

**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 CHALICE BRANDS LTD.

APPLICANT

**FACTUM
(APPROVAL AND VESTING ORDER & STAY EXTENSION)**

August 28, 2023

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PART I - NATURE OF THE MOTION

1. The Applicant, Chalice Brands Ltd. (“**Chalice**” or the “**Applicant**”), together with its direct and indirect subsidiaries (together, the “**Chalice Group**”) forms a vertically integrated cannabis company operating primarily in the regulated adult-use market of Oregon. The Applicant is the ultimate parent of the Chalice Group.

2. On May 23, 2023, the Applicant was granted protection under the *Companies’ Creditors Arrangement Act*¹ (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”). The stay of proceedings in the Initial Order was extended in favour of the direct and indirect subsidiaries of the Applicant (the “**Non-Filing Affiliates**”). KSV Restructuring Inc. was appointed as monitor within these CCAA proceedings (the “**Monitor**”). On the same day, certain of the Non-Filing Affiliates (the “**Oregon Receivership Entities**”) were placed into receivership in the State of Oregon by order of the Circuit Court of the State of Oregon (the “**Oregon Court**” and the “**Oregon Receivership**”). Kenneth S. Eiler was appointed by the Oregon Court as receiver (the “**Oregon Receiver**”).

3. The Applicant entered insolvency protection to implement an expedited sale and investment solicitation process (“**SISP**”) for all or substantially all of the business and property of the Chalice Group, with the aim of achieving a going concern solution. The CCAA Court and the Oregon Court approved the SISP on June 1 and 2, 2023, respectively (together, the “**SISP Approval Orders**”). The SISP was to be implemented by the Applicant with the oversight of the Monitor, and contemplated extensive consultation with, and consent and approval rights to, the Oregon Receiver. The SISP has now been implemented and completed.

¹ [RSC 1985, c C-36](#), as amended (the “**CCAA**”).

4. The Applicant now seeks an order (the “**Approval and Vesting Order**”):
 - (a) approving the transaction (the “**Transaction**”) contemplated by an Asset Purchase Agreement (“**APA**”) dated August 11, 2023 between APCO LLC (the “**Purchaser**”) and Chalice, Greenpoint Nevada, Greenpoint Oregon, Greenpoint Equipment, CFA Retail, SMS Ventures, and CF Bliss (together, the “**Vendor**”) wherein the Purchaser will acquire substantially all of the assets of the Chalice Group;
 - (b) vesting all of the Applicant’s right, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser, free and clear of all encumbrances except permitted encumbrances; and
 - (c) extending the Stay Period (as defined below) to and including October 31, 2023.

5. The Transaction is the result of a comprehensive Court-approved SISP, and reflects the best expected recovery for the Applicant’s stakeholders. The Transaction also provides a going-concern solution for part of the business of the Chalice Group and preserves many of the Chalice Group’s valuable cannabis licenses. The Transaction involves an experienced Purchaser and permits the continuation of part of the Chalice Group’s business for the benefit of contract counterparties and other stakeholders. The Transaction is supported by the Monitor, the Chief Restructuring Officer (“**CRO**”) of the Applicant, and the Oregon Receiver.

PART II - FACTS

6. The facts underlying this motion are set out more fully in the Affidavit of Scott Secord sworn on August 18, 2023 (the “**Fifth Secord Affidavit**”). Capitalized terms used but not defined herein have the meanings accorded to them in the Fifth Secord Affidavit.

A. Outcome of the SISP

7. Since the SISP Approval Orders, the Applicant, Monitor, CRO and Receiver have worked together to market and sell the assets of the Chalice Group, all in accordance with the SISP.

