

**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 TRICHOME FINANCIAL CORP., 1000491916 ONTARIO INC., 1000492008 ONTARIO INC., 1000491929 ONTARIO INC., 1000492005 ONTARIO INC. AND 1000492023 ONTARIO INC.**

Applicants

**FACTUM OF THE APPLICANTS  
(Returnable September 14, 2023)**

September 11, 2023

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**TO: THE SERVICE LIST**

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## **PART I: OVERVIEW**

1. The Applicants seek an order (the "**CCAA Termination Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), to effect the orderly and efficient completion of these CCAA proceedings.
2. Pursuant to a reverse approval and vesting order (the "**Approval and Vesting Order**") previously granted by this Court, the Applicants have implemented a going-concern sale of the Canadian Business (as defined below) and no longer have any material assets (other than cash) or business operations. Having closed the sale transaction and attended to various residual matters, the Applicants are now in a position to terminate these CCAA proceedings.
3. The proposed CCAA Termination Order, among other things:
  - (a) approves the (i) Fifth Report of KSV Restructuring Inc. ("**KSV**"), in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**"), dated April 3, 2023 (the "**Fifth Report**"), the Sixth Report of the Monitor dated September 11, 2023 (the "**Sixth Report**"), and the activities of the Monitor referred to therein, and (ii) the fees and disbursements of the Monitor and its counsel referred to in the Sixth Report, including the Fee Accrual (as defined in the Sixth Report);
  - (b) authorizes Trichome to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), naming Goldhar & Associates Ltd. as its licensed insolvency trustee (in such capacity, the "**Trustee**");

- (c) authorizes and directs (i) Trichome to transfer \$12,000, plus HST (the "**Bankruptcy Reserve**") to the Trustee for the fees and disbursements of the Trustee to be incurred in connection with Trichome's intended assignment in bankruptcy, and (ii) the Trustee to transfer any available remainder from the Bankruptcy Reserve following the administration of Trichome's bankruptcy under the BIA to Cortland Credit Lending Corporation ("**Cortland**");
  - (d) authorizes and directs the Applicants to transfer the remainder of all of their cash on hand to Cortland (the "**Cash Distribution**") upon the completion of all matters to be attended to in connection with these CCAA proceedings;
  - (e) terminates these CCAA proceedings upon the Monitor's service on the service list established in these CCAA proceedings (the "**Service List**") of an executed certificate (the "**Monitor's Certificate**") in substantially the form attached as Schedule "A" to the proposed CCAA Termination Order (the "**CCAA Termination Time**");
  - (f) releases and discharges the Charges (as defined below) effective as of the CCAA Termination Time;
  - (g) discharges and releases KSV as Monitor of the Applicants in these CCAA proceedings effective as of the CCAA Termination Time; and
  - (h) grants certain releases (the "**Releases**") in favour of the Released Parties (as defined below).
4. The relief sought under the proposed CCAA Termination Order will facilitate the orderly and efficient completion of these CCAA proceedings and a wind-up of the Applicants. Such relief

is the logical next step in these CCAA proceedings, is consistent with the purposes and requirements of the CCAA, and is appropriate in the circumstances.

## **PART II:           FACTS**

5.       The facts underlying this motion are more fully set out in the affidavit of Michael Ruscetta sworn September 5, 2023 (the "**Ruscetta Affidavit**") and the Sixth Report.<sup>1</sup> All capitalized terms used but not defined herein have the meanings ascribed to them in the Ruscetta Affidavit.

### **A.       Background to and Initial Stages in these CCAA Proceedings**

6.       Prior to the commencement of these CCAA proceedings, Trichome, Trichome JWC Acquisition Corp. ("**TJAC**"), Trichome Retail Corp. ("**TRC**"), MYM Nutraceuticals Inc. ("**MYM**"), MYM International Brands Inc. ("**MYMB**") and Highland Grow Inc. ("**Highland**", and collectively with, Trichome, TJAC, TRC, MYM, and MYMB, the "**Initial Applicants**") cultivated, processed and sold premium and ultra-premium cannabis for the adult-use market in Canada (the "**Canadian Business**"). Following months of liquidity challenges and despite concerted efforts to improve their financial position, conserve costs and restructure the Canadian Business, the Initial Applicants faced a dire liquidity crisis.<sup>2</sup>

7.       Having regard to the best interests of the Initial Applicants and their stakeholders, and after extensive review and careful consideration of the strategic options and alternatives available, each of the Initial Applicants' board of directors resolved to seek urgent relief under the CCAA.

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<sup>1</sup> Affidavit of Michael Ruscetta sworn on September 5, 2023 [Ruscetta Affidavit], Motion Record at Tab 2; Sixth Report of KSV Restructuring Inc. dated September 11, 2023 [Monitor's Report].

<sup>2</sup> Ruscetta Affidavit, *ibid* at para 6, Motion Record at Tab 2.

Accordingly, the Initial Applicants sought, and on November 7, 2022 (the "**Filing Date**"), obtained an initial order pursuant to the CCAA (the "**Initial Order**").<sup>3</sup>

8. Among other things, the Initial Order:

- (a) appointed KSV as the Monitor;
- (b) stayed, until November 17, 2022, all proceedings and remedies taken or that might be taken in respect of the Initial Applicants, the Monitor or the Initial Applicants' directors and officers, or affecting the Canadian Business or the Property (as defined in the Initial Order), except with the written consent of the Initial Applicants and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");
- (c) approved the Initial Applicants' ability to borrow under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Facility**") pursuant to a DIP facility agreement dated November 6, 2022 (as amended, the "**DIP Agreement**"), among TJAC, as borrower, Trichome, TRC, MYM, MYMB and Highland, as guarantors, and Cortland, as agent for and on behalf of the lenders party thereto (the "**DIP Lender**"); and
- (d) granted the Administration Charge, the Directors' Charge and the DIP Lender's Charge (each as defined in the Initial Order) over the Property (collectively, the "**Charges**").<sup>4</sup>

9. On November 17, 2022, the Initial Applicants sought and obtained an amended and restated Initial Order pursuant to the CCAA, which, *inter alia*, extended the Stay of Proceedings to and

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<sup>3</sup> *Ibid* at para 7, Motion Record at Tab 2.

