

No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF NEXTPOINT  
FINANCIAL, INC. AND THOSE PARTIES LISTED ON SCHEDULE "A"**

**PETITIONERS**

**PETITION TO THE COURT**

**This proceeding is brought by the Petitioners for the relief set out in Part 1 below.**

If you intend to respond to this proceeding, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner(s),

- (c) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (d) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (e) if you were served with the petition anywhere else, within 49 days after that service, or
- (f) if the time for response to petition has been set by order of the court, within that time.

The address of the registry is: 800 Smithe Street  
Vancouver, BC V6Z 2E1

The ADDRESS FOR SERVICE of the petitioner(s) is: Jeffrey D. Bradshaw  
DLA Piper (Canada) LLP  
Barristers & Solicitors  
Suite 2700  
1133 Melville St  
Vancouver, BC V6E 4E5

Fax number address for service (if any):

E-mail address for service (if any): [jeffrey.bradshaw@dlapiper.com](mailto:jeffrey.bradshaw@dlapiper.com)

The name and office address of petitioner's lawyer is: Jeffrey D. Bradshaw  
DLA Piper (Canada) LLP  
Barristers & Solicitors  
Suite 2700  
1133 Melville St  
Vancouver, BC V6E 4E5

### CLAIM OF THE PETITIONER(S)

#### Part 1: ORDER(S) SOUGHT

1. The Petitioners make an application for an order under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), substantially in the form attached hereto as Schedule "B" (the "**Initial Order**"), granting the following relief:
  - (a) a declaration that the CCAA applies to the Petitioners;
  - (b) a stay of all proceedings and remedies taken or that might be taken in respect of the Petitioners or any of their property, except as otherwise set out in the Initial Order or otherwise permitted by law;
  - (c) authorizing the Petitioners to carry on business in a manner consistent with the preservation of their property and business and to make certain payments in connection with their business during the CCAA proceeding;
  - (d) approving the Interim DIP Financing (as defined below);
  - (e) appointing FTI Consulting Canada Inc. ("**FTI**") as monitor in these proceedings (the "**Monitor**");

- (f) appointing Peter Kravitz as Chief Restructuring Officer of the Petitioners, and authorizing and directing the Petitioners to enter into and carry out the terms of the CRO Engagement Letter (as defined below), including without limitation making the payments to the Chief Restructuring Officer contemplated thereunder;
  - (g) granting the following charges over the assets, properties and undertakings of the Petitioners, with the relative priorities set out in the Initial Order, as security for the obligations of the Petitioners to the beneficiaries of such charges:
    - (i) a charge in favour of the proposed Monitor, counsel to the proposed Monitor, and counsel to the Petitioners (the "**Administration Charge**");
    - (ii) a charge in favour of the CRO (the "**CRO Charge**");
    - (iii) a charge in favour of the Interim Lender (the "**Interim Lender's Charge**");
    - (iv) a charge in favour of the directors and officers of the Petitioners (the "**D&O Charge**"); and
    - (v) a charge in favour of any Intercompany Lender, as defined below (the "**Intercompany Charge**"); and
  - (h) such further and other relief as this Honourable Court may deem just.
2. Unless otherwise provided, all amounts set out in this affidavit are provided in United States currency.

## Part 2: FACTUAL BASIS

### The Petitioners

1. NextPoint is a company incorporated pursuant to the laws of British Columbia whose common shares are listed on the Toronto Stock Exchange (the "**TSX**"). NextPoint's registered office is in Vancouver, British Columbia.
2. NextPoint is the ultimate parent corporation of all other Petitioners in these CCAA Proceedings (collectively, the "**NextPoint Group**" or the "**Petitioners**").
3. The NextPoint Group includes the following subsidiaries of NextPoint:
  - (a) NPI Holdco LLC ("**NPI Holdco**"), incorporated in Delaware;
  - (b) the "Liberty Tax group of companies", comprised of LT Holdco, LLC, LT Intermediate Holdco, LLC, JTH Tax, LLC ("**JTH Tax**"), JTH Financial, LLC, JTH Properties 1632 LLC, JTH Tax Office Properties, LLC, Wefile LLC, Liberty Credit Repair, LLC, Liberty Tax Holding Corporation, Liberty Tax Service Inc., LTS Software LLC, JTH Court Plaza, LLC, 360 Accounting Solutions, LLC LTS

Properties, LLC, and Siempre Tax+ LLC (collectively, "**Liberty Tax**"). The various companies comprising Liberty Tax are incorporated variously under the laws of Ontario, Alberta, Delaware, and Virginia;

- (c) the "Community Tax group of companies", comprised of CTAX Acquisition LLC, Community Tax Puerto Rico LLC, and Community Tax LLC (collectively, "**Community Tax**"). The various companies comprising Community Tax are incorporated variously under the laws of Delaware and Illinois; and
  - (d) the "LoanMe group of companies", comprised of NPLM Holdco LLC, LoanMe, LLC, MMS Servicing LLC, LoanMe Funding, LLC, LM Retention Holdings, LLC, LoanMe Stores LLC, LoanMe Trust Prime 2018-1, Loanme Trust SBL 2019-1, InsightsLogic LLC, and LM 2020 CM I SPE, LLC (collectively, "**LoanMe**"), all of which are incorporated under the laws of Delaware.
4. The NextPoint Group is functionally integrated and is consolidated financially. The NextPoint Group:
- (a) has employees that simultaneously maintain responsibilities at various entities of the NextPoint Group;
  - (b) has shared services across the subsidiaries, as discussed in more detail below; and
  - (c) conducts regular intercompany cash transfers.
5. Currently, 27 employees of the NextPoint Group, including all NextPoint executives, simultaneously work and have responsibilities with various entities in each of the Liberty Tax, Community Tax, and LoanMe business lines.
6. All financial statements of the NextPoint Group are reported on a consolidated basis.

### **The Business**

7. The NextPoint Group provides financial and tax services for small businesses and consumers across Canada and the United States through the following three primary business lines:
- (a) a tax preparation and settlement business, operated through Liberty Tax;
  - (b) a tax debt resolution service, operated through Community Tax; and
  - (c) a lending and loan marketing business, which previously operated through LoanMe, but which, as discussed further below, has been in the process of winding down since approximately June 2022.

NextPoint

8. NextPoint was incorporated on July 16, 2020, under *the Business Corporations Act* (British Columbia). NextPoint acquired Liberty Tax and LoanMe in July 2021, and Community Tax in December 2021 (in each case indirectly through NPI Holdco).

Liberty Tax

9. Liberty Tax is a tax preparation service provider with over 250 locations in Canada (headquartered in Markham, Ontario) and 2300 locations in the United States (headquartered in Hurst, Texas). The vast majority of Liberty Tax's operations are franchised to small business owners and operators pursuant to the terms of a franchise agreement with JTH Tax. Liberty Tax also operates a limited number of company-owned offices during tax season in order to meet customer demand.
10. The structure of Liberty Tax's business as a franchisee network has allowed Liberty Tax to grow its business across North America with minimal capital outlay, while permitting it to focus on marketing, franchise support, and business growth. Liberty Tax franchisees maintain control over pricing and local market dynamics under the Franchisee Agreements.
11. Liberty Tax (through both its franchisee network and its company-owned offices) offers tax preparation and bookkeeping services to customers in Canada, and both personal and small business tax preparation, loans, bookkeeping services, and credit repair to customers in the United States. Liberty Tax also offers online tax preparation software and associated support services in both Canada and the United States to permit customers to prepare their tax returns online.
12. In the United States, Liberty Tax offers two types of tax settlement products to consumers: (a) refund transfer products; and (b) refund-based loans. Refund transfer products provide customers with temporary bank accounts in the customer's name with one of Liberty Tax's banking partners in order to facilitate direct deposit of their tax refund. Once the tax refund is received, Liberty Tax deducts all applicable tax preparation and service fees and releases the remainder to the customer.
13. Refund based loans provide customers with loans in the amount of their anticipated tax refund, less applicable fees, immediately upon the filing of the tax refund and prior to any refund being issued by the IRS. In order to access the capital to advance such short-term loans to customers, JTH Tax is party to an unsecured facility agreement (the "**Republic Facility Agreement**") with Republic Bank & Trust Company ("**Republic**"). Pursuant to the Republic Facility Agreement, JTH Tax draws on the facility as needed in order to fund refund advances to qualifying customers. Upon receipt of the customer's tax refund from the IRS, JTH Tax repays the advance under the Republic Facility Agreement.

