Court File No. CV-25-00743485-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ARBAT CAPITAL GROUP LTD.

Applicant

and

THE SECOND CUP COFFEE COMPANY INC.

Respondent

FACTUM OF THE APPLICANT
(Returnable January 29, 2026)

January 28, 2026

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 6600
Toronto, ON Canada M5H 3S1

Gavin H. Finlayson LSO# 44126D
Email: gfinlayson@millerthomson.com
Tel: 416.595.8619

Larry Ellis LSO# 49313K
Email: lellis@millerthomson.com
Tel: 416.595.8639

Matthew Cressatti LSO# 77944T
Email: mcressatti@millerthomson.com
Tel: 416-597-4311

Lawyers for the Applicant

TO: THE SERVICE LIST

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TABLE OF CONTENTS

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APPLICANT'S FACTUM

PART I - INTRODUCTION

1. This Factum is filed by the Applicant, Arbat Capital Group Ltd. ("**Arbat**"), the largest creditor and a 40% shareholder of the Respondent, The Second Cup Coffee Company Inc. ("**Second Cup**" or the "**Company**"), in support of its Motion for an order (the "**Distribution and CCAA Termination Order**"), *inter alia*:

(a) authorizing Grant Thornton Limited ("**Grant Thornton**"), in its capacity as the Court-appointed Monitor (in such capacity, the "**Monitor**") of Second Cup to make certain distributions from the Closing Payment (as defined below) to satisfy the accepted claims identified by the Monitor (the "**Accepted Claims**") pursuant to the Claims Identification Order of the Honourable Mr. Justice Cavanagh dated May 29, 2025;

(b) approving the supplement to the third report of the Monitor dated October 29, 2025 (the "**Supplemental Third Report**"), the fourth report of the Monitor dated January 26, 2026 (the "**Fourth Report**"), and the activities and conduct of the Monitor described therein;

(c) approving the fees and disbursements of the Monitor and its legal counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), including the estimated Final Fees (as defined below), as described in the Fourth Report;

(d) terminating these CCAA Proceedings upon the filing by the Monitor of a certificate with this Court certifying that, among other things, all matters to be attended to in connection with these CCAA Proceedings have been completed (the "**Monitor's Termination Certificate**" and the time of service thereof being the "**CCAA Termination Time**");

(e) extending the Stay Period (as defined below) from January 31, 2026, up to and including the CCAA Termination Time;

(f) discharging the Monitor at the CCAA Termination Time;

(g) approving certain releases (the "**Releases**") with respect to the Monitor and its legal counsel, Cassels (together, the "**Released Parties**");

(h) sealing the Confidential Appendices (as defined below) to the Fourth Report until the earlier of the closing of the Transaction (defined herein) or further order of this Court; and

(i) terminating, releasing, and discharging the Administration Charge, the DIP Lender's Charge, and the Directors' Charge (each as defined below) (collectively, the "**Charges**") at the CCAA Termination Time.

PART II - SUMMARY OF FACTS

2. The complete set of facts in support of this Motion are set out in the Affidavit of Alexey Golubovich, affirmed on January 26, 2026 (the "**Fourth Golubovich Affidavit**") and the Fourth Report of the Monitor. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Fourth Golubovich Affidavit, the Fourth Report of the Monitor, the ARIO, or the Approval and Reverse Vesting Order of the Honourable Mr. Justice Myers dated October 30, 2026 (the "**ARVO**").

A. Procedural Background

3. On May 22, 2025, on the application of Arbat, Second Cup was granted creditor protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), pursuant to an order (the "**Initial Order**", as amended and restated, the "**ARIO**") of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

4. The Initial Order, among other things: (i) appointed Grant Thornton as Monitor of Second Cup; (ii) appointed Maxim Lojevsky as the Chief Restructuring Officer of the Company; (iii) granted an initial stay of proceedings up to and including June 1, 2025 (the "**Stay Period**"); (iv) granted an initial administration charge in the maximum amount of $275,000 (the "**Administration Charge**"); (v) approved an interim financing term sheet between

Arbat, as lender (in such capacity, the "**DIP Lender**") and the Company, as borrower, establishing a charge (the "**DIP Lender's Charge**") in the maximum amount of $200,000; and (vi) granted an initial director's charge in the maximum amount of $100,000 (the "**Directors' Charge**").[1]