Specifically:

- (a) prior to the commencement of the CCAA proceeding, the Board of Directors of the Applicant formed a special committee (the “**Committee**”) to conduct a strategic review to determine potential buyers of the Chalice Group’s assets;
- (b) the Committee spent several weeks actively soliciting potential buyers for the Chalice Group’s assets, including by contacting investment banks to advise them of the opportunity;
- (c) following commencement of the CCAA proceeding and the Oregon Receivership, the Monitor disseminated the Bid Procedures contemplated by the SISP to 38 parties identified by the Monitor, the CRO, and the Applicant as potential buyers of the Chalice Group’s assets;
- (d) the Oregon Receiver caused the Bid Procedures to be sent to the members of the Executive Committee of the Oregon Cannabis and Psychedelics Section of the Oregon State Bar as well as to the Oregon State Bar Cannabis e-mail listserv, which includes non-attorneys with an interest in cannabis law in Oregon;

- (e) the Bid Procedures were provided to parties on the “special notice list” in the Oregon Receivership, as certain of such parties were logical potential buyers for all or part of the Chalice Group’s assets as prior owners of such assets;
- (f) twenty (20) parties entered into non-disclosure agreements (“**NDAs**”) and visited the virtual data room to review materials related to the Chalice Group’s assets; and
- (g) several parties had calls and/or meetings with management and made site visits to some of the Chalice Group’s locations in Oregon.²

8. Ultimately, the Applicant received four offers by the bid deadline, including one offer (from the Purchaser) which was for substantially all of the Chalice Group’s assets (the “**Initial Bids**”).³

9. The Applicant determined that none of the Initial Bids provided for sufficient cash to cover the administration costs of the proposed sale.⁴ Accordingly, the Applicant, in consultation with the Monitor and the Oregon Receiver, proceeded to re-engage with each of the four bidders, including the Purchaser, in an effort to encourage the bidders to improve their bids.⁵ To enable such re-engagement, the Applicant extended the bid deadline, with the consent of the Monitor and the Oregon Receiver, in accordance with the SISP.⁶

10. As a result of ongoing negotiations, the Purchaser delivered a revised offer on the evening of July 12, 2023 (the “**Revised APCO Bid**”).⁷ The terms of the Revised APCO Bid were

² [Fifth Secord Affidavit at para 18.](#)

³ [Fifth Secord Affidavit at para 19.](#)

⁴ [Fifth Secord Affidavit at para 20.](#)

⁵ [Fifth Secord Affidavit at para 20.](#)

⁶ [Fifth Secord Affidavit at para 20.](#)

⁷ [Fifth Secord Affidavit at para 21.](#)

subsequently improved and further evaluated by the Applicant, in consultation with the Monitor and the Oregon Receiver, based on several factors, including:

- (a) the purchase price and the net value provided by such bid as compared to the net value that could be obtained in a liquidation of the Chalice Group's assets;
- (b) the ability of the proposed purchaser to successfully complete such transaction, the effects of the bid on the stakeholders of the Chalice Group;
- (c) factors affecting the speed, certainty and value of the transaction (including any licensing, regulatory or legal approvals, including by the Oregon Liquor and Cannabis Commission (the "OLCC") required to close the transactions, and the consideration being entirely composed of cash);
- (d) the assets included or excluded from the bid; and
- (e) any related restructuring costs.⁸

11. The Applicant, with the approval of the Monitor and the Oregon Receiver, ultimately selected the Revised APCO Bid as the Successful Bid and negotiated and entered into the APA with the Purchaser on August 11, 2023.⁹

B. The Asset Purchase Agreement

12. Under the APA, the Purchaser will acquire substantially all of the assets of the Chalice Group on an "as is, where is" basis as at the Time of Closing, except for assets described in the

⁸ [Fifth Secord Affidavit at para 21.](#)

⁹ [Fifth Secord Affidavit at para 22.](#)

APA as Excluded Assets.¹⁰ In consideration, the Purchaser will pay the all-cash purchase price of US \$3 million.¹¹

13. The Purchaser is a Delaware limited liability company. Its principals and managers are William Simpson and Gary Zipfel. Both of these individuals are familiar with the business and operations of the Chalice Group, including as prior owners, creditors and former members of management of the Chalice Group.¹²

