

**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 BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS INC., AND JOINT CAPTAIN REAL ESTATE INC.

AFFIDAVIT OF PATTY VANMINNEN

I, PATTY VANMINNEN, of the Town of Kingsville, in the Province of Ontario **MAKE**

OATH AND SAY:

1. I am a secured creditor in this proceeding, having granted mortgages to Interlude Inc., one of the debtors in the within proceeding; as such, I have knowledge of the matters to which I hereinafter dispose. To the extent that information set out herein is based on information obtained from others and/or belief, I have stated the source of that information and verily believe that information to be true.
2. This affidavit is made in response to the applicants' motion that is returnable January 31, 2024, in which they are seeking, amongst other things, to impose a debtor-in-possession loan facility in the amount of \$12,000,000.

BACKGROUND

3. In May 2023, along with a company, 1000027984 Ontario Limited, I loaned money

to the Applicant, Interlude, and was granted mortgages against title to two properties located in Sudbury, bearing the municipal addresses 536 Montague Avenue, Sudbury, Ontario, and 348 Poplar Street, Sudbury, Ontario. These mortgages were each personally guaranteed by Dylan Sutor (“Sutor”), and bear instrument numbers SD475657 and SD475659, respectively (the “Mortgages”). The Mortgages each held a six-month term.

4. At the time, we were not advised by Sutor that these Mortgages were being granted as part of a larger enterprise, or that there were hundreds of other lenders being granted mortgages as part of a larger business, or that any of the alleged problems being raised in this proceeding existed. Sutor did not tell us that he was operating an integrated business with Aruba Butt, as it is now being framed in the applicants’ materials.
5. At the end of the six-month term, Interlude defaulted on repayment under the Mortgages, so we delivered Notices of Sale Under Mortgages.
6. In December 2023 and early January 2024, my lawyer spoke with Sutor to negotiate a resolution. At no time during these negotiations did the within proceeding come up in our discussions, nor did the alleged enterprise or the other applicants.
7. I first learned that this proceeding existed on the afternoon of January 25, 2024. I first received the application materials on January 26, 2024, when my real estate lawyer was provided with a link to the monitor’s website, where he could access

them. I have thus only had two business days to consider these issues.

8. Through review of the motion materials, my counsel learned that as part of the initial order of Justice Kimmel dated January 23, 2024, Chaitons LLP was appointed as representative counsel for all of the secured and unsecured lenders of the applicants. My counsel also learned that the applicants had brought a motion, in which they are seeking to impose a debtor-in-possession loan in the amount of \$12,000,000, at an interest rate of 11.5%. These funds are to be used for, amongst other things, the renovation of various untenanted units across various properties that are owned by the applicants.
9. On January 26, 2024, my counsel was informed of a town hall meeting that would be hosted by the monitors on January 29, 2024. My counsel attended at the town hall meeting. The town hall was presented by three people: two representatives of the monitors, KSV, and the representative counsel from Chaitons. The list of participants was not available, nor was there a chat function that allowed us to contact other secured lenders. The speakers advised that there were 183 participants at the town hall. You could not see who was on the call or even speak. The only way to participate was to raise your hand electronically and to type a question.
10. On January 30, 2024, my counsel wrote to counsel for the applicants, setting out various concerns that I have with the relief being sought on the application and motion materials. Attached hereto and marked as **Exhibit "A"** is a true copy of this email. My counsel's concerns are set out in the paragraphs below.