14. Liberty Tax's business is generally seasonal, with most of its business conducted and revenue generated during the annual tax season (December 15 to April 30). Revenue is collected when taxes are filed and fees are charged to the customer.
15. In order to assist franchisees with the seasonal nature of the business and associated cash flow fluctuations, JTH Tax is party to an unsecured facility agreement (the "**FCB Facility Agreement**") with First Century Bank, N.A. ("**FCB**") pursuant to which FCB had advanced a credit facility to JTH Tax which, in turn, JTH Tax uses to provide loans to Liberty Tax's qualifying franchisees in the range of \$1,000 to \$1,250,000. JTH Tax is current on all obligations under the FCB Facility Agreement and intends to continue servicing all such obligations during the course of these CCAA proceedings.
16. While most Canadian and US employees of Liberty Tax are employed directly by the franchisees (and not by Liberty Tax), as at the swearing of this Affidavit, Liberty Tax employed approximately 14 employees in Canada and 406 employees in the United States. Such employees generally work in Liberty Tax's company-owned offices or as area developers tasked with marketing franchise opportunities in available areas across North America and with providing marketing and operational support for franchisees within their area of oversight.

#### Community Tax

17. Community Tax is based in Chicago, Illinois and has offices in Jacksonville, Florida and San Juan, Puerto Rico. Community Tax offers tax resolution services by first investigating outstanding tax debts, then negotiating the resolution of those debts with the IRS, on behalf of their customers.
18. A taxpayer's engagement with Community Tax typically proceeds in the following two phases:
  - (a) Phase 1 (the "**Investigation Services**") - Community Tax contacts the IRS on behalf of the customer to collect the customer's tax history and evaluate the most affordable and efficient tax resolution program for the customer. Once the information has been collected and a program is formed, the customer will decide whether or not to proceed further in the program; and
  - (b) Phase 2 (the "**Resolution Service**") - Community Tax prepares outstanding and unfiled tax returns for previous years and engages in negotiations on behalf of the taxpayer with the IRS or state taxing authority with a view to effecting a resolution of the outstanding tax debt. Once its customers enter an IRS resolution program, Community Tax also offers ongoing tax preparation services, tax extension services, and monthly IRS monitoring programs which enable customers to re-engage Community Tax if they default on their resolution program.
19. As discussed further below, the vast majority of Community Tax's customers are individuals in the United States who have received demand letters from the IRS with

respect to outstanding tax obligations. The IRS suspended most enforcement actions during the COVID-19 pandemic, as well as the more recent economic pressures faced by individuals and their families across the United States, negatively impacted Community Tax's business by reducing the demand for Community Tax's services and impacting its annual revenues.

20. Community Tax employs approximately 84 employees in the United States and 25 employees in Puerto Rico. Such employees include attorneys, tax experts and agents approved by the IRS to represent taxpayers before the IRS.

#### LoanMe

21. Prior to commencing a wind-down process in June 2022, LoanMe provided personal and small business loans to qualifying individuals and business in the United States.
22. As discussed further below, in an effort to address the overleveraged position of the NextPoint Group and its increasing inability to service all loan obligations while continuing to operate the various business lines, NextPoint determined in mid-2022 to wind down LoanMe's operations and cease all further loan originations. Such process has been ongoing since June 2022 with only those loans originated prior to this date continuing to be serviced.
23. NextPoint expects to continue the wind-down process for LoanMe within these CCAA proceedings.

#### **Shared Services**

24. Liberty Tax and Community Tax and, prior to its wind down, LoanMe, rely on JTH Tax for certain administrative and business support services that are integral to their ongoing operations. These services include executive, accounting, finance, treasury, human resources, insurance, payroll, accounts payable, information technology support services, and leasing, among other things.
25. JTH Tax provides these shared services from its head office in Virginia Beach, Virginia. The operations, including the Canadian operations, cannot operate or function without the provision of the shared services from JTH Tax. If the shared services were not provided, the operations of the NextPoint Group (including the Canadian operations) would be unable to continue operating in the normal course,
26. In addition to the foregoing shared services, the entire NextPoint Group shares a single IT platform and most software services and licenses, including Great Plains/Hyperion software (accounting), Microsoft licensing (including programs such as Azure, Tenable, Office 365 Manager), AD Manager (workflow management software), AD Audit (IT management software), Technology Support, and SolarWinds (IT platform). Access and use rights to such platforms and software is critical to the ability of the NextPoint Group to continue business in the normal course.

27. Further, certain necessary operational costs and, in turn, associated benefits, are shared across the NextPoint Group, including director and officer insurance and accounting and audit costs.
28. As consideration for the shared services, each of the operating companies within Liberty Tax and Community Tax are allocated a portion of the costs for the services. The Liberty Tax companies are responsible for 70% of the overall costs, with 30% allocated to Community Tax. LoanMe was charged \$10,000 USD per month for their portion of the shared services. As discussed further below, such intercompany allocations are booked, but not settled, by JTH Tax and so continue to accumulate on a monthly basis.

### **Banking and Cash Management**

29. Liberty Tax, Community Tax and LoanMe are part of an enterprise-wide centralized cash management system used to consolidate and track funds generated by the operations of the NextPoint Group. Importantly, NextPoint does not generate cash receipts and instead pushes down an allocation of expenses to Liberty Tax and Community Tax through various intercompany accounts.
30. The NextPoint Group operates their cash management system through various Canadian and US bank accounts, held through the following financial institutions:
  - (a) Royal Bank of Canada (two (2) bank accounts);
  - (b) Canadian Imperial Bank of Commerce (two (2) bank accounts);
  - (c) Canadian Imperial Bank of Commerce - USA (nine (9) bank accounts)
  - (d) Bank of Montreal (2 (two) bank accounts);
  - (e) Wells Fargo Commercial US (three (3) bank accounts);
  - (f) Regions Bank (three (3) bank accounts); and
  - (g) JPMorgan Chase Bank (four (4) bank accounts).
31. All intercompany transfers flow through NextPoint's main operating account at Wells Fargo Commercial US. When an intercompany transfer is required, the transferring entity sends funds directly to NextPoint, which operates as a central hub for deposits. NextPoint then transfers the funds to the receiving entity. All transfers are completed in US currency.
32. Liberty Tax's Canadian entities' main operating accounts are held through the Canadian Imperial Bank of Commerce's Canadian banks. When the Canadian entities are involved in an intercompany transfer, they purchase US currency that is transferred to Liberty Tax's U.S. bank accounts at CIBC. When the Liberty Tax Canadian entities receive



intercompany transfers, they perform the same transaction in reverse by purchasing a foreign currency buy for Canadian currency.

33. The significant levels of intercompany debts arose as a result of the allocation of shared company expenses to the Community Tax and LoanMe lines and direct cash infusions to pay the operating expenses of those companies.
34. With respect to the Canadian Operations, Liberty Tax maintains 2 accounts at Royal Bank of Canada, 2 accounts at Canadian Imperial Bank of Commerce (Canada) and 8 accounts at Canadian Imperial Bank of Commerce (USA), and 2 accounts at Bank of Montreal. 41. With respect to the Canadian Operations, Liberty Tax maintains 2 accounts at Royal Bank of Canada, 2 accounts at Canadian Imperial Bank of Commerce (Canada) and 8 accounts at Canadian Imperial Bank of Commerce (USA), and 2 accounts at Bank of Montreal. Paperwork was submitted to open additional Canadian accounts pre-petition, but are subject to bank processing as of the time of Peter Kravitz's First Affidavit, sworn on July 25, 2023.
35. All accounts relating to the Canadian operations are domiciled in Canada and are denominated in CAD. All cash receipts realized from the operations of the NextPoint Group are deposited in accounts with JPMorgan Chase Bank, CIBC US, and CIBC Canada and are pooled on a daily basis in a disbursement account held by Community, the U.S. Liberty Tax entities, and the Canadian Liberty Tax entities, respectively, which is then used to fund the NextPoint Group's daily operations, such as accounts payable, payroll, sales tax, and other obligations.
36. As discussed above, the handling and processing of all disbursements for payroll, accounts payable, and other obligations is completed by JTH Tax on behalf of the entire NextPoint Group (both in Canada and the United States). The individual entities within the Liberty Tax group and the Community Tax group do not independently direct any of their bank accounts or the disbursements made therefrom.
37. As at May 31, 2023, NextPoint is owed approximately \$85 million by its various subsidiaries relating to advances made in order to fund their continuing operations. Such intercompany obligations are booked by JTH Tax to account for funds allocated to the individual entity to fund its operational expenses. These debts continue to accrue.
38. The Petitioners anticipate that during the proposed CCAA proceeding, revenues will be collected, and expenses will be funded, through the foregoing bank accounts in the normal course of business.
39. The bank accounts described above comprise the NextPoint Group's "**Cash Management System**". The Petitioners need to be able to maintain access to their Cash Management System, and to retain the ability to transfer funds among the various bank accounts held by its subsidiaries, throughout its restructuring proceedings. The continued existence of

NextPoint Group's cash management system is critical to its ongoing ability to conduct business and complete a successful restructuring within these CCAA proceedings.