5. As a component of these CCAA Proceedings, the Monitor, in consultation with the Applicant, conducted a Court-approved sale and investment solicitation process ("**SISP**"), whereby Arbat acted as the stalking horse bidder (in such capacity, the "**Stalking Horse Bidder**") pursuant to a stalking horse subscription agreement (the "**Stalking Horse Agreement**").[2] The Monitor received at least one additional qualified bid in the SISP and, following a multi-round auction administered by the Monitor (the "**Auction**"), the Stalking Horse Bidder was selected as the successful bidder.[3]

6. Additionally, on May 29, 2025, this Court granted the Claims Identification Procedure Order, which approved a claims procedure that enabled the Monitor to identify the existing claims against Second Cup, including those claims against the Company's board of directors (the "**Claims Identification Process**"). [4] The Claims Identification Process was designed to identify, quantify, and settle the claims against Second Cup to facilitate distributions to creditors.

[1] Fourth Golubovich Affidavit at para 7; Motion Record, Tab 2.
[2] Fourth Golubovich Affidavit at para 10; Motion Record, Tab 2.
[3] Fourth Golubovich Affidavit at paras 12, 13, and 15; Motion Record, Tab 2.
[4] Fourth Golubovich Affidavit at para 9; Motion Record, Tab 2.

B. The Transaction and ARVO

7. The Stalking Horse Bid represented the highest consideration and the best bid of the Auction. Accordingly, the Stalking Horse Agreement was amended to reflect the new purchase price that arose from the Auction (the "**Amended Purchase Agreement**").[5] The transaction contemplated by the Amended Purchase Agreement (the "**Transaction**") is structured as a reverse vesting transaction. On closing of the Transaction, all existing shares of the Company will be cancelled and Arbat, as the Stalking Horse Bidder and ultimate purchaser, will subscribe for and be issued new common shares in the Company (the "**Purchased Shares**").[6]

8. On October 30, 2025, the Honourable Mr. Justice Myers granted the ARVO, which, among other things, (i) approved the Amended Purchase Agreement; (ii) approved the transfer and vesting of all of Second Cup's right, title, and interest in and to the Purchased Shares and Retained Assets (as defined in the Amended Purchase Agreement) in Arbat on closing; (iii) approved the transfer and vesting of all of Second Cup's right, title, and interest in and to the Excluded Assets, Excluded Contracts, and Excluded Liabilities (each as defined in the Amended Purchase Agreement) in a newly incorporated company ("**ResidualCo**"), on closing; and (iv) directed the closing cash payment (the "**Closing Payment**") to be paid to the Monitor, and authorized the Monitor to pay from the Closing Payment: (i) the priority

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[5] Fourth Golubovich Affidavit at para 15; Motion Record, Tab 2.
[6] Fourth Golubovich Affidavit at para 16; Motion Record, Tab 2.

payments prescribed under section 6 of the CCAA (the "**Priority Payments**"); and (ii) amounts secured under the Administration Charge.[7]

9. Pursuant to the ARVO, the balance of the Closing Payment, following the satisfaction of the Priority Payments and the amounts secured by the Administration Charge, is to be held in trust by the Monitor to: (i) fund those costs incurred by the Monitor and its professional advisors to administer ResidualCo post-closing; and (ii) distribute any remaining funds towards the Accepted Claims (the "**Distributions**").[8]

10. On December 17, 2025, the Second Cup and Arbat agreed to extend the outside date for the Transaction to February 15, 2026. A further extension is anticipated, and the Transaction is expected to close on or prior to February 28, 2026.[9]

11. Following the completion of: (i) closing of the Transaction; (ii) the administration of the distributions to creditors pursuant to the Proposed Distribution Methodology , if approved; (iii) preparation of the statutory and administrative documents required to assign ResidualCo into bankruptcy; and (iv) payment of the approved professional fees, disbursements, and retainers (collectively, the "**Remaining Matters**"), these CCAA Proceedings will be substantially complete and will have served their intended purpose of enabling Second Cup to continue operating as a going concern for the benefit of its stakeholders.

