

**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 PAYSTONE HOLDINGS INC.,
PAYSTONE INC., ATOM GROWTH INC., and ATOM
GROWTH (USA), INC.**

FACTUM OF THE APPLICANTS

June 21, 2026

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PART I: OVERVIEW

1. On June 5, 2026, Paystone Holdings Inc., Paystone Inc. (“**Paystone**”), Atom Growth Inc. and Atom Growth (USA), Inc. (collectively, the “**Applicants**” or the “**Company**”) sought and obtained an Order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granting limited relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Applicants now return to Court, following an extension of the stay and a consensual adjournment of the substantive relief sought, to seek an approval and vesting order (the “**AVO**”) and an order granting related ancillary relief (the “**Ancillary Order**”), all of which was described in detail in the Applicants’ application record dated June 5, 2026.

2. The AVO would approve a value-maximizing, pre-packaged sale transaction (the “**Sale Transaction**”) to allow the Applicants’ business (the “**Business**”) to continue as a going-concern. The Sale Transaction is the product of an asset purchase agreement (the “**APA**”) that was executed following a robust pre-filing sale process (the “**Pre-Filing Process**”) conducted by Canaccord Genuity Corp. (“**Canaccord**”) and overseen by Reflect Advisors, LLC, Paystone’s chief restructuring officer (the “**CRO**”). It is the best, and only, viable offer in the circumstances.

3. The Sale Transaction contemplates the sale of all the Applicants’ material assets to a newly incorporated company (the “**Purchaser**”) controlled by the co-founders and principals of the Applicants. If approved, the Sale Transaction will strengthen the Applicants’ balance sheet, maximize value, preserve jobs for substantially all of the Applicants’ 118 employees and over 100 independent contractors, and allow the Business to continue as a going concern for the benefit of the Applicants’ 38,000 customers, vendors and other stakeholders. The Sale Transaction is supported by the Monitor and the Applicants’ fulcrum senior secured lender, Sandton Investments

X (Luxembourg) S.à r.l. (“**Sandton**”), which has agreed to enter into a new credit agreement with the Purchaser that will significantly reduce the Applicants’ total debt burden post-closing.

4. The approval of the Sale Transaction is opposed by BDC Capital Inc. (“**BDC**”), an out-of-the-money subordinate creditor, which has filed a competing motion for a Court-approved sale process to be funded by a priming DIP (as defined below). As the results of the Pre-Filing Process make clear, and as underscored by BDC’s unwillingness to advance funding on a junior basis, there is no value beyond the senior secured debt owed to Sandton. Consistent with that conclusion, the Monitor does not view an additional sale or solicitation process as likely to create additional value or otherwise improve recoveries for stakeholders. Indeed, even if it could be funded, a further sale process would only result in delay, increased risk and uncertainty for the Business, with no apparent upside for the Applicants or their stakeholders. More pressing, the Applicants have insufficient funding to continue operations beyond July 1, 2026, let alone to conduct a further sale process.

5. BDC is aware of the Applicants’ funding need and appears to recognize that an additional sale process is highly unlikely to achieve a better result. It has therefore (wisely) declined to provide funding on a junior basis to Sandton – it instead asks for a free option for a second kick at the can, funded, directly or indirectly, by Sandton and at great risk to the Applicants. The only viable path forward for the Applicants is to close the Sale Transaction on an expeditious basis before its limited liquidity disappears. Approval of the Sale Transaction cannot be jeopardized at the insistence of a creditor with no remaining economic interest in these proceedings that is unwilling to “put its money where its mouth is”.

6. The remainder of the relief sought by the Applicants is reasonable and appropriate to facilitate first, the Sale Transaction and, second, an efficient wind-up of these CCAA proceedings following the closing. All such relief is supported by the Monitor and Sandton.

PART II: FACTS

7. The facts underlying this application are more fully set out in the affidavits of Adam Zalev sworn June 5, 2026 and June 21, 2026 (together, the “**Zalev Affidavits**”) and the Second Report of the Monitor dated June 19, 2026 (the “**Second Report**”).¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Zalev Affidavits.

A. Background in these CCAA Proceedings

8. Detailed background on the Business and the causes of the Applicants’ insolvency is provided in the Zalev Affidavits and is not repeated herein.

9. On June 5, 2026, the Applicants applied for CCAA protection after struggling with prolonged liquidity and default issues.² Shortly before their filing, the Applicants completed a transaction (the “**Loan Transaction**”) – which had been identified as the superior offer following the Pre-Filing Process – pursuant to which Sandton became the Applicants’ senior secured creditor by acquiring the position from a syndicate of lenders (the “**Syndicate**”).³ Sandton acquired this debt for less than half of the over \$92 million then owing by the Applicants.⁴

10. Pursuant to the terms of the forbearance agreement entered into between Sandton and the Applicants as part of the Loan Transaction (the “**Sandton Forbearance Agreement**”), Sandton agreed to, among other things: (a) extend the maturity date thereunder from December 31, 2027 to May 8, 2028; and (b) at maturity, provide a discount of over \$35 million, absent certain defaults.⁵

¹ Affidavit of Adam Zalev sworn June 5, 2026 [Zalev Affidavit], Application Record of the Applicants dated June 5, 2026, at Tab 2 [Application Record]; Second Report of the Monitor dated June 19, 2026 [Second Report].

² Zalev Affidavit, *ibid* at para 8, Application Record at Tab 2.

³ Zalev Affidavit, *ibid* at para 72, Application Record at Tab 2.

⁴ Zalev Affidavit, *ibid* at para 14, Application Record at Tab 2.

⁵ Zalev Affidavit, *ibid* at para 15, Application Record at Tab 2.

11. The Loan Transaction, combined with the Sandton Forbearance Agreement, offered the Applicants an opportunity to materially improve their capital structure. However, it alone was not sufficient to right-size the Applicants' balance sheet – the Applicants remained unable to pay their subordinate debt when due. As such, comprehensive restructuring is required for the Business to continue operations as a going concern.⁶ As a result, the Applicants and Sandton continued discussions regarding a fulsome deleveraging transaction.⁷

12. These discussions ultimately culminated in the execution of the APA between the Applicants and the Purchaser. The APA contemplates that, among other things, the Sale Transaction will be implemented pursuant to the AVO, and the Purchaser and Sandton will enter into a new credit agreement (the “**New Credit Agreement**”), under which the principal amount owing to Sandton will be permanently reduced from over \$92 million to \$60 million.⁸

13. At the time of their filing, the Applicants were insolvent on both a balance sheet and cash-flow basis.⁹ As such, on June 5, 2026, the Applicants sought and obtained the Initial Order, which provided for the limited relief necessary to continue operations in the immediate term, including an initial ten-day stay of proceedings (the “**Stay of Proceedings**”).¹⁰

B. Developments in the CCAA Proceedings and BDC's Motion

14. At the comeback hearing on June 15, 2026 (the “**Comeback Hearing**”), the Applicants obtained an Amended and Restated Initial Order, which, among other things, extended the Stay of Proceedings to and including June 25, 2026 (the “**Stay Period**”). The Applicants had originally intended to also seek approval of the AVO and the Ancillary Order at the Comeback Hearing;

⁶ Zalev Affidavit, *ibid* at para 16, Application Record at Tab 2.