40. The NextPoint Group is accordingly seeking the authority to continue the Cash Management System to maintain the funding and banking arrangements already in place. The Cash Management System includes the necessary accounting controls to enable the NextPoint Group to trace funds and ensure that all transactions are adequately documented and readily ascertainable.

### **Financial Position of the Petitioners**

41. As a publicly traded company, NextPoint files consolidated financial statements with SEDAR (the System for Electronic Document Analysis and Retrieval). These financial statements include the consolidated results of both the U.S. and Canadian operations for the entirety of the NextPoint Group, including Liberty Tax, Community Tax and LoanMe. NextPoint has not prepared audited financial statements since Fiscal Year 2021.

#### **(a) Assets**

42. As at June 30, 2023, the NextPoint Group had total assets of approximately \$380.9 million, broken down as follows:
- (a) cash of approximately \$9.58 million;
  - (b) accounts receivable of approximately \$28.49 million;
  - (c) other current assets of approximately \$44.95 million;
  - (d) property, plant and equipment of approximately \$23.00 million;
  - (e) net goodwill of approximately \$158.46 million; and
  - (f) other non-current assets of approximately \$116.46 million.

#### **(b) Liabilities**

43. As at March 31, 2023, the NextPoint Group had total liabilities of approximately \$356.06 million, broken down as follows:
- (a) current portion of long term obligations of approximately \$120.72 million;
  - (b) accounts payable and accrued expenses of approximately \$17.45 million;
  - (c) other current liabilities of approximately \$31.49 million; and
  - (d) non-current liabilities of approximately \$186.40 million.

(c) **Shareholder Equity**

44. As at June 30, 2023, the shareholders' equity in respect of NextPoint was valued at \$24.88 million.

(d) **Earnings**

45. For the three-month period ending March 31, 2023, the NextPoint Group reported approximately \$2.3 million in net income.

(e) **Secured Debt**

***NP/LT Credit Facility Agreement***

46. Each of NPI Holdco and LT Holdco, LLC ("**LT Holdco**") are borrowers under a Credit Agreement, originally dated as of July 2, 2021 and as amended through Amendment No. 5 thereto dated as of June 30, 2023 (as may be amended, restated, supplemented, or otherwise modified from time to time, the "**NP/LT Credit Agreement**") with BP Commercial Funding Trust, Series SPL-X, as administrative agent and collateral agent (the "**NP/LT Facility Agent**") on behalf of the lenders thereunder (with respect to the NP Revolving Credit Loans (as defined below), the "**NP Lenders**", and with respect to the LT Term Loan (as defined below), the "**LT Lenders**").
47. Under the NP/LT Credit Agreement, the NP Lenders originally agreed to extend a revolving credit facility to NPI Holdco of \$200 million. The NP/LT Credit Agreement was subsequently amended and restructured on November 1, 2022 to (i) reduce the maximum revolving credit facility commitment available to NPI Holdco at \$130 million, and (ii) provide a new \$74.4 million term loan to LT Holdco, discussed further below. As at July 14, 2023, there was approximately \$125.7 million in outstanding principal amount of revolving loans borrowed by NPI Holdco under the NP/LT Credit Agreement (the "**NP Revolving Credit Loans**"). Interest is payable on outstanding NP Revolving Credit Loans at a rate of 13% per annum, payable monthly. The NP Revolving Credit Loans mature on July 2, 2025. The draw maturity for additional NP Revolving Credit Loans under the NP/LT Credit Agreement matured on July 2, 2023.
48. All obligations of NPI Holdco under the NP/LT Credit Agreement are secured against all assets of NextPoint, including restricted subsidiaries (subordinated only to the claims of the LT Lenders (as defined below) in respect of the LT Term Loan (as defined below), pursuant to that certain Intercreditor Agreement, dated as of November 1, 2022, by and among the NP/LT Facility Agent, the NP Lenders and the LT Lenders, the "**Intercreditor Agreement**") and by guarantees provided by NextPoint, all companies comprising Liberty Tax (other than Liberty Tax Holding Corporation and Liberty Tax Service, Inc.) and by three companies within the LoanMe group of companies (NPLM Holdco LLC, LoanMe, LLC and InsightLogic LLC) (collectively, the "**Guarantors**").

### ***LT Term Loan***

49. LT Holdco is a borrower under the NP/LT Credit Agreement pursuant to which the LT Lenders advanced to LT Holdco a term loan of \$74.4 million (the "**LT Term Loan**") on November 1, 2022. As at July 14, 2023, the LT Term Loan was fully drawn. Interest on the LT Term Loan accrues at the SOFR Reference Rate plus 9.50% per annum. Interest on the LT Term Loan consists of 0.25% PIK interest, capitalized monthly, and the remaining portion of accrued interest payable in cash monthly. The LT Term Loan matures on July 2, 2025.

All obligations of LT Holdco under the LT Term Loan are secured against the assets of NextPoint, NPI Holdco and LT Holdco, and by guarantees provided by the Guarantors; provided, that pursuant to the Intercreditor Agreement, all property, assets and interests in property owned by the LoanMe group of companies and all equity interests therein are solely for the benefit of the NP Lenders

### ***Community Tax Facility***

50. The Community Tax Facility is comprised of three separate term loans to CTAX Acquisition LLC ("**CTAX LLC**") as borrower in the aggregate amount of \$70 million, as follows:
- (a) \$45 million of senior debt held by Drake Enterprises Ltd. ("**Drake**") which bears interest at a rate of 9% per annum (the "**Drake Debt**"). The Drake Debt is secured on a first lien basis against all property and interests in property of CTAX LLC or any subsidiary thereof.
  - (b) \$15 million of subordinated debt held by Frontier Capital Group Ltd. which bears interest at a rate of 11% per annum (the "**Frontier Debt**"). The Frontier Debt is secured on a second lien basis against all property and interests in property of CTAX LLC or any subsidiary thereof; and
  - (c) \$10 million of subordinated debt to BP Commercial Funding Trust II, Series SPL-I which bears interest at a rate of 11% per annum, paid monthly (the "**BP Debt**"). The BP Debt is secured on a second lien basis against all property and interests in property of CTAX LLC or any subsidiary thereof,
- (collectively, the "**Community Tax Facility**").
51. The Community Tax Facility is guaranteed by both Community Tax Puerto Rico LLC and Community Tax LLC. It may be prepaid, with final repayment due on the maturity date (December 30, 2027), and monthly interest payments beginning on September 1, 2022.
52. As at May 31, 2023, approximately \$70 million was outstanding on the Community Tax Facility.

(f) **Unsecured Debt**

53. The unsecured debt of the NextPoint Group primarily consists of the following:
- (a) unsecured trade debt which, as at July 21, 2023, totals approximately \$5.25 million USD in the United States and \$15,000 CAD in Canada;
  - (b) unsecured obligations of approximately \$1.4 million owing to Frontier Capital Group, Ltd. under an unsecured note issued by NextPoint and having a maturity date of April 30, 2026 (the "**Frontier Note**"). Pursuant to the Frontier Note, NextPoint commenced required monthly payments on the Frontier Note of \$45,369.87 on May 1, 2023, and which payments are scheduled to continue for the next 35 months;
  - (c) an unsecured loan of \$500,000, advanced by the U.S. Small Business Administration and guaranteed by Jonathan Williams and Bliksum, LLC to LoanMe, LLC, bearing interest at a rate of 3.75%;
  - (d) various settlement and litigation related obligations.
54. In addition to the foregoing unsecured debt, the NextPoint Group has various intercompany obligations outstanding, including the following:
- (a) NextPoint is owed approximately \$85 million by its various subsidiaries relating to advances made in order to fund their continuing operations, including \$77.8 million by LoanMe and \$7.4 million by Community Tax; and
  - (b) Liberty Tax is owed approximately \$30.8 million by NextPoint.
55. The significant intercompany obligation between Liberty Tax and NextPoint is the result of the disproportionate share of operating costs for the NextPoint Group as a whole that Liberty Tax has borne during the past years. As discussed further below, the Liberty Tax business is profitable and viable and, as a result, has funded approximately \$31 million to NextPoint which, in turn, has pushed such funds down to the Community Tax and LoanMe business lines to fund their daily operations and, since mid-2022, LoanMe's wind down. Such business lines have been unable to either service their debt or fund their normal course operating expenses without funds from Liberty Tax by means of the foregoing intercompany funding arrangements.

