



FORCE FILED

No. S-235288
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF NEXTPOINT
FINANCIAL, INC. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: the Petitioners

To: the Service List

TAKE NOTICE that an application will be made by the applicant to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on October ~~13~~, 2023 at 10:00 a.m. for the orders set out in Part 1 below. 31

Part 1: ORDER(S) SOUGHT

1. An Order substantially in the form attached as Schedule "C" hereto (the "**Reverse Vesting Order**" or "**RVO**"), among other things,
 - (a) approving the transactions contemplated by the Transaction Agreement (the "**Transaction Agreement**"); and
 - (b) vesting in Residual Co. 1 all of the right, title and interest in and to the Excluded Assets and Excluded Liabilities of the Non-US Acquired Entities (as defined below); and
 - (c) vesting in Residual Co. 2 all of the right, title and interest in and to the Excluded Assets and Excluded Liabilities of the US Acquired Entities (as defined below); and

2. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

1. All capitalized terms used, but not otherwise defined herein have the meanings given to them in the Second ARIO, amending and restating the Initial Order, granted by this Honourable Court on October 13, 2023, or the Fourth Affidavit of Peter Kravitz, to be sworn (the "**Fourth Kravitz Affidavit**"). All amounts are referenced in USD, unless otherwise stated.
2. The Petitioners provide financial and tax services for small businesses and consumers across Canada and the United States through the following three primary business lines:
 - (a) a tax preparation and settlement business, operated through Liberty Tax;
 - (b) a tax debt resolution service, operated through Community Tax; and
 - (c) a lending and loan marketing business, previously operated through LoanMe, but in the process of winding down since approximately June 2022.
3. The Petitioners are over-leveraged and have recurring operating losses, working capital deficiencies, and insufficient cash flow to meet their obligations. As of July 14, 2023, the Petitioners had an outstanding debt load of approximately \$285 million.
4. Pursuant to an order made July 25, 2023 (the "**Initial Order**"), NextPoint Financial Inc. and certain subsidiaries were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and FTI Consulting Canada Inc. was appointed monitor (and in such capacity, the "**Monitor**").
5. Also pursuant to the terms of the Initial Order, the Court granted an initial stay of proceedings until August 3, 2023 (the "**Initial Stay Period**") and various charges.
6. On August 3, 2023, the Court granted the ARIO which:
 - (a) extended the Initial Stay Period to October 20, 2023;
 - (b) approved an increase to certain priority charges; and

- (c) increased the DIP Facility to a maximum of \$25 million USD and the Interim Lender's Charge up to the maximum amount of \$25 million USD.
7. Also on August 3, 2023, the Court granted an order approving the Sales and Investment Solicitation Process (the "**SISP**"), including the bid (the "**Stalking Horse Bid**") submitted by the BP Lenders (the "**Purchasers**"), as documented in the Stalking Horse Purchase Agreement (the "**SHPA**") appended to the Restructuring Support Agreement (the "**RSA**") approved by the Court on such date.
 8. The Petitioners obtained recognition of the Initial Order in the US Bankruptcy Court in Delaware (the "**US Bankruptcy Court**") on July 27, 2023, in concurrent proceedings under chapter 15 of title 11 of the United States Bankruptcy Code (the "**Chapter 15 Proceedings**"). On August 16, 2023, the US Bankruptcy Court entered a further order recognizing and approving, among other relief, the SISP and the ARIO.
 9. On September 19, 2023, the Court granted an Order which, among other things:
 - (a) added LM BP Holdings, LLC as a Petitioner in this Proceeding;
 - (b) approved the Success Fee Calculation for the transaction fee payable to the Chief Restructuring Officer (the "**CRO**") in the event of an applicable transaction;
 - (c) removed LoanMe Trust Prime 2018-1 and LoanMe Trust SBL 2019-1 as Petitioners in this proceeding; and
 - (d) granted the LoanMe Stay until the hearing of the next application.
 10. On October 13, 2023, this Honourable Court granted an order amending and restating the ARIO (the "**Second ARIO**") which, among other things:
 - (a) extended the Stay Period to November 20, 2023;
 - (b) extended the LoanMe Stay until the expiry of the Stay Period; and
 - (c) expanded the powers to be exercised by the CRO upon resignation of the Petitioners' boards of directors.

The SISP

11. Pursuant to the SISP, interested parties were required (among other things) to submit a non-binding letter of intent to bid by September 4, 2023, that identified the potential purchaser and included a general description of the assets and/or business(es) of the Petitioners that would be the subject of the bid.
12. In accordance with the terms of the SISP, the Petitioners have, with the assistance of the CRO, *inter alia*:
 - (a) researched and identified potentially interested parties including certain strategic buyers and financial buyers;
 - (b) prepared a process summary non-confidential information letter (the "**Teaser Letter**"), confidential information memorandum (the "**CIM**"), and confidentiality agreement (the "**Confidentiality Agreement**") with input from the Monitor and its legal counsel;
 - (c) contacted various parties by direct email to determine their interest in the SISP, including 112 financial sponsors and 46 strategic buyers, and provided them with a copy of the Teaser Letter and Confidentiality Agreement;
 - (d) prepared and populated an electronic data site containing information on the Petitioners' assets and operations (the "**Data Room**") for prospective purchasers;
 - (e) responded to over 25 diligence requests from potential investors and their advisors;
 - (f) obtained signed Confidentiality Agreements from 13 interested parties and provided those parties with the CIM and access to the Data Room; and
 - (g) held discussions with more than 10 prospective buyers.
13. The Petitioners and the Monitor received two non-binding indications of interest (the "**IOIs**"). However, in consultation with the Monitor and the BP Lenders, the CRO and the Petitioners determined that neither of the IOIs had a reasonable prospect of culminating in a "**Qualified Bid**" (as defined in the SISP). A "Qualified Bid" under the SISP is required to, among other things, pay in full or assume the BP NP-Liberty Claims.

