

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 CHALICE BRANDS LTD.

APPLICANT

**FACTUM
(INITIAL ORDER)**

May 23, 2023

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PART I - NATURE OF THE APPLICATION

1. This factum is filed in support of an urgent application by Chalice Brands Ltd. (“**Chalice**”, or the “**Applicant**”, and together with its subsidiaries, the “**Chalice Group**”) seeking an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Chalice Group is a vertically integrated cannabis company operating primarily in the regulated adult-use market of Oregon. Chalice, a publicly-traded company incorporated and headquartered in Ontario, is the ultimate parent of the Chalice Group.¹

2. The Chalice Group is experiencing a liquidity crisis and cannot pay its obligations as they come due. This liquidity crisis arises, in part, from an acquisition strategy that commenced in 2021 based on the industry belief that a change in the U.S. federal government would result in the federal legalization of cannabis. The Chalice Group began taking on debt to acquire additional retail stores and production facilities to support its vertical integration. When deregulation did not occur, the Chalice Group was left with considerable funded debt that it struggled to service.

3. Simultaneously, the Chalice Group was hit by the macroeconomic impacts of COVID-19, including supply chain difficulties, inflation, and rising interest rates. These factors at once increased the Chalice Group’s costs and reduced consumer spending. In addition, notwithstanding that many states authorize medical or recreation marijuana sales, U.S. federal tax rules provide that businesses trafficking in “controlled substances” (such as cannabis) are effectively taxed on 21% of their gross profit rather than net income. This significantly reduces the margins on which the Chalice Group can achieve profitability. Forced to continually drop prices to attract customers, the Chalice Group suffered a retail price squeeze that negatively impacted profits and left it unable

¹ Affidavit of Scott Secord dated May 22, 2023 at para 24 [Initial Order Affidavit].

to pay creditors, wages, or rent. Chalice is also subject to a cease-trade order in respect of its shares, effectively preventing Chalice from raising funds through issuing securities.

4. The Applicant requires an urgent CCAA stay of proceedings to continue operating while the Applicant, the Chief Restructuring Officer (“**CRO**”), and the proposed Monitor pursue a going concern sale of all or substantially all of the Chalice Group’s assets.

5. Although Chalice operates in compliance with state cannabis laws, as a cannabis business the Chalice Group cannot access the protections of the federal U.S. *Bankruptcy Code*. Therefore, concurrently with this Application, the Applicant has commenced receivership proceedings in the State of Oregon (the “**Oregon Receivership**”) over certain of its subsidiaries located in that state. However, any stay pursuant to the Oregon Receivership may only have effect in Oregon, so the Applicant seeks to extend the CCAA stay to its direct subsidiary, Greenpoint Holdings, Inc. (“**Greenpoint Holdings**”), and each of its indirect subsidiaries, all of which are based in the U.S. (together, the “**Non-Filing Affiliates**”). The extension of the stay to the Non-Filing Affiliates would provide the breathing space necessary for continued operations of the Chalice Group during a sale process.

6. If a receiver (the “**Oregon Receiver**”) is appointed, the Applicant and the CRO, with the assistance of the proposed Monitor, intend to conduct a going-concern sale process in a coordinated fashion with the Oregon Receiver. The Applicant intends to seek approval of a sales and investment solicitation process at a subsequent motion.

PART II - FACTS

7. Chalice is an Ontario corporation with its registered head office in Toronto. It operates as the public company in the corporate group and its assets comprise of cash and its direct and indirect

ownership of the remaining entities in the Chalice Group.² Until the issuance of the CTO (defined below), Chalice’s common shares traded on the Canadian Securities Exchange (“CSE”) as well as over the counter on the OTCQX®.³

8. Chalice is the 100% owner of Greenpoint Holdings.⁴ Greenpoint Holdings is the 100% owner of each operating company in the Chalice Group. All entities in the Chalice Group other than Chalice are based in the United States and have no assets in Canada.⁵

9. The Chalice Group operates mainly within the Oregon adult-use regulated market through its main operating subsidiaries: Greenpoint Oregon, CFA Retail, SMS Ventures, and CFB.⁶

10. Chalice has five bank accounts in Canada.⁷ The Chalice Group has 21 active bank accounts in the United States.⁸

A. The Chalice Group’s Business and Operations

(a) Retail Business, Facilities and Production Operations

11. The Chalice Group is a farm-to-table cannabis business wherein the Chalice Group grows, processes, distributes, and sells its own cannabis and cannabis products.⁹

² Initial Order Affidavit at para 22.

³ Initial Order Affidavit at para 5.

⁴ Initial Order Affidavit at para 25.

⁵ Initial Order Affidavit at para 6.

⁶ Initial Order Affidavit at para 6.

⁷ Initial Order Affidavit at para 45.

⁸ Initial Order Affidavit at para 46.

⁹ Initial Order Affidavit at para 28.

12. The Chalice Group owns and operates a network of 16 retail stores in Oregon. The Chalice Group also distributes its branded products to other retailers in the Oregon wholesale market via the same distribution infrastructure at the Chalice Group's headquarters in Portland.

13. The Chalice Group leases certain properties in Oregon, including its 16 retail stores; three production facilities; and its cultivation location.¹⁰ Chalice has guaranteed certain of those leases.¹¹

The Chalice Group does not own any real property in Canada or the United States.¹²

(b) Cannabis Licenses

14. The Chalice Group holds 32 regulatory licenses in Oregon related to producing, processing, wholesaling, and retailing cannabis.¹³ While all of these licenses are in good standing, four are on Temporary Closure Status under the OLCC licensing regime.¹⁴ In Nevada, the Chalice Group holds four licenses related to cultivation and product manufacturing of medical marijuana. All four licenses are in good standing but currently inactive.¹⁵

(c) Employees and Employee Retention Tax Credits

15. The Chalice Group has 134 full-time employees and 37 part-time employees, all of whom work in the United States. All employees of the Chalice Group are employed and paid by one of Chalice's subsidiaries, Greenpoint Workforce, Inc. ("**Greenpoint Workforce**").¹⁶ The other

¹⁰ Initial Order Affidavit at para 43.

