

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

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT  
R.S.C. 1985 c.C - 36, as amended**

**- and -**

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF  
KOREX DON VALLEY ULC**

**APPLICANT**

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**THIRD REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC**

**DATED APRIL 27, 2009**

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**THIRD REPORT OF  
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**DATED APRIL 27, 2009**

**INDEX**

<b>REPORT</b>	<b><u>Page</u></b>
<b>1.0</b> Introduction	1
<b>2.0</b> Disclaimer	5
<b>3.0</b> The Section 7.03 Invoice	6
<i>3.1 Inventory locations</i>	6
<i>3.2 Toronto inventory count results</i>	6
<i>3.3 The Manufacturing Agreement</i>	7
<b>4.0</b> Summary	8
 <b>EXHIBITS</b>	
CCAA Initial Order dated February 6, 2009	“A”
Korex invoice to Unilever Canada dated February 4, 2009	“B”
Monitor’s Toronto inventory count results memo dated April 24, 2009	“C”
Finished goods inventory relating to Unilever Canada Demand Purchase Order schedule	“D”
Monitor’s memo to file re forecasts dated April 26, 2009	“E”

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IRA SMITH TRUSTEE & RECEIVER INC.**

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KOREX DON VALLEY ULC**

**DATED APRIL 27, 2009**

**1.0 INTRODUCTION**

This Third Report (the "**Third Report**") is filed by Ira Smith Trustee & Receiver Inc. ("**ISI**") in its capacity as court-appointed monitor (the "**Monitor**") of all of the assets, undertakings and properties of Korex Don Valley ULC ("**Korex**").

On January 2, 2009, by Endorsement of the Honourable Mr. Justice Campbell, prior to its appointment as Monitor, ISI was directed to perform certain work and prepare its First Report in its capacity as proposed court-appointed monitor as part of an adjournment on a consent basis of the within application.

On January 12, 2009, the parties attended before the Honourable Madam Justice Pepall to seek an adjournment of the hearing of Korex's motion. By endorsement of Justice Pepall, the First Report was not filed with this Honourable Court at that time. A copy of Her Honour's Endorsement was attached to the proposed Monitor's Supplementary First Report as Exhibit "A" (further discussed below).

On January 19, 2009, the parties attended before the Honourable Mr. Justice Morawetz to seek a further adjournment of the hearing of Korex's motion. By endorsement of Justice Morawetz on that same date, His Honour directed that the proposed monitor file a further report for the next attendance on January 23, 2009 providing an up to date summary of key events.

On January 23, 2009, the parties attended before the Honourable Mr. Justice Cumming and scheduled the hearing of the Korex motion for February 3, 2009. By Endorsement of Mr. Justice Cumming, the proposed monitor was directed to file a Supplementary Second Report with this Honourable Court on February 2, 2009. Justice Cumming also directed the proposed monitor to file the First Report and the Supplementary First Report with this Honourable Court which was done at the same time.

On February 6, 2009, Korex's motion was heard and an Order was made granting Korex the requested relief, including, the stay of proceedings, the appointment of ISI as Monitor and directing that a further hearing in this Application should be heard on March 9, 2009, or such alternate date as the Court may fix (the "**Initial Order**"). Attached hereto as **Exhibit "A"** is a copy of the Initial Order.

On March 6, 2009, the Monitor's legal counsel, Aird & Berlis LLP, filed the Monitor's First Report to Court (the "**First Report**") with this Honourable Court in connection with the

Applicant's motion for an extension to the Initial Stay Order being heard on March 9, 2009 before the Honourable Madam Justice Hoy. Her Honour advised Mr. S. Mitra of Aird & Berlis LLP, who appeared on the March 9 attendance on behalf of the Monitor, that the First Report was not contained in the Court file. Accordingly, the First Report was neither considered nor approved by Her Honour.

By Order of the Honourable Madam Justice Hoy dated March 9, 2009, the Initial Stay Order and the initial stay was extended to March 31, 2009.

On March 25, 2009, the Monitor's legal counsel, Aird & Berlis LLP, filed the Monitor's Second Report to Court (the "**Second Report**") with this Honourable Court. Attached as Exhibit "A" to the Second Report was an original signed copy of the First Report. Included in the Exhibits to the First Report is a copy of all Reports filed by ISI in its capacity as proposed monitor.

On March 30, 2009, Aird & Berlis LLP filed the Monitor's Supplementary Second Report to Court (the "**Supplementary Second Report**") dated March 28, 2009. The purpose of the Supplementary Second Report was to provide the Court with additional information in connection with the Applicant's application for an extension of a further extension of the Initial Stay and the Initial Stay Order to April 30, 2009, which was served and filed subsequent to the finalization of the Second Report.

By Order of the Honourable Mr. Justice Lederman dated March 31, 2009, the Initial Stay Order and the initial stay was extended to April 30, 2009 (the "**Second Extension Order**").

