

**Court File No. CV-20-00642970-00CL**

**GNC Holdings, Inc.,  
General Nutrition Centres Company *et al***

**THIRD REPORT OF THE INFORMATION OFFICER**

**September 19, 2020**

**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 GNC HOLDINGS, INC., GENERAL NUTRITION  
CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION,  
GENERAL NUTRITION CENTERS, INC., GENERAL NUTRITION  
CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY,  
LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC  
INTERNATIONAL HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC  
HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES,  
LTD., GNC CANADA HOLDINGS, INC., GNC GOVERNMENT  
SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. AND  
GNC PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC., UNDER SECTION 46 OF  
*THE COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

**THIRD REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS INFORMATION OFFICER**

**INTRODUCTION**

1. GNC Holdings, Inc. ("**GNC Holdings**"), an entity registered in the state of Delaware, is the ultimate parent of General Nutrition Centres Company ("**GNC Canada**"). GNC Holdings is also the ultimate parent for those entities listed in **Appendix A** hereto (collectively, with GNC Holdings and GNC Canada, the "**Debtors**"). On June 23, 2020 (the "**Petition Date**"), the Debtors commenced cases under Chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Cases**") in the U.S. Bankruptcy Court in Delaware (the "**U.S. Court**").

2. On June 24, 2020, GNC Holdings in its capacity as the proposed foreign representative of the Debtors in respect of the Chapter 11 Cases filed an application (the “**Recognition Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) to the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) for:
  - (a) An interim order (Foreign Main Proceeding) granting a stay of proceedings against the Debtors (the “**Interim Stay Order**”);
  - (b) An initial recognition order (the “**Initial Recognition Order**”) recognizing the Chapter 11 Cases and granting, *inter alia*, a stay of proceedings against the Debtors;
  - (c) A supplemental recognition order (the “**Supplemental Order**”) seeking certain relief including the recognition of various orders issued in the Chapter 11 Cases and the appointment of FTI Consulting Canada Inc. (“**FTI Canada**”) as Information Officer (in such capacity, the “**Information Officer**”); and
  - (d) An order (the “**Consulting Agreement Approval Order**”) approving the consulting agreement (the “**Consulting Agreement**”) entered into between GNC Canada and a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively, the “**Canada Consultant**”).
3. The Interim Stay Order was granted on June 24, 2020. Pursuant to the Interim Stay Order, FTI Consulting Canada Inc. (“**FTI Canada**”), in its capacity as the proposed Information Officer (at that time), established a case website for the Recognition Proceedings at <http://cfcanada.fticonsulting.com/GNCC> (the “**Canada Case Website**”).

4. On June 25, 2020 and June 26, 2020, the U.S. Court granted the First Day Orders to permit the Debtors to continue to operate their business in the ordinary course and to advance their proposed reorganization. The First Day Orders included the Foreign Representative Order, the Interim DIP Order, the Interim Cash Management Order, the Interim Store Closing Order, and the Interim Wages Order, each as defined in the Pre-Filing Report of the Proposed Information Officer dated June 28, 2020 (the “**Pre-Filing Report**”). The U.S. Court also issued an order consolidating the administration of the Chapter 11 Cases for procedural purposes only under Case No. 20-11662.
5. All publicly available information filed in the Chapter 11 Cases is available at <https://cases.primeclerk.com/gnc> (the “**U.S. Case Website**”).
6. On June 29, 2020, the Honourable Madam Justice Conway of the Canadian Court granted:
  - (a) The Initial Recognition Order, *inter alia*, declaring that GNC Holdings is a “foreign representative” as defined in section 45 of the CCAA (the “**Foreign Representative**”), that the centre of main interests for each of the Debtors is the United States of America and recognizing the Chapter 11 Cases as a “foreign main proceeding”;
  - (b) The Supplemental Order, *inter alia*, recognizing several of the First Day Orders, appointing FTI Canada as information officer (the “**Information Officer**”), granting a stay of proceedings against the Debtors and granting a super-priority charge (the “**DIP Lenders’ Charges**”) on the Debtors’ property in Canada for the benefit of GLAS Trust Company LLC, as administrative collateral agent for and on behalf of itself and the other lenders party thereto (the “**DIP Term Lenders**”), and JP Morgan Chase N.A. as administrative agent and collateral agent for an on behalf of themselves and the other lenders party thereto (the “**DIP ABL FILO Lenders**”, and collectively with the DIP Term Lenders, the “**DIP Lenders**”); and

- (c) The Consulting Agreement Approval Order, *inter alia*, recognizing the Interim Store Closing Order in the Chapter 11 Cases, approving the Consulting Agreement and approving and authorizing the Debtors to conduct the going-out-of-business sale process in Canada (the “**GOB Sale**”) in accordance with the Interim Store Closing Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines (as defined in the Interim Store Closing Order) and the Consulting Agreement.
7. As described in the First Report of the Information Officer dated July 24, 2020 (the “**First Report**”), various orders were entered by the U.S. Court on July 20, July 21, and July 22, 2020 (the “**Second Day Orders**”).
  8. On July 27, 2020, the Honourable Madam Justice Gilmore of the Canadian Court granted an Order (the “**Second Day Recognition Order**”) recognizing certain of the Second Day Orders, including the Final DIP Order, the Bar Date Order and the Bidding Procedures Order.
  9. On August 25, 2020, the Honourable Madam Justice Conway of the Canadian Court granted an Order (the “**August 25 Recognition Order**”) recognizing certain additional Orders that had been entered by the U.S. Court, including the Disclosure Statement Order and the Stalking Horse and Bid Protections Approval Order.
  10. The purpose of this, the Third Report of the Information Officer (the “**Report**”), is to provide information to the Canadian Court with respect to the following:
    - (a) GNC Canada’s actual receipts and disbursements for the period from August 16 to September 5, 2020;
    - (b) Events in the Chapter 11 Cases since the date of the Information Officer’s Second Report; and

- (c) The Foreign Representative's request for an order (the "**Sale Recognition Order**") recognizing the Sale Order and Thirteenth Lease Rejection Order (each as defined later in this Report) and the Information Officer's recommendations thereon.

## **TERMS OF REFERENCE**

- 11. In preparing this Report, the Information Officer has relied upon unaudited financial information of the Debtors, the Debtors' books and records, certain financial information prepared by the Debtors and discussions with various parties, including the Canada Consultant and other various legal, financial, and other advisors to the Debtors (collectively, the "**Information**").
- 12. Except as described in this Report:
  - (a) The Information Officer has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) The Information Officer has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 13. The Information Officer has prepared this Report in connection with the Debtors' motion for the granting of the Sale Recognition Order, which is scheduled to be heard on Tuesday, September 22, 2020, and this Report should not be relied on for any other purposes.
- 14. Future oriented financial information reported or relied on in preparing this Report is based on the assumptions of management of the Debtors ("**Management**") regarding future events; actual results may vary from forecast and such variations may be material.

15. Unless otherwise stated, all monetary amounts contained herein are expressed in **United States Dollars**. Capitalized terms not otherwise defined herein have the meanings defined in the Initial Tolivar Affidavit, the U.S. First Day Declarations, the Pre-Filing Report or previous Reports of the Information Officer.

## **EXECUTIVE SUMMARY**

16. In summary, for the reasons set out in this Report, the Information Officer is of the view that:
- (a) The Sale Transaction is the best transaction resulting from the marketing of the Purchased Assets and the consideration is fair and reasonable in the circumstances;
  - (b) There is no evidence to suggest that any viable alternative exists that would deliver a better recovery from the Purchased Assets for the creditors of GNC Canada;
  - (c) The approval of the Sale Transaction is in the best interests of the creditors of GNC Canada and its stakeholders generally;
  - (d) It is appropriate for the Assigned Contracts to be assigned;
  - (e) The Sale Order provides a mechanism to ensure that the Cure Costs in relation to the Assigned Contracts will be remedied in accordance with the process set out in the Sale Order;
  - (f) Recognition of the Sale Order by the Canadian Court is appropriate in the circumstances; and
  - (g) Recognition of the Thirteenth Lease Rejection Order is appropriate in the circumstances.

17. Accordingly, the Information Officer respectfully recommends that the Foreign Representative's request for the Sale Recognition Order be granted by this Honourable Court.

**RECEIPTS AND DISBURSEMENTS FOR THE PERIOD TO SEPTEMBER 5, 2020**

18. GNC Canada's actual net cash flow for the period from August 16 to September 5, 2020 was approximately \$0.7 million better than the July 20 Forecast as summarized below:

	<b>Forecast</b>	<b>Actual</b>	<b>Variance</b>
	<b>US\$000</b>	<b>US\$000</b>	<b>US\$000</b>
<b>Receipts</b>	<b>3,924</b>	<b>3,335</b>	<b>(589)</b>
<b>Operating Disbursements</b>			
Merchandise Vendors	(1,515)	0	1,515
Non-Merchandise Vendors	(612)	(434)	178
Payroll & Employee Related Disbursements	(799)	(792)	7
Occupancy Disbursements	(755)	(871)	(116)
Sales Taxes	(8)	(221)	(213)
Capital Expenditures	(6)	0	6
Corporate and Other Disbursements	(91)	(26)	65
<b>Total Operating Disbursements</b>	<b>(3,786)</b>	<b>(2,344)</b>	<b>1,442</b>
<b>Net Operating Cash Flow</b>	<b>138</b>	<b>991</b>	<b>853</b>
Professional Fees	(87)	(28)	59
Liquidation Disbursements	(251)	(485)	(234)
<b>Net Cash Flow</b>	<b>(200)</b>	<b>478</b>	<b>678</b>
<b>Cash, opening balance</b>	<b>1,807</b>	<b>7,488</b>	<b>5,681</b>
Net Cash Flow	(200)	478	678
Cash Transfers from/(To) GNC US	0	0	0
<b>Cash, ending balance</b>	<b>1,607</b>	<b>7,966</b>	<b>6,359</b>

19. Explanations for the key variances in actual receipts and disbursements as compared to the July 20 Forecast are as follows:
- (a) The unfavourable variance of approximately \$0.6 million in receipts is comprised of the following:

- (i) An unfavourable variance of approximately \$0.7 million in receipts at GOB Stores resulting from a combination of lower than forecast sales volume in certain weeks and higher than forecast discounting during the period than the July 20 Forecast had contemplated; and
  - (ii) A favourable variance of approximately \$0.1 million at stores that are not in the GOB Sale due to higher than forecast sales volume;
- (b) The favourable variance of \$1.5 million for merchandise vendors is a timing variance that is expected to reverse in future periods. The Debtors continue to be in discussions with merchandise vendors who have placed shipments to GNC Canada on hold pending completion of the negotiation of go-forward supply arrangements and outstanding balances;
- (c) The favourable variance of \$0.2 million for non-merchandise vendors is due to lower than forecast advertising disbursements of \$0.1 million and a timing variance of \$0.1 million that is expected to reverse in future periods pending receipt of invoices for services provided by transportation and utility vendors;
- (d) The unfavourable variance of \$0.1 million for occupancy disbursements is due to higher than forecast percentage rent payments made during the period;
- (e) The unfavourable variance of \$0.2 million for sales taxes is due to less sales tax paid as a result of lower than forecast disbursements during the remittance period, which was only partially offset by less sales tax being collected due to lower sales;
- (f) The favourable variance of approximately \$0.1 million in professional fees is a timing variance that is expected to reverse in future periods;
- (g) The unfavourable variance of approximately \$0.2 million in liquidation disbursements is a timing variance; and

- (h) The explanations for the favourable variance in opening cash were provided at paragraph 18 of the Information Officer's Second Report.

## EVENTS IN THE CHAPTER 11 CASES SINCE THE SECOND REPORT

### CLAIMS PROCESS

- 20. On September 8, 2020, the Debtors filed a notice (the "**Amended Scheduled Claim Notice**") of filing of certain amendments to schedule D for General Nutrition Centers, Inc. and to schedule E/F, Part 2, for certain other Debtors (collectively, the "**Removed and Amended Scheduled Claims**").
- 21. Pursuant to the Bar Date Order, holders of the Removed and Amended Scheduled Claims shall have until 5:00 p.m. (prevailing Eastern Time) on September 29, 2020 (the "**Supplemental Bar Date**") to file proofs of claim.

### PLAN SOLICITATION PROCESS

- 22. The Disclosure Statement Order granted by the U.S. Court on August 20, 2020, *inter alia*, approved the Third Disclosure Statement and set:
  - (a) 5:00 p.m. (prevailing Eastern Time) on October 5, 2020, as the deadline for the filing of objections to the confirmation of the Plan; and
  - (b) 1:00 p.m. (prevailing Eastern Time) on October 14, 2020, as the time and date of the hearing to consider confirmation of the Plan (the "**Confirmation Hearing**").
- 23. Pursuant to the Disclosure Statement Order, the Debtors caused the Solicitation Package to be mailed on or before September 4, 2020.
- 24. Also pursuant to the Disclosure Statement Order, the Debtors caused the Notice of Approval of Disclosure Statement, Plan Confirmation Hearing, and Confirmation Deadline to be published in the *Globe and Mail* on August 26, 2020, and in *La Presse* on September 1, 2020.

## ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

25. As noted in the Second Report and in accordance with the Bidding Procedures Order, the Debtors filed an initial assignment notice (the “**First Assumption Notice**”) on July 31, 2020 identifying the Assigned Contracts which may be assumed and assigned to the Successful Bidder in connection with a Sale and the proposed amounts, if any, that the Debtors believe are owed to the respective counterparties to such Assigned Contracts to cure any defaults or arrears existing under each Assigned Contract (the “**Cure Costs**”) as of the Petition Date.
26. On August 21, 2020, the Debtors filed a first supplemental assumption notice (the “**First Supplemental Assumption Notice**”), which added certain additional contracts not included in the First Assumption Notice and updated the Cure Costs for certain contracts listed on the First Assumption Notice. The First Supplemental Assumption Notice stated that:
- (a) Any objections to the proposed assumption and assignment of such Assigned Contracts, including any objection relating to the Cure Cost or adequate assurance of future performance by the Stalking Horse Bidder must be made as prescribed in the Assumption Procedures and be served on the Objection Notice Parties and filed with the U.S. Court by no later than two days prior to the hearing to consider approval of sale (the “**Sale Hearing**”);
  - (b) The Debtors reserved the right, at any time until the date that is one business day prior to the Sale Hearing, to:
    - (i) Supplement the list of Assigned Contracts;
    - (ii) Remove any Assigned Contract from the list; and/or
    - (iii) Modify the previously stated Cure Costs associated with any Assigned Contract.

- (c) For any revised Assumption Notice filed and served at least seven days prior to the commencement of the Sale Hearing, Contract Objections must have been filed two days prior to the Sale Hearing;
  - (d) For any revised Assumption Notice filed and served within seven days prior to the Sale Hearing, Contract Objections must be filed within seven days after the date of filing and service of the revised Assumption Notice, and such Contract Objections will not be adjudicated at the Sale Hearing but will be determined at a subsequent hearing.
27. On September 10, 2020, the Debtors filed a second supplemental assumption notice (the “**Second Supplemental Assumption Notice**”), which added a number of additional contracts and real property leases, and updated the Cure Costs for certain contracts or real property leases listed on the First Assumption Notice and/or the First Supplemental Assumption Notice.
28. Also on September 10, 2020 and in accordance with section 2.5(b) of the Stalking Horse Agreement as amended, the Stalking Horse Bidder provided the Debtors with a notice of designation of contracts (the “**Designation Notice**”) designating various contracts as Assumed Agreements and Assumed Real Property Leases under the Stalking Horse Agreement.
29. On September 17, 2020, the Debtors filed a third supplemental assumption notice (the “**Third Supplemental Assumption Notice**”), which added a number of additional contracts, and updated the Cure Costs for certain contracts or real property leases listed on the First Assumption Notice, First Supplemental Assumption Notice, or Second Supplemental Assumption Notice.

30. Also, on September 17, 2020, the Debtors filed a Notice of Filing of Amended Designation Notice (the “**Amended Designation Notice**”). Pursuant to the Franchisee Assignment Motions (as defined in the Amended Designation Notice), the Debtors requested the authority to assume certain leases and assign such leases to the franchisees currently operating in the leased premises (the “**Franchisee Leases**”). The Designation Notice inadvertently designated the Franchisee Leases to be assumed by the Stalking Horse Bidder. The Amended Designation Notice corrects this scrivener’s error by removing the Franchisee Leases that the Debtors seek to assign to certain franchisees pursuant to the Franchisee Assignment Motions.
  
31. The Information Officer is informed by the Debtors that the list of Assumed Contracts filed with the Court at the Sale Hearing did not include numerous contracts which had been expected to be on that list. The list of Assumed Contracts filed with the Court did not include any of the Canadian Leases. Approval of the U.S. Court will be required for the assumption and assignment of those contracts and leases. The Debtors have informed the Information Officer that discussions are ongoing with the Purchaser about supplementing the list of Assumed Contracts and the Information Officer will provide an update on or before the date of the Recognition Motion. If an additional motion for approval of the assumption of any Canadian contracts or unexpired leases is brought in the Chapter 11 Proceedings, it is expected that a further request will be made by the Foreign Representative for recognition by the Canadian Court of the additional U.S. Order.

#### **ADDITIONAL ADEQUATE ASSURANCE INFORMATION**

32. On August 10, 2020 pursuant to the Bidding Procedures Order, the Debtors filed information to demonstrate adequate assurance of future performance of the Assigned Contracts provided by the Stalking Horse Bidder (the “**Adequate Assurance Information**”).

33. Subsequently, the Debtors received a number of objections requesting additional adequate assurance information. While the Debtors believe the Adequate Assurance Information provided was sufficient to demonstrate adequate assurance of future performance of the Assigned Contracts, the Debtors provided certain additional information (the “**Additional Adequate Assurance Information**”) to address such additional requests as part of the Notice of Filing of Additional Adequate Assurance Information with respect to the Stalking Horse Bidder (the “**Additional Adequate Assurance Notice**”) filed on September 8, 2020.
34. The Additional Adequate Assurance Information included the following:
- (a) The projected cash flows of the business;
  - (b) Financial projections for the business through 2023;
  - (c) GNC Holdings, LLC (which is “GNC Newco” as defined in the Stalking Horse Agreement) was formed as a domestic limited liability company in Delaware on August 17, 2020;
  - (d) The heightened requirements under certain sections of Chapter 11 of the United States Bankruptcy Code for shopping center leases are satisfied because the Stalking Horse Bidder will continue to operate such stores as GNC stores, and the source of rent will remain the same;
  - (e) The proposed assignee will have no other liabilities other than the liabilities incurred in connection with the Sale;
  - (f) The exact legal name of the proposed assignee is ZT Biopharmaceutical LLC;
  - (g) Confirmation the Stalking Horse Bidder has significant experience both with the Debtors’ business and operation of health and nutrition stores because the Stalking Horse Bidder is already a significant shareholder of the Debtors; and

- (h) Confirmation that to the extent required under the terms of an Assigned Contract, the assignee will comply with applicable indemnity obligations or obligations to maintain insurance.
35. On September 17, 2020, the Debtors filed a Notice of Filing Additional Adequate Assurance Information with respect to the Stalking Horse Bidder (the “**Supplemental Additional Adequate Assurance Notice**”). The Supplemental Additional Adequate Assurance Notice was filed to correct certain information contained in the Additional Adequate Assurance Notice – specifically, the inclusion of the exact legal name of the proposed assignee being GNC Holdings LLC and its contact information.

#### **SALE PROCESS**

36. On September 14, 2020, the Debtors filed a Notice of Auction Cancellation and Successful Bidder (the “**Auction Cancellation Notice**”) stating that the Debtors did not receive any Qualified Bids for the Debtors’ assets, other than from the Stalking Horse Bidder and that, pursuant to the Bidding Procedures, the Debtors were cancelling the Auction and designating the Stalking Horse Bidder as the Successful Bidder.

#### **THE THIRD AMENDMENT TO STALKING HORSE AMENDMENT**

37. On September 8, 2020, the Debtors filed a Notice of Filing of Third Amendment to Stalking Horse Agreement (the “**Third Amendment Notice**”). The Third Amendment Notice provided notice of and a copy of the Third Amendment to Stalking Horse Agreement dated September 8, 2020 (the “**Third Amendment**”). The Third Amendment makes limited amendments to section 2.5(b) pertaining to the Assumption and Assignment of Certain Contracts. In particular, the Third Amendment reduces the number of Business Days prior to the Bid Deadline from three to one that the Buyer may in its sole discretion designate any Contract of any Selling Entity as an Assumed Agreement or Assume Real Property Lease, or remove any such Contract from the Seller Disclosure Schedule.