¹¹ Initial Order Affidavit at para 43.

¹² Initial Order Affidavit at para 42.

¹³ Initial Order Affidavit at para 35.

¹⁴ Initial Order Affidavit at para 35.

¹⁵ Initial Order Affidavit at para 36.

¹⁶ Initial Order Affidavit at para 38.

Chalice Group entities reimburse Greenpoint Workforce for employee expenses based on the activity performed and what legal entity is associated with said activity.¹⁷

16. An important asset of the Chalice Group is employee retention tax credits. In 2020, the U.S. Congress passed the *Coronavirus Aid, Relief and Economic Security (CARES) Act* which, among other things, created a new employee retention tax credit (“**ERTCs**”).¹⁸ The ERTCs are a refundable tax credit created to encourage employers to keep their employees on the payroll during the months in 2020 affected by the pandemic.¹⁹

17. To date, Greenpoint Workforce has received \$2,700,000 worth of ERTCs. Greenpoint Workforce anticipates receiving another \$2,300,000 of ERTCs in the near future.²⁰

18. On or about May 12, 2023, Greenpoint Workforce made a payment of \$1,450,000 to Chalice as partial repayment of its intercompany debt, which Chalice intends to use to fund this CCAA proceeding. Greenpoint Workforce also intends to use some of the ERTC proceeds to repay the Bridge Loans (as defined below) shortly after commencement of this proceeding.²¹

B. Financial Position of the Chalice Group

19. The Chalice Group has been incurring operating losses and cash flow deficits since its inception in 2014 and has historically relied on equity and debt financing to fund its operations.²²

¹⁷ Initial Order Affidavit at para 38.

¹⁸ Initial Order Affidavit at para 39.

¹⁹ Initial Order Affidavit at para 39.

²⁰ Initial Order Affidavit at para 40.

²¹ Initial Order Affidavit at para 41.

²² Initial Order Affidavit at para 8.

20. On May 3, 2022, Chalice announced it would be delayed in filing its 2021 Annual Filings.²³ As a result of the delay, on May 6, 2022, the OSC issued a failure-to-file cease trade order (the “CTO”) against Chalice.²⁴

21. Chalice has not yet made the 2021 Annual Filings and the CTO remains in place.²⁵ The Chalice Group’s most recent financial statements are its unaudited, consolidated financial statements as at December 31, 2021.²⁶

22. As of December 31, 2021, the Chalice Group’s assets had an unaudited book value of approximately \$32,950,001²⁷ and liabilities of approximately \$29,847,412.²⁸ After removing intangible assets and goodwill, the Chalice Group’s liabilities exceed its assets.²⁹ The Chalice Group’s financial position has continued to deteriorate since the preparation of these statements.³⁰

23. For the period ending December 31, 2021, the Chalice Group’s net loss was \$16,965,906.³¹

C. Indebtedness of Chalice and the Chalice Group

24. The Applicant’s significant assets consist of cash totalling \$1.2 million and intercompany receivables totalling approximately \$109.7 million.³²

²³ Initial Order Affidavit at para 51.

²⁴ Initial Order Affidavit at para 52.

²⁵ Initial Order Affidavit at para 54.

²⁶ Initial Order Affidavit at para 55.

²⁷ Initial Order Affidavit at para 56.

²⁸ Initial Order Affidavit at para 57.

²⁹ Initial Order Affidavit at para 58.

³⁰ Initial Order Affidavit at para 58.

³¹ Initial Order Affidavit at para 59.

³² Pre-Filing Report of the Proposed Monitor, KSV Advisory, dated May 22, 2023 [Pre-Filing Report].

25. The Applicant's principal liabilities consist of outstanding debt under three notes and two series of unsecured debentures with an aggregate outstanding principal of \$10,259,297 as summarized below (all figures in USD unless otherwise noted):

Instrument	Maturity Date	Principal Outstanding
Notes		
Bobsled Note	2024-05-31	\$108,587
Homegrown Note (co-borrower with Greenpoint Holdings)	2025-06-01	\$1,896,411
Revised Earn-Out Agreement	2027-04-01	\$2,149,299
Total Notes Debt		\$4,154,297
Unsecured Debentures		
Round 4 Convertible Debentures	2024-11-16	\$3,086,250
Round 5 Convertible Debentures	2024-11-23	\$3,018,750
Total Debenture Debt		\$6,105,000³³
Total Indebtedness		\$10,259,297

26. In addition to the Applicant's indebtedness, four of the Applicant's subsidiaries also have funded debt obligations of \$8,864,616, as summarized below:

Instrument	Maturity Date	Principal Outstanding
Greenpoint Holdings		
Homegrown Note (co-borrower with Chalice)	2025-06-01	\$1,896,411
Greenpoint Oregon		
Tozmoz Note (unsecured)	2025-12-21	\$178,368
Bobsled Note (co-borrower with Chalice)	2024-05-31	\$108,587
CFB		
Cannabliss Note (secured)	2026-01-01	\$5,850,000

³³ Debenture debt is in Canadian dollars, as described below. R4: CAD \$4,115,000; R5: CAD \$4,025,000. The USD amounts are calculated using the US:CAD foreign exchange rate of 0.75 CAD:USD.

Instrument	Maturity Date	Principal Outstanding
Greenpoint Workforce		
Secured Bridge Loans	2023-04-30	\$550,000
Secured Bridge Loans ³⁴	2023-04-30	\$281,250
Total Subsidiary Indebtedness		\$8,864,616

(a) Bobsled Note

27. Chalice and Greenpoint Oregon are borrowers under a secured promissory note with Bobsled Extracts, LLC (“**Bobsled**”), as lender, in the principal amount of \$315,000 (the “**Bobsled Note**”) for the purchase of certain production equipment.³⁵ The Bobsled Note does not accrue interest. In lieu of interest, Greenpoint Oregon agreed to enter into a 36-month term Product Procurement Agreement with Bobsled. In lieu of interest, the Chalice Group agreed to purchase \$20,000 of product from Bobsled per month but has largely failed to meet this obligation.³⁶ The principal under the Bobsled Note is payable in 36 consecutive monthly payments, with the last payment due on May 25, 2024.³⁷

28. As of May 1, 2023, \$108,586.97 remains owing on the Bobsled Note.³⁸ Payments due on April 30 and May 1, 2023 were not made.

