

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:)	Chapter 15
)	
DYNAMIC TECHNOLOGIES GROUP)	Case No. 23-41416
INC., <i>et al.</i> , ¹)	
)	(Jointly Administered)
Debtors in a Foreign Proceeding.)	

DECLARATION OF ALLAN FRANCIS

I, Allan Francis, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge, information, and belief.

1. I am the Corporate Secretary and Vice-President of Corporate Affairs and Administration of Dynamic Technologies Group Inc. (“DTC” or the “Foreign Representative”), Corporate Secretary of Dynamic Attractions Ltd. (“DAL”), Dynamic Entertainment Group Ltd. (“DEG”) Dynamic Attractions Inc. (“DAI”), and Dynamic Structures Ltd. (“DSL,” and collectively with DTC, DAL, DEG, and DAI, the “Dynamic Group” or the “Debtors”).

2. I am over the age of 18 and intimately familiar with the Debtors and their reorganization proceeding (the “Canadian Proceeding”) currently pending in Court of the King’s Bench of Alberta, Judicial Centre Calgary (the “Canadian Court”).

3. All facts set forth in this Declaration are based upon (a) my personal knowledge; (b) my review of relevant documents and any and all documents prepared and/or filed in

¹ The Debtors in these Chapter 15 cases, along with the last four digits of the Debtors’ unique identifier are: DYNAMIC TECHNOLOGIES GROUP INC. (CA. BN 863055893); DYNAMIC ATTRACTIONS, INC. (EIN 98-1016243); DYNAMIC ATTRACTIONS LTD. (CA. BN 101632677); DYNAMIC ENTERTAINMENT GROUP LTD. (CA. BN 703755496 CR0001); DYNAMIC STRUCTURES LTD. (CA. BN 794519280 RC0001). Additional information regarding this case may be obtained on the Monitor’s website for this case at <http://cfcanada.fticonsulting.com/dynamicgroup/>.

connection with the Canadian Proceedings; (c) information supplied to me by the directors or professionals retained by the Debtors; or (d) based on my experience and knowledge of the Debtors' assets and financial condition.

4. I make this Declaration in support of the *Motion for Entry of an Order (I) Recognizing and Enforcing the CCAA Vesting Orders, (II) Approving the Sale of Substantially All of the Debtors' Interests Free and Clear of Liens, Claims and Encumbrances, and (III) Granting Related Relief* (the "Sale Motion").

5. On June 16, 2023, Debtors' counsel in the Canadian Court filed: Brief of the Applicants Reverse Vesting Order and Sale Approval and Vesting Order, (the "Brief"). Attached hereto as **Exhibit B** is a true, correct, and certified copy of the Brief.

6. This Brief was submitted in support of the Dynamic Group's application (the "Application") for approval of a transaction agreement (the "PEL Transaction Agreement") among DAI, DTGI, DEGL, DAL, and DSL, and Promising Expert Limited ("PEL"), 2523613 Alberta Ltd. ("Canadian Holdco"), 15102545 Canada Inc. ("Canadian Subco"), PEL Dynamic Acquisition (US) Corp. ("US Subco"; together with PEL, Canadian Holdco and Canadian Subco, the "Purchaser") to be implemented through the proposed approval and reverse vesting order (the "ARVO") and sale approval and vesting order (the "SAVO"), resulting in the subscription for the DTGI Share and a transfer of the remaining Purchased Shares by the Purchaser and the sale of the US Assets to US Subco (the "Proposed Transaction").

7. In relevant part, the Brief sets forth how the ARVO and SAVO are appropriate and should be granted. The Brief also explains how the Transaction, the ARVO, and the SAVO are fair and reasonable. Lastly, the Brief outlines how the sale and investment solicitation process was fair and transparent and fully complied with; particularly, Debtors' thorough canvas of the market

(through the actions of the Monitor in running the SISP), the benefits of the Transaction, and other relief sought by the Transaction.

8. In further support of the Application, I, as the Debtors' Corporate Secretary and Vice President, executed a Fourth Affidavit of Allen Francis (the "Fourth Francis Affidavit"). The Fourth Francis Affidavit outlines the necessity of the ARVO, outcome of the SISP, and the transaction terms.

9. Attached hereto as **Exhibit A** is a true, correct, and certified copy of the Fourth Affidavit of Allen Francis.

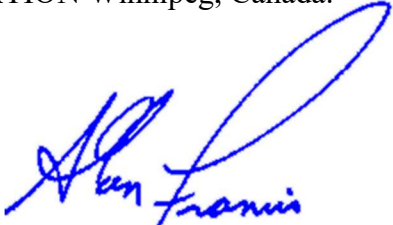
10. The Brief and the Affidavit establish how the Debtors with the assistance of its counsel, and the Monitor, worked diligently and advanced efforts to engage with potentially interested parties in an effort to maximize value for the benefit of creditors, and other stakeholders.

11. The parties have structured the Transaction, in part, as a share transaction in order to avoid costly, lengthy, and uncertain regulatory approvals for the intellectual property required to operate the businesses and to preserve tax attributes for the go-forward business. Any other transaction structure that does not enable a timely and efficient closing while achieving these restructuring objectives would undermine the future viability of the business. The Transaction Agreement is fair and reasonable under the circumstances, is the result of good faith, arms-length negotiations, and is in the best interests of the Debtors, their creditors, and other stakeholders.

12. For the reasons set out above, in the Brief, and Fourth Francis Affidavit, I urge the Court to approve the Sale Motion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 26th day of June in 2023, LOCATION Winnipeg, Canada.

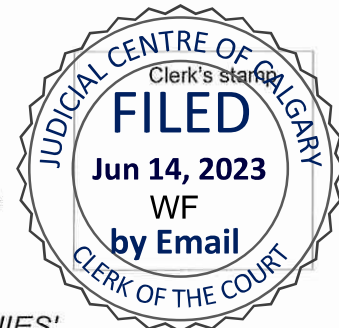


Allan Francis

EXHIBIT A

Fourth Affidavit of Allan Francis

ENTERED



COURT FILE NUMBER 2301-03179
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

COM
June 23, 2023

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DYNAMIC TECHNOLOGIES GROUP INC., DYNAMIC ATTRACTIONS LTD., DYNAMIC ENTERTAINMENT GROUP LTD., DYNAMIC STRUCTURES LTD. and DYNAMIC ATTRACTIONS INC.

DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MLT AIKINS LLP
Barristers and Solicitors
2100, 222 – 3rd Avenue S.W.
Calgary, Alberta T2P 0B4
Telephone: 403.693.5420
Fax No.: 403.508.4349
Attention: Ryan Zahara
Email: rzahara@mltaikins.com
File No.: 0119375.00031

**FOURTH AFFIDAVIT OF ALLAN FRANCIS
Sworn June 13, 2023**

I, Allan Francis, of the City of Winnipeg, in the Province Manitoba, SWEAR AND SAY THAT:

1. I am the Corporate Secretary and Vice-President Corporate Affairs and Administration of Dynamic Technologies Group Inc. ("DTG") and as such I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief, in which case I verily believe same to be true.
2. I am also the Corporate Secretary of Dynamic Attractions Ltd. ("DAL"), the Corporate Secretary and Treasurer of Dynamic Entertainment Group Ltd. ("DEGL"), the Corporate Secretary of Dynamic Attractions Inc. ("DAI"), the Corporate Secretary of Dynamic Structures Ltd. ("DSL"; together with DTG, DAL, DAI and DEGL, the "Dynamic Group" or the "Applicants").
3. All capitalized terms not otherwise defined herein shall have the same meaning as within my Affidavit sworn on March 8, 2023 (the "First Affidavit"), my Affidavit sworn on March 14, 2023

(the "**Second Affidavit**") and, my supplemental Affidavit sworn on March 16, 2023 (the "**Supplement to the Second Affidavit**"), my Third Affidavit (the "**Third Affidavit**") sworn on May 16, 2023, the supplement to the Third Affidavit sworn on June 2, 2023, (the "**Supplement to Third Affidavit**"; together with the First Affidavit, the Second Affidavit, the Supplement to the Second Affidavit, and the Third Affidavit, the "**Francis Affidavits**") or as given to them in the proposed form of the transaction agreement (the "**PEL Transaction Agreement**") among the Applicants and Promising Expert Limited ("**PEL**"), 2523613 Alberta Ltd. ("**Canadian Holdco**"), 15102545 Canada Inc. ("**Canadian Subco**"), PEL Dynamic Acquisition (US) Corp. ("**US Subco**"; together with PEL, Canadian Holdco, and Canadian Subco, the "**Purchaser**"). Attached hereto and marked as **Exhibit "A"** is a redacted copy of the proposed form of the PEL Transaction Agreement. The Vendors expect that certain portions of the schedule and non-substantive provisions may change between the date of swearing this Affidavit and the application for approval of the PEL Transaction Agreement.

4. Unless otherwise indicated, monetary references in this affidavit are references to Canadian dollars.

I. RELIEF SOUGHT

5. This affidavit is sworn in support of an application scheduled for June 23, 2023, for an Order granting, among other things, the following relief:

- (a) declaring service of the Application and supporting materials good and sufficient, and if necessary, abridging time for notice of the Application to the time actually given;
- (b) an Order (the "**ARVO**"), granting among other things the following relief:
 - (i) approving the proposed transaction (the "**Proposed Transaction**") as set out in the PEL Transaction Agreement involving, among other things, the purchase by the Purchaser of the Purchased Shares, representing all of the aggregate issued and outstanding common shares of DTGI, DAL, DSL, and DEGL and a purchase by US Subco of all of the US Assets owned by DAI;
 - (ii) upon implementation of the Proposed Transaction, cancelling all other shares of the Vendors and vesting certain remaining liabilities, contracts and remaining assets of the Vendors in numbered company to be



incorporated by DTGI ("**ResidualCo**"), and which is a wholly-owned subsidiary of DTGI, on the terms discussed further below;

- (iii) authorizing and approving the execution of the PEL Transaction Agreement by the Vendors;
- (iv) authorizing and directing the Vendors to perform their obligations under the PEL Transaction Agreement, including the reorganization steps (the "**Reorganization Steps**") (Schedule "J" to the PEL Transaction Agreement) and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Proposed Transaction;
- (v) ordering that upon delivery of the Monitor's certificate (the "**PEL Transaction Certificate**") to the Purchaser certifying that, among other things, it has received written confirmation from the Vendors and the Purchaser that all conditions to closing of the Transaction have been satisfied or waived by the parties to the PEL Transaction Agreement, the following shall be deemed to occur in the sequence set out in the Reorganization Steps and or as set forth in the ARVO, as applicable:
 - (1) all of the right, title and interest of the Vendors in their respective Excluded Assets shall be transferred to, assumed by and vested absolutely and exclusively in ResidualCo., and in each case, all Claims, Liabilities, and Encumbrances shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer;
 - (2) all Excluded Contracts and Excluded Liabilities of the Vendors shall be transferred to, assumed by and vested absolutely in ResidualCo and the Vendors shall be forever discharged and released from such Excluded Contracts and Excluded Liabilities and all related claims and encumbrances;
 - (3) all right title and interest to the Purchased Shares issued or transferred by the Vendors will vest absolutely in the Purchaser free and clear of all Claims, Liabilities and Encumbrances and all