⁷ Zalev Affidavit, *ibid* at para 122, Application Record at Tab 2.

⁸ Zalev Affidavit, *ibid*, Application Record at Tab 2.

⁹ Zalev Affidavit, *ibid* at paras 8, 11, 16, Application Record at Tab 2.

¹⁰ Second Report, *supra* note 1, s 1.0 at para 1.

however, following discussions with certain stakeholders (including BDC), the Applicants agreed to adjourn such relief to June 22, 2026.¹¹

15. Despite the additional time afforded to BDC through the adjournment and having been served with the Applicants' application materials fifteen days prior to the date hereof, BDC has failed to present a viable alternative to the Sale Transaction. Instead, over the course of two weeks, it has obtained two non-binding, highly conditional term sheets that remain subject to due diligence periods and further negotiation.¹² The proposed offers submitted by: (a) Shopley Inc. ("**Shopley**"), which is owned by Steve Levely, an unsecured creditor; and (b) Valsoft Corporation Inc. ("**Valsoft**"), are each fatally deficient – they expose the Applicants and Sandton to extreme financial and operational risk in the absence of any interim financing, evidence of proof of funds or equity valuations, or binding commitments to close the transactions.¹³

16. In the affidavit of Imran Malik sworn June 19, 2026, Mr. Malik also describes two without prejudice, non-binding offers (one of which is from BDC) to provide super-priority debtor-in-possession ("**DIP**") financing to fund a further sale process – both of which are highly conditional.¹⁴ These offers are highly prejudicial to the Applicants' fulcrum creditor, Sandton, which will not consent to a priming DIP facility.¹⁵ BDC's unwillingness to provide DIP financing on a basis junior to Sandton demonstrates its recognition that there is no realistic prospect of any subordinated recovery.

17. Moreover, even if the proposed DIP financing was a viable solution (which it is not), it only addresses part of the Company's funding requirements over the coming weeks. On June 18, 2026,

¹¹ Second Report, *ibid*, s 1.0 at para 9.

¹² Affidavit of Adam Zalev sworn June 21, 2026 at para 12 [Second Zalev Affidavit]; Affidavit of Imran Malik sworn June 19, 2026, Exhibits V, W [Malik Affidavit].

¹³ Second Zalev Affidavit, *ibid* at para 11, Letter to N. MacParland at Exhibit "B".

¹⁴ Malik Affidavit, *supra* note 12 at paras 58-59.

¹⁵ Second Report, *supra* note 1 at s 5.1 at para 1(g).

the Bank of Nova Scotia (“BNS”) advised the Monitor that beginning on July 2, 2026, the Applicants would be required to post additional cash collateral (estimated to be approximately \$5 million) for BNS to continue providing cash management and billing services (the “BNS Services”) during these CCAA proceedings.¹⁶ Despite the BNS Services being essential to the Applicants’ business operations and necessary to preserve enterprise value, neither DIP term sheet contemplates sufficient funding to fund the BNS Services, together with the Applicants’ ordinary course operations and a further sale process.

C. Pre-Filing Process and Loan Transaction

18. Canaccord, a reputable financial advisory firm, conducted the Pre-Filing Process under the oversight of the experienced CRO.¹⁷ The Pre-Filing Process was conducted in accordance with the Syndicate’s requirements.¹⁸ The Monitor has reviewed the materials prepared by, and confirmed the details of the Pre-Filing Process with, Canaccord, and is of the view that it was conducted in a reasonable manner.¹⁹

19. In conducting the Pre-Filing Process, Canaccord broadly canvassed the market for parties interested in acquiring or investing in the Business. To facilitate this effort, Canaccord prepared: (a) a list of prospective parties to contact, consisting of a mix of majority and minority equity investors and structured capital providers; (b) a teaser describing the opportunity; (c) a detailed confidential information memorandum; and (d) a virtual data room containing relevant materials, which was made available to parties that executed non-disclosure agreements.²⁰ As part of the Pre-Filing Process, Canaccord contacted 122 prospective parties, of which 94 responded, 35 executed

¹⁶ Second Report, *supra* note 1 at s 3.3 at para 2; s 5.1 at para 1(c).

¹⁷ Zalev Affidavit *ibid* at para 119, Application Record at Tab 2; Second Report, *supra* note 1, s 4.0 at para 2.

¹⁸ Zalev Affidavit, *ibid* at para 112, Application Record at Tab 2; Second Report, *ibid*, s 4.0 at para 2.

¹⁹ Second Report, *ibid*, s 4.0 at para 1.

²⁰ Second Report, *supra* note 1, s 4.0 at para 3.

non-disclosure agreements and 27 had discussions or meetings with the Company (all of which were attended by Canaccord).²¹

20. Four non-binding term sheets (the “**Term Sheets**”) were submitted as part of the Pre-Filing Process. The Term Sheets were reviewed by the Applicants, the CRO and the Syndicate. Copies of the Term Sheets were provided to the Monitor on a confidential basis, who noted that the Term Sheets were non-binding, highly conditional and would have resulted in a significant shortfall for the Syndicate.²²

21. Separate from the Pre-Filing Process, the CRO received a proposal directly from Sandton for the purchase of the Applicants’ debt. After reviewing and comparing Sandton’s proposal against the Term Sheets, the Applicants and the Syndicate, in consultation with the CRO, determined that the Sandton proposal was superior (including, among other reasons, because it provided the greatest recovery for the Syndicate). The Syndicate – made up of three sophisticated Canadian banks and advised by an experienced and reputable financial advisor - ultimately proceeded with the Sandton proposal, thereby agreeing to sell its debt for less than half of its face value rather than pursuing alternatives or seeking further marketing (including through an insolvency process).²³

22. The Pre-Filing Process resulted in a thorough canvassing of the market. As set out in the Second Report, the Pre-Filing Process was value-maximizing and conducted in a commercially reasonable manner. Any further time or expense devoted to a court-supervised process cannot reasonably be expected to yield any recoveries for the Applicants’ subordinate creditors.²⁴

²¹ Second Report, *ibid*, s 5.1 at para 1(b).

²² Second Report, *ibid*, s 4.0 at para 8.

²³ Zalev Affidavit, *supra* note 1 at para 120, Application Record at Tab 2.

²⁴ Second Report, *supra* note 1, s 5.1 at para 1(c), s 1.0 at para 6.

