# ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

BETWEEN:

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 SANDVINE CORPORATION, SANDVINE HOLDINGS UK LIMITED, PROCERA NETWORKS, INC., PROCERA HOLDING, INC. AND NEW PROCERA GP COMPANY

**Applicants** 

#### **FACTUM OF THE APPLICANTS**

June 20, 2025

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#### PART I - NATURE OF THE APPLICATION

- 1. This motion is brought by Sandvine Corporation ("Sandvine Canada"), and the other applicant companies (collectively, the "Applicants", and together with the partnership Procera II LP, the "Sandvine Entities", and collectively with certain non-filing entities, "Sandvine" or the "Company"), in order to seek an extension of the Stay Period (as defined below) in these CCAA proceedings.
- 2. Sandvine was a Canadian application and network optimization company, whose technology facilitated internet access for hundreds of millions of people around the world. The primary purpose of the CCAA Proceedings was to conduct a Court-approved Sale and Investment Solicitation Process (the "SISP"), in order to secure a going-concern, value-maximizing solution for Sandvine and its stakeholders, while ensuring continuity of service to Sandvine's customers.
- 3. This purpose has been fulfilled. The SISP has been completed, and the Stalking Horse Transaction Agreement was selected as the successful bid in the SISP and approved by the Court. The transactions contemplated by the Stalking Horse Purchase Agreement have since closed, and the restructured business has emerged as new entities under the AppLogic Networks umbrella (collectively, the "NewCos").
- 4. Given the critical nature of Sandvine's services, the Stalking Horse Transaction Agreement provided for the provision of certain services by Sandvine Canada and Procera US (collectively, the "OldCos") to Sandvine's customers located in jurisdictions which Sandvine had committed to exiting by the end of 2025 (as defined below, the "Transition Customers"). These services were to assist the Transition Customers with the discontinuance of Sandvine's services in an orderly, responsible manner.

- 5. The services to be provided by NewCos to OldCos (and vice versa) post-closing (the "Transition Services"), to, among other things, facilitate the OldCo's provision of services to the Transition Customers, are detailed in a Transition Services Agreement.
- 6. To allow for the continued provision of the Transition Services and the orderly wind-down of the OldCos, the Applicants seek an order (the "Stay Extension Order"), which will extend the Stay Period (as defined below) to and until January 30, 2026. The requested extension of the Stay Period is in the best interests of the Applicants and their stakeholders (including the Transition Customers) and should be approved by the Court.

#### **PART II - SUMMARY OF FACTS**

7. The facts are more fully set out in the Affidavit of Michael T. Sullivan.<sup>1</sup>

#### A. The CCAA Proceedings

- 8. On November 7, 2024, the Ontario Superior Court of Justice (Commercial List) (the "Court") granted the Applicants protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA," and the within proceedings, the "CCAA Proceedings") pursuant to an initial order (the "Initial Order"). The Initial Order, among other things, appointed KSV Restructuring Inc. as monitor of the Applicants in these proceedings (the "Monitor"), and granted a stay of proceedings in respect of the Applicants (the "Stay Period").<sup>2</sup>
- 9. On November 15, 2024, the Court granted an order which, among other things, approved the SISP and authorized the Sandvine Entities to enter into the Stalking Horse Transaction Agreement. Following the completion of the SISP, the Stalking Horse Transaction was determined

Affidavit of Michael T. Sullivan, sworn June 16, 2025 [Sullivan Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Sullivan Affidavit.

<sup>&</sup>lt;sup>2</sup> Sullivan Affidavit at paras. 6, 9.

to be the successful bid, and on January 30, 2025, the Court granted the Assignment, Approval and Vesting Order, which among other things approved the Stalking Horse Transaction and the transactions contemplated therein (the "**Transactions**"). The Assignment, Approval, and Vesting Order also approved the Transition Services Agreement.<sup>3</sup>

10. On January 30, 2025, the Court also granted the Post-Closing Administration Order, which was designed to facilitate the continued operation of the Sandvine Entities following the closing of the Transactions, including with respect to their obligations under the Transition Services Agreement. The Post-Closing Administration Order therefore, among other things: (i) expanded the powers of the Monitor in order to ensure that the OldCos continued to operate and perform their obligations under the Transition Services Agreement and Stalking Horse Transaction Agreement, and to assist the OldCos in winding-down their business, and (ii) extended the Stay Period to June 30, 2025.<sup>4</sup>