14. The first potential bidder (the “**First Potential Bidder**”) presented an offer consisting of \$40 million of cash consideration and the assumption of certain of the BP NP-Liberty Claims, rather than repayment thereof. However, the BP Lenders would not consent to this assumption of debt.
15. The second potential bidder (the “**Second Potential Bidder**”) presented an offer consisting of a range for the potential purchase price. The maximum of this range was \$200 million (with \$171.6 million allocated to the Liberty Tax assets and \$28.4 million allocated to the Community Tax assets). This maximum was less than the amount required to pay the BP NP-Liberty Claims in full. The CRO, together with the Monitor, had discussions with the Second Potential Bidder to clarify their bid and determine whether it could be enhanced.
16. The CRO, in consultation with the Monitor, determined that neither of the IOIs had a reasonable prospect of culminating in a Qualified Bid. Neither of the IOIs contemplated the payment in full in cash on closing of the BP NP-Liberty Claims and consent of the BP Lenders to such transactions would therefore be required pursuant to the terms of the SISP Order. In addition, the BP Lenders and Drake advised the CRO and the Monitor that they would amend their bid (the “**Amended Bid**”) to increase the consideration to \$271,090,000 of credit bid or assumed debt, plus the assumption of certain other specified liabilities. The Amended Bid is reflected in the Transaction Agreement, which is described in further detail below.
17. Accordingly, the Petitioners terminated the SISP and, on September 11, 2023, notified the First and Second Potential Bidders and the service list of this termination.
18. The Petitioners now seek approval of the transactions contemplated by the Transaction Agreement and the granting of the Reverse Vesting Order, together with the related relief.
19. The Petitioners’ business and assets were sufficiently exposed to the market in a commercially reasonable and fair marketing process in accordance with the SISP. Accordingly, the price to be paid under the Transaction Agreement represents the highest and best price that can be obtained in the current circumstances.
20. The Monitor’s legal counsel has reviewed the security that forms the credit bid, including:
 - (a) the Interim Lenders’ Charge;

- (b) the first ranking secured interest held by the BP Lenders under the NP/LT Credit Agreement; and
- (c) the first ranking secured interest held by Drake under the Drake Debt;

and confirmed that, subject to the standard and customary qualifications, assumptions and limitations, the security of the BP Lenders and Drake over the assets, property and undertakings is valid and enforceable. The Monitor has not opined on the priority of the security interests.

The Transaction Agreement and Reverse Vesting Order

- 21. The Petitioners and the BP Lenders are negotiating the Transaction Agreement, the current working draft as submitted by the Petitioners is attached to the Fourth Kravitz Affidavit as Exhibit "A", which reflects the increased consideration contemplated by the Amended Bid. The Transaction Agreement also reflects a shift to a Reverse Vesting Order transaction in light of recently identified information that leaves such structure as the only way to facilitate the sale of the ongoing business, complete the transactions and achieve the commercial terms contemplated in the original SHPA.
- 22. In particular, the Reverse Vesting Order is required because:
 - (a) The SHPA provided that substantially all assets of the "Compromised LT Entities" would be transferred to the Purchasers, with all but a limited number of specified assumed liabilities retained by the Compromised LT Entities. However, certain of the Compromised LT Entities hold "Electronic Filing Identification Numbers" ("**EFINs**"), which were issued by the U.S. Internal Revenue Service ("**IRS**"). The EFINs allow such entities to file tax returns on behalf of customers—the core business of Liberty Tax—and represent customers in connection with IRS investigations—the core business of Community Tax. The EFINs are non-transferrable. The process to obtain an EFIN can take between several months to an entire year.
 - (b) JTH Tax, LLC ("**JTH**"), which operates the franchise business of Liberty Tax and was a Compromised LT Entity under the SHPA, has a registered "Franchise Disclosure Document" ("**FDD**") in the U.S., which is currently invalid due to a lack of audited financial statements. JTH intends to have such audited financial

statements available by the end of this year with a view to bringing its FDD into compliance and resuming selling new franchises at such time, which is critical to the business. A registered FDD cannot be transferred. Accordingly, an asset purchaser would be required to prepare and register one of its own, a process that typically takes several months.

- (c) The Compromised LT Entities are party to several hundred business-critical contracts, a significant portion of which require consent to an assignment in an asset acquisition. Obtaining such consents in a timely manner is impracticable. These contracts relate to, among other business-critical matters, software licenses, real property leases, information technology and marketing services.
 - (d) JTH operates the payroll function for the bulk of the Petitioners' employees through a complex, non-transferable system developed by ADP specifically for the company's operations across all fifty states. Based on the Petitioners' recent experience with the acquisition of CTAX, developing a new payroll system, which would be required in an asset sale transaction, would take several months. This would jeopardize the ability of the Purchasers to administer payroll for several months post-closing.
23. The Stalking Horse Bid, which has been substantially increased in the Transaction Agreement, was subjected to a robust and thorough canvassing of the market pursuant to the SISP. The SISP was developed and undertaken by the Petitioners and the CRO, with the oversight of the Monitor, with the objective of identifying a transaction that would maximize the value of the Petitioners' assets or businesses for the benefit of all stakeholders. For the reasons set out above, no other offers were received that had a reasonable prospect of resulting in a Qualified Bid. The Transaction Agreement is the best executable transaction available.
24. Key commercial terms of the Transaction Agreement include the following:
- (a) A purchase price comprised of:
 - (i) A credit bid of \$196,590,000 of DIP and first-lien debt;
 - (ii) the Closing Cash Payment; and

- (iii) the assumption of the Assumed Liabilities, including the \$75 million LT Term Loan.

- (b) in accordance with Implementation Steps to be agreed to by the parties, the Purchasers (or their designee) will directly or indirectly acquire LT Holdco, LLC, LT Intermediate Holdco, LLC, SiempreTax+ LLC, JTH Tax, LLC, JTH Financial, LLC, JTH Properties 1632, LLC, JTH Tax Office Properties, LLC, Wefile LLC, Liberty Credit Repair, LLC, LTD Properties, LLC, 360 Accounting Solutions, LLC, Liberty Tax Holding Corporation, Liberty Tax Service Inc., JTH Court Plaza, LLC, LTS Software LLC, CTAX Acquisition LLC, Community Tax LLC, and Community Tax Puerto Rico LLC (the "**Acquired Entities**") in their entirety;

- (c) the obligations and liabilities of the Acquired Entities as of the Closing will consist only of the Assumed Liabilities;

- (d) all Excluded Contracts and Excluded Liabilities of the Acquired Entities which were not formed or incorporated under the laws of the United States (the "**Non-US Acquired Entities**") will be transferred to and vest absolutely and exclusively in Residual Co. 1;

- (e) all Excluded Contracts and Excluded Liabilities of the Acquired Entities which were formed or incorporated under the laws of the United States (the "**US Acquired Entities**") will be transferred to and vest absolutely and exclusively in Residual Co. 2; and

- (f) LoanMe will not be acquired.