11. First, in the application materials, the applicants refer to various corporations that are alleged to be affiliated with One Happy Island Inc. (“Happy Island”; which is allegedly owned by Aruba Butt) and its subsidiaries and affiliates, or with 2657677 Ontario Inc. (“265 Inc.”; which is allegedly owned by Dylan Sutor) and its subsidiaries and affiliates. However, there is no connection in the materials as to how 265 Inc and Happy Island are connected. In paragraph 43 of the applicants’ factum, their counsel make the bald assertion that “*the Applicants operate as an integrated company...*”, without any basis for this statement. While their factum asserts that they meet the criteria set out in section 3 of the *Act*, that does not appear to be the case.
12. Second, before this proceeding was commenced, I was not informed by Interlude that it was an affiliate or subsidiary of the other applicants, nor was I informed that it operated as an integrated company with any of the other applicants. Rather, what I understood was that I was loaning money to Interlude, and would be secured by the two mortgages that I could subsequently enforce upon a default.
13. Third, I am informed by my counsel and verily believe it to be true that Chaitons LLP is in an apparent conflict by purporting to act for both secured and unsecured lenders. At paragraph 90 of the affidavit in the Application Record, it states that there are 802 unsecured promissory notes, of which 602 were issued to The Lion’s Share Group Inc, of which Ms. Drage is the CEO. There very much appears to be conflict where Windrose is seeking to use this proceeding to obtain rights that it otherwise could have bargained for if it sought security. More particularly, Windrose is unsecured and does not want these properties sold, while the secured creditors negotiated rights on

which they are being prevented from enforcing.

14. I understand that section 22(2) of the *Act* sets out that creditors may be included in the same class if their interests or rights are sufficiently similar to give them commonality of interest. In these circumstances, as a secured creditor I do not have commonality in interest with the unsecured creditors. Rather, their interests are opposed, and should make up separate classes. As above, the unsecured creditors do not want these properties sold (and instead want the properties to be renovated), while the secured creditors negotiated rights to enforce on their mortgages, and would be prevented from enforcing on those rights if the order is granted.
15. Because of this lack of commonality of interest, Chaitons LLP; these two groups should be made separate classes with separate representative counsel.
16. Fourth, my counsel has not been provided with a list of the secured creditors' contact information so that they can speak amongst themselves. My counsel would like to hold a meeting amongst secured creditors to discuss whether they should make up their own class.
17. Most immediately, our concern is that we have not had a chance to speak with the other secured lenders. It appears that the applicants are seeking to force this order ahead on January 31, 2024, imposing a \$12,000,000 facility in priority over the secured creditors, without the secured creditors being afforded an opportunity to speak to one another. This is prejudicial to the secured creditors.

- 18. On January 30, 2024, my counsel emailed the service list of lawyers contained in the applicant’s materials, setting out that we are seeking an adjournment of tomorrow’s motion so that we can speak to the secured creditors directly. In response, we received an email from another lender, advising that they support our position. We also received an email from the counsel for Sault Ste. Marie, setting out that they had only been served on Monday January 29, 2024. Finally, we received an email from the applicants’ counsel, challenging the appropriateness of emailing the service list in their materials. Attached hereto and marked as **Exhibit “B”** is a true copy of this email chain between counsel from January 30, 2024.

- 19. I verily believe that there would be no prejudice to the applicants if such an adjournment was granted. Conversely, there would be a significant amount of prejudice to the secured creditors if a debtor-in-possession loan facility in the amount of \$12,000,000 were imposed, with priority over the secured creditors.

- 20. I make this affidavit in good faith and for no improper purpose.

SWORN remotely by Patty Vanminnen in)
the Town of Kingsville, before me at the)
City of Hamilton, in the Province of Ontario,)
this 30th day of January, 2024 in)
accordance with O. Reg. 431/20,)
Administering Oath or Declaration
Remotely.

Dillon Beaulne

A Commissioner, etc.



Patty Vanminnen

This is Exhibit “A” to the Affidavit of Patty Vanminnen sworn before
me on this 30th day of January, 2024

Dillon Beaulne

A commissioner for taking oaths etc.

From: [Samuel Nash](#)
To: ["ZweigS@bennettjones.com"](mailto:ZweigS@bennettjones.com)
Cc: ["Christian Vit"](#); ["Noah Goldstein"](#); ["George@chaitons.com"](mailto:George@chaitons.com); ["David Sieradzki"](#); ["Nisan Thurairatnam"](#); [Christina Kontogiannis](#); [Dillon Beaulne](#)
Subject: BALBOA INC. ET AL
Date: January 30, 2024 11:44:27 AM

Mr. Zweig,

I am litigation counsel for the lenders on 348 Poplar and 536 Montague.

We have instructions to seek an adjournment of tomorrow's attendance so that a meeting of the secured creditors can take place and to provide time to provide fulsome responding materials. The affected parties have been given less than five business days to consider the relief sought and they will need the opportunity to speak to other members of their class.

