

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP DHILLON,
908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382 ONTARIO
LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED, 1552838
ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED, 1849722
ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO LIMITED,
1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

**THIRD REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED,
IN ITS CAPACITY AS RECEIVER AND MANAGER**

OCTOBER 18, 2019

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1.0 INTRODUCTION AND PURPOSE OF REPORT

1.1 Introduction

- 1.1.1 By way of an order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 30, 2019 (the “**Appointment Order**”), BDO Canada Limited (“**BDO**”) was appointed as the Receiver, without security, of all the Property (as defined in the Appointment Order) of 908593 Ontario Limited operating as Eagle Travel Plaza (“**908**”), 1393382 Ontario Limited (“**139**”), 2145744 Ontario Limited (“**5744**”), 2145754 Ontario Limited (“**5754**”), 1552838 Ontario Inc., 2189788 Ontario Inc., 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, 1254044 Ontario Limited and 2612550 Ontario Limited (collectively, the “**Debtors**” or the “**Receivership Parties**”). Attached, as **Appendix A**, is copy of the Appointment Order. Attached as **Appendix B** is a listing of the Receivership Parties, including their location, a description of their operations and the parties which hold security over each entity’ assets.
- 1.1.2 At the September 30 hearing, the Court granted the following two additional orders by separate motion:
- an order to allow entry and search of premises of the Defendants (the “**Anton Piller Order**”); and
 - a Mareva injunction order restraining Simranjit Dhillon (“**Simran**”), Mandhir Dhillon (“**Mandhir**”), Sarbjit Dhillon (“**Sarbjit**”) and Mandeep Dhillon (“**Mandeep**”) (collectively the “**Individual Defendants**” and, together with the Debtors, the “**Defendants**”) from dissipating their assets (the “**Mareva Order**”).
- 1.1.3 Certain of the Debtors operate a number of retail gas stations, truck service centres and fueling stations in Southwestern Ontario (collectively, the “**Retail Gas Stations**”). The service centres are located in Windsor, Tilbury, Chatham, Wyoming, and Sarnia (Sarnia having three locations). 908 operated a fleet member reward card program (the “**Fleet Card Business**”) used by its customers at gas stations located in Canada and the United States, including at gas stations operated by certain of the Debtors. The Fleet Card Business is described in detail below at paragraph 3.1.1. For the reasons outlined in detail below, the Receiver terminated active operations in respect of the Fleet Card Business on October 11, 2019, after determining that it lacked any centralized record-keeping, traditional management structure, and/or controls, and that it was generating significant and rapidly escalating losses. As set out in Appendix B, the remaining Debtors are related companies who own, operate and/or guarantee related businesses and assets, including certain fast food restaurants located at certain of the Retail Gas Stations.
- 1.1.4 The background with respect to the Defendants, as well as a description of the activities and circumstances leading to the appointment of the Receiver over the Receivership Parties, are contained in the motion record (the “**CIBC Motion Record**”) filed by Canadian Imperial Bank of Commerce (“**CIBC**”), the plaintiff in the within proceeding. The CIBC Motion Record has been sealed pending further order of the Court.

- 1.1.5 The Individual Defendants, who are not the subject of the receivership but are subject to the Mareva Order and the Anton Piller Order, are various members of the Dhillon family. Together, members of the Dhillon family own, operate and are otherwise associated with the Receivership Parties.
- 1.1.6 On October 3, 2019, the Court issued an order (the “**October 3 Order**”) that, among other things, released into the Receiver’s possession three computer towers (the “**Simran Computers**”) which had been seized from Simran’s Cadillac XT5 pursuant to the Anton Piller Order. Attached as **Appendix C** is a copy of the October 3 Order.
- 1.1.7 On October 4, 2019, the Receiver filed its first report to the Court (the “**First Report**”), in support of a motion brought by CIBC seeking an order, among other things, granting the Receiver access to certain records seized from the Storage Unit (as defined in the First Report) located at a storage facility identified in the Anton Piller Order. Attached as **Appendix D**, is a copy of the First Report (without appendices). The First Report has already been sealed, and therefore will be redacted the publicly-available version of this Third Report
- 1.1.8 On October 4, 2019, the Court amended the Appointment Order (the “**Amended Appointment Order**”) to increase the Receiver’s borrowing limit under the Receiver’s Borrowing Charge (as defined in the Appointment Order) to \$5,000,000. A copy of the Amended Appointment Order is attached to this report as **Appendix E**.
- 1.1.9 On October 7, 2019, the Court issued an order amending the Mareva Order (the “**October 7 Order**”) to expand the assets subject to the Mareva Order to include the assets of certain corporations that are not named as Defendants. A copy of the October 7 Order is attached as **Appendix F**.
- 1.1.10 On October 11, 2019, the Receiver filed its second report to the Court (the “**Second Report**”), which was filed in support of a motion brought by the Receiver to amend and restate the Appointment Order to increase the Receiver’s borrowing limit under the Receiver’s Borrowing Charge to \$10,000,000. A copy of the Second Report (without appendices) is attached as **Appendix G**.
- 1.1.11 On October 11, 2019, the Court issued an order (the “**October 11 Order**”) that amended the Appointment Order to increase the Receiver’s borrowing limit under the Receiver’s Borrowing Charge (as defined in the Appointment Order) to \$10,000,000. A copy of the October 11 Order is attached to this report as **Appendix H**.

1.2 Purpose of this Report

- 1.2.1 This report is the Receiver’s third report to the Court (the “**Third Report**”) and is filed to provide the Court with an update on the Debtors’ business and operations. In particular, the Receiver is reporting on a number of materially detrimental events that occurred in the business days leading up to Friday, October 11, 2019, which led the Receiver to conclude that the Debtors’ Fleet Card Business and its associated operations were not viable even in the short term. The Fleet Card Business was accordingly shut down effective 6:00 p.m. on October 11, 2019, as

described in sections 3 and 6.1 below. The Receiver continues to assess the Debtors' Retail Gas Station business and operations, and this business line remains operational as of the date of this report.

- 1.2.2 In preparing this Third Report, the Receiver has relied upon the Receivership Parties' books and records that could be located by the Receiver, unaudited and draft financial information available, certain financial information obtained from third parties, and discussions with various individuals (collectively, the "Information"). The Receiver 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 ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of the Information.
- 1.2.3 This Third Report has been prepared for the use of this Court to provide general information and an update relating to these Receivership Proceedings. This Third Report should not be relied upon for any other purpose. The Receiver will not assume responsibility or liability for losses incurred as a result of the circulation, publication, reproduction or use of this Third Report contrary to the provisions of this paragraph.
- 1.2.4 Capitalized terms used but not defined in this Third Report shall have the meaning ascribed to them in the First Report or the Appointment Order, as applicable, both of which are appended hereto for reference. All references to dollars are in Canadian currency unless otherwise noted.
- 1.2.5 In accordance with the Appointment Order, copies of unsealed materials and prescribed notices delivered and/or filed in the Receivership Proceedings are available on the Receiver's Case Website at www.extranets.bdo.ca/eagletravelplaza.

2.0 RECEIVER'S ACTIVITIES

2.1 Taking Possession

2.1.1 On September 30, 2019, the majority of the Receiver's Southern Ontario commercial restructuring team was mobilized to locations near each of the Debtors' premises, to await the issuance of the Appointment Order. Immediately upon the issuance of the Appointment Order, the Receiver's staff took possession and control over the Debtors' Property, as detailed below. In total, the Receiver engaged fourteen staff members, together with technology experts including its national IT security director, in its initial effort. Since the date of the Appointment Order, the Receiver has taken possession and control of the following properties:

- the Esso gas station, On the Run convenience store and restaurants at the address municipally known as 3613 Queens Line in Tilbury, Ontario (the "**Tilbury Location**"), at which location certain of the Debtors also maintain staff offices;
- the Esso gas station at the address municipally known as 1670 London Line Road in Sarnia, Ontario;
- the Esso gas station at the address municipally known as 2097 London Line Road in Sarnia, Ontario;
- the truck stop convenience store and Esso gas station, including the Pizza Pizza and Subway restaurants, at the address municipally known as 22216 Bloomfield Road in Chatham, Ontario (the "**Bloomfield Location**"), at which location certain of the Debtors also maintain staff offices;
- the Shell gas station at the address municipally known as 203 Indian Road in Sarnia, Ontario;
- the Esso gas station, Pizza Depot and customer service operations of the Eagle Fleet Business at the address municipally known as 1527 Provincial Road in Windsor, Ontario (the "**Windsor Location**"); and
- the Debtors' sales office at the address municipally known as 69 Bramalea Road, PO Box 1618, Brampton, Ontario (the "**Sales Office**").

2.1.2 In taking possession, the Receiver arranged for the changing of all external locks and certain internal office locks, mail redirection, inventorying the various assets on site, videotaping the premises, implementing security arrangements (where appropriate), backing up computer systems, changing computer passwords, copying the records of internal video surveillance systems, limiting external access to company computer systems, closing the Debtors' bank accounts, and opening bank accounts for the Debtors that were operating entities (collectively, the "**Receiver's Account(s)**").

2.1.3 In addition, as a result of the evidence in the CIBC motion record that the Debtors had been moving funds around in the days leading up to the appointment, the Receiver advised the Schedule A banks and a number of credit unions of its appointment, asked for information relating to any accounts held by the Debtors, and asked that any such accounts be frozen.

- 2.1.4 The Receiver secured cash found on the various sites totaling approximately \$71,000, and made arrangements for the cash to be deposited into the Receiver's Account. This amount includes \$9,000 the Receiver found in a desk drawer in a locked office at 1670 London Line, Sarnia location, and \$60,000 of cash the Receiver found in a bag at the Tilbury Location (the "**Cash Bag**") on September 30, 2019. A BDO representative witnessed Sarbjit leaving the Cash Bag in a small bathroom on the outside of the main building, while Sarbjit was removing records from the business premises and loading them into his vehicle earlier that day. Mandeep later notified the Receiver that the Cash Bag related to a separate ATM business operated by relatives of the Individual Defendants. To date, no additional documentation has been provided by the Individual Defendants and/or their relatives to the Receiver in respect of this matter.
- 2.1.5 The Receiver met with the employees and/or third party contractors at the sites above to advise of the Appointment Order and the intention to continue operations in the normal course.
- 2.2 Cash Controls and Depositing**
- 2.2.1 A meaningful portion of the Debtors' sales receipts relating to the Retail Gas Stations are received in cash from customers (i.e. the retail fuel, convenience stores and fast food operations). The Receiver obtained access to the on-site safes where daily cash deposits were stored, and arranged daily pick-up of cash from each of the locations to be deposited to the Receiver's Accounts daily.
- 2.2.2 None of the employees at the various locations knew the combinations to the safes. Accordingly, in certain instances the Receiver had to arrange for the safes to be breached in order to gain access. At the Bloomfield and Tilbury Locations, Simran and Mandeep, respectively, provided access to the safes. For those safes where access was provided, the Receiver has changed the combinations and/or secured the keys.
- 2.3 Invoicing and Collections**
- 2.3.1 As discussed in greater detail below in Section 3, invoicing and collections for the Fleet Card Business are complex and labour-intensive. The Receiver has spent considerable time with the various employees who are involved in gathering invoicing data from the T-Chek and Comdata systems (defined in paragraph 3.1.1 below), in order to understand the method used to convert that data into customer invoicing, and the methods of collection of amounts invoiced to each customer. The Receiver's efforts in this regard have been impeded by, among other things, the fact that the Debtors' record-keeping was completely inadequate, as described in sections 2.4 and 3.2 below.
- 2.3.2 The Receiver has also had to understand the process for invoicing and collecting certain customer accounts that were not invoiced through the Fleet Card Business, (the "**In-House Diesel Fuel Accounts**"). This process is also discussed in greater detail in section 3 below.

2.4 Accounting Controls and Books and Records

- 2.4.1** Upon taking possession of the Bloomfield Location and the Tilbury Location, the Receiver changed the locks of the various offices at each location. The Receiver noted that the records at each location were in extreme disarray, with no apparent coordination of records. The records were strewn about the offices, and several of the drawers of the desks in the offices were empty.
- 2.4.2** The three accounting staff at the Tilbury Location maintained their offices in small portables at the back of the gas station. The records in the portables primarily consist of historical daily sales packages for each gas station location, supplier payables, certain government accounts reporting and some customer fuel card credit applications. There are no monthly operations reporting packages at the accounting office.
- 2.4.3** The Receiver has begun to put in place rudimentary reporting on the retail sales conducted at the Retail Gas Stations on a consolidated basis, as well as reconciling the Fleet Card Business sales to third party data supplied by T-Chek and Comdata. This is discussed further in Section 3.
- 2.4.4** Lastly, the Receiver has been in contact with the Debtors' external accountant, MDP LLP, who has provided the Quickbooks files related to 908, 139, 5754 and 5744.

