Court File No.: BK-26-03382861-0032
Estate No.: 32-3382861

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF FIELD AVIATION COMPANY INC. and FIELD AVIATION EAST LTD.

FACTUM OF FIELD AVIATION COMPANY INC. AND FIELD AVIATION EAST LTD.

(Approval and Vesting Order and Ancillary Relief)
(Motion returnable July 24, 2026)

July 22, 2026

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TABLE OF CONTENTS

PART I - OVERVIEW

1. Field Aviation Company Inc. ("**Field Canada**") and Field Aviation East Ltd. ("**Field East**", and together with Field Canada, the "**Field Entities**"), are insolvent aerospace engineering and modification companies. Following the successful implementation of a Court-approved stalking horse sale and investment solicitation process (the "**SISP**") for the sale of the Field Entities' aviation business (the "**Business**") or their assets, undertakings and properties (the "**Property**"), the Field Entities bring this motion seeking approval of the best and only qualifying offer emerging out of the SISP (being the stalking horse bid), together with a distribution to its sole secured creditor, limited releases, a 45-day extension of the time to file a proposal, and related relief. The relief sought on this motion is in the best interests of the Field Entities and their stakeholders, is supported by the Proposal Trustee and Wells (each as defined below), and is fair and reasonable in the circumstances.

PART II - FACTS

A. Background

2. Field Canada is an aerospace engineering and modification company that designs, integrates and certifies aircraft special mission systems and structural modifications for government and commercial operations.[1] Field East is a non-operating wholly owned subsidiary of Field Canada.[2] Field Canada and Field East are each registered with Transport

[1] Motion Record of the Field Entities, Tab 2, Affidavit of John Mactaggart sworn July 17, 2026 (the "**Mactaggart Affidavit**") at para 2. Any capitalized terms not otherwise defined herein have the meaning attributed to them in the Mactaggart Affidavit.
[2] Mactaggart Affidavit at para 2.

Canada as holders of certain approvals to modify aircraft, including supplemental type certificates ("**STCs**"), which have commercial re-sale value within the aviation industry.[3]

3. The Field Entities' sole secured lender is Wells Fargo Capital Finance Corporation Canada and its agent, Wells Fargo Bank, National Association (together, "**Wells**"), pursuant to a credit agreement dated January 29, 2021, as amended from time to time (the "**Credit Agreement**"). The Field Entities owe Wells US$3,101,835 under the Credit Agreement (inclusive of accrued interest).[4]

4. Following a period of severe financial distress arising from, among other things, disruptions to the Business caused by the COVID-19 pandemic, Field Canada defaulted under the Credit Agreement, prompting Wells to sweep Field Canada's bank accounts.[5] Field Canada was then forced to immediately freeze operations and implement temporary mass layoffs of all employees pending a resolution with Wells.[6]

5. On June 5, 2026, the Field Entities filed notices of intention (the "**NOI Proceedings**") to make a proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**").[7] AlixPartners Restructuring, Inc. was appointed as proposal trustee in the NOI Proceedings (in such capacity, the "**Proposal Trustee**").

6. Subsequently, the Field Entities successfully negotiated a comprehensive package of interrelated agreements with Wells and various other stakeholders that would provide the

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[3] Mactaggart Affidavit at para 2.
[4] This is the estimated amount payable on July 31, 2026, being the outside closing date under the DHC/PAL Transactions.
[5] Mactaggart Affidavit at para 4.
[6] Mactaggart Affidavit at paras 4 and 54.
[7] Mactaggart Affidavit at para 5.

Field Entities with the necessary liquidity and breathing space to implement a Court-approved sales process for the Business or Property, for the benefit of all stakeholders.[8]

7. The Field Entities then brought a motion for the approval of these arrangements. On June 12, 2026, this Court granted:[9]

(a) an Order (the "**SISP Order**"), among other things, approving the proposed SISP, including a stalking horse asset purchase agreement (the "**DHC/PAL Sale Agreement**") between the Field Entities, as sellers, and De Havilland Aircraft of Canada Limited ("**DHC**") and PAL Aerospace Ltd., ("**PAL**", and together with DHC, the "**Purchasers**"), as purchasers, solely for the purpose of serving as the stalking horse bid thereunder;

(b) an Order (the "**DIP Approval and Extension Order**"), among other things, approving:

(i) an extension to August 19, 2026 for the Field Entities to file a proposal and administratively consolidating the NOI Proceedings of Field Canada and Field East;

(ii) an interim financing term sheet between Wells and the Field Entities (the "**DIP Term Sheet**") in the maximum principal amount of US$2.5 million (subject to availability) and related super-priority charge on the Property in favour of Wells (the "**DIP Lender's Charge**");

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[8] Mactaggart Affidavit at paras 4 and 7.
[9] Mactaggart Affidavit at para 7.

(iii) approving the engagement of Riveron Consulting LLC as Field Canada's Chief Restructuring Officer (the "**CRO**"), *nunc pro tunc*;

(iv) approval of the Administration Charge, Directors' Charge, and KERP Charge (each as defined in the DIP Approval and Extension Order and subject to the priority rankings as set out in the DIP Approval and Extension Order); and

(v) an accommodation agreement (the "**Draken Accommodation Agreement**") and related data purchase agreement (the "**Draken Data Transfer Agreement**") with a key customer, FR Aviation Limited, trading as Draken ("**Draken**"), providing for accelerated payments toward completion of certain aircraft modifications and the purchase of related intellectual property.

