IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 15
GOLI NUTRITION INC., *et al.*,[1]	:	Case No. 24- 10438 (___)
Debtors in a Foreign Proceeding.	:	Joint Administration Requested

PETITIONER'S VERIFIED PETITION UNDER CHAPTER 15 FOR RECOGNITION OF THE CANADIAN PROCEEDINGS AND REQUEST FOR RELATED RELIEF

Deloitte Restructuring Inc., in its capacity as the court-appointed monitor and duly authorized foreign representative (in such capacity, the "Petitioner"), as defined by section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"), of Goli Nutrition Inc., a company incorporated in Québec, Canada ("Goli Canada") and Goli Nutrition Inc., a company incorporated in Delaware ("Goli US," and together with Goli Canada, the "Debtors"), through its United States co-counsels, Landis Rath & Cobb LLP and Norton Rose Fulbright US LLP, respectfully submits this verified petition (the "Verified Petition"), accompanied by the *Declaration of Noah Zucker in Support of (A) Petitioner's Verified Petition under Chapter 15 for Recognition of the Canadian Proceedings and Request for Related Relief, (B) Motion for Provisional Relief, and (C) Motion for Order Enforcing CCAA Vesting Orders* filed contemporaneously herewith (the "Zucker Declaration"), seeking (i) recognition of the Debtors' insolvency proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA")

[1] The Debtors in these Chapter 15 cases, are: Goli Nutrition, Inc., a company incorporated in Québec, Canada and the last 4 digits of its Canadian business number is 0002; and Goli Nutrition Inc., a company incorporated in Delaware and the last 4 digits of its federal tax identification number is 2655. The Debtors are collectively managed from their corporate headquarters which are located at 2205 Boul. De la Côte-Vertu, suite 200, Montreal, Québec, Canada.

pending before the Superior Court, sitting in the Commercial Division for the district of Montréal (the "Canadian Court"), File No. 500-11-063787-242 (the "Canadian Proceedings") as (a) foreign main proceedings or, (b) in the alternative, foreign nonmain proceedings, (ii) provisional relief, and (iii) related relief. In support thereof, the Petitioner respectfully states as follows:

PRELIMINARY STATEMENT

1. The Petitioner, as the foreign representative of the Debtors, commenced these Chapter 15 cases by filing petitions (the "Petitions") contemporaneously with, and accompanied by, all certifications, statements, lists and documents required under Chapter 15 of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). By this Petition, the Petitioner seeks recognition of the Canadian Proceedings. As set forth in greater detail below, the Petitioner requests this Court enter an order finding that:

(a) a foreign proceeding respecting each of the Debtors was duly commenced in Canada;

(b) each Debtor's center of main interest is located in Québec, Canada;

(c) the Petitioner is duly authorized to serve as the Debtors' foreign representative and to petition for relief under Chapter 15 of the Bankruptcy Code in connection with the Canadian Proceedings pending in Canada;

(d) the Canadian Proceedings are recognized as foreign main proceeding; and

(e) the Petitioner is entitled to the relief requested herein, including provisional relief.

2. The Debtors commenced the Canadian Proceedings in order to implement a restructuring centered around the sale of the Debtors' business and assets, which is to be effectuated through two sale transactions. In particular, following a lengthy sale investment solicitation process that took place prior to the commencement of the Canadian Proceedings, Goli Canada entered into a binding subscription agreement (the "Subscription Agreement") with an entity affiliated with a group that includes Group KPS (a healthcare company), Bastion Capital (an

investment management firm) and one of the Debtors' founders (collectively, the "Purchaser"). Pursuant to the Subscription Agreement, the Purchaser will subscribe for new shares in Goli Canada (the "Subscribed Shares") and effectively acquire 100% of the equity interest in Goli Canada in accordance with the terms and conditions of the Subscription Agreement (the "Principal Transaction"). Goli Canada will, in turn, cancel and terminate all of its existing shares so that the Purchaser may become the sole shareholder of Goli Canada. The Principal Transaction is intended to be approved and implemented under the CCAA pursuant to a reverse vesting order (the "RVO"). Pursuant to the RVO, certain excluded assets, contracts, and liabilities will be transferred or "vested" out of Goli Canada and transferred to a newly created "Residual Co." that will replace Goli Canada as a debtor in the Canadian Proceedings. Accordingly, Residual Co. will replace Goli Canada as a debtor in the Chapter 15 case upon the closing of the Principal Transaction.

3. In addition, the Debtors have negotiated and finalized the terms of a second and separate transaction to implement the liquidation of the Atos Equipment (as defined below). Specifically, the Debtors have entered into an Agency Agreement (as defined below), wherein the Agent has agreed to sell and auction the Atos Equipment (the "Atos Sale," together with the Principal Transaction, the "Sale Transactions") on behalf of the Debtors. The Debtors are seeking entry of an order from the Canadian Court approving the Atos Sale (the "Atos Sale Order"). By separate motion, the Petitioner is seeking an order from this Court enforcing the RVO and Atos Sale Order (collectively, the "CCAA Vesting Orders").

4. The Petitioner commenced these Chapter 15 cases and seeks an order granting recognition to each of the Canadian Proceedings substantially in the form of the proposed order annexed hereto as **Exhibit A** (the "Proposed Order"). In particular, the Petitioner is requesting recognition as a foreign representative as defined in section 101(24) of the Bankruptcy Code and

all relief afforded automatically upon recognition of a foreign main proceeding pursuant to sections 1509 and 1520 of the Bankruptcy Code or, in the alternative, discretionary relief pursuant to section 1521 of the Bankruptcy Code, including a stay of the commencement or continuation of any individual action or proceeding concerning the Debtors' assets, rights, obligations or liabilities. In addition, the Proposed Order grants comity and gives full force and effect in the United States to the Initial Order (defined below), including any and all extensions or amendments thereof authorized by the Canadian Court and extending the protections of the Initial Order to the Debtors in the United States on a final basis.

5. The Debtors satisfy all of the requirements set forth in section 1515 of the Bankruptcy Code. In addition, each of the Debtors is eligible to be a debtor under section 109(a) of the Bankruptcy Code. Goli Canada has property in the United States in the form of stock in a United States subsidiary (Goli US) and the Atos Equipment. Goli US is organized in the United States and holds property in the United States in the form of leases of a distribution facility. In addition, both Debtors have an interest in an undrawn retainer in an amount of $25,000 in a non-interest bearing client trust account with Wilmington Savings Fund Society, FSB in Delaware (the "Client Trust Account").

6. Based on the foregoing and the reasons described herein, the Petitioner is entitled to entry of an order granting recognition to the Canadian Proceedings as foreign main proceedings or, in the alternative, as foreign nonmain proceedings, under Chapter 15 of the Bankruptcy Code, as well as related relief under sections 1507, 1509, and 1521 of the Bankruptcy Code.

JURISDICTION AND VENUE

7. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the

District of Delaware, dated February 29, 2012. The Petitioner properly commenced these Chapter 15 cases pursuant to sections 1504 and 1509 of the Bankruptcy Code by filing petitions for recognition of the Canadian Proceedings under section 1515 of the Bankruptcy Code.

8. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Petitioner consents to the entry of a final order by the Court in connection with this Verified Petition to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

9. Venue is proper before the Court pursuant to 28 U.S.C. § 1410, as the Debtors have assets in the United States located in Delaware and such venue is consistent with the interests of justice and the convenience of the parties.

BACKGROUND

I. The Debtors' Corporate Structure, Operations, and Assets and Liabilities

10. On the date hereof (the "Petition Date"), the Petitioner filed with this Court a petition for each of the Debtors under Chapter 15 of the Bankruptcy Code.