Notice and Service

- 25. There are approximately 300 identified counterparties of material contracts, the majority of whom are located in the United States (the "**Material Contract Counterparties**").

- 26. There are also counterparties to the approximately 2,200 U.S. franchise agreements and approximately 251 Canadian franchise agreements (the "**Franchisee Counterparties**", and collectively with the Material Contract Counterparties, the "**Contract Counterparties**").

27. Almost all of the Contract Counterparties have been served with the materials for the initial filing of these CCAA proceedings (the "**Initial Service**"). 14 additional parties were identified after the commencement of these proceedings; those parties received service after the Initial Service. The Contract Counterparties were additionally served with a notice document that informed them of this application and directing them to the materials located on the Monitor's Website (the "**Materials Notice**").
28. The estimated cost to serve all of the Contract Counterparties with the application materials for this application exceeds \$245,000.

Releases

29. The Reverse Vesting Order contains releases applicable to certain parties (collectively, the "**Released Parties**"), including (a) the current and former employees, legal counsel, and advisors of the Acquired Entities; (b) the Monitor and its legal counsel; and (c) the DIP Lenders, the Purchasers and their respective affiliates; (d) the CRO, and each of their respective current and former directors, officers, employees, legal counsel and advisors.

Part 3: LEGAL BASIS

The Reverse Vesting Order

1. A reverse vesting order, or RVO, generally involves a series of steps whereby: (a) the purchaser becomes the sole shareholder of the debtor company; (b) the debtor company retains its assets, including key contracts and permits; and (c) the liabilities not assumed by the Purchasers are vested out and transferred, together with any excluded assets, to a newly incorporated entity.

*Arrangement relative a Blackrock Metals Inc., 2022 QCCS
2828 at para 85 [**Blackrock Metals**]; see also *Harte Gold (Re)*,
2022 ONSC 653 [**Harte Gold**] at para. 22.*

2. An RVO can be contrasted with a traditional vesting order which vests the assets of the debtor company in a purchaser free and clear of any encumbrances or claims, other than those expressly assumed by the purchaser as contemplated in section 36(4) of the CCAA.

CCAA, s. 36

3. CCAA Courts have cautioned that reverse vesting orders should not be the “norm” and should only be granted after careful consideration in exceptional circumstances. However, RVOs have been recognized in numerous instances as an appropriate method for a debtor to sell its business where the circumstances justify such a structure.

Blackrock Metals at paras 85, 86, 96 and 99, citing *Harte Gold; Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCA 1488. *Quest University (Re)*, 2022 BCSC 1883 [**“Quest University”**]

4. The jurisdictional basis to approve a transaction that is to be implemented through an RVO is anchored in section 11 of the CCAA, which grants the court discretionary power to make any order it thinks fit.

CCAA, s. 11. *Harte Gold* at paras 36-37.

5. CCAA Courts have also recognized that the factors set out in section 36(3) of the CCAA should guide the Court in evaluating an RVO.

CCAA, s. 36. *Blackrock Metals* at para 87; *Quest University* at para 37. *Harte Gold* at paras 36-37.

6. RVOs are generally appropriate in at least three circumstances: (a) where the debtor operates in a highly regulated environment in which its existing permits, licenses or other rights are difficult or impossible to assign to a purchaser; (b) where the debtor is party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and (c) where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.

Blackrock Metals at paras 86 and 96. *Harte Gold*, at para 71. *Quest University* at para 136 and para 142; *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354 (CanLII) at para 34 [**“Just Energy”**]

7. The Reverse Vesting Order is necessary and appropriate in this case as it is the only way to complete the transactions and achieve the commercial terms contemplated in the

original SHPA. The business of the Compromised LT Entities is the EFINs, which are non-transferrable, and the process to obtain an EFIN can take between several months to an entire year.

8. Additionally, JTH requires an FDD in order to be eligible to franchise, which is critical to its business. A registered FDD cannot be transferred and, accordingly, an asset purchaser would be required to prepare and register one of its own, which process typically takes several months. JTH also operates the payroll function for the bulk of the Petitioners' employees through a complex, non-transferable system developed by ADP specifically for the company's operations across all fifty states. Developing a new system, which would be required in an asset deal context, would take several months (i.e., payroll could not be administered for several months post-closing).
9. The Reverse Vesting Order is the only available transaction structure that would preserve the EFINs, FDD and ADP system, while addressing the practical difficulties of gaining consents to the assignment of hundreds of business-critical contracts, which are necessary the continued operation of the business as a going-concern.
10. The cancellation or redemption of the issued and outstanding equity interests of the Acquired Entities, and the implementation of any Implementation Steps in relation to the articles of the Acquired Entities, may be effected through an alteration to the notice of articles and articles of the Acquired Entities authorized by court order.

The Transaction is Fair and Reasonable

11. Where the factors supporting the use of the RVO structure are present, the Court must also be satisfied that the proposed transaction is fair and reasonable. The factors under subsection 36(3) of the CCAA, which apply where a debtor company seeks approval to sell its assets out of the ordinary course of business, also inform the fairness and reasonableness of a reverse vesting order.

CCAA, s. 36;

Blackrock Metals at paras 100-112.

12. Section 36(3) sets out the factors that courts are to consider in determining whether to approve a sale:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition in bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, s. 36(3).

13. These factors are not intended to be exhaustive, nor are they intended to be a formulaic checklist to be followed in every sale transaction under the CCAA.

Blackrock Metals at para 87, referring to section 36(3) of the CCAA.

14. The principles identified in *Royal Bank v. Soundair Corp.* ("**Soundair**") also inform the Court's analysis of the section 36 factors.

