

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TREES CORPORATION, ONTARIO CANNABIS HOLDINGS CORP., MIRACULO
INC., 2707461 ONTARIO LTD., OCH ONTARIO CONSULTING CORP., AND 11819496
CANADA INC.**

Applicants

**FACTUM OF THE APPLICANTS
(returnable on January 29, 2024)**

January 25, 2024

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Tel: 416-304-1616

Robert I. Thornton (LSO# 24266B)
Email: rthornton@tgf.ca

Mitchell W. Grossell (LSO# 699931)
Email: mgrossell@tgf.ca

Derek Harland (LSO# 79504N)
Email: धारland@tgf.ca

Rudrakshi Chakrabarti (LSO# 86868U)
Email: rchakrabarti@tgf.ca

Lawyers for the Applicants

TO: THE SERVICE LIST

PART I - OVERVIEW¹

1. The Applicants are in the cannabis retail business and operate cannabis retail stores in Ontario and British Columbia. Leading up to these CCAA proceedings, the Applicants have suffered significant losses in the tens of millions of dollars. Due to these financial difficulties, on December 22, 2023, the Applicants sought and obtained relief under the *Companies' Creditors Arrangement Act*² pursuant to the Initial Order granted by Chief Justice Morawetz.

2. At the comeback hearing on January 2, 2024, the Court granted the Amended and Restated Initial Order (the "**First ARIO**"), which, among other things:
 - (a) appointed FTI as the Monitor of the Applicants;
 - (b) extended the stay of proceedings (the "**Stay**") in favour of the Applicants and their D&Os up to and including February 29, 2024;
 - (c) approved the execution of the DIP Term Sheet between the Applicants and the DIP Lender pursuant to which the Applicants were authorized to borrow up to \$800,000 at the interest rate of 0% per annum; and
 - (d) granted the following priority charges against the Property:
 - (i) the Administration Charge in the amount of \$100,000;
 - (ii) the DIP Lender's Charge in the amount of \$1,100,000;
 - (iii) the Directors' Charge in the amount of \$100,000;

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the First Report of the Monitor, FTI Consulting Canada Inc. ("**FTI**" or the "**Monitor**") dated January 24, 2024 ("**First Report of the Monitor**"), or in the affidavit of Jeffrey Holmgren sworn January 23, 2024 (the "**Third Holmgren Affidavit**"); Motion Record at Tab 2.

² R.S.C. 1985, c. C-36, as Amended [[CCAA](#)].

- (iv) the Subsequent Administration Charge in the amount of \$400,000 that ranks behind the Senior Secured Debt; and
- (v) the Subsequent Directors' Charge in the amount of \$383,000 that ranks behind the Senior Secured Debt.

3. At this hearing, the Applicants seek the following relief to further their restructuring:

- (a) the Second Amended and Restated Initial Order (the "**Second ARIO**") that, among other things:
 - (i) amends the DIP Lender's name from One Plant Retail Corp. to One Plant (Retail) Corp. to fix this clerical error in the First ARIO;
 - (ii) authorizes and approves the Amended and Restated DIP Term Sheet dated January 23, 2024, that, among other things, increases the principal amount available under the DIP Facility to \$1,560,000 (the "**A&R DIP Term Sheet**");
 - (iii) increases the DIP Lender's Charge to the maximum amount of \$1,850,000;
 - (iv) extends the Stay in up to and including April 12, 2024;
 - (v) authorizes payment by the Applicants of the professional fees and disbursements of Ernst & Young Inc. ("**EY**") and its counsel, Torys LLP, incurred during their involvement in these CCAA Proceedings;
 - (vi) authorizes the Applicants to take no further steps or incur further expenses in relation to the Securities Filings and declares that none of the D&Os, employees, and other representatives of the Applicants or FTI shall have any personal liability for any failure by the Applicants to make the Securities Filings; and

- (vii) postpones the requirement for any future annual general meeting (“**AGM**”) of the shareholders of Trees during the CCAA Proceedings; and
 - (b) the SISP Approval Order, that, among other things:
 - (i) approves the sale and investment solicitation process (the “**SISP**”) in substantially the form attached as Schedule “A” to the SISP Order;
 - (ii) authorizes for the Applicants and the Monitor to immediately commence the SISP;
 - (iii) approves the Stalking Horse Agreement dated January 23, 2024, entered between Trees and One Plant (in such capacity, the “**Stalking Horse Bidder**”) solely for the purpose of constituting the “**Stalking Horse Bid**” under the SISP; and
 - (iv) approves of certain bid protections for the Stalking Horse Bidder.
4. The relief sought by the Applicants is supported by the Monitor and the DIP Lender. The relief will allow the Applicants to continue operating as a going concern until the value of their business and assets can be determined through a SISP that is open and fair to all parties.
5. For the additional reasons set out in greater detail below, the Applicants submit that the relief sought is fair, reasonable, and will help advance these CCAA Proceedings for the benefit of all the Applicants’ stakeholders.