I have a few questions regarding the materials and the relief sought that the other parties will be interested in.

First, can you please clarify how the companies referenced at paragraph 43 (a) and (b) of the factum are considered to be affiliates of one another to satisfy section 3(2). On my initial review of the materials I do not see what connects Happy Island and its subsidiaries as affiliates with 265 Inc. and its subsidiaries. Can you please clarify the position taken on this. There is a bald statement in paragraph 43 that "the Applicants operate as an integrated Company..." but I do not see any basis for this statement. It appears that some of the applicants may be affiliates with some others, but not all.

Second, it appears to me that Chaitons is in an apparent conflict if it is purporting to act for both secured and unsecured lenders. Furthermore, it appears that the unsecured lenders are 75% made up by Windrose. At paragraph 80 of the affidavit in the Application Record it states that there are 802 unsecured promissory notes of which 602 were issued to Lion's Share of which Ms. Drage is the CEO. There very much appears to be conflict where Windrose is seeking to use this proceeding to obtain rights that it otherwise could have bargained for if it sought security. Can you please provide some clarity on how Chaitons understands it can proceed in the face of this conflict. I would like to understand how Chaitons can consent to the \$12M facility before its clients have even had an opportunity to consult with it. The \$12M of financing is only to the benefit of the unsecured creditors, 80% of which is made up by one person, to the detriment of the secured creditors.

I am still working my way through the materials but there are representations being made in the factum that purport to hold the Applicants out as a unified business when that is not how ordinary individual lenders understood to be advancing funds. This was never a unified business. My clients had no idea about any of the other parties or affected people until six days ago.

My concern is that this attendance tomorrow is being forced away with the strategy of trying to keep secured lenders from speaking with one another.

We are preparing a responding affidavit for tomorrow and we will be seeking an adjournment of

tomorrow's attendance so that a meeting of secured creditors can take place before this large \$12M+ facility is ordered. This time will also allow parties to determine if there is a conflict of using Chaitons.

I left you a voicemail with my cellphone number and I ask that you call me as soon as you can to discuss the matter. I also ask that you respond to my inquiries and forward my email and your response to all of the other parties affected by the proceeding. Alternatively, please provide me with an email contact list of all of the secured lender parties so that I may forward my correspondence to them.

Yours truly,

Samuel I. Nash Partner, George Street Law Group LLP

Direct Phone: [905.526.2106](tel:905.526.2106)

Fax: 905-526-2111

Email: snash@georgestreetlaw.ca

Website: www.georgestreetlawgroup.com

Address: 10 George Street, Suite 200, Hamilton, Ontario, L8P 1C8

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This is Exhibit "B" to the Affidavit of Patty Vanminnen sworn before
me on this 30th day of January, **2024**

Dillon Beaulne

A commissioner for taking oaths etc.

From: Karen Fields
To: Shaneka Shaw Taylor; Samuel Nash; "zweigs@bennettjones.com"; "fosterj@bennettjones.com"; "grayt@bennettjones.com"; "ngoldstein@ksvadisory.com"; "dsieradzki@ksvadisory.com"; "cvit@ksvadisory.com"; "NThurairatnam@ksvadisory.com"; "rjacobs@cassels.com"; "jbellissimo@cassels.com"; "harvey@chaitons.com"; "george@chaitons.com"; "ndasilva@harbourmortgage.ca"; "Irodness@torkinmanes.com"; "tmarkovic@torkinmanes.com"; "howard@howardscapital.com"; "chris.burr@blakes.com"; "daniel.loberto@blakes.com"; "pat.confalone@justice.gc.ca"; "Toronto-Tax-Fiscal@justice.gc.ca"; "leslie.crawford@ontario.ca"; "insolvency.unit@ontario.ca"; "pat.confalone@cra-arc.gc.ca"; "sandra.palma@cra-arc.gc.ca"; "avinash@liftcap.ca"; "RRSPMortgageLegal@olympiatrust.com"; "claire@thewindrosegroupp.ca"; "cdrage@mortgagealliance.com"; "collections@timmins.ca"; "servicetimmins@timmins.ca"; "darlene.peever@tkl.ca"; "clerk@tkl.ca"; "kyla.bell@greatersudbury.ca"; "taxdepartment@greatersudbury.ca"; "taxes@thorold.ca"; "contact@thorold.ca"; "kashfield@stcatharines.ca"; "clerks@stcatharines.ca"; "CitizensFirst@stcatharines.ca"; "imarques@brantford.com"; "finance@welland.ca"; "info@tsacc.ca"; "clerk@niagarafalls.ca"; "cobalt@cobalt.ca"; "pmccracken@markstay-warren.ca"; "traymond@markstay-warren.ca"; "info@markstay-warren.ca"; "qcorney@forterie.ca"; "ETingley@bashllp.com"; "JMartschenko@blg.com"; "RJaipargas@blg.com"
Cc: Christina Kontogiannis; Dillon Beaulne; marshall@uijlaw.com
Subject: RE: BALBOA INC. ET AL
Date: January 30, 2024 2:04:04 PM