[7] Fourth Golubovich Affidavit at para 17; Motion Record, Tab 2.
[8] Fourth Golubovich Affidavit at para 17; Motion Record, Tab 2.
[9] Fourth Golubovich Affidavit at paras 19 and 35; Motion Record, Tab 2.

C. The Purchaser Group Distributions and the Set-Off Mechanism

12. Arbat, Park Investors LLC ("**Park**"), and Svetlana Bortsova ("**Bortsova**" and, together with Arbat and Park, the "**Purchaser Group**") are collectively funding the Closing Payment. Pursuant to the Monitor's proposed methodology in respect to the Distributions (the "**Proposed Distribution Methodology**"), as described in the Fourth Report, the Purchaser Group is also entitled to be distributed $1,729,683.18 (the "**Purchaser Group Distributions**") in satisfaction of their respective Accepted Claims.[10]

13. Since the Purchaser Group is both funding the Closing Payment and entitled to receive the Purchaser Group Distributions from that same payment, Arbat proposes that the Purchaser Group Distributions be satisfied by set-off. The Applicant proposes to reduce the Closing Payment by $1,729,683.18 (the amount of the Purchaser Group Distributions), such that the Purchaser Group would not be required to advance that amount, and no corresponding distribution would be made to the Purchaser Group from the Closing Payment in respect of its Accepted Claims (the "**Set-Off Mechanism**").[11]

14. The Set-Off Mechanism will not affect the quantum of the Distributions being paid to the other unsecured creditors with Accepted Claims.[12] In its absence, the Purchaser Group will be required to advance a further $1,729,683.18 and subsequently receive that same amount back through the distribution process, resulting in an inefficient and unnecessary circular flow of funds that would complicate the closing of the Transaction.[13]

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[10] Fourth Golubovich Affidavit at para 17; Motion Record, Tab 2.
[11] Fourth Golubovich Affidavit at para 22; Motion Record, Tab 2.
[12] Fourth Golubovich Affidavit at para 23; Motion Record, Tab 2.
[13] Fourth Golubovich Affidavit at para 24; Motion Record, Tab 2.

PART III - ISSUES

15. The issues underlying this Motion are whether the Court should:

(a) authorize the Monitor to make the proposed Distributions in accordance with the Proposed Distribution Methodology;

(b) approve the Monitor's Supplemental Third Report and Fourth Report, and the activities and conduct of the Monitor described therein;

(c) approve the fees and disbursements of the Monitor and its legal counsel, including the Final Fees;

(d) terminate these CCAA Proceedings upon the filing by the Monitor of the Monitor's Termination Certificate;

(e) extend the Stay Period up to and including the CCAA Termination Time;

(f) discharge Grant Thornton, in its capacity as the Monitor, at the CCAA Termination Time;

(g) approve the proposed Releases of the Released Parties;

(h) seal the Confidential Appendices to the Fourth Report; and

(i) terminate, release, and discharge the Charges at the CCAA Termination Time.

PART IV - LAW AND ARGUMENT

A. The Monitor Should be Authorized to Make the Distributions

16. The proposed Distribution and CCAA Termination Order authorizes the Monitor, following payment of the Priority Payments and the amounts secured by the Administration Charge from the Closing Payment, to make one or more distributions in accordance with the Proposed Distribution Methodology in satisfaction of the Accepted Claims.[14]

17. Section 11 of the CCAA provides that a court may, subject to the restrictions set out in the CCAA, make any order it considers appropriate in the circumstances.[15] Accordingly, the court has inherent jurisdiction to fill in the caps of the CCAA to give effect to its objects.[16]

18. It is well-established that this Court has the authority to approve distributions to creditors over the course of CCAA proceedings. This Court has also noted that courts often approve distributions to creditors without the need for a CCAA plan.[17]

19. The Applicant respectfully submits that it is reasonable and appropriate for the Court to exercise its discretion to approve the Distributions to be made in accordance with the Proposed Distribution Methodology, as described in the Fourth Report.

