

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N :

FISGARD CAPITAL CORPORATION

Applicant

- and -

ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE*  
ACT, R.S.O. 1990, c. C.43

**MOTION RECORD  
(Appointment of Receiver)  
(Returnable October 10, 2018)**

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Non-CCAA Monitor, and proposed Receiver

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**TAB 1**

Court File No.: CV-18-602596-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N :

FISGARD CAPITAL CORPORATION

Applicant

- and -

ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE*  
ACT, R.S.O. 1990, c. C.43

**NOTICE OF MOTION  
(Expand Receiver's Powers)  
(Returnable October 10, 2018)**

**THE APPLICANT**, Fisgard Capital Corporation, will make a motion to the court on October 10, 2018, at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) if necessary, abridging time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (b) an Order discharging Albert Gelman Inc. ("**AGI**") as non-CCAA Monitor (in this capacity, the "**Monitor**") appointed over the property municipally known as 218 Jerseyville Road, Brantford, Ontario (the "**Property**") pursuant to the Order of the Honourable Justice S.F. Dunphy, dated August 16, 2018 (the "**Monitorship Order**");

- (c) an Order appointing AGI as receiver over the Property (in this capacity, the “**Receiver**”)
- (d) such further and other relief as outlined in the Order attached at tab 6 to this motion record (the “**Proposed Receivership Order**”); and
- (e) such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) The Applicant is the first mortgagee over the Property;
- (b) The Respondent Islam Jassem (aka Islam Hammadi Jassem) (the “**Mortgagor**”) is the registered owner of the Property;
- (c) In June 2018, the Property was the subject of a drug raid. Three people were arrested as part of the drug raid including the Mortgagor’s brother and sister-in-law;
- (d) As part of the drug raid the police discovered significant quantities of fentanyl and cocaine at the Property;
- (e) On August 16, 2018 the Court granted the Monitorship Order which granted the Monitor certain powers including, but not limited to, the authority to retain third parties to conduct a narcotics investigation;
- (f) The Monitor retained Canadian Decon Solutions (“**CDS**”) to conduct the narcotics investigation which was conducted in mid September 2018;
- (g) The Monitor has received a report from CDS indicating fentanyl and cocaine contamination throughout the Property;
- (h) The Applicant has also received notice from the Mortgagor’s insurer that the insurance policy for the Property has been canceled effective October 11, 2018;

- (i) The Applicant, through counsel, gave the Mortgagor until October 4, 2018 at 12:00pm to obtain replacement insurance. To date, the Mortgagor has not advised the Applicant that it was able to obtain alternate insurance;
- (j) Both the Monitor and the Applicant have inquired about obtaining alternate insurance for the Property and both have been advised that they cannot obtain insurance for the Property until the Property is remediated;
- (k) CDS has advised the Monitor that it can remediate the Property and that it would require one week advanced notice before attending the Property to remediate;
- (l) The Applicant is extremely concerned about the degradation of the Property, particularly as the Property is about to be uninsured;
- (m) The Mortgagor's counsel has provided the Monitor and the Applicant with an agreement of purchase and sale for the Property (the "**APS**"). While the APS suggests that the proposed purchasers are aware of the drug raid, there is no evidence as to whether the proposed purchasers are aware of the narcotic contamination to the Property. The Applicant is hopeful that the Monitor, if appointed as the Receiver, will re-engage with the proposed purchasers regarding purchase of the Property;
- (n) It is both just and convenient to appoint the Receiver;
- (o) section 101 of the *Courts of Justice Act*;
- (p) rule 37 of the *Rules of Civil Procedure*; and
- (q) such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Affidavit of Angela Bull, sworn October 4, 2018, and the exhibits attached thereto;
- (b) the First Report of the Monitor, to be filed, and the appendices attached thereto; and
- (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

October 5, 2018

LERNERS LLP  
130 Adelaide Street West, Suite 2400  
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Lawyers for the Applicant

TO: THE ATTACHED SERVICE LIST

**FIGGARD CAPITAL CORPORATION**  
Applicant and Respondents

**ISLAM JASSEM et al.**  
Respondents

Court File No.: CV-18-602596-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**NOTICE OF MOTION**

**LERNERS LLP**  
130 Adelaide Street West, Suite 2400  
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Fax: 416.601.4123

Lawyers for the Applicant

**TAB 2**

Court File No.: CV-18-602596-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N :

FISGARD CAPITAL CORPORATION

Applicant

- and -

ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM

Respondent

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE*  
ACT, R.S.O. 1990, c. C.43

**AFFIDAVIT OF ANGELA BULL  
(Sworn October 4, 2018)**

I, Angela Bull, of the City of Victoria, in the Province of British Columbia, MAKE  
OATH AND SAY:

1. I am an employee of Fisgard Capital Corporation ("**Fisgard**"), the applicant in these proceedings. As such, I have knowledge to the matters hereinafter deposed to, except where stated to be on information and belief, and where so stated, I verily believe it to be true.
2. Fisgard is a corporation carrying on business as a mortgage investment corporation, as well as a mortgage lender, with domestic share corporations registered in Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Fisgard's head office is located in British Columbia.
3. On July 25, 2018 I swore an affidavit (the "**July Affidavit**") in support of appointing Albert Gelman Inc. ("**AGI**") as non-possessory receiver and monitor (in these capacities, the "**Monitor**") of certain real property municipally known as 218 Jerseyville Rd., Brantford, Ontario (the "**Property**"). This affidavit should be read in conjunction

with the July Affidavit. A copy of my affidavit sworn July 25, 2018 (without exhibits) is attached hereto as **Exhibit “A”**.

4. All terms not otherwise defined in this affidavit shall have the meanings ascribed to them in the July Affidavit.

### **BACKGROUND**

5. As further explained in the July Affidavit, Fisgard is the first mortgagee on the Property. In June 2018, the Property was the subject of a drug raid where quantities of fentanyl and cocaine were seized together with a number of firearms. The drug raid resulted in three arrests including the Mortgagor’s brother and sister-in-law.

6. By Order of the Honourable Justice Dunphy dated August 16, 2018 the Court appointed AGI as the Monitor of the Property (the “**Monitor Appointment Order**”). The Monitor’s powers included retaining a third party remediation company to inspect the Property for narcotics contamination. A copy of the Monitor Appointment Order is attached hereto as **Exhibit “B”**.

7. The Mortgagor has failed to make her mortgage payments for August and September 2018.

### **ACTIVITIES SINCE THE MONITOR APPOINTMENT ORDER**

#### **a. Canadian Decon Solutions Investigation**

8. I understand that following its appointment the Monitor retained Canadian Decon Solutions (“**CDS**”) to complete an inspection of the Property for narcotics contamination.

9. Following the Monitor’s appointment, the Monitor together with counsel to Fisgard contacted the Mortgagor to advise of the Monitor Appointment Order and try to arrange a mutually agreeable time for CDS to complete its investigation. During the course of this conversation the Mortgagor disclosed for the first time that it had retained Philip Okpala as counsel on this matter.

10. The Monitor also was in contact with the OPP regarding the CDS investigation. The Monitor advises that the OPP was concerned about obtaining peaceful access to the Property and suggested that the Monitor retain two off-duty police officers to assist with access to the Property. The Monitor coordinated with the OPP to arrange access to the Property on September 14, 2018.

11. The Monitor, together with Fisgard's counsel, coordinated access to the Property with Mr. Okpala who advised the Mortgagor would not oppose access on September 14, 2018.

12. It is my understanding that CDS completed its investigation, and while the Monitor will provide particulars of the CDS investigation together with a copy of CDS' report, it is my understanding that CDS discovered widespread cocaine and fentanyl contamination throughout the home.

**b. Marketing and Sale of the Property**

13. In the days preceding the Monitor Appointment Order, Fisgard discovered that the Property was being marketed for sale. Following the Monitor Appointment Order, the Mortgagor, through counsel, asked whether the Property could remain for sale. Counsel to Fisgard advised that the Monitor Appointment Order leaves the Mortgagor in possession of the Property and thus has no authority to continue or terminate marketing of the Property.

14. On or about September 24, 2018 the Monitor and Fisgard's counsel were advised of a "firm" agreement of purchase and sale with respect to the Property (the "APS"). I understand that the Monitor will be providing further details about the APS and will recommending a sealing order with respect to certain aspects of the APS. I can advise that the APS contemplates a November 16, 2018 and contains a provision wherein the purchasers acknowledge that they are aware of the drug raid at the Property.

**c. Insurance Cancellation**

15. The Mortgagor's insurance for the Property lists Fisgard as loss payee. By letter dated September 25, 2018, the Mortgagor's insurer advised Fisgard that it would be cancelling the insurance policy over the Property for non payment effective October 11, 2018. A copy of the letter from the Mortgagor's insurer is attached hereto as **Exhibit "C"**.

16. Fisgard's counsel wrote to the Mortgagor's counsel advising that Fisgard had been advised of insurer's pending cancellation of insurance over the Property. Fisgard's counsel provided the Mortgagor until noon on October 4, 2018, to provide evidence of suitable insurance over the Property. A copy of the e-mail from Domenico Magisano to Philip Okpala dated October 1, 2018 is attached hereto as **Exhibit "D"**.

17. Fisgard has inquired as to whether it could obtain replacement insurance for the Property. It has been advised that the Property cannot be insured until it has been fully remediated from the narcotics contamination. I understand that the Monitor has made similar inquiries of certain insurers and has received the same response.

### **NEED FOR POSSESSORY RECEIVER**

18. In spite of the fact that the Mortgagor did not advise of the insurer's decision to cancel its insurance policy, the Mortgagor was afforded the opportunity to obtain replacement insurance. To date, Fisgard has not received confirmation that suitable replacement insurance has been obtained. There is now a possibility, and perhaps likelihood, that the Property will be uninsured unless and until CDS can complete a full remediation of the Property.

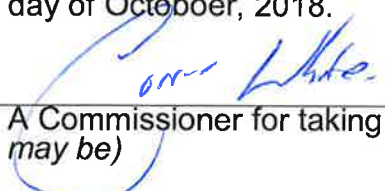
19. Even if replacement insurance is found, Fisgard is concerned about the Property being remediated while the Mortgagor remains in possession. In particular, Fisgard is concerned that if the Mortgagor remains in possession, further fentanyl and cocaine could be introduced to the Property after remediation has been completed rendering the remediation process useless.

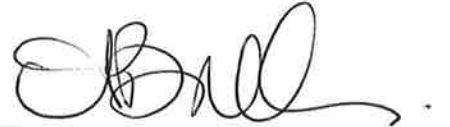
20. I also understand that if the Monitor is granted expanded powers as Receiver, to take possession of the Property and control of the marketing process, they will reach

out to the purchasers under the APS to assess their willingness to complete the transaction with the Receiver as vendor (and with certain amendments to account for the fact that the Receiver would be selling the Property).

21. The Monitor has provided a consent to act as a receiver which is attached hereto as **Exhibit "E"**.

SWORN BEFORE ME at the City of Victoria,  
in the Province of British Columbia, this 4  
day of October, 2018.

  
A Commissioner for taking Affidavits (or as  
may be)

  
Angela Bull

Corrie White  
Commissioner for taking affidavits  
for British Columbia  
Commission 2016 - 0165  
Expires February 28, 2019  
3378 Douglas Street  
Victoria, BC V8Z 3L3

THE FOLLOWING IS EXHIBIT "A"

TO THE AFFIDAVIT OF ANGELA BULL

SWORN BEFORE ME THIS 4<sup>th</sup> DAY OF OCTOBER, 2018.



---

A Commissioner, etc.

Carrie White  
Commissioner for taking affidavits  
for British Columbia  
Commission 2016 – 0165  
Expires February 28, 2019  
3378 Douglas Street  
Victoria, BC V8Z 3L3

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**FISGARD CAPITAL CORPORATION**

Applicant

- and -

**ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM**

Respondent

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE*  
ACT, R.S.O. 1990, c. C.43

**AFFIDAVIT OF ANGELA BULL  
(Sworn July 25, 2018)**

I, Angela Bull, of the City of Victoria, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am an employee of Fisgard Capital Corporation ("**Fisgard**"), the applicant in these proceedings. As such, I have knowledge to the matters hereinafter deposed to, except where stated to be on information and belief, and where so stated, I verily believe it to be true.

2. Fisgard is a corporation carrying on business as a mortgage investment corporation, as well as a mortgage lender, with domestic share corporations registered in Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Fisgard's head office is located in British Columbia.

**JASSEM OBTAINED A MORTGAGE WITH FISGARD**

3. On March 16, 2017, Fisgard offered financing to the respondent, Islam Jassem aka Islam Hammadi Jassem (the "**Mortgagor**"), in the amount of \$780,000, at an interest rate of 8.4% compounded monthly, for a term of one year (the "**Loan**"), to

purchase a property municipally known as 218 Jerseyville Road, Brantford, Ontario (the "**Property**"). A copy of the commitment letter dated March 16, 2017, is attached hereto as **Exhibit "A"** (the "**Commitment Letter**").

4. The Loan was secured by a Charge/Mortgage, registered on title to the Property on July 20, 2017, as instrument number BC320787 (the "**Mortgage**"), together with a General Assignment of Rents, registered as instrument number SC1468521. Due to a typographical error during the registration of the Mortgage, the Mortgage was incorrectly registered on title to "Islam Jassam", instead of "Islam Jassem". A copy of the parcel register for the Property is attached hereto as **Exhibit "B"** (the "**Parcel Register**").

5. A copy of the Mortgage, Mortgage Schedule, Standard Charge Terms and General Assignment of Rents are attached hereto and marked as **Exhibit "C"**. Payments under the Loan are due on the 15<sup>th</sup> of each month from September 15, 2017, to August 15, 2018. Payments are made by Pre Authorized Payments ("**PAP**").

6. The Loan was also secured by a promissory note, executed by the Mortgagor in favour of Fisgard, promising to pay the principle sum of the Loan and interest as set out in the Commitment Letter (the "**Promissory Note**"). A copy of the Promissory Note dated July 19, 2017, is attached hereto and marked as **Exhibit "D"**.

7. Finally, the Loan was also guaranteed by Asia Kazem (the "**Guarantor**") pursuant to a guarantee and postponement of claim dated July 19, 2017 (the "**Guarantee**") in favour of Fisgard. A copy of the Guarantee is attached hereto and marked as **Exhibit "E"**.

## **PRIOR DEFAULTS**

8. The Mortgagor made her first three payments due under the Mortgage, but the December 15, 2017, payment was returned "not sufficient funds" ("**NSF**").

9. On December 28, 2017, Fisgard instructed its lawyers, Lerner LLP ("**Lerner**"), to issue a demand letter and Notice of Intention to Enforce Security under section

244(1) of the *Bankruptcy and Insolvency Act* ("**BIA**"), copies of which are attached hereto and marked as **Exhibit "F"**.

10. On January 10, 2018, Fisgard instructed Leners to issue a Notice of Sale under the Mortgage, a copy of which is attached hereto and marked as **Exhibit "G"**.