³⁴ Certain Bridge Loans were made totalling CAD \$375,000, as described below. The USD amounts are calculated using the US:CAD foreign exchange rate of \$0.75 CAD:USD

³⁵ Initial Order Affidavit at para 62.

³⁶ Initial Order Affidavit at para 63.

³⁷ Initial Order Affidavit at para 63.

³⁸ Initial Order Affidavit at para 64.

29. The Bobsled Note is secured by the Bobsled Security Agreement.³⁹ A Uniform Commercial Code (“UCC”) financing statement was registered against a predecessor to Chalice in Oregon which details certain production equipment.⁴⁰

30. On January 27, 2023, Bobsled delivered a Notice of Default and Demand for Payment.⁴¹

(b) Homegrown Note

31. Chalice’s predecessor company and Greenpoint Holdings entered into an agreement (the “**Homegrown Acquisition**”) to acquire a chain of five retail dispensaries located in Oregon.⁴² Consideration for the Homegrown Acquisition included a promissory note in the principal amount of \$1,750,000 (the “**Homegrown Note**”) under which Chalice and Greenpoint Holdings are the borrowers. The Homegrown Note accrues interest at a rate of 8% per annum.⁴³

32. The Homegrown Note is payable in 48 consecutive monthly payments, commencing on June 1, 2021 and with the last payment due on June 1, 2025. As of May 1, 2023, \$1,896,411.00 is outstanding under the Homegrown Note.⁴⁴

33. The Homegrown Note purports to be secured by a first priority security interest in collateral specified in a security agreement (the “**Homegrown Security Agreement**”).⁴⁵ The collateral comprises certain cannabis licenses, inventory arising from the licenses, and proceeds from the sale of such inventory. The licenses described in the Homegrown Security Agreement are not the property of any party to the Homegrown Security Agreement or Homegrown Note, but rather are

³⁹ Initial Order Affidavit at para 65.

⁴⁰ Initial Order Affidavit at para 65.

⁴¹ Initial Order Affidavit at para 66.

⁴² Initial Order Affidavit at para 67.

⁴³ Initial Order Affidavit at para 68.

⁴⁴ Initial Order Affidavit at para 70.

⁴⁵ Initial Order Affidavit at para 71.

owned by a different Chalice Group entity that is not a party to any Homegrown loan or security agreement.⁴⁶ UCC filings were registered against Chalice and Greenpoint Holdings in Oregon over these cannabis licenses held by the non-party to the Homegrown Note.⁴⁷ No UCC filings were registered against the non-party to the Homegrown Note.⁴⁸

34. No monthly payments have been made under the Homegrown Note since May 2022.⁴⁹ The Homegrown Lenders issued a Notice of Default on July 19, 2022 and a Notice of Acceleration on August 8, 2022.⁵⁰ On the same day, the Homegrown Lenders initiated an arbitration against Chalice relating to the defaults under the Homegrown Note.⁵¹ The Homegrown Lenders recently voluntarily dismissed the arbitration purportedly to move forward with a nonjudicial foreclosure of the collateral set forth in the Homegrown Security Agreement.⁵²

(c) Revised Earn-Out Agreement

35. In connection with various acquisitions of certain assets or subsidiaries of the Chalice Group on or around July 7, 2017, the prior owners of Chalice LLC (the “**Owners**”) became entitled to earn-out payments totalling \$9,527,350.⁵³ No less than \$5,000,000 (the “**Cash Payment**”) was payable in cash, with the balance of \$4,527,350 payable in Chalice stock (together with the Cash Payment, the “**Earn-Out Payments**”).⁵⁴

36. In July 2019, the parties agreed to amend and defer the Earn-Out Payments obligation. On November 18, 2020, the Owners reached an agreement to further extend the Earn Out Payments

⁴⁶ Initial Order Affidavit at para 71.

⁴⁷ Initial Order Affidavit at para 72.

⁴⁸ Initial Order Affidavit at para 72.

⁴⁹ Initial Order Affidavit at para 74.

⁵⁰ Initial Order Affidavit at para 107.

⁵¹ Initial Order Affidavit at para 107.

⁵² Initial Order Affidavit at para 107.

⁵³ Initial Order Affidavit at para 75.

⁵⁴ Initial Order Affidavit at para 75.

due on May 2, 2022 (the “**Revised Earn-Out Agreement**”).⁵⁵ Under the Revised Earn-Out Agreement, some of the cash debt was converted into Chalice shares, with the remaining principal of \$2,500,000 (the “**Remaining Cash Portion**”) payable in 60 monthly payments of \$41,666 plus an interest rate of 6% beginning on the maturity date of May 2, 2022 and ending on April 2, 2027.⁵⁶

37. The Revised Earn-Out Agreement currently has an outstanding principal balance of \$2,149,299.⁵⁷ Payments ceased in mid-2022 but no notice of default has yet been delivered.

38. The Revised Earn-Out Agreement provides that, if Chalice is unable to pay or in the event Chalice declares bankruptcy, the Owners shall have as security for the outstanding balance of the Remaining Cash Portion, assets of certain Chalice stores designated by Chalice valued to the amount of the then-outstanding balance of Remaining Cash Portion owed by Chalice.⁵⁸ No such designation was made and no security agreements were entered into in respect thereof.⁵⁹

(d) Unsecured Debentures

39. Chalice has two outstanding rounds of unsecured debentures with a total aggregate value of CAD\$8,140,000. Interest on the debentures will come due on June 30, 2023.⁶⁰

(i) Round 4 Convertible Debentures

40. On November 18, 2018, Chalice issued unsecured convertible debenture units (collectively, the “**R4 Debentures**”) maturing November 16, 2021. The R4 Debentures accrued

⁵⁵ Initial Order Affidavit at para 76.

