



**Pre-Filing Report of  
KSV Restructuring Inc.  
as Proposed CCAA Monitor of  
BioSteel Sports Nutrition Inc.**

**September 14, 2023**

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COURT FILE NO.: ●

**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.**

**PRE-FILING REPORT OF KSV RESTRUCTURING INC.  
AS PROPOSED MONITOR**

**September 14, 2023**

## **1.0 Introduction**

1. KSV Restructuring Inc. ("KSV") understands that BioSteel Sports Nutrition Inc. ("BioSteel Canada" or the "Applicant") intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an initial order (the "Initial Order"), among other things, granting BioSteel Canada relief under the CCAA, and appointing KSV as monitor in these proceedings (in such capacity, the "Monitor").
2. BioSteel Canada, operating on an integrated basis with BioSteel Sports Nutrition USA LLC ("BioSteel US") and BioSteel Manufacturing LLC ("BioSteel Manufacturing"), both of which are not applicants in these proceedings, is a sports nutrition and hydration company focused on high-quality ingredients with a strong presence in the professional sports market. BioSteel Manufacturing and BioSteel US are jointly referred to as the "Non-Applicant Stay Parties" and, together with BioSteel Canada, "BioSteel". As described below, while the Non-Applicant Stay Parties are not applicants in these proceedings, it is requested that certain limited protections be extended to them.
3. The principal purpose of these CCAA proceedings is to create a stabilized environment to enable BioSteel Canada to temporarily hibernate its business while undertaking a court-supervised sale and investment solicitation process (the "SISP") for BioSteel's assets and business with the view of identifying and completing a sale transaction. No relief is being sought at the initial application in respect of the SISP.
4. If the Initial Order is granted, BioSteel Canada intends to return to Court within ten days (the "Comeback Motion") seeking approval of an Amended and Restated Initial Order and SISP Approval Order (each as defined and discussed below).

5. The Affidavit of Sarah S. Eskandari, General Counsel of the Applicant, sworn September 13, 2023 in support of the CCAA application (the “Eskandari Affidavit”), provides, among other things, background information concerning BioSteel and its business, as well as the reasons for the commencement of these CCAA proceedings.<sup>1</sup>
6. If the Court grants the relief set out in the proposed Initial Order, the Court materials filed in these proceedings will be made available by KSV on its case website at [www.ksvadvisory.com/experience/case/biosteel](http://www.ksvadvisory.com/experience/case/biosteel) (the “Case Website”).
7. KSV is filing this report (the “Pre-Filing Report”) as proposed Monitor. If the Initial Order is granted, the Monitor will file a subsequent report in respect of the relief to be sought by the Applicant at the Comeback Motion, which report will also detail any matters that have arisen since the date of this Pre-Filing Report.

### **1.1 Purposes of this Pre-Filing Report**

1. The purposes of this Pre-Filing Report are to:
  - a) provide KSV’s qualifications to act as Monitor;
  - b) provide certain background information about BioSteel Canada and its financial position;
  - c) report on the Applicant’s cash flow projection (the “Cash Flow Forecast”) for the Initial Forecast Period (as defined below);
  - d) discuss the rationale for the following aspects of the Initial Order:
    - i. a charge in the amount of US\$750,000 (the “Administration Charge”) on all of the Applicant’s current and future assets, property and undertaking (collectively, the “Property”) to secure the fees and disbursements of the Applicant’s legal counsel, the fees and disbursements of legal counsel to the Special Committee (as defined below), the fees and disbursements of the Monitor and its independent legal counsel, Bennett Jones LLP (“Bennett Jones”) and the monthly fees of the Financial Advisor (as defined below);
    - ii. a charge in the amount of US\$1,279,000 (the “Directors’ Charge” and together with the Administration Charge, the “Charges”) on the Property in favour of the Directors and Officers (as defined below);
    - iii. the proposed priority of the Charges in the Initial Order;
    - iv. a provision authorizing BioSteel Canada to pay certain pre-filing obligations to essential suppliers of BioSteel, subject to first obtaining the Monitor’s consent;

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<sup>1</sup> Ms. Eskandari also serves as General Counsel for the Non-Applicant Stay Parties.

- v. extending the benefit of the stay of proceedings to the Non-Applicant Stay Parties and their respective Directors and Officers; and
  - vi. a provision authorizing BioSteel Canada to act as the foreign representative in respect of these CCAA proceedings for the purpose of having orders issued in these CCAA proceedings from time to time recognized and approved in a jurisdiction outside of Canada, and authorizing BioSteel Canada to apply for foreign recognition and approval of these CCAA proceedings, as necessary, in any jurisdiction outside of Canada, including the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); and
- e) provide the proposed Monitor's recommendation regarding the relief sought by BioSteel Canada in its CCAA application materials.

