

RICHTER

Court File No. CV-23-00699238-00CL

**SECOND REPORT OF RICHTER INC.,
IN ITS CAPACITY AS RECEIVER OF
DIGITAL ORTHODONTIC CARE INC.**

FEBRUARY 9, 2024

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

BETWEEN:

ORTHO STUDIO EXPRESS, INC.

Applicant

- and -

DIGITAL ORTHODONTIC CARE INC.

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**SECOND REPORT OF RICHTER INC.,
IN ITS CAPACITY AS RECEIVER OF
DIGITAL ORTHODONTIC CARE INC.**

FEBRUARY 9, 2024

I. INTRODUCTION

1. Pursuant to an application by Ortho Studio Express, Inc. (the “**Lender**”) under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, Richter Inc. (“**Richter**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Digital Orthodontic Care Inc. (the “**Company**”) by way of an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), dated July 4, 2023 (the “**Date of Appointment**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. Pursuant to the Appointment Order, the Receiver was authorized to market any or all of the Property.
3. On August 17, 2023 the Court issued an order (the “**August 17th Order**”), among other things, authorizing the Receiver to:
 - (i) engage Infinity Asset Solutions Inc. (the “**Agent**”) to conduct a liquidation sale under a net minimum guarantee arrangement (the “**Liquidation Sale**”) in respect of the Company’s tools, equipment, vehicle, and furniture (collectively, the “**Liquidation Property**”); and
 - (ii) conduct a sale solicitation process (the “**Sale Process**”) for the balance of the Company’s assets not subject to the Liquidation Sale, including, *inter alia*: minority investments in other businesses, intellectual property and other credits, refunds and rebates (collectively, the “**Sale Process Property**”).
4. Pursuant to the August 17th Order, the Court approved a stalking horse sale agreement dated August 10, 2023 (the “**Stalking Horse Agreement**”) pursuant to which the Lender agreed to act as a stalking horse bidder in the Sale Process (in such capacity, the “**Stalking Horse Bidder**”). The closing of the purchase transaction contemplated by the Stalking Horse Agreement was conditional on, among other things: (i) the Stalking Horse Bidder being declared the Successful Bidder (as defined in the Sale Process); and (ii) Court approval. The August 17th Order conditionally approved a vesting order (the “**Stalking Horse Vesting Order**”) in respect of the Stalking Horse bidder in the circumstances that no other bid was received in the Sale Process. A copy of the August 17th Order is attached hereto as **Appendix “B”**.
5. This report is the Receiver’s second report (the “**Second Report**”) filed with this Court in connection with these receivership proceedings. The Receiver’s first report (the “**First Report**”) dated August 11, 2023 outlined, among other things: background information on the Company, the security interests granted by the Company in favour

of the Lender, the activities of the Receiver since the Date of Appointment, the Liquidation Sale and the Sale Process. A copy of the First Report (without appendices) is attached hereto as **Appendix “C”**.

6. The Receiver has established a website (the “**Receiver’s Website**”) at <https://www.richter.ca/insolvencycase/digital-orthodontic-care-inc/> where copies of materials filed in the Company’s receivership proceedings, including the First Report, have been made available in electronic format.
7. The Receiver has engaged Reconstruct LLP (“**Reconstruct**”) as its legal counsel.

II. PURPOSE OF REPORT

8. The purpose of this Second Report is to:
 - (i) provide an update on the outcome of the Liquidation Sale;
 - (ii) provide an update on the outcome of the Sale Process;
 - (iii) outline the terms of the agreement of purchase and sale between the Lender and the Receiver in relation to the ArcadLab Assets (as defined below);
 - (iv) provide an overview of the activities of the Receiver since the First Report;
 - (v) summarize the Receiver’s receipts and disbursements for the period from the Date of Appointment to February 9, 2024 (the “**Interim R&D**”);
 - (vi) summarize the Receiver’s estimate of accrued and unpaid obligations (the “**Accrued Obligations**”) as of the date of this Second Report and the Receiver’s estimate of professional fees and disbursements, including those of its counsel, Reconstruct, required to complete the administration of these receivership proceedings (the “**Remaining Fees and Disbursements**”); and
 - (vii) recommend the Court grant an Order:
 - (a) approving the First Report, the Second Report, and the actions, activities and conduct of the Receiver set out therein;
 - (b) approving the Interim R&D;
 - (c) approving the Stalking Horse Vesting Order in respect of the Stalking Horse Agreement;