## **Purpose of this Report**

In the Second Extension Order, Mr. Justice Lederman ordered that the Set-Off Motion (as defined in the Second Extension Order) as to the validity of the set-offs claimed by U L Canada Inc. (“**Unilever Canada**”) be adjourned until April 17, 2009.

The motion began on April 17, 2009 and was continued on April 22, 2009 before Mr. Justice Wilton-Seigel. On April 22, Mr. Justice Wilton-Seigel directed that an inventory count under the supervision of the Monitor be conducted of the product described in Korex invoice no. 13657 dated February 4, 2009 in the amount of \$677,221.21 (inclusive of GST) billed to Unilever Canada (the “**Section 7.03 Invoice**”). The invoice was for inventory and raw materials in connection with product produced for Unilever initially in connection with an agreement between Unilever Canada and Korex made as of August 18, 2002 (the “**Manufacturing Agreement**”).

The Monitor’s understanding of Korex’s position is that notwithstanding the Manufacturing Agreement had expired effective August 18, 2008, there was continued production by Korex. The terms of the arrangement with the parties are in dispute. Korex has put forth an email from an employee of Unilever confirming that the payment for inventory and raw materials on the terms confined to the email. Unilever has taken the position that the email has to be interpreted in the context of the overall business relationship and that the termination provisions contained in the original Manufacturing Agreement continue to govern the obligation of Unilever to make payment for unused inventories on hand in February 2009.

The purpose of this Third Report is in connection with the Set-Off Motion, to provide this Honourable Court with the result of the inventory taken as to the actual quantity of product on hand being the subject of the Section 7.03 invoice.

## **2.0 DISCLAIMER**

The Monitor has relied upon the financial records and financial statements of Korex, as well as other information supplied by Messrs. S. Pensler (President) and Mr. J. Bojkovski (Chief Financial Officer). Our procedures did not constitute an audit or review engagement.

Our procedures and enquiries did not include verification work or constitute an audit in accordance with generally accepted auditing standards. In the event any of the information we relied upon was inaccurate or incomplete, the results of our analysis could be materially affected.

Only the Korex inventory physically located in Toronto subject to the Section 7.03 Invoice was counted (see further discussion below). Further, no party has taken issue with the pricing used by Korex in the Section 7.03 Invoice, and the Monitor was not directed by this Honourable Court to review such pricing. Accordingly, the Monitor does not express any opinion on the reasonableness of the costing of the inventory as contained in the Section 7.03 Invoice.

Therefore, the Monitor is unable to and does not express an opinion on any financial statements, or elements of accounts referred to in this Third Report, or any of the attached Appendices or Exhibits forming part of this Third Report. We reserve the right to review all calculations included or referred to in this Third Report and, if we consider it necessary, to revise our calculations or conclusions in light of new information as such information becomes available.

### 3.0 THE SECTION 7.03 INVOICE

#### *3.1 Inventory locations*

Attached as **Exhibit “B”** is a copy of the Section 7.03 Invoice for \$644,972.58 plus GST of \$32,248.63 totalling \$677,221.21. The Monitor wishes to bring to the Court’s attention that backup attached to this invoice indicates that the inventory is located in three physical locations: (i) Korex – Toronto - \$488,260.58; Korex Chicago – Chicago - \$132,480; and (iii) Korex Wixom – Detroit - \$24,232. The Monitor was able to have its representatives available to count in all locations on April 24 to complete the count. Unilever was not able to have any representatives in the US locations. Ms. C. Tate, Assistant General Counsel, Intellectual Property of Unilever Canada Inc. advised all parties:

“The Unilever representatives attending at Korex Don Valley will be Jim Moses and Duncan Gray. No Unilever representative will attend in Chicago since we had no idea relevant material was located there. This comes as a complete surprise and we cannot provide a representative on this short notice.”

Accordingly, only the inventory located in Toronto was counted.

#### *3.2 Toronto inventory count results*

Attached as **Exhibit “C”** is the Monitor’s memo prepared immediately after the inventory count. As indicated in the memo, the count was well organized and no problems were encountered. The results of the physical count in Toronto indicated only minor discrepancies. The value of the inventory counted, based on the pricing contained in the Section 7.03 Invoice, is calculated to be



\$465,463.12 as compared to the invoiced amount expected of \$478,021.24<sup>1</sup>, for a difference of \$12,558.12 or -2.6%.

### ***3.3 The Manufacturing Agreement –***

As indicated above, the Monitor's understanding of Korex's position is that notwithstanding the Manufacturing Agreement had expired effective August 18, 2008, there was continue production by Korex. The terms of the arrangement with the parties are in dispute. Korex has put forth an email from an employee of Unilever Canada confirming that the payment for inventory and raw materials on the terms confined to the email. Unilever has taken the position that the email has to be interpreted in the context of the overall business relationship and that the termination provisions contained in the original Manufacturing Agreement continue to govern the obligation of Unilever to make payment for unused inventories on hand in February 2009.

