SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: **CV-23-00693280-00CL** **HEARING DATE:** **30 JANUARY 2023**

NO. ON LIST: **6**

TITLE OF PROCEEDING: **TEHAMA INC.**

BEFORE JUSTICE: **MADAM JUSTICE KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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ENDORSEMENT OF JUSTICE KIMMEL:

1. I granted an initial order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "CCAA") in this matter on January 20, 2023 (the "Initial Order") that was limited to what the applicant Company (Tehama Inc.) reasonably required during the initial 10-day stay period. It provided for a come-back hearing on January 30, 2023. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Initial Order and/or the First Report of the Monitor dated January 26, 2023.
2. In advance of the expiry of the Initial Stay Period, the Company is requesting certain extended and additional relief to advance its restructuring efforts. Accordingly, the Company seeks by this motion an amended and restated Initial Order ("ARIO"), among other things:
    a. extending the Initial Stay Period to and including March 31, 2023 (as extended, the "Stay Period");
    b. increasing the Administration Charge to $300,000; and
    c. increasing the DIP Lender's Charge to $500,000.
3. The Monitor arranged for notices to be sent on January 26, 2023 to all known creditors of the Applicant with claims exceeding $1,000 and arranged for the publication of a notice of the CCAA Proceedings in the Globe and Mail (National Edition) in accordance with the Initial Order and statutory requirements. Advertisements will be published once per week for two weeks in accordance with the Initial Order. Creditors or other stakeholders may contact the Company or the Monitor and ask to be placed on the service list. In the meantime, a service list was developed by the Company and the Monitor and all persons on the service list were served with the Initial Order, the court's endorsement, the material filed in support of that order as well as the material for this come-back motion. No one appeared or indicated to the Monitor or the Company that they had any objections to or concerns about the relief sought.
4. Since the Initial Order, among other things, the Company has been working with the Monitor to develop a sale and investment solicitation process ("SISP"), which includes a proposed stalking horse purchase agreement (the "Stalking Horse APA"). It is anticipated that the interested parties will be before the court on February 6, 2023 at which time the Company will seek the court's approval of these further restructuring steps.
5. The contemplated outside date for a transaction under the SISP is March 31, 2023. That is the reason for the request now for an extension of the Stay Period until then. The Stay of Proceedings is currently set to expire on January 30, 2023. Subsection 11.02(2) of the CCAA expressly authorizes the Court to grant an extension of the Stay of Proceedings for "any period the court considers necessary."
6. The extension of the Stay of Proceedings will preserve the *status quo* and afford the Company the breathing room and stability that it needs to advance its restructuring efforts, including the finalization and implementation of the SISP. These are good reasons to grant an extension of the Stay Period. See *Target Canada Co*, 2015 ONSC 303 at para. 8; and *Re Timminco Limited*, 2012 ONSC 2515 at para. 15.
7. Further, the Company has demonstrated, based on the materials filed by the Company and the Monitor, that it has acted, and is acting, in good faith and with due diligence in the pursuit of its restructuring efforts. See *Laurentian University of Sudbury*, 2021 ONSC 1098 at para. 56.
8. I am satisfied that circumstances exist that make the order requested for an extension of the Stay Period to March 31, 2023 appropriate and that it is in the best interests of its stakeholders to grant this extension.
9. The Company has prepared a Cash Flow Forecast for the extended Stay Period (the "Cash Flow Forecast") that the Monitor has reviewed. It demonstrates that the Company will have sufficient cash to support its ordinary course business operations and the costs of these CCAA proceedings throughout the proposed extension to the Stay Period, provided the ARIO is granted. The Monitor has appropriately identified that this Cash Flow Forecast is dependent upon certain anticipated receipts from the Federal Government (SRED Credits and HST rebates) expected during the extended Stay Period which, if not received, could lead to a need for additional funding. At this time, management has indicated to the

Monitor that they are confident that these funds will be received and that they will continue to work hard to obtain these anticipated funds. The DIP Lender and other significant stakeholders are aware that these funds are not guaranteed to be received within the Stay Period. The court appreciates the Monitor highlighting this potential uncertainty in the Cash Flow Forecast and is content for it to be addressed if and when it materialized since no concern has been raised about it at this time.

10. The quantum of the requested increase in the Administration Charge (from $200,000 to $300,000) is reasonably necessary at this time to secure the fees and disbursements of the professionals who continue to contribute to these CCAA proceedings and assist the Company with its restructuring efforts and in the continuation of its business in the ordinary course. The court has the discretion to increase the Administration Charge under s. 11.52 of the CCAA. The increase is justified on the same grounds as justified the granting of the Administration Charge in the Initial Order (detailed in my earlier endorsement), and based on the fee projections over the extended Stay Period for the professionals who continue to assist the Company in the restructuring process.
11. Having regard to the Cash Flow Forecast and the Company's funding requirements during the extended Stay Period, the Company proposes to increase the amount of the DIP Lender's Charge to $500,000, which is commensurate with the maximum borrowings available under the DIP Facility and the Company's needs during the extended Stay Period. The court has the discretion under s.11.2 of the CCA to approve the proposed increase in the DIP Lender's Charge.
12. Absent the proposed increase to the DIP Lender's Charge, the Company anticipates that it will be forced to cease its ongoing operations. I am satisfied that the the DIP Lender's Charge should be increased to correspond to what has been identified in the Cash Flow Forecast to be reasonably necessary for the Company's continued operations in the ordinary course of business during the Initial Stay Period. The requirements under s. 11.2(1) and the considerations in s. 11.2(4) have been met, on the same grounds as they were found to be at the time the Initial Order was granted, supplemented by the Cash Flow Forecast and continued support of the Monitor and the DIP Lender (and only secured creditor).
13. The ARIO also includes some provisions from the Commercial List model order relating to restructuring steps that were not included in the Initial Order but that will now be available to the Company and the Monitor to consider as part of its ongoing restructuring efforts during the extended Stay Period. These include the ability to file a plan of compromise and arrangement and takes steps in furtherance thereof and to pursue restructuring efforts such as downsizing its work force and refinancing).
14. I am satisfied that the amendments to the Initial Order reflected in the proposed ARIO are appropriate in the circumstances. The Amended and Restated Initial Order shall issue in the form signed by me and effective today.

Kimmel J.

KIMMEL J.
January 30, 2023