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Good Afternoon

We will not oppose the motion. I am the solicitor for the City of Sault Ste. Marie. We were not served on the initial application, nor did we receive a copy of the initial Order until Monday the 29th when a member in our tax department was sent the second Motion Record, and we asked to be sent it.

Also, in this City, three of the applicants are currently before the Courts for Fire Code violations, and 37 property standards violations, which we would like to make sure the court understands that staying those matters, has the potential for safety issues on those properties. We have had no opportunity to fully gather information or prepare responding materials.

Seven of the Applicants have tax arrears with this City for a total current amount of \$609,239.61. I am aware that the materials sent on Monday refer to Municipal Taxes as "unsecured" obligations however, Municipal Taxes have a "priority lien status" pursuant to Section 349 of the *Municipal Act*. Not for this hearing but to correct the misinformation.

Best

Karen Fields (she/her)
City Solicitor
Legal Department
705-759-5407 k.fields@cityssm.on.ca

CITY OF SAULT STE. MARIE

99 Foster Drive, Sault Ste. Marie, ON P6A 5X6

saultstemarie.ca



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From: Shaneka Shaw Taylor <Shaneka@taylordlitigation.ca>

Sent: Tuesday, January 30, 2024 12:44 PM

To: Samuel Nash <snash@georgestreetlaw.ca>; 'zweigs@bennettjones.com' <zweigs@bennettjones.com>; 'fosterj@bennettjones.com' <fosterj@bennettjones.com>; 'grayt@bennettjones.com' <grayt@bennettjones.com>; 'ngoldstein@ksvadvisory.com' <ngoldstein@ksvadvisory.com>; 'dsieradzki@ksvadvisory.com' <dsieradzki@ksvadvisory.com>; 'cvit@ksvadvisory.com' <cvit@ksvadvisory.com>; 'NThurairatnam@ksvadvisory.com' <NThurairatnam@ksvadvisory.com>; 'rjacobs@cassels.com' <rjacobs@cassels.com>; 'jbellissimo@cassels.com' <jbellissimo@cassels.com>; 'harvey@chaitons.com' <harvey@chaitons.com>; 'george@chaitons.com' <george@chaitons.com>; 'ndasilva@harbourmortgage.ca' <ndasilva@harbourmortgage.ca>; 'Irodness@torkinmanes.com' <Irodness@torkinmanes.com>; 'tmarkovic@torkinmanes.com' <tmarkovic@torkinmanes.com>; 'howard@howardscapital.com' <howard@howardscapital.com>; 'chris.burr@blakes.com' <chris.burr@blakes.com>; 'daniel.loberto@blakes.com' <daniel.loberto@blakes.com>; 'pat.confalone@justice.gc.ca' <pat.confalone@justice.gc.ca>; 'Toronto-Tax-Fiscal@justice.gc.ca' <Toronto-Tax-Fiscal@justice.gc.ca>; 'leslie.crawford@ontario.ca' <leslie.crawford@ontario.ca>; 'insolvency.unit@ontario.ca' <insolvency.unit@ontario.ca>; 'pat.confalone@cra-arc.gc.ca' <pat.confalone@cra-arc.gc.ca>; 'sandra.palma@cra-arc.gc.ca' <sandra.palma@cra-arc.gc.ca>; 'avinash@liftcap.ca' <avinash@liftcap.ca>; 'RRSPMortgageLegal@olympiatrust.com' <RRSPMortgageLegal@olympiatrust.com>; 'claire@thewindrosegroup.ca' <claire@thewindrosegroup.ca>; 'cdrage@mortgagealliance.com' <cdrage@mortgagealliance.com>; 'collections@timmins.ca' <collections@timmins.ca>; 'servicetimmins@timmins.ca' <servicetimmins@timmins.ca>; Karen Fields <k.fields@cityssm.on.ca>; 'darlene.peever@tkl.ca' <darlene.peever@tkl.ca>; 'clerk@tkl.ca' <clerk@tkl.ca>; 'kyla.bell@greatersudbury.ca' <kyla.bell@greatersudbury.ca>; 'taxdepartment@greatersudbury.ca' <taxdepartment@greatersudbury.ca>; 'taxes@thorold.ca' <taxes@thorold.ca>; 'contact@thorold.ca' <contact@thorold.ca>; 'kashfield@stcatharines.ca' <kashfield@stcatharines.ca>; 'clerks@stcatharines.ca' <clerks@stcatharines.ca>; 'CitizensFirst@stcatharines.ca' <CitizensFirst@stcatharines.ca>; 'jmarques@brantford.com' <jmarques@brantford.com>; 'finance@welland.ca' <finance@welland.ca>; 'info@tsacc.ca'

