

Court File Number      **2301 - 08305**

Court                      **COURT OF KING'S BENCH OF ALBERTA**

Judicial Centre        **CALGARY**

Applicants              **IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, RSC 1985, c. C-36, as amended**

**AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF WALLACE & CAREY INC., LOUDON  
BROS LIMITED and CAREY MANAGEMENT INC.**

Respondent              **DIGIFLEX INFORMATION SYSTEMS INC.  
2611 VENABLES STREET  
VANCOUVER, BC V5K 2R4**

                              Attention:    **Mohamad Z. Mardukhi**  
                              Telephone:   **604-720-0485**  
                              Email:        **mardukhi@digiflex.ca**

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**Written Reply Submission of the Respondent**

**to**

**Second Supplement to the Seventeenth Report of the Monitor**

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## **Remedy sought by the Respondent**

Regardless of what the Monitor or 7-Eleven Distribution Canada Corporation (“SEDCC”) may think about Digiflex Information Systems Inc. (“Digiflex”), or its ProCLASS Distribution and Financial Management Systems (“ProCLASS”), the fact remains that SEDCC has been using ProCLASS without a license since at least November 17, 2023. For this infringement of Digiflex’s intellectual property rights, we seek from the Honourable Court:

- a) To declare all License Agreement in place between Wallace & Carey Inc. (“Wallace & Carey”) and Digiflex terminated, as early as November 17, 2023, when a Sales Agreement between SEDCC and Wallace & Carey was finalized.
- b) To block SEDCC from using Digiflex software without a license and to force SEDCC to pay our license fee invoice dated November 1, 2024 in the amount of \$3,230,000 plus interest, and our maintenance fee invoice for the year ending on October 31, 2025 in the amount of \$807,500 plus interest (attached as **Appendix “A”**).
- c) Any further relief for damages caused to Digiflex that this Honourable Court may deem appropriate.

## **Background**

1. Development of ProCLASS began in 1985 when I was the IT manager at Canalta Data Services in Calgary. Although I was the main architect of this Software, at peak, we had a team of 25 people working on this development. Over a hundred million dollars have been spent on developing, enhancing, and maintaining ProCLASS over the past 40 years.
2. ProCLASS was the first integrated distribution solution that included functionality for Retail, Wholesale, and Foodservice distribution operations in a single system. This allowed us to implement ProCLASS in a variety of business types and sizes. ProCLASS was first implemented at Associated Grocers and Associated Foodservice in 1990, eleven years before Wallace & Carey purchased a license for ProCLASS. ProCLASS was not developed for any specific customer and in fact the exact same version of the software was implemented for these customers over the past 35 years:
  - Associated Grocers, based in Calgary, AB.
  - Associated Foodservice, based in Calgary, AB.
  - Thrifty Foods, based in Victoria, BC.

- Centennial Foods Corp, now operating as Centennial Foodservice; they are still using the exact same ProCLASS versions that Wallace & Carey has been using for the past 25 years.
  - Overwaitea Food Group, based in Langley, BC.
  - Best Direct Distributors, a Division of Maple Leaf Meats Inc., based in Calgary, AB.
  - Canada West Foods, based in Chilliwack, BC and Innisfail, AB.
  - Hardy Sales, based in Langley, BC.
  - Turner Distribution Systems, based in Surrey, BC.
  - Loudon Bros. Inc., based in Thunder Bay, ON.
  - Sell Canada, based in Calgary, AB.
  - Eastern Alliance Corp., based in Sibu, Sarawak, Malaysia.
  - New Food Classics, based in Calgary, AB.
  - Frobisher International, based in Delta, BC.
3. ProCLASS was developed for hardware from Digital Equipment Corporation ("DEC"). In 1998, DEC was acquired by Compaq. Compaq later merged with Hewlett-Packard (HP) in 2002. In 2014, HP abandoned its software and hardware offerings that we used to develop ProCLASS. This resulted in Digiflex to stop marketing ProCLASS.
  4. Digiflex then started to port ProCLASS to a new platform based on software offerings from Microsoft and non-proprietary hardware. As this project generates no revenue for Digiflex until its completion, we have only worked on it when we had no other revenue-generating projects, so this porting project has been advancing on a very slow timeline. This project is currently around 80% complete.
  5. When Wallace & Carey put out an RFP for a new ERP system in 2021, primarily due to ProCLASS's hardware base being abandoned by HP, Digiflex took part in the RFP process. But because our new ProCLASS version was still in development, and because we could not afford to speed up its development by hiring more staff, Wallace & Carey chose the ERP system from Epicor Software Corp., based in Austin, Texas.
  6. In meetings with the Wallace & Carey management in 2024, I was told that Wallace & Carey is abandoning Epicor's ERP, presumably because this very "modern" ERP could not satisfy the critical operational requirements of the Wallace & Carey business.
  7. Even if SEDCC is now reviving the Epicor ERP implementation project, or they are attempting to implement another ERP system by the end of their current



TSA extension application to February 15, 2026, does not change the fact that SEDCC has been using our ProCLASS systems without a license, and has been doing so since at least November 2023.

