

**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 OF THE APPLICANT,  
CHALICE BRANDS LTD.  
(Motion For Stay Extension Returnable July 27, 2023 at 11:30 a.m.)**

July 25, 2023

**OSLER, HOSKIN & HARCOURT LLP**  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)  
Tel: 416.862.4908  
Email: mwasserman@osler.com

**Shawn Irving** (LSO# 50035U)  
Tel: 416.862.4733  
Email: sirving@osler.com

**Kathryn Esaw** (LSO# 58264F)  
Tel: 416.862.4905  
Email: kesaw@osler.com

**Fabian Suárez-Amaya** (LSO# 80301W)  
Tel: 416.862.6416  
Email: fsuarezamaya@osler.com

Lawyers for the Applicant,  
Chalice Brands Ltd.

## 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.<sup>1</sup> On May 23, 2023, Chalice was granted protection under the *Companies’ Creditors Arrangement Act*<sup>2</sup> (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**” or this “**Court**”). The stay of proceedings in the Initial Order was extended in favour of the direct and indirect subsidiaries of Chalice (the “**Non-Filing Affiliates**”). KSV Restructuring Inc. was appointed as monitor within these CCAA proceedings (the “**Monitor**”). The Initial Order authorized the Applicant to pursue all avenues of refinancing its Business or Property, subject to the approval of the CCAA Court, to enable the Applicant to proceed with an orderly restructuring.

2. 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**”). The Applicant, with the assistance of the Monitor, has been working in a coordinated fashion with the Oregon Receiver to operate the business of the Chalice Group during these proceedings.<sup>3</sup>

3. On June 1, 2023, this Court issued an amended and restated initial order (“**ARIO**”) which, among other things, approved the appointment of a Chief Restructuring Officer (“**CRO**”). In a

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<sup>1</sup> Affidavit of Scott Secord dated May 22, 2023 at [para 24 \[First Secord Affidavit\]](#). Terms not defined in herein have the meaning ascribed to them in the First Secord Affidavit; or in the Affidavit of Scott Secord dated May 26, 2023 [[Second Secord Affidavit](#)]; or in the Affidavit of Scott Secord dated May 26, 2023 [[Third Secord Affidavit](#)]; or in the Affidavit of Scott Secord dated July 21, 2023 [[Fourth Secord Affidavit](#)].

<sup>2</sup> *Companies’ Creditors Arrangement Act*, [RSC 1985, c C-36](#), as amended (the “**CCAA**”).

<sup>3</sup> Second Secord Affidavit at [para 18](#).

separate order, this Court authorized the terms of Chalice's proposed sale and investment solicitation process ("SISP"). The SISP was also approved by an order of the Oregon Court.

4. On this motion, the Applicant seeks an extension of the Stay of Proceedings until and including August 31, 2023 in order to continue pursuing a going concern transaction through the SISP. The Applicant is in advanced discussions with one of the bidders who submitted a bid at the initial bid deadline and continues to field inquiries and have discussions with other interested parties regarding the process and various bid options. The Applicant requires an extension of the Stay Period (as defined in paragraph 14 of the ARIO) to, among other things, allow for continued negotiations and potentially enter into an executable transaction.<sup>4</sup>

## **PART II - FACTS**

5. The Applicant is an Ontario corporation and a reporting issuer with its head office in Toronto. Chalice is the 100% owner of Greenpoint Holdings.<sup>5</sup> Greenpoint Holdings is the 100% owner of each operating company in the Chalice Group, including the Oregon Receivership Entities. All entities in the Chalice Group other than Chalice are based in the United States.<sup>6</sup>

6. The events prior to this motion are more fully described in the Fourth Secord Affidavit.

### **A. Recent Activities of the Chalice Group**

#### **(a) Operation of the Chalice Group's Business**

7. Since the commencement of the CCAA Proceedings and the Oregon Receivership Proceedings, the Applicant and the CRO, with the assistance of the Monitor, have worked in a

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<sup>4</sup> Fourth Secord Affidavit at [para 4](#).