<info@tsacc.ca>; 'clerk@niagarafalls.ca' <clerk@niagarafalls.ca>; 'cobalt@cobalt.ca'
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'traymond@markstay-warren.ca' <traymond@markstay-warren.ca>; 'info@markstay-warren.ca'
<info@markstay-warren.ca>; 'gcorney@forterie.ca' <gcorney@forterie.ca>; 'ETingley@bashllp.com'
<ETingley@bashllp.com>; 'JMartschenko@blg.com' <JMartschenko@blg.com>;
'RJaipargas@blg.com' <RJaipargas@blg.com>

Cc: Christina Kontogiannis <ckontogiannis@georgestreetlaw.ca>; Dillon Beaulne
<dbeaulne@georgestreetlaw.ca>; marshall@uijlaw.com

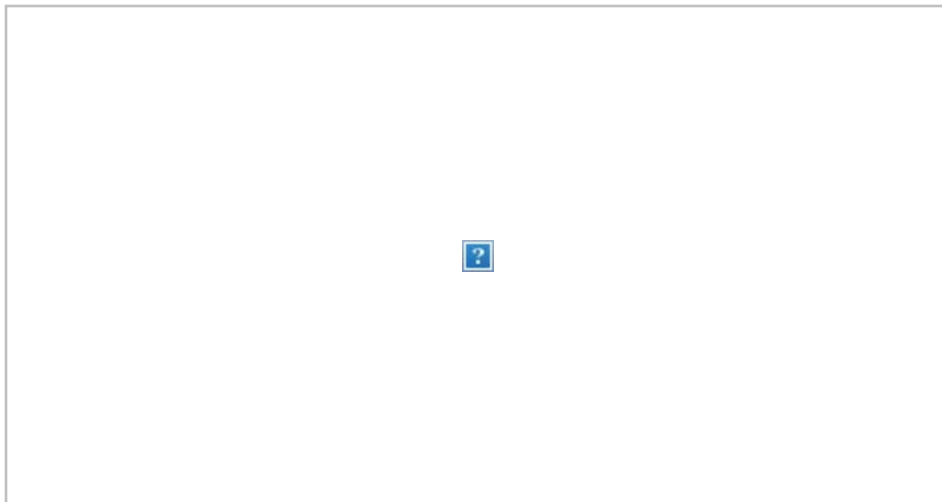
Subject: Re: BALBOA INC. ET AL

This email originated outside of the Corporation of the City of Sault Ste. Marie.
Do not open attachments or click links unless you verify the sender and know the content is safe.

Hi All,

We support Mr. Nash's position and our clients share the same concerns. I have also added Brent Marshall to this email. Mr. Marshall acts for another secured creditor in the same position as my clients.