Just Energy at para 32, citing *Harte Gold*;
Royal Bank v. Soundair Corp. (1991), 4 OR (3d) 1 (C.A.) at para. 8-9.

15. In analyzing whether a transaction should be approved, taking into consideration section 36 of the CCAA and the *Soundair* factors, a court is to consider the transaction as a whole and decide "whether or not the sale is appropriate, fair and reasonable".

Veris Gold Corp. (Re), 2015 BCSC 1204, at para. 24.

16. The Petitioners submit that the following factors all favour granting the Reverse Vesting Order:

- (a) the Court and the Monitor approved of the SISP and the Monitor has overseen the process in accordance with the SISP;
 - (b) the secured creditors have been consulted and involved in this CCAA proceeding since before the Initial Order, and were specifically consulted on the SISP;
 - (c) after consideration of the interests of all stakeholders, the Petitioners, in accordance with the SISP and in their informed business judgment, determined that the Transaction Agreement offers the highest and best price;
 - (d) the Transaction Agreement will provide sufficient funds to pay the obligations secured by the charges granted in this CCAA proceeding in full; and
 - (e) overall, the Monitor is satisfied that the consideration provided for in the Transaction Agreement is reasonable and fair, taking into account the market value of the businesses being acquired and the other unique factors of these proceedings.
17. The Petitioners submit that the *Soundair* factors also support the conclusion that the SISP was conducted in an appropriate, fair and reasonable manner. There can be no suggestion that the Petitioners have acted improvidently.
18. The market has been thoroughly tested. No transaction emerged from the process that would have provided higher recovery to the Petitioners' subordinate secured creditors, let alone that would allow for recovery by unsecured creditors. This is a function of the value of the Petitioners' businesses, not the RVO structure. It would be the result regardless of whether the transaction is implemented through a traditional vesting order or an RVO. The use of the RVO structure, including the transfer of the excluded assets and liabilities to the ResidualCos, therefore does not create any incremental prejudice that would not exist in a vesting order structure.
19. The Petitioners therefore request that the Reverse Vesting Order be granted on the basis that it is fair, reasonable and consistent with the objectives of the CCAA.

Notice and Service

20. Almost all Contract Counterparties received the Initial Service at the commencement of these proceedings, and the remaining 14, having been identified after commencement, received service after the Initial Service. All Contract Counterparties, through the Materials Notice, were advised of this application and provided explanations of the relief sought. The Materials Notice directed the Contract Counterparties to the Monitor's Website, where all documents in these proceedings are available, provided contact information for counsel, an email address to request addition to the service list, and other materials. The Monitor and the servicing agent in the US have maintained service lists throughout these proceedings. None of the Contract Counterparties have asked to be added to the service list in Canada or the United States.
21. The Petitioners to date have incurred costs in excess of \$520,000 to effect service on parties in these proceedings, nearly double the original budget of \$300,000 given the number of stakeholders in Canada and the U.S. Further notice of these application materials to the hundreds of Contract Counterparties would cause the Petitioners to incur significant costs estimated at \$245,000, and would be an overall detriment to stakeholders without providing a corresponding benefit.
22. CCAA plans, traditional vesting orders, and reverse vesting orders are frequently approved by the court in a manner that is binding on all creditors, without requiring specific service to such creditors. The general notices and advertisements of the proceeding carried out by the Monitor are often viewed as sufficient in such circumstances to provide stakeholders with notice and an opportunity to object.
23. The Petitioners submit that, in these circumstances, the Petitioners' efforts to notify all parties potentially affected were fair and reasonable.
24. Any potential prejudice to the Contract Counterparties due to a lack of further notice is largely theoretical, given that the market has been fully canvassed without generating a transaction that could provide recovery for unsecured creditors. In any event, any such prejudice is outweighed by the benefits to all stakeholders if approval of the RVO can occur promptly. Employees retain their jobs. Supply relationships continue. While Contractual Counterparties may be precluded from relying upon an insolvency or change of control default to terminate a contract with an applicable Petitioner, they benefit from

the deleveraging of the balance sheet and the support of the new, solvent shareholder resulting from the RVO.

Releases

25. Section 11 of the CCAA grants this Court the jurisdiction to make any order that it considers appropriate in the circumstances, including granting releases not only of the CCAA debtors, but of third parties such as the Released Parties.

CCAA, s. 11.

26. Third party releases (i.e., releases in favour of parties other than the CCAA debtor company) have been granted in CCAA proceedings, including where there is no plan of compromise and arrangement. Such releases have been granted in the context of RVOs on a number of occasions. Courts have noted that:

...it has now become commonplace for third-party releases, in favour of parties to a restructuring, their professional advisors, as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction.

Blackrock Metals, at para. 128; *Re Green Relief Inc.*, 2020 ONSC 6837, at para. 23 [**“Green Relief”**]; *Just Energy*, at para 67.

27. The same test for granting third party releases in a CCAA plan applies to a release in a reverse vesting order. The Court must consider:
- (a) whether the parties to be released were necessary to the restructuring of the debtor;
 - (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it;
 - (c) whether the restructuring could succeed without the releases;
 - (d) whether the parties being released contributed to the restructuring; and
 - (e) whether the releases benefit the debtors as well as the creditors generally.

Blackrock Metals, at para. 130, citing *Harte Gold*, at paras. 78-86. See also *Green Relief*, at para. 27.

28. It is not necessary for each of these factors to apply in order for the proposed release to be granted.

Green Relief, at para. 28.