<sup>4</sup> *Ibid* at para 8, Motion Record at Tab 2.

including February 3, 2023, and approved increases to the Directors' Charge and the DIP Lender's Charge up to the maximum amounts of \$2,922,000 and \$4,875,000, respectively.<sup>5</sup>

**B. The Initial Applicants' Value Maximizing Efforts**

10. In an effort to identify a value-maximizing transaction, the Initial Applicants sought and, on January 9, 2023, obtained an order under the CCAA, among other things:

- (a) approving a sale and investment solicitation process, including corresponding bidding and auction procedures (the "**SISP**");
- (b) approving the letter agreement dated November 7, 2022 (the "**SISP Advisor Engagement Agreement**"), among the Initial Applicants and Stoic Advisory Inc. (the "**SISP Advisor**");
- (c) authorizing the SISP Advisor and the Initial Applicants to implement the SISP, with the oversight of the Monitor;
- (d) authorizing and approving the Initial Applicants' execution of the stalking horse share purchase agreement dated December 12, 2022 (the "**Stalking Horse SPA**"), among the Initial Applicants and L5 Capital Inc. (the "**Stalking Horse Bidder**"), *nunc pro tunc*, and approving the Stalking Horse SPA, solely for the purposes of acting as the stalking horse bid in the SISP (the "**Stalking Horse Bid**"); and
- (e) granting an extension of the Stay of Proceedings to and including March 10, 2023.<sup>6</sup>

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<sup>5</sup> *Ibid* at para 9, Motion Record at Tab 2.

<sup>6</sup> *Ibid* at para 11, Motion Record at Tab 2.



11. Notwithstanding the SISP Advisor's and the Initial Applicants' efforts to canvass the market for potential buyers of the Initial Applicants' assets or investors in the Canadian Business, no Qualified Bids were submitted by the Bid Deadline (each as defined in the SISP), other than the Stalking Horse Bid. As such, the Stalking Horse Bid was deemed to be the Successful Bid (as defined in the SISP), and the SISP did not proceed to an auction.<sup>7</sup>

12. Despite being deemed to be the Successful Bid in the SISP, on February 13, 2023, the Stalking Horse Bidder formally and irrevocably advised that it did not intend to close the transactions contemplated by the Stalking Horse SPA. The Stalking Horse SPA was subsequently terminated with the Monitor's consent.<sup>8</sup>

13. After consideration of the results of the SISP, the termination of the Stalking Horse SPA, the Initial Applicants' limited liquidity and obligations under the DIP Agreement, and the then impending maturity of the DIP Facility, the Initial Applicants, in consultation with the Monitor, sought and, on March 9, 2023, obtained an order (the "**Stay Extension Order**") under the CCAA, *inter alia*, extending the Stay of Proceedings to and including April 21, 2023.<sup>9</sup>

14. The Stay Extension Order was intended to provide the time and stability necessary to address the Initial Applicants' liquidity challenges and conduct an orderly wind-down of the Canadian Business (the "**Wind-Down**"). With a view to improving the recoveries anticipated from the Wind-Down, and after consultation with the DIP Lender and the Monitor, the Initial Applicants engaged Hyde Advisory & Investments Inc. ("**Hyde**") to lead an informal marketing process for the Canadian Business or the Initial Applicants' assets during the Wind-Down.<sup>10</sup>

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<sup>7</sup> *Ibid* at para 12, Motion Record at Tab 2.

<sup>8</sup> *Ibid* at para 13, Motion Record at Tab 2.

<sup>9</sup> *Ibid* at para 15, Motion Record at Tab 2.

<sup>10</sup> *Ibid* at para 16, Motion Record at Tab 2.

15. The Initial Applicants', the Monitors' and Hyde's continued efforts to market the Canadian Business and the Initial Applicants' assets culminated in the Initial Applicants entering into a share purchase agreement (the "**Sale Agreement**"), among, Trichome (the "**Vendor**"), 1000370759 Ontario Inc. (the "**Purchaser**"), TJAC, TRC, MYM, MYMB and Highland (collectively, the "**Purchased Entities**") dated March 28, 2023.<sup>11</sup>

16. To effectuate the Sale Agreement, the Initial Applicants sought and, on April 6, 2023, obtained the Approval and Vesting Order, among other things:

- (a) approving the Sale Agreement and the transactions contemplated therein (collectively, the "**Transactions**");
- (b) adding TJAC Residual Co., TRC Residual Co., MYM Residual Co., MYMB Residual Co. and Highland Residual Co. (collectively, the "**Residual Cos.**"), as Applicants in these CCAA proceedings;
- (c) vesting in the Purchaser all of the Vendor's right, title and interest in and to all of the issued and outstanding shares in the capital of TJAC and MYM, free and clear of any Encumbrances (as defined in the Approval and Vesting Order);
- (d) vesting in and to TJAC Residual Co., TRC Residual Co., MYM Residual Co., MYMB Residual Co. and Highland Residual Co. absolutely and exclusively, all of the right, title and interest of TJAC, TRC, MYM, MYMB and Highland, respectively, in and to the Excluded Assets, Excluded Contracts and Excluded Liabilities (each as defined in the Sale Agreement), and discharging all

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<sup>11</sup> *Ibid* at paras 17-18, Motion Record at Tab 2.

