

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N° : 500-11-057570-190

**SUPERIOR COURT**  
(Commercial Division)

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

**9348069 CANADA INC.**

-and-

**4295862 CANADA INC.**

-and-

**MOTOVAN CORPORATION**

-and-

**MONCY HOLDING COMPANY INC.**

-and-

**MONCY FINANCIAL SERVICES COMPANY INC.**

-and-

**NICHOLS MOTORCYCLE SUPPLY INC.**

-and-

**MONCY LLC**

-and-

**MOTORCYCLE TIRES & ACCESSORIES LLC ("MTA")**

*CCAA Parties*

- and-

**KPMG INC.**

*Monitor*

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## **FOURTH REPORT OF THE MONITOR**

*(Companies' Creditors Arrangement Act, R.S.C. 1985, C. C-36, As Amended)*

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MAY 11, 2020

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## **APPENDICES**

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## **A. INTRODUCTION AND PURPOSE OF THE MONITOR'S FOURTH REPORT**

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1. On November 28, 2019, 9348069 Canada inc., 4295862 Canada inc. and Motovan Corporation (collectively "**Motovan**", or the "**CCAA Parties**") filed an application before the Quebec Superior Court, Commercial Division (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
2. On November 28, 2019, KPMG Inc., in its then capacity as proposed monitor, provided the Court with a pre-filing report dated November 29, 2019 (the "**Pre-Filing Report**") in connection with the CCAA Parties' application seeking, *inter alia*, the issuance of an Initial Order granting the CCAA Parties protection under the CCAA and the granting of certain priority charges, namely an administration charge and a directors and officers' charge (the "**Proposed Initial Order**").
3. On December 2<sup>nd</sup>, 2019, the Court granted an initial order which provides for, among other things, the appointment of KPMG Inc. as monitor of the CCAA Parties (in such capacity, the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**") and a stay of proceedings until December 12, 2019, or such later date as the Court may order against the CCAA Parties (the "**Initial Order**").
4. On December 9, 2019, the CCAA Parties filed a motion (I) for an order extending the stay period, (II) to amend the initial order and (III) for the approval of a sale and investment solicitation process (the "**SISP**").
5. On December 12, 2019, the Court granted the Amended and Restated Initial Order (the "**Amended and Restated Initial Order**") and the Order approving the SISP and extending the stay period up to January 31, 2020 (the "**First Extension/SISP Order**").
6. On December 20, 2019, the Monitor, in its capacity as foreign representative, obtained provisional relief, and on January 23, 2020, obtained final relief under Chapter 15 of the Bankruptcy Code for recognition of the CCAA Proceedings by the United States Bankruptcy Court for the District of Delaware (the "**US Court**").
7. On January 29, 2020, the CCAA Parties filed a motion seeking an extension of the stay period (the "**Second Extension Motion**").
8. On January 31, 2020, the Court granted an order extending the stay period up to May 15, 2020 (the "**Second Extension Order**").
9. On February 12, 2020, the CCAA Parties filed a Motion seeking approval of the GCBI Revised Offer (as defined hereinafter) and the issuance of an Approval and Vesting Order (the "**AVO Motion**").
10. On February 19, 2020, the Court granted the AVO Motion and issued an approval and vesting order (the "**Approval and Vesting Order**").

11. Motovan and Gestion Claude Bigras Inc. (“**GCBI**”) executed the assets purchase agreement (the “**APA**”) on February 28, 2020, and on the same day, the Monitor signed the Monitor’s certificate which was filed with the Court on the following business day March 2<sup>nd</sup>, 2020, the whole in accordance with the Approval and Vesting Order.
12. On May 11, 2020, the CCAA Parties filed a motion (the “**Motion**”) (I) for an order extending the stay period (the “**Extending Order**”), (II) to amend the initial order (the “**Re-Amended and Restated Initial Order**”) and (III) for the issuance of a distribution order (the “**Distribution Order**”).
13. The purpose of this report (the “**Report**”) is to provide the following information to this Court:
  - a) The terms and reference and disclaimer for the Report (section **B**);
  - b) The Monitor’s activities since the Third Monitor’s Report (section **C**);
  - c) The CCAA Parties’ restructuring efforts since the Third Monitor’s Report (section **D**)
  - d) Motovan and MTA’s actual receipts and disbursements for the 104-week period ended May 9, 2020, as compared to the corresponding period reflected in the cash flow projections for Motovan (the “**Motovan Cash Flow Forecast**”) and the cash flow projections for MTA (the “**MTA Cash Flow Forecast**”), previously filed as part of the Second Monitor’s Report (section **E**);
  - e) Overview of cash flow projections for Motovan (the “**Motovan Cash Flow**”) and the cash flow projections for MTA (the “**MTA Cash Flow**” and collectively with the Motovan Cash Flow the “**Cash Flows**”) for the 6-month period from May 17, 2020, to November 30, 2020 (the “**Cash Flow Period**”) (section **F**);
  - f) The Monitor’s assessment of the Cash Flows (section **G**);
  - g) Extension of the Stay Period (section **H**);
  - h) Distribution of the Transaction (as defined below) to BMO (section **I**)
  - i) Additional powers to the Monitor (section **J**); and
  - j) The Monitor’s observations regarding the Motion (section **K**).

## **B. RESTRICTIONS AND SCOPE LIMITATIONS**

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14. In preparing this Report, the Monitor has been provided with and has relied upon unaudited financial information, books and records prepared by certain senior management of the CCAA Parties (“**Senior Management**”), and discussions with Senior Management (collectively, the “**Information**”). Except as further described in this Report:
  - a) The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
  - b) Some of the information referred to in this Report consists of financial forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

15. Future oriented financial information referred to in this Report was prepared based on Senior Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.
16. The information contained in this Report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the CCAA Parties.
17. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars, which is the CCAA Parties' common Reporting currency.

### **C. MONITOR'S ACTIVITIES SINCE THE ISSUANCE OF THE THIRD MONITOR'S REPORT**

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18. Since the issuance of the Third Monitor's Report, the Monitor has, *inter alia*:

#### **General**

- a) Posted on the Monitor's websites [www.kpmg.com/ca/motovan](http://www.kpmg.com/ca/motovan) and [www.kpmg.com/ca/motovan-fr](http://www.kpmg.com/ca/motovan-fr) (the "**Website**"):
  - i. The AVO Motion and the Approval and Vesting Order;
  - ii. The Third Report of the Monitor; and
  - iii. The Foreign Representative's Omnibus Motion Seeking Entry of an Order (I) Authorizing (A) the Rejection of Certain Unexpired Leases and (B) Abandonment of Certain Personal Property, if any, Each Effective *Nunc Tunc* to the Applicable Surrender date and (II) Granting Related Relief (the "**Omnibus Motion to Reject Certain Unexpired Leases**") and the Order Granting Foreign Representative's Omnibus Motion Seeking Entry of an Order (I) Authorizing (A) the Rejection of Certain Unexpired Leases and (B) Abandonment of Certain Personal Property, if any, Each Effective *Nunc Tunc* to the Applicable Surrender date and (II) Granting Related Relief (the "**Order Granting the Omnibus Motion to Reject Certain Unexpired Leases**"). A copy of the Omnibus Motion to Reject Certain Unexpired Leases and the Order Granting the Omnibus Motion to Reject Certain Unexpired Leases are attached to this Report as Appendix A.
- b) Assisted the CCAA Parties with its communications with employees, suppliers, lenders and other parties;
- c) Responded to telephone calls, emails and inquiries and addressed concerns from creditors and other stakeholders and their financial and legal advisors regarding the effect of the CCAA Proceedings;
- d) Prepared and provided to BMO and Richter weekly updates of cash flows and weekly variance analyses of the cash flows for both Motovan and MTA;

### **Motovan**

#### *Closing of the transaction approved by the Court*

- e) Assisted Motovan and GCBI with the closing of the transaction in accordance with the Approval and Vesting Order and the APA, and signed and filed with the Court the certificate of the Monitor (the “**Transaction**”);

#### *Potential refunds of customs duties*

- f) Participated in numerous discussions with ALB Group (“**ALB**”), BMO and BMO’s financial and legal advisors and Motovan’s legal advisors with regards to potentials refunds of overpaid customs duties (the “**Duties Refunds**”). The Monitor was informed of the existence of the Duties Refunds in late April 2020. Per ALB:
  - i. Between 2013 and 2019, Motovan had overpaid customs duties of approximately \$1M to \$1,3M on importations of track and field helmets for sports. Additional work is to be performed by ALB to confirm the exact overpaid amount;
  - ii. On June 3, 2019, the Canadian International Trade Tribunal (“**CITT**”) rendered a judgment in favour of Motovan in an appeal procedure after the Canada Border Services Agency (“**CBSA**”) had refused to issue the credits (the “**CITT Order**”);
  - iii. In November 2019 and January 2020, CBSA began issuing credits on requests for adjustments following the CITT Order;
  - iv. ALB had hold its work of claiming overpaid customs duties since their invoices were not paid.
- g) The Duties Refunds do not form part of the Purchased Assets as defined in the APA and therefore remains in full property of Motovan. Any proceeds collected in respect to the Duties Refund, as the case may be, shall be distributed amongst Motovan’s creditors in accordance with their rank.

### **MTA**

- h) Assisted MTA with the completion of the liquidation process in respect to its American inventories and equipment. Mainly due to the sanitary measures and stay home orders in the United States in the fight against Covid-19, the process of collection of accounts receivable is not yet completed;
- i) Assisted MTA in handing over their premises to the landlords;
- j) In our capacity as Foreign Representative, filed on March 13, 2020, an omnibus motion seeking entry of an order (I) authorizing (A) the rejection of certain unexpired leases and (B) abandonment of certain personal property, if any, each effective *nunc pro tunc* to the applicable surrender and (II) granting related relief. On March 31, 2020, the US Court granted the order.