Best regards,



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[View my contact details here:](#)

From: Samuel Nash <snash@georgestreetlaw.ca>

Sent: Tuesday, January 30, 2024 12:39 PM

To: 'zweigs@bennettjones.com' <zweigs@bennettjones.com>; 'fosterj@bennettjones.com' <fosterj@bennettjones.com>; 'grayt@bennettjones.com' <grayt@bennettjones.com>; 'ngoldstein@ksvadvisory.com' <ngoldstein@ksvadvisory.com>; 'dsieradzki@ksvadvisory.com' <dsieradzki@ksvadvisory.com>; 'cvit@ksvadvisory.com' <cvit@ksvadvisory.com>; 'NThurairatnam@ksvadvisory.com' <NThurairatnam@ksvadvisory.com>; 'rjacobs@cassels.com' <rjacobs@cassels.com>; 'jbellissimo@cassels.com' <jbellissimo@cassels.com>; 'harvey@chaitons.com' <harvey@chaitons.com>; 'george@chaitons.com' <george@chaitons.com>; 'ndasilva@harbourmortgage.ca' <ndasilva@harbourmortgage.ca>; 'lrodness@torkinmanes.com' <lrodness@torkinmanes.com>; 'tmarkovic@torkinmanes.com' <tmarkovic@torkinmanes.com>; 'howard@howardscapital.com' <howard@howardscapital.com>; 'chris.burr@blakes.com' <chris.burr@blakes.com>; 'daniel.loberto@blakes.com' <daniel.loberto@blakes.com>; 'pat.confalone@justice.gc.ca' <pat.confalone@justice.gc.ca>; 'Toronto-Tax-Fiscal@justice.gc.ca' <Toronto-Tax-Fiscal@justice.gc.ca>; 'leslie.crawford@ontario.ca' <leslie.crawford@ontario.ca>; 'insolvency.unit@ontario.ca' <insolvency.unit@ontario.ca>; 'pat.confalone@cra-arc.gc.ca' <pat.confalone@cra-arc.gc.ca>; 'sandra.palma@cra-arc.gc.ca' <sandra.palma@cra-arc.gc.ca>; 'avinash@liftcap.ca' <avinash@liftcap.ca>; 'RRSPMortgageLegal@olympiatrust.com' <RRSPMortgageLegal@olympiatrust.com>; 'claire@thewindrosegroup.ca' <claire@thewindrosegroup.ca>; 'cdrage@mortgagealliance.com' <cdrage@mortgagealliance.com>; 'collections@timmins.ca' <collections@timmins.ca>; 'servicetimmins@timmins.ca' <servicetimmins@timmins.ca>; 'k.fields@cityssm.on.ca' <k.fields@cityssm.on.ca>; 'darlene.peever@tkl.ca' <darlene.peever@tkl.ca>; 'clerk@tkl.ca' <clerk@tkl.ca>; 'kyla.bell@greatersudbury.ca' <kyla.bell@greatersudbury.ca>; 'taxdepartment@greatersudbury.ca' <taxdepartment@greatersudbury.ca>; 'taxes@thorold.ca' <taxes@thorold.ca>; 'contact@thorold.ca' <contact@thorold.ca>; 'kashfield@stcatharines.ca' <kashfield@stcatharines.ca>; 'clerks@stcatharines.ca' <clerks@stcatharines.ca>; 'CitizensFirst@stcatharines.ca' <CitizensFirst@stcatharines.ca>; 'jmarques@brantford.com' <jmarques@brantford.com>; 'finance@welland.ca' <finance@welland.ca>; 'info@tsacc.ca' <info@tsacc.ca>; 'clerk@niagarafalls.ca' <clerk@niagarafalls.ca>; 'cobalt@cobalt.ca' <cobalt@cobalt.ca>; 'pmccracken@markstay-warren.ca' <pmccracken@markstay-warren.ca>; 'traymond@markstay-warren.ca' <traymond@markstay-warren.ca>; 'info@markstay-warren.ca' <info@markstay-warren.ca>; 'gcorney@forterie.ca' <gcorney@forterie.ca>; 'ETingley@bashllp.com' <ETingley@bashllp.com>; 'JMartschenko@blg.com' <JMartschenko@blg.com>; 'RJaipargas@blg.com' <RJaipargas@blg.com>; Shaneka Shaw Taylor <Shaneka@taylordlitigation.ca>
Cc: Christina Kontogiannis <ckontogiannis@georgestreetlaw.ca>; Dillon Beaulne <dbeaulne@georgestreetlaw.ca>

Subject: FW: BALBOA INC. ET AL

Good Afternoon,

We are the lawyers for lenders on two affected properties in this proceeding. Please see my correspondence below.