- (d) approving the Lender's credit bid offer in relation to the ArcadLab Assets (the "**ArcadLab Offer**") and authorizing the Receiver to take any steps necessary to complete the transaction and vesting, upon closing of the transaction, all of the Company's right, title and interest in and to the ArcadLab Assets to the Lender, free and clear of all liens, charges, security interest and other encumbrances (the "**ArcadLab Approval and Vesting Order**");
- (e) authorizing the Receiver to make any distributions to the Lender without further order of this Court, provided that the aggregate distributions to the Lender do not exceed the indebtedness owed to it by the Company (the "**Lender Distributions**");
- (f) authorizing the Receiver to retain approximately \$120,000 (the "**Holdback**") from the available cash on hand, and to use such funds, and any subsequent receipts, to address the Remaining Matters (as defined herein) without further approval of this Court;
- (g) approving the accounts of the Receiver and its counsel, including the Remaining Fees and Disbursements, as set out in this Second Report;
- (h) discharging the Receiver upon completion of the Remaining Matters, including the distribution of any residual amounts remaining in its possession to the Lender, upon filing a certificate with the Court confirming that it has completed the administration of the Company's estate (the "**Discharge Certificate**"); and
- (i) ordering and declaring that effective upon its discharge as Receiver, Richter is released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of Richter.

III. TERMS OF REFERENCE

9. In preparing this Second Report, Richter has relied upon financial information and documents prepared by the Company and its advisors, including unaudited, draft and/or internal financial information, the Company's books and records, discussions with representatives of the Company including former employees, communications with the Lender and its legal counsel, and information from third-party sources (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in the Second Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Canadian Auditing Standards ("**CAS**") pursuant to the *Chartered*

Professional Accountant of Canada Handbook and, as such, Richter expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.

10. The Second Report should be read in conjunction with the motion materials filed in respect of the Lender's receivership motion, including the affidavit of Mr. Mark Cassidy sworn May 8, 2023 and the Receiver's First Report. Parties using this Second Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
11. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the First Report or the Stalking Horse Agreement.
12. Unless otherwise noted, all monetary amounts noted herein are expressed in Canadian dollars.

IV. THE LIQUIDATION SALE

13. The Company, which was established in 2017 and operated under the business name 'SureCure Orthodontic Aligners', was a manufacturer of customized orthodontic supplies, primarily clear aligners used to straighten teeth and related accessories.
14. Pursuant to the August 17th Order, the Receiver and the Agent entered into an auction services agreement (the "**Auction Services Agreement**") dated September 6, 2023 in respect of the Liquidation Sale. A copy of the Auction Services Agreement is attached as **Appendix "D"**.
15. The Auction Services Agreement entered into with the Agent, included the following key terms:
 - (i) **Agent's Fees:** Following the first \$515,000 in auction proceeds, the Agent was to retain the next \$60,000 to cover expenses, marketing, labour and set-up fees; and
 - (ii) **Profit Sharing:** Proceeds in excess of \$575,000 were to be split 85/15 between the Receiver and the Agent, in the Receiver's favour.
16. The auction conducted by the Agent concluded September 13, 2023 and resulted in auction proceeds totaling approximately \$533,000. As a result, the Liquidation Sale realized the guaranteed minimum amount, \$515,000.