## **D. CCAA PARTIES' RESTRUCTURING EFFORTS SINCE THE ISSUANCE OF THE THIRD MONITOR'S REPORT**

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### **Sale of Motovan's Canadian Assets and Business**

19. As mentioned in the previous sections, on February 28, 2020, Motovan completed the sale of its assets to GCBI and executed the APA in accordance with the Approval and Vesting Order granted on February 19, 2020. The proceeds of the sale were transferred to the Monitor trust account on the same day (the "Proceeds").

### **MTA's American Assets – Liquidation Process by the Agent Gordon Brothers**

20. Since January 6, 2020, MTA has been liquidating its assets with the assistance and support of Gordon Brothers, in accordance with the Agency Agreement (as defined in the Second Report of the Monitor) signed on December 18, 2019, as approved by the Court.

21. The liquidation of MTA's assets in accordance with the Agency Agreement was anticipated to be completed by end of April, 2020. However, mainly due to the sanitary measures and stay home orders in the United States in the fight against Covid-19, the process of collection of accounts receivable is not yet completed.

22. Per the books and records of MTA, an amount of approximately \$USD 892,000 of accounts receivable is still outstanding. However, due to the current economic crisis, neither GB nor the Monitor are capable of assessing the quantum nor the timing of the collections.

## E. CASH FLOW RESULTS RELATIVE TO FORECASTS

### Motovan

23. The following table summarizes the cash receipts and disbursements for the 104-day ended May 9, 2020, as compared to the Motovan Cash Flow Forecast:

<b>Motovan Corporation ("MTV")</b>				
<b>Cash flow Forecast</b>	<b>Period</b>	<b>Period</b>	<b>Variance</b>	
<b>For the period Jan-26-2020 to May-9-2020</b>	<b>Total</b>	<b>Total</b>	<b>\$</b>	<b>%</b>
	<b>ACTUAL</b>	<b>FORECAST</b>		
<b>(in CA \$)</b>				
<b>RECEIPTS</b>				
Collections from opening balance	195 875	2 068 123	(1 872 248)	-91%
Collections - New sales	993 008	5 663 572	(4 670 564)	-82%
Net Sale of the Assets	6 790 803	-	6 790 803	
<b>Total receipts</b>	<b>7 979 686</b>	<b>7 731 695</b>	<b>247 991</b>	<b>3%</b>
<b>DISBURSEMENTS</b>				
<b>Operating Disbursements</b>				
Inventory Purchases	(3 342)	(1 205 000)	1 201 658	-100%
Freight/Packaging	(109 437)	(235 000)	125 563	-53%
Rent	(55 188)	(220 752)	165 564	-75%
Utilities/Building & Moving Expenses	(7 378)	(44 000)	36 622	-83%
Insurance	(51 698)	(87 000)	35 303	-41%
Employee Expenses	(450 205)	(1 851 596)	1 401 391	-76%
Tax/Duties/Customs	(65 129)	(322 642)	257 512	-80%
Vehicle Leases	(5 125)	(20 000)	14 875	-74%
Vehicle Operating Expenses	(3 604)	(10 000)	6 396	-64%
IT Equipment Leases	(5 100)	(8 410)	3 310	-39%
Other Equipment Lease	-	(8 000)	8 000	-100%
Communication (Internet)	(4 042)	(21 000)	16 958	-81%
Communication (Phone)	(730)	(11 900)	11 170	-94%
Bank Fees and Credit Card Fees	(12 557)	(89 000)	76 443	-86%
USD Purchase / Transfer Western Union	(9 065)	-	(9 065)	
Contingency	(16 168)	(139 600)	123 432	-88%
<b>Total Operating Disbursements</b>	<b>(798 768)</b>	<b>(4 273 899)</b>	<b>3 475 131</b>	<b>-81%</b>
<b>Debt Service Disbursements</b>				
Interest - Facility A	(49 132)	(202 000)	152 868	-76%
<b>Total Debt Service Disbursements</b>	<b>(49 132)</b>	<b>(202 000)</b>	<b>152 868</b>	<b>-76%</b>
<b>Total Professional Fee Disbursements</b>	<b>(242 402)</b>	<b>(1 060 239)</b>	<b>817 837</b>	<b>-77%</b>
<b>Total Disbursements</b>	<b>(1 090 302)</b>	<b>(5 536 138)</b>	<b>4 445 836</b>	<b>-80%</b>
<b>Net cash flow</b>	<b>6 889 384</b>	<b>2 195 557</b>	<b>4 693 827</b>	<b>214%</b>
<b>Opening Net bank indebtedness</b>	<b>(12 057 718)</b>	<b>(12 056 649)</b>	<b>(1 070)</b>	<b>0%</b>
Net cash flow	6 889 384	2 195 557	4 693 827	214%
<b>Ending Net bank indebtedness</b>	<b>(5 168 334)</b>	<b>(9 861 092)</b>	<b>4 692 757</b>	<b>-48%</b>

24. As at May 9, 2020, Motovan's net closing bank indebtedness was approximately of \$-5,168,000, which represents a favorable position of \$4,693,000 compared to the Motovan Cash Flow Forecast. *This balance includes the net proceeds of the Transaction of \$6,790,000 that is in a trust account of the Monitor.*



25. The opening net bank indebtedness, as at January 26, 2020, was \$1,000 higher than forecasted due to the forecast deriving from forecasted balances.
26. The net cash flow during the period was approximately \$4,694,000 higher than projected. The primary reasons for the favorable net cash flow variance are summarized below:
- a) The Motovan Cash Flow Forecast did not contemplate the net proceeds of the sale of the assets of Motovan of \$6,791,000. However, the Motovan Cash Flow Forecast was contemplating the sale/collections of accounts receivable of \$6,543,000; and;
  - b) Total cash disbursements during the period were approximately \$4,446,000 lower than forecasted mainly due to:
    - i. Timing difference, especially with regards to the payment of the professional fees (unpaid invoices of \$409,000); and
    - ii. Permanent favorable difference, especially for inventory purchases, freight & packaging and for tax, duties & customs due to lower purchase of inventory and employees' expenses since all employees were terminated at the transaction and contingency.

**MTA**

27. The following table summarizes the cash receipts and disbursements for the 104-day ended May 9, 2020, as compared to the MTA Cash Flow Forecast:

<b>Motorcycle Tires &amp; Accessories LLC ("MTA")</b>				
<b>Forecasted cashflows</b>				
<b>For the period Jan-26-2020 to May-9-2020</b>				
	<b>Period</b>	<b>Period</b>	<b>Variance</b>	
	<b>Total</b>	<b>Total</b>	<b>\$</b>	<b>%</b>
	<b>ACTUAL</b>	<b>FORECAST</b>		
<b>(in US \$)</b>				
<b>RECEIPTS</b>				
Collections from opening balance	382 146	1 007 453	(625 307)	-62%
Collection from new sales (i.e. since Dec 18th)	2 148 450	2 640 632	(492 182)	-19%
<b>Total receipts</b>	<b>2 530 596</b>	<b>3 648 085</b>	<b>(1 117 488)</b>	<b>-31%</b>
<b>DISBURSEMENTS</b>				
<b>Operating Disbursements</b>				
Freight	(263 313)	(49 806)	(213 507)	429%
Rent	(128 250)	(106 120)	(22 130)	21%
Utilities/Building Expenses	(14 235)	(14 000)	(235)	2%
Insurance	(11 011)	-	(11 011)	100%
Employee Expenses	(429 952)	(326 345)	(103 607)	32%
Bank Fees and Credit Card Fees	(45 204)	(34 409)	(10 795)	31%
Communication (Internet/Phone)	(11 845)	(12 400)	555	-4%
Contingency	(36 312)	(30 000)	(6 312)	21%
<b>Total Operating Disbursements</b>	<b>(940 122)</b>	<b>(573 079)</b>	<b>(367 043)</b>	<b>64%</b>
<b>Debt Service Disbursements</b>				
Interest - Facility B	(58 206)	(73 936)	15 730	-21%
<b>Total Debt Service Disbursements</b>	<b>(58 206)</b>	<b>(73 936)</b>	<b>15 730</b>	<b>-21%</b>
<b>Total Professional Fee Disbursements</b>	<b>(415 322)</b>	<b>(481 144)</b>	<b>65 822</b>	<b>-14%</b>
<b>Total Disbursements</b>	<b>(1 413 650)</b>	<b>(1 128 160)</b>	<b>(285 490)</b>	<b>25%</b>
<b>Net cash flow</b>	<b>1 116 946</b>	<b>2 519 925</b>	<b>(1 402 979)</b>	<b>-56%</b>
<b>Opening bank indebtedness</b>	<b>(5 004 359)</b>	<b>(5 004 359)</b>	<b>-</b>	<b>0%</b>
Net cash flow	1 116 946	2 519 925	(1 402 979)	-56%
<b>Ending bank indebtedness</b>	<b>(3 887 413)</b>	<b>(2 484 434)</b>	<b>(1 402 979)</b>	<b>56%</b>

28. As at May 9, 2020, MTA's closing net bank indebtedness was approximately USD\$-3,887,000, which represents an unfavorable position of USD\$1,403,000 compared to the MTA Cash Flow Forecast.