B. Results of the SISP

8. The Property of the Field Entities, including the STCs, is highly technical and specialized, and is only of value to a limited class of participants in the aviation industry.[10]

9. In accordance with its terms, the Proposal Trustee launched the SISP on June 15, 2026, with the assistance of the Field Entities, by distributing teaser letters to 38 potential bidders.[11] 12 potential bidders executed a non-disclosure agreement and were granted access to the confidential data room prepared and maintained by the Field Entities.[12] The

[10] Mactaggart Affidavit at para 37(f).
[11] Mactaggart Affidavit at paras 31-32.
[12] Mactaggart Affidavit at para 31.

Field Entities promptly responded to applicable technical and commercial inquiries.[13] Four bids (in addition to the DHC/PAL Sale Agreement) were submitted by the bid deadline of July 13, 2026, each for non-material assets at a relatively nominal cost.[14] Ultimately, the DHC/PAL Sale Agreement was the only qualified bid submitted by the bid deadline.

10. Accordingly, on July 14, 2026, the Proposal Trustee, in consultation with the Field Entities, selected the DHC/PAL Sale Agreement as the successful bid.[15] The salient terms of the DHC/PAL Sale Agreement are as follows:[16]

(a) **Purchase price**: US$6,500,000 (US$3,900,000 paid by DHC and US$2,600,000 paid by PAL), plus the assumption of certain liabilities set out thereunder, with the Purchasers already having paid a 10% deposit;

(b) **Purchased assets**: certain STCs specified in the schedules to the agreement, together with related data, information, inventory and records. The assets are purchased on an "as is, where is" basis;

(c) **Free and clear transfer**: other than the permitted liabilities, the purchased assets are to be sold and transferred free and clear of all claims and encumbrances; and

(d) **Closing**: within 5 days of Court approval, or such other time as may be agreed to by the parties, in consultation with the Proposal Trustee.

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[13] Mactaggart Affidavit at para 10(b); Second Report of the Proposal Trustee, AlixPartners Restructuring, Inc. dated July 22, 2026 (the "**Second Report**") at para 4.1(2)(d).
[14] Mactaggart Affidavit at para 32.
[15] Mactaggart Affidavit at para 33.
[16] Mactaggart Affidavit at para 36.

C. A&R Data Transfer Agreement and UKRI Agreements

11. The Field Entities and Draken are party to (i) the Draken Accommodation Agreement, pursuant to which Draken agreed to accelerate payment under a pre-filing contract with Field Canada under which Field Canada agreed to modify a Draken aircraft (the "**Draken Program**"), together with funding for Field Canada's operating and payroll costs, along with completion bonuses for key employees retained to complete the Draken Program; and (ii) the Draken Data Transfer Agreement pursuant to which the Field Entities agreed to transfer certain intellectual property and data to Draken in connection with the Draken Program for US$800,000.[17] The Draken Accommodation Agreement and Draken Data Transfer Agreement were each approved by the Court pursuant to the DIP Approval and Extension Order. The Field Entities continue to work on the Draken Program, which is subject to extension, providing meaningful employment to the engineers and other personnel retained to support the program.[18]

12. At that time, the specific intellectual property to be transferred under the Draken Data Transfer Agreement had not yet been finalized. Accordingly, the Court-approved agreement contemplated that the parties would enter into an amended and restated agreement identifying the subject intellectual property. The Field Entities and Draken have since entered into an amended and restated Data Transfer Agreement executed June 29, 2026 (the "**A&R Data Transfer Agreement**"), which finalizes the intellectual property to be transferred.[19]

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[17] Mactaggart Affidavit at paras 11-14.
[18] Mactaggart Affidavit at paras 11-13.
[19] Mactaggart Affidavit at paras 14-15.

13. Separately, pursuant to the UKRI Services Agreement, United Kingdom Research and Innovation ("**UKRI**") contracted Field Canada to perform modification services on an aircraft currently in Field Canada's possession (the "**UKRI Aircraft**").[20] Given Field Canada's insolvency and the estimated timeline to complete the modifications, the parties entered into an Asset Retrieval Agreement dated July 7, 2026, and accompanying Bill of Sale (together, the "**UKRI Agreements**"), to facilitate UKRI's retrieval of the UKRI Aircraft and the transfer of related intellectual property and data, along with title of the UKRI Aircraft to UKRI.[21] The UKRI Agreements include a limited release in favour of Field Canada, and a release in favour of Field Canada's related entities and the Proposal Trustee, while preserving certain claims UKRI may have against the Field Entities and their directors and officers arising from the UKRI Services Agreement.[22]

D. Anticipated employee terminations

14. No going-concern offer was submitted through the SISP, or at all. Given the Field Entities' insolvency, it is anticipated that employees not required to assist with the Draken Program, closing the DHC/PAL Transactions, or otherwise winding down the Field Entities will be terminated, with all wages and accrued vacation to be paid in full upon closing of the DHC/PAL Transactions (as defined below).[23] Field Canada seeks to support its terminated employees by obtaining a judicial declaration that the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("**WEPPA**") applies to the NOI Proceedings, pursuant to which such employees will be entitled to make claims for unpaid termination and severance.

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[20] Mactaggart Affidavit at para 20.
[21] Mactaggart Affidavit at paras 21-22.
[22] Mactaggart Affidavit at paras 23-24.
[23] Mactaggart Affidavit at paras 38 and 42.