V. THE SALE PROCESS

17. The purpose of the Sale Process was to solicit interest in substantially all of the Company's remaining Property not subject to the Liquidation Sale while providing the certainty of a transaction through the Stalking Horse Agreement. A copy of the Stalking Horse Agreement is attached hereto as **Appendix "E"**.
18. The Property to be acquired pursuant to the Stalking Horse Agreement (the "**Stalking Horse Assets**") excluded:
 - (i) the Liquidation Property subject to the Liquidation Sale; and
 - (ii) the Company's interest in two (2) third-party businesses, ArcadLab LLC based in the United States and Dental SPV based in France (the "**AdcadLab Assets**" and "**Dental SPV Assets**", respectively).
19. Pursuant to the August 17th Order, on August 21, 2023, the Receiver commenced the Sale Process. A summary of certain of the activities undertaken in the Sale Process are as follows:
 - (i) the Receiver prepared an interest solicitation summary document (the "**Teaser**") detailing the acquisition opportunity;
 - (ii) the Receiver prepared a list of potential interested parties (the "**Prospective Participants**") with the assistance of the Company and the Lender. The Prospective Participants comprised both financial and strategic buyers, including both domestic and foreign parties;
 - (iii) in total, the Receiver distributed the Teaser to approximately fifty-eight (58) Prospective Participants, including more than forty (40) strategic buyers;
 - (iv) the Receiver placed a notice of the Sale Process in The Globe & Mail (National Edition); and
 - (v) Prospective Participants that executed a non-disclosure agreement ("**NDA**") were provided access to a virtual data room (the "**Data Room**") maintained by the Receiver. The Data Room contained, amongst other materials, confidential information about the Company, including corporate documents, historical financial information, prior tax returns, information related to the Company's intellectual property and information related to the Company's investment holdings. A copy of the Stalking Horse Agreement including the appended sale process procedures, setting out, *inter alia*, the Bid Deadline (as hereinafter defined), the bid protections and the minimum information requirements for any offer to be considered a Qualified Offer were also made available in the Data Room.

20. Offers were required to be submitted to the Receiver by no later than 5:00 pm (Toronto time) on September 29, 2023 (the “**Bid Deadline**”). Pursuant to the terms of the Sale Process, the Receiver extended the Bid Deadline to 5:00 pm (Toronto time) on October 6, 2023 in order to facilitate additional diligence requests.
21. A summary of the Sale Process results is as follows:
- (i) seven (7) parties executed an NDA (then, a “**Prospective Bidder**”) and were provided access to the Data Room to perform diligence on the opportunity. Throughout the course of the Sale Process, the Receiver facilitated due diligence for Prospective Bidders, including updating the Data Room with current information and responding to any queries from Prospective Bidders, as required;
 - (ii) three (3) offers were received prior to the Bid Deadline:
 - (a) no bids on the Stalking Horse Assets (aside from the Stalking Horse Bid) were received;
 - (b) two (2) bids were received in relation to the ArcadLab Assets; and
 - (c) one (1) bid was received in relation to the Dental SPV Assets.

Stalking Horse Assets

22. As noted in the First Report, the Receiver, the Lender and their respective legal counsel negotiated the terms and provisions of the Stalking Horse Agreement and the Sale Process. The key elements of the transaction contemplated by the Stalking Horse Agreement include the following:
- (i) the Lender is acquiring, on an “as is, where is” basis, the Company’s intellectual property, legal actions where the Company is the moving party, tax refunds, credits, rebates, claims to insurance reimbursements, investment property and books and records related to the Stalking Horse Assets;
 - (ii) the Stalking Horse Assets specifically exclude: shares and other interests or capital in the Company, tax records unrelated to the Stalking Horse Assets, insurance policies, books and records unrelated to the Stalking Horse Assets and assets listed in Schedule D to the Stalking Horse Agreement (i.e., the Arcadlab Assets and the Dental SPV Assets);
 - (iii) the purchase price for the Stalking Horse Assets is \$3,000,000 to be paid by way of a credit bid, representing a portion of the Lender’s total Secured Indebtedness (USD\$ 5 million, plus interest and fees);