#### B. Update on the CCAA Proceedings

#### (a) Completion of Restructuring

11. The Transactions closed on March 3, 2025. Following closing, the NewCos have been providing Transition Services to Sandvine to allow Sandvine to fulfill its obligations to the Transition Customers and Sandvine has been providing Transition Services to the NewCos pursuant to the Transition Services Agreement, all subject to the continuing oversight of the Monitor.<sup>5</sup>

<sup>&</sup>lt;sup>3</sup> Sullivan Affidavit at paras. 7-8.

Sullivan Affidavit at para. 9.

<sup>&</sup>lt;sup>5</sup> Sullivan Affidavit at para. 11.

#### **(b) Transition Services**

- 12. The CCAA Proceedings were precipitated by the designation of Sandvine Canada and certain of the other Applicants and Non-Applicant Stay Parties on the U.S. Department of Commerce's Entity List (the "Entity List") as a result of the alleged misuse of Sandvine's products in Egypt.<sup>6</sup> In connection with the removal of Sandvine from the Entity List (which occurred on October 23, 2024), Sandvine committed to terminating the provision of its services by March 31, 2025 for government of Egypt customers and by December 31, 2025 for non-governmental Egyptian customers and all of its customers in the Additional Terminated Jurisdictions (collectively, the "Transition Customers").
- 13. As Sandvine's services are critical to facilitating internet access, the Stalking Horse Transaction Agreement provided that the OldCos would continue to provide certain services to the Transition Customers pursuant to a Transition Services Agreement. The Transition Services Agreement further contemplated that certain Transition Services would be provided by the NewCos to the OldCos, 8 while others would be provided by the OldCos to the NewCos. 9
- The provision of the Transition Services, and the withdrawal from Egypt and the 14. Additional Terminated Jurisdictions, has continued to move forward:

Sullivan Affidavit at para. 13.

Sullivan Affidavit paras. 13-14.

See Sullivan Affidavit at para. 16 for a detailed summary of the Transition Services provided by the NewCos to

See Sullivan Affidavit at para. 17 for a detailed summary of the Transition Services provided by the OldCos to the NewCos.

- (a) on March 31, 2025, Sandvine terminated the provision of its services to the Government of Egypt Transition Customers, and will terminate services with respect to the remaining Transition Customers on December 31, 2025;<sup>10</sup>
- (b) Sandvine conducted an investigation regarding whether its technology was being misused in Turkey, following which, the timeline for Sandvine's planned exit from Turkey was not accelerated.;<sup>11</sup> and
- (c) Procera US is in the process of transferring Delayed Transfer Employees to certain of the NewCos, which process will continue in the coming weeks.<sup>12</sup>

#### C. The Chapter 15 Proceedings

- 15. On November 7, 2024, Sandvine Canada, as Foreign Representative of the Applicants, commenced proceedings in the United States Bankruptcy Court for the Northern District of Texas (Dallas Division) (the "U.S. Court") seeking the recognition of the CCAA Proceedings under chapter 15 of title 11 of the United States Code.<sup>13</sup>
- 16. On November 7, 2024, the U.S. Court entered orders, among other things, recognizing and enforcing the Initial Order and granting a stay of proceedings in the United States. On December 3, 2024, the U.S. Court entered an order, among other things, recognizing the CCAA Proceedings as foreign main proceedings in the United States and granting certain relief on a final basis. <sup>14</sup>
- 17. On February 12, 2025, the U.S. Bankruptcy Court entered orders, among other things, recognizing and enforcing the Assignment, Approval and Vesting Order and the Post-Closing

Sullivan Affidavit at para. 19.

Sullivan Affidavit at para. 19.

Sullivan Affidavit at para. 18.

Sullivan affidavit at paras. 20-21.

<sup>&</sup>lt;sup>13</sup> Sullivan Affidavit at para. 23.

<sup>14</sup> G 11: A CC 1 ... 24.2

Sullivan Affidavit at paras. 24-25.