2.5 Maintaining Operations

- 2.5.1** The Receiver has arranged to maintain fuel deliveries to the Retail Gas Stations for both regular and diesel fuels. The Receiver has had to contact fuel suppliers, make arrangements for new accounts and to set up delivery terms for the fuel. The Receiver notes that the Debtors originally had diesel fuel delivered to them, but the Receiver could not initially determine the identity of the supplier(s). The Receiver later determined that Pilot (as defined in paragraph 3.1.1 herein) supplied some fuel, which was delivered by Canadian Clean Fuels, up to the afternoon of October 2, 2019. In the intervening period, the Receiver sourced and made arrangements with Amco Petroleum Ltd., which had not previously provided fuel to the Debtors, to continue supply.
- 2.5.2** The Receiver took possession of the sales offices located in Brampton and Windsor, and maintained the employment of the sales and customer service staff at each location. Through the sales staff and directly, the Receiver has maintained contact with Fleet Card Business customers. The Receiver has also been in contact with Go Daddy to maintain the Fleet Card Business website for customers. Initially, Go Daddy would not respond or provide details to the Receiver and/or its counsel, Aird & Berlis LLP ("**Counsel**"), without the account number and applicable PIN, despite the issuance of the Appointment Order. Access to the Go Daddy site was gained on October 4, 2019, after the Receiver gained access to the Simran Computers (discussed below).
- 2.5.3** The Receiver made direct contact with both T-Chek and Comdata to discuss the continuation of operations, customer listing, customer usage, billing and credit terms.

- 2.5.4** The Receiver contacted and set up new accounts for the numerous suppliers to the gas station convenience stores (such as Coke, Pepsi, Cor Mark, Imperial Tobacco, etc.).
- 2.5.5** Further, the Receiver has been in contact with Ontario Lottery and Gaming Commission (the “**OLG**”) to discuss the lottery sales at the various gas stations. To date, the OLG has not authorized the Receiver to continue the sales of OLG products. Once the Debtors’ bank accounts were closed and/or frozen pursuant to the Mareva Order, a number of payments bounced, and the OLG disabled the terminals. Upon learning of the issue, the Receiver began setting up new accounts in the Receiver’s name to allow these terminals to operate, which remains in process while the Receiver awaits the Alcohol and Gaming Commission’s authorization. The Receiver will take appropriate steps to ensure that the authorization is granted.
- 2.5.6** The Receiver has maintained various fast food operations at the various gas station locations, and has arranged to continue supply of the various products sold at the locations. In total, the Receiver is maintaining the operations of a Subway and Pizza Pizza at the Bloomfield location, and a Pizza Depot at the Windsor Location.
- 2.5.7** The Receiver closed the Menchie’s Frozen Yogurt business located at 1041 Wellington Rd., London. The Receiver determined that the professional costs associated with keeping this business operational would outweigh the benefits.
- 2.5.8** The Receiver met with the staff at the various locations, and discussed the Appointment Order with them, along with the Receiver’s intended course of action. The Receiver has also arranged to continue the payroll for each of the Retail Gas Stations, the sales staff, the Subway, the Pizza Pizza, the Pizza Depot, and the accounting staff at the Tilbury Location.

2.6 Other Activities of the Receiver

2.6.1 In addition to the activities detailed above, the Receiver has:

- liaised with the Ministry of the Environment regarding potential environmental issues;
- liaised with other lenders to the Receivership Parties;
- coordinated the execution of the Receiver’s duties under the Appointment Order and the execution of Grant Thornton’s duties under the Anton Piller Order;
- worked with CIBC and Pilot (as defined in paragraph 3.1.1 herein), on the negotiations of the non-disclosure and stabilization agreements (as discussed in greater detail in Section 5, below); and
- participated in daily update calls with CIBC and their counsel regarding the status of operations, the stabilization agreement and funding requirements.

2.7 Assets not in the Receiver's possession

2.7.1 The Receiver has not taken possession and control over certain of the assets and/or locations of the following parties either included in the Appointment Order or related thereto:

- the Esso gas station owned by 1254044 Ontario Limited and the Burger King restaurant at the address municipally known as 5906 Oil Heritage Road in Wyoming, Ontario (together, the “**Wyoming Location**”), which are discussed in greater detail at paragraphs 2.7.2-2.7.7 below;
- the Shell station at 119 Keil Drive South, which was previously owned by 2123618 Ontario Limited (one of the Debtors), but which was sold to an unrelated party in or around 2014. The Receiver is not aware of any active business being carried on by this entity;
- the Burger King restaurant located at the Shell gas station at 203 Indian Road in Sarnia, Ontario, as it is not owned by any of the Debtors; and,
- two of the apparent three Menchies owned by 2364507 Ontario Limited, as the Receiver has been unable to determine with certainty whether this company owns additional Menchies locations, and if so, where they are located.

2.7.2 On October 2, 2019, the Receiver became aware that the Wyoming Location may be operated by 1254044 Ontario Limited (“**125**”), a Receivership Party. Until that time, there had been confusion regarding 125's ownership and operational status, because the Teraview Land Registry search results for the Wyoming Location's municipal address incorrectly indicated that the land is owned by an unrelated party, JN Ventures Limited. Upon learning that the Wyoming Location may be operated by 125, the Receiver immediately sought clarification regarding the ownership of the Wyoming Location, and determined that the property is in fact owned by 125. Around the same time, the Receiver further came to understand that 125 had granted a security interest in the Wyoming Location in favour of Bank of Montreal (“**BMO**”) pursuant to various security agreements.

2.7.3 Upon learning of BMO's interest, the Receiver and Counsel began engaging with BMO with respect to this issue. BMO, CIBC and the Receiver engaged in discussions regarding the path forward for 125 and certain other Receivership Parties which were subject to BMO security interests, being 218 and 155. Attached as **Appendix I** is a chart which illustrates the related companies which have granted security interests in favour of BMO, and their relationship(s) to the Debtors.

2.7.4 Following discussions with the Receiver and CIBC, BMO determined that it would initiate a separate application to appoint MNP Ltd. as receiver over all of the assets, undertakings and properties of 125, 218, 155 and certain other related companies and assets. The application was unopposed and the order was granted on October 16, 2019 (the “**BMO Receivership Order**”). As part of the BMO Receivership Order, the Receiver was discharged as Receiver of 125, 218 and 155 effective as of 1:00 p.m. (Toronto time) on October 16, 2019. A copy of the BMO Receivership Order is attached hereto as **Appendix J**.

2.7.5 Leading up to the issuance of the BMO Receivership Order, the Receiver, BMO and CIBC collectively agreed to provide operational support to the Wyoming Location.

The Receiver, BMO and CIBC entered into a reimbursement agreement dated October 10, 2019, whereby 125's employee payroll and fuel supplies would be funded by the Receiver (and indirectly, by CIBC), and reimbursed by BMO (the "Reimbursement Agreement").

- 2.7.6** The Reimbursement Agreement also included employee payroll and fuel delivery funding for the Ultramar gas station at the address municipally known as 5470 Walker Road, Tecumseh, Ontario (the "Tecumseh Location"). The Tecumseh Location is owned by 2541899 Ontario Limited ("254"), a related company to the Debtors which is not a Receivership Party, but which is the subject of the BMO Receivership Order. As a result of the Reimbursement Agreement, employees of 125 have continued to be paid and are current on their wages. The Receiver subsequently learned that 254's employees are not paid directly by 254, but by a third-party management company, which has continued to pay 254's employees.
- 2.7.7** In order to deliver fuel to the Wyoming Location and the Tecumseh Location, on or about October 9, 2019, the Receiver reached out to counsel to the Individual Defendants (other than Simran) by phone and email, requesting confirmation as to the quantity of fuel needed, as well as certain other basic information required for fuel delivery. The Receiver did not receive a response to its requests, and therefore was unable to order fuel to be delivered.

3.0 DIESEL FUEL BUSINESS UNIT

3.1 Background

3.1.1 The Receiver estimates that the Fleet Card Business accounted for approximately 95% of the Debtors' business, representing approximately \$1.1 million in revenues per day. The Fleet Card Business can be summarized as follows:

- 908 provided its customers (truck transportation companies with varying fleet sizes) with “Fleet Cards”. A Fleet Card is essentially a credit card, which was issued to each of the customers' truck drivers to allow them to purchase fuel and other items on credit, as described below. As of the date of the appointment, 908 had approximately 1,300 active known customers, and up to 1,800 customers in total. As each customer represents numerous truck drivers, there are significantly more Fleet Cards in circulation than there are active known customers;
- the Fleet Cards were administered by way of electronic systems maintained by two third-party operators, WEX Bank (doing business as T-Chek Systems, Inc., “T-chek”) and Comdata, Inc. (“Comdata”), both of which are domiciled in the U.S.;
- customers' truck drivers used the Fleet Cards to purchase diesel fuel, convenience store items and obtain cash advances at stations operated by the Debtors and their partners, Pilot Travel Centers LLC, Flying J Canada Inc. and their respective affiliates and partners (collectively, “Pilot”). Pilot has informed the Receiver that Fleet Cards issued by 908 could be used at all of Pilot's stations, consisting of approximately 700 U.S. locations and 70 Canadian locations;
- 908 paid Pilot, at a discounted rate, for the fuel purchased by its Fleet Card customers. Pursuant to the short term fuel marketing agreement between Pilot Travel Centers LLC and 908, 908 had ten days to pay Pilot for the fuel purchased by customers through the Fleet Cards;
- 908 would then invoice its customers for the fuel and other items purchased, and any cash advances received through the Fleet Cards. Pursuant to credit agreements with each customer, customers' payments were taken either daily, twice weekly, weekly or every 15 days, through several payment methods. The main payment method was for 908 to debit a customer's bank account for the amount owed through 908's bank account system. However, customers also made payments to 908 by way of credit cards, fund transfers, and cheques;
- monthly, customers expected to receive a rebate cheque from 908 in relation to their fuel purchases on the Fleet Cards. The Receiver's counsel has reviewed the customer agreements, and has not found any contractual requirement for 908 to issue rebate cheques to its customers, nor any documented basis upon which rebates were to be calculated. Based on discussions with 908's employees and Simran, the Receiver understands that, historically, 908 provided customers with rebates, which Simran personally quantified based on the spread between the price and the cost of fuel, and then taking into consideration the volume of fuel purchased, Simran's relationship with the customer, and the economic climate; and

- Fleet Card holders were also eligible to access credit by way of the “Express Codes” system administered on T-Chek and Comdata’s systems, pursuant to which customers receive cheques that they could use to pay for items or services purchased from vendors other than the Debtors and Pilot, such as repairs.

3.2 Books and Records and Management Controls

- 3.2.1 Upon its appointment, the Receiver could not initially locate the majority of the critical information that was fundamental to operating the Fleet Card Business. It appeared to the Receiver that the Debtors did not maintain a central repository for customer and other data. Accordingly, in order to understand the Debtors’ operations, the Receiver had to meet with representatives of the Debtor, including Simran and Mandeep. Due to Simran’s alleged involvement in the events that precipitated the Receiver’s appointment, the Receiver has been cautious in relying on any information provided by Simran, but has had little other option given the state of the business records (or lack thereof).
- 3.2.2 Following requests from the Receiver, on Thursday, October 3, 2019, Simran and Mandeep attended at the Tilbury Location to meet with the Receiver (the “October 3 Meeting”). This was Simran’s first attendance at any of the Debtors’ operations since the issuance of the Appointment Order. Mandeep had attended briefly at the Bloomfield Location on October 1, 2019, to address payroll, but his assistance was not ultimately required as the Receiver made arrangements to coordinate the payroll.
- 3.2.3 At the October 3 Meeting, Simran advised representatives of the Receiver that critical operational and financial information relating to the Fleet Card Business was contained on the Simran Computers, which at that time were in the possession of the Independent Supervising Solicitor (the “ISS”), pursuant to the Anton Piller Order, having been seized from the trunk of Simran’s Cadillac XT5, where he had put them.
- 3.2.4 Counsel for CIBC and the Receiver immediately attended before the Court to obtain the October 3 Order, which permitted the ISS to transfer custody of the Simran Computers to the Receiver. The Receiver thereafter received the Simran Computers at approximately 10:00 p.m. on October 3, 2019.
- 3.2.5 On October 4, 2019, Simran attended at the Bloomfield Location to assist the Receiver with reviewing the information contained on the Simran Computers. Mandeep did not attend, and has not attended at any of the Debtors’ locations since the October 3 Meeting, despite a request by the Receiver that Mandeep attend at the Bloomfield Location on or about October 8, 2019. The Receiver has asked Mandeep a limited number of questions by email and phone, which he has answered.
- 3.2.6 For a business of the size and reported revenue base of the Debtors, and the significant amount of cash being generated, the Receiver expected to find integrated professional systems and processes for accounting, management and significant internal controls. Instead, the Receiver has determined that:
- there are no written procedures for calculating the rebates for customers;

- there are no controls for determining the accuracy or completeness of invoicing;
- there are no written procedures for accumulating In-House Diesel Fuel customer data for invoicing;
- there are no written procedures for collection from customers (i.e. which method of payment each customer is using and when they are expected to pay);
- there is no procedure for maintaining ongoing accounts receivable balances;
- information and tasks were highly disbursed amongst the employees at different locations, such that no employee knew any complete process or task; and
- there are multiple systems recording differing types of transactions, with no internal accounting system to consolidate all transactions.