- (iv) as per the Stalking Horse Agreement, closing is scheduled to occur five (5) business days following the later of: (i) the selection of the Stalking Horse Agreement as the Successful Bid, and (ii) the issuance of the Stalking Horse Vesting Order, or such other date as may be agreed in writing between the parties; and
 - (v) the only material conditions precedent to the transaction contemplated by the Stalking Horse Agreement are the Stalking Horse Bidder becoming the “Winning Bidder” as contemplated by the Sale Process and the granting of the Stalking Horse Vesting Order.
23. Upon the waiver or satisfaction of the conditions precedent, the Receiver will file a certificate with the Court attesting that the transaction contemplated by the Stalking Horse Agreement has been completed to the satisfaction of the Receiver and confirming the closing of the sale for the Stalking Horse Assets.
24. As noted above, the Court’s August 17th Order approved the Stalking Horse Agreement and conditionally approved the Stalking Horse Vesting Order in respect of the Stalking Horse Agreement in the circumstances “where no bids (other than the Stalking Horse Agreement) are received by the Receiver”. Although there were multiple bids received in the Sale Process, no other bids were received for the Stalking Horse Assets. Accordingly, the Receiver is of the opinion that the Court has already approved the vesting of the Stalking Horse Assets in the Lender. However, given the wording of the August 17th Order does create some ambiguity, the Receiver seeks approval of the Stalking Horse Vesting Order out of an abundance of caution.
25. In granting the August 17th Order, the Court was satisfied that it was appropriate to approve the Stalking Horse Agreement and conditionally approve the Stalking Horse Vesting Order. The Receiver remains of the view that the transaction contemplated by the Stalking Horse Agreement represents the best recovery for the Stalking Horse Assets in the circumstances. In particular, the Receiver notes:
- (i) the Sale Process, which was approved by the Court, was reasonable in the circumstances, transparent and carried out in accordance with the August 17th Order;
 - (ii) there is a limited market for the Stalking Horse Assets. This market has been extensively canvassed, and all likely bidders have already been provided with an opportunity to bid on the Stalking Horse Assets;
 - (iii) the Stalking Horse Agreement was posted on the Receiver’s Website and available throughout the Sale Process for Prospective Bidders to review and consider in their assessment of the opportunity;
 - (iv) the transaction represented by the Stalking Horse Agreement is the only offer received for the Stalking Horse Assets; and

- (v) no funding is available to further market the Stalking Horse Assets and, as noted above, the market has been fully canvassed and all likely bidders have already been provided with an opportunity to bid on the Stalking Horse Assets.
26. Based on the foregoing, the Receiver recommends that the Court issue an order(s):
- (i) approving the transaction contemplated by the Stalking Horse Agreement and directing the Receiver to take all steps necessary to complete the transaction; and
 - (ii) granting the Stalking Horse Vesting Order.

ArcadLab Assets

27. As noted above, two (2) bids were submitted to the Receiver in respect of the Arcadlab Assets:
- (i) a bid from ArcadLab LLC in the amount of US\$10,000 submitted in the form of a letter of intent; and
 - (ii) the ArcadLab Offer in the amount of \$2,000,000 submitted in the form of a credit bid from the Lender.
28. The ArcadLab Offer was submitted in substantially the same form as the Stalking Horse Agreement (the “**ArcadLab Agreement**”). A copy of the ArcadLab Agreement is attached as **Appendix “F”**. The key terms of the ArcadLab Agreement are provided below (capitalized terms not otherwise defined in this section have the meanings provided to them in the ArcadLab Offer):
- (i) **Purchaser:** Ortho Studios Express, Inc.
 - (ii) **Purchase Price:** estimated to be \$2,000,000 million (the “**Arcadlab Purchase Price**”) to be paid by way of a credit bid in the amount to \$2,000,000 of the Secured Indebtedness (the “**Arcadlab Credit Bid Amount**”), such that on Closing the Secured Indebtedness shall be partially repaid in the amount of the Credit Bid Amount.
 - (iii) **Purchased Assets:** all shares of Arcadlab, LLC issued to the Company, along with all of the Company’s right, title and interest (including any choses in action relating thereto) in and to such shares or any other shares of Arcadlab, LLC and all books and records related to the Arcadlab Assets.
 - (iv) **Excluded Assets:** the right, title, benefit and interest of the Company in and to the assets of the Company that are not the Purchased Assets.