#### **THE FOURTH STALKING HORSE AMENDMENT**

38. On September 17, 2020, the Debtors entered into a Fourth Amendment to Stalking Horse Agreement (the “**Fourth Amendment**”) primarily to reflect the Settlement (as defined below) reached with the UCC to consensually resolve the UCC Sale Objection (as defined below). The Fourth Amendment was incorporated into the Sale Order, and subsequently approved upon granting of the Sale Order on September 18, 2020. The amendments stipulated in the Fourth Amendment included the following:

- (a) Amendment of the agreement to include a new Exhibit G to the Stalking Horse Agreement, which provides a term sheet relating to the proposed 2.25% PIK Subordinated Convertible Notes due 2028 (the “**Junior Convertible Notes**”) and 2.25% PIK Subordinated Notes due 2028 (the “**Junior Non-Convertible Notes**”) and, together with the Convertible Notes, the “**Notes**”). The terms of the Notes are consistent with the Settlement (as defined below) reached with the UCC as outlined in the Berube Declaration below in this Report.
- (b) Amendment to the definition of “Convertible Notes Issuance” to reflect the Notes and deletion of the definition of “Unsecured Creditor Consideration Trigger Event”; and
- (c) Addition of section 7.21 that stipulates the Buyer shall acquire and/or assume Real Property Leases for no fewer than 1,400 retail stores; provided, however, the Buyer shall have no obligation to keep such retail stores open after the Closing Date.

#### **ORDERS ISSUED IN THE CHAPTER 11 PROCEEDINGS SINCE THE DATE OF THE SECOND REPORT**

39. A number of Orders have been issued by the U.S. Court since the date of the Second Report of which the Debtors are not seeking recognition by the Canadian Court. Those Orders include the following (and exclude Orders granting motions for admission *pro hac vice*):

- (a) *Order granting Debtors leave and permission to file replies in support of (i) the Disclosure Statement motion, and (ii) the Asia Earth rejection motion, granted August 21, 2020;*
- (b) *Order authorizing Official Committee of Unsecured Creditors to employ Berkeley Research Group, LLC as financial advisor effective as of July 10, 2020, granted September 4, 2020;*
- (c) *Order authorizing and approving the employment and retention of Borden Ladner Gervais LLP as special Canadian counsel to the Official Committee of Unsecured Creditors nunc pro tunc to August 5, 2020, granted September 14, 2020;*
- (d) *Twelfth (12<sup>th</sup>) omnibus Order (a) authorizing rejection of certain unexpired leases effective as of August 31, 2020 and (b) granting related relief, granted September 15, 2020;*
- (e) *Fourteenth (14<sup>th</sup>) omnibus Order (a) authorizing rejection of certain unexpired leases effective as of August 31, 2020 and (b) granting related relief, granted September 15, 2020;*
- (f) *Fifteenth (15<sup>th</sup>) omnibus Order (a) authorizing rejection of certain unexpired leases, subleases and agreements effective as of August 31, 2020 and (b) granting related relief, granted September 15, 2020;*
- (g) *Sixteenth (16<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*
- (h) *Seventeenth (17<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*

- (i) *Eighteenth (18<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*
- (j) *Nineteenth (19<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*
- (k) *Twentieth (20<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*
- (l) *Twenty-first (21<sup>st</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*
- (m) *Twenty-second (22<sup>nd</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*
- (n) *Twenty-third (23<sup>rd</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*
- (o) *Twenty-fourth (24<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*
- (p) *Twenty-fifth (25<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*

- (q) *Twenty-sixth (26<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020;*
  - (r) *Twenty-seventh (27<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020; and*
  - (s) *Twenty-eighth (28<sup>th</sup>) omnibus Order (a) authorizing the Debtors to assume and assign certain unexpired leases to certain franchisees and (b) rejecting certain unexpired subleases with applicable franchisees, granted September 18, 2020.*
40. The Foreign Representative is seeking recognition by the Canadian Court of the following Orders issued by the U.S. Court since the date of the Second Report:
- (a) *Order (i) authorizing and approving (a) the sale of substantially all of the Debtors' assets free and clear of all liens, claims, and encumbrances and (b) the assumption and assignment of certain executory contracts and unexpired leases in connection therewith, and (ii) granting related relief (the “**Sale Order**”), granted September 18, 2020; and*
  - (b) *Thirteenth (13<sup>th</sup>) omnibus Order (a) authorizing rejection of certain unexpired leases effective as of August 31, 2020 and (b) granting related relief, granted September 15, 2020 (the “**Thirteenth Lease Rejection Order**”).*
41. The Sale Order and the Thirteenth Lease Rejection Order are discussed in further detail later in this Report.

42. For ease of reference, a summary of all Orders entered in the Chapter 11 Cases (excluding Orders granting motions for admission *pro hac vice*) and the status of each order vis-à-vis the Recognition Proceedings (the “**Chapter 11 Order Summary**”) has been prepared by the Information Officer and posted to the Canadian Case Website. A copy of the Chapter 11 Order Summary is attached hereto as **Appendix B**.

## **THE SALE ORDER**

### **RESOLUTION OF UCC OBJECTION**

43. On July 31, 2020, the Debtors filed a Notice of Filing of Proposed Sale Order, which included a copy of the Proposed Sale Order.
44. On September 4, 2020, the UCC filed an objection to the Debtors’ motion for entry of an Order approving the sale of substantially all of the Debtors’ assets free and clear of all claims, liens, liabilities, rights, interests, and encumbrances (the “**UCC Sale Objection**”).
45. The UCC Sale Objection objected to the Sale Motion on several grounds, including that the Sale did not provide sufficient proceeds for unsecured creditors. Subsequent to the filing of the UCC Sale Objection, the Debtors, the Stalking Horse Bidder, the Ad Hoc Group of Crossover Lenders, the Committee and the Ad Hoc Group of Convertible Notes (the “**Negotiating Parties**”) entered into negotiations regarding not only the UCC Sale Objection, but also the UCC’s objections to the Plan and the Committee’s challenge rights with respect to the validity and extent of the prepetition liens and claims of the Debtors’ secured lenders pursuant to the Final DIP Order.
46. On September 15, 2020, the Debtors filed a reply to the UCC Sale Objection (the “**Sale Objection Reply**”) and reported that the Negotiating Parties have agreed in principle to the terms of a settlement (the “**Settlement**”) with respect to the following:
- (a) All issues raised by the UCC and the Ad Hoc Group of Convertible Notes with respect to the Sale;

- (b) All issues raised by the UCC and Ad Hoc Group of Convertible Notes with respect to the Plan; and
  - (c) The UCC's challenge rights under the Final DIP Order.
47. The Settlement forms the basis for a fully consensual Plan supported by all of the Debtors' key creditor constituencies.
48. The key terms of the Settlement are described in the Declaration of Greg Berube in Support of the Sale Order (the "**Berube Declaration**") attached as Exhibit A to the Sale Objection Reply and are summarized as follows:
- (a) Sale and Plan Approval: The UCC and Ad Hoc Group of Convertible Notes agree to support the Sale and the Plan, and the Ad Hoc Group of Convertible Notes agrees to vote in favour of the Plan;
  - (b) Cash Available to General Unsecured Creditors in the event that a Sale is consummated:
    - (i) The amended Plan will provide for \$4.5 million cash to be distributed per the UCC's election;
    - (ii) The cost of administering estate claims will be paid from the applicable portion of the wind-down budget, and if the UCC elects, the \$4.5 million cash amount can be reduced to commensurately increase the amount of the wind-down budget;
    - (iii) Fees for advisors of the Ad Hoc Group of Convertible Notes are capped at \$1 million and will be allowed and paid with \$750,000 paid from this \$4.5 million cash amount and \$250,000 paid by the Debtors or Tranche B-2 Term Lenders; and

- (iv) Pursuant to the amended Plan, the Ad Hoc Group of Convertible Notes will waive their claims on the cash portion of the general unsecured distribution in exchange for payment of the \$1 million to their advisors, but retain their claims on the non-cash portion of the general unsecured distribution;
- (c) Cash Available to General Unsecured Creditors in the event of a standalone Restructuring:
- (i) The Debtors will agree to increase the dollar amount of the contingent value right set forth in the Plan to \$4 million and increase the cash payment to unsecured creditors from \$1 million to \$2.5 million to be distributed per the UCC's election;
  - (ii) \$250,000 of fees for advisors of the Ad Hoc Group of Convertible Notes shall be allowed and paid by the Debtors or the Tranche B-2 Term Lenders. Any amounts in excess of \$250,000 will be paid from the \$2.5 million of cash available to general unsecured creditors to be negotiated in good faith by the Committee and advisors to the Ad Hoc Group of Convertible Notes; and
  - (iii) In no circumstance will additional amounts be funded by the Debtors' estates for payment of fees for advisors of the Ad Hoc Group of Convertible Notes in connection with a standalone Restructuring or Sale;
- (d) Notes to be Issued to Unsecured Creditors in the Event of a Sale:
- (i) Amounts: The \$10 million Junior Convertible Notes to be provided as additional consideration to unsecured creditors under the Stalking Horse Agreement will be increased to \$15 million, and the unsecured creditors will receive the additional \$5 million Junior Non-Convertible Notes;

- (ii) Issuer: ZT Biopharmaceutical LLC;
  - (iii) Guarantors: None;
  - (iv) Interest Rate: 2.25% to be paid in kind with no amortization;
  - (v) Maturity: 8 years;
  - (vi) Conversion rights for Junior Convertible Notes: Conversion price of \$2.25 billion equity value with other conversion terms consistent with the original Junior Convertible Note term sheet previously filed;
  - (vii) Ranking: Subordinated to the Aland Subordinated Facility with respect to both ranking and right to payment;
  - (viii) Covenants: Buyer will acquire at least 1,400 stores at closing of the Sale but with no further guarantee of keeping the stores open; and
  - (ix) Terms of Aland Subordinated Facility: The Aland Subordinated Facility is to be senior to the Junior Non-Convertible Notes and the Junior Convertible Notes;
- (e) Death-Trap Provision: Pursuant to the Stalking Horse Agreement, the Junior Convertible Note was to be issued to unsecured creditors, but only if neither the unsecured creditors nor their representatives objected to the Sale of the Plan. Likewise, pursuant to the Plan, the contingent value right and cash payment to be distributed to unsecured creditors under the Plan in the event of a standalone Restructuring were available only if neither the unsecured creditors nor their representatives objected to the Plan. Both “death-trap” provisions will be removed from the Stalking Horse Agreement and the Plan as part of the Settlement;

- (f) Challenge Waiver: The UCC waives its right to assert any Challenge (as defined in the Final DIP Order) to any of the prepetition and rollup claims and liens, the Debtors' stipulations with respect to such claims, and the Debtors' releases of claims against secured parties;
- (g) Waiver of Tranche B-2 Deficiency Claims: In exchange for the UCC waiving its rights to any Challenge under the Final DIP Order, the amended Plan will provide that the Tranche B-2 Term Lenders waive their unsecured deficiency claims for distribution purposes, but not for voting purposes;
- (h) Wind-Down Budget Under Sale Scenario: The wind-down budget is capped at \$3 million (plus any portion of the \$4.5 million cash amount that the UCC allocates to the wind-down budget);
- (i) Post-Effective Date Process: In the event of a Sale, the post-effective date process will be controlled by a Plan Administrator appointed by the UCC, and the Plan Administrator shall be responsible for filing the final tax returns and discharging the other responsibilities contemplated by the Plan and the wind-down budget;
- (j) Causes of Action: In the event of a Sale, all causes of action against directors, officers, and insiders and all other avoidance causes of action are to be sold to the Buyer who shall immediately release them pursuant to the asset purchase agreement. In the event of a Restructuring, all such causes of action shall be released in accordance with the Plan; and
- (k) Committee Advisors: Committee advisors will have a reasonable opportunity to comment on and revise the Plan, as necessary.

49. On September 15, 2020, the Debtors filed a Notice of Filing of Revised Proposed Sale Order. On September 15, 2020 and September 17, 2020, the Debtors filed a Notice of Filing of Further Revised Proposed Sale Order and a Notice of Filing of Second Further Revised Proposed Sale Order to reflect additional discussions and materials filed in the Chapter 11 Cases, including the Third Supplemental Assumption Notice.
50. The Sale Hearing was held on September 17, 2020 and the U.S. Court approved the Sale Order, subject to certain further modifications including the Buyer designating its subsidiary and confirming that GNC Holdings LLC will own all of the Assets and take assignment of all of the selected Assigned Contracts upon consummation of the Sale.
51. On September 18, 2020, the U.S. Court granted the relief requested and issued the Sale Order.

#### **THE SALE ORDER**

52. The Sale Order provides, *inter alia*, for the approval of the transactions contemplated by the Stalking Horse Agreement as amended (the “**Sale Transaction**”) and for the Debtors’ assumption, assignment and transfer to the Buyer of the Assigned Contracts.
53. A description of the key terms of the Stalking Horse Agreement, in addition to the Third Stalking Horse Amendment discussed above, was provided in the Second Report, a copy of which, without appendices, is attached hereto as **Appendix C** for ease of reference.
54. Pursuant to the Sale Order, the U.S. Court has found and determined that:
  - (a) The Sale Order constitutes a final order and the Court finds there is no just reason for delay in the implementation of the Sale Order;
  - (b) Proper, timely, adequate, and sufficient notice of, *inter alia*, the Motion, the Bidding Procedures, the Assumption Procedures, the Stalking Horse Agreement, the Sale, the Sale Hearing, and all deadlines related thereto, has been provided in accordance with the applicable Bankruptcy Code, Bankruptcy Rules, and the Bidding Procedures Order;

- (c) The Debtors served the First Assumption Notice, First Supplemental Assumption Notice, Second Supplemental Assumption Notice, and Third Supplemental Assumption Notice on each of the counterparties to the Assigned Contracts in accordance with the Assumption Procedures and the Bidding Procedures Order;
- (d) The Debtors served the Stalking Horse Selection Notice on all parties required to receive such notice pursuant to the Bidding Procedures Order and applicable rules;
- (e) The Debtors served the Auction Cancellation Notice on all parties required to receive such notice under applicable rules;
- (f) The notice provided was, and is, good, sufficient, and appropriate under the circumstances of the Chapter 11 Cases, and provided a fair and reasonable opportunity for parties in interest to object and be heard;
- (g) The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for, and compelling circumstances to promptly consummate, the Sale and the other transactions contemplated by the Stalking Horse Agreement, including:
  - (i) There is substantial risk of depreciation of the value of the Assets if the Sale is not consummate promptly;
  - (ii) The Stalking Horse Agreement and the Closing present the best opportunity to maximize the value of the Debtors' estates;
  - (iii) The Cash proceeds from the Sale, once consummated, will be used to indefeasibly pay in full the outstanding DIP Facilities Claims at Closing and the remaining proceeds will be distributed in accordance with the Plan; and

- (iv) Unless the Sale is concluded expeditiously, potential creditor recoveries may be substantially diminished;
  - (h) The Stalking Horse Agreement constitutes the highest or otherwise best offer for the Assets and represents a fair and reasonable offer to purchase the Assets;
  - (i) The Buyer has demonstrated its wherewithal to satisfy its obligations under the Stalking Horse Agreement; and
  - (j) The Debtors (on behalf of the Buyer) have, or will have as of the Closing Date, cured, or provided adequate assurance of cure, of any default existing prior to the Closing Date with respect to the Selected Assigned Contracts and have, or will have, provided compensation, or adequate assurance of compensation, to any party for any actual pecuniary loss to such party.
55. The Sale Order also provides, *inter alia*, that:
- (a) All objections to the Sale Order and relief requested that have not been withdrawn, waived, resolved, adjourned, or otherwise settled, are hereby denied and overruled on the merits with the exception of timely filed objections with respect to the issue of the proper amount of Cure Costs which are adjourned to September 29, 2020. The rights of the parties with respect to such Cure Costs issues are expressly preserved;
  - (b) The Stalking Horse Agreement and the Transaction Documents, including all amendments, are approved;
  - (c) The consideration provided by the Buyer is fair and reasonable;
  - (d) The Debtors are authorized and directed to transfer the Assets to the Buyer on the Closing Date, and upon the Debtors' receipt of the Purchase Price, the transfer of such assets will be free and clear of all Interests of any kind and shall vest the Buyer with all right, title and interest in such Assets;

- (e) The Debtors' assumption, assignment, and transfer to the Buyer of the Assigned Contracts is hereby authorized and approved in full subject to the terms of the Sale Order.
  - (i) In particular with respect to the Debtors' non-residential real property leases, the assumption and assignment of the such leases shall not be free and clear of all obligations arising and accruing under the terms of such leases and, after the effective date of the assignment of such leases, the Buyer shall remain liable for: i) amounts owed under the applicable lease that are accrued but not yet due and owing as of the Closing Date regardless of when such obligations accrued; ii) any regular or periodic adjustment or reconciliation of charges under the lease which are not due as of the Closing Date; iii) any percentage rent that may come due post-closing; and, iv) indemnification obligations that come due and owing or are to be performed on a post-closing basis.
- (f) The Sale Transaction contemplated by the Sale Order, the Stalking Horse Agreement, and the Transaction Documents are undertaken by the Buyer without collusion and in good faith, and the Buyer is a good faith purchaser and is entitled to the full protections of section 363 (m) of the Bankruptcy Code; and
- (g) The Debtors are authorized to change their legal names and file any necessary documents to effectuate such name changes without further Order of the Court.

## REQUEST FOR RECOGNITION OF THE SALE ORDER

56. The Foreign Representative is seeking recognition of the Sale Order and not an Order approving a sale pursuant to section 36(1) of the CCAA. However, the Information Officer is of the view that the factors to be considered by the court in determining whether to approve a sale under section 36(1) of the CCAA, as set out in section 36(3) of the CCAA, are of relevance in the Canadian Court's consideration of the Foreign Representative's request.

57. Section 36(3) of the CCAA states:

“(3) **Factors to be considered** - In deciding whether to grant the authorization, the court is to consider, among other things,

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

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

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

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

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.”

***Reasonableness of the Process Leading to the Proposed Sale***

58. The Purchased Assets were made available for sale pursuant to the Bidding Procedures Order, details of which were provided to Court in previous reports of the Information Officer.
59. The Bidding Procedures Order was recognized by the Canadian Court pursuant to the Second Day Recognition Order and, as subsequently amended, pursuant to the August 25 Recognition Order.
60. As outlined in the Declaration of Gregory Berube of Evercore Group L.L.C. (“**Evercore**”) in Support of the Debtors’ Sale Objection Reply (the “**Berube Declaration**”)<sup>1</sup>, beginning in the third quarter of 2019 the Debtors, with the assistance of Evercore and the Debtors’ other advisors, executed an extensive marketing process targeted towards US based investors to refinance the Debtors’ funded debt obligations. This included a roadshow during which the Debtors and their advisors met with approximately 50 potential investors. Evercore also assisted the Debtors in exploring options with certain Asia-based lenders for a comprehensive refinancing, and contacted 12 other potential financial and strategic buyers. However, the Debtors did not receive any actionable proposals from these efforts.
61. Upon commencement of the Chapter 11 Cases and with the oversight of the independent committee of the Debtors’ board of directors, Evercore began to aggressively market the Debtors’ assets:
  - (a) Evercore contacted or had been contacted by more than 150 potential strategic or financial purchasers from both the United States and internationally, including potential purchasers recommended by the advisors to the UCC;

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<sup>1</sup> The Information Officer has not independently verified the statements made in the Berube Declaration and relies thereon in preparing this Report.

- (b) Evercore conducted diligence calls and established a virtual data room (the “VDR”) with detailed confidential financial, business, and legal due diligence information regarding the Assets; and
  - (c) Access to the VDR was granted to 15 potential purchasers that executed an acceptable form on non-disclosure agreement.
62. After lengthy negotiations that commenced prior to the Petition Date and were conducted on an arm’s length, good-faith basis, the Debtors entered into the Stalking Horse Agreement on August 7, 2020.
63. The marketing process for the Debtors’ assets extended over an 80-day period from the Petition Date to the bid deadline on September 11, 2020, and was overseen by the independent committee of the Directors’ board of directors. In addition, throughout the process, Evercore consulted with the Debtors’ key constituencies, which included the UCC.
64. The Debtors did not receive any Qualified Bids for the Debtors’ assets, other than the Stalking Horse Bid, and the Debtors cancelled the scheduled Auction on September 14, 2020, and designated the Stalking Horse Bidder as the Successful Bidder.
65. As stated in the First Report and Second Report, the Information Officer is of the view that the Bidding Procedures Order and the Bidding Procedures are reasonable in the circumstances. The Information Officer is also of the view that the Bidding Procedures provided potentially interested parties an adequate opportunity to perform due diligence and to formulate and submit a binding offer.

***Monitor’s Approval of the Process***

66. There is, of course, no Monitor in the Recognition Proceedings. However, the Information Officer did recommend that the Bidding Procedures Order be recognized by the Canadian Court and the Bidding Procedures Order was recognized by the Canadian Court pursuant to the Second Day Recognition Order.