**Events Leading to the CCAA Filing**

56. The Petitioners are over-leveraged and have recurring operating losses, working capital deficiencies, and insufficient cash flow to meet their obligations. As at July 14, 2023, the NextPoint Group has an outstanding debt load of approximately \$285 million. It has a financial leverage ratio across the enterprise of approximately 18.8x, constraining its ability

to raise additional capital, service its debt obligations or raise additional capital. Community Tax's financial leverage is currently in excess of 27.0x.

57. Based on the NextPoint Group's free cash flow metrics, management forecasts that it will take the current organization over 25 years to repay its principal obligations (including interest, fees, penalties, etc.). Management is of the view that there is no viable and sustainable path forward for the NextPoint Group based on the current capital structure without a significant restructuring.
58. The current financial situation faced by the NextPoint Group is the result of macroeconomic factors caused by the COVID-19 pandemic, which led to an unsustainable capital structure driven by outsized leverage to the businesses' ability to service.
59. First, as a consumer tax preparation business, Liberty Tax has historically generated most of its revenues between January 1 and April 30 of each year. The remainder of the year, Liberty Tax has historically operated at a loss and focused on preparing for the upcoming tax season and growing its franchise network across North America in order to bolster its revenues during the approximately four-month tax season.
60. While the seasonal fluctuations in revenues have remained consistent for Liberty Tax, its ability to grow its business has recently suffered setbacks. In the United States, Liberty Tax is required to provide potential or renewing franchisees with a franchise disclosure document ("FDD") prior to execution of a new franchise agreement. Each FDD must, by law, include audited financial statements. Liberty Tax is currently unable to obtain such audited financial statements without a going concern qualification given the liquidity issues described in this Affidavit. As a result, Liberty Financial cannot renew franchise agreements with existing franchisees nor enter into new franchise agreements with new franchisees, and the revenue growth of Liberty Tax is currently constrained to developing new customers for existing franchisees. New franchise development is critical to ensure the viability and future growth of the Liberty Tax entities on a go-forward basis.
61. Liberty Tax's financial difficulties are not the result of a poorly operating business. The Liberty Tax business is profitable and viable. However, as discussed further above, Liberty Tax is a guarantor of all NPI Holdco's obligations in respect of the NP Revolving Credit Loans under the NP/LT Credit Agreement. Neither NextPoint nor the other guarantors of the NP/LT Credit Agreement are currently in a position to service such debt and, as a result, Liberty Tax has borne the financial obligations of the facility. The proposed Stalking Horse Transactions (discussed further below) is structured to address this issue directly by resolving all debt obligations of Liberty Tax other than the LT Term Loan. Liberty Tax believes that it can service the LT Term Loan in accordance with its terms and without issue once its other debt obligations are addressed.
62. This resolution will, in turn, better position Liberty Tax to obtain audited financial statements without a going concern qualification and, in turn, prepare a compliant FDD in order to grow the Liberty Tax business across North America.

63. Second, since early 2020, Community Tax has been significantly impacted by the IRS's implementation of a temporary freezing of most enforcement activities and the extension of deadlines for enforcement activities already underway in response initially to the COVID-19 pandemic and, more recently, in response to rising inflation and economic pressures facing individuals and their families in the United States. Importantly, the vast majority of Community Tax's customers are individuals in the United States who have received demand letters from the IRS with respect to outstanding tax obligations. The suspension of most enforcement efforts, including the suspension of the issuance of demand letters by the IRS, significantly reduced demand for Community Tax's services and, in turn, its revenues. For example, new client creation in 2022 declined 22% as compared to 2021, and estimated new client creation in the first six months of 2023 represents a decline of 22.5% as compared to the same period in 2022.
64. The foregoing not only reduced the number of customers accessing Community Tax's services, but also the number of customers accessing Community Tax's Resolution Services. As discussed above, Community Tax offers both Investigation Services and Resolution Services to its customers. The margin realized by Community Tax on the provision of Resolution Services is significantly higher than the margin realized by Community Tax on the provision of Investigation Services. The extension of deadlines and suspension of collection activities reduced demand for Resolution Services, thereby curtailing the historical margins previously realized by Community Tax.
65. Finally, following the acquisition of LoanMe by NextPoint, LoanMe experienced an elevated rate of charge-offs as they continued to operate the business. This resulted in a significant shortfall in cash compared to the amount required to fund the operations. Such shortfall was exasperated by the unsustainable debt load following the LoanMe acquisition.
66. Recognizing the need to restructure the NextPoint Group's business and its debt load in order to better position it for long-term success, in June 2022, LoanMe announced that it would cease further loan originations and would only continue to service its outstanding loans. In September 2022, in response to continuing financial difficulties, the NextPoint Group determined that it needed to restructure its business to refocus its resources solely on its Liberty Tax and Community Tax segments. The NextPoint Group accordingly announced that it would be winding down the LoanMe segment on a go forward basis. Such wind down efforts have been ongoing.
67. In addition to winding down LoanMe, on September 30, 2022, the NextPoint Group completed a strict foreclosure with BP SLL Trust, Series SPL-II and BP SLL Trust, Series SPL-3 (the "LoanMe SPE Warehouse Lenders"). Pursuant to the strict foreclosure, in exchange for a release of all guaranty payment claims against LoanMe, (i) First Star Credit, LLC, as designee of the LoanMe SPE Warehouse Lenders, received 100% of the equity in the two related LoanMe special purpose entity (SPE) borrowers and (ii) the LoanMe SPE Warehouse Lenders received a \$12.0 million promissory note of NPI Holdco at a zero coupon, with an original maturity date of December 31, 2023. On February 27,

2023, NextPoint extended the maturity date and modified the repayment schedule and applicable interest rate. The maturity date was extended to January 2, 2026, with the zero coupon staying in place through maturity. The LoanMe special purpose entities represented approximately 90% of LoanMe's loan portfolio.

68. Finally, on November 1, 2022, NextPoint and the NP/LT Credit Facility Agent, the NP Lenders and the LT Lenders entered into a Waiver and Amendment to the NP/LT Credit Agreement, which, among, others, set the maximum revolving credit facility commitment at \$130.0 million and provided for a new \$74.4 million term loan to LT Holdco. Proceeds from the new LT Term Loan were used by the NextPoint Group to provide additional working capital and to pay down the outstanding principal balance of the NP Revolving Credit Loans drawn under the existing NP/LT Credit Agreement.
69. While the foregoing resulted in various positive financial and operational benefits for the NextPoint Group, such efforts were not sufficient to address the NextPoint Group's overleveraged financial position and cash flow constraints.
70. In May, 2023, The NextPoint Group became aware that they would fail to make the interest payments due on May 15, 2023, and June 15, 2023, under the Community Tax Credit Facility.
71. In order to address the prospective default under the Community Tax Facility, on or about May 31, 2023, the applicable lenders under the Community Tax Facility agreed to forbear from enforcing their rights under their credit agreement with regards to failed interest payments due on May 15, 2023, and June 15, 2023 (the "**First Community Tax Forbearance**") for 90 days from May 31, 2023.
72. In June 2023, the NextPoint Group confirmed that they were unable to make the upcoming July interest payments under both the NP/LT Credit Agreement and the Community Tax Facility and, unless remedied, would be in default of their obligations thereunder.
73. In order to address such prospective defaults, NextPoint, all applicable subsidiaries and the applicable lenders under each of the NP/LT Credit Agreement and the Community Tax Facility executed forbearance agreements (collectively with the First Community Tax Forbearance, the "**Forbearance Agreements**") pursuant to which: (a) the NP/LT Credit Facility Agent agreed to forbear from enforcing any rights and remedies under the NP/LT Credit Facility Agreement until July 31, 2023; and (b) the agreed to forbear from enforcing rights and remedies under the Community Tax Facility until July 31, 2023.
74. Since execution of the Forbearance Agreements, the NextPoint Group has undertaken a further in-depth review of strategic alternatives to explore restructuring options in order to better position it for long term success and to maximize the value of its business for the benefit of all stakeholders. To assist in such restructuring efforts, on July 11, 2023, NextPoint announced that Peter Kravitz was appointed as CRO. The NextPoint Group



also retained Province, LLC and Province Fiduciary Services, LLC ("**Province**") as financial and restructuring advisor.