29. The releases in the Reverse Vesting Order are rationally connected to the restructuring and essential to its success. They are reasonable in scope and essential to the completion of the restructuring. The Released Parties have made significant and often critical contributions to these CCAA proceedings. Furthermore, the releases in the Reverse Vesting Order were a negotiated term of the Support Agreement.
30. The officers and employees of the Petitioners, in particular the CRO, have made substantial contributions to the continuation of the business of the Petitioners during these CCAA and Chapter 15 Proceedings. A release of these individuals, in such circumstances, should be granted. The proposed relief of the Monitor, its counsel, and of the other professional advisors is typical and it recognizes the contribution of these Released Parties to the restructuring.
31. Similarly, the Purchasers have made material contributions to the restructuring, including by acting as Stalking Horse Bidder in the SISP and as DIP Lender to provide financing necessary for the CCAA debtors to remain in business during the period necessary for the restructuring. The Petitioners could not have achieved a going-concern transaction without the substantial support of the Purchasers.
32. The releases provided in the Reverse Vesting Order explicitly do not release or discharge:
- (a) any claim that is not permitted to be released under section 5.1(2) of the CCAA; or
 - (b) any obligations of any of the Released Parties under the Transaction Agreement, the RSA, or any other related agreement.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Peter Kravitz, made July 25, 2023;
2. Affidavit #2 of Peter Kravitz, made September 18, 2023;
3. Affidavit #3 of Peter Kravitz, made October 10, 2023;

4. Affidavit #4 of Peter Kravitz, to be sworn;
5. First Report of the Monitor, dated August 2, 2023;
6. Second Report of the Monitor, dated September 18, 2023;
7. Third Report of the Monitor, dated October 11, 2023;
8. Fourth Report of the Monitor, to be filed; and
9. Any such further materials as counsel advises and this Honourable Court permits.

The applicants estimate that the application will take 3.5 hours.

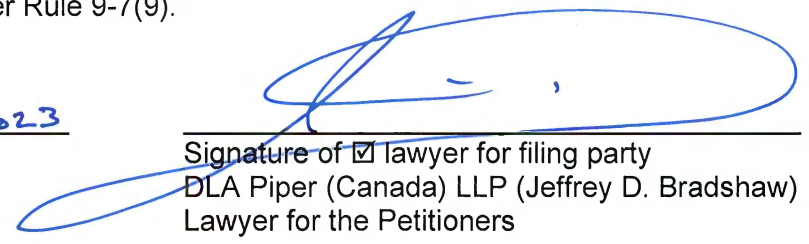
This matter is not within the jurisdiction of a master. Justice Fitzpatrick is seized of these proceedings. The date and time of this Application has been confirmed with Supreme Court Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

OCTOBER 24 / 2023
Dated


Signature of lawyer for filing party
DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)
Lawyer for the Petitioners

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1
of this notice of application

with the following variations and additional terms:

Date: _____ Signature of Judge Master

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

discovery: comply with demand for documents

discovery: production of additional documents

oral matters concerning document discovery

extend oral discovery

other matter concerning oral discovery

amend pleadings

add/change parties

summary judgment

summary trial

service

mediation

adjournments

proceedings at trial

case plan orders: amend

case plan orders: other

experts

none of the above

Schedule "A"

1. NextPoint Financial, Inc.

2. NPI Holdco LLC

Liberty Tax Entities

1. LT Holdco, LLC

2. LT Intermediate Holdco, LLC

3. SiempreTax+ LLC

4. JTH Tax LLC

5. Liberty Tax Holding Corporation

6. Liberty Tax Service, Inc.

7. JTH Financial, LLC

8. JTH Properties 1632, LLC

9. Liberty Credit Repair, LLC

10. Wefile LLC

11. JTH Tax Office Properties, LLC

12. LTS Software LLC

13. JTH Court Plaza, LLC

14. 360 Accounting Solutions, LLC

15. LTS Properties, LLC

Community Tax Entities

1. CTAX Acquisition LLC

2. Community Tax Puerto Rico LLC

3. Community Tax LLC

Loan Me Entities

1. NPLM Holdco LLC

2. MMS Servicing LLC

3. LoanMe, LLC

4. LoanMe Funding, LLC

5. LM Retention Holdings, LLC
6. LoanMe Stores LLC
7. LM BP Holdings, LLC
8. InsightsLogic LLC
9. LM 2020 CM I SPE, LLC

SCHEDULE "B"

List of Counsel Appearing

NAME OF COUNSEL	PARTY REPRESENTING

SCHEDULE "C"

Draft Order

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
NEXTPOINT FINANCIAL, INC. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

ORDER MADE AFTER APPLICATION
APPROVAL AND VESTING ORDER

BEFORE)
) THE HONOURABLE JUSTICE)
) FITZPATRICK) October 31, 2023
)
)

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, BC V6Z 2E1 on this date and on hearing Jeffrey D. Bradshaw and Samantha Arbor, and those other counsel listed on Schedule "B" hereto; AND UPON READING the material filed, including the first affidavit of Peter Kravitz sworn July 25, 2023, the fourth affidavit of Peter Kravitz sworn October ●, 2023 (the "**Kravitz Affidavit**"), and the Fourth Report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as monitor (the "**Monitor**") dated October ●, 2023; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), the British Columbia *Supreme*

Court Civil Rules, BC Reg 168/2009, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES that:

SERVICE AND DEFINITIONS

1. The time for service of the Notice of Application for this order and the supporting materials is hereby abridged such that this application is properly returnable today and the need for further service of the Application and supporting materials is hereby dispensed with.
2. Capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process approved by Order of this Honourable Court on July 25, 2023 (the "**SISP**"), the Second Amended and Restated Initial Order of this Court dated October 13, 2023 (the "**Initial Order**"), or the Transaction Agreement appended as Exhibit "A" to the Kravitz Affidavit (as may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "**Transaction Agreement**").

APPROVAL AND VESTING

3. The Transaction Agreement and the transactions contemplated therein (collectively, the "**Transactions**"), including the Implementation Steps, for the acquisition of LT Holdco, LLC, LT Intermediate Holdco, LLC, SiempreTax+ LLC, JTH Tax, LLC, JTH Financial, LLC, JTH Properties 1632, LLC, JTH Tax Office Properties, LLC, Wefile LLC, Liberty Credit Repair, LLC, LTD Properties, LLC, 360 Accounting Solutions, LLC, Liberty Tax Holding Corporation, Liberty Tax Service Inc., JTH Court Plaza, LLC, LTS Software LLC, CTAX Acquisition LLC, Community Tax LLC, and Community Tax Puerto Rico LLC (collectively, the "**Acquired Entities**") are hereby approved. The execution of the Transaction Agreement by NextPoint and the Acquired Entities (collectively, the "**NP Entities**") is hereby authorized and approved, with such minor amendments as the NP Entities and the

Purchaser may deem necessary, with the approval of the Monitor and subject to the terms of the Support Agreement, or as may be required by the Purchaser pursuant to the terms of the Transaction Agreement. The Petitioners are hereby authorized and directed to perform their obligations under the Transaction Agreement, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions.