***Comparison with Sale in Bankruptcy***

67. The Information Officer has considered whether the Sale Transaction would be more beneficial to creditors of GNC Canada and GNC Canada's stakeholders generally than a sale or disposition of the Purchased Assets under a bankruptcy.
68. The options available for sale or disposition of the Purchased Assets would be the same regardless of whether such a sale or disposition were to be carried out in the Recognition Proceedings or in a bankruptcy.
69. As discussed later in this Report, the Monitor is satisfied that the Purchase Price contemplated in the Stalking Horse Agreement represents the highest consideration available and is fair and reasonable in the circumstances.
70. Effecting the sale in bankruptcy would delay and possibly jeopardize the Sale Transaction as it would be necessary to first assign GNC Canada into bankruptcy or obtain a Bankruptcy Order, convene a meeting of creditors, appoint inspectors and obtain the approval of the inspectors for the Sale Transaction and, potentially, seek an approval and vesting order. Furthermore, additional costs would be incurred.
71. Accordingly, it is the Monitor's view that a sale or disposition of the Purchased Assets in a bankruptcy would not be more beneficial than the closing of the Sale Transaction in the Chapter 11 Cases.

***Consultation with Creditors***

72. As noted in the Berube Declaration, the Debtors have consulted with various creditor constituencies during the Chapter 11 Cases. Furthermore, creditors have been provided with sufficient notice of the developments in the Chapter 11 Cases as outlined in the Sale Order, and afforded the opportunity at each stage of the Chapter 11 Cases and the Recognition Proceedings to voice any objections to the Bidding Procedures or the Sale Transaction.

73. The Information Officer is of the view that the degree of creditor consultation was appropriate in the circumstances. The Information Officer does not consider that any material change in the outcome of efforts to sell the Purchased Assets would have resulted from additional creditor consultation.

***The Effect of the Proposed Sale on Creditors and Other Interested Parties***

74. As noted in the Third Disclosure Statement and as summarized below, the recoveries for each class of creditor under the Plan are estimated to be higher from the Sale Transaction than the recoveries that would result from the standalone Restructuring, and are subject to finalization of Claims by voting class:

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>	<b>Est. Amount</b>	<b>Estimated Recovery</b>
1	Other Secured Claims	Unimpaired	Presumed to Accept	\$0	100%
2	[Reserved]	[Reserved]	[Reserved]	[Reserved]	[Reserved]
3	Tranche B-2 Term Loan Secured Claims	Impaired	Entitled to Vote	Up to \$313,652,580	<b>Restructuring:</b> 35.4%-97.6%  <b>Sale Transaction:</b> 98.8%
4	General Unsecured Claims; Tranche B-2 Term Loan Deficiency Claims; and Convertible Unsecured Notes Claims	Impaired	Entitled to Vote	<b>Restructuring:</b> \$342,505,636 - \$537,505,636  <b>Sale Transaction:</b> 338,506,636	<b>Restructuring:</b> 0.2%-1.0%  <b>Sale Transaction:</b> 3.0%
5	Subordinated Securities Claims	Impaired	Deemed to Reject	\$0	0%
6	Intercompany Claims	Unimpaired or impaired	Presumed to Accept or Deemed to Reject	N/A	N/A
7	Intercompany Interests	Unimpaired or impaired	Presumed to Accept or Deemed to Reject	N/A	N/A

8	Equity Interest	Impaired	Presumed to Accept or Deemed to Reject	\$0	0%
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75. Based on its review of the available information and estimated recoveries for each class, the Information Officer is of the view that the Sale Transaction represents the best recovery available.

***Fairness of Consideration***

76. The Assets have been extensively marketed pursuant to the Bidding Procedures Order. The Stalking Horse Agreement is the only Qualified Bid received. Accordingly, the Sale Transaction represents the highest and best offer received and is the only viable transaction available other than the Restructuring outlined in the Restructuring Support Agreement, as described in the previous reports of the Information Officer.

77. As described earlier in this Report, the estimated recoveries for the Debtors' stakeholders are higher under the Sale Transaction as compared to the standalone Restructuring.

78. To determine what the holders of Claims and Interests in each impaired Class would receive if the Debtors were liquidated under Chapter 7 of the U.S. Bankruptcy the Debtors prepared a liquidation analysis providing the Debtors' best estimate of recoveries by Holders of Claims and Interests if the Chapter 11 Cases had been converted to cases under Chapter 7 on June 30, 2020 (the "**Liquidation Analysis**")<sup>2</sup>.

79. The Liquidation Analysis, a copy of which is available as Exhibit E to the Disclosure Statement, provides the estimate range of recoveries:

- (a) For secured creditors, 61%-71% in a liquidation versus 98.8% under the Sale Transaction; and

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<sup>2</sup> The Information Officer has not independently prepared its own liquidation analysis and relies on the Liquidation Analysis.

(b) For unsecured creditors, no recovery in a liquidation versus a 3.0% recovery under the Sale Transaction.

80. Accordingly, the Monitor is of the view that the consideration payable under the Stalking Horse Agreement is fair and reasonable in the circumstances.

#### **ASSIGNMENT OF ASSIGNED CONTRACTS**

81. The Foreign Representative seeks recognition of the Sale Order and not an Order assigning the Assigned Contracts pursuant to section 11.3 of the CCAA. However, the Information Officer is of the view that the factors to be considered by the court in determining whether to order an assignment under section 11.3 of the CCAA, as set out in section 11.3(3) of the CCAA, are of relevance in the Canadian Court's consideration of the Foreign Representative's request.

82. Section 11.3 of the CCAA states:

“11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions:

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(a) an agreement entered into on or after the day on which proceedings commence under this Act;

(b) an eligible financial contract; or

(c) a collective agreement.

Factors to be considered:

- (3) In deciding whether to make the order, the court is to consider, among other things,
- (a) whether the monitor approved the proposed assignment;
  - (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
  - (c) whether it would be appropriate to assign the rights and obligations to that person.

Restriction:

- (4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company’s insolvency, the commencement of proceedings under this Act or the company’s failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.”

***Assignability of the Rights and Obligations***

83. The Information Officer is not aware of any rights and obligations under the Assigned Contracts that are not assignable by reason of their nature.
84. To the best of the Information Officer’s knowledge, none of the Assigned Contracts is:
- (a) An agreement entered into on or after the commencement of the Recognition Proceedings;
  - (b) An eligible financial contract; or
  - (c) A collective agreement.

***Whether the Monitor Approved the Proposed Assignment***

85. As noted earlier in this Report, the Information Officer is of the view that the approval of the Sale Transaction is in the best interests of the GNC Canada's stakeholders generally. The assignment of the Assigned Contracts is a condition of the Stalking Horse Agreement.
86. Pursuant to the Sale Order, except as agreed to by the Debtors and a non-Debtor counterparty, the respective amounts set forth on the exhibits attached to the Debtors' First Assumption Notice, First Supplemental Assumption Notice, Second Supplemental Assumption Notice, and Third Supplemental Assumption Notice are the sole amounts necessary to cure all such monetary defaults and pay all pecuniary losses under the Assigned Contracts.
87. In addition, pursuant to the Sale Order, the Debtors (on behalf of the Buyer) have or will have as of the Closing Date:
- (a) Cured, or provided adequate assurance of cure, of any default existing prior to the Closing Date with respect to the Assigned Contracts; and
  - (b) Provided compensation, or adequate assurance of compensation, to any party for any actual pecuniary loss to such party resulting from such default.
88. Accordingly, the Information Officer supports the proposed assignments.

***Whether the Purchaser Would Be Able to Perform the Obligations***

89. As noted earlier in this Report, the Debtors filed the Adequate Assurance Information on August 10, 2020, and the Additional Adequate Assurance Information on September 8, 2020.
90. Pursuant to the Sale Order, the U.S. Court has found that the Buyer has demonstrated its financial wherewithal to satisfy its obligations under the Stalking Horse Agreement, and otherwise provided adequate assurance of future performance.

91. Accordingly, the Information Officer is of the view that the Buyer would be able to perform its obligations.

***Whether It Would Be Appropriate to Assign the Rights and Obligations***

92. The Information Officer understands that the Assigned Contracts are fundamental to the continuation of the Debtors' business that is to be acquired in the Sale Transaction.
93. As noted earlier in this Report, the Information Officer is of the view that the approval of the Sale Transaction is in the best interests of GNC Canada's stakeholders generally. The assignment of the Assigned Contracts is a condition of the Stalking Horse Agreement.
94. Accordingly, the Information Officer is of the view that the assignment of the Assigned Contracts is appropriate in the circumstances.

***Payment of Monetary Defaults***

95. Pursuant to the Sale Order the Cure Costs will be paid and a reserve will be established for any Cure Costs that have not been finally determined.

**INFORMATION OFFICER'S RECOMMENDATION**

96. The Sale Transaction is the highest and best transaction resulting from the marketing of the Purchased Assets and the Information Officer is of the view that the consideration is fair and reasonable in the circumstances. There is no evidence to suggest that any viable alternative exists that would deliver a better recovery from the Purchased Assets for the creditors of GNC Canada.
97. Based on the foregoing, the Information Officer is of the view that the approval of the Sale Transaction is in the best interests of the creditors of GNC Canada and its stakeholders generally.
98. The assignment of the Assigned Contracts is a condition precedent to the Sale Transaction and the Information Officer is of the view that it is appropriate for the Assigned Contracts to be assigned.

99. The Sale Order provides a mechanism to ensure that the Cure Costs in relation to the Assigned Contracts will be paid.
100. Accordingly, the Monitor supports the Foreign Representative's request for recognition of the Sale Order by the Canadian Court.

### **THE THIRTEENTH LEASE REJECTION ORDER**

101. The Foreign Representative is seeking recognition of the Thirteenth Lease Rejection Order.
102. As described in the First Report and Second Report, the U.S. Court has authorized the rejection of leases in furtherance of the Debtors' store rationalization strategy. Since the date of the Second Report, several lease rejection Orders have been granted as noted earlier in this Report. Of these, only the Thirteenth Lease Rejection Order includes authorization to reject certain leases for stores in Canada. Accordingly, the Foreign Representative is not seeking recognition of the other lease rejection Orders.
103. The Thirteenth Lease Rejection Order includes eight Canadian store leases that were terminated effective as of August 31, 2020 (collectively, the "August 31 Rejected Leases"). The provisions of the Thirteenth Lease Rejection Order are substantially consistent with the Lease Rejection Orders previously recognized by the Canadian Court pursuant to the Second Day Recognition Order and the August 25 Recognition Order.
104. GNC Canada provided at least 30 days' notice to the landlords of the August 31 Rejected Leases prior to the effective date of the lease rejection and paid rent for the notice period.
105. Accordingly, the Information Officer is of the view that recognition of the Thirteenth Lease Rejection Order is appropriate in the circumstances.

The Information Officer respectfully submits to the Court this, its Report.

Dated this 19<sup>th</sup> day of September, 2020.

**FTI CONSULTING CANADA INC.**

Solely in its capacity as Information Officer of GNC Holdings, Inc., General Nutrition Centres Company, GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding Inc., GNC International Holdings Inc., GNC China Holdco, LLC, GNC Headquarters LLC, Gustine Sixth Avenue Associates, Ltd., GNC Canada Holdings, Inc., GNC Government Services, LLC, GNC Puerto Rico Holdings, Inc., and GNC Puerto Rico, LLC, and not in its personal or corporate capacity.



Nigel D. Meakin  
Senior Managing Director



Jim Robinson  
Managing Director

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# Appendix A

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## Debtors

GNC HOLDINGS, INC.  
GENERAL NUTRITION CENTRES COMPANY  
GNC PARENT LLC  
GNC CORPORATION  
GENERAL NUTRITION CENTERS, INC.  
GENERAL NUTRITION CORPORATION  
GENERAL NUTRITION INVESTMENT COMPANY  
LUCKY OLDSCO CORPORATION  
GNC FUNDING INC.  
GNC INTERNATIONAL HOLDINGS INC.  
GNC CHINA HOLDCO, LLC  
GNC HEADQUARTERS LLC  
GUSTINE SIXTH AVENUE ASSOCIATES, LTD.  
GNC CANADA HOLDINGS, INC.  
GNC GOVERNMENT SERVICES, LLC  
GNC PUERTO RICO HOLDINGS, INC  
GNC PUERTO RICO, LLC

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# Appendix B

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## The Chapter 11 Order Summary

	U.S. Order	Defined Order Name per Reports of the Information Officer	US Dock. #	Date U.S. Order Granted	Recognition by Canadian Court	Date of Canadian Recognition Order
1	ORDER AUTHORIZING JOINT ADMINISTRATION OF CHAPTER 11 CASES	Joint Administration Order	95	June 24, 2020	Yes	June 29, 2020
2	ORDER AUTHORIZING RETENTION AND APPOINTMENT OF PRIME CLERK LLC AS CLAIMS AND NOTICING AGENT	N/A	115	June 25, 2020	No	N/A
3	INTERIM ORDER ESTABLISHING CERTAIN NOTICE AND HEARING PROCEDURES FOR TRANSFERS OF, OR WORTHLESSNESS DEDUCTIONS WITH RESPECT TO, COMMON STOCK AND CONVERTIBLE PREFERRED STOCK OF GNC HOLDINGS, INC.	Interim Equity Trading NOL Order	116	June 24, 2020	Yes	June 29, 2020
4	ORDER (I) AUTHORIZING THE DEBTORS TO (A) FILE A CONSOLIDATED LIST OF CREDITORS, (B) FILE A CONSOLIDATED LIST OF THE DEBTORS' THIRTY (30) LARGEST UNSECURED CREDITORS, (C) MODIFY REQUIREMENTS TO FILE A LIST OF, AND PROVIDE NOTICE TO, ALL EQUITY HOLDERS, AND (D) REDACT CERTAIN PERSONAL IDENTIFICATION INFORMATION, AND (II) APPROVING NOTICE PROCEDURES FOR CERTAIN CUSTOMERS	Consolidated Creditor Matrix Order	117	June 24, 2020	Yes	June 29, 2020
5	ORDER (A) ENFORCING PROTECTIONS OF SECTIONS 362, 365, 525, AND 541(C) OF THE BANKRUPTCY CODE	Automatic Stay Comfort Order for Foreign Entities	118	June 24, 2020	Yes	June 29, 2020

	AND (B) APPROVING NOTICE TO CUSTOMERS, SUPPLIERS, AND OTHER STAKEHOLDERS OF DEBTORS' NON-DEBTOR GLOBAL AFFILIATES					
6	ORDER AUTHORIZING GNC HOLDINGS, INC. TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS	Foreign Representative Order	120	June 25, 2020	Yes	June 29, 2020
7	INTERIM ORDER AUTHORIZING (A) PAYMENT OF PREPETITION INSURANCE OBLIGATIONS AND PREPETITION BONDING OBLIGATIONS, AND (B) MAINTENANCE OF POSTPETITION INSURANCE COVERAGE AND BONDING PROGRAM	Interim Insurance Order	121	June 25, 2020	Yes	June 29, 2020
8	INTERIM ORDER AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES	Interim Tax Order	122	June 25, 2020	Yes	June 29, 2020
9	INTERIM ORDER (A) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (B) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT, (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT, AND (D) AUTHORIZING PAYMENT OF ANY PREPETITION SERVICE FEES	Interim Utilities Order	123	June 25, 2020	Yes	June 29, 2020
10	INTERIM ORDER AUTHORIZING (A) PAYMENT OF CERTAIN PREPETITION FRANCHISE CLAIMS AND (B) CONTINUED PERFORMANCE	N/A	124	June 25, 2020	No	N/A

	UNDER FRANCHISE AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS					
11	INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) MAINTAIN AND ADMINISTER PREPETITION CUSTOMER PROGRAMS AND (II) PAY PREPETITION OBLIGATIONS RELATED THERETO	Interim Customer Programs Order	126	June 25, 2020	Yes	June 29, 2020
12	INTERIM ORDER (A) AUTHORIZING PAYMENT OF PREPETITION LIEN CLAIMS AND IMPORT CLAIMS AND (B) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS	Interim Lien and Import Claims Order	127	June 25, 2020	Yes	June 29, 2020
13	INTERIM ORDER AUTHORIZING PAYMENT OF CERTAIN PREPETITION CRITICAL VENDOR CLAIMS	Interim Critical Vendors Order	128	June 25, 2020	Yes	June 29, 2020
14	INTERIM ORDER (A) AUTHORIZING PAYMENT OF CERTAIN PREPETITION WORKFORCE OBLIGATIONS, (B) AUTHORIZING CONTINUANCE OF WORKFORCE PROGRAMS, (C) AUTHORIZING PAYMENT OF WITHHOLDING AND PAYROLLRELATED TAXES, AND (D) AUTHORIZING PAYMENT OF PREPETITION CLAIMS OWING TO WORKFORCE PROGRAM ADMINISTRATORS OR PROVIDERS	Interim Wages Order	130	June 25, 2020	Yes	June 29, 2020
15	INTERIM ORDER GRANTING DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (A) APPROVING PROCEDURES FOR STORE CLOSING SALES,	Interim Store Closing Order	131	June 25, 2020	Yes	June 29, 2020

	(B) AUTHORIZING CUSTOMARY BONUSES TO MANAGERS OF STORES, (C) AUTHORIZING ASSUMPTION OF THE CONSULTING AGREEMENTS AND (D) GRANTING RELATED RELIEF					
16	INTERIM ORDER (A) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (B) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT PRACTICES, (C) AUTHORIZING CONTINUATION OF INTERCOMPANY TRANSACTIONS, AND (D) GRANTING ADMINISTRATIVE CLAIM STATUS TO POSTPETITION INTERCOMPANY CLAIMS	Interim Cash Management Order	132	June 25, 2020	Yes	June 29, 2020
17	INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDERS, (V) MODIFYING AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF	Interim DIP Order	134	June 25, 2020	Yes	June 29, 2020
18	ORDER SCHEDULING OMNIBUS HEARING DATES	N/A	281	July 7, 2020	No	N/A

19	ORDER APPOINTING FEE EXAMINER AND ESTABLISHING PROCEDURES FOR CONSIDERATION OF REQUESTED FEE COMPENSATION AND REIMBURSEMENT OF EXPENSES	N/A	439	July 20, 2020	No	N/A
20	ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS	N/A	461	July 20, 2020	No	N/A
21	ORDER, PURSUANT TO SECTION 107(b) OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 9018 AND LOCAL RULE 9018-1(b), (I) AUTHORIZING THE DEBTORS TO FILE (A) EXHIBIT B TO DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING THE KEY EMPLOYEE RETENTION PROGRAM IN REDACTED FORM PUBLICLY, AND (B) UNREDACTED VERSION UNDER SEAL, AND (II) DIRECTING PARTIES TO REDACT CONFIDENTIAL INFORMATION	N/A	462	July 20, 2020	No	N/A
22	ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF LAX O'SULLIVAN LISUS GOTTLIEB LLP AS CANADIAN CONFLICTS COUNSEL TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE	N/A	463	July 20, 2020	No	N/A
23	ORDER EXTENDING TIME TO FILE INITIAL RULE 2015.3 REPORTS	N/A	464	July 20, 2020	No	N/A
24	ORDER AUTHORIZING THE EMPLOYMENT AND	N/A	465	July 20, 2020	No	N/A

	RETENTION OF PRIME CLERK LLC AS ADMINISTRATIVE ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE					
25	FINAL ORDER AUTHORIZING THE DEBTORS TO (I) MAINTAIN AND ADMINISTER PREPETITION CUSTOMER PROGRAMS AND (II) PAY PREPETITION OBLIGATIONS RELATED THERETO	Final Customer Programs Order	466	July 20, 2020	Yes	July 27, 2020
26	ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF EVERCORE GROUP L.L.C. AS INVESTMENT BANKER TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE	N/A	467	July 20, 2020	No	N/A
27	FINAL ORDER AUTHORIZING (A) PAYMENT OF CERTAIN PREPETITION FRANCHISE CLAIMS AND (B) CONTINUED PERFORMANCE UNDER FRANCHISE AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS	N/A	468	July 20, 2020	N/A	N/A
28	ORDER AUTHORIZING RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISORS FOR THE DEBTORS AND DEBTORS IN POSSESSION	N/A	469	July 20, 2020	No	N/A
29	ORDER APPROVING KEY EMPLOYEE RETENTION PROGRAM	KERP Order	470	July 20, 2020	No	N/A
30	FINAL ORDER (A) AUTHORIZING PAYMENT OF PREPETITION LIEN CLAIMS AND IMPORT CLAIMS AND (B) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS	Final Lien and Import Claims Order	471	July 20, 2020	Yes	July 27, 2020

31	ORDER AUTHORIZING EMPLOYMENT AND PAYMENT OF PROFESSIONALS UTILIZED IN ORDINARY COURSE OF BUSINESS	N/A	472	July 20, 2020	No	N/A
32	FINAL ORDER AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES	Final Tax Order	475	July 20, 2020	Yes	July 27, 2020
33	ORDER, PURSUANT TO SECTION 327(a) OF THE BANKRUPTCY CODE, AUTHORIZING THE RETENTION AND EMPLOYMENT OF YOUNG CONAWAY STARGATT & TAYLOR, LLP AS CO-COUNSEL TO THE DEBTORS, EFFECTIVE AS OF THE PETITION DATE	N/A	476	July 20, 2020	No	N/A
34	FIRST (1ST) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF THE PETITION DATE AND (B) GRANTING RELATED RELIEF	First Lease Rejection Order	477	July 20, 2020	Yes	July 27, 2020
35	SECOND (2ND) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF THE PETITION DATE AND (B) GRANTING RELATED RELIEF	N/A	478	July 20, 2020	No	N/A
36	THIRD (3RD) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF THE PETITION DATE AND (B) GRANTING RELATED RELIEF	Third Lease Rejection Order	479	July 20, 2020	Yes	July 27, 2020
37	FOURTH (4TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF JUNE 29,	N/A	480	July 20, 2020	No	N/A