Retained Liabilities will be retained as provided for under the PEL Transaction Agreement;

- (4) the US Assets will vest absolutely in the Purchaser free and clear of all Claims, Liabilities and Encumbrances;
 - (5) DTGI, DAL, DSL and DEGL will cease to be Applicants in the CCAA proceedings and will be released from the purview of the ARIO and all other Orders granted in the CCAA proceedings (excluding the ARVO); and
 - (6) ResidualCo will be added as an Applicant to these CCAA proceedings;
- (vi) From and after the Effective Time (as defined in the PEL Transaction Certificate), barring and enjoining all Persons from commencing or continuing any step or proceeding against the Purchaser or the Vendors relating to the Excluded Assets, the Excluded Contracts, the Excluded Liabilities, or any other claim, obligation or matter waived, released, or discharged pursuant to the ARVO;
 - (vii) Granting certain releases and exculpations with respect to the current and former directors, officers, employee, legal counsel and advisors of the Applicants and ResidualCo, the Monitor and its legal counsel, the Purchaser and its current and former directors, officers, employees, legal counsel and advisors;
- (c) Granting a sale approval and vesting order in respect of the US Assets of DAI to US Subco; and
 - (d) A restricted court access order sealing the Confidential Supplement to the Monitor's Third Report.

A. BACKGROUND AND UPDATE ON CCAA

6. As described in more detail in the First Affidavit, the Dynamic Group is in the business of designing, producing, engineering, and manufacturing, commissioning, warranting and providing

ongoing parts and services to theme park owners around the world. The Dynamic Group has produced award-winning and cutting-edge theme park ride systems and attraction developments.

7. The Dynamic Group has manufactured and engineered rides for major theme park owner/operators including, Universal Studios and Disney, over the past 20 years and, prior to filing for CCAA protection, had 100 employees worldwide. DTGI also uses these same turn-key services for special projects such as large optical telescope enclosures, specialty engineering, and custom steel fabrication services.

Necessity of ARVO

8. A significant asset of the Dynamic Group is its intellectual property that it has developed through the application of its engineering and design expertise to award-winning rides around the world.

9. The Dynamic Group has filed a number of patents to protect its intellectual property (the "**Intellectual Property**") in the proprietary rides it has developed using its leading engineering and technology expertise. Attached hereto and marked as **Exhibit "B"** is a copy of a spreadsheet outlining all of the Dynamic Group's intellectual property registrations.

10. The Intellectual Property of the Dynamic Group is registered in numerous countries, including, but not limited to, Canada, United Arab Emirates, Austria, Brazil, Switzerland, Chile, China, Germany, France, United Kingdom, Hong Kong, Indonesia, Italy, Korea, Macao, Malaysia, Qatar, Russia, Saudi Arabia, Singapore, Turkey, and the United States. The Intellectual Property and engineering know-how to design and build some of the most complex rides and theme park projects in the business is one of the most significant assets of the Dynamic Group.

11. If the Dynamic Group was to attempt to sell its Intellectual Property through a normal sale approval and vesting order this would necessitate a purchaser attempting to transfer all of the Intellectual Property registrations into its own name and this would incur significant costs (estimated to be at least \$75,000-\$100,000) and would take significant time to complete.

12. I am advised by MLT Aikins LLP that if the Dynamic Group proceeds with the Transaction through the ARVO no steps need to be taken by the Vendors or the Purchaser to transfer any of the Intellectual Property registrations.

13. Additionally, DAL and DSL hold a certification from the International Organization for Standardization ("**ISO**") for design, fabrication and assembly of dynamic complex structural and



mechanical steel products and amusement rides. Attached hereto and marked as **Exhibit "C"** is a copy of the certificate evidencing the ISO certification for DAL and DSL.

14. ISO certification is an important part of DAL and DSL's manufacturing business that would not be transferrable to a third-party purchaser who would ultimately have to go through the entire process to obtain ISO certification again. DAL and DSL invest tens of thousands of dollars annually in maintaining their ISO certification and has done so since their initial ISO certification in 1990. These costs include not only the fees for the annual audit, but also the labour put in each year by all departments in the company to review and update the standards prior to the annual audit to reflect the current work practices and any changes in methodology that have occurred since the previous audit. DAL and DSL's ISO certification is established against their own unique process and procedure documents and cannot be easily duplicated or purchased by any other parties.

15. DAL and DSL has maintained ISO certification since 1990 and have developed and continued improving the comprehensive processes and procedure documents that are the basis of their ISO certification. For DAL and DSL to maintain their ISO certification, they are audited annually against these procedures to validate they still comply with such procedures and to look at any changes that have occurred requiring modification. If a purchaser were required to establish a new ISO certification there would be a much more extensive and expensive audit process to evaluate those processes and procedure documents, as opposed to the much less onerous process of updating the same documentation DAL and DSL already have in place (which are subject on to the renewal and surveillance audits they undergo now).

16. The ISO 9001 standard is recognized globally as the leading certification of quality management systems and demonstrates to DAL and DSL's customers and suppliers that they are committed to delivering products of a consistent high quality level following defined and effective processes. Additionally, holding the ISO certification is important for marketing and differentiating DAL and DSL as a premium provider of ride system equipment and attractions.

17. I understand from MLT Aikins LLP that if the ARVO is obtained, the ISO certification will also continue in DAL and DSL and no further steps will be needed by the Purchaser to re-apply for this ISO certification.

18. The RVO Entities also have significant tax attributes estimated to total approximately \$88,650,661 (the "**Tax Attributes**"). It is expected that the Tax Attributes will provide substantial value to a restructured Dynamic Group going forward and provided the restructured entity can

continue its operations as a going-concern and set-off revenues against the Tax Attributes. The Tax Attributes will only have value to reduce taxes payable on future revenues of a restructured Dynamic Group entity and will have no value or a nominal value (i.e. \$0.01-\$0.07 per dollar of Tax Attribute) to any other parties outside of the Proposed Transaction. The most practical and efficient way for the stakeholders to realize on the benefits of the Tax Attributes is through the PEL Transaction Agreement and the ARVO.

B. OUTCOME OF SISP

19. The High Value Bid was the only substantive bid received for the purchase of the assets of the Applicants on a going-concern basis through the SISP conducted by the Monitor.

20. On May 5, 2023, the Monitor issued to the Applicants the notice required under the SISP indicating that it would be terminating the SISP in three days.

21. On May 9, 2023, the Applicants understand that the Monitor terminated the SISP and advised all other bidders that the Applicants and the Monitor were proceeding with the High Value Bid submitted by PEL.

22. The Applicants have worked since the termination of the SISP to negotiate definitive transaction documents with PEL and move forward the transaction set out in the High Value Bid.

23. The SISP fully canvassed the market for potential parties to invest in or purchase the assets of the Dynamic Group. The Purchaser was the only party that came forward with a going-concern transaction.

24. The SISP also built on the previous solicitation and investment processes that were conducted by the Dynamic Group prior to the CCAA filing, including a fulsome process run by Canaccord in October of 2019 and a follow-up process in 2021 to market its co-venture business that was run by Everleaf Capital Corp.

25. The SISP has resulted in only one viable transaction to preserve the business and operations of the Dynamic Group and thoroughly canvassed the market to try and find potential parties to invest in or purchase its business.

C. THE PROPOSED TRANSACTION

26. The Proposed Transaction is the outcome of the SISP and a result of the Dynamic Group's efforts, in conjunction with the Monitor, to identify a viable going concern strategy to exit the CCAA proceedings and US Proceedings in a manner which:

- (a) preserves the going concern value of the businesses for the benefit of stakeholders;
- (b) maintains the Vendors relations with suppliers and customers to the greatest extent possible; and
- (c) preserves the ongoing employment of most of the remaining 27 employees of the Applicants.

27. The Vendors agreed to terms in respect of the PEL Transaction Agreement with the Purchaser and ResidualCo pursuant to which, among other things, (a) the Purchaser would subscribe for the DTGI Purchased Share and receive a transfer of the remaining Purchased Shares in consideration for the payment of the Purchase Price; (b) all of the issued and outstanding shares of DTGI, DAL, DSL and DEGL (the "**RVO Entities**"), other than the Purchased Shares, would be cancelled for no consideration, resulting in the Purchaser becoming the sole shareholder of the RVO Entities, subject to the vesting of the Excluded Assets, Excluded Liabilities and Excluded Contracts in ResidualCo. ResidualCo would also effectively replace the RVO Entities as an applicant in these CCAA proceedings.

28. The Excluded Assets, Excluded Liabilities and Excluded Contracts are to be transferred to ResidualCo as part of the Proposed Transaction including the Purchase Price, which will be available for distribution to creditors pursuant to terms of the ARVO and the SAVO. The steps and transactions to implement the Proposed Transaction are set out in detail in the PEL Transaction Agreement and are discussed further below.

29. In determining to proceed with the Proposed Transaction, the Applicants, in consultation with its counsel and the Monitor, reviewed and considered a number of key considerations with respect to the offers submitted, including the consideration offered, timing, conditions, certainty of closing and impact on stakeholders. Consideration was also given by the Applicants to the efforts made during the SISP to source a going-concern transaction. The Proposed Transaction was also the only viable alternative submitted through the SISP for a going-concern transaction.



30. Following their review of the process, the Applicants, with the advice and assistance of its counsel and in consultation with the Monitor, determined that proceeding with the Proposed Transaction with the Purchaser is the best and only alternative available to the Applicants in the circumstances and is in the best interests of the Applicants and their stakeholders.

31. The Applicants and its counsel have given advance notice of the structure of the PEL Transaction Agreement to certain contractual counterparties and the DTGI shareholders in respect of the Proposed Transaction. Attached hereto and marked as **Exhibit “D”** are copies of notices sent to contractual counter-parties. Attached hereto and marked as **Exhibit “E”** is a copy of the DTGI press release to be issued in conjunction with the filing of the materials in support of the ARVO.