20. The Monitor has identified the Accepted Claims in accordance with the Claims Identification Order, which procedure was designed and undertaken to identify, quantify,

[14] Draft Distribution and CCAA Termination Order at para 4; Motion Record, Tab 3.
[15] s. 11, CCAA.
[16] *Re Nortel Networkd Corp.*, (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List]), at para 30.
[17] *Nortel Networks Corp., Re*, 2014 ONSC 4777, at paras 53-55.

and resolve the claims against Second Cup, with a view to making distributions to the Company's creditors.[18]

21. Additionally, since the Purchaser Group is both funding the Closing Payment and receiving the Purchaser Group Distributions from the Closing Payment, it is appropriate that the Set-Off Mechanism also be approved by this Court.

B. The Monitor's Supplemental Third Report, Fourth Report, Activities and Conduct Should be Approved

22. Arbat is seeking this Court's approval of the Monitor's Supplemental Third Report and the Fourth Report filed in connection with these CCAA Proceedings, and the activities and conduct of the Monitor set out therein.

23. In *Target Canada Co. (Re)*, Justice Morawetz noted that there are good policy and practical reasons to grant the approval of a monitor's reported activities, including (a) allowing a monitor to bring its activities before a court; (b) allowing an opportunity for stakeholders' concerns to be addressed; (c) enabling a court to satisfy itself that a monitor's activities have been conducted in a prudent and diligent manner; (d) providing protection for a monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by a monitor.[19]

24. The Monitor's activities are set out in the Supplemental Third Report and the Fourth Report.

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[18] Fourth Golubovich Affidavit at para 28; Motion Record, Tab 2.
[19] *Target Canada Co (Re)*, 2015 ONSC 1487, at paras 2, 22-23.

25. The Applicant respectfully submits that Grant Thornton, in its capacity as the Court-appointed Monitor, has carried out its duties in a reasonable and efficient manner, consistent with its powers as set out in the CCAA, and in the interests of Second Cup's stakeholders generally. Therefore, the Supplemental Third Report and the Fourth Report, as well as the activities and conduct set out therein should be approved.

C. The Monitor and its Legal Counsel's Fees Should be Approved

26. The Applicant further seeks this Court's approval of the fees and disbursements of the Monitor and its legal counsel, up to December 31, 2025, including the estimate of remaining fees, disbursements, and taxes (estimated not to exceed $100,000) (the "**Final Fees**") that are anticipated to be incurred in completing the Remaining Activities, as set out in the Fourth Report and fee affidavits appended thereto.[20]

27. Paragraph 33 of the ARIO provides that the Monitor and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges as part of the costs of the CCAA Proceedings. Pursuant to paragraph 34 of the ARIO, the Monitor and its counsel shall pass their accounts from time to time.[21]

28. In considering whether to approve the fees and disbursements of the Monitor and its counsel, the Court should employ the "overriding principle of reasonableness".[22] Courts do not engage in a "docket-by-docket" assessment.[23] Instead, the Ontario Court of Appeal has stated that "[t]he focus of the fair and reasonable assessment should be on what was

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[20] Fourth Report at paras 78-83; Appendix "J" and Appendix "K" to the Fourth Report.
[21] Fourth Report at para 77; Appendix "A" to the Fourth Report.
[22] *Nortel Networks Inc.*, 2022 ONSC 6680 at para 10;
[23] *Laurentian University of Sudbury*, 2022 ONSC 2927 at para 9.

accomplished, not on how much time it took."[24]

29. The Monitor and its legal counsel have devoted significant time to, among other things, (i) undertaking the steps required to advance the closing of the Transaction, (ii) maintaining consistent communications with the Company's stakeholders, including its creditors; and (ii) carrying out their duties and activities in a manner consistent with the provisions of the CCAA and in compliance with Orders issued in these CCAA Proceedings.[25]

30. The Monitor and its legal counsel have maintained detailed records of their professional time and costs since the commencement of these CCAA Proceedings, and since this Court last approved their respective fees and disbursements on October 30, 2025.

31. Any unused portion of the Final Fees will be made available for distribution among the Company's creditors in order of priority in accordance with the Proposed Distribution Methodology.[26]

32. The Applicant submits that the Monitor's fees and disbursements, as well as the fees and disbursements of its counsel, including the Final Fees, are fair, reasonable, and commensurate with the size and complexity of these CCAA Proceedings. Accordingly, the fees and disbursements of the Monitor and its counsel, and the Final Fees, should be approved by this Court.

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[24] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 45; *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 at para 26.
[25] Fourth Report at para 21.
[26] Fourth Report at para 83.