PART II - FACTS

A. Background

6. The facts with respect to this motion are briefly summarized below and are more fully set out in the Third Holmgren Affidavit.
7. The Applicants commenced these proceedings due to their financial difficulties and on December 22, 2023, and January 2, 2024, respectively, obtained the Initial Order and the First ARIO.³ Pursuant to the Initial Order, EY was appointed as monitor of the Applicants. At the comeback hearing, the First ARIO replaced EY as monitor and appointed FTI.
8. Since the First ARIO, the Applicants have focused their efforts on negotiating a share purchase agreement with One Plant that is proposed to serve as a stalking horse bid in the proposed SISP.

B. Proposed Second ARIO

(i) Amending the DIP Lender's Name

9. Since the Applicants obtained the First ARIO, the Applicants were advised the correct name of the DIP Lender is One Plant (Retail) Corp.⁴ On January 12, 2024, the parties entered into an Amending and Rectification Agreement to amend the DIP Term Sheet to reflect the correct corporate name of the DIP Lender.⁵ The Second ARIO amends reference to the DIP Lender from One Plant Retail Corp. to One Plant (Retail) Corp.⁶

³ Third Holmgren Affidavit at paras 5-7.

⁴ Third Holmgren Affidavit at para 52.

⁵ *Ibid.*

⁶ *Ibid* at para 53.

(ii) **Amended DIP Term Sheet – Increase to DIP Financing and DIP Charge**

10. The Applicants seek approval of the A&R DIP Term Sheet pursuant to which the DIP Lender has agreed to increase the maximum principal amount available under the DIP Facility to \$1,560,000. The Applicants also seek approval of a corresponding increase to the DIP Lender’s Charge up to \$1,850,000.
11. The updated and revised cash flow forecast (the “**Revised Cash Flow Forecast**”) forecasts that the Applicants will not have sufficient liquidity to continue to fund its operations through the requested Stay without the use of the Amended DIP Facility pursuant to the A&R DIP Term Sheet. The Amended DIP Facility is required to provide liquidity to the Applicants to fund the day-to-day operations of the Applicants and the restructuring costs while the Applicants complete the SISP and close a transaction.⁷
12. The A&R DIP Term Sheet includes the following material amendments to the DIP Facility:⁸
- (a) the original terms of the DIP Term Sheet will remain the same with respect to the first \$800,000 of funding available under the original DIP Facility;
 - (b) subsequent advances beyond \$800,000 (each, a “**Subsequent DIP Advance**”) include the following additional terms:
 - (i) each Subsequent DIP Advance will be in maximum tranches of \$200,000;
 - (ii) there is a commitment fee of \$45,000;

⁷ *Ibid* at para 55.

⁸ *Ibid* at para 57; First Report of the Monitor at para 50.

- (iii) Subsequent DIP Advances bear interest at 15% per annum;
 - (iv) the final \$350,000 is only available to the Applicants if Phase 2 of the SISP is required; and
 - (v) the Revised Cash Flow Forecast must remain acceptable to the DIP Lender, in its sole discretion; and
- (c) the maturity date of the Amended DIP Facility was extended to April 12, 2024.
13. The Applicants worked with its counsel and the Monitor in determining the quantum of the Amended DIP Facility and, accordingly, the DIP Lender's Charge. The Monitor supports the approval of the A&R DIP Term Sheet, and the corresponding increase to the DIP Lender's Charge.⁹

(iii) Stay Extension

14. The Stay currently expires on February 29, 2024. The Applicants request an extension of the Stay to April 12, 2024. The extension of the Stay is necessary to maintain stability and provide the Applicants with sufficient time to complete the SISP and canvas the market for potential bidders.¹⁰
15. The Applicants seek the extension of the Stay at this time to minimize the costs associated with an additional hearing closer to the expiration of the current Stay period. Extending the Stay to April 12, 2024, will permit the Applicants, with the assistance of the Monitor, to

⁹ Third Holmgren Affidavit at para 58; First Report of the Monitor at para 53.

¹⁰ Third Holmgren Affidavit at para 59.

complete the SISP and prepare materials associated with the approval of the successful bid under the SISP.¹¹

(iv) Authorizing Payment of EY's Fees

16. In November 2023, EY started assisting the Applicants with their CCAA preparations.¹² Pursuant to the Initial Order, EY was appointed as monitor of the Applicants and authorized to, among other things, monitor the business and financial affairs of the Applicants in accordance with the CCAA.¹³
17. EY and its counsel performed numerous restructuring services for the Applicants, including assisting the Applicants in the preparation for these CCAA Proceedings, assisting the Applicants with the preparation of an initial Cash Flow Forecast, and performing the initial statutory duties of a monitor in a CCAA proceeding.¹⁴
18. EY has issued an account in the amount of \$66,817.48 for the services rendered in connection with these CCAA Proceedings.¹⁵ Additionally, Torys LLP, has issued an account in the amount of \$70,062.19 for its services rendered while acting as EY's counsel.¹⁶ These accounts reflect material goodwill discounts offered by EY and Torys LLP.¹⁷ In light of the comprehensive services rendered by EY and their counsel, and due

¹¹ *Ibid* at para 60.

¹² *Ibid* at para 65.