A. The Debtors' Corporate Structure

11. Goli Canada was incorporated on October 4, 2018, pursuant to the *Canada Business Corporations Act,* RSC (1985), c. C-44. Goli Canada is domiciled in Saint-Laurent, Québec. The majority and controlling shareholders of Goli Canada are 11028154 Canada Inc. (40.59%) and 11028227 Canada Inc. (40.59%) (collectively, the "Majority Owners"), which are ultimately controlled by Melina del Carmen Ash (the spouse of founder, Deepak Argwal) and Michael Bitensky, respectively. Additionally, 9204-1797 Québec Inc., which is ultimately controlled by

Mr. Martin Leroux, owns 7.95%, of the shares in Goli Canada. The balance of the shares are held by various other entities, including VMG Partners IV L.P., VMG Partners Mentors Circle IV L.P., and BMO Capital Partners.[2] Goli Canada is the sole shareholder of Goli US.[3]

12. Goli US was incorporated on April 30, 2019, pursuant to the General Corporation Law of the State of Delaware. Although a Delaware corporation, Goli US's principal place of business is located at Goli Canada's principal place of business in Montreal, Québec, and all management, operational and financial decisions of Goli US are made by Goli Canada. Goli US only has one board member—Deepak Agarwal, founder of Goli Canada who sits in Montreal. An organizational chart showing the Debtors' corporate structure is annexed hereto as **Exhibit B**.

13. Goli Canada and Goli US are debtors in ***both*** the Canadian Proceedings and these Chapter 15 cases. The Debtors' affairs and operations are conducted on a consolidated basis and directed from Québec. The majority of the Debtors' tangible assets and property (in addition to accounts receivable and inventory) are owned by Goli Canada, some of which is currently stored in a manufacturing and distribution facility located in Norco, California (the "Norco Facility"), which is leased by Goli US (the "Norco Lease"). The Debtors also own inventory located in fulfillment centers in the United States and Canada.

14. As of the date hereof, the Debtors have property in the United States and in this District as summarized below:

Debtor Entity	Asset Description	Situs
Goli Canada	• Stock in Goli US.	• Delaware

[2] BMO Capital Partners, minority shareholder of Goli Canada, and Bank of Montreal, lender and agent under the Credit Facilities (described below) are separate, independent entities.

[3] Goli Canada also owns 25% of the shares of Better Nutritionals, LLC ("BNL"), a California limited liability company currently in a case under chapter 7 of the Bankruptcy Code pending before the United States Bankruptcy Court for the Central District of California, Case No. 6:22-14723. BNL was previously the Debtors' primary manufacturer.

Debtor Entity	Asset Description	Situs
	• Atos Equipment	• California
	• Undrawn retainer in the Client Trust Account	• Delaware
	• Inventory	• United States and Canada
Goli US	• Lease of distribution facility and related equipment and other property.	• California
	• Undrawn retainer in the Client Trust Account	• Delaware

B. The Debtors' Business

15. At its core, the Debtors are a distributor and retailer of organic, vegan and gluten-free nutritional products and supplements that are sold in the form of gummies and bites. The Debtors market and sell a variety of nutritional and dietary supplements under the Goli® brand ("GOLI Products"), including its popular patented Apple Cider Vinegar gummies ("ACV Gummy"). In addition to the ACV Gummy, the Debtors also offer additional GOLI Products, including Ashwagandha gummies, Prebiotics-Probiotics-Postbiotics gummies, Beet Root Cardio gummies, and Women's PMS Relief gummies, amongst others.

16. GOLI Products, are made in the United States from ingredients that have been locally and globally sourced. GOLI Products are sold globally through direct-to-consumer, and wholesale business-to-business channels, such as Amazon, Wal-Mart, Kroger, Walgreens and Target. The Debtors also sell their products through its online website, www.goli.com.

17. The Debtors' headquarters is in Montréal, Quebec, from which all financial, business, managerial, and operational decisions for both Debtors are made.[4] The Debtors operate on a consolidated basis and all of the important decisions are taken in Canada by the senior

[4] *See Judgment on Application for the Issuance of a First Day Initial Order, an Amended and Restated Initial Order and Other Relief, Including the Approval of a Transaction and an Agency Agreement*, No. 500-11-0637787-242 (Mar. 18, 2024), attached hereto as **Exhibit C** ("Judgment").

management of Goli Canada. Judgment, ¶ 83.2. As of the Petition Date, Goli Canada employs approximately 35 employees of which 32 employees are located and employed in Quebec and 3 employees elsewhere in Canada. Goli US employs approximately 4 employees located in various states throughout the United States, all of whom take direction directly from Goli Canada management in Montreal. Additionally, Goli Canada has an outsourcing contract with Liveketo Private Limited based in India, pursuant to which it provides finance, human resources, business intelligence, supply chain and retailer support services to Goli Canada. Goli Canada also has an outsourcing contract with a Philippines entity, pursuant to which it provides customer service, shipping, influencer and sales support services to Goli Canada. All finance, human resources, business intelligence, supply chain, retailer support, customer service, and related services required of Goli US are performed by Goli Canada. Judgment, ¶ 83.6.

18. The Debtors generally distribute their products utilizing third-party logistics providers ("3PL"), such as Amazon and Amware Fulfillment LLC, who handle the shipments to consumers in accordance with the logistics or fulfillment agreements in place between the Debtors and 3PL. A significant portion of GOLI Products are held in 3PL storage facilities until they are sold. As of December 31, 2023, the Debtors owned approximately $3.9 million in gummy and packaging inventory located at 3PL storage facilities, including in Indianapolis, Indiana; Los Angeles, California; and Milton, Ontario, Canada.

C. The Debtors' Manufacturing

19. Between 2018 and 2022, manufacturing of GOLI Products was contracted to BNL. To aid in BNL's performance of these manufacturing contracts and to support BNL's expansion strategy, the Debtors entered into two agreements. First, Goli US entered into the Norco Lease with Saddle Ranch APG LLC, successor in interest to CRPF IV HCD, LLC (the "Norco

Landlord"). The Norco Landlord would not agree to lease the Norco Facility solely to BNL as it lacked the requisite financial wherewithal. To accommodate BNL, Goli US agreed to lease the Norco Facility from the Norco Landlord and agreed with BNL that BNL would occupy the Norco Facility on the condition BNL assume rental obligations and other expenses related to the Norco Facility and guarantee all of the Debtors' obligations under the Norco Lease. The Norco Lease contains an *ipso facto* provision. As described below, BNL ceased making these payments, as well as other payments that led to further defaults under the Norco Lease, causing significant financial difficulties for the Debtors.

20. Second, Goli US assisted BNL in purchasing manufacturing machinery designed to fit the Norco Facility. As with the Norco Lease, BNL lacked the financial wherewithal to finance the purchase alone. Accordingly, Goli US assisted BNL and entered into an equipment financing and services agreement with ATOS IT Solutions and Services, Inc. ("Atos") for the purchase and servicing of state of the art "smart" manufacturing machinery ("Atos Equipment"). BNL agreed to make all payments on the Atos Equipment on Goli US's behalf, and executed a guaranty. While BNL made some payments under the Norco Lease and towards the Atos Equipment, BNL ultimately defaulted. To stave off repossession of the Atos Equipment, Goli Canada entered into a settlement agreement with Atos pursuant to which Goli Canada acquired the Atos Equipment for $32 million.