D. These CCAA Proceedings and the Charges Should be Terminated, and the Monitor Should be Discharged

33. The Applicants are seeking to terminate these CCAA Proceedings and discharge Grant Thornton, in its capacity as the Monitor, effective upon the Monitor's filing of the Monitor's Termination Certificate, substantially in the form attached to the Distribution and CCAA Termination Order, with this Court.

34. Pursuant to section 11 of the CCAA, this Court has broad jurisdiction to terminate these CCAA Proceedings.[27]

35. This Court has previously granted similar relief where no material steps remain in a CCAA proceeding and has permitted the proceeding to terminate upon the filing of a termination certificate at a future date.[28]

36. Upon the Monitor's filing of the Monitor's Termination Certificate, Grant Thornton will have completed its responsibilities as Monitor in these CCAA Proceedings, including the Remaining Activities.[29]

37. The Monitor also seeks to terminate the Charges, effective as of the CCAA Termination Time. The Court's jurisdiction to terminate the Charges is found in its broad discretion under section 11 of the CCAA.[30]

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[27] s 11, CCAA.
[28] *Re Peraso Technologies Inc.*, (28 October 2020), Toronto CV-20-00642010-00CL, Ont. Sup. Ct. [Commercial List] Order (Termination of CCAA Proceedings) at para 3; *Re Chalice Brands Ltd.*, (28 September 2023), Toronto CV-23-00699872-00CL, Ont. Sup. Ct. [Commercial List] (CCAA Termination Order) at para 6.
[29] Fourth Golubovich Affidavit at para 36; Motion Record, Tab 2.
[30] s. 11, CCAA.

38. The Applicant respectfully submits that it is appropriate for this Court to exercise its jurisdiction to authorize the termination of these CCAA Proceedings and the discharge of the Monitor and the Charges, given that, among other things, following the closing of the Transaction and completion of the other Remaining Activities, these CCAA Proceedings will have achieved their overall objectives and will no longer be needed.

E. The Stay Period Should be Extended

39. The Stay Period currently expires on January 31, 2026. The Applicant seeks to extend the Stay Period up to and including the CCAA Termination Time. The Applicant submits that the test to extend the Stay Period is satisfied.

40. Pursuant to section 11.02(2) of the CCAA, this Court is empowered to extend the stay of proceedings granted to a debtor company.[31] The Court must consider whether: (a) the order sought is appropriate in the circumstances; and (b) the applicant has been acting in good faith and with due diligence.[32]

41. This Court has previously granted an extension of the stay period in similar proceedings up to and including the date on which the CCAA proceedings terminated.[33]

42. The requested extension is reasonable and is intended to provide the Monitor and its legal counsel with the time necessary to address the Remaining Activities.

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[31] s 11.02(2)-(3), CCAA; *Aleafia Health Inc. et al.*, (March 1, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-23-00698107-00CL (CCAA Termination Order) at para 25.
[32] s 11.02(2)-(3), CCAA.
[33] See e.g. *1001379021 Ontario Inc.*, (November 10, 2025), Toronto CV-25-00749165-00CL, Ont. Sup. Ct. [Commercial List] Order (CCAA Termination Order) at para 12; *Eastern Meat Solutions et al.*, (December 11, 2025), Toronto CV-24-00720622-00CL, Ont. Sup. Ct. [Commercial List] Order (CCAA Termination Order) at para 3.

43. The Applicant submits that extending the Stay Period is warranted for the following reasons:

(a) Second Cup, with the oversight and control of the Monitor, is acting in good faith and with due diligence;

(b) an extension of the Stay Period will not prejudice or adversely affect any of the Company's creditors;

(c) the Monitor is not aware of any party opposed to the proposed extension of the Stay Period;

(d) no person will be unduly or unfairly prejudiced by the proposed extension of the Stay Period; and

(e) the proposed extension of the Stay Period will equip the Monitor with sufficient time to complete the Remaining Activities. [34]

44. For all of the foregoing reasons, the Monitor requests that the Stay Period be extended up to and including the CCAA Termination Time.

[34] Fourth Golubovich Affidavit at paras 40-42; Motion Record, Tab 2.