### **Urgent Need for CCAA Protection**

75. The NextPoint Group is insolvent and is in urgent need of CCAA protection in order to provide business critical liquidity in the near term to address solvency issues and to provide for an orderly sales process for the Petitioners and their assets. In the event CCAA protection is granted, the NextPoint Group intends to apply for recognition thereof to the United States Bankruptcy Court for the State of Delaware (the "**U.S. Bankruptcy Court**") under chapter 15 of title 11 of the United States Bankruptcy Code (the "**Chapter 15 Proceedings**").
76. The NextPoint Group, with the assistance of the proposed monitor, FTI Consulting Canada Inc. (the "**Proposed Monitor**"), has prepared cash flow projections for the period from July 14, 2023, to November 24, 2023 (the "**Cash-Flow Statement**"). The Cash-Flow Statement forecasts that the NextPoint Group will deplete all available cash necessary for the ongoing operation of the business by the end of July, 2023.
77. As part of its efforts to restructure for the benefit of stakeholders, the NextPoint Group commenced discussions in or about June 2023, with its primary secured lenders, Basepoint Capital (though its various wholly owned funding trusts comprising the NP/LT Credit Facility Lenders and BP Debt lenders, collectively, the "**BP Lenders**") and Drake regarding the terms on which they would support a restructuring of the Petitioners. On July 25, 2023, the BP Lenders, Drake, NextPoint, NPI Holdco, various entities comprising Liberty Tax, Community Tax and various entities comprising LoanMe (the "**RSA Company Parties**") executed a Restructuring Support Agreement (the "**RSA**").
78. The proposed restructuring of the NextPoint Group provided in the RSA is comprised of the following significant aspects:
  - (a) the NextPoint Group will seek Court approval of a sale and investment solicitation process by no later than August 4, 2023, subject to court availability, in the form attached as Exhibit A to the RSA (as may be amended, restated, supplemented, or otherwise modified from time to time, the "**SISP**"), including a stalking horse transaction (the "**Stalking Horse Bid**") concerning certain assets of and equity interests in the RSA Company Parties;
  - (b) the CCAA proceedings, SISP and Stalking Horse Bid will be recognized in the Chapter 15 Proceedings; and
  - (c) the BP Lenders and Drake will provide the RSA Company Parties with a \$25.2 million debtor in possession financing facility on the terms contained in the term sheet attached as Exhibit C to the RSA (as may be amended, restated, supplemented, or otherwise modified from time to time, the "**DIP Facility**") and the

BP Lenders will provide a further sixty-day deferral of the interest payment due July 1, 2023, under the NP/LT Credit Agreement.

### **Proposed DIP Facility**

79. As discussed above, the Petitioners anticipate that they will require interim financing to provide a source of cash funding and to provide stability and fund operations for a limited period of time under CCAA protection while pursuing the going concern sale of their business, as reflected in the Cash Flow Statement.
80. In order to fund the operations of the Petitioners during these CCAA proceedings, the Petitioners commenced negotiations with the BP Lenders and Drake to provide the DIP Facility. Following such negotiations, on July 25, 2023, NPI Holdco, as borrower (in such capacity, the "**DIP Borrower**"), the other Petitioners, as guarantors, and the BP Lenders and Drake, each in their capacity as DIP Lender (together, the "**DIP Lenders**"), entered into the DIP Facility Agreement (the "**DIP Facility Agreement**").
81. The DIP Facility Agreement provides for a senior secured, super priority, debtor-in-possession, interim, non-revolving credit facility up to a maximum principal amount of \$25.2 million (funded \$20 million by the BP Lenders and \$5.2 million by Drake). The Petitioners are seeking an initial draw on the DIP Facility Agreement in the amount of \$4 million USD, and a corresponding charge in the amount of \$5.3 million CAD, being the rate of currency conversion at the date of filing the Petition. This amount is supported by the Cash Flow Statement and is required to ensure the Petitioners can continue operations through the next 10 days.
82. The funds available under the DIP Facility will be used to meet the Petitioners' immediate funding requirements during the CCAA proceeding in accordance with the DIP Budget described below. The Petitioners believe that it is crucial and necessary to have access to sufficient funding to ensure there is enough flexibility and sufficient time to facilitate and complete a process to maximize realizations on all assets for the benefit of all stakeholders.

### **Initial Relief Sought**

#### **a) *Stay of Proceedings***

83. The Petitioners are insolvent and urgently require a stay of proceedings and other protections provided by the CCAA in order to preserve the status quo and secure breathing space to pursue a value maximizing SISF for the benefit of stakeholders. The proposed Initial Order provides a stay of proceedings until August 3, 2023 (the "**Stay Period**").

**b) Appointment of Monitor**

84. The Proposed Monitor (FTI Consulting Canada Inc.) has consented to act as the Monitor of the Petitioners under the CCAA.

**c) Administration Charge**

85. The Petitioners propose that the Proposed Monitor, its counsel, and counsel to the Petitioners be granted a court-ordered charge on the Property as security for their respective fees and disbursements relating to services rendered in respect of the Petitioners (the "**Administration Charge**"). The Administration Charge is proposed to rank *pari passu* with the CRO Charge and in priority to all other charges. With the concurrence of the Proposed Monitor, the Petitioners are proposing that the Administration Charge for the first ten days be limited to \$1 million CAD and will be seeking to increase the charge at the comeback hearing.

**d) Appointment of CRO and CRO Charge**

86. In May 2023, the NextPoint board of directors engaged Province to assist the NextPoint Group to assess its operations and consider potential restructuring options, all in accordance with the terms set out in an engagement letter dated May 23, 2023 (the "**Province Engagement Letter**").
87. As the NextPoint Group considered potential restructuring options, it was determined that a CRO would be accretive to the process. Peter Kravitz was accordingly appointed as the CRO of NextPoint pursuant to the terms of an engagement letter agreement, dated July 1, 2023 (the "**CRO Engagement Letter**").
88. The Petitioners propose that Province be granted a court-ordered charge on the Property as security for their respective fees and disbursements relating to services rendered in respect of the Petitioners (the "**CRO Charge**"). The CRO Charge is proposed to rank *pari passu* with the Administration Charge and in priority to all other charges. The Petitioners are proposing that the CRO Charge for the first ten days be limited to \$500,000 CAD and will be seeking to increase the charge at the comeback hearing.

**e) Interim DIP Charge**

89. The Petitioners propose that the DIP Lenders be granted a court-ordered charge on the Property as security for the Interim DIP Financing (the "**Interim DIP Charge**"). The Interim DIP Charge is proposed to rank subordinate to the Administration Charge and the CRO Charge, and in priority to all other charges. The Petitioners are proposing the Interim DIP Charge be granted in the maximum amount of \$5.3 million CAD during the initial 10-day stay period and may be increased at the comeback hearing.

**f) Directors' and Officers' Charge**

90. A value maximizing sale process of the NextPoint Group will only be possible with the continued participation of the NextPoint Group's directors, officers, management, and employees who are essential to the viability of the business.
91. In certain circumstances, directors of Canadian companies can be held liable for certain obligations of a company owing to employees and government entities, and may be expose to certain liability by virtue of their role as a director or officer of the company. The NextPoint Group estimates that these obligations may amount to as much as approximately \$500,000 during the initial 10-day stay period, and may be increased at the Comeback Hearing.
92. The Petitioners' present and former directors and officers are among the potential beneficiaries of a directors' and officers' insurance policy, however coverage under that policy is expected to be less than \$5 million. This amount is wholly inadequate for an enterprise of the size of the NextPoint Group with its cross-border operations. The existing policy does not have sufficient coverage against the potential liability that the directors and officers could incur in relation to these CCAA proceedings. Additional coverage is not available.
93. In light of the complexity and scope of the NextPoint Group's operations and potential liabilities, and the uncertainty surrounding available insurance, the directors and officers have indicated that their continued service to the NextPoint Group and involvement in these CCAA proceeding is conditional upon the granting of an order under the CCAA that grants a charge in favour of the directors and officers (the "**D&O Charge**"). The Petitioners are proposing that the D&O Charge for the first ten days be limited to \$500,000 CAD.
94. The D&O Charge is proposed to rank subordinate to the Administration Charge, the CRO Charge, and the Interim DIP Charge, and in priority to the Intercompany Charge. The D&O Charge is necessary so that the NextPoint Group may benefit from its directors' and officers' experience with NextPoint Group's business and the industries in which it operates, and so that the directors and officers can guide the NextPoint Group through a successful restructuring.