E. Relief sought on this motion

15. The proceeds of the DHC/PAL Sale Agreement will be sufficient to fully repay (i) the indebtedness owed to Wells on account of both the DIP Term Sheet and pre-filing indebtedness under the Credit Agreement in the approximate aggregate amount of US$5,402,543 (the "**Wells Secured Indebtedness**"),[24] (ii) all unpaid wages and accrued vacation pay owed (or that will be owing upon termination) to the Field Entities' employees, and (iii) the KERP to the remaining KERP beneficiaries.[25]

16. As noted above, the Field Entities also received four other relatively minor bids for certain of the Property (not subject to the DHC/PAL Transactions). As certain sale agreements with other bidders are in the process of being finalized, the Field Entities seek limited authorization to sell the Property (not subject to the DHC/PAL Sale Agreement) up to $250,000, exclusive of applicable sales taxes, in an effort to avoid the professional costs required to return to Court for approval of those agreements, if applicable.[26]

17. The Field Entities' restructuring efforts have been a success. Through the negotiation and implementation of a multifaceted restructuring plan reviewed and approved by this Court, as facilitated and led by the Field Entities' directors and officers, with the assistance of the CRO and Proposal Trustee, the Field Entities have significantly improved the previously dire prospects of their stakeholders, including their sole secured creditor, employees and major customers. Accordingly, on this motion, the Field Entities seek approval of:

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[24] This is the estimated amount payable on July 31, 2026, being the outside closing date under the DHC/PAL Transactions.
[25] Mactaggart Affidavit at paras 37(d), 40 and 42-43; Second Report at para 6.0.
[26] Mactaggart Affidavit at para 34.

(a) an Order (the "**Approval and Vesting Order**") substantially in the form attached as Tab 3 to the Field Entities' Motion Record:

(i) approving the transactions (together, the "**DHC/PAL Transactions**") contemplated by the DHC/PAL Sale Agreement and authorizing the Field Entities and Purchasers to perform their obligations thereunder; and

(ii) granting certain limited releases in favour of the current and former directors, officers, employees and advisors of the Field Entities (including the CRO) and the Proposal Trustee (collectively, the "**Released Parties**");

(b) an Order (the "**Ancillary Order**") substantially in the form attached as Tab 4 to the Field Entities' Motion Record:

(i) authorizing the Proposal Trustee to make distributions from the proceeds of the DHC/PAL Transactions to Wells up to the amount of the Wells Secured Indebtedness;

(ii) declaring that the NOI Proceedings are proceedings to which the WEPPA applies and that the employees of Field Canada are entitled to apply for payments in accordance with WEPPA following the termination of their employment;

(iii) approving the UKRI Agreements;

(iv) approving the A&R Data Transfer Agreement;

(v) authorizing the Proposal Trustee to file an assignment in bankruptcy on behalf of either of the Field Entities;

(vi) extending the time for the Field Entities to file a proposal pursuant to section 50.4(9) of the BIA and the attendant stay of proceedings, for an additional 45 days up to and including October 3, 2026;

(vii) authorizing the Field Entities to enter into transactions to sell or transfer any of their remaining Property not subject to the DHC/PAL Transactions, with the consent of the Proposal Trustee, each up to the maximum amount of $250,000 (exclusive of applicable sales taxes); and

(viii) approving: (a) the fees and disbursements of the Proposal Trustee and its counsel, Bennett Jones LLP, and (b) the First Report of the Proposal Trustee dated June 10, 2026 (the "**First Report**"), the Second Report, and the activities of the Proposal Trustee described therein.

PART III - THE ISSUES

18. The issues on this motion are whether the Court should: (a) grant the Approval and Vesting Order, including the limited releases sought therein; and (b) grant the Ancillary Order, providing for an extension of the stay period, distribution to Wells, approval of the reports and fees of the Proposal Trustee and its counsel, among other things.

PART IV - LAW & ANALYSIS

A. The Court should approve the DHC/PAL Sale Agreement

19. The Court should approve the DHC/PAL Sale Agreement and authorize the related DHC/PAL Transactions.

20. Subsection 65.13(4) of the BIA sets out the statutory factors that should be considered by the Court when determining whether to approve a sale of assets outside the ordinary course

of business, being: (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances; (b) whether the proposal trustee approved the process leading to the proposed sale or disposition; (c) whether the proposal trustee filed with the court a report stating that, in its 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.[27]

21. An order approving a sale transaction in proposal proceedings may be made where the Court is satisfied that the criteria set out above have been met, and having regard to the well-known principles for the approval of an asset sale set out in *Royal Bank v Soundair Corp*, with which the section 65.13(4) criteria "overlap considerably".[28] The *Soundair* principles include: (a) whether sufficient efforts were made to obtain the best price and that the debtor has not acted improvidently; (b) whether the interests of all parties has been considered; (c) the integrity and efficacy of the process for obtaining offers; and (d) whether there is any unfairness in working out the process.[29]

22. The DHC/PAL Transactions satisfy the criteria in section 65.13(4) of the BIA, as well as the *Soundair* principles:

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[27] BIA, s 65.13(4).
[28] Endorsement of Justice Steele dated March 27, 2026, *Re JointCraft Inc*, Court File No. BK-26-003318323-0031 at para 9 [*JointCraft*]; Endorsement of Justice J Dietrich dated December 19, 2025, *Re Stewart's Vertical Farms Inc*, Court File No. BK-25-03241528-0031 at para 19 [*SVFI*]; Endorsement of Justice Kimmel dated April 15, 2024, *Re BRR Logistics Limited*, Court File No. BK-24-03038619-0031 at para 8 [*BRR Logistics*].
[29] *Royal Bank v Soundair Corp*, 1991 CarswellOnt 205 at para 16, 1991 CanLII 2727 (CA) [*Soundair*].