F. The Releases Should be Approved

45. The Applicant is seeking approval of the Releases in favour of the Monitor and its legal counsel (defined above as the Released Parties) from the Released Claims (as defined in the Distribution and CCAA Termination Order) up to the CCAA Termination Time.

46. The releases granted in the ARVO are limited to claims taking place prior to closing of the Transaction or relating to these CCAA Proceedings. The proposed Releases are intended to provide certainty and finality for the Released Parties, who made significant contributions to the restructuring process, and to ensure the Released Parties are fully protected from the Released Claims.

47. It is well-established that courts have jurisdiction to approve third-party releases in CCAA proceedings pursuant to section 11 of the CCAA, and such releases have been routinely granted in orders terminating proceedings under the CCAA.[35]

48. The relevant factors for the Court to consider in determining whether to approve releases in CCAA proceedings include whether:

(a) the claims to be released are rationally connected to the purpose of the plan;

(b) the plan could succeed without the releases;

[35] s 11, CCAA: *Aleafia Health Inc. et al.*, (March 1, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-23-00698107-00CL (CCAA Termination Order) at para 29; *Golf Town et al.*, (March 29, 2018), Ont. S.C.J. [Commercial List], Court File No. CV- 16-11527-00CL (CCAA Termination Order) at para 14. *Re Chalice Brands Ltd.*, (28 September 2023), Toronto CV-23-00699872-00CL, Ont. Sup. Ct. [Commercial List] (CCAA Termination Order) at para 17.

(c) the parties being released contributed to the plan;

(d) the releases benefit the debtors as well as the creditors generally;

(e) the creditors have knowledge of the nature and effect of the releases; and

(f) the releases are fair, reasonable, and not overly broad.[36]

49. The Releases are being requested with the support of the Monitor, and are fair, reasonable and appropriate in the circumstances.[37]

50. The Released Parties have worked diligently to facilitate a going concern restructuring transaction and are presently working to wind up these CCAA Proceedings and complete the Remaining Matters.

51. The Releases explicitly do not release or discharge any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any claim for willful misconduct or gross negligence.

52. Accordingly, the Applicant respectfully submits that proposed Releases are consistent with releases sought in similar Court-approved transactions under the CCAA and are fair and reasonable in the circumstances.

[36] *Laurentian University of Sudbury*, 2022 ONSC 5645 at para 40, citing *Lydian International Limited (Re)*, 2020 ONSC 4006 at para 54; *Re Green Relief Inc.*, 2020 ONSC 6837, at para 28.
[37] Fourth Report at paras 72-73.

G. The Confidential Appendices to the Fourth Report Should be Sealed

53. The Applicant seeks the sealing of Confidential Appendix A, B, and C to the Fourth Report of the Monitor (collectively, the "**Confidential Appendices**").

54. The Confidential Appendices contain the Proposed Transaction Waterfall (as defined below), the proposed Distribution schedule, and the Amended ResidualCo cash flow for the period of March 1, 2026 to the CCAA Termination Time (the "**ResidualCo Cashflow**").

55. The Applicant wishes to seal each of these documents because they contain the Purchase Price for the Transaction and there is a risk that releasing that information could taint any future sale process in the unlikely event that the Transaction fails to close.

56. Pursuant to the *Courts of Justice Act*, R.S.O. 1990, c C.43, as amended (the "**CJA**"), this Court has the discretion to order any document filed in a civil proceeding be treated as "confidential", sealed, and not form part of the public record.[38]

57. The test to determine whether a sealing order should be granted, as set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*, as modified in *Sherman Estate*, is as follows:

(a) whether court openness poses a serious risk to an important public interest;

(b) the order is necessary to prevent risk to an important interest because reasonably alternative measures will not prevent the risk; and

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[38] s 137(2), CJA.

(c) whether the benefits of the confidentiality order outweigh the negative effects.[39]

58. The Supreme Court of Canada has explicitly recognized commercial interests, such as preserving confidential information or avoiding a breach of a confidentiality agreement, as an "important public interest" for the purposes of this test.[40]

59. The ResidualCo Cashflow includes the purchase price to be received by the Monitor on closing of the Transaction. Additionally, the illustrative analysis provided by the Monitor as an aid to understand the expected impact of the Transaction on each of Second Cup's creditors (the "**Proposed Transaction Waterfall**") and the proposed Distribution schedule include details of the purchase price.