11. The Mortgagor failed to make her January and February, 2018, payments.

12. I am advised by Leners and do verily believe that on February 22, 2018, the Mortgagor contacted Leners and advised that she would be paying the arrears owing and that she had missed the Loan payments because she was sick. Leners wrote back to the Mortgagor advising that they required an appraiser to inspect the property. The Mortgagor advised that her lawyer would be contacting Leners. Copies of this email correspondence is attached hereto and marked as **Exhibit "H"**.

13. The Mortgagor paid her outstanding arrears and other amounts on March 13, 2018, and agreed to allow an appraiser to enter the Property and conduct an appraisal on March 16, 2018 (the "**Appraisal**").

14. The Appraisal was conducted, the Mortgage was put back into good standing, and the Mortgagor made her April, May, and June, 2018, Loan payments.

15. The Mortgagor's July, 2018, Loan payment was returned marked "NSF".

16. Fisgard is not prepared to renew the Mortgage and therefore it will mature and become due in full on August 15, 2018. Fisgard sent a maturity notice to the Mortgagor on May 16, 2018 (the "**Maturity Notice**"), that was returned to Fisgard marked as "unclaimed", a copy of which is attached hereto and marked as **Exhibit "I"**.

### **OCCUPIERS WERE CHARGED WITH TRAFFICKING NARCOTICS**

17. On July 10, 2018, Fisgard learned that on June 7, 2018, Ontario Provincial Police (the "**OPP**" or "**Police**") executed a search warrant at the Property as part of an ongoing criminal investigation (the "**Raid**").

18. I spoke to Detective Constable Cindy Schuffels (“**DC Schuffels**”) with the Asset Forfeiture and Community Street Crime Units of the OPP on or about July 10, 2018. I am advised by Lerner and do verily believe that they also spoke to DC Schuffels on or about July 11, 2018. As a result of these conversations with DC Schuffels, I have learned the following facts regarding the Property:

- (a) Police seized large quantities of fentanyl and cocaine, both controlled substances pursuant to Schedule I of the *Controlled Drugs and Substances Act* (S.C. 1996, c. 19) (the “**CDSA**”), and firearms from the Property;
- (b) Police were required to enter and investigate the Property wearing hazardous material (“**Hazmat**”) suits due to the extremely toxic and potentially fatal nature of fentanyl;
- (c) Police arrested three individuals found at-scene:
  - (i) Jassem Hamdi Jassem (the Mortgagor’s brother);
  - (ii) Dila Bataineh (the Mortgagor’s sister-in-law); and
  - (iii) Roger Vanevery (collectively, the “**Accused**”);
- (d) all three Accused were charged with:
  - (i) possession of Schedule 1 controlled substances, including fentanyl, for the purpose of trafficking, contrary to the *CDSA*;
  - (ii) unauthorized possession of a firearm contrary to the *Criminal Code of Canada* (the “**Criminal Code**”); and
  - (iii) careless storage of a firearm contrary to the *Criminal Code*;
- (e) Police broke down the front door of the house on the Property during the Raid;

- (f) after conducting the Raid and completing their investigation at the Property, the Police released the Property back to the Mortgagor later that same day;
- (g) Police have not returned to the property and do not know the status of the Property after it was returned to the Mortgagor; and
- (h) the police are hopeful, but cannot guarantee that all of the drugs were removed from the Property.

19. I am told by Lerner, and do verily believe, that they have spoken with different companies and individuals who are experts in fentanyl remediation, namely individuals from "Canadian Decon Solutions" and "Mayken Hazmat Solutions Ltd". They have advised us that fentanyl is extremely toxic and can be fatal if not disposed of properly.

#### **FISGARD'S CONTACT WITH THE MORTGAGOR**

20. As referenced above, the Maturity Notice was returned unclaimed.

21. On July 10, 2018, the same day that I learned about the Raid, I attempted to contact the respondents using all three numbers that I had on file for them:

- (a) I called the primary number provided for the Mortgagor, and heard an automatic message stating that the phone number was out of service;
- (b) I called the alternate number provided for the Mortgagor, however no one answered and there was no ability to leave a message; and
- (c) I called the number provided for the Guarantor, and heard an automatic message stating that the phone number was out of service.

22. On July 20, 2018, my manager, Joanne Vickery, received a phone call from the Mortgagor. I am advised by Ms. Vickery, that the Mortgagor indicated that July's payment would be returned NSF but that she would have the funds to pay July's payment shortly.

23. I am advised by Lerner, and do verily believe, that they attempted to call the Mortgagor on July 20 and 23, 2018, but that both times the calls were not answered and they could not leave a voicemail.

24. I am advised by Lerner, and do verily believe, that they sent the Mortgagor emails on July 20 and 23, 2018, copies of which are attached hereto and marked as **Exhibit "J"**. As of swearing this affidavit, the Mortgagor has not responded to these emails.

25. Fisgard is unaware of the current state of the property, including being unaware as to:

- (a) whether anyone, including the Mortgagor, is living at or occupying the Property;
- (b) the current state of repair of the Property, including as to whether damages from the Raid have been repaired; and
- (c) whether the Raid caused any additional damage;

26. Furthermore, the Appraisal indicates that the Property's water supply comes from a private well and that its sewer system is a septic tank. Fisgard is unaware as to whether the well-water or septic system has been contaminated with fentanyl or other drugs, or whether any fentanyl or other drugs were deposited or flushed in the well-water or septic system either before or during the Raid.

27. Fisgard is unaware as to whether the soil, groundwater, or other parts of the Property have been contaminated by fentanyl or other drugs.

#### **APPOINTMENT OF A MONITOR**

28. Fisgard seeks an order appointed Albert Gelman Inc ("**Albert Gelman**") as monitor over the assets, undertakings and properties of the Mortgagor (the "**Monitor**"). Fisgard expects that Albert Gelman, if appointed, will retain the necessary experts to inspect the Property and advise as to next steps.

29. I have reviewed the Parcel Register and note that there are no other registrants on title aside from Fisgard.

30. I am advised by Lerner, that Albert Gelman has consented to act as Monitor. A copy of the executed Consent will be attached to the Application Record at Tab 5.

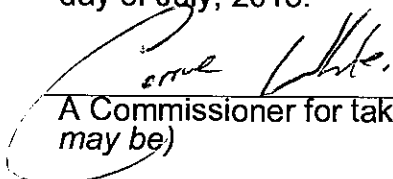
31. Fisgard will be able to better determine what additional relief, if any, is required after Albert Gelman completes its investigation of the Property.


32. For the forgoing reasons, I believe that the appointment of a Monitor over the Property would be just and convenient as it will ensure that the Property is dealt with appropriately, safely, and fairly.

33. Fisgard intends to proceed immediately with the relief sought at subparagraphs 1(a), (b), (c) of the Notice of Application. However, Fisgard is seeking to adjourn the relief sought at subparagraph 1(d) of the Notice of Application *sine die*, returnable on seven days' notice to the respondents.

34. I swear this affidavit in support of the Application by Fisgard for the appointment of a Monitor over the Property and for no other purpose.

SWORN BEFORE ME at the City of Victoria,  
in the Province of British Columbia, this 25<sup>th</sup>  
day of July, 2018.

  
A Commissioner for taking Affidavits (or as  
may be)

  
Angela Bull

Corrie White  
Commissioner for taking affidavits  
for British Columbia  
Commission 2016 – 0165  
Expires February 28, 2019  
3378 Douglas Street  
Victoria, BC V8Z 3L3

**FIGGARD CAPITAL CORPORATION**  
Applicant

**ISLAM JASSEM et al.**  
Respondent

Court File No.:

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SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**AFFIDAVIT OF ANGELA BULL  
(Sworn July 25, 2018)**

**LERNERS LLP**  
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Fax: 416.867.2448

**Lawyers for the Plaintiff**

**THE FOLLOWING IS EXHIBIT "B"**

**TO THE AFFIDAVIT OF ANGELA BULL**

**SWORN BEFORE ME THIS <sup>4<sup>th</sup></sup> DAY OF OCTOBER, 2018.**



\_\_\_\_\_  
A Commissioner, etc.

Corrie White  
Commissioner for taking affidavits  
for British Columbia  
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Victoria, BC V8Z 3L3

Court File No. CV-18-602596-00CL

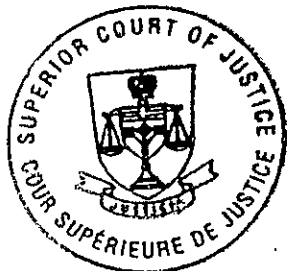
**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )

THURSDAY, THE 16<sup>TH</sup>

JUSTICE S.F. DUNPHY )

DAY OF AUGUST, 2018



**FISGARD CAPITAL CORPORATION**

Applicant

- and -

**ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM**

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, c. C.43

**ORDER  
(appointing Non-CCAA Monitor)**

**THIS APPLICATION** made by the applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Albert Gelman Inc. ("**Albert Gelman**") as non-CCAA Monitor (in such capacities, the "**Monitor**") without security, in the terms set out below, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Angela Bull sworn July 25, 2018, and the Exhibits thereto, the supplementary affidavit of Victoria Gifford, sworn August 15, 2018, and the Exhibits thereto, and the factum and book of authorities of the applicant and on hearing the submissions of counsel for the applicant, on being advised by counsel for the applicant that the Ontario Provincial Police take no position on the relief sought in the Amended Notice of Application, no one appearing for either of the Respondents or any

- 2 -

other proper party although duly served as appears from the affidavits of service of Victoria Gifford sworn August 8, August 10, and August 15, 2018, and on reading the consent of Albert Gelman to act as the Monitor,

### **SERVICE**

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

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Albert Gelman Inc. is hereby appointed Monitor, without security, and with only the powers granted below, of the real property known municipally as 218 Jerseyville Road, Brantford, Ontario, which is more particularly described at **Schedule "A"** to this Order, together with the contents contained therein (the "**Property**"), which is the property of Islam Jassem (aka Islam Hamadi Jassem) ("**Jassem**").

### **MONITOR NOT IN POSSESSION OF THE ASSETS**

3. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property without further Order of the Court.

4. **THIS COURT ORDERS** Jassem shall remain in possession of the Property, but shall not take any steps to dissipate the Property.

### **MONITOR'S POWERS**

5. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

- (a) to engage consultants, appraisers, agents, experts, counsel and such other persons from time to time and on whatever basis, including on a temporary

- 3 -

basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;

(b) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and the Monitor, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and

(c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR**

6. **THIS COURT ORDERS** that (i) Jassem, (ii) all of their current and former agents, accountants, legal counsel and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith grant immediate and continued access to the Property to the Monitor.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Jassem, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the

granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

9. **THIS COURT ORDERS** that the Monitor shall have access to the Property at any time or times, including evenings, weekends and holidays, and Jassem shall take all reasonable steps to ensure that the Monitor will have such access, provided however that the Monitor shall exercise its access to the Property in such a manner as to minimally interfere with the affairs of Jassem.

10. **THIS COURT ORDERS** that, for greater certainty and without limiting the generality of the forgoing, the Monitor's authorized access to the Property includes but is not limited to access to inspect and appraise it, to perform environmental and narcotics testing on any parts of it, including testing of its water supply, ground water, septic system, and soil, and any other investigative measures necessary to determine the extent of any contamination of the Property.

11. **THIS COURT ORDERS** that, notwithstanding that the Monitor is non-possessory, if the Monitor determines that the Property has been abandoned, or that the Monitor cannot get access to the Property from Jassem, the Monitor is hereby authorized and directed to seek the assistance of the Brantford County Ontario Provincial Police in gaining access to the Property.

#### **NO PROCEEDINGS AGAINST THE MONITOR**

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

#### **NO PROCEEDINGS AGAINST JASSEM OR THE PROPERTY**

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

14. **THIS COURT ORDERS** that notwithstanding paragraph 13, the Applicant may issue a demand letter, Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3 (the "BIA"), and/or a Notice of Sale Under Charge/Mortgage pursuant to section 26(1) and 31(1) of the *Mortgages Act*, R.R.O. 1990, c. M.40, without further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that all rights and remedies against Jassem, the Monitor, or affecting the Property, are hereby stayed and suspended except with the written consent of the Monitor or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA and further provided that nothing in this paragraph shall (i) empower the Monitor or Jassem to carry on any business which Jassem is not lawfully entitled to carry on, (ii) exempt the Monitor or Jassem from compliance with statutory or regulatory provisions

relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE MONITOR**

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

#### **EMPLOYEES**

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE MONITOR'S LIABILITY**

19. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by section 14.06 of the BIA or by any other applicable legislation.

#### **MONITOR'S ACCOUNTS**

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

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

#### **FUNDING OF THE MONITOR**

22. **THIS COURT ORDERS** that the Monitor be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000.00 (or such greater amount as this Court may by further

Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Monitor by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Monitor's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Monitor's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

#### **SERVICE AND NOTICE**

26. **THIS COURT ORDERS** that the e-mail service of documents shall be valid and effective service on transmission.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with paragraph 26 is not practicable, the Monitor is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Jassem's creditors or other

interested parties at their respective addresses as last shown on the records of Jassem and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a possessory receiver or trustee in bankruptcy of Jassem.

30. **THIS COURT ORDERS** that for greater certainty, the Monitor need not send notices under section 245 of the BIA.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

**ADDITIONAL RELIEF TO CORRECT NAME ON PARCEL REGISTER**

35. **THIS COURT ORDERS** that the Land Registrar for the Land Titles Division of Brant (No. 2) (the "Land Registrar") is authorized and directed to amend the following registrations against the Property to show the Chargor and the Assignor as "ISLAM JASSEM":

(a) Charge registered as Instrument No. BC320787 on July 20, 2017, in favour of Fisgard Capital Corporation securing the principal sum of \$780,000; and

(b) General Assignment of Rents registered as Instrument No. SC1468521 on July 20, 2017, in favour of Fisgard Capital Corporation,

which registrations incorrectly described the Chargor and Assignee as "ISLAM JASSAM" as a result of a typographical error on the aforesaid registrations.

36. **THIS COURT FURTHER ORDERS** that the Land Registrar is authorized to delete from the Parcel Register this Order upon the discharge or deletion of the aforesaid registrations.

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

AUG 16 2018

PER / PAR: RW

- 11 -

**SCHEDULE "A"**

PT LT 53, CON 3 TWP BRANTFORD, PT 2, 2R6680; COUNTY OF BRANT

PIN 32226-0152 (LT)

Being municipally known as 218 Jerseyville Road, Brantford, Ontario

**SCHEDULE "B"**

**MONITOR CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

37. THIS IS TO CERTIFY that Albert Gelman Inc, the non-CCAA Monitor (the "**Monitor**") of the real property known municipally as 218 Jerseyville Road, Brantford, Ontario (the "**Property**"), which is the property of Islam Jassem (aka Islam Hamadi Jassem) ("**Jassem**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Order**") made in an action having Court file number CV-18-602596-00CL, has received as such Monitor from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Monitor is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Albert Gelman Inc, solely in its capacity  
as Monitor of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

FIGGARD CAPITAL CORPORATION  
Applicant and Respondents

ISLAM JASSEM et al.  
Respondents

Court File No.: CV-602596-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER  
(Appointment of Non-CCAA Monitor)**

LERNERS LLP  
130 Adelaide Street West, Suite 2400  
Toronto, ON M5H 3P5

Domenico Magisano LS#: 45725E  
dmagisano@lerner.ca  
Tel: 416.601.4121  
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Christopher Shorey LS#: 70135B  
cshorey@lerner.ca  
Tel: 416.601.2389  
Fax: 416.867.2448

Lawyers for the Applicant

**THE FOLLOWING IS EXHIBIT "C"**

**TO THE AFFIDAVIT OF ANGELA BULL**

**SWORN BEFORE ME THIS <sup>4th</sup> DAY OF OCTOBER, 2018.**

  
A Commissioner, etc.