## **1.2 Scope and Terms of Reference**

1. In preparing this Pre-Filing Report, KSV has relied upon the Applicant's unaudited financial information, books and records, information available in the public domain and discussions with the Applicant's management and legal counsel.
2. KSV has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Pre-Filing Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, KSV expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information set out herein should perform its own diligence.
3. An examination of the Cash Flow Forecast as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future-oriented financial information relied upon in this Pre-Filing Report is based upon the Applicant's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. KSV expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.

## **1.3 Currency**

1. Unless otherwise noted, all currency references in this Pre-Filing Report are in Canadian dollars.

## **1.4 KSV's Qualifications to Act as Monitor**

1. KSV is a licensed trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”). KSV is not subject to any of the restrictions to act as monitor set out in Section 11.7(2) of the CCAA.
2. KSV has consented to act as monitor in these proceedings should the Initial Order be granted. A copy of KSV's consent to act as Monitor is attached hereto as Appendix “A”.

3. KSV has experience acting as CCAA monitor and other court-officer capacities in insolvency proceedings. KSV Advisory Inc. (“KSV Advisory”), an affiliate of KSV, was engaged by the Applicant on August 5, 2023 to assist with financial analysis and other strategic initiatives. During its engagement, KSV Advisory obtained an understanding of the Applicant’s business. This knowledge will assist KSV to fulfill its duties as Monitor if the Initial Order is granted.
4. Neither KSV nor any of its representatives or affiliates has at any time in the past two years been: (a) a director, officer or employee of the Applicant; (b) related to the Applicant, or to any director or officer of the Applicant; or (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the Applicant.

## **2.0 Background**

### **2.1 Corporate**

1. The Eskandari Affidavit provides detailed background information with respect to BioSteel's business and operations. Accordingly, that information is only summarized in this Pre-Filing Report.
2. BioSteel Canada, formerly BioSteel Sports Supplements Inc., was incorporated in Ontario on August 26, 2009 under the *Ontario Business Corporations Act*, and later continued under the *Canada Business Corporations Act*. The Applicant is extra provincially registered in Alberta, the Northwest Territories and Ontario, and is also registered as a foreign profit corporation in the state of New Jersey.
3. BioSteel US and BioSteel Manufacturing operate with BioSteel Canada on an integrated basis to manufacture, market and distribute the BioSteel Products (as defined below). While the Non-Applicant Stay Parties are not subsidiaries of BioSteel Canada, they are significantly intertwined in BioSteel Canada's business. The Non-Applicant Stay Parties were created to support the expansion of BioSteel in the North American market. A copy of the group's simplified organizational chart is attached hereto as Appendix "B".
4. BioSteel US provides sales and marketing services to BioSteel Canada in the United States and is incorporated in Delaware. BioSteel Manufacturing serves as the production and manufacturing operation of certain of BioSteel Canada's RTDs (defined below). The company was incorporated in Delaware on October 8, 2019 and operates BioSteel's manufacturing operations located at a production facility in Verona, Virginia (the "Verona Facility").

### **2.2 Acquisition by Canopy**

1. In October 2019, the then-shareholders of BioSteel Canada and Canopy Growth Corporation (“Canopy”) entered into a share purchase agreement (the “SPA”) pursuant to which Canopy agreed to acquire approximately 72% of the issued and outstanding shares of BioSteel Canada. Subsequent to the completion of the SPA transaction, Canopy completed an incremental equity investment in the Applicant increasing its ownership percentage to 76.7%.

2. In connection with the SPA, Canopy, BioSteel Canada and the now minority shareholders of BioSteel Canada entered into a unanimous shareholders agreement to establish and govern their rights, obligations and relationship in connection with the equity interests of BioSteel Canada.
3. In October 2022, following certain other incremental equity purchases, Canopy exercised its option to purchase one-half of the minority shareholders' remaining shares in BioSteel Canada and all of the shares held by certain optionholders that were acquired pursuant to the exercise of stock options. As of December 2022, Canopy owns approximately 90.4% of the outstanding voting common shares of BioSteel Canada.