60. As stated above, it is likely that disclosure of the purchase price to third parties would negatively impact the integrity of any future sale efforts, including a situation where the Transaction does not close. This far outweighs the deleterious effects of the public not knowing the negotiated purchase price.

61. The Applicant proposes to limit the sealing of the Confidential Appendices until the earlier of the closing of the Transaction or further order of this Court, which is consistent with the sealing relief granted pursuant to the ARVO.

62. Accordingly, it is submitted that the Confidential Appendices to the Fourth Report be

[39] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53; *Sherman Estate v. Donovan*, 2021 SCC 25 at paras 38 and 43.
[40] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 55; *Sherman Estate v. Donovan*, 2021 SCC 25 at paras 41-43.

sealed.

PART V - ORDER REQUESTED

63. For each of the foregoing reasons, the Applicant respectfully requests that this Honourable Court grant the Distribution and CCAA Termination Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of January, 2026.

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 6600
Toronto, ON Canada M5H 3S1

Gavin H. Finlayson LSO# 44126D
Email: gfinlayson@millerthomson.com
Tel: 416.595.8619

Larry Ellis LSO# 49313K
Email: lellis@millerthomson.com
Tel: 416.595.8639

Matthew Cressatti LSO# 77944T
Email: mcressatti@millerthomson.com
Tel: 416-597-4311

Lawyers for the Applicant

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Re Nortel Networkd Corp.*, (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List]).

2. *Nortel Networks Corp., Re*, 2014 ONSC 4777.

3. *Target Canada Co (Re)*, 2015 ONSC 1487.

4. *Nortel Networks Inc.*, 2022 ONSC 6680.

5. *Laurentian University of Sudbury*, (May 18, 2022), Ont. S.C.J. [Commercial List], Court File No. CV-21-656040-00CL (Endorsement of Morawetz, J.).

6. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851.

7. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400.

8. *Re Peraso Technologies Inc.*, (28 October 2020), Toronto CV-20-00642010-00CL (Ont. Sup. Ct. [Comm. List] Order (Termination of CCAA Proceedings).

9. *Re Chalice Brands Ltd.*, (28 September 2023), Toronto CV-23-00699872-00CL (Ont. Sup. Ct. [Comm. List] CCAA Termination Order).

10. *Aleafia Health Inc. et al.*, (March 1, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-23-00698107-00CL (CCAA Termination Order).

11. *1001379021 Ontario Inc.*, (November 10, 2025), Toronto CV-25-00749165-00CL, Ont. Sup. Ct. [Commercial List] Order (CCAA Termination Order).

12. *Eastern Meat Solutions et al.*, (December 11, 2025), Toronto CV-24-00720622-00CL, Ont. Sup. Ct. [Commercial List] Order (CCAA Termination Order).

13. *Golf Town et al.*, (March 29, 2018), Ont. S.C.J. [Commercial List], Court File No. CV- 16-11527-00CL (CCAA Termination Order).

14. *Laurentian University of Sudbury*, 2022 ONSC 5645.

15. *Re Green Relief Inc.*, 2020 ONSC 6837.

16. *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41.

17. *Sherman Estate v. Donovan*, 2021 SCC 25.

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date January 28, 2026

Gavin Finlayson, Larry Ellis and
Matthew Cressatti

SCHEDULE "B"
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended**

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. – other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
(b) in the case of an order under subsection (2), the applicant also satisfied the court that the applicant has acted, and is acting, in good faith and with due diligence.

***Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

Section 137

Sealing Documents
(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

ARBAT CAPITAL GROUP LTD.
Applicant

and

THE SECOND CUP COFFEE COMPANY INC.
Respondent

Court File No. CV-25-00743485-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

FACTUM
(Returnable January 29, 2026)

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 6600
Toronto ON M5H 3S1

Gavin H. Finlayson LSO# 44126D
Email: gfinlayson@millerthomson.com
Tel: 416.595.8619

Larry Ellis LSO# 49313K
Email: lellis@millerthomson.com
Tel: 416.595.8639

Matthew Cressatti LSO# 77944T
Email: mcressatti@millerthomson.com
Tel: 416-597-4311

Lawyers for the Applicant