¹³ *Ibid* at para 66.

¹⁴ *Ibid* at para 67.

¹⁵ Fee affidavit of Allen (Liang) Yao sworn January 19, 2024 (the "**Yao Affidavit**"); Motion Record at Tab 3.

¹⁶ Fee affidavit of Mike Noel sworn January 18, 2024 (the "**Noel Affidavit**"); Motion Record at Tab 4.

¹⁷ *Ibid*; Yao Affidavit.

to their replacement as monitor, the Applicants seek authorization to pay these professional fees.

(v) Authority to Incur No Further Costs in Connection with Securities Filings and Extension of Time Limit to Hold AGM

19. In the Second ARIO, the Applicants seek: (a) to incur no further expenses in relation to the Securities Filings; (b) a declaration that none of the directors, officers, employees and other representatives of the Applicants or the Monitor shall have any personal liability for failure by the Applicants to make any Securities Filings that may be required by the Securities Provisions; and (c) to extend the time limit to call and hold the AGM.
20. The Applicants have determined that incurring further expenses to maintain the currency of Trees' securities reporting going forward and holding the AGM is not appropriate at this time. The Applicants' resources and time are better directed towards its restructuring efforts, specifically to implement a sale or investment transaction following the SISP to preserve the business as a going concern and ensure employment stability.¹⁸
21. Moreover, the Applicants have engaged with the Alberta Securities Commission ("ASC"), the relevant securities regulator, and the ASC has advised that they have no concerns with the securities related relief sought by the Applicants in the Second ARIO and that the ASC takes no position on the motion seeking the securities-related relief.¹⁹

¹⁸ Third Holmgren Affidavit at paras 71-74.

¹⁹ *Ibid* at paras 14 and 75.

C. Proposed SISP Order

(i) SISP

22. The SISP has been developed by the Applicants and the Monitor as a means of seeking to maximize the value of the Applicants' business assets.²⁰
23. The SISP is designed to be broad, flexible, and solicit interest in, and opportunities for, a sale of all or substantially all of the Applicants' Property or Business, or an investment in the Applicants or their Business.²¹
24. The SISP provides for a two-staged process. Phase 1 of the SISP calls for the submission of non-binding Letters of Intent ("**LOIs**") by February 29, 2024 (the "**Phase 1 Bid Deadline**"). The Applicants and the Monitor will evaluate the LOIs and determine which Qualified Phase 1 Bidders, if any, shall proceed to Phase 2 of the SISP. If no Qualified Phase 1 Bid is received by the Applicants prior to the Phase 1 Bid Deadline (other than the Stalking Horse Agreement, which is determined to be a Qualified Phase 1 Bid), the Applicants will promptly proceed to seek Court approval of the Stalking Horse Agreement and Phase 2 of the SISP will not proceed.²²
25. Phase 2 of the SISP calls for binding offers that are irrevocable until Court approval of the Successful Bid(s).²³

²⁰ *Ibid* at paras 17 and 18.

²¹ *Ibid* at para 22.

²² *Ibid* at para 23.

²³ *Ibid* at para 24.

26. A summary of the key dates under the proposed SISP is as follows:²⁴

Milestone	Deadline
Commencement of SISP	January 29, 2024
Distribution of the Notice, Teaser Letter Confidentiality Agreement and Acknowledgement of SISP	As soon as reasonably practicable following the date on which the SISP Order is granted
Phase 1 Bid Deadline	February 29, 2024
Phase 2 Bid Deadline	March 15, 2024
Selection of Successful Bid(s)	March 19, 2024
Auction (if any)	No later than March 22, 2024
Sale Approval Hearing	As soon as practicable
Closing Date Deadline	A maximum of 4 weeks after the Sale Approval Hearing, but by no later than the Outside Date of April 30, 2024

(ii) The Stalking Horse Agreement

27. The Applicants have negotiated a share purchase agreement with the Stalking Horse Bidder that is proposed to serve as the “Stalking Horse Bid” in the SISP.²⁵ At this time, approval of the Stalking Horse Agreement is only being sought for the purposes of approving it as the Stalking Horse Bid under the SISP.

²⁴ *Ibid* at para 25.

²⁵ *Ibid* at para 19.

28. Below are the principal terms of the Stalking Horse Agreement, among other things:²⁶

Term	Details
Transaction Structure	Purchase of 100% of the issued and outstanding shares of Trees, to be effected through a reverse vesting order. Any Excluded Assets or Excluded Liabilities will be channeled to, and assumed by ResidualCo. The entire transaction is an “as is, where is” basis.
Purchase Price	The aggregate of: (a) the Credit Bid Consideration, (b) the Pre-Filing GST/HST Obligations, and (c) the Cash Consideration (each as defined in the Stalking Horse Agreement), which is estimated to be approximately \$3.6 million.
Assumed Liabilities	<ul style="list-style-type: none"> • All Post-Filing Claims; • To the extent that the Applicants do not have sufficient funds on or before the Closing Date to satisfy such amounts or such amounts are not otherwise paid with the Cash Consideration, any and all Claims in priority to the Credit Bid Consideration; • Intercompany Claims between members of the Applicants; and • Those specific Assumed Liabilities set forth in Schedule 2.04 of the Stalking Horse Agreement.
Employees	The Purchaser intends to assume all store-level employees of the Applicants, and, in any event, offer letters shall be delivered to no fewer than 95% of such store-level employees
Break Fee	\$60,000.