### **2.3 Business of the Applicant**

1. BioSteel is a sports nutrition and hydration company in the business of manufacturing and selling ready to drink sports drinks (“RTDs”), hydration mixes and supplements with high quality ingredients for sale at retailers across Canada, the United States and online. The primary distribution channels include, among others, food retailers, convenience stores, gas stations and online platforms, including through its own website. BioSteel also has a strong presence in the professional sports market.
2. BioSteel’s products (collectively, the “BioSteel Products”) include:
  - a) RTDs – These products are bottled natural, sugar free, sports drinks, with more nutrients than other drinks offered on the market. The RTDs are packaged in eco-friendly Tetra Pak Prisma Aseptic cartons.
  - b) Hydration Mix - The powdered Hydration Mix is a market alternative to RTDs and is intended to be mixed with water before consumption. RTD and Hydration Mix come in numerous staple and limited-time flavours.
  - c) Other - BioSteel also sells numerous supplement products, including specialty nutrition and protein powders, as well as BioSteel-branded merchandise.
3. In addition to its significant investments in rights to “rinkside” advertisements, use of proprietary logos and social media participation, the Applicant also has agreements with professional sports teams such as the Toronto Blue Jays, athletic organizations such as the National Hockey League (the “NHL”), and endorsement arrangements with numerous individual professional athletes. These endorsement and sponsorship parties provide market exposure and awareness of Biosteel's products on sponsored social media accounts, marketing campaigns, in-game and in-arena branding during sports games, and the rights for certain of Biosteel's trademarks to appear in advertising campaigns and video games.
4. Biosteel's most notable and significant sponsorship agreement is with the NHL and the National Hockey League Players Association (the “NHLPA”). Both BioSteel Canada and BioSteel US have signed the sponsorship agreement with the NHL and NHLPA, as well as certain related agreements for the services of specific NHL players.

5. Between October 1, 2023 and March 31, 2024, the upcoming payments scheduled to come due under the various endorsement and sponsorship agreements is approximately \$12 million. The Applicant does not intend to use the services of these counterparties following the commencement of these CCAA proceedings and, as a result, does not intend to make any of these upcoming payments.

## 2.4 Employees

1. Prior to the Termination Event (as discussed and defined below), approximately 190 individuals worked at BioSteel (collectively, the “BioSteel Employees”). As of the date of this Pre-Filing Report, approximately 90 of the BioSteel Employees were providing services at the Verona Facility with the remaining BioSteel Employees working in sales, marketing or other corporate capacities.
2. All of the BioSteel Employees are employed by Canopy or Canopy Growth USA, LLC (“Canopy US”). As a result, Canopy or Canopy US, as applicable, is responsible for the remuneration of the BioSteel Employees as well as administering the relevant source deductions. Prior to the Termination Event, the aggregate monthly payroll for the BioSteel Employees was approximately \$1.7 million.
3. Pursuant to their respective Master Services Agreements, employee pay incurred by Canopy or Canopy US for the BioSteel Employees is passed down to the Applicant as an intercompany payable. Due to the Applicant’s liquidity issues, the obligations payable to Canopy or Canopy US for employee related costs have not been paid since March 2023. KSV understands that Canopy has continued to pay the employees and remit source deductions notwithstanding BioSteel Canada's failure to pay the charges when due.
4. The BioSteel Employees are not unionized and the Applicant does not maintain any registered pension plans.
5. Historically, the only person employed by BioSteel was BioSteel Canada's Co-founder. However, on August 18, 2023 the co-founder resigned all positions at the company, including as a director or officer, and the company waived any obligation for them to continue working as of that date.
6. The proposed Monitor understands that on September 14, 2023, Canopy and Canopy Growth US will be terminating (the “Termination Event”) 69 BioSteel Employees (the “Terminated Employees”). The proposed Monitor further understands that Canopy and Canopy Growth US have agreed to retain a limited number of BioSteel Employees to assist with certain necessary continuing services during the pendency of these proceedings (the “Retained Employees”).



## 2.5 Financial Performance

1. Despite the growth of its business, the Applicant's financial challenges have persisted. As a result, the Applicant incurred total losses of approximately \$191.1 million in its most recent fiscal year ending March 31, 2023, as summarized below:

<b>52 weeks ended (\$000s)</b>	<b>March 31, 2023</b>
Sales	24,274
Cost of sales	90,784
Gross profit	(66,509)
Gross profit %	(274%)
Ordinary expenses	114,044
Other expenses	10,553
<b>Net loss</b>	<b>(191,106)</b>

2. As discussed in greater detail in the Eskandari Affidavit, the Applicant continued to incur significant ongoing financial losses as it attempted to expand its market share within North America. The resulting liquidity crisis has been compounded by BioSteel's high production costs, which have historically resulted in negative gross margins on its RTD and Hydration Mix products.
3. A growing number of trade creditors and product endorsement partners are now placing the Applicant on credit hold and/or are demanding immediate payment of past-due obligations and/or threatening to terminate or sending termination notices for certain agreements. The Applicant does not have the liquidity available under its demand loan facilities to fund the arrears payments owing to these creditors and/or contract counterparties.
4. In addition, Canopy is no longer willing to fund BioSteel's operating costs and, absent filing for CCAA protection and support from Canopy, the Applicant will not have the liquidity required to fund its immediate operational needs.

