

**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 HAKIM OPTICAL LABORATORY LIMITED,
LAWRENCE OPHTHALMIC LAB INC. AND HAKIM OPTICAL
WORLDWIDE LENSES INC.**

Applicants

**FACTUM OF THE APPLICANTS
(Stay Extension and DIP Amendment Order)**

August 6, 2025

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PART I: OVERVIEW

1. This Factum is filed in support of a motion by Hakim Optical Laboratory Limited (“**HOLL**”), Lawrence Ophthalmic Lab Inc. (“**Lawrence Lab**”), and Hakim Optical Worldwide Lenses Inc. (also known as Hakim Optical Lenses Worldwide Inc. and Hakim Optical Worldwide Lenese Inc. [sic]) (collectively, the “**Applicants**” or the “**Company**”) for an order (the “**Stay Extension and DIP Amendment Order**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), which, among other things:

- (a) extends the Stay of Proceedings (as defined below) to and including August 29, 2025 (the “**Stay Extension**”);
- (b) approves the First Amending Agreement dated August 5, 2025 (the “**DIP Amendment**”), which, among other things increases the maximum principal amount that may be drawn under the DIP Facility (as defined below) from \$2.8 million to \$4.2 million;
- (c) increases the quantum of the DIP Lender’s Charge (as defined in the Amended and Restated Initial Order of this Court dated June 27, 2025 (the “**ARIO**”)) to \$4.2 million plus interest accrued and unpaid interest, fees and expenses payable in accordance with the DIP Agreement (as defined below); and
- (d) approves the Supplement to the First Report of KSV Restructuring Inc. (“**KSV**”), in its capacity as the monitor of the Applicants (in such capacity, the “**Monitor**”) dated July 8, 2025 (the “**Supplemental Report**”), the Second Report of the Monitor dated August 6, 2025 (the “**Second Report**”, and together with the Supplemental Report, the “**Reports**”), and the activities of the Monitor described therein.

PART II: FACTS

2. The facts underlying this motion are more fully set out in the Affidavit of Douglas Robertson sworn August 5, 2025 (the “**Robertson Affidavit**”) and the Second Report.¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the Robertson Affidavit.

3. On May 15, 2025, the Applicants obtained relief to take up and continue the NOI Proceedings under the CCAA pursuant to an initial order (the “**Initial Order**”).²

4. The Initial Order, among other things:

- (a) authorized the continuation of the NOI Proceedings under the CCAA;
- (b) appointed KSV as the Monitor in these CCAA proceedings;
- (c) granted an initial stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants and the Monitor, and in respect of any claims or proceedings against, or affecting, the Business or the Property (each as defined in the Initial Order), until and including June 30, 2025;
- (d) approved the Applicants’ ability to borrow under a debtor-in-possession credit facility (the “**DIP Facility**”), up to a principal amount of \$2.8 million, pursuant to a binding commitment letter dated May 8, 2025 (the “**DIP Agreement**”), among HOLL and Lawrence Lab, as borrowers, an affiliate of the Applicants, as guarantor,

¹ Affidavit of Douglas Robertson sworn August 5, 2025 [Robertson Affidavit], Applicants’ Motion Record dated August 5, 2025 at Tab 2 [Motion Record]. Second Report of the Monitor dated August 6, 2025 [Second Report].

² Robertson Affidavit, *supra* at para 10, Motion Record at Tab 2.

and 1001112855 Ontario Inc., as lender (in such capacity, the “**DIP Lender**”), to finance the Company’s working capital requirements and other general corporate purposes, post-filing expenses and costs incurred during the CCAA proceedings; and

- (e) granted the Administration Charge (as defined in the Initial Order) and the DIP Lender’s Charge over the Property.³

5. Since prior to the commencement of these CCAA proceedings, the Applicants, the Monitor and an affiliate of the DIP Lender (the “**Stalking Horse Bidder**”) have engaged in discussions to advance and finalize the terms of a stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”), which is intended to serve as the “stalking horse bid” in the Applicants’ forthcoming sale and investment solicitation process (the “**SISP**”).⁴ While discussions with the Stalking Horse Bidder have continued, the Applicants have obtained the following orders:

- (a) on June 27, 2025, the Applicants sought and obtained the ARIO, which, among other things, granted an extension of the Stay of Proceedings to and including July 14, 2025; and
- (b) on July 14, 2025, the Applicants sought and obtained an order, among other things, extending the Stay of Proceedings to and until August 8, 2025 (the “**Stay Extension Order**”).