<sup>5</sup> First Secord Affidavit at [para 25](#).

<sup>6</sup> First Secord Affidavit at [para 6](#).

coordinated fashion with the Oregon Receiver to stabilize the business and operations of the Chalice Group while it seeks to achieve a going concern transaction.<sup>7</sup>

8. On June 1, 2023, the Oregon Liquor and Cannabis Commission (“OLCC”) granted the Oregon Receiver temporary authority to operate the cannabis licenses of the Chalice Group.<sup>8</sup>

9. Also on June 1, 2023, the former CEO of the Applicant and the former CFO of the Applicant resigned from their employment. Existing employees of the Applicant immediately stepped into those roles. As a result, there has been no material interruption or interference with the CCAA Proceeding, the Oregon Receivership, or the daily operations of the Chalice Group.<sup>9</sup>

10. On or about June 5, 2023, it was discovered that the Chalice Group had a previously undisclosed liability relating to unpaid marijuana taxes owing to the State of Oregon in the months of March 2023 through May 2023.<sup>10</sup>

11. On June 15, 2023, the OLCC approved new temporary rules requiring cannabis retailers to obtain a Certificate of Tax Compliance from the Oregon Department of Revenue as a condition for acquiring or renewing a cannabis retailer license, as well as for changes of ownership to a license.<sup>11</sup> The temporary rules went into effect immediately. The Applicant has been working with the Monitor and the Oregon Receiver to ensure that any transaction that emerges from the SISF takes these regulatory changes into account.<sup>12</sup>

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<sup>7</sup> Fourth Second Affidavit at [para 20](#).

<sup>8</sup> Fourth Second Affidavit at [para 21](#).

<sup>9</sup> Fourth Second Affidavit at [para 22](#).

<sup>10</sup> Fourth Second Affidavit at [para 23](#).

<sup>11</sup> Fourth Second Affidavit at [para 25](#).

<sup>12</sup> Fourth Second Affidavit at [para 25](#).

**(b) ERTC Funds**

12. A key receivable of the Chalice Group is certain Employee Retention Tax Credits (“**ERTCs**”) payable to Greenpoint Workforce. As of July 17, 2023, Greenpoint Workforce has not yet received the remaining ERTCs.<sup>13</sup> The Internal Revenue Service (“**IRS**”) has advised that certain tax liabilities remain unpaid.<sup>14</sup> The Oregon Receiver has directly engaged with the IRS on the issue of the ERTCs, and the IRS’ set off rights, if any. The Applicant continues to explore avenues for payment of the ERTC funds.<sup>15</sup>

**(c) Motion Commenced by the Homegrown Lenders**

13. On June 30, 2023, certain creditors of the Chalice Group (collectively, the “**Homegrown Lenders**”) filed a motion in the Oregon Receivership (the “**Lift Stay Motion**”) seeking the following relief:

- (a) an Order lifting the stay of proceedings and authorizing the Homegrown Lenders to foreclose on what they allege to be their collateral under a security agreement with Chalice and Greenpoint Holdings, which includes the five named OLCC licensed retail marijuana dispensaries; or
- (b) in the alternative, an Order declaring that SMS Ventures holds title to what the Homegrown Lenders allege to be their collateral, and that the Homegrown Lenders have a perfected first prior security interest in the alleged collateral.<sup>16</sup>

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<sup>13</sup> Fourth Second Affidavit at [para 24](#).

<sup>14</sup> Fourth Second Affidavit at [para 24](#).

<sup>15</sup> Fourth Second Affidavit at [para 24](#).

<sup>16</sup> Fourth Second Affidavit at [para 27](#).