## 2.6 Formation of the Special Committee

1. Canopy and BioSteel, in late 2022, undertook a broad marketing process to seek an additional investment in or the sale of BioSteel. The proposed Monitor understands that the process returned no bids for a going concern sale.
2. In the summer of 2023, a special committee of the Applicant's board was formed (the "Special Committee") to explore certain strategic alternatives for the Applicant, including a renewed focus on sale efforts. The Special Committee engaged the Financial Advisor to assist in develop a process to gauge and solicit interest in BioSteel. This process yielded interest, however, all indications of interest submitted were highly conditional with no corresponding offer to fund the BioSteel business during the diligence period.
3. In light of the foregoing, the proposed Monitor understands that the Special Committee has determined that seeking the benefit of Court protection will provide the best opportunity to maximize the value of BioSteel for all stakeholders.

## 2.7 Financial Position

1. The Applicant's unaudited, internal balance sheet as at the most recent fiscal year end of March 31, 2023 is provided below.

Description	Book Value (\$000s)
Cash	6,104
Accounts receivable	26,686
Inventory	63,778
Prepaid expenses and deposits	15,669
Property, plant and equipment	735
Other assets	124
<b>Total Assets</b>	<b>113,096</b>
Accounts payable	30,926
Accrued liabilities	29,173
Sales tax payable	417
Intercompany interest and trade payables	6,293
Due to Canopy	313,830
Lease liability	168
Other long-term liabilities	208
<b>Total Liabilities</b>	<b>381,015</b>
<b>Equity</b>	<b>(267,918)</b>
<b>Total Liabilities &amp; Equity</b>	<b>113,096</b>

2. The following is a brief description of certain material line items on the Applicant's balance sheet:
  - a) Accounts receivable – Reflects amounts owed by third party customers located in North America. As at August 31, 2023, the Applicant had accounts receivable of approximately \$25.7 million, of which approximately \$22.7 million was aged less than 60 days.
  - b) Inventory – Inventory is primarily comprised of unprocessed raw materials used at the Verona Facility and finished inventory held at various warehousing and storage facilities pending its sale and distribution. As at August 31, 2023 inventory was approximately \$63.8 million.
  - c) Accounts payable – mainly consist of trade payables owing to suppliers. This amount has increased to approximately \$40.4 million as of September 11, 2023.
  - d) Due to Canopy – Reflects the balance of the demand loan facilities owed to Canopy. These facilities provided operating capital historically used to fund payroll (through the Master Service Agreement arrangements), manufacturing costs under the CMO agreements, sponsorship and endorsement payments, and other operations as BioSteel worked to expand within the North American market. This amount has increased to approximately \$366 million, before interest, as of September 11, 2023.

## 2.8 Secured Creditors

### BioSteel Loan Agreement

1. The Applicant is funded primarily through a secured demand loan and credit facility (the “Secured Loan Facility”) with Canopy and 11065220 Canada Inc (“11065220”) as co-lender (together, the “Lenders”) pursuant to a loan agreement (as amended from time to time, the “BioSteel Loan Agreement”).
2. Pursuant to the terms of the BioSteel Loan Agreement, the Lenders established the Secured Loan Facility in favour of BioSteel Canada. The Secured Loan Facility is comprised of various revolving and non-revolving tranches which totaled a consolidated maximum credit of approximately \$389.5 million. The Applicant currently owes Canopy the principal amount of \$69,729,929.65, plus accrued and unpaid interest as at July 31, 2023 of \$5,122,161.77 and owes 11065220 the principal amount of US\$218,452,976.56, plus accrued and unpaid interest as at July 31, 2023 of US\$16,336,604.82.
3. The BioSteel Loan Agreement and the underlying indebtedness is secured by a tenth amended and restated general security agreement dated as of July 13, 2023 by and between the Lenders and BioSteel Canada (the “Security Agreement”). Pursuant to the Security Agreement, BioSteel Canada granted the Lenders a security interest in all right, title and interest in and to all of its real and personal or after acquired property.
4. Bennett Jones has reviewed the Lenders’ security in respect of the Secured Loan Facility and determined that, subject to customary assumptions and qualifications, the security creates a validly perfected security interest in favour of the Lenders in all right, title and interest in and to all of its real and personal or after acquired property of BioSteel Canada in Ontario. If appointed Monitor, KSV will obtain security opinions under the laws of any other applicable provinces as necessary and update the Court accordingly.
5. The Applicant has advised that it has no amounts owing to other secured or priority creditors. The only other registration that the proposed Monitor has been made aware of is a personal property security registration in favour of the Royal Bank of Canada in connection with a cash collateral account.
6. Given the significant amounts owing by BioSteel Canada to the Lenders and their first-ranking security over all of BioSteel Canada assets, the Lenders appear to be the only creditors with an economic interest in the Applicant.