- (v) **Assumption of Liabilities:** the Purchaser will assume only those liabilities in respect of the Purchased Assets. The Assumed Liabilities are the liabilities of the Company: (i) related to the transfer of the Purchased Assets, including any costs associated with obtaining consent to such transfer.
 - (vi) **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis, with limited representations and warranties.
 - (vii) **Closing Date:** the date that is five (5) Business Days following the later of (i) the selection of the ArcadLab Agreement as the Successful Bid and (ii) the date of the Approval and Vesting, or such other date as may be agreed in writing between the parties hereto, but in any case, not later than the Outside Date.
29. The Receiver is of the view that the transaction contemplated by the Arcadlab Offer represents the best recovery for the Arcadlab Assets in the circumstances. In particular, the Receiver notes:
- (i) the Sale Process, which was approved by the Court, was reasonable in the circumstances, transparent and carried out in accordance with the August 17th Order;
 - (ii) there is a limited market for the Arcadlab Assets. This market has been extensively canvassed, and all likely bidders have already been provided with an opportunity to bid on the Stalking Horse Assets;
 - (iii) the transaction contemplated by the Arcadlab Offer represents the best and highest offer for the Arcadlab Assets; and
 - (iv) no funding is available to further market the Arcadlab Assets and, as noted above, the market has been fully canvassed and all likely bidders have already been provided with an opportunity to bid on the Arcadlab Assets.
30. Based on the foregoing, the Receiver recommends that the Court issue an order(s):
- (i) approving the transaction contemplated by the Arcadlab Offer and directing the Receiver to take all steps necessary to complete the transaction; and
 - (ii) vesting, upon the closing of the transaction contemplated by the Arcadlab Offer, all of the Company’s right, title and interest in and to the Arcadlab Assets in the Lender free and clear of all liens, security interests, charges and other encumbrances other than permitted encumbrances.

Dental SPV Assets

31. As noted above, one (1) bid (the “**Dental SPV Offer**”) was received on the Dental SPV Assets in the amount of US\$15,000.
32. Following receipt of the Dental SPV Offer, the Receiver explored the feasibility of completing a transaction for the Dental SPV Assets. However, based on the Receiver’s analysis, it was determined that the estimated costs to complete such transaction would exceed the amounts realized from such sale. In particular, as the Dental SPV Assets include shares in a foreign jurisdiction (France) registered/held in the name of a former principal of the Company (for the benefit of the Company), and any sale of such shares are subject to a right of first refusal in favour of the Dental SPV shareholders, the estimated professional costs to effect the contemplated transaction would exceed the amounts realized from such sale.
33. As the offeror for the Dental SPV Assets was unwilling to increase its bid for the Dental SPV Assets, the Receiver, after consulting with the Lender, elected to not proceed with the transaction contemplated by the Dental SPV Offer.
34. In the circumstances, and given the lack of interest in the Dental SPV Assets, the Receiver does not intend to take any further steps in respect of the Dental SPV Assets.

VI. ACTIVITIES OF THE RECEIVER SINCE THE DATE OF THE FIRST REPORT

35. The Receiver’s activities since the Date of the First Report have included, *inter alia*, the following:
 - (i) attending before the Court in respect of the August 17th Order;
 - (ii) arranging for cash balances in the Company’s bank accounts to be transferred to the Receiver’s account;
 - (iii) administering claims of the Company’s former employee’s pursuant to the *Wage Earners Protection Plan Act* (“**WEPPA**”);
 - (iv) corresponding with the Company’s former payroll administrator, the former head of human resources, Service Canada and the Company’s former employees regarding WEPPA;
 - (v) corresponding with the Company’s subtenant, Borderworx Logistics (the “**Subtenant**”), regarding the receivership proceedings and access to the Premises;
 - (vi) Coordinating access to the Premises for:

- (a) the Company's former employees to retrieve personal belongings;
 - (b) the Landlord's representatives;
 - (c) the Agent in respect of the Liquidation Sale; and
 - (d) the Company's Subtenant.
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- (vii) responding to inquiries from various stakeholders, including creditors, customers, former employees and other interested parties;
 - (viii) negotiating and entering into a reduced-rate short-term occupancy agreement with the landlord of the Company's former premises;
 - (ix) corresponding with the Company's bookkeeping service provider regarding the Company's financial records;
 - (x) compiling information for the Data Room in relation to the Sale Process;
 - (xi) soliciting interest in the Sale Process, including compiling a listing of Prospective Participants;
 - (xii) corresponding with Prospective Participants regarding the Sale Process;
 - (xiii) facilitating diligence requests for Prospective Bidders;
 - (xiv) reviewing and summarizing offers received in the Sale Process;
 - (xv) analysing the feasibility of completing a transaction for the Dental SPV Assets, including corresponding with a former principal of the Company, a legal representative of Dental SPV, the party that submitted the Dental SPV Offer, Reconstruct, the Lender and their legal counsel, McMillan LLP ("**McMillan**");
 - (xvi) corresponding with Canada Revenue Agency ("**CRA**") regarding the Company's sales tax obligations;
 - (xvii) maintaining the Receiver's Website, where all materials filed with the Court in connection with The Company's receivership proceedings are available in electronic format;
 - (xviii) corresponding extensively with Reconstruct regarding all matters relating to these proceedings;

- (xix) corresponding and communicating regularly with the Lender and McMillan regarding the receivership proceedings;
- (xx) reviewing post-filing invoices and arranging for payment of same from the Company's estate bank account;
- (xxi) preparing this Second Report;
- (xxii) recording receipts and disbursements, including preparation of the Interim R&D; and
- (xxiii) attending to other matters pertaining to the administration of the receivership proceedings.