⁵⁶ Initial Order Affidavit at para 77.

⁵⁷ Initial Order Affidavit at para 78.

⁵⁸ Initial Order Affidavit at para 79.

⁵⁹ Initial Order Affidavit at para 79.

⁶⁰ Initial Order Affidavit at para 80.

interest at a rate of 12% per annum until December 31, 2019 (the first interest payment date), after which such interest decreased to 10% per annum and is payable semi-annually until maturity.⁶¹

41. The R4 Indenture has been amended multiple times, first to extend the maturity date from November 16, 2021 to November 16, 2022; and second, by way of an extraordinary resolution, to (i) extend the time for repayment of the principal until November 16, 2024, (ii) to waive the default from the failure to pay interest which became due on June 30, 2022, and (iii) to extend the time for paying interest due on June 30, 2022 and December 31, 2022 until June 30, 2023.⁶²

42. The outstanding principal with respect to the R4 Debentures is CAD\$4,115,000.⁶³

(ii) Round 5 Convertible Debentures

43. On November 23, 2021, Chalice issued unsecured convertible debenture units (collectively, the “**R5 Debentures**” and each, a “**R5 Debenture**”) maturing November 23, 2024. Each R5 Debenture accrues interest at a rate of 10% per annum, payable on a semi-annual basis.⁶⁴

44. The R5 Debentures also had interest coming due on June 30, 2022, but, as Chalice was unable to pay this interest, the parties agreed to waive the default on this interest.⁶⁵

45. The outstanding principal with respect to the R5 Debentures is CAD\$4,025,000.⁶⁶

⁶¹ Initial Order Affidavit at para 81.

⁶² Initial Order Affidavit at para 83.

⁶³ Initial Order Affidavit at para 84.

⁶⁴ Initial Order Affidavit at para 85.

⁶⁵ Initial Order Affidavit at para 87.

⁶⁶ Initial Order Affidavit at para 88.

(e) Intercompany Debt

46. As of May 10, 2023, Chalice has provided Greenpoint Workforce with loans of approximately \$4,000,000 to fund operating costs, namely employee wages and other working capital obligations.⁶⁷ As noted above, in May 2023, Greenpoint Workforce made a payment of \$1,450,000 to Chalice as partial repayment of its intercompany debt.⁶⁸

47. Chalice's unconsolidated financial statements dated December 31, 2021 indicate a total of over USD\$109,711,289.76 owed to Chalice by its subsidiaries.⁶⁹ While Chalice has not required its subsidiaries to enter into formal loan agreements, these amounts are also consistent with the Chalice Group's tax filings in the United States for the year ending December 31, 2021.⁷⁰

48. While it is currently not anticipated that the Oregon Subsidiaries will need financing from Chalice during the Oregon Receivership, in the event that such need arises, the parties have entered into a General Security Agreement and a UCC filing over the Oregon Subsidiaries in favour of Chalice to ensure that financing needs are met while protecting the assets of Chalice.⁷¹

(f) Subsidiary Indebtedness

(i) Cannabliss Note

49. On September 16, 2021, CFB (a subsidiary of the Chalice Group) entered into an asset purchase agreement (the "**Cannabliss APA**") to acquire four retail stores branded Cannabliss & Co.. In connection with this purchase, CFB entered into a 36-month secured promissory note (the "**Cannabliss Note**") in the principal amount of \$5,850,000, carrying accrued interest at a rate of

⁶⁷ Initial Order Affidavit at para 89.

⁶⁸ Initial Order Affidavit at para 89.

⁶⁹ Initial Order Affidavit at para 90.

⁷⁰ Initial Order Affidavit at para 91.

⁷¹ Initial Order Affidavit at para 92.

12% per annum, payable on a quarterly basis commencing January 1, 2023.⁷² Under the Cannabliss Note, CFB agreed to make balloon payments to High Street Capital Partners (“**High Street**”) of \$1,000,000 on January 1, 2024 and \$1,000,000 on January 1, 2025. Amounts that remain owing to High Street, if any, shall be paid on January 1, 2026.⁷³

50. The Cannabliss Note is secured by a security agreement dated July 1, 2022 (the “**Cannabliss Security Agreement**”) entered into between CFB and High Street.⁷⁴ Until the Cannabliss Note is paid in full, CFB grants High Street a security interest in the Collateral (as defined therein), including among other things, all Equipment, Inventory, Accounts, General Intangibles, any the Cannabis Licenses and permits acquired by CFB under the Cannabliss APA, and all Intellectual Property listed in the schedules thereto.⁷⁵ A UCC financing statement was registered by High Street against CFB in Oregon. The Cannabliss Note also provides that Greenpoint Holdings will be a guarantor, but a guarantee was never executed.⁷⁶

(ii) **Tozmoz Note**

51. On December 21, 2021, Chalice acquired substantially all of the assets of Tozmoz, a licensed cannabis processor in Oregon, pursuant to an asset purchase agreement. Consideration for the purchase included a 48-month unsecured promissory note for \$400,000 (the “**Tozmoz Note**”) payable in 48 equal monthly installments, with the first payment due on the first day of the first full month after closing. The Tozmoz Note accrues interest at 6% per annum.⁷⁷

⁷² Initial Order Affidavit at para 93.

⁷³ Initial Order Affidavit at para 94.

⁷⁴ Initial Order Affidavit at para 95.

⁷⁵ Initial Order Affidavit at para 95.

⁷⁶ Initial Order Affidavit at para 95.

⁷⁷ Initial Order Affidavit at para 99.