Encumbrances against the Purchased Entities and the Retained Assets other than the Permitted Encumbrances (each as defined in the Sale Agreement);

- (e) removing the Purchased Entities as Applicants in these CCAA proceedings; and
- (f) granting an extension of the Stay of Proceedings to and including October 31, 2023 (the "**Stay Period**").<sup>12</sup>

17. The Transactions contemplated by the Sale Agreement and approved pursuant to the Approval and Vesting Order closed on April 6, 2023 (the "**Closing Date**") as anticipated.<sup>13</sup>

### **C. Terminating these CCAA Proceedings**

18. Having closed the Transactions, conveyed the Canadian Business to the Purchaser and implemented the Settlement Agreement, the Applicants now seek the proposed CCAA Termination Order to effect the orderly and efficient completion of these CCAA proceedings and a wind-up of the Applicants.<sup>14</sup>

19. The proposed CCAA Termination Order provides that these CCAA proceedings and the Stay of Proceedings will be terminated upon service of the Monitor's Certificate certifying that the Cash Distribution has been made and all matters to be attended to in connection with these CCAA proceedings have been completed to the satisfaction of the Monitor. At such time, KSV will be released and discharged as Monitor and each of the Charges will be terminated, released and discharged.<sup>15</sup>

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<sup>12</sup> *Ibid* at para 20, Motion Record at Tab 2.

<sup>13</sup> *Ibid* at para 22, Motion Record at Tab 2.

<sup>14</sup> *Ibid* at para 31, Motion Record at Tab 2.

<sup>15</sup> *Ibid* at para 32, Motion Record at Tab 2.

**D. Trichome's Assignment in Bankruptcy and the Bankruptcy Reserve**

20. Given that the Transactions did not provide sufficient proceeds to satisfy the Applicants' indebtedness to the DIP Lender, the Applicants do not have the wherewithal to fund distributions to their secured and unsecured creditors. As such, the Applicants do not intend to implement a process for the identification and resolution of claims in these CCAA proceedings (a "**Claims Process**") or file a plan of compromise or arrangement.<sup>16</sup>

21. To facilitate the orderly and efficient wind-up of Trichome's estate and allow its former employees to assert claims under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, as amended (the "**WEPP Act**"), the proposed CCAA Termination Order authorizes Trichome to make an assignment in bankruptcy pursuant to the BIA prior to the CCAA Termination Time. In accordance with the proposed CCAA Termination Order, Goldhar & Associates Ltd. will be named as the Trustee.<sup>17</sup>

22. In contemplation of the termination of these CCAA proceedings and Trichome's assignment in bankruptcy pursuant to the BIA, the proposed CCAA Termination Order also authorizes and directs Trichome to transfer the Bankruptcy Reserve to Goldhar & Associates Ltd. for the fees and disbursements of the Trustee. Any available remainder from the Bankruptcy Reserve following the administration of Trichome's bankruptcy under the BIA will be paid by the Trustee to Cortland in accordance with the proposed CCAA Termination Order.<sup>18</sup>

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<sup>16</sup> *Ibid* at para 35, Motion Record at Tab 2.

<sup>17</sup> *Ibid* at para 36, Motion Record at Tab 2.

<sup>18</sup> *Ibid* at para 37, Motion Record at Tab 2.

**E. The Cash Distribution to Cortland**

23. Cortland, in its capacity as the DIP Lender, and in its capacity as agent (the "**Agent**") for and on behalf of the Applicants' senior secured lenders (collectively, the "**Lenders**") under a Credit Agreement dated May 14, 2021 (as amended pursuant to an Amending Agreement No. 1 dated August 27, 2021, and an Amending Agreement No. 2 dated March 31, 2022, the "**ABL Agreement**"), is the Applicants' senior secured creditor. As at February 28, 2023, approximately \$6.6 million was owing to Cortland (with interest and costs continuing to accrue), approximately \$2.5 million of which was owing under the DIP Facility. Since the Closing Date, the Applicants have repaid approximately \$1.8 million under the DIP Facility in accordance with the DIP Agreement. Despite such repayments, approximately \$0.9 million remains owing under the DIP Facility as of July 31, 2023, which amount exceeds the Applicants' cash on hand.<sup>19</sup>

24. In its capacity as the DIP Lender, Cortland has a Court-ordered super priority interest in the Applicants' remaining cash on hand, subordinate only to the Administration Charge and the Directors' Charge. Accordingly, the proposed CCAA Termination Order authorizes and directs the Applicants to make the Cash Distribution to Cortland upon the Monitor's confirmation that all matters to be attended to in connection with these CCAA proceedings have been completed to its satisfaction, including the payment of all fees and disbursements secured by the Administration Charge and the establishment of the Bankruptcy Reserve.<sup>20</sup>

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<sup>19</sup> *Ibid* at paras 39-40, Motion Record at Tab 2.

<sup>20</sup> *Ibid* at para 41, Motion Record at Tab 2.

**F. The Releases in Favour of the Released Parties**

25. The proposed CCAA Termination Order releases the following parties (collectively, the "**Released Parties**", and each a "**Released Party**") from the Released Claims (as defined in the CCAA Termination Order):

- (a) the Purchased Entities' directors, officers, and advisors immediately prior to the Closing Time (as defined in the Sale Agreement);
- (b) the current and former directors, officers, and advisors of the Applicants; and
- (c) the Monitor, the Monitor's counsel, the DIP Lender, counsel to the DIP Lender, the Purchased Entities' legal counsel immediately prior to the Closing Time, counsel to the Applicants and each of their respective present and former affiliates and officers, directors, partners, employees, agents and advisors.<sup>21</sup>

26. The Releases provided under the proposed CCAA Termination Order do not waive, discharge, release, cancel or bar any claim against a Released Party that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA or with respect to any act or omission that is finally determined by a court of competent jurisdiction to have constituted actual fraud, wilful misconduct or gross negligence. Nor do the Releases waive, discharge, release, cancel or bar any obligations of any of the Released Parties under or pursuant to the Sale Agreement not otherwise released pursuant to the Settlement Agreement.<sup>22</sup>

27. The proposed Releases are intended to limit any indemnification claims the Released Parties may have against the Applicants, allow for the release of the Charges, and recognize the

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<sup>21</sup> *Ibid* at para 43, Motion Record at Tab 2.