21. On December 20, 2022, BNL filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. See Case No. 6:22-17723, Dkt. No. 1 (Bankr. C.D. Ca. Dec. 20, 2022). By order dated March 30, 2023, BNL's chapter 11 case was converted to Chapter 7. See Case No. 6:22-17723, Dkt. No. 402 (Bankr. C.D. Ca. Mar. 30, 2023). Effective on April 1, 2023, BNL relinquished its sublease to the Norco Facility and Goli US reassumed the Norco Lease, which was

approved by the bankruptcy court overseeing BNL's Chapter 7 case. See Case No. 6:22-17723, Dkt. No. 374 (Bankr. C.D. Ca. Mar. 21, 2023).

D. Credit Facilities

22. Goli Canada is the borrower under an amended and restated credit agreement dated September 2, 2022 (as amended, the "Senior Credit Agreement") entered into with Bank of Montreal (in its capacity as lender and administrative agent), National Bank of Canada, Fédération des Caisses Desjardins and HSBC Bank Canada (collectively, the "Lenders"). Pursuant to the Senior Credit Agreement, the Lenders provided (a) a revolving credit facility up to a maximum of $50,000,000 USD (the "Revolving Credit Facility"); (b) a term facility up to a maximum of $63,000,000 USD (the "Term Facility"); and (c) credit card facilities (together with the Revolving Credit Facility and the Term Facility, the "Credit Facilities").

23. Goli Canada's obligations under the Credit Facilities are secured by a security on all movable property, present and future, corporeal and incorporeal, of Goli Canada, including, without limitation, the Atos Equipment, all of its intellectual property rights, and all of its shares in Goli US, other than Excluded Property (as this term is defined in the Credit Agreement). Goli US has guaranteed all of Goli Canada's obligations under the Credit Facilities, which guarantee is secured by all of Goli US's assets. Upon a review by the Petitioner, it has been determined that the Lenders' liens are valid and enforceable. Also, based on information in public registries, the Lenders' liens appear to be first ranking.

24. As of the Petition Date, the Lenders hold claims of approximately $100 million, subject to adjustments, against the Debtors, all of which are secured by valid and enforceable first priority security interests.

II. Events Leading to the Filing of the Canadian Proceedings

A. Financial Difficulties

25. The Debtors financial difficulties are generally the result of declining demand for the Debtors' products, certain questionable management and operational decisions, supply chain disruptions, and mounting legal battles. The Debtors have seen their customer base shrink drastically, resulting in decreased gross revenues and gross profit reflected in financial statements for the year ended December 31, 2023. The most significant reduction in the customer base is noted at the direct-to-consumer level, indicating that the Debtors must rely more and more on wholesalers and business-to-business operations.

26. In parallel, the Debtors experienced material inventory management, quality, and aging issues resulting in high levels of customer returns. The Debtors' primary product, the GOLI gummies, generally expire approximately 18 months after production. Therefore, the Debtors face a strict timeline to market, distribute, and sell inventory immediately following production. Notwithstanding the indicated product expiry dates, many wholesalers impose additional earlier expiry deadlines on the products they accept to sell from distributors.

27. From December 2021 to December 2023, the book value of the Debtors' inventory decreased from $70m to $5.1m. This shortfall stems from significant inventory obsolescence issues as revenues declined, resulting in inventory write-offs and discounted liquidation sales. Considering the heavy reliance of wholesalers to the Debtors' operations and declining direct-to-consumers customers, this materially impacted the Debtors' recent financial performance and resulted in high levels of customer returns. As a result, the Debtors are over-leveraged, and have recurring operating losses, working capital deficiencies, and insufficient cash flow to meet their obligations as they become due.

28. Additionally, as a result of the Debtors' cash-flow issues it has, at times, been unable to pay suppliers and manufacturers in a timely manner, which has created disputes with affected suppliers and at times led to the withholding of shipments or implementation of various payment plans. Finally, as a result of significant arrears outstanding under the Norco Lease, the Debtors are a risk of being evicted from the Norco Facility. As described above, the Debtors entered into the Norco Lease with the Norco Landlord and subleased the Norco Lease to BNL. Unfortunately, BNL was unable to make these payments. At the risk of being evicted from the Norco Facility—along with the repossession of crucial Atos Equipment inside the Norco Facility by lienholder Atos IT Solutions and Services, Inc.—the Debtors were left with no choice but to resolve such matters directly (*i.e.* Goli Canada made a settlement payment of $32m to acquire the Atos Equipment and Goli US assumed payment of the Norco Lease).

29. Since assuming primary responsibility for the Norco Lease, the Norco Landlord has issued several notices of default for rental arrears, the most recent being on March 12, 2024, wherein the Norco Landlord demanded immediate payment of past due rent or turnover of possession of the Norco Facility. The Debtors are in arrears on the Norco Lease in the approximate amount of $510,000, representing unpaid rent for the month of March 2024. On February 29, 2024, the Norco Landlord applied a portion of its deposit in payment of the previous outstanding rental arrears (leaving a deposit balance of approximately $1.2m) and requested that the Debtors replenish said deposit within 10 days. Since the Debtors will not be able to replenish the deposit and have not paid rent for the current month, they are now at serious risk of being evicted from the Norco Facility, and denied access to the Norco Facility where the Atos Equipment is located.

B. Pre-Petition Restructuring Efforts and SISP

1. Pre-Filing Restructuring Efforts

30. In an attempt to remedy their financial difficulties, the Debtors endeavored, without success, to implement operational restructuring efforts beginning in May 2023. By such efforts, the Debtors tried to rationalize operations in the United States, Canada, and worldwide by developing strategies to improve profitability and conducting a review of their operations to identify potential synergies and costs savings across the board. Many changes were made, including but not limited to: (i) negotiating the early termination of a leased office space and the non-renewal of other leased office space as, following the COVID-19 pandemic, most of the Debtors' employees were working from home; (ii) developing a new pricing strategy for both retailers and direct-to-consumers; (iii) reducing their workforce and payroll (including refraining from paying bonuses to management and equity drawing no salary); (iv) terminating any non-essential services; (v) engaging in negotiations with various vendors, service providers and suppliers for additional cost savings; (vi) settling (whether for monetary amounts or otherwise) certain legal disputes to try to avoid the substantial continued expense of further litigation; and (vii) subletting portions of the Norco Facility to help with the financial burden. Unfortunately, these efforts alone were not sufficient to offset the ongoing cash flow problems the Debtors suffered over the last several months or to allow the Debtors to pay liabilities as they become due.

31. As part of their strategic review of capital and business alternatives, with the support and input of the Lenders, the Debtors and their advisors implemented a Sale and Investment Solicitation Process (the "SISP") for the Debtors, their assets, and business. The objective of the SISP was to identify one or more transactions in respect of a potential sale, investment in, or refinancing of all or part of the business and/or assets of the Debtors that could, ideally, permit the Debtors to repay its substantial secured indebtedness, with any balance to be

used to pay other debt and allow for the continuation of all or part of the Debtors' activities on a going concern basis.

32. The SISP began in June 2023 and concluded in January 2024. As described below, the long and comprehensive sale and marketing process included: (i) the creation of a process for identifying and notifying potentially interested purchasers and/or investors; (ii) the preparation of bidding procedures; (iii) the creation of a protocol for the selection of a successful bidder; and (iv) the establishment of procedures and requirements for approval of any proposed transaction.

2. The Execution and Results of the SISP

33. With the support, cooperation, and input of the Lenders, the Debtors engaged the services of BMO Capital Markets ("BMOCM") to develop and implement the SISP. In accordance with the SISP procedures, BMOCM, with the assistance of the Debtors, prepared and/or maintained all SISP related documents (including the preparation of a teaser letter, a target list of potential Purchaser or investors, and confidentiality agreements) and provided all required information to potential bidders. The Petitioner, then acting as financial advisor for the Lenders, was kept apprised of the progress of the SISP.