29. The opening net bank indebtedness, as at January 26, 2020, was USD\$-5,004,000.

30. The net cash flow during the period was approximately USD\$1,403,000 lower than projected. The primary reasons for the unfavorable net cash flow variance are summarized below:

- a) Total cash receipts during the period were approximately USD\$1,117,000 lower than forecasted mainly due to:
  - i. Lower sales than forecasted as the opening inventory mix was of less value for customers than estimated;

- ii. The MTA Cash Flow Forecast was contemplating that the liquidation of inventories and assets and the collection of accounts receivable would be completed by end of April 2020. However, the collection of accounts receivable is not yet completed because of the stay home orders and other Covid-19 pandemic sanitary measures put in place by the state governments in the United States which resulted in customers having stopped their payment. Gordon Brothers estimates that an additional amount of approximately \$USD350,000 should be collected when business will re-open; and,
- iii. The opening accounts receivable had more doubtful accounts than estimated.
- b) Total cash disbursements during the period were approximately USD\$285,000 higher than forecasted mainly due to:
  - i. Higher freight expenses since more sale than anticipated we made to Tier 1 customers that require that MTA takes care of the freight; and
  - ii. Higher employees' expenses since the liquidation of inventory and equipment process was longer than anticipated.

## **F. CASH FLOWS**

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31. The CCAA Parties have prepared the Motovan Cash Flow and the MTA Cash Flow which covers the Cash Flow Period. A copy of the Cash Flows will be filed with this Report as Appendix B.

### **Motovan**

32. The following table summarizes the Motovan Cash Flow:

<b>Motovan Corporation ("MTV")</b>	
<b>Period Starting 2020-05-17</b>	<b>Total for</b>
<b>Period Ending 2020-11-30</b>	<b>period</b>
<b>(in CAD \$)</b>	
<b>RECEIPTS</b>	
Collections from recuparation of custom duties	1 026 592
<b>Total receipts</b>	<b>1 026 592</b>
<b>DISBURSEMENTS</b>	
<b>Operating Disbursements</b>	
Consulting fee - Custom duties	(378 798)
<b>Total Operating Disbursements</b>	<b>(378 798)</b>
<b>Total Professional Fee Disbursements</b>	<b>(584 442)</b>
<b>Total Disbursements</b>	<b>(963 240)</b>
<b>Net cash flow</b>	<b>63 351</b>
<b>Opening bank indebtedness</b>	<b>(5 168 334)</b>
Net cash flow	63 351
<b>Ending bank indebtedness</b>	<b>(5 104 983)</b>

33. With respect to the Motovan Cash Flow:

- a) Motovan had an opening net bank indebtedness balance of -\$5,168,000 at the beginning of the Cash Flow Period. ***This balance includes the net proceeds of the Transaction of \$6,790,000 that is in a trust account of the Monitor;***
- b) During the Cash Flow Period, Motovan forecasts to generate aggregate cash inflows of approximately \$1,027,000, consisting of cash receipts from Duties Refunds;
- c) During the Cash Flow Period, Motovan forecasts to incur cash outflows of approximately \$963,000, which mainly includes the:
  - i. Payment of the **Balance Owed to Professionals** (as defined below) that amounts to **\$410,000** (incl. GST/QST);
  - ii. Payment of the **Provision for Professionals** (as defined below) estimated at **\$109,000** (incl. GST/QST); and
  - iii. Commission to ALB of \$379,000.
- d) At the end of the Cash Flow, Motovan projects a net bank indebtedness balance of -5,105,000.

**MTA**

34. The following table summarizes the MTA Cash Flow:

Motorcycle Tires & Accessories LLC ("MTA") Period Starting 2020-05-17 Period Ending 2020-11-30	Total for period
(in US \$)	
<b>RECEIPTS</b>	
Collections of accounts receivable	396 308
<b>Total receipts</b>	<b>396 308</b>
<b>DISBURSEMENTS</b>	
<b>Operating Disbursements</b>	
Insurance	(23 100)
Bank Fees	(6 000)
Credit Card Fees	(11 889)
Contingency	(2 500)
<b>Total Operating Disbursements</b>	<b>(43 489)</b>
<b>Debt Service Disbursements</b>	
Interest - Facility B	(90 000)
<b>Total Debt Service Disbursements</b>	<b>(90 000)</b>
<b>Total Professional Fee Disbursements</b>	<b>(96 492)</b>
<b>Total Disbursements</b>	<b>(229 981)</b>
<b>Net cash flow</b>	<b>166 327</b>
<b>Opening bank indebtedness</b>	<b>(3 887 413)</b>
Net cash flow	166 327
<b>Ending bank indebtedness</b>	<b>(3 721 086)</b>

35. With respect to the MTA Cash Flow:

- a) MTA had a an opening net bank indebtedness balance of US\$-3,887,000 at the beginning of the Cash Flow Period;
- b) During the Cash Flow Period, MTA forecasts to generate aggregate cash inflows of approximately US\$396,000, consisting of cash receipts from liquidation of its assets;
- c) During the Cash Flow Period, MTA forecasts to incur cash outflows of approximately US\$230,000; and
- d) At the end of the Cash Flow Period, MTA projects a net bank indebtedness balance of US\$-3,721,000.

36. Subject to the continued support of their operating lenders, BMO as agent and the lenders, the Cash Flows reflect that the CCAA Parties are projected to have sufficient cash flow to operate in the normal course during the extended stay period (**November 16, 2020**). BMO has confirmed to the Monitor that it does not have any objections to the Cash Flows.

## **G. MONITOR'S ASSESSMENT OF THE CASH FLOWS**

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37. The Monitor has assessed the Cash Flows as to its reasonableness as required by Section 23(1)(b) of the CCAA. Pursuant to this standard, the Monitor's assessment of the Cash Flows consisted of inquiries, analytical procedures and discussions related to information supplied to it by Senior Management and employees of the CCAA Parties. The Monitor's procedures with respect to the assumptions considered in the Cash Flows (the "**Cash Flow Assumptions**") were limited to evaluating whether they were consistent with the purpose of the Cash Flows. The Monitor also reviewed the supporting Information provided by Senior Management for the Cash Flows and the preparation and presentation of the Cash Flows.

38. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in any material respect that:

- a) The Cash Flow Assumptions are not consistent with the purpose of the Cash Flows;
- b) As at the date of this Report, the Cash Flow Assumptions are not suitably supported and consistent with the plans of the CCAA Parties or do not provide a reasonable basis for the Cash Flows given the Cash Flow Assumptions; or that
- c) The Cash Flows does not reflect the Cash Flow Assumptions.

## **H. REQUEST FOR AN EXTENSION OF THE STAY PERIOD**

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39. The stay period pursuant to the Second Extension Order expires on May 15, 2020. The CCAA Parties are seeking an extension of the Stay Period until November 16, 2020.

40. To date, the CCAA Parties have been acting diligently and in good faith. Senior Management has provided the Monitor with full co-operation and unrestricted access to CCAA Parties' premises, books and records upon requests by the Monitor.

41. Senior Management has also fully collaborated with KPMG CF in preparation and implementation of the SISP of Motovan and the liquidation of MTA.
42. The Monitor supports the CCAA Parties' Motion to extend the Stay Period to **November 16, 2020**, for the following reasons:
- a) Motovan (or the Monitor is the additional powers are granted by the Court) requires additional time to assess, review and potentially file claims to the CBSA in order to collect Duties Refunds. Per ALB, this process should take (5) five to (6) six months;
  - b) MTA requires additional time to complete the collections of its accounts receivable. Due to the uncertainty of the duration of the Covid-19 pandemic sanitary measures in the United States, the Monitor is of the view that an extension of the Stay Period for (6) six months should be adequate;
  - c) The Monitor, in its capacity as Foreign Representative, requires additional time to file a motion for final decree in order to close the Chapter 15 with the US Court; and
  - d) With the support of their operational lender, BMO, the CCAA Parties have sufficient liquidity to continue their current operations on a going concern basis during the extended Stay Period.

## **I. DISTRIBUTION OF THE TRANSACTION NET PROCEEDS TO BMO**

43. On the date of the Transaction, the proceeds were duly remitted to the Monitor, which amounted to \$6,900,000. At the date of the Report, the amount of interest generated on the Transaction proceeds amounts to \$5,000.
44. On the direction of Motovan and approved by BMO, the Monitor issued two payments, which consisted of:
- a) Payment of the outstanding vacations and last payroll of the non-assumed employees by the purchaser, the whole in accordance with the GCBI Revised Offer (as defined in the Third Report of the Monitor) and the APA for an amount of approximately \$92,000 ; and,
  - b) A payment to cover March 4, 2020, excess in Motovan's bank account with BMO of approximately \$23,000.
45. In addition, at the date of this Report, Motovan has unpaid professional fees of approximately \$410,000 (incl. GST/QST) ("**Balance Owed to Professionals**"). The Balance owed to professionals excludes, for most professionals, the time worked since the beginning of April 2020 and therefore the time to prepare the Motions. In addition, the Monitor estimated that a provision of \$109,000 (incl. GST/QST) should be enough to cover the time to complete the CCAA, with the exception of the management of the Duties Refunds ("**Provision for Professionals**").
46. The table below summarize the movement of the Transaction proceeds, the Balance owed to professionals and the Provision for professionals:

## Receipts and Disbursements

### RECEIPTS

Net Proceeds from sale	6 900 000 \$
Interest	5 000 \$

### DISBURSEMENTS

Payment to cover March 04, 2020, excess in Motovan Corp account	(23 000) \$
Last Payroll + Unpaid Vacations of Non-Assumed Employees	(92 000) \$
<b>Receipts Net of Disbursements</b>	<b>6 790 000 \$</b>
Balance Owed to Professionals + Provision for Professionals	(519 000) \$
<b>Amount For Distribution</b>	<b>6 271 000 \$</b>

47. The current balance owed to BMO by Motovan under the line of credit is approximately of \$12 million.
48. The Monitor has obtained an independent security review from its counsels confirming the validity of the security interest granted by Motovan in favour of BMO and the enforceability of BMO's rights resulting thereto over the assets subject to the Transaction ("**BMO Opinion**").
49. The BMO Opinion did not address the priority of the BMO security relative to other claims against Motovan, other than the Court ordered Administration Charge, in the amount of \$500,000 and the Court ordered Directors and Officers Charge in the amount of \$723,000 (collectively, the "**Priority Charges**").
50. However, since the issuance of the Initial Order, and including following the issuance of Approval and Vesting Order, the Monitor has not been contacted by any creditor alleging a claim in priority to BMO or the Administration Charge, and is not aware of the existence of such claims as of the date herof. Indeed, almost two (2) months and a half has passed since the Transaction and no other secured creditor has expressed to the Monitor their entitlement to receive the net proceeds of the Transaction and to be considered as the first secured rank instead of BMO, other than the Priority Charges.
51. Moreover, there has been no claim process in the present matter as it was not appropriate to do so in the absence of equity for the unsecured creditors, the BMO secured indebtedness pursuant to the CCAA Parties' line of credit being substantially higher (approximately \$12,000,000) than the amount of the Proceeds.
52. The Monitor understands that all secured creditors of Motovan were served with the Motion and will have the time to contest the Motion if they are of the view that their secured claims is of a prior rank. In addition, the Distribution Order sought contains a comeback hearing provision allowing creditors served with the Distribution Order ten (10) business days to apply to this Court for relief in that respect.