The finished goods inventory totaling \$106,229.48 was supported by Demand Purchase orders supplied by Unilever Canada. Upon reviewing several forecasts and discussions with Korex management, a "Demand Purchase order" is created subsequent to the forecast. Attached as **Exhibit "D"** is a listing of such finished goods inventory on hand related to the respective Demand Purchase Order.

With respect to raw materials, the analysis is much more difficult, due to the nature of the business. The Monitor reviewed various forecasts and held a discussion with Korex

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<sup>1</sup> The difference between the invoiced amount of \$488,260.58 and the expected amount of \$478,021.24, being \$10,239.34 is made up of \$4,848.27 maintained in the Toronto inventory and not shipped to either Chicago or Detroit as per the Korex records less the amount of \$15,087.61 related to materials shipped to Jempak as requested by Sun Products. That request is a matter between Sun Products and Unilever and excludes Korex's involvement. Also see Exhibit "C" attached to this Third Report.

management. It appears that while the Manufacturing Agreement was in effect, the parties were acting in accordance with it. Subsequent to the expiration of the Manufacturing Agreement, Korex and Unilever Canada continued to trade.

Attached hereto as **Exhibit “E”** is the Monitor’s memo to file concerning forecasts reviewed and discussions with Korex management regarding the practical implications of the winding-up of the Korex manufacturing for Unilever Canada. In the time allotted, the Monitor cannot make any other comments.

#### **4.0 SUMMARY**

The Monitor advises that:

1. The Korex Toronto physical inventory which is the subject of the Section 7.03 Invoice, utilizing the costing contained in that invoice, had a value of \$465,463.12 as compared to the invoiced amount expected of \$478,021.24, for a difference of \$12,558.12 or -2.6%; and
2. through a review of various forecasts and discussions with Korex management, it appears that while the Manufacturing Agreement was in effect, the parties were acting in accordance with it. Subsequent to the expiration of the Manufacturing Agreement, Korex and Unilever Canada continued to trade.

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All of which is respectfully submitted at Toronto, Ontario this 27<sup>th</sup> day of April, 2009.

**IRA SMITH TRUSTEE & RECEIVER INC.**  
solely in its capacity as Court-Appointed Monitor  
of Korex Don Valley ULC and not in its personal Capacity



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

COURT FILE NO. 08-CL-7925

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

THE HONOURABLE MR. ) FRIDAY, THE 6<sup>TH</sup> DAY OF  
 )  
JUSTICE CUMMING ) FEBRUARY, 2009.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*  
R.S.C. 1985 c.C - 36, as amended**

**- and -**

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
KOREX DON VALLEY ULC**

**APPLICANT**

**INITIAL ORDER**

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application issued December 31, 2008, the affidavit of John Bojkovski, sworn December 31, 2008, and the Exhibits thereto, the Notice of Motion of the Respondent Secured Party, Comerica Bank, dated January 28, 2009, the Affidavit of Jacob Villemure, sworn January 27, 2009 and the Exhibits, thereto, the Affidavit of Sanford Pensler sworn February 2, 2009, and the Exhibits thereto, the First Report, Supplementary First Report and Supplementary Second Report, dated January 9, 2009, January 22, 2009 and February 2,

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2009, respectively, of Ira Smith Trustee & Receiver Inc. in its capacity as proposed Court - Appointed Monitor and being advised that their respective clients consent to the terms hereof, and on reading the consent of Ira Smith Trustee & Receiver Inc. to act as the Monitor, filed.

**SERVICE**

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

**APPLICANT**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

**FURTHER HEARING**

3. THIS COURT ORDERS that a further hearing in this Application shall be held on March 9, 2009, or such alternate date as this Court may fix, at which time this Order may be supplemented or otherwise varied, and the Stay Period (as herein defined) extended or terminated. The Applicant and the Monitor shall serve their materials for this further hearing on all parties who serve a Notice of Appearance on the Applicant and the Monitor, such materials to be served by no later than five (5) days prior to the date scheduled for the further hearing.

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize their existing bank accounts and any other bank accounts permitted under the Forbearance Agreement with its lender, Comerica Bank ("Comerica") (as defined below) (the "**Bank Accounts**") and that all banks in which the Applicant maintains any Bank Account are authorized and directed to deliver the balance of such funds held on behalf of the Applicant to Comerica.
6. THIS COURT ORDERS that the Applicant is authorized and empowered to continue to manage their cash and cash equivalents and transfer funds among their respective Comerica Bank Accounts pursuant to the cash management system currently in place, or replace it with another substantially similar central cash management system satisfactory to Comerica (the "**Cash Management System**").
7. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- b) payment for goods or services actually supplied to the Applicant following the date of this Order.

9. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (a) employment insurance, (b) Canada Pension Plan, (c) Quebec Pension Plan, and (d) income taxes;
  - b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
  - c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.
10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or



encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

11. THIS COURT ORDERS that until and including March 9, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, nothing in this Order shall stay the exercise by Comerica of any of its rights or remedies under the Forbearance Agreement (as defined below).