14. A summary of the key terms of the APA is set out in the Fifth Secord Affidavit.

C. Alleged Liens on Certain of the Purchased Assets

15. Four creditors of the Chalice Group (together, the “**Disputed Secured Creditors**”) assert or potentially assert liens on certain of the Purchased Assets subject to the Transaction.¹³ As of the date of the Fifth Secord Affidavit, the Oregon Receiver, with the support of the Applicant, had reached tentative settlement agreements with two of the Disputed Secured Creditors (the Homegrown Lenders and High Street) in respect of two of those asserted liens, subject to documentation and court approval.¹⁴ The remaining asserted lien claims are as follows:

(a) Bobsled Extracts, LLC Lien Claim

16. Bobsled Extracts, LLC (“**Bobsled**”) asserts liens relating to two pieces of equipment: (i) a Luna Tech IO machine (serial #KJ02-003-00) and (ii) a HAL Booth (serial #120U04190069) (the

¹⁰ [Fifth Secord Affidavit at para 25.](#)

¹¹ [Fifth Secord Affidavit at para 27.](#)

¹² [Fifth Secord Affidavit at para 26.](#)

¹³ [Fifth Secord Affidavit at para 30.](#)

¹⁴ [Fifth Secord Affidavit at para 31.](#)

“**Bobsled Equipment**”). Bobsled also asserts that it owns a commercial freezer in the possession of Greenpoint Oregon (the “**Bobsled Freezer**”).¹⁵

17. The Purchased Assets in the APA include the Bobsled Equipment and the Bobsled Freezer.¹⁶

18. With respect to the Bobsled Equipment:

(a) In May 2021, Bobsled executed a bill of sale transferring title to the Bobsled Equipment to “Golden Leaf Holdings Ltd., an Ontario corporation, or its wholly-owned corporate subsidiary designee”. The Bobsled Equipment was ultimately owned by Greenpoint Oregon and treated by the Chalice Group as an asset of Greenpoint Oregon.¹⁷

(b) Golden Leaf and Greenpoint Oregon executed a secured promissory note (the “**Bobsled Note**”) in May 2021, in favour of Bobsled, evidencing a payment obligation of \$315,000 for the purchase of the Bobsled Equipment.¹⁸

(c) Golden Leaf and Greenpoint Oregon also each executed a Security Agreement dated May 25, 2021, granting a security interest in the Bobsled Equipment to Bobsled to secure the obligations evidence by the Bobsled Note.¹⁹

¹⁵ [Fifth Secord Affidavit at para 33.](#)

¹⁶ [Fifth Secord Affidavit at para 39.](#)

¹⁷ [Fifth Secord Affidavit at para 34.](#)

¹⁸ [Fifth Secord Affidavit at para 34.](#)

¹⁹ [Fifth Secord Affidavit at para 34.](#)

(d) Bobsled filed a UCC-1 financing statement in Oregon against Goden Leaf on October 25, 2022. The UCC-1 financing statement was filed *after* Golden Leaf legally changed its name to Chalice on May 25, 2021.²⁰

(e) Bobsled has not filed in Oregon a UCC-1 financing statement against Chalice or Greenpoint Oregon, nor has it filed a PPSA registration in Ontario against Greenpoint Oregon, Golden Leaf or Chalice.²¹

19. With respect to the Bobsled Freezer, Bobsled previously subleased a portion of a processing facility from Greenpoint Oregon. On or around May 20, 2021, following Bobsled's second default under the sublease, Bobsled removed most of its property from the premises in the night without prior notice to Greenpoint Oregon.²² The Bobsled Freezer was abandoned by Bobsled when it vacated the premises. Greenpoint Oregon has since incurred expenditures for the repair and maintenance of the Bobsled Freezer and has permanently affixed the Bobsled Freezer to another freezer and the ground to address potential seismic activity.²³

(b) IRS Lien Claim

20. On April 19, 2022, the IRS filed a tax lien against Greenpoint Holdings in the approximately amount of \$1,239,794.72 related to an unpaid tax balance for the period of December 31, 2020. Greenpoint Holdings is the U.S. parent corporation of the Oregon Receivership Entities.²⁴

²⁰ [Fifth Secord Affidavit at para 35.](#)