Corrie White  
Commissioner for taking affidavits  
for British Columbia  
Commission 2016 – 0165  
Expires February 28, 2019  
3378 Douglas Street  
Victoria, BC V8Z 3L3



#3540

REGISTERED MAIL

SEPT. 25 2018

9998-20900  
FISGARD CAPITAL CORPORATION  
3378 DOUGLAS STREET  
3378 DOUGLAS STREET  
VICTORIA BC V8Z 3L3

Reference: Termination of Policy No. FA769462  
Name of Insured: JASSEM ISLAM  
218, JERSEYVILLE RD  
BRANTFORD ON N3T 5M1

Type of insurance: PROPERTY  
Policy termination date: 2018-10-11  
Reason: NON-COMPLIANCE WITH PAYMENT CONDITIONS

Dear Sirs,

Please be advised that the coverage under the above noted policy will be terminated on the date specified, in accordance with the terms and conditions of the policy.

We recommend that you take the necessary steps to protect your insurable interest prior to the termination date.

Yours truly,

Underwriting Department

Agent name: LILIAN HEE-KARSTADT INS AND FIN  
(416) 622-1200

© State Farm and related trademarks and logos are registered trademarks owned by State Farm Mutual Automobile Insurance Company, used under licence by Certas Home and Auto Insurance Company.

Underwritten by Certas Home and Auto Insurance Company

THE FOLLOWING IS EXHIBIT "D"

TO THE AFFIDAVIT OF ANGELA BULL

SWORN BEFORE ME THIS 4<sup>th</sup> DAY OF OCTOBER, 2018.

  
\_\_\_\_\_  
A Commissioner, etc.

Corrie White  
Commissioner for taking affidavits  
for British Columbia  
Commission 2016 – 0165  
Expires February 28, 2019  
3378 Douglas Street  
Victoria, BC V8Z 3L3

**Victoria L. Gifford**

---

**From:** Domenico Magisano  
**Sent:** October 01, 2018 5:30 PM  
**To:** Philip Okpala  
**Cc:** 'BGelman@albertgelman.com'  
**Subject:** RE: 218 Jerseyville Rd, Brantford, Ontario (the "Property")

**Importance:** High

Mr. Okpala,

We have received the APS together with the purported waivers of conditions and thank you for same. Unfortunately, the APS and the waivers do not address the fact that your client's insurer has cancelled insurance on the Property effective October 11, 2018. This means that, absent a new insurance policy, the Property will be uninsured from October 12, 2018 until closing. We also understand that absent remediation to the Property, it will be extremely difficult to obtain insurance. This is unacceptable to my client.

Please be advised that, unless my client receives evidence (which they can independently verify) that there is suitable insurance on the property naming my client as loss payee by noon on October 4, 2018, it will take whatever steps are required (on an urgent basis) to ensure the Property is adequately protected. These steps include, but not limited to, enhanced powers for the Non-CCAA Monitor so that it may take possession of the Property and ensure that it can obtain insurance for the Property.

We look forward to your client providing confirmation of continued insurance ASAP and in any event before noon on October 4, 2018.

Yours truly

Dom

THE FOLLOWING IS EXHIBIT "E"

TO THE AFFIDAVIT OF ANGELA BULL

SWORN BEFORE ME THIS 4<sup>th</sup> DAY OF OCTOBER, 2018.



\_\_\_\_\_  
A Commissioner, etc.

Corrie White  
Commissioner for taking affidavits  
for British Columbia  
Commission 2016 - 0165  
Expires February 28, 2019  
3378 Douglas Street  
Victoria, BC V8Z 3L3

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

FISGARD CAPITAL CORPORATION

Applicant

- and -

ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM  
Respondents

**APPLICATION UNDER SECTION 101 OF THE COURTS OF  
JUSTICE ACT, R.S.O. 1990, c. C.43, as amended**

**CONSENT**

ALBERT GELMAN INC. HEREBY CONSENTS to the appointment as Receiver of the assets, undertakings and properties of the respondent, Islam Jassem (aka Islam Hammadi Jassem), under the terms of an Order which will be sought from this Honourable Court in this matter.

Dated this 4 day of October, 2018

**ALBERT GELMAN INC**

Per: 

As proposed Reciever and not in any other  
corporate or personal capacity

**FISGARD CAPITAL CORPORATION**  
Applicant and Respondent

**ISLAM JASSEM et al.**  
Respondent

Court File No.: CV-18-602596-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**AFFIDAVIT OF ANGELA BULL  
(Sworn October 4, 2018)**

**LERNERS LLP**  
130 Adelaide Street West, Suite 2400  
Toronto, ON M5H 3P5

**Domenico Magisano LS#: 45725E**  
dmagisano@lerner.ca  
Tel: 416.601.4121  
Fax: 416.601.4123

Lawyers for the Applicant

**TAB 3**

Court File No. CV-18-602596-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**FISGARD CAPITAL CORPORATION**

Applicant

- and -

**ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM**

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, c. C.43

**FIRST REPORT OF ALBERT GELMAN INC.  
IN ITS CAPACITY AS COURT-APPOINTED NON-CCAA MONITOR**

(Dated October 5, 2018)

**I. INTRODUCTION**

1. This first report (“**First Report**”) is filed by Albert Gelman Inc. (“**AGI**”) in its capacity as Non-CCAA Monitor (the “**Monitor**”), appointed pursuant to the Order of the honourable Mr. Justice Dunphy of the Ontario Superior Court of Justice, Commercial List, dated August 16, 2018 (the “**Appointment Order**”), without security, of the real property known municipally as 218 Jerseyville Road, Brantford, Ontario (hereinafter the “**Property**”), together with the contents contained therein, which is the property of Islam Jassem (aka Islam Hamadi Jassem) (“**Jassem**”).

2. A copy of the Appointment Order is attached hereto as **Appendix “A”**.

**II. PURPOSE OF THIS REPORT**

3. The purpose of the First Report is to update the Court with respect to the actions and activities of the Monitor, including advising the Court of the Agreement of Purchase and Sale between the Jassem and the Purchaser (defined below), and to seek an order:

- a. approving this First Report, including the actions and activities of the Monitor described herein,
- b. approving the First Confidential Report of the Monitor dated October 5, 2018 (“**First Confidential Report**”) pertaining to the sale of the Property accompanied with an Order sealing same until further order of the Court;
- c. approve the Monitor’s interim statement of receipts and disbursements as of October 5, 2018;
- d. approving the professional fees and disbursements of the Monitor to October 5, 2018, including the final accruals set out therein; and,
- e. providing for such further and other relief as this Honourable Court may deem just.

### III. SCOPE AND TERMS OF REFERENCE

4. This First Report has been prepared to assist the Court in making a determination of the relief sought by the Monitor and the Applicant. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose. The Monitor does not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

### IV. BACKGROUND

5. The application record of Fisgard Capital Corporation (“**Fisgard**” or the “**Applicant**”) dated August 1, 2018 (“**Application Record**”) includes confirmation that Jassem is the owner of the Property.

6. The Property is comprised of a detached two-storey residential home built in 2009 which is approximately 5,600 square feet in size (including basement), located on a large parcel of land in Brantford, Ontario. The surrounding properties are comprised of large residential homes and farm land. The Property does not have municipal water and waste services, so it has a well and a septic tank onsite.

7. The Property was the subject of a criminal investigation and drug raid (“**Raid**”) in which three individuals were arrested, and the police seized large quantities of fentanyl and cocaine from the residence.

## **V. APPOINTMENT AND DISCUSSIONS WITH STAKEHOLDERS**

### The Police

8. The Monitor’s initial focus at the outset of its appointment was to confirm details of the Raid, including the types of drugs seized by the Ontario Provincial Police (“**Police**”), in order to engage the appropriate company to conduct narcotics testing in accordance with paragraph 10 of the Appointment Order.

9. The Monitor contacted several representatives of the Police, including Detective Constable Cindy-Ann Shuffles (“**Shuffles**”) with the Asset Forfeiture and Community Street Crimes Units, who had knowledge of the Raid, to advise them of the Appointment Order and the Monitor’s intention to engage a company to conduct narcotics testing at the Property. The Police confirmed the seizure of cocaine and fentanyl from the Property and advised of their concerns about obtaining peaceful access to the Property. The Police recommended that the Monitor be accompanied by two paid-duty Police officers, while conducting testing at the Property.

10. The Monitor secured the first available date of the Police to attend at the Property which was September 14, 2018, and, as described in further details below, engaged the services of Canadian Decon Solutions (“**CDS**”) to conduct the testing on that date.

11. Upon receipt of the test results and Remediation Plan from CDS, the Monitor provided same to Shuffles who advised that she would be serving the Monitor with a production order in order to use this information in their Criminal Court matter.

### Communications with Jassem

12. Following receipt of the Appointment Order, the Monitor made numerous attempts to contact Jassem to discuss its mandate and gain access to the Property to conduct its testing. Jassem did not respond to the Monitor’s emails, phone calls or text messages.

13. The Monitor also attempted to call Asia Kazem, Jassem's mother, who did not answer the phone.

14. On August 20, 2018, Angela Bull ("**Angela**"), Mortgage Investment Recovery Specialist / Agent at Fisgard, advised that she received calls that weekend from Jassem. The Monitor arranged to call Jassem, with Angela, representative of Fisgard, and Fisgard's lawyer, Dom Magisano ("**Magisano**") from Leners LLP.

15. During the call, a discussion took place with Jassem regarding the status of the Property as well as the Monitor's mandate. Jassem indicated that her sister was also on the phone listening to the call. Jassem confirmed that she received the Appointment Order by email from the Monitor and that she would provide the Monitor with access to the Property to conduct the narcotics testing. She also indicated that there was no power in the house and that they were going to do some renovations at the house.

16. During the course of the conversation, an unidentified person came onto the phone line with Jassem and demanded to know what was going on, in a very aggressive tone. Jassem immediately ended the call at that time advising that we should contact her lawyer, Philip Okpala ("**Okpala**") to discuss further details.

17. The Monitor contacted Okpala who advised that his client Jassem would cooperate and provide access to the Property. Okpala requested that the Monitor only communicate with him and not directly with Jassem.

18. The Monitor has continued to communicate with Okpala and provided Okpala with the test results and Remediation Plan (as defined and described below) provided to it by CDS.

## **VI. RETENTION AND FINDINGS OF CANADIAN DECON SOLUTIONS**

19. Given the potentially lethal nature of fentanyl and cocaine, the Monitor was only able to identify one company in Ontario, CDS, who could conduct testing and remediation of this nature.

20. CDS provides first responder site testing, emergency response for narcotics contamination and remediation services, utilizing its highly trained personnel and an external hygiene subcontractor, EFI Global ("**EFI**"), for third party review and reporting.

21. The Monitor contacted Chris Andrews (“**Andrews**”), the President of CDS, who advised that CDS regularly works for police agencies across Ontario as well as local fire departments and large consulting companies.
22. Following its due diligence, the Monitor engaged CDS to conduct testing at the Property for dry sample narcotics, such as fentanyl and cocaine residue. Andrews advised that there is currently no ability to test liquids from the water well and/or septic tank but that CDS would collect samples while onsite. Attached hereto as **Appendix “B”** is a copy of the quote from CDS.
23. As set out above, the Monitor coordinated access to the Property to conduct testing on September 14, 2018.
24. Several weeks prior to the testing date, in order to monitor the status of the Property, the Monitor engaged a property manager, to drive to the Property and take photographs of the house from the street. Attached hereto as **Appendix “C”** are two of the photographs taken by the property manager.
25. On September 14, 2018 at 8am, the Monitor attended at the Property, accompanied by the Police and representatives of CDS and EFI. A lady identifying herself as Jassem’s sister provided access to the Property. Another lady, identified as Jassem’s mother, and an older unidentified child, accompanied Jassem’s sister into the Property.
26. Representatives of CDS entered the Property wearing hazardous material suits. CDS took a video of the entire interior of the house and the Monitor took a video of the exterior of the Property. Jassem’s family chose to remain in the house and in the backyard throughout during the testing.
27. CDS advised the Monitor of the test results while onsite, which revealed traces of cocaine, fentanyl, procaine and methamphetamine in the house. The Monitor emailed a high-level overview of the test results to Okpala, the Police and the Applicant to keep them informed.
28. The formal test results and proposed remedial action plan (“**Remediation Plan**”) were emailed to the Monitor by CDS on September 26, 2018 and the Monitor immediately provided

copies to the Okpala, the Police and to the Applicant. Attached hereto as **Appendix “D”** is a copy of the Remediation Plan dated September 26, 2018.

29. CDS has also prepared a cost estimate for the Remediation Plan, which is attached hereto as **Appendix “E”**.

## **VII. JASSEM’S PURPORTED LISTING AND SALE OF THE PROPERTY**

30. Shortly following its appointment, the Monitor was advised by Angela that an online search revealed that the Property was listed for sale for \$1,329,900.

31. On August 20, 2018, the Monitor contacted Moe Hamzehian (“**Hamzehian**”), Broker of Record for Leadex Realty Inc., who was listed as the listing agent of the Property on Realtor.ca. Attached hereto as **Appendix “F”** are copies of the listing on Realtor.ca and the website of Leadex Realty Inc.

32. The Monitor spoke with Hamzehian and advised him of the Raid and other details. Hamzehian advised that he was not aware of the Raid nor the possibility that there might be traces of narcotics throughout the house. The following day, the listing of the house was suspended.

33. On August 31, 2018, the Monitor was advised by Angela that the Property had been re-listed for sale on Realtor.ca for the same listing price at \$1,329,900.

34. In an effort to minimally interfere with Jassem’s listing of the Property, the Monitor emailed Hamzehian on September 7, 2018, to advise of the date of the September 14<sup>th</sup> testing so that Hamzehian would not schedule any showings of the Property on that date. Hamzehian responded to the Monitor advising that all communication should go through Jassem’s lawyer.

35. On September 14<sup>th</sup>, while CDS was conducting its onsite testing, an individual identifying himself as a real estate agent with Remax and his client, walked up the driveway and approached the Monitor indicating that they were scheduled to walk through the Property on that date. The agent indicated that he would not be entering the Property as a result of the extensive testing and that he would contact Hamzehian for more information.

36. On October 1, 2018, Okpala confirmed with Magisano and the Monitor that Jassem had accepted an offer for the sale of the Property from a purchaser (“**Purchaser**”) with a closing date of November 16, 2018. Okpala’s office provided Magisano and the Monitor with copies of the Agreement of Purchase and Sale, Notice of Fulfillment and confirmation that the deposit set out in the APS was paid.