**NO EXERCISE OF RIGHTS OR REMEDIES**

12. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry

on, (ii) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

13. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

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

upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

15. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA, provided however that, any Person that seeks to advance a claim of, or analogous to set-off or equitable set-off to justify the non-payment of any existing or accruing debt to the Applicant shall advise the Applicant and the Monitor in writing prior to so doing so as to enable the Applicant to have the validity of the set-off adjudicated upon by this Honourable Court on an urgent basis if so advised.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

16. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one

is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

17. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b) and 9(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants, except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.
18. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraph 31.
19. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such

coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

#### **APPOINTMENT OF MONITOR**

20. THIS COURT ORDERS that Ira Smith Trustee & Receiver Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.
  
21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
  - a) monitor the Applicant's receipts and disbursements;
  
  - b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
  
  - c) have full and complete access to the books, records and management, employees and advisors of the Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;

- d) assist the Applicant in preparing the cash flow projections, budgets and any other reporting or information they may require in relation to the Business and the Property, and to report to Comerica as required in relation to the Forbearance Agreement, which information shall be reviewed with the Monitor;
- e) assist the Applicant in its dissemination to Comerica and its counsel of financial and other information requested by Comerica and in its sole discretion, provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph 21. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree;
- f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- g) perform such other duties as are required by this Order or by this Court from time to time.

22. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.
24. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

25. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis.
26. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
27. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant 's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 31 hereof.

#### **COMERICA FACILITY**

28. THIS COURT ORDERS that, notwithstanding any other provision of this Order:
  - a) the Applicant is authorized and empowered to continue to borrow under the Loan Agreement among Comerica and the Applicant made April 30, 2003, as subsequently amended, modified and supplemented, most recently pursuant to a



Forbearance Agreement between the Applicant and Comerica (the “**Forbearance Agreement**”);

- b) the Applicant is authorized and directed to perform all obligations to Comerica under the Loan Agreement and any security or other documents contemplated thereby, whether arising before or after the making of this Order as and when the same become due and are to be performed, but subject to the priority set out in paragraph 31 hereof (the “**Loan Documents**”); and
- c) the Applicant is authorized, empowered and directed to enter into and perform their obligations under a certain Forbearance Agreement, substantially in the form of the agreement attached hereto to which the Applicant is a party, and are directed and shall comply with the Loan Documents and the Forbearance Agreement and shall make all payments to Comerica provided for under the Forbearance Agreement and Loan Documents.

29. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- a) subject to the terms of the Forbearance Agreement and the Loan Agreement, Comerica may, upon the occurrence of a default (other than an Existing Default as defined in the Forbearance Agreement): (i) without notice to the Applicant or any other Person cease making advances to the Applicant and set off and/or consolidate any amounts owing by Comerica to the Applicant, against the obligations of the Applicant to Comerica under the Loan Agreement, the Loan Documents or the Comerica Charge, and (ii) upon two (2) business days notice to the Applicant and the Monitor, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Forbearance Agreement, the Loan Agreement, and the Loan Documents, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant or for the appointment of a trustee in bankruptcy of the Applicant, but subject to the priorities as set out in paragraph 31 of this Order; and

- b) the foregoing rights and remedies of Comerica shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.
30. THIS COURT ORDERS AND DECLARES that, without prejudice to the stay of Comerica's right to take enforcement proceedings against the Applicant contained in the Forbearance Agreement and herein, Comerica shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Credit Agreement or the Loan Documents.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

31. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as between them, shall be as follows:
- a) First – Administration Charge not to exceed the amount of \$250,000;
  - b) Second – The Directors' Charge not to exceed the amount of \$250,000.
32. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, and the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
33. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all

other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

34. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.
  
35. THIS COURT ORDERS that the Charges and the Forbearance Agreement shall not be rendered invalid or unenforceable and the rights and remedies of the parties entitled to the benefit of the Charges and the Forbearance Agreement (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- a) the creation of the Charges nor the execution, delivery, or performance of the Forbearance Agreement, shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the execution, delivery or performance by the Applicant; and
- c) any payments made by the Applicant pursuant to this Order or the Forbearance Agreement, and the granting of the Charges and the Forbearance Agreement, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

#### **SERVICE AND NOTICE**

36. THIS COURT ORDERS that the Applicant shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to its known creditors, other than employees and creditors to which the Applicant owes less than \$500.00, at their addresses as they appear on the Applicant's records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

37. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant as applicable and that (i) any such service by courier, personal delivery, facsimile or electronic transmission shall be deemed to be received (i) if delivered by or forwarded by facsimile or electronic submission before 4:00 p.m. on a business day (being a day that the principal Canadian banks are open for business in Toronto), on that same day, (ii) if delivered or forwarded by facsimile or electronic submission following 4:00 p.m. on any day, on the next business day following the date of delivery or forwarding thereof, or (iii) if sent by ordinary mail, on the third business day after mailing, and (ii) any such service shall be deemed to be good and sufficient service.
38. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at [www.irasmithinc.com](http://www.irasmithinc.com) .