²¹ [Fifth Secord Affidavit at para 35.](#)

²² [Fifth Secord Affidavit at para 37.](#)

²³ [Fifth Secord Affidavit at para 37.](#)

²⁴ [Fifth Secord Affidavit at para 40.](#)

21. The Purchased Assets do not include any assets of Greenpoint Holdings.²⁵

D. Motions Filed in Oregon Court

22. On August 11, 2023, the Oregon receiver served two motions in the Oregon Receivership: (i) a motion to approve the Transaction (the “**Oregon Sale Motion**”); and (ii) a motion to determine the validity of the liens asserted by the Disputed Secured Creditors (the “**Lien Motion**” and together with the Oregon Sale Motion, the “**Oregon Motions**”).²⁶

23. In the Lien Motion, the Oregon Receiver is disputing the validity of the liens asserted by Bobsled on the basis that:

- (a) the Bobsled Equipment is owned by Greenpoint Oregon. Bobsled did not file a UCC filing statement against Greenpoint Oregon, and therefore does not have a perfected security interest in the Bobsled Equipment;
- (b) to the extent the Bobsled Equipment is owned by Chalice and the Chief Executive Office of Chalice is in Toronto, Ontario, Bobsled was obligated to perfect its lien in Ontario under the PPSA, which it failed to do; and
- (c) to the extent the Bobsled Equipment is owned by Chalice and the Chief Executive Office of Chalice is in Portland, Oregon, Bobsled was obligated to perfect its lien in Oregon by filing a UCC filing statement against the correct legal entity in existence as of the date of the filing of the financing statement (i.e., Chalice), which it failed to do.²⁷

²⁵ [Fifth Secord Affidavit at para 40.](#)

²⁶ [Fifth Secord Affidavit at para 42.](#)

²⁷ [Fifth Secord Affidavit at para 36.](#)

(d) the Bobsled Freezer was abandoned, and Bobsled does not have a lien on or ownership interest in the Bobsled Freezer today.²⁸

24. The Oregon Receiver has requested that the Oregon Court enter an order determining that the Disputed Secured Creditors' liens are invalid and unperfected.

25. In the alternative, the Oregon Receiver has requested in the Lien Motion that the Oregon Court grant the Oregon Sale Motion and authorize it to close the Transaction free and clear of all liens, with all claims to any liens and interests against the Property (including any alleged liens asserted by Bobsled and the other Disputed Secured Creditors) attaching to the net proceeds of the Transaction in the same order and in the same priority as such liens and interests had with respect to the Property immediately before the Transaction, except that the Oregon Receiver is requesting authority to pay (i) all outstanding administrative tax liabilities (whether arising from the Transaction or otherwise) and Oregon state taxes required to be paid as a condition of transfer of the OLCC licenses; (ii) \$150,000 to the Homegrown Lenders pursuant to a settlement on account of their asserted lien claims; (iii) \$150,000 to High Street on account of its asserted secured claim; and (iv) all allowed administrative claims owing as of the Closing Date at closing other than to holders of administrative claims who have agreed to other treatment.²⁹

26. The Applicant supports the relief sought by the Oregon Receiver in the Oregon Motions.³⁰

27. Given that most of the Chalice Group's assets (including the cannabis licenses) are owned by the Oregon Receivership Entities and the Company's operations are based in Oregon, the

²⁸ [Fifth Secord Affidavit at para 38.](#)

²⁹ [Fifth Secord Affidavit at para 43.](#)

³⁰ [Fifth Secord Affidavit at para 43.](#)

Applicant, in consultation with the Monitor and the Oregon Receiver, has determined that the Oregon Motions should be heard before the sale approval motion in the CCAA Court.³¹

28. The Oregon Motions are scheduled to be heard by the Oregon Court commencing on August 28, 2023.

29. Should the Oregon Sale Approval Order be granted on August 28, 2023, the Applicant intends to seek the CCAA Approval and Vesting Order, together with the extension of the Stay Period, at the motion currently scheduled on August 31, 2023. (The current Stay Period expires on August 31, 2023.) In the event that the Oregon Sale Approval Order is not granted in advance of August 31, the Applicant intends to use the August 31 hearing date to request an extension of the Stay Period and will request another hearing date in early September (after the Oregon Sale Approval Order has been granted) to seek the Approval and Vesting Order from this Court.³²

PART III - ISSUES AND THE LAW

30. The issues to be considered on this motion are whether:

- (a) the APA should be approved; and
- (b) the Stay of Proceedings should be extended to and including October 31, 2023.