(a) **The SISP was fair and transparent, and supported by the Proposal Trustee**: The SISP, including the DHC/PAL Sale Agreement as the stalking horse bid, was approved by this Court pursuant to the SISP Order. The SISP was developed in consultation with the Proposal Trustee, CRO and Wells, the Field Entities' sole secured creditor, and all other stakeholders received notice of the approval motion and an opportunity to provide input. The Proposal Trustee administered the SISP with the full co-operation of the Field Entities and is satisfied that it was conducted fairly, transparently and in accordance with its Court-approved terms.[30] No stakeholder has objected to the conduct of the SISP.[31]

(b) **The Proposal Trustee and Wells support the DHC/PAL Transactions**: The Proposal Trustee supports the DHC/PAL Transactions and is of the view that they will provide a better outcome for the Field Entities' creditors and stakeholders than a sale or disposition in bankruptcy.[32] Wells is also supportive of the DHC/PAL Transactions. All other stakeholders received notice of the DHC/PAL Sale Agreement when it was approved by this Court as the stalking horse bid under the SISP. No stakeholder has objected or submitted a superior bid.

(c) **Fair and positive impact on stakeholders**: The consideration paid by DHC and PAL will be sufficient to fully repay the indebtedness owed to Wells under both the DIP Term Sheet and the Credit Agreement, as well as all unpaid wages and accrued

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[30] Second Report at para 5.3(a) and (b).
[31] Second Report at para 5.3(f).
[32] Second Report at para 5.3(c).

vacation to employees, and KERP amounts payable to the remaining KERP beneficiaries.[33]

(d) **Fair and reasonable consideration**: The DHC/PAL Sale Agreement represents the only qualified bid submitted under the SISP and is therefore the highest and best transaction available to the Field Entities. It maximizes value for the estate and its stakeholders. Given the highly specialized nature of the purchased assets and the limited pool of industry participants capable of acquiring and utilizing them, and in light of the results of the Court-approved SISP, there is no realistic prospect that a superior transaction could have been achieved.[34] The Proposal Trustee supports the DHC/PAL Transactions as the best recovery available under the SISP.[35]

B. The Court should grant the proposed releases

23. The proposed Approval and Vesting Order contemplates certain limited releases (the "**Releases**") in favour of the Released Parties, comprising: (i) the Field Entities' directors, officers, employees and advisors, and (ii) the Proposal Trustee. The proposed Releases will take effect after the DHC/PAL Transactions close.[36]

24. In general, the proposed Releases are limited to claims arising from acts, omissions, transactions, dealings or other matters existing prior to closing of the DHC/PAL Transactions or arising in connection with (i) the Business, Property and affairs of the Field Entities, (ii) the administration and/or management of the Field Entities and the NOI

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[33] Mactaggart Affidavit at paras 37(d), 40 and 42-43.
[34] Mactaggart Affidavit at para 37(e)-(f); Second Report at para 5.3.
[35] Second Report at para 5.3(c).
[36] Mactaggart Affidavit at paras 45-46; Motion Record of the Field Entities, Tab 3, Draft Approval and Vesting Order ("**AVO**") at para 18.

Proceedings; and (iii) the DHC/PAL Sale Agreement and/or the consummation of the DHC/PAL Transactions. The proposed Releases do not seek to release the following claims: (i) claims that are not permitted to be released pursuant to applicable law (including sections 50(14) and 178(1) of the BIA); (ii) claims arising from actual fraud or wilful misconduct, or post-closing obligations under the DHC/PAL Sale Agreement or the DHC/PAL Transactions; (iii) claims that are recoverable under any of the Field Entities' applicable directors' and officers' insurance, up to the maximum amount claimable thereunder; (iv) claims that are preserved by UKRI pursuant to the UKRI Agreements; and (v) any claims available pursuant to sections 95 or 96 of the BIA.[37]

25. Although the Field Entities are not aware of any claims that UKRI can assert under the UKRI Agreements, or any claims available to any party under sections 95 or 96 of the BIA, these carve-outs reflect commercial resolutions with certain of the Field Entities' stakeholders and ensure that the Releases are not overly broad.[38] Further, given that the Releases aim to provide the Released Parties with certainty and recognition of their significant contributions to the restructuring efforts of the Field Entities and maximize recovery for stakeholders, as discussed below, and to ensure that potential claimants are not denied recovery under applicable directors' and officers' insurance, the Releases exclude claims that may be covered by such insurance.[39]

26. The Court should grant the proposed Releases. In determining whether to approve third party releases, this Court considers the factors set out in *Lydian*, including whether: (a) the

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[37] AVO at paras 18-19.
[38] Mactaggart Affidavit at paras 50-52.
[39] Mactaggart Affidavit at paras 48 and 50-52.

parties to be released were necessary to the restructuring; (b) the claims sought to be released are rationally connected to the restructuring and necessary for its success; (c) the restructuring could proceed without the releases; (d) the released parties contributed to the restructuring; and (e) the releases benefit the debtor and its stakeholders generally.[40] While it is not necessary to satisfy each *Lydian* factor for the Releases to be granted,[41] this Court has recently reaffirmed that it must be vigilant against granting overly-broad releases.[42]

27. The *Lydian* factors are satisfied. The Released Parties have contributed significantly to the successful restructuring of the Field Entities and their efforts allowed the Field Entities to improve from a dire financial position with no cash liquidity, to implementation of a successful SISP with a stalking horse bid with sufficient proceeds to ensure payment of all outstanding wages and vacation pay, repay Wells in full, along with commercial resolution of the two remaining aircraft at the Field Entities' premises.[43]