<sup>22</sup> *Ibid* at para 45, Motion Record at Tab 2.

significant time and effort expended by the Released Parties in connection with these CCAA proceedings.<sup>23</sup>

28. As noted above, due to the Applicants' liquidity, the shortfall in the DIP Lender's recovery and the priority of the Charges, the Applicants have not and do not intend to incur additional costs to conduct a Claims Process to identify and resolve the narrow universe of potential claims that may be asserted against the Released Parties. However, the Service List has been provided with notice of the within motion, including a copy of the proposed CCAA Termination Order, to ensure that the Applicants' stakeholders are nonetheless afforded an opportunity to consider the proposed Releases. Such notice is in addition to the indications within the November Affidavits that the directors and officers of the Initial Applicants anticipated seeking releases in connection with the consummation of a value-maximizing sale or restructuring transaction and the eventual termination of these CCAA proceedings.<sup>24</sup>

### **PART III: ISSUES**

29. The issues to be considered on this motion are whether this Court should:

- (a) authorize the termination of these CCAA proceedings and the discharge of the Monitor and the Charges at the CCAA Termination Time;
- (b) authorize the Cash Distribution to Cortland; and
- (c) approve the Releases in favour of the Released Parties.

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<sup>23</sup> *Ibid* at para 46, Motion Record at Tab 2.

<sup>24</sup> *Ibid* at para 48, Motion Record at Tab 2.

## PART IV: LAW AND ANALYSIS

### A. The CCAA Proceedings Should be Terminated and the Monitor and the Charges Should be Discharged

30. Section 11 of the CCAA vests this Court with broad discretion to make "any order that it considers appropriate in the circumstances."<sup>25</sup> This discretion has been characterized as the "engine that drives" the CCAA's flexible statutory scheme, allowing Courts to make orders responsive to the circumstances of each case.<sup>26</sup>

31. The exercise of this Court's discretion under section 11 of the CCAA must "further the remedial objectives of the CCAA and be guided by the baseline considerations of appropriateness, good faith, and due diligence."<sup>27</sup> An order under section 11 of the CCAA will be appropriate where it "advances the policy objectives underlying the CCAA."<sup>28</sup> These objectives include "providing for timely, efficient and impartial resolution of a debtor's insolvency" and "preserving and maximizing the value of a debtor's assets".<sup>29</sup>

32. In furtherance of the CCAA's remedial objectives, Courts have routinely granted orders, akin to the proposed CCAA Termination Order, terminating debtor companies' proceedings under the CCAA, discharging the Court-appointed monitor and Court-ordered charges, and facilitating the debtor companies' assignment in bankruptcy under the BIA.<sup>30</sup>

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<sup>25</sup> [Companies' Creditors Arrangement Act, RSC 1985, c. C-36 s 11](#) [CCAA].

<sup>26</sup> [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at para 48 [*Callidus*].

<sup>27</sup> *Ibid* at paras 49, 67, 70; [Century Services Inc v Canada \(Attorney General\), 2010 SCC 60](#) at paras 59, 70 [*Century Services*]; [Re ENTREC Corporation, 2020 ABQB 751](#) at para 3 [*ENTREC*].

<sup>28</sup> *Callidus, ibid* at para 50; [Century Services, ibid](#) at 70; [ENTREC, ibid](#) at para 4.

<sup>29</sup> *Callidus, ibid* at para 40; [Century Services, ibid](#) at paras 15, 59, 70.

<sup>30</sup> [In the Matter of a Plan of Compromise or Arrangement of PharmHouse Inc. \(June 23, 2021\), Toronto, CV-20-00647704-00CL \(CCAA Termination Order\) \(ONSC\)](#) [*PharmHouse Termination Order*]; [In the Matter of a Plan of Compromise or Arrangement of Old API Wind-down Ltd. \(May 17, 2019\), Toronto, CV-18-603054-00CL \(CCAA Termination Order\) \(ONSC\)](#) [*Old API Termination Order*]; [In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., FIGR Norfolk Inc. and 1307849 B.C. Ltd. \(April 21, 2022\), Toronto, CV-21-00655373-00CL \(Order\) \(ONSC\)](#) [*FIGR Termination Order*]; [In the Matter of a Plan](#)



33. Having regard to the foregoing considerations, the Applicants submit that it is appropriate for this Court to exercise its jurisdiction to authorize the termination of these CCAA proceedings and the discharge of the Monitor and the Charges given that, among other things:

- (a) since the granting of the Initial Order, the Initial Applicants and the Applicants, as applicable, have acted in good faith and with due diligence to, among other things, stabilize the Canadian Business, prepare and implement the SISP and the Additional Marketing Process and consummate the Transactions;
- (b) in accordance with the Sale Agreement and the Approval and Vesting Order, the Transactions have been consummated, the Canadian Business has been transferred to the Purchaser and substantially all of the Initial Applicants' assets have been retained by the Purchased Entities;
- (c) the Applicants no longer have any ongoing business operations and, subject to the completion of certain outstanding administrative items, have substantially completed all matters to be addressed in these CCAA proceedings;