D. Proposed Transaction Terms and Implementation Steps

32. The detailed terms of the Proposed Transaction are set forth in the PEL Transaction Agreement. Certain key terms of the Proposed Transaction are summarized as follows:

Retained Assets – the Retained Assets to remain with the RVO Entities	collectively, all assets and Personal Property of the RVO Entities that are not designated as Excluded Assets by the Purchaser, prior to Closing, in accordance with Error! Reference source not found. , including, which for clarity includes (subject to Error! Reference source not found.) all of the right, title and interest of the RVO Entities in and to those assets and Personal Property set out in Error! Reference source not found. (Retained Assets) (as same may be modified by the Purchaser prior to the Closing Date)
Retained Liabilities	means: <ul style="list-style-type: none"> • the Liabilities under the Retained Contracts; • the Liabilities under the Assigned Contracts arising after the Closing Date; • the High Express Debt; and • those Liabilities set out in Error! Reference source not found. (Retained Liabilities), and any additional Liabilities which may be designated by the Purchaser to be Retained Liabilities on or prior to Closing, in accordance with Error! Reference source not found.
Retained Contracts	means, collectively, all Contracts of the RVO Entities that are set out as Retained Contracts in Error! Reference source not found. (Retained Contracts) or are designated as Retained Contracts by the Purchaser prior to Closing, in accordance with Error! Reference source not found.

Excluded Liabilities	<p>means all Encumbrances, Claims, Liabilities, obligations, undertakings, leases, agreements, debts, rights and entitlements 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 in equity and whether arising by subrogation, set-off, right of indemnification or otherwise) of or against any RVO Entity which are not designated by the Purchaser as Retained Liabilities prior to Closing, in accordance with Section 6.08. For greater certainty, without limiting the generality of the foregoing, the Excluded Liabilities include, but are not limited to, all:</p> <ul style="list-style-type: none">• Liabilities arising from or in connection with the conduct of the Business and the operation of the Retained Assets and/or US Assets prior to the Closing Date (other than those specifically included in the Retained Liabilities);• Liabilities of the Vendors arising from, in connection with or otherwise accruing before or after the Closing Date relating to or under the Excluded Contracts and Excluded Assets;• Liabilities of the Vendors for Taxes arising prior to the Filing Date;• Liabilities of the Vendors arising from the ETA, including any liability for GST;• Liabilities relating to any change of control provision that may arise in connection with the change of control contemplated by the Transaction and to which any Vendor may be bound as of the Closing Date;• Liabilities for or to Employees whose employment with the Vendors is terminated on or before Closing;• all Liabilities relating to or in connection with Priority Payables;• all Liabilities relating to or in connection with indebtedness owed by the Vendors to Export Development Canada;• all remaining amounts outstanding under the PEL Loan Agreement and/or the DIP Loan Agreement that are not satisfied through the payment of the Purchase Price; and• all other Liabilities, of any nature and kind, other than the Retained Liabilities.
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Excluded Assets	<ul style="list-style-type: none">• All interests of the RVO Entities in the Cash Payment other than the Cure Cost Amount.• All Excluded Contracts.• All of the issued and outstanding securities in the capital of Qiguang Dynamic Steel Structures Ltd. that are owned by DTGI.• All of the issued and outstanding securities in the capital of DAI that are owned by DTGI.• All of the issued and outstanding securities in the capital of ResidualCo that are owned by DTGI.• All of the issued and outstanding securities in the capital of Dynamic Attractions (HK) Ltd. that are owned by DTGI.• All assets and Personal Property owned by Dynamic Attractions (HK) Ltd.
Reorganization Steps	<ul style="list-style-type: none">• The Purchase Price shall be delivered by the Purchaser to the Monitor, for the benefit of the Vendors, and then immediately following Step 4, the Purchase Price shall be, and shall be deemed to be held by the Monitor for the benefit of ResidualCo (other than the Cure Cost Amount);• All Employees shall be terminated;• Any directors of the Vendors immediately prior to Closing Date shall be deemed to resign and other persons shall be deemed to be appointed as directors of the RVO Entities;• All of the RVO Entities right, title and interest in and to the Excluded Assets (including for certainty, the right to receive the Purchase Price (other than the Cure Cost Amount) shall vest absolutely and exclusively in the name of ResidualCo and all Claims, Liabilities and Encumbrances attached to the Excluded Assets shall continue to attach to the Excluded Assets with the same nature and priority as they had immediately prior to their transfer;• Concurrently with Step 4 above, all the Excluded Assets, Excluded Liabilities (including, for certainty, all Priority Payables), and Excluded Contracts shall be novated and



	<p>become obligations of ResidualCo and not Liabilities or obligations of the Companies;</p> <ul style="list-style-type: none">• Concurrently with Step 5 above, the Companies shall be forever released and discharged from all Excluded Liabilities, and all Encumbrances securing the Excluded Liabilities shall be forever released and discharged in respect of the Companies and the Retained Assets;• The US Assets shall be transferred to and vested in US Subco free and clear of all Claims, Liabilities and Encumbrances, except for the Permitted Encumbrances and the Retained Liabilities, but only as they pertain to the Assigned Contracts;• The Cure Cost Amount will be disbursed by the Monitor to the applicable counterparties and the Assigned Contracts shall be transferred to and assumed by US Subco;• Pursuant to Section 192 of the Business Corporations Act (Alberta), the Reverse Vesting Order shall constitute an "order for reorganization" that has the effect of: (a) lifting the effect of the Cease Trade Order for the limited purpose of completing the DTGI reorganization steps; (b) authorizing DTGI to issue one common share in the capital of DTGI to Canadian Subco in exchange for \$1.00 notwithstanding any constraints under Applicable Law; and (c) cancelling for no consideration, all of the issued and outstanding securities in the capital of DTGI other than the DTGI Share;• Pursuant to Section 191 of the Canada Business Corporations Act, the Reverse Vesting Order shall constitute a court order for "reorganization" that has the effect of cancelling for no consideration, all of the issued and outstanding securities in the capital of DSL held by Persons other than DTGI;• Following Step 11, Canadian Subco shall subscribe for, and DTGI shall issue the DTGI Share to Canadian Subco;• The Purchased Shares (other than the DTGI Share) shall be transferred to and vested in Canadian Subco free and clear of all Claims, Liabilities and Encumbrances, except for the Permitted Encumbrances and the Retained Liabilities;• The remaining Cash Payment shall be disbursed by the Monitor to pay the Priority Payables and any Wind-Down
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	<p>Cost Amount incurred in respect of or on behalf of ResidualCo;</p> <ul style="list-style-type: none"> • DTGI, DAL, DEGL, and DSL shall each cease to be a petitioner in the CCAA proceedings and shall be deemed released from the purview of all Orders granted in the CCAA Proceedings. ResidualCo shall replace DTGI, DAL, DEGL, and DSL as petitioner in the CCAA Proceedings and shall be subject to the terms of all Orders granted in the CCAA Proceedings; • The Monitor's powers shall be enhanced in respect of DAL and ResidualCo, including the authority to authorize and direct ResidualCo to make an assignment in bankruptcy and the Monitor shall be authorized to be appointed as trustee in bankruptcy of the estate of ResidualCo.; • DTGI shall cease to be a reporting issuer by order of the Alberta Securities Commission and the Ontario Securities Commission under the securities legislation of the jurisdictions in which DTGI is a reporting issuer and, concurrently with the order, a full revocation of the Cease Trade Order, upon completion of the issuance of the DTGI Share, provided that, a certified filed copy of the Reverse Vesting Order and the SAVO have been provided to the Alberta Securities Commission and the Ontario Securities Commission in advance of the issuance of the DTGI Share; • As and when the Purchaser sees fit, DTGI shall be continued into the jurisdiction of Canada and become a corporation governed by the Canada Business Corporations Act and the Reverse Vesting Order shall specifically authorize such Continuance; and • As and when the Purchaser sees fit, Canadian Subco will amalgamate with DTGI, DAL, DSL and DEGL and the Reverse Vesting Order shall specifically authorize such Amalgamation
<p>Key Closing Conditions</p>	<ul style="list-style-type: none"> • The ARVO and the SAVO shall be granted and all rights to appeal the ARVO and SAVO shall have expired or lapsed or been fully and finally dismissed; provided the Parties have agreed to waive the condition regarding appeal rights in respect of any appeal that are immaterial and/or without merit in the respective views of each Party, acting reasonably; • Between the date of the PEL Transaction Agreement and the Closing Time, there shall not have occurred and

	<p>be continuing any Material Adverse Change with respect to the Applicants; and</p> <ul style="list-style-type: none">• The Closing date shall occur on or before July 28, 2023 or such later as the parties may agree (the "Outside Date")
Termination Rights	If any condition is not satisfied or performed prior to the Outside Date, the Party for whose benefit the condition is inserted may elect to terminate the PEL Transaction Agreement

33. In summary, following the closing, Canadian Subco will own directly all of the issued and outstanding shares of RVO Entities, which in turn will be wholly-owned by Canadian Holdco, which in turn is wholly-owned by PEL. US Subco will own all of the US Assets of DAI. The RVO Entities, will continue to control and own their assets, other than the Excluded Assets, and will continue to be liable for the Retained Liabilities and to perform the obligations under the Retained Contracts, excluding the Excluded Liabilities. Almost all of first lien secured debt and priority payables (except for a minimal amount of the DIP Loan Amount) will be satisfied, and the Monitor will be receiving the Cash Payment amount in order to pay the Priority Payable Cash Amount, the Cure Cost Amount, and in order to fund the Wind-up Cost Amount.

34. The RVO Entities will exit the CCAA proceedings and US Proceedings for the benefit of all stakeholders without the burden of the Excluded Liabilities, Excluded Contracts and the Excluded Assets. ResidualCo will hold all Excluded Assets, Excluded Contracts, and Excluded Liabilities of RVO Entities and will become an applicant (with DAI) in the CCAA proceedings.

E. PROPOSED APPROVAL AND REVERSE VESTING ORDER

35. In addition to approving the PEL Transaction Agreement, including the specific Reorganization Steps discussed above and set forth in detail in the PEL Transaction Agreement, the proposed ARVO includes certain additional relief necessary to facilitate the implementation of the Proposed Transaction in an efficient and cost effective manner.

DTGI Reorganization

36. Among other things, the proposed ARVO and SAVO provides that the order shall constitute the only authorization required by the Applicants and ResidualCo to complete the Proposed Transaction, and that without limiting the generality of the foregoing, DTGI shall not be required



to comply with Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (“**MI 61-101**”), National Policy 11-207 – *Failure to File Cease Trade Orders* (“**NP 11-207**”) and/or the cease trade order issued by the Executive Director of the Alberta Securities Commission and evidences the decision of the regulator or securities regulatory authority in Ontario in respect of DTGI dated May 9, 2023 (the “**Cease Trade Order**”). Additionally, the ARVO, provides that DTGI shall cease to be a reporting issuer, shall be delisted by the TSXV and concurrently therewith, the Cease Trade Order shall be lifted as part of the Reorganization Steps.

37. If the Reorganization Steps are completed, DTGI will only have 1 issued and outstanding share and there will be fewer than 15 shareholders in DTGI in each province in Canada and fewer than 51 shareholders in total worldwide.