34. In June 2023, BMOCM delivered a teaser letter (the "Teaser") to forty-two (42) potential bidders from both strategic and financial sectors. Two (2) other potential bidders were also contacted directly by BMOCM, for a total of forty-four (44) potential bidders. The Teaser invited potential bidders to submit (i) a confidentiality agreement to access the Debtors' virtual data room (the "VDR"), and (ii) a non-binding letter of intent for the entirety of the Debtors' business and assets, including the Atos Equipment. Ultimately, twenty-nine (29) parties signed confidentiality agreements and were invited to submit non-binding letters of intent by no later than August 8, 2023.

35. On August 8, 2023, the Debtors received four (4) non-binding letters of interest for their business (excluding the Atos Equipment). The Debtors received an additional letter of interest from a late entrant in November 2023.

36. On October 31, 2023, BMOCM sent a process letter to five (5) interested parties inviting the submission of final, binding proposals and including a draft definitive sale agreement for review and mark-up. The Debtors set the deadline for submission of proposals as November 14, 2023 ("Binding Proposal Deadline"). No binding offers were received by BMOCM or the Debtors by the Binding Proposal Deadline.

37. BMOCM continued its efforts to advance a transaction with interested parties and to facilitate due diligence requests, but several of the parties raised concerns regarding the Debtors' operating results and required more time for the Debtors to demonstrate an improvement in its results. A number of the interested parties undertook financial and commercial due diligence from September 2023 to January 2024. However, none of these parties decided to proceed with submitting a binding offer to acquire the Debtors.

3. The Debtors Enter Into the Subscription Agreement

38. On January 15, 2024, considering the worsening liquidity position of the Debtors and the failure of the SISP to generate a binding offer, the Purchaser submitted a LOI to Goli Canada (the "Initial Purchaser LOI"). The terms of the Initial Purchaser LOI provided for a rapid transaction that would preserve the value of the business as a going concern and allow it to continue its operations.

39. The transaction value put forward in the Initial Purchaser LOI was significantly less than the amount owed to the Lenders under the Credit Facilities. Accordingly, being the stakeholder with the primary economic interest in the outcome of the transaction, over the next

three (3) weeks, the Lenders negotiated enhanced terms, including an increase to the proposed transaction value.

40. On February 3, 2024, the Purchaser entered into a non-binding LOI with the Lenders, pursuant to which the Lenders agreed to work towards the drafting and execution of a definitive agreement in respect of the contemplated transaction. This culminated in the Subscription Agreement.

41. On March 15, 2024, Goli Canada entered into the Subscription Agreement with the Purchaser pursuant to which the Purchaser agreed to subscribe for new shares in Goli Canada (*i.e.*, the Subscribed Shares) and effectively acquire 100% of the equity interest in Goli Canada in accordance with the terms and conditions of the Subscription Agreement. Goli Canada, will, in turn, cancel and terminate all of its existing shares so that the Purchaser may become the sole shareholder of Goli Canada.

42. The Principal Transaction is intended to be approved and implemented under the CCAA pursuant to a reverse vesting order (*i.e.*, the RVO) and thereafter recognized and enforced in the United States in these Chapter 15 cases. Certain excluded assets (including notably the Atos Equipment and shares of Goli US), contracts and liabilities will be vested out of Goli Canada and transferred to a "Residual Co." as part of the contemplated RVO structure.

43. Under the terms of the Subscription Agreement, consideration payable by the Purchaser will include a cash payment, the payment of any priority claims of Goli Canada and payment of certain amounts to cover the professional fees of the Petitioner, its legal counsel and legal counsel to the Lenders in connection with the Sale Transactions, the Canadian Proceedings, and this Chapter 15 Case.

44. Pursuant to the terms of the Subscription Agreement, closing of the Principal Transaction is scheduled to occur on or around April 11, 2024, subject to the required court approvals, or as otherwise agreed upon by the Debtors and the Purchaser with the consent of the Petitioner and the Lenders (the "Closing Date"). The transaction is not subject to any financing condition and the Purchaser have provided certain documents to the Lenders and the Petitioner to demonstrate its ability to fund the transaction value.

45. Closing of the Subscription Agreement is conditional on approval of the Principal Transaction pursuant to the issuance of the RVO by the Canadian Court and the recognition and enforcement thereof in the United States.

4. Disposition of the Atos Equipment

46. As noted above, the four non-binding indications of interest for the Debtors' business received in August 2023 excluded the Atos Equipment. However, in the same month, the Debtors received a separate indication of interest from another party for the Atos Equipment. Such party was granted access to the VDR and visited the Norco Facility to conduct due diligence.

47. Following due diligence of the Norco Facility and the Atos Equipment, it became clear that the party was not interested in moving forward. Left with no other options, Goli Canada, with the consent of the Lenders, engaged in a process to liquidate the Atos Equipment through an auction. After receipt of multiple proposals and extensive negotiations, Goli Canada and the Lenders selected Gordon Brothers Commercial & Industrial, LLC acting on behalf of a contractual joint venture between itself and Brandford Auctions, LLC (the "Agent"). The proposal by the Agent (through which the Agent would serve as the agent of Goli Canada in the conduct of the sale) ultimately offered the highest guaranteed return and, given their familiarity and knowledge of the equipment, Goli Canada and the Lenders believe that they are best positioned to sell the

Atos Equipment at maximum value. On March 15, 2024, Goli Canada entered into an agency agreement with the Agent for the purpose of liquidating the Atos Equipment for the benefit of Goli Canada's creditors ("Agency Agreement"). Pursuant to the Agency Agreement, the Agent will provide a net minimum guarantee, a portion of which will be paid in advance of the sale, and the Agent will share any further proceeds realized from the sale of the Atos Equipment with Goli Canada. The Agent is also entitled to mark up the price of the Atos Equipment by a certain percentage and to retain the benefit of that markup as compensation for its services.

48. Pursuant to the Agency Agreement, the Agent has specified they will require a period commencing as at the date of the Agency Agreement, namely March 14, 2024, and expiring on June 30, 2024 of peaceful access to the Norco Facility where the Atos Equipment is located to complete the sale and auction process, during which time Goli US will pay occupation rent and certain other related expenses. All amounts payable to Goli Canada under the Agency Agreement are to be made to the Monitor for the benefit of the creditors.

49. As security for all obligations of Goli Canada to the Agent under or in connection with the Agency Agreement, the Atos Equipment and all proceeds thereof including all proceeds from sales of the Atos Equipment shall be subject to a first ranking charge and security in favor of the Agent, as contemplated in the Atos Sale Order.

50. The implementation of the Agency Agreement is conditional on approval of the Agency Agreement by the Canadian Court and the recognition and enforcement of the Atos Sale Order.

C. The RVO

51. The Subscription Agreement is the culmination of the Debtors' nearly year-long efforts to restructure. Through the Canadian Proceedings, the Debtors seek to implement a strategy

that will enable Goli Canada to exit the Canadian Proceedings as a viable going-concern business and, at the same time, maximize the value of the Debtors' business for the benefit of stakeholders. Key features and aspects of the Principal Transaction can be summarized as follows:

(a) based on the price payable under the Subscription Agreement, all the Lenders are suffering a significant shortfall on their senior secured position such that no recovery would be expected for any other secured or unsecured creditors under the Principal Transaction, regardless of the structure employed;

(b) creditors and other stakeholders of the Debtors affected by the Principal Transaction will not be in a worse position than they would be if the transaction was implemented pursuant to a traditional asset sale or similar structure;

(c) the Subscription Agreement provides for various unsecured and contingent liabilities to be assumed by the Purchaser;

(d) various agreements, licenses and authorizations are part of the purchased assets that must be transferred to the Purchaser as part of the Principal Transaction. It will be more complicated and costly to transfer these assets under a traditional sale order or other structure since consents, approvals or authorizations may be required. An RVO structure will minimize the risks, costs or delays of having these assets transferred; and

(e) all options, securities and other rights held by any person that are convertible or exchangeable for any securities of Goli Canada shall terminate or be cancelled; and

(f) the completion of the Principal Transaction will allow for the Debtors to continue operations as a going concern, resulting in (i) the potential for employees to preserve their employment; (ii) suppliers of goods and services being able to maintain their business relationships with the Debtors; and (iii) many of the contractual distribution arrangements remaining intact without need for the Debtors to take further steps.

