

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

**Court No.: 31-2516167
Estate No.: 31-2516167**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
ORBCARE INC.,
OF THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO**

SECOND REPORT TO THE COURT

July 29, 2019

I. INTRODUCTION

1. On May 28, 2019, Orbcare Inc. (“**Orbcare**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), wherein MNP Ltd. was named as proposal trustee (the “**Proposal Trustee**”). A copy of the NOI is attached hereto and marked as **Exhibit “A”**.
2. Notice of the NOI as prescribed by the BIA was sent on June 3, 2019 to all of Orbcare’s known creditors. A copy of such notice is attached hereto and marked **Exhibit “B”**.

3. On June 22, 2019, the Company brought a motion returnable June 25, 2019, seeking, among other things, an order extending the time within which the Company had to file a proposal and an order authorizing Orbcare to obtain and borrow under a credit facility (the “**Credit Facility**”) from iGan Partners Inc. (the “**DIP Lender**”) on terms set out in the debtor-in-possession financing facility term sheet between Orbcare, the DIP Lender, Pariscribe and Orbcare US (both defined below) as guarantors, dated June 11, 2019, and granting in favour of the DIP Lender a charge on Orbcare’s assets. The Proposal Trustee delivered its first report dated June 24, 2019 (the “**First Report**”) in connection with that hearing. A copy of the First Report, without exhibits, is attached hereto and marked as **Exhibit “C”**.
4. On June 25, 2019, the Court ordered the following:
 - a. the date for the filing of the Orbcare’s proposal be extended to August 12, 2019; and
 - b. approving an interim financing facility with a maximum principal amount of \$1,200,000 (the “**DIP Loan**”) and a charge (the “**DIP Lender’s Charge**”) on the Company’s assets, property and undertaking (collectively the “**Assets**”) in favour of the DIP Lender.
5. Orbcare has the following wholly owned subsidiary corporations:
 - a. Pariscribe Inc. (“**Pariscribe**”), which is incorporated pursuant to the *Canada Business Corporations Act* and which operates in the same business as Orbcare; and
 - b. Orbcare US, Inc. (“**Orbcare US**”, and collectively with Pariscribe and Orbcare, the “**Companies**”), which is incorporated pursuant to the Delaware *General*

Corporation Law and which also operates in the same business as Orbcare, principally in the United States.

6. Pariscribe filed a NOI on July 26, 2019 under estate #31- 2539066 and Orbcare US filed a NOI on July 29, 2019 under estate #31-2539459. MNP is named as the Proposal Trustee in each of these filings. Copies of each of the NOIs for Pariscribe and Orbcare US are attached as **Exhibit “D”** and **“E”**, respectively. As each of these NOIs was only recently filed, the Proposal Trustee has not yet sent notice of the NOI to the affected creditors.
7. On July 29, 2019, the Companies filed a Notice of Motion and a Motion Record returnable July 30, 2019 (the **“July 30th Motion”**), seeking, among other things: (i) an order extending the time within which the Company has to file a proposal; (ii) an order authorizing Orbcare US and Pariscribe to borrow under the Credit Facility; and (iii) an order approving the procedural consolidation of the Companies’ proposal proceedings.
8. Information regarding the NOI proceeding has been posted to the Proposal Trustee’s website at <https://mnpdebt.ca/en/corporate/Engagements/orbcare-inc>. Provided the Court authorizes a procedural consolidation of the Companies’ estates, the website used for Orbcare will also be used for Pariscribe and Orbcare US.
9. The primary purpose of the Companies’ proposal proceedings is to provide stability to the Companies’ business while the Companies, with the assistance of the Proposal Trustee, restructure their business and work on formulating and presenting viable proposals to the Companies’ creditors.

II. RESTRICTIONS

10. In preparing this Report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Giner Affidavits (as defined below), the Companies’ books and records,

discussions with management of the Companies and information from other third-party sources (collectively, the “**Information**”). Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.

11. The Proposal Trustee also bases its report on the Orbcare and Pariscribe’s cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals’ Standards of professional Practice No. 99-5 (Trustee’s Report on Cash Flow Statement). Certain of the information referred to in this report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by Chartered Professional Accountants Canada, has not been performed. Future oriented financial information referred to in this report was prepared based on estimates and assumptions provided by Orbcare’s management. Readers are cautioned that, since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material.