VII. RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

36. Set out below is a summary of the Interim R&D for the period from the Date of Appointment to February 9, 2024 (the "Period"):

Digital Orthodontic Care Inc. Interim Statement of Receipts and Disbursements For the Period July 4, 2023 to February 9, 2024 (\$000s; Unaudited)	
Receipts	
Liquidation Plan proceeds	515
Transfers from Company's operating accounts	98
Advances under Receiver's Certificate	70
Collection of accounts receivable	32
Rental income	13
HST collected	2
Interest	7
Total receipts	737
Disbursements	
Professional fees	221
Occupation rent	157
Payroll	73
Repayment of Advances under Receiver's Certificate	70
HST paid on disbursements	54
Contract services	14
Waste disposal	10
IT expenses	5
Interest	4
Other expenses	9
Total disbursements	617
Estate cash balance	120

37. As noted above, the Receiver had total receipts of approximately \$737,000 over the Period, the majority of which relate to proceeds from the sale of the Company's equipment under the Liquidation Sale.

38. Total disbursements during the Period were approximately \$617,000, primarily consisting of:
- (i) Professional fees and disbursements (\$221,000) – fees and disbursements of the Receiver (\$172,692) and Reconstruct (\$48,516);
 - (ii) Occupancy rent (\$157,000) – occupation rent paid by the Receiver since the Date of Appointment through the effective vacate date;
 - (iii) Payroll and benefits (\$73,000) – includes regular wages, vacation pay and benefits to the former employees of the Company, including approximately \$30,000 related to the pre-filing period;
 - (iv) Receiver’s borrowings (\$70,000) – As noted in the First Report, the Receiver requested and received \$70,000 in borrowings (the “**Receiver’s Borrowings**”) from the Lender in order to fund interim expenditures such as rent and payroll. The Receiver’s Borrowings, plus interest, have been fully repaid and no Receiver’s Borrowings are outstanding;
 - (v) Sales taxes (\$54,000) – paid on disbursements made by the Receiver for rent, professional fees, and other operating costs;
 - (vi) Contract services (\$14,000) – includes fees associated with locksmiths, cataloguing of books and records, document retention and data preservation; and
 - (vii) Waste disposal (\$10,000) – includes fees associated with the removal of waste, including the professional removal of hazardous waste, from the Premises.
39. As at February 9, 2024 the Receiver’s estate account had cash on hand of approximately \$120,000.
40. The Interim R&D does not include approximately \$40,000 of Accrued Obligations in respect of: (i) the Remaining Fees and Disbursements; and (ii) costs related to the storage and destruction of the Company’s books and records. The Receiver has informed the Lender of the Accrued Obligations and the Receiver’s intention to hold back \$40,000 on account of the Accrued Obligations as part of the Holdback.
41. The Interim R&D does not include the expected receipt of a rent deposit refund in the amount of approximately \$150,000. Counsel to the Company’s former landlord has advised the Receiver that the refund is being processed and will be wired to the Receiver’s estate account by end of February 2024.
42. As at the date of this Second Report, the Receiver does not anticipate any additional material realizations to the estate.

VIII. THE COMPANY'S OBLIGATIONS TO THE LENDER

43. Details of the Company's obligation to the Lender are set out in the affidavit of Mark Cassidy of the parent corporation to the Lender dated May 8, 2023 (the "**Cassidy Affidavit**"), sworn in support of the application for the appointment of the Receiver.
44. As noted in the Cassidy Affidavit, as at the Date of Appointment, the Company was indebted to the Lender in the principal amount of US\$5.0 million, plus interest and fees (the "**Secured Note**"). As security for the repayment of amounts owing under the Secured Note, the Company provided a general security agreement in favour of the Lender, including a security interest in all of the present and after acquired personal property of the Company.
45. The Receiver has received a written opinion from its independent counsel, Reconstruct, that subject to the customary assumptions and qualifications for opinions of this nature, the security interests in favour of the Lender are valid and enforceable in the Province of Ontario.