52. The Principal Transaction contemplated under the Subscription Agreement has been structured as a so-called "reverse vesting" transaction. The Purchaser would not have entered into the Subscription Agreement and would not consummate the purchase of the Subscribed Shares and the related transactions, thus adversely affecting the Debtors, their estates, and their creditors, and other parties in interest, if the sale of the Subscribed Shares to the Purchaser was not free and

clear of all liens, claims, encumbrances, and other interests. In sum, instead of providing for a traditional asset sale transaction where all purchased assets are purchased and transferred to the purchaser on a "free and clear" basis, the Principal Transaction provides for a transaction whereby, essentially:

(a) the Purchaser will subscribe for and purchase new shares of Goli Canada, which will, in turn, cancel and terminate all of its existing shares so that the Purchaser may become the sole shareholder of Goli Canada; and

(b) all excluded contracts, excluded assets, and excluded liabilities with respect to the Debtors (including the Atos Equipment and the shares of Goli US) will be transferred and "vested out" to a Canadian corporation (Residual Co.) to be incorporated by Goli Canada in advance of the Closing Date, so as to allow the Purchaser to indirectly acquire Goli Canada's business and other assets, including, for the avoidance of doubt, all of the Debtors' assets, licenses, undertaking, and properties of every kind whatsoever and wherever situated, including property held in trust for the Debtors on a "free and clear" basis.

53. The Subscription Agreement was structured as a reverse vesting transaction primarily because Goli Canada maintains various licenses that are required to maintain its operations, as well as in-progress trials and testing programs that are proceeding under and in the name of Goli Canada. Under a traditional asset sale transaction structure, some of these licenses would be difficult to transfer to a purchaser and, to the extent that such transfer is possible, the steps required to proceed with such a transfer would likely result in additional delays, costs and uncertainty. The Purchaser were willing to enter into the Subscription Agreement on the understanding that the Primary Transaction could be completed quickly and with certainty that the key licenses would be transferred. As the Debtors are facing significant liquidity constraints, the delays, costs and uncertainty associated with transferring or obtaining new permits and licenses would have a detrimental impact on the Goli's business. Therefore, the Subscription Agreement's

structure as a reverse vesting transaction is appropriate and necessary to give effect to the Primary Transaction given the following:

(a) A reverse vesting-order structure allows for the licenses, registrations, permits, and certifications that are essential to the Debtors' operations to remain in place. These include, among others, licenses, registrations, permits, and certifications granted by various food, health, and other authorities across the world, which are essential to its operations.

(b) For instance, in Canada alone, Goli Canada holds:

i. various natural-health-product licenses issued by the Minister of Health in according with section 7 of the Natural Health Products Regulations, SOR/2003-196 (the "NHP Licenses"), which are required in order to sell, market, and distribute its products in Canada. For illustrative purposes, the standard delay, according to the Natural and Non-Prescription Health Product Directorate (the "NNPHPD"), to get a NHP License is 60 days for a Class I product, 90 days for a Class II product, and 210 days for a Class III product. However, the NNPHPD frequently exceeds such delays. Goli Canada showed longer delays for its own products. The vast majority of GOLI Products are classified as Class III, including the Debtors' most popular products;

ii. a site license issued by the Minister of Health in accordance with section 29 of the Natural Health Products Regulations, SOR/2003-196, which is required in order to import its licensed natural health products in Canada;

iii. an import license issued by the Canadian Food Inspection Agency under the Safe Food for Canadians Act (S.C. 2012, c. 24), which is required to import its apple-cider vinegar food-product gummies;

iv. Goli Canada's GS1 license, which holds all of Goli Canada's unique identifiers (UPCs and GTINS) necessary for the sale of GOLI Products with various retailers, online marketplaces, distributors, and other partners. Goli Canada has approximately 400 existing UPCs, which represents a substantial portion of Goli Canada's product catalog and market presence. These UPCs are registered with over 30 different retailers. Changes to UPCs could take 6- 9 months to implement, involve a significant amount of paperwork, and present logistical challenges (such as needing to update all new items with Goli Canada's 3PLs, relisting all items on each of the retailer-specific platforms, and recreating all new labels with the new barcodes) as well as strategic challenges. Such changes could hinder market presence and risk losing shelf space with important

retailers as well as require reprinting all labels with the new UPCs; and

v. Various brand and trademark registrations in international markets required to obtain regulatory permits and product registrations with the applicable authorities.

(c) Those delays mentioned above will render the implementation of the Principal Transaction impossible. Indeed, the Debtors simply do not have required liquidity to wait that long to close the Principal Transaction. Moreover, the Lenders are unlikely to support any transaction which could take a minimum of 7 months to materialize.

(d) The Lenders are the sole stakeholders that have a financial interest in the Principal Transaction and, therefore, the reverse vesting order structure is not prejudicing any creditor in the present instance.

54. The reverse vesting structure will also allow the Debtors to maintain all of their licenses and intellectual property without requiring any additional steps or regulatory approvals to transfer them to the Purchaser. The Purchaser was willing to enter into the Subscription Agreement on the understanding that the Primary Transaction could be completed quickly and with certainty that the key licenses would be transferred. As the Debtors are facing significant liquidity constraints, the delays, costs, and uncertainty associated with getting licenses transferred is not a viable option.

55. Under a traditional vesting order structure, the transfer of such permits, registrations, licenses, and certifications would involve a complex transfer and/or new application process of indeterminate risk, which as illustrated above, would interrupt or delay the continued operations of Goli Canada, impact current relationships and partnerships with third parties, and lead to regulatory challenges and significantly increased costs that could ultimately jeopardize the Sale Transaction as well as the value of the business.

56. In light of the foregoing, the Petitioner, in its capacity as an officer of the Canadian Court, is confident that the market has been thoroughly canvassed and there is no other viable

alternative transaction available to the Debtors. The only going-concern option that results in an ongoing customer or supplier for contract counterparties, among other benefits, are the transactions with the Purchaser under the Subscription Agreement, which are to be implemented through a reverse vesting structure. The RVO represents the best outcome for all of the Debtors' stakeholders.

57. At the request of the Debtors and the Purchaser, the RVO provides for releases and protections in favor of: (i) Goli Canada and certain of its directors and officers, and (ii) the Purchaser and its present and former directors, officers, employees, shareholders, legal counsel and advisors (the "Released Parties"). The releases cover any and all present and future claims against the Released Parties based upon any fact or matter of occurrence related to the Principal Transaction or the Debtors, their assets, business or affairs or administration of the Debtors, subject to certain limited exceptions.

58. Further, the releases provided in the Subscription Agreement and RVO explicitly do not release or discharge: (a) any claim that is not permitted to be released pursuant to the CCAA; (b) any claims against the directors or officers of Goli Canada that: (i) relate to contractual rights of one or more creditors; or (ii) is based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors; or (c) any obligations of any of the Released Parties under or in connection with the Subscription Agreement, the closing documents, and/or the consummation of the Principal Transaction.