III. PURPOSE OF THIS REPORT

12. The purpose of this Report is to:
 - a. provide information to the Court with respect to the administration of the Companies’ proposal proceedings, including
 - i. the activities of Orbcare and the Proposal Trustee since the date of the First Report;

- ii. preliminary information relating to the administration of the proposal proceedings of Pariscribe and Orbcare US;
 - iii. the Companies' efforts to financially restructure the business; and
 - iv. the Companies' request for an extension of time to file a Proposal; and
- b. provide the Court with the Proposal Trustee's recommendations for an order, *inter alia*:
 - i. extending the time for filing a proposal to September 26, 2019;
 - ii. approving the procedural consolidation of the Companies' NOI proceedings; and
 - iii. authorizing each of Pariscribe and Orbcare USA to borrow under the Credit Facility from the DIP Lender on the terms set out in the DIP Loan Agreement.

IV. BACKGROUND INFORMATION

- 13. Orbcare is a federally incorporated company carrying on business out of its leased premises in Toronto, Ontario. Orbcare provides a range of software information technology solutions to clients in the healthcare sector in order to streamline clinic operations and patient care.
- 14. The affidavits of Olivier Giner, dated June 23, 2019 and July 29, 2019 (the "**Giner Affidavits**") detail the causes of Orbcare's financial difficulties, which include the following:
 - a. insufficient record keeping or controls on the use or release of company funds;
 - b. financial records that were dated and incomplete;

- c. failure to maintain adequate customer records and to diligently track customer invoicing and accounts receivable;
 - d. Orbcare's costs of operations were too high, notably due to an unnecessarily large number of employees; and
 - e. As detailed below, Pariscribe's failure to meet its financial obligations under the terms of a distribution agreement governing Pariscribe's distribution of a third-party archiving and communication (PACS) known as NILReader.
15. Additional information in respect of the Companies', including their assets and liabilities, is set out in the Giner Affidavits. The Proposal Trustee has not repeated such details in this Report.

V. THE COMPANIES' ACTIVITIES

Tax Obligations and Credits

16. As noted in the Giner Affidavits, Orbcare has retained Vizhenbooks, a service company providing bookkeeping services, to assist Orbcare in regularizing its financial statements. Orbcare has also retained MNP LLP to carry out a forensic review of Orbcare's financial records. While the Companies report that considerable progress has been made in updating their financial records, there remains much to be done before the Companies are in a position to reconstruct the records, where necessary, and restate the financial statements (and amend tax filings, if necessary). For instance, the Giner Affidavits suggest that the review of the Companies' books and records has now been substantially completed for all of 2018 and 2019 to date, especially from a profit and loss perspective. The Companies have not yet completed the forensic audit and/or its review of the 2017 books and records, which audit and review may reveal findings that necessitate further restatement of the financial statements.

17. The Giner Affidavits suggest that progress has been made in quantifying the obligations of Orbcare and Pariscribe to Canada Revenue Agency (“CRA”) for Harmonized Sales Tax (“HST”) liabilities, payroll source deduction obligations and corporate taxes, which quantification is subject to CRA (re)assessment and/or audit. The quantification of CRA’s claim, particularly the source deduction arrears, is integral to determining whether each of the Companies have the ability to fund a viable proposal.
18. Based on CRA’s letter dated July 18, 2019, Orbcare objected to CRA’s assessment of the 2015 T4 Summary of Remuneration Paid, with CRA indicating that Orbcare’s liability was \$11,881 greater than Orbcare reported. CRA asked Orbcare for production of its 2015 T4 slips and return, which Orbcare sent to CRA on July 25, 2019. CRA’s review of Orbcare’s 2015 payroll records is pending.
19. Based on CRA’s letter dated July 17, 2019, the 2015 and 2016 Scientific Research and Experimental Development (“SR&ED”) tax incentive program credits have yet to be established. CRA has reviewed Orbcare’s SR&ED claim and has determined that a large part of the SR&ED claim is ineligible for credit. Orbcare still has an opportunity to respond to CRA’s review and/or object to any assessment in respect of the SR&ED claims. Based on the Giner Affidavits, Orbcare does not intend on pursuing these claims as it’s of the view that the records available in support of the SR&ED claims for those years are insufficient, and the Company has dedicated abundant resources already trying to amend previous filings made by previous SR&ED consultants, which contained erroneous descriptions of the activities carried on and insufficient supporting data.