3.2.7 One of the most significant issues for the Receiver continues to be the lack of accurate and complete customer data. The Debtors did not have a central repository for customer data. The Company did begin using the Salesforce CRM system in 2018; however, the Receiver was unable to ascertain if this information was complete. Additionally, the Salesforce CRM was used primarily for customer contact details only (no pricing, billing frequency, banking details, etc.). As noted above, the employees did not have a complete understanding of the various operations of the Debtors, and there were effectively no controls or procedures in place.

3.2.8 The Fleet Card Business consisted of thousands of transactions each week that were invoiced through an excel-based proprietary program, with no known reconciliation to the source data from T-Chek and Comdata. In order to collect payment from the Fleet Card Business' approximately 1,300 known active customers, the Receiver required customer bank account information. However, the Receiver did not have access to customer collection data and customer bank account information until Simran was able to show the Receiver the information on the Simran Computers on Friday, October 4, 2019.

3.2.9 As noted above, the Debtors do not have a centralized accounting system by which the financial results of the various parts of the Business are consolidated in order to assess the overall financial position of the Debtors. In particular, there is no accounting system that consolidates the invoicing, collections and rebates for the most significant portion of the Business, the Fleet Card Business. At the October 3 Meeting, Simran confirmed there was no updated accounts receivable listing, and that the accounts receivable listing was only prepared manually by him on a monthly basis for the borrowing base calculation at the end of the following month. Accordingly, Simran stated that the August 31, 2019 accounts receivable listing would not have been prepared until September 30, 2019 and the only receivables listing available was as at July 31, 2019.

3.2.10 Following the meeting on October 4, 2019, Simran attended at the Bloomfield Location for approximately an hour's worth of assistance on October 7, 2019, and two hours' worth of assistance on October 9, 2019.

- 3.2.11** At the October 9 meeting, the Receiver again discussed with Simran the September 30, 2019 accounts receivable and requested Simran's assistance with preparing same. Simran advised that it would take up to 4 to 6 hours to complete, and that he could assist on either October 10 or 11. The Receiver did not hear from Simran on October 10, and on October 11 texted him at approximately 9:00 a.m. on the cell phone number Simran had previously responded to, to request that he attend the Bloomfield Location to assist in the preparation of the accounts receivable listing as discussed on October 9. The Receiver did not receive a response.
- 3.2.12** There is no easy way to determine which customers have paid which invoices, as this is not tracked in any system. This is exemplified in Simran's comments regarding the accounts receivable listing, noted above. Management appears to have used excel spreadsheets that were not integrated with any accounting systems to record the accounts receivable information, but there is no way to determine if the information is accurate or complete. The Receiver is attempting to obtain third party information to confirm the information supplied by Simran.
- 3.2.13** As detailed above, despite Simran and Mandeep providing some initial information to the Receiver about the Business in the meetings on October 3 and 4, and Simran attending for short meetings at the Bloomfield Location on October 7 and 9, thereafter neither Simran nor Mandeep responded promptly, adequately, or at all, to the Receiver's requests for assistance. In particular, the Receiver notes that Simran was not able to provide the Receiver with a current accounts receivable listing in order for the Receiver to collect outstanding accounts.
- 3.2.14** In summary, the Receiver has determined that record-keeping for the Fleet Card Business was wholly inadequate. In some cases, crucial operational information does not exist except to the extent that Simran personally has knowledge of such information. In addition, the Fleet Card Business lacks written policies and procedures that would permit anyone other than Simran to carry on the Business. The situation has been aggravated by the Individual Defendants' apparent removal of information from the Business in the days leading up to the Receiver's appointment, and by the Individual Defendants' failure to co-operate substantively with the Receiver, except for the minor assistance detailed above.

3.3 Anton Piller Order Records

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



3.4 Invoicing and Collection for the Fleet Card Business Unit - Fuel

- 3.4.1 In order to collect electronically from Fleet Card Customers, an operator must enter information regarding a customer's complete corporate name, Fleet Card account number and banking information into CIBC's on-line banking system (collectively, the "Customer Data").
- 3.4.2 Upon its appointment, as stated, the Receiver did not have the information necessary to collect from customer bank accounts. As discussed above, the Receiver gained access to the Customer Data upon receipt of the Simran Computers at approximately 10:00 p.m. on October 3, 2019.
- 3.4.3 On Friday, October 4, 2019, Simran attended the offices at the Bloomfield Location and showed the Receiver certain computer files containing Customer Data. On a test basis, the Receiver initially entered approximately 40 customer accounts into the CIBC system, and then walked through how those customer accounts would be debited (the "PAD Process").
- 3.4.4 Once it had established how to complete the PAD Process, the Receiver had to enter Customer Data for the Debtors' approximately 1,300 active known customers before it could commence collections of the amounts invoiced to customers. Seven (7) of the Receiver's staff members spent approximately eight (8) hours each on Saturday, October 5, 2019 manually entering Customer Data into the CIBC systems. This was the maximum number of Receiver staff who could be authorized to have bank account access, for security reasons.
- 3.4.5 On Monday, October 7, 2019, the Receiver arranged for seven (7) staff members to commence the PAD Process to debit the approximately 1,300 customer accounts, for amounts invoiced for the period September 23 to 29, 2019. The Receiver commenced the PAD Processing for the week of September 30 to October 6, 2019 on Wednesday October 9 and finished what could be entered on Friday, October 11, 2019.

3.4.6 During the PAD Processing conducted between October 4, 2019, and October 11, 2019, the Receiver determined that there was CDN \$1,814,579.69 and U.S. \$1,691,608.19 in accounts for which the Receiver did not have complete Customer Data to permit the Receiver to process a payment. Examples of the missing information include, without limitation:

- incomplete customer names (i.e. the entry stated “Orbit” for the customer name but there were five different customers whose name began with “Orbit”);
- missing bank account information (either U.S. or Canadian accounts or both);
- incorrect bank account information that would not be accepted by the PAD system;
- the customer ID account number did not match the customer name; and,
- the customer did not appear in the listing of customer files provided.

3.4.7 In the end, the Receiver was able to process \$5,532,445.30 and U.S. \$3,598,861.62 in customer payments through PAD Processing between October 4, 2019, and October 11, 2019. The Receiver also completed \$90,116.76 in payments through customer credit cards.

3.4.8 As of Friday, October 11, 2019 the Receiver has experienced numerous returned items from PAD Processing. The chart below summarizes the Receiver’s returned items from PAD Processing as of October 11, 2019:

Reason for Return	Currency	
	CAD	U.S.
Payment stopped by customer	\$ 472,023	\$ 67,558
NSF	289,722	58,667
Account closed	55,315	417
Account not found	68,122	88,676
Account frozen	57,068	-
Not in accordance with business	106,230	74,462
No agreement existed	39,266	-
Other	42,503	-
Totals	\$ 1,130,248	\$ 289,780

3.4.9 The Receiver understands that this volume of returns is not surprising in the industry, given the Receiver’s delayed ability to process payments. Over the course of the Receiver’s efforts to effect PAD Processing, the rate of returns has continued to accelerate. Pilot has advised that, in its experience, if accounts are not collected within a few days of becoming due, the likelihood of collection declines each day.

3.5 Invoicing and Collection for the Fleet Card Business Unit - Express Codes

3.5.1 As detailed above, Fleet Card holders can use “Express Codes” to obtain cheques that they can use to purchase items and services other than fuel and convenience store items. During the period September 30, 2019 to October 6, 2019, Express

Codes cheques averaged approximately \$70,000 per day, and cash advances averaged approximately \$27,000 a day. The invoicing information for the Express Codes is also gathered by T-Chek and Comdata and downloaded by 908 into their invoicing systems. Accordingly, the Receiver has had the same concerns regarding accuracy and completeness of the Express Codes invoicing as it has had for the fuel invoicing.

- 3.5.2 Express Codes invoicing is provided to customers on a weekly basis, and is collected using the same methods as the fuel invoicing (i.e. principally through the PAD Process).

3.6 In-House Diesel Fuel Accounts

- 3.6.1 There are approximately 22 In-House Diesel Fuel Accounts. These customers differ from other customer accounts, in that they are managed at the local gas station and not through the sales staff. In addition, they have different payment terms (mostly by cheques and potentially longer payment terms of up to 30 days) and rebates (cash rebates and preferred pricing). The invoicing information is maintained in a separate computer system at each of the three gas stations with a “Truck Stop” for diesel refueling. The Receiver was informed by the employees at the Bloomfield Location that the invoicing for In-House Diesel Fuel Accounts at Bloomfield was prepared solely by Simran.

- 3.6.2 The accounting staff at the Tilbury Location were able to generate a summary aged receivables listing for the In-House Diesel Fuel Accounts (the “In-House AR”). A copy of the In-House AR as at September 30, 2019 is attached as **Appendix K**. However, the accounting staff stated that the payments received from the largest In-House Diesel Fuel customers were not reported to them, and therefore were not referenced in the In-House AR. The In-House AR shows accounts total approximately \$2,100,000, including the account for One World, which shows an outstanding balance of approximately \$1,260,000. However, in discussions with One World, its representatives stated that payments are remitted weekly and that it only owed approximately \$150,000 as at September 30, 2019. The Receiver is investigating this account further, but it appears that the In-House AR generated by the accounting staff at the Tilbury Location may be significantly overstated.

- 3.6.3 In addition, the Receiver has communicated directly with Warren Gibson, one of the Debtors’ largest In-House Diesel Fuel customers. Warren Gibson advised the Receiver that it would only continue to purchase fuel if its existing pricing arrangements were honoured. The Receiver has learned that the pricing that the Debtors’ offered to Warren Gibson resulted in only a very slim gross margin, which does not appear to be sustainable.

3.7 Diesel Fuel Customer Rebates and Special Pricing

- 3.7.1 An important aspect of the Fleet Card Business consisted of the loyalty rebate programs offered to customers, which are important to customers, and therefore to the Fleet Card Business generally. The customers are price sensitive, and the market is very competitive. As detailed above, Simran advised the Receiver that

customer rebates were determined by Simran on a discretionary basis, based on the spread between market price and the cost to 908, taking into consideration the volume of fuel purchased by the customer, Simran's relationship with the customer, and the economic climate. Simran would exercise his own discretion to apply a discount on the premise that retaining customers is essential to the business. There are no written agreements regarding the rebates or discounts that are provided to customers.

- 3.7.2 The Receiver understood from customers and employees that not all of the August 2019 rebates were sent to customers or may not have been cashed prior to the Receiver freezing the 908 bank account at Bank of Montreal ("BMO"). The Receiver wanted to understand the potential liability owing to customers, and, accordingly, what may be offset against accounts receivable or current sales. Simran directed the Receiver to the August 2019 customer rebate spreadsheets on one of the Simran Computers (the "**August 2019 Rebate Spreadsheet**"). The total rebate to customers per the August 2019 Rebate Spreadsheet, as calculated by Simran, was approximately \$3.6 million (using an exchange rate for U.S. dollars of 1.35) for the month of August 2019.
- 3.7.3 Simran estimated that approximately \$500,000 of the August 2019 rebate cheques were issued on 908's CIBC accounts in early September and therefore may have cleared the CIBC accounts. However, Simran advised that these rebate cheques were issued on manual cheques (with no copies retained), and therefore the clearing of these cheques through the CIBC account could not be confirmed unless the Receiver reviewed the bank statements. The balance of the August 2019 rebate cheques were issued on the BMO account on or around September 22, 2019. Accordingly, a portion of the cheques may have cleared the BMO account prior to the account being frozen by the Receiver. Again, the Receiver would require bank statements to confirm, which, if any, cleared the BMO account. Further, Simran advised that certain customer rebate cheques from prior months were not released, but he was not able to provide a listing of those unsent rebate cheques.
- 3.7.4 Further, the business operated another "rebate" program, whereby individual truck drivers who fueled at Debtor-owned gas stations would receive cash from cashiers at a rate of 14 cents per litre of gas purchased.
- 3.7.5 The rebate program calculation process is highly irregular and void of oversight, structure, and systemization. The foregoing contributes to the difficulties associated with accurately assessing the financial performance of the Fleet Card Business.

4.0 RETAIL GAS STATIONS

4.1 Books and Records and Point of Sale Systems

- 4.1.1 The accounting staff at the Tilbury Location collect the electronic information from the point of sale systems for the retail operations at all but one gas station. The gas station located at 203 Indian Road, Sarnia uses a different point of sale system, and the electronic information for that gas station has to be collected manually by the accounting staff.
- 4.1.2 Each of the retail locations prepares a daily cash register report and cash reconciliation, which is delivered to the accountants at the Tilbury Location. To the Receiver's knowledge, no one summarizes the retail point of sale system results or the daily cash register and cash reconciliation reports. The Receiver is in the process of setting up daily reporting for the retail operations.

4.2 Fuel and Retail Store Operations

- 4.2.1 In the days following the issuance of the Appointment Order, the Receiver went to some lengths to secure continued supply of fuel for the retail operation, as well as the supply of goods for the stores. The Receiver treated continued supply of fuel and store inventory with urgency. The Receiver has now established ongoing fuel supply arrangements with Parkland Fuel Corporation for five of the six retail stations and Shell for the other, as well as ongoing supply for the convenience stores from over a dozen different suppliers.

