

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 16TH
)
JUSTICE CONWAY) DAY OF NOVEMBER, 2023
)

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 BIOSTEEL SPORTS NUTRITION INC.,
BIOSTEEL MANUFACTURING LLC, AND BIOSTEEL SPORTS
NUTRITION USA LLC

(the "**Applicants**")

MANUFACTURING APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCA**"), for an order approving the transaction (the "**Manufacturing Transaction**") contemplated by an Asset Purchase Agreement between Gregory Packaging, Inc., as buyer ("**GPI**"), and BioSteel Manufacturing LLC ("**BioSteel Manufacturing**"), as seller, dated November 9, 2023 (as amended from time to time, in accordance with the terms thereof, the "**Manufacturing Purchase Agreement**") and vesting in GPI, BioSteel Manufacturing's right, title, and interest in and to the Purchased Assets (as defined in the Manufacturing Purchase Agreement) was heard this day by judicial videoconference via Zoom.

ON READING the Affidavit of Sarah Eskandari, sworn November 10, 2023, and the Exhibits thereto (the "**Eskandari Affidavit**"), the Second Report of KSV Restructuring, Inc. in its capacity as the court-appointed monitor (the "**Monitor**") dated November 14, 2023 (the "**Second Report**") and such further materials as counsel may advise, and on hearing the submissions of counsel to the Applicants, counsel to the Monitor, counsel to GPI, and the other parties listed on the counsel slip, and no one else appearing for any other party on the Service List although duly

served as appears from the affidavit of service of Stephanie Fernandes sworn November 10, 2023.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are otherwise not defined shall have the meaning ascribed to them in the Manufacturing Purchase Agreement and/or the Amended and Restated Initial Order made in these proceedings on September 21, 2023 (the “**ARIO**”), as applicable.

APPROVAL OF MANUFACTURING TRANSACTION

3. **THIS COURT ORDERS** that the Manufacturing Purchase Agreement and the Manufacturing Transaction are hereby approved and the execution of the Manufacturing Purchase Agreement by BioSteel Manufacturing is hereby authorized and approved, with such minor amendments as the Applicants, with the consent of the Monitor, may deem necessary. The Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Manufacturing Transaction and for the conveyance of the Purchased Assets to GPI and the assumption of the Liabilities in respect of the Lease.

4. **THIS COURT ORDERS** that BioSteel Manufacturing is authorized and directed to perform its obligations under the Manufacturing Purchase Agreement and any ancillary documents related thereto.

VESTING OF THE PURCHASED ASSETS

5. **THIS COURT ORDERS** that upon the delivery of a Monitor’s certificate to the Applicants (or their counsel) and to GPI (or its counsel) substantially in the form attached as **Schedule “A”** hereto (the “**Monitor’s Certificate**”), all of BioSteel Manufacturing’s right, title and interest in and to the Purchased Assets shall vest absolutely in GPI as at 12:01 a.m. on the date of the Monitor’s Certificate free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), rights of first offer, rights of first refusal, liens, executions, levies, charges, or other

financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order, the ARIO, the SISP Approval Order made in these proceedings on September 21, 2023, or any other Orders made in this CCAA proceeding; and (ii) all charges, security interests or claims whether evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system in any province or territory in Canada or the Civil Code of Quebec, or the Uniform Commercial Code provisions in the United States (all of which are collectively referred to as the “**Encumbrances**”), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof to the Applicants and GPI, or to their respective counsel.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from BioSteel Manufacturing and GPI regarding the fulfilment or waiver of conditions to closing under the Manufacturing Purchase Agreement and shall have no liability with respect to delivery of the Monitor’s Certificate.

APPROVAL OF ASSIGNMENT OF LEASE

9. **THIS COURT ORDERS** that upon delivery of the Monitor’s Certificate:

- (a) all of the rights and obligations of BioSteel Manufacturing under the Lease from and after the delivery of the Monitor’s Certificate shall be assigned, conveyed, transferred and assumed by GPI pursuant to section 11.3 of the CCAA and such

assignment is valid and binding upon all of the counterparties to the Lease notwithstanding any restriction or prohibition, if any, contained in the Lease relating to the assignment thereof, including but not limited to, provisions, if any, relating to a change of control or requiring the consent of or notice for any period in advance of the assignment to any party to the Lease;