8. SEDCC should not be allowed to continue to use our ProCLASS software without a license. SEDCC's ignorance of the fact that they did not have a license for ProCLASS (as proved by their abandoned request on July 4, 2024, for Digiflex to set up ProCLASS systems for SEDCC), nor SEDCC's ignorance of the complexities of Wallace & Carey business operations, can be used as an excuse by SEDCC to use our ProCLASS without a license.
9. Even if this Honourable Court grants a TSA extension to February 15, 2026, it does not change the fact that SEDCC has been using ProCLASS without a license since at least November 2023. SEDCC should be forced to buy a valid license from Digiflex and/or to compensate Digiflex for any profits gained through the unlicensed use of ProCLASS.

#### **References to the Monitor's Second Supplement to Seventeenth Report**

10. In point 2.0.1, the Monitor mentions SEDCC manages over 5,000 products, presumably to show the complex nature of SEDCC business. In some of our past ProCLASS implementations listed above in point 2, we had clients with more than ten times the number of products, or vendors, or customers.
11. In point 2.1.1, the Monitor states that without the use of the ERP software, it would be impossible for SEDCC to continue operating the Logistics Business. This is a known fact for all ERP systems, and it enforces our argument that SEDCC should not risk its entire operations on ERP software without a license.
12. In point 2.1.3, the Monitor mentions that SEDCC will have an Integration Software fully operational by February 15, 2026. This does not mention whether ProCLASS will be part of that integration, but even if it is not, it will mean that SEDCC is asking for another 5 months to continue to use ProCLASS without a license.
13. In point 2.1.8, the Monitor lists invoice amounts for Maintenance and Helpdesk services along with percentage increases. But the Monitor fails to mention that our Helpdesk service is not part any agreement, and that we are not obligated to provide that service. We told SEDCC that we cannot afford to provide the Helpdesk service to them at the same rate as we did for Wallace & Carey, as it needs at least two employees to be available 7 x 24 to provide that service, and

even the increased amount we charged SEDCC was not sufficient to cover our costs for a single employee.

Our maintenance services have always had a discount when clients paid for multiple years at once. For example, our maintenance service fee for 2003 to 2005 was discounted by more than 10% because Wallace & Carey renewed the maintenance for 2 years. Accordingly, our latest maintenance agreements with SEDCC were for one month or less, thus the Renewal Rates are higher than the previous annual rates.

14. In point 2.2.1.c, the Monitor mentions that without our ERP Software the SEDCC business will be disrupted, resulting in potential widespread job losses. This is more reason that SEDCC should get a legal license for our ERP software and not risk the fate of a large number of employees by using unlicensed software.
15. In point 2.2.1.d, the Monitor mentions that “DigiFlex has been, and will continue to be, paid for the continued use,...”, this is incorrect, our 2 invoices issued to SEDCC on November 1, 2024, for license fees and one year of Maintenance fees remain unpaid.
16. In point 2.2.1.e, the Monitor claims that our “ERP Software is not otherwise saleable to any third-party as it was specifically designed for ... Wallace & Carey...”; this claim is false and point 2 above lists the businesses that have used, and are still using, the exact same ERP Software.
17. In point 2.2.1.g, the Monitor repeats some of the same statements regarding “not saleable” software, and Digiflex invoices having been paid, that have been refuted above.
18. In point 3.0.1, the Monitor is “requesting an extension of the Stay to February 15, 2026”. The Monitor also stated in point 2.2.1.h, that no other stakeholders will be significantly prejudiced by the extension of the TSA Term. What he fails to mention is that Digiflex is hugely impacted by any extension if it allows SEDCC to continue to use our ProCLASS ERP systems without a license. However, if SEDCC pays our 2 overdue invoices for license fee and annual maintenance, plus interest, Digiflex will have no objections to extending the TSA term even beyond February 15, 2026.



## The Need for Urgent Relief

Each day of unauthorized use of ProCLASS constitutes an infringement of Digiflex's copyright and contractual rights. If SEDCC, a large corporation with enormous legal resources, is allowed to ignore the law in this case, they will be ignoring Copyright Law, Contract Law, Computer-Specific / IT laws, and even potentially Criminal Law for unauthorized use of copyrighted software.

On the one hand, the Monitor and SEDCC paint Digiflex and its software systems as some simple software that does not have the necessary functionality to be used by SEDCC, while also repeating the fact that our ProCLASS software is critical to the SEDCC operations. Whichever of these opinions this Honourable Court accepts, it does not change the fact SEDCC has been using this same Digiflex software without a license for two years.

Digiflex is not responsible for mistakes made by SEDCC, first by not knowing what they were buying when they bought Wallace & Carey, and second by thinking that they could implement a "modern" ERP system by November 2023, or by multiple other TSA extension dates.

SEDCC should have acquired a valid software license from Digiflex as soon as they bought Wallace & Carey, or at least as soon as Digiflex informed SEDCC that the licenses Digiflex granted to Wallace & Carey were not transferable to anyone, and that SEDCC needs to buy a new license.

We respectfully request that this Honourable Court prohibit SEDCC from using the Digiflex Software without a license and compel SEDCC to obtain a valid license by paying our two invoices issued on November 1, 2024, together with interest.

All of which is respectfully submitted



16-Sep-2025

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Mohamad Z. Mardukhi, president  
Digiflex Information Systems Inc.

# Appendix A

Please Pay	3391500.00
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