A. The APA should be Approved

31. It is well established that this Court has jurisdiction to approve a sale of all or substantially all the assets of a debtor company in a CCAA proceeding.³³ Section 36 authorizes a debtor to sell

³¹ [Fifth Secord Affidavit at para 46.](#)

³² [Fifth Secord Affidavit at para 46.](#)

³³ *Re Nortel Networks Corp*, [2009 CarswellOnt 4467](#) (Ont SCJ [Comm List]), [2009 CanLII 39492](#) at paras [35-48](#) and cases cited therein.

substantially all of its assets outside the ordinary course of business with the consent of the Court, without the need for a plan of arrangement or other corporate approval requirements:³⁴

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

32. Section 36(3) sets out factors to consider when authorizing an asset sale:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.³⁵

33. These factors overlap to a large degree with the factors set out in *Royal Bank v Soundair Corp*, which governed asset sales in CCAA proceedings before the enactment of section 36. The *Soundair* test required the Court to consider: (i) whether sufficient efforts were made to obtain the best price; (ii) whether the interests of all stakeholders were considered; (iii) the efficacy and integrity of the sale process; and (iv) whether there was unfairness in the sale process.³⁶

³⁴ *Re Brainhunter Inc.*, [2009 CarswellOnt 7627](#) (ONSC), [2009 CanLII 67659](#) at paras [12-16](#); *Re Komtech Inc.*, [2011 ONSC 3230](#) at para [29](#).

³⁵ CCAA s. 36(3); *Re Canwest Publishing Inc/Publications Canwest Inc.*, [2010 ONSC 2870](#) [*Canwest Publishing*] at para [13](#).

³⁶ *Royal Bank v Soundair Corp.*, [1991 CarswellOnt 205](#) (ONCA), [1991 CanLII 2727](#) at para [16](#); *Canwest Publishing* at para [13](#).

34. Section 36(3) and *Soundair* factors are satisfied in this case. The APA and Transaction should be approved because:

- (a) The SISP was fair and reasonable and there was no unfairness in the working out of the process. Whether the process for achieving a sale transaction is reasonable must be considered contextually, in light of the circumstances existing at the time.³⁷ Assessing the reasonableness of a sale process does not require the Court to examine in minute detail all of the circumstances leading up to the acceptance of a particular offer.³⁸ The SISP was approved by the CCAA Court and by the Oregon Court, and implemented with the support of the Monitor and in close consultation with the Oregon Receiver. The SISP was conducted in accordance with the court-approved terms, and the breadth of the marketing process allowed multiple parties to perform due diligence.³⁹ The Applicant received bids from several parties and, with the consent of the Monitor and the Oregon Receiver and in accordance with the SISP, extended the bid deadline to negotiate the best possible purchase price.
- (b) The Purchase Price is fair and reasonable. To establish that the purchase price is fair and reasonable, the debtor must demonstrate that sufficient effort has been made to obtain the best price and that it has not acted improvidently, based on the information available at the time the offer is accepted.⁴⁰ The Applicant made sufficient efforts to obtain the best price, including by extending the bid deadline

³⁷ See *White Birch Paper Holding Company (Arrangement relatif à)*, [2010 QCCS 4915](#) at para 49: “The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA.” See also *Sanjel Corporation (Re)*, [2016 ABQB 257](#) [*Sanjel*] at paras 77 and 80.

³⁸ *Soundair* at paras 48-49.

³⁹ Third Report of the Monitor dated August 28, 2023 (“**Monitor’s Third Report**”) at para 4.3(1).