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*[of Compromise or Arrangement of Del Equipment Inc. \(October 29, 2020\), Toronto, CV-19-629552-00CL \(CCAA Termination Order\) \(ONSC\) \[Del Equipment Termination Order\]; In the Matter of a Plan of Compromise or Arrangement of Golf Town Canada Holdings Inc., Golf Town Canada Inc. and Golf Town GP II Inc. \(March 29, 2018\), Toronto, CV-16-11527-00CL \(CCAA Termination Order\) \(ONSC\) \[Golf Town Termination Order\]; In the Matter of a Plan of Compromise or Arrangement of Wayland Group Corp., 2751609 Ontario Inc. and Nanoleaf Technologies Inc. \(November 24, 2021\), Toronto, CV-19-00632079-00CL \(Order\) \(ONSC\) \[Wayland Termination Order\]; In the Matter of a Plan of Compromise or Arrangement of Trinity Ravine Community Inc. \(September 15, 2022\), Toronto, CV-22-00677236-00CL \(Ancillary Order\) \(ONSC\) \[Trinity Ravine Termination Order\]; In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp., 13699404 Canada Inc. and 13699447 Canada Inc. \(February 15, 2022\), Toronto, CV-21-00673304-00CL \(CCAA Distribution and Termination Order\) \(ONSC\) \[Harte Gold Termination Order\].](#)*

- (d) Trichome's assignment in bankruptcy pursuant to the BIA under the proposed CCAA Termination will facilitate the orderly and efficient wind-up of its estate and allow its former employees to assert claims under the WEPP Act;
- (e) the sole stakeholder with an economic interest in these CCAA proceedings – the DIP Lender – is supportive of the termination of these CCAA proceedings and the discharge of the Charges in the manner contemplated under the proposed CCAA Termination Order and does not oppose Trichome's assignment in bankruptcy pursuant to the BIA (provided that the Bankruptcy Reserve does not exceed \$12,000, plus HST); and
- (f) the Monitor is supportive of the termination of these CCAA proceedings, the discharge of the Charges, and Trichome's assignment in bankruptcy pursuant to the BIA on the terms set out in the proposed CCAA Termination Order.<sup>31</sup>

**B. The Applicants Should be Authorized to Make the Cash Distribution**

34. The proposed CCAA Termination Order authorizes and directs the Applicants to make the Cash Distribution to Cortland upon the Monitor's confirmation that all matters to be attended to in connection with these CCAA proceedings have been completed to its satisfaction. Such distribution is appropriate in the circumstances and should be authorized.<sup>32</sup>

35. Nothing in the CCAA precludes the distribution of the net proceeds remaining after a Court-approved sale transaction to a debtor company's creditors.<sup>33</sup> Rather, it is well established

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<sup>31</sup> Ruscetta Affidavit, *supra* note 1 at paras 24, 31, 35-38, 53, Motion Record at Tab 2; Monitor's Report, *supra* note 1 s 5.0 at paras 1-2, s 5.1 at paras 1-5, s 5.2 at paras 1-2, s 7.0 at para 1.

<sup>32</sup> Ruscetta Affidavit, *ibid* at para 41, Motion Record at Tab 2.

<sup>33</sup> [Re AbitibiBowater Inc, 2009 QCCS 6461](#) at para 71 [*Abitibi*]. See also, [Re Nortel Networks Corp, 2014 ONSC 4777](#) at para 53 [*Nortel*].

that the broad discretion conferred under section 11 of the CCAA permits Courts to approve interim or final distributions absent a plan of compromise or arrangement.<sup>34</sup> The fact that a Court supervised CCAA proceeding does not result in recovery for creditors that do not have an economic interest in a debtor company's assets, as is the case here, is no reason to withhold approval of such distributions.<sup>35</sup>

36. Exercising its discretion under section 11 of the CCAA, this Court has previously approved distributions in connection with the termination of a debtor company's CCAA proceedings in the absence of a plan of compromise or arrangement.<sup>36</sup> The Applicants submit that it is similarly appropriate for this Court to exercise its discretion to authorize the proposed Cash Distribution in this case given that:

- (a) the proposed Cash Distribution is conditional upon the Monitor's confirmation that all matters to be attended to in connection with these CCAA proceedings have been completed to its satisfaction, including the payment of all fees and disbursements secured by the Administration Charge and the establishment of the Bankruptcy Reserve;
- (b) pursuant to the DIP Lender's Charge, Cortland, in its capacity as the DIP Lender, has a super priority interest in the Applicants' remaining cash on hand, subordinate only to the Administration Charge and the Directors' Charge;

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<sup>34</sup> [CCAA](#), *supra* note 25 s 11; [Nortel](#), *ibid* at paras 54-58; [Abitibi](#), *ibid*. See also, [Re Timminco Ltd](#), 2014 ONSC 3393 at para 38; [Urbancorp Toronto Management Inc](#), 2021 ONSC 2772 at paras 1, 7, 9; [Re Windsor Machine & Stamping](#) (2009), 179 ACWS (3d) 513 at paras 2, 7, 13-14 [*Windsor*].

<sup>35</sup> [Abitibi](#), *ibid* at paras 73-74; [Windsor](#), *ibid* at para 13; [Nortel](#), *ibid* at para 55.

<sup>36</sup> [PharmHouse Termination Order](#), *supra* note 30 at paras 8-9; [Wayland Termination Order](#), *supra* note 30 at para 6; [In the Matter of a Plan of Compromise or Arrangement of 9366016 Canada Inc. \(October 28, 2016\), Toronto, CV-15-10869-00CL \(Distribution and CCAA Termination Order\) \(ONSC\)](#) at paras 5-6 [*Plasco Energy Termination Order*]; [Golf Town Termination Order](#), *supra* note 30 at paras 2-3; [Harte Gold Termination Order](#), *supra* note 30 at paras 3-4. See also, [Nortel](#), *ibid*.