Operational Restructuring

20. Both before and after the filing of the NOIs, the Companies undertook a review of its operations with the objective of decreasing its costs. Prior to the filing of the NOI, Orbcare reduced its payroll costs by terminating four (4) employees. Since the NOI, Orbcare has

terminated a further staff member. Orbcare has also reduced its overhead costs by disclaiming its commercial lease in respect of 500 King (defined below).

21. Orbcare has also retained a software engineer on contract to better respond to its customers and service its technical support needs.
22. The Companies are making concerted efforts at attracting new customers.

Other Matters

23. As part of Management's review of the Companies' operations, it identified that Pariscribe owes either licence fee arrears or damages to Hyland Software, Inc. ("**Hyland**"), the supplier of the PACS software provided by Orbcare to its customers, which the Companies may have been installing in client locations without paying a licence fee to Hyland. Orbcare is currently unable to quantify the extent of its obligation to Hyland.
24. The Companies are not using the most recent version of the PACS software in their service offering, which has caused the Companies' customers to express concern about the functionality of the Companies' platforms. The Companies also advise that Hyland is not supplying the technical and customer support it and its customers require. As part of its operational review and restructuring, the Companies are evaluating whether Hyland's most recent version of the PACS software satisfactorily resolves these customer concerns and assess whether this software is cost effectiveness as compared to comparable software offered by Hyland's competitors. If the Companies determine that Hyland's software is satisfactory, it will enter into discussions with Hyland on a go forward arrangement. The proposal proceedings will address Pariscribe's financial obligations to Hyland relating to the issue of unpaid licence fees or damages.

Consideration of Restructuring Alternatives

25. Concurrent with their review of their financial records and exploring ways to operationally restructure the business, the Companies are also weighing options available to restructuring the businesses. As noted in the Giner Affidavits, the Companies have begun the process of considering, with the assistance of counsel and of the Proposal Trustee, whether value for creditors and the interests of stakeholders more widely (including customers, suppliers, and employees) might be preserved or enhanced by conducting a process to solicit interest in investments and/or purchases of the Companies' assets (the "SISP"). Given the ongoing efforts aimed at improving the quality of their financial information and improving the financial and operational performance of the Companies' business, the Companies are also considering the timing of commencing such a SISP. At this time, the Companies have not yet determined a particular restructuring strategy or strategies.
26. As noted in the Article III- Interim Financing section of this report, the DIP Lender has presented an Amended and Restated Term Sheet wherein, *inter alia*, the DIP Lender seeks a first ranking security charge against each of Orbcare, Orbcare US and Pariscribe and that the Companies cross-guarantee their obligations as a term of the loan. The DIP Lender has also introduced an event of default if the Companies have failed to institute a SISP (which may take the form of a stalking horse process) on terms acceptable to the DIP Lender on or before August 15, 2019.

VI. CASH FLOW PROJECTIONS

27. To date, Orbcare has provided the Proposal Trustee with its full co-operation and unrestricted access to its premises, and books and records.
28. In accordance with the provisions of the BIA, the Company filed with the Official Receiver a projected cash flow statement dated June 7, 2019, which was reviewed by the Proposal

Trustee for reasonableness and signed by the Proposal Trustee and the Company (the “**Cash Flow Projections**”). The Cash Flow Projections cover the period starting on June 3, 2019 and ending on September 1, 2019 (the “**Projection Period**”). A copy of the Cash Flow Projection, and related reports, is attached hereto as **Exhibit “F”**.

29. The Proposal Trustee has implemented procedures for monitoring the Company’s receipts and disbursements and has kept in close contact with Orbcare’s management to ensure that operations are continuing in the normal course of business and in accordance with the Cash Flow Projection.
30. The principal assumptions of the Cash Flow Projection are as follows:
 - a. existing accounts receivable will be collected in approximately 60 days;
 - b. operating expenses are assumed to be paid on a current basis;
 - c. the projections exclude any activity in Orbcare US but do include the activities of Pariscribe;
 - d. other disbursements are based on management's best estimates;
 - e. projected rent excludes payment of rent on 500 King Street West, Toronto (“**500 King**”) as this commercial lease was disclaimed on June 4, 2019. This disclaimer has become final and conclusive; and
 - f. the number of employees and associated payroll costs (i.e. wages, benefits, government remittances, etc.) are based on the “Actual” payroll costs prior to the NOI filing, adjusted to reflect the reduction of payroll arising from the recent termination of four (4) employees.
31. The Cash Flow Projections reflect that Orbcare is expected to require funding of approximately \$24,741 by the end of the Projection Period. The Company had \$288,220

in cash as at June 3, 2019, which means that during the Projection Period the Company is projected to have a \$312,961 decrease in its cash position.