⁴⁰ *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) [*Terrace Bay*] at paras 50-55; *Sanjel* at para 56;

and continuing negotiations in order to maximize recovery for the Chalice Group's stakeholders.⁴¹ The Monitor has confirmed that the purchase price and net value to be provided by the Transaction is greater than the net value that could be obtained in a liquidation of the Chalice Group's assets.⁴² The decision to accept a particular offer is a matter of business judgment on the part of the debtor that should not lightly be interfered with in the absence of evidence of imprudence or unfairness.⁴³

(c) The Transaction will benefit creditors and stakeholders. The Transaction contemplates a sale of substantially all of the business and assets of the Applicant to an experienced Purchaser who has knowledge of the industry and can operate the business going forward. Absent the Transaction, the Chalice Group will need to immediately cease operations and commence a liquidation of the Chalice Group's assets.⁴⁴ The Transaction contemplates the continuation of a portion of the Chalice Group's business on a going concern basis, preserves many of its valuable cannabis licenses, and offers the possibility of continued employment for a number of the Chalice Group's employees and potentially preserves key supplier and customer relationships.⁴⁵ The Transaction is the best means to maximize the value of the Purchased Assets for the benefit of creditors and other stakeholders.⁴⁶

(d) The Monitor and the Oregon Receiver support the proposed Transaction.⁴⁷

⁴¹ [Fifth Secord Affidavit at para 20.](#)

⁴² Monitor's Third Report at para 4.3(1).

⁴³ *Soundair* at paras [21](#) and [30-31](#); see also *Sanjel* at para [99](#) and *Terrace Bay* at paras [45](#) and [51-52](#).

⁴⁴ Monitor's Third Report at para 4.3(1).

⁴⁵ Monitor's Third Report at para 4.3(1).

⁴⁶ [Fifth Secord Affidavit at para 24.](#)

⁴⁷ [Fifth Secord Affidavit at para 6.](#)

35. The Applicant, in its business judgment and with the support of the Monitor and the Oregon Receiver, has determined that the APA is the best offer to result from the SISP and is in the best interest of all the Chalice Group's stakeholders.⁴⁸ The Applicant believes that a liquidation of the Chalice Group would likely lead to less recovery than the Transaction.⁴⁹ In the absence of any indication that the Applicant has acted improvidently, the Applicant's business judgment is entitled to deference by this Court.⁵⁰

36. The Purchaser is a Delaware limited liability company. Its principals and managers are William Simpson and Gary Zipfel. Both of these individuals are familiar with the business and operations of the Chalice Group, including as prior owners, creditors and former members of management.⁵¹ To the extent that the Purchaser may be "related to" the Applicant as a consequence, the APA is nevertheless authorized by the CCAA. Section 36(4) of the CCAA establishes two factors that must be satisfied for this Court to authorize a sale to a person "related to the company". The Applicant submits that those factors are satisfied here:

- (a) Good faith efforts were made to sell the assets to persons who are not related to the company. The APA is the result of a competitive bidding process that canvassed interest from multiple strategic and financial parties unrelated to the Applicant. 20 parties signed NDAs to obtain access to the data room, ultimately giving rise to 4 bids, of which the bid from the Purchaser provided the best consideration. The APA

⁴⁸ [Fifth Secord Affidavit at para 23.](#)

⁴⁹ [Fifth Secord Affidavit at para 29.](#)

⁵⁰ *AbitibiBowater Inc. (Re)*, [2010 OCCC 1742](#) at paras [70-72](#). See also *Sanjel* at para [57](#); *Target Canada Co. (Re)*, [2015 ONSC 1487](#) at para [18](#).