IX. PRIORITY CLAIMS

46. Based on the search results for the Ontario personal property registration system (the "**PPSA**") in respect of the Company, the Lender as well as another party have registered their respective security interests against the personal property of the Company. According to the PPSA, the order of registrations is the Lender and then the other registrant.
47. The security granted by the Company in favour of the Lender is subject to prior charges and security interest or claims in respect of the Property, which include:
 - (i) the Receiver's Charge;
 - (ii) the Receiver's Borrowing Charge;
 - (iii) the Proposed HST Assessment; and
 - (iv) statutory claims pursuant to the BIA.

Receiver's Charge

48. As at the date of this Second Report, the fees and disbursements of the Receiver and its legal counsel, Reconstruct, have been paid up to February 7, 2024 and February 8, 2024, respectively, and total approximately \$224,100, exclusive of HST. As discussed further below, the Receiver and Reconstruct have estimated Remaining Fees and Disbursements in the amount of \$25,000 (excluding HST). The Remaining Fees and

Disbursements are to be funded from the Holdback, subject to the Court granting the order requested by the Receiver as described herein.

Receiver's Borrowing Charge

49. Pursuant to the Appointment Order, the Receiver was authorized to borrow up to \$400,000, as it is considered necessary or desirable to fund the cost of the receivership. The Receiver borrowed, by way of a receiver's certificate, \$70,000 from the Lender. As at the date of this Second Report, the Receiver's Borrowings, plus interest, have been fully repaid and no Receiver's Borrowings are outstanding.

Proposed HST Assessment

50. By letter dated November 30, 2023, CRA advised the Receiver that it was proposing a reassessment of the Company's pre-filing HST returns that would result in an obligation to CRA in the amount of approximately \$474,212 (the "**Proposed HST Assessment**").
51. The Receiver has reviewed the matter and notes the Proposed HST Assessment is inconsistent with the Company's books and records and could potentially be overstated by approximately \$466,000. As of the date of the Second Report, the Receiver and the CRA are in the process of reconciling the difference in findings.
52. In the event that CRA finalizes an assessment at a material amount, the Lender has advised the Receiver that it would petition the Company into bankruptcy, pursuant to the BIA, in order to re-order any priority afforded CRA in respect of its HST-related claim in a non-bankruptcy scenario. A contingency reserve of \$80,000 has been included in the Holdback in relation to the Proposed HST Assessment.

Statutory Claims pursuant to the BIA

53. Since the Date of Appointment, the Receiver has not received any supplier demands for repossession of goods. Accordingly, the Receiver is not aware of any claims that could be owing pursuant to section 81.1 of the BIA.
54. Since the Date of Appointment, the Receiver has paid approximately \$30,000 in respect of pre-filing wages and vacation pay to the Company's former employees. Based on the Receiver's review of the Company's books and records, there are no outstanding amounts owed to the Company's former employees in respect of wages and/or vacation pay. Accordingly, the Receiver is not aware of any amounts that could be owing pursuant to section 81.4 of the BIA.

55. The Receiver understands that the Company did not provide a registered pension plan for its employees. Accordingly, the Receiver is not aware of any amounts that could be owing pursuant to section 81.6 of the BIA.

X. PROPOSED LENDER DISTRIBUTIONS

56. The Holdback of \$120,000 represents the entire balance remaining in the Receiver's estate account. Subject to this Court's approval, the following summarizes the funds that will remain in the Receiver's possession:

Digital Orthodontic Care Inc. Summary of Holdbacks (\$000s)	
Holdback	
Remaining Fees and Disbursements (incl. HST)	28
Record retention and destruction	12
Contingency / Proposed HST Assessment	80
Total Holdback	120

57. Other than the claims noted above, the Receiver is not aware of any security interests, liens, charges, encumbrances or other rights of third parties that would have priority over the security granted in favour of the Lender, with respect to the Property or the proceeds therefrom.