37. The Monitor’s First Confidential Report contains the documents listed above, pertaining to the sale of the Property. The Monitor believes that these documents contain commercially sensitive information that could adversely impact the Jassem’s sales process in the event that the transaction is not completed. Accordingly, the Monitor is seeking an Order sealing the First Confidential Report from the general public until further order of the Court.

38. The Monitor believes that the test results and Remediation Plan are material documents and for this reason have provided these documents to Okpala. The Monitor is unaware if Jassem, as vendor, has disclosed the test results and Remediation Plan to the Purchaser. The Monitor believes that it is outside of its scope to communicate with the Purchaser directly however, it is pleased to accept direction from the Court in this regard.

### **VIII. INSURANCE CANCELLATION ON THE PROPERTY**

39. Angela has advised the Monitor that Jassem’s insurance company wrote to Fisgard advising that they would be cancelling insurance coverage on the Property effective October 11, 2018 as a result of non-payment.

40. Attached hereto as **Appendix “G”** is a copy of the email from Magisano to Okpala dated October 1, 2018 requesting that Jassem obtaining suitable insurance on the Property naming Fisgard as loss payee by noon on October 4, 2018 failing which Fisgard will take steps to ensure that the Property is adequately protected.

41. The Monitor has since been advised by Magisano that Okpala has not respond to the October 4<sup>th</sup> deadline for confirmation of insurance. The Monitor is advised that Fisgard is seeking the appointment of AGI as Receiver in order to remediate the Property, obtain proper insurance and sell the Property. AGI’s insurance broker has confirmed that it would provide insurance coverage to the Receiver following a remediation of the Property.

## **IX. STATEMENT OF RECEIPTS AND DISBURSEMENTS**

42. Attached hereto at **Appendix “H”** is the Monitor’s Interim Statement of Receipts and Disbursements dated October 5, 2018 (“**Interim R&D**”).

43. In accordance with the funding provisions of the Appointment Order, the Monitor has borrowed \$25,000 from Fisgard in order to fund disbursements of the Monitor. The Monitor has issued Borrowing Certificate No. 1 to Fisgard dated September 6, 2018 (“**Borrowing Certificate**”) as evidence of the borrowings. Attached hereto as **Appendix “I”** is a copy of the borrowing certificate.

44. As set out in the Interim R&D, the Monitor requires an additional \$18,375.58 to satisfy payment of its estimated disbursements. The Monitor will be requesting additional funds from Fisgard and will issue Borrowing Certificate No. 2 at that time under the same terms as the first borrowing certificate.

45. The total of the Monitor’s first and second borrowing certificate will remain as a first charge on title to the Property until such time as they are paid.

## **X. ACCOUNTS OF THE MONITOR**

46. Attached hereto as **Appendix “J”** is the Affidavit of Bryan Gelman regarding the Monitor’s fees to October 5, 2018 accompanied by supporting time dockets. Included in the Monitor’s invoice is an estimated accrual of 5.0 hours to complete its mandate as Monitor and to attend in Court to speak to the matters at hand.

## **XI. MONITOR’S REQUEST FOR APPROVAL**

47. The Monitor respectfully requests an Order of this Honourable Court, including the relief set out herein.

All of which is respectfully submitted this 5<sup>th</sup> day of October, 2018.

**ALBERT GELMAN INC., solely in its  
capacity as the Court-Appointed Non-CCAA Monitor  
and not in its Personal**

A handwritten signature in black ink, appearing to be 'Bryan Gelman', written over a horizontal line.

Per:

Bryan Gelman, CIRP, LIT

**TAB A**

Court File No. CV-18-602596-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE S.F. DUNPHY )

THURSDAY, THE 16<sup>TH</sup>  
DAY OF AUGUST, 2018



**FISGARD CAPITAL CORPORATION**

Applicant

- and -

**ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM**

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, c. C.43

**ORDER  
(appointing Non-CCAA Monitor)**

**THIS APPLICATION** made by the applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Albert Gelman Inc. ("**Albert Gelman**") as non-CCAA Monitor (in such capacities, the "**Monitor**") without security, in the terms set out below, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Angela Bull sworn July 25, 2018, and the Exhibits thereto, the supplementary affidavit of Victoria Gifford, sworn August 15, 2018, and the Exhibits thereto, and the factum and book of authorities of the applicant and on hearing the submissions of counsel for the applicant, on being advised by counsel for the applicant that the Ontario Provincial Police take no position on the relief sought in the Amended Notice of Application, no one appearing for either of the Respondents or any

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other proper party although duly served as appears from the affidavits of service of Victoria Gifford sworn August 8, August 10, and August 15, 2018, and on reading the consent of Albert Gelman to act as the Monitor,

#### **SERVICE**

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

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Albert Gelman Inc. is hereby appointed Monitor, without security, and with only the powers granted below, of the real property known municipally as 218 Jerseyville Road, Brantford, Ontario, which is more particularly described at **Schedule "A"** to this Order, together with the contents contained therein (the "**Property**"), which is the property of Islam Jassem (aka Islam Hamadi Jassem) ("**Jassem**").

#### **MONITOR NOT IN POSSESSION OF THE ASSETS**

3. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property without further Order of the Court.

4. **THIS COURT ORDERS** Jassem shall remain in possession of the Property, but shall not take any steps to dissipate the Property.

#### **MONITOR'S POWERS**

5. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

- (a) to engage consultants, appraisers, agents, experts, counsel and such other persons from time to time and on whatever basis, including on a temporary

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basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;

(b) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and the Monitor, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and

(c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR**

6. **THIS COURT ORDERS** that (i) Jassem, (ii) all of their current and former agents, accountants, legal counsel and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith grant immediate and continued access to the Property to the Monitor.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Jassem, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the

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granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

9. **THIS COURT ORDERS** that the Monitor shall have access to the Property at any time or times, including evenings, weekends and holidays, and Jassem shall take all reasonable steps to ensure that the Monitor will have such access, provided however that the Monitor shall exercise its access to the Property in such a manner as to minimally interfere with the affairs of Jassem.

10. **THIS COURT ORDERS** that, for greater certainty and without limiting the generality of the forgoing, the Monitor's authorized access to the Property includes but is not limited to access to inspect and appraise it, to perform environmental and narcotics testing on any parts of it, including testing of its water supply, ground water, septic system, and soil, and any other investigative measures necessary to determine the extent of any contamination of the Property.

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11. **THIS COURT ORDERS** that, notwithstanding that the Monitor is non-possessory, if the Monitor determines that the Property has been abandoned, or that the Monitor cannot get access to the Property from Jassem, the Monitor is hereby authorized and directed to seek the assistance of the Brantford County Ontario Provincial Police in gaining access to the Property.

#### **NO PROCEEDINGS AGAINST THE MONITOR**

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

#### **NO PROCEEDINGS AGAINST JASSEM OR THE PROPERTY**

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

14. **THIS COURT ORDERS** that notwithstanding paragraph 13, the Applicant may issue a demand letter, Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3 (the "BIA"), and/or a Notice of Sale Under Charge/Mortgage pursuant to section 26(1) and 31(1) of the *Mortgages Act*, R.R.O. 1990, c. M.40, without further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that all rights and remedies against Jassem, the Monitor, or affecting the Property, are hereby stayed and suspended except with the written consent of the Monitor or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA and further provided that nothing in this paragraph shall (i) empower the Monitor or Jassem to carry on any business which Jassem is not lawfully entitled to carry on, (ii) exempt the Monitor or Jassem from compliance with statutory or regulatory provisions

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relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE MONITOR**

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

#### **EMPLOYEES**

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE MONITOR'S LIABILITY**

19. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by section 14.06 of the BIA or by any other applicable legislation.

#### **MONITOR'S ACCOUNTS**

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

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

#### **FUNDING OF THE MONITOR**

22. **THIS COURT ORDERS** that the Monitor be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000.00 (or such greater amount as this Court may by further

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Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Monitor by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Monitor's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Monitor's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

#### **SERVICE AND NOTICE**

26. **THIS COURT ORDERS** that the e-mail service of documents shall be valid and effective service on transmission.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with paragraph 26 is not practicable, the Monitor is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Jassem's creditors or other

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interested parties at their respective addresses as last shown on the records of Jassem and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a possessory receiver or trustee in bankruptcy of Jassem.

30. **THIS COURT ORDERS** that for greater certainty, the Monitor need not send notices under section 245 of the BIA.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

**ADDITIONAL RELIEF TO CORRECT NAME ON PARCEL REGISTER**

35. **THIS COURT ORDERS** that the Land Registrar for the Land Titles Division of Brant (No. 2) (the "**Land Registrar**") is authorized and directed to amend the following registrations against the Property to show the Chargor and the Assignor as "ISLAM JASSEM":

(a) Charge registered as Instrument No. BC320787 on July 20, 2017, in favour of Figgard Capital Corporation securing the principal sum of \$780,000; and

(b) General Assignment of Rents registered as Instrument No. SC1468521 on July 20, 2017, in favour of Figgard Capital Corporation,

which registrations incorrectly described the Chargor and Assignee as "ISLAM JASSAM" as a result of a typographical error on the aforesaid registrations.

36. **THIS COURT FURTHER ORDERS** that the Land Registrar is authorized to delete from the Parcel Register this Order upon the discharge or deletion of the aforesaid registrations.

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

AUG 16 2018

PER / PAR: RW

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**SCHEDULE "A"**

PT LT 53, CON 3 TWP BRANTFORD, PT 2, 2R6680; COUNTY OF BRANT

PIN 32226-0152 (LT)

Being municipally known as 218 Jerseyville Road, Brantford, Ontario

**SCHEDULE "B"**  
**MONITOR CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

37. THIS IS TO CERTIFY that Albert Gelman Inc, the non-CCAA Monitor (the "Monitor") of the real property known municipally as 218 Jerseyville Road, Brantford, Ontario (the "Property"), which is the property of Islam Jassem (aka Islam Hamadi Jassem) ("Jassem"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number CV-18-602596-00CL, has received as such Monitor from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Monitor is authorized to borrow under and pursuant to the Order.

1. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
2. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Monitor pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Monitor to indemnify itself out of such Property in respect of its remuneration and expenses.
3. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
4. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Monitor to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Albert Gelman Inc, solely in its capacity  
as Monitor of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

FIGGARD CAPITAL CORPORATION  
Applicant and Respondents

ISLAM JASSEM et al.  
Respondents

Court File No.: CV-602596-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER  
(Appointment of Non-CCAA Monitor)**

LERNERS LLP  
130 Adelaide Street West, Suite 2400  
Toronto, ON M5H 3P5

Domenico Magisano LS#: 45725E  
dmagisano@lerners.ca  
Tel: 416.601.4121  
Fax: 416.601.4123

Christopher Shorey LS#: 70135B  
cshorey@lerners.ca  
Tel: 416.601.2389  
Fax: 416.867.2448

Lawyers for the Applicant

**TAB B**



## Quotation

#

**Customer**

Name Albert Gelman Inc (Court Appointed Monitor)  
 Address 100 Simcoe Street, Suite 125  
 City Toronto Province ON  
 Postal Code M5H 3G2 Phone 416-504-1650

**Misc**

Date 2018-08-21  
 P.O. No \_\_\_\_\_  
 Rep Andrews

Qty	Description	Unit Price	TOTAL
8.00	Hazardous Materials Supervisor per hour	\$ 105.00	\$ 840.00
8.00	Hazardous Materials technician per hour	\$ 85.00	\$ 680.00
8.00	Hazardous Materials technician per hour	\$ 85.00	\$ 680.00
8.00	Hazardous Materials technician per hour	\$ 85.00	\$ 680.00
4.00	P.P.E. per man per day	\$ 80.00	\$ 320.00
1.00	Smith Ion Scan per day	\$ 1,250.00	\$ 1,250.00
2.00	Dahlgren Decon 22oz kit (each)	\$ 161.50	\$ 323.00
1.00	Electrostatic Spray gun	\$ 65.00	\$ 65.00
1.00	Decontamination equipment (including consumables)	\$ 150.00	\$ 150.00
2.00	Crew truck per day	\$ 150.00	\$ 300.00
1.00	2000 Watt Generator with lighting equipment per day	\$ 250.00	\$ 250.00
<b>Consulting</b>			
1.00	Project Manager	\$ 1,800.00	\$ 1,800.00
1.00	Remediation plan development and reporting	\$ 3,500.00	\$ 3,500.00
<b>Laboratory Sampling</b>			
1.00	Well and septic system (Estimate)	\$ 1,500.00	\$ 1,500.00
		SubTotal	\$ 12,338.00
		Tax Rate 13.00%	\$ 1,603.94
		<b>TOTAL</b>	<b>\$ 13,941.94</b>

## Canadian Decon Solutions

**TAB C**





**TAB D**



46 Jackson Street E  
Hamilton, ON L8N 1L1  
Telephone: (905) 393-2302  
Fax: (905) 524-2536  
www.efiglobal.ca

September 26, 2018

Court Appointed Monitor  
Albert Gelman Inc.  
100 Simcoe St., Suite 125  
Toronto, Ontario

**Attention:** Bryan Gelman

**Re: Proposed Remedial Action Plan  
218 Jerseyville Rd, Brantford, ON**

---

Dear Mr. Gelman,

Pursuant to your request, EFI Global ("EFI") has prepared this Remedial Action Plan (RAP) to address the risks posed from the detected presence of illicit drugs in rooms within the residence at 218 Jerseyville Road in Brantford, ON. EFI was retained by Canadian Decon Services (CDS) to assist with an assessment and sampling of the home and property. The assessment findings confirm detectable levels of drug residue including one or more of cocaine, fentanyl, procaine and methamphetamine in all but three rooms covering all floors of the home. It should be noted that personal possessions within the home were excluded from this assessment. A summary of the results of our assessment is provided in **Table 1**. The layout of the three floors of the home is shown on **Figures 1, 2 and 3**.

The purpose of this RAP is to ensure that future occupants do not experience adverse health effects from exposure to the residual concentrations that were detected. The scope of work is limited to the remediation of the interior of the home and septic system.

In preparing this work plan EFI and CDS have referenced various guidelines including:

- United States Environmental Protection Agency (USEPA) Voluntary Guidelines for Methamphetamine Laboratory Cleanup. Washington DC; EPA Office of Solid Waste and Emergency Response; 2013.
- Australian Government. Clandestine Drug Laboratory Remediation Guidelines, Barton, Australia; Attorney-General's Department; 2011.
- Barn P., Wiens M., and Dods P. Clandestine Amphetamine-derived Drug Laboratories: Remediation Guidelines for Residential Settings. Vancouver, B.C. National Collaborating Centre for Environmental Health, 2012.



Remedial Action Plan  
218 Jerseyville Rd.  
Brantford, ON

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- The Interagency Board. Recommendations on Selection and Use of Personal Protective Equipment and Decontamination Products for First Responders Against Exposure Hazards to Synthetic Opioids, Including Fentanyl and Fentanyl Analogues. Arlington, V.A. 2017.