4.3 Fast Food and Space Rental Operations

- 4.3.1 As previously noted, the Receiver has spoken with the employees at each of the Subway and Pizza Pizza operating at the Bloomfield Location, and the employees at the Pizza Depot operated at the Windsor Location, and has maintained these operations. However, the Receiver has received a notice from Subway Franchise World Headquarters dated October 4, 2019 (the "**Subway Notice**") regarding certain underreported sales and a demand for payment of royalties previously issued on July 31, 2019. A copy of the Subway Notice is attached as **Appendix L**. The Receiver has attempted to contact Subway to follow up on the Subway Notice.
- 4.3.2 The Receiver will be reviewing the rent to be charged to any operating fast food restaurant not under the Receiver's control pursuant to the Appointment Order. Specifically, the Receiver will be reviewing whether there are any rent/lease agreements entered into by the entity that controls the Burger King in Sarnia. The Receiver has made arrangements to collect rent from 18 Wheeler Restaurant, which operates at the Tilbury Location.

5.0 PILOT DUE DILIGENCE

5.1 Stabilization Agreement

- 5.1.1 As discussed briefly above, Pilot was the Debtors' partner in the Fleet Card Business. The Debtors' Fleet Card customers were able to use their Fleet Cards to purchase fuel and other goods at each of Pilot's 700 U.S. locations and 70 Canadian locations. In fact, prior to the issuance of the Appointment Order, Pilot and the Debtors had been in discussions regarding a proposed joint venture to further their strategic partnership.
- 5.1.2 The daily cost of fuel payable by 908 to Pilot as part of the Fleet Card Business is approximately \$1,000,000. On or about October 2, 2019, Pilot approached the Receiver and CIBC to express concern about Pilot's potential exposure in the receivership, due to the 10-day payment terms described in paragraph 3.1.1 above. Based on the Receiver's inability to pay pre-filing expenses, and the 10-day payment terms Pilot is required to abide by in the receivership, Pilot advised that its potential exposure associated with Fleet Card Business could be in excess of \$20 million.
- 5.1.3 Pilot further offered its expertise to the Receiver in order to assist the Receiver in overcoming the complete lack of controls at the Business and to stabilize operations, including the Fleet Card Business. The Receiver determined that having a seasoned industry player assist with such stabilization efforts would be to the benefit of the Business and the stakeholders.
- 5.1.4 In addition, Pilot was sufficiently concerned about ensuring ongoing payment on better terms than the 10 days contemplated pre-receivership, that it engaged counsel to bring a motion to seek to vary those payment terms to limit its potential exposure. On October 4, 2019, the Court directed the parties to make efforts to work out an arrangement, to avoid the necessity of such a motion.
- 5.1.5 Accordingly, in order to continue the supply of fuel under the Fleet Card Business and to engage Pilot in the stabilization efforts that were underway in respect of the Fleet Card Business, the Receiver, CIBC and Pilot entered into a funding stabilization agreement dated October 5, 2019 (the "**Stabilization Agreement**"). The Stabilization Agreement required Pilot to provide consulting services for the length of the Stabilization Agreement, with the objective of assessing and stabilizing the Fleet Card Business, in exchange for which Pilot would receive \$1,000,000 per day over six days to apply to the cost of fuel supplied during the receivership proceedings. The Receiver determined that entering into this agreement was absolutely necessary for several reasons, including:
- Pilot had brought a motion to alter its fuel payment terms with 908 to accelerate payments given the instability of the Fleet Card Business, and;
 - Pilot is an industry leader in fuel supply and a partner of 908 in the Fleet Card Business, and, therefore, had knowledge that was determined to be essential in the Receiver's attempt to stabilize the Fleet Card Business.

5.2 Potential Offer

- 5.2.1** In addition to offering consulting services by way of the Stabilization Agreement, Pilot also expressed an interest in purchasing some or all of the Debtors' operations. Pilot entered into a confidentiality and non-disclosure agreement in respect of both the consulting services to be provided by way of the Stabilization Agreement, and a potential transaction.
- 5.2.2** Given Pilot's partnership and familiarity with the Debtors, the fact that the majority of the Debtor's customers purchased fuel from Pilot/Flying J locations, the fluidness of the Receivership, and the immediate flight risks associated with the Debtors' customers, it was the Receiver's and CIBC's view that Pilot was likely the only plausible buyer of the Fleet Card Business in the circumstances, including the limited time frame within which the Receiver would likely be required to effect such a transaction.
- 5.2.3** There were two major barriers to the Receiver selling the Fleet Card Business to any party other than Pilot.
- 5.2.4** First, on an operational level, the Debtors' Fleet Card holders were already accustomed to attending at Pilot/Flying J locations for fuel and other necessities. A sale to any other buyer would require customers to fundamentally change their habits by attending at gas station locations other than those operated by Pilot/Flying J, which would be likely to lead to a major loss of customers.
- 5.2.5** Second, any other purchaser would be required to perform significant due diligence. The Fleet Card Business effectively consisted of the extension of short-term credit arrangements to over 1,300 known active customers (and up to 1,800 customers in total). Pilot's existing familiarity with the Debtors and their operations was expected to permit Pilot to conduct due diligence on a more expedited basis, as compared to a purchaser who did not have an existing relationship with the Debtors' operations. The length of time required to conduct a fulsome due diligence process was expected to lead to a major loss of customers.
- 5.2.6** In initial discussions with Pilot, before Pilot had conducted any due diligence, Pilot identified a proposed purchase price which appeared to the Receiver to be a commercially reasonable figure.
- 5.2.7** Following the execution of the Stabilization Agreement, Pilot representatives arrived at the Business on October 7, 2019 to provide consulting services to the Receiver, as agreed. Pilot's primary role was to assist with operations, and, in particular, to seek to slow customer attrition. Pilot also immediately began its due diligence in attempting to understand the Fleet Card Business' profitability.
- 5.2.8** Shortly after engaging in these efforts, Pilot expressed concern about the lack of controls over the Fleet Card Business, and the methodology used by the principals of the Business to determine customer rebates, all as detailed above. Despite Pilot's intimate industry knowledge, it was unable to materially assist the Receiver to better understand the operations.

- 5.2.9** Late in the afternoon, on Wednesday October 9, 2019, Pilot informed the Receiver that the structure and operational organization of the Debtors' operations were not as it expected them to be. Given the uncertainty surrounding the Company's operations (undetermined rebates, lack of financial records, lack of financial and operational controls), Pilot advised that the only transaction it would consider was a purchase of the Debtors' customer list.
- 5.2.10** On October 10, 2019, Pilot, CIBC and the Receiver, together with their respective counsel, met to discuss the status and future prospects of the Fleet Card Business and a potential transaction. Pilot formally communicated its belief, which is shared by the Receiver, that the Fleet Card Business had not been stabilized. The Fleet Card Business continued to lose a significant amount of cash and customers on a daily basis.
- 5.2.11** Most significantly, the additional collection risk surrounding the maintenance of operations and the continuity of invoicing of customers could have led to substantial financial losses for any purchaser. In addition, as detailed above, the Receiver has been unable to determine the quantum of customer rebate arrears from August and September 2019. Currently, they are estimated to be approximately CAD \$3.8 million and USD \$1.9 million (prior to consideration of any unknown prior period rebate amounts). In order to maintain the Debtors' customers, a purchaser would likely be required to honour these arrears, which would result in a corresponding decrease to the quantum of any offer. The Receiver agrees that these material uncertainties made it very difficult for a proposed purchaser, such as Pilot, to assess the value of the Business.
- 5.2.12** Based on its review of the Business, Pilot significantly reduced its proposed purchase price for the list of customers in the Fleet Card Business, to a fraction of the price that had been discussed initially. The offer from Pilot for the purchase of the customer list was rejected by the Receiver, in consultation with CIBC, on October 10, 2019. Pilot also rejected various other proposals put forward by the Receiver. Accordingly, negotiations with Pilot came to an end.

6.0 STATUS OF OPERATIONS

6.1 Fleet Card Business Segment

- 6.1.1 The Receiver's funding has been impacted by the fact that a material portion of payments from customers have been stopped by the customer or returned for non-sufficient funds, or the Receiver has not been able to collect from customers' accounts due to inaccurate customer banking data, or other outstanding Customer Data, all as discussed above. The Receiver is concerned that there will be even more stopped payments and chargebacks to the Receiver's Accounts from the PAD Process. As the Receiver does not have certainty that such receivables will be honoured, the Receiver has determined that using those receipts for the operation of the Debtors' Business is not appropriate until after the expiry of a ten-day clearing period. Accordingly, the funds generated from PAD Processing have not been able to be used for operating the Debtors' businesses, which has impeded the Receiver's ability to stabilize and operate the Business in the ordinary course. Major expenditures, such as, but not limited to, fuel and Express Codes in excess of \$1.1 million per day, on the other hand, are highly certain and need to be paid. Therefore, the Receiver has had to resort to extraordinary borrowings to keep the Debtors' businesses operating.
- 6.1.2 Most significantly, between September 30, 2019, and October 10, 2019, the Receiver had expended over \$5,700,000 associated with maintaining the Fleet Card Program, and over \$800,000 to purchase fuel for the Retail Gas Stations. Given the difficulties in collections, as detailed above, these expenditures have been funded to date by CIBC.
- 6.1.3 In addition to these amounts, since the Receiver's appointment, the Fleet Card Business has incurred liabilities in respect of the operation of the Fleet Card Program of approximately \$6,000,000, which, as at October 11, 2019, had yet to be paid. The majority of this amount consists of fuel costs payable to Pilot, and the rest represents amounts owing for the provision of services by T-chek and Comdata. Overhead and professional costs must also be accounted for.
- 6.1.4 Currently, the Receiver's Borrowing Limit is \$10 million. If the Fleet Card Business operations were to continue, the Receiver estimates that it would have likely exceeded its current borrowing capacity in the short term.
- 6.1.5 The viability of the Fleet Card Business depends on the loyalty of customers. However, there are no barriers to customers leaving the Fleet Card Business to join a competitor. The uncertainty of the future of 908's Fleet Card Business and the inability of the Receiver to expeditiously continue the rebate program in an insolvency would have provided and did provide customers with sufficient reason to join a competitor's program. In a meeting with Pilot on October 10, 2019, the Receiver was advised that 10% of the Debtors' customers have migrated away from 908's Fleet Card Business in one day. The Receiver was also advised that at least one other company with familial ties to the Individual Debtors was rumoured to be systematically poaching the Debtor's customers. Accordingly, it appears that the uncertainty surrounding the Fleet Card Business resulted in a significant loss of customers.

- 6.1.6** Ultimately, it became clear that because of the events leading up to the receivership and the myriad of issues confronting the Fleet Card Business, including the apparent significant loss of customers, Pilot was not able to assess the going concern value of the Fleet Card Business quickly. Therefore, Pilot was not prepared to present an offer for the Debtors' Business as a whole, nor for the Fleet Card Business alone.
- 6.1.7** Accordingly, the Receiver had to assess the viability of the Fleet Card Business in light of Pilot withdrawing its interest therein, including an assessment of the significant costs being incurred daily in respect of the daily purchase of fuel from Pilot/Flying J, the substantial quantum of customer payment returns and the probability of further returns, and the uncertainty of whether the Fleet Card Business operations were profitable at all, or ever.
- 6.1.8** As detailed in paragraphs 6.1.2 and 6.1.3 above, the nature of the Business is such that it can incur significant liabilities over a short period of time. CIBC committed to fund certain of these expenses by way of the Stabilization Agreement and the Borrowing Limit provided for in the Appointment Order, as amended. However, in light of the various and significant problems described herein, it appeared to the Receiver that there was no reasonable prospect that the Fuel Card Business could be revived or become profitable, and that the losses accruing daily were likely to be irrecoverable. In light of the uncertainty associated with collecting from customers, the lack of assurances that funding advanced by CIBC will be recovered through operations, the considerable risk associated with maintaining the Business, and the lack of advancement of any negotiations with Pilot for the potential sale of the Fleet Card Business, CIBC advised the Receiver on October 11, 2019, that it was no longer willing to fund the Fleet Card Business on an ongoing basis.
- 6.1.9** Based on all of the foregoing, the Receiver, in consultation with CIBC, decided to shut down the Fleet Card Business effective October 11, 2019. At this time, the Receiver does not have sufficient funding to maintain the Business. Further, as detailed above, there was little to no prospect of selling the Fleet Card Business, such that continuing to incur the significant expenses associated with the Business was unlikely to benefit the stakeholders.

6.2 Retail Gas Station Operations

- 6.2.1** The Receiver is currently maintaining the Retail Gas Station operations and intends to prepare a sales process for the gas stations in the short term.

6.3 Fast Food Operations

- 6.3.1** The Receiver is currently maintaining the fast food operations and will be including same with any sales process for the Retail Gas Stations.

7.0 SEALING ORDER REQUEST

- 7.1 The Receiver is requesting that portions of this Third Report be sealed until further order of the Court, as this Third Report contains confidential and commercially sensitive information that could prejudice the Receivership Parties' stakeholders. Accordingly, the Receiver intends to file an unredacted copy of the Third Report with this Court, for which a sealing order will be sought, and will serve all parties, file in the public record, and publish on the Receiver's website a redacted version thereof.

All of which is respectfully submitted this 18th day of October, 2019.