## 3.0 Cash Flow Forecast

1. The Applicant has prepared a Cash Flow Forecast for the 10-day initial stay period (the “Initial Forecast Period”). The Cash Flow Forecast and the Applicant’s statutory report thereon pursuant to Section 10(2)(b) of the CCAA are attached hereto as Appendix “C”.
2. As of the filing date, the Applicant had a cash balance of approximately \$16.2 million.
3. The Cash Flow Forecast demonstrates that, subject to obtaining the relief sought as part of the originating application for the Initial Order, the Applicant is projected to have sufficient liquidity to fund its obligations until the Comeback Motion.

4. Based on KSV's review of the Cash Flow Forecast, the cash flow assumptions appear reasonable. The proposed Monitor's report on the Cash Flow Forecast is attached as Appendix "D".
5. The Applicant will file an updated cash flow forecast for an extended period prior to the Comeback Motion.

## **4.0 Court Ordered Charges**

### **4.1 Administration Charge**

1. The Applicant is seeking Court approval of an Administration Charge in an initial amount not to exceed US\$750,000 to secure the fees and expenses of the Monitor, its legal counsel, the Applicant's legal counsel, the Special Committee's legal counsel and the monthly fees payable to the Financial Advisor. Significant fees and costs have been incurred by these firms to-date in preparing for these CCAA proceedings and fees will continue to be incurred prior to the Comeback Motion.
2. The Administration Charge is a customary provision in an initial order in a CCAA proceeding; it is required to provide security to the professionals engaged to assist a debtor company and to protect them if the debtor is unable to pay professional fees and costs during the CCAA process.
3. The Applicant has worked with its legal counsel and KSV to estimate the proposed quantum of the Administration Charge.
4. KSV believes that the Administration Charge is reasonable and appropriate in the circumstances given the complexities of the Applicant's proceedings. The professionals require the benefit of the Administration Charge to protect them for their pre-filing fees related to preparing for these proceedings, as well as for their fees and costs that will be incurred during these proceedings. Without such protection, the professionals are unlikely to be prepared to continue to provide services in these proceedings.
5. At the Comeback Motion, KSV understands that the Applicant intends to apply for an increase in the maximum amount of the Administration Charge.

### **4.2 Directors' Charge**

1. The Applicant is seeking Court approval of a Directors' Charge in an initial amount not to exceed US\$1,279,000. The amount of the Directors' Charge was estimated by the Applicant in consultation with the proposed Monitor, taking into consideration the potential exposure of the directors and officers for sales taxes (GST/PST/HST), vacation pay, employee wages, environmental liabilities and source deductions until the Comeback Motion.