- (c) the DIP Lender's consent to the termination, release and discharge of the DIP Lender's Charge is conditional upon receipt of the Cash Distribution; and
- (d) the Monitor is supportive of the proposed Cash Distribution.<sup>37</sup>

### C. The Releases in Favour of the Released Parties Should be Granted

37. The broad discretion inherent in section 11 of the CCAA to make any order considered "appropriate in the circumstances" vests this Court with jurisdiction to approve releases in favour of a debtor company's directors and officers and third parties – in each case, absent a plan of compromise or arrangement.<sup>38</sup> Such discretion has previously been exercised by Courts both when granting approval and vesting orders and terminating a debtor company's CCAA proceedings.<sup>39</sup>

38. When determining whether it is appropriate to grant such releases pursuant to section 11 of the CCAA, Courts have drawn on the well-established factors for approving third party releases in the context of a plan of compromise or arrangement.<sup>40</sup> When modified to accommodate cases in which no plan of compromise or arrangement is proposed, these factors include whether:

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<sup>37</sup> Ruscetta Affidavit, *supra* note 1 at paras 39-42, Motion Record at Tab 2; Monitor's Report, *supra* note 1 s 5.3 at paras 1-2.

<sup>38</sup> [CCAA](#), *supra* note 25 s 11; [Re Green Relief Inc, 2020 ONSC 6837](#) at paras 16-17, 23-26 [*Green Relief*]; [CannaPiece Group Inc v Marzilli, 2023 ONSC 3291](#) at para 22 [*CannaPiece*]; [Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al, 2022 ONSC 6354](#) at para 67 [*Just Energy*]; [Re Harte Gold Corp, 2022 ONSC 653](#) at paras 78-79 [*Harte Gold Corp*]; [ENTREC](#), *supra* note 27 at paras 3, 5-7, 9. As this Court and the Alberta Court of King's Bench recognized in [Green Relief](#) at paras 17, 25 and [ENTREC](#) at para 5, respectively, subsection 5.1(1) of the [CCAA](#) contemplates the release of a debtor company's directors and officers in the context of a plan of compromise or arrangement without limiting the jurisdiction of Courts to make any order considered appropriate in the circumstances pursuant to section 11 of the [CCAA](#).

<sup>39</sup> [Del Equipment Termination Order](#), *supra* note 30 at para 17; [Golf Town Termination Order](#), *supra* note 30 at para 14; [Plasco Energy Termination Order](#), *supra* note 36 at para 12; [Trinity Ravine Termination Order](#), *supra* note 30 at para 15; [FIGR Termination Order](#), *supra* note 30 at para 17; [In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp. \(January 28, 2022\), Toronto, CV-21-00673304-00CL \(Approval and Reverse Vesting Order\) \(ONSC\)](#) at para 21(A); [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 \(Approval and Vesting Order\) \(ONSC\)](#) at paras 21-24; [In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co. \(May 12, 2023\), Toronto, CV-23-00696017-00CL \(Approval and Vesting Order\) \(ONSC\)](#) at paras 21-22.

<sup>40</sup> [ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp, 2008 ONCA 587](#) at paras 43, 70-71 [*Metcalfe*]; [Harte Gold Corp](#), *supra* note 38 at para 80 citing [Re Lydian International Limited, 2020 ONSC](#)

- (a) the claims to be released are rationally connected to the restructuring;
- (b) the restructuring can succeed without the proposed releases;
- (c) the parties to be released contributed to the restructuring;
- (d) the proposed releases benefit the debtor company as well as its creditors generally;
- (e) the debtor company's creditors have knowledge of the nature and effect of the proposed releases; and
- (f) the proposed releases are fair, reasonable and not overly-broad.<sup>41</sup>

39. No single factor is determinative and not all factors need apply.<sup>42</sup>

40. Here, the factors considered by Courts in granting releases in favour of a debtor company's directors and officers and third parties support approval of the proposed Releases given, among other things, that:

- (a) ***The Released Claims are Rationally Connected to the Restructuring*** – The proposed Releases will invariably reduce or eliminate any claims for indemnification or contribution that the Released Parties may be entitled to assert against the Applicants, certain of which could be secured by priority charges that rank ahead of the DIP Lender's Charge. As a result, the remaining proceeds available to the Applicants' sole creditor with an economic interest in these CCAA proceedings, the DIP Lender, will be maximized rather than eroded. The maximization of the Applicants' remaining value for the benefit of their creditors is

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[4006](#) at para [54](#) [*Lydian*]; *Green Relief*, *supra* note 38 at para [27](#) citing *Lydian* at para [54](#); *CannaPiece*, *supra* note 38 at para [22](#) citing, among other things, *Just Energy* at para [67](#) and *Green Relief* at paras [23-29](#).

<sup>41</sup> *Metcalfe*, *ibid* at paras [43, 70-71](#); *Harte Gold Corp*, *ibid* at paras [81-86](#); *Green Relief*, *ibid*; *Lydian*, *ibid*; *CannaPiece*, *ibid*; *Just Energy*, *ibid*.

<sup>42</sup> *Harte Gold Corp*, *ibid* at para [80](#); *Lydian*, *ibid*; *Green Relief*, *ibid* at para [28](#).

commensurate with both the objectives of these CCAA proceedings and the CCAA.<sup>43</sup>

- (b) ***The Released Parties Contributed to the Initial Applicants' and the Applicants' Restructuring*** – The Released Parties have made, and where applicable, continue to make, significant contributions to these CCAA proceedings and the Initial Applicants' and the Applicants' restructuring efforts. Indeed, the Released Parties have been instrumental to the: (i) the Initial Applicants' efforts to conserve costs in, and apprise key stakeholders of, these CCAA proceedings; (ii) the negotiation of the Stalking Horse SPA and the SISP Advisor Engagement Agreement; (iii) the development and implementation of the SISP; (iv) the partial implementation of the value-preserving Wind-Down and the Additional Marketing Process; (v) the negotiation of the Sale Agreement and the consummation of the value-maximizing Transactions, which ultimately assured the continuation of the Canadian Business through the Purchaser; (vi) the stabilization and continuation of the Canadian Business until the Closing Date; and (vii) the negotiation of the Settlement Agreement and implementation of the resolutions contemplated thereunder. The results realized in these CCAA proceedings could not have been achieved without the significant time and effort expended by the Released Parties.<sup>44</sup>
- (c) ***The Restructuring Could Not Succeed Without the Proposed Releases*** – The proposed Releases provide certainty and finality for the Released Parties, certain of which have conditioned their consent to the release, discharge and termination of

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<sup>43</sup> Ruscetta Affidavit, *supra* note 1 at para 46, Motion Record at Tab 2; Monitor's Report, *supra* note 1 s 5.4 at para 5.