38. DTGI is a corporation existing under the *Business Corporations Act* (Alberta) and its principal regulator is the Alberta Securities Commission. DTGI is not an over-the-counter (the “**OTC**”) reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*.

39. DTGI failed to file annual audited financial statements, annual management’s discussion and analysis and certification of the annual filings for the year ended December 31, 2022 (the “**Filing Default**”). As a result of the Filing Default, DTGI became subject to cease trade orders in each of British Columbia, Alberta, and Ontario. Subsequent to the Filing Default, DTGI has not filed all of the continuous disclosure documents that it is required to file (the “**Ongoing Filing Default**”).

40. DTGI’s securities are not traded in Canada or another country on a marketplace or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

41. If DTGI were to make an application, it would be unable to rely on the “simplified procedure” under Section 8 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* because DTGI is in default of securities legislation. Other than the Filing Default and the Ongoing Filing Default, DTGI is not in default of securities legislation.

42. Given the facts and circumstances of these proceedings, including the fact that the proceeds available for distribution to creditors are insufficient to repay the secured lender in full and there are no funds available for distribution to subordinate secured creditors, unsecured creditors or equity holders, the Applicants believe it would be fair and appropriate for the Court to grant DTGI relief from the requirements under MI 61-101, NP 11-207, the Cease Trade Order, ceasing to be a reporting issuer, and any other authorizations, approvals or filing requirements that may be



applicable to the Proposed Transaction. In light of the circumstances of the Applicants and these CCAA proceedings, I do not believe that there would be any prejudice to any stakeholders as a result of the proposed relief sought in the ARVO.

43. DTGI's legal counsel reached out to the Alberta Securities Commission and provided background and certain other information and documents in respect of the Proposed Transaction and the relief contemplated under the proposed ARVO. Attached hereto and marked as **Exhibit "F"** is a copy of the June 10, 2023 correspondence from MLT Aikins LLP to the Alberta Securities Commission.

44. I have been advised by MLT Aikins LLP that: (i) the provisions of M1 61-101 and NP 11-207 may be triggered by the Proposed Transaction, and (ii) the CCAA provides that shareholders are not required to vote on the Proposed Transaction unless specifically ordered by the Court.

45. In addition, the proposed ARVO also provides that, concurrently with the implementation of the Proposed Transaction, ResidualCo shall be added as an applicant in these CCAA proceedings and the RVO Entities shall cease being applicants in the CCAA proceedings.

46. As part of the implementation of the Proposed Transaction, ResidualCo will assume all of the Excluded Liabilities, which substantially exceed \$5,000,000, and will be insolvent upon completion of the Reorganization Steps.

Releases

47. The proposed ARVO also includes a release (the "**Release**") in favour of the present and former directors, officers, employees, legal counsel, and advisors of the Applicants and ResidualCo, the Monitor and its legal counsel, and the Purchaser and its legal counsel, in each case in respect of claims relating to business and affairs of the Dynamic Group prior to the date of the Initial Order, the Proposed Transaction or matters completed pursuant to the terms of the ARVO and the SAVO. The Applicants are completing the Proposed Transaction for the benefit of their stakeholders with the assistance of such parties, and believes that the proposed release is customary, reasonable, fair and appropriate in the circumstances. It is also a condition of the PEL Transaction Agreement that the Release be obtained as part of the Proposed Transaction.

48. Given the exit of the Applicants from the CCAA proceedings and US Proceedings upon closing of the Proposed Transaction, the Applicants are seeking an Order from the CCAA Court expanding and enhancing the powers of the Monitor granted in the ARIO and other Orders to

authorize and empower the Monitor to take all actions necessary to, among other things, wind down and/or dissolve and/or bankrupt ResidualCo and administer the Excluded Assets, Excluded Liabilities and ResidualCo and DAI as the remaining applicants in the CCAA proceedings.

Conditions to Closing of the Transaction

49. The respective obligations of the Applicants and the Purchaser to consummate the Proposed Transaction are subject to the satisfaction or waiver of, or compliance with, the following conditions at or prior to the Closing Time:

- (a) the ARVO and SAVO shall have been granted by the CCAA Court on or by June 23, 2023;
- (b) the Vendors shall have completed the Reorganization Steps that are required to be completed to the satisfaction of the parties;
- (c) customary releases acceptable to the Vendors and the Purchaser shall have been obtained in the ARVO for (i) the current and former directors and officers of the Vendors, ResidualCo and the Vendors' Solicitors; (ii) the Monitor and the Monitor's Solicitors; and (iii) the Purchaser and the Purchaser's Solicitors;
- (d) as of the Closing Date, the ARVO and the SAVO shall have been issued and shall each be a Final Order,
- (e) as of the Closing Date, US Recognition of Vesting Order, Initial Recognition Order and the Recognition Order shall have been issued and entered by the US Bankruptcy Court each be a Final Order;
- (f) immediately prior to the Closing, the Cash Payment shall be sufficient to pay all amounts to be paid by the Monitor pursuant to the PEL Transaction Agreement and the ARVO; and
- (g) DTGI shall have initiated the process to be delisted from the TSX Venture Exchange.

50. It is a condition of the Proposed Transaction that it be implemented by means of a reverse vesting order granted by the CCAA Court and recognized by the US Bankruptcy Court. The



necessity for the ARVO and the impracticality of implementing the Proposed Transaction through another structure is clear.

51. The Proposed Transaction is required to be implemented pursuant to the ARVO as such structure is necessary to preserve the going concern value of the Applicants business for the benefit of stakeholders. Importantly, the significant value associated with the Intellectual Property rights of the Applicants to the various rides it produces and manufactures will be preserved and no additional and significant steps will need to be taken to have such Intellectual Property rights transferred to another entity.

52. Additionally, DAL and DAI have received ISO certification in respect of its manufacturing, engineering and processing capabilities which would not be transferred through a standard approval and vesting order to a third-party purchaser. There is also significant value to the stakeholders in the Tax Attributes to be preserved through the ARVO structure under the Proposed Transaction.

53. For these reasons, amongst others, the only feasible structure for the Proposed Transaction is through a sale of the equity of the RVO Entities by means of the ARVO and a sale of the assets of DAI to US Subco by means of the SAVO. Any other structure risks exposing the Applicants and their stakeholders to risks of transferring the Intellectual Property registrations to a new entity, losing the ISO certifications obtained by certain of the Applicants, and potentially foregoing the benefit of the significant Tax Attributes.

54. Accordingly, it is imperative to the Proposed Transaction, and a condition of the PEL Transaction Agreement, that the Proposed Transaction be completed by means of the ARVO and the SAVO.

55. In light of the foregoing, the Applicants are of the view that completion of the Transaction by means of a traditional asset sale vesting order will be extremely difficult, lengthy, costly and unlikely to preserve the going concern value of the Applicants. In any event, it is a requirement of the Proposed Transaction that it be implemented by means of the ARVO.

56. First, in a traditional asset sale scenario, the complexities associated with transferring the Intellectual Property registrations would be significant and there may be some risk some are not transferred on a timely basis. Secondly, even if the Applicants had an extended period of time for transfer of the Intellectual Property rights to occur, such a process would be uncertain in some of the jurisdictions where registrations are currently pending.



57. The Proposed Transaction is the only viable and executable transaction available to the Applicants following a thorough and transparent marketing process under the SISP. It is imperative that the Applicants conclude these costly CCAA proceedings and US Proceedings for the benefit of all stakeholders. The Proposed Transaction is the only viable transaction available to the Applicants to effect such result and, in turn, the granting of the ARVO is, in the view of the Applicants, necessary and appropriate.

Releases

58. The ARVO includes the following releases and protections in favour of the Applicant and various other interested parties that have made material contributions to the successful restructuring of the Applicants, including, the following: (a) the current and former directors, officers, employees, legal counsel and advisors of the Applicants and ResidualCo (or any of them); (b) the Monitor and its legal counsel; (c) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (in such capacities the "**Released Parties**") will be released by all Persons (defined in the ARVO as the "**Releasing Parties**") from the Released Claims (as defined in the ARVO).

59. The requested releases are necessary to bring finality to the CCAA proceedings, facilitate the release of the Court-ordered charges, including the D&O Charge, without requiring a reserve for potential claims against the Released Parties, which would prevent the Proposed Transaction from closing, and to protect the Released Parties from any and all claims, demands, causes of action, dealings, occurrences (or other matters including within the definition of "Released Claims" in the ARVO) which existed or took place prior to the Effective Time, or which were undertaken or completed in connection with or pursuant to the terms of the ARVO in respect of, relating to, or arising out of: (a) the Applicants, the business, operations, assets, property and affairs of the Applicants, the administration and/or management of the Applicants or the CCAA and/or the Chapter 15 Cases (as defined in the ARVO); or (b) the PEL Transaction Agreement, any agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Proposed Transaction (subject to the exclusions described below, collectively the "**Released Claims**").

60. The releases provided in the ARVO explicitly do not release or discharge:

- (a) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA; or



- (b) any obligation of any of the Released Parties under or in connection with the PEL Transaction Agreement, the Closing Documents, and/or any agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing.

61. The Released Parties have made significant and often critical contributions to the development and implementation of the Applicants restructuring in these CCAA proceedings. The Released Parties have worked diligently towards ensuring the implementation of the restructuring of the Applicants financial obligations and operations for the benefit of stakeholders. If the ARVO is granted and the Proposed Transaction is consummated, the RVO Entities and their businesses will continue, and their going concern value will be preserved for the benefit of stakeholders.

62. In addition to the Releases discussed above, the ARVO also includes various exculpations which the Applicants will request be approved by the US Bankruptcy Court in the US Recognition of Vesting Order. The ARVO provides that all of: (a) the current and former directors, officers, employees, legal counsel and advisors of the Applicants and ResidualCo (or any of them); (b) the Monitor and its legal counsel; and (c) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively the "**Exculpated Parties**") are released and exculpated from any cause of action for any act or omission in respect of, relating to, or arising out of: (a) the PEL Transaction Agreement, (b) the consummation of the Proposed Transaction, (c) the CCAA and US Proceedings, (d) the formulation, preparation, dissemination, negotiation, filing, or consummation of the PEL Transaction 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 Proposed Transaction, (f) the pursuit of approval and consummation of the Proposed Transaction or the recognition thereof in the US Bankruptcy Court, and/or (g) the transfer of assets and liabilities pursuant to the ARVO.

63. The ARVO expressly does not release the Exculpated Parties from any Causes of Action (as defined in the ARVO) related to any act or omission that is determined in a final order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence.

F. CONCLUSION

64. The Applicants, with the assistance of its counsel and the Monitor, worked diligently and advanced efforts to engage with potentially interested parties in an effort to maximize value for the benefit of the Applicants stakeholders.