28. Throughout the NOI Proceedings, the directors and officers successfully assisted the Proposal Trustee with the implementation of the SISP, maintained the confidential data room, responded to bidder and stakeholder inquiries, facilitated due diligence and the preparation of assets for sale, including the collection of engineering data relating to STCs, continued the Draken Program and related data transfer process, resolved outstanding

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[40] *Re Lydian International Limited*, 2020 ONSC 4006 at para 54 [*Lydian*]; *JointCraft*, para 21; *SVFI*, para 26; Endorsement of Justice Steele dated March 6, 2025, *Re OMNI Conversion Technologies Inc*, Court File No. BK-24-03155126-0031 at paras 24-26.
[41] *Re Green Relief Inc*, 2020 ONSC 6837 at paras 27-28 [*Green Relief*]; *Re Harte Gold Corp*, 2022 ONSC 653 at para 80.
[42] *SRX Health Solutions (Canada) Inc*, 2026 ONSC 2894 at paras 24-38.
[43] Mactaggart Affidavit at para 54.

matters with UKRI, reported to Wells, and supported the Field Entities' broader restructuring and sale efforts.[44]

29. The proposed Releases are rationally connected to those efforts and provide appropriate certainty to the Released Parties upon completion of the DHC/PAL Transactions, as the Released Parties are critical to the closing of such transactions, which involves highly technical data transfers and application forms to Transport Canada.[45] The Releases will facilitate the successful completion of the restructuring process and benefit the Field Entities and their stakeholders generally.

30. Further, the Releases are not overly broad, including in comparison to other releases that have been recently granted by this Court,[46] and are tailored to the specific circumstances of this case. This Court has further held that excluding claims recoverable under applicable directors' and officers' insurance from proposed releases is an appropriate measure to ensure that releases are appropriately circumscribed.[47]

31. Finally, the Releases benefit all stakeholders. Under Field Canada's by-laws, the Field Entities' directors and officers are indemnified for all "costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment… by reason of being or having been a director or officer" of Field Canada (the "**Indemnity**").[48] As described in the Mactaggart Affidavit and Second Report, the Field Entities have applied for a tax

[44] Mactaggart Affidavit at paras 10 and 55.
[45] Mactaggart Affidavit at paras 10, 46-47 and 57.
[46] Order of Justice Steele dated March 27, 2026, *Re JointCraft Inc*, Court File No. BK-26-003318323-0031 at para 18; *JointCraft*, para 22; see also Order of Justice Cavanagh dated November 26, 2025, *Re STS Renewables Ltd*, Court File No. CV-25-00743275-00CL at para 23.
[47] *Green Relief*, paras 60-61.
[48] Mactaggart Affidavit at para 57 and at Exhibit "F".

refund of up to $2.9 million (the "**Tax Refund**"), which, if recovered, would be available for distribution to stakeholders.[49] Claims by the directors and officers under the Indemnity would reduce that recovery, if any. As held by Justice Koehnen in *Green Relief*, releases in these circumstances benefit stakeholders because "the funds available to creditors could be significantly diminished because of indemnity claims by the releasees."[50]

32. Alternatively, in the event that the Tax Refund is not received, the Releases in favour of the Field Entities' directors and officers are particularly necessary in that the protection normally afforded to these parties by the Field Entities' corporate indemnity has now become *de minimis*.[51] Specifically, it is unknown whether there would be any recovery under any indemnity claims, which would arise at some future unknown time, and the directors and officers would have no other "practical means of collecting any indemnity" given the Field Entities' lack of material assets and prospective bankruptcy.[52] The Releases are thus necessary to ensure the critical, continuing involvement of the Field Entities' directors and officers in the final phase of these NOI Proceedings.[53]

33. The Proposal Trustee supports the proposed Releases.[54]

C. The Court should authorize the distributions to Wells

34. The Field Entities are seeking authorization for the Proposal Trustee to make distributions from the sale proceeds of the DHC/PAL Sale Agreement to Wells, their sole secured

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[49] Mactaggart Affidavit at paras 28-29; Second Report at para 3.0(5).
[50] *Green Relief*, paras 51-55.
[51] Mactaggart Affidavit at para 57.
[52] *Endean v St Joseph's General Hospital*, 2019 ONCA 181 at para 51; cf. *Re CannTrust Holdings Inc*, 2021 ONSC 4408 at para 56.
[53] Mactaggart Affidavit at para 57.
[54] Second Report at paras 5.2(3) and 5.3(e)-(f).

creditor and DIP lender. As at July 31, 2026, the Field Entities are estimated to owe Wells approximately US$2,300,708 under the DIP Term Sheet and US$3,101,835 under the Credit Agreement. As set out in the Second Report, the sale proceeds from the DHC/PAL Sale Agreement are sufficient to fully repay Wells after all priority payables are paid.[55]

35. The Court often approves interim distributions to senior secured creditors following Court-approved sale transactions in BIA proposal proceedings.[56] When determining whether to approve interim distributions, the Court considers: (a) whether the proposed recipient's security is valid and enforceable; (b) whether the amounts that are owed to the proposed recipient exceed the proposed interim distribution amount; and (c) whether the proposed interim distribution would result in interest savings.[57]