<sup>44</sup> Ruscetta Affidavit, *ibid*, Motion Record at Tab 2; Monitor's Report, *ibid*.

the Charges upon such Releases. Namely, the consent of the directors and officers of the Applicants and the Purchased Entities immediately prior to the Closing Time to the termination, release and discharge of the Directors' Charge is conditional upon the granting of the proposed Releases. This conditionality is due, in part, to the absence of a Claims Process and the limited insurance coverage available to such directors and officers under the claims-made policies maintained by Trichome's publicly listed parent company, IM Cannabis Corp.<sup>45</sup>

- (d) ***The Proposed Releases Benefit both the Applicants and their Creditors*** – By protecting the Applicants from potential contribution and indemnity claims that will further erode creditor recovery, the proposed Releases benefit the Applicants' creditors generally. In particular, the proposed Releases will minimize any further diminution in value available to Cortland, who will suffer a partial shortfall on its recovery under the DIP Facility and a complete shortfall in its capacity as Agent for and on behalf of the Applicants' senior secured Lenders under the ABL Agreement. Notwithstanding such shortfall, the DIP Lender has not opposed the funding of the Bankruptcy Reserve (in the quantum estimated), which will facilitate the orderly and efficient wind-up of Trichome's estate and allow its former employees to assert claims under the WEPP Act.<sup>46</sup>
- (e) ***The Applicants' Creditors had Knowledge of the Nature and Effect of the Proposed Releases*** – The Service List was provided with service of the within motion to ensure that the Applicants' stakeholders are afforded an opportunity to

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<sup>45</sup> Ruscetta Affidavit, *ibid* at paras 33, 46, 48-49, Motion Record at Tab 2; Monitor's Report, *ibid*.

<sup>46</sup> Ruscetta Affidavit, *ibid* at paras 38-40, 48, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.2 at paras 1-2, s 5.4 at para 5.

consider, and are not materially prejudiced by, the proposed Releases. Such notice is in addition to the indications within the November Affidavits that the directors and officers of the Initial Applicants anticipated seeking releases in connection with the consummation of a value-maximizing sale or restructuring transaction and the eventual termination of these CCAA proceedings. In light of the Applicants' liquidity, the shortfall in the DIP Lender's recovery and the priority of the Charges, no benefit would accrue to the Applicants' secured and unsecured creditors from the receipt of further notice through a Claims Process (nor could such a Claims Process be funded).<sup>47</sup>

- (f) ***The Proposed Releases are Fair, Reasonable and not Overly-Broad*** – The Applicants have narrowed the scope of the proposed Releases so as to ensure that the Released Claims do not include: (i) any claim against a Released Party that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA or with respect to any act or omission that is finally determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct or gross negligence; or (ii) any obligations of any of the Released Parties under or pursuant to the Sale Agreement not otherwise released pursuant to the Settlement Agreement. As a result of the limitations imposed on the scope of the proposed Release, the only potential Released Claims that the Applicants are currently aware of are certain claims against the directors or officers of the Applicants or the directors or officers of the Purchased Entities immediately prior to the Closing Time. These include certain claims that the Canada Revenue Agency may assert

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<sup>47</sup> Ruscetta Affidavit, *ibid* at para 48, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.4 at paras 3-5.



(which may be subject to objections and defences) and potential claims for accrued and unpaid vacation pay by two former employees of Trichome that declined to execute a release in connection with the payment of such amounts.<sup>48</sup>

41. Taken together, the Applicants submit that the proposed Releases are appropriate in the circumstances. The Monitor is likewise of the view that the proposed Releases are appropriate in the circumstances and is supportive of the Releases being granted on the terms set out in the proposed CCAA Termination Order.<sup>49</sup>

#### **PART V: RELIEF REQUESTED**

42. The Applicants submit that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court,<sup>50</sup> and respectfully request that the proposed form of CCAA Termination Order be granted.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11<sup>TH</sup> DAY OF SEPTEMBER 2023**

*Bennett Jones LLP*  
BENNETT JONES LLP

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<sup>48</sup> Ruscetta Affidavit, *ibid* at paras 45, 47, 50, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.4 at paras 2-5.

<sup>49</sup> Ruscetta Affidavit, *ibid* at para 50, Motion Record at Tab 2; Monitor's Report, *ibid* s 5.4 at para 5, s 7.0 at para 1.

<sup>50</sup> See generally, [PharmHouse Termination Order](#), *supra* note 30; [Old API Termination Order](#), *supra* note 30; [FIGR Termination Order](#), *supra* note 30; [Del Equipment Termination Order](#), *supra* note 30; [GolfTown Termination Order](#), *supra* note 30; [Wayland Termination Order](#), *supra* note 30; [Trinity Ravine Termination Order](#), *supra* note 30; [Plasco Energy Termination Order](#), *supra* note 36.