⁵¹ [Fifth Secord Affidavit at para 26.](#)

itself is also the product of negotiations between the Applicant and several bidders, which were overseen by the Monitor and the Oregon Receiver.⁵²

- (b) The Purchase Price is superior to the consideration that would be received under any other offer received in the SISP. The Monitor has concluded that the Purchase Price under the APA represents the best offer for the assets of the Chalice Group and is superior to what would be achieved through a liquidation.⁵³

37. Moreover, the Oregon Receiver has concluded that the Purchaser demonstrated honesty in fact and fair dealing in negotiating its bid and the proposed sale pursuant to the APA is the best means to maximize the value of the Purchased Assets.⁵⁴

38. Section 36(6) of the CCAA expressly empowers this Court to authorize a sale of the Property free and clear of any security or charge (for example, any alleged liens asserted by the Disputed Secured Creditors) and order that such security shall attach to the net proceeds of the Transaction in the same order and in the same priority as such security interest had with respect to the Property immediately before the Transaction:

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

39. CCAA courts routinely grant orders providing for such relief.⁵⁵ The Applicant submits that this Court should exercise its authority to do so here.

⁵² [Fifth Secord Affidavit at paras 18-22.](#)

⁵³ Monitor's Third Report at para 4.3(1).

⁵⁴ [Exhibit L to the Fifth Secord Affidavit, Declaration of Kenneth S. Eiler \(the Oregon Receiver\), dated August 11, 2023, at para 6.](#)

⁵⁵ See for example *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, [2022 ONSC 6354](#) at para [27](#).

B. The Stay Period should be Extended

40. The Applicant is seeking to extend the Stay Period so that it will run to and including October 31, 2023. This Court is authorized to extend a CCAA stay of proceedings pursuant to section 11.02(2) of the CCAA, subject to the two considerations outlined in section 11.02(3):

11.02(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.

(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.

41. Both of the section 11.02(3) factors are satisfied here.

(a) Stay extension is appropriate – extending the Stay Period to October 31, 2023 is appropriate in the circumstances. This will allow the Applicant time to seek approval of the APA from the Oregon Court and the CCAA Court, to close the Transaction, and to wind down the remaining estate.⁵⁶ The proposed extended Stay Period is in the best interests of the Applicant and its stakeholders generally. The Monitor supports the proposed request to extend the Stay Period.⁵⁷

⁵⁶ [Fifth Secord Affidavit at para 47.](#)

⁵⁷ [Fifth Secord Affidavit at para 49](#); Monitor's Third Report at para 5.0(2).

- (b) Applicant has acted in good faith and with due diligence – the Applicant has acted, and continues to act, in good faith and with due diligence in this CCAA proceeding since the granting of the Initial Order, including with respect to the implementation of the SISP and entering into of the APA.⁵⁸

42. The Applicant, with the assistance of the Monitor, has confirmed that the Applicant will have sufficient liquidity to fund the wind-down of the CCAA proceeding during the proposed extension of the Stay Period.⁵⁹

⁵⁸ [Fifth Secord Affidavit at para 49.](#)

⁵⁹ [Fifth Secord Affidavit at para 48.](#)

PART IV - NATURE OF THE ORDER SOUGHT

43. The Applicant requests that this Court grant the proposed Approval and Vesting Order and order that the Stay Period is extended to and including October 31, 2023.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of August, 2023:



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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Arrangement relatif à White Birch Paper Holding Company*, [2010 QCCS 4915](#)
2. *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, [2022 ONSC 6354](#)
3. *Re AbitibiBowater Inc*, [2010 QCCS 1742](#)
4. *Re Brainhunter Inc*, [2009 CanLII 72333](#) (Ont SCJ)
5. *Re Canwest Publishing Inc/Publications Canwest Inc*, [2010 ONSC 2870](#)
6. *Re Komtech Inc*, [2011 ONSC 3230](#)
7. *Re Nortel Networks Corp*, [2009 CanLII 39492](#) (Ont SCJ [Comm List])
8. *Re Sanjel Corporation*, [2016 ABQB 257](#)
9. *Re Target Canada Co*, [2015 ONSC 1487](#)
10. *Re Terrace Bay Pulp Inc*, [2012 ONSC 4247](#)
11. *Royal Bank v Soundair Corp*, [1991 CanLII 2727 \(ONCA\)](#)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

11.02(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.

(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.

36 (3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

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

Court File No: CV-23-00699872-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CHALICE BRANDS LTD.

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

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