D. Proposed Sale Transaction and AVO

23. Pursuant to the APA, the Applicants have agreed to sell all of their material assets to the Purchaser, free and clear of all claims and encumbrances, for an aggregate purchase price consisting of: (a) a cash payment sufficient to satisfy the Priority Payables and the Wind-Up Reserve (each as defined in the APA); (b) \$60 million, to be satisfied by entering into the New Credit Agreement with Sandton, in exchange for Sandton's consent to the vesting off of all encumbrances related to the Sandton Secured Indebtedness; and (c) the Purchaser's assumption of certain "Assumed Liabilities" (as defined in the APA).²⁵ The Purchaser expects to offer employment to substantially all of the Applicants' 118 employees and to assume their material contracts on a consensual basis.²⁶

24. Unlike the Shopley and Valsoft expressions of interest, the Sale Transaction is memorialized by an executed, definitive APA. If approved, it would provide continuity for the Applicants' stakeholders, while immediately reducing the principal amount payable under the Applicants' senior credit facility.²⁷ The APA offers value substantially greater than any offer received under the Pre-Filing Process and is more beneficial to creditors than a bankruptcy sale or disposition.²⁸ If the AVO is approved, it will vest out all other claims and encumbrances, allowing the Purchaser to start fresh without the subordinate debt that the Applicants have long been incapable of servicing.²⁹ Since the Purchaser intends to continue the Business, the proposed AVO authorizes the Applicants to change their names following closing to avoid confusion for customers, employees and other stakeholders.³⁰

²⁵ Zalev Affidavit, *supra* note 1 at paras 145–146, Application Record at Tab 2.

²⁶ Zalev Affidavit, *ibid*, Application Record at Tab 2.

²⁷ Zalev Affidavit, *ibid* at para 148, Application Record at Tab 2.

²⁸ Zalev Affidavit, *ibid*, Application Record at Tab 2; Second Report, *supra* note 1, s 5.1 at paras 1(m), 1(n).

²⁹ Zalev Affidavit, *ibid* at paras 122, 149, Application Record at Tab 2.

³⁰ Zalev Affidavit, *ibid* at para 150, Application Record at Tab 2; See examples of similar relief being granted in other CCAA proceedings: *In the Matter of a Plan of Compromise or Arrangement of STS Renewables Ltd et al.* (October 21, 2025), Toronto, CV-25-00743275-00CL (ONSC) ([Approval and Vesting Order](#)) at para 13; *In the Matter of a Plan of Compromise or Arrangement of Hudson's Bay Company ULC et al.* (June 23, 2025), Toronto, CV-25-00738613-00CL (ONSC) ([Amendment to Approval and](#)

25. The Sale Transaction is supported by Sandton, the Applicants' senior secured (fulcrum) creditor, and only material economic creditor.³¹ It is also supported by the Monitor, which has provided its opinion that it is unlikely that a better result would be achieved through a further sale process.³²

E. Releases

26. The Applicants seek approval of certain releases in favour of the Released Parties (as defined in the AVO) upon the closing of the Sale Transaction. The Released Parties include, among others, the current and former directors, officers and legal counsel of the Applicants, the CRO, Sandton, the Monitor and its legal counsel, and the Monitor's respective current directors, officers, partners, employees and advisors.³³

27. The proposed Releases release and discharge the Released Parties from all present and future liabilities and claims arising in connection with or relating to:

- (a) any omissions, transactions, offers, dealings, or other facts, matters, occurrences or things existing or taking place prior to the delivery of the Monitor's Certificate;
- (b) the CCAA proceedings;
- (c) the Loan Transaction, the APA and/or the consummation of the Sale Transaction;
and/or

[Vesting Order](#)) at para 3; *In the Matter of a Plan of Compromise or Arrangement of Hakim Optical Laboratory Limited* (November 18, 2025), Toronto, CV-25-00743383-00CL (ONSC) ([Approval and Vesting Order](#)) at paras 18-19.

³¹ Zalev Affidavit, *supra* note 1 at para 152, Application Record at Tab 2.

³² Second Report, *supra* note 1, s 1.0 at para 6.

³³ Zalev Affidavit, *supra* note 1 at para 153, Application Record at Tab 2.

- (d) any closing document, agreement, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing (collectively, the “**Released Claims**”).³⁴

28. The Released Claims do not include any claim for fraud or wilful misconduct or any claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA.³⁵ The proposed releases also provide certain negotiated carve-outs for the Syndicate and preferred shareholders.

F. Confidential Appendices

29. In connection with this Application, the Monitor was required to file certain confidential and commercially sensitive information. Specifically, the Monitor has filed: (a) a summary of the economic terms of the Term Sheets prepared by Canaccord (the “**Canaccord Summary**”); and (b) an unredacted copy of the Loan Purchase Agreement (inclusive of the purchase price) (the “**Unredacted LPA**”).

30. BDC also filed on a confidential basis: (a) certain responses and materials regarding the Pre-Filing Process (the “**Confidential Responses**”) that were provided by the CRO, on behalf of the Applicants, pursuant to a non-disclosure agreement (the “**NDA**”); and (b) an unredacted copy of the letter of intent submitted by Shopley Inc. on June 18, 2026 (the “**Shopley LOI**” and collectively, with the Confidential Responses, the Canaccord Summary and the Unredacted LPA, the “**Confidential Materials**”).

31. The information contained in the Canaccord Summary, the Confidential Responses and the Shopley LOI is highly sensitive and could prejudice any further attempt by the Applicants to maximize value should the Sale Transaction fail to close. The Applicants therefore seek limited

³⁴ Zalev Affidavit, *ibid* at para 154, Application Record at Tab 2.

³⁵ Zalev Affidavit, *ibid* at para 155, Application Record at Tab 2.

sealing relief from this Court to exclude this information from the public record pending closing of the Sale Transaction.³⁶

32. The purchase price paid by Sandton under the Loan Transaction was explicitly marked as confidential until May 12, 2027 – the Applicants therefore seek to seal such information until that date.³⁷

G. CCAA Wind-Up

33. The Applicants also seek various relief to facilitate their anticipated wind-up following the closing of the Sale Transaction. First, the Applicants seek to extend the Stay of Proceedings to and including June 30, 2026, to facilitate the closing of the Sale Transaction (if approved).³⁸ As a result of the delay caused by the adjournment, the Applicants require a brief stay extension to complete the closing deliverables and ensure a smooth transition of the Business. The Cash Flow Forecast (as defined in the Second Report) demonstrates that the Applicants have sufficient funding to conduct operations until the end of June 2026.³⁹

34. Second, if the Sale Transaction closes (as evidenced by the delivery of the Monitor’s Certificate) on or before June 30, 2026, the proposed Ancillary Order extends the Stay Period to and including August 15, 2026. The proposed extension will provide the Monitor with sufficient time to complete administrative wind-up matters and facilitate an orderly termination of these CCAA proceedings.⁴⁰

35. Third, under the proposed Ancillary Order, the Applicants seek to: (a) authorize and empower, but not require, the Monitor (an experienced Licensed Insolvency Trustee) to take all

³⁶ Zalev Affidavit, *ibid* at para 161, Application Record at Tab 2.

³⁷ Zalev Affidavit, *supra* note 1 at para 162, Application Record at Tab 2.

³⁸ Second Report, *ibid*, s 10.0 at para 2(b).

³⁹ Second Report, *ibid*, Appendix F.