#### **SCOPE OF WORK:**

The scope of the proposed remedial program has been developed based on the information gathered by EFI and CDS during completion of our assessment of the interior of the home and the results of the associated wipe samples collected. Based on the conditions encountered and the concerns identified, EFI proposes to undertake the following activities to address the drug residue presence:

- A Health and Safety (H&S) Plan will be developed to be followed by all personnel involved in remedial activities. The H&S Plan will address worker health and safety, and establish contingency plans for emergencies that could arise during the project.
- A decontamination zone is proposed to be set up outside the front entrance way of the home or should the weather conditions be unsuitable to stage at this location in the garage.
- Carpet, drapes and blinds within the home are proposed to be sprayed with a solution designed to neutralize the drug residue to help reduce potential health risks and then removed and disposed of.
- A neutralizing solution will be applied via electrostatic spray guns to hard surface areas within the home including floors, walls, ceilings, doors, etc. after which these surfaces will be washed. While sample results were non-detect for drug residue in one bedroom in the basement and another on the second floor, based on the widespread detected presence of drug residue in the home, EFI recommends these areas be treated in the same fashion to help ensure risks are minimized.
- As the gap between the baseboards and walls appears to be sealed by paint which would inhibit drug residue from falling and accumulating behind the baseboards, the baseboards are proposed to be left in place and their surfaces simply sprayed and washed.
- The electrical outlet covers, switch plates, light fixtures, vent diffusers will be removed and the outlets HEPA vacuumed.
- All removed electric outlet covers, switch plates, light fixtures, etc. will have the neutralizing solution applied after which they will be washed and reinstalled.



Remedial Action Plan  
218 Jerseyville Rd.  
Brantford, ON

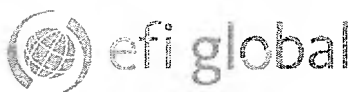
---

- Some of the neutralizing solution will be added into the drains for any sinks and tubs in the home before the drains are flushed with generous amounts of potable water.
- Some of the neutralizing solution will be added into each of the central vacuum system ports and the system turned on to try and neutralize any drug residue that may be present within the piping system. Following completion of efforts the existing power unit/dirt-collection canister will be removed and disposed of and a replacement unit installed.
- A subcontractor will be brought in the vacuum out the heating, ventilation and air conditioning (HVAC) systems. Where possible to do so the neutralizing solution will be applied. This will be documented in our final report.
- Once all surfaces have been neutralized, washed and allowed to dry, areas previously wiped and reported as positive for drug residue will be resampled and retested. In addition, composite wipe samples, collected over an area of 10x10 cm<sup>2</sup> from one room on each floor where positive detections were recorded along with one blank, are proposed to be collected and submitted to an independent third party laboratory for analysis for cocaine and/or fentanyl to confirm no residual post remedial drug presence. This is to be done as part of quality assurance and quality control (QA/QC) measures to verify the effectiveness of remedial measures.
- Waste generated will be disposed of in accordance with the regulations.
- After the completion of the field work and receipt of confirmatory sample analyses, EFI will compile all information gathered and prepare a factual report that will include the signature from EFI's Occupational Hygiene Specialist. This report will be suitable for distribution to third parties, regulatory agencies, and other parties that may be involved in this matter.

#### **ASSUMPTIONS AND LIMITATIONS:**

This proposed work scope incorporates the following assumptions and limitations:

- You are responsible for arrangement of right of access to the home and restricting all persons not involved in remedial activities from entry into the home during completion of the works;
- You are responsible for ensuring that heat, hydro and water are operating within the home. Should one or more of these be shutoff, then it may delay the completion of remedial efforts and additional charges may be incurred;



Remedial Action Plan  
218 Jerseyville Rd.  
Brantford, ON

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- The draft report prepared by EFI will undergo one (1) round of review prior to issuing the final report. We assume that the comments regarding the draft report will be minor in nature;
- The provision of reliance on the report to any third party (e.g., financial institutions).

**CLOSURE:**

We hope this is satisfactory for your current needs. Please contact the undersigned should you have any questions with respect to this proposal.

Yours truly,

**EFI Global**

A handwritten signature in black ink, appearing to read "Ian Mendes", written over a horizontal line.

Ian Mendes, P.Eng.  
Environmental Team Leader

cc.

Chris Andrews, CDS

**Att:**

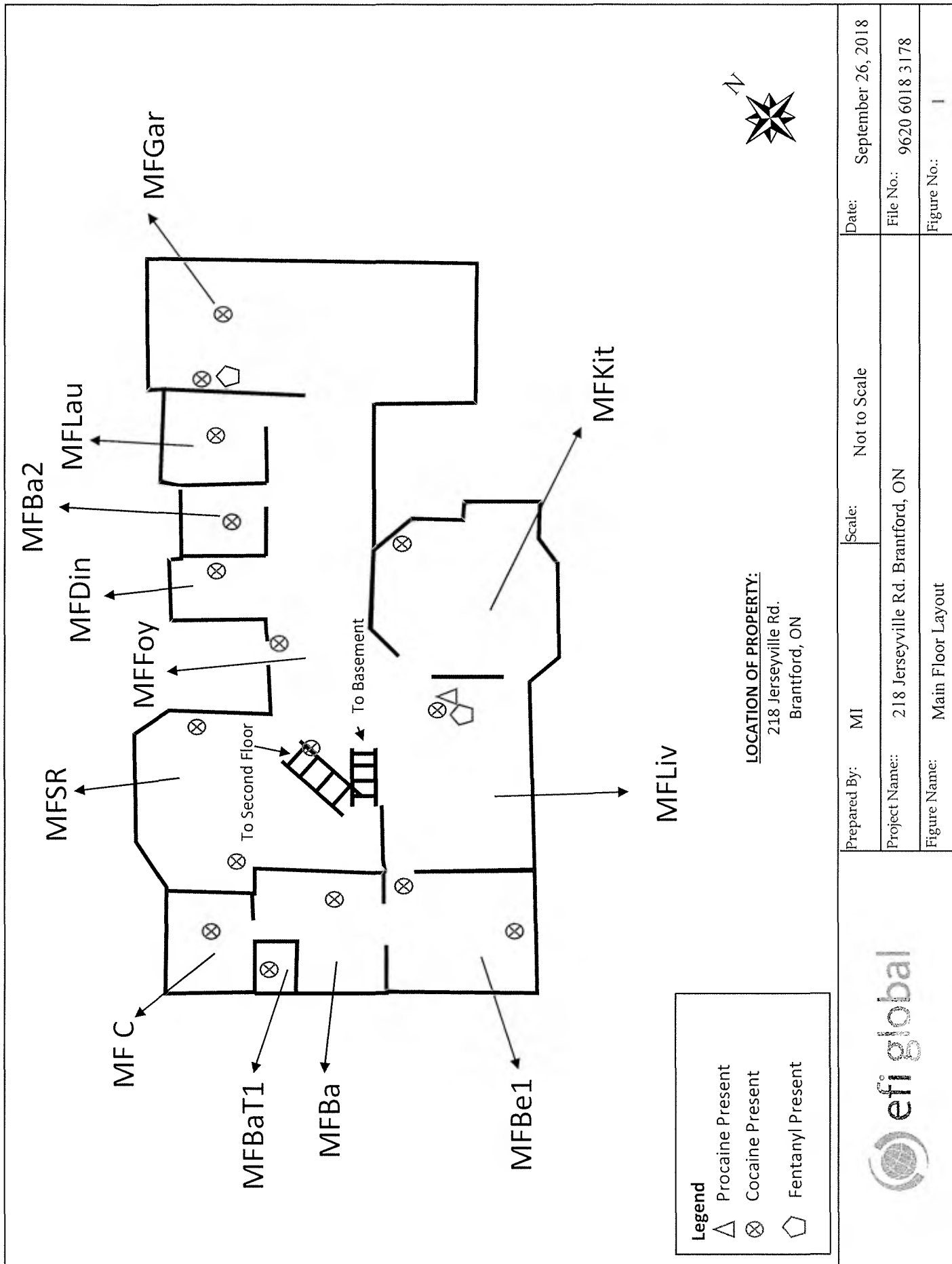
Table 1

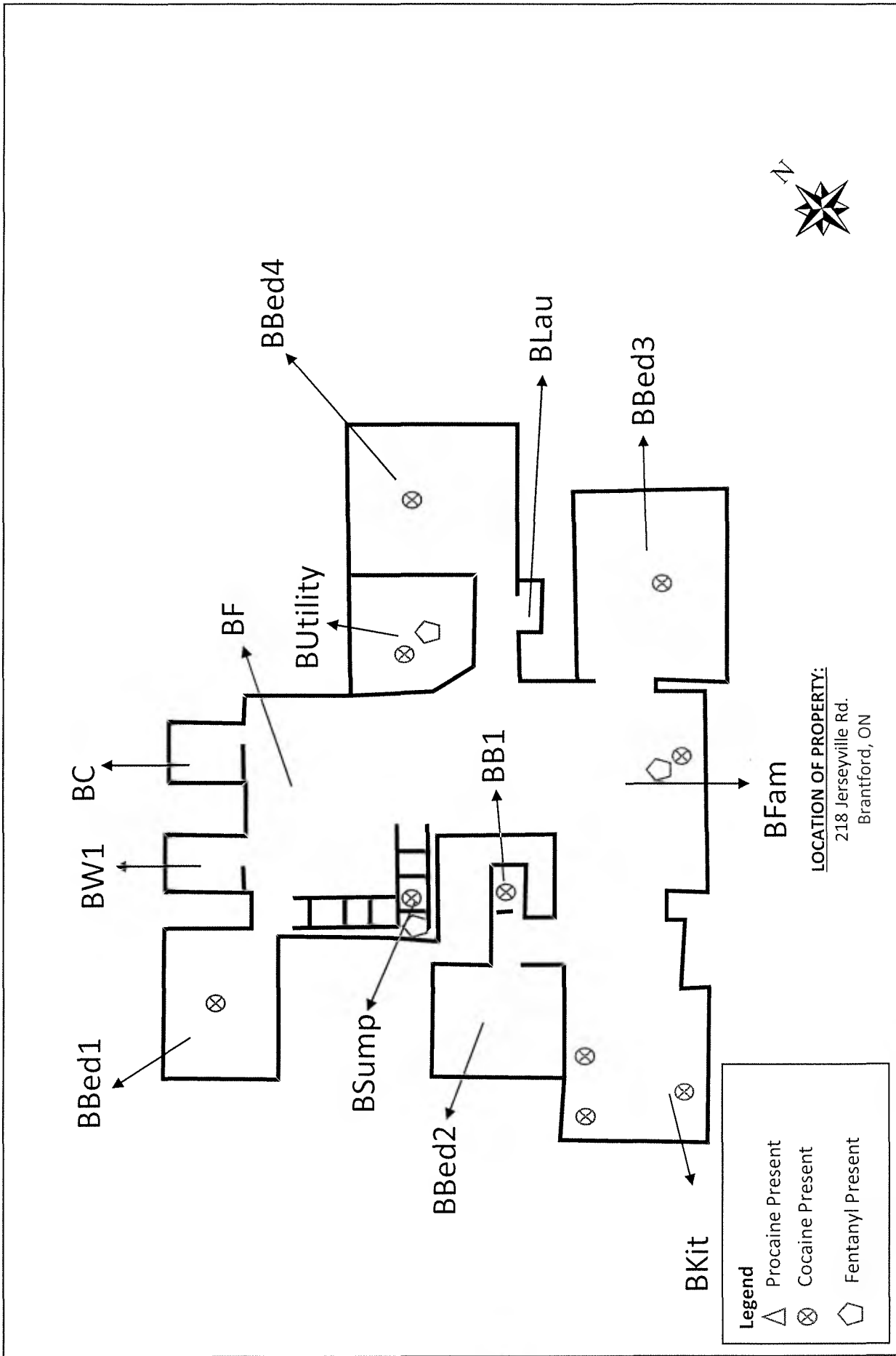
Figures 1, 2 and 3



Client: CDS  
 Location: 218 Jerseyville Rd, Branford  
 File No.: 9785 6018 3178

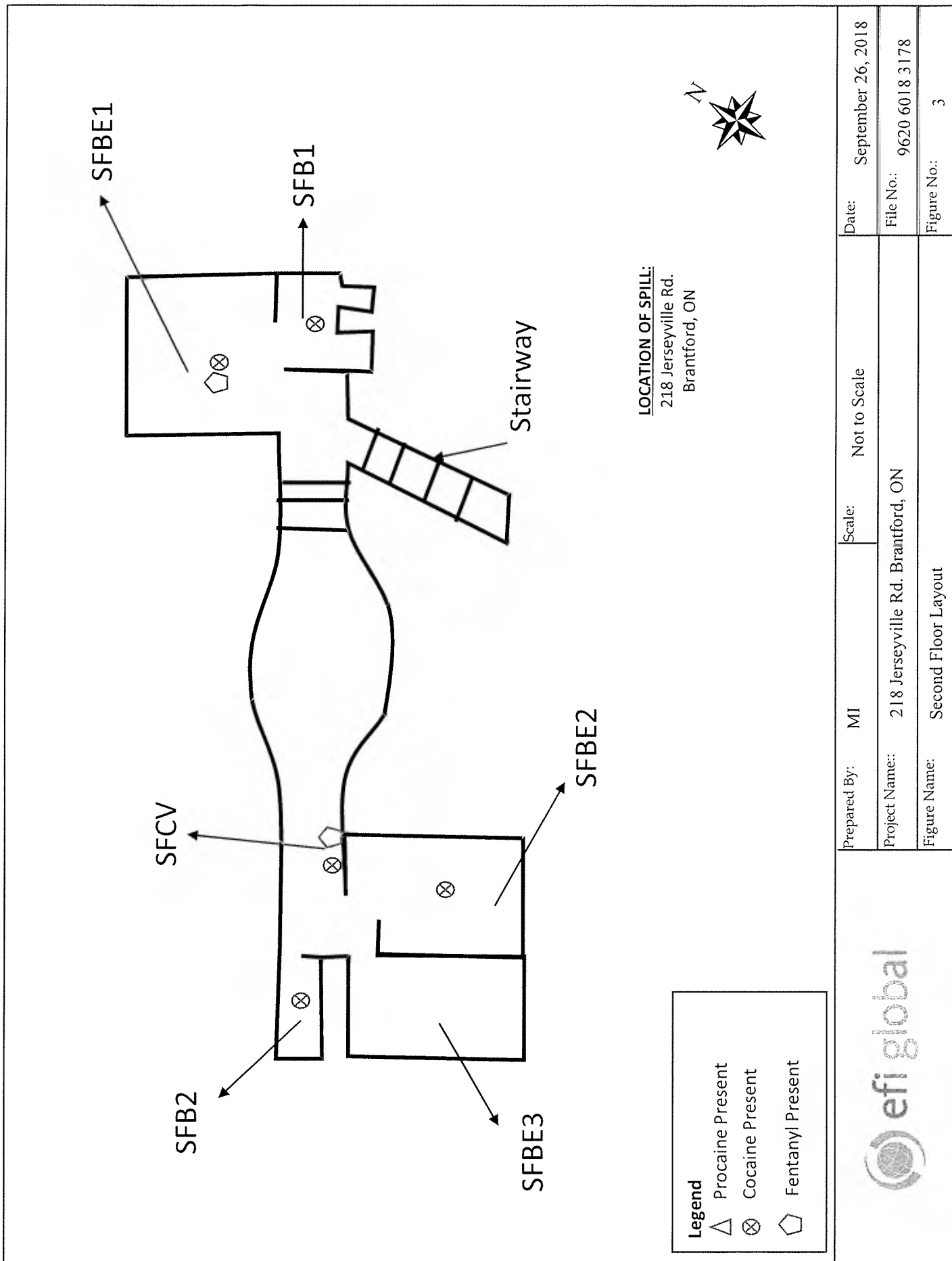
Location	Room	Result	Location	Room	Result
Main Floor	1 bedroom	Positive for Cocaine	Basement	4 bedrooms	All positive for Cocaine except Bedroom 2
	Sitting room	Positive for Cocaine		1 Work Room	Clear
	2 bathrooms	Positive for Cocaine		Cold Cellar	Clear
	Walk in closet	Positive for Cocaine		Foyer area at base of stairs	Clear
	Entrance foyer area	Positive for Cocaine		Sump room under stairs	Positive for Cocaine & fentanyl
	Dining room	Positive for Cocaine		Utility Room	Positive for Cocaine & fentanyl
	Living room	Positive for Cocaine, fentanyl & procaine		Laundry Room	Clear
	Kitchen	Positive for Cocaine		Bathroom	Positive for Cocaine
	Laundry room	Positive for Cocaine		Kitchen	Positive for Cocaine
	Garage	Positive for Cocaine & fentanyl		Family Room	Positive for Cocaine & fentanyl
	bedroom 1	Positive for Cocaine & fentanyl			
	bedroom 2	Positive for Cocaine			
	bedroom 3	Clear			
	2 Bathrooms	Positive for Cocaine			
Central Vac	Positive for Cocaine & Methamphetamine				
Upper Landing/Foyer	Positive for Cocaine				
2nd Floor					