³ *Ibid*, Motion Record at Tab 2.

⁴ *Ibid* at para 11, Motion Record at Tab 2.

A. The Stay of Proceedings

6. The Stay of Proceedings granted under the Stay Extension Order will expire on August 8, 2025. Pursuant to the proposed Stay Extension and DIP Amendment Order, the Applicants are seeking to further extend the Stay of Proceedings to and including August 29, 2025.⁵

7. On August 4, 2025, counsel to the Stalking Horse Bidder sent a revised draft of the proposed Stalking Horse Agreement to the Applicants' counsel, the Monitor and the Monitor's counsel, which addressed many of the outstanding issues between the parties. The Applicants and the Monitor are in the process of reviewing the draft.⁶

8. The Applicants continue to maintain that implementing the SISP, with the Stalking Horse Agreement serving as the stalking horse bid, is in the best interest of the Company and its stakeholders.⁷ The Stalking Horse Agreement will provide certainty of a going-concern outcome for the Company, while also affording the Monitor the flexibility and time needed to canvass the market for superior offers.⁸ The Applicants intend to return to Court to seek approval of the Stalking Horse Agreement and the SISP later this month.⁹ The Applicants therefore require the proposed Stay Extension to August 29, 2025 in order to maintain ordinary course operations while the parties attempt to execute the final form of the Stalking Horse Agreement and finalize the SISP for approval by the Court.

⁵ *Ibid* at para 22, Motion Record at Tab 2.

⁶ *Ibid* at para 24, Motion Record at Tab 2.

⁷ *Ibid* at para 26, Motion Record at Tab 2.

⁸ *Ibid*, Motion Record at Tab 2.

⁹ *Ibid* at paras 24-25, Motion Record at Tab 2.

9. The Applicants, with the assistance of the Monitor, have prepared an updated cash flow forecast (the “**Second Cash Flow Forecast**”).¹⁰ The Second Cash Flow Forecast demonstrates that subject to Court approval of the DIP Amendment and related relief, the Applicants will have sufficient liquidity to fund their obligations and the costs of these CCAA proceedings through the end of the proposed Stay Extension period.¹¹

B. The DIP Amendment

10. Pursuant to the ARIO, this Court approved the DIP Agreement and authorized HOLL and Lawrence Lab to borrow from the DIP Lender up to \$2.8 million under the DIP Facility.¹² Since the granting of the Initial Order, the total borrowings and costs incurred under the DIP Facility have been approximately \$2.0 million to-date, exclusive of interest and fees incurred subsequent to July 4, 2025, which continue to accrue.¹³

11. The Second Cash Flow Forecast reflects that the Applicants are projected to require an additional \$1.4 million in funding during the forecast period (which, for clarity extends beyond the requested Stay Extension period).¹⁴

12. The original cash flow forecast submitted to this Court, was tied to the SISP milestones set out in the DIP Agreement.¹⁵ For example, the DIP Agreement contemplated that the Applicants would obtain court approval of a successful bid under the SISP by no later than July 18, 2025.¹⁶

¹⁰ Robertson Affidavit, *supra* at para 28. Second Report, *supra* at s 3.0.

¹¹ Robertson Affidavit, *supra* at paras 18-19, 21, Motion Record at Tab 2. Second Report, *supra* at s 6.0 and Appendix “C”.

¹² Robertson Affidavit, *supra* at Exhibit “C”. Amended and Restated Initial Order dated June 27, 2025 [ARIO] at paras 34-38, Motion Record at Tab 2.

¹³ *Ibid* at para 14, Motion Record at Tab 2.