- (b) the Lease shall remain in full force and effect and the counterparties under the Lease are prohibited from exercising any rights or remedies (including, without limitation, any right of set-off) under the Lease, and shall be forever barred, enjoined and estopped from taking such action, by reason solely of:
 - (i) any circumstance that existed or event that occurred on or prior to the Closing Date that would have entitled such counterparty to the Lease to enforce those rights or remedies or caused an automatic termination to occur;
 - (ii) any defaults arising from the insolvency of BioSteel Manufacturing or any of its affiliates;
 - (iii) the commencement of this CCAA proceeding;
 - (iv) any defaults that arise upon the assignment of the Lease to GPI;
 - (v) any change of control of BioSteel Manufacturing or its affiliates arising from the implementation of the Manufacturing Purchase Agreement and/or the Manufacturing Transaction and its implementation shall be deemed not to constitute a change in ownership or change in control under the Lease; or
 - (vi) BioSteel Manufacturing having breached a non-monetary obligation under the Lease,

and the counterparties under the Lease are hereby deemed to waive any defaults relating thereto. For greater certainty: (A) without limiting the foregoing, no counterparty under the Lease shall rely on a notice of default sent prior to the filing of the Monitor's Certificate to terminate the Lease as against GPI; and (B) nothing herein shall limit or exempt GPI in respect of obligations accruing, arising or continuing after the Closing of the Manufacturing Transaction under the Lease other than in respects of items (i) to (vi) above.

10. **THIS COURT ORDERS** that the assignment of the Lease shall be subject to the provisions of this Order directing that BioSteel Manufacturing's rights, title and interests in the Lease shall vest absolutely in GPI free and clear of all Claims and Encumbrances.

11. **THIS COURT ORDERS** that the Lease may not be assigned hereunder unless all amounts owing in respect of monetary defaults under the Lease, other than those arising by reason only of the BioSteel Manufacturing's insolvency, the commencement of this CCAA proceeding, or the BioSteel Manufacturing's failure to perform a non-monetary obligation (the "**Cure Costs**"), are paid on or by the Closing Date, or such later date as may be agreed to by GPI and Hansen Partners, LLC (together with any of its successors or assigns, the "**Landlord**") on prior written notice to the Monitor.

12. **THIS COURT ORDERS** that upon delivery of the Monitor's Certificate contemplated by this Order, except as expressly set out to the contrary in any agreement among BioSteel Manufacturing, GPI and the Landlord, GPI shall be entitled to all of the rights and benefits and subject to all of the obligations pursuant to the terms of the Lease.

13. **THIS COURT ORDERS** that upon (a) delivery of the Monitor's Certificate contemplated by this Order, (b) payment of the Cure Costs and (c) payment by GPI to the Landlord in the amount of US\$300,000 to replace the Security Deposit (as defined in the Lease), the Landlord shall forthwith pay to the Monitor for the benefit of BioSteel Manufacturing the amount of US\$300,000, being the Security Deposit, less the amount, if any, needed to pay the Cure Costs, in immediately available funds to a bank account designated by the Monitor; provided the Landlord shall not pay any Cure Costs from the Security Deposit without the prior written consent of BioSteel Manufacturing, acting reasonably, or further Order of this Court; provided further, the Landlord shall be permitted to pay the amounts due in respect of the invoice received from Augusta Water for the billing period from September 6 to November 3, 2023 from the Security Deposit if BioSteel Manufacturing has not paid the invoice within five business days of receipt thereof.

14. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, nothing shall derogate from the obligations of GPI to assume the Lease and to perform GPI's obligations under the Lease, except as expressly set out to the contrary in any agreement among BioSteel Manufacturing, GPI and the applicable counterparty under the Lease.

15. **THIS COURT ORDERS** that the indemnity provided by Canopy Growth Corporation ("**Canopy**") in favour of the Landlord in respect of the Lease (the "**Lease Indemnity**") shall not be

affected by the assignment of the Lease to GPI in accordance with this Order, unless otherwise agreed to by the Landlord, acting reasonably. GPI shall use commercially reasonable efforts to propose to the Landlord one or more reasonable alternatives to replace the Lease Indemnity by Canopy to guarantee performance of the Liabilities of GPI under the Lease (the "**Replacement Indemnity**"), subject to the Landlord's consent, which consent shall not be unreasonably withheld. Upon the Replacement Indemnity becoming effective, the Landlord shall immediately thereby (without any other act or formality) waive, release, and discharge Canopy of all of its obligations in respect of the Lease Indemnity for all Liabilities under the Lease for the period from and after the delivery of the Monitor's Certificate contemplated by this Order.

16. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) the pendency of any applications for a bankruptcy or receivership now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"), in respect of the Applicants or its property, and any bankruptcy or receivership order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicants; and
- (d) the provision of any federal or provincial statute,

the assignment of the Lease to GPI in accordance with this Order, the Manufacturing Purchase Agreement and the vesting of the Purchased Assets in GPI pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of BioSteel Manufacturing or its property and shall not be void or voidable by creditors of BioSteel Manufacturing, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal, provincial or other legislation.

PIPEDA

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor and the Applicants are authorized and permitted to disclose and transfer to GPI all human resources and payroll information in the Applicants' records pertaining to the Applicants' past and current employees.

GPI shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicants.

GENERAL

18. **THIS COURT ORDERS** that the Applicants, the Monitor or GPI may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURTS ORDERS** that this Order and all of its provisions are effective as of 12:02 a.m. Eastern Prevailing Time on the date of this Order without any need for filing or entry.

A handwritten signature in blue ink is written over a horizontal line. The signature appears to be "Conway J." with a stylized flourish at the end.

Schedule “A” – Form of Monitor’s Certificate

Court File No. CV-23-00706033-00CL

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 BIOSTEEL SPORTS NUTRITION INC., BIOSTEEL MANUFACTURING
LLC, AND BIOSTEEL SPORTS NUTRITION USA LLC

(the “**Applicants**”)

MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 14, 2023 (as amended and restated, and as may be further amended and restated from time to time, the “**Initial Order**”), KSV Restructuring, Inc. was appointed as monitor of BioSteel Sports Nutrition Inc. (in such capacity, the “**Monitor**”) in proceedings commenced by BioSteel Sports Nutrition Inc. under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceeding**”).

B. Pursuant to an Order of the Honourable Justice Conway of the Court dated November 16, 2023, BioSteel Manufacturing LLC (“**BioSteel Manufacturing**”) and BioSteel Sports Nutrition USA LLC were made Applicants in the CCAA Proceeding and the terms of the Initial Order were made applicable to BioSteel Manufacturing and BioSteel Sports Nutrition USA LLC.

C. Pursuant to the Manufacturing Approval and Vesting Order of the Court dated November 16, 2023 (the “**Manufacturing Approval and Vesting Order**”), the Court approved the Asset Purchase Agreement between Gregory Packaging, Inc., as buyer (“**GPI**”), and BioSteel Manufacturing, as seller, dated November 9, 2023 (as amended from time to time in accordance with the terms thereof, the “**Manufacturing Purchase Agreement**”), providing for the vesting in GPI, of all of BioSteel Manufacturing’s right, title and interest in and to all of the Purchased Assets (as defined in the Manufacturing Purchase Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to GPI (or its counsel) and the Applicants (or their counsel) of this Monitor’s Certificate.

D. Unless otherwise indicated or defined herein, capitalized terms used in this Monitor’s Certificate shall have the meanings given to them in the Manufacturing Approval and Vesting Order and/or the Manufacturing

Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing set forth in the Manufacturing Purchase Agreement have been satisfied or waived by BioSteel Manufacturing and GPI in accordance with the Manufacturing Purchase Agreement.
2. GPI has paid or satisfied the Purchase Price, subject to applicable adjustments (if any), for the Purchased Assets payable on the Closing Date pursuant to the Manufacturing Purchase Agreement and/or the Manufacturing Approval and Vesting Order.
3. The Manufacturing Transaction has been completed to the satisfaction of the Applicants, the Monitor and GPI.

DATED at Toronto, Ontario this _____ day of _____, 2023.

KSV RESTRUCTURING INC., solely in its capacity as Monitor of the Applicants and not in its personal capacity

Per: _____
Name:
Title:

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 BIOSTEEL SPORTS NUTRITION INC., BIOSTEEL MANUFACTURING LLC, AND BIOSTEEL SPORTS NUTRITION USA LLC

Court File No. CV-23-00706033-00CL

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MANUFACTURING APPROVAL AND VESTING ORDER

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