**GENERAL**

39. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
40. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.
41. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
42. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
43. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7)

days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

44. THIS COURT ORDERS that notwithstanding paragraph 43, no creditor other than Comerica, shall apply to this Court to vary, rescind or otherwise affect the provisions of this Order with respect to the Forbearance Agreement or the Charges unless notice of a Motion for such Order is served on the Applicant, the Monitor and Comerica, returnable no later than 7 days following the making of this Order.
45. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

Feb 6, 2009 Peter A. Cumming J.

WWLIB:549163.3\138995-00032

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

FEB 06 2009

PER / PAR TV

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT .S.C. 1985 c.C - 36, as amended  
IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF KOREX DON VALLEY ULC**

Court File No. 08-CL-7925

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

**INITIAL ORDER**

**DAVIS LLP**  
Barristers & Solicitors  
1 First Canadian Place, Suite 5600  
100 King Street West  
Toronto, ON M5X 1E2

**Susan E. Friedman (LSUC #24991U)**  
Tel: 416.365.3503  
Fax: 416.777.7415  
Email: [sfriedman@davis.ca](mailto:sfriedman@davis.ca)

Lawyers for the Applicant





SE REMIT TO:  
PLEASE EFFECTUER  
LE VERSEMENT:

KOREX DON VALLEY  
21 DON VALLEY PARKWAY  
TORONTO, ONTARIO  
CANADA  
M4M 3P2

CUSTOMER NO. N° DU CLIENT: 5100000	INVOICE DATE FACTURE LE: 04 Feb/2009	INVOICE NO. FACTURE N°: 13657
MM	DD	AA

DU Unilever Canada  
160 Bloor Street East  
Suite 300  
Toronto, ON  
M4W3R2

SHIP  
TO  
EXPÉDIER  
À

PRODUIT PRODUCT	DESCRIPTION	UNITS UNITÉS	UNIT PRICE PRIX UNITAIRE	AMOUNT MONTANT
		Net Amount		\$677,221.21
	<p>Powders Inventory Write-Off.</p> <p>Please see attached for details.</p> <p>Amount: C\$644,972.58 GST: C\$ 32,248.63</p> <p>Total: C\$677,221.21 =====</p> <p>Attn: Erik Weingartner</p> <p>Note: Excludes Dispositions Cost to be Billed Separately.</p>			

GST Reg. #: R85252 6136

RETURNED MERCHANDISE WILL BE ACCEPTED UNLESS WE FIRST ISSUE SIGNED AUTHORIZATION FOR RETURNED MERCHANDISE. ALL GOODS SHIPPED AT PURCHASER'S RISK. CLAIMS MUST BE MADE ON RECEIPT OF GOODS. ALL DELIVERIES SUBJECT TO STRIKES, ACCIDENTS AND OTHER CAUSES BEYOND OUR CONTROL.

J'ÉTAI ACCEPTÉ AUCUN RENVOI DE MARCHANDISES SANS UNE AUTORISATION PRÉALABLE SIGNÉE À CET EFFET. TOUTES LES MARCHANDISES SONT EXPÉDIÉES AUX RISQUES DE L'ACHETEUR. LES RÉCLAMATIONS DOIVENT ÊTRE EFFECTUÉES À LA RÉCEPTION. TOUTS LES DELAIS DE LIVRAISON DÉPENDENT, ÉVENTUELLEMENT DES GRÈVES, ACCIDENTS ET AUTRES RAISONS EN DÉPENDANT DE NOTRE VOLONTÉ.

