

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

THE HONOURABLE MR.) WEDNESDAY, THE 30TH
)
JUSTICE OSBORNE) DAY OF NOVEMBER, 2022

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
14428552 CANADA INC., EVE & CO INCORPORATED AND EVE & CO
INTERNATIONAL HOLDINGS LTD.**

(each an “Applicant” and collectively, the “Applicants”)

DISTRIBUTION AND TERMINATION ORDER

THIS MOTION, made by BDO Canada Limited (“**BDO**”), in its capacity as monitor (the “**Monitor**”) of 14428552 Canada Inc. (“**ResidualCo**”), Eve & Co Incorporated and Eve & Co International Holdings Ltd. (collectively, the “**Applicants**”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order (this “**Order**”), among other things, (i) approving the activities, conduct and report of the Monitor, (ii) increasing the Administration Charge, (iii) approving the Distributions specified herein, (iv) approving the fees and disbursements of the Monitor and the Monitor’s legal counsel, as described in the Fifth Report of the Monitor dated November 25, 2022 (the “**Fifth Report**”) and the affidavits attached thereto sworn in support thereof, (v) terminating these CCAA proceedings and discharging the Monitor upon the service of the Termination Certificate (as defined below), and (vi) granting certain related relief, was heard this day via videoconference due to the ongoing COVID-19 pandemic.

ON READING the Notice of Motion of the Monitor, the Fifth Report and the affidavits attached thereto sworn in support of the approval of the fees and disbursements of the Monitor and its counsel, and on hearing the submissions of counsel for the Monitor, and such other counsel as were present and wished to be heard, and on reading the affidavit of service, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Monitor's Notice of Motion, the Motion Record and the Fifth Report 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 capitalized terms used herein and not otherwise defined have the meanings given to them in the Fifth Report.

APPROVAL OF MONITOR'S REPORTS AND ACTIVITIES

3. **THIS COURT ORDERS** that the Fifth Report is hereby approved, and the activities and conduct of the Monitor is hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

ADMINISTRATION CHARGE

4. **THIS COURT ORDERS** that the Administration Charge be and is hereby increased to \$1,000,000.

DISTRIBUTIONS

5. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to make distributions (collectively, the "**Distributions**") from the Funds on Hand in payment of the following:
 - (a) Amounts owing to Canada Revenue Agency in satisfaction of unpaid source deductions owing by the Applicants;
 - (b) Amounts owing to the DIP Lender totaling \$2,900,964 (plus a per diem rate of \$871 from November 30, 2022), the payment of which shall constitute the full and final satisfaction of the DIP Loan and the Applicants shall have no further liability in respect of the DIP Loan upon the payment of such distribution;

- (c) \$75,000 to the Van Engelens; and
- (d) Amounts owing to RBC in partial satisfaction of the RBC Indebtedness which shall be applied as a permanent reduction of the RBC Indebtedness.

6. **THIS COURT ORDERS** that the Monitor is hereby authorized to take all necessary steps and actions to effect the Distributions in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distributions.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these CCAA proceedings;
- (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or other applicable legislation in respect of the Applicants and any bankruptcy or receivership order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicants; and
- (d) any provisions of any federal or provincial legislation,

the Distributions shall be made free and clear of all Encumbrances (as defined in the Approval and Vesting Order), including the Charges, and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicants and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS AND DECLARES** that the Distributions shall not constitute a “distribution” for the purposes of section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act, 2007* (Ontario), section 159 of the *Tax Act*, section 270 of the *Excise Tax Act* (Canada), section 86 of the *Employment Insurance Act* (Canada), or any other similar applicable federal, provincial or territorial tax

legislation (collectively, the “**Tax Statutes**”), and the Monitor, in making the Distributions, is merely a disbursing agent and is not exercising any discretion in making the Distributions, and no Person is “distributing” such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of the Distributions and the Monitor is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of the Distributions made by it in accordance with this Order and any claims of this nature are hereby forever barred.

APPROVAL OF FEES AND DISBURSEMENTS

9. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from March 14, 2022 to November 23, 2022, all as set out in the affidavit of Stephen Cherniak sworn November 24, 2022, are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of Thornton Grout Finnigan LLP (“**TGF**”) as legal counsel to the Monitor, for the period from March 8, 2022 to November 23, 2022 as set out in the affidavit of Leanne M. Williams sworn November 24, 2022, are hereby approved.

11. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and TGF, estimated not to exceed \$40,000 in aggregate (excluding HST), for the completion of remaining activities in connection with these CCAA proceedings, are hereby approved.

TERMINATION OF CCAA PROCEEDINGS

12. **THIS COURT ORDERS** that, upon service by the Monitor of an executed certificate in substantially the form attached hereto as Schedule “A” (the “**Termination Certificate**”) on the service list in these CCAA proceedings certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed, these CCAA proceedings shall be terminated without any further act or formality (the “**CCAA Termination Time**”), save and except as provided in this Order, and provided that nothing herein impacts the validity of any Orders made in these CCAA proceedings or any action or steps taken by any Person pursuant thereto.

13. **THIS COURT ORDERS** that the Monitor is hereby directed to file a copy of the Termination Certificate with the Court as soon as is practicable following the service thereof on the service list in these CCAA proceedings.

14. **THIS COURT ORDERS** that the Charges shall be terminated, released and discharged as of the CCAA Termination Time without any further act or formality.

DISCHARGE OF THE MONITOR

15. **THIS COURT ORDERS** that effective at the CCAA Termination Time, BDO shall be and is hereby discharged from its duties as the Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time, provided that, notwithstanding its discharge as Monitor, BDO shall have the authority to carry out, complete or address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings following the CCAA Termination Time as may be required (“**Monitor Incidental Matters**”).

16. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor’s discharge or the termination of these CCAA proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of, all of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Amended and Restated Initial Order, the Approval and Vesting Order, any other Order of this Court in these CCAA proceedings or otherwise, all of which are expressly continued and confirmed following the CCAA Termination Time, including in connection with any Monitor Incidental Matters and other actions taken by the Monitor following the CCAA Termination Time with respect to the Applicants or these CCAA proceedings.

EXTENSION OF THE STAY PERIOD

17. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

GENERAL

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

19. **THIS COURT ORDERS** that each of the Applicants and the Monitor 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.

**SCHEDULE “A”
TERMINATION CERTIFICATE**

Court File No. CV-22-00678884-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
14428552 CANADA INC., EVE & CO INCORPORATED AND
EVE & CO INTERNATIONAL HOLDINGS LTD.**

(each an “Applicant” and collectively, the “Applicants”)

TERMINATION CERTIFICATE

RECITALS

1. BDO Canada Limited (“**BDO**”) was appointed as the Monitor of the Applicants in the within proceedings commenced under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 25, 2022 (as amended, the “**Initial Order**”).
2. Pursuant to an Order of this Court dated November 30, 2022 (the “**Distribution and Termination Order**”), among other things, BDO shall be discharged as the Monitor and the Applicants’ CCAA proceedings shall be terminated upon the service of this Termination Certificate on the service list in these CCAA proceedings, all in accordance with the terms of the CCAA Distribution and Termination Order.
3. Unless otherwise indicated herein, capitalized terms used in this Termination Certificate shall have the meaning given to them in the Fifth Report of the Monitor dated November 2, 2022.

THE MONITOR CERTIFIES that, to the knowledge of the Monitor, all matters to be attended to in connection with the CCAA proceedings have been completed.

ACCORDINGLY, the CCAA Termination Time as defined in the Distribution and Termination Order has occurred.

DATED at London, Ontario this _____ day of _____, 2022.

BDO CANADA LIMITED in its capacity as Court-appointed Monitor of the Applicants and not in its personal or corporate capacity

Per: _____

Name:

Title:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 14428552 CANADA INC., EVE & CO INCORPORATED
AND EVE & CO INTERNATIONAL HOLDINGS LTD.

Court File No. CV-22-00678884-00CL

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

Proceedings commenced at Toronto, Ontario

DISTRIBUTION AND TERMINATION ORDER

Thornton Grout Finnigan LLP

TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
Fax: (416) 304-1313

Leanne M. Williams (LSO# 41877E)

Email: lwilliams@tgf.ca
Tel: (416) 304-0060

Alexander Soutter (LSO# 72403T)

Email: asoutter@tgf.ca
Tel: (416) 304-0595

Lawyers for the Court-appointed Monitor,
BDO Canada Limited