⁴⁰ Second Report, *supra* note 1, s 10.0 at para 2(a).

actions required to facilitate the administration of the Applicants for the remainder of these proceedings, including exercising the powers of management; and (b) approve the Wind-Up Reserve, to be held by the Monitor from the proceeds of the Sale Transaction, to fund its remaining activities.⁴¹ The Monitor is well-positioned to fairly and impartially resolve any remaining matters and expeditiously conclude these CCAA proceedings.

PART III: ISSUES

36. The issues to be considered are whether this Court should:

- (a) approve the Sale Transaction;
- (b) grant the Releases;
- (c) extend the Stay of Proceedings;
- (d) seal the Confidential Materials; and
- (e) approve the expansion of the Monitor's powers.

PART IV: LAW AND ANALYSIS

A. The Sale Transaction Should be Approved

37. The Sale Transaction would see all of the Applicants' material assets sold to the Purchaser, which would continue the Business as a going concern. It is well recognized that this Court has jurisdiction under section 36 of the CCAA to approve a sale of all, or substantially all, of a debtor's assets outside the ordinary course of business.⁴² A going-concern sale directly advances the

⁴¹ Zalev Affidavit, *supra* note 1 at paras 163-164, Application Record at Tab 2.

⁴² *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s.36 [CCAA]; *Target Canada Co. (Re)*, 2015 ONSC 846 at para 3; pursuant to subsection [s.36\(6\)](#) of the CCAA, any such sale may be authorized free and clear of any security, charge or other restriction.

objectives of the CCAA by maximizing value and preserving important relationships with employees, customers and other stakeholders.⁴³

38. This Court has approved immediate sales of property in insolvency proceedings (often referred to as “quick-flip” or “pre-pack” transactions) where a fair and reasonable sale process was undertaken and further marketing would serve no useful purpose.⁴⁴

39. The advantages of pre-pack transactions have been expressly recognized in insolvency proceedings. In a recent decision under the *Bankruptcy and Insolvency Act* (Canada), Justice Morin highlighted the economic and commercial benefits of pre-pack transactions, noting that “they can shield a business from the stigma of formal insolvency proceedings, reduce operational disruption, preserve going-concern value, and minimize professional costs associated with prolonged court oversight.”⁴⁵

40. Courts have held that pre-pack transactions are subject to the same principles as transactions arising from court-approved sale processes.⁴⁶ While pre-pack transactions may attract heightened stakeholder scrutiny, the jurisprudence is clear: a sale process need only be reasonable, not perfect.⁴⁷ This Court will not lightly interfere with the business judgment of an applicant and/or a monitor where the marketing and sale process was conducted in a fair, transparent and reasonable manner.⁴⁸

⁴³ *Century Services Inc v Attorney General (Canada)*, [2010 SCC 60](#) at [para 15](#); *Harte Gold Corp (Re)*, [2022 ONSC 653](#) at [para 32](#) [*Harte Gold*].

⁴⁴ *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#) at [para 160](#) [*MEC*]; *Romspen Investment Corporation v Tung Kee Investment Canada Ltd*, [2023 ONSC 5911](#) at [para 48](#) [*Romspen*]; *Nelson Education Limited (Re)*, [2015 ONSC 5557](#) at [paras 35-39](#) [*Nelson*].

⁴⁵ *Proposition de SRTX inc.*, [2026 QCCS 570](#) at [para 6](#) [*SRTX*]; See also *MEC*, *ibid* at [para 100](#).

⁴⁶ *In the Matter of a Plan of Compromise or Arrangement of Cannabist Company Holdings Inc. et al.* (April 15, 2026), Toronto, CL-26-00000122-0000 (ONSC) ([J. Dietrich Endorsement](#)) at para 16 citing *Nelson*, *supra* note 44 at paras [31-33](#), [35-59](#) and *Re Bloom Lake*, [2015 QCCS 1920](#) at [paras 25-27, 29](#) [*Bloom Lake*]; *Sanjel Corporation (Re)*, [2016 ABOB 257](#) at [para 70](#) [*Sanjel*].

⁴⁷ *Sanjel*, *ibid* at [para 80](#); *Bloom Lake*, *ibid* at [para 39](#).

⁴⁸ *Sanjel*, *supra* note 46 at [para 57](#); *0989705 BC Ltd (Re)*, [2026 BCSC 761](#) at [para 173](#); *Pride Group Holdings Inc et al.*, [2024 ONSC 5908](#) at [para 14](#).

The omission of some potential bidders is not a basis for the Court to intervene, provided that reasonable steps to market the assets were taken.⁴⁹

41. When reviewing pre-pack transactions, courts may also consider the impact the transaction will have on the various parties and assess whether their respective positions or treatment would realistically be any different if an extended sale process was undertaken.⁵⁰ For example, a pre-pack transaction may be appropriate where the following circumstances are present: (a) there are substantial risks associated with a further marketing process;⁵¹ (b) the pre-filing process was consistent with other court-supervised processes;⁵² (c) the monitor believes the pre-filing process was reasonable and supports the proposed transaction;⁵³ and (d) it is inevitable that certain parties will receive no recovery.⁵⁴

42. In deciding whether to authorize a sale, the Court will consider the non-exhaustive factors set out in subsection 36(3) of the CCAA: (a) whether the process leading to the proposed sale was reasonable in the circumstances; (b) whether the monitor approved the process leading to the proposed sale; (c) whether the monitor filed a report stating that in its opinion the proposed sale would be more beneficial to creditors than a sale or disposition under a bankruptcy; (d) the extent to which creditors were consulted; (e) the effects of the proposed sale 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.⁵⁵

⁴⁹ *Bloom Lake*, supra note 46 at [para 39](#); *Terrace Bay Pulp Inc., Re*, 2012 ONSC 4247 at [para 48](#); *Nelson*, supra note 44 at [para 162](#).

⁵⁰ *Tool-Plas Systems Inc., Re*, 2008 ONSC 54791 at [para 15](#) [*Tool-Plas*]; *Nelson*, supra note 44 at [paras 35-39](#); *Romspen*, supra note 44 at [para 48](#); See also the additional factors set out at *SRTX*, supra note 45 at [para 27](#).

⁵¹ *MEC*, supra note 44 at [para 126](#); *Tool-Plas*, *ibid* at [para 18](#); *Elleway Acquisitions Limited v 4358376 Canada Inc.*, 2013 ONSC 7009 at [para 27](#); *SRTX*, supra note 45 at [para 27.5](#); *Sanjel*, supra note 46 at [para 74](#) [*Sanjel*].

⁵² *MEC*, supra note 44 at [paras 118-119](#); *Nelson*, supra note 44 at [para 35\(a\)](#).

⁵³ *Nelson*, *ibid* at [para 38\(a\)](#), [38\(f\)](#); *MEC*, *ibid* at [para 147](#).

⁵⁴ *Tool-Plas*, supra note 50 at [paras 16-17](#); *Romspen*, supra note 44 at [para 86](#).

⁵⁵ *CCAA*, supra note 42 at [s 36\(3\)](#); *BBB Canada Inc.*, 2023 ONSC 2308 at [para 10](#).