## J. ADDITIONAL POWERS TO THE MONITOR

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53. In the Motion, the CCAA Parties submit that certain amendments are desirable in order to provide the Monitor with super-monitor powers in order to:
- Coordinate the collection of the Duties; and,
  - Give instructions to the Foreign Representative in the Chapter 15 Proceedings to file a final decree in due course.

54. Since Motovan has ceased its operations following the Transaction and that Motovan will not benefit from the collection of the Duties Refunds, BMO has expressed to the Monitor its view that the collection process would be managed to a better extent by the Monitor in order to maximise the realization. The Monitor and the CCAA Parties are also of the same view.
55. Since MTA has also ceased its operations following the liquidation of all its assets, with the exception of some accounts receivable and that BMO, acting as agent, is supporting the cost of completing the collection process, BMO as expressed to the Monitor its view that the Monitor should be empowered, in its capacity as Foreign Representative, to file the motion for a final decree in due course and at the appropriate time, pursuant to instructions received from BMO. The Monitor and the CCAA Parties are also of the same view.
56. As described in the Monitor's Third Report, management of Motovan participated and were involved in the Transaction with GCBI, which was approved by this Honourable Court through the issuance of the Approval and Vesting Order in respect to the APA. The Monitor understands that Mr. James Paladino is now an employee of the purchaser GCBI pursuant to the APA. The Monitor also understands that although Mr. Paladino remains a director of Motovan while being employed by GCBI, it is for the sole purpose of facilitating transitional issues in respect to the business once operated by Motovan and for which the Purchased Assets were transferred to GCBI pursuant to the Approval and Vesting Order. The request for these additional powers is supported by BMO, main secured creditor of Motovan and must be analyzed through the lens of this specific context.
57. Therefore, the Monitor respectfully submits that the additional powers described in paragraphs 28.1 and 28.2 of the Re-Amended and Restated Initial Order should be granted.

## **K. THE MONITOR'S RECOMMENDATIONS**

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58. The Monitor respectfully submits that the orders sought pursuant to the Motion should be granted as such orders are necessary to maximize the realization of the CCAA Parties' remaining assets and bring the present CCAA Proceedings to completion, including the distribution of the Proceeds resulting from the Transaction, the collection of the Duties, the collection of MTA's receivables and the completion of the Chapter 15 proceedings.
59. More particularly, the Monitor is of the view that the extension of the Stay Period until November 16, 2020, will afford the CCAA Parties to:
- a) Assess, review and potentially file claims to the CBSA in order to collect Duties Refunds;
  - b) File a motion for final decree with the US Court; and,
  - c) Complete MTA's liquidation process as approved by the US Court.
60. The Monitor confirms that:
- a) The CCAA Parties have acted and are continuing to act in good faith with due diligence; and,
  - b) If the Extension of the Stay Period as sought by CCAA Parties is granted by the Court, the CCAA Parties will be able to continue their restructuring efforts with a view to maximise the realization of the assets of MTA and Motovan.



All of which is respectively submitted to this Honourable Court this 11th day of May 2020.

**KPMG INC.**

in its capacity as the Monitor of  
9348069 Canada Inc.;  
4295862 Canada Inc.;  
Motovan Corporation;  
Moncy Holding Company Inc.;  
Moncy Financial Services Company Inc.;  
Nichols Motorcycle Supply Inc.;  
Moncy LLC &  
Motorcycle Tires and Accessories LLC.

A handwritten signature in blue ink, consisting of a stylized 'C' followed by a vertical line and a horizontal line extending to the right.

Per: Dev A. Coossa, CIRP, LIT  
Partner

**APPENDIX A – OMNIBUS MOTION TO REJECT CERTAIN UNEXPIRED  
LEASES AND ORDER GRANTING THE OMNIBUS MOTION TO REJECT  
CERTAIN UNEXPIRED LEASES**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 15
	)	
MOTORCYCLE TIRES & ACCESSORIES LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-12706 (KBO)
	)	Jointly Administered
	)	
Debtors in a Foreign Proceeding	)	
	)	

**FOREIGN REPRESENTATIVE’S OMNIBUS MOTION SEEKING ENTRY OF AN  
ORDER (I) AUTHORIZING (A) THE REJECTION OF CERTAIN UNEXPIRED  
LEASES AND (B) ABANDONMENT OF CERTAIN PERSONAL PROPERTY, IF ANY,  
EACH EFFECTIVE *NUNC PRO TUNC* TO THE APPLICABLE SURRENDER DATE  
AND (II) GRANTING RELATED RELIEF**

**LANDLORDS RECEIVING THIS OMNIBUS LEASE REJECTION MOTION SHOULD  
LOCATE THEIR NAMES AND LEASES IN THE SCHEDULE OF LEASES  
ATTACHED HERETO AS EXHIBIT 1 TO EXHIBIT A.**

KPMG, Inc., (“KPMG” or the “Foreign Representative”), in its capacity as the court-appointed monitor and authorized foreign representative for the above-captioned debtors (collectively, the (“Debtors”)), in the Canadian proceeding (the “Canadian Proceeding”) commenced under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Superior Court in Commercial Division in the District of Montreal (the “Canadian Court”), hereby moves (this “Motion”) this Court, for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a), 365, and 554 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 6004(h) and 6006(f) of the Federal Rules of Bankruptcy Procedure (the

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<sup>1</sup> The Debtors in these chapter 15 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Motorcycle Tires & Accessories LLC (8629); Moncy Holding Company, Inc. (6755); Moncy Financial Services Company, Inc. (7515); Moncy LLC (3654); and Nichols Motorcycle Supply, Inc. (4371). The Debtors’ mailing address is 1550 Melissa Court, Corona, CA 92879.

“Bankruptcy Rules”), (a) authorizing (i) the rejection of certain unexpired leases (each, a “Lease,” and collectively, the “Leases”) of nonresidential real property located at the premises (collectively, the “Premises”), as set forth on Exhibit 1 to Exhibit A attached hereto and (ii) the abandonment of certain equipment, fixtures, furniture, or other personal property (the “Personal Property”) that may be located at the Premises, each effective *nunc pro tunc* to the respective departure date listed on Exhibit 1 to Exhibit A (each a “Surrender Date” and collectively the “Surrender Dates”); and (b) granting related relief. In support of the Motion, the Debtors rely upon the *Declaration of Maxime Codère in Support of Foreign Representative’s (I) Verified Petitions under Chapter 15, (II) Motion for Joint Administration, (III) Motion for Provisional and Final Relief in Recognition of a Foreign Main Proceeding, (IV) Motion to Establish Certain Notice Procedures in Connection with Filing of Verified Petitions under Chapter 15 and (V) Motion to Assume Agency Agreement* (the “Codère Declaration”).<sup>2</sup> In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

2. These cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of petitions for recognition (collectively, the “Petitions for Recognition”) of the Canadian Proceeding pursuant to section 1515 of the Bankruptcy Code. On January 22, 2020, the Court entered the *Order Granting Final Relief in Recognition of a*

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Codère Declaration.

*Foreign Main Proceeding Pursuant to Sections 105(a), 1519, 1520 and 1521 of the Bankruptcy Code* [D.I. 38], recognizing the Canadian Proceeding as a foreign main proceeding.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
4. Venue is proper in this Court and this District pursuant to 28 U.S.C. § 1410.
5. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 365(a), 554(a), and 1521(a) and Bankruptcy Rules 6004, 6006, and 6007, and Local Rule 9013-1.

### **BACKGROUND**

6. On December 19, 2019, (the “Petition Date”), the Foreign Representative filed with this Court verified voluntary petitions (collectively, the “Chapter 15 Petitions”) for each of the Debtors under chapter 15 of the Bankruptcy Code (the “Chapter 15 Cases”).

7. The Canadian Proceeding was commenced under the CCAA, pursuant to which the Canadian Court entered an order appointing KPMG as monitor and authorizing it to act as foreign representative of the Debtors on December 2, 2019 (as amended and restated on December 12, 2019, the “CCAA Order”).

8. Additional information about the Debtors’ business, the events leading up to the Petition Date, and the facts and circumstances surrounding the Debtors, the Canadian Proceeding and the Chapter 15 Cases can be found in the Codère Declaration.