29. While the Applicants are optimistic that the SISP will result in a competitive bidding process in furtherance of a value maximizing transaction, the Stalking Horse Agreement assures the preservation and continuity of the core business of the Applicants as a going concern, and the continued employment of most of the Applicants’ employees.²⁷

²⁶ *Ibid* at para 47.

²⁷ *Ibid* at para 48.

30. The terms of the Stalking Horse Agreement were negotiated extensively between the Applicants, the Monitor, and the Stalking Horse Bidder.²⁸

PART III - ISSUES

31. The issues in respect of the relief being sought under the Second ARIO are:
- (a) Should the A&R DIP Term Sheet should be approved?
 - (b) Should the Stay be extended up to and including April 12, 2024?
 - (c) Should this court authorize payment by the Applicants of the professional fees and disbursements of EY and Torys LLP?
 - (d) Should this Court grant authority to the Applicants to incur no further expenses in relation to the Securities Filings and extend the time limit to hold the AGM?
32. The issues in respect of the relief being sought under the SISP Order are:
- (a) Should the SISP be approved?
 - (b) Should the Stalking Horse Agreement be approved for the purposes of serving as the Stalking Horse Bid under the SISP?

PART IV - LAW & ARGUMENT

A. The A&R DIP Term Sheet and DIP Lender's Charge Should be Approved

33. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the A&R DIP Term Sheet and the DIP Lender's Charge.²⁹ Section 11.2(4) of the

²⁸ *Ibid* at para 49; First Report of the Monitor at para 35.

²⁹ [CCAA, s 11.2.](#)

CCAA sets out the following non-exhaustive factors to be considered by the Court in deciding to approve an interim financing charge:

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the report of the monitor with respect to the reasonableness of the cashflow statement.³⁰

34. In *Canwest Publishing Inc.*,³¹ Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) of the CCAA in addition to those found in section 11.2(4), namely:

- (a) whether notice has been given to secured creditors likely to be affected by the security or charge;
- (b) whether the amount to be granted under a DIP charge is appropriate and required having regard to the debtors' cash-flow statement; and

³⁰ [CCAA, s 11.2\(4\)](#).

³¹ [2010 ONSC 222](#).

- (c) whether the DIP charge secures an obligation that existed before the order approving the DIP was made.³²

35. The criteria from sections 11.2(1) and 11.2(4) of the CCAA support approving the A&R DIP Term Sheet and granting the DIP Lender's Charge for the following reasons:

- (a) all of the Applicants' secured creditors have been provided with notice of this motion;
- (b) the current DIP Lender is the most logical source of the additional financing required because the DIP Lender continues to offer the first \$800,000 without interest and any other commitment fees – any other DIP Facility is unlikely to offer better terms for the Applicants, if one could be found in a reasonable timeframe;
- (c) the Monitor is of the view that the interest rate and fees provided in the A&R DIP Term Sheet for the Subsequent DIP Advance is within an acceptable range;³³
- (d) pursuant to the Revised Cash Flow Forecast, the Applicants require the additional DIP financing to complete the SISP and close a transaction;³⁴
- (e) the additional liquidity under the Amended DIP Facility will allow the Applicants to preserve the jobs of employees, preserve the business as a going concern, and provides the best opportunity to maximize value;³⁵
- (f) without the Amended DIP, the alternative is to cease operations and liquidate the Applicants' business, which would materially prejudice all creditors;³⁶ and

³² [CCAA, s 11.2\(1\)](#); *Ibid* at [paras 42-44](#).

³³ First Report of the Monitor at para 52.

³⁴ Third Holmgren Affidavit, at para 55. Similar reasoning has been approved in the following cases: [Just Energy Group Inc et al](#), 2021 ONSC 7630 at para [37](#); and [Target Canada Co, Re](#), 2015 ONSC 303 at paras [67-68](#).

³⁵ Third Holmgren Affidavit at para 55.

³⁶ *Ibid* at para 8(a) and (b).

(g) the Monitor is supportive of the approval of the A&R DIP Term Sheet and corresponding DIP Lender's Charge.³⁷

36. The Amended DIP Facility is in the best interests of the Applicants and their stakeholders because it allows the Applicants to continue operations with a view of proceeding with the SISP and an eventual transaction, thereby maximizing value for the Applicants' business and assets.

B. The Stay Should be Extended

37. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the Stay period for any period "it considers necessary." To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.

38. Since the granting of the Initial Order, the Applicants have acted, and are continuing to act in good faith and with due diligence in these CCAA Proceedings to stabilize the Applicants' business and operations.³⁸

39. The Stay expires on February 29, 2024, which is the same date as the proposed Phase 1 Bid Deadline. An extension of the Stay to and including April 12, 2024, is necessary and appropriate in the circumstances to forego the costs associated with an additional hearing, and to provide the Applicants the time necessary to complete the SISP and prepare materials associated with the approval of the successful bid under the SISP.³⁹

³⁷*Ibid* at para 58.