TERMS NET 10 DAYS  
CONDITIONS NET  
10 JOURS

AMOUNT  
DUE  
MONTANT  
À PAYER

\$677,221.21

Part #	Description	UM	Current Cost	Total Qty	Total Inventory Value
11080687	SUNLIGHT LEMON CARTON 34W - PR	EA	\$ 0.5840	7,854	4,586.34
11080688	SUNLIGHT MF CARTON 34W - PROJE	EA	\$ 0.5840	3,597	2,100.47
11080689	SUNLIGHT W/BL CARTON 40W RDP -	EA	\$ 1.2843	288	369.89
11080690	SUNLIGHT LEMON CARTON 52W RDP	EA	\$ 1.2843	8,351	10,725.44
11080691	SUNLIGHT MF CARTON 52W RDP - P	EA	\$ 1.2843	864	1,109.66
11080692	SUNLIGHT LEMON CARTON 70W RDP	EA	\$ 1.6375	6,534	10,699.62
11080693	SUNLIGHT LEMON CARTON 90W RDP	EA	\$ 1.7995	1,802	3,242.63
11080697	ULT SUNLIGHT HE 31W CARTON - P	EA	\$ 0.3018	53,270	16,078.48
11080702	SUNLIGHT LEMON, MF CUP - PROJE	EA	\$ 0.0432	1,248	53.90
11080703	SUNLIGHT W/BL CUP - PROJECT MA	EA	\$ 0.0432	140,544	6,070.10
11080705	SUNLIGHT W/BL 13W CASE - PROJE	EA	\$ 0.9405	188	176.81
11080707	SUNLIGHT W/BL CASE 26W - PROJE	EA	\$ 0.9888	2,666	2,636.14
11080708	SUNLIGHT LEMON CASE 34W - PROJ	EA	\$ 0.9888	3,379	3,341.16
11080713	UL SUNLIGHT HE 31W CASE - PROJ	EA	\$ 0.9019	8,588	7,745.52
11081200	ULTRA SUNLIGHT W/BL, HE CUP -	EA	\$ 0.0455	62,850	2,859.68
9534-0097	CS 6x23W MORNING FRESH	EA	\$ 1.0466	2,580	2,700.23
9534-0098	CS 6X23W LEMON	EA	\$ 1.0466	3,220	3,370.05
9534-0119	CS 5 X 28 W SENSITIVE SKIN	EA	\$ 0.8293	700	580.51
9534-0120	CASE 4 x 44 W SENSITIVE SKIN	EA	\$ 0.9415	4,956	4,666.07
9534-0121	CASE 5x28W SURF WATERFRESH BRE	EA	\$ 0.8293	3,666	3,040.21
9534-0127	CASE 5 x 34W WILD AND FRESH	EA	\$ 0.7966	8,835	7,037.96
9545-0007	11081890 CARTON - AMAZE BY SUN	EA	\$ 0.2362	52,640	12,434.09
9545-0008	CARTON 6X23W MORNING FRESH	EA	\$ 0.4029	1,200	483.52
9545-0009	CARTON 6X23W LEMON	EA	\$ 0.4029	31,200	12,571.42
9545-0010	CARTON 28 WASH SENSITIVE SKIN	EA	\$ 0.4809	3,120	1,531.70
9545-0012	CARTON 28 W SURF	EA	\$ 0.3796	30,160	11,448.43
9545-0014	CARTON SUN WILD & FRESH 34W	EA	\$ 0.3708	46,080	17,084.16
9901-0001	SCOOP 240 ML PET 28W SS	EA	\$ 0.0777	15,708	1,220.04
9901-0002	SUN SCOOP 207/240 ML PLASTIC 34W W&F	EA	\$ 0.0777	134,640	10,457.49
9901-0003	324ML SCOOP	EA	\$ 0.1514	40,040	6,061.26
90029	PDRS CTN HOT MELT (34-269C)	KG	\$ 3.9104	1,360	5,318.14
95000	LINEAR ALKYL BENZENE, HMW	KG	\$ 2.1123	10,589	22,367.46
95008	NTA MONOHYDRATE, 92.5%, BULK	KG	\$ 1.5262	22,952	35,029.11
95008	NTA MONOHYDRATE, 92.5%, BULK	KG	\$ -	5,321	-
95012	SODIUM PERCARBONATE	KG	\$ 0.9626	6,500	6,256.58
95023	DENSE SODA ASH, BULK, S/S	KG	\$ 0.2856	2,720	776.89
95027	SOD SULPHATE DET GR BULK	KG	\$ 0.2065	42,543	8,784.70
95035	ACUSOL 410N- POLYMER	KG	\$ 1.3582	5,717	7,765.06
95049	HUBBERSORB 600, FLOW AID	KG	\$ 4.5588	816	3,719.96
95053	SOD. SILICATE 2.4 RATIO, 44%	KG	\$ 0.2378	11,049	2,627.56
95055	FL DYE BRY-10 D'OR	KG	\$ 9.2173	3,368	31,043.80
95058	ANTIFOAM PDR GRANULE 2-4248S	KG	\$ 3.4565	3,300	11,406.38
95061	SCMC-POWDERS GRADE CARBOSE D72	KG	\$ 2.2766	1,635	3,722.16
95082	ACUSOL 425 N POLYMER	KG	\$ 2.1310	15,708	33,473.12
98443	PERFUME LP995/ALL LNDY PDR	KG	\$ 14.1144	188	2,653.51
98469	SUNLIGHT LNDY BL PERF BULK PDR	KG	\$ 0.4809	10,911	5,247.43
9100-0002	ALCOHOL ETHOXYLATE 9 EO	KG	\$ 2.9024	21,814	63,311.86
9100-0025	SODIUM CARBONATE	KG	\$ 0.2803	59,000	16,537.70
9101-0001	SAVINASE 12.0 TXT ENZYME	KG	\$ 7.6050	1,280	9,734.40
9200-0026	FRAG GR CLOVER UO174277/00 wild and fresh	KG	\$ 22.1403	449	9,941.00
9200-0034	FRAGRANCE UO117325/00 NEMO	KG	\$ 23.0285	1,437	33,091.94
9200-0035	FRAGRANCE LEMONPERLE UN15995DB	KG	\$ 13.7164	4,292	58,870.79
9200-0036	FRAG UN475651 G DALI SPLATSCEN sunlight with bl	KG	\$ 18.7273	31	580.55
					538,743.08
12131	SUN LDYPDR MF 1X80X52WASH	PL	\$ 471.7600	1	471.76
12132	SUN LDYPDR W/BL 1X80X40WASH	PL	\$ 489.0797	1	489.08
12141	SUNLIGHT LAUNDRY POWDER 1x60x70W	PL	\$ 469.6642	1	469.66
12193	UL SUN MF 6 x 40 WASH - PROJEC	CS	\$ 16.9707	1,067	18,107.72
12194	UL SUN LEMON 6 x 40 WASH - PRO	CS	\$ 17.0123	13	221.16
12195	SUNLIGHT W/BL 26W - MORPHEUS	CS	\$ 15.1287	2,898	43,842.83
1102-0002	11083685 SUN SENS SKIN 4 X 44	CS	\$ 18.0353	21	378.74
1120-0001	SUNLIGHT LEMON 6 x 23W	CS	\$ 15.7292	2,686	42,248.55