BDO CANADA LIMITED, solely in its capacity as Court-appointed Receiver of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited, and in its capacity as the formerly Court-appointed and since discharged Receiver of 1552838 Ontario Inc., 2189788 Ontario Inc. and 1254044 Ontario Limited, and not in its corporate or personal capacity



Per: Christopher J. Mazur, CIRP, LIT
Senior Vice President
National Commercial Practice Leader

37538255.10

APPENDIX A
APPOINTMENT ORDER DATED SEPTEMBER 30, 2019

See attached.

CV-19-00628293-0001
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

MONDAY, THE 30TH

JUSTICE HAINES)

DAY OF SEPTEMBER, 2019

BETWEEN:



CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

and

SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON,
MANDEEP DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel
Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754
ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC.,
2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD., 2469244 ONTARIO
LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and
2612550 ONTARIO LIMITED

Defendants

ORDER

THIS MOTION made by the Plaintiff for an Order pursuant to section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing BDO Canada Limited receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO

LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD, 2469244 ONTARIO LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED (collectively the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record dated September 30, 2019 and on hearing the submissions of counsel for the applicant, counsel for BDO Canada Limited in its capacity as proposed receiver, and upon being advised that counsel for certain of the Debtors was given notice of this motion, and on reading the consent of BDO Canada Limited to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, investigators, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (l) without the approval of this Court in respect of any transaction not exceeding ~~\$300,000~~ ^{\$500,000}, provided that the aggregate consideration for all such transactions does

not exceed ~~\$750,000~~;

^{\$1,000,000} and



- (m) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- (n) and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (u) to provide copies of any materials that Grant Thornton Limited requests, and which the Receiver believes, acting reasonably, the Grant Thornton requires, which may be of assistance or required as part of Grant Thornton's engagement by the Plaintiff to conduct a forensic investigation. Materials shall include but shall not be limited to electronic records or information contained therein.
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing

the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that all Persons are hereby enjoined and restrained from in any way altering, concealing, defacing, destroying, discarding, erasing or otherwise tampering or adversely dealing with any of the Property of the Debtors or from removing any Property out of the ordinary course of business, from the premises of the Debtors without the prior written consent of the Receiver.

8. THIS COURT ORDERS that any security personnel engaged by the Receiver pursuant to paragraph 3(b) herein shall be authorized and entitled, but not required, to escort or remove any Persons onto or from the Property of the Debtors as the Receiver may in its sole discretion consider it necessary or desirable to escort or remove.

9. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

OBLIGATIONS OF THE DEBTORS AND OTHERS

10. THIS COURT ORDERS that all of the current and former directors, officers, employees, agents, accountants, and shareholders of the Debtors, and all other persons acting on their instructions or behalf and all persons with notice of this order are hereby restrained from:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the Property, wherever situate, without prior approval of the Receiver;
- (b) instructing, requesting, counselling, demanding , or encouraging any other person to do the acts identified in subparagraph 10(a) above; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any of the activities subparagraph 10(a) above.

without prior written instructions from the Receiver.

NO PROCEEDINGS AGAINST THE RECEIVER

11. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

12. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

13. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

16. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

17. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

18. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental**

22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

23. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

24. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

27. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

28. 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/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure 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 www.extranets.bdo.ca/eagletravelplaza.

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

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

36. THIS COURT ORDERS that, until further Order of this Court, the Motion Record in support of this Motion shall be sealed and not form part of the public record and any persons served with a copy of it shall keep it and its contents confidential and shall not disclose its contents to any person except their legal counsel.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 30 2019

PER / PAR:



Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the

Bankruptcy and Insolvency Act, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:

Name:

Title:

CANADIAN IMPERIAL BANK OF COMMERCE
Plaintiff

-and- SIMRANJIT DHILLON et al.
Defendants

CV-19-00628293-CJCL
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

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SMITH GRIFFIN LLP**

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Lawyers for the Plaintiff

APPENDIX B
LISTING OF THE RECEIVERSHIP PARTIES

See attached.

	Company	Address	Referred to:	Operations	Owned Real Property	Security
1	908593 Ontario Limited	1) 3613 Queens Line, Tilbury, ON 2) 22216 Bloomfield Road, Chatham, ON 3) 1670 London Line, Sarnia, ON 4) 2097 London Line, Sarnia, ON 5) 69 Bramalea Road, Brampton, ON	Tilbury Esso Bloomfield Truck Centre 402 Travel Centre XTR Sales Office	Gas station (Esso brand); Semi-tractor truck gas station; Convenience store Gas station (Esso brand); Semi-tractor truck gas station; Convenience store; Fast-food restaurant Gas station (Esso brand); Semi-tractor truck gas station; Convenience store; Fast-food restaurant Gas station (Esso brand); Convenience store Sales and customer service representatives for fleet fuel card		CIBC
2	1393382 Ontario Limited	1) 3613 Queens Line, Tilbury, ON 2) 22216 Bloomfield Road, Chatham, ON 3) 1670 London Line, Sarnia, ON 4) 2097 London Line, Sarnia, ON 5) 69 Bramalea Road, Brampton, ON	Holdco - 908	Holding company for 908593 Ontario Limited	Yes Yes Yes Yes Leased	CIBC FirstOntario CIBC CIBC
3	2145744 Ontario Limited	203 Indian Road South, Sarnia, ON	Holdco - Shell Sarnia	Holding company for 2145754 Ontario Limited	Yes	Laurentian
4	2145754 Ontario Limited	203 Indian Road South, Sarnia, ON	Shell Sarnia	Gas station (Shell brand); Convenience store		CIBC
5	1552838 Ontario Inc.	1527 Provincial Road, Windsor, ON	Holdco - Provincial Esso	Holding company for 2189788	Yes	BMO
6	2189788 Ontario Inc.	1527 Provincial Road, Windsor, ON	Provincial Esso	Gas station (Esso brand); Pizza Depot restaurant		BMO
7	2123618 Ontario Limited	191 Keil Drive South		Formerly owned the gas station located at 191 Keil Drive South		None
8	1849722 Ontario Ltd					None
9	2469244 Ontario Limited	22216 Bloomfield Road, Chatham, ON	Pizza Pizza	Pizza Pizza Franchise		None
10	2364507 Ontario Limited	1041 Wellington Rd., London, ON	Menchie's	Receiver ceased operations		Yogurtworld
11	1254044 Ontario Limited	5906 Oil Heritage Rd, Wyoming, ON	Sarnia Service Centre	Gas station (Esso brand); Semi-tractor truck gas station; Convenience store; Fast-food restaurant	Yes	BMO
12	2612550 Ontario Limited		261	Broker sales of diesel to semi-tractor truck fuel stations		None

APPENDIX C
ORDER OF THE COURT DATED OCTOBER 3, 2019

See attached.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE HAINEY

)
)
)

THURSDAY THE 3rd
DAY OF OCTOBER, 2019

BETWEEN:



CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

and

SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON,
MANDEEP DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel
Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754
ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC.,
2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD., 2469244 ONTARIO
LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and
2612550 ONTARIO LIMITED

Defendants

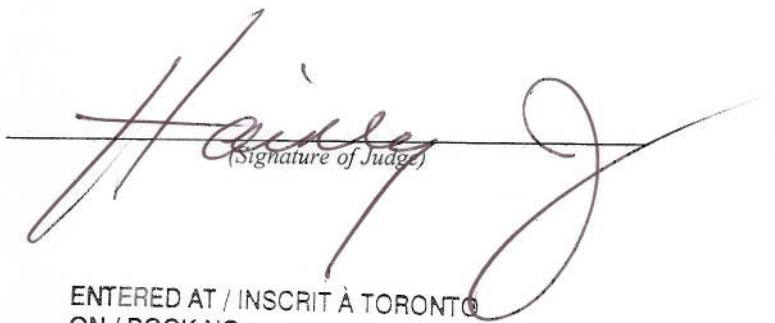
ORDER

THIS MOTION, made by the Plaintiff without notice, was heard this day at the court house, 361 University Avenue, Toronto, Ontario.

ON READING the Motion Record and on hearing the submissions of the lawyers for the Plaintiff,

WHEREAS this court made an order on September 30, 2019 to Allow Entry and Search of certain Premises (the "Anton Piller Order")

1. THIS COURT ORDERS that the 72 hour period during which the Independent Supervising Solicitor is entitled to have the Computer Materials collected during its searches in its possession, as provided for at paragraph 11 of the Anton Piller Order, is hereby extended by an additional 48 hours.
2. THIS COURT ORDERS that, for greater clarity, the deadline for the return of any remaining electronic evidence in the possession of the Independent Supervising Solicitor is extended to midnight on Saturday, October 5, 2019.
3. THIS COURT ORDERS that the three computer towers seized from the Defendant, Simranjit Dhillon's Cadillac XT5, namely the HP Pavilion Elite HPE-000 Series, Serial Number MXX1110JMN, the HP Pavilion 500 PC Series, Serial Number MXX50611H7, and the HP Pavilion Series, Serial Number MXU12901Z7 be released from Grant Thornton LLP to the Receiver.


(Signature of Judge)

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 03 2019

PER / PAR: RW

CANADIAN IMPERIAL BANK OF COMMERCE
Plaintiff

-and- SIMRANJIT DHILLON et al.
Defendants

Court File No. CV-19-00628293-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

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Email: jkras@litigate.com

Lawyers for the Plaintiff

APPENDIX D
THE RECEIVER'S FIRST REPORT DATED OCTOBER 4, 2019,
WITHOUT APPENDICES

Sealed by Order of Justice Hailey dated October 16, 2019

***APPENDIX E
AMENDED APPOINTMENT ORDER
(AMENDED OCTOBER 4, 2019)***

See attached.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY, THE 30TH

JUSTICE HAINEY

)

)

DAY OF SEPTEMBER, 2019

BETWEEN:



CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

and

SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON,
MANDEEP DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel
Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754
ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC.,
2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD., 2469244 ONTARIO
LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and
2612550 ONTARIO LIMITED

Defendants

AMENDED ORDER

THIS MOTION made by the Plaintiff for an Order pursuant to section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing BDO Canada Limited receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO

LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD, 2469244 ONTARIO LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED (collectively the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record dated September 30, 2019 and on hearing the submissions of counsel for the applicant, counsel for BDO Canada Limited in its capacity as proposed receiver, and upon being advised that counsel for certain of the Debtors was given notice of this motion, and on reading the consent of BDO Canada Limited to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, investigators, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (l) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and

- (m) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- (n) and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (u) to provide copies of any materials that Grant Thornton Limited requests, and which the Receiver believes, acting reasonably, the Grant Thornton requires, which may be of assistance or required as part of Grant Thornton's engagement by the Plaintiff to conduct a forensic investigation. Materials shall include but shall not be limited to electronic records or information contained therein.
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing

the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that all Persons are hereby enjoined and restrained from in any way altering, concealing, defacing, destroying, discarding, erasing or otherwise tampering or adversely dealing with any of the Property of the Debtors or from removing any Property out of the ordinary course of business, from the premises of the Debtors without the prior written consent of the Receiver.

8. THIS COURT ORDERS that any security personnel engaged by the Receiver pursuant to paragraph 3(b) herein shall be authorized and entitled, but not required, to escort or remove any Persons onto or from the Property of the Debtors as the Receiver may in its sole discretion consider it necessary or desirable to escort or remove.

9. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

OBLIGATIONS OF THE DEBTORS AND OTHERS

10. THIS COURT ORDERS that all of the current and former directors, officers, employees, agents, accountants, and shareholders of the Debtors, and all other persons acting on their instructions or behalf and all persons with notice of this order are hereby restrained from:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the Property, wherever situate, without prior approval of the Receiver;
- (b) instructing, requesting, counselling, demanding , or encouraging any other person to do the acts identified in subparagraph 10(a) above; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any of the activities subparagraph 10(a) above.

without prior written instructions from the Receiver.

NO PROCEEDINGS AGAINST THE RECEIVER

11. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

12. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

13. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

16. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

17. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

18. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental**

Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

20. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

21. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

23. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

24. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$5,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

27. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

28. 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/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure 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 www.extranets.bdo.ca/eagletravelplaza.

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, 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.

GENERAL

30. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

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

36. THIS COURT ORDERS that, until further Order of this Court, the Motion Record in support of this Motion shall be sealed and not form part of the public record and any persons served with a copy of it shall keep it and its contents confidential and shall not disclose its contents to any person except their legal counsel.



C. Irwin
Registrar

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 04 2019

PER / PAR: 

Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the

Bankruptcy and Insolvency Act, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:

Name:

Title:

CANADIAN IMPERIAL BANK OF COMMERCE
Plaintiff

-and- SIMRANJIT DHILLON et al.
Defendants

Court File No. CV-19-00628293-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

**LENCZNER SLAGHT ROYCE
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Lawyers for the Plaintiff

APPENDIX F
ORDER OF THE COURT DATED OCTOBER 7, 2019

See attached.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE HAINEY

)
)
)

MONDAY THE 7TH
DAY OF OCTOBER, 2019

B E T W E E N:

(Court Seal)

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

and

SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON,
MANDEEP DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel
Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754
ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC.,
2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD., 2469244 ONTARIO
LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and
2612550 ONTARIO LIMITED

Defendants

ORDER

(Amending Mareva Order dated September 30, 2019)

THIS MOTION, made by the Plaintiff was heard this day at the court house, 361
University Avenue, 9th Floor, Toronto, Ontario, M5G 1R7.