	2020 AND (B) GRANTING RELATED RELIEF					
38	FIFTH (5TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF JUNE 29, 2020 AND (B) GRANTING RELATED RELIEF	N/A	481	July 20, 2020	No	N/A
39	SIXTH (6TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF JUNE 29, 2020 AND (B) GRANTING RELATED RELIEF	N/A	482	July 20, 2020	No	N/A
40	ORDER (A) AUTHORIZING THE DEBTORS TO RETAIN MPA INC. AS A REAL ESTATE CONSULTANT AND ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE AND (B) WAIVING CERTAIN REPORTING REQUIREMENTS	N/A	483	July 20, 2020	No	N/A
41	ORDER (A) AUTHORIZING THE DEBTORS TO RETAIN A&G REALTY PARTNERS, LLC AS A REAL ESTATE CONSULTANT AND ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE AND (B) WAIVING CERTAIN REPORTING REQUIREMENTS	N/A	484	July 20, 2020	No	N/A
42	ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF TORYS LLP AS CANADIAN RESTRUCTURING COUNSEL TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE	N/A	485	July 20, 2020	No	N/A
43	ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF LATHAM & WATKINS LLP AS BANKRUPTCY CO-COUNSEL TO THE DEBTORS NUNC PRO TUNC TO THE PETITION DATE	N/A	486	July 20, 2020	No	N/A

44	SEVENTH (7TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES, SUBLEASES AND AGREEMENTS EFFECTIVE AS OF JUNE 29, 2020 AND (B) GRANTING RELATED RELIEF	N/A	487	July 20, 2020	No	N/A
45	EIGHTH (8TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES, SUBLEASES AND AGREEMENTS EFFECTIVE AS OF JUNE 29, 2020 AND (B) GRANTING RELATED RELIEF	N/A	488	July 20, 2020	No	N/A
46	FINAL ORDER AUTHORIZING (A) PAYMENT OF PREPETITION INSURANCE OBLIGATIONS AND PREPETITION BONDING OBLIGATIONS, AND (B) MAINTENANCE OF POSTPETITION INSURANCE COVERAGE AND BONDING PROGRAM	Final Insurance Order	493	July 21, 2020	Yes	July 27, 2020
47	FINAL ORDER (A) AUTHORIZING PAYMENT OF CERTAIN PREPETITION WORKFORCE OBLIGATIONS, (B) AUTHORIZING CONTINUANCE OF WORKFORCE PROGRAMS, (C) AUTHORIZING PAYMENT OF WITHHOLDING AND PAYROLLRELATED TAXES, AND (D) AUTHORIZING PAYMENT OF PREPETITION CLAIMS OWING TO WORKFORCE PROGRAM ADMINISTRATORS OR PROVIDERS	Final Wages Order	495	July 21, 2020	Yes	July 27, 2020
48	FINAL ORDER GRANTING DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS	Final Store Closing Order	496	July 21, 2020	Yes	July 27, 2020

	(A) APPROVING PROCEDURES FOR STORE CLOSING SALES, (B) AUTHORIZING CUSTOMARY BONUSES TO MANAGERS OF STORES, (C) AUTHORIZING ASSUMPTION OF THE CONSULTING AGREEMENTS AND (D) GRANTING RELATED RELIEF					
49	FINAL ORDER (A) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (B) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT PRACTICES, (C) AUTHORIZING CONTINUATION OF INTERCOMPANY TRANSACTIONS, AND (D) GRANTING ADMINISTRATIVE CLAIM STATUS TO POSTPETITION INTERCOMPANY CLAIMS	Final Cash Management Order	497	July 21, 2020	Yes	July 27, 2020
50	FINAL ORDER ESTABLISHING CERTAIN NOTICE AND HEARING PROCEDURES FOR TRANSFERS OF, OR WORTHLESSNESS DEDUCTIONS WITH RESPECT TO, COMMON STOCK AND CONVERTIBLE PREFERRED STOCK OF GNC HOLDINGS, INC.	Final Equity Trading NOL Order	498	July 21, 2020	Yes	July 27, 2020
51	ORDER ESTABLISHING BAR DATES AND RELATED PROCEDURES FOR FILING PROOFS OF CLAIM (INCLUDING FOR CLAIMS ARISING UNDER SECTION 503(b)(9) OF THE	Bar Date Order	499	July 21, 2020	Yes	July 27, 2020

	BANKRUPTCY CODE) AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF					
52	FINAL ORDER (A) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (B) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT, (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT, AND (D) AUTHORIZING PAYMENT OF ANY PREPETITION SERVICE FEES	Final Utilities Order	501	July 21, 2020	Yes	July 27, 2020
53	FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDERS, (V) MODIFYING AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF	Final DIP Order	502	July 21, 2020	Yes	July 27, 2020
54	FINAL ORDER AUTHORIZING PAYMENT OF CERTAIN PREPETITION CRITICAL VENDOR CLAIMS	Final Critical Vendors Order	544	July 21, 2020	Yes	July 27, 2020
55	ORDER APPROVING (I) THE BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF ALL, SUBSTANTIALLY ALL OF THE	Bidding Procedures Order	559	July 22, 2020	Yes	July 27, 2020

	DEBTORS' ASSETS, (II) THE PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (III) THE FORM AND MANNER OF NOTICE OF THE SALE HEARING, ASSUMPTION PROCEDURES, AND AUCTION RESULTS, (IV) DATES FOR AN AUCTION AND SALE HEARING AND (V) GRANTING RELATED RELIEF					
56	AMENDED FINAL ORDER (A) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (B) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT PRACTICES, (C) AUTHORIZING CONTINUATION OF INTERCOMPANY TRANSACTIONS, AND (D) GRANTING ADMINISTRATIVE CLAIM STATUS TO POSTPETITION INTERCOMPANY CLAIMS	Amended Final Cash Management Order	634	August 5, 2020	Yes	August 25, 2020
57	ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF RIVERON CONSULTING, LLC AS ACCOUNTING ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE	N/A	655	August 7, 2020	No	N/A
58	ORDER SHORTENING THE NOTICE PERIOD WITH RESPECT TO THE DEBTORS' MOTION TO MODIFY	N/A	668	August 10, 2020	No	N/A

	BIDDING PROCEDURES ORDER					
59	ORDER APPROVING STIPULATION BETWEEN THE DEBTORS AND RAQUEL DIAZ IN HER INDIVIDUAL AND REPRESENTATIVE CAPACITY FOR A PUTATIVE CLASS OF CONSUMER CLAIMANTS	N/A	696	August 13, 2020	No	N/A
60	ORDER AUTHORIZING EMPLOYMENT AND RETENTION OF BAYARD, P.A. AS CO-COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO JULY 8, 2020	N/A	714	August 14, 2020	No	N/A
61	ORDER AUTHORIZING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO EMPLOY AND RETAIN MILLER BUCKFIRE & CO., LLC AND STIFEL, NICOLAUS & CO., INC. AS INVESTMENT BANKER EFFECTIVE AS OF JULY 10, 2020	N/A	732	August 17, 2020	No	N/A
62	NINTH (9TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF JULY 30, 2020 AND (B) GRANTING RELATED RELIEF	Ninth Lease Rejection Order	782	August 18, 2020	Yes	August 25, 2020
63	TENTH (10TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF JULY 30, 2020 AND (B) GRANTING RELATED RELIEF	Tenth Lease Rejection Order	783	August 18, 2020	No	N/A
64	ELEVENTH (11TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES, SUBLEASES AND	Eleventh Lease Rejection Order	784	August 18, 2020	No	N/A

	AGREEMENTS EFFECTIVE AS OF JULY 30, 2020 AND (B) GRANTING RELATED RELIEF					
65	ORDER (A) AUTHORIZING REJECTION OF THAT CERTAIN MASTER DEVELOPMENT, DISTRIBUTION AND FRANCHISE AGREEMENT WITH ASIA EARTH REL HONG KONG LIMITED EFFECTIVE AS OF AUGUST 4, 2020 AND (B) GRANTING RELATED RELIEF	N/A	788	August 19, 2020	No	N/A
66	ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF PRICEWATERHOUSECOOPERS LLP AS INDEPENDENT AUDITOR AND TAX ADVISORY SERVICES PROVIDER TO THE DEBTORS EFFECTIVE JUNE 23, 2020	N/A	789	August 19, 2020	No	N/A
67	ORDER AUTHORIZING AND APPROVING THE EMPLOYMENT AND RETENTION OF LOWENSTEIN SANDLER LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, EFFECTIVE AS OF JULY 8, 2020	N/A	802	August 19, 2020	No	N/A
68	ORDER MODIFYING THE BIDDING PROCEDURES ORDER	Further Revised Bidding Procedures Modification Order	810	August 19, 2020	Yes	August 25, 2020
69	ORDER APPROVING (I) THE DEBTORS' ENTRY INTO STALKING HORSE AGREEMENT AND RELATED BID PROTECTIONS AND (II) GRANTING RELATED RELIEF	Stalking Horse Approval Order	811	August 19, 2020	Yes	August 25, 2020
70	ORDER (A) APPROVING THE DISCLOSURE STATEMENT, (B) ESTABLISHING THE VOTING RECORD DATE, VOTING	Disclosure Statement Order	820	August 20, 2020	Yes	August 25, 2020

	DEADLINE, AND OTHER DATES, (C) APPROVING PROCEDURES FOR SOLICITING, RECEIVING, AND TABULATING VOTES ON THE PLAN AND FOR FILING OBJECTIONS TO THE PLAN, (D) APPROVING THE MANNER AND FORMS OF NOTICE AND OTHER RELATED DOCUMENTS, (E) APPROVING NOTICE AND PROCEDURES FOR THE ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (F) GRANTING RELATED RELIEF					
71	ORDER GRANTING DEBTORS LEAVE AND PERMISSION TO FILE REPLIES IN SUPPORT OF (I) THE DISCLOSURE STATEMENT MOTION, AND (II) THE ASIA EARTH REJECTION MOTION	N/A	881	August 21, 2020	No	N/A
72	ORDER AUTHORIZING OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO EMPLOY BERKELEY RESEARCH GROUP, LLC AS FINANCIAL ADVISOR, EFFECTIVE AS OF JULY 10, 2020	N/A	1061	September 4, 2020	No	N/A
73	ORDER AUTHORIZING AND APPROVING THE EMPLOYMENT AND RETENTION OF BORDEN LADNER GERVAIS LLP AS SPECIAL CANADIAN SPECIAL CANADIAN COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO AUGUST 5, 2020	N/A	1140	September 14, 2020	No	N/A

74	ORDER GRANTING MOTION OF PHD FITNESS LLC d/b/a JYM SUPPLEMENT SCIENCE TO SEAL EXHIBITS TO ITS (I) OBJECTION TO THE DEBTORS' NOTICE OF POTENTIAL ASSUMPTION OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNTS AND (II) RESERVATION OF RIGHTS WITH RESPECT TO THE DEBTORS' SALE MOTION	N/A	1164	September 15, 2020	No	N/A
75	TWELFTH (12TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF AUGUST 31, 2020 AND (B) GRANTING RELATED RELIEF	N/A	1165	September 15, 2020	No	N/A
76	FOURTEENTH (14TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF AUGUST 31, 2020 AND (B) GRANTING RELATED RELIEF	N/A	1166	September 15, 2020	No	N/A
77	FIFTEENTH (15TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES, SUBLEASES AND AGREEMENTS EFFECTIVE AS OF AUGUST 31, 2020 AND (B) GRANTING RELATED RELIEF	N/A	1167	September 15, 2020	No	N/A
78	THIRTEENTH (13TH) OMNIBUS ORDER (A) AUTHORIZING REJECTION	Thirteenth Lease Rejection Order	1168	September 15, 2020	Yes	Recognition Pending

	OF CERTAIN UNEXPIRED LEASES EFFECTIVE AS OF AUGUST 31, 2020 AND (B) GRANTING RELATED RELIEF					
79	ORDER (I) AUTHORIZING AND APPROVING (A) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES AND (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH, AND (II) GRANTING RELATED RELIEF	Sale Order	1202	September 18, 2020	Yes	Recognition Pending
80	SIXTEENTH (16 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1203	September 18, 2020	No	N/A
81	TWENTY-EIGHTH (28 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1204	September 18, 2020	No	N/A
82	SEVENTEENTH (17 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES	N/A	1208	September 18, 2020	No	N/A

	TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES					
83	EIGHTEENTH (18 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1209	September 18, 2020	No	N/A
84	NINETEENTH (19 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1210	September 18, 2020	No	N/A
85	TWENTIETH (20 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1211	September 18, 2020	No	N/A
86	TWENTY-FIRST (21 <sup>st</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1212	September 18, 2020	No	N/A

87	TWENTY-SECOND (22 <sup>nd</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1213	September 18, 2020	No	N/A
88	TWENTY-THIRD (23 <sup>rd</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1214	September 18, 2020	No	N/A
89	TWENTY-FOURTH (24 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1215	September 18, 2020	No	N/A
90	TWENTY-FIFTH (25 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1216	September 18, 2020	No	N/A
91	TWENTY-SIXTH (26 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES	N/A	1217	September 18, 2020	No	N/A

	TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES					
92	TWENTY-SEVENTH (27 <sup>th</sup> ) OMNIBUS ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN UNEXPIRED LEASES TO CERTAIN FRANCHISEES AND (B) REJECTING CERTAIN UNEXPIRED SUBLEASES WITH APPLICABLE FRANCHISEES	N/A	1218	September 18, 2020	No	N/A

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# Appendix C

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## The Information Officer's Second Report (without appendices)

**Court File No. CV-20-00642970-00CL**

**GNC Holdings, Inc.,  
General Nutrition Centres Company *et al***

**SECOND REPORT OF THE INFORMATION OFFICER**

**August 21, 2020**

**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 GNC HOLDINGS, INC., GENERAL NUTRITION  
CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION,  
GENERAL NUTRITION CENTERS, INC., GENERAL NUTRITION  
CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY,  
LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC  
INTERNATIONAL HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC  
HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES,  
LTD., GNC CANADA HOLDINGS, INC., GNC GOVERNMENT  
SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. AND  
GNC PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC., UNDER SECTION 46 OF  
*THE COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

**SECOND REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS INFORMATION OFFICER**

**INTRODUCTION**

1. GNC Holdings, Inc. ("**GNC Holdings**"), an entity registered in the state of Delaware, is the ultimate parent of General Nutrition Centres Company ("**GNC Canada**"). GNC Holdings is also the ultimate parent for those entities listed in **Appendix A** hereto (collectively, with GNC Holdings and GNC Canada, the "**Debtors**"). On June 23, 2020 (the "**Petition Date**"), the Debtors commenced cases under Chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Cases**") in the U.S. Bankruptcy Court in Delaware (the "**U.S. Court**").

2. On June 24, 2020, GNC Holdings in its capacity as the proposed foreign representative of the Debtors in respect of the Chapter 11 Cases filed an application (the “**Recognition Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) to the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) for:
  - (a) An interim order (Foreign Main Proceeding) granting a stay of proceedings against the Debtors (the “**Interim Stay Order**”);
  - (b) An initial recognition order (the “**Initial Recognition Order**”) recognizing the Chapter 11 Cases and granting, *inter alia*, a stay of proceedings against the Debtors;
  - (c) A supplemental recognition order (the “**Supplemental Order**”) seeking certain relief including the recognition of various orders issued in the Chapter 11 Cases and the appointment of FTI Consulting Canada Inc. (“**FTI Canada**”) as Information Officer (in such capacity, the “**Information Officer**”); and
  - (d) An order (the “**Consulting Agreement Approval Order**”) approving the consulting agreement (the “**Consulting Agreement**”) entered into between GNC Canada and a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively, the “**Canada Consultant**”).
3. The Interim Stay Order was granted on June 24, 2020. Pursuant to the Interim Stay Order, FTI Consulting Canada Inc. (“**FTI Canada**”), in its capacity as the proposed Information Officer (at that time), established a case website for the Recognition Proceedings at <http://cfcanada.fticonsulting.com/GNCC> (the “**Canada Case Website**”).

4. On June 25, 2020 and June 26, 2020, the U.S. Court granted the First Day Orders to permit the Debtors to continue to operate their business in the ordinary course and to advance their proposed reorganization. The First Day Orders included the Foreign Representative Order, the Interim DIP Order, the Interim Cash Management Order, the Interim Store Closing Order, and the Interim Wages Order, each as defined in the Pre-Filing Report of the Proposed Information Officer dated June 28, 2020 (the “**Pre-Filing Report**”). The U.S. Court also issued an order consolidating the administration of the Chapter 11 Cases for procedural purposes only under Case No. 20-11662.
5. All publicly available information filed in the Chapter 11 Cases is available at <https://cases.primeclerk.com/gnc> (the “**U.S. Case Website**”).
6. On June 29, 2020, the Honourable Madam Justice Conway of the Canadian Court granted:
  - (a) The Initial Recognition Order, *inter alia*, declaring that GNC Holdings is a “foreign representative” as defined in section 45 of the CCAA (the “**Foreign Representative**”), that the centre of main interests for each of the Debtors is the United States of America and recognizing the Chapter 11 Cases as a “foreign main proceeding”;
  - (b) The Supplemental Order, *inter alia*, recognizing several of the First Day Orders, appointing FTI Canada as information officer (the “**Information Officer**”), granting a stay of proceedings against the Debtors and granting a super-priority charge (the “**DIP Lenders’ Charges**”) on the Debtors’ property in Canada for the benefit of GLAS Trust Company LLC, as administrative collateral agent for and on behalf of itself and the other lenders party thereto (the “**DIP Term Lenders**”), and JP Morgan Chase N.A. as administrative agent and collateral agent for an on behalf of themselves and the other lenders party thereto (the “**DIP ABL FILO Lenders**”, and collectively with the DIP Term Lenders, the “**DIP Lenders**”); and

- (c) The Consulting Agreement Approval Order, *inter alia*, recognizing the Interim Store Closing Order in the Chapter 11 Cases, approving the Consulting Agreement and approving and authorizing the Debtors to conduct the going-out-of-business sale process in Canada (the “**GOB Sale**”) in accordance with the Interim Store Closing Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines (as defined in the Interim Store Closing Order) and the Consulting Agreement.
7. As described in the First Report of the Information Officer dated July 24, 2020 (the “**First Report**”), various orders were entered by the U.S. Court on July 20, July 21, and July 22, 2020 (the “**Second Day Orders**”).
  8. On July 27, 2020, the Honourable Madam Justice Gilmore of the Canadian Court granted an Order (the “**Second Day Recognition Order**”) recognizing certain of the Second Day Orders, including the Final DIP Order, the Bar Date Order and the Bidding Procedures Order.
  9. The purpose of this second report of the Information Officer (the “**Second Report**”) is to provide information to the Canadian Court with respect to the following:
    - (a) GNC Canada’s actual receipts and disbursements for the period from July 19 to August 15, 2020;
    - (b) Events in the Chapter 11 Cases since the date of the Information Officer’s First Report;
    - (c) The stalking horse agreement by and among GNC Holding and certain of its subsidiaries including GNC Canada, and Harbin Pharmaceutical Group Holding Co., Ltd. (“**Harbin**” or the “**Stalking Horse Bidder**”) dated as of August 7, 2020 (as amended by the First Amendment dated August 15, 2020, and the Second Amendment dated August 19, 2020, the “**Stalking Horse Agreement**”);

- (d) The Third Amended Joint Chapter 11 Plan of Reorganization of the Debtors Under Chapter 11 of the Bankruptcy Code (the “**Third Amended Plan**”) and the Disclosure Statement for the Third Amended Plan (the “**Third Disclosure Statement**”) filed by the Debtors on August 17, 2020; and
- (e) The Foreign Representative’s request for an order recognizing the August 25 Recognition Orders (as defined later in this Report) and the Information Officer’s recommendations thereon.

## **TERMS OF REFERENCE**

- 10. In preparing this Second Report, the Information Officer has relied upon unaudited financial information of the Debtors, the Debtors’ books and records, certain financial information prepared by the Debtors and discussions with various parties, including the Canada Consultant and other various legal, financial, and other advisors to the Debtors (collectively, the “**Information**”).
- 11. Except as described in this Second Report:
  - (a) The Information Officer has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) The Information Officer has not examined or reviewed financial forecasts and projections referred to in this Second Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 12. The Information Officer has prepared this Second Report in connection with the Debtors’ motion for recognition of the August 25 Recognition Orders, which is scheduled to be heard on Tuesday, August 25, 2020 (the “**August 25 Recognition Hearing**”), and this Second Report should not be relied on for any other purposes.