¹⁴ *Ibid* at para 18, Motion Record at Tab 2.

¹⁵ *Ibid* at para 15, Motion Record at Tab 2.

¹⁶ *Ibid* at para 15, Motion Record at Tab 2.

13. Given that the parties are still negotiating the terms of the Stalking Horse Agreement and the SISP has yet to be approved by the court, the milestones in the original DIP Agreement require the extensions contemplated by the DIP Amendment.¹⁷

14. The DIP Lender has agreed to continue supporting these CCAA proceedings through the DIP Amendment which, among other things, increases the maximum availability under the DIP Facility to \$4.2 million, and adjusts the SISP milestone dates to reflect the new agreed timeline for the SISP, which is anticipated to start at the end of this month upon completion of the Stalking Horse Agreement, subject to the approval of this Court.¹⁸

15. Funds advanced under the DIP Amendment will, among other things, (i) enable the Applicants to continue negotiating the Stalking Horse Agreement; (ii) fund the additional costs required to seek approval of and close any transaction under the SISP; and (iii) pay critical operating costs, including payroll, rent and other business expenditures, in the ordinary course.¹⁹

16. As set out in the Second Cash Flow Forecast, subject to the stated assumptions the DIP Amendment is anticipated to provide adequate operating liquidity through the Stay Extension period and beyond through to the anticipated completion of the SISP, should it be approved by the Court at a subsequent attendance.

17. Pursuant to the proposed Stay Extension and DIP Amendment Order, the Applicants are also seeking approval of certain corresponding amendments to paragraphs 34-40 of the ARIO to reflect the increase to permitted borrowing under the DIP Facility, and a corresponding increase to the quantum of the DIP Lender's Charge.²⁰

¹⁷ *Ibid* at para 16, Motion Record at Tab 2.

¹⁸ *Ibid* at paras 18-21, Motion Record at Tab 2. Second Report, *supra* at s 3.0.

¹⁹ *Ibid* at para 18, Motion Record at Tab 2. Second Report, *supra* at s 3.0.

²⁰ *Ibid* at para 16, Motion Record at Tab 2.

C. The Monitor's Reports and Activities

18. The Monitor and its counsel have provided valuable assistance to the Applicants and their stakeholders both prior to and throughout these CCAA proceedings, including in connection with the negotiations surrounding the Stalking Horse Agreement and the DIP Amendment.²¹ Pursuant to the proposed Stay Extension and DIP Amendment Order, the Monitor is now seeking approval of such activities, as described in the Reports.²²

PART III: ISSUES

19. The issues to be considered on this motion are whether this Court should:

- (a) extend the Stay of Proceedings to and including August 29, 2025;
- (b) approve the DIP Amendment and corresponding increase to the quantum of the DIP Lender's Charge; and
- (c) approve the Reports and the conduct and activities of the Monitor as described therein.

PART IV: LAW AND ARGUMENT

A. The Stay of Proceedings Should be Extended

20. Subsection 11.02(2) of the CCAA authorizes this Court to grant an extension of the Stay of Proceedings for "any period the court considers necessary."²³ To grant such an extension, this

²¹ *Ibid* at paras 32-33, Motion Record at Tab 2. Second Report, *supra* at s 5.0.

²² *Ibid* at paras 32-33, Motion Record at Tab 2.

²³ *Companies' Creditors Arrangement Act*, [R.S.C. 1985, c. C-36](#), as amended ss [11.02\(2\)](#) [CCAA]. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1631](#) at para [7](#) [*Nordstrom*].

Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.²⁴

21. The jurisdiction of courts to stay proceedings under section 11.02 “should be construed broadly to accomplish the legislative purposes of the CCAA”.²⁵ These purposes include, among others, enabling the continuation of the debtors’ business and facilitating a value maximizing restructuring.²⁶ Accordingly, a stay of proceedings will be appropriate where it maintains the *status quo* and provides a debtor with breathing room while it seeks to restore solvency and continue as a going concern or arrange a “sale of assets in order to maximize recovery for stakeholders” as part of an orderly liquidation or wind-down.²⁷

22. Having regard to the foregoing, the Applicants submit that the proposed extension of the Stay of Proceedings is appropriate in the circumstances given that:

- (a) since the issuance of the Stay Extension Order, the Applicants have acted, and continue to act, in good faith and with due diligence to stabilize and maintain ordinary course operations, and advance negotiations of the Stalking Horse Agreement and the DIP Amendment, which are both intended to promote a going-concern restructuring outcome for the Applicants, for the benefit of their stakeholders;
- (b) the Second Cash Flow Forecast demonstrates that the Applicants will be able to fund their obligations and the costs of these proceedings through the end of the

²⁴ [CCAA](#), *ibid* at ss [11.02\(2\)-\(3\)](#); [Nordstrom](#), *ibid*.

²⁵ [Canwest Global Communications Corp.](#), [2011 ONSC 2215](#) at paras [24-25](#) [[Canwest](#)].

²⁶ [Canwest](#), *ibid* at para [24](#). [Century Services Inc. v. Canada \(Attorney General\)](#), [2010 SCC 60](#) at para [15](#) [[Century Services](#)]. [Target Canada Co. \(Re\)](#), [2015 ONSC 303](#) at para [8](#) [[Target](#)]. [Timminco Limited \(Re\)](#), [2012 ONSC 2515](#) at para [15](#) [[Timminco](#)].

²⁷ [Century Services](#), *ibid* at para [14](#); [Target](#), *ibid*; [Timminco](#), *ibid*.

proposed Stay Extension period and beyond to the anticipated conclusion of the SISP, provided that the DIP Amendment is granted and the Applicants continue to have access to the DIP Facility;

- (c) the Applicants are not aware of any creditor that is expected to suffer material prejudice as a result of the proposed Stay Extension; and
- (d) the Monitor and the DIP Lender are supportive of the proposed extension, and the Monitor is of the view that it is reasonable and appropriate in the circumstances.²⁸

B. The DIP Amendment Should be Approved

23. Where an increase in DIP financing is sought, the Court may consider the factors set out in section 11.2 of the CCAA.²⁹ Subsection 11.2(1) of the CCAA provides the Court with the statutory jurisdiction to grant a DIP financing charge “on notice to the secured creditors who are likely to be affected by the security or charge – in an amount that the court considers appropriate...having regard to [the debtors’] cash-flow statement. The security or charge may not secure an obligation that exists before the order is made”.³⁰

24. Subsection 11.2(4) sets out the following list of non-exhaustive factors to be considered by the Court in deciding whether to grant a DIP financing charge:

- 11.2(4) *Factors to be considered.* – In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;

²⁸ Robertson Affidavit, *supra* at paras 27-31, Motion Record at Tab 2. Second Report, *supra* at s 6.0.

²⁹ PCAS Patient Care Automation Services Inc, *Re*, [2012 ONSC 2423](#) at para [9](#). Tacora Resources Inc. (*Re*), [2024 ONSC 2454](#) at para [42](#). *In the Matter of a Plan of Compromise or arrangement of Eastern Meat Solutions Inc. et.al.*, (May 28, 2025), [Endorsement of Justice Kimmel](#) (Stay Extension and PMSI Order) at para [8](#).

³⁰ CCAA, *supra* s [11.2\(1\)](#).

- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.³¹

25. In granting the Initial Order (as amended by the ARIO), this Court held that the DIP Agreement was appropriate, having regard to the circumstances set out in the motion materials and the factors set out in subsection 11.2(4) of the CCAA.³²

26. Additionally, the Applicants submit that the following factors support the approval of the DIP Amendment:

- (a) the Second Cash Flow Forecast reflects that without the cash to be provided under the DIP Amendment, the Applicants will be unable to continue operating and, consequently, would not be able to advance their restructuring efforts;
- (b) other than a monthly fee of \$2,500, there are no structuring, facility, standby or other fees being charged by the DIP Lender under the DIP Facility and the DIP Amendment;
- (c) the DIP Lender is also the Applicants' sole pre-filing secured creditor and is supportive of the approval of the DIP Amendment and corresponding increase to the DIP Lender's Charge; and

³¹ *Ibid*, s [11.2\(4\)](#).