14. The Oregon Receiver opposed the Lift Stay Motion.<sup>17</sup>

15. On July 14, 2023, the Oregon Court denied the Lift Stay Motion and permitted the SISP to move forward.<sup>18</sup>

**(d) Interim Financing to Oregon Receivership Entities**

16. In early July 2023, the Oregon Receiver requested USD \$150,000 for professional fees in order to continue and complete the Oregon Receivership (the “**Interim Financing**”).<sup>19</sup> Such financing had been requested because the Oregon Receivership Entities’ cash receipts during the pendency of the Oregon Receivership Proceedings were less than forecasted and as a result of trust claims asserted by the State of Oregon that were previously unknown to the Chalice Group.<sup>20</sup>

17. The Applicant, in consultation with the Monitor, determined that it was in the best interests of the Chalice Group to advance the Interim Financing in order to complete the SISP and execute and close a transaction for the assets of the Chalice Group.<sup>21</sup> The Oregon Receiver and its counsel have provided extensive assistance to the Applicant and the Monitor in respect of the SISP, including in connection with regulatory and tax matters.<sup>22</sup> Without the Oregon Receiver’s assistance, a transaction would be much more difficult, and perhaps impossible, to effect.<sup>23</sup>

18. The ARIO authorizes and empowers the Applicant to continue its complaint against the Oregon Receivership Entities (which established the Oregon Receivership Proceedings), and to

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<sup>17</sup> Fourth Second Affidavit at [para 30](#).

<sup>18</sup> Fourth Second Affidavit at [paras 30-31](#).

<sup>19</sup> Fourth Second Affidavit at [para 32](#).

<sup>20</sup> Second Report of the Monitor dated July 25, 2023 [Monitor’s Second Report] at para 3.3(1).

<sup>21</sup> Monitor’s Second Report at para 3.3(2).

<sup>22</sup> Fourth Second Affidavit at [para 32](#).

<sup>23</sup> Fourth Second Affidavit at [para 32](#).

pay all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business:

- (a) Section 9 of the ARIO provides that “except as specifically permitted herein, and subject to the consent of the Monitor, the Applicant is hereby directed, until further Order of this Court” to not grant credit, except in the ordinary course of the Business.”<sup>24</sup>
- (b) Section 7 of the ARIO provides that “except as provided to the contrary herein, with the consent of the Monitor, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant [...] in carrying out the provisions of this Order which expenses shall include, without limitation: (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business...”<sup>25</sup>
- (c) Section 16 of the ARIO authorizes the Applicant to “commence and/or continue its complaint in the [Oregon Court] for breach of loan agreements and appointment of a receiver, and a motion to appoint an Oregon state receiver” in respect of the Oregon Receivership Entities.<sup>26</sup>

19. For the protection of Canadian creditors, the Interim Financing was structured so that it would be secured by a charge in Oregon over the property of the Oregon Receivership Entities.

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<sup>24</sup> Fourth Second Affidavit at Exhibit “D”, ARIO at [s. 9](#).

<sup>25</sup> Fourth Second Affidavit at Exhibit “D”, ARIO at [s. 7](#).

<sup>26</sup> Fourth Second Affidavit at Exhibit “D”, ARIO at [s. 16](#).

20. More specifically, the Order Appointing Receiver granted by the Oregon Court contemplates that, as necessary to satisfy the costs and expenses of the Oregon Receivership, Chalice may advance funds to the Oregon Receiver on a first-priority basis (the “**Financing Lien**”), subject to a lien in favour of the Receiver and its professionals (the “**Receiver’s Lien**”).<sup>27</sup> The Applicant also has security agreements with the Oregon Receivership Entities, registered against each of the Oregon Receivership Entities via UCC filings, which also serve to perfect any security advanced in respect of the Financing Lien.<sup>28</sup> Provided that the Oregon Receivership Entities’ assets can be monetized, the proceeds are anticipated to be sufficient to repay the Interim Financing.<sup>29</sup>

21. To ensure that any Interim Financing has the best possible security, the Applicant requested, and the Oregon Receiver agreed, that the parties would enter into a consent and acknowledgement (the “**Consent and Acknowledgement**”) such that the Applicant has a right of subrogation in respect of the Receiver’s Lien and may claim the benefit of the lien as security for the Interim Financing.<sup>30</sup> The Monitor agreed that the terms of the Consent and Acknowledgement were reasonable and supported the advance on such terms.<sup>31</sup> The funds advanced under the Interim Financing were delivered to the Oregon Receiver on July 24, 2023.<sup>32</sup>

## **B. Conduct of the SISP**

22. As noted above, both the CCAA Court and the Oregon Court approved the SISP. The purpose of the SISP was to seek out proposals for the acquisition of, or investment in, the Chalice

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<sup>27</sup> Fourth Second Affidavit at [para 33](#).