Administration Order. On March 4, 2025, following the close of the Stalking Horse Transaction, Sandvine Corporation filed a Notice of Sale Closing with the U.S. Court.<sup>15</sup>

18. On March 12, 2025, Sandvine Corporation filed a final report for Sandvine OP (UK) Ltd. and a motion to close Sandvine OP (UK) Ltd.'s ongoing chapter 15 case on the basis that, pursuant to the Stalking Horse Transaction Agreement, all of the equity interests of Sandvine OP (UK) Ltd had been acquired. On April 18, 2025, the U.S. Bankruptcy Court entered an order closing the Chapter 15 case of Sandvine OP (UK) Ltd. 16

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

19. The issue on this motion is whether the Stay Period should be extended until and including January 30, 2026.

#### A. The Stay Period Should be Extended

- 20. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (i) circumstances exist that make the order appropriate; and (ii) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.
- 21. The Stay Period currently expires on June 30, 2025. The Applicants, as supported by the Monitor, propose that the Stay of Proceedings be extended up to and including January 30, 2026, for the following reasons:
  - (a) the Applicants require the extension of the Stay Period in order to allow for the continued provision of Transition Services in accordance with the Transition

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<sup>&</sup>lt;sup>15</sup> Sullivan Affidavit at paras. 26-27.

<sup>&</sup>lt;sup>16</sup> Sullivan Affidavit at paras. 28-29.

Services Agreement previously approved by the Court<sup>17</sup> and to continue the wind-down activities of the OldCos;<sup>18</sup>

- (b) the extension will allow the OldCos to complete the orderly exit from the Terminated Jurisdictions (with the sole exception of the Ongoing Business Compliance Monitoring Services, which will continue until the earlier of either December 31, 2026, or the date that the OldCos and NewCos mutually determine that the Ongoing Business Compliance Monitoring Services are not required for each Transition Customer);<sup>19</sup>
- (c) based on the amounts contained in the Administrative Expense Reserve and the Transition Services Fees Reserve, the Applicants will have sufficient cash reserves to continue their wind-down activities through the proposed extension of the Stay Period;<sup>20</sup>
- (d) the Applicants have acted, and continue to act, in good faith and with due diligence in the CCAA Proceedings;<sup>21</sup>
- (e) no creditor will be prejudiced by the extension being sought;<sup>22</sup> and

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Sandvine Corporation et al. (Re), 2025 CanLII 15118 (ONSC) at para. 16

Sullivan Affidavit at para. 32; Third Report of the Monitor dated June 20, 2025, at para. 4.0.2(c) [Third Report].

Third Report at para. 4.0.2(d); Sullivan Affidavit at para 32.

Sillivan Affidavit at para. 33; Third Report at para. 4.0.2(f). The Administrative Expense Reserve and the Transition Services Fees Reserve were provided for the Stalking Horse Transaction Agreement, in order to ensure that sufficient funds remain in the Applicants' estates post-closing to continue to administer the CCAA Proceedings and the Chapter 15 Proceedings and to provide for the Transition Services.

Sullivan Affidavit at para. 34; Third Report at para. 4.0.2(a).

<sup>&</sup>lt;sup>22</sup> Third Report at para. 4.0.2(b).

- (f) as of the date of the Third Report, neither the Applicants nor the Monitor are aware of any parties opposed to the extension.<sup>23</sup>
- 22. The proposed extension of the Stay Period is in the best interests of the Applicants and their stakeholders and should be approved by the Court.

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

23. The Applicants therefore request that this court grant the proposed Stay Extension Order substantially in the form of the draft order attached at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of June, 2025:

OSLER, HOSKIN & HARCOURT, LLP per Karin Sachar

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Lawyers for the Applicants

TO: THE ATTACHED SERVICE LIST

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Third Report at para. 4.0.2(e).

### **SCHEDULE "A": LIST OF AUTHORITIES**

1. Sandvine Corporation et al. (Re), 2025 CanLII 15118 (ONSC)

### SCHEDULE "B" TEXT OF STATUTES, REGULATIONS & BY-LAWS

#### COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

#### Stays, etc. — initial application

- 11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,
  - (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
  - **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
  - (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

#### 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.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SANDVINE CORPORATION, SANDVINE HOLDINGS UK LIMITED, PROCERA NETWORKS, INC., PROCERA HOLDING, INC. AND NEW PROCERA GP COMPANY

Applicants

## ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

#### PROCEEDING COMMENCED AT TORONTO

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