36. Each factor is satisfied in this case. Wells is the only secured creditor of the Field Entities, having a security interest in all of the Field Entities' present and after-acquired personal property. The Proposal Trustee has obtained an opinion from its counsel that, subject to customary assumptions and qualifications, Wells' security is valid and enforceable.[58] The Proposal Trustee is only authorized to make distributions up to the amounts owing to Wells Secured Indebtedness. Interest on the Field Entities' obligations to Wells continues to accrue; therefore, repaying Wells swiftly and fully will reduce interest expenses, preserving surplus proceeds for other creditors.[59]

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[55] Second Report at para 6(3). Priority payables include unpaid wages and accrued vacation pay.
[56] *Kingsett Mortgage Corporation v Churchill Lands United Inc*, 2024 ONSC 7127 at paras 43-44; *First Source Financial Management v Chacon Strawberry Fields Inc*, 2024 ONSC 7229 at para 44 [*Chacon*]; see e.g. Endorsement of Justice J Dietrich dated April 14, 2025, *Re Brands International Corporation*, Court File No. BK-24-03169618-0031 at para 16.
[57] *Chacon*, paras 45-46, citing *Re Abitibibowater Inc*, 2009 QCCS 6461 at para 75.
[58] Second Report at paras 2.1(3) and 6.0(1).
[59] Second Report at para 6.0(2)-(3).

D. The Court should grant the WEPPA declaration

37. Field Canada seeks a declaration pursuant to sections 5(1)(b)(iv) and 5(5) of the WEPPA declaring that it meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**WEPP Regulations**"). As of April 2026, Field Canada employed approximately 132 employees.[60] Due to the Field Entities' liquidity constraints arising from their reduced cash position and defaults under the Credit Agreement, Field Canada was required to lay off nearly all of its employees.[61] In light of the anticipated DHC/PAL Transactions, these layoffs will eventually become permanent.[62]

38. The proposed WEPPA declaration will allow eligible former employees of Field Canada whose employment has ended in connection with the NOI Proceedings to apply for WEPP payments. Section 5(1) of the WEPPA provides that an individual is eligible for WEPP payments where, among other things, their employment ended for a prescribed reason, they are owed eligible wages, the former employer is subject to proceedings under Division I of Part III of the BIA, and the court determines under section 5(5) that the criteria prescribed by section 3.2 of the WEPP Regulations are met.[63] Namely, that the former employer is one "all of whose employees in Canada have been terminated other than any retained to wind down its business operations."[64]

39. The Court should declare that Field Canada meets the criteria prescribed by WEPPA. Where the debtor sells its assets and terminated employees are left with no solvent

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[60] Mactaggart Affidavit at para 59.
[61] Mactaggart Affidavit at para 60.
[62] Mactaggart Affidavit at para 60.
[63] WEPPA, s 5(1).
[64] WEPP Regulations, s 3.2; WEPPA, s 5(5).

employer from whom to claim their lost wages, those employees are "precisely who the WEPPA is intended to protect."[65] That is the position the Field Entities' terminated employees find themselves in. Further, an insolvent debtor who previously employed terminated employees directly is a "former employer" for the purposes of section 3.2.[66] This Court regularly grants WEPPA declarations concurrently with vesting orders where the balance of the debtor's employees will not be retained post-closing to wind down the debtor's business operations, including in proposal proceedings.[67]

E. The Court should approve the A&R Data Transfer Agreement

40. As discussed above, this Court previously approved the Draken Data Transfer Agreement, pursuant to which Field Canada agreed to sell certain intellectual property and data to Draken for US$800,000. The A&R Data Transfer Agreement does not materially alter the transaction previously approved by this Court. Other than finalizing the schedule of transferred intellectual property and data, the purchase price and all material commercial terms remain unchanged.

41. The same considerations that led this Court to approve the Draken Data Transfer Agreement therefore apply with equal force to the A&R Data Transfer Agreement. As Justice Dietrich found at the June 12 hearing,[68] the transferred data is specific to Draken's aircraft modification program, has little or no independent value to third parties, and an

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[65] *Syndic d'Intelgenx Corp*, 2024 QCCS 3678 at paras 42-44.
[66] *Re Hudson's Bay Company*, 2025 ONSC 3328 at paras 44-45; *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 7052 at paras 37-43.
[67] *BRR Logistics*, paras 17-22; see also Endorsement of Justice Wilton-Siegel dated November 17, 2023, *Re Bad Boy Furniture Warehouse Limited*, Court File No. BK-23-03008133-0031 at para 5.
[68] *Field Aviation Company et al*, 2026 ONSC 3498 at para 30.

open-market sale would be unlikely to generate greater value for the Field Entities' stakeholders. The Proposal Trustee and Wells continue to support the transaction.[69]

F. The Court should approve the UKRI Agreements

42. The Field Entities seek approval of the UKRI Agreements. The UKRI Agreements provide for the orderly retrieval of the UKRI Aircraft and related assets from the Field Entities' hangar, under the oversight of Field Canada and the Proposal Trustee, the delivery by Field Canada of available existing program data, and the removal, handling and transportation of the assets by UKRI by July 31, 2026.[70] Upon completion of those obligations, UKRI will provide certain releases in favour of Field Canada, the Proposal Trustee and certain other related parties, subject to the exclusions set out in the UKRI Agreements.