2. KSV understands that the Applicant is current on their normal course GST/PST/HST and payroll obligations (including employee withholding taxes), however the Applicant is generally in a payable position on sales taxes and is expected to be so for the beginning of these proceedings. Accordingly, the amount of the Directors' Charge represents the sum of:
  - a) the provisional balance of sales taxes as at the date of the Initial Order (US\$157,000);
  - b) termination amounts potentially payable in certain provinces and states where liability may exist for the Terminated Employees and the Retained Employees (US\$403,000);
  - c) one payroll cycle for the Retained Employees (inclusive of source deductions) (US\$263,000);
  - d) the estimated amount of the Applicant's vacation pay owing to employees (US\$300,000); and
  - e) a provisional amount for any future occurring environmental obligations at the Verona Facility (US\$156,000).
3. The proposed Directors' Charge is being sought as security for the directors and officers of BioSteel (other than a director or officer who is or was at any point a shareholder or optionholder of the Applicant) (collectively, the "Directors and Officers") in connection with any obligations or liabilities that they incur as a director or officer of BioSteel after the commencement of these CCAA proceedings. While the BioSteel Employees are ultimately employed by Canopy and Canopy US, and therefore are the ultimate responsibility of those entities as the proposed Monitor understands, the Directors' Charge is necessary in the event that a party alleges that the obligations are a *de facto* obligations for BioSteel.
4. As outlined in the Eskandari Affidavit, the Applicant, through Canopy, maintains director's and officer's liability insurance up to an aggregate of US\$20 million. However, this coverage is subject to certain deductibles, exclusions and carve outs which create a degree of uncertainty. Accordingly, KSV believes the Directors' Charge is reasonable given that the expertise offered by the Directors and Officers of the Applicant is critical to the overall success of these proceedings. The Directors and Officers are not prepared to be personally liable for BioSteel's obligations, and accordingly, without the benefit of the Directors' Charge, the continued cooperation of the Directors and Officers would be at risk, which would impair the Applicant's ability to operate and participate in the SISF during these proceedings.
5. It is notable that the proposed Directors' Charge seeks to secure any obligations or liabilities that the directors and officer of the Non-Applicant Stay Parties incur as a director or officer of their respective entity after the commencement of these CCAA proceedings. The proposed Monitor understands the Lenders, who are the only party that could be prejudiced by this relief, are agreeable given in large part due to the integrated nature of BioSteel's business.

6. KSV understands that at the Comeback Motion, the Applicant intends to apply for an increase of the Directors' Charge up to their estimated maximum total exposure at any point in time in these proceedings.

#### **4.3 Priority of Charges**

1. Each of the Charges is proposed to rank in priority to all other encumbrances against the Property, other than any person who has not been served with notice of the application for the Initial Order. At the Comeback Motion, the Applicant intends to seek to have the Charges rank in priority to the encumbrances described above.
2. The Applicant proposes that the Charges have the following priority (amounts presented below are those proposed to be granted in the Initial Order – any increases to the amounts covered by the Charges will be addressed at the Comeback Motion):
  - a) first, the Administration Charge (US\$750,000); and
  - b) second, the Directors' Charge (US\$1,279,000).
3. The Monitor is of the view that the priority of the Charges is appropriate and in the interest of facilitating these proceedings.

#### **5.0 Proposed Payment of Critical Vendor Obligations**

1. On its application for the Initial Order, the Applicant is seeking a provision permitting it to make payments to certain critical vendors integral to the operation of the business in respect of obligations arising prior to the commencement of its CCAA proceedings. The Applicant is also seeking authorization to pay certain amounts for goods and services of the Non-Applicant Stay Parties as a result of the integrated nature of the BioSteel business.
2. The Applicant seeks authorization to pay these obligations subject to the consent of the Monitor, with the Monitor considering, among other factors, whether:
  - a) the supplier or service provider is considered critical to the business and whether the payment is required to ensure ongoing supply;
  - b) the proposed payment is expected to preserve, protect or enhance the value of the Applicant's property or business; and
  - c) the applicable supplier or service provider is otherwise required to continue to provide goods or services to the Applicant after the date of the Initial Order pursuant to the terms of the proposed Initial Order.
3. The proposed Monitor is familiar with provisions of orders under the CCAA permitting the debtor company to pay specific pre-filing obligations, where appropriate. In certain circumstances, such payments are required or appropriate to preserve the value of a debtor's business for the benefit of stakeholders.

4. KSV is supportive of the Applicant's request for the inclusion of a provision authorizing it to pay certain pre-filing obligations owing to critical vendors, including of the Non-Applicant Stay Parties. KSV will review each proposed payment in accordance with the foregoing criteria prior to providing (or not providing) the Monitor's required consent, with a view to ensuring that payments to suppliers/contractors in respect of pre-filing obligations are limited to those reasonably necessary in the circumstances.
5. The Applicant is also seeking authority to pay post-filing expenses of the Non-Applicant Stay Parties with the consent of the Monitor. The proposed Monitor supports that relief on the same basis as the pre-filing amounts.