## SCHEDULE A – LIST OF AUTHORITIES

### *Cases Cited*

1. [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#)
2. [ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp, 2008 ONCA 587](#)
3. [CannaPiece Group Inc v Marzilli, 2023 ONSC 3291](#)
4. [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#)
5. [In the Matter of a Plan of Compromise or Arrangement of 9366016 Canada Inc. \(October 28, 2016\), Toronto, CV-15-10869-00CL \(Distribution and CCAA Termination Order\) \(ONSC\)](#)
6. [In the Matter of a Plan of Compromise or Arrangement of Del Equipment Inc. \(October 29, 2020\), Toronto, CV-19-629552-00CL \(CCAA Termination Order\) \(ONSC\)](#)
7. [In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., FIGR Norfolk Inc. and 1307849 B.C. Ltd. \(April 21, 2022\), Toronto, CV-21-00655373-00CL \(Order\) \(ONSC\)](#)
8. [In the Matter of a Plan of Compromise or Arrangement of Golf Town Canada Holdings Inc., Golf Town Canada Inc. and Golf Town GP II Inc. \(March 29, 2018\), Toronto, CV-16-11527-00CL \(CCAA Termination Order\) \(ONSC\)](#)
9. [In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp., 13699404 Canada Inc. and 13699447 Canada Inc. \(February 15, 2022\), Toronto, CV-21-00673304-00CL \(CCAA Distribution and Termination Order\) \(ONSC\)](#)
10. [In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp. \(January 28, 2022\), Toronto, CV-21-00673304-00CL \(Approval and Reverse Vesting Order\) \(ONSC\)](#)
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 \(Approval and Vesting Order\) \(ONSC\)](#)
12. [In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co. \(May 12, 2023\), Toronto, CV-23-00696017-00CL \(Approval and Vesting Order\) \(ONSC\)](#)
13. [In the Matter of a Plan of Compromise or Arrangement of Old API Wind-down Ltd. \(May 17, 2019\), Toronto, CV-18-603054-00CL \(CCAA Termination Order\) \(ONSC\)](#)
14. [In the Matter of a Plan of Compromise or Arrangement of PharmHouse Inc. \(June 23, 2021\), Toronto, CV-20-00647704-00CL \(CCAA Termination Order\) \(ONSC\)](#)
15. [In the Matter of a Plan of Compromise or Arrangement of Trinity Ravine Community Inc. \(September 15, 2022\), Toronto, CV-22-00677236-00CL \(Ancillary Order\) \(ONSC\)](#)
16. [In the Matter of a Plan of Compromise or Arrangement of Wayland Group Corp., 2751609 Ontario Inc. and Nanoleaf Technologies Inc. \(November 24, 2021\), Toronto, CV-19-00632079-00CL \(Order\) \(ONSC\)](#)
17. [Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al, 2022 ONSC 6354](#)
18. [Re AbitibiBowater Inc, 2009 QCCS 6461](#)
19. [Re ENTREC Corporation, 2020 ABQB 751](#)

20. [Re Green Relief Inc, 2020 ONSC 6837](#)
21. [Re Harte Gold Corp, 2022 ONSC 653](#)
22. [Re Lydian International Limited, 2020 ONSC 4006](#)
23. [Re Nortel Networks Corp, 2014 ONSC 4777](#)
24. [Re Timminco Ltd, 2014 ONSC 3393](#)
25. [Re Windsor Machine & Stamping \(2009\), 179 ACWS \(3d\) 513](#)
26. [Urbancorp Toronto Management Inc, 2021 ONSC 2772](#)

## SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

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

#### Section 5.1

##### **Claims against directors – compromise**

(1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

##### **Exception**

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

##### **Powers of court**

(3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

##### **Resignation or removal of directors**

(4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the debtor company shall be deemed to be a director for the purposes of this section.

1997, c. 12, s. 122

#### Section 6

##### **Compromises to be sanctioned by court**

(1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act or is in the course of being wound up under the Winding-up and Restructuring Act, on the trustee in bankruptcy or liquidator and contributories of the company.

**Court may order amendment**

(2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

**Restriction — certain Crown claims**

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the Income Tax Act;

(b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or

(ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a province providing a comprehensive pension plan as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a provincial pension plan as defined in that subsection.

**Restriction — default of remittance to Crown**

(4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

**Restriction — employees, etc.**

**(5)** The court may sanction a compromise or an arrangement only if

**(a)** the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

**(i)** amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the Bankruptcy and Insolvency Act if the company had become bankrupt on the day on which proceedings commenced under this Act, and

**(ii)** wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

**(b)** the court is satisfied that the company can and will make the payments as required under paragraph (a).

**Restriction — pension plan**

**(6)** If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

**(a)** the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

**(i)** an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

**(ii)** if the prescribed pension plan is regulated by an Act of Parliament,

**(A)** an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and

**(B)** an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985,

**(C)** an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and

**(iii)** in the case of any other prescribed pension plan,

**(A)** an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards

Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

**(B)** an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament,

**(C)** an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the Pooled Registered Pension Plans Act; and

**(b)** the court is satisfied that the company can and will make the payments as required under paragraph (a).

### **Non-application of subsection (6)**

**(7)** Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

### **Payment — equity claims**

**(8)** No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

R.S., 1985, c. C-36, s. 61992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1232004, c. 25, s. 1942005, c. 47, s. 126, 2007, c. 36, s. 1062009, c. 33, s. 272012, c. 16, s. 82.

## **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.

R.S., 1985, c. C-36, s. 111992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1242005, c. 47, s. 128.

**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 TRICHOME FINANCIAL CORP., 1000491916 ONTARIO INC., 1000492008  
ONTARIO INC., 1000491929 ONTARIO INC., 1000492005 ONTARIO INC. AND  
1000492023 ONTARIO INC.**

Court File No.: CV-22-00689857-00CL

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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**FACTUM OF THE APPLICANTS**  
**(Returnable September 14, 2023)**

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