**g) *Intercompany Charge***

95. As discussed above, the NextPoint Group maintains a centralized cash management system in which cash is moved to fund the operating needs of the entire NextPoint Group. In recognition of such normal course intercompany arrangements, the NextPoint Group is seeking an Intercompany charge (the "**Intercompany Charge**") on behalf of any Petitioner who makes any payment to or on behalf of, or incurs any obligation on behalf of, or discharges any obligation of, another Petitioner (other than itself) after the date of the Initial Order. The Intercompany Charge will secure the amount of such payment on all of the Property of such debtor Petitioner.
96. The Intercompany Charge is proposed to rank subordinate to all other charges.

### Part 3: LEGAL BASIS

1. The Petitioners rely upon:
  - (a) the CCAA;
  - (b) the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, as amended (the "**Civil Rules**");
  - (c) the *Business Corporations Act*, S.B.C. 2002, c. 57 (the "**BCBCA**");
  - (d) the *Business Corporations Act*, R.S.O. 1990, c. B. 16 (the "**Ontario BCA**");
  - (e) the *Interpretation Act*, R.S.B.C. 1996 c. 238 (the "**BC Interpretation Act**");
  - (f) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**");
  - (g) the inherent jurisdiction of this Honourable Court; and
  - (h) such further and other legal basis as counsel may advise and this Honourable Court may allow.
2. Pursuant to section 11 of the CCAA, this Honourable Court may make any order that it considers appropriate in the circumstances with or without notice to any person as this Honourable Court may see fit.

#### Application of the CCAA

3. The CCAA applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies is more than \$5M.

CCAA, ss. 2, 3.

4. The CCAA defines "company" as a company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province. A "debtor company" is any company that is bankrupt or insolvent.

CCAA, ss. 2(1).

5. The BIA defines an "insolvent person" as follows:

*insolvent person* means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and:

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

BIA, s. 2.

6. Whether or not a company is insolvent under the CCAA is evaluated pursuant to the definition of "insolvent person" under the BIA. This test is considered expansively under the CCAA. If a company is "reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring", it is considered insolvent.

*Stelco Inc., Re*, 2004 CarswellOnt 1211 (Ont. Sup. Ct. J.) ("Stelco") at para. 26, leave to appeal ref'd 2004 CarswellOnt 2936 (C.A.), leave to appeal ref'd 2004 CarswellOnt 5200 (S.C.C.).

*Lemare Holdings Ltd., Re.*, 2014 BCSC 893 at para. 18.

7. Section 3 of the CCAA includes affiliated debtor companies in the application of the CCAA. Pursuant to subsection 3(2), this includes a company's subsidiary. As demonstrated by the organization charts attached as Exhibit "A" to the Affidavit #1 of Peter Kravitz, made in these proceedings, the Petitioners are affiliated debtor companies within the meaning of the CCAA.
8. Given the foregoing, the Petitioners are affiliated debtor companies, and the CCAA applies to the Petitioners as:
- (a) The corporate Petitioners are corporations under the BCBCA, Ontario BCA, or the US corporate statutes applicable in their jurisdictions of incorporation and therefore are companies under the CCAA;
  - (b) it is just and convenient to stay proceedings as the operations of the corporate Petitioners are so intertwined that it would significantly impair the effectiveness of a stay in respect of the Canadian corporate Petitioners not to extend the same relief to the US corporate Petitioners; and
  - (c) The Petitioners are subject to secured claims of more than \$250M USD. The Petitioners have insufficient cash flow to meet their needs, as their current sales revenue is far below what is necessary to cover expenses and repay outstanding

liabilities. The Petitioners have run out of liquidity and are unable to meet their obligations as the same become due.

### The BC Court is the Appropriate Venue for these Proceedings

9. Subsection 9(1) of the CCAA provides that an application for a stay of proceedings under the CCAA may be made to the court that has jurisdiction in the province in which the head office or chief place of business of the company in Canada is situated, or if the company has no place of business in Canada, in any province within which any assets of the company are situated.

CCAA, s. 9(1).

10. The wording of this provision is disjunctive. It provides for three separate bases for this Court to take jurisdiction over a proceeding, namely: (a) the head office is located in the province; (b) the chief place of business is located in the province; or (c) the debtor company or companies have assets in the province (if there is no place of business in Canada). In a multi-national group, such as the NextPoint Group, these elements must be satisfied in relation to the primary CCAA Petitioner – in this case, NextPoint, as the ultimate parent of the Canadian and non-Canadian related Petitioners in the NextPoint Group.
11. Case law interpreting subsection 9(1) has held that “head office” means registered office, as determined under corporate law. The registered office of NextPoint is located in BC. This factor alone is sufficient to establish jurisdiction of this Court over the Petitioner under subsection 9(1).

*Oblats de Marie Immaculée du Manitoba, (Re)*, 2002 SKQB 161 at para. 13, citing *Royal Bank v. Perfection Foods Ltd.*, 1991 CarswellPEI 116, 80 A.P.R. 302

12. In a recent Ontario decision, the Ontario Court held that the requirements of subsection 9(1) of the CCAA were satisfied on the basis that the Applicant, the ultimate parent of a number of affiliates in Canada and the United States, was incorporated in Ontario, with assets in Ontario (bank accounts and shareholdings).

*Chalice Brands, (Re)*, 2023 ONSC 3174 at para. 27 [**“Chalice Brands”**].

13. CCAA Courts have accepted that a multinational enterprise such as the Petitioners’ business must be restructured as a global unit. For example, the request of two Ghanaian subsidiaries of a CCAA debtor for an order that the CCAA proceeding not apply to their Ghanaian property was refused by the Ontario Court. Central to the Court’s reasoning was the fact that it was critical to the restructuring that the entire group of applicants be included in the CCAA proceedings. There are numerous examples of Canadian CCAA Courts taking jurisdiction over cross-border restructurings involving both Canadian and non-Canadian affiliates, with a view to facilitating a global restructuring of the business.

*Ghana Gold Corp. (Re)*, 2013 ONSC 3284 at paras. 55 to 56; see also *Just Energy Corp. (Re)*, 2021 ONSC 1793; *Chalice Brands*, above.

14. To this end, this proceeding includes, as Petitioners, a number of NextPoint's non-Canada affiliates. The non-Canadian Petitioners are all "companies" within the meaning of the CCAA. The definition of "company" refers to any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, or any incorporated company having assets or doing business in Canada, wherever incorporated. Again, this wording is disjunctive – it is sufficient for a company to either be incorporated in Canada or to have assets or do business in Canada in order to be properly entitled to benefit from a CCAA stay order. In other words, a corporation incorporated outside Canada can be a debtor company, as long as it has assets in Canada, or does business in Canada.

CCAA, s. 2, "company".

15. Case law establishes that the requirement for assets in Canada does not require those assets to be substantial – the test can be met even where the assets are nominal, such as funds on deposit in a Canadian bank account. There is no requirement for this Court to embark on a quantitative analysis of the assets or even of the circumstances in which they were created.

See, for example, *Canwest Global Communications Corp.*, (Re), 2009 CarswellOnt 6184 (SCJ) at para. 30; *Global Light Telecommunications Inc.*, (Re), 2004 BCSC 745 at para. 17; *Cadillac Fairview Inc.*, (Re), 1995 CarswellOnt 36 (Gen. Div.) at para. 6.

16. In establishing jurisdiction of the Canadian Courts under s. 9(1) of the CCAA, some CCAA Courts have also looked at the indicia of the "centre of main interest" or "COMI". However, other Courts have held that the determination of the COMI is a matter for the Court tasked with recognizing a foreign insolvency order – for example, the US Bankruptcy Court tasked with determining whether to recognize a CCAA order granted by a Canadian Court under Chapter 15 of the US Bankruptcy Code, or the converse.

CCAA, s. 45(2): see *Re Angiotech Pharmaceuticals Ltd.*, (Re), 2011 BCSC 115 [In Chambers], at paras. 5-7; *Just Energy Corp. (Re)*, 2021 ONSC 1793 at paras. 40-47. But see: *Cinram International Inc.*, (Re), 2012 CarswellOnt 8413 at para. 42.