<sup>28</sup> Fourth Second Affidavit at [para 33](#).

<sup>29</sup> Monitor’s Second Report at para 3.3(7).

<sup>30</sup> Fourth Second Affidavit at [para 34](#).

<sup>31</sup> Fourth Second Affidavit at [para 34](#).

<sup>32</sup> Fourth Second Affidavit at [para 35](#).



Group or their business and assets, and to implement one or a combination of such proposals, including a potential sale of the business as a going concern.<sup>33</sup>

23. The SISP contemplated an expedited timeline for completion, including initially a Successful Bid Selection Deadline of July 5, 2023 and a July 27, 2023 closing of a transaction.<sup>34</sup> The SISP also permits the Applicant to modify the SISP (including, without limitation, to extend the Bid Deadline or any other deadline) with the prior written approval of the Monitor and the Oregon Receiver if, in the Monitor's reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP.<sup>35</sup>

24. Over the past month, the Applicant, in consultation with the Monitor and the Oregon Receiver, has been conducting the SISP in an effort to achieve a potential sale of some or all of the business as a going concern.<sup>36</sup> Four bids (the "**Initial Bids**") were received at the initial Qualified Bid Deadline.

25. The Applicant, with the approval of the Monitor and the Oregon Receiver, elected to extend the deadlines in the SISP to take additional time to negotiate with the bidder it identified as having the best initial offer, to better achieve the objectives of the SISP.<sup>37</sup> All parties that submitted Initial Bids were advised of the extension. The Applicant and the Monitor also continued to have discussions with other interested parties regarding the process and various bid options.<sup>38</sup>

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<sup>33</sup> Fourth Second Affidavit at [para 13](#).

<sup>34</sup> Fourth Second Affidavit at [para 18](#).

<sup>35</sup> Fourth Second Affidavit at [para 19](#).

<sup>36</sup> Fourth Second Affidavit at [para 37](#).

<sup>37</sup> Fourth Second Affidavit at [para 39](#).

<sup>38</sup> Fourth Second Affidavit at [para 39](#).

26. At present, the Applicant, in consultation with the Monitor and the Oregon Receiver, remains in advanced discussions with a bidder in an effort to reach agreement on terms and enter into an executable transaction.<sup>39</sup>

### **PART III -ISSUES AND THE LAW**

27. The sole issue before this Court is whether the Stay Period should be extended.

#### **A. The Stay of Proceedings should be extended**

28. The Applicant is seeking to extend the Stay Period until and including August 31, 2023.<sup>40</sup> This stay extension is necessary for the Chalice Group, with the assistance of the Monitor and the Oregon Receiver, to continue negotiations with potential bidders in the SISP with the aim of closing a prospective sale transaction and working towards winding down the remainder of the Chalice Group's business.<sup>41</sup>

29. The fundamental purpose of a CCAA stay is to preserve the status quo while the debtor seeks a path forward that will enable it to remain in business to the benefit of all concerned.<sup>42</sup> This Court is authorized to extend a CCAA stay 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

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<sup>39</sup> Fourth Second Affidavit at [para 41](#).

<sup>40</sup> Fourth Second Affidavit at [para 44](#).

<sup>41</sup> Fourth Second Affidavit at [para 44](#).

<sup>42</sup> *Asset Engineering LP v. Forest & Marine Financial Limited Partnership*, [2009 BCCA 319](#) at [para 26](#).

(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.