43. For related party transactions, the court may, after considering the factors referred to above, grant the authorization for the sale if it is satisfied that subsections 36(4)(a) and (b) of the CCAA have also been met:

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.⁵⁶

44. The factors above are generally considered alongside those articulated in *Royal Bank of Canada v Soundair Corp* (“*Soundair*”) – namely, whether sufficient effort has been made to obtain the best price, whether the debtor has not acted improvidently, the efficacy and integrity of the process by which offers have been obtained, whether the interests of all parties have been considered, and whether there has been unfairness in the working out of the process.⁵⁷

45. Applied here, the factors in subsections 36(3)-(4) of the CCAA and *Soundair* support approval of the Sale Transaction and the AVO:

- (a) **The Pre-Filing Process was Reasonable and Fair.** The Pre-Filing Process was comprehensive and mirrored sale processes typically conducted in insolvency proceedings.⁵⁸ It was conducted by Canaccord, a reputable, independent third-party advisory firm with considerable experience in selling and divesting Canadian

⁵⁶ [CCAA](#), *ibid*, s [36\(4\)](#); *Target Canada Co., Re*, [2015 ONSC 2066](#) at para 15; See also *In the Matter of a Plan of Compromise or Arrangement of BZAM Ltd.* (May 15, 2025), Toronto, CV-24-00715773-00CL (ONSC) ([J. Osborne Endorsement](#)) at para 7.

⁵⁷ *Royal Bank v Soundair Corp*, [1991 46 OAC 321](#) at [para 16](#); *Pride Group Holdings Inc et al*, [2024 ONSC 7053](#) at [para 25](#); *In Re Hudson's Bay Company*, [2025 ONSC 6764](#) at [para 26](#).

⁵⁸ Second Report, *supra* note 1, s 5.1 at para 1(c); Zalev Affidavit, *supra* note 1 at para 119, Application Record at Tab 2.

businesses – all under the oversight of the experienced CRO.⁵⁹ Canaccord contacted 122 interested parties over a two-month period.⁶⁰ The Pre-Filing Process culminated in the execution of 35 non-disclosure agreements, 27 meetings with management and 4 non-binding term sheets.⁶¹ The Monitor has reviewed the Pre-Filing Process and is of the view that it resulted in a thorough canvassing of the market.⁶² It was also sufficient for the Syndicate (comprised of sophisticated Canadian banks being advised by a reputable and experienced financial advisor) to decide to sell its senior secured debt at a discount of more than 50%. The fact that (i) Shopley – a competitor to the Applicants with approximately 9 employees and \$2 million of annual revenue – was not contacted, and (ii) Valsoft was contacted through its equity sponsor and not directly, does not render the Pre-Filing Process unreasonable or unfair.⁶³ The fact that neither party has submitted a viable offer in the two weeks after these proceedings were commenced reinforces this.

- (b) **The Sale Transaction is the Best Offer in the Circumstances.** The Sale Transaction represents the best, and only, viable restructuring solution for the Company. If approved, it will allow the Company to strengthen its balance sheet, maintain critical goodwill with stakeholders and preserve a viable go-forward

⁵⁹ Zalev Affidavit, *supra* note 1 at para 115, Application Record at Tab 2; Second Report, *supra* note 1, s 5.1 at para 1(b).

⁶⁰ In *Sanjel*, *supra* note 46 at [para 24](#) the court approved a transaction where the pre-filing process was conducted for approximately 36 days (from January 17, 2016 to February 22, 2016); *In the Matter of a Plan of Compromise or Arrangement of Flowr Corporation* (October 28, 2022), Toronto, CV-22-00688966-00CL (ONSC) ([SISP Order](#)) at [Schedule “A,” at para 6](#) (28 days from SISP Order to bid deadline); *In the Matter of a Plan of Compromise or Arrangement of Chalice Brands Ltd*, (June 1, 2023), Toronto, CV-23-00699872-00CL (ONSC) ([SISP Approval Order](#)) at Schedule “A,” at [para 3](#) (29 days from SISP Order to bid deadline); *In the Matter of a Plan of Compromise or Arrangement of BZAM Ltd. et al.* (March 8, 2024), Toronto, CV-25-00738613-00CL (ONSC) ([SISP Approval Order](#)) (31 days from SISP Order to bid deadline).

⁶¹ Zalev Affidavit, *supra* note 1 at paras 117-118, Application Record at Tab 2; Second Report, *supra* note 1, s 4 at paras 4, 7.

⁶² Zalev Affidavit, *ibid* at para 119, Application Record at Tab 2; Second Report, *ibid*, s 5.1 at para 1(p).

⁶³ Second Zalev Affidavit, *supra* note 12 at para 25.

business. The Monitor is of the view that the consideration under the APA is superior.⁶⁴ The Shopley and Valsoft transactions are not supported by Sandton.

(c) **The Monitor Supports the Sale Transaction.** The Monitor supports the Sale Transaction and believes the terms of the APA are commercially reasonable.⁶⁵

(d) **The Sale Transaction is in the Best Interests of the Applicants' Stakeholders.**

The Sale Transaction is supported by Sandton, notwithstanding that the Sandton Secured Indebtedness will not be repaid in full – in fact, both the Syndicate and Sandton experienced, or will experience, significant shortfalls under the Senior Credit Facilities.⁶⁶ The results of the Pre-Filing Process make clear that there is insufficient value in the Business for the Applicants' senior creditors to be fully repaid, let alone their subordinate or unsecured creditors. As noted in the Second Report, there is no realistic prospect that a further sale process (which the Applicants are unable to fund) would yield a different result.⁶⁷ The Sale Transaction also generates significant non-financial value for the Applicants and their stakeholders. It will allow the Business to continue outside of these CCAA proceedings on a going-concern basis, preserving critical relationships with approximately 38,000 customers who rely on the Company to operate their businesses and more than 100 independent contractors, while maintaining the employment of substantially all of the Applicants' 118 employees. The APA also contemplates satisfaction of all priority payments.⁶⁸

⁶⁴ Second Report, *ibid*, s 5.1 at para 1(m).

⁶⁵ Second Report, *ibid*, s 5.1 at para 1(o).

⁶⁶ Zalev Affidavit, *supra* note 1 at paras 14, 17, Application Record at Tab 2.

⁶⁷ Second Report, *supra* note 1, s 1.0 at para 6.

⁶⁸ Zalev Affidavit, *ibid* at paras 18, 143, Application Record at Tab 2.