106,229.50

Grand Total

644,972.58

Note: 1 Unilever became buyer of record of NTA on Nov 17, 2008. At that time, Unilever was invoiced for Korex owned inventory in Chicago at that time. However, there was also 22,952 kg's of NTA at Korex Don Valley that was not invoiced and hence is being included as part of this write-off.

Note: Excludes Dispositions cost to be billed separately.

Part #	Description	UM	Current Cost	Total Qty	Total Inventory Value
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Note: Included in the above amounts are the following inventories at off site locations.

Korex Chicago

Part #	Description	UM	Current Cost	Quantity	
9545-0010	28W carton	EA	\$ 0.4909	3120	\$ 1,532
11080690	52 W cartons	EA	\$ 1.2843	8352	\$ 10,726
9534-0119	28W shippers	EA	\$ 0.8293	3470	\$ 2,878
9901-0003	324ML scoops	EA	\$ 0.1514	14500	\$ 2,195
9901-0001	240ML scoops	EA	\$ 0.0777	15708	\$ 1,221
95055	FL Dye	KG	\$ 9.2173	3368	\$ 31,043
9200-0035	Lemonpearle perfume	KG	\$ 13.7164	4292	\$ 58,871
9200-0034	Morning Fresh perfume	KG	\$ 23.0285	873	\$ 20,104
95008	NTA	KG	\$ -	5321	\$ -
95082	Acusol 425	KG	\$ 2.1310	911	\$ 1,941
	Salt	KG	\$ 0.1590	4110	\$ 653
96612	Caustic	KG	\$ 0.7029	1872	\$ 1,316
					\$ 132,480

Korex Wixom

Part #	Description	UM	Current Cost	Quantity	
11080697	ULT SUNLIGHT HE 31W CARTON - P	EA	\$ 0.3018	52178	\$ 15,749
11080713	UL SUNLIGHT HE 31W CASE - PROJ	EA	\$ 0.9019	6588	\$ 5,942
11081200	ULTRA SUNLIGHT W/BL, HE CUP -	EA	\$ 0.0455	55850	\$ 2,541
					\$ 24,232

**Stanley Sugar CA**

Tel. (905) 738-4167

Fax (905) 738-9848

Email: [stan@irasmithinc.com](mailto:stan@irasmithinc.com)Website: [www.irasmithinc.com](http://www.irasmithinc.com)

# Memo

To: Korex Monitoring File  
From: Stanley Sugar  
CC: Ira Smith  
Date: April 24th, 2009  
Re: **Korex Don Valley ULC**

As instructed, I attended at Korex Don Valley ULC on April 24<sup>th</sup> 2009 to observe a complete full physical inventory count to verify just the quantities of inventory as indicated in invoice number 13657 dated February 4<sup>th</sup> 2009 rendered to Unilver Canada as it related to surplus powders inventory on hand by Korex.

Both myself and Marty Wolfe from our office were in attendance to observe the counting of the inventory.

The count was jointly physically performed by two staff members from Korex Don Valley ULC as well as two staff members from Unilver Canada Inc.

Attached to this memo are signed off copies by all parties that participated in this inventory count.

Only the inventory at the Korex Don Valley location was counted.

The inventory on hand located in both Chicago and in Detroit were not part of this count.

The physical count went very well and with only one small variance – 2.6% in value.

We were not asked nor do we opine on the extrapolation of the quantities times Korex's inventory values to arrive at the total invoice dollar value.

Subject to this disclaimer the dollars work out as follows.

In summary:

The invoice rendered to Unilever (pre GST) was for \$644,972.58

Deducted from the invoice for both quantity and value was the sum of \$15,087.61 related to materials shipped to Jempak as requested by Sun Products.

That request is a matter between Sun Products and Unilver and excludes Korex's involvement.

Dollars remaining thereafter = \$629,884.97

The inventory not counted in Chicago and Detroit has a value of \$151,863.73  
(there is a small difference of \$4,858.27 kept by Toronto not sent to the US.)

