

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ORBCARE US, INC., A
CORPORATION INCORPORATED UNDER THE
DELAWARE *GENERAL CORPORATION LAW***

MOTION RECORD

**(Extension of Time to File a Proposal and Approval of DIP Financing
returnable July 30, 2019)**

DATE: July 29, 2019

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TO: THE SERVICE LIST

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

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MAKE A PROPOSAL OF ORBCARE US, INC., A
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DELAWARE *GENERAL CORPORATION LAW***

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Tab 1

Estate No. 31-2539459

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ORBCARE US, INC., A
CORPORATION INCORPORATED UNDER THE
DELAWARE *GENERAL CORPORATION LAW***

**NOTICE OF MOTION
(Extension of Time to File a Proposal and Approval of DIP Financing
returnable July 30, 2019)**

OrbCare US, Inc. (“**OrbCare US**”) will make a motion to a judge of the Commercial List at 330 University Avenue, Toronto, Ontario, on Tuesday July 30, 2019, at 10:00 a.m. or as soon thereafter as the motion can be heard.

THE PROPOSED METHOD OF HEARING: The motion is to be heard

~~in writing under subrule 37.12.1(1) because it is made without notice;~~

~~in writing as an opposed motion under subrule 37.12.1(4); or~~

orally.

THE MOTION IS FOR:

- a) an order extending from August 28, 2019 to September 26, 2019 the time for MNP Ltd. in its capacity as proposal trustee (the “**Trustee**”) to file with the official receiver a proposal pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) on behalf of OrbCare US;
- b) an order authorizing OrbCare US to obtain and borrow under a credit facility (the “**Credit Facility**”) from iGan Partners Inc. (the “**DIP Lender**”) on terms set out in the Amended and Restated DIP Term Sheet between OrbCare Inc., OrbCare US, and Pariscribe Inc., as borrowers and guarantors, and the DIP Lender, as lender,

dated July 29, 2019 (the “**DIP Loan Agreement**”) and granting in favour of the DIP Lender a charge (the “**DIP Lender’s Charge**”) on OrbCare US’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof; and

c) such further and other relief as counsel may advise and this Court accepts.

THE GROUNDS FOR THE MOTION ARE:

Stay Extension

- (a) On July 29, 2019, OrbCare US filed a notice of intention to make a proposal (the “**NOI**”) under Section 50.4 of the BIA;
- (b) OrbCare US has and is currently working on regularizing its financial reporting and analyzing the available options to make a proposal to its creditors but requires further time to do so;
- (c) OrbCare US’s underlying business has been and remains more valuable to creditors as a going concern than in liquidation, and OrbCare US remains likely be able to make a viable proposal;
- (d) OrbCare US has acted and is acting in good faith and with due diligence;
- (e) No creditor would be materially prejudiced if an extension were granted;
- (f) Section 50.4(9) of the BIA;

Approval of DIP Financing

- (g) OrbCare US will lack liquidity to fund its essential business activities within 13 weeks from the filing of the NOI;
- (h) DIP lending is the only financing option left available to OrbCare US, after cost-cutting and regularizing measures were implemented;

- (i) OrbCare US has no regular lender, and the DIP Lender is the only lender prepared to advance cash to OrbCare US;
- (j) The DIP Loan Agreement's terms, including the \$1,200,00 maximum available principal amount, \$25,000 fees and 10% interest rate, are fair and reasonable;
- (k) The Credit Facility will ensure the going concern operations of OrbCare US and thereby the prospects of a viable proposal being made in respect of OrbCare US;
- (l) OrbCare US as guarantor has already executed a similar DIP Loan Agreement with the DIP Lender in respect of a credit facility in favour of OrbCare, so now that OrbCare US has filed under the BIA it is appropriate that it be able to borrow under such a facility as principal borrower when necessary and that the DIP Lender be granted a court ordered charge over OrbCare US's assets;
- (m) No creditor would be materially prejudiced as a result of the Dip Lender's Charge;
- (n) Section 50.6 of the BIA.

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

- (a) The affidavit of Olivier Giner sworn July 29, 2019 in the companion motion by OrbCare in Estate No. 31-2516167;
- (b) The Second Report of the Trustee to be filed; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATE: July 29, 2019

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OrbCare US Inc.

TO: THE SERVICE LIST

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF ORBCARE US INC., A CORPORATION
INCORPORATED UNDER THE DELAWARE GENERAL
CORPORATION LAW**

Estate File No. 31-2539459

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO**

**NOTICE OF MOTION
(Extension of Time Limit to File a Proposal and
Approval of DIP Financing returnable July 30, 2019)**

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Lawyers for OrbCare Inc. Pariscribe Inc. and
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Tab 2

Estate No. 31-2539459

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	TUESDAY, THE 30 th
)	
JUSTICE)	DAY OF JULY, 2019

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF ORBCARE US, INC., A
CORPORATION INCORPORATED UNDER THE
DELAWARE *GENERAL CORPORATION LAW***

ORDER
**(Extension of Time to File a Proposal and Approval of
Debtor-in-Possession Financing)**