13. Future oriented financial information reported or relied on in preparing this Second Report is based on the assumptions of management of the Debtors (“**Management**”) regarding future events; actual results may vary from forecast and such variations may be material.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in **United States Dollars**. Capitalized terms not otherwise defined herein have the meanings defined in the Initial Tolivar Affidavit, the U.S. First Day Declarations, the Pre-Filing Report or the First Report.

### **EXECUTIVE SUMMARY**

15. In summary, for the reasons set out in this Second Report, the Information Officer is of the view that:
  - (a) The Bid Protections granted are reasonable and appropriate; and
  - (b) Recognition of the August 25 Recognition Orders by the Canadian Court is appropriate in the circumstances.
16. Accordingly, the Information Officer respectfully recommends that the Foreign Representative’s request for an Order recognizing the August 25 Recognition Orders be granted by this Honourable Court.

### **RECEIPTS AND DISBURSEMENTS FOR THE PERIOD TO AUGUST 15, 2020**

17. GNC Canada’s actual net cash flow for the period from July 19 to August 15, 2020 was approximately \$5.7 million better than the July 20 Forecast as summarized below:

	<b>Forecast</b>	<b>Actual</b>	<b>Variance</b>
	<b>US\$000</b>	<b>US\$000</b>	<b>US\$000</b>
<b>Receipts</b>	<b>4,425</b>	<b>5,062</b>	<b>637</b>
<b>Operating Disbursements</b>			
Merchandise Vendors	(2,793)	0	2,793
Non-Merchandise Vendors	(1,153)	(350)	803
Payroll & Employee Related Disbursements	(1,065)	(725)	340
Occupancy Disbursements	(949)	(949)	0
Sales Taxes	(157)	(273)	(116)
Capital Expenditures	(53)	0	53
Corporate and Other Disbursements	(140)	(64)	76
<b>Total Operating Disbursements</b>	<b>(6,310)</b>	<b>(2,361)</b>	<b>3,949</b>
<b>Net Operating Cash Flow</b>	<b>(1,885)</b>	<b>2,701</b>	<b>4,586</b>
Professional Fees	(259)	(151)	108
Liquidation Disbursements	(1,031)	(44)	987
<b>Net Cash Flow</b>	<b>(3,175)</b>	<b>2,506</b>	<b>5,681</b>
<b>Cash, opening balance</b>	<b>4,982</b>	<b>4,982</b>	<b>0</b>
Net Cash Flow	(3,175)	2,506	5,681
Cash Transfers from/(To) GNC US	0	0	0
<b>Cash, ending balance</b>	<b>1,807</b>	<b>7,488</b>	<b>5,681</b>

18. Explanations for the key variances in actual receipts and disbursements as compared to the July 20 Forecast are as follows:

- (a) The favourable variance of approximately \$0.6 million in receipts is comprised of the following:
  - (i) A favourable variance of approximately \$0.7 million pertaining to the receipt of a 2019 corporate tax refund that was not forecast as the amount and timing of receipt of any potential refund was unknown when the July 20 Forecast was finalized;

- (ii) An unfavourable variance of approximately \$0.2 million in receipts at GOB Stores believed to result from lower discounting on merchandise during certain weeks of the forecast than the July 20 Forecast had contemplated in order to maintain higher margins. GNC Canada is of the view that this is a timing variance which will reverse in future periods; and
  - (iii) An unfavourable variance of approximately \$0.1 million at stores that are not in the GOB Sale due to lower than forecast volume of sales.
- (b) The favourable variance of \$2.8 million for merchandise vendors is comprised of the following:
- (i) A favourable variance of approximately \$0.8 million pertaining to the estimated payment in the July 20 Forecast of claims under Section 503(b)(9) of the U.S. Bankruptcy Code, which provided “administrative priority” for goods and services delivered to the Debtors in the twenty days prior to the Petition Date. The estimated amount pertaining to GNC Canada was originally scheduled to be paid by GNC Canada; however, the amount was instead funded by the U.S. Debtors resulting in the variance noted. GNC Canada expects to transfer their portion of the amount owing in the coming weeks; and
  - (ii) A \$2.0 million favourable timing variance that is expected to reverse in future periods. Merchandise vendors that have shipped goods to GNC Canada continue to provide better payment terms than had been assumed. The Debtors also continue to be in discussions with merchandise vendors who have placed shipments to GNC Canada on hold pending completion of the negotiation of go-forward supply arrangements and outstanding balances;

- (c) The favourable variance of \$0.8 million for non-merchandise vendors is a timing variance that is expected to reverse in future periods. The variance arose as many vendors continue to provide better payment terms than had been assumed while other forecast disbursements have been temporarily pending delivery of goods and services in the coming week;
- (d) The favourable variance of \$0.3 million for payroll and employee-related disbursements is comprised of the following:
  - (i) A favourable timing variance of \$0.2 million in estimated severance, termination, and vacation pay costs that are expected to be paid in future periods as final documentation is agreed to and executed by employees and payments are issued; and
  - (ii) A permanent variance of approximately \$0.1 million arising from reduced staffing needs at the stores than had been forecast.
- (e) The favourable variance of approximately \$0.1 million in professional fees is a timing variance expected to reverse in future periods; and
- (f) The favourable variance of approximately \$1.0 million in liquidation disbursements is a timing variance expected to reverse in future periods once invoices are received from the Canada Consultant pursuant to Consulting Agreement.

## EVENTS IN THE CHAPTER 11 CASES SINCE THE FIRST REPORT

### CLAIMS PROCEDURE

19. Pursuant to the Bar Date Order, the Debtors served the Bar Date Package (as defined in the Bar Date Order and comprised of the Bar Date Notice and a Proof of Claim Form) on all known creditors, including those located in Canada, and on the service list in the Recognition Proceedings, via prepaid postage first-class U.S. mail on or before July 28, 2020.
20. Also pursuant to the Bar Date Order, the Debtors caused the Publication Notice to be published in *The Globe and Mail (National Edition)* on July 28, and July 29, 2020, and in French in *La Presse* on July 30, and July 31, 2020. A copy of the Bar Date Notice and Proof of Claim Form was also posted on the Canada Case Website.

### BIDDING PROCEDURES

21. As discussed in the First Report, the Bidding Procedures Order contemplated that the Debtors could execute a stalking horse agreement and file a Notice of Filing of Stalking Horse Agreement (the “**Stalking Horse Notice**”) on or before August 4, 2020. No Stalking Horse Notice was filed by that deadline and, accordingly, pursuant to paragraph 10 of the Bidding Procedures Order, the original dates noted in the Sale Notice were modified as follows (all times noted are prevailing Eastern Time):

Key Date	Original Date	Modified Date
Sale Objection Deadline	August 21, 2020 at 4:00 p.m.	August 28, 2020 at 4:00 p.m.
Bid Deadline	September 4, 2020 at 4:00 p.m.	September 11, 2020 at 4:00 p.m.
Auction Date	September 8, 2020 at 10:00 a.m.	September 15, 2020 at 11:00 a.m.
Reply and Auction Objection Deadline	September 9, 2020 at 4:00 p.m.	September 16, 2020 at 5:00 p.m.
Sale Hearing	September 14, 2020 at 1:00 p.m.	September 17, 2020 at 1:00 p.m.
Adequate Assurance Objection Deadline	September 15, 2020 at 8:00 p.m.	September 22, 2020 at 8:00 p.m.
Adequate Assurance Hearing	September 18, 2020 at 2:00 p.m.	September 29, 2020 at 1:00 p.m.

22. Subsequently, on August 7, 2020, the Debtors executed the Stalking Horse Agreement and filed a motion seeking an Order (the “**Bidding Procedures Modification Order**”) to extend the deadline by which the Debtors may enter into a Stalking Horse Agreement from August 3, 2020, to August 7, 2020.
23. On August 10, 2020, the Debtors filed the Notice of Filing of Adequate Assurance Information with Respect to Proposed Stalking Horse Bidder (the “**Adequate Assurance Notice**”).
24. An August 19, 2020, the Debtors filed a Notice of Filing of Further Modified Proposed Bidding Procedures Order, which proposed certain revisions to the Bidding Procedures Modification Order and the related Revised Bidding Procedures, resulting in the “**Further Revised Bidding Procedures Modification Order**” and the “**Further Revised Bidding Procedures**”.
25. The Stalking Horse Agreement, the Further Revised Bidding Procedures Modification Order and the Adequate Assurance Notice are each discussed in more detail later in this Report.

#### **ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

26. On July 31, 2020, the Debtors filed a Notice of Potential Assumption of Executory Contracts or Unexpired Leases and Cure Amounts (the “**Assignment Notice**”) pursuant to the Bidding Procedures Order. The Assignment Notice states:
  - (a) That the Debtors may seek the assumption and assignment of certain executory contracts and unexpired leases (collectively, the “**Assigned Contracts**” and each an “**Assigned Contract**”) to the Successful Bidder in connection with a Sale Transaction; and

- (b) The amounts which the Debtors believe are owing to the respective counterparties to the Assigned Contracts to cure any monetary defaults existing under each Assigned Contract as of the Petition Date (the “**Cure Costs**”).
27. Pursuant to the procedures outlined in the Bidding Procedures Order (the “**Assumption Procedures**”), objections to the proposed assumption and assignment of an Assigned Contract (a “**Contract Objection**”), including any objection relating to the Cure Cost or adequate assurance of future performance by any Stalking Horse Bidder must be made as prescribed in the Assumption Procedures and be filed and served with the U.S. Court by no later than the Sale Objection Deadline of August 28, 2020 at 4:00 p.m. (prevailing Eastern Time), subject to certain extended deadlines and procedures should the Debtors add additional Assigned Contract(s) after July 31, 2020.

#### **SECTION 341 MEETING**

28. On August 5, 2020, the Section 341 Meeting was held telephonically to provide creditors and parties in interest an opportunity to examine the Debtors’ financial affairs. The Section 341 Meeting was adjourned pending receipt of additional information from the Debtors.

#### **THE THIRD AMENDED PLAN AND THIRD DISCLOSURE STATEMENT**

29. As noted in the First Report, on July 15, 2020, the Debtors filed a preliminary joint plan of reorganization for the resolution of the outstanding claims against, and equity interests in, the Debtors (the “**Preliminary Plan**”).
30. On August 7, 2020, the Debtors filed an Amended Joint Chapter 11 Plan of Reorganization of the Debtors Under Chapter 11 of the Bankruptcy Code (the “**First Amended Plan**”) and the Disclosure Statement for the First Amended Plan (the “**First Disclosure Statement**”).
31. On August 12, 2020, the Debtors filed a Second Amended Joint Chapter 11 Plan of Reorganization (the “**Second Amended Plan**”) and the Disclosure Statement for the Second Amended Plan (the “**Second Disclosure Statement**”).

32. On August 17, 2020, the Debtors filed a Third Amended Joint Chapter 11 Plan of Reorganization (the “**Third Amended Plan**”) and the Disclosure Statement for the Third Amended Plan (the “**Third Disclosure Statement**”). The Third Amended Plan and Third Disclosure Statement are discussed in further detail later in this Report.

**ORDERS ISSUED IN THE CHAPTER 11 PROCEEDINGS SINCE THE DATE OF THE FIRST REPORT**

33. A number of Orders have been issued by the U.S. Court since the date of the First Report of which the Debtors are not seeking recognition by the Canadian Court. Those Orders include the following (and exclude Orders granting motion for admission *pro hac vice*):

- (a) *Order authorizing the employment and retention of Riveron Consulting, LLC as accounting advisor to the Debtors effective as of the Petition Date, granted August 7, 2020;*
- (b) *Order shortening the notice period with respect to the Debtors’ motion to modify Bidding Procedures Order, granted August 10, 2020;*
- (c) *Order approving stipulation between the Debtors and Raquel Diaz in her individual and representative capacity for a putative class of consumer claimants, granted August 13, 2020;*
- (d) *Order authorizing employment and retention of Bayard, P.A. as co-counsel to the Official Committee of Unsecured Creditors, granted August 14, 2020;*
- (e) *Order authorizing the Official Committee of Unsecured Creditors to employ and retain Miller Buckfire & Co., LLC and Stifel, Nicolaus & Co., Inc. as investment banker, granted August 17, 2020;*
- (f) *Order authorizing the employment and retention of PricewaterhouseCoopers LLP as independent auditor and tax advisory services provider to the Debtors, granted August 19, 2020;*

- (g) *Tenth (10<sup>th</sup>) omnibus Order (a) authorizing rejection of certain unexpired leases effective as of July 30, 2020 and (b) granting related relief (the “**Tenth 10<sup>th</sup> Lease Rejection Order**”), granted August 19, 2020;*
  - (h) *Eleventh (11<sup>th</sup>) omnibus Order (a) authorizing rejection of certain unexpired leases, subleases and agreements effective as of July 30, 2020 and (b) granting related relief (the “**Eleventh Lease Rejection Order**”), granted August 19, 2020;*
  - (i) *Order (a) authorizing rejection of that certain master development, distribution and franchise agreement with Asia Earth REL Hong Kong Limited effective as of August 4, 2020 and (b) granting related relief, granted August 19, 2020; and*
  - (j) *Order authorizing and approving the employment and retention of Lowenstein Sandler LLP as counsel to the Official Committee of Unsecured Creditors effective as of July 8, 2020, granted August 19, 2020.*
34. The Debtors are seeking recognition by the Canadian Court of the following Orders issued by the U.S. Court since the date of the First Report (collectively, the “**August 25 Recognition Orders**”):
- (a) *Amended final Order (a) authorizing continued use of existing cash management system, including maintenance of existing bank accounts, checks, and business forms, (b) authorizing continuation of existing deposit practices, and (d) granting administrative claim status to postpetition intercompany claims (the “**Amended Final Cash Management Order**”) granted August 5, 2020;*
  - (b) *Debtors’ ninth (9<sup>th</sup>) Omnibus Order (a) authorizing rejection of certain unexpired leases effective as of July 30, 2020 and (b) granting related relief (the “**Ninth Lease Rejection Order**”) granted August 18, 2020;*

- (c) *Order modifying the bidding procedures order* (the “**Further Revised Bidding Procedures Modification Order**”) granted August 19, 2020;
  - (d) *Order (a) approving the disclosure statement, (b) establishing the voting record date, voting deadline, and other dates, (c) approving procedures for soliciting, receiving, and tabulating votes on the plan and for filing objections to the plan, (d) approving the manner and forms of notice and other related documents, (e) approving notice and procedures for the assumption of executory contracts and unexpired leases, and (f) granting related relief* (the “**Disclosure Statement Order**”) granted August 20, 2020; and,
  - (e) *Order approving (i) the Debtors’ entry into stalking horse agreement and related bid protections and (ii) granting related relief* (the “**Stalking Horse Approval Order**”).
35. The August 25 Recognition Orders are described in more detail later in this Report.
36. For ease of reference, a summary of all Orders entered in the Chapter 11 Cases and the status of each order vis-à-vis the Recognition Proceedings (the “**Chapter 11 Order Summary**”) has been prepared by the Information Officer and posted to the Canadian Case Website. A copy of the Chapter 11 Order Summary is attached hereto as **Appendix B**.

## **THE STALKING HORSE AGREEMENT**

37. As described in the Pre-Filing Report of the Proposed Information Officer, prior to the commencement of the Chapter 11 Proceedings, the Debtors negotiated a standalone plan of reorganization with certain of their secured lenders (the “**Restructuring**”), the details of which were memorialized in a signed restructuring support agreement (the “**Restructuring Support Agreement**”). The Restructuring Support Agreement contemplates a comprehensive restructuring that is supported by the Debtors and their major prepetition secured creditors.

38. The Pre-Filing Report of the Proposed Information Officer also informed the Court that in addition to the Restructuring Support Agreement, the Debtors, a significant majority of the Supporting Secured Lenders, and the Proposed Buyer had reached an agreement in principle for the sale of the Debtors' business (the "**Sale Transaction**"). The Sale Transaction contemplated a \$760 million purchase price for a going-concern sale of the Debtors' business, which would be executed through an auction process under section 363 of the United States Bankruptcy Code, during which higher and better bids may be presented. At that time, the Sale Transaction remained subject to definitive documentation acceptable to the Debtors, the Supporting Secured Lenders and the Proposed Buyer. It was contemplated that, if the Sale Transaction was timely documented and selected as the winning bid in the 363 auction, it would be implemented instead of the Restructuring.
39. The Sale Transaction was ultimately memorialized in the Stalking Horse Agreement. Harbin holds approximately 41% of the equity of GNC Holdings, is its largest shareholder, and has the right to designate up to five individuals (the "**Harbin Designees**") to serve on the board of directors of GNC Holdings. Of the five Harbin Designees, two are independent directors per regulatory requirements, and none of the Harbin Designees are on the special committee of the board of directors of GNC Holdings in charge of any and all decision making regarding the sale and restructuring processes underway.

#### **KEY TERMS OF THE STALKING HORSE AGREEMENT**

40. The key terms by category of the Stalking Horse Agreement, a copy of which is attached hereto as **Appendix C** without schedules, are summarized below:
- (a) Structure: Harbin is to purchase a newly formed subsidiary ("**GNC Newco**") of the Debtors to which substantially all of the assets and certain specified liabilities of the Debtors, together with equity interests in certain non-filed subsidiaries will be transferred immediately before closing;
  - (b) Purchase price: The aggregate purchase price of \$770 million (subject to certain adjustments), is comprised of:

- (i) \$550 million in cash consideration, subject to adjustments set forth in the Stalking Horse Agreement (the “**Cash Purchase Price**”). The Cash Purchase Price will be funded from the proceeds of a \$400 million Senior Secured Term Loan Bank of China Facility (the “**BOC Facility**”) and a \$150 million subordinated financing, which may be refinanced with senior indebtedness under certain circumstances (the “**Aland Subordinated Facility**”);
  - (ii) The issuance of an aggregate principal amount of Second Lien Loans equal to \$210 million by GNC Newco to the Term Loan B Lenders, subject to adjustments as set forth in the Stalking Horse Agreement (the “**Second Lien Loans**”);
  - (iii) The issuance of \$10 million in subordinated “PIK” convertible notes (the “**Junior Convertible Notes**”) to the Debtors general unsecured creditors under a plan of reorganization, subject to certain conditions, including support of the transaction and Plan; and
  - (iv) The assumption of the Assumed Liabilities, which includes the payment of cure costs and assumption of certain liabilities, including most operating liabilities;
- (c) Purchase price adjustments: The Purchase Price Adjustments are noted in section 3.4 of the Stalking Horse Agreement and include the following provisions:

- (i) At least three days prior to the Closing, the Seller shall prepare and deliver to the Buyer a statement (the “**Estimated Closing Statement**”) setting forth the Seller’s estimate of: i) the Target Cash Amount<sup>1</sup>; ii) the Company Cash representing all Cash of the Seller and its Subsidiaries as of the Closing; iii) the Cash Reduction Amount<sup>2</sup>; iv) the Cash Purchase Price equal to \$550,000,000 minus the Deposit plus the Cash Increase Amount<sup>3</sup>; v) the Second Lien Loans Amount of \$210,000,000, plus the Shortfall Adjustment Amount meaning an amount equal to the Cash Shortfall minus the Cash Reduction Amount, plus the Second Lien Loans Adjustment Amount of \$410,000,000 minus \$210,000,000 plus the Shortfall Adjustment Amount minus the TLB Cash Distribution Amount; vi) the Excluded Cash; and, vii) the Estimated TLB Cash Distribution Amount<sup>4</sup>; and
- (ii) On the Closing Date, the Seller shall prepare and deliver a statement (the “**Final Closing Statement**”) with the Seller’s updated good faith estimates of the amounts noted in paragraph (i) above, which amounts shall be final for all purposes of the Stalking Horse Agreement absent manifest error;

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<sup>1</sup> The Target Cash Amount means an amount equal to (a) \$61,145,000 plus (b) the Closing Cure Payment Amount, minus (c) the pro rata portion of all prepaid rent under the Assumed Real Property Leases paid by the Selling Entities or their Subsidiaries on or prior to the Closing for any period occurring from and after the Closing.

<sup>2</sup> The Cash Reduction Amount means: a) if the Cash Shortfall, meaning the amount if any by which the Target Cash Amount exceeds the Company Cash Pre-Adjustment, is less than \$5,000,000, \$0; b) if the Cash Shortfall is equal to or greater than \$5,000,000 and less than \$10,000,000, an amount equal to the Cash Shortfall minus \$5,000,000; and, c) if the Cash Shortfall is equal to or greater than \$10,000,000, \$5,000,000.

<sup>3</sup> The Cash Purchase Price may be further reduced in accordance with the definition of “Purchased Cash”.

<sup>4</sup> The Estimated TLB Cash Distribution means means the estimated cash distribution to be made under the Plan by the Selling Entities to the holders of Allowed Tranche B-2 Term Loan Secured Claims (as defined in the Plan) and the holders of TLB Allowed DIP Term Roll-Up Loan Claims (as defined in the Plan), in each case in respect of such Allowed Tranche B-2 Term Loan Claims and TLB Allowed DIP Term Roll-Up Loan Claims, as determined in good faith by the Selling Entities, subject to certain adjustments.