## **6.0 Non-Applicant Stay of Proceedings**

1. The proposed Initial Order contemplates that the Non-Applicant Stay Parties and their Directors and Officers be granted the benefits and protection of the stay of proceedings despite not being applicants in these CCAA proceedings.
2. Given the integrated nature of their operations, the insolvency of the Applicant puts the Non-Applicant Stay Parties in a highly vulnerable position. It would be detrimental to BioSteel Canada's ability to successfully restructure if proceedings were commenced or actions taken against any of the Non-Applicant Stay Parties.
3. A stay of proceedings for the Non-Applicant Stay Parties will help maintain the status quo in order to afford BioSteel Canada the best chance to maximize value for all stakeholders.
4. KSV understands that Biosteel operates as an integrated and intertwined North American business. As a result, the proposed stay in favour of the Non-Applicant Stay Parties is in the best interests of the Applicant and its stakeholders as it will permit the coordinated and orderly transition through these proceedings. If enforcement steps are taken against the Non-Applicant Stay Parties, it is expected to materially erode value and negatively impact the SISF to be sought at the Comeback Motion.
5. Accordingly, KSV believes that the relief sought in this regard is reasonable and in the best interests of the Applicant and its stakeholders.

## **7.0 Chapter 15 Proceedings**

1. The Applicant seeks authorization under the proposed Initial Order to apply for foreign recognition and approval of the orders issued in these CCAA proceedings in the United States pursuant to the chapter 15 of title 11 of the United States Code (the "Chapter 15 Proceedings"). If granted, the Initial Order will authorize the Applicant to act as the foreign representative for the purpose of the Chapter 15 Proceedings. KSV has reviewed the cross-border nature of the BioSteel operations, including facts set out in the Eskandari Affidavit, and agrees that Canada is the centre of main interest for BioSteel Canada.



## 8.0 Creditor Notification

1. The proposed Initial Order requires the Monitor to:
  - a) publish without delay a notice in the national edition of *National Post* newspaper containing the information prescribed under the CCAA; and
  - b) within five days of the granting of the Initial Order:
    - i. make the Initial Order publicly available in the manner prescribed under the CCAA;
    - ii. send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000 advising that the order is publicly available; and
    - iii. 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, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
2. If appointed Monitor, KSV will undertake these tasks, and will also post the Initial Order and all motion materials on the Case Website.

## 9.0 Comeback Motion

1. If the Initial Order is granted, the Applicant intends to return to Court within ten days to seek two orders at the Comeback Motion:
  - a) an Order (the “Amended and Restated Initial Order”), among other things: (i) extending the stay of proceedings; (ii) increasing the amount of the Administration Charge and the Directors’ Charge; (iii) approving an engagement letter between the Applicant and its financial advisor, Greenhill & Co. Canada Ltd. (the “Financial Advisor”), and (iv) granting the Financial Advisor a charge to provide certainty that it will be compensated for its services in respect of the SISP; and
  - b) an Order (the “SISP Approval Order”), among other things: (i) approving the SISP; and (ii) authorizing and directing the Applicant, the Financial Advisor and the Monitor to perform their obligations under the SISP.
2. If appointed as Monitor, KSV intends to file a report providing its views on the relief the Applicant is seeking at the Comeback Motion in advance of same.



## 10.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that this Court make the Initial Order granting the Applicant's CCAA application on the terms of the draft Initial Order set out in the Applicant's application record.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
IN ITS CAPACITY AS PROPOSED MONITOR OF  
BIOSTEEL SPORTS NUTRITION INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

**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.**

Applicant

**CONSENT OF THE PROPOSED MONITOR**

**KSV Restructuring Inc.** hereby consents to act as the Court-appointed monitor of BioSteel Sports Nutrition Inc. (the "**Applicant**"), pursuant to the terms of the initial order contained in the Applicant's Application Record and the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, in respect of these proceedings.

Dated: September 13, 2023

**KSV RESTRUCTURING INC.**

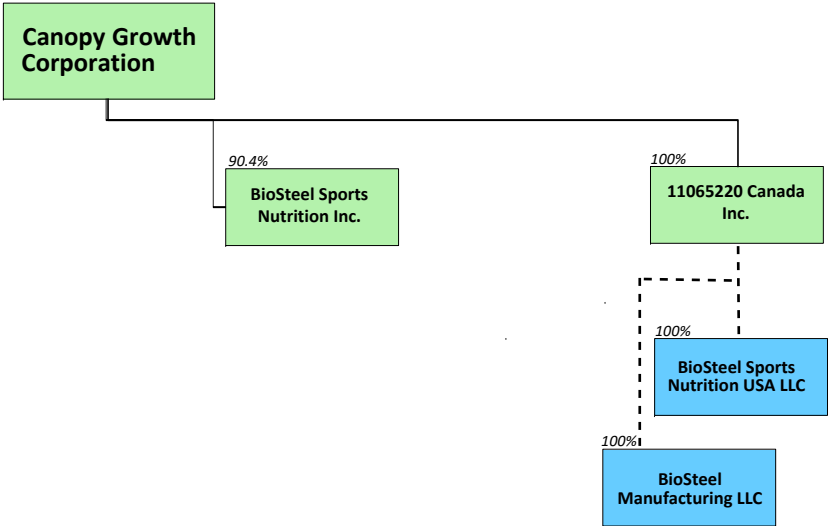
Per:



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Name: Noah Goldstein  
Title: Managing Director

## **Appendix “B”**



- - - Represents indirect ownership.