59. The Petitioner, in its capacity as an officer of the Canadian Court, believes that the Subscription Agreement is fair and reasonable under the circumstances and is generally beneficial to the Debtors' stakeholders, inclusion its creditors, employees, and trading partners. In that regard the Petitioner has considered that the Principal Transaction is supported by the Lenders, which

have the primary economic interest in the Debtors' assets. and that the Principapl Transaction will allow for the continuation of the Debtors' business as a going concern. Moreover, the reverse vesting structure of the Principal Transaction is necessary and appropriate to preserve the going-concern value of the Debtors' business and produces an economic result more favorable than the available alternatives. Indeed, the Petitioner is confident, given the results of the SISP and the Lenders' support for the CCAA Initial Application, that the Principal Transaction is the ***only*** viable going-concern transaction available to the Debtors that will allow Goli Canada to exit the Canadian insolvency proceedings, and continue its business.

D. The Atos Sale Order

60. In addition, the Debtors have negotiated and finalized the terms of a second and separate transaction to implement the liquidation of the Atos Equipment. As described above, the Debtors have entered into the Agency Agreement with the Agent pursuant to which the Agent shall be engaged for the purpose of proceeding with the orderly liquidation of the Atos Equipment.

61. The Agency Agreement contains certain indemnification provisions and limitations of liability in favor of the Agent in connection with its performance under the Agency Agreement.

62. The Agency Agreement, like the Subscription Agreement, has been concluded based on the results of the SISP. Given the extensive marketing process and other protections provided by the SISP, the Petitioner believes that the Agency Agreement is fair and reasonable under the circumstances, and provides the highest and best value to the Debtors and their stakeholders for the Atos Equipment. The proposal by the Agent (through which the Agent would serve as the agent of Goli Canada in the conduct of the sale) ultimately offered the highest guaranteed return and, given their familiarity and knowledge of the equipment, Goli Canada and the Lenders believe that they are best-positioned to sell the Atos Equipment at maximum value.

All amounts payable to Goli Canada under the Agency Agreement are to be made to the Petitioner for the benefit of the creditors. In accordance with the Atos Sale Order, as security for all obligations of Goli Canada to the Agent under or in connection with the Agency Agreement, the Agent is granted a first priority security lien in the Atos Equipment and all proceeds from sales thereof in accordance with the Agency Agreement. Given the above, the Petitioner is also confident that the Agency Agreement is the best way to maximize the value of the Atos Equipment.

III. The Canadian Proceedings

63. On March 15, 2024, the Debtors commenced the Canadian Proceedings by filing an application (the "CCAA Initial Application") with the Canadian Court. Contemporaneously, the Petitioner served its pre-filing report attached hereto as **Exhibit D** ("First Report"). On March 18, 2024, the Canadian Court entered an initial order (the "Initial Order"), a true and correct copy of which is annexed hereto as **Exhibit E.** The Petitioner, by virtue of its appointment as Monitor by the Canadian Court, is subject to the supervision and oversight of the Canadian Court with respect to the performance of its duties.

64. Pursuant to the Initial Order, the Canadian Court expressly authorized the Petitioner to seek recognition of the Canadian Proceedings under Chapter 15 of the Bankruptcy Code and ancillary relief in respect thereto. Specifically, the Initial Order provides, in relevant part, that

> [the Petitioner] may act as a 'foreign representative' of the [Debtors] or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada
>
> ***and further that***
>
> the [Petitioner] shall be authorized to apply and act as 'foreign representative' of the [Debtors] as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the [Initial Order] and any subsequent orders of [the Canadian Court] and, without limitation to the foregoing, an order under Chapter 15 of the U.S. *Bankruptcy Code* (*US Code*, Title 11). All courts and administrative

> bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor or the Applicants as may be deemed necessary or appropriate for that purpose.

Initial Order ¶¶ 31(*l*), 53. In addition, the Canadian Court requested "the aid and recognition of . . . any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this [Canadian Court] in carrying out the terms of the [Initial] Order" and found that "the Province of Quebec, Canada is the '*center of main interest*' of [the Debtors]." Initial Order ¶¶ 54, 55.

65. The Initial Order also provides for a broad stay of proceedings in favor of the Debtors. In particular, for an initial ten-day period through and including March 27, 2024 (the "Stay Period"), "no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the [Debtors], or affecting the [Debtors'] business operations and activities (the "Business") or the Property … except with leave of this Court." Initial Order, ¶ 10.

66. By the CCAA Initial Application, the Debtors indicated they would request (i) entry of the RVO approving the sale of the Subscribed Shares pursuant to the Subscription Agreement, and (ii) entry of the Atos Sale Order approving the Agency Agreement, pursuant to which the Agent will sell the Atos Equipment.

67. On March 27, 2024, the Canadian Court will hold a hearing (the "Comeback Hearing") to approve an extension of the automatic stay that is in place in the CCAA Proceedings. Initial Order, ¶ 45. The Debtors are also requesting a subsequent hearing to take place approximately one week after the Comeback Hearing for the Canadian Court to consider approval of the Sale Transactions (the "CCAA Sale Approval Hearing"). The Petitioner anticipates that the

Canadian Court will approve the Sale Transactions and enter the CCAA Vesting Orders at or shortly following the CCAA Sale Approval Hearing.

RELIEF REQUESTED

68. The Debtors' primary goals for the Canadian Proceedings and these Chapter 15 case are:

(a) To stay ongoing and potential proceedings against the Debtors and their assets in order to preserve the status quo and be able to implement Sale Transactions;

(b) To seek approval and recognition of the Subscription Agreement and the sale of the Subscribed Shares as provided thereunder pursuant to the RVO; and

(c) To seek approval of the sale of the Atos Equipment on the terms set forth in the Agency Agreement pursuant to the Atos Sale Order.

69. Pursuant to the Initial Order, the Canadian Court expressly authorized the Petitioner to seek recognition of the Canadian Proceedings under Chapter 15 of the Bankruptcy Code in this Court, and ancillary relief in respect thereto. The Petitioner commenced these Chapter 15 cases and seeks an order substantially in the form of the Proposed Order. In particular, the Petitioner is requesting all relief afforded automatically upon recognition of a foreign main proceeding pursuant to sections 1509 and 1520 of the Bankruptcy Code and, in the alternative, upon recognition as a foreign nonmain proceeding, discretionary relief available under section 1521 of the Bankruptcy Code. Separately, the Petitioner also seeks provisional relief to maintain the status quo and protect the Debtors' United States operations and assets until this Court considers approval of the Verified Petition and entry of the Proposed Order. The Petitioner submits that this Court's assistance is necessary to protect the Debtors' rights and assets and, ultimately, to implement their restructuring through the Canadian Proceedings.

STATUTORY BASES FOR RECOGNITION OF CANADIAN PROCEEDINGS

70. Chapter 15 of the Bankruptcy Code was specifically designed to assist foreign representatives, such as the Petitioner, in the performance of their duties. One of the primary objectives of Chapter 15 is the "fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor." 11 U.S.C. § 1501(a)(3).

71. Consistent with these principles, the Petitioner commenced ancillary proceedings for the Debtors under Chapter 15 of the Bankruptcy Code to obtain recognition of the Canadian Proceedings, and certain related relief. The Petitioner believes that these chapter 15 cases will complement the Debtors' primary proceedings in Canada to ensure the effective and economic administration of the Debtors' restructuring efforts and prevent adverse actions in the United States. Further, the Petitioner submits that recognition of the Canadian Proceedings and the related relief requested herein will not undermine the rights that United States creditors typically would enjoy in a chapter 11 case.