(iii) Greenpoint Workforce Bridge Loans

52. On November 22, 2022, Greenpoint Workforce entered into three secured bridge loan term sheets – one with Dan Noonan in the amount of CAD \$250,000, one with Gary Zipfel in the amount of \$300,000 and one with Karl Rickard Miller Trust in the amount of \$250,000 (Noonan, Zipfel and Miller, together, the “**Bridge Lenders**”).⁷⁸ These bridge loans were intended to fund day-to-day working capital requirements until Greenpoint Workforce received the ERTC funds from the IRS.⁷⁹ Subsequently, Dan Noonan and Greenpoint Workforce entered into an additional bridge loan term sheet of CAD \$125,000 (the four loans together, the “**Bridge Loans**”).⁸⁰

53. In order to secure the Bridge Loans, the Board of Directors of Chalice committed to the Bridge Lenders that the Bridge Loans would be repaid first upon receipt of the first tranche of ERTCs.⁸¹ The Bridge Loans were intended to be secured; however, due to an oversight, the parties did not finalize the security agreements.⁸² Upon realizing the oversight, each of the Bridge Lenders entered into security agreements with Greenpoint Workforce dated May 7, 2023, and registered UCC financing statements in Oregon accordingly.⁸³

54. The Bridge Loans accrue interest at a rate of 1.5% per month and have a term of five months. They mature upon the earlier of April 30, 2023, the date on which Greenpoint Workforce received the ERTC, and the date a Bridge Lender demands repayment following an event of

⁷⁸ Initial Order Affidavit at para 100.

⁷⁹ Initial Order Affidavit at para 100.

⁸⁰ Initial Order Affidavit at para 100.

⁸¹ Initial Order Affidavit at para 100.

⁸² Initial Order Affidavit at para 101.

⁸³ Initial Order Affidavit at para 101.

default.⁸⁴ Greenpoint Workforce intends to repay the Bridge Loans during the course of this CCAA proceeding.⁸⁵

D. Macroeconomic Factors Leading to Present Crisis

55. The Chalice Group's current financial position stems from a strategy embarked upon in early 2021.⁸⁶ At that time, the cannabis industry had an optimistic forecast for the future, notwithstanding the uncertain impact of the COVID-19 pandemic.⁸⁷ The Chalice Group was relatively well-capitalized, year-over-year sales were improving, and the industry anticipated that the federal legalization of cannabis was imminent.⁸⁸ In anticipation of legalization, the Chalice Group undertook an acquisition-based strategy, taking on debt to acquire retail stores and production facilities in Oregon to support its vertical integration.⁸⁹ All of these acquisitions were funded through a combination of cash and vendor take-back notes.⁹⁰

56. Unfortunately, the last two years have been very challenging for the U.S. cannabis industry.⁹¹ Federal deregulation did not occur, causing much-needed capital to dry up and the value of many cannabis companies to plummet. A combination of the CTO, limited capital investments in the cannabis industry, and Chalice's inability to finalize its 2021 and 2022 audited financial statements prevents the Chalice Group from raising funds through issuing securities.⁹²

⁸⁴ Initial Order Affidavit at para 102.

⁸⁵ Initial Order Affidavit at para 103.

⁸⁶ Initial Order Affidavit at paras 9-10.

⁸⁷ Initial Order Affidavit at para 9.

⁸⁸ Initial Order Affidavit at para 9.

⁸⁹ Initial Order Affidavit at para 10.

⁹⁰ Initial Order Affidavit at para 10.

⁹¹ Initial Order Affidavit at para 11.

⁹² Initial Order Affidavit at paras 13 and 15-16.

57. During the same period, the Chalice Group has experienced significant price pressures. Macroeconomic factors created supply chain issues during a period of high inflation.⁹³ These circumstances increased the Chalice Group's costs, and also made price-sensitive consumers reduce cannabis consumption or return to the lower-priced black market.⁹⁴ Oversupply in more mature markets such as California, Colorado, and Oregon also led to significant drops in cannabis retail prices.⁹⁵ To keep attracting customers, the Chalice Group had to continually drop prices.⁹⁶

58. The effect of these price drops was compounded by the detrimental treatment cannabis businesses experience. Notwithstanding that many states have laws authorizing medical or recreational cannabis sales, cannabis remains a "controlled substance" pursuant to U.S. federal law. Consequently, cannabis businesses suffer from detrimental tax treatment under Section 280E of the U.S. Internal Revenue Code, significantly reducing the margins on which a business can achieve profitability.⁹⁷ The combination of reduced retail prices and Section 280E led to dramatically lower gross margin dollars, leaving very little cash flow to fund operating costs.⁹⁸

59. Over the past year, the Chalice Group has made significant reductions in headcount and inventory procurement and has renegotiated contractual obligations to navigate this period of reduced cash flow. The Chalice Group has also asked key employees to take dramatic pay cuts or deferrals, or to take payment in shares.⁹⁹ These efforts have not been able to stem the tide.

⁹³ Initial Order Affidavit at para 12.

⁹⁴ Initial Order Affidavit at para 12.

⁹⁵ Initial Order Affidavit at para 12.

⁹⁶ Initial Order Affidavit at para 12.

⁹⁷ Initial Order Affidavit at para 14.

⁹⁸ Initial Order Affidavit at para 12.

⁹⁹ Initial Order Affidavit at para 17.

E. Urgent Need for Relief

60. The Chalice Group faces an urgent liquidity crisis. Chalice and its operating subsidiaries are unable to satisfy their obligations as they come due. Chalice and certain of the Non-Filing Affiliates are alleged to be, or are, in default under their respective debt obligations.¹⁰⁰ The Chalice Group cannot pay its trade creditors, its landlords, or its employees.

61. In particular, Chalice has not made payments of either interest or principal on the Homegrown Note since June 2022.¹⁰¹ The lenders under the Homegrown Note have recently threatened to move forward with nonjudicial foreclosure on the collateral set forth in the Homegrown Security Agreement. The Homegrown Lenders, through counsel, have written directly to the Oregon cannabis regulator (the “OLCC”) advising that they were purportedly taking steps to foreclose on assets of the Chalice Group and seeking approval for temporary authority to operate five of the Chalice Group’s cannabis licenses.¹⁰² On May 10, 2023, the Chalice Group, through its U.S. Counsel, wrote to the OLCC to dispute the Homegrown Lenders’ claims.