43. The Court should approve the UKRI Agreements. Courts often approve settlement agreements within the restructuring context that avoid "complex and costly legal contests" and "contribute to advancing the restructuring on a timely and efficient basis".[71] When determining whether to approve a settlement agreement in insolvency proceedings, this Court has considered whether (a) the settlement is fair and reasonable; (b) the settlement provides substantial benefits to other stakeholders; and (c) the settlement is consistent with the purpose and spirit of the relevant insolvency legislation.[72]

44. The UKRI Agreements satisfy these factors. The UKRI Agreements are fair and reasonable, balancing the parties' interests by providing an orderly resolution of matters

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[69] Second Report at para 8.1(5).
[70] Mactaggart Affidavit at paras 21-23.
[71] *Re 1057863 BC Ltd*, 2024 BCSC 1111 at para 14 [*863 BC*].
[72] *Ontario Securities Commission v Bridging Finance Inc*, 2025 ONSC 539 at para 13; *Re Maple Bank GmbH*, 2016 ONSC 7218 at para 8.

relating to the UKRI Aircraft while avoiding the costs, delays and uncertainty associated with continued disputes and potential litigation.[73] They also provide substantial benefits to stakeholders by facilitating the orderly retrieval of the UKRI Aircraft, at UKRI's expense, and preserving the Field Entities' resources.[74] The UKRI Agreements are consistent with the objectives of the BIA proposal provisions, facilitating the Field Entities' restructuring efforts and eliminating the operational and practical impediments associated with the UKRI Aircraft.[75] Finally, the Proposal Trustee supports the UKRI Agreements.[76]

G. The Court should authorize the Field Entities to sell residual assets

45. The Court should authorize the Field Entities to market their remaining assets without the need for further Court appearances.

46. The proposed Ancillary Order contemplates that the Field Entities may sell, convey, transfer, lease or assign any remaining Property not subject to the DHC/PAL Transactions, up to $250,000 per-transaction (exclusive of applicable sales taxes).[77] This Court has previously authorized debtors in proposal proceedings to sell non-material assets without Court approval for specific transactions.[78] This relief will prevent further expense, thereby maximizing surplus proceeds available to stakeholders.[79]

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[73] *863 BC*, para 16; Second Report at para 8.2(4).
[74] Second Report at para 8.2(4).
[75] *9354-9186 Québec Inc v Callidus Capital Corp*, 2020 SCC 10 at para 40; Second Report at para 8.2(4).
[76] Second Report at para 8.2(4).
[77] Motion Record of the Field Entities, Tab 4, Draft Ancillary Order at para 14.
[78] Order of Justice Osborne dated March 4, 2024, *Re The Body Shop Canada Limited*, Court File No. BK-31-3050418 at para 4(a).
[79] Second Report at para 4.3(3).

H. The Court should approve the Proposal Trustee's fees and activities

47. The Field Entities seek approval of: (i) the fees and disbursements of the Proposal Trustee and its legal counsel as set out in the Second Report; and (ii) the First Report and Second Report, including the Proposal Trustee's conduct and activities described therein.

48. The Proposal Trustee and its counsel have been instrumental in advancing the Field Entities' restructuring efforts, including implementing the SISP, monitoring the Field Entities' affairs, and assisting with the transactions and other relief sought on this motion and at the June 12 hearing.[80] The fees and disbursements incurred are reasonable, commensurate with the services provided, and consistent with market rates.[81] The Court should likewise approve the First and Second Report, and the activities described therein. Such approval is routinely granted where the officer has acted in good faith and in accordance with its mandate and applicable legislation.[82] The Proposal Trustee has done so here, and no party has raised any concerns regarding its conduct.

I. Extension of the time to file a proposal and stay of proceedings

49. The Field Entities seek to extend the time to file a proposal with the Official Receiver, and the attendant stay of proceedings, by 45 days, up to and including October 3, 2026. Pursuant to section 50.4(9) of the BIA, the court may extend the time if it is satisfied that: (a) the insolvent person has acted, and is acting, in good faith and with due diligence; (b) the insolvent person would likely be able to make a viable proposal if the extension being

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[80] Second Report at para 11.
[81] Mactaggart Affidavit at paras 66-68; Second Report at para 12.
[82] *Chacon*, para 55; see e.g. *JointCraft*, para 28.

applied for were granted; and (c) no creditor would be materially prejudiced if the extension being applied for were granted.[83]

50. The extension will provide the Field Entities and the Proposal Trustee with sufficient time to complete the DHC/PAL Transactions and the Draken Program, facilitate UKRI's retrieval of the UKRI Aircraft, administer WEPPA claims of former employees and wind down operations in an orderly manner.[84] The Field Entities have been acting diligently and in good faith throughout the NOI Proceedings,[85] no stakeholder will be materially prejudiced by the extension, and the Proposal Trustee supports the stay extension.[86]

J. The Court should pre-authorize the Field Entities' assignment in bankruptcy

51. The Court should authorize the Proposal Trustee to file an assignment in bankruptcy on behalf of the Field Entities. This relief is "not extraordinary" and the Court has previously authorized this,[87] where (a) the debtors are facing bankruptcy in any event; (b) delaying bankruptcy may be prejudicial to the debtors' stakeholders; and (c) bankruptcy would provide the insolvent debtors and the court officer with "efficient and cost-effective procedures" for winding down the insolvency proceedings.[88]

52. The foregoing factors are satisfied in this case. The Field Entities will be deemed bankrupt pursuant to section 50.4(8) of the BIA upon expiry of the extended time to file a proposal

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[83] BIA, s 50.4(9).
[84] Second Report at para 9(2)(b).
[85] Mactaggart Affidavit at paras 54 and 69.
[86] Second Report at para 9(2)(d).
[87] *Bank of Nova Scotia v Fraser Valley Renewables Ltd*, 2026 BCSC 201 at para 94 [*Fraser Valley*]; Order of Justice Dietrich dated April 7, 2021, *Re Allied Track Services Inc*, Court File No. 32-2705503 at para 22.
[88] *Fraser Valley*, para 96; Endorsement of Justice Cavanagh dated October 2, 2025, *Royal Bank of Canada v Chesswood Group Ltd*, Court File No. CV-24-00730212-00CL at para 4.

on October 3, 2026, unless further extended.[89] If the remaining post-closing matters and the Draken Program are completed before that date, there is no benefit to stakeholders in prolonging the NOI Proceedings until an automatic deemed assignment occurs. Authorizing the Proposal Trustee to assign the Field Entities into bankruptcy will avoid unnecessary professional costs and allow any remaining recoveries, claims, and wind-down matters to be addressed efficiently through the bankruptcy process.