We have instructions to seek an adjournment of tomorrow's attendance so that the secured lenders can have an opportunity to meet as a class and to prepare more fulsome responding materials as it

appears there Applicants are not all affiliated in accordance with the CCAA relevant rest. The email below sets out some of our clients' concerns. We have spoken with counsel for the Applicants and I understand they will be opposing the adjournment request.

Yours truly,

Samuel I. Nash Partner, George Street Law Group LLP

Direct Phone: [905.526.2106](tel:905.526.2106)

Fax: 905-526-2111

Email: snash@georgestreetlaw.ca

Website: www.georgestreetlawgroup.com

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From: Samuel Nash

Sent: January 30, 2024 11:44 AM

To: 'ZweigS@bennettjones.com' <ZweigS@bennettjones.com>

Cc: 'Christian Vit' <cvit@ksvadvisory.com>; 'Noah Goldstein' <ngoldstein@ksvadvisory.com>; 'George@chaitons.com' <George@chaitons.com>; 'David Sieradzki' <dsieradzki@ksvadvisory.com>; 'Nisan Thurairatnam' <NThurairatnam@ksvadvisory.com>; Christina Kontogiannis <ckontogiannis@georgestreetlaw.ca>; Dillon Beaulne <dbeaulne@georgestreetlaw.ca>

Subject: BALBOA INC. ET AL

Mr. Zweig,

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First, can you please clarify how the companies referenced at paragraph 43 (a) and (b) of the factum are considered to be affiliates of one another to satisfy section 3(2). On my initial review of the materials I do not see what connects Happy Island and its subsidiaries as affiliates with 265 Inc. and its subsidiaries. Can you please clarify the position taken on this. There is a bald statement in

paragraph 43 that “the Applicants operate as an integrated Company...” but I do not see any basis for this statement. It appears that some of the applicants may be affiliates with some others, but not all.

Second, it appears to me that Chaitons is in an apparent conflict if it is purporting to act for both secured and unsecured lenders. Furthermore, it appears that the unsecured lenders are 75% made up by Windrose. At paragraph 80 of the affidavit in the Application Record it states that there are 802 unsecured promissory notes of which 602 were issued to Lion’s Share of which Ms. Drage is the CEO. There very much appears to be conflict where Windrose is seeking to use this proceeding to obtain rights that it otherwise could have bargained for if it sought security. Can you please provide some clarity on how Chaitons understands it can proceed in the face of this conflict. I would like to understand how Chaitons can consent to the \$12M facility before its clients have even had an opportunity to consult with it. The \$12M of financing is only to the benefit of the unsecured creditors, 80% of which is made up by one person, to the detriment of the secured creditors.

I am still working my way through the materials but there are representations being made in the factum that purport to hold the Applicants out as a unified business when that is not how ordinary individual lenders understood to be advancing funds. This was never a unified business. My clients had no idea about any of the other parties or affected people until six days ago.

My concern is that this attendance tomorrow is being forced away with the strategy of trying to keep secured lenders from speaking with one another.

We are preparing a responding affidavit for tomorrow and we will be seeking an adjournment of tomorrow’s attendance so that a meeting of secured creditors can take place before this large \$12M+ facility is ordered. This time will also allow parties to determine if there is a conflict of using Chaitons.

I left you a voicemail with my cellphone number and I ask that you call me as soon as you can to discuss the matter. I also ask that you respond to my inquiries and forward my email and your response to all of the other parties affected by the proceeding. Alternatively, please provide me with an email contact list of all of the secured lender parties so that I may forward my correspondence to them.

Yours truly,

Samuel I. Nash Partner, George Street Law Group LLP

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