4. This Order shall constitute the only authorization required by the Petitioners to proceed with the Transactions and no shareholder or other approval shall be required in connection therewith.
5. As of the Effective Time (as defined in the Monitor's Certificate):
 - (a) ♦ ("**Residual Co. 1**") and ♦ ("**Residual Co. 2**") shall be companies to which the CCAA applies; and
 - (b) Residual Co. 1 and Residual Co. 2 shall be added as Petitioners in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) a "Petitioner" or the "Petitioners" shall refer to and include Residual Co. 1 and Residual Co. 2, *mutatis mutandis*, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of Residual Co. 1 and Residual Co. 2, as applicable, including the Excluded Assets (the "**Residual Co. Property**"), and, for greater certainty, each of the Charges (excluding the Directors' Charge, which shall be terminated, released and discharged and be of no further force or effect, without the need for any further act of formality, as of the Effective Time) shall constitute charges on the Residual Co. Property.
6. Upon delivery of the Monitor's certificate (the "**Monitor's Certificate**") to the Purchaser, substantially in the form attached as Schedule "♦" hereto, the following

shall occur and shall be deemed to have occurred, subject to the terms of the Implementation Steps:

(a) As of the Effective Time:

- (i) with respect to the Petitioners not listed on Schedule "" of the Transaction Agreement (the "**Acquired Entities**") which were not formed or incorporated under the laws of the United States (the "**Non-US Acquired Entities**"), all of the Non-US Acquired Entities' right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 1;
- (ii) with respect to the Acquired Entities formed or incorporated under the laws of the United States (the "**US Acquired Entities**"), all of the US Acquired Entities' right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 2; and
- (iii) in each case, all applicable Claims and Encumbrances shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer;

(b) all Excluded Contracts and Excluded Liabilities (which, for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of the Non-US Acquired Entities and the US Acquired Entities (in each case, other than the Assumed Liabilities) shall be transferred to, assumed by and vest absolutely and exclusively in Residual Co. 1 and Residual Co. 2, respectively, such that all Excluded Contracts and Excluded Liabilities shall become obligations of Residual Co. 1 and Residual Co. 2, as applicable,

and shall no longer be obligations of the Acquired Entities, and the Acquired Entities and all of their remaining assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (collectively, the "**Retained Assets**") shall be and are hereby forever released and discharged from all Excluded Contracts and Excluded Liabilities, and all related Claims and Encumbrances, other than the permitted encumbrances, easements and restrictive covenants affecting or relating to the Retained Assets listed on Schedule "" of the Transaction Agreement (the "**Permitted Encumbrances**"), are hereby expunged and discharged as against the Retained Assets;

- (c) all right, title and interest in and to the Purchased Interests acquired by the Purchaser shall vest absolutely and exclusively in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (x) any encumbrances or charges created by the Initial Order, the SISP Order, or any other Order of this Court, and (y) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (British Columbia) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Interests are hereby expunged and discharged as against the Purchased Interests;
- (d) all equity interests of the Acquired Entities existing prior to the commencement of the Implementation Steps (for greater certainty, other than the Purchased Interests and any issued equity interests owned by any

other Acquired Entity or Acquired Entities), as well as all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as hereinafter defined) and are convertible or exchangeable for any securities of any of the Acquired Entities, or which require the issuance, sale or transfer by any NP Entity of any shares or other securities of any NP Entity, or which otherwise evidence a right to acquire the Purchased Interests and/or the share capital of any Acquired Entity or otherwise relate thereto, shall be deemed terminated and cancelled or redeemed as provided in the Implementation Steps, as applicable; and

(e) the Acquired Entities shall and shall be deemed to cease to be Petitioners in this CCAA, and the Acquired Entities shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order the provisions of which (as they related to the Acquired Entities) shall continue to apply in all respects.

7. The Monitor is to (a) provide a copy of the Monitor's Certificate to the parties to the Transaction Agreement; and (b) file with this Court a copy of the Monitor's Certificate forthwith after delivery thereof in connection with the Transactions as well as a copy of the final form of Transaction Agreement, all related schedules and the Implementation Steps.
8. The Monitor may rely on written notice from NextPoint and the Purchaser regarding the satisfaction or waiver of conditions to closing under the Transaction Agreement and shall have no liability with respect to delivery of the Monitor's Certificate.
9. For the purposes of determining the nature and priority of Claims, from and after the Effective Time, all Claims and Encumbrances released, expurged and discharged pursuant to paragraph 5, including as against the Acquired Entities, the Retained Assets and the Purchased Interests, shall attach to the Excluded Assets

with the same priority as they had immediately prior to the Transactions, as if the Transactions had not occurred.

10. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or Section 18(1)(o) of the *Personal Information Protection Act of British Columbia*, the Petitioners are hereby authorized, permitted and directed to, at the Effective Time, disclose and transfer to the Purchaser all human resources and payroll information in the Acquired Entities' records pertaining to past and current employees of the Acquired Entities. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Acquired Entity prior to the Effective Time.
11. At the Effective Time and without limiting the provisions of paragraph 5 hereof, the Purchaser and the Acquired Entities shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to, the Petitioners (provided, as it relates to the Purchaser and the Acquired Entities, such release shall not apply to (a) Taxes in respect of the business and operations conducted by the Acquired Entities after the Effective Time; or (b) Taxes expressly assumed as Assumed Liabilities pursuant to the Transaction Agreement), including, without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or the Acquired Entities (including its affiliates and any predecessor corporations) pursuant to section 160 of the *Income Tax Act* (Canada) (the "**Tax Act**"), or proposed section 160.01 of the Tax Act, including as a result of any future amendments or proposed amendments to such provisions or related provisions, or any provincial equivalent, in connection with the Petitioners.
12. Except to the extent expressly contemplated by the Transaction Agreement, all Continuing Contracts to which any of the Acquired Entities are a party upon delivery of the Monitor's Certificate will be and remain in full force and effect upon

and following delivery of the Monitor's Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the Effective Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any Petitioner);
 - (b) the insolvency of any Petitioner or the fact that the Petitioners sought or obtained relief under the CCAA;
 - (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Transaction Agreement, the Transactions or the provisions of this Order, or any other Order of this Court in these CCAA proceedings; or
 - (d) any transfer or assignment, or any change of control of an Acquired Entity arising from the implementation of the Transaction Agreement, the Transactions or the provisions of this Order.
13. For greater certainty, (a) nothing in paragraph 12 hereof shall waive, compromise or discharge any obligations of the Acquired Entities or the Purchaser in respect of any Assumed Liabilities; (b) the designation of any Claim as an Assumed Liability is without prejudice to the Acquired Entities' and the Purchaser's right to dispute the existence, validity or quantum of any such Assumed Liability; and (c) nothing in this Order or the Transaction Agreement shall affect or waive the Acquired Entities' or Purchaser's rights and defences, both legal and equitable,

with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liability.

