

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

**IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL OF 1382769 ONTARIO  
LIMITED AND 1622354 ONTARIO LIMITED**

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**FACTUM**  
**(Extension of Time to File a Proposal; Administrative Consolidation)**

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May 18, 2026

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**TO: THE SERVICE LIST**

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## I. RELIEF SOUGHT

1. This is a motion by 1382769 Ontario Limited and 1622354 Ontario Limited (together, the “**Companies**”) for an order, in the form of the draft order delivered, that (i) extends the time for the Companies to file proposals (the “**Stay Period**”) by 45 days, to July 15, 2026; (ii) administratively (and not substantively) consolidates the Companies’ notice of intention to make a proposal (“**NOI**”) proceedings; and (iii) validates service so that this motion is properly returnable on May 19, 2026 at 9:00 a.m. as scheduled by the East Region Commercial List (“**ERCL**”) office.

2. Albert Gelman Inc., in its capacity as trustee to the NOIs (in such capacity, the “**Proposal Trustee**”), supports the relief sought and there is no known opposition.

## II. KEY FACTS

### A. Context of NOI filings

3. The Companies operate restaurant franchises located in the RioCan Centre Mall in Kingston, Ontario. The Companies employ approximately one hundred (100) employees.<sup>1</sup> In addition to employees, key going-concern stakeholders include the Companies’ franchisor, Recipe Unlimited Corporation (the “**Franchisor**”), the Companies’ landlords, and the Companies’ numerous suppliers.<sup>2</sup>

4. In 2025, the Companies and an arm’s length purchaser (the “**Purchaser**”) had agreed on the key terms of a going-concern transaction (the “**Transaction**”) for the Companies’ businesses

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<sup>1</sup> First Report of the Proposal Trustee dated May 17, 2026 (“**First Report**”), paras. 8-10.

<sup>2</sup> First Report, paras. 12-13.

and assets. The Franchisor had approved the Purchaser and Transaction. The parties intended to close on or around May 4, 2026.

5. In the weeks prior to the intended closing date, Canada Revenue Agency (“CRA”) threatened to garnish or freeze the Companies’ bank accounts, asserting that the Companies are in default on account of HST remittances and corporate income taxes.<sup>3</sup>

6. The Companies are reviewing CRA’s claims<sup>4</sup> and intend to communicate transparently with CRA on all issues, including the underlying context such as the economic headwinds experienced during and since the COVID-19 pandemic.

7. However, in the meantime, the Companies could not continue to operate, and the Purchaser could not complete the Transaction, under the threat of garnishment, as any freeze or garnishment of the Companies’ accounts would have been terminal for the businesses and any going-concern transaction opportunity.

8. In particular, it would have prevented business operations, halted revenues from operations, and caused suppliers and employees to go unpaid. It would have caused the Companies to miss rent and franchisor payments, triggering claims and potential contractual terminations, compromising the Companies’ ability to resume operations. The risks posed to the continuity of the businesses, together with the potential that CRA would assert a deemed trust or other claim as against the assets before or after closing, would have prevented or significantly reduced the value

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<sup>3</sup> First Report, para. 14.

<sup>4</sup> *Id.*

of any going-concern transaction – including the Transaction with the Purchaser – to the detriment of creditors and stakeholders.

9. In addition, any CRA enforcement would have created priority issues. Specifically, unpaid corporate income taxes are unsecured claims and HST deemed trusts are unenforceable in bankruptcy. Since the Companies have at least one secured creditor, being the Franchisor, any CRA enforcement would have resulted in unsecured claims being paid ahead of claims secured by the Franchisor's security and would have allowed CRA to recover more than its pro-rated share of unsecured claims. Such preferential recovery would have caused prejudice to other creditors and would have likely constituted a reviewable transaction.

10. To preserve the status quo, maintain going-concern operations, preserve the opportunity to complete a going-concern transaction, and ensure that CRA's claims are addressed and paid in an expeditious but also fair and orderly manner, the Companies filed NOIs on May 1, 2026.<sup>5</sup>

## **B. Financial position**

11. But for the enforcement threat, the Companies' financial position is positive and they would likely not be considered insolvent.