62. Further, certain of Chalice’s subsidiaries have also fallen behind on making lease payments to certain of their landlords, which may entitle the landlords to declare a default under the lease and lock out the tenant. This, in turn, would put the Chalice Group’s store-based cannabis licenses at risk as in Oregon, cannabis licenses are specific to a particular retail location and risk being suspended or terminated if the retail location ceases operating.¹⁰³ At present, the Chalice Group owes approximately \$6 million in trade payables, including over \$1 million in missed rent.¹⁰⁴

¹⁰⁰ Initial Order Affidavit at para 106.

¹⁰¹ Initial Order Affidavit at para 107.

¹⁰² Initial Order Affidavit at para 107.

¹⁰³ Initial Order Affidavit at para 18.

¹⁰⁴ Initial Order Affidavit at para 18.

63. The Applicant and its subsidiaries require an urgent stay of proceedings to provide “breathing space” from creditors so the Applicant can pursue a going-concern sale. The Applicant seeks to extend the benefit of the CCAA stay to the Non-Filing Affiliates.¹⁰⁵ As described more fully below, the Non-Filing Affiliates are integral to the operations of the Chalice Group. If proceedings were taken against the Non-Filing Affiliates, it would be highly detrimental to the Chalice Group’s ability to achieve a going-concern solution.¹⁰⁶

64. Because the Chalice Group sells cannabis products, the Chalice Group is unable to seek protection under the U.S. Bankruptcy Code, whether or not it is in compliance with state cannabis laws.¹⁰⁷ As such, concurrently with the filing of this Application, the Applicant is commencing proceedings in the State of Oregon in order to have certain subsidiaries, all of which are formed or have assets in Oregon (the “**Oregon Subsidiaries**”), placed into state receivership.¹⁰⁸ The Oregon Subsidiaries are among the Non-Filing Affiliates. Should the Oregon Subsidiaries successfully be placed in receivership, there shall be an automatic stay of proceedings against those entities and their property.

65. To facilitate the appointment of the Oregon Receiver, the Applicant seeks to carve out from the stay proceedings by Chalice in Oregon against the Oregon Subsidiaries.¹⁰⁹ This is procedurally necessary to initiate the Oregon Receivership. The Initial Order expressly contemplates that the Oregon Receivership can be initiated. It is intended that the Applicant, together with the CRO

¹⁰⁵ Initial Order Affidavit at para 114.

¹⁰⁶ Initial Order Affidavit at para 115.

¹⁰⁷ Initial Order Affidavit at para 20.

¹⁰⁸ Initial Order Affidavit at para 112.

¹⁰⁹ Initial Order Affidavit at para 116.

and the proposed Monitor, will work in a coordinated manner with the Oregon Receiver to conduct a sales process in an effort to achieve a going concern outcome.¹¹⁰

PART III -ISSUES AND THE LAW

66. The issues to be considered on this Application are whether:

- (a) The Applicant meets the criteria for CCAA protection;
- (b) The CCAA Stay should be extended to the Non-Filing Affiliates; and
- (c) The Administration Charge should be granted. [*fix spacing above]

A. The Applicant meets the criteria for CCAA protection

67. The Applicant meets the criteria established for CCAA protection. The CCAA applies to a “debtor company” (a company having assets or doing business in Canada) or affiliated debtor companies where the total of claims against the debtor or its affiliates exceeds \$5 million. The Applicant is a debtor company incorporated in Canada, with assets in Canada (its bank accounts and shareholdings), and with total claims against it exceeding \$5 million.¹¹¹

68. Pursuant to section 2 of the CCAA, a “debtor company” means, *inter alia*, a company that is insolvent.¹¹² Whether a company is insolvent for the purposes of this definition is evaluated via the definition of “insolvent person” in section 2 of the *Bankruptcy and Insolvency Act*¹¹³ and to the expanded concept of insolvency accepted by this Court in *Stelco*.¹¹⁴

69. The Applicant is insolvent. Chalice is unable to meet its obligations as they become due and has ceased paying its current obligations in the ordinary course of business. Chalice is in default of its obligations under the Bobsled Note, the Homegrown Note, and the Revised Earn-Out

¹¹⁰ Initial Order Affidavit at para 20.

¹¹¹ Initial Order Affidavit at paras 5, 45, and 60.

¹¹² CCAA, sections 2 and 3(1)

¹¹³ RSC 1985, c B-3, as amended [the BIA].

¹¹⁴ *Re Stelco Inc.*, [2004 CanLII 24933](#) (ONSC), leave to appeal to ONCA ref'd, [2004 CarswellOnt 3926](#), leave to appeal to SCC ref'd, [2004 CarswellOnt 5200](#) [*Stelco*].

Agreement. Moreover, Chalice does not have sufficient liquidity to make payments on either of the Unsecured Debentures when the next interest payments come due on June 30, 2023. Given the CTO and the lack of appetite in capital markets for cannabis companies, Chalice's only immediate sources of funds are its subsidiaries. Those subsidiaries are struggling to such a great degree that they cannot pay retail landlords or employees.

70. Because the Chalice Group grows and sells cannabis, the U.S. entities within the group cannot access the protection of the U.S. Bankruptcy Code and thus cannot enter a coordinated Chapter 11 proceeding. State receivership in Oregon is the only option to provide breathing space to the subsidiaries, but a CCAA proceeding in Canada with respect to the Applicant is necessary to provide a stay of proceedings to the Canadian parent as the Chalice Group effects a going concern sale of its business. This is the best option for preserving the value of the Chalice Group as a going concern.