- (e) **The Consideration is Reasonable and Fair.** The assets were extensively market-tested through a broad solicitation of potential purchasers. The purchase price represents the highest value achieved, whether inside or outside the Pre-Filing Process, and constitutes fair value for the business of the Applicants.⁶⁹
- (f) **The Sale Transaction is a Superior Result to a Bankruptcy.** The Sale Transaction will allow the Business to continue as a going-concern, thereby protecting the jobs of approximately 118 employees and preserving valuable relationships with the Applicants' approximately 38,000 customers.⁷⁰ In the Monitor's view, the Sale Transaction will result in a better outcome and generate more value for the Applicants' and their stakeholders than a bankruptcy or liquidation.⁷¹
- (g) **The Sale Transaction is Supported by the Applicants' Senior Secured Creditor.** As noted above, although it will result in a significant loss being taken, the Sale Transaction is supported by Sandton. The only opposition is from an out-of-the-money creditor that has refused to fund a further process on a junior basis.
- (h) **The Applicants' Liquidity Crisis Necessitates Expedited Approval.** As reflected in the Cash Flow Forecast, the Applicants do not have sufficient funding to continue operations past July 1, 2026, particularly in light of the additional \$5 million in cash collateral requested by the BNS, let alone undertake a new sale or solicitation process. BDC is not willing to provide debtor-in-possession financing subordinate to Sandton, presumably because BDC has no confidence that there is value beyond the Sandton debt. Further, given the high risk of customer attrition, any delay in

⁶⁹ Second Report, *supra* note 1, s 5.1 at para 1(m).

⁷⁰ Zalev Affidavit, *supra* note 1 at para 7, Application Record at Tab 2.

⁷¹ Second Report, *ibid*, s 5.0 at para 1(n).

closing presents a significant risk to the value and going-concern nature of the business.⁷² As such, closing the Sale Transaction on an expedited basis represents the only viable option for the Business.

46. For the reasons enumerated above, the Applicants submit that the factors set out in subsection 36(4) are also satisfied. The Pre-Filing Process was undertaken in good faith and in a manner consistent with CCAA sale processes under the oversight of the CRO (i.e. it was not run by the related party principals). Despite significant third-party solicitation, no offer received in the Pre-Filing Process (or since the CCAA filing) provides for greater value than the Sale Transaction. Given its superior economic terms and as the only available going-concern transaction, the Sale Transaction represents the best available outcome for the Applicants and their stakeholders in the circumstances.

47. As such, the Applicants submit that the Sale Transaction and the APA should be approved and that the proposed AVO is appropriate and reasonable in the circumstances.

B. The Releases Should be Granted

48. Third-party releases are commonly approved by this Court outside of a CCAA plan in the context of going concern sale transactions.⁷³ In *Harte Gold*, this Court considered the following factors from *Lydian*:

- (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

⁷² Second Report, *ibid*, s 5.0 at paras 1(g), 1(p)(vii); Zalev Affidavit, *supra* note 1 at paras 45, 59, Application Record at Tab 2.

⁷³ *In the Matter of a Plan of Compromise or Arrangement of Tacora Resources Inc.* (July 26, 2024), Toronto, CV-23-00707394-00CL (ONSC) ([Approval and Vesting Order](#)) at para 26 [*Tacora*]; *In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc. et al.* (November 3, 2022), Toronto, CV-21-00658423-00CL (ONSC) ([Approval and Vesting Order](#)) at para 21 [*Just Energy*]; *In the Matter of a Plan of Compromise or Arrangement of BZAM Ltd. et al.* (May 15, 2025), Toronto, CV-25-00738613-00CL (ONSC) ([CCAA Termination Order](#)) at para 18 [*BZAM*]; *In the Matter of a Plan of Compromise or Arrangement of Hakim Optical et al.* (November 18, 2025), Toronto, CV-25-00743383-00CL (ONSC) ([CCAA Termination Order](#)) at para 26 [*Hakim Optical*].

- (b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- (c) whether the plan could succeed without the releases;
- (d) whether the parties being released were contributing to the plan; and
- (e) whether the release benefitted the debtors as well as the creditors generally.⁷⁴

49. The Court noted that it is not necessary for each factor to apply for the releases to be approved.⁷⁵ In the circumstances, the following factors support approval of the Releases:

- (a) **The Released Parties Made Significant Contributions to the Restructuring.** The Released Parties were significantly involved leading up to and throughout the filing and administration of the CCAA proceedings. Their involvement included conducting and overseeing the Pre-Filing Process, negotiating and finalizing the Loan Purchase Agreement and Sandton Forbearance Agreement, assisting with the CCAA application, finalizing the APA, and negotiating with creditors, customers, suppliers, and other stakeholders in the course of these proceedings, all while managing the day-to-day operations of the Company (each as applicable).⁷⁶ Since the granting of the Initial Order, the Released Parties have continued to advance the Applicants' restructuring efforts on an expedited basis due to the urgent nature of the relief being sought.
- (b) **The Releases are Rationally Connected to the Purpose of the Restructuring and Benefit the Applicants and their Stakeholders.** The Applicants submit that the

⁷⁴*Lydian International Limited (Re)*, 2020 ONSC 4006 at para 54 [*Lydian*] where the Court noted that it is not necessary for each of the above factors to apply for the releases to be approved; *Harte Gold*, supra note 43 at para 78-86; *Tacora Resources Inc. (Re)*, 2024 ONSC 4436 at para 17.

⁷⁵ *Lydian*, *ibid.*

⁷⁶ Zalev Affidavit, supra note 1 at para 156, Application Record at Tab 2.

Court may and should consider the efforts of the proposed releasees during the Pre-Filing Process, as well as during the CCAA proceedings. The same rationale for providing releases ought to apply whether the sale process is conducted in or out of a formal insolvency proceeding. In addition, the Applicants require the continued support and guidance (as applicable) of the Released Parties to close the Sale Transaction as efficiently as possible to ensure a smooth transfer of the Business.⁷⁷

- (c) **The Releases are Fair and Reasonable.** The Releases are consistent with releases that have recently been approved in other CCAA transactions.⁷⁸ The Released Claims do not include any claim for fraud or willful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.⁷⁹ The Releases also include certain negotiated carve-outs based on stakeholder feedback.
- (d) **Stakeholders have Knowledge of the Nature and Effect of the Releases.** The release language was included as part of the Applicants' initial application materials, which were served on June 5, 2026.

C. Confidential Appendices Should be Sealed

50. Subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, provides that a court may order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.⁸⁰ In *Sherman Estate v Donovan*, the Supreme Court of Canada recast

⁷⁷ Zalev Affidavit, *supra* note 1 at para 155, Application Record at Tab 2.

⁷⁸ *Tacora*, *supra* note 74 at para 26; *Just Energy*, *supra* note 73 at para 21; *BZAM*, *supra* note 73 at para 18; *Hakim Optical*, *supra* note 73 at para 26; *In the Matter of a Plan of Compromise or Arrangement of Old MM GP Inc.* (August 22, 2024), Toronto, CV-23-00710259-00CL (ONSC) ([CCAA Termination and Distribution Order](#)) at para 28; *In the Matter of a Plan of Compromise or Arrangement of STS Renewables Ltd. et al.* (November 26, 2025), Toronto, CV-25-00743275-00CL (ONSC) ([CCAA Termination and Ancillary Matters](#)) at para 23

⁷⁹ Zalev Affidavit, *supra* note 1 at para 155, Application Record at Tab 2.