THIS MOTION made by OrbCare US, Inc. ("**OrbCare US**") for: (i) an order extending from August 25, 2019 to September 26, 2019 the time limit for MNP Ltd. in its capacity as proposal trustee (in such capacity, the "**Trustee**") to file with the official receiver, on behalf of OrbCare US, a proposal pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**"); and (ii) an order authorizing OrbCare US to obtain and borrow under a credit facility (the "**Credit Facility**") from iGan Partners Inc. (the "**DIP Lender**") on terms set out in the Amended and Restated DIP Term Sheet between OrbCare Inc., OrbCare US and Pariscribe Inc., as borrowers and guarantors, and the DIP Lender, as lender, dated July 29, 2019 (the "**DIP Loan Agreement**") and granting in favour of the DIP Lender a charge (the "**DIP Lender's Charge**") on OrbCare US's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof ("**Property**"); was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Olivier Giner sworn July 29, 2019 and the Second Report dated July 29, 2019 (the “**Second Report**”) of the Trustee and upon hearing the submissions of counsel for OrbCare US, the Trustee, the DIP Lender, and those other parties present, as indicated in the counsel slip, no other parties being present although duly served as appears from the affidavit of service of Brendan Bissell dated July 29, 2019.

NOTICE AND SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Second Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the period within which a proposal may be filed on behalf of OrbCare US be and is hereby extended to September 26, 2019.

DIP FINANCING

3. **THIS COURT ORDERS** that OrbCare US is hereby authorized and empowered to obtain and borrow under the Credit Facility from the DIP Lender on the terms set out in the DIP Loan Agreement, provided that borrowings under the Credit Facility shall not exceed the maximum principal amount of \$1,200,000 unless permitted by further Order of this Court.

4. **THIS COURT ORDERS** that OrbCare US is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Loan Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and OrbCare US is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Loan Agreement and the

Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

5. **THIS COURT ORDERS** that notwithstanding any other provision of this Order, the DIP Loan Agreement and the Definitive Documents, OrbCare US shall not be authorized and empowered to operate any form of draw on the Credit Facility without the written approval of the Trustee, who, in deciding whether to issue its approval, shall consider the best interests of OrbCare US and its stakeholders;

6. **THIS COURT ORDERS** that pursuant to Section 50.6 of the BIA, the DIP Lender shall be entitled to the benefit of and is hereby granted the DIP Lender's Charge on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made.

7. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the provisions of Section 69 of the BIA:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender will be entitled to exercise any and all of its rights and remedies under or pursuant to the DIP Loan Agreement, the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to OrbCare US and set off and/or consolidate any amounts owing by the DIP Lender to OrbCare US against the obligations of OrbCare US to the DIP Lender under the DIP Loan Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against OrbCare US and for the appointment of a trustee in bankruptcy of OrbCare US; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of OrbCare US or the Property.

8. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by OrbCare US under the BIA or any plan of arrangement or compromise filed by OrbCare US under the *Companies' Creditors Arrangement Act* with respect to any advances made under the Definitive Documents or the Credit Facility.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the DIP Lender's Charge shall not be required, and that the DIP Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that the DIP Lender's Charge shall constitute a charge on the Property and such DIP Lender's Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any individual, firm, corporation, governmental body or agency, or any other entities (each and any, a "**Person**").

11. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, OrbCare US shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the DIP Lender's Charge, unless OrbCare US also obtains the prior written consent of the Trustee and the DIP Lender, or further Order of this Court.

12. **THIS COURT ORDERS** that the DIP Loan Agreement, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any

bankruptcy order made pursuant to such applications; (iii) any deemed or voluntary assignment for the general benefit of creditors pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) 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 (each and any, an “**Agreement**”) which binds OrbCare US, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the DIP Lender’s Charge nor the execution, delivery, perfection, registration or performance of the DIP Loan Agreement or the Definitive Documents shall create or be deemed to constitute a breach by OrbCare US of any Agreement to which it is a party;
- (b) the DIP Lender shall have no liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from OrbCare US entering into the DIP Loan Agreement, the creation of the DIP Lender’s Charge, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by OrbCare US pursuant to the DIP Loan Agreement or the Definitive Documents, and the granting of the DIP Lender’s Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

13. **THIS COURT ORDERS** that the DIP Lender’s Charge created by this Order over leases of real property in Canada shall only be a charge in OrbCare US’s interest in such real property leases.

14. **THIS COURT ORDERS THAT** the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial]) shall be valid and effective service. Subject to Rule 17.05

of the Ontario *Rules of Civil Procedure*, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules*. Subject to Rule 3.01(d) of the *Rules* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: [<https://mnpdebt.ca/en/corporate/Engagements/>_____]

15. **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 or elsewhere, to give effect to this Order and to assist OrbCare US, the Trustee 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 OrbCare US and to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist OrbCare US and the Trustee and their respective agents in carrying out the terms of this Order.

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OrbCare US, Inc.

Tab 3

Estates No. 31-2516167, 31-2539066 and 31-2539459

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

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE
A PROPOSAL OF ORBCARE INC. AND PARISCRIBE INC.,
CORPORATIONS INCORPORATED UNDER THE CANADA
BUSINESS CORPORATIONS ACT, AND ORBCARE US, INC., A
CORPORATION INCORPORATED UNDER THE LAWS OF THE
STATE OF DELAWARE IN THE UNITED STATES OF AMERICA**

SERVICE LIST

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