32. Based on the Proposal Trustee’s review of the Cash Flow Projections, there are no material assumptions which seem unreasonable in Orbcare’s circumstances or are inconsistent with the purpose of the projections. Based on the Cash Flow Projections and the availability of the DIP Loan, Orbcare will have sufficient funding through to the end of the requested extension of the NOI.
33. A summary of the Company’s actual receipts and disbursements as compared to the those presented in the Cash Flow Projections up to the week ended July 21, 2019 (the “**Monitored Period**”) is as follows:

	TOTAL		
	June 3, 2019 to July 21, 2019		
	(Forecast)	(Actual)	(Variance)
Receipts			
Collection of Receivables			
Orbcare	58,615	47,153	(11,462)
Pariscribe	32,726	48,160	15,434
Provincial Taxes	0	5,317	5,317
Funds from Loan	0	0	0
Total Receipts	91,341	100,630	9,289
Disbursements			
Payroll	252,532	258,940	(6,407)
Rent	3,955	8,543	(4,588)
SG&A	12,374	7,383	4,991
Technology	7,900	17,850	(9,950)
Advisors	76,000	7,503	68,497
Provincial Taxes	0	0	0
Repayment to Loan	0	0	0
Total Disbursements	352,762	300,219	52,543
Net Operating Cash Flows	(261,421)	(199,589)	61,832

34. As noted above, through the Monitored Period, the Company has had aggregate negative Net Operating Cash Flows of \$199,589 as compared to the projected negative Net Operating Cash Flows of \$261,421 (a positive variance of \$61,832) for the Monitored Period.
35. The positive variance is largely related to the timing differences in the payment of professional fees.
36. Notwithstanding the concerns about the quality of the historic financial information, Orbcare's Management appears able to reasonably estimate its operational expenses. The administrative fees and expenses associated with the restructuring will largely depend on the complexities associated with the proposal proceedings and the strategies utilized by the Companies in carrying out the restructuring.
37. In support of the Companies' motion returnable July 30, 2019, the Companies, with the assistance of the Proposal Trustee, prepared an updated weekly cash flow projection for the period from July 22, 2019 to October 13, 2019 (the "**Revised Cash Flow Projections**"), a copy of which, together with the reports of management and the Proposal Trustee on said projections, are attached hereto as **Appendix "G"**. The Revised Cash Flow Projections have been prepared using the probable and hypothetical assumptions set out in the notes attached to the Revised Cash Flow Projections. The Revised Cash Flow Projections do not include Orbcare US' cash flow activity.
38. The Revised Cash Flow Projections are based on assumptions that are consistent with the assumptions used in the Cash Flow Projections, other than those that have been revised to better reflect the timing of receivables collections and taking into consideration the actual results to date. Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:
 - a. the hypothetical assumptions are not consistent with the purpose of the forecast;

- b. as at the date of this Report, the probable assumptions used in developing the Revised Cash Flow Projections are not suitably supported and consistent with the plans of the Companies or do not provide a reasonable basis for the forecast, given the hypothetical assumptions; and
 - c. the Revised Cash Flow Projections do not reflect the probable and hypothetical assumptions.
39. A copy of the Revised Cash Flow Projections, together with the reports of management and the Proposal Trustee on the Revised Cash Flow Projections were filed with the Office of the Superintendent of Bankruptcy.

VII. REQUEST FOR AN EXTENSION OF TIME FOR FILING A PROPOSAL

40. In order to allow sufficient time to further stabilize their operations by taking the measures identified in paragraphs 16-26 above, the Companies seek a forty-five (45) day extension of the time for filing of a proposal to September 26, 2019.
41. The Proposal Trustee supports the Companies request for such an extension and has also considered:
- a. that the Companies are acting in good faith and with due diligence;
 - b. that the extension should not adversely affect or prejudice creditors as the Companies are projected to have sufficient funds to pay post-filing services and supplies in the amounts contemplated in the Revised Cash Flow Projections;
 - c. that creditors would not be prejudiced by an extension of time for each of Orbcare, Orbcare US and Pariscribe to file their proposals, which could result in greater recoveries than in a liquidation within a bankruptcy scenario; and

- d. as set out in the Revised Cash Flow Projections, it appears that the Companies, subject to approval of the proposed extended interim financing, will have sufficient funds available to continue operating and meet obligations through to the end of the requested extension to the stay period.