³⁸ Third Holmgren Affidavit at para 63.

³⁹ Third Holmgren Affidavit at para 60.

40. If the Amended DIP Facility is granted, the Applicants are projected to have sufficient cash during the requested Stay.⁴⁰ The Monitor and the DIP Lender are both supportive of the proposed extension of the Stay.⁴¹

C. Authorize Payment of Professional Fees

41. Section 23 of the CCAA⁴² sets out the duties and functions of a monitor. Before and after its appointment as monitor, EY and its counsel performed such duties and numerous services for the Applicants, including assisting the Applicants in their preparation for these CCAA Proceedings, assisting the Applicants with the preparation of a Cash Flow Forecast, and performing the initial statutory duties of a monitor in the CCAA proceeding.⁴³
42. Pursuant to the Initial Order, the Monitor and its counsel are entitled to be paid their reasonable fees and disbursements, each at their standard rates and charges.⁴⁴ The Initial Order also requires the Monitor and its counsel to pass their accounts.⁴⁵ A summary of the fees for EY and its counsel for the period of December 17, 2023, through January 2, 2024, are set out in the Fee Affidavits.⁴⁶
43. The overarching test on a motion to pass accounts is to consider the “overriding principle of reasonableness”, with the predominant consideration in such assessment being the overall value contributed by the monitor and its counsel. As stated by Chief Justice

⁴⁰ *Ibid* at para 62.

⁴¹ *Ibid* at paras 61 and 62.

⁴² CCAA, [s 23](#).

⁴³ See Yao Affidavit and Noel Affidavit.

⁴⁴ *Trees et al*, Initial Order dated December 22, 2023 [Court File No. CV-23-00711935-00CL] at para 28.

⁴⁵ *Ibid* at para 29.

⁴⁶ See Yao Affidavit and Noel Affidavit.

Morawetz in the CCAA proceedings of *Laurentian*, the Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.⁴⁷

44. Additionally, the following non-exhaustive factors assist courts in evaluating the fairness and reasonableness of a court-appointed officer's fees:
- (a) the nature, extent and value of the assets being handled;
 - (b) the complications and difficulties encountered;
 - (c) the degree of assistance provided by the company, its officers or its employees;
 - (d) the time spent;
 - (e) the Monitor's knowledge, experience and skill;
 - (f) the diligence and thoroughness displayed;
 - (g) the responsibilities assumed;
 - (h) the results achieved; and
 - (i) the cost of comparable services when performed in a prudent and economical manner.⁴⁸
45. Applying these factors, it is respectively submitted that the accounts of EY and their counsel are fair and reasonable. The Applicants have been advised by EY and their counsel, that they have not charged any time in connection with the transition from EY to FTI as

⁴⁷ *Laurentian University of Sudbury*, 2022 ONSC 2927 at [para 9](#) [*Laurentian*]; *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at [para 45](#).

⁴⁸ *Laurentian* at [para 10](#).

monitor and, further, they have each voluntarily reduced their respective invoices by \$25,000 as a goodwill gesture to ensure that the change in the monitor (including time spent on this issue) has not prejudiced the Applicants or their stakeholders.⁴⁹

46. In *Nelson Education Ltd, Re*,⁵⁰ Justice Newbould approved fees and disbursements of the “former monitor” (including those of its counsel), in which Alvarez & Marsal Canada Inc. was ultimately replaced by FTI Consulting Canada Inc. at the respective comeback hearing. The authorized remuneration for the former monitor in *Nelson* pertained to the timeframe spanning from May 12, 2015, to May 29, 2015, encompassing a duration of 17 days. Despite the relatively short duration, the work accomplished during this period by the former monitor was essential and compensation was warranted.
47. Similar to *Nelson*, the services provided by EY and Torys LLP were essential to the restructuring efforts of the Applicants. The services allowed the Applicants to develop a restructuring plan and consisted of an efficient transition of the monitor role to FTI.⁵¹
48. The Revised Cash Flow Forecast filed with the First Report of the Monitor, provides for the payment of EY and Torys LLP.⁵² The Applicants have reviewed the fees and disbursements of the EY and its counsel and is of the view that they are fair and reasonable for the services rendered.

⁴⁹ Third Holmgren Affidavit at para 69. See Yao Affidavit and Noel Affidavit.

⁵⁰ Order dated December 15, 2015 [Court File No. CV-15-10961-00CL] See <http://cfcanada.fticonsulting.com/NelsonEducationLtd/courtOrders.htm> [*Nelson*].

⁵¹ First Report of the Monitor at para 76.

⁵² Third Holmgren Affidavit at para 70.