I. The Debtors are Eligible for Chapter 15 Relief

72. Certain courts in this district have held that the requirements of section 109(a) of the Bankruptcy Code do not apply in chapter 15 cases. *See, e.g., Hr'g Tr. 8:19-9:10, In re Bemarmara Consulting A.S.*, Case No. 13-13037 (Bankr. D. Del. Dec. 17, 2013), D.I. 38 (holding section 109(a) did not apply to chapter 15 case); *In re Metinvest B.V.*, Case No. 17-10130 (LSS) (Bankr. D. Del. Feb. 8, 2017), D.I. 19 (same). However, the United States Court of Appeals for the Second Circuit has adopted a different approach. *See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 247 (2d Cir. 2013) ("Section 109 . . . applies 'in a case

under chapter 15.'"). Regardless, to the extent section 109(a) of the Bankruptcy Code is applicable in a Chapter 15 case, the debtor-eligibility requirements are satisfied here.

73. Section 109(a) states, in relevant part, that "only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title." 11 U.S.C. § 109(a). *See In re Octaviar Administration Pty Ltd.*, 511 B.R. 361, 373 (Bankr. S.D.N.Y. 2014) ("[T]he Court must abide by the plain meaning of the words in the statute. Section 109(a) says, simply, that the debtor must have property; it says nothing about the amount of such property…."); *see also In re Suntech Power Holding Co. Ltd.*, 520 B.R. 399 (Bankr. S.D.N.Y. 2014) (same).

74. Each of the Debtors is eligible to be a debtor under section 109(a) of the Bankruptcy Code. *First,* Goli Canada is eligible to be a debtor because Goli Canada has property in the United States in the form of (a) stock in Goli US, a United States corporation,[5] (b) the Atos Equipment located in the United States, (c) inventory located in 3PL facilities throughout the United States, and (d) Goli Canada has an interest in unearned portions of a retainer provided to local Delaware counsel. *Second*, Goli US is eligible to be a debtor because (a) it has a place of business in the United States[6] as it continues to wind down operations at the Norco Facility, and (b) it has property in the United States in the form of (i) a lease of the Norco Facility and (ii) an interest in unearned portions of a retainer provided to local Delaware counsel.

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[5] Stock of a Delaware corporation constitutes property in Delaware. *See In re Glob. OCEAN CARRIERS Ltd.*, 251 B.R. 31, 37 (Bankr. D. Del. 2000).

[6] A *principal* place of business is not required to satisfy Section 109(a)'s requirement, rather it is merely "*a*" place of business. *In re Zais Inv. Grade Ltd. VII*, 455 B.R. 839, 844 (Bankr. D.N.J. 2011) (emphasis original) (citing *In re Paper I Partners, L.P.,* 283 B.R. 661, 672 (Bankr. S.D.N.Y. 2002)).

II. These Cases are Proper under Chapter 15

75. Chapter 15 of the Bankruptcy Code provides a mechanism for a foreign representative to obtain, in the United States, recognition of, and assistance for, a foreign proceeding. *See* 11 U.S.C. § 1501(b)(l). Chapter 15 recognition shall be granted if: (a) recognition is sought for a "foreign proceeding" that qualifies as either "foreign main" or "foreign nonmain;" (b) recognition is sought by a "foreign representative;" and (c) the Chapter 15 petition meets certain procedural requirements. *See* 11 U.S.C. § 1517(a). The legislative history to Chapter 15 provides that:

> The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of [section 1517], which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition.

H.R. Rep. 109-31, pt. 1 (2005). Thus, recognition under sections 1517(a) and (b) of the Bankruptcy Code is mandatory where, as here, a Chapter 15 petition meets the statutory requirements.

A. Each of the Canadian Proceedings is a Foreign Proceeding

76. Each of the Canadian Proceedings is a foreign proceeding entitled to recognition under Chapter 15 of the Bankruptcy Code. Courts in this District have consistently held that proceedings under the CCAA are foreign proceedings entitled to relief under chapter 15 of the Bankruptcy Code. *See, e.g, In re Xebec Holding USA Inc.*, No 22-10934 (Bankr. D. Del. Sep. 30, 2022); *In re Spectra Premium Corp.*, No. 20-10614 (Bankr. D. Del. Mar. 11, 2020); *In re Motorcycle Tires & Accessories LLC*, No. 19-12706 (Bankr. D. Del. Jan. 22, 2020);. *In re Kraus Carpet Inc.,* No. 18-12057 (Bankr. D. Del. Oct. 1, 2018); *In re Artic Glacier Int'l Inc.,* No. 12-10605 (Bankr. D. Del. Mar. 16, 2012).

77. A foreign proceeding has seven elements:

> (i) [the existence of] a proceeding; (ii) that is either judicial or administrative; (iii) that is collective in nature; (iv) that is in a foreign country; (v) that is authorized or conducted under a law related to insolvency or the adjustment of debts; (vi) in which the debtor's assets and affairs are subject to the control or supervision of a foreign court; and (vii) which proceeding is for the purpose of reorganization or liquidation.

See In re ABC Learning Centres Ltd., 445 B.R. 318, 327 (Bankr. D. Del. 2010), *aff'd*, 728 F.3d 301 (3d Cir. 2013) (citation omitted); 11 U.S.C. § 101(23). As set forth below, the Canadian Proceedings satisfy all of the elements.

78. For the purpose of Chapter 15 recognition, "the hallmark of a 'proceeding' is a statutory framework that contains a company's actions and that regulates the final distribution of a company's assets" and includes "acts and formalities set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice." *Flynn v. Wallace (In re Irish Bank Resolution Corp.*), 538 B.R. 692, 697 (D. Del. 2015) (quoting *In re Betcorp Ltd.*, 400 B.R. 266, 278 (Bankr. D. Nev. 2009)). Here, the relevant statutory framework is provided by the CCAA, a federal statute in Canada. *See* Zucker Declaration ¶¶ 14, 17. The CCAA is "Canada's analogue of Chapter 11 of our Bankruptcy Code." *In re Artic Glacier Inter'l, Inc.*, 901 F.3d 162, 164 (3d Cir. 2018). "The CCAA provides for a court-supervised reorganization procedure designed to enable financially distressed companies to avoid foreclosure or seizure of assets while maximizing the company's value as a going concern for the benefit of creditors and other parties in interest." *In re U.S. Steel Canada Inc.*, 571 B.R. 600, 611 (Bankr. S.D.N.Y. 2018); *see also* Zucker Declaration ¶ 17. Because the Canadian Proceedings are subject to the CCAA, a statutory framework, they are each a "proceeding" within the meaning of 11 U.S.C. §101(23).

79. Second, the Canadian Proceedings are clearly judicial in nature given the substantial oversight by the Canadian Court. *See* Zucker Declaration ¶ 19 (the Canadian Court has

broad discretion "to make any order that it considers appropriate in the circumstances" on application by any person interested in the matter). Moreover, all interested persons, including creditors, have access to the Canadian Court and may file an application seeking relief. *See id*. The judicial character of the Canadian Proceedings is readily apparent as the Canadian Court appointed the Petitioner as the Monitor of the Debtors. The Petitioner is an officer of the Canadian Court and is entrusted with monitoring the business and financial affairs of the Debtors and reporting to the Canadian Court on material matters. *See* Zucker Declaration ¶ 22. In some cases, the monitor will also be granted expanded powers to implement the restructuring process for and on behalf of the debtor company. *Id*. Moreover, the Canadian Court expressly authorized the Petitioner to file these Chapter 15 cases and to seek an order granting recognition to the Canadian Proceedings in the United States. *See* Zucker Declaration ¶ 8. Thus, the Canadian Proceedings are judicial in character.