ON READING the Motion Record and on hearing the submissions of the lawyers for the
Plaintiff, the Receiver and lawyers for Mandhir Dhillon, Sarbjit Dhillon, Mandeep Dhillon (the
“**Individual Defendants**”) and certain of the corporate defendants,

1. **THIS COURT ORDERS** that this Court's Mareva Order dated September 30, 2019 ("Mareva Order") is hereby varied in accordance with the terms of this Order.

2. **THIS COURT ORDERS** that the assets of the Defendants subject to the Mareva Order shall include, but shall not be limited to, the assets of the following corporations that are not named as defendants:

- (a) 2541899 Ontario Ltd.;
- (b) 2571279 Ontario Inc.;
- (c) 2541900 Ontario Ltd.;
- (d) 2587984 Ontario Inc.;
- (e) 2561534 Ontario Ltd.;
- (f) 2431264 Ontario Inc.;
- (g) 2542372 Ontario Inc.; and
- (h) 2034039 Ontario Inc.

3. **THIS COURT ORDERS** that for greater certainty the assets subject to the Mareva Order include, but are not limited to, the assets set out in Appendix "A" to this Order.

4. **THIS COURT ORDERS** that the addition of the assets in paragraph 2 and 3 of this Order is without prejudice to the Defendants' right to seek to vary or discharge this Order in accordance with paragraph 11 of the Mareva Order.


5. **THIS COURT ORDERS** that funds in the amount of \$1,000,000 CAD be transferred from the 2561534 Ontario Inc. Meridian Credit Union account bearing account number 100322882 to the trust account of Lax O'Sullivan Lissus Gottlieb LLP ("**LOLG**") on behalf of the Defendants for the payment of legal fees and disbursements incurred to date and to act as a monetary retainer for legal fees and disbursements yet to be incurred in relation to this matter or other legal matters related to the allegations in this proceeding against the Defendants and the payment of such funds by the Defendants solely for the purposes of legal fees and disbursements is hereby approved.

6. **THIS COURT ORDERS** that LOLG is authorized to transfer any portion of the funds referred to in paragraph 5 from its trust account to another law firm's trust account for related legal fees and disbursements.

7. **THIS COURT ORDERS** that Meridian Credit Union shall freeze and prevent any removal or transfer of any monies or assets of the Defendant or of any companies referred to in paragraph 2 but shall permit and authorize the release of funds in the amount set out at paragraph 5 above.

8. **THIS COURT ORDERS** that notwithstanding paragraph 5 of the Mareva Order, the Individual Defendants shall, on or before October 8, 2019, provide a sworn statement describing the nature, value and location of their assets worldwide, whether in his own name or not and whether solely or jointly owned.

9. **THIS COURT ORDERS** that, until further Order of this Court, the Motion Record in support of this Motion shall be sealed and not form part of the public record and any persons served with a copy of it shall keep it and its contents confidential and shall not disclose its contents to any person except their legal counsel.



(Signature of Judge)

SCHEDULE "A"

REAL PROPERTY

Property Address/Location	Nature of Property	PIN
3613 Queens Line Tilbury	Esso Gas Station (On the Run & Restaurant)	00809-0087 (LT)
1670 London Line Road, Sarnia	Esso Gas Station	43138-0087 (LT)
2097 London Line Road, Sarnia	Esso Gas Station	43132-0051 (LT)
22216 Bloomfield Road, Chatham	Truck Stop and Esso Gas Station (Pizza Pizza and Subway)	00877-0040 (LT)
203 Indian Road, Sarnia	Shell Gas Station	43226-0127 (LT)
60 Rose Ave Tilbury, ON	Residential Home	00805-0194 (LT)
39 Rose Avenue Tilbury, ON	Residential Home	00805-0148 (LT)
1527 Provincial Road, Windsor	Esso Gas Station	01560-2611 (LT)
1537 Provincial Road, Windsor		01560-2703 (LT)
12774 Innis Lake Road, Caledon, Ontario	Appearance of Large Residential Home	14348-0039 (LT)
21 Laurentia Drive, Tilbury, Ontario	Residential Home	00805-0259(LT)
0 Humber Station Road, Caledon	Vacant Land	14326-0055(LT)
Property owned Hwy 50 and Castlemore Road		14213-0053 (LT)
PT LT 6, CON 7 ND (TOR.GORE) DES PTS 1 & 2, PL 43R35777; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, PL 43R35777 AS IN PR2264406; CITY OF BRAMPTON		14209-1729(LT)
PART LOT 18 CON 2 EHS (CHING) AND PART BLOCK 202 PLAN 43M1800 DESIGNATED AS PART 2 PLAN 43R37497; TOWN OF CALEDON		14235-5806(LT)
PT LT 16 CON 5 PLYMPTON PT 1, 25R7472 & PT 1, 25R5839 EXCEPT PT 1, 25R7478; PLYMPTON-WYOMING		43104-0011(LT)

Property Address/Location	Nature of Property	PIN
5470 Walker Road, Tecumseh	[Notice of Lease to Parkland Fuel Corporation]	70622-0310(LT)
258 Merritt Avenue, Chatham	Residential Home	00524-0177(LT)
58 Partridge Crescent, Chatham, ON	Residential Home	00532-0493 (LT)
56 Partridge Crescent, Chatham ON	Residential Home	00535-0429 (LT)
22 Lark Street, Chatham, ON	Residential Home	00532-0063 (LT)

MOTOR VEHICLES

Year/Make/Model	VIN Number	Known Creditors / PPSA Registration Information
2017 Acura RDX	VIN: 5J8TB4H59HL800841	Honda Canada Finance Inc. Registered on 2016/07/26 Maturity Date: 2020/07/20
2016 Cadillac Escalade AWD	VIN: 1GYS4CKJ9GR313326	GM Financial Canada Leasing Ltd. Registered on 2016/05/12 Maturity Date: 2020/05/04
2018 Lexus RX350L	VIN: JTJDKCA1J20009591	Toyota Credit Canada Inc. Registered on 2018/08/03 Maturity Date: 2023/07/31
2017 Audi A4 Progressiv	VIN: WAUBNAF41HN052730	VW Credit Canada Inc. Registered on 2018/10/16 Maturity Date: 2023/10/04
2016 Volvo 670	VIN: 4V4NC9EHXJN889186	TPINE LEASING CAPITAL CORPORATION Registered on: 2017/09/14
2018 Lexus GX470	VIN: JTJJM7FX5J5189350	Toyota Credit Canada Inc. Registered on: 2018/01/05

CANADIAN IMPERIAL BANK OF COMMERCE
Plaintiff

-and-

SIMRANJIT DHILLON et al.
Defendants

Court File No. CV-19-00628293-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
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Lawyers for the Plaintiff

APPENDIX G
THE RECEIVER'S SECOND REPORT DATED OCTOBER 11, 2019,
WITHOUT APPENDICES

See attached.

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

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON,
MANDEEP DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel
Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754
ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC.,
2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD., 2469244 ONTARIO
LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and
2612550 ONTARIO LIMITED**

Defendants

**SECOND REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER AND MANAGER**

October 11, 2019

TABLE OF CONTENTS

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Receiver's Borrowing Limit.....	2

Background

1. By way of an order of the Honourable Justice Hainey dated September 30, 2019 (as amended, the "Appointment Order"), BDO Canada Limited was appointed as the receiver and manager (in such capacities, the "Receiver"), without security, of all of the assets, undertakings and properties of 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza ("908"), 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD, 2469244 ONTARIO LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors.

2. 908 is the principal Debtor. 908, together with certain of the other Debtors, operates a number of truck service centres and fueling stations in Southwestern Ontario, and a fleet member reward card program used by its customers at gas stations located in Canada and the United States. The service centres are located in Tilbury, Chatham, and Sarnia (two locations). The remaining Debtors are related companies who own, operate and/or guarantee related businesses and/or assets.

Purpose of this Report

3. This constitutes the Receiver's second report to the Court in this matter (the "Second Report"). It is filed in support of the BDO's request for an order, *inter alia* (the "BDO Motion"):

- (a) amending and restating the Appointment Order to increase the Receiver's borrowing limit under the Receiver's Borrowing Charge (as defined in the Appointment Order) to \$10,000,000.

Scope and Terms of Reference

4. This Second Report has been prepared for the limited purpose of supporting the BDO Motion and for the use of this Court. Accordingly, the reader is cautioned that the Second

Report may not be appropriate for any other purpose. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of the Second Report for purposes other than as set out herein.

5. All court materials (other than those sealed by Court order) and orders and endorsements issued and filed in these receivership proceedings are available on the Receiver's website at: www.extranets.bdo.ca/eagletravelplaza and will remain available on the website for a period of six (6) months following the Receiver's discharge.

Receiver's Borrowing Limit

6. In light of the circumstances of its appointment, the Receiver was appointed without an accurate appreciation of the cash needs associated with running the Debtors' businesses. The Receiver has been working diligently since its appointment to gain a greater understanding of those needs, and is continuing to learn about the costs associated with the Debtors' operations.

7. Pursuant to paragraph 24 of the Appointment Order, the Receiver was initially authorized to borrow by way of a revolving credit facility or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,000 (the "Borrowing Limit"), or such greater amount as the Court may by further order authorize, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Appointment Order, including interim expenditures.

8. On Friday, October 4, 2019, the Honourable Mr. Justice Hainey signed an amendment to the Appointment Order increasing the Borrowing Limit to \$5,000,000 (the "First Borrowing Limit Increase"). A copy of the Appointment Order, as amended, is attached hereto as Appendix A.

9. Since the First Borrowing Limit Increase, the Receiver has made significant expenditures in the course of operating the Debtors' business, including, most significantly, expenditures associated with purchasing fuel through the Debtors' fleet card programme, as well as for the operating gas stations. Notably, and without limitation, the Receiver has been required to pay

the Debtors' primary suppliers, Pilot Travel Centers LLC and Flying J Canada Inc. (together, "Pilot"), more than \$1,000,000 per day in fuel costs during the period October 7 through October 15, 2019, as part of an interim "stabilization" agreement. The Receiver has also been required to make payments to and post deposits with T-check and Com Data, two other suppliers associated with the fleet card business, totalling more than \$825,000, with new amounts coming due multiple times per week, in order to maintain the Receiver's accounts within the required margin.

10. The Receiver's access to funds has been complicated by the fact that, to date, a material portion of payments received from customers have been returned for non-sufficient funds, or stopped. As a result, there is considerable uncertainty surrounding the Receiver's receipt of funds. As the Receiver does not have certainty that such receipts will be honoured, the Receiver is not comfortable using those receipts for the operation of the Debtor's business, until after the expiry of a ten-day hold period.

11. As of the date of this Second Report, the balance available to the Receiver under the Borrowing Limit is approximately \$1,000,000 short of the current \$5,000,000 Borrowing Limit.

12. The Receiver anticipates that it will require additional funding over the course of the next several days of the receivership proceedings to pay for critical daily supplies, such as gas for the gas stations, which supplies enable the Debtors' business to operate on a business as usual basis, together with various costs associated with the fleet card business. Currently, the Receiver estimates its immediate needs as, approximately and without limitation:

- (a) \$2 million in fuel payments to Pilot to October 15, 2019;
- (b) \$400,000 (\$300K USD) for T-check;
- (c) \$200,000 (\$150K USD) for Com Data;
- (d) \$400,000 for gas purchases for operating gas stations from Parkland and AMCO;

- (e) \$40,000 in convenience store inventory purchases; and
- (f) \$25,000 per week in payroll costs.

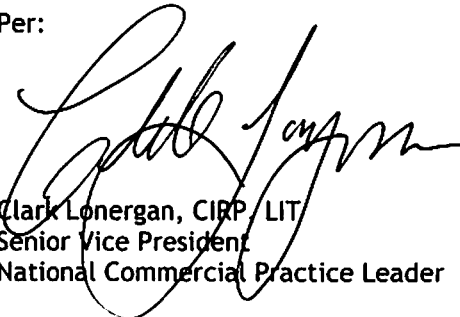
13. The Receiver is exercising all efforts possible to stabilize the business, and expending such funds as are necessary to achieve such stabilization.

14. Accordingly, the Receiver requests an increase of \$5,000,000 to the Borrowing Limit to cover the obligations that will likely accrue, and thereby enable the Receiver to continue to carry out its mandate pursuant to the Appointment Order. The Receiver advises the Court that it will only make those draw-downs necessary to its function as Receiver.

All of which is respectfully submitted this 11th day of October 2019.