D. This Court Should Grant the Securities-Related Relief

49. As described previously, the Second ARIO includes specific securities and corporate law related relief to minimize costs and allow management to focus on the restructuring. The Applicant's counsel has corresponded with the ASC, the relevant securities regulator, and the ASC has confirmed in writing that it takes no issue with the proposed relief.
50. Subsection 133(1)(b) of the *Canada Business Corporations Act* ("CBCA") requires a corporation to call an annual shareholders' meeting no later than six months after the end of its preceding financial year. In many CCAA proceedings involving publicly-traded corporations, it is common for the CCAA Court to suspend the statutory period to hold an AGM.⁵³ From a policy perspective, it is important for publicly-traded corporations to hold AGM's to keep their broad shareholder group apprised of key developments and to give them an opportunity to vote on certain corporate actions. However, in the context of a CCAA proceeding where there is frequent public disclosure of the restructuring through Court materials and on the Monitor's website, an AGM is not required.
51. Similar analysis applies with respect to the securities law reporting requirements imposed by securities regulators on publicly-traded corporations. In light of the present CCAA Proceedings which represent a public forum, it is in the best interests of the Applicants and their stakeholders if the Applicants are relieved of their securities reporting obligations during these proceedings, and to incur no further expenses in respect of same. There is no prejudice to stakeholders given that detailed financial information and other information

⁵³ [Re Canwest Global Communications Corp](#), 2009 CanLII 55114 (ONSC) at paras [53-54](#) [*Canwest Global*].

regarding the Applicants will continue to be made publicly available through the materials filed in these CCAA Proceedings and published on the Monitor’s website.

52. Similar relief with respect to reporting obligations has been granted in other CCAA proceedings and the language in the proposed ARIO is the same as the language previously approved on these occasions.⁵⁴

E. The SISP Should be Approved

53. The remedial nature of the CCAA confers broad powers to facilitate restructurings, including the power to approve a sale and investment solicitation process in relation to a CCAA debtor and its business and assets, prior to or in the absence of a plan of compromise and arrangement.⁵⁵
54. In *Nortel*, the Court identified several factors to be considered in determining whether to approve a sales process, which have since been consistently applied:
- (a) Is a sale warranted at this time?
 - (b) Will the sale be of benefit to the whole “economic community”?
 - (c) Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?

⁵⁴ [*Acerus Pharmaceuticals Corporation et al \(Re\)*](#), Amended and Restated Initial Order issued February 3, 2023 at paras 61 and 62 [Court File No. CV-23- 00693595-00CL]; [*Inscape Corporation, Re*](#), Amended and Restated Initial Order issued January 20, 2023 at paras 42 and 43 [Court File No. CV-23- 00692784-00CL]; [*CannTrust Holdings Inc, Re*](#), Initial Order issued March 31, 2020 at paras. 46-47 [Court File No. CV-20-00638930-00CL]; [*Magna Gold Corp Re*](#), Amended and Restated Initial Order issued May 29, 2023 at paras 40-42 [Court File No. CV-23-00696874-00CL]; [*Fire & Flower, Re*](#), Amended and Restated Initial Order issued June 15, 2023 at paras 53-55 [Court File No. CV-23-00700581-00CL].

⁵⁵ [*Nortel Networks Corporation \(Re\)*](#), 2009 CanLII 39492 (ONSC) at paras [47-48](#) [*Nortel*]; CCAA, section [11](#).

(d) Is there a better viable alternative?⁵⁶

55. These criteria have also been applied by this Court in *Sino-Forest Corporation (Re)*⁵⁷ and *Green Growth Brands*.⁵⁸

56. Courts have also considered these additional factors:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.⁵⁹

57. In consideration of the above criteria and factors, the SISP should be approved as:

- (a) A sale will maximize value for the Applicants' stakeholders by allowing the business to continue as a going-concern or through ascribing fair market value to the business and assets of the Applicants;
- (b) the broad flexibility afforded by the SISP is designed to solicit the highest value available for the Property and Business, suggesting that the value that results from any sale transaction will benefit the Applicants' stakeholders. The SISP is flexible and capable of canvassing the market for a variety of potential transaction structures including one or more of a restructuring, recapitalization, or some other form of reorganization of the business and affairs of the Applicants as a going concern or a

⁵⁶ *Nortel*, at para 49.

⁵⁷ [2012 ONSC 2063](#) at para 41.

⁵⁸ [2020 ONSC 3565](#) at para 61 [*Green Growth*].

⁵⁹ *Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107 at paras 20-21; *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para 6 [*CCM Master*].

sale of all, substantially all or one or more components of the Property and Business of the Applicants;⁶⁰

- (c) the Applicants do not believe that any creditor has a reasonable basis to object to the SISP and [no objection has been received since the Notice of Motion of the Applicants was served on January 23, 2024];
- (d) the A&R DIP Term Sheet (and the original DIP Term Sheet) requires a sales process to be commenced;
- (e) the SISP is the best option in the circumstances, particularly in consideration of the Applicants' significant liquidity constraints;
- (f) the SISP was developed by the Applicants, with the assistance of the Monitor, and is intended to provide a flexible, fair, and an efficient structure for canvassing the market;
- (g) the Applicants and the Monitor believe that the milestones of the proposed SISP will provide sufficient time to canvass the market;⁶¹
- (h) the SISP will cause minimal interruption to ongoing operations; and
- (i) the Monitor is supportive of the proposed SISP.⁶²

F. The Stalking Horse Agreement Should be Approved

58. Approval of stalking horse agreements and related SISPs have become a common feature in CCAA proceedings.⁶³ The benefits of having a stalking horse bid are well recognized by the CCAA courts, which include, among others:

⁶⁰ Third Holmgren Affidavit, at paras 22 and 23.