12. The Companies' restaurants are profitable and the Companies are current on all their obligations in the ordinary course, with the potential exception of CRA. Pursuant to 15-week cashflow forecasts prepared with the assistance of the Proposal Trustee, the Companies expect to generate gross revenues of approximately \$2,130,000 between May 3, 2026 and August 16, 2026, representing net revenues of approximately \$163,000. This includes payment of all post-filing

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<sup>5</sup> First Report, para. 1.

expenses and obligations, including professionals fees and amounts payable to governmental agencies, as they come due.<sup>6</sup>

13. Presently, assuming CRA's claims are valid and enforceable, the Companies would likely be unable to satisfy those claims in full other than from the proceeds of a comprehensive going-concern transaction, which is at the centre of the Companies' restructuring plan.

### **C. Restructuring Plan**

14. The Purchaser remains interested in acquiring the Companies' assets and businesses, and the Franchisor continues to approve of the Purchaser. Accordingly, the Companies intend to implement the following restructuring plan:

- a. work with the Purchaser and the Franchisor to convert the Transaction into a "stalking horse" bid (the "**Stalking Horse Bid**") for purposes of a sale and investment solicitation process to be approved by the Court and performed under the supervision of the Proposal Trustee ("**SISP**");
- b. develop the terms of a SISP in consultation with the Proposal Trustee and CRA (if it wishes to be involved);
- c. bring a motion for an order approving the performance of the SISP and approving the Stalking Horse Bid for purposes of the SISP;
- d. perform the SISP under the supervision of the Proposal Trustee;

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<sup>6</sup> First Report, paras. 21-25 and Appendix "D".

- e. bring a motion for approval of the successful bid(s) in the SISP, including the Stalking Horse Bid or any superior bid(s);
- f. close the applicable transaction(s);
- g. distribute the proceeds in accordance with applicable priorities, including to CRA as the case may be, pursuant to a joint proposal or in a bankruptcy.

15. The Purchaser confirmed its intent to be the stalking horse bidder in the SISP. The parties are working on the Stalking Horse Bid and the Companies expect to bring the SISP and Stalking Horse Bid approval motion in June.

### **III. ISSUES**

16. The issues on this motion are whether the Court should extend the Stay Period, administratively (and not substantively) consolidate the Companies' NOI proceedings, and validate service such that this motion is properly returnable on May 19, 2026, as scheduled by the ERCL office.

### **IV. LAW AND ARGUMENT**

#### **A. The Court Should Extend the Stay Period**

17. The Companies filed NOIs on May 1, 2026. The initial Stay Period expires 30 days thereafter, on May 30, 2026.<sup>7</sup> The Companies seek to extend the Stay Period by 45 days to July 15, 2026. This would be the first extension.

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<sup>7</sup> [\*Bankruptcy and Insolvency Act\*](#), s. [50.4\(8\)](#).

18. The criteria for an extension of the Stay Period, set out in subsection [50.4\(9\)](#) of the [Bankruptcy and Insolvency Act](#), are met. The Companies are acting in good faith and with due diligence, the extension of the Stay Period will enhance the prospects of a viable proposal, and extending the Stay Period will not prejudice, let alone materially prejudice, any creditors. The reasons for this include the following reasons, among others:

- a. the Companies have a clear, conventional and viable restructuring plan centered around a SISP that leverages the Transaction as the Stalking Horse Bid.
- b. the extended Stay Period will allow the Companies to begin implementing this plan, which is in the interest of all stakeholders, including, but not limited to, CRA.
- c. the Companies have positive cashflow and sufficient liquidity to operate in the normal course during the extended Stay Period and to implement the restructuring plan – including payment of professionals – without interim financing.<sup>8</sup>
- d. the non-extension of the Stay Period would cause the Companies to automatically become bankrupt, which would cause the same disruption and prejudice as discussed at paragraph 7, above.
- e. the Proposal Trustee supports the extension.<sup>9</sup>

**B. The Court Should Administratively Consolidate the NOI Proceedings**

19. The Court has jurisdiction to order the administrative consolidation of proceedings pursuant to its inherent power to control its own processes. This power is informed by, among

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<sup>8</sup> First Report, paras. 21-25 and Appendix “D”.