BDO CANADA LIMITED,
solely in its capacity as Court-appointed receiver and manager
of SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON,
MANDEEP DHILLON, 908593 ONTARIO LIMITED, operating as
Eagle Travel Plaza, 1393382 ONTARIO LIMITED, 2145744
ONTARIO LIMITED, 2145754 ONTARIO LIMITED, 1552838
ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO
LIMITED, 1849722 ONTARIO LTD., 2469244 ONTARIO LIMITED,
2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and
2612550 ONTARIO LIMITED

Per:



Clark Lonergan, CIRP, LIT
Senior Vice President
National Commercial Practice Leader

APPENDIX H
ORDER OF THE COURT DATED OCTOBER 11, 2019

See attached.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

FRIDAY, THE 11TH

JUSTICE HAINEY

)

DAY OF OCTOBER, 2019

)



BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP
DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382
ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED,
1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED,
1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO
LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

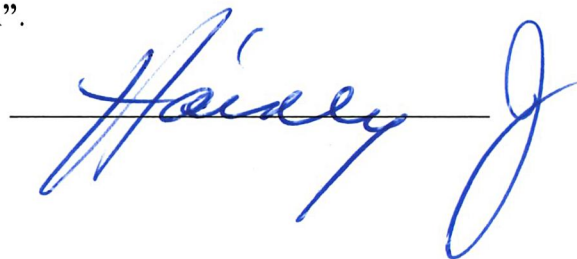
ORDER

THIS MOTION, made by BDO Canada Limited (“**BDO**”), in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of the assets, undertakings and properties of 908593 Ontario Limited operating as Eagle Travel Plaza, 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 1552838 Ontario Inc., 2189788 Ontario Inc., 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, 1254044 Ontario Limited and 2612550 Ontario Limited (collectively, the “**Debtors**”), for an order, amongst other things, amending and restating the Order of the Honourable Mr. Justice Hainey dated September 30, 2019 (as amended, the “**Appointment Order**”) to increase the Receiver’s borrowing limit under the Receiver’s Borrowing Charge (as

defined in the Appointment Order) to \$10,000,000, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Diana McMillen sworn October 11, 2019,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Appointment Order be and is hereby amended and restated in the form attached hereto as **Schedule "A"**.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 15 2019

PER / PAR:

JP

SCHEDULE "A"

See attached.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 30TH
)
JUSTICE HAINEY) DAY OF SEPTEMBER, 2019

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

and

SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON,
MANDEEP DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel
Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754
ONTARIO LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC.,
2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD., 2469244 ONTARIO
LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and
2612550 ONTARIO LIMITED

Defendants

AMENDED ORDER

THIS MOTION made by the Plaintiff for an Order pursuant to section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing BDO Canada Limited receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382 ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO

LIMITED, 1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED, 1849722 ONTARIO LTD, 2469244 ONTARIO LIMITED, 2364507 ONTARIO LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED (collectively the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record dated September 30, 2019 and on hearing the submissions of counsel for the applicant, counsel for BDO Canada Limited in its capacity as proposed receiver, and upon being advised that counsel for certain of the Debtors was given notice of this motion, and on reading the consent of BDO Canada Limited to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, investigators, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (l) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and

- (m) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- (n) and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (u) to provide copies of any materials that Grant Thornton Limited requests, and which the Receiver believes, acting reasonably, the Grant Thornton requires, which may be of assistance or required as part of Grant Thornton's engagement by the Plaintiff to conduct a forensic investigation. Materials shall include but shall not be limited to electronic records or information contained therein.
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing

the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that all Persons are hereby enjoined and restrained from in any way altering, concealing, defacing, destroying, discarding, erasing or otherwise tampering or adversely dealing with any of the Property of the Debtors or from removing any Property out of the ordinary course of business, from the premises of the Debtors without the prior written consent of the Receiver.

8. THIS COURT ORDERS that any security personnel engaged by the Receiver pursuant to paragraph 3(b) herein shall be authorized and entitled, but not required, to escort or remove any Persons onto or from the Property of the Debtors as the Receiver may in its sole discretion consider it necessary or desirable to escort or remove.

9. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

OBLIGATIONS OF THE DEBTORS AND OTHERS

10. THIS COURT ORDERS that all of the current and former directors, officers, employees, agents, accountants, and shareholders of the Debtors, and all other persons acting on their instructions or behalf and all persons with notice of this order are hereby restrained from:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the Property, wherever situate, without prior approval of the Receiver;
- (b) instructing, requesting, counselling, demanding , or encouraging any other person to do the acts identified in subparagraph 10(a) above; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any of the activities subparagraph 10(a) above.

without prior written instructions from the Receiver.

NO PROCEEDINGS AGAINST THE RECEIVER

11. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

12. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

13. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

16. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

17. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

18. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental**

Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

20. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

21. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

23. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

24. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$10,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

27. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

28. 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/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure 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 www.extranets.bdo.ca/eagletravelplaza.

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, 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.

GENERAL

30. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

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

36. THIS COURT ORDERS that, until further Order of this Court, the Motion Record in support of this Motion shall be sealed and not form part of the public record and any persons served with a copy of it shall keep it and its contents confidential and shall not disclose its contents to any person except their legal counsel.

Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the

Bankruptcy and Insolvency Act, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:

Name:

Title:

CANADIAN IMPERIAL BANK OF COMMERCE
Plaintiff

-and- SIMRANJIT DHILLON et al.
Defendants

Court File No. CV-19-00628293-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AMENDED ORDER

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Lawyers for the Plaintiff

CANADIAN IMPERIAL BANK OF COMMERCE
Plaintiff

-and-

SIMRANJIT DHILLON et al.
Defendants

Court File No. CV-19-00628293-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

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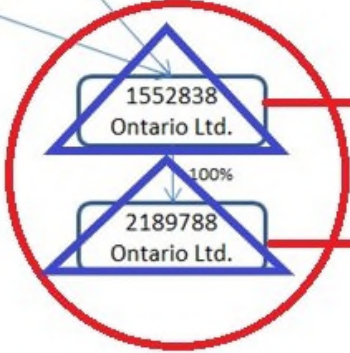
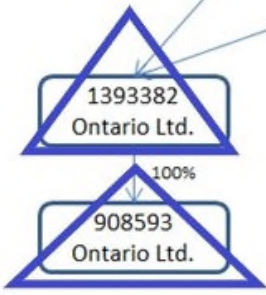
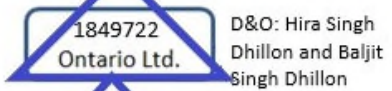
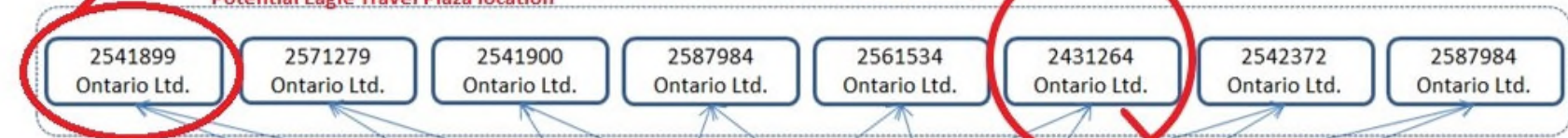
Lawyers for BDO Canada Limited in its capacity as the court-appointed Receiver of 908593 Ontario Limited, operating as Eagle Travel Plaza, et al.

APPENDIX I
CHART OF RELATED COMPANIES

See attached.

Property owner 5470 Walker Rd. Tecumseh
Potential Eagle Travel Plaza location

Ownership split 60%/40% for all (Sarbjit/Mandhir)



Operating Company -
Burger King at 5906
Heritage Road, Wyoming

Property Owner - 1527
Provincial Road, Windsor

Operating Company -
1527 Provincial Road
(Esso Gas Station)



Property Owner - 5906 Oil
Heritage Road, Wyoming

Bank of Montreal seeking Receivership

Subject to CIBC Receivership

APPENDIX J
BMO RECEIVERSHIP ORDER DATED OCTOBER 16, 2019
AND ENDORSEMENT OF THE COURT

See attached.

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.) WEDNESDAY THE 16th
JUSTICE HAINEY) DAY OF OCTOBER, 2019



BANK OF MONTREAL

Applicant

- and -

1254044 ONTARIO LIMITED, 2431264 ONTARIO INC.,
2189788 ONTARIO INC. and 1552838 ONTARIO INC.

Respondents

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

ORDER
(appointing Receiver)

THIS APPLICATION brought by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing MNP Ltd. as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of 1254044 Ontario Limited ("**125**"), 2431264 Ontario Inc. ("**243**"), 2189788 Ontario Inc. ("**218**"), 1552838 Ontario Inc. ("**155**") and 2542372 Ontario Inc. ("**254**") (collectively the "**Debtors**") acquired for, or used in relation to businesses carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario (such appointment hereinafter being referred to as the "**Receivership**"). For certainty, the Debtors as referred to in this Order specifically do not refer to any other entities other than 125, 243, 218, 155 and 254, and do not refer to any entities under an order of receivership in the CIBC Action defined below.


ON READING the affidavit of Jason Henderson sworn October 10, 2019 and the Exhibits thereto and on hearing the submissions of counsel for Bank of Montreal and counsel for certain of the Debtors,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

DISCHARGE OF RECEIVER IN THE CIBC ACTION

2. THIS COURT ORDERS that BDO Canada Limited, appointed by order of the Honourable Mr. Justice Hainey dated September 30, 2019 in court file no. CV-19-00628293-00CL (the "**CIBC Action**") as receiver of the assets, undertakings and properties of, among other parties, 125, 218 and 155, is hereby discharged as receiver of 125, 218 and 155 effective as of 1:00 p.m. (Toronto time) on the date of this Order.

 ~~3. THIS COURT ORDERS AND DECLARES that BDO Canada Limited is hereby released and discharged from any and all liability that BDO Canada Limited now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO Canada Limited while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO Canada Limited is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.~~

4. THIS COURT ORDERS that BDO Canada Limited shall be reimbursed for amounts set out in a payment agreement among BDO Canada Limited, CIBC and BMO, in accordance with that agreement, and that said amounts shall be deemed to have been borrowed under this Receivership and have the benefit of the Receiver's Borrowings Charge.

5. THIS COURT ORDERS that, other than as provided in this paragraph, nothing in this Order shall affect the charge granted in favour of BDO Canada Limited (the "**CIBC Receiver**") in the CIBC Action (the "**CIBC Receiver's Charge**"), including the assets pursuant to which such charge was granted, and that the CIBC Receiver's Charge and the receiver's borrowing charge granted in the CIBC Action shall rank *pari passu* with the Receiver's Charge and the

Receiver's Borrowing Charge (as those terms are defined herein) granted in this Order as they pertain to the Property subject to this Receivership only. For the purpose of this paragraph, the charges in favour of BDO Canada Limited shall apply for the time period from September 30, 2019 to and including the date of this Order.

APPOINTMENT

6. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the *CJA*, MNP Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors, 125, 243, 218, 155 and 254 acquired for, or used in relation to businesses carried on by the Debtors, including all proceeds thereof (the "**Property**").

7. THIS COURT ORDERS that the appointment of the Receiver hereunder is effective notwithstanding an order of the Honourable Mr. Justice Hainey made in the CIBC Action dated October 7, 2019 amending an order dated September 30, 2019 granting to Canadian Imperial Bank of Commerce a Mareva injunction (collectively the "**Mareva Order**") and nothing in the Mareva Order shall impair the powers of the Receiver as granted herein, save and except that all bank accounts and bank account balances of the Debtors, 125, 243, 218, 155 and 254, existing at the time of the making of this Order shall remain subject to the Mareva Order.

RECEIVER'S POWERS

8. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided that the proceeds of the sale of any real-property or non-inventory personal property (tangible or intangible) or accounts of any of the Debtors' existing at the time of the making of this Order shall be retained by the Receiver and remain subject to the Mareva Order;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause or, in the opinion of the Receiver, court approval is otherwise necessary or desirable regardless of the value of the transaction;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the Receivership, and to share information, subject to such terms as to confidentiality, including without limitation of any Court order, and as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

9. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the

foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

10. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

11. THIS COURT ORDERS that books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related primarily to the business or affairs of the persons and entities, other than the Debtors, subject to the Mareva Injunction Order dated September 30, 2019, as amended on October 7, 2019, as set out in Schedule "B", and any computer programs, computer tapes, computer disks, or other data storage media containing any such information that comes into the possession of the Receiver (the "**Non-Debtor Records**"), shall be delivered to BDO Canada Limited, and not kept in the possession of the Receiver;

12. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto

paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

13. THIS COURT ORDERS that all Persons are hereby enjoined and restrained from in any way altering, concealing, defacing, destroying, discarding, erasing or otherwise tampering or adversely dealing with any of the Property of the Debtors or from removing any Property in the ordinary course of business, from the premises of the Debtors without the prior written consent of the Receiver.

14. THIS COURT ORDERS that any security personnel engaged by the Receiver pursuant to paragraph 8(b) herein shall be authorized and entitled, but not required, to escort or remove any Persons onto or from the Property of the Debtors as the Receiver may in its sole discretion consider it necessary or desirable to escort or remove.

OBLIGATIONS OF THE DEBTORS AND OTHERS

15. THIS COURT ORDERS that all of the current and former directors, officers, employees, agents, accountants, and shareholders of the debtors, and all other persons acting under instructions or on behalf and all persons with notice of this order are hereby restrained from:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the Property, wherever situate;
- (b) instructing, requesting, counseling, commanding, or encouraging any other person to do the acts identified in subparagraph 15(a) above; and
- (c) facilitating, assisting in, aiding, abetting or participating in any of the activities set out in subparagraph 15(a) above,

without prior written approval and instructions from the Receiver.