14. From and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Petitioner then existing or previously committed by any Petitioner, or caused by any Petitioner, directly or indirectly, or noncompliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligations, expressed or implied, in any Continuing Contract, existing between such Person and any Acquired Entity directly or indirectly from the filing by the Petitioners under the CCAA and the implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 12 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a Continuing Contract shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to excuse the Purchaser or the Petitioners from performing their obligations under, or be a waiver of defaults by the Purchaser or the Petitioners under, the Transaction Agreement and the related agreements and documents, or affect the validity of the Implementation Steps.
15. From and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Purchaser or the Acquired Entities relating in any way to or in respect of any Excluded Assets, Excluded Contracts or Excluded Liabilities and any other claims, obligations and other matters which are waived, released, expunged or discharged pursuant to this Order; provided that, nothing herein shall affect the validity of the Implementation Steps.

16. From and after the Effective Time:

- (a) the nature of the Assumed Liabilities assumed by the Purchaser or retained by the Acquired Entities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;
- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co. 1 or Residual Co. 2, as applicable;
- (c) any Person that prior to the Effective Time had a valid right or claim against the Acquired Entities under or in respect of any Excluded Contract or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against the Acquired Entities but will have an equivalent Excluded Liability Claim against Residual Co. 1 or Residual Co. 2, as applicable, in respect of the Excluded Contract and Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residual Co. 1 or Residual Co. 2, as applicable; and
- (d) the Excluded Liability Claim of any Person against Residual Co. 1 or Residual Co. 2, as applicable, following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the applicable Acquired Entities prior to the Effective Time.

PRE-CLOSING REORGANIZATION

17. In completing the transactions contemplated in the Implementation Steps, the Petitioners be and are hereby authorized:

- (a) to execute and deliver any documents and assurances governing or giving effect to the Implementation Steps as the Petitioners and the Purchaser, in

their discretion, may deem to be reasonably necessary or advisable to conclude the Implementation Steps, including the execution of such deeds, contracts or documents, as may be contemplated in the Transaction Agreement and all such deeds, contracts or documents are hereby ratified, approved and confirmed; and

- (b) to take such steps as are, in the opinion of the Petitioners and the Purchaser, necessary or incidental to the implementation of the Implementation Steps.
18. The Petitioners be and are hereby permitted to execute and file notices of alteration, articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Implementation Steps and that such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective notwithstanding any requirement under federal or provincial law to obtain director or shareholder approval with respect to such actions or to deliver any statutory declarations that may otherwise be required under corporate law to effect the Implementation Steps.
19. This Order shall constitute the only authorization required by the Petitioners to proceed with the Implementation Steps and no director, shareholder or regulatory approval shall be required in connection with any of the steps contemplated pursuant to the Implementation Steps save for those authorizations contemplated in the Transaction Agreement.
20. The Registrar of Companies appointed pursuant to the British Columbia *Business Corporations Act* is hereby authorized and directed to accept and receive any articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Implementation Steps contemplated in the Transaction Agreement, filed by either the Petitioners, Residual Co. 1 or Residual Co. 2, as the case may be.

RELEASES

21. Effective as of the Effective Time, (a) the current and former directors, officers, employees, legal counsel and advisors of the Acquired Entities; (b) the Monitor and its legal counsel; (c) the CRO; and (d) the DIP Lenders, the Purchaser and their respective affiliates, and each of their respective current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released by the Releasing Parties (as hereinafter defined) and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Time (and, with respect to the current or former directors or officers of the Acquired Entities, on and after July 25, 2023), or undertaken or completed in connection with or pursuant to the terms of this Order, in respect of, relating to, or arising out of (x) the Petitioners, the business, operations, assets, property and affairs of the Petitioners wherever or however conducted or governed, the administration and/or management of the Petitioners, these CCAA proceedings and/or the U.S. Proceedings, or (y) the Transaction Agreement, the Support Agreement, any agreement, document, instrument, matter or transaction involving the Petitioners arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, subject to the excluded matters below, the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties.

22. Nothing in this paragraph or paragraph 21 shall waive, discharge, release, cancel or bar (A) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (B) any obligations of any of the Released Parties under or in connection with the Transaction Agreement, the Support Agreement and/or any agreement, document, instrument, matter or transaction involving the Petitioners arising in connection with or pursuant to any of the foregoing. **“Releasing Parties”** means any and all Persons (besides the Petitioners and their respective current and former affiliates), and their current and former affiliates’ current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles, managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisor board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.
23. Effective as of the Effective Time, the Released Parties shall be deemed to be forever irrevocably released by each of the Petitioners and their respective current and former affiliates, and discharged from, any and all Released Claims held by the Petitioners and such current and former affiliates as of the Effective Time, which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (a) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful

misconduct, or gross negligence; or (b) any obligations of any of the Released Parties under or in connection with the Transaction Agreement, the Support Agreement, and/or any agreement, document, instrument, matter or transaction involving the Petitioners arising in connection with or pursuant to any of the foregoing; provided further that, the releases set forth in this paragraph shall not include, nor limit or modify in any way, any claim (or any defenses) which any of the Petitioners may hold or be entitled to assert against any Released Party as of the Effective Time relating to any contracts, leases, agreements, licenses, bank accounts or banking relationships, accounts receivable, invoices, or other ordinary course obligations which are remaining in effect following the Effective Time.