⁸⁰ *Courts of Justice Act*, [R.S.O. 1990 c. C.43](#), s [137\(2\)](#).

the test for a sealing order, which requires the moving party to establish: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁸¹

51. Courts have recognized the important public interests CCAA proceedings serve, that maximizing recoveries in insolvency proceedings is an important public interest,⁸² and no reasonable alternative exists where declining to grant the sealing order would materially impair the maximization of value for the benefit of stakeholders.⁸³

52. All factors favour the sealing of the Confidential Materials in this case. This Court has routinely sealed bid summaries, as their disclosure would undermine the integrity and outcome of any subsequent sale or marketing process if the proposed transaction does not close.⁸⁴ Further, this Court has acknowledged that where information was accumulated with a reasonable expectation of being kept confidential – including in a sale process conducted *prior* to the proceedings or where parties agreed to confidentiality provisions – preserving that confidentiality constitutes a sufficiently important commercial interest.⁸⁵

53. In this case, the bids described in the Canaccord Summary were submitted outside of a court process with the reasonable expectation that such offers would remain confidential. It would also

⁸¹ *Sherman Estate v Donovan*, [2021 SCC 25](#) at [para 38](#).

⁸² *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) at [para 84](#) [*Danier*].

⁸³ *In the Matter of the Companies' Creditors Arrangement Act and In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.*, [2023 ONSC 753](#) at [para 62](#); *Equitable Bank v Ashcroft Homes – Capital Hall Inc.*, [2025 ONSC 6047](#) at [para 25](#).

⁸⁴ *In Re Hudson's Bay Company*, [2025 ONSC 4535](#) at [para 12](#); *Corus Entertainment Inc et al*, [2026 ONSC 1852](#) at [para 72](#) [*Corus*].

⁸⁵ *Corus*, *ibid* at [paras 72-74](#) citing *Hudson's Bay Company, Re*, [2025 ONSC 1897](#) at [para 100](#) [*Hudson Bay*]; *DCL Corporation*, [2023 ONSC 3686](#) at [paras 42-45](#); *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23- 00693758-00CL ([Endorsement of Justice Osborne](#)) at para 60 [*Original Traders*]. *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, [2022 ONSC 6354](#) at [para 72](#).

be significantly prejudicial to the value maximizing efforts of the Applicants if the Canaccord Summary and the Shopley LOI were made publicly available prior to the Sale Transaction closing.

54. Similar concerns exist for the disclosure of the purchase price under the Unredacted LPA and the Confidential Responses. This information was disclosed in reliance on the confidentiality provisions under the applicable agreements and is highly sensitive – as it involves information relating to the value of the Business, the third parties solicited as part of the Pre-Filing Process and other proprietary information regarding the Applicants’ business operations (as applicable). There is no reasonable alternative to granting the requested sealing relief.

55. CCAA courts have approved sealing orders where the information to be kept confidential is “discrete, proportional, and limited.”⁸⁶ Here, the sealing relief requested is limited in nature and expires upon either: (a) the Sale Transaction closing; or (b) May 12, 2027.

56. Accordingly, the sealing request is necessary and proportionate. Further, the Monitor supports the sealing request and agrees it is appropriate in the circumstances.⁸⁷

D. Monitor’s Enhanced Powers

57. It is well established that this Court has the jurisdiction to grant a monitor enhanced powers pursuant to section 11 and subsection 23(1)(k) of the CCAA. The Court will exercise its discretion to do so when appropriate in the circumstances in accordance with the objectives of the CCAA.⁸⁸

⁸⁶ *Hudson Bay*, *supra* note 84 at [para 103](#).

⁸⁷ Second Report, *ibid*, s 5.2 at para 1.

⁸⁸ *CCAA*, *supra* note 42 s [11](#), s [23\(1\)](#); *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, [2023 NLSC 88](#) at [paras 84-85](#); *Inca One Gold Corp. (Re)*, [2024 BCSC 1478](#) at [para 36](#); *Atlas Global Brands et. al. (Re)*, (October 29, 2024), Ont S.C.J. [Commercial List], CV-24-00722386-00CL ([Endorsement of Justice Steele](#)) at paras 37-39; *DCL Corporation (Re)*, [2023 ONSC 4475](#) at [para 7](#).

58. Here, the Applicants seek to expand the current powers of the Monitor to, among other things, oversee the remaining winddown activities of the Applicants.⁸⁹ The Monitor's expanded powers will become effective upon the service of the Monitor's Certificate.

59. Such relief is necessary and appropriate given that: (a) following the completion of the Sale Transaction, the Applicants will have no material business operations, employees or assets; (b) AlixPartners Restructuring, Inc. is a Licensed Insolvency Trustee with significant experience in CCAA proceedings (through its predecessor KSV Restructuring Inc.), including as "super monitor"; and (c) to date, the Monitor has exercised its powers fairly and impartially under the Court's supervision.⁹⁰ As such, the Applicants submit that the Monitor will be well-positioned to fairly and impartially resolve any remaining matters in these CCAA proceedings and such relief is appropriate in the circumstances.

E. The Stay Period Should be Extended

60. The Stay of Proceedings is currently set to expire on June 25, 2026.⁹¹ Subsection 11.02(2) of the CCAA expressly authorizes this Court to grant an extension of the stay of proceedings if it is satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.⁹²

61. The proposed Ancillary Order will extend the Stay of Proceedings to and including June 30, 2026 – however, if the Sale Transaction closes on or prior to June 30, 2026, the Stay of Proceedings will automatically be extended to and including August 15, 2026. The Applicants require the proposed extensions to close the Sale Transaction and complete all remaining ancillary

⁸⁹ Zalev Affidavit, *supra* note 1 at para 163, Application Record at Tab 2

⁹⁰ Zalev Affidavit, *supra* note 1 at paras 164-165, Application Record at Tab 2

⁹¹ Second Report, *supra* note 1, s 10.0 at para 1

⁹² [CCAA](#), *supra* note 42, s [11.02\(2\)](#); [Harte Gold](#), *supra* note 43 at [para 87](#).

restructuring steps before terminating these CCAA proceedings, all while continuing operations in the ordinary course.

62. As reflected in the Cash Flow Forecast, the bifurcated stay extension ensures that the Applicants are forecast to have sufficient liquidity through the end of the requested stay extension periods (as applicable). Further, once the Sale Transaction closes, the Wind-Up Reserve is expected to provide sufficient liquidity to fund the Monitor's remaining activities.

63. The Applicants have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings and the proposed stay extension is supported by the Monitor.⁹³ The Applicants submit that the Stay of Proceedings is in the best interests of the Applicants' and their stakeholders, consistent with the purposes of the CCAA, and appropriate in the circumstances.⁹⁴

PART V: RELIEF REQUESTED

64. The relief sought on the within motion is appropriate in the circumstances and in the best interest of the Applicants and their stakeholders. The Applicants respectfully request that this Court grant the proposed form of the AVO and Ancillary Order, and dismiss BDC's motion seeking approval of a sale and investment solicitation process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21ST DAY OF JUNE, 2026.

Bennett Jones LLP

BENNETT JONES LLP

⁹³ Second Report, *supra* note 1, s 10.