65. The Proposed Transaction provides for a Purchase Price that was materially higher than any of the other offers received through the SISP. The Applicants believe that the Proposed Transaction is the best available transaction in the circumstances, and that the proposed structure, and implementation method of the Proposed Transaction are reasonable, appropriate and intended to facilitate the completion of the Proposed Transaction in the most efficient and cost effective manner.

66. In light of the foregoing, the Applicants are of the view that completion of the Proposed Transaction by means of a traditional asset sale vesting order will be extremely difficult, lengthy, costly and unlikely to preserve the going concern value of the Applicants. Further, the longer that the Applicants remain in CCAA proceedings and the US Proceedings the more difficult it will be to continue their operations as a going concern upon completing the Proposed Transaction. Externally, market conditions in the ride industry continue to be difficult and larger projects are only now being brought back online after the impact of the COVID-19 pandemic on theme-parks worldwide. The Applicants critical business relationships with their employees, customers, suppliers and subcontractors continue to be strained. It is imperative that the Applicants protect against further deterioration in their business-critical relationships and going concern value and conclude these ongoing proceedings as soon as reasonably possible.

67. Based on available funds (including the expected proceeds from the Proposed Transaction), it is not expected that the subordinate secured creditors or unsecured creditors will receive any funds. Under the circumstances, it is only PEL that has a remaining economic interest in the Applicants and will benefit from the implementation of the Proposed Transaction. The Applicants do not believe that there will be any prejudice to stakeholders as a result of the Proposed Transaction or its structure.

68. For the reasons set out above, the Applicants respectfully request that this Court grant the relief sought in the proposed form of ARVO and the SAVO.



69. I swear this Affidavit in support of an Application for the relief set out in paragraph 5 above, including, but not limited to, the approval of PEL Transaction Agreement and the granting of the ARVO and the SAVO, including all relief contained in those proposed forms of Order.

SWORN BEFORE ME at Calgary, Alberta,
this 13th day of June 2023.

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Commissioner of Oaths in and for the Province
of Alberta

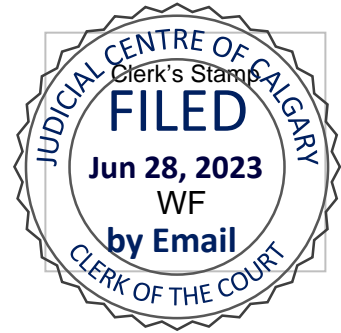
ALLAN FRANCIS

This affidavit was sworn using video technology as Allan Francis was not physically present before the Commissioner, but was linked with the Commissioner utilizing video technology.

EXHIBIT B

Brief of the Applicants (Reverse Vesting Order and Sale Approval and Vesting Order)

ENTERED



COURT FILE NUMBER 2301-03179
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

COM

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DYNAMIC TECHNOLOGIES GROUP INC., DYNAMIC ATTRACTIONS LTD., DYNAMIC ENTERTAINMENT GROUP LTD., DYNAMIC STRUCTURES LTD. and DYNAMIC ATTRACTIONS INC.

APPLICANTS DYNAMIC TECHNOLOGIES GROUP INC., DYNAMIC ATTRACTIONS LTD., DYNAMIC ENTERTAINMENT GROUP LTD., DYNAMIC STRUCTURES LTD. and DYNAMIC ATTRACTIONS INC.

DOCUMENT **BRIEF OF THE APPLICANTS (REVERSE VESTING ORDER and SALE APPROVAL AND VESTING ORDER)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MLT AIKINS LLP
Barristers and Solicitors
2100, 222 3rd Avenue S.W.
Calgary, Alberta T2P 0B4
Phone: 403.693.5420/4347
Fax: 403.508.4349
Attention: Ryan Zahara/Catrina Webster
File: 0119375.00031

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I. INTRODUCTION

1. On March 9, 2023, the Applicants, Dynamic Technologies Group Inc. (“**DTGI**”), Dynamic Attractions Ltd. (“**DAL**”), Dynamic Entertainment Group Ltd. (“**DEGL**”), Dynamic Structures Ltd. (“**DSL**”) and Dynamic Attractions Inc. (“**DAI**”, together with DTGI, DAL, DEGL, and DSL, the “**Companies**” or the “**Dynamic Group**”) were granted protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”)¹ by the Honourable Justice J.A. Fagnan pursuant to an initial order, as subsequently amended (the “**Initial Order**”) appointing FTI Consulting Canada Inc. to act as Monitor (the “**Monitor**”). On May 22, 2023, the U.S. Bankruptcy Court granted an Order granting joint administration under Chapter 15 of the United States *Bankruptcy Code*.
2. This Brief is submitted in support of the Dynamic Group’s application (the “**Application**”) for approval of a transaction agreement (the “**PEL Transaction Agreement**”) among DAI, DTGI, DEGL, DAL, and DSL (collectively, the “**Vendors**”), and Promising Expert Limited (“**PEL**”), 2523613 Alberta Ltd. (“**Canadian Holdco**”), 15102545 Canada Inc. (“**Canadian Subco**”), PEL Dynamic Acquisition (US) Corp. (“**US Subco**”; together with PEL, Canadian Holdco and Canadian Subco, the “**Purchaser**”) to be implemented through the proposed draft approval and reverse vesting order (the “**ARVO**”) and sale approval and vesting order (the “**SAVO**”), resulting in the subscription for the DTGI Share and a transfer of the remaining Purchased Shares by the Purchaser and the sale of the US Assets to US Subco (the “**Proposed Transaction**”).
3. The Proposed Transaction is the only substantive bid received for the purchase of the assets of the Applicants on a going-concern basis that has emerged following the completion of a sale and investment solicitation process (“**SISP**”) approved by the Honourable Justice D.R. Mah on March 16, 2023 (the “**SISP Order**”).²
4. The Proposed Transaction contemplates that upon implementation of the Proposed Transaction, all shares of DTGI, DAL, DSL and DEGL (collectively, the “**RVO Entities**”) will be cancelled and certain remaining liabilities, contracts and remaining assets of the

¹ *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”), at **TAB A**.

² Affidavit of Allan Francis, sworn on June 13, 2023 (the “**Fourth Affidavit**”), at para. 19.

RVO Entities will be vested in a numbered company to be incorporated by DTGI (“**ResidualCo**”), which is a wholly-owned subsidiary of DTGI.³

5. There is clear evidence that the ARVO structure is necessary and appropriate to preserve the going-concern value of the Dynamic Group’s business in these circumstances. The granting of the ARVO is a condition of the Proposed Transaction, which is justified to preserve the business and operations of the Dynamic Group and the significant value of the Applicants’ intellectual property rights.
6. The Proposed Transaction should therefore be approved and the ARVO and SAVO should be granted, together with the related relief including the releases, on the basis that the Proposed Transaction represents the best possible outcome for all stakeholders.

II. BACKGROUND

7. The facts supporting this Application are set out in the Affidavit of Allan Francis, sworn on June 13, 2023 (the “**Fourth Affidavit**”), and the prior Affidavits of Allan Francis sworn on March 8, 2023, March 14, 2023, March 16, 2023, May 16, 2023, and June 1, 2023.
8. The Dynamic Group is in the business of designing, producing, engineering, manufacturing, commissioning, warranting and providing ongoing parts and services to theme park owners around the world. The Dynamic Group has produced award-winning and cutting-edge theme park ride systems and attraction developments. The Dynamic Group has manufactured and engineered rides for major theme park owner/operators, including Universal Studios and Disney, over the past 20 years and has 100 employees worldwide. DTGI also uses these same turn-key services for special projects such as large optical telescope enclosures, specialty engineering, and custom steel fabrication services.⁴
9. The Applicants filing for protection under the CCAA was precipitated by a significant downturn in people attending theme parks during the global COVID-19 crisis, similar to other businesses supporting the theme park industry. Many theme parks were forced to shut down due to COVID-19 restrictions, and when they re-opened, they operated at

³ Fourth Affidavit, at para. 5(b).

⁴ Affidavit of Allan Francis, sworn on March 8, 2023 (the “**First Affidavit**”), at para. 25.

reduced capacity. This loss of revenue by the theme parks had a flow-down effect on ride suppliers like the Dynamic Group. Many ride projects previously awarded by theme parks were cancelled and almost two years of theme park ride capital expenditure planning time was lost, limiting the number of large ride projects available for bidding. It also had a detrimental effect on many contracts that required extensive fabrication, commissioning and retrofitting on-site as these trades were hampered by COVID-19 restrictions and quarantining of site personnel and countless mobilization, demobilization and remobilization orders, none of the significant costs of which were covered in the pre COVID-19, lump sum contract prices committed to by DAL.⁵

10. In addition, the Dynamic Group's current and recent historical financial performance has been negatively impacted by multiple "first-generation" projects which are defined as projects that were first of a kind in nature, posing significant technical and financial risks to the Dynamic Group to overcome these risks and deliver the projects successfully from a commercial standpoint. Overcoming these risks has been costly and has resulted in negative financial performance and significant liquidity constraints.⁶
11. On March 16, 2023, following the granting of the Initial Order on March 9, 2023, Justice D.R. Mah granted an Order extending the stay of proceedings respecting the Applicants to May 26, 2023 and further granted the SISP Order.
12. On May 26, 2023, Justice B.B. Johnston granted an Order extending the stay of proceedings respecting the Applicants to July 28, 2023.
13. Pursuant to the SISP Order, on May 5, 2023, the Monitor issued to the Applicants the notice required under the SISP indicating that it would be terminating the SISP in three days.⁷
14. On May 9, 2023, the Monitor terminated the SISP and advised all other bidders that the Applicants and the Monitor were proceeding with the Transaction submitted by PEL.⁸

⁵ First Affidavit, at para. 28.

⁶ First Affidavit, at para. 103.

⁷ Fourth Affidavit, at para. 20.

⁸ Fourth Affidavit, at para. 21.

15. The Applicants have worked since the termination of the SISP to negotiate definitive transaction documents with PEL and move forward the transaction set out in the PEL Transaction Agreement.⁹
16. The SISP has resulted in only one viable transaction to preserve the business and operations of the Dynamic Group as a going-concern. The SISP thoroughly canvassed the market to try and find potential parties to invest in or purchase the Dynamic Group's business.¹⁰ The Applicants now seek this Court's approval of the Proposed Transaction, together with certain other ancillary relief.

III. ISSUE

17. The issue to be determined on this motion is whether the Proposed Transaction should be approved and the ARVO and SAVO granted, together with the releases and other ancillary relief sought.