24. Without affecting or limiting the releases set forth in paragraphs 21 through 23 hereof, effective as of the Effective Time, none of (a) the current and former directors, officers, employees, legal counsel and advisors of the Acquired Entities; (b) the Monitor and its legal counsel; (c) the CRO; and (d) the DIP Lenders, the Purchaser and their respective affiliates, and their respective current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively, the "**Exculpated Parties**"), shall have or incur, and each Exculpated Party is released and exculpated from, any Causes of Action (as hereinafter defined) against such Exculpated Party for any act or omission in respect of, relating to, or arising out of the Transaction Agreement, the Support Agreement and/or the consummation of the Transactions, these CCAA proceedings, the U.S. Proceedings, the formulation, preparation, dissemination, negotiation, filing or consummation of the Transaction Agreement, the Support Agreement and all related agreements and documents, any transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Transactions, the pursuit of approval and consummation of the Transactions or the recognition thereof in the United States, and/or the transfer of assets and liabilities pursuant to this Order, except for Causes of Action related to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence. "**Causes of Action**" means any action, claim, cross claim, third party claim, damage, judgment, cause of action,

controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise.

25. All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all claims or Causes of Actions released pursuant to this Order (including but not limited to the Released Claims), from (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties or Exculpated Parties; (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or Exculpated Parties or their respective property; (c) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties or Exculpated Parties; (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties or Exculpated Parties or their respective property; or (e) taking any actions to interfere with the consummation of the Transactions; and any such proceedings will be deemed to have no further effect against such parties and will be released, discharged or vacated without cost.

26. Without affecting or limiting the releases set forth in paragraphs 21 through 23 hereof, effective as of the Effective Time, each Consenting Party (as hereinafter defined) shall be deemed to have consented and agreed to paragraphs 21 through 26 hereof. "**Consenting Parties**" means any Person who is, at the Effective Time, a party to the Support Agreement.

27. Notwithstanding:

- (a) these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Petitioners, Residual Co. 1 or Residual Co. 2, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made by or in respect of any of the Petitioners or Residual Co. 1 or Residual Co. 2;

the Transaction Agreement and the Transactions (including without limitation the transfer and vesting of the Excluded Assets, the Excluded Contracts and the Excluded Liabilities in Residual Co., the transfer and vesting of the Purchased Interests in and to the Purchaser authorized herein or pursuant to the Transaction Agreement and the Implementation Steps) shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Petitioners and/or Residual Co. 1 and/or Residual Co. 2, as applicable, and shall not be void or voidable by creditors of the Petitioners or Residual Co., nor shall they constitute nor be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the CCAA, the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

28. Nothing in this Order, including the release of the Acquired Entities from the purview of the CCAA proceedings pursuant to paragraph 5(e) hereof and the addition of Residual Co. as a Petitioner in these CCAA proceedings, shall affect,

vary, derogate from, limit or amend, and FTI shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, this Order, any other Orders in these CCAA proceedings or otherwise, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Monitor, all of which are expressly continued and confirmed.

GENERAL

29. Having been advised of the provisions of Multilateral Instrument 61-101 "Protection of Minority Security Holders in Special Transactions" relating to the requirement for "minority" shareholder approval in certain circumstances, no meeting of shareholders or other holders of Equity Claims (as defined in the CCAA) in the Petitioners is required to be held in respect of the Transactions and accordingly, there is no requirement to send any disclosure document related to the Transactions to such holders.
30. Following the Effective Time, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances (other than the Permitted Encumbrances) as against the Purchased Interests, the Acquired Entities and the Retained Assets.
31. Following the Effective Time, the title of these proceedings shall be hereby changed by removing the current Petitioners that are not Excluded Entities and adding Residual Co. 1 and Residual Co. 2.
32. Endorsement of this order by counsels other than counsel for the Petitioners is hereby dispensed with.
33. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Petitioners and their 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 Petitioners

as may be necessary or desirable to give effect to this Order or to assist the
Petitioners and its agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT
TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY
CONSENT:

Signature of lawyer for the Petitioners
DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)

BY THE COURT

REGISTRAR

Schedule “◆” – Monitor’s Certificate

No. S-235288
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
NEXTPOINT FINANCIAL, INC. AND THOSE PARTIES LISTED ON SCHEDULE “A”

MONITOR’S CERTIFICATE

A. Pursuant to an Initial Order of the Honourable Madam Justice Fitzpatrick of the British Columbia Supreme Court (the “**Court**”) dated July 25, 2023, the Petitioners were granted protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-46, as amended (as amended, the “**CCAA**”), and FTI Consulting Canada Inc. was appointed as the monitor (the “**Monitor**”).

B. Pursuant to an Approval and Vesting Order of the Court dated ●, 2023 (the “**Order**”), the Court approved the transactions (collectively, the “**Transactions**”) contemplated by the Transaction Agreement (as amended in the form attached as Exhibit ● hereto, the “**Transaction Agreement**”) and ordered, *inter alia*, (a) that all of the Acquired Entities’ right, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities shall vest absolutely and exclusively in and to Residual Co.; and (b)

the vesting of all of the right, title and interest in and to the Purchased Interests absolutely and exclusively in and to the Purchaser, free and clear of any Encumbrances.

C. Capitalized terms used but not defined herein have the meanings ascribed to them in the Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Purchaser and NextPoint, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the Transaction Agreement.

2. This Monitor's Certificate was delivered by the Monitor at _____ on _____, 2020 (the "**Effective Time**").

FTI CONSULTING CANADA INC., in its capacity as Monitor of the Petitioners, and not in its personal capacity

By: _____

Name:

Title:

No. S-235288
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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
AND ARRANGEMENT OF NEXTPOINT FINANCIAL,
INC. AND THOSE PARTIES LISTED ON SCHEDULE
"A"

PETITIONERS

ORDER MADE AFTER APPLICATION

DLA Piper (Canada) LLP
Barristers & Solicitors
Suite 2700
1133 Melville Street
Vancouver, BC V6E 4E5

Tel. No. 604.687.9444
Fax No. 604.687.1612

File No.: 109926-00007

SAA/day

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PETITIONERS

NOTICE OF APPLICATION

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