58. The Receiver is of the view that, in order to maximize efficiency and avoid the need to seek the approval of the Court to make distributions to the Lender, it is appropriate, to seek the Court's approval to make such distributions to the Lender, as the Receiver determines are appropriate, subject to the Receiver maintaining sufficient reserves to complete the administration of the Company's receivership proceedings, including settlement of the Proposed HST Assessment and payment of any outstanding disbursements.

59. The Receiver requests that the Court authorize the Lender Distributions, subject to maintaining sufficient reserves to satisfy any outstanding obligations, provided that the aggregate distributions to the Lender do not exceed the indebtedness owed to it by the Company.

XI. REMAINING MATTERS AND RECEIVER'S DISCHARGE

60. If this Court grants the orders requested herein, the Receiver will have completed its duties and obligations as set out in the Appointment Order and subsequent orders of this Court, save and except for the following (the "**Remaining Matters**"):

- (i) payment of the Accrued Obligations and the Remaining Fees and Disbursements;
- (ii) settlement of the Proposed HST Assessment;

- (iii) the filing of any outstanding HST returns and pursuing potential recovery of any unclaimed HST input tax credits resulting from these receivership proceedings;
 - (iv) payment of Lender Distributions, if any; and
 - (v) other administrative matters incidental to these proceedings such as filing the Receiver's final statutory report pursuant to section 246(3) of the BIA.
61. Upon completion of the Remaining Matters, the Receiver will have realized on the Property and completed its statutory duties as well as those duties set out in the Appointment Order. Accordingly, the Receiver is of the view that it is appropriate to seek an order of the Court discharging the Receiver upon the filing of the Discharge Certificate with this Court, certifying that all of the Remaining Matters have been completed.

XII. REQUEST FOR APPROVAL OF FEES

62. The Receiver and its counsel, Reconstruct, have maintained detailed records of their professional fees and disbursements prior to and since the Date of Appointment.
63. In accordance with the Appointment Order, the Receiver has been authorized to periodically pay its fees and disbursements, and that of its counsel, subject to approval by the Court.
64. The Receiver's professional fees incurred for services rendered from the Date of Appointment to February 7, 2024, amount to \$172,692.00, plus disbursements in the amount of \$2,886.80 (all excluding HST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Receiver's professionals is described in the affidavit of Jonathan Joffe, sworn February 9, 2024, attached hereto as **Appendix "G"**.
65. The fees of Reconstruct for services rendered from the Date of Appointment to February 8, 2024, amount to \$47,801.00, plus disbursements in the amount of \$714.58 (all excluding HST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by Reconstruct's professionals is described in the affidavit of Caitlin Fell, sworn February 9, 2024, attached hereto as **Appendix "H"**.
66. The Receiver has reviewed Reconstruct's accounts and has determined that the services have been duly authorized and duly rendered and that the charges are reasonable given the circumstances.

67. In addition to the fees paid to Richter and Reconstruct as of February 7, 2024 and February 8, 2024 respectively, and on the assumption that there are no delays, disputes or unforeseen developments in connection with these proceedings, including the performance of the Remaining Matters, the Receiver and Reconstruct have estimated Remaining Fees and Disbursements in the amount of \$25,000 (excluding HST).
68. The above estimate represents the Receiver and Reconstruct's best estimate of the reasonable professional and legal fees required to complete the administration of these proceedings up to the effective date of discharge. If the actual Remaining Fees and Disbursements are less than the above estimates, no further Court approval of fees is required. If the actual Remaining Fees and Disbursements exceed the estimates, the Receiver is authorized to pay those excess fees with either: (i) the consent of the Lender; or (ii) pursuant to further order of the Court.

XIII. RECEIVER'S RECOMMENDATION

69. To the best of the Receiver's knowledge and belief, all duties of the Receiver, as set out in the Appointment Order and subsequent order of the Court, will be completed upon completion of the Remaining Matters and payment of the Lender Distributions, if any.
70. Based on the foregoing, the Receiver respectfully recommends that this Court issue an Order granting the relief detailed in paragraph 8(vii) of this Second Report.

All of which is respectfully submitted, this 9th day of February, 2024.

Richter Inc.
in its capacity as Receiver of
Digital Orthodontic Care Inc.
and not in its personal or corporate capacity

Per:



Karen Kimel, MAcc, CPA, CA, CPA (IL), CIRP, LIT



Jonathan Joffe, CA, CPA, CFA, CIRP, LIT