9. On the Petition Date, the Foreign Representative filed the *Foreign Representative’s Motion for Interim and Final Orders Authorizing (I) the Debtors to Assume the Agency Agreement, (II) the Conduct of the Store Closing Sales, with Such Sales to be Free and Free and Clear of All Liens, Claims and Encumbrances, and (III) Granting Related Relief* (the “Store Closing Sales Motion”) [D.I. 8], seeking authorization for the Debtors to enter into an

agency agreement (the “Agency Agreement”) with Gordon Brothers Commercial & Industrial LLC (“Gordon Brothers”) to conduct liquidation sales at certain of the Debtors’ assets located at the Premises that are subject to the Leases.

10. On January 22, 2020, the Court entered an order approving the Store Closing Sales Motion on a final basis [D.I. 37].

11. Pursuant to the Agency Agreement, Gordon Brothers has been conducting the liquidation sales at the Premises and expects to complete the liquidation sales process and vacate the Premises on or before the respective Surrender Dates.

**RELIEF REQUESTED**

12. The Debtors seek entry of the Proposed Order: (a) authorizing the rejection of the Leases for nonresidential real property located at the Premises, as set forth on **Exhibit 1** to the Proposed Order and (ii) the abandonment of Personal Property that may be located at the Premises, each effective *nunc pro tunc* to the respective Surrender Dates; and (b) granting related relief.

**LEASES TO BE REJECTED**

13. Through this Motion, the Foreign Representative seeks authority for the Debtors to reject the Leases to preserve value for their estates by avoiding unnecessary rent and other costs. The Debtors seek to reject the Leases effective as of the Surrender Dates. Debtors will provide the affected landlords (the “Landlords”) notice of the Debtors’ irrevocable and unequivocal surrender of the Premises on, or prior to, the respective Surrender Dates.

14. Debtors have determined in their business judgment that the Leases to be rejected will provide no benefit to the Debtors’ estates or these Chapter 15 Cases. By rejecting the Leases, the Debtors will save a substantial amount in rent and associated costs. Absent

rejection, the Debtors could be obligated to pay rent under the Leases should the applicable Landlords seek rent for these properties, even though the Debtors will no longer be in possession of such store locations. Moreover, in addition to their obligations to pay rent and other associated costs under the Leases, the Debtors would be obligated to pay certain real property taxes, utilities, insurance, and other related charges associated with the Leases. The Debtors have determined in their business judgment that such costs would be burdensome to the Debtors' estates. Additionally, the Debtors have determined in their business judgment that the costs of the Leases exceed any marginal benefits that could potentially be achieved from assignments or subleases of the Leases.

15. Accordingly, in an effort to reduce post-petition administrative costs and in the exercise of the Debtors' sound business judgment, the Foreign Representative requests authority for the Debtors to reject the Leases set forth on **Exhibit 1** to the Proposed Order attached hereto as **Exhibit A**, effective as of the respective Surrender Dates.

#### **PERSONAL PROPERTY TO BE ABANDONED**

16. Because the Debtors plan to not operate warehouses at the Premises, the Personal Property located at the Premises for the Leases sought to be rejected, if any, will no longer be necessary for the administration of the Debtors' estates. Accordingly, to reduce post-petition administrative costs and, in the exercise of the Debtors' sound business judgment, the Debtors believe that the abandonment of the Personal Property that may be located at each of the Premises, if any, is appropriate and in the best interests of the Debtors, their estates, and their creditors.

## BASIS FOR RELIEF

### **A. Rejection of the Leases is Appropriate and Provides the Debtors with Significant Cost Savings.**

17. Section 365(a) of the Bankruptcy Code, made applicable to these Chapter 15 Cases pursuant to section 1521(a)(7), provides that a debtor in possession, “subject to the court’s approval, may . . . reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. *See Nat’l Labor Relations Bd. v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.” (citation omitted)); *see also Glenstone Lodge, Inc. v. Buckhead Am. Corp. (In re Buckhead Am. Corp.)*, 180 B.R. 83, 88 (Bankr. D. Del. 1995). Application of the business judgment standard requires a court to approve a debtor’s business decision unless the decision is the product of bad faith, whim, or caprice. *See Lubrizol Enters., Inc. v. Richmond Metal Finishes*, 756 F.2d 1043, 1047 (4th Cir. 1985). Further, “[t]his provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citation omitted).

18. Rejection of an unexpired lease is appropriate where such rejection would benefit the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 39-40 (3d Cir. 1989). Upon finding that a debtor has exercised its sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and all parties in interest, a court should approve the rejection under section 365(a). *See In re Fed. Mogul Glob., Inc.*, 293 B.R. 124, 126 (D. Del. 2003); *In re Bradlees Stores, Inc.*,



194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996), *appeal dismissed*, 210 B.R. 506 (S.D.N.Y. 1997); *In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

19. The Leases are not a source of potential value for the Debtors’ estates or stakeholders. The Debtors’ obligations to pay, for example, postpetition rent, real estate taxes, utilities, insurance, and other related charges for vacant Premises eliminates any potential value of the Leases to the Debtors’ estates—including any potential value from an assignment or sublease. Accordingly, the Debtors have determined that the Leases constitute unnecessary drains on the estates’ resources and, therefore, rejection of the Leases reflects the Debtors’ exercise of sound business judgment.

**B. The Abandonment of Personal Property is Appropriate.**

20. The abandonment of the Personal Property is appropriate and authorized by the Bankruptcy Code. *See* 11 U.S.C. §§ 554(a); 1521(a)(7). Section 554(a) provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). Courts generally give a debtor in possession great deference to its decision to abandon property. *See, e.g., In re Vel Rey Props., Inc.*, 174 B.R. 859, 867 (Bankr. D.D.C. 1994) (“Clearly, the court should give deference to the trustee’s judgment in such matters.”). Unless certain property is harmful to the public, once a debtor has shown that it is burdensome or of inconsequential value to the estate, a court should approve the abandonment. *Id.*

21. Before deciding to abandon the Personal Property, if any, the Debtors determined whether the costs of moving and storing such Personal Property outweigh any benefit to the

Debtors' estates. Further, any efforts by the Debtors to move or further market the Personal Property could unnecessarily delay the Debtors' surrender of the Premises and the rejection of the Leases. Accordingly, it is in the best interests of the Debtors and their estates for the Debtors to abandon Personal Property located on the Premises.

22. Courts in this jurisdiction have approved relief similar to the relief requested herein. *See, e.g., In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019) (authorizing, but not directing, the debtors to abandon personal property that may be located at the debtors' leased premises that are subject to a rejected lease); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018) (same); *In re Dex Media, Inc.*, No. 16-11200 (KG) (Bankr. D. Del. June 8, 2016) (same); *In re Sports Auth. Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. Apr. 4, 2016) (same); *In re Samson Res. Corp.*, No. 5-11934 (CSS) (Bankr. D. Del. Feb. 19, 2016) (same).

**C. This Court Should Deem the Leases Rejected *Nunc Pro Tunc* to the Respective Surrender Dates.**

23. Section 365 of the Bankruptcy Code does not restrict a bankruptcy court from applying rejection retroactively. *See In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 does not include "restrictions as to the manner in which the court can approve rejection"); *see also In re CCI Wireless, LLC*, 297 B.R. 133, 138 (D. Colo. 2003) (noting that section 365 "does not prohibit the bankruptcy court from allowing the rejection of [leases] to apply retroactively"). Courts have held that a bankruptcy court may, in its discretion, authorize rejection retroactively to a date prior to entry of an order authorizing such rejection where the balance of equities favors such relief. *See In re Thinking Machs. Corp.*, 67 F.3d 1021, 1028-29 (1st Cir. 1995) (stating that "rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable

cases, to order a rejection to operate retroactively”); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating “the court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a)”); *CCI Wireless*, 297 B.R. at 140 (holding that a “court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”); *BP Energy Co. v. Bethlehem Steel Corp. (In re Bethlehem Steel Corp.)*, No. 03-6419, at \*3 (S.D.N.Y. Nov. 15, 2002) (“We cannot conclude . . . that a bankruptcy court’s assignment of a retroactive rejection date falls outside of its authority when the balance of the equities favors this solution.”); *see also In re At Home Corp.*, 392 F.3d 1064, 1065-66 (9th Cir. 2004) (holding “that a bankruptcy court may approve retroactively the rejection of an unexpired nonresidential lease”).

24. In *In re Namco Cybertainment, Inc.*, the Court stated that retroactive rejection of an unexpired lease was permissible, provided: (a) the premises (and the keys thereto) were surrendered with an unequivocal statement of abandonment to the landlord; (b) the motion was served on the landlord; (c) the official committee consented to the requested relief; and (d) the debtor waived its right to withdraw the motion. No. 98-173 (PJW) (Bankr. D. Del. Feb. 6, 1998); *see also TW, Inc. v. Angelastro (In re TW, Inc.)*, No. 03-10785, at \*2 (D. Del. Jan. 14, 2004) (upholding bankruptcy court ruling denying rejection of leases *nunc pro tunc* to the petition date when the debtor had not surrendered possession prior to the petition date).

25. Here, the balance of equities favors rejection of the Leases *nunc pro tunc* to the respective Surrender Dates. Without such relief, the Debtors will potentially incur unnecessary administrative expenses related to the Leases—agreements that provide no benefit to the Debtors’ estates. *See* 11 U.S.C. § 365(d)(3). The Landlords will not be unduly prejudiced if the

rejection is deemed effective as of the Surrender Dates. Possession of the Premises will be delivered to each respective Landlord on, or prior to, the respective Surrender Dates with an unequivocal and irrevocable statement of surrender and abandonment of the Premises to such Landlord. Further, by this Motion, the Landlords are receiving notice of the Debtors' intention to reject the Leases. Contemporaneously with the filing of this Motion, the Debtors will cause notice of this Motion to be served on the Landlords, thereby allowing each party sufficient opportunity to respond accordingly. The Debtors have sought the relief requested at the earliest possible moment in these Chapter 15 Cases and do not seek to reject the Leases effective *nunc pro tunc* to the Surrender Dates due to any undue delay on their own part.