**LOCATION OF PROPERTY:**  
 218 Jerseyville Rd.  
 Brantford, ON

	Prepared By: MI	Scale: Not to Scale	Date: September 26, 2018
	Project Name: 218 Jerseyville Rd. Brantford, ON		File No.: 9620 6018 3178
	Figure Name: Basement Layout		Figure No.: 2



	Prepared By:	MI	Scale:	Not to Scale	Date:	September 26, 2018
	Project Name:	218 Jerseyville Rd. Brantford, ON			File No.:	9620 6018 3178
	Figure Name:	Second Floor Layout			Figure No.:	3

**TAB E**



# Quotation

#

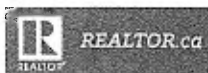
Customer	
Name	Albert Gelman Inc (Court Appointed Monitor)
Address	100 Simcoe Street, Suite 125
City	Toronto Province ON
Postal Code	M5H 3G2
Phone	416-504-1650

Misc	
Date	2018-10-01
P.O. No	
Rep	Andrews

Qty	Description	Unit Price	TOTAL
50.00	Hazardous Materials Supervisor per hour	\$ 105.00	\$ 5,250.00
150.00	Hazardous Materials technician per hour (3 Man)	\$ 85.00	\$ 12,750.00
20.00	P.P.E. per man per day	\$ 70.00	\$ 1,400.00
1.00	Smith Ion Scan per week	\$ 4,995.00	\$ 4,995.00
3.00	Dahlgren Decon per gallon	\$ 729.00	\$ 2,187.00
5.00	Electrostatic Spray gun	\$ 65.00	\$ 325.00
1.00	Decontamination equipment (including consumables)	\$ 1,165.00	\$ 1,165.00
5.00	Crew truck per day	\$ 150.00	\$ 750.00
<b>Subcontracting Services</b>			
1.00	Consulting and report generation	\$ 9,830.00	\$ 9,830.00
1.00	Septic Tank cleaning and disposal	\$ 1,070.00	\$ 1,070.00
1.00	Carpet and window covering disposal	\$ 760.00	\$ 760.00
1.00	HVAC System cleaning	\$ 870.00	\$ 870.00
*Remedial operations will require Hydro to be connected			
*Applicable disposal cost for any contents to be removed			
		SubTotal	\$ 41,352.00
		Tax Rate	13.00%
		TOTAL	\$ 46,727.76

## Canadian Decon Solutions

**TAB F**


[Residential](#)
[Commercial](#)
[Trends & Insights](#)


218 JERSEYVILLE Road, Brantford, Ontario N3T5M1

\$1,329,900

MLS® Number: H4034536

4 + 3 5

<b>Property Type</b> Single Family	<b>Building Type</b> House	<b>Storeys</b> 2
<b>Title</b> Freehold	<b>Land Size</b> 213.25 x 547.912 - 4.99 acres	<b>Parking Type</b> Attached garage, Gravel

## Description

Exceptionally well built custom home. Beautiful and timeless exteriors combining stone and Stucco. Backyard oasis and eye catching architectural detailing. Fantastic interiors built to a higher standard than most. 2 Full kitchens and fully finished basement. Well designed for family in terms of flow and comfort yet still elegant.

## Location Description

RURAL

## Details

<b>Features</b> Ravine, Crushed stone driveway, Level, Country residential, Automatic Garage Door Opener, In-Law Suite	<b>Parking Type</b> Attached garage, Gravel	<b>Rental Equipment</b> None
<b>Total Parking Spaces</b> 13	<b>View</b> View	

## Building

<b>Architecture Style</b> 2 Level	<b>Basement Development</b> Finished	<b>Basement Type</b> Full (Finished)
<b>Bathrooms (Partial)</b> 1	<b>Bathrooms (Total)</b> 5	<b>Bedrooms - Above Grade</b> 4
<b>Bedrooms - Below Grade</b> 3	<b>Cooling</b> Central air conditioning	<b>Exterior Finish</b> Stone, Stucco
<b>Fireplace Fuel</b> Electric, Gas	<b>Fireplace Type</b> Other - See remarks, Other - See remarks	<b>Floor Space</b> 3838
<b>Foundation Type</b> Poured Concrete	<b>Heating Fuel</b> Natural gas	<b>Heating Type</b> Forced air
<b>Rental Equipment</b> None	<b>Style</b> Detached	<b>Utility Sewer</b> Septic System
<b>Water</b> Drilled Well, Well		

## Rooms

Level	Type	Dimensions
Second level	5pc Bathroom	Measurements not available
	Bedroom	13' 9" x 11' 8"
	Bedroom	14' " x 12' 8"
	4pc Ensuite bath	Measurements not available
	Master bedroom	16' 9" x 16' 2"
Ground level	Laundry room	Measurements not available
	5pc Bathroom	Measurements not available
	Master bedroom	21' 2" x 16' 2"
	2pc Bathroom	Measurements not available
	Eat in kitchen	21' " x 19' "
	Office	13' " x 12' 8"
	Living room	23' " x 18' "
	Dining room	16' 2" x 12' 8"
	Foyer	20' " x 15' "
Basement	4pc Bathroom	Measurements not available
	Bedroom	14' 2" x 14' 2"
	Bedroom	17' 6" x 11' "
	Bedroom	19' 8" x 18' 2"
	Eat in kitchen	16' 6" x 16' "
	Living room	21' 10" x 15' 6"

## Land

Frontage	Land Depth
213 ft	547 ft

Data provided by: REALTORS® Association of Hamilton-Burlington 505 York Boulevard, Hamilton, Ontario L8R 3K4

All information displayed is believed to be accurate but is not guaranteed and should be independently verified. No warranties or representations are made of any kind.



**Moe Hamzehian**

Broker of record

📞 905-575-0505

Fax: 905-575-5252

### LEADDEX Realty Inc.

#232-845 Upper James Street  
Hamilton, ON L9C3A3

📞 905-575-0505

Fax: 905-575-5252



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# \$1,329,900

218 Jerseyville Road, Brantford, Ontario, N3T5M1

## PROPERTY DETAILS

## MAP & DIRECTIONS

## BIRD'S EYE VIEW

## STREET VIEW



## OVERVIEW

Property Type: Single Family

4 + 3 Bedrooms

Building Type: House

5 Bathrooms

Title: Freehold

Leadex ID: 19811034

## DESCRIPTION

Exceptionally well built custom home. Beautiful and timeless exteriors combining stone and Stucco, Backyard oasis and eye catching architectural detailing. Fantastic interiors built to a higher standard than most. 2 Full kitchens and fully finished basement. Well designed for family in terms of flow and comfort yet still elegant. (id:18021)

[Read More](#)

## BUILDING

### Style

2 Level, Detached

### Exterior Finish

Stone, Stucco

### Basement Type

Full (Finished)

### Heating

Natural gas, Forced air

### Cooling

Central air conditioning

### No. of Fireplaces:

1

### Utility Sewer

Septic System

### Water

Drilled Well, Well

## DETAILS

**Features**

Ravine, Crushed stone driveway, Level, Country residential, Automatic Garage Door Opener, In-Law Suite

**Parking Spaces**

13

**Parking**

Attached garage, Gravel

**Rental Equipment**

None

**LAND**

**Land Size**

213.25 x 547.9 | 2 - 4.99 acres

**Frontage**

213 ft

**Land Depth**

547 ft

**LISTING OFFICE**

**Office**

LEADEx Realty Inc.

**TAB G**

## Bryan Gelman

---

**From:** Domenico Magisano <dmagisano@lernalers.ca>  
**Sent:** Monday, October 1, 2018 5:30 PM  
**To:** Philip Okpala  
**Cc:** Bryan Gelman  
**Subject:** RE: 218 Jerseyville Rd, Brantford, Ontario (the "Property")

**Importance:** High

Mr. Okpala,

We have received the APS together with the purported waivers of conditions and thank you for same. Unfortunately, the APS and the waivers do not address the fact that your client's insurer has cancelled insurance on the Property effective October 11, 2018. This means that, absent a new insurance policy, the Property will be uninsured from October 12, 2018 until closing. We also understand that absent remediation to the Property, it will be extremely difficult to obtain insurance. This is unacceptable to my client.

Please be advised that, unless my client receives evidence (which they can independently verify) that there is suitable insurance on the property naming my client as loss payee by noon on October 4, 2018, it will take whatever steps are required (on an urgent basis) to ensure the Property is adequately protected. These steps include, but not limited to, enhanced powers for the Non-CCAA Monitor so that it may take possession of the Property and ensure that it can obtain insurance for the Property.

We look forward to your client providing confirmation of continued insurance ASAP and in any event before noon on October 4, 2018.

Yours truly

Dom

**Domenico Magisano | Lernalers LLP** | Partner | phone 416.601.4121 | direct fax 416.601.4123 | [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca) | 130  
 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5



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Please consider the environment before printing this email.

**TAB H**

**Monitor's Statement of Receipts and Disbursements, including accruals**  
**Re: 218 Jerseyville Road, Brantford, Ontario**  
**As at October 5, 2018**

**Receipts**

Funding - Borrowing Certificate No. 1	\$ 25,000.00
Funding - Estimated, Borrowing Certificate No. 2*	18,375.58
	<u>43,375.58</u>

**Disbursements**

Monitor's fees, including accruals to complete*	24,428.00
Testing - Canadian Decon Solutions	10,296.50
Legal Fees - estimated*	1,500.00
HST paid on disbursements	4,919.54
Police services	1,208.78
Contingency*	500.00
Property manager photographs and travel	295.96
Travel	216.80
Data drive	10.00
	<u>43,375.58</u>

<b>Net receipts over disbursements, including accruals</b>	<b>\$ -</b>
--	-------------

Notes:

- 1 Items with a \* are accrued and not yet paid
- 2 Some items are estimates only and subject to change

**TAB I**

**SCHEDULE "B"**  
**MONITOR CERTIFICATE**

CERTIFICATE NO. 1

AMOUNT \$25,000.00

1. THIS IS TO CERTIFY that Albert Gelman Inc, the non-CCAA Monitor (the "**Monitor**") of the real property known municipally as 218 Jerseyville Road, Brantford, Ontario (the "**Property**"), which is the property of Islam Jassem (aka Islam Hamadi Jassem) ("**Jassem**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 16<sup>th</sup> day of August, 2018 (the "**Order**") made in an action having Court file number CV-18-602596-00CL, has received as such Monitor from Fisgard Capital Corporation (the "**Lender**") the principal sum of \$25,000, being part of the total principal sum of \$150,000 which the Monitor is authorized to borrow under and pursuant to the Order.

1. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly, commencing on September 5, 2018 at a fixed rate of 8.40% per annum.

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

3. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender located at 3378 Douglas Street, Victoria, British Columbia.

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

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

- 2 -

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

DATED the 6<sup>th</sup> day of September 2018.

Albert Gelman Inc, solely in its capacity  
as Monitor of the Property, and not in its  
personal capacity

Per:



---

Bryan Gelman, A.S.O

**TAB J**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

FISGARD CAPITAL CORPORATION

Applicant

- and -

ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM

Respondents

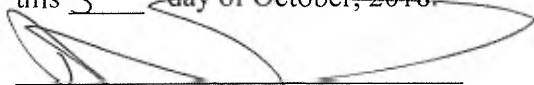
APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.  
1990, c. C.43

MONITOR'S AFFIDAVIT OF FEES

I, Bryan Gelman, of the City of Toronto, make oath and say as follows:

1. I am a Licenced Insolvency Trustee and Director of Albert Gelman Inc., Court Appointed Non-CCAA Monitor of the real property known as municipally as 218 Jerseyville Road, Brantford, Ontario, and as such have knowledge of the facts herein deposed to.
2. The Monitor has prepared its invoice in connection with this matter as follows:
  - a. An account dated October 5, 2018 for the period ending October 5, 2018 in the amount of \$24,428.00, plus HST and disbursements thereon. This invoice includes an accrual of 5.0 hours to complete
3. The Monitor's accounts, including detailed time dockets, are attached hereto as **Exhibit "A"**.
4. Based on the attached invoice, the Receiver's average hourly rate is calculated to be \$408.49.
5. This Affidavit is made in support of a motion to approve the accounts of Albert Gelman Inc. and for no improper purpose.

SWORN before me at the City of Toronto in the Province of Ontario this 5<sup>th</sup> day of October, 2018.



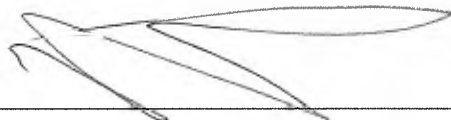
A Commissioner, etc.

D. Magisano

)  
)  
) 

Bryan Gelman

Attached is **Exhibit "A"**  
Referred to in the  
MONITOR'S AFFIDAVIT OF FEES  
sworn before me  
This 5<sup>th</sup> day of October, 2018

A handwritten signature in black ink, appearing to read 'D. Magisano', written over a horizontal line.