71. Pursuant to s. 11.7 of the CCAA, when an Initial Order is made in respect of a CCAA debtor company the Court shall at the same time appoint a Monitor. Chalice proposes that KSV Restructuring Inc. (the "**Proposed Monitor**") will act as Monitor in this CCAA proceeding if the proposed Initial Order is issued. KSV has consented to act as Monitor.

B. The CCAA stay should be granted and extended to the Non-Filing Affiliates

72. Chalice's insolvency puts the Non-Filing Affiliates and the Applicant's investments in its subsidiaries in a highly vulnerable position.¹¹⁵ If enforcement steps are taken against the Non-Filing Affiliates, it is expected to materially destroy value and negatively impact a going concern

¹¹⁵ Pre-Filing Report at para 4.1(1).

sale of the Chalice Group's assets or business.¹¹⁶

73. This Court's power to grant a stay of proceedings is a cornerstone of the CCAA process. The Court's authority derives from its broad jurisdiction under sections 11 and 11.02(1) of the CCAA. Section 11.02(1) permits this Court to grant an initial stay of up to 10 days on an application for an initial order, provided the Applicant establishes that such a stay is appropriate and that the Applicant has acted with due diligence and in good faith.¹¹⁷ The primary purpose of the CCAA stay is to maintain the *status quo* for a period while the debtor company consults with its stakeholders with a view to continuing its operations for the benefit of its creditors.¹¹⁸

74. The Applicant requests that the benefit of the stay be extended to the Non-Filing Affiliates. The Non-Filing Affiliates are wholly-owned subsidiaries of the Applicant (through Greenpoint Holdings), except Fifth and Root, of which Chalice ultimately owns 80%.¹¹⁹ CCAA courts have extended the CCAA stay over non-applicant affiliates,¹²⁰ non-affiliated third parties,¹²¹ and foreign non-applicant affiliates.¹²² In proceedings under Part IV of the CCAA, this Court routinely extends a CCAA stay over non-applicants subject to foreign main insolvency proceedings.¹²³

¹¹⁶ Pre-Filing Report at para 4.1(4).

¹¹⁷ CCAA section 11.02(3)(a-b).

¹¹⁸ *Re JTI-Macdonald Corp.*, [2019 ONSC 1625](#) at para 12 [*JTI-Macdonald*].

¹¹⁹ Initial Order Affidavit at para 26.

¹²⁰ *Re Sino-Forest Corp.*, [2012 ONSC 2063](#) at paras 5, 31; *Re Cinram International Inc.*, 2012 ONSC 3767 at paras 61-65; *Re Laurentian University of Sudbury*, 2021 ONSC 6959 at paras 38-42; [In the matter of a plan of compromise or arrangement of Wayland Group Corp.](#), Court File No. CV-19-00632079-00CL (Ont Sup Ct J: Toronto, Commercial List), Order of Hailey J. dated December 2, 2019 (Initial Order) at para 10.

¹²¹ See for example *Re Cinram International*, [2012 ONSC 3767](#) at para 1; *Re Muscletech Research & Development Inc.*, [2006 CarswellOnt 6230](#) at paras 1, 7; [In the Matter a plan of compromise or arrangement with 9323-7055 Quebec Inc \(formerly known as Aquadis International inc.\)](#), File No. 500-11-049838-1560 (Quebec Sup Ct: District of Montreal), order of Castonguay J.C. (Initial Order) dated December 9, 2015 at para 11.

¹²² *Re Tamerlane Ventures Inc.*, [2013 ONSC 5461](#) [*Tamerlane*] at para 2; *Re Target Canada Co.*, [2015 ONSC 303](#) at paras 49-90; *Re Nordstrom Canada Retail, Inc.*, 2023 ONSc 1422 at para 42; [In the matter of a plan of compromise or arrangement of Lydian Group](#), Court File No. CV-19-00633392-00CL (Ont Sup Ct J: Toronto, Commercial List) Order of Morawetz J. (Initial Order) dated December 23, 2019 at paras 2 and 10.

¹²³ See for example [In the matter of Hollander Sleep Products, LLC](#), CV-19-620484-00CL (Ont Sup Ct J: Toronto, Commercial List) Order of Hailey J. (Initial Recognition Order) dated May 23, 2019 at para 4; [In the matter of](#)

75. Courts have found it just and reasonable to extend a stay over non-applicant affiliates when:

- (a) the applicant and its subsidiaries are “highly integrated... and indispensable to the Applicants’ business and restructuring... Failure to [extend the stay] would undermine the intent of the stay.”¹²⁴
- (b) without the benefit of a stay, the non-filing affiliates would “run out of liquidity before the time that would reasonably be required to complete a restructuring.”¹²⁵

76. In *JTI-Macdonald Corp*, this Court outlined the factors determining when it is appropriate to extend a CCAA stay over non-filing affiliates.¹²⁶ The Applicant submits that the *JTI-Macdonald Corp* factors, as well as factors identified in case law cited above, support the extension of the stay:

- (a) The business and operations of the Non-Filing Affiliates are significantly intertwined with those of the Applicant. The Chalice Group operates as a vertically integrated business and most key decision-making is done through the Applicant.¹²⁷
- (b) Not extending the stay to the Non-Filing Affiliates could jeopardize the success of a potential going concern sale of the business. Creditors are already pursuing enforcement action against the Non-Filing Affiliates that may put the Chalice Group’s cannabis licenses at risk.¹²⁸
- (c) Failure of the restructuring would be more detrimental than extending the stay to the Non-Filing Affiliates. Enforcement action against the Non-Filing Affiliates, in Canada or elsewhere, would be detrimental to the Applicant’s efforts to pursue a going concern sale of the Chalice Group and would undermine a process that would otherwise benefit the stakeholders of the Chalice Group as a whole.¹²⁹
- (d) The Non-Filing Affiliates will run out of liquidity before this proceeding can be completed. The Non-Filing Affiliates do not have enough cash to maintain regular operations, and cannot even independently fund the proposed Oregon Receivership.
- (e) The balance of convenience favours extending the stay. Extending the CCAA stay, concurrent with the stay of proceedings pursuant to the Oregon Receiverships, will protect the Applicant’s creditors by protecting the investment in its subsidiaries, as well as the stakeholders including employees, suppliers, customers, and lenders.¹³⁰

[Brooks Brothers Group, Inc.](#), Court File No. CV-20-00647463-00CL (Ont Sup Ct J: Toronto, Commercial List) Order of Hainey J. (Initial Recognition Order) dated September 14, 2020 at para 4.