NO PROCEEDINGS AGAINST THE RECEIVER

16. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

17. THIS COURT ORDERS that with the exception of the CIBC Action, no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. THIS COURT ORDERS that with the exception of the CIBC Action, all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

19. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

20. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

21. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

22. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

23. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

24. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in

pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

25. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

26. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

27. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

29. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

30. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

31. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

32. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

33. 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/e-service->

protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure 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.

34. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, 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.

GENERAL

35. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

36. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

37. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

38. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

39. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

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



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 16 2019

PER / PAR: 

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd. the receiver (the "**Receiver**") of the assets, undertakings and properties 1254044 Ontario Limited, 2431264 Ontario Inc. 2189788 Ontario Inc., 1552838 Ontario Inc. and 2542372 Ontario Inc. (collectively the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 16th day of October, 2019 (the "**Order**") made in an action having Court file number CV-19-00629058-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

MNP Ltd., solely in its capacity as Receiver of
the Property, and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"

**PERSONS AND ENTITIES SUBJECT TO THE MAREVA ORDER OF SEPTEMBER 30,
2019 AS AMENDED ON OCTOBER 7, 2019**

- Sarbjit Singh Dhillon
- Mandhir S. Dhillon
- Simranjit Dhillon
- Mandeep Dhillon
- 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza,
- 1393382 ONTARIO LIMITED,
- 2145744 ONTARIO LIMITED,
- 2145754 ONTARIO LIMITED,
- 1552838 ONTARIO INC.,
- 2189788 ONTARIO INC.,
- 2123618 ONTARIO LIMITED,
- 1849722 ONTARIO LTD.,
- 2469244 ONTARIO LIMITED,
- 2364507 ONTARIO LIMITED,
- 1254044 ONTARIO LIMITED
- 2612550 ONTARIO LIMITED
- 2541899 Ontario Ltd.;
- 2571279 Ontario Inc.;
- 2541900 Ontario Ltd.;
- 2587984 Ontario Inc.;
- 2561534 Ontario Ltd.;
- 2431264 Ontario Inc.;
- 2542372 Ontario Inc.; and
- 2034039 Ontario Inc.

BANK OF MONTREAL

Applicant

and

1254044 ONTARIO LIMITED ET AL.

Respondents

Court File No. CV-19-00629058-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at TORONTO

ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Christopher J. Staples

LSUC Registration No. 31302R

Tel: (416) 218-1147

Fax: (416) 218-1847

Lawyers for the Applicant

COUNSEL SLIP

COURT FILE

NO.:

DATE:

October 16th, 2019

NO. ON LIST

Add on #4

TITLE OF PROCEEDING

CIBC v. Dillon Group CV-19-00628293

COUNSEL FOR:

- PLAINTIFF(S)
- APPLICANT(S)
- PETITIONER(S)

C. Staples

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(416) 218-1147

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- RESPONDENT(S)

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JUDICIAL NOTES:

M. Jilesen

C. Yung

Counsel to CIBC

Phone 416-865-2976

Fax 416-865-3730

email: cyung@lit.tgate.com

K. Esau

counsel to BDO

416-865-4707

Kesau@airdberlis.com

by CIBC October 16, 2019
 This Motion is not opposed
 I am satisfied that it
 should be granted on the
 terms of the attached
 order - there shall be a

Sealing order on the terms
of para 28 of the order.

This Motion by Bank of Montreal
is not opposed without
prejudice to the defendants'
rights. I am satisfied
that it should be granted
on the terms of the
attached order.

The balance of My
endorsement is attached.

Hairy J

Endorsement

The issue of ~~the~~ release & discharge of liability of BDO Canada Limited with respect to its actions as receiver of 125,218 & 155 shall be determined, without prejudice to BDO, expeditiously upon the filing of a receiver's report regarding its activities to the date of the Receivership Order dated October 16, 2019.

October 16, 2019 *Haring J*

APPENDIX K
IN-HOUSE AR

See attached.

908593 Ontario Limited

A/R AGING SUMMARY

As of September 30, 2019

	CURRENT	1 - 30	31 - 60	61 - 90	91 AND OVER	TOTAL
2189788 Ontario Inc					128,737.63	\$128,737.63
BIG CITY TRANSPORT LTD	12,454.24					\$12,454.24
CHARRON TRANSPORT					516,258.87	\$516,258.87
CRYSTAL FARMS					26,320.14	\$26,320.14
CUSTOM CARRIER SERVICE	122.83					\$122.83
FAST WHEELS TRANSPORT INC	56.83	96.92	110.42	40.00		\$304.17
GREAT LAKES TRUCKING	1,122.75	4,226.01	564.22	607.41		\$6,520.39
HAROLD NORTH TRUCKING					30,406.46	\$30,406.46
HEINRICH BARTSCH	3,170.87	539.50				\$3,710.37
IRON CLAD GROUP				1,938.23	1,978.70	\$3,916.93
JACOB & ANNA GUENTHER	2,559.44					\$2,559.44
JEK TRANSPORTATION LTD	500.65	2,517.65	464.19	1,217.02	47,597.74	\$52,297.25
JOHAN BOLDT	2,344.56					\$2,344.56
KANG FREIGHT SYSTEM		704.29	2,157.87		1,590.07	\$4,452.23
LANG BUS LINES LTD	279.21					\$279.21
LARRY SYLVESTRE/1225770 ONTARI	21,951.72					\$21,951.72
ONE WORLD - COMCHEK	80,120.93	127,915.52	36,509.53	7,876.91	1,009,043.84	\$1,261,466.73
PHILIP MARTENS	141.25					\$141.25
PRODUCE EXPRESS/JACOB BANMAN	13,060.24					\$13,060.24
RODNEY LARAMIE	779.92					\$779.92
TERRE DE LA PRARIE FARMS	14,628.57	6,143.12				\$20,771.69
TERRY PECK SIGNS		255.42	81.58			\$337.00
TIL-MECH	117.02	1,314.79				\$1,431.81
TRUCK STOP		241.15	142.50	256.25	7,984.64	\$8,624.54
TOTAL	\$153,411.03	\$143,954.37	\$40,030.31	\$11,935.82	\$1,769,918.09	\$2,119,249.62

APPENDIX L
SUBWAY NOTICE DATED OCTOBER 4, 2019

See attached.



Franchise World Headquarters, LLC
2000 Valley Road
Middletown, CT 06461-3097
203-877-4281

October 4, 2019

VIA EMAIL AND UPS#: 1Z554RE50496821596

Sarbjit Dhillon [bloomfield@mdirect.net]

Subway® #47058

Esso On The Run Truck Stop

22216 Bloomfield Road

Chatham, ON N7M5J6

Canada

RE: FINAL FINDINGS AND 10-DAY DEMAND FOR PAYMENT
Franchise Agreement #47058

Dear Mr. Dhillon:

This letter is in follow-up to the Notice of Default sent to you on May 24, 2019 and the Final Findings and Demand for Payment sent to you on July 31, 2019 (copy enclosed). On June 3, 2019 you were provided a summary of the initial findings of gross sales transmitted by you for Subway® restaurant #47058 (hereinafter #47058), which indicated underreporting. Since that time, no additional feedback has been received indicating the need to adjust our initial findings.

The company has completed its review of your protein inventory and reported gross sales for the timeframe of December 28, 2016 through December 25, 2018 and has identified underreporting of gross sales. The total variance between your reported and expected gross sales is \$85,471.63.

Set forth below is a summary of the matter and the final findings, including any issues or evidence that you may have raised during our discussion.

To begin, you operated a Temporary Additional Point of Sale (TAPS) location in violation of terms of your franchise agreement and Subway® *Operations Manual* (hereinafter the "Manual"), including policies related to required paperwork and controls. During our conference call on November 16, 2018, you admitted that in August 2018 you participated in an unapproved TAPS location at the Boothill Jamborie. It was further determined that you are not actively involved in the day-to-day operations of #47058, you have no back-up documentation of TAPS sales or inventory, and gross sales entered into your Subway® POS for this TAPS location do not match the advertised pricing that you charged at the event, pricing that is evidenced by the signs that were posted during the event.

On November 16, 2018, in addition to discussing your TAPS location, we conducted a review of the restaurant's paperwork and controls by looking at Live IQ, Subway's® digital online reporting platform. We reviewed, among other things, the restaurant's weekly inventory and sales reports, control sheets and control steps for recording inventory and usage properly. We further discussed the reporting tools available for restaurant and employee oversight whether you are at the restaurant or working

remotely. Due to the lack of required controls and oversight at the TAPS location and your Subway® restaurant, you were informed that the company would review your protein inventory and reported gross sales.

The company has completed a review of your protein inventory and reported gross sales for the timeframe of December 28, 2016 through December 25, 2018 and has identified underreporting of gross sales. First, as to your TAPS location, based on the advertised offerings of Footlong sandwiches for \$12, boxed lunches (including footlong sandwich, chips, cookie, and beverage) for \$15, and the TAPS sales entered into the POS, we were able to calculate event sales of \$2,556.00. However, your recorded gross sales from the event are \$1,510.50. As such, your gross sales from the TAPS location were underreported by \$1,045.50.

As to #47058, we conducted a protein inventory and sales review for the period of December 28, 2016 through December 25, 2018. A discrepancy between reported and expected gross sales was discovered. The variance between your reported gross and expected gross sales is \$84,426.13. That amount is in addition to the underreporting at the TAPS location.

On May 24, 2019 you were sent a 10 Day Notice of Default outlining the protein and sales review referenced above. That notice requested that you contact me within 10 days of delivery. A voicemail was received from you on June 3, 2019, in which you acknowledged receipt of the notice of default.

In response to your voicemail of June 3, 2019, documentation of our protein and sales review for #47058 was emailed to you along with an invitation to provide feedback and additional information relative to the review by June 24, 2019.

A second invitation was extended in an email dated July 8, 2019. That email also notified you that if additional feedback and information was not provided by July 15, 2019, the amount due would be considered final. Again, a response was not received. Therefore, we sent you a Final Findings Notice dated July 31, 2019.

On August 15, 2019 I received two voicemails from you requesting that I contact and discuss the matter with Kim Avery, manager at Subway® 47059 (hereinafter "#47059"). Upon returning your phone call I explained to you that while I would contact Kim in regards to #47059, that she is not able to rectify either matter as she is not the Franchisee of record for either restaurant. Additionally, she would not be able to provide information for #47058 because she is not involved in the operations for that restaurant. It was advised that you should reach out to the manager of #47058 and provide any additional information that may affect our review. At that time I emailed you a copy of the Sales and Protein analysis for both locations for a second time to review and follow-up.

During our August 15, 2019 phone conversation, I expressed to you that while we had finalized our results due to no response to our initial communications, I would be willing to bring forth any additional documentation to my Managing Attorney for his approval to include and adjust our Final Findings. Since that conversation I have not received any additional documentation regarding #47058.

Our analysis of the restaurant's reported sales for the review period of December 28, 2016 through December 25, 2018 is now complete with the findings final. The total value, including TAPS, of underreported gross sales is \$85,471.63. Consequently, the unpaid royalty and advertising payments due to SFSC is \$10,683.95. In addition, you are required to pay audit costs of \$1,000.00. **Therefore, your total due and owing to SFSC is \$11,683.95.**

	2017	2018	Total	X 12.5%
Expected	\$246,191.08	\$258,504.01	\$504,695.09	
Reported	\$215,029.25	\$205,239.71	\$420,268.96	
Discrepancy	\$31,161.82	\$53,264.31	\$84,426.13	\$10,553.27
TAPS			\$1,045.50	\$130.68
Discrepancy				
Audit Fee	\$500.00	\$500.00	\$1,000.00	
Total				\$11,683.95

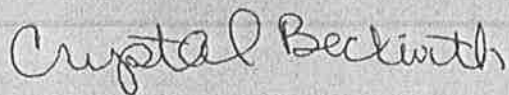
Subparagraph 8.a. of the franchise agreement provides in relevant part that SFSC may terminate your franchise agreement after 10-days' written notice if "(ii) you fail to pay any money you owe us, . . ."

You must remit full payment in certified funds payable to Subway Franchise Systems of Canada, Ltd. no later than 10-days after delivery of this notice.

You should deliver payment to my attention at 325 Sub Way, Milford, CT 06461. Should the company not receive full and timely payment of the amount due and owing, further action under your franchise agreement may result, up to and including termination.

Should you have any questions or concerns, I can be reached by email at beckwith_c@subway.com or by phone at 1-800-888-484- Ext. 1151. I am happy to discuss resolution of this matter with you.

Sincerely,



Crystal Beckwith

Encl.

CC: BDA by email only

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

-and-

SIMRANJIT DHILLON et al.

Defendants

Court File No. CV-19-00628293-00CL

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

THIRD REPORT OF THE RECEIVER

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

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Tel: (416) 865-7726

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Kathryn Esaw (LSUC # 58264F)

Tel: (416) 865-4707

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Email: kesaw@airdberlis.com

Miranda Spence (LSUC # 60621M)

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: mspence@airdberlis.com

Lawyers for BDO Canada Limited in its capacity as the court-appointed Receiver of 908593 Ontario Limited, operating as Eagle Travel Plaza, et al.

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