IV. LAW AND ARGUMENT

A. The ARVO and SAVO are Appropriate and Should be Granted

18. The Court has the jurisdiction to authorize the implementation of reverse protection transactions similar to the proposed structure of the Proposed Transaction under section 11 the CCAA, which gives the Court broad powers to make any order it thinks appropriate in the circumstances.¹¹ Many Courts have also referred to the jurisdiction of the Court under section 36 of the CCAA, which contemplates court approval for the sale of the debtor company's assets out of the ordinary course of business. Courts agree that the factors set out in section 36(3) of the CCAA should guide the Court in evaluating a reverse vesting order.¹²
19. In approving a reverse vesting order, the Quebec Superior Court held that sections 11 and 36 should be interpreted broadly and in accordance with the policy and remedial objectives of the CCAA, as well as the wide discretionary power vested in the presiding

⁹ Fourth Affidavit, at para. 22.

¹⁰ Fourth Affidavit, at para. 25.

¹¹ CCAA, section 11, at **TAB A**.

¹² CCAA, section 36, at **TAB A**; *Arrangement relatif à Black Rock Metals Inc.*, 2022 QCCS 2828 ("**Black Rock Metals**"), at para. 87, at **TAB B**; *Quest University (Re)*, 2022 BCSC 1883, ("**Quest University**"), at para. 27, at **TAB C**; *Harte Gold (Re)*, 2022 ONSC 653 ("**Harte Gold**"), at paras. 36-37, at **TAB D**.

Justice.¹³ Similarly, the Court in *Quest University (Re)* stated that such relief must be appropriate in the circumstances and all stakeholders must be treated as fairly and reasonably as the circumstances permit.¹⁴

20. Reverse vesting orders are generally appropriate in at least three types of circumstances: (a) where the debtor operates in a highly-regulated environment in which its existing permits, licences 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.¹⁵
21. Courts, including those in Alberta, have previously authorized purchase transactions where the assets and liabilities not assumed by the purchaser were either transferred into a “newco” or to a debtor whose operations were not continued by the purchaser:
 - a. *Arrangement relatif à Black Rock Metals Inc.*;¹⁶
 - b. *Quest University (Re)*;¹⁷
 - c. *Harte Gold (Re)*, 2022 ONSC 653;¹⁸
 - d. *Plasco Energy Group Inc.*, Order granted on July 17, 2015 (ONSC);¹⁹
 - e. *Stornoway Diamonds Inc.*, Order granted on October 7, 2019 (QCCS);²⁰
 - f. *Wayland Group Corp.*, Order granted on April 21, 2020 (ONSC);²¹

¹³ *Blackrock Metals*, at para. 88, at **TAB B**, citing *Nemaska: Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCS 3218, only available in French.

¹⁴ *Quest University*, at para. 157, at **TAB C**, citing *Century Services Ltd. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70.

¹⁵ *Blackrock Metals*, at paras. 114-116, at **TAB B**; *Harte Gold*, at para. 71, at **TAB D**; *Quest University*, at para. 136, at **TAB C**, citing *Re Comark Holdings Inc et al*, [2020] (Ont SCJ [Commercial List]) at para. 142, and *JMB Crushing Systems Inc. (Re)* 2020 ABQB 763.

¹⁶ *Black Rock Metals*, at **TAB B**.

¹⁷ *Quest University*, at **TAB C**.

¹⁸ *Harte Gold*, at **TAB D**.

¹⁹ *Plasco Energy Group Inc.*, Order granted on July 17, 2015 (ONSC), at **TAB E**.

²⁰ *Stornoway Diamonds Inc.*, Order granted on October 7, 2019 (QCCS), at **TAB F**.

- g. *Beleave Inc.*, Order granted September 18, 2020 (ONSC);²²
 - h. *JMB Crushing Systems Inc.*, Order granted March 31, 2021 (ABQB);²³
 - i. *Nemaska Lithium Inc.*, Order granted October 15, 2020 (ONSC);²⁴
 - j. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital*;²⁵
 - k. *Southern Pacific Resource Corp. et al*, Order granted on May 13, 2022 (ABQB);²⁶
 - l. *Enterra Feed Corporation, et al*, Order granted on March 2, 2023 (ABKB);²⁷
 - m. *Bellatrix Exploration Ltd.*, Order granted June 22, 2021 (ABQB).²⁸
22. The ARVO is necessary in this case to preserve the going-concern value of the businesses for the benefit of stakeholders, maintain the Vendors' relations with suppliers and customers to the greatest extent possible, and preserve the ongoing employment of most of the remaining employees of the Applicants.²⁹
23. The Applicants also hold a number of patents and registrations to protect their intellectual property (collectively, the "**Intellectual Property**") in the ride systems they have developed using leading engineering and technology expertise, which are filed in registries in Canada and around the world.³⁰ The Intellectual Property and engineering know-how to design and build some of the most complex rides and theme park projects in the world is one of the Dynamic Group's most significant assets.³¹ The ARVO preserves the significant value associated with the Intellectual Property and ensures no additional and major steps need to be taken to transfer such Intellectual Property rights to another entity.

²¹ *Wayland Group Corp.*, Order granted on April 21, 2020 (ONSC), at **TAB G**.

²² *Beleave Inc.*, Order granted September 18, 2020 (ONSC), at **TAB H**.

²³ *JMB Crushing Systems Inc.*, Order granted March 31, 2021 (ABQB), at **TAB I**.

²⁴ *Nemaska Lithium Inc.*, Order granted October 15, 2020 (ONSC), at **TAB J**.

²⁵ *Just Energy Group Inc. et. al. v. Morgan Stanley Capital*, 2022 ONSC 6354 ("**Just Energy**"), at **TAB K**.

²⁶ *Southern Pacific Resource Corp. et al*, Order granted on May 13, 2022 (ABQB), at **TAB L**.

²⁷ *Enterra Feed Corporation, et al* ("**Enterra**"), Order granted on March 2, 2023 (ABKB), at **TAB M**.

²⁸ *Bellatrix Exploration Ltd.* ("**Bellatrix**"), Order granted June 22, 2021 (ABQB), at **TAB N**.

²⁹ Fourth Affidavit, at para. 26.

³⁰ Fourth Affidavit, at para. 9 and Exhibit "B".

³¹ Fourth Affidavit, at para. 10.

24. Transferring the various Intellectual Property registrations would be a complex process involving a certain amount of risk that some transfers would not be effected on a timely basis. By way of anecdote, the wait time to register a trademark at Canada's trademark office is approximately two years. Further, even if the Applicants had an extended period of time to transfer the Intellectual Property, such a process would be uncertain.
25. In addition, DAL and DSL have received certification by the International Organization for Standardization (the "**ISO Certificates**") for design, fabrication and assembly of dynamic complex dynamic structural and mechanical steel products and amusement rides.³² The ISO Certificates are recognized globally as the leading certification of quality management systems and have substantial value in marketing DAL and DSL as a premium provider of ride system equipment and attractions.³³
26. The ISO Certificates are crucial to DAL and DSL's manufacturing business and cannot be transferred to a third-party purchaser, who would ultimately have to go through a substantial vetting and audit process to obtain its own ISO Certification. DAL and DSL invest tens of thousands of dollars annually to maintain their ISO Certificates, and have done so since their initial certification in 1990.³⁴
27. Finally, the RVO Entities have unique tax attributes, estimated to total approximately \$88,650,661.00 (the "**Tax Attributes**"). The parties expect the Tax Attributes will provide significant value to a restructured Dynamic Group going forward. The most practical and efficient way for the stakeholders to realize on the value of the Tax Attributes is through the PEL Transaction Agreement and the ARVO, which preserves the Tax Attributes and makes them available to the Purchaser.³⁵
28. The Intellectual Property, the ISO Certificate and the Tax Attributes provide significant value to the Purchaser but are not easily transferred or cannot be transferred to a third-party purchaser through a standard approval and vesting order. As a result, the only feasible structure for the Proposed Transaction is a sale of the equity of the RVO Entities by means of the RVO and a sale of the US Assets by means of the SAVO. Any other

³² Fourth Affidavit, at para. 13 and Exhibit "C".

³³ Fourth Affidavit, at para. 16.

³⁴ Fourth Affidavit, at para. 14.

³⁵ Fourth Affidavit, at para. 18.

structure risks exposing the Applicants and their shareholders to the risk of losing the value of their Intellectual Property, the ISO Certificates and the Tax Attributes

29. The Applicants are also seeking approval of a sale approval and vesting order (the “**SAVO**”) respecting the sale and assignment of the US Assets and Assigned Contracts from DAI to the US Subco, free and clear of all Claims, Liabilities and Encumbrances, except for the Permitted Encumbrances and Retained Liabilities (as those terms are defined in the PEL Transaction Agreement) (the “**DAI Transaction**”). The SAVO largely follows the Alberta Template Approval and Vesting Order to effect the DAI Transaction.
30. The DAI Transaction is a key piece of the Proposed Transaction as it ensures the transfer of, among other things, DAI’s active contracts, accounts receivables, books and records, inventory, equipment and intellectual property to the US Subco.³⁶ DAI’s shares will not be cancelled and it is currently exclusively owned by DTGI (if and until the PEL Transaction Agreement closes, at which point in time DAI will be owned by ResidualCo).
31. Further to the reasons set out below, the Applicants submit that in addition to the ARVO, the SAVO should also be approved as part of the larger Proposed Transaction.

B. The Transaction, the ARVO, and the SAVO are Fair and Reasonable

32. Where the circumstances supporting the use of the ARVO structure are present, the Court must also be satisfied that the Proposed Transaction is fair and reasonable.³⁷
33. In making this determination, CCAA Courts have referred to the factors set out under section 36 of the CCAA. In particular, the relevant factors include: (a) whether the process leading to the proposed transaction is reasonable in the circumstances; (b) whether the Monitor approved the process leading to the transaction; (c) whether the Monitor has filed a report stating its opinion that the transaction would be more beneficial to creditors than a sale or disposition in a bankruptcy; (d) the extent to which the creditors were consulted; (d) the effects of the proposed transaction on the creditors and other interested parties; and (f)

³⁶ Fourth Affidavit, at Exhibit “A”, Schedule “F”, page 0057.