⁶¹ *Ibid* at para 28.

⁶² *Ibid* at paras 23 and 50.

⁶³ *Re Harte Gold Corp*, Endorsement issued December 20, 2021 [Court File No. CV-21-00673304-00CL]; *Re Loyalty One, Co*, Endorsement issued March 20, 2023 [Court File No. CV-23-00696017-00CL].

- (a) facilitating sales by establishing a baseline price and deal structure for superior bids from interested parties, and accordingly, the “use of a sales process that includes a stalking horse agreement maximizes the value of a business for the benefit of its stakeholders and enhances the fairness of the sales process”;⁶⁴
- (b) establishing deal structure by providing a template for competing bidders to use for the submission of competing offers;⁶⁵ and
- (c) providing certainty that a going-concern solution for the business has already been identified.⁶⁶

59. This Court has approved numerous stalking horse agreements for the purposes of being a stalking horse bidder under a SISP.⁶⁷

60. In *DCL Corporation*, it was held that while it would remain to be seen whether a stalking horse agreement would be the final or best bid, the stalking horse bid set a minimum price and thereby incentivized prospective bidders. In turn, the stalking horse agreement benefits the entire economic community, as it provides a going-concern solution, preserves the jobs of active employees and important relationships with suppliers, customers, and other stakeholders.⁶⁸

⁶⁴ *Daniel Leather Inc Re*, 2016 ONSC 1044 at para 20 [*Daniel Leather*]; *CCM Master*, at para 7.

⁶⁵ *Ibid.*

⁶⁶ *Cannapiece Group Inc v Marzili*, 2022 ONSC 6379 at para 4.

⁶⁷ *Re DCL Corporation*, Endorsement issued February 27, 2023 [Court File No. CV-22-00691990-00CL] [*DCL Corporation*]; *Re Trichome Financial Corp et al*, Stalking Horse and SISP Approval Order dated January 10, 2023 [Court File No. CV-22-00689857-00CL]; *Re Tehama Inc*, SISP Approval Order dated February 9, 2023 [Court File No. CV-23-00010241- 00CL]; *Greenspace Brands Inc. Re*, SISP Approval Order issued April 14, 2023 [Court File No. CV-23-00697516- 00CL]. *Fire & Flower, Re*, SISP Approval Order issued June 21, 2023 [Court File No. CV-23-00700581-00CL].

⁶⁸ *DCL Corporation*, at paras 28-29.

61. The Break Fee in the Stalking Horse Agreement is \$60,000, equal to approximately 1.6% of the Purchase Price.⁶⁹ The quantum of the Break Fee is reasonable in the circumstances and well grounded in the authorities. The CCAA Court held that break fees compensate a stalking horse purchaser for the time, resources and risk taken in developing the agreement, and it also represents the price of stability.⁷⁰ In the Applicants' case, customer confidence, stability, and certainty are key to the protection of the Applicants' business.
62. In *CCM Master*, the Court found that a reasonable range for a break fee is between 1.8% and 5% of the value of the bid.⁷¹ Moreover, the Monitor considers the Break Fee to be reasonable in these circumstances.⁷²
63. The terms of the Stalking Horse Agreement were negotiated extensively between the Applicants and the Stalking Horse Bidder in consultation with the Monitor. Accordingly, the consideration provided under the Stalking Horse Agreement is both fair and reasonable in the circumstances, and reflects the product of extensive, good faith negotiations.⁷³
64. The Monitor supports the approval of the Stalking Horse Agreement solely for the purpose of approving it as the Stalking Horse Bid under the SISP.⁷⁴

⁶⁹ First Report of the Monitor at para 34(g).

⁷⁰ *Green Growth*, at para 52; *Daniel Leather*, at para 41.

⁷¹ *CCM Master*, at para 13.

⁷² The Monitor has reviewed break fees in all approved stalking horse processes valued at lower than \$10 million between January 2019 to December 2023, and considers the Break Fee to be reasonable. See the First Report of the Monitor at paras 44-46:

⁷³ Third Holmgren Affidavit at para 49.

⁷⁴ *Ibid* at para 50; First Report of the Monitor at para 47.

PART V - ORDER SOUGHT

65. For all of the foregoing reasons, the Applicants respectfully submit that this Court grant the Second ARIO and the SISP Order in the forms requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of January 2024.