⁹⁴ Second Report, *ibid*, s 10.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. *0989705 BC Ltd (Re)*, [2026 BCSC 761](#)
2. *Re Bloom Lake*, [2015 QCCS 1920](#)
3. *BBB Canada Inc.*, [2023 ONSC 2308](#)
4. *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#)
5. *Corus Entertainment Inc et al*, [2026 ONSC 1852](#)
6. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#)
7. *DCL Corporation*, [2023 ONSC 3686](#)
8. *DCL Corporation (Re)*, [2023 ONSC 4475](#)
9. *Elleway Acquisitions Limited v 4358376 Canada Inc.*, [2013 ONSC 7009](#)
10. *Ernst & Young Inc. v Essar Global Fund Limited*, [2017 ONCA 1014](#)
11. *Equitable Bank v Ashcroft Homes – Capital Hall Inc.*, [2025 ONSC 6047](#)
12. *Harte Gold Corp (Re)*, [2022 ONSC 653](#)
13. *In Re Hudson’s Bay Company, Re*, [2025 ONSC 1897](#)
14. *In Re Hudson’s Bay Company*, [2025 ONSC 4535](#)
15. *In Re Hudson’s Bay Company*, [2025 ONSC 6764](#)
16. *Inca One Gold Corp. (Re)*, [2024 BCSC 1478](#)
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18. *Royal Bank v Soundair Corp*, [1991 46 OAC 321](#)
19. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
20. *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#)
21. *Nelson Education Limited (Re)*, [2015 ONSC 5557](#)
22. *Nortel Networks Corporation (Re)*, [\[2009\] 55 CBR \(5th\) 229](#)
23. *In the Matter of the Companies’ Creditors Arrangement Act and In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.*, [2023 ONSC 753](#)
24. *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, [2023 NLSC 88](#)
25. *Pride Group Holdings Inc et al*, [2024 ONSC 5908](#)
26. *Pride Group Holdings Inc et al*, [2024 ONSC 7053](#)
27. *Proposition de SRTX inc.*, [2026 QCCS 570](#)
28. *Romspen Investment Corporation v Tung Kee Investment Canada Ltd*, [2023 ONSC 5911](#)
29. *Sanjel Corporation (Re)*, [2016 ABQB 257](#)

30. *Sherman Estate v Donovan*, [2021 SCC 25](#)
31. *Tacora Resources Inc. (Re)*, [2024 ONSC 4436](#)
32. *Target Canada Co., Re*, [2015 ONSC 2066](#)
33. *Target Canada Co. (Re)*, [2015 ONSC 846](#)
34. *Terrace Bay Pulp Inc., Re*, [2012 ONSC 4247](#)
35. *Tool-Plas Systems Inc., Re*, [2008 CanLII 54791 \(ONSC\)](#)
36. *Union Carbide Canada Inc. v. Bombardier Inc.*, [2014 SCC 35](#)


Endorsements and Orders

1. *In the Matter of a Plan of Compromise or Arrangement of Atlas Global Brands et. al.*, (October 29, 2024), Ont S.C.J. [Commercial List], CV-24-00722386-00CL ([J. Steele Endorsement](#))
2. *In the Matter of a Plan of Compromise or Arrangement of BZAM Ltd. et al.* (May 15, 2025), Toronto, CV-25-00738613-00CL (ONSC) ([CCAA Termination Order](#))
3. *In the Matter of a Plan of Compromise or Arrangement of BZAM Ltd. et al.* (May 15, 2025), Toronto, CV-24-00715773-00CL (ONSC) ([J. Osborne Endorsement](#))
4. *In the Matter of a Plan of Compromise or Arrangement of BZAM Ltd. et al.* (March 8, 2024), Toronto, CV-25-00738613-00CL (ONSC) ([SISP Approval Order](#))
5. *In the Matter of a Plan of Compromise or Arrangement of Cannabist Company Holdings Inc. et al.* (April 15, 2026), Toronto, CL-26-00000122-0000 (ONSC) ([J. Dietrich Endorsement](#))
6. *In the Matter of a Plan of Compromise or Arrangement of Chalice Brands Ltd.*, (June 1, 2023), Toronto, CV-23-00699872-00CL (ONSC) ([SISP Approval Order](#))
7. *In the Matter of a Plan of Compromise or Arrangement of Flowr Corporation* (October 28, 2022), Toronto, CV-22-00688966-00CL ([SISP Order](#))
8. *In the Matter of a Plan of Compromise or Arrangement of Hakim Optical Laboratory Limited* (November 18, 2025), Toronto, CV-25-00743383-00CL (ONSC) ([Approval and Vesting Order](#))
9. *In the Matter of a Plan of Compromise or Arrangement of Hakim Optical Laboratory Limited et al.* (November 18, 2025), Toronto, CV-25-00743383-00CL (ONSC) ([CCAA Termination Order](#))
10. *In the Matter of a Plan of Compromise or Arrangement of Hudson's Bay Company ULC et al.* (June 23, 2025), Toronto, CV-25-00738613-00CL (ONSC) ([Amendment to Approval and Vesting Order](#))

11. *In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc. et al.* (November 3, 2022), Toronto, CV-21-00658423-00CL (ONSC) ([Approval and Vesting Order](#))
12. *In the Matter of a Plan of Compromise or Arrangement of Old MM GP Inc.* (August 22, 2024), Toronto, CV-23-00710259-00CL (ONSC) ([CCAA Termination and Distribution Order](#))
13. *In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. (Re)*, (January 30, 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23- 00693758-00CL ([J. Osborne Endorsement](#))
14. *In the Matter of a Plan of Compromise or Arrangement of STS Renewables Ltd et al.* (October 21, 2025), Toronto, CV-25-00743275-00CL (ONSC) ([Approval and Vesting Order](#))
15. *In the Matter of a Plan of Compromise or Arrangement of STS Renewables Ltd. et al.* (November 26, 2025), Toronto, CV-25-00743275-00CL (ONSC) ([CCAA Termination and Ancillary Matters](#))
16. *In the Matter of a Plan of Compromise or Arrangement of Tacora Resources Inc.* (July 26, 2024), Toronto, CV-23-00707394-00CL (ONSC) ([Approval and Vesting Order](#))

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

Dated: June 21, 2026



JAMIE ERNST

SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

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

Section 10

Form of applications

(1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

(2) An initial application must be accompanied by

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Publication ban

(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.

Section 11

General Power of Court

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Section 11.001

Relief reasonably necessary

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.02

Stays, etc. – initial application

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

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

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

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

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

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

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

Burden of proof on application

(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.

Restriction

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

Section 23

Duties and functions

(1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

Monitor not liable

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

Section 36

Restriction on disposition of business assets

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

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

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

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

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

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

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

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

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

Additional factors — related persons

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

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

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

Related persons

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

(a) a director or officer of the company;

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

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

Assets may be disposed of free and clear

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

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

2005, c. 47, s. 1312007, c. 36, s. 782017, c. 26, s. 142018, c. 27, s. 269

Courts of Justice Act, R.S.O. 1990, c. C.43

Section 137

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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

**AND IN THE MATTER OF PAYSTONE HOLDINGS INC., PAYSTONE INC.,
ATOM GROWTH INC., and ATOM GROWTH (USA), INC.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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