<sup>9</sup> First Report, paras. 26-27.

other provisions, [section 138](#) of the [Courts of Justice Act](#), which provides that “*As far as possible, multiplicity of legal proceedings shall be avoided.*” Courts often order the administrative consolidation of insolvency matters to streamline their administration and avoid the unnecessary costs of producing, serving and filing multiple sets of redundant materials at each stage of the proceedings.<sup>10</sup>

20. Administratively consolidating the Companies’ NOI proceedings is appropriate and beneficial, and creates no prejudice, including for the following reasons, among others:

- a. the Companies operate virtually identical businesses that have the same key stakeholders, namely, their employees, their landlords, the Franchisor, and CRA, in addition to sharing multiple suppliers and vendors.
- b. the cause of insolvency is the same for both Companies, namely, the CRA enforcement threat.
- c. the Companies are owned and operated by the same people, appointed the Proposal Trustee in both NOI proceedings, and retained the same legal counsel, with a view to completing a joint restructuring plan, namely, a SISP leveraging a Stalking Horse Bid that targets both Companies’ assets.
- d. the order sought makes clear that it does not substantively consolidate the estates of the Companies which shall remain separate and distinct. The Companies’ respective

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<sup>10</sup> See *Re Mustang GP Ltd.*, [2015 ONSC 6562](#) [Rady J.], [para. 25](#).

rights, properties, undertakings, assets and liabilities shall remain vested within each Company's respective estate, as applicable. The consolidation is administrative only.

- e. the Proposal Trustee supports the administrative consolidation of the Companies' NOI proceedings.<sup>11</sup>
- f. there is no known opposition.

### **C. The Court May Validate Service**

21. The Companies filed NOIs on May 1, 2026. Counsel to the Companies sent a scheduling request form for this motion to ERCL office on May 6 and followed up on May 11. On May 12, the ERCL office scheduled this motion for May 19, 2026, at 9:00, by videoconference. Given this was less than a week away (including a holiday) and this could result in a shorter service window, counsel advised the ERCL office that the relief sought on the initial motion would be limited to the extension of the Stay Period and administrative consolidation, and would exclude any relief related to the Stalking Horse Bid or SISP at this time.

22. Given that the initial Stay Period expires on May 30, 2026 and the need to accommodate the Court's schedule, short service may have occurred, however this was beyond the control of the Companies in the circumstances.

23. Given the nature of the relief sought and the facts set out herein, the Companies believe that it is just and appropriate to validate service as they are acting in good faith, with due diligence, and in the best interest of stakeholders, including, but not limited to, CRA.

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<sup>11</sup> First Report, paras. 16-20.

**RELIEF REQUESTED**

24. The Companies therefore request an order in the form of the draft order delivered.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 18<sup>th</sup> day of May, 2026.



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**SCHEDULE “A”  
LIST OF AUTHORITIES**

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| 1. | <i>Re Mustang GP Ltd.</i> , <a href="#">2015 ONSC 6562</a> [Rady J.], <a href="#">para. 25</a> |
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**SCHEDULE “B”  
RELEVANT STATUTES**

**[Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3](#)**

**Extension of time for filing proposal**

**50.4 (8)** Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

**(a)** the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment; [...]

**(9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

**(a)** the insolvent person has acted, and is acting, in good faith and with due diligence;

**(b)** the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

**(c)** no creditor would be materially prejudiced if the extension being applied for were granted.

**[Courts of Justice Act, R.S.O. 1990, c. C.43](#)**

**138** As far as possible, multiplicity of legal proceedings shall be avoided.

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**IN THE MATTER OF THE NOTICES OF  
INTENTION TO MAKE A PROPOSAL OF 1382769  
ONTARIO LIMITED AND 1622354 ONTARIO  
LIMITED**

Court File No. 33-3368241  
33-3368242

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

Proceeding commenced at Ottawa

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**FACTUM**  
**(Motion returnable May 19, 2026)**

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