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

(a) Stay extension is appropriate – extending the Stay Period to August 31, 2023 is appropriate in the circumstances. Extending the Stay Period will grant the Chalice Group sufficient time to pursue further negotiations with bidders in the SISP, with the aim of concluding a going concern transaction.<sup>43</sup> The Applicant and the Monitor anticipate that if the stay extension is granted and negotiations lead to an executable transaction, the Applicant will be able to seek approval of a sale transaction in a matter of weeks.<sup>44</sup> The Oregon Receiver will also seek approval of such sale from the Oregon Court.<sup>45</sup> In these circumstances, a stay extension is appropriate and in the best interests of all stakeholders of the Chalice Group.<sup>46</sup>

(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 these CCAA Proceedings since the granting of the Initial Order, including working in a coordinated fashion with the Monitor and the Oregon Receiver to stabilize the

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<sup>43</sup> Monitor’s Second Report at para 6.0(2).

<sup>44</sup> Fourth Secord Affidavit at [para 42](#).

<sup>45</sup> Fourth Secord Affidavit at [para 42](#).

<sup>46</sup> Fourth Secord Affidavit at [para 46](#).

business and with respect to the implementation of the SISP and the ongoing negotiations with prospective purchasers.<sup>47</sup>

31. CCAA courts have previously granted stay extensions to allow a CCAA applicant more time to pursue a going-concern transaction. In *Quest University Canada (Re)*, the CCAA court extended a CCAA stay multiple times to permit ongoing negotiations where there was a realistic potential of a going concern transaction.<sup>48</sup> Similarly, in *Arrangement relatif à Fortress Global Enterprises*, the court extended a CCAA stay to allow a debtor to assess offers received through a sale and investment solicitation process, continue negotiations with potential purchasers, and consider other available options.<sup>49</sup>

32. The Monitor supports the proposed extension of the Stay Period.<sup>50</sup> No creditor will be materially prejudiced if the stay extension is granted.<sup>51</sup>

33. The Applicant and the Monitor have confirmed that the Applicant will have sufficient liquidity to fund the CCAA Proceedings during the proposed extension of the Stay Period.<sup>52</sup>

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<sup>47</sup> Fourth Second Affidavit at [para 46](#).

<sup>48</sup> *Quest University Canada (Re)*, [2020 BCSC 1883](#) at [paras 17-18](#).

<sup>49</sup> *Arrangement relatif à Fortress Global Enterprises*, [2023 QCCS 1353](#) at [paras 47](#) and [104](#).

<sup>50</sup> Fourth Second Affidavit at [para 46](#); Monitor's Second Report at para 6.0(1-2).

<sup>51</sup> Monitor's Second Report at para 6.0(2).

<sup>52</sup> Fourth Second Affidavit at [para 45](#).

**PART IV - NATURE OF THE ORDER SOUGHT**

34. The Applicant requests that this Court grant the proposed Stay Extension Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 25<sup>th</sup> day of July, 2023:



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**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)

Tel: 416.862.4908

Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

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Email: [kesaw@osler.com](mailto:kesaw@osler.com)

**Fabian Suárez-Amaya** (LSO# 80301W)

Tel: 416.862.6416

Email: [fsuarezamaya@osler.com](mailto:fsuarezamaya@osler.com)

Lawyers for the Applicant,  
Chalice Brands Ltd.

**TO: THE ATTACHED SERVICE LIST**

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

1. *Asset Engineering LP v. Forest & Marine Financial Limited Partnership* [2009 BCCA 319](#)
2. *Quest University Canada, Re,* [2020 BCSC 1883](#)
3. *Arrangement relatif à Fortress Global Enterprises,* [2023 QCCS 1353](#)

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

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

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

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

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

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

(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.

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

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

**FACTUM OF THE APPLICANT,  
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(Motion for Stay Extension Returnable July 27, 2023 at  
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**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)

Tel: 416.862.4908

Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Shawn Irving** (LSO# 50035U)

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Email: [sirving@osler.com](mailto:sirving@osler.com)

**Kathryn Esaw** (LSO# 58264F)

Tel: 416.862.4905

Email: [kesaw@osler.com](mailto:kesaw@osler.com)

**Fabian Suárez-Amaya** (LSO# 80301W)

Tel: 416.862.6416

Email: [fsuarezamaya@osler.com](mailto:fsuarezamaya@osler.com)

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