D. MAGISANO  
Commissioner for taking Affidavits, etc.

Islam Jassem  
218 Jerseyville Road  
Brantford, ON

## Invoice

**Invoice Date:** Oct 5, 2018

**Invoice No:** <2260-1>

**Billing Through:** Oct 5, 2018

**File ID:** FISGARD-R:

**Re: Non-CCAA Monitor over Real Property at 218 Jerseyville Road, Brantford, Ontario**

**Professional Fees:**

<u>Date</u>	<u>Employee</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
7/18/2018	BGELMAN	Calls with Dom Magisano re testing and remediation companies and terms of order;	0.50	\$450.00	\$225.00
7/24/2018	BGELMAN	Final review of draft order; email to Dom re comments on same; Prepare indemnity/guarantee;	0.40	\$450.00	\$180.00
7/30/2018	BGELMAN	Research on property and history of issues;	0.40	\$450.00	\$180.00
8/1/2018	BGELMAN	Finalize indemnity; prepare and issue consent to act as Monitor;	0.50	\$450.00	\$225.00
8/13/2018	BGELMAN	Review of factum for background of matters relating to property; Update call with Dom Magisano;	0.40	\$450.00	\$180.00
8/15/2018	BGELMAN	Review of amended application and amended order appointing monitor;	0.20	\$450.00	\$90.00
8/16/2018	BGELMAN	Call with D. Magisano; Call with Victoria re police contact information; consider next steps re access to property and letter to debtor re access; Email to Cindy at OPP to advice of our order and next steps in relation to the property; Research on Fentanyl remediation online;	1.30	\$450.00	\$585.00
8/17/2018	BGELMAN	Call with Chris at Canadian Decon Solutions and email re same; Email to Dom and Angela; Calls to Ontario Provincial Police; Call with Det Cst Tyler Horton and email to him re same; Attempted calls to Islam Jassem; Emails to Islam Jassem re appointment order and seeking responding call; receipt and review of emails from Angela at Figgard re listing of property; call to Dom Magisano; call with Joe Albert re next steps; research property listing;	3.70	\$450.00	\$1,665.00
8/17/2018	JALBERT	Discuss appointment, access to property, environment issues with Bryan	0.40	\$490.00	\$196.00
8/18/2018	JALBERT	review court order and EM to Bryan on access to property issues	0.20	\$490.00	\$98.00
8/19/2018	BGELMAN	Send text messages to Islam Jassem re appointment of monitor;	0.20	\$450.00	\$90.00

Albert Gelman Inc. - 100 Simcoe Street, Ste. 125, Toronto, ON M5H 3G2 - Tel: 416 504 1650 - Fax: 416 504 1655 - albertgelman.com

Islam Jassem  
218 Jerseyville Road  
Brantford, ON

## Invoice

**Invoice Date:** Oct 5, 2018  
**Invoice No:** <2260-1>  
**Billing Through:** Oct 5, 2018  
**File ID:** FISGARD-R:

**Re: Non-CCAA Monitor over Real Property at 218 Jerseyville Road, Brantford, Ontario**

Date	Client	Description	Hours	Rate	Total
8/20/2018	BGELMAN	Call with Dom Magisano re listing; attempted call to Realtor; call with Rocco to coordinate drive by and photographs at property; Call with Moe Hamzehian at Leadex Realty and email to him re same; Emails with Chris at Canadian Decon Solutions; Review of appraisal; Another attempted call to Islam Jassem; (1.8) Attend conference call with Dom Magisano, Angela Bull and others from Fisgard; Attend follow up call with Angela Bull, Dom Magisano and Islam Jassem; Prepare memo to file; Call to Rocco property manager re update on scheduling his drive by for pictures email to Philip Okpala (counsel to Islam Jassem) re access to property (2.2);	4.00	\$450.00	\$1,800.00
8/21/2018	BGELMAN	Review of quote and materials provided by Canadian Decon Solutions and call with Chris Andrews re same; Attend conference call with Angela Bull, Joanne and Dom Magisano re Quote from Canadian Decon; Email to Angela re funding request; Call with Chris Andrew at Canadian Decon; email to him re follow up and discussion points; Call to London Communications Centre re police presence during testing; email to Robert Daniel (Opp) to set up call to understand OPP findings onsite to prepare for site visit;	4.50	\$450.00	\$2,025.00
8/21/2018	SWARNER	Review of Court Order and considered AGI's appointment and general case review to gain understanding of issues in relation to monitoring	1.10	\$265.00	\$291.50
8/22/2018	BGELMAN	Call from John Rupert at OPP re details of property when OPP entered, findings, etc; Calls and emails with Allison Drouin re coordination of paid officer on site on expedited basis; Reviews of quote from OPP to attend on site; emails and call with Philip Okpala counsel to Islam Jassem re access; Call to Islam Jassem re her providing access; call and emails with Chris Andrew at Canadian Decon re site visit and testing;	2.30	\$450.00	\$1,035.00
8/22/2018	DCHERNIAK	Set up File;	0.50	\$100.00	\$50.00
8/23/2018	BGELMAN	Email to OPP to confirm police on site; call with Dom Magisano re update; Emails and calls with Chris Andrews and OPP to confirm scheduling; Meeting with Suzette regarding next steps re testing;	0.90	\$450.00	\$405.00
8/23/2018	SWARNER	Meeting with B Gelman to discuss site testing; follow-up items and next step	0.30	\$265.00	\$79.50
8/27/2018	SWARNER	Follow-up telephone calls and email to Brantford OPP; Calls and email to Norfolk OPP regarding paid officer duty	0.90	\$265.00	\$238.50

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Islam Jassem  
218 Jerseyville Road  
Brantford, ON

## Invoice

**Invoice Date:** Oct 5, 2018  
**Invoice No:** <2260-1>  
**Billing Through:** Oct 5, 2018  
**File ID:** FISGARD-R:

**Re: Non-CCAA Monitor over Real Property at 218 Jerseyville Road, Brantford, Ontario**

8/28/2018	SWARNER	Follow-up call and Email with OPP & Testing crew to coordinate September site visit	0.20	\$265.00	\$53.00
9/4/2018	BGELMAN	Update meeting with Suzette re status of testing date;	0.10	\$450.00	\$45.00
9/4/2018	SWARNER	Follow-up with the OPP regarding site visit at 218 Jerseyville ; Email communication with property owner lawyer regarding access to premises	0.50	\$265.00	\$132.50
9/6/2018	BGELMAN	Prepare borrowing certificate; Update call with Angela Bull re listing by realtor/debtor and advise of WIP to date;	0.40	\$450.00	\$180.00
9/6/2018	SWARNER	Telephone calls and email with the OPP regarding paid duty; Received confirmation on paid duty and send email confirmation to Property owner Lawyer and all other parties involved	0.50	\$265.00	\$132.50
9/12/2018	SWARNER	Call with B Gelman & Chris from Canadian Decon regarding site visit ; Follow emails with OPP to confirm site visit for Friday Sept 12	0.40	\$265.00	\$106.00
9/12/2018	BGELMAN	Update call with Chris Andrew from Canadian Decon Solutions;	0.20	\$450.00	\$90.00
9/13/2018	SWARNER	Issue final reminder to property owner and confirm timing with the OPP	0.30	\$265.00	\$79.50
9/14/2018	BGELMAN	Attend at 208 Jerseyville Road, Brantford re testing day, accompanied by Police and Canadian Decon Solutions; Update calls with Angela Bull and Dom Magisano;	4.10	\$450.00	\$1,845.00
9/14/2018	SWARNER	Travel to Brantford Ontario to 218 Jerseyville Rd for monitoring of home inspection and testing per monitoring mandate; Prepared detailed notes of activities for the day	7.40	\$265.00	\$1,961.00
9/17/2018	BGELMAN	Email to Chris Andrews re update on reporting;	0.20	\$450.00	\$90.00
9/18/2018	BGELMAN	Respond to Angela re next steps;	0.10	\$450.00	\$45.00
9/21/2018	BGELMAN	Review of report from Canadian Decon Solutions; email to Angela and Dom re same; Call with Dom Magisano re report from Canadian Decon; Call with Angela, Joanne, Joel and Dom;	1.30	\$450.00	\$585.00
9/24/2018	BGELMAN	Call with Chris Andrew at Canadian Decon and email to him re follow up points; Update email to Angela Bull re remediation report; Call with Dom Magisano; email to Cindy Ann Shuffles; Commence drafting report to Court as Monitor;	1.40	\$450.00	\$630.00
9/25/2018	BGELMAN	Continue to draft report to court; call with Dom Magisano and email to Debtor's counsel re findings at property;	2.10	\$450.00	\$945.00

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Islam Jassem  
218 Jerseyville Road  
Brantford, ON

## Invoice

**Invoice Date:** Oct 5, 2018  
**Invoice No:** <2260-1>  
**Billing Through:** Oct 5, 2018  
**File ID:** FISGARD-R:

**Re: Non-CCAA Monitor over Real Property at 218 Jerseyville Road, Brantford, Ontario**

Date	Staff	Description	Hours	Rate	Amount
9/26/2018	BGELMAN	Review of final report from Canadian Decon Solutions and EFI Global; Email to Cindy Ann Shuffles at OPP with Proposed Remedial Action Plan; Email to Philip Okpala with copy of action plan; Continue to draft first draft of report to Court;	3.30	\$450.00	\$1,485.00
9/27/2018	BGELMAN	Review of comments to report from Suzette Warner and update report re same;	0.30	\$450.00	\$135.00
9/27/2018	SWARNER	Review and editing of Trustee's Report to Court	1.00	\$265.00	\$265.00
10/1/2018	BGELMAN	Email to Mr. Okpala (Debtor counsel) re update on sale of property; Review of remediation cost outline and respond to same from Canadian Decon Solutions; Review of APS and correspondence between Dom Magisano and lawyer for Debtor; Meeting with Dom Magisano re next steps; attend call with Joanne, Angela and Dom Magisano;	1.60	\$450.00	\$720.00
10/2/2018	BGELMAN	Further drafting of report to Court;	2.30	\$450.00	\$1,035.00
10/3/2018	BGELMAN	Call with Dom Magisano; respond to email from Police re production order; Email to Jeffrey Larry as proposed Receiver's counsel; Review of draft affidavit of Angela Bull re facts; Update Court Report;	1.30	\$450.00	\$585.00
10/4/2018	BGELMAN	Draft first confidential report; execute consent for Receivership; emails with Lerner and Jeff Larry, counsel to Monitor;	1.10	\$450.00	\$495.00
10/5/2018	BGELMAN	Finalize First Report to Court and Confidential First Report;	2.00	\$450.00	\$900.00
10/5/2018	BGELMAN	Accrual to complete set out in Monitor's First Report to Court;	5.00	\$450.00	\$2,250.00
				<b>Total Fees:</b>	<b>\$24,428.00</b>
				<b>HST:</b>	<b>\$3,175.64</b>

**Summary by Staff:**

Staff	Hours	Rate	Amount
Bryan A. Gelman (Principal, CIRP LIT)	46.10	\$450.00	\$20,745.00
Daphna Cherniak (Estate Administrator)	0.50	\$100.00	\$50.00
Joe E. Albert (Principal, CIRP, CPA, DIFA. LIT)	0.60	\$490.00	\$294.00
Suzette Warner (Associate, CFE, CPA, CGA, FCCA)	12.60	\$265.00	\$3,339.00

**Disbursements:**

**Taxable Disbursements**

OTHER MISC.:	\$10.00
TRAVEL:	\$103.40

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Islam Jassem  
218 Jerseyville Road  
Brantford, ON

Invoice

Invoice Date: Oct 5, 2018  
Invoice No: <2260-1>  
Billing Through: Oct 5, 2018  
File ID: FISGARD-R:

Re: Non-CCAA Monitor over Real Property at 218 Jerseyville Road, Brantford, Ontario

Total Disbursements: \$113.40  
HST: \$14.74  
Amount Due This Invoice: \$27,731.78

**Invoice Summary:**

TOTAL FEES AND DISBURSEMENTS:	\$24,541.40
TOTAL HST:	\$3,190.38
<b>TOTAL AMOUNT DUE:</b>	<b>\$27,731.78</b>

Payment of this account is due on receipt  
HST Registration # 83741 9514 RT0001

Albert Gelman Inc. - 100 Simcoe Street, Ste. 125, Toronto, ON M5H 3G2 - Tel: 416 504 1650 - Fax: 416 504 1655 - albertgelman.com

**TAB 4**

Court File No.: CV-18-602596-00CL

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

THE HONOURABLE	)	WEDNESDAY, THE 10 <sup>TH</sup>
	)	
JUSTICE _____	)	DAY OF OCTOBER, 2018
	)	

BETWEEN:

**FISGARD CAPITAL CORPORATION**

Applicant

- and -

**ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM**

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE*  
ACT, R.S.O. 1990, c. C.43

**DISCHARGE ORDER**

**THIS MOTION**, made by the applicant, for an Order discharging Albert Gelman Inc. as non-CCAA Monitor (the “**Monitor**”), without security and only with the powers granted in the Order of the Honourable Justice Dunphy dated August 13, 2018, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the first report of the Monitor dated October 5, 2018 (the “**Report**”), the Monitor’s first confidential report dated October 5, 2018 (“**First Confidential Report**”), the affidavit of the Monitor as to fees (the “**Fee Affidavit**”), the affidavit of Angela Bull sworn on October 4, 2018 and on hearing the submissions of counsel for the Monitor, no one else appearing although served as evidenced by the Affidavit of Victoria Gifford sworn October 5, 2018, filed;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the activities of the Monitor, including the Monitor's Statement of Receipts and Disbursements dated October 5, 2018, as set out in the Report, as well as the First Confidential Report are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, including estimated accruals to complete the Monitor's engagement, as set out in the Report and the Fee Affidavit, are hereby approved.
4. **THIS COURT ORDERS** that the Monitor's First Confidential Report dated October 5, 2018 shall be sealed until a sale of the Property has been sold or pending a further order of the Court.
5. **THIS COURT ORDERS** that the Monitor is hereby discharged as Monitor, provided however that notwithstanding its discharge herein (a) the Monitor shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the monitorship herein, and (b) the Monitor shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Albert Gelman Inc. its capacity as Monitor.
6. **THIS COURT ORDERS AND DECLARES** that Albert Gelman Inc. is hereby released and discharged from any and all liability that Albert Gelman Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Albert Gelman Inc. while acting in its capacity as Albert Gelman Inc. herein, save and except for any gross negligence or wilful misconduct on the Monitor's part. Without limiting the generality of the foregoing, Albert Gelman Inc. is hereby forever released

and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Monitor's part.