- (d) DIP repayment: The Stalking Horse Agreement contemplates that the DIP Obligations (including the ABL FILO DIP Claims) shall be paid in full at Closing provided that \$200 million of the Cash Purchase Price will be repaid to holders of Tranche B-2 Term Loan Claims (the “**TLB Lenders**”), which includes amounts anticipated to be paid on account of the roll-up Term Loan B DIP Obligations, and that sum is subject to adjustment for the Debtors’ performance through Closing, Exit Costs, Cure Payments, and the costs associated with the administration of the Chapter 11 Cases. If the TLB Lenders expect to receive less than \$185 million of cash from the Sale after considering estimates for these items, which includes amounts to be paid on account of the roll-up Term Loan B DIP Obligations, the Debtors would have an option of not consummating the Sale. For any shortfall in cash consideration to the TLB Lenders below \$200 million, the Second Lien Loans would increase dollar-for-dollar to ensure that the consideration paid to the TLB Lenders is no less than \$410 million, subject to certain limitations. If the Debtors are performing better than projected through closing such that cash available exceeds \$200 million, the excess would be used to pay down some of the notes;
- (e) Overview of treatment of creditors: The table below provides a summary of the treatment of various creditors under the Stalking Horse Agreement:

Creditor	Treatment
FILO DIP	<ul style="list-style-type: none"> <li>• Paid in full in cash</li> </ul>
Term Loan DIP (\$100 million “new money”)	<ul style="list-style-type: none"> <li>• Paid in full in cash</li> </ul>
TLB-2 Lenders (Term Loan DIP roll-up portion and prepetition Term Loan B2)	<ul style="list-style-type: none"> <li>• \$200 million, reduced by certain closing adjustments based on emergence liquidity</li> </ul>

	<ul style="list-style-type: none"><li>• \$210 million Second Lien Loans, increased dollar-for-dollar by decrease in cash paydown</li></ul>
Unsecured creditors	<ul style="list-style-type: none"><li>• \$10 million Junior Convertible Notes</li></ul>

- (f) Capitalization of GNC Newco: The capitalization of GNC Newco, designed in part to provide liquidity post-closing, will be as follows:
- (i) \$400 million BOC Facility guaranteed by Harbin and IVC;
  - (ii) \$210 million Second Lien Loans (subject to adjustment as provided above);
  - (iii) \$150 million Aland Subordinated Facility; and
  - (iv) \$10 million Junior Convertible Notes (subject to their issuance as provided above);
- (g) Bid Protections: The proposed Bid Protections, should a Third-Party Sale or Restructuring Transaction be consummated, consist of a Termination Fee in the amount of \$15.2 million and an Expense Reimbursement in a maximum amount not to exceed \$3 million. The Debtors are obligated to pay Harbin the Bid Protections if:
- (i) Harbin is not selected as the successful bidder at any auction, and at such time Harbin was not in material breach;
  - (ii) The Debtors consummate a standalone plan of reorganization at a time when Harbin was not in breach of any of its obligations and is prepared to consummate the Sale; or

- (iii) The Expense Reimbursement only will be payable if Harbin terminates the agreement due to the Debtors' uncured breach regardless of whether a third-party sale or standalone plan is consummated;
  
- (h) Deposit: The Buyer is to provide a deposit of \$57 million, representing approximately 7.5% of the aggregate purchase price of \$770 million, into a segregated escrow account, which will be released to the Debtors at Closing in partial satisfaction of the cash purchase price, or upon forfeiture in the event of a Buyer Default Termination;
  
- (i) Mutual termination rights: The Sale can be terminated by either party if:
  - (i) Closing does not occur by the Outside Date of October 15, 2020;
  
  - (ii) Transactions are illegal, or there is an order blocking the transaction; however, the Buyer may not terminate if this is due to a failure to obtain required People's Republic of China ("**PRC**") approvals (the "**PRC Approvals**");
  
  - (iii) The Bidding Procedures are revoked/invalidated;
  
  - (iv) Sale Order of the U.S. Court is not entered by September 24, 2020, or recognition by the Canadian Court is not entered by September 26, 2020;
  
  - (v) There is an uncured material breach of a party's representations and covenants;
  
  - (vi) There is an uncured material breach of a party's representations and covenants; or
  
  - (vii) The Bidding Protections are revoked/invalidated;

- (j) Debtor(s) termination rights: The Debtors could terminate the Sale, but the Buyer would not forfeit the Deposit, if the Estimated TLB Cash Distribution Amount is not at least \$185 million (subject to Buyer's right to cure by increasing the cash portion of the purchase price by the shortfall). The Debtors can also terminate, with the Deposit forfeited, if:
- (i) There is a Financing Failure Event, subject to Harbin's right to obtain alternative financing prior to the Outside Date;
  - (ii) Harbin fails to obtain required PRC Approvals within 3 business days of other closing conditions being satisfied;
  - (iii) Harbin's "Related Party" tax representation becomes untrue in any respect at any time;
  - (iv) Conditions precedent under Second Lien Loan documents are not satisfied or there is a default that is not cured prior to the Outside Date; and
  - (v) The vendor financing agreement is not effective when all other conditions are satisfied;
- (k) Buyer termination rights: The Buyer can terminate the sale if:
- (i) The Debtors enter into a third-party sale and the Buyer is not the Back-up Bidder at the Auction, or in any case, if a Third-Party Sale is eventually consummated; or
  - (ii) The Chapter 11 Cases are dismissed or converted to Chapter 7 Cases and neither such dismissal nor conversion expressly contemplates the transactions provided for in the Stalking Horse Agreement;
- (l) Key closing conditions: The key closing conditions are as follows:

- (i) The Sale Order must be entered by the U.S. Court in the Chapter 11 Cases and recognized by the Canadian Court in the Recognition Proceedings by September 24, 2020, and September 26, 2020, respectively;
  - (ii) The Estimated TLB Distribution Amount is at least \$185 million;
  - (iii) Vendor financing agreement must not be amended and must be effective at Closing;
  - (iv) Delivery of Cash Purchase Price and the concurrent effectiveness of the Second Lien Loans;
  - (v) Receipt of required regulatory clearances;
  - (vi) Mutual compliance with covenants in all material respects by both the Debtors and Harbin; and
  - (vii) A bring-down of the representations and warranties made at the time of entrance into the Stalking Horse Agreement to applicable standards as of the Closing;
- (m) U.S. Court filing requirements: Upon execution, the Stalking Horse Agreement must be filed with the U.S. Court, and the related agreements pertaining to the Second Lien Loans are to be filed shortly thereafter. The Further Revised Bidding Procedures Modification Order, as described below in this Second Report, must also be sought to extend the deadline to select a Stalking Horse Bidder, and the U.S. Court must designate Harbin as the Stalking Horse Bidder and approve the related Bid Protections. Remaining documentation, including financing documentation, is to be filed with the U.S. Court as and when they are finalized between execution of the Stalking Horse Agreement and Closing;

- (n) Purchase and Sale of Assets: The Selling Entities shall sell, assign, convey, transfer and deliver to GNC Newco, all of the Seller's and its Subsidiaries' right, title and interest, free and clear of all Encumbrances (other than Permitted Encumbrances) to the Purchased Assets, which are to include all right, title and interest in and to, and include the following:
- (i) **Cash**: All Purchased Cash as of the Closing, which is subject to certain formulaic adjustments that could reduce the Cash Purchase Price if Company Cash is less than the Target Cash pursuant to certain thresholds as of the Closing;
  - (ii) **Accounts Receivable**: All Accounts Receivable of the Selling Entities as of the Closing excluding intercompany obligations and accounts receivable of any Selling Entity owed to it by another Selling Entity;
  - (iii) **Inventory**: All Inventory and materials of the Selling Entities as of the Closing;
  - (iv) **Advances, prepaid assets, deposits and prepayments**: All royalties, advances, prepaid assets, security and other deposits, prepayments and other current assets relating to the Business, the Assumed Agreements, and the Assumed Real Property Leases as of the Closing;
  - (v) **Non-Real Property Contracts**: All contracts to which any Selling Entity is a party other than the Real Property Leases as listed in the Seller Disclosure Schedule (the "**Assumed Agreements**") assumed and assigned to GNC Newco;

- (vi) **Real Property Leases:** All leases, subleases, and other occupancy Contracts with respect to real property to which any Selling Entity is a party listed in the Seller Disclosure Schedule (the “**Assumed Real Property Leases**”) assumed and assigned to GNC Newco;
- (vii) **Seller IP:** All GNC Names and Marks and all other Seller IP, including all Intellectual Property and Intellectual Property Rights owned by the Selling Entities;
- (viii) **Purchase Orders:** All open purchase orders with customers and suppliers;
- (ix) **Equipment, furniture, fixtures, and leasehold improvements:** All items of machinery, equipment, supplies, furniture, fixtures, leasehold improvements, and other tangible property and fixed assets owned by the Selling Entities;
- (x) **Books and records:** All books, records, information, files, data, marketing materials, and similar items, including customer and supplier lists and mailing lists;
- (xi) **Owned Real Property:** All real property owned by the Selling Entities as of the Closing as listed in the Seller Disclosure Schedule;
- (xii) **Equity Interests:** All of the stock or other equity interests owned by the Selling Entities in the Persons listed in the Seller Disclosure Schedule;
- (xiii) **Goodwill and intangible assets:** All goodwill and other intangible assets associated with the Business or the Purchased Assets;

- (xiv) **Websites, domain names, telephone, fax and email addresses:**  
All rights to the noted communication paths and the right to receive mail and other communications addressed to the Selling Entities;  
and
- (xv) **All other assets:** All other assets that are related to or used in connection with the Business and that are owned by any Selling Entity as of the Closing;
- (o) Excluded Assets: The Purchased Assets do not include the Excluded Assets, which include the following:
  - (i) **Certain records and documents:** Certain records, documents or other information are Excluded Assets including those that pertain to Employees that are not Transferred Employees, minute books and corporate books and records of the Selling Entities, and similar items that exclusively relate to any Excluded Assets or Excluded Liabilities;
  - (ii) **Selling Entities' rights:** Any right of the Selling Entities under the Stalking Horse Agreement and other transaction documents, including all cash and non-cash consideration payable to the Selling Entities;
  - (iii) **Excluded agreements and real property leases:** Any contracts other than the Assumed Agreements and the Assumed Real Property Leases, together with all related prepaid assets;
  - (iv) **Intercompany obligations:** Any accounts receivable or other intercompany obligations of any Selling Entity owed to it by any other Selling Entity; and
  - (v) **Excluded Cash:** Any Company Cash other than Purchased Cash;

- (p) Assumed Liabilities: GNC Newco shall assume and agree to pay, perform and discharge when due the Assumed Liabilities, which include the following:
- (i) **Current Liabilities**: All Liabilities relating to the Purchased Assets that are properly characterized as current liabilities of the Selling Entities as of the Closing, excluding a) any indebtedness for borrowed money, b) any Liabilities that are General Unsecured Claims or Subordinated Securities Claims (as defined in the Plan), and c) any Liabilities listed as Excluded Liabilities in section 2.4 of the Stalking Horse Agreement;
  - (ii) **Consumer Liabilities**: All Liabilities of the Selling Entities with respect to consumers including returns of goods or merchandise, store or customer credits, gift cards and certificates, customer prepayments and overpayments, customer loyalty obligations or programs, refunds, warranty obligations, returns of goods sold by licensees;
  - (iii) **Assumed Agreements and Real Property Leases**: All Liabilities of the Selling Entities arising under the Assumed Agreements and Assumed Real Property Leases, and under open purchase orders with customers and suppliers that constitute Purchased Assets;
  - (iv) **Payments to Acquired Subsidiaries**: The accounts payable and other intercompany obligations of the Selling Entities owed to the Acquired Subsidiaries;
  - (v) **Employee-related liabilities**: GNC Newco is responsible for certain employee related liabilities, which include the following:

- a) Closing Payroll Period: Processing and payment of amounts owing, including all applicable payroll and other taxes, for the payroll period in which the Closing Date falls with respect to each Employee employed at any time during the Closing Payroll Period excluding Retained Employees retained by the Selling Entities after the Closing Date;
- b) Accrued wages, vacation, termination and severance: From and after Closing with respect to each Terminated Employee, the Buyer shall assume, pay and discharge the Liabilities of the Selling Entities for: i) all deferred salary, wages, unused vacation, sick days, personal days or leave earned by such Terminated Employee; ii) any severance obligations or Liabilities, including any obligations or Liabilities that arise under an employee incentive or retention program;
- c) Buyer Benefit Plan: Transferred Employees shall receive credit for all purposes under any Buyer Benefit Plan on or after Closing; and,
- d) Compensation and Benefit Programs: The Buyer agrees to assume and honour in accordance with their current terms, each of the Seller Compensation and Benefit Programs as indicated in the Seller Disclosure Schedule and all related trust agreements, insurance contracts, administrative services agreements, and investment management agreements;

- (vi) **Cure Payments:** All of the cure amounts as determined by the U.S. Court to cure all defaults and pay all actual or pecuniary losses that have resulted from such defaults under the Assumed Agreement and the Assumed Real Property Leases (collectively, the “**Cure Payments**”). No Selling Entity shall have any liability for such Cure Payments;
- (vii) **All other Operating Liabilities:** All other Operating Liabilities, excluding any portion of such outstanding Operating Liabilities that Seller or its Subsidiaries failed to pay as and when due in the ordinary course of business consistent with past practice prior to the Closing; and
- (viii) **BOC Debt Commitment Letter:** All fees payable in connection with the BOC Debt Commitment Letter and any related facilities or other credit agreement;
- (q) Excluded Liabilities: GNC Newco shall not assume or be obligated or be liable for the Excluded Liabilities, whether incurred or accrued before, on or after the Petition Date or the Closing, which include the following:
  - (i) **Pre-Closing Taxes:** All Taxes of the Selling Entities for any Pre-Closing Tax Period;
  - (ii) **Professional Services:** All prepetition or post-petition Liabilities of the Selling Entities relating to legal, accounting or other professional services performed in conjunction with the Agreement;

- (iii) **Employee-related Liabilities:** All Liabilities of the Selling Entities with respect to current and former Employees and Service Providers, other than Liabilities under the Assumed Compensation and Benefit Programs and Liabilities otherwise specifically assumed by GNC Newco pursuant to Section 7.10 of the Stalking Horse Agreement;
- (iv) **Excluded Assets:** All Liabilities relating to the Excluded Assets;
- (v) **Indebtedness:** All Liabilities of any Selling Entity in respect of indebtedness for borrowed money, whether or not relating to the Business;
- (vi) **Equity or securities holder Liabilities:** All Liabilities of any Selling Entity to any holder of equity or equity-linked securities;
- (vii) **Intercompany accounts payable:** All accounts payable or other intercompany obligations of any Selling Entity owed by it to any other Selling Entity;
- (viii) **Certain other Liabilities:** Any other Liability of the Selling Entities that arises prior to the Closing and is not expressly included among the Assumed Liabilities; and
- (ix) **Exit Costs:** All fees, costs or other expenses pertaining to 503(b)(9) claims, stub rent, transaction fees, and professional fees accrued;
- (r) Employee Matters: Employee matters are set out primarily in Section 7.10 of the Stalking Horse Agreement, and include the following:

- (i) **Specified Employees:** The Seller Disclosure Schedule, once finalized at least 10 days prior to closing, will set forth a list containing the names of Employees to whom the Buyer will not make an offer of employment (the “**Specified Employees**”);
- (ii) **Transferred Employees:** Prior to Closing, the Buyer shall make an offer of employment to each of the Employees who were not Specified Employees (an “**Offered Employee**”). An Offered Employee who receives and accepts such an offer of employment will be a “**Transferred Employee**”, and each Transferred Employee will be employed with such accepted offer as of the Closing;
- (iii) **Transferred Employee Offer Base Terms:** The Buyer agrees that offers to the Offered Employees shall include for the 12-month anniversary of the Closing: i) a level of base salary and wages to each Transferred Employee that is no less favourable to the base salary and wages provided to such Offered Employees at present; and, ii) benefit plans will be comparable in the aggregate to the benefits provided to such Offered Employee at present;
- (iv) **Canadian Transferred Employee Offer Terms:** Notwithstanding the foregoing for Transferred Employees in Canada to the extent required by applicable Law, such offers will be on substantially similar basis as such Employees received from the Selling Entities at present;
- (v) **Retained Employees:** The Selling Entities may elect to continue the employment of any Specified Employee following Closing (a “**Retained Employee**”);

- (vi) **Terminated Employees:** On or prior to Closing and excluding Retained Employees, the Selling Entities shall terminate the employment of each Specified Employee and each Offered Employee who does not accept an offer of employment prior to the Closing (a “**Terminated Employee**”);
  
- (vii) **Closing Period Payroll:** The Buyer is responsible for processing and paying wages accrued during the payroll period in which the Closing Date falls (the “**Closing Period Payroll**”) with respect to each Employee employed at any time during the Closing Payroll Period other than Retained Employees; and
  
- (viii) **Employee Liabilities Before and After Closing:** With the exception of the Closing Period Payroll, the Selling Entities shall retain, pay and discharge the Liabilities of the Selling Entities for all current and deferred salary, wages, unused vacation, sick days, or other earned by each Employee through Closing. From and after the Closing, with respect to each Terminated Employee, the Buyer shall assume, pay and discharge the Liabilities of the Selling Entities for i) all wages, unused vacation, sick days, personal or other earned by such Terminated Employee, ii) any severance obligations or Liabilities, and iii) any Liabilities arising under an employee incentive or retention program.

- (s) Assumption and Assignment of Certain Contracts: The Sale Order shall provide for the assumption and assignment by the Selling Entities to GNC Newco, effective on Closing, of the Assumed Agreement and Assumed Real Property Leases pursuant to certain terms and conditions as set out in Section 2.5 of the Stalking Horse Agreement. In particular, the Buyer may designate or remove any such Contract until three Business Days prior to the Bid Deadline. For any Contract that is not an Assumed Agreement or Assumed Real Property Lease, the Seller may move to reject any Contract with not less than five Business Days prior written notice;
  
- (t) Submission for Bankruptcy Court and Canadian Court Recognition: All Parties shall use commercially reasonable efforts to have the Sale Hearing in the U.S. Court no later than September 17, 2020 and to have the Sale Order entered no later than 3 days after conclusion of the Sale Hearing. As promptly as possible, but in no event later than three Business Days after the entry of the Sale Order, the Selling Entities shall bring a motion in the Canadian Court in the Recognition Proceedings seeking an order recognizing the Sale Order and vesting the Canadian Purchased Assets in the Buyer free and clear of all claims, liens and encumbrances (other than any permitted encumbrances);
  
- (u) Overbid Procedures and Adequate Assurance: The Buyer agrees to be bound by and accept the terms and conditions of the Bidding Procedures Order and Bidding Procedures, and includes the following to which the Buyer agrees or acknowledges:

- (i) Pursuant to the Bidding Procedures, the value of each Bid for substantially all of the Debtors' Assets, must exceed: (i) the Minimum Purchase Price, plus (ii) the amount of the Bid Protections payable to the Stalking Horse Bidder, if applicable, plus (c) minimum Bid increment of \$2.5 million (or such other amount as the Debtors may determine in consultation with the Consultation Parties);
- (ii) The Selling Entities are and may continue soliciting inquiries for the Purchased Assets;
- (iii) The Buyer shall serve as a back-up bidder if the Buyer is the next highest bidder at the Auction, and the Buyer will keep its bid to consummate the transactions contemplated by the Stalking Horse Agreement open and irrevocable until the earlier of: a) 5:00 p.m. (prevailing Eastern Time) on October 31, 2020 (the "**Outside Back-Up Date**") or, b) the date of the consummation of a Third-Party Sale; and
- (iv) The Buyer shall provide adequate assurance as required of its ability to fulfil its obligations and commitments under the Stalking Horse Agreement.
- (v) Termination Fee: A Termination Fee of \$15.2 million plus the amount of the Buyer's reasonable documented out-of-pocket expenses to a maximum of \$3 million is payable to the Buyer from the proceeds of such Third-Party Sale without further order of the U.S. Court or Canadian Court if:

- (i) (x) an Auction takes place and the Buyer is not the Successful Bidder,  
(y) at the time the Successful Bidder is identified, the Buyer is not in material breach of this Agreement, **AND**  
(z) a sale of substantially all of the Purchased Assets to an entity other than GNC Newco is consummated;

**OR**

- (ii) A standalone plan of reorganization, including the Restructuring under which the Selling Entities' secured lenders receive a material portion of the equity and/or debt in the reorganized Seller, resulting in a Restructuring Transaction being consummated.