VIII. INTERIM FINANCING

42. As noted above, on June 25, 2019 the Court issued an Order approving an interim financing facility with a maximum principal amount of \$1,200,000 and approved the DIP Lender's Charge.
43. There have, as of the date of this Report, been no draws as against the DIP Loan.
44. The DIP Loan Agreement required that both Pariscribe and Orbcare US be guarantors and to grant security in favour of the DIP Lender. The DIP Loan Agreement was entered into prior to the NOI filings of both Pariscribe and Orbcare US.
45. Due to the relationship and intertwined operations of the Companies, the financing required for the ongoing operations of the Companies during these proceedings, provided by the DIP Loan, will be used for the operations of the Companies and not only Orbcare. Accordingly, the Company is seeking an Order to authorize and empower both Pariscribe and Orbcare US to borrow under the existing DIP Loan, provided that the limit of the DIP Loan shall not exceed the maximum principal amount of \$1,200,000.
46. The Proposal Trustee has considered the factors set out in subsection 50.6(5) of the BIA with respect to the proposed amended DIP terms. The Proposal Trustee respectfully recommends that the Court make the order sought by the Companies for the following reasons:
 - a. the Companies are considering their various restructuring options, which restructuring potentially will enhance the recoveries for their stakeholders;

- b. the Companies are facing an imminent liquidity crisis, and per the Revised Cash Flow Projections are projected to require funding from the DIP Loan prior to August 4, 2019. The Revised Cash Flow Projections further indicate that additional draws on the DIP Loan will be required to (i) sustain operations and (ii) present a viable proposal to the Companies' creditors;
- c. under the terms of the proposed order, the Companies will not be authorized or empowered to operate any form of draw on the DIP Loan without the written approval of the Proposal Trustee, who in deciding whether to issue its approval, shall have regard to the Revised Cash Flow Projections, as may be revised from time to time to take into account its findings from its review of the Companies' financial records. Accordingly, no creditor of the Companies appears to be materially prejudiced by the borrowings under the terms of the proposed revised DIP Loan, and the risks of material prejudice to certain creditors are outweighed by the potential benefits that would be derived from a successful restructuring;
- d. the terms of the borrowings appear to be reasonable in the circumstances and consistent with the terms of debtor in possession financing facilities in similar proceedings;
- e. notice of the July 30th motion is being given to Pariscribe's two registered secured creditors, Emmanuel Abraham (who was formerly a director of Pariscribe) and Dejan Dimitrijevic (who is currently a director of Pariscribe and was formerly a shareholder of Pariscribe). The Proposal Trustee has not yet sought from Chaitons LLP, its independent counsel, an opinion on validity and enforceability of this security; and
- f. copies of the order(s) issued in respect of the July 30th motion will be sent to all creditors of Orbcare US by the Proposal Trustee together with a notice informing

them that they can seek amendments or variations of the order(s) by way of motion to the Court.

IX. PROPOSED PROCEDURAL CONSOLIDATION

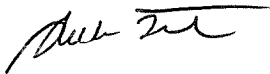
47. The Companies are seeking an order administratively consolidating Orbcare, Orbcare US and Pariscribe's NOI proceedings to avoid a multiplicity of proceedings. The Companies' operations are largely integrated with substantially all of the Companies' management, accounting, banking, and administrative functions performed at Orbcare's head office in Toronto, Ontario.
48. The Proposal Trustee recommends the administrative consolidation of the Companies' NOI proceedings.

X. CONCLUSION AND RECOMMENDATION

49. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 12(b).

All of which is respectfully submitted on this 29th day of July, 2019.

MNP Ltd.,
in its capacity as Trustee under
the Notice of Intention to Make a Proposal of
Orbcare Inc., Pariscribe Inc. and Orbcare USA Inc.
Per:



Sheldon Title
Licensed Insolvency Trustee

Court No.: 31-2516167

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OF ORBCARE INC., OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ONTARIO

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

**REPORT TO THE COURT SUBMITTED BY MNP LTD., IN
ITS CAPACITY AS PROPOSAL TRUSTEE**

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