26. Furthermore, no official committee has been appointed in these cases, obviating the requirement that the official committee consent to the requested relief herein and the Debtors hereby waive their right to withdraw the Motion, thus satisfying the elements for retroactive rejection of an unexpired lease.

27. Courts in this jurisdiction have approved relief similar to that requested herein. *See, e.g., In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019) (authorizing debtors' rejection of certain license agreements *nunc pro tunc* to prior notice date); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018) (authorizing rejection of unexpired leases *nunc pro tunc* to prior notice date); *In re Quicksilver Res. Inc.*, No. 15-10585 (LSS) (Bankr. D. Del. Apr. 15, 2015) (authorizing rejection of executory contracts effective as of specified dates); *In re QCE Fin. LLC*, No. 14-10543 (PJW) (Bankr. D. Del. Apr. 9, 2014) (authorizing rejection of unexpired leases *nunc pro tunc* to the petition date); *In re Longview Power, LLC*, No. 13-12211 (BLS) (Bankr. D. Del. Feb. 26, 2014) (authorizing rejection of unexpired leases *nunc pro tunc* to prior notice date).

28. Accordingly, the Debtors respectfully submit that the Court deem the Leases rejected, effective *nunc pro tunc* to the respective Surrender Dates.

### **RESERVATION OF RIGHTS**

29. Nothing contained herein is intended or shall be construed as: (i) an admission as to the validity, amount or priority of any claim against the Debtors or the Foreign Representative; (ii) a waiver of the Debtors' or Foreign Representative's rights to dispute any claim; (iii) a promise or requirement to pay any claim; (iv) a waiver of any claim or cause of action of the Debtors or the Foreign Representative that exists against any entity; (v) a ratification or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (vi) a waiver of limitation of the Debtors' or Foreign Representative's rights under the Bankruptcy Code, any other applicable law or any agreement; or (vii) an admission or concession by the Debtors or the Foreign Representative that any lien is valid, and the Debtors and the Foreign Representative expressly reserve and preserve their rights to contest the extent, validity, or perfection, or seek avoidance of, any lien.

### **COMPLAINT WITH BANKRUPTCY RULE 6006(f)**

30. Bankruptcy Rule 6006(f) establishes requirements for an omnibus motion to reject executory contracts or unexpired leases. Specifically, Bankruptcy Rule 6006(f) states, in part, that such a motion shall: (a) "state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion," (b) "list parties alphabetically and identify the corresponding contract or lease," (c) "be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases," and (d) "be limited to no more than 100 executory contracts or unexpired

leases.” Fed. R. Bankr. P. 6006(f). The Debtors respectfully submit that the relief requested in this Motion complies with the requirements of Bankruptcy Rule 6006(f).

**REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY**

31. Pursuant to Bankruptcy Rule 6004(h), the Debtors seek a waiver of any stay of the effectiveness of an order granting this Motion, to the extent that it applies to the relief requested in this Motion. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The relief requested in this Motion is essential to avoid the potential accrual of unnecessary administrative expenses. Accordingly, the Debtors submit that, to the extent that Bankruptcy Rule 6004(h) applies, ample cause exists to justify a waiver of the fourteen-day stay.

**NOTICE**

32. The Foreign Representative has provided notice of this Motion to the following parties or their respective counsel: (a) the office of the U.S. Trustee for the District of Delaware; (b) counsel to BMO; (c) the Landlords; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Foreign Representative submits that no other or further notice of this Motion is necessary or required.

*[Remainder of Page Intentionally Left Blank]*

**CONCLUSION**

WHEREFORE, the Foreign Representative respectfully requests this Court enter the Proposed Order, substantially in the form attached hereto, granting the relief requested herein and all other and further relief as this Court deems just and proper.

Dated: March 13, 2020  
Wilmington, Delaware

**POTTER ANDERSON & CORROON LLP**

*/s/ R. Stephen McNeill*

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rslauch@potteranderson.com

*Counsel to KPMG Inc., as Monitor and Foreign  
Representative for the Debtors*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 15
	)	
MOTORCYCLE TIRES & ACCESSORIES LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-12706 (KBO)
	)	Jointly Administered
	)	
Debtors in a Foreign Proceeding	)	<b>Hearing Date: April 23, 2020 at 2:00 p.m. (ET)</b>
	)	<b>Objection Deadline: March 27, 2020 at 4:00 p.m. (ET)</b>

**NOTICE OF MOTION REGARDING FOREIGN REPRESENTATIVE’S OMNIBUS  
MOTION SEEKING ENTRY OF AN ORDER (I) AUTHORIZING (A) THE  
REJECTION OF CERTAIN UNEXPIRED LEASES AND (B) ABANDONMENT OF  
CERTAIN PERSONAL PROPERTY, IF ANY, EACH EFFECTIVE *NUNC PRO TUNC*  
TO THE APPLICABLE SURRENDER DATE AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that KPMG, Inc., (“KPMG” or the “Foreign Representative”), in its capacity as the court-appointed monitor and authorized foreign representative for the above-captioned debtors (collectively, the (“Debtors”)) filed the *Foreign Representative’s Omnibus Motion Seeking Entry of an Order (I) Authorizing (A) the Rejection of Certain Unexpired Leases and (B) Abandonment of Certain Personal Property, if any, Each Effective Nunc Pro Tunc to the Applicable Surrender Date and (II) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must be in writing, filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 3<sup>rd</sup> Floor, 824 North Market Street, Wilmington, Delaware 19801, on or before **March 27, 2020 at 4:00 p.m. (ET)** (the “Objection Deadline”) and served upon and received by the undersigned attorneys for the Foreign Representative.

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<sup>1</sup> The Debtors in these chapter 15 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Motorcycle Tires & Accessories LLC (8629); Moncy Holding Company, Inc. (6755); Moncy Financial Services Company, Inc. (7515); Moncy LLC (3654); and Nichols Motorcycle Supply, Inc. (4371). The Debtors’ mailing address is 1550 Melissa Court, Corona, CA 92879.



**PLEASE TAKE FURTHER NOTICE** that, if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before the Honorable Karen B. Owens at the Bankruptcy Court, 824 Market Street, 6<sup>th</sup> Floor, Courtroom 3, Wilmington, Delaware 19801 on **April 23, 2020 at 2:00 p.m. (ET)**.

**IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: March 13, 2020  
Wilmington, Delaware

**POTTER ANDERSON & CORROON LLP**

*/s/ R. Stephen McNeill*  
Jeremy W. Ryan (DE Bar No. 4057)  
R. Stephen McNeill (DE Bar No. 5210)  
D. Ryan Slaugh (DE Bar No. 6325)  
1313 North Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
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rslaugh@potteranderson.com

*Counsel to KPMG Inc., as Monitor and Foreign Representative for the Debtors*

**EXHIBIT A**  
**(PROPOSED ORDER)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	)	Chapter 15
In re:	)	
	)	
MOTORCYCLE TIRES & ACCESSORIES	)	Case No. 19-12706 (KBO)
LLC, <i>et al.</i> , <sup>1</sup>	)	Joint Administration Requested
	)	
Debtors in a Foreign Proceeding	)	

**ORDER GRANTING FOREIGN REPRESENTATIVE’S OMNIBUS MOTION SEEKING ENTRY OF AN ORDER (I) AUTHORIZING (A) THE REJECTION OF CERTAIN UNEXPIRED LEASES AND (B) ABANDONMENT OF CERTAIN PERSONAL PROPERTY, IF ANY, EACH EFFECTIVE *NUNC PRO TUNC* TO THE APPLICABLE SURRENDER DATE AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of KPMG, Inc., (“KPMG” or the “Foreign Representative”), in its capacity as the court-appointed monitor and duly authorized foreign representative for the above-captioned debtors (collectively, the “Debtors”) in the Canadian proceedings (the “Canadian Proceeding”) commenced under the under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Superior Court in Commercial Division in the in the District of Montreal (the “Canadian Court”) and upon consideration of the Codère Declaration; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. §

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<sup>1</sup> The Debtors in these chapter 15 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Motorcycle Tires & Accessories LLC (8629); Moncy Holding Company, Inc. (6755); Moncy Financial Services Company, Inc. (7515); Moncy LLC (3654); and Nichols Motorcycle Supply, Inc. (4371). The Debtors’ mailing address is 1550 Melissa Court, Corona, CA 92879.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

157(b); and this Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED, as set forth herein.
2. Each of the Leases set forth on **Exhibit 1** attached hereto is rejected, effective *nunc pro tunc* to the respective surrender date listed on **Exhibit 1** (each a “Surrender Date” and collectively the “Surrender Dates”).
3. The Debtors are authorized to abandon the Personal Property, if any, that may be located on the Premises and all such property is deemed abandoned effective *nunc pro tunc* to respective Surrender Dates. The applicable counterparty to each Lease may utilize or dispose of such Personal Property in its sole and absolute discretion without further notice or liability to any party (including the Debtors) claiming an interest in such abandoned property. The automatic stay, to the extent applicable, is modified to allow for such utilization or disposition. The rights of the counterparty to each Lease to assert claims for the disposition of the Personal Property are reserved as are all parties’ rights to object to such claims.
4. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (i) an admission as to the validity, amount or priority of any claim against the Debtors or the Foreign Representative; (ii) a waiver of the Debtors’ or Foreign Representative’s rights to dispute any claim; (iii) a promise or requirement

to pay any claim; (iv) a waiver of any claim or cause of action of the Debtors or the Foreign Representative that exists against any entity; (v) a ratification or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (vi) a waiver of limitation of the Debtors' or Foreign Representative's rights under the Bankruptcy Code, any other applicable law or any agreement; or (vii) an admission or concession by the Debtors or the Foreign Representative that any lien is valid, and the Debtors and the Foreign Representative expressly reserve and preserve their rights to contest the extent, validity, or perfection, or seek avoidance of, any lien.

5. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**EXHIBIT 1**  
**(LIST OF REJECTED LEASES)**

**LIST OF REJECTED LEASES**

<b>Debtor/Lessee</b>	<b>Landlord/Lessor</b>	<b>Property Location</b>	<b>Name of Contract</b>	<b>Surrender Date</b>
Motorcycle Tires and Accessories, LLC	PE Ventures Consulting LLC	6497 Hwy 33 Choudrant, LA, 71227	Commercial Warehouse Contract of Lease	March 13, 2020
Motorcycle Tires and Accessories, LLC	IMC NA LLC	28210 Cedar Park Blvd Perrysburg, OH, 43551	Lease Agreement	March 20, 2020
Motorcycle Tires and Accessories, LLC	EP Ventures Consulting LLC	1550 Melissa Court Corona, CA, 92879	Commercial Warehouse Contract of Lease	March 27, 2020

**CERTIFICATE OF SERVICE**

I, R. Stephen McNeill, hereby certify that on this 13<sup>th</sup> day of March 2020, I caused a true and correct copy of the foregoing *Foreign Representative's Omnibus Motion Seeking Entry of an Order (I) Authorizing (A) the Rejection of Certain Unexpired Leases and (B) Abandonment of Certain Personal Property, if any, Each Effective Nunc Pro Tunc to the Applicable Surrender Date and (II) Granting Related Relief* to be served upon the parties on the attached service list via first class mail, postage pre-paid.

/s/ R. Stephen McNeill

R. Stephen McNeill (DE Bar No. 5210)



## SERVICE LIST

Securities & Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Securities and Exchange Commission  
New York Regional Office  
Attn: Andrew Calamari, Regional Director  
Brookfield Place  
200 Vesey Street, Suite 400  
New York, NY 10281-1022

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

Delaware State Treasury  
820 Silver Lake Blvd., Suite 100  
Dover, DE 19904

Secretary of State  
Division of Corporations, Franchise Tax  
P.O. Box 898  
Dover, DE 19903

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844 King Street, Suite 2207  
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Border Ladner Gervais  
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Alexander Bayus  
Gowling WLG  
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Sylvain Rigaud  
Norton Rose Fulbright Canada  
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Bureau 2500  
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Southern Edison California  
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Rosemead, CA 91771-0001

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McMillan S.E.N.C.R.L., s.r.l./LLP  
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Perrysburg, OH 43551  
Email: mfarrar@act-repair.com

PE Ventures Consulting LLC  
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Email: larry.popp1010@gmail.com

GLS US  
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San Ramon, CA 94583

Ohio Bureau of Workers' Compensation  
30 W. Spring Street  
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Email: darnold@rcolaw.com

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6469 Highway 33  
Choudrant, LA 71227  
Email: larry.popp1010@gmail.com

**File a Motion:**[19-12706-KBO Maxime Codere and Motorcycle Tires & Accessories LLC](#)

Type: bk

Chapter: 15 v

Office: 1 (Delaware)

Judge: KBO

Case Flag: LEAD

**U.S. Bankruptcy Court****District of Delaware**

## Notice of Electronic Filing

The following transaction was received from R. Stephen McNeill entered on 3/13/2020 at 5:59 PM EDT and filed on 3/13/2020

**Case Name:** Maxime Codere and Motorcycle Tires & Accessories LLC**Case Number:** [19-12706-KBO](#)**Document Number:** [46](#)**Docket Text:**

Motion to Authorize // *Foreign Representative's Omnibus Motion Seeking Entry of an Order (I) Authorizing (A) the Rejection of Certain Unexpired Leases and (B) Abandonment of Certain Personal Property, if any, Each Effective Nunc Pro Tunc to the Applicable Surrender Date and (II) Granting Related Relief* Filed by Maxime Codere. Hearing scheduled for 4/23/2020 at 02:00 PM at US Bankruptcy Court, 824 Market St., 6th Fl., Courtroom #3, Wilmington, Delaware. Objections due by 3/27/2020. (Attachments: # (1) Notice # (2) Exhibit A # (3) Certificate of Service) (McNeill, R. Stephen)

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**Omni Motion to Reject Leases.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=3/13/2020] [FileNumber=16284899-0] [a59df74c2f67c50df4ee9bac914d1824ef6c51b2e6dff885222a5051442ef78e99028aaacb178a3850be7728b073f5883e269bb7c4196003fd8312d32e5e733c]]

**Document description:**Notice**Original filename:**C:\fakepath\Omni Motion to Reject Leases\_Notice.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=3/13/2020] [FileNumber=16284899-1] [6508080d35a95131b068ad7bc376623cdc3b0957bbeb33acced11412f0e50c80d1bed9e49989dece7ad84a136065bbfe20ac3e1bb952a28b97c04d6f5424aed6]]

**Document description:**Exhibit A**Original filename:**C:\fakepath\Omni Motion to Reject Leases\_Ex A.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=3/13/2020] [FileNumber=16284899-2] [667d39f553d99d88d34584e3cb0ee73707e21a1994841ca4ee46b98e3a09e7ba75ccf730234d62e7d3a0550f2a7bee5a895b25cbf92e0c3d132d3f5db0bf8cae]]

**Document description:**Certificate of Service**Original filename:**C:\fakepath\Omni Motion to Reject Leases\_COS.pdf

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 15
	)	
MOTORCYCLE TIRES & ACCESSORIES LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-12706 (KBO)
	)	Jointly Administered
	)	
Debtors in a Foreign Proceeding	)	<b>Re: Docket No. 46</b>

**ORDER GRANTING FOREIGN REPRESENTATIVE’S OMNIBUS MOTION SEEKING  
ENTRY OF AN ORDER (I) AUTHORIZING (A) THE REJECTION OF CERTAIN  
UNEXPIRED LEASES AND (B) ABANDONMENT OF CERTAIN PERSONAL  
PROPERTY, IF ANY, EACH EFFECTIVE *NUNC PRO TUNC* TO THE APPLICABLE  
SURRENDER DATE AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of KPMG, Inc., (“KPMG” or the “Foreign Representative”), in its capacity as the court-appointed monitor and duly authorized foreign representative for the above-captioned debtors (collectively, the “Debtors”) in the Canadian proceedings (the “Canadian Proceeding”) commenced under the under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Superior Court in Commercial Division in the in the District of Montreal (the “Canadian Court”) and upon consideration of the Codère Declaration; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that notice of the Motion has been given as set forth in the Motion and that such

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<sup>1</sup> The Debtors in these chapter 15 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Motorcycle Tires & Accessories LLC (8629); Moncy Holding Company, Inc. (6755); Moncy Financial Services Company, Inc. (7515); Moncy LLC (3654); and Nichols Motorcycle Supply, Inc. (4371). The Debtors’ mailing address is 1550 Melissa Court, Corona, CA 92879.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

notice is adequate and no other or further notice need be given; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED, as set forth herein.
2. Each of the Leases set forth on **Exhibit 1** attached hereto is rejected, effective *nunc pro tunc* to the respective surrender date listed on **Exhibit 1** (each a “Surrender Date” and collectively the “Surrender Dates”).
3. The Debtors are authorized to abandon the Personal Property, if any, that may be located on the Premises and all such property is deemed abandoned effective *nunc pro tunc* to respective Surrender Dates. The applicable counterparty to each Lease may utilize or dispose of such Personal Property in its sole and absolute discretion without further notice or liability to any party (including the Debtors) claiming an interest in such abandoned property. The automatic stay, to the extent applicable, is modified to allow for such utilization or disposition. The rights of the counterparty to each Lease to assert claims for the disposition of the Personal Property are reserved as are all parties’ rights to object to such claims.
4. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (i) an admission as to the validity, amount or priority of any claim against the Debtors or the Foreign Representative; (ii) a waiver of the Debtors’ or Foreign Representative’s rights to dispute any claim; (iii) a promise or requirement to pay any claim; (iv) a waiver of any claim or cause of action of the Debtors or the Foreign

Representative that exists against any entity; (v) a ratification or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (vi) a waiver of limitation of the Debtors' or Foreign Representative's rights under the Bankruptcy Code, any other applicable law or any agreement; or (vii) an admission or concession by the Debtors or the Foreign Representative that any lien is valid, and the Debtors and the Foreign Representative expressly reserve and preserve their rights to contest the extent, validity, or perfection, or seek avoidance of, any lien.