17. To the extent relevant to this Petition, a number of factors point to the COMI for NextPoint being in British Columbia and support the assumption of jurisdiction over this proceeding by this Court. The Petitioner, NextPoint, was incorporated pursuant to the laws of British Columbia. Its registered office is in British Columbia (which, under subsection 45(2) of the CCAA, establishes a rebuttable presumption that the COMI is in British Columbia). It is a



publicly-traded company with common shares listed on the TSX. It is the ultimate parent corporation of the other petitioners in this proceeding.

18. The NextPoint Group, including NextPoint, is fully integrated and operates on a consolidated basis through its three business lines. NextPoint oversees the operations of its subsidiaries and provides significant direction to and oversight of the NextPoint Group's operations and assets. The NextPoint Group is functionally consolidated, with shared services, expenses, and employees across the corporate group. Finally, all intercompany transfers occur through NextPoint in Canada.
19. If the proposed Initial Order and related relief is granted, the Petitioners intend to commence a recognition proceeding under chapter 15 of the US Bankruptcy Code. This relief will ensure that actions taken in relation to US entities and US property, are overseen by the US courts.

### **The Relief Sought is Urgent**

20. Section 11 of the CCAA provides that the Court may make any order that it considers appropriate in the circumstances, "on notice to any other person or without notice as it may see fit".
21. Rule 8-5(6) of the Civil Rules provides the court may make an order without notice in the case of urgency.
22. The Petitioners require urgent relief due to their liquidity challenges and inability to pay liabilities as they come due. They require urgent access to interim financing in the first 10 days of the CCAA proceeding in order to maintain ongoing operations for the benefit of all stakeholders. The Petitioners have sought to have this application heard this date to preserve and stabilize operations, and to preserve the opportunity to restructure their business.
23. In addition, the Forbearance Agreements with the Petitioners' major secured creditor expires on July 31, 2023, following which the Petitioners will be in default of their obligations under the NP/LT Credit Agreement and the Community Tax Facility. The Petitioner's major secured creditors have supported the Petitioners' efforts to restructure over the past year by agreeing to credit facility amendments and forbearance agreements. They continue to support the Petitioners by execution of the RSA and provision of the Interim DIP Financing in accordance with the terms outlined therein, including that an Initial Order under the CCAA be granted.
24. Therefore, the Petitioners submit that granting the Initial Order is appropriate and is in the best interests of the Petitioners' stakeholders.

### **A Stay of Proceedings is Appropriate**

25. Section 11.02 of the CCAA provides:

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

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

26. The purpose of the stay of proceedings is to assist the debtor in maintaining the status quo, while working to stabilize its affairs and negotiate a plan of arrangement with creditors, thus benefiting both the debtor and its creditors.

*Ted Leroy Trucking [Century Services] Ltd., Re*, 2010 SCC 60 ("**Century Services**") at paras. 60-62.

27. The power to grant a stay of proceedings should be construed broadly to facilitate the CCAA's legislative purpose. The CCAA is remedial legislation, affording courts with broad jurisdiction to approve and implement restructuring arrangements:

The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court supervised attempt to reorganize the financial affairs of the debtor company is made.

*Century Services* at para. 59.

28. As the primary policy instrument available under the CCAA, a stay of proceedings helps to facilitate compromises and arrangements between companies and their creditors. It provides an essential period of reprieve from litigation proceedings, allowing a debtor company to instead focus on negotiations with creditors.

*Campeau v. Olympia & York Developments Ltd.*, 1992 CarswellOnt 185  
(Ct. J. (Gen. Div.)) at para. 17.

29. The stay of proceedings also facilitates the on-going operations of the debtor's business, preserves the value of the operations and provides the debtor with the necessary time, flexibility and "breathing room" to carry out a court-supervised restructuring or sale process.

*Lehndorff General Partners Ltd., Re*, 1993 CarswellOnt 183 (Ont. Ct. J.)  
at paras. 5-7.

30. The threshold for a debtor company to obtain a stay of proceedings under the CCAA is low. The company only has to satisfy the Court that a stay of proceedings would "usefully further" its efforts to reorganize. The debtor company is not required to put forward anything more than a germ of a plan that requires protection.

*Century Services* at para. 70.

*Industrial Properties Regina Limited v. Copper Sands Land Corp.*, 2018  
SKCA 36 at para. 21.

31. Pursuant to s. 11.02(1) of the CCAA, any stay of proceedings in an initial order under the CCAA is restricted to ten days, subject to extension at the first comeback application and subsequently thereafter. This short initial stay period is meant to minimize prejudice to creditors who may have received short or no notice of the initial petition. Any creditor with concerns about the adequacy of service is only required to wait ten days to make its case in opposition to the debtor company's filing or the resulting stay of proceedings.
32. Most of the Petitioners are either borrowers or have guaranteed each other's secured debt obligations. Accordingly, a stay of proceedings is sought with respect to all of the Petitioners to avoid the patchwork of legal proceedings and enforcement that would otherwise occur, whether against Petitioners with primary or secondary debt obligations, or subsidiaries of such Petitioners who would be impacted if creditors were to obtain judgment against such Petitioners.
33. The requested stay of proceedings conforms to the British Columbia model CCAA initial order and is sought to enable the Petitioners to explore restructuring alternatives. The Petitioners have gone well beyond the necessary "germ of a plan" and indeed have entered into the RSA, the CRO engagement and negotiated the potential SISF. The restructuring will see the Petitioners benefitting from the protections and relief afforded by the CCAA.
34. Therefore, the Petitioners submit that a ten-day stay of proceedings until the scheduled Comeback Hearing is appropriate in these circumstances.

#### **Appointment of the Monitor**

35. Section 11.7 of the CCAA provides that the court shall appoint a person to monitor the business and affairs of a debtor company granted relief under the CCAA.
36. Section 11.7(2) of the CCAA provides restrictions on who may be appointed as a monitor. In particular, if in the two preceding years an entity was an auditor or accountant for the debtor company then they are barred from acting as monitor.

37. FTI has acted as a monitor in this and other Canadian jurisdictions and is qualified and competent to act as a monitor in these proceedings. At no time in the past two years has FTI or any of its partners or managers been:
- (a) a director, officer, or employee of the Petitioners;
  - (b) related to the company or any director or officer of the Petitioners; or
  - (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the Petitioners.
38. FTI is not under a trust indenture or power of attorney related to the Petitioners, nor is it related to a holder of any such indenture or power of attorney.
39. FTI has consented to act as the monitor in these CCAA proceedings.

#### **Commencement of CCAA Proceedings**

40. Pursuant to subsection 10(2) of the CCAA, an initial application must be accompanied by:
- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
  - (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
  - (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.
41. The Petitioners have provided the documents required under subsection 10(2), and commencing CCAA proceedings would enable a restructuring of the Petitioners' business that would be consistent with the purposes of the CCAA as the restructuring would maximize recovery to stakeholders and allow the Petitioners to file a CCAA Plan for the stakeholders' benefit.
42. The Petitioners have acted and are acting in good faith and with due diligence.

#### **Interim DIP Financing and Interim DIP Charge are Appropriate**

43. The Petitioners seek approval of an interim debtor-in-possession loan facility (the "**Interim DIP Financing**"), and the granting of the related Interim DIP Facility Charge in the maximum amount of \$25.2 million plus interest and fees. The Interim DIP Facility Charge is to rank in priority to all other encumbrances on the assets, properties and undertakings of the Petitioners, other than the Administration Charge and the CRO Charge.

44. This Court has the jurisdiction to approve the Interim DIP Facility and Interim DIP Facility Charge under section 11 of the CCAA.

CCAA, s. 11

*Re U.S. Steel Canada Inc.*, 2014 ONSC 6145, at para. 11.

45. The purpose of DIP Financing is to benefit all stakeholders by allowing the debtors to protect the company's going-concern value while they attempt to devise a plan acceptable to creditors.

*Canwest Global Communications Corp.*, [2009] CarswellOnt 6184

46. Section 11.2 of the CCAA vests the Court with the jurisdiction to grant an interim financing charge over the assets of a debtor company in priority to the claim of any secured creditor of the debtor company, on notice to the secured creditors who are likely to be affected by such security or charge.

CCAA, s. 11.2.

47. In deciding whether to make an order, the court is to consider, among other things, the following factors:

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

CCAA, s. 11.2(4).