¹²⁴ *Re Imperial Tobacco Canada Limited, et al*, [2019 ONSC 1684](#) at paras 11-12.

¹²⁵ *Re Urbancorp Toronto Management Inc.*, [2016 ONSC 3288](#) at para 44.

¹²⁶ *JTI-Macdonald* at para 15.

¹²⁷ Pre-Filing Report at para 4.1(6).

¹²⁸ Initial Order Affidavit paras 74 and 107.

¹²⁹ Initial Order Affidavit at para 113.

¹³⁰ Pre-Filing Report at para 4.1(6).

(f) The Proposed Monitor supports extending the stay to the Non-Filing Affiliates.¹³¹

77. The Oregon Receivership is necessary to ensure that the Non-Filing Affiliates are protected from the demands of creditors as the Chalice Group pursues a coordinated sale of all or substantially all of its assets. However, any stay granted pursuant to the Oregon Receivership may not have effect beyond the borders of Oregon.¹³² In the circumstances, where Chapter 15 of the U.S. *Bankruptcy Code* is not available to the Chalice Group, extending the CCAA stay to the Non-Filing Affiliates is the best option to achieve the breathing space necessary to pursue a sale of the business in a coordinated fashion with the Oregon Receiver.

78. To ensure that the Oregon Receiver is not affected by the CCAA proceeding, the Initial Order includes a carve-out from the stay for the Non-Filing Affiliates to permit the hearing of the Oregon receivership proceeding and the granting of the Oregon receivership. The Initial Order expressly contemplates that the Oregon receivership proceeding can be heard.¹³³

79. The Applicant intends to seek approval of an expeditious sales and investment solicitation process at a subsequent motion.

C. The Administration Charge should be granted

80. As is typical in CCAA proceedings, the proposed Initial Order creates a first-ranking Administration Charge of \$400,000 over Chalice's assets to secure the fees and disbursements of the Proposed Monitor and its counsel and of Chalice's counsel.¹³⁴ The services of these advisors are critical to the Applicant's ability to restructure.

¹³¹ Pre-Filing Report at para 4.1(7).

¹³² Initial Order Affidavit at para 116.

¹³³ Initial Order Affidavit at para 116.

¹³⁴ Initial Order Affidavit at para 119.

81. Section 11.52 of the CCAA gives this Court the jurisdiction to grant a charge for the fees and expenses of financial, legal and other advisors or experts. Such charge can rank in priority to the claims of existing secured creditors.¹³⁵ The Applicant submits that the Administration Charge is necessary in the circumstances, is appropriately sized given the nature and complexity of the proceeding, and should be granted.

PART IV - NATURE OF THE ORDER SOUGHT

82. The Applicant requests that this Court grant the proposed Initial Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of May, 2023:



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TO: THE ATTACHED SERVICE LIST

¹³⁵ CCAA, s. 11.52.

SCHEDULE “A”: LIST OF AUTHORITIES

1. [*In the matter a plan of compromise or arrangement with 9323-7055 Quebec Inc \(formerly known as Aquadis International inc.\)*](#), File No. 500-11-049838-1560 (Quebec Sup Ct: District of Montreal), order of Castonguay J.C. (Initial Order) dated December 9, 2015
2. [*In the matter of a plan of compromise or arrangement of Lydian Group*](#), Court File No. CV-19-00633392-00CL (Ont Sup Ct J: Toronto, Commercial List) Order of Morawetz J. (Initial Order) dated December 23, 2019
3. [*In the matter of a plan of compromise or arrangement of Wayland Group Corp*](#), Court File No. CV-19-00632079-00CL (Ont Sup Ct J: Toronto, Commercial List), Order of Hainey J. (Initial Order) dated December 2, 2019
4. [*In the matter of Brooks Brothers Group, Inc.*](#), Court File No. CV-20-00647463-00CL (Ont Sup Ct J: Toronto, Commercial List) Order of Hainey J. (Initial Recognition Order) dated September 14, 2020
5. [*In the matter of Hollander Sleep Products, LLC*](#), CV-19-620484-00CL (Ont Sup Ct J: Toronto, Commercial List) Order of Hainey J. (Initial Recognition Order) dated May 23, 2019
6. *Re Canwest Global Communications Corp.*, [2009 CarswellOnt 6184](#)
7. *Re Cinram International Inc.*, [2012 ONSC 3767](#)
8. *Re Imperial Tobacco Canada Limited, et al.*, [2019 ONSC 1684](#)
9. *Re JTI-Macdonald Corp.*, [2019 ONSC 1625](#)
10. *Re Muscletech Research & Development Inc.*, [2006 CarswellOnt 6230](#)
11. *Re Performance Sports Group Ltd.*, [2016 ONSC 6800](#)
12. *Re Sino-Forest Corp.*, [2012 ONSC 2063](#)
13. *Re Stelco Inc.*, [2004 CanLII 24933](#) (ONSC), leave to appeal to ONCA ref'd [2004 CarswellOnt 3926](#), leave to appeal to SCC ref'd, [2004 CarswellOnt 5200](#)
14. *Re Tamerlane Ventures Inc.*, [2013 ONSC 5461](#)
15. *Re Target Canada Co.*, [2015 ONSC 303](#)
16. *Re Urbancorp Toronto Management Inc.*, [2016 ONSC 3288](#)
17. *Re U.S. Steel Canada Inc.*, [2014 ONSC 6145](#)

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

Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36

Interpretation

2 (1) *debtor company* means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Burden of proof on application

11.02 (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.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

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

Court File No:

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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