³⁷ *Blackrock Metals*, at paras. 110-112, at **TAB B**; *Quest University*, at paras. 157, 174-177, at **TAB C**; *Harte Gold*, at paras. 40-69, at **TAB D**.

whether the consideration to be received for the assets is fair and reasonable, taking into account their market value.³⁸

34. The section 36(3) factors are, on their face, not intended to be exhaustive. Nor are they intended to be a formulaic checklist that must be followed in every sale transaction under the CCAA.³⁹ Specifically, there is no requirement for the Monitor or the Company to provide a liquidation analysis for the debtor company in order for a sale under section 36 to be approved.
35. Additionally, as with an order under section 36 of the CCAA for the sale of assets through a traditional vesting order, the Court should consider the principles set out in *Soundair* – namely, whether sufficient efforts to get the best price have been made and the parties have acted providently; the efficacy and integrity of the process followed; the interests of the parties; and whether any unfairness resulted from the process.⁴⁰
36. In finding that the ARVO is key to the completion of the Proposed Transaction, the Monitor considered the following:
 - a. whether a reverse vesting order concept was necessary as set out in the proposed ARVO;
 - b. whether the ARVO structure provided an economic result at least as favourable as another viable alternative;
 - c. whether key stakeholder(s) were worse off under the ARVO structure that they would have been under another viable structure; and
 - d. is the consideration paid for the Applicants' business reflective of the importance and value of the intangible assets being preserved under the ARVO structure?⁴¹

³⁸ *Blackrock Metals*, at para. 87, referring to section 36(3) of the CCAA, at **TAB B**; *Harte Gold*, at para. 37, at **TAB D**; *Clearbeach and Forbes (Re)*, 2021 ONSC 5564 (“**Clearbeach**”) at paras. 24-25, at **TAB O**; *Green Relief (Re)*, 2020 ONSC 6837 (“**Green Relief**”) at para. 5, at **TAB P**.

³⁹ *White Birch Paper Holding Co. (Re)*, 2010 QCCS 4915, at para. 48, at **TAB Q**.

⁴⁰ *Blackrock Metals*, at para. 95, at **TAB B**, citing *Harte Gold*, and *Royal Bank v. Soundair Corp.* 1991 CanLII 2727 (Ont. CA); *Clearbeach*, at para. 25, at **TAB O**; *Green Relief*, at para. 6, at **TAB P**.

⁴¹ The Monitor's Third Report, dated June 15, 2023 (the “**Third Report**”), at para. 31.

37. The Monitor found that the ARVO is demonstrably necessary in this case as it is critical to the completion of the Proposed Transaction and allows for the Intellectual Property to be conveyed without the additional costs and time associated with transferring the registration of the Intellectual Property in multiple countries. Further, the ARVO preserves the Applicants' ISO Certification, which is non-transferable and would require a newly formed entity to complete the entire certification process again which would negate the significant annual costs DAL and DSL have incurred to maintain this certification since 1990 as well as taking significantly more time and expense to obtain if starting the audit process from the beginning. The Tax Attributes provide significantly higher value in the ARVO structure given the ability to apply the Tax Attributes against future operational revenues whereas a new entity or third party purchaser would likely only ascribe nominal value to them.⁴²
38. The Proposed Transaction also represents the highest and best recovery available to the Applicants' stakeholders in the circumstances. Additionally, the Proposed Transaction was the only viable alternative to effect a going-concern transaction and is a requirement of the Purchaser.⁴³
39. The Monitor was also not aware of any stakeholder that would be worse off under the PEL Transaction Agreement as opposed to another viable transaction structure. Further, none of the other bids received by the Monitor would have been sufficient to repay the PEL first-priority secured debt making PEL the fulcrum creditor and key stakeholder in these proceedings. No other subordinate creditors will receive a return and therefore no creditors would be worse off because of the ARVO structure.⁴⁴

(i) The SISP Was Fair and Transparent and was Complied With

40. The SISP was developed by the Dynamic Group in consultation with the Monitor, under the Monitor's supervision, and in compliance with the SISP Order.
41. The SISP was launched on March 16, 2023.⁴⁵

⁴² Third Report, at para. 32.

⁴³ Third Report, at para. 33.

⁴⁴ Third Report, at para. 34.

⁴⁵ Third Report, at para. 14(a).

42. Between March 21 and March 27, 2023, the Monitor placed notices in the Globe and Mail, National Edition and Global Newswire, sent targeted emails to approximately 225 parties and posted a copy of a letter summarizing the opportunity on the Monitor's website.⁴⁶
43. The Phase 1 Bid Deadline was April 28, 2023, at which time the Monitor received 4 non-binding LOIs, which included a bid presented by PEL.⁴⁷
44. The Monitor determined that the PEL bid met the requirements of a High Value LOI (as defined in the SISP) and terminated the SISP on May 9, 2023.⁴⁸
45. The SISP was thorough, far-reaching and provided sufficient time and opportunity for interested parties to be involved and carry out the necessary due diligence required to form a view on the opportunity and ultimately submit a bid. The Monitor made significant solicitation efforts including by contacting third parties who were identified as strategic partners/buyers, private equity investors, or other parties who were contacted during the sales processes completed by the Applicants prior to these CCAA Proceedings. Additionally, the SISP was also extensively advertised by the Applicants.⁴⁹
46. The process was conducted in an open and transparent manner. The PEL bid met the requirements of the High Value LOI set forth in the SISP and, if approved, would allow the Applicants to move forward with their restructuring efforts in an expedited manner, particularly in light of their cash constraints.⁵⁰

(ii) The Market Has Been Thoroughly Canvassed

47. The Proposed Transaction is the culmination of a broad-based and efficient sales process (that was built on two previous processes completed in 2019 and 2021 by the Applicants) and the market has been thoroughly canvassed.

⁴⁶ Third Report, at para. 14(b).

⁴⁷ Third Report, at para. 14(c).

⁴⁸ Third Report, at para. 14(d).

⁴⁹ Third Report, at para. 15.

⁵⁰ Third Report, at para. 16.

48. The SISP fully canvassed the market for potential parties to invest in or purchase the assets of the Dynamic Group. The Purchaser was the only party that came forward with a going-concern transaction.⁵¹
49. The SISP also built on the previous solicitation and investment processes that were conducted by the Dynamic Group prior to the CCAA filing, including a fulsome process run by Canaccord in October of 2019 and a follow-up process in 2021 to market its co-venture business that was run by Everleaf Capital Corp.⁵²

(iii) Benefits of the Transaction

50. The Proposed Transaction is the only viable option for a purchase of the applicants on a going-concern basis. It represents the highest and best value for the Dynamic Group and their stakeholders.⁵³ The Proposed Transaction has numerous tangible benefits, including, but not limited to:
- a. preserving the going-concern value of the business for the benefit of stakeholders;
 - b. maintaining the Vendors' relations with suppliers and customers to the greatest extent possible; and
 - c. preserves the ongoing employment of most of the remaining 27 employees of the Applicants.⁵⁴
51. The market testing under the SISP resulted in the Proposed Transaction, which represents the maximum value available in this proceeding. If there were any other transaction available in the market that could provide a higher purchase price and therefore higher recoveries for the creditors of the Dynamic Group than is provided under the Proposed Transaction, there has been more than enough opportunity for such a superior transaction to emerge.

⁵¹ Fourth Affidavit, at para. 23.

⁵² Fourth Affidavit, at para. 24.

⁵³ Fourth Affidavit, at para. 25.

⁵⁴ Fourth Affidavit, at para. 26.

52. Given the facts and circumstances of these proceedings, including the fact that the proceeds available for distribution to creditors are insufficient to repay the secured lender in full and there are no funds available for distribution to subordinate secured creditors, unsecured creditors or equity holders, the Proposed Transaction is the only viable alternative and maximizes value for the stakeholders who have an economic interest in the Dynamic Group. Even if the Proposed Transaction were implemented through a traditional vesting order, the Dynamic Group's unsecured creditors would not receive any recoveries.⁵⁵
53. As set out in *Blackrock Metals*, in considering an ARVO it should be considered whether unsecured creditors would be in a worse position with an ARVO than they would under a traditional asset sale.⁵⁶ In approving an ARVO, the Court held:

It is true that the RVO will result in the claim of unsecured creditors being transferred to ResidualCo, an empty shell where all unassumed liabilities will be transferred. This transfer simply reflects the fact that the BlackRock's value, as tested in the market through the SISP and for many years prior to the current restructuring, is not high enough to generate value for these unsecured creditors.⁵⁷

54. If the Proposed Transaction were implemented through a traditional vesting order, the Applicants' unsecured creditors would recover only to the extent that the amount of the purchase price exceeded the value of all secured claims. It has been demonstrated in these proceedings that such value is not available in the market. There is no other viable option that would produce a different result, nor is there any basis on which the Purchaser can be compelled to pay more, let alone to specifically provide for such recoveries.
55. As a result, there is no unfairness in the fact that the claims of unsecured creditors will be transferred to the ResidualCo, which will have no material assets from which to satisfy those claims.

⁵⁵ Fourth Affidavit, at para. 42.

⁵⁶ *Blackrock Metals*, at para. 120, at **TAB B**.

⁵⁷ *Blackrock Metals*, at para. 109, at **TAB B**.

C. Other Relief is Appropriate

(i) Cancellation and Issuance of Shares

56. The Proposed Transaction provides for DTGI and DSL to file articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the steps necessary for reorganization.
57. Section 191(2) of the *Canada Business Corporations Act* (the “**CBCA**”) provides that, where a corporation is subject to an order under section 191(1), its articles may be amended by such order to effect any change that might lawfully be made under section 173.⁵⁸ Section 173 permits the articles of the corporation to be amended to “add, change or remove any rights, privileges, restrictions and conditions ... in respect of all or any of its shares”.⁵⁹ Additionally, subsection 176(1)(b) of the CBCA expressly refers to effecting (among other things) a cancellation of “all or part of the shares of a class”.⁶⁰ Both of these provisions have been held to permit the Court to approve the cancellation of outstanding shares as part of a corporate reorganization that gives effect to a CCAA restructuring transaction.⁶¹
58. Section 192 of the Alberta *Business Corporations Act* further provides that if a Court makes an order for reorganization, the Court may also “authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms of those debt obligations.”⁶²
59. There are two conditions for a reorganization under section 192 of the Alberta *Business Corporations Act* to be approved by the Court: (i) that the corporation be “subject to an order for reorganization”, and (ii) that the proposed amendments be authorized by section

⁵⁸ *Canada Business Corporations Act*, RSC 1985, c C-44 (the “**CBCA**”) at section 191(2), at **TAB R**.

⁵⁹ CBCA, section 173(1)(g),(n), and (o), at **TAB R**.

⁶⁰ CBCA, section 176(1)(b), at **TAB R**.

⁶¹ *Harte Gold*, at para. 62, at **Tab D**; *Blackrock Metals*, at para. 122, at **TAB B**; *Laidlaw (Re)*, 2003 CarswellOnt 787 (SCJ) at para. 9, at **TAB S**.

⁶² *Business Corporations Act* (Alberta), RSA 2000, c B-9 at section 192(1), at **TAB T**.

173 of the Alberta *Business Corporations Act*. In the circumstances both conditions are met.⁶³

60. As contemplated by section 192(1) of the Alberta *Business Corporations Act*, where an order is made under an “Act of the Legislature that affects the rights among the corporation, its shareholders and creditors”, such order constitutes an “order for reorganization” under the Alberta *Business Corporations Act*, thereby authorizing the Court to approve the issuance of debt obligations and entitling the corporation to amend its articles to affect the reorganization.⁶⁴
61. If a corporation is subject to an order for reorganization its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 173 of the Alberta *Business Corporations Act*, which includes the cancellation of shares.⁶⁵
62. Given the foregoing, the Receiver submits that this Court has the jurisdiction to authorize the transactions contemplated in the Reorganization Steps.