48. In these circumstances, the foregoing factors all support the granting of the Interim DIP Facility Charge.

49. The Petitioners intend to move quickly to develop and approve the SISP and pursue a restructuring. They are acting in good faith in the face of their current financial challenges.
50. During these proceedings, the Petitioners' operations will continue under the guidance of their management and the CRO, which have the confidence of the DIP lender. No viable restructuring is possible without the Interim DIP Financing.
51. Without the financing provided for in the Interim DIP Commitment Letter, the Petitioners will be unable to carry on their operations, including supporting its franchisees, to the detriment of their stakeholders.
52. The amount of the Interim DIP Financing is reasonably necessary in these circumstances to fund NextPoint's operations in the ordinary course of business during the first ten days of the proceeding, given the scope and size of the NextPoint Group's business until the comeback hearing. The Petitioners, with the assistance of the Proposed Monitor, have sized the Interim DIP Financing to address the Petitioners' urgent liquidity needs over the first ten days of the proceeding, as reflected in the Cash Flow Forecast. At the comeback hearing, the Petitioners intend to request the authority to draw down the remainder of the Interim DIP Facility in accordance with the Cash Flow Forecast.
53. The fulcrum secured creditors of the Petitioners and the Monitor support the Interim DIP Financing and the Interim DIP Facility Charge.

**The Appointment of a Chief Restructuring Officer is Appropriate**

54. The Petitioners seek approval of the engagement and continued involvement of the CRO pursuant to the terms and conditions set out in the Engagement Letter. The CRO Engagement Letter also sets out the compensation to be received by the CRO for its services to be provided throughout these CCAA proceedings.
55. This Court has the jurisdiction to approve the engagement of the CRO under Section 11 of the CCAA.

CCAA, s. 11.

56. This Court has jurisdiction to fund the CRO and grant the CRO Charge pursuant to section 11.52 of the CCAA.

CCAA, s. 11.52.

57. This Court has held that the appointment of a chief restructuring officer is appropriate where such expertise will assist the debtor company to proceed with its restructuring efforts under the CCAA. Courts have frequently appointed a chief restructuring officer as part of the initial stay order where there are creditor concerns that the debtor company's directors and officers may not have the skills or expertise to deal with a restructuring.

*Re Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107, at para. 35  
("Walter Energy")

*Pascan Aviation Inc. (Arrangement relatif à)*, 2015 QCCS 4227, at para.  
57 ("Pascan Aviation")

58. Courts consider the following factors in determining whether to approve the appointment of a chief restructuring officer:
- (a) whether the appointment enhances the likelihood of generating maximum value for the debtor company's stakeholders;
  - (b) whether the appointment will allow the debtor company's operations to continue in an orderly fashion, pending a transaction;
  - (c) whether the proposed CRO has experience in restructuring;
  - (d) whether the CRO has experience and necessary skills to oversee the debtor company;
  - (e) whether the monitor supports the appointment of the CRO;
  - (f) whether the proposed CRO has a good knowledge of industry in which the debtor company operates so that the CRO's presence is reassuring to all industry stakeholders;
  - (g) whether the proposed CRO is independent from the parties; and
  - (h) whether the proposed CRO will incur reasonable costs.

*Walter Energy*, at para. 27, 32-35

*Pascan Aviation*, at paras. 68-69

*Re JTI-Macdonald Corp.*, 2019 ONSC 1625, at paras. 26-27

59. In June 2023, the Petitioners, in consultation with their primary secured creditor, determined that additional management support would be required to support the Petitioners in their restructuring efforts.
60. The Petitioners require management support in respect of these CCAA proceedings and their restructuring. The CRO is experienced in large, complex restructurings in capital-intensive industries and, accordingly, has the skills necessary to oversee the Petitioners' business and restructuring through these proceedings.
61. On July 1, 2023, the Petitioners engaged Province to provide Peter Kravitz as CRO and the necessary resources to assist NextPoint with its restructuring. Since July 1, 2023, the

CRO has been working with NextPoint in an effort to restructure their affairs on an out-of-court basis. In consultation with stakeholders, the Petitioners determined that these proceedings were necessary to facilitate their restructuring and to maximize value for stakeholders.

62. The CRO is also familiar with the Petitioners and the issues they face, having worked closely with the Board, senior management and the management of NextPoint's subsidiaries since May 2023.
63. As a result of the Petitioners' need for management support, the CRO's experience with the Petitioners and the CRO's experience in restructuring matters, the Petitioners submit that the CRO's continued engagement enhances the likelihood of maximizing stakeholder value.
64. The Proposed Monitor has reviewed the CRO engagement Letter and supports the continued involvement of the CRO.

#### **The D&O Charge is Appropriate**

65. Pursuant to s. 11.51 of the CCAA, the Court has specific authority to grant a "super priority" charge to the directors and officers of a company as security for the indemnity provided by the company in respect of certain statutory obligations. Such charge can rank in priority over the claims of any secured creditor of the debtor company. In deciding whether to grant a D&O Charge, the court must be satisfied that:
  - (a) notice is given to the secured creditors who are likely to be affected;
  - (b) the charge relates to obligations or liabilities that may be incurred after the commencement of CCAA proceedings;
  - (c) the amount of the charge is reasonable;
  - (d) directors' and officers' insurance is not otherwise available; and
  - (e) the charge will not provide coverage for wilful misconduct or gross negligence.

CCAA, s. 11.51.

*Laurentian University of Sudbury, 2021 ONSC 659*

*Nordstrom Canada Retail, Inc., 2023 ONSC 1422*

66. In these circumstances, the D&O Charge is appropriate because:
  - (a) the Petitioners will benefit from the active and committed involvement of the directors and officers, who have considerable institutional knowledge and valuable experience and whose continued participation will help facilitate an effective



restructuring and is essential to the viability of the Petitioners' business and the preservation of enterprise value;

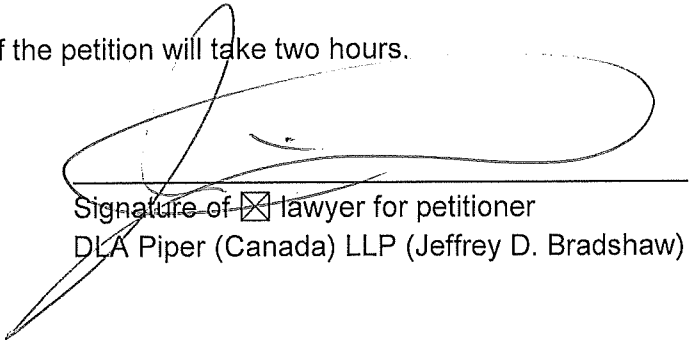
- (b) the existing insurance coverage is inadequate for an enterprise of this size and additional coverage is unavailable;
- (c) the D&O Charge does not secure obligations incurred by a director or officer as a result of their gross negligence or wilful misconduct; and
- (d) the Proposed Monitor is of the view that the D&O Charge is reasonable and appropriate in the circumstances.

**Part 4: MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of Peter Kravitz made on July 25, 2023;
- 2. Proposed Monitor's Report, to be filed; and
- 3. Such further and other materials as counsel may advise and this Honourable Court may allow;

The petitioner estimates that the hearing of the petition will take two hours.

July 25, 2023  
Dated

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

***To be completed by the court only:***

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master

**Schedule "A"**

1. NextPoint Financial, Inc.
2. NPI Holdco LLC

**Liberty Tax Entities**

1. LT Holdco, LLC
2. LT Intermediate Holdco, LLC
3. SiempreTax+ LLC
4. JTH Tax LLC
5. Liberty Tax Holding Corporation
6. Liberty Tax Service Inc.
7. JTH Financial, LLC
8. JTH Properties 1632, LLC
9. Liberty Credit Repair, LLC
10. Wefile, LLC
11. JTH Tax Office Properties, LLC
12. LTS Software LLC
13. JTH Court Plaza, LLC
14. 360 Accounting Solutions, LLC
15. LTS Properties, LLC

**Community Tax Entities**

16. CTAX Acquisition LLC
17. Community Tax Puerto Rico LLC
18. Community Tax LLC

**LoanMe Entities**

19. NPLM Holdco LLC
20. MMS Servicing LLC
21. LoanMe, LLC
22. LoanMe Funding, LLC
23. LM Retention Holdings, LLC
24. LoanMe Trust Prime 2018-1
25. LoanMe Trust SBL 2019-1
26. LoanMe Stores LLC
27. InsightsLogic LLC
28. LM 2020 CM I SPE, LLC

No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND  
ARRANGEMENT OF NEXTPOINT FINANCIAL, INC. AND  
THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

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**PETITION TO THE COURT**

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DLA Piper (Canada) LLP  
Barristers & Solicitors  
2800 Park Place  
666 Burrard Street  
Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444  
Fax No. 604.687.1612

File No.: 109926-00007

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