Percentage (%) represents ownership of voting common shares and membership interests.

1. Canopy Growth Corporation holds a call (and the minority shareholders hold a put) over the minority interests' common shares of BioSteel Sports Nutrition Inc.

Canada

USA

## **Appendix “C”**

BioSteel Sports Nutrition Inc.

**Projected Statement of Cash Flows**

For the Period Ending September 29, 2023

(Unaudited; C\$000s)

	Note	9 day period ending 22-Sep-23	Week ending 29-Sep-23	Total
Receipts	1			
Collection of Accounts Receivable	2	2,100	2,100	4,200
Total Receipts		2,100	2,100	4,200
Disbursements				
Payroll	3	-	-	-
Other operating expenses	4	400	400	800
Contingency		100	100	200
Total Operating disbursements		500	500	1,000
Net Cash Flow before the Undernoted		1,600	1,600	3,200
Professional Fees	5	418	418	837
Net Cash Flow		1,182	1,182	2,363
Opening Cash balance		16,198	17,380	16,198
Net Cash Flow		1,182	1,182	2,363
Closing cash balance		17,380	18,561	18,561

The above financial projections are based on management's assumptions detailed in Appendix "1-1".

The note references correspond to the assumption numbers shown in Appendix "1-1".

**Notes to Projected Statement of Cash Flows**

For the Period Ending September 29, 2023

(Unaudited; C\$000s)

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**Purpose and General Assumptions**

1. The purpose of the projection is to present a forecast of the cash flow of BioSteel Sports Nutrition Inc. ("BioSteel") for the period September 13, 2023 to September 29, 2023 (the "Period").

**Hypothetical**

2. Represents projected collections of accounts receivables.

**Most Probable**

3. BioSteel employees are employed by Canopy Growth Corporation ("Canopy") and, accordingly, payroll obligations are not included in the projection.
4. Other expenses include payments for sundry and HST remittance.
5. Represents professional fees of the proposed Monitor, the proposed Monitor's legal counsel, BioSteel's Canadian and US legal counsel, counsel to the Special Committee and the Applicant's Financial Advisor.



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.

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT  
(paragraph 23(1)(b) of the CCAA)

The management of BioSteel Sports Nutrition Inc. (the "Applicant") has developed the assumptions and prepared the attached statement of projected cash flow as of the 13th day September, 2023 for the period September 14, 2023 to September 29, 2023 ("Cash Flow Forecast"). All such assumptions are disclosed in the notes to the Cash Flow Forecast.

The hypothetical assumptions are suitably supported and consistent with the purpose of the Cash Flow Forecast as described in Note 1 to the Cash Flow Forecast, and the probable assumptions are suitably supported and consistent with the plans of the Applicant and provide a reasonable basis for the Cash Flow Forecast.

Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented and the variations may be material.

The Cash Flow Forecast has been prepared solely for the purpose outlined in Note 1 using a set of probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow Forecast may not be appropriate for other purposes.

Dated at Rochester, NY this 13th day of September, 2023.

**BIOSTEEL SPORTS NUTRITION INC.**



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Per: Tom Stewart

## **Appendix “D”**

**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.**

**MONITOR'S REPORT ON CASH FLOW STATEMENT**  
(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash-flow of BioSteel Sports Nutrition Inc. (the "Applicant") as of the 13th day September, 2023, consisting of a projected cash flow statement for the period September 14, 2023 to September 29, 2023 (the "Cash Flow Forecast") has been prepared by the management of the Applicant's for the purpose described in Note 1, using probable and hypothetical assumptions set out in the notes to the Cash Flow.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by the management and employees of the Applicant. We have reviewed the support provided by management for the probable and hypothetical assumptions and the preparation and presentation of the Cash Flow Forecast.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow Forecast;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Forecast, given the hypothetical assumptions; or
- c) the Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow Forecast will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow Forecast has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto this 13th day of September, 2023.

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
in its capacity as proposed monitor of  
BioSteel Sports Nutrition Inc.  
and not in its personal capacity**