Rudrakshi Chakrabarti

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Tel: 416-304-1616

Robert I. Thornton (LSO# 24266B)
Email: rthornton@tgf.ca

Mitchell W. Grossell (LSO# 69993I)
Email: mgrossell@tgf.ca

Derek Harland (LSO# 79504N)
Email: धारलंद@tgf.ca

Rudrakshi Chakrabarti (LSO# 86868U)
Email: rधारलंद@tgf.ca

Lawyers for the Applicants

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [*Acerus Pharmaceuticals Corporation et al \(Re\)*](#), Amended and Restated Initial Order issued February 3, 2023 [Court File No. CV-23- 00693595-00CL].
2. [*Bank of Nova Scotia v Diemer*](#), 2014 ONCA 851.
3. [*Cannapiece Group Inc v Marzili*](#), 2022 ONSC 6379.
4. [*CannTrust Holdings Inc, Re*](#), Initial Order issued March 31, 2020 [Court File No. CV-20-00638930-00CL].
5. [*Canwest Publishing Inc*](#), 2010 ONSC 222.
6. [*CCM Master Qualified Fund v blutip Power Technologies*](#), 2012 ONSC 1750.
7. [*Daniel Leather Inc Re*](#), 2016 ONSC 1044.
8. [*Fire & Flower, Re*](#), Amended and Restated Initial Order issued June 15, 2023 [Court File No. CV-23-00700581-00CL].
9. [*Green Growth Brands*](#), 2020 ONSC 3565.
10. [*Greenspace Brands Inc, Re*](#), SISP Approval Order issued April 14, 2023 [Court File No. CV-23-00697516- 00CL].
11. [*Inscape Corporation, Re*](#), Amended and Restated Initial Order issued January 20, 2023 [Court File No. CV-23- 00692784-00CL].
12. [*Just Energy Group Inc et al*](#), 2021 ONSC 7630.
13. [*Laurentian University of Sudbury*](#), 2022 ONSC 2927.
14. [*Magna Gold Corp Re*](#), Amended and Restated Initial Order issued May 29, 2023 [Court File No. CV-23-00696874-00CL].
15. [*Nelson Education Ltd, Re*](#), Order dated December 15, 2015 [Court File No. CV-15-10961-00CL].
16. [*Nortel Networks Corporation \(Re\)*](#), 2009 CanLII 39492 (ONSC).
17. [*Re Canwest Global Communications Corp*](#), 2009 CanLII 55114 (ONSC).
18. [*Re DCL Corporation*](#), Endorsement issued February 27, 2023 [Court File No. CV-22-00691990-00CL].
19. [*Re Harte Gold Corp*](#), Endorsement issued December 20, 2021 [Court File No. CV-21-00673304-00CL].

20. [Re Loyalty One, Co](#), Endorsement issued March 20, 2023 [Court File No. CV-23-00696017-00CL].
21. [Re Tehama Inc](#), SISP Approval Order dated February 9, 2023 [Court File No. CV-23-00010241- 00CL].
22. [Re Trichome Financial Corp et al](#), Stalking Horse and SISP Approval Order dated January 10, 2023 [Court File No. CV-22-00689857-00CL].
23. [Sino-Forest Corporation \(Re\)](#), 2012 ONSC 2063.
24. [Target Canada Co, Re](#), 2015 ONSC 303.
25. [Walter Energy Canada Holdings, Inc](#), 2016 BCSC 107.

**SCHEDULE “B”
RELEVANT STATUTES**

[Bankruptcy and Insolvency Act, RSC 1985, c B-3.](#)

Interpretation

Definitions

2 In this Act,

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; (*personne insolvable*)

[Companies’ Creditors Arrangement Act, RSC 1985, c C-36.](#)

Definitions

2 (1) In this Act,

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies; (*compagnie*)

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within 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.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Stays, etc. — initial application

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

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

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

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

Stays, etc. — other than initial application

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

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

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

Interim financing

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

Priority — secured creditors

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

Priority — other orders

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

Factors to be considered

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

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

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

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

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

Monitors

Duties and functions

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

- (e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);
- (f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;
- (f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;
- (g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;
- (h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the *Bankruptcy and Insolvency Act*, so advise the court without delay after coming to that opinion;
- (i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;
- (j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and
- (k) carry out any other functions in relation to the company that the court may direct.

Monitor not liable

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

[Canada Business Corporations Act, RSC 1985, c C-44.](#)

Calling annual meetings

133 (1) The directors of a corporation shall call an annual meeting of shareholders

- (a) not later than eighteen months after the corporation comes into existence; and
- (b) subsequently, not later than fifteen months after holding the last preceding annual meeting but no later than six months after the end of the corporation's preceding financial year.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TREES CORPORATION, ONTARIO CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461 ONTARIO LTD., OCH ONTARIO CONSULTING CORP., AND 11819496 CANADA INC.

Court File No. CV-23-00711935-00CL

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

Proceedings commenced at Toronto, Ontario

FACTUM OF THE APPLICANTS

Thornton Grout Finnigan LLP

3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Tel: 416-304-1616

Robert I. Thornton (LSO# 24266B)

Email: rthornton@tgf.ca

Mitchell W. Grossell (LSO# 69993I)

Email: mgrossell@tgf.ca

Derek Harland (LSO# 79504N)

Email: dharland@tgf.ca

Rudrakshi Chakrabarti (LSO# 86868U)

Email: rchakrabarti@tgf.ca

Lawyers for the Applicants