The Termination Payment shall not be payable to the Buyer in the event a Restructuring Transaction is consummated under certain circumstances, which include the following:

- (i) Following the termination of the Stalking Horse Agreement by:
  - a. The Seller, and subject to such inaccuracy being curable by the Buyer within 10 days, if:
    - i. Any representations and warranties of the Buyer are inaccurate as of the date of the Stalking Horse Agreement;
    - ii. The Buyer fails to perform or comply with any of the covenants or agreements contained in the Stalking Horse Agreement;
    - iii. The Buyer fails to obtain any required PRC Approval; or

- iv. The Buyer fails to provide written notice to the Seller that it elects to increase the Cash Purchase Price to an amount that would result in the Estimated TLB Cash Distribution Amount being satisfied.
- b. By the Seller or Buyer if:
- i. Mutual written consent of the Seller and the Buyer; and
  - ii. The Closing has not occurred by October 31, 2020 (the “**Outside Date**”), subject to certain conditions.

#### ADEQUATE ASSURANCE

41. As required by paragraph 14 of the Bidding Procedures Order, on August 10, 2020, the Debtors provided financial and other information demonstrating adequate assurance of future assurance of the Assigned Contracts provided by the Stalking Horse Bidder.
42. In a statement to the Debtors, White & Case LLP, legal counsel to the Stalking Horse Bidder, disclosed certain information to provide assurance of the Buyer’s ability to adequately perform and satisfy the obligations of existing agreements with the Selling Entities that are being assigned to and assumed by the Buyer (the “**Adequate Assurance Information**”). In particular, the Adequate Assurance Information provided included the following:
- (a) Harbin Pharmaceutical Group Holding Co. Ltd. as the Buyer, a corporation incorporated in the People’s Republic of China, is the largest shareholder of one of China’s largest drug manufacturers by market value, and its products are sold throughout China and in more than 50 other countries;
  - (b) The Buyer’s total asset value as of December 19, 2019, exceeded the equivalent of \$2.3 billion;
  - (c) The Buyer owns:

- (i) 46% of the equity in Harbin Pharmaceutical Group Co. Ltd, a publicly listed entity (SHA: 60064);
  - (ii) 74% of the equity in HPGC Renmintongtai Pharmaceutical Corp, a publicly listed entity (SHA: 600829); and
  - (iii) 100% of the equity in Harbin Pharmaceutical Group Bio-vaccine Co., Ltd.;
- (d) The basis for the Bank of China financing is the guarantee provided by the Buyer;
- (e) GNC Newco will be capitalized by the \$400 million BOC Facility, the \$210 million Second Lien Loans, the \$150 million Aland Subordinated Facility, and up to \$10 million of Junior Convertible Notes;
- (f) GNC Newco's sources of liquidity at closing include \$25-30 million of cash on hand, \$50 million of available vendor financing, and the potential for an additional \$30 million revolver, which the Buyer states "will be more than adequate funding for GNC Newco to satisfy all obligations that arise in the ordinary course of business for the foreseeable future."

#### **BOC FACILITY**

43. On August 15, 2020 as part of the Stalking Horse Amendment Notice filed, the Debtors filed the term sheet for the BOC Facility with the U.S. Court as required pursuant to the Stalking Horse Agreement.
44. The key terms of the BOC Facility are as follows:

- (a) Facility and purpose: The facility is a USD senior secured term loan facility in an amount of \$400 million for the purpose of: i) financing the refinancing of GNC Holdings' financial indebtedness and its subsidiaries; ii) funding acquisition costs and deposits made to the debt service reserve account (“**DSRA**”); and, iii) funding working capital requirements, pursuant to the Stalking Horse Agreement;
- (b) Borrower: GNC Newco, a company to be newly organized as a Delaware limited liability company and a wholly-owned subsidiary of GNC Holdings, subject to becoming a wholly-owned subsidiary of ZT Biopharmaceutical LLC (the “**ZT LLC**”), a Delaware limited liability company and wholly-owned subsidiary of Harbin Pharmaceutical Hong Kong I Limited (“**Hayao HK**”, and a wholly-owned subsidiary of Harbin), after Closing;
- (c) Lender: Bank of China Limited, Macau Branch and other banks appointed in consultation with GNC Newco;
- (d) Security: The following summarizes the security package for the BOC Facility:
  - (i) Security over all shares in GNC Newco;
  - (ii) Security over all shares in all present and future material subsidiaries of the Borrower, subject to agreed security principles;
  - (iii) Security over material assets;
  - (iv) Security over certain bank accounts of Hayao HK and Harbin; and
  - (v) First priority security over the shares of Hayao Listco held by Harbin – currently stated to be 46.49%;

- (e) Intercreditor Agreement: A draft Intercreditor and Subordination Agreement (the “**Intercreditor Agreement**”) attached to the Stalking Horse Agreement, which will establish the relationship between this facility and the Second Lien Loans, including payment and lien subordination, certain payment and lien priorities, and other related provisions;
- (f) Guarantors: Guarantors are to include: i) Harbin; ii) Hayao HK; iii) the ZT LLC; and, iv) all present and future material subsidiaries subject to agreed security principles;
- (g) Guarantors coverage: Tested annually, GNC Newco shall ensure that at least 90% of consolidated total assets are held by Guarantors, and Guarantors contribute at least 90% of Adjusted EBITDA;
- (h) Maturity and interest: Maturity is to occur after a 5-year period, and interest is to be assessed at LIBOR (subject to a zero floor), plus 4.25%. Interest is payable on the last day of each interest period, which is either 1, 2, 3, or 6 months;
- (i) Repayment: The BOC Facility is to be repaid in scheduled semi-annual instalments starting 12 months after the initial draw, which reduces the principal under the BOC Facility by certain set percentages;
- (j) Mandatory prepayments: The BOC Facility is subject to certain mandatory prepayments including an annual excess cash sweep, net disposal/recovery proceeds, certain capital market events, and certain changes of control;
- (k) Financial covenants: Certain financial covenants are to be tested semi-annually commencing June 30, 2021 at the GNC Newco consolidated level and at the Harbin level (start date to be finalized):

- (i) GNC Newco: i) leverage ratio of total consolidated net debt to total consolidated adjusted EBITDA equal to or less than 3.5:1; ii) DSCR not less than 1.25x total consolidated cash flow; and, iii) annual cap on capital expenditures to be confirmed based on projections; and
- (ii) Harbin: i) leverage ratio of total consolidated net debt to total consolidated EBITDA equal to or less than the proposed 3.5:1, stepping down to 3.0:1 by December 31, 2021;
- (l) Events of Default: There are numerous events of default, which include non-payment, financial covenant default, cross default, misrepresentation, and insolvency; and
- (m) Governing law and dispute resolution: Hong Kong law and Hong Kong resolution.

## **SECOND LIEN LOANS**

- 45. On August 7, 2020, the form of the Second Lien Term Loan Credit Agreement in relation to the Second Lien Loans was filed with the U.S. Court as an exhibit to the Stalking Horse Notice.
- 46. The key terms of the Second Lien Loans are as follows:
  - (a) Amount: \$210 million facility plus additional amounts based on purchase price adjustments (takeback debt);
  - (b) Collateral: The following summarizes the collateral components for the Second Lien Loans:

- (i) An intercreditor agreement with the BOC Facility lenders with respect to lien and payment priorities and collateral management, which includes a proceeds sharing provision with respect to dispositions of IP Collateral of up to \$75 million that are to be distributed pro rata between First Lien Lenders and Second Lien Lenders based on the amount of principal outstanding. The Second Lien Loans are capped at \$240 million;
  - (ii) The Second Lien Loans will hold a junior lien on all other assets; and
  - (iii) The Second Lien Loans will hold a first lien on Cares Act tax refunds, if any;
- (c) Guarantors: Guarantors are to include all material subsidiaries of GNC Newco;
- (d) Maturity and interest: Maturity is to occur after a 6-year period, and interest is to be assessed at LIBOR plus 6% PIK plus 3% cash;
- (e) Mandatory prepayments: Mandatory prepayments include the following: i) an excess cash flow payment provision covering 15% of amounts above a minimum cash balance of \$50 million; ii) payment of tax refund proceeds; and, iii) certain vendor payments that are to be shared pro rata with the BOC Facility with respect to the first \$40 million, and Second Lien Loans principal capped at \$240 million; and
- (f) Financial covenants: The Second Lien Loans are subject to certain financial covenants including a guarantee coverage ratio where guarantors represent a minimum of 90% of EBITDA and assets of GNC Newco.

#### **ALAND SUBORDINATED FACILITY**

47. On August 15, 2020, as part of the Stalking Horse Amendment Notice filed, the Debtors filed the term sheet for the Aland Subordinated Facility with the U.S. Court as required pursuant to the Stalking Horse Agreement.
48. The key terms of the Junior Convertible Notes are as follows:
- (a) Borrower: ZT LLC;
  - (b) Lender: Aland (HK) Nutrition Holding Limited (“**Aland**”);
  - (c) Subordinated loan facility: Aggregate principal amount equal to \$150,000,000;
  - (d) Maturity: 24 months after the later of: i) final repayment date of the BOC Facility; and ii) the maturity date of the Second Lien Loans;
  - (e) Subordination: The Aland Subordinated Facility will be subordinated to: i) the BOC Facility; and, ii) the Second Lien Loans;
  - (f) Use of proceeds: The proceeds will be made available to fund: i) a \$57,000,000 deposit pursuant to Section 3.2 of the Stalking Horse Agreement; and, ii) a portion of the cash purchase price under the Stalking Horse Agreement equal to \$93,000,000; and
  - (g) Interest: Interest rate to be mutually agreed between the ZT LLC and Aland.

#### **JUNIOR CONVERTIBLE NOTES**

49. On August 15, 2020 as part of the Stalking Horse Amendment Notice filed, the Debtors filed the term sheet for the Junior Convertible Notes with the U.S. Court as required pursuant to the Stalking Horse Agreement.
50. The key terms of the Junior Convertible Notes are as follows:

- (a) Issuer: ZT LLC, which holds 100% of the equity interests of GNC Newco;
- (b) Notes: \$10,000,000 aggregate principal amount of 1.5% PIK subordinated convertible notes due 2028;
- (c) Maturity date: October 15, 2028;
- (d) Interest: 1.5% per annum payable annually in arrears, which shall be paid by increasing the principal amount of the outstanding Junior Convertible Notes on October 15 of each year;
- (e) Guarantors: None;
- (f) Conversion rights: ZT LLC may mandatorily convert all or any portion of the Junior Convertible Notes at its option prior to the close of business on the business day preceding May 15, 2023 under the following circumstances, which are mutually exclusive:
  - (i) ZT LLC's common stock is listed on a national U.S. exchange after September 30, 2023 and the last reported sale price of the issuer's shares is greater than or equal to 130% of the conversion price on each applicable trading day for at least 20 trading days during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter;
  - (ii) ZT LLC's listed common stock during the five day period after any consecutive five trading day period in which the trading price per \$1,000 principal amount was less than 98% of the product of the last reported sale price of the shares; or
  - (iii) Upon the occurrence of other specified corporate events.

On or after June 30, 2023 until the date of maturity, ZT LLC may convert all or any portion of the Notes at the option of ZT LLC.

The conversion rate for the Junior Convertible Notes shall be an amount of shares per \$1,000 principal amount equivalent to a conversion price of \$60.00 per share; and

- (g) Unsecured obligations: The Junior Convertible Notes will be ZT LLC's unsecured obligation and will rank: i) junior to the BOC Facility and the Second Lien Loans; ii) equal in right of payment to any unsecured indebtedness that is also subordinated; iii) effectively junior in right of payment to any of its secured indebtedness to the extent of the value of the assets securing such indebtedness; and, iv) structurally junior to all indebtedness and other liabilities including trade payables of ZT LLC's subsidiaries.

### **THE THIRD AMENDED PLAN AND THIRD DISCLOSURE STATEMENT**

51. The Third Amended Plan contemplates either the distribution of proceeds arising from the Successful Bid under the Bidding Procedures Order or, if no sale transaction is completed by the Outside Date, the implementation of the Restructuring outlined in the Restructuring Support Agreement.

### **SUMMARY OF THE THIRD AMENDED PLAN**

52. The key components of the Third Amended Plan are summarized below.

#### ***Treatment of Certain Claims and Interest***

53. Administrative Claims: In accordance with section 1123(a)(1) of the Bankruptcy Code, the following have not been classified, are excluded from the Classes of Claims and Interest, and are not entitled to vote:
- (a) General Administrative Claims;
  - (b) Professional Fee Claims;
  - (c) Transaction Expenses; and

(d) Tranche B-2 Term Loan Expenses.

54. DIP Facilities Claims: The DIP Facilities Claims consist of the DIP ABL FILO Facility Claims and the DIP Term Facility Claims. The DIP Facilities Claims shall be deemed to be allowed under the Third Amended Plan. These Claims are unclassified under the Plan and are not entitled to vote.
55. Allowed DIP Term New Money Loan Claims: shall be converted on a dollar-for-dollar basis into Exit FLFO Facility Loans if the Restructuring is consummated; or be indefeasibly repaid in full in cash at closing if the Sale Transaction is consummated.
56. Allowed DIP Term Roll-Up Loan Claims: shall be converted on a dollar-for-dollar basis into Exit FLSO Facility Loans if Restructuring is consummated; or be indefeasibly repaid in full in cash at closing if the Sale Transaction is consummated.
57. Allowed DIP ABL FILO Facility Claims: shall be converted on a dollar-for-dollar basis into Exit FILO loans if the Restructuring is consummated, or be indefeasibly repaid in full in cash at closing if the Sale Transaction is consummated.
58. Priority Tax Claims: Allowed Priority Tax Claims shall be, unless otherwise agreed: (1) paid in cash in an amount equal to the amount of such Allowed Priority Tax Claim; (2) paid in cash in an amount agreed to by the applicable Debtor or Reorganized Debtor and the holder of such Allowed Priority Tax Claim; or (3) at the option of the Debtors, paid in cash in instalment payments over a period of not more than five years, pursuant to section 1129(a)(9)(c) of the Bankruptcy Code. These Claims are unclassified under the Third Amended Plan and are not entitled to vote.
59. Other Priority Claims: Allowed Other Priority Claims shall be generally paid in full in cash unless otherwise agreed. These Claims are unclassified under the Third Amended Plan and are not entitled to vote.

60. United States Trustee Statutory Fees: All quarterly fees due to the United States Trustee shall be paid. These Claims are unclassified under the Third Amended Plan and are not entitled to vote.
61. Other Secured Claims: Allowed Other Secured Claims shall be paid in full in cash, receive the collateral securing its Allowed Other Secured Claim or receive any other treatment that would render such Claim unimpaired. These Claims are unimpaired under the Third Amended Plan, are not entitled to vote and are deemed to accept.
62. Tranche B-2 Term Loan Secured Claims: Allowed Tranche B-2 Term Loans Claims, which claims are Impaired under the Third Amended Plan and are entitled to vote, shall either:
  - (a) In the event of a Sale Transaction constituting the Harbin Stalking Horse Bid, receive its Pro Rata Share of the total amount of Second Lien Loans issued in connection with the Sale Transaction in a principal amount equal to the Second Lien Loans Amount, and Cash equal to the Cash Purchase Price less (i) the DIP Obligations Payment Amount, (ii) the Exit Cost Amount, and (iii) the Wind-Down Amount;
  - (b) In the event of any other Sale Transaction, either (i) payment in full in cash of its Allowed Tranche B-2 Term Loan Secured Claim or (ii) if the Sale Transaction Proceeds are insufficient to pay all Allowed Tranche B-2 Term Loan Secured Claims in full in cash, and the Required Lenders (as defined in the Tranche B-2 Term Loan Credit Agreement) have so consented in writing at or prior to entry of the Sale Order, its Pro Rata Share of the Sale Transaction Proceeds available for distribution on account of the Allowed Tranche B-2 Term Loan Secured Claims; or

- (c) In the event of a restructuring, receive its pro rata share of 100% of the New Common Equity, subject to dilution by the Management Incentive Plan, and its pro rata share of \$50 million in principal amount of the Exit FLSO Facility Loans.
63. General Unsecured Claims, Convertible Unsecured Notes Claims, and Tranche B-2 Term Loan Deficiency Claims: These Claims are Impaired under the Third Amended Plan and are entitled to vote. Each Holder shall receive:
- (a) If and only if the Class 4 Conditions have been met:
    - (i) In the event of a Sale Transaction constituting the Harbin Stalking Horse Bid in which the Unsecured Creditor Consideration Trigger Event occurred on or before the closing of such Sale Transaction resulting in the issuance of the Junior Convertible Notes, its Pro Rata Share of the Junior Convertible Notes, or in the event of any other Sale Transaction, its pro rata share of not less than \$1 million in Cash; or
    - (ii) In the event of a Restructuring, at its own election either its pro rata share of not less than \$1 million in Cash, or the Class 4 Contingent Rights.
  - (b) If the Class 4 Conditions have not been met:
    - (i) In the event of a Sale Transaction its pro rata share of any Sale Transaction Proceeds remaining after payment of the Exit Cost Amount, Wind-Down Amount, DIP ABL FILO Facility Claims, DIP Term Facility Claims, Allowed Tranche B-2 Term Loan Secured Claims, and all other Claims that are senior to Class 4 Claims; or

- (ii) In the event of a Restructuring, each Claim will be cancelled, released, discharged and extinguished and shall receive no recovery on account of such claims.

- 64. Subordinated Securities Claims: Whether in the event of a Sale Transaction or Restructuring, Claims, shall be extinguished and receive no recovery or distribution. These Claims are Impaired under the Plan, are not entitled to vote and are deemed to reject.
- 65. Intercompany Claims: No property shall be distributed and each Intercompany Claim will either be Reinstated or cancelled and released at the option of the Debtors. In either case such Claims are not entitled to vote. Depending on the election, these Claims are either Impaired or Unimpaired under the Plan and are deemed to accept or to reject.
- 66. Intercompany Interests: No recovery or distribution, and in the event of a Restructuring, will be Reinstated solely to the extent necessary to maintain the Debtors' corporate structure, and in the event of a Sale Transaction, be treated in such manner as determined by the Successful Bidder. In either case such claims are not entitled to vote. Depending on the treatment, such Claims are either Impaired or Unimpaired under the Plan and are deemed to accept or to reject.
- 67. Equity Interests: No distribution on account of Equity Interests, which will be extinguished with no further force or effect. These Claims are Impaired under the Plan, are not entitled to vote and are deemed to reject.

### ***Exit Financing***

- 68. In the event of a Restructuring, the Debtors' exit financing will comprise the following:
  - (a) Exit Revolver/FILO Facility: New secured revolving credit and last out term loan facility;
  - (b) Exit FLFO Facility: New secured first-lien first-out term loan facility to be entered; and

- (c) Exit FLSO Facility: New secured first-lien second-out term loan facility.

***Executory Contracts and Unexpired Leases***

69. In the event of a Sale Transaction, any Executory Contract or Unexpired Lease will be deemed rejected on the Effective Date if it:
- (a) Is not assumed and assigned;
  - (b) Has not previously been rejected by order of the U.S. Court;
  - (c) Is not identified to be assumed in the Plan Supplement;
  - (d) Is not expressly assumed per the Plan;
  - (e) Has not expired or terminated on its own terms; or
  - (f) Has not been assumed or is not the subject of a motion to assume on the Confirmation Date.
70. In the event of a Restructuring, each Executory Contract or Unexpired Lease not previously assumed or rejected pursuant to an order of the U.S. Court, will be deemed assigned as of the Effective Date, except any Executory Contract or Unexpired Lease:
- (a) Identified on the Rejected Executory Contract/Unexpired Lease List;
  - (b) That is the subject of a separate motion or notice to reject pending as of the Effective Date; or
  - (c) That previously expired or terminated pursuant to its own terms.

***Compensation and Benefit Programs and Workers' Compensation Programs***

71. In the event of a Sale Transaction or Restructuring, all Compensation and Benefits Programs shall be treated as Executory Contracts under the Plan and deemed assumed or assumed and assigned on the Effective Date.

***Conditions Precedent to the Effective Date***

72. There are numerous conditions precedent to the Effective Date, including the following:
- (a) The U.S. Court shall have approved the Third Disclosure Statement, which condition precedent was satisfied on August 20, 2020 upon the Disclosure Statement Order being granted;
  - (b) The Confirmation Order shall have been entered by the U.S. Court;
  - (c) The Canadian Court shall have recognized the Confirmation Order in the Recognition Proceedings giving full force and effect to the Confirmation Order in Canada; and
  - (d) No termination event under the Restructuring Support Agreement shall have occurred.

***Releases***

73. The Third Amended Plan contains broad releases in favour of the following parties, among others (the “**Released Parties**”):
- (a) the Debtors;
  - (b) the Reorganized Debtor;
  - (c) the DIP Agents;
  - (d) the DIP Lenders;
  - (e) the ABL FILO Agent;
  - (f) the ABL Revolving Lenders;
  - (g) the ABL FILO Term Lenders;
  - (h) the Tranche B-2 Term Loan Agents;

- (i) the Tranche B-2 Term Loan Lenders;
  - (j) the New Lenders;
  - (k) the New Debt Agents;
  - (l) the members of the Ad Hoc Groups in their capacity as such;
  - (m) the Successful Bidder; and
  - (n) the respective Related Persons for each of the foregoing.
74. Pursuant to Article IX.C of the Third Amended Plan, each holder of a Claim that (a) submits a Ballot accepting the Plan or (b) submits a Ballot rejecting the Plan, but does not affirmatively opt-out of the Third-Party Release as provided on their respective Ballot shall be deemed to grant the Third-Party Release. Accordingly, each holder of a Claim that opts to reject the plan has the option to not grant the releases contained in Article IX.C of the Plan by making the appropriate selection on their respective Ballot.