Thereafter the total value that should be in Toronto is \$478,021.24

Deduct the sum of \$12,558.11 (inventory shortfall to-day based on actual inventory count  
having 2.6% error factor )

The extrapolated inventory value as calculated based upon the agreed upon inventory  
count today at Korex Don Valley is **\$465,463.12**

Stan

Appendix D

Part #	Description	UM	Current Cost	Total Qty	Total Inventory Value	Production Date	Demand PO	Location	Note
12131	SUN LDYPDR MF 1X80X52WASH	PL	\$ 471.7600	1	471.76	feb 27 2004	4500026804	L42	Ordered 735, produced 739.
12132	SUN LDYPDR W/BL 1X80X40WASH	PL	\$ 489.0797	1	489.08	feb 4 2004	4500024631	L43	Ordered 50, produced 57
12141	SUNLIGHT LAUNDRY POWDER 1x8	PL	\$ 469.6642	1	469.66	oct 31 2003	4500020990	L40	Ordered 1164, Produced 1120.
12193	UL SUN MF 6 x 40 WASH - PROJEC	CS	\$ 16.9707	1,067	18,107.72	oct 20 2006	4500082047	1055 B10	Ordered 15000, produced 16190. 1055 is current inventory - adjusted jan 20 2009 by dave armstrong
12194	UL SUN LEMON 6 x 40 WASH - PRO	CS	\$ 17.0123	13	221.16	sept 10 2007	4500093337	2 h08, 11L39 924 b11, 1008 h18,	Ordered 15000 then reduced to 7500, Produced 9637. produced in 4904 feb 07 and 4733 sept 07.
12195	SUNLIGHT W/BL 28W - MORPHEUS	CS	\$ 15.1287	2,898	43,842.83	aug 10 2007	4500107288	966 h21	Ordered 15000. Produced 13200
1102-0002	11083685 SUN SENS SKIN 4 X 44	CS	\$ 18.0353	21	378.74	aug 8 2006	4500079768	j23	Ordered 19000. Produced 14720
1120-0001	SUNLIGHT LEMON 6 x 23W	CS	\$ 15.7292	2,686	42,248.55	nov 13 2007	4500114731	1008 b18, 108 c20, 1548 c21, 22 L31	Ordered 5000. Produced 4907

\*\*\* Assumption : the remaining finished goods are from the last production run of any given sku



**Lyndon Rollit**  
Tel. (905) 738-4167  
Fax (905) 738-9848

# Memo

To: Korex Monitoring File  
From: Lyndon Rollit  
CC: Ira Smith  
Date: April 25th, 2009  
Re: **Korex Don Valley ULC**

## Finished Goods

- The finished goods inventory has been supported by Demand Purchase orders supplied by Unilever. Upon reviewing several forecasts and discussions with Korex Don Valley ("KDV") management, a "Demand Purchase order" is created subsequent to the forecast. The first several weeks of production in forecast is supported by a demand purchase order due to immediacy of the requirement for this product. This product is to be expected and required to be produced to support immediate customer demand. The finished goods product remaining in inventory has been produced for Unilever based on forecasts and purchase orders but not delivered.

## Raw Material Inventory

- Several forecasts were reviewed while at the KDV premises. Forecasts were generally for a 12 week period with the first several weeks being for product where the above noted "Demand Purchase Order" was evident.
- When asked of KDV management to support the raw material in hand by the forecast, it became evident that given the changing nature of these forecasts in the final weeks of KDV production this would be very difficult task. The Forecasts reviewed clearly showed a significant decrease in expected volumes to be produced by KDV. In the final weeks, the forecasts even indicated the amounts that were to be produced by the replacement manufacturer to KDV and not KDV.
- In light of the above, it became very unclear what forecast should be used to support the raw material inventory on hand. The final forecast where very little product was to be produced by KDV or a forecast produced several months or weeks previous where much greater volumes were expected to be produced by KDV.



- The original Annual Estimated Forecast for 2009 provided and agreed to (Appendix F per April 24, memo to file report), indicated over \$20,000,000 million in product was to be produced. A raw material inventory in order of \$3.2 million (12 weeks \* 7 days \* 37,991 Raw Material per day) would be deemed acceptable. Final Raw material per the disputed invoice is \$538,743, or 17% of what would have been acceptable under the original annual forecast.
- A significant number of raw material items are ordered based on practical and standard ordering quantities. In all cases it may not be practical, cost efficient or even possible to only order enough raw materials for the 12 week production schedule. For example, certain minimum quantities may be required to receive delivery of printed packaging or several raw material components are delivered by railway car to the plant where quantities are dictated by the supplier.
- As the forecasted production volumes decreased or were shifted to the replacement manufacturer, it would be impractical and in many cases impossible for KDV to return unwanted and unused inventory to the original supplier.

Lyndon Rollit

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT  
R.S.C. 1985 c.C - 36, as amended**

**- and -**

**IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF  
KOREX DON VALLEY ULC**

**APPLICANT**

**Court File No. 08-CL-7925**

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

**THIRD REPORT OF  
IRA SMITH TRUSTEE & RECEIVER INC.  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC  
DATED APRIL 27, 2009**

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