(ii) Expanded Monitor Powers

63. The Dynamic Group seeks an order expanding the powers of the Monitor to, among other things, take all necessary steps respecting DAI and ResidualCo in the within proceedings including the authority to authorize and direct ResidualCo to make an assignment in bankruptcy and the Monitor shall be authorized to be appointed as trustee in bankruptcy of the estate of ResidualCo.
64. This relief is intended to facilitate the ARVO structure. Similar relief has been granted in other ARVO cases.⁶⁶

⁶³ *Raymor Industries Inc., Re*, 2010 QCCS 376, at paras. 49-53, at **TAB U**.

⁶⁴ *Business Corporations Act* (Alberta), RSA 2000, c B-9, section 192(1), at **TAB T**.

⁶⁵ *Business Corporations Act* (Alberta), RSA 2000, c B-9, section 173, at **TAB T**.

⁶⁶ *Quest University*, Expanded Monitor Powers Order, at para. 3, at **TAB C**; *Harte Gold*, at paras. 91-93, at **TAB D**.

(iii) The Reorganization Steps Should be Approved

65. The Applicants are seeking approval of the Reorganization Steps. Since it is contemplated that certain steps will be completed prior to the exit of the Dynamic Group from these proceedings.

(iv) The Releases Should be Granted

66. The ARVO contains typical broad releases applicable to the Applicants as well as certain other third parties, including the current and former directors, officers, employees, legal counsel and advisors of the Applicants and ResidualCo, the Monitor and its legal counsel, PEL, Canadian Holdco, Canadian Subco and US Subco, and their current and former directors, officers, employees, legal counsel and advisors (collectively, the “**Released Parties**”).

67. The CCAA expressly contemplates that claims against the directors and officers of a debtor company can be compromised and released in a plan, subject to certain exceptions.⁶⁷ The same should apply where a CCAA restructuring does not involve a plan, as this Court has noted: “I do not agree that the absence of a plan deprives the court of jurisdiction to approve a release.”⁶⁸

68. The same test for granting third party releases in a CCAA plan applies to a release in an ARVO. The Court must ask: (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

⁶⁷ *Blackrock Metals*, at para. 128, at **TAB B** citing *Green Relief* at paras. 23-25 at **TAB P**; 8640025 *Canada Inc.*, 2021 BCSC 1826 at para. 43, at **TAB V**.

⁶⁸ *Green Relief*, at para. 23, at **TAB P**.

generally.⁶⁹ It is not necessary for each of these factors to apply in order for the proposed release to be granted.⁷⁰

69. This Honourable Court recently considered similar factors in support of a third-party release including, among other factors, the following:
- a. the directors and officers provided critical direction leading up to the CCAA proceedings;
 - b. the directors and officers were instrumental in administering the sale and investment solicitation process;
 - c. the directors and officers played an integral role in identifying and facilitating the potential transactions to explore;
 - d. the releases would facilitate further monetary distributions to the secured creditor which would otherwise be held back for the charge to secure indemnity;
 - e. creditors and stakeholders of the applicants were put on notice of the intention to apply for a release of claims;
 - f. the release will not affect claims against directors and officers that are covered by an applicable insurance policy;
 - g. the releases are subject to the limitations under section 5.1(2) of the CCAA;
 - h. the releases provide certainty and finality of the CCAA proceedings in the most efficient manner;
 - i. throughout the CCAA proceedings, the directors and officers acted in good faith and with due diligence; and
 - j. the monitor and agent supported the release.⁷¹

⁶⁹ *Blackrock Metals*, at para. 130, at **TAB B**, citing *Harte Gold*, at paras. 78-86 at **TAB D** and *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587; *Green Relief*, at para. 27, at **TAB P**, citing *Lydian International Limited (Re)*, 2020 ONSC 4006 (*Lydian International*) at para. 54 at **TAB W**.

⁷⁰ *Green Relief*, at para. 28, at **TAB P**; *Lydian International*, at para. 54, at **TAB W**.

70. It is well established that this Court has the jurisdiction to sanction releases in favour of the Applicants, its directors and officers, and other parties.⁷²
71. The requested releases in this matter are necessary to bring finality to the CCAA proceedings, facilitate the release of the Court-ordered charges, including the D&O Charge, without requiring a reserve for potential claims against the Released Parties, which would prevent the Proposed Transaction from closing, and to protect the Released Parties from any and all claims, demands, causes of action, dealings, occurrences (or other matters including within the definition of “Released Claims” in the ARVO) which existed or took place prior to the Effective Time, or which were undertaken or completed in connection with or pursuant to the terms of the ARVO in respect of, relating to, or arising out of: (a) the Applicants, the business, operations, assets, property and affairs of the Applicants, the administration and/or management of the Applicants or the CCAA and/or the Chapter 15 Cases (as defined in the ARVO); or (b) the PEL Transaction Agreement, any agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Proposed Transaction (subject to the exclusions described below, collectively the “Released Claims”).⁷³
72. Third party releases can be found to be essential where it enhances certainty and creates finality of the transaction.⁷⁴
73. The releases provided in the ARVO explicitly do not release or discharge:
- a. any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA; or
 - b. any obligation of any of the Released Parties under or in connection with the PEL Transaction Agreement, the Closing Documents, and/or any agreement,

⁷¹ *Re ENTREC Corporation*, 2020 ABQB 751 (“**ENTREC**”), at para. 8, at **TAB X**.

⁷² *ENTREC*, at para. 5, at **TAB X**.

⁷³ Fourth Affidavit, at para. 59.

⁷⁴ *Harte Gold*, at para. 84, at **TAB D**.

document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing.⁷⁵

74. The releases in the ARVO are rationally connected to the restructuring and essential to its success. The Released Parties have made significant and often critical contributions to the development and implementation of the Dynamic Group's exit from these CCAA proceedings. The Released Parties have worked diligently towards ensuring the implementation of the restructuring of the Applicants financial obligations and operations for the benefit of stakeholders. If the ARVO is granted and the Proposed Transaction is consummated, the RVO Entities and their businesses will continue, and their going concern value will be preserved for the benefit of stakeholders.⁷⁶
75. The ARVO also includes various exculpations which the Applicants will request be approved by the US Bankruptcy Court in the US Recognition of Vesting Order. The ARVO provides that all of: (a) the current and former directors, officers, employees, legal counsel and advisors of the Applicants and ResidualCo (or any of them); (b) the Monitor and its legal counsel; and (c) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively the "**Exculpated Parties**") are released and exculpated from any cause of action for any act or omission in respect of, relating to, or arising out of: (a) the PEL Transaction Agreement, (b) the consummation of the Proposed Transaction, (c) the CCAA and US Proceedings, (d) the formulation, preparation, dissemination, negotiation, filing, or consummation of the PEL Transaction 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 Proposed Transaction, (e) the pursuit of approval and consummation of the Proposed Transaction or the recognition thereof in the US Bankruptcy Court, and/or (f) the transfer of assets and liabilities pursuant to the ARVO.⁷⁷
76. The ARVO expressly does not release the Exculpated Parties from any Causes of Action (as defined in the ARVO) related to any act or omission that is determined in a final order

⁷⁵ Fourth Affidavit, at para. 60.

⁷⁶ Fourth Affidavit at para. 57; *Green Relief*, at paras. 51-55, at **TAB P**.

⁷⁷ Fourth Affidavit, at para. 62.

of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence.⁷⁸

77. Pursuant to section 11 of the CCAA, this Honourable Court has the broad discretionary power to grant a variety of orders, including granting releases.⁷⁹

78. This Honourable Court has summarized three "baseline considerations" in determining whether an application is consistent with the remedial objectives of the CCAA:

- a. the order sought is appropriate in the circumstances;
- b. the applicant has been acting in good faith; and
- c. the applicant has been acting with due diligence.⁸⁰

79. Further, pursuant to section 5.1 of the CCAA this Honourable Court has the discretion to sanction a release of claims against directors arising before the commencement of CCAA proceedings where the directors are by law liable in their capacity as directors for the payment of such obligations.⁸¹

80. A release of claims against directors, pursuant to the CCAA, should be fair and reasonable in the circumstances and must not:

- a. include claims related to the contractual rights of another creditor; or
- b. be based on misrepresentations made by the director to creditors or the wrongful or oppressive conduct by the directors.⁸²

81. This Honourable Court has noted, in applying section 5.1 of the CCAA, the judicial trend to exercise discretion to grant a release of claims against director and officers of a debtor company in the absence of a plan of arrangement.⁸³

⁷⁸ Fourth Affidavit, at para. 63.

⁷⁹ CCAA, s. 11, at **TAB A**.

⁸⁰ *ENTREC*, at para. 3, at **TAB X**.

⁸¹ CCAA, s. 5.1(1), at **TAB A**.

⁸² CCAA, s. 5.1(2) and (3), at **TAB A**.

⁸³ *ENTREC*, at para. 6, at **TAB X**.

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82. Third party releases (i.e. releases in favour of parties other than the CCAA debtor company) have been granted both in CCAA plans and in RVOs. As the Quebec Court recently noted in *Blackrock Metals*, "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."⁸⁴ There are numerous examples where such releases have been granted in RVO transactions.⁸⁵
83. In the circumstances of this matter, the releases are essential to the success of the restructuring, the completion of the PEL Transaction Agreement, and ought to be approved by this Honourable Court.

V. REQUESTED RELIEF

84. The Companies respectfully requests this Honourable Court approve the Proposed Transaction and grant the ARVO and the SAVO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16 day of June 2023.

MLT AIKINS LLP



Ryan Zahara/Catrina Webster
Counsel for Dynamic Technologies Group Inc.,
Dynamic Attractions Ltd., Dynamic Entertainment
Group Ltd., Dynamic Attractions Inc., and Dynamic
Structures Ltd.

⁸⁴ *Blackrock Metals*, at para. 128, at **TAB B** citing *Green Relief*, at paras. 23-25 at **TAB P**; *8640025 Canada Inc.*, 2021 BCSC 1826 at para. 43, at **TAB V**.

⁸⁵ *Harte Gold*, at paras. 78 to 86, at **TAB D**; *Quest University*, at paras. 123, 151, 179, at **TAB C**; *Clearbeach*, at para. 27(f), at **TAB O**; *Green Relief*, at paras. 23 and 27-29, at **TAB P**; *Just Energy*, at para. 67, at **TAB K**; *Enterra*, at para. 18, at **TAB M**; *Bellatrix*, at para. 16, at **TAB N**.