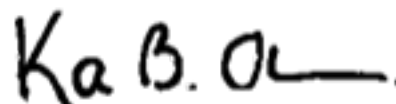
5. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Dated: March 31st, 2020**  
**Wilmington, Delaware**



**KAREN B. OWENS**  
**UNITED STATES BANKRUPTCY JUDGE**

**EXHIBIT 1**  
**(LIST OF REJECTED LEASES)**

**LIST OF REJECTED LEASES**

<b>Debtor/Lessee</b>	<b>Landlord/Lessor</b>	<b>Property Location</b>	<b>Name of Contract</b>	<b>Surrender Date</b>
Motorcycle Tires and Accessories, LLC	PE Ventures Consulting LLC	6497 Hwy 33 Choudrant, LA, 71227	Commercial Warehouse Contract of Lease	March 13, 2020
Motorcycle Tires and Accessories, LLC	IMC NA LLC	28210 Cedar Park Blvd Perrysburg, OH, 43551	Lease Agreement	March 20, 2020
Motorcycle Tires and Accessories, LLC	EP Ventures Consulting LLC	1550 Melissa Court Corona, CA, 92879	Commercial Warehouse Contract of Lease	March 27, 2020



**APPENDIX B - MOTOVAN CASH FLOW & MTA CASH FLOW**

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Motovan Corporation ("MTV")  
Cash flow Forecast - Extension period  
For the period May-17-2020 to Nov-30-2020

Month	May	June	July	August	September	October	November	Total for period
Week Starting	2020-05-17	2020-05-31	2020-06-28	2020-08-02	2020-08-30	2020-10-04	2020-11-01	
Week Ending	2020-05-30	2020-06-27	2020-08-01	2020-08-29	2020-10-03	2020-10-31	2020-11-30	
<b>(in CAD \$)</b>								
<b>RECEIPTS</b>								
Collections from recuperation of custom duties	-	76 592	150 000	150 000	250 000	250 000	150 000	1 026 592
<b>Total receipts</b>	<b>-</b>	<b>76 592</b>	<b>150 000</b>	<b>150 000</b>	<b>250 000</b>	<b>250 000</b>	<b>150 000</b>	<b>1 026 592</b>
<b>DISBURSEMENTS</b>								
<b>Operating Disbursements</b>								
Consulting fee - Custom duties		(48 473)	(51 525)	(51 525)	(87 875)	(87 875)	(51 525)	(378 798)
<b>Total Operating Disbursements</b>	<b>-</b>	<b>(48 473)</b>	<b>(51 525)</b>	<b>(51 525)</b>	<b>(87 875)</b>	<b>(87 875)</b>	<b>(51 525)</b>	<b>(378 798)</b>
<b>Debt Service Disbursements</b>								
Interest - Facility A	-	-	-	-	-	-	-	-
<b>Total Debt Service Disbursements</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Professional Fee Disbursements</b>								
<b>Total Professional Fee Disbursements</b>	<b>(409 442)</b>	<b>(10 000)</b>	<b>(80 000)</b>	<b>(10 000)</b>	<b>(10 000)</b>	<b>(10 000)</b>	<b>(55 000)</b>	<b>(584 442)</b>
<b>Total Disbursements</b>	<b>(409 442)</b>	<b>(58 473)</b>	<b>(131 525)</b>	<b>(61 525)</b>	<b>(97 875)</b>	<b>(97 875)</b>	<b>(106 525)</b>	<b>(963 240)</b>
<b>Net cash flow</b>	<b>(409 442)</b>	<b>18 119</b>	<b>18 475</b>	<b>88 475</b>	<b>152 125</b>	<b>152 125</b>	<b>43 475</b>	<b>63 351</b>
<b>Opening bank indebtedness</b>	<b>(5 168 334)</b>	<b>(5 577 777)</b>	<b>(5 559 658)</b>	<b>(5 541 183)</b>	<b>(5 452 708)</b>	<b>(5 300 583)</b>	<b>(5 148 458)</b>	<b>(5 168 334)</b>
Net cash flow	(409 442)	18 119	18 475	88 475	152 125	152 125	43 475	63 351
<b>Ending bank indebtedness</b>	<b>(5 577 777)</b>	<b>(5 559 658)</b>	<b>(5 541 183)</b>	<b>(5 452 708)</b>	<b>(5 300 583)</b>	<b>(5 148 458)</b>	<b>(5 104 983)</b>	<b>(5 104 983)</b>

## **Motovan Corporation monthly Cash Flow assumptions**

### ***Receipts for recuperation of duty rights:***

- Receipts for refunds of overpaid custom duties, based Motovan's specialist in customs, ALB Group, best estimates.
- Redetermination request of refunds custom duties would be submitted within 1 or 2 months pursuant and following the court granting the extending of the stay period order and the Re-Amended and Restated Initial Order.
- The reasonable time for the CBSA to process requests is approximately 120 days, and checks could be received 30 days later.
- Per ALB Group, an amount of approximately \$77,000 is currently available for refund with CBSA. The Monitor is currently reviewing this amount and reviewing the potential claims of federal agencies against Motovan (DAS, GST, Coporate Tax and others) to assess potential compensations prior to issuing a payment by CBSA. Receipts could be subject of compensations by CBSA, if Motovan has any outstanding amounts owed to the federal government.

### ***Consulting fee – Custom duties:***

- Based on contingent fee percentage agreed between ALB Group and Motovan. Motovan currently owes approximately \$48,000 (incl. GST/QST) to ALB Group for credits issued before May 2020. Per ALB Group, part of those credits were offset by CBSA and part (approx. \$77,000) could be available for refund.
- Per the agreement, ALB contingency rate is 35% on the first credits of \$100,000 and 30% on additional credits issued by CBSA.
- All amounts incl. GST/QST

### ***Professional fees:***

- Professional fees are based on best estimates received by different parties involved.
- Disbursements in Professional fees for the month of May are comprised of accrued fees from January to March 2020 of approx. \$409,000 (incl. GST/QST).
- Disbursements in Professional fees of June and November also include payment of the provision for professional fees for the work of April and May 2020 and to close the CCAA in November.
- Professional fees in June include a 25 k\$ provision for corporate tax filing, based on historical fee. Motovan will need to be up to date in the filing of its statutory reporting in order to receive the refunds.

### ***Opening Bank Indebtedness***

- The cash flow opening bank indebtedness includes the net proceeds of the sale of the assets of Motovan that amounts to \$6,790,000.

*Note that sales tax credits/refunds was not illustrated on cash flow assumptions intentionally.*

Motorcycle Tires & Accessories LLC ("MTA")  
Forecast - Extension period  
For the period May-17-2020 to Nov-30-2020

Month	May	June	July	August	September	October	November	Total for period
Week Starting	2020-05-17	2020-05-31	2020-06-28	2020-08-02	2020-08-30	2020-10-04	2020-11-01	
Week Ending	2020-05-30	2020-06-27	2020-08-01	2020-08-29	2020-10-03	2020-10-31	2020-11-30	
<b>(in US \$)</b>								
<b>RECEIPTS</b>								
Collections of accounts receivable	25 000	83 551	83 551	53 551	53 551	48 551	48 551	396 308
<b>Total receipts</b>	<b>25 000</b>	<b>83 551</b>	<b>83 551</b>	<b>53 551</b>	<b>53 551</b>	<b>48 551</b>	<b>48 551</b>	<b>396 308</b>
<b>DISBURSEMENTS</b>								
<b>Operating Disbursements</b>								
Insurance	(3 300)	(3 300)	(3 300)	(3 300)	(3 300)	(3 300)	(3 300)	(23 100)
Bank Fees	-	(1 000)	(1 000)	(1 000)	(1 000)	(1 000)	(1 000)	(6 000)
Credit Card Fees	(750)	(2 507)	(2 507)	(1 607)	(1 607)	(1 457)	(1 457)	(11 889)
Contingency	(100)	(400)	(500)	(400)	(500)	(400)	(200)	(2 500)
<b>Total Operating Disbursements</b>	<b>(4 150)</b>	<b>(7 207)</b>	<b>(7 307)</b>	<b>(6 307)</b>	<b>(6 407)</b>	<b>(6 157)</b>	<b>(5 957)</b>	<b>(43 489)</b>
<b>Debt Service Disbursements</b>								
Interest - Facility B	(15 000)	-	(30 000)	-	(30 000)	-	(15 000)	(90 000)
<b>Total Debt Service Disbursements</b>	<b>(15 000)</b>	<b>-</b>	<b>(30 000)</b>	<b>-</b>	<b>(30 000)</b>	<b>-</b>	<b>(15 000)</b>	<b>(90 000)</b>
<b>Total Professional Fee Disbursements</b>	<b>(29 250)</b>	<b>(13 349)</b>	<b>(13 349)</b>	<b>(11 249)</b>	<b>(11 249)</b>	<b>(10 899)</b>	<b>(7 149)</b>	<b>(96 492)</b>
<b>Total Disbursements</b>	<b>(48 400)</b>	<b>(20 555)</b>	<b>(50 655)</b>	<b>(17 555)</b>	<b>(47 655)</b>	<b>(17 055)</b>	<b>(28 105)</b>	<b>(229 981)</b>
<b>Net cash flow</b>	<b>(23 400)</b>	<b>62 996</b>	<b>32 896</b>	<b>35 996</b>	<b>5 896</b>	<b>31 496</b>	<b>20 446</b>	<b>166 327</b>
<b>Opening bank indebtedness</b>	<b>(3 887 413)</b>	<b>(3 910 813)</b>	<b>(3 847 816)</b>	<b>(3 814 920)</b>	<b>(3 778 924)</b>	<b>(3 773 028)</b>	<b>(3 741 532)</b>	<b>(3 887 413)</b>
Net cash flow	(23 400)	62 996	32 896	35 996	5 896	31 496	20 446	166 327
<b>Ending bank indebtedness</b>	<b>(3 910 813)</b>	<b>(3 847 816)</b>	<b>(3 814 920)</b>	<b>(3 778 924)</b>	<b>(3 773 028)</b>	<b>(3 741 532)</b>	<b>(3 721 086)</b>	<b>(3 721 086)</b>

## **Motorcycle Tires & Accessories LLC monthly cash flow projections assumptions**

### ***Collections of accounts receivable:***

- Collections of sales are based on liquidation agent's best estimates.
- Accounts receivable are mostly comprised of 4 large accounts, where monthly payments could be received through payment plan agreements once their businesses reopen.

***Insurance:*** Comprised of monthly payment for Directors and Officers insurance, based on current premium and in accordance with the APA.

***Bank fees:*** Includes expenses based on historical disbursements.

***Credit card fees:*** Includes disbursements based on historical percentage fee over collections.

***Interest – Facility B:*** Based on average weekly loan balance, calculated with contractual interest rate of 6.15%, paid monthly.

***Professional fees:*** Professional fees are based on best estimates received by different parties involved, including the fees to file the motion for final decree to close the Chapter 15 with the US Court.