#### **OVERVIEW OF THIRD DISCLOSURE STATEMENT**

75. The Third Disclosure Statement was developed for the purpose of providing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgement regarding their decision to vote to accept or reject the Plan, if such party is so entitled to vote and decides to do so to participate in the process.
76. The Third Disclosure Statement contains information on the following topics:
- (a) An overview of the Debtors' operations;
  - (b) Summary of events leading to the commencement of the Chapter 11 Cases;
  - (c) An overview of the Chapter 11 Cases;
  - (d) A summary of the Plan;

- (e) The capital structure and corporate governance of the reorganized Debtors;
  - (f) The process and outcome of the confirmation of the Plan;
  - (g) A comparison of alternatives to confirmation and consummation of the Plan;
  - (h) Various factors to be considered before voting;
  - (i) Details on securities law matters;
  - (j) Details on certain U.S. federal income tax consequences of the Plan; and
  - (k) A conclusion and recommendation by the Debtors.
77. The Third Disclosure Statement states that the boards of directors of GNC Holdings and its subsidiaries have unanimously approved the transactions contemplated by the Third Amended Plan and recommend that all creditors whose votes are being solicited submit ballots to accept the Third Amended Plan.
78. The Third Disclosure Statement also states that Consenting creditors holding approximately 92% of the Holders of Tranche B-2 Term Loan Secured Claims have already agreed to vote in favour of the Plan.
79. The Third Disclosure Statement provides information on the Debtors relationship with Harbin as follows:
- (a) In February 2018, GNC Holdings entered into a securities purchase agreement with Harbin pursuant to which GNC Holdings agreed to issue and sell to Harbin approximately \$300 million in aggregate of Series A Convertible Preferred Stock, which is convertible into common stock at a conversion price of \$5.35 per share. Subsequent to certain conversions, Harbin owned approximately 41% of the outstanding voting securities and had the right to designate up to five (5) individuals to serve on the board of directors; and

- (b) In February 2019, the Debtors completed the formation of a commercial joint venture in Hong Kong (the “**HK JV**”) with respect to its e-commerce business in the PRC in which they own 35% and Harbin owns 65%. The Debtors also anticipate completing the formation of a second, retail-focused joint venture in China (the “**China JV**”) with Harbin in the third quarter of 2020 in which the Debtors will own 35% and Harbin will own 65%.
80. The Third Disclosure Statement provides information on the Debtors relationship with International Vitamin Corporation (“**IVC**”), which is privately held by Aland Nutraceutical Group, a related party to Aland as lender under the Aland Subordinated Facility. In March 2019, the Debtors entered into a strategic joint venture with IVC regarding the Debtors manufacturing operations (the “**Manufacturing JV**” or “**Nutra**”). The Debtors currently own 32% of the Manufacturing JV with IVC owning the remaining 68%. The Company believes the Manufacturing JV enables its quality and R&D teams to continue to support product development and to increase its focus on product innovation, while IVC manages manufacturing and integrates with the Debtors’ supply chain.

## **REQUEST FOR RECOGNITION OF THE AUGUST 25 RECOGNITION ORDERS**

### **AMENDED FINAL CASH MANAGEMENT ORDER**

81. The Foreign Representative is seeking recognition of the Amended Final Cash Management Order.
82. The Final Cash Management Order, as described in the First Report, was granted by the U.S. Court on July 21, 2020 and recognized by the Canadian Court in the Recognition Proceedings on July 27, 2020.
83. After the Final Cash Management Order was entered, the U.S. Trustee requested an amendment to address the fact that certain of the Debtors’ banks that have not executed a Uniform Depository Agreement (“**UDA**”) with the U.S. Trustee in response to section 345(b) of the Bankruptcy Code. A UDA provides for collateralization of accounts held by the Debtors.

84. Specifically, the U.S. Trustee requested that the Final Cash Management Order be amended to provide that the Debtors be allowed to maintain accounts at banks that have not executed a UDA with the U.S. Trustee (collectively, the “**Non-UDA Accounts**”) provided that:
- (a) The balance of any Non-UDA Account shall not exceed US\$45,000 at any given time during the Chapter 11 Cases; and
  - (b) If the balance of any Non-UDA Account exceeds US\$45,000, any excess amount shall be transferred as soon as practicable into an account at a bank that has executed a UDA.
85. On consent of the parties, the U.S. Court entered the Amended Final Cash Management Order to reflect the foregoing on August 5, 2020.
86. The Information Officer has been informed by the Debtors that the amendments to the Amended Final Cash Management Order providing for the sweep of funds in excess of US\$45,000 described above are not intended to apply to the Debtor’s bank accounts located at Canadian banks. The Information Officer has been further informed that the draft order recognizing the August 25 Recognition Orders served by the Foreign Representative will be amended to reflect that fact and confirm that bank accounts of the Debtors at Canadian banks will not be swept in that manner.
87. Accordingly, and subject to the foregoing, the Information Officer is of the view that recognition of the Amended Final Cash Management Order is appropriate in the circumstances.

#### **THE NINTH LEASE REJECTION ORDER**

88. The Foreign Representative is seeking recognition of the Ninth Lease Rejection Order.

89. As described in the First Report, the U.S. Court had authorized the rejection of leases in furtherance of the Debtors' store rationalization strategy. Since the date of the First Report, a further three lease rejection Orders have been granted by the U.S. Court. Of these, only the Ninth Lease Rejection Order includes authorization to reject certain leases for stores in Canada. Accordingly, the Foreign Representative is not seeking recognition of the other Tenth Lease Rejection Order or the Eleventh Lease Rejection Order.
90. The Ninth Lease Rejection Order includes three Canadian store leases that were terminated effective as of July 30, 2020 (collectively, the "**July 30 Rejected Leases**"). The provisions of the Ninth Lease Rejection Order are substantially consistent with the First Lease Rejection Order and Third Lease Rejection Order, each of which was recognized by the Canadian Court pursuant to the Order granted July 27, 2020.
91. GNC Canada provided at least 30 days' notice to the landlords of the July 30 Rejected Leases prior to the effective date of the lease rejection and paid rent for the notice period.
92. Accordingly, the Information Officer is of the view that recognition of the Ninth Lease Rejection Order is appropriate in the circumstances.

#### **THE FURTHER REVISED BIDDING PROCEDURES MODIFICATION ORDER**

93. The Foreign Representative is seeking recognition of the Further Revised Bidding Procedures Modification Order. The purpose of the Further Revised Bidding Procedures Modification Order is to, *inter alia*:
  - (a) Retroactively extend the deadline (the "**Stalking Horse Deadline**") by which the Debtors may select a Stalking Horse Bidder and enter into a Stalking Horse Agreement from August 3, 2020 to August 7, 2020, the date of execution of the Stalking Horse Agreement;
  - (b) Update relevant dates and deadlines to reflect the modified schedule as previously noted; and
  - (c) Adjust the minimum Bid increment from \$5.0 million to \$2.5 million.

94. The Further Revised Bidding Procedures Modification Order explicitly specifies for the avoidance of doubt that, as the Debtors did not file a Stalking Horse Selection Notice within one business day after August 3, 2020, the dates in the Bidding Procedures Order were extended pursuant to paragraph 10 as previously described in this Second Report.
95. The Information Officer is of the view that the extension of the Stalking Horse Deadline does not prejudice any party at interest. Accordingly, the Information Officer is of the view that recognition of the Further Revised Bidding Procedures Modification Order, including Further Revised Bidding Procedures is appropriate in the circumstances.

#### **THE DISCLOSURE STATEMENT ORDER**

96. The Foreign Representative is seeking recognition of the Disclosure Statement Order. The Disclosure Statement Order provides, *inter alia*, that:
- (a) The U.S. Court has found and determined that:
    - (i) The Third Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code;
    - (ii) The notices and forms of ballots attached to the Third Disclosure Statement Order contain sufficient information and are appropriate in the circumstances;
    - (iii) The time period established to solicit votes on the Plan is a reasonable period of time for creditors to make an informed decision as to whether to accept or reject the Plan;
    - (iv) The solicitation and tabulation of votes procedures provide for a fair and equitable voting process;
    - (v) The notice and objection procedures with respect to the hearing regarding the Third Disclosure Statement Order were reasonable and appropriate; and

- (vi) The procedures regarding the Confirmation Hearing Notice and the contents of the Solicitation Package constitute sufficient notice to all interested parties.
- (b) The Disclosure Statement Notice and the Third Disclosure Statement is approved and the Debtors are authorized to distribute the Third Disclosure Statement and Solicitation Package;
- (c) The Confirmation Hearing shall be held on October 14, 2020 at 1:00 p.m. (prevailing Eastern Time), subject to certain provisions allowing for continuation of the Confirmation Hearing from time to time;
- (d) The Confirmation Objection Deadline shall be September 28, 2020 at 5:00 p.m. (prevailing Eastern Time), which may be extended by the Debtors;
- (e) The Voting Record Date with respect to all Claims shall be August 13, 2020;
- (f) The Debtors are authorized to transmit the Solicitation Package on or before August 28, 2020 or as soon as reasonably practicable thereafter;
- (g) The Plan Supplement shall be filed on or before September 21, 2020, subject to further amendment or supplements by the Debtors;
- (h) The Debtors shall publish the Confirmation Hearing Notice on or prior to August 26, 2020, or five business days after entry of the Disclosure Statement Order in the national editions of *USA Today*, *the Wall Street Journal*, and *the Globe and Mail*, and shall be authorized (but not required) to publish the Confirmation Hearing Notice in such trade or other local publications of general circulation as the Debtors shall determine. As provided for, the Debtors have indicated to the Information Officer of their intention to also publish the Confirmation Hearing Notice in *La Presse*, a French language newspaper based in the Province of Quebec; and

- (i) Ballots must be received by the Voting and Claims Agent on or before the Voting Deadline on September 28, 2020.

97. The Information Officer has reviewed the Disclosure Statement Order and is satisfied that the processes, timelines, and procedures provided for in the Disclosure Statement Order are adequate and reasonable in the circumstances. Accordingly, the Information Officer is of the view that recognition of the Disclosure Statement Order is appropriate in the circumstances.

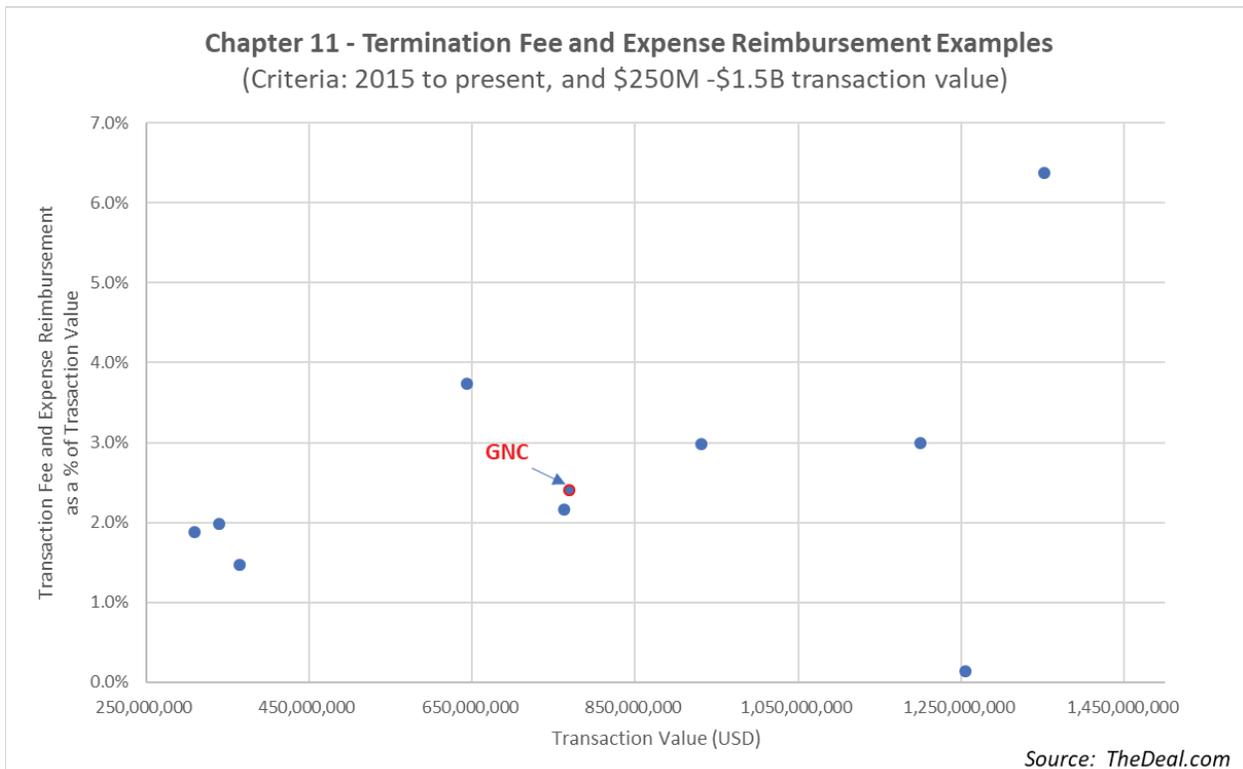
#### **THE STALKING HORSE APPROVAL ORDER**

98. The Foreign Representative is seeking recognition of the Stalking Horse Approval Order. The Stalking Horse Approval Order provides, *inter alia*, that:

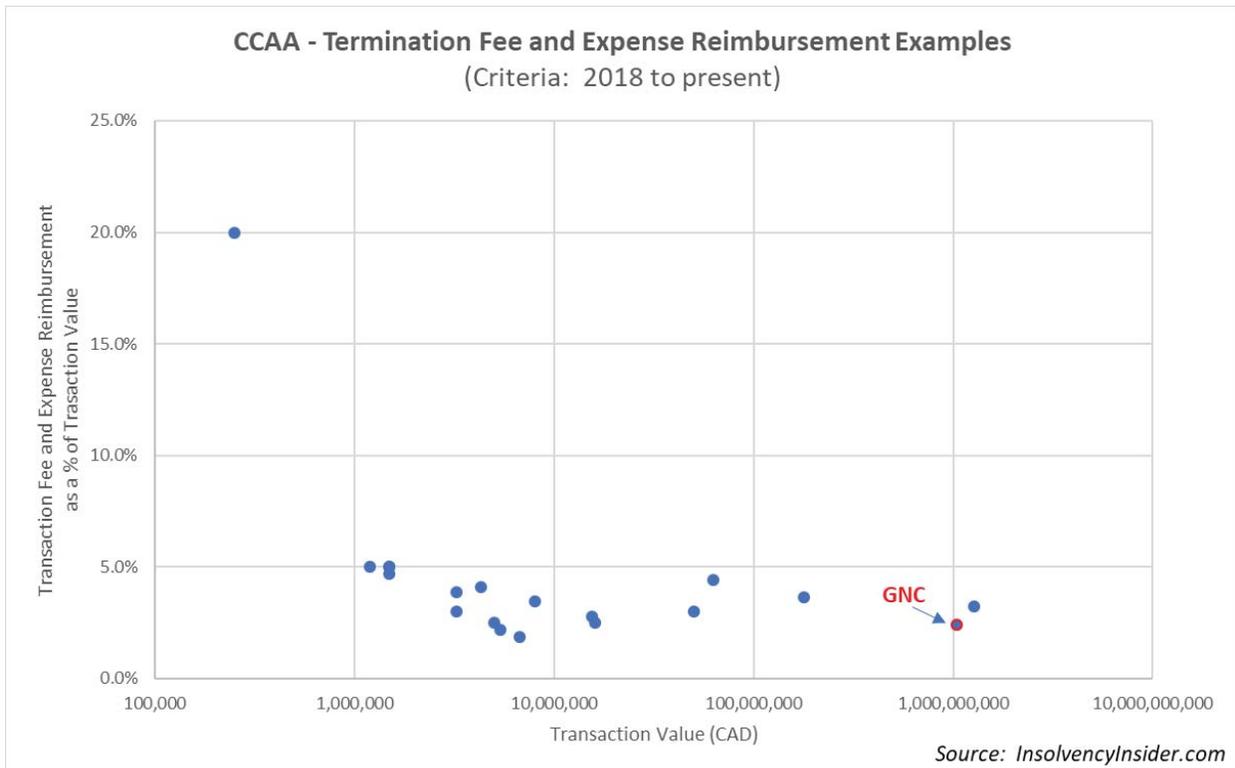
- (a) The U.S. Court has found and determined that:
  - (i) The Debtors and the Stalking Horse Bidder negotiated the Stalking Horse Agreement at arm's length and in good faith, without collusion;
  - (ii) The Stalking Horse Agreement represents the highest or otherwise best offer for the Assets that the Debtors have received to date;
  - (iii) Entry of the Stalking Horse Approval Order and authorizing the Debtors' to enter into and perform under the Stalking Horse Agreement and approval of the Bid Protections is in the best interests of the Debtors and their respective estates, creditors, and all other parties in interest; and

- (iv) The Bid Protections are commensurate to the real and substantial benefits conferred upon the Debtors' estates by the Stalking Horse Bidder; are reasonable and appropriate in light of the size and nature of the proposed sale contemplated, the commitments made by the Stalking Horse Bidder, and the efforts that have been and will be expended by the Stalking Horse Bidder; and are necessary to induce the Stalking Horse Bidder to continue to pursue such sale and continue to be bound by the Stalking Horse Agreement;
  - (b) The Debtors are authorized to enter into and perform under the Stalking Horse Agreement, subject to the solicitation of higher or otherwise better offers for the Assets;
  - (c) The Stalking Horse Agreement is authorized and approved, and the Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse Bid shall be deemed a Qualified Bid, for all purposes under the Bidding Procedures Order and Bidding Procedures;
  - (d) The Bid Protections are approved; and
  - (e) The Stalking Horse Approval Order does not approve the sale of the Assets under the Stalking Horse Agreement or authorize consummation of the Sale, such approval and authorization to be considered only at the Sale Hearing.
99. As noted above, the Stalking Horse Agreement provides for the Bid Protections which, subject to certain conditions and limitations as set out in section 7.14 of the Stalking Horse Agreement, are payable to the Buyer if a Third-Party Sale or Restructuring Transaction is consummated. The Bid Protections total \$18.2 million and consist of:
- (a) The Termination Fee in the amount of \$15.2 million; and
  - (b) The Expense Reimbursement to a maximum of \$3 million.

100. The Termination Fee equates to approximately 2.8% of the cash purchase price of \$550 million and approximately 2.0% of the aggregate purchase price of \$770 million, excluding Assumed Liabilities. The total Bid Protections of \$18.2 million equate to approximately 3.3% of the cash purchase price of \$550 million and approximately 2.4% of the aggregate purchase price of \$770 million, excluding Assumed Liabilities.
101. Data on break-fees and expense reimbursements (collectively, “**Bid Protection Amounts**”) approved in Chapter 11 proceedings is tracked by TheDeal.com. The Monitor obtained data from TheDeal.com for Bid Protection Amounts approved since January 2015 for transactions with a value greater than \$250 million. For this data set, Bid Protection Amounts range from approximately 0.1% to 6.4% of the transaction value, with a mean of approximately 2.7% and a median of 2.6%. The data obtained is summarized in the following scatter-chart, together with the Bid Protections provided for in the Stalking Horse Agreement:



102. Data on break-fees and expense reimbursements approved in CCAA proceedings since January 2018 is tracked by InsolvencyInsider.com. For this data set, Bid Protection Amounts range from approximately 1.9% to 20% of purchase price, with a mean of 4.5% and a median of 3.5%. The data is summarized in the following scatter-chart, together with the Bid Protections provided for in the Stalking Horse Agreement:



103. Based on the foregoing, it appears that Bid Protections are within market parameters.
104. Accordingly, the Information Officer is of the view that recognition of the Stalking Horse Approval Order is appropriate in the circumstances.

The Information Officer respectfully submits to the Court this, its Second Report.

Dated this 21<sup>st</sup> day of August, 2020.

**FTI CONSULTING CANADA INC.**

Solely in its capacity as Information Officer of GNC Holdings, Inc., General Nutrition Centres Company, GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding Inc., GNC International Holdings Inc., GNC China Holdco, LLC, GNC Headquarters LLC, Gustine Sixth Avenue Associates, Ltd., GNC Canada Holdings, Inc., GNC Government Services, LLC, GNC Puerto Rico Holdings, Inc., and GNC Puerto Rico, LLC, and not in its personal or corporate capacity.



Nigel D. Meakin  
Senior Managing Director



Jim Robinson  
Managing Director