³² The bases for approving the DIP Agreement and granting the DIP Lender's Charge are discussed in the [Endorsement of Justice Kimmel](#) dated May 15, 2025 at paras [20-22](#) [Initial Order Endorsement].

- (d) the Monitor is of the view that the DIP Amendment and the proposed amendments to the ARIO are reasonable and necessary in the circumstances.³³

C. The Monitor's Reports and Activities Should be Approved

27. This Court routinely approves the reports and activities of Court-appointed monitors in CCAA proceedings pursuant to its jurisdiction under section 11 of the CCAA to make any order considered “appropriate in the circumstances”.³⁴ This Court has also previously recognized that there are policy and practical reasons for a court to approve a monitor's activities. Specifically, Court approval:

- (a) allows the monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the monitor's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and disruption that would be caused by (i) the re-litigation of steps taken to date, and (ii) potential indemnity claims by the monitor.³⁵

³³ Robertson Affidavit, *supra* at paras 18-19, Motion Record at Tab 2. Second Report, *supra* at s 3.0. [Initial Order Endorsement](#), *supra* at para [20-22](#).

³⁴ CCAA, *supra*, s [11](#). *Re Target Canada Co*, [2015 ONSC 7574](#) at paras [1-2](#) [*Re Target*]. Laurentian University of Sudbury, [2022 ONSC 5850](#) at para [17](#) [*Laurentian*]; Laurentian University of Sudbury, [2022 ONSC 2927](#) at para 13 [*Laurentian University*].

³⁵ *Re Target*, *ibid* at paras [22-23](#); *Laurentian*, *ibid* at para [17](#); *Laurentian University*, *ibid* at paras [13-14](#).

28. Given the aforementioned benefits, the customary limitations imposed upon reliance on such approval included in the proposed Stay Extension and DIP Amendment Order, and the Monitor's diligent and good faith performance of its activities in compliance with the CCAA and the orders issued in these proceedings from time to time, the Applicants submit that it is appropriate for this Court to approve the Reports and the activities described therein.³⁶

PART V: RELIEF REQUESTED

29. The Applicants submit that the relief sought on the within motion is both necessary and appropriate in the circumstances and respectfully request that the proposed form of the Stay Extension and DIP Amendment Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6TH DAY OF AUGUST, 2025

Bennett Jones LLP

BENNETT JONES LLP

³⁶ Robertson Affidavit, *supra* at paras 32-33, Motion Record at Tab 2. Second Report, *supra* at s 5.0.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. *Canwest Global Communications Corp*, [2011 ONSC 2215](#).
2. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#).
3. *In the Matter of a Plan of Compromise or arrangement of Eastern Meat Solutions Inc. et.al.*, (May 28, 2025), [Endorsement of Justice Kimmel](#) (Stay Extension and PMSI Order).
4. *In the Matter of a Plan of Compromise or arrangement of Hakim Optical Laboratory Limited.*, (May 28, 2025), [Endorsement of Justice Kimmel](#) (Initial Order).
5. *Laurentian University of Sudbury*, [2022 ONSC 2927](#).
6. *Laurentian University of Sudbury*, [2022 ONSC 5850](#).
7. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1631](#).
8. *PCAS Patient Care Automation Services Inc, Re*, [2012 ONSC 2423](#).
9. *Re Target Canada Co*, [2015 ONSC 7574](#).
10. *Re Timminco Limited*, [2012 ONSC 2515](#).
11. *Tacora Resources Inc. (Re)*, [2024 ONSC 2454](#).
12. *Target Canada Co*, [2015 ONSC 303](#).

I certify that I am satisfied as to the authenticity of every authority.

Dated: August 6, 2025

Linda Fraser-Richardson

Signature

SCHEDULE B – STATUTES RELIED ON

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 11.2

Interim financing

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

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Court File No. CV-25-00743383-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced in Toronto

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(Returnable August 8, 2025)

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