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**TAB 5**

Court File No. \_\_\_\_\_: CV-18-602596-00CL

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

THE HONOURABLE \_\_\_\_\_ ) ~~WEEKDAY~~WEDNESDAY, THE # 10<sup>TH</sup>  
)  
)  
JUSTICE \_\_\_\_\_ ) DAY OF ~~MONTH~~OCTOBER,  
20YR2018

~~BETWEEN:-~~

**~~PLAINTIFF~~**

~~Plaintiff~~

BETWEEN:

**FISGARD CAPITAL CORPORATION**

Applicant

- and -

**~~DEFENDANT~~**

~~Defendant~~

**ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM**

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT, R.S.O. 1990, c. C.43*

**DISCHARGE ORDER**

**THIS MOTION**, made by [~~RECEIVER'S NAME~~] ~~in its capacity as the Court appointed receiver (the "Receiver") of the undertaking, property~~the applicant, for an Order discharging Albert Gelman Inc. as non-CCAA Monitor (the "Monitor"), without security and assets of [~~DEBTOR~~] ~~(the "Debtor"), for an order:-~~

- ~~1. approving the activities of the Receiver as set out in the report of the Receiver dated [DATE] (the "Report");~~
- ~~2. approving the fees and disbursements of the Receiver and its counsel;~~
- ~~3. approving the distribution of the remaining proceeds available in the estate of the Debtor;~~  
~~[and]~~
- ~~4. discharging [RECEIVER'S NAME] as Receiver of the undertaking, property and assets of the Debtor; and~~
- ~~5. releasing [RECEIVER'S NAME] from any and all liability, as set out in paragraph 5 of this Order~~<sup>1</sup>; only with the powers granted in the Order of the Honourable Justice Dunphy dated August 13, 2018, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the first report of the Monitor dated October 5, 2018 (the "Report," the affidavits of the Receiver and its counsel as to fees (the "Fee Affidavits"), the Monitor's first confidential report dated October 5, 2018 ("First Confidential Report"), the affidavit of the Monitor as to fees (the "Fee Affidavit"), the affidavit of Angela Bull sworn on October 4, 2018 and on hearing the submissions of counsel for the ~~Receiver~~Monitor, no one else appearing although served as evidenced by the Affidavit of ~~[NAME]~~Victoria Gifford sworn ~~[DATE]~~October 5, 2018, filed<sup>2</sup>;

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
1. THIS COURT ORDERS that the activities of the Receiver, Monitor, including the Monitor's Statement of Receipts and Disbursements dated October 5, 2018, as set out in the Report, as well as the First Confidential Report are hereby approved.

<sup>1</sup>~~If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.~~

<sup>2</sup>~~This model order assumes that the time for service does not need to be abridged.~~

~~3.~~ **2. THIS COURT ORDERS** that the fees and disbursements of the ~~Receiver and its counsel~~Monitor, including estimated accruals to complete the Monitor's engagement, as set out in the Report and the Fee ~~Affidavits~~Affidavit, are hereby approved.

~~4.~~ **3. THIS COURT ORDERS** that, ~~after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to [NAME OF PARTY]~~<sup>3</sup> Monitor's First Confidential Report dated October 5, 2018 shall be sealed until a sale of the Property has been sold or pending a further order of the Court.

~~5.~~ **4. THIS COURT ORDERS** that ~~upon payment of the amounts set out in paragraph 3 hereof [and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report], the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor~~the Monitor is hereby discharged as Monitor, provided however that notwithstanding its discharge herein (a) the ~~Receiver~~Monitor shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the ~~receivership~~monitorship herein, and (b) the ~~Receiver~~Monitor shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of ~~[RECEIVER'S NAME] in~~Albert Gelman Inc. its capacity as ~~Receiver~~Monitor.

~~6.~~ **5. THIS COURT ORDERS AND DECLARES** that ~~[RECEIVER'S NAME]~~Albert Gelman Inc. is hereby released and discharged from any and all liability that ~~[RECEIVER'S NAME]~~Albert Gelman Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of ~~[RECEIVER'S NAME]~~Albert Gelman Inc. while acting in its capacity as ~~Receiver~~Albert Gelman Inc. herein, save and except for any gross negligence or wilful misconduct on the ~~Receiver's~~Monitor's part. Without limiting the generality of the foregoing, ~~[RECEIVER'S NAME]~~Albert Gelman Inc. is hereby forever released

<sup>3</sup> ~~This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.~~

and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the ~~Receiver's~~ Monitor's part.<sup>4</sup>

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<sup>4</sup>~~The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.~~

Document comparison by Workshare 9 on October 05, 2018 3:07:41 PM

Input:	
Rendering set	Standard

Legend:	
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<del>Deletion</del>	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	85
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Moved to	0
Style change	0
Format changed	0
Total changes	134

**TAB 6**

Court File No.: CV-18-60596-00CL

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

THE HONOURABLE	)	WEDNESDAY, THE 10 <sup>TH</sup>
	)	
JUSTICE _____	)	DAY OF OCTOBER, 2018
	)	

B E T W E E N :

FISGARD CAPITAL CORPORATION

Applicant

- and -

ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM

Respondents

**ORDER  
(APPOINTING RECEIVER)**

**THIS MOTION** made by the Applicant, Fisgard Capital Corporation (“**Fisgard**”) for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O 1990 c. C.43, as amended (the “**CJA**”) appointing Albert Gelman Inc. as receiver (in this capacity, the “**Receiver**”) without security, of certain real property municipally known as 218 Jerseyville Road, Brantford, Ontario as more particularly described in Schedule “A” to this Order (the “**Real Property**”) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Angela Bull sworn October 4, 2018, and the Exhibits thereto, the First Report of the Albert Gelman Inc., in its capacity as Monitor (the “**Monitor Report**”), dated October 5, 2018 (including the First Confidential Report), and on hearing the submissions of counsel for the Applicant, no one else appearing, although duly served as appears from the affidavit of service of Victoria Gifford sworn October 5, 2018,

## **SERVICE**

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

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Albert Gelman Inc. is hereby appointed Receiver, without security, of all of the Real Property, including any assets acquired for, or used in relation to, the Real Property including all proceeds thereof (the "**Property**").

## **RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) without in any way limiting the generality of paragraph 2(b) above, to move and store any and all property, assets, and undertaking (the "**Personal Property**") located inside the Real Property. Once the Personal Property has been moved into storage, the Receiver will allow Islam Jassem (aka Islam Hammadi Jassem) (the "**Debtor**") to remove the Personal Property

from storage provided that the Debtor and any other persons who may assist the Debtor with such removal, execute a release in favour of the Receiver (in a form to be provided by the Receiver) for any damage, harm or loss that may result to the Debtor and/or such persons as a result of any contamination from or of the Personal Property.

- (d) to manage and oversee the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course together with entering into agreements and incurring obligations relating to the remediation of the Real Property and/or cease to perform any contracts, including, but not limited to, the Agreement of Purchase and Sale for the Real Property as further described in the Monitor Report, entered into by the Debtor in relation to the Property;
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to the Debtor relating to the Property;

- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$25,000 provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

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

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

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former agents, accountants, legal counsel and all other persons acting on her instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively,

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

#### **NO INTERFERENCE WITH THE RECEIVER**

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

## **CONTINUATION OF SERVICES**

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

## **RECEIVER TO HOLD FUNDS**

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

## **EMPLOYEES**

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for

in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

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

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

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

#### **RECEIVER’S ACCOUNTS**

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

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

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

#### **FUNDING OF THE RECEIVERSHIP**

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all

Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## **SERVICE AND NOTICE**

24. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.albertgelman.com/corporate-solutions/Jassem/> (the "**Website**").

25. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

26. **THIS COURT ORDERS** that the Receiver may post all reports and related documents relating to its engagement as Monitor of the Property on the Website.

**GENERAL**

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

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

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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



**SCHEDULE "A"**

PT LT 53, CON 3 TWP BRANTFORD, PT 2, 2R6680; COUNTY OF BRANT

PIN 32226-0152 (LT)

Being municipally known as 218 Jerseyville Road, Brantford, Ontario

**SCHEDULE “B”**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. «number»

AMOUNT \$«amount»

1. THIS IS TO CERTIFY that Albert Gelman inc., the receiver (the “Receiver”) of 218 Jerseyville Road, Brantford, Ontario (the “Real Property”), including any assets acquired for, or used in relation to, the Real Property including all proceeds thereof including all proceeds thereof (collectively, the “Property”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated the «day» day of «month», 2018 (the “Order”) made in an action having Court file number CV-18-602596-00CL, has received as such Receiver from the holder of this certificate (the “Lender”) the principal sum of \$«amount», being part of the total principal sum of \$«amount» which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

Dated the «day» of October, 2018

«name of receiver», solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name: »  
Title: »

**TAB 7**



municipally known as 218 Jerseyville Road, Brantford, Ontario as more particularly described in Schedule "A" to this Order (the "Real Property") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the ~~Report~~affidavit of Angela Bull sworn October 4, 2018, and the Exhibits thereto, the First Report of the Albert Gelman Inc., in its capacity as Monitor (the "Monitor Report"), dated October 5, 2018 (including the First Confidential Report), and on hearing the submissions of counsel for the ~~Receiver, [NAMES OF OTHER PARTIES APPEARING]~~Applicant, no one else appearing ~~for any other person on the service list,~~ although ~~properly~~duly served as appears from the affidavit of ~~[NAME] sworn [DATE] filed<sup>4</sup>;~~service of Victoria Gifford sworn October 5, 2018,

### **SERVICE**

1. ~~THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup> is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.~~THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. ~~THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased~~

<sup>1</sup> This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

<sup>2</sup> In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup> In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

~~Assets described in the Sale Agreement [and listed on Schedule B hereto]<sup>4</sup> shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE]; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets. that pursuant to section 243(1) of the BIA and section 101 of the CJA, Albert Gelman Inc. is hereby appointed Receiver, without security, of all of the Real Property, including any assets acquired for, or used in relation to, the Real Property including all proceeds thereof (the "Property").~~

### RECEIVER'S POWERS

3. **THIS COURT ORDERS** that ~~upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto. the Receiver is hereby empowered~~

<sup>4</sup> To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) without in any way limiting the generality of paragraph 2(b) above, to move and store any and all property, assets, and undertaking (the **“Personal Property”**) located inside the Real Property. Once the Personal Property has been moved into storage, the Receiver will allow Islam Jassem (aka Islam Hammadi Jassem) (the **“Debtor”**) to remove the Personal Property from storage provided that the Debtor and any other persons who may assist the Debtor with such removal, execute a release in favour of the Receiver (in a form to be provided by the Receiver) for any damage, harm or loss that may result to the Debtor and/or such persons as a result of any contamination from or of the Personal Property.
- (d) to manage and oversee the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course together with entering into agreements and incurring obligations relating to the remediation of the Real Property and/or cease to perform any contracts, including, but not limited to, the Agreement of Purchase and Sale for the Real Property as further described in the Monitor Report, entered into by the Debtor in relation to the Property;

- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to the Debtor relating to the Property;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$25,000 provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the

foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to lawyer-client communication or due to statutory provisions prohibiting such disclosure.

~~6. 4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.~~ **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

~~5.—— THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.~~

~~<sup>7</sup> The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

~~<sup>8</sup> This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

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

**NO INTERFERENCE WITH THE RECEIVER**

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

### CONTINUATION OF SERVICES

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

### RECEIVER TO HOLD FUNDS

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

### EMPLOYEES

13. ~~6-THIS COURT ORDERS~~ that, ~~pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal~~

~~information of those employees listed on Schedule "•" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~ all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

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

~~(a) the pendency of these proceedings;~~

~~(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and~~

~~(c) any assignment in bankruptcy made in respect of the Debtor;~~

## **PIPEDA**

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

information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

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

## **RECEIVER'S ACCOUNTS**

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

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

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

## **FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this

Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

### **SERVICE AND NOTICE**

24. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on

transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.albertgelman.com/corporate-solutions/Jassem/> (the “Website”).

25. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

26. **THIS COURT ORDERS** that the Receiver may post all reports and related documents relating to its engagement as Monitor of the Property on the Website.

#### GENERAL

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

~~28. the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.<sup>8</sup> THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. ~~9.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

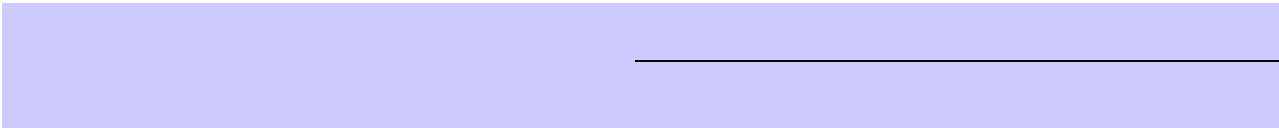
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30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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





~~Schedule A – Form of Receiver’s Certificate~~ SCHEDULE “A”

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

~~BETWEEN:–~~

~~PLAINTIFF~~

Plaintiff

~~–and–~~

~~DEFENDANT~~

Defendant

**RECEIVER’S**

PT LT 53, CON 3 TWP BRANTFORD, PT 2, 2R6680; COUNTY OF BRANT

PIN 32226-0152 (LT)

Being municipally known as 218 Jerseyville Road, Brantford, Ontario

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

**RECITALS**

~~A. Pursuant to an Order of the Honourable [NAME OF JUDGE]~~

CERTIFICATE NO. «number»

AMOUNT \$«amount»

1. THIS IS TO CERTIFY that Albert Gelman inc., the receiver (the "Receiver") of 218 Jerseyville Road, Brantford, Ontario (the "Real Property"), including any assets acquired for, or used in relation to, the Real Property including all proceeds thereof including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").

~~B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.~~

~~C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.~~

~~THE RECEIVER CERTIFIES the following:~~

~~1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;~~

~~2. The conditions to Closing as set out in section 1 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and~~

~~3. The Transaction has been completed to the satisfaction of the Receiver.~~

~~4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].~~

Commercial List) (the "Court") dated the «day» day of «month», 2018 (the "Order") made in an action having Court file number CV-18-602596-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$«amount», being part of the total principal sum of \$«amount» which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

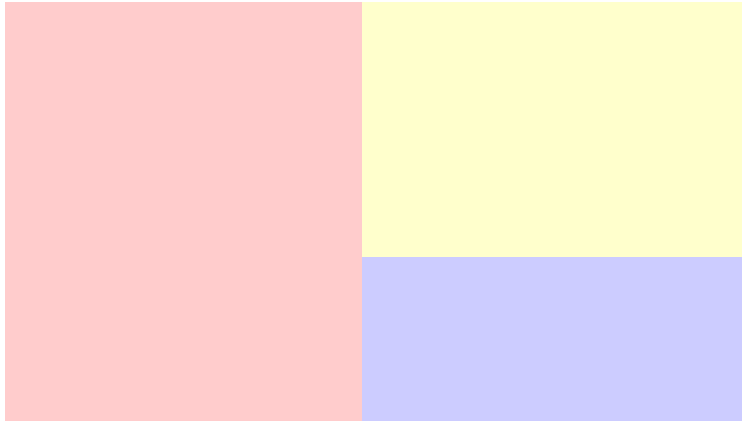
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

Dated the «day» of October, 2018



~~[NAME OF RECEIVER]~~, «name of receiver», solely in its capacity as Receiver of the ~~undertaking, property and assets of~~ [DEBTOR]Property (as defined in the Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name: »  
Title: »

~~Schedule B – Purchased Assets~~

~~Schedule C – Claims to be deleted and expunged from title to Real Property~~  
~~Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property~~

~~(unaffected by the Vesting Order)~~

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Format changed	0
Total changes	285

**FISGARD CAPITAL CORPORATION**  
Applicant and Respondents

**ISLAM JASSEM et al.**  
Respondents

Court File No.: CV-602596-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**MOTION RECORD  
(Appointment of Receiver)  
(Returnable October 10, 2018)**

**LERNERS LLP**  
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