PART V - RELIEF REQUESTED

53. For the reasons set out herein, the Court should grant the Approval and Vesting Order and the Ancillary Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of July, 2026.

July 22, 2026

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[89] BIA, s 50.4(8).

SCHEDULE "A"
LIST OF AUTHORITIES

1. Endorsement of Justice Steele dated March 27, 2026, *Re JointCraft Inc*, Court File No. BK-26-003318323-0031.

2. Endorsement of Justice J Dietrich dated December 19, 2025, *Re Stewart's Vertical Farms Inc*, Court File No. BK-25-03241528-0031.

3. Endorsement of Justice Kimmel dated April 15, 2024, *Re BRR Logistics Limited*, Court File No. BK-24-03038619-0031.

4. *Royal Bank v Soundair Corp*, 1991 CarswellOnt 205, 1991 CanLII 2727 (CA).

5. *Re Lydian International Limited*, 2020 ONSC 4006.

6. Endorsement of Justice Steele dated March 6, 2025, *Re OMNI Conversion Technologies Inc*, Court File No. BK-24-03155126-0031.

7. *Re Green Relief Inc*, 2020 ONSC 6837.

8. *Re Harte Gold Corp*, 2022 ONSC 653.

9. *SRX Health Solutions (Canada) Inc*, 2026 ONSC 2894.

10. Order of Justice Steele dated March 27, 2026, *Re JointCraft Inc*, Court File No. BK-26-003318323-0031.

11. Order of Justice Cavanagh dated November 26, 2025, *Re STS Renewables Ltd*, Court File No. CV-25-00743275-00CL.

12. *Endean v St Joseph's General Hospital*, 2019 ONCA 181.

13. *Re CannTrust Holdings Inc*, 2021 ONSC 4408.

14. *Kingsett Mortgage Corporation v Churchill Lands United Inc*, 2024 ONSC 7127.

15. *First Source Financial Management v Chacon Strawberry Fields Inc*, 2024 ONSC 7229.

16. Endorsement of Justice J Dietrich dated April 14, 2025, *Re Brands International Corporation*, Court File No. BK-24-03169618-0031.

17. *Re Abitibibowater Inc*, 2009 QCCS 6461.

18. *Syndic d'Intelgenx Corp*, 2024 QCCS 3678.

19. *Re Hudson's Bay Company*, 2025 ONSC 3328.

20. *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 7052.

21. Endorsement of Justice Wilton-Siegel dated November 17, 2023, *Re Bad Boy Furniture Warehouse Limited*, Court File No. BK-23-03008133-0031.

22. *Field Aviation Company et al*, 2026 ONSC 3498.

23. *Re 1057863 BC Ltd*, 2024 BCSC 1111.

24. *Ontario Securities Commission v Bridging Finance Inc*, 2025 ONSC 539.

25. *Re Maple Bank GmbH*, 2016 ONSC 7218.

26. *9354-9186 Québec Inc v Callidus Capital Corp*, 2020 SCC 10.

27. Order of Justice Osborne dated March 4, 2024, *Re The Body Shop Canada Limited*, Court File No. BK-31-3050418.

28. *Bank of Nova Scotia v Fraser Valley Renewables Ltd*, 2026 BCSC 201.

29. Order of Justice Dietrich dated April 7, 2021, *Re Allied Track Services Inc*, Court File No. 32-2705503.

30. Endorsement of Justice Cavanagh dated October 2, 2025, *Royal Bank of Canada v Chesswood Group Ltd*, Court File No. CV-24-00730212-00CL.

I certify that I am satisfied as to the authenticity of every authority listed above.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date July 22, 2026

Rachel Nicholson

SCHEDULE "B"
RELEVANT STATUTES

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3**

50.4 (8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

50.4 (9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) 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.

65.13 (4) 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 trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee 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.

***Wage Earner Protection Program Act*, SC 2005, c 47, s 1**

5 (1) An individual is eligible to receive a payment if

(a) the individual's employment ended for a reason prescribed by regulation;

(b) one of the following applies:

(i) the former employer is bankrupt,

(ii) the former employer is subject to a receivership,

(iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the *Bankruptcy and Insolvency Act* and

(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and

(B) a trustee is appointed, or

(iv) the former employer is the subject of proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act* and a court determines under subsection (5) that the criteria prescribed by regulation are met; and

(c) the individual is owed eligible wages by the former employer.

5 (5) On application by any person, a court may, in proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act*, determine that the former employer meets the criteria prescribed by regulation.

***Wage Earner Protection Program Regulations*, SOR/2008-222**

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FIELD AVIATION COMPANY INC. AND FIELD AVIATION EAST LTD.

Court File No.: BK-26-03382861-0032
Estate No.: 32-3382861

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at **Toronto**

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