80. Third, the Canadian Proceedings are collective in nature. A proceeding is "collective" if it considers the rights and obligations of all creditors. *See In re ABC Learning*, 445 B.R. at 328; *see also In re Ashapura Minechem Ltd*., 480 B.R. 129, 136 (Bankr. S.D.N.Y. 2012) (A proceeding is collective in nature if it "considers the rights and obligations of all creditors."). "The 'collective proceeding' requirement is intended to limit access to Chapter 15 to proceedings which benefit creditors generally and to exclude proceedings which are for the benefit of a single creditor." 8 *Collier on Bankruptcy* ¶ 1501.03[1] (16th ed. Rev. 2019). A proceeding under the CCAA is collective because it is designed to "facilitate compromises and arrangements between companies and their creditors" and to address creditors' claims against a debtor. Zucker Declaration ¶¶ 17, 24.

81. Fourth, the Canadian Proceedings are pending in a foreign country. The Canadian Court, which is overseeing the Canadian Proceedings, is located in Québec, Canada. Likewise, the Petitioner is located in Canada and is monitoring the restructuring of the Debtors from Canada under the auspices of the CCAA.

82. Fifth, the Canadian Proceedings were initiated under a law relating to insolvency or adjustment of debt. The Canadian Proceedings were commenced under the CCAA, a Canadian federal statute, which provides for the liquidation or reorganization of a debtor. *See* Zucker Declaration ¶ 25. Consequently, the CCAA constitutes a law relating to insolvency or the adjustment of debt.

83. Sixth, the Canadian Proceedings subject the Debtors' assets and affairs to a foreign court's control or supervision. Upon entry of the Initial Order, the Debtors' assets became subject to the supervision of the Canadian Court. *See* Zucker Declaration ¶ 15. Indeed, the Canadian Court appointed the Petitioner as Monitor, an officer of the court, to monitor the Debtors' business and financial affairs. Moreover, various parties, including creditors, have access to the Canadian Court and may seek relief from the court to "make any order that it considers appropriate in the circumstances." *See* Zucker Declaration ¶ 19.

84. Finally, the Canadian Proceedings are for the purpose of reorganizing or liquidating the Debtors. *See* Zucker Declaration ¶ 25 (noting that a company can liquidate or reorganize under the CCAA). As described in the Zucker Declaration, a debtor may seek to reorganize by proposing a plan of compromise or arrangement to be voted upon by creditors, and if approved by the requisite majority of creditors, implemented with the approval of the Canadian Court. *See id*. In addition, a debtor may sell or liquidate its assets outside of the ordinary course of business with court approval pursuant to Section 36 of the CCAA. *Id*. Further, a debtor may dispose of assets

through an RVO-structured transaction.[7] Zucker Declaration ¶ 32. Here, the Debtors are implementing a restructuring centered around the sale of the Debtors' business and assets, which is to be effectuated through two separate sale transactions, namely the Principal Transaction and the Atos Sale.

B. These Cases were Commenced by the Debtors' Foreign Representative

85. These Chapter 15 cases were commenced by a duly appointed and authorized "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code. That section provides as follows:

> The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24). Courts in this District have routinely concluded that a monitor appointed under the CCAA qualifies as a "foreign representative" for purposes of Chapter 15. *See, e.g., In re Xebec Holding USA Inc.,* No 22-10934 (Bankr. D. Del. Sep. 30, 2022); *In re Spectra Premium Corp*., No. 20-10614 (Bankr. D. Del. Mar. 11, 2020); *In re Motorcycle Tires & Accessories LLC*, No. 19-12706 (Bankr. D. Del. Jan. 22, 2020); *In re Kraus Carpet Inc.,* No. 18-12057 (Bankr. D. Del. Oct. 1, 2018); *In re Artic Glacier Int'l Inc.,* No. 12-10605 (Bankr. D. Del. Mar. 16, 2012).

86. Pursuant to the Initial Order, the Canadian Court authorized and empowered the Petitioner to act as a foreign representative in respect of the Canadian Proceedings, and authorized

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[7] RVO transactions have been recognized and enforced in the U.S. under Chapter 15 on several occasions, including by bankruptcy courts in this district. *See In re In re Acerus Pharmaceuticals Corp., et al.* , No. 23-10111 (TMH) (Bankr. D. Del. June 13, 2023), Docket No. 78; *In Re NextPoint Financial Inc., et al*., No. 23-10983 (Bankr. D. Del. Dec. 11, 2023), Docket No. 155; *In re Just Energy Group Inc., et. al*., No. 21-30823 (MI) (Bankr. S.D. Tex., Dec. 1, 2022), Docket No. 232.

the Foreign Representative to file the Chapter 15 cases in the United States for the purpose of having the Canadian Proceedings recognized. *See* Initial Order, ¶29(*l*).

C. These Chapter 15 Cases were Properly Commenced

87. The Petitioner filed the Petitions in compliance with sections 1504, 1509(a), and 1515 of the Bankruptcy Code. Each of the Petitions meets the requirements of section 1515 and was accompanied by: (a) a copy of the Initial Order commencing the Canadian Proceedings; (b) a statement identifying all foreign proceedings known to the Petitioner with respect to the Debtors; (c) a corporate ownership statement containing the information described in Bankruptcy Rule 1007(a)(4); and (d) on a consolidated basis, (i) a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (ii) all parties to litigation pending in the United States, and (iii) all parties against whom provisional relief is sought pursuant to section 1519 of the Bankruptcy Code. Because the Petitioner has satisfied the requirements set forth in section 1515 of the Bankruptcy Code, it has properly commenced these Chapter 15 cases.

III. The Canadian Proceedings Should be Recognized as Foreign Main Proceedings or, Alternatively, as Foreign Nonmain Proceedings

A. The Canadian Proceedings should be recognized as foreign main proceedings.

88. This Court should recognize the Canadian Proceedings with respect to each Debtor as a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code. A foreign proceeding must be recognized as a "foreign main proceeding" if it is pending in the country where the debtor has the center of its main interests ("COMI"). *See* 11 U.S.C. § 1517(b)(l).

89. While the Bankruptcy Code does not define "center of main interests," it does provide that "in the absence of evidence to the contrary, the debtor's registered office . . . is presumed to be the center of the debtor's main interests." 11 U.S.C. § 1516(c). "Registered office'

refers to the place of incorporation or the equivalent for an entity that is not a natural person." 8 *Collier on Bankruptcy* ¶ 1516.03 (16th ed. Rev. 2019) (citing H.R. Rep. No. 109-31, 109th Cong., 1st Sess. 113 (2005)). The "registered office" presumption is rebuttable. In *Bear Stearns*, Judge Lifland observed that:

> This presumption "permits and encourages fast action in cases where speed may be essential, while leaving the debtor's true 'center' open to dispute in cases where the facts are more doubtful.". . . . This presumption is not a preferred alternative where there is a separation between a corporation's jurisdiction of incorporation and its real seat. . . . "[T]he Model Law and Chapter 15 give limited weight to the presumption of jurisdiction of incorporation as the COMI."

In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 128 (Bankr. S.D.N.Y. 2007) (internal citations omitted). Thus, where any "evidence to the contrary" is presented, the presumption plays no role. *Collins v. Oilsands Quest, Inc*., 484 B.R. 593, 595 (S.D.N.Y. 2012).

90. When considering a debtor's COMI, many courts consider the analogous concept of an entity's "principal place of business" or "nerve center." *See Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd*.), 714 F.3d 127, 138 n.10 (2d Cir. 2013). In this regard, courts have developed a list of factors to consider when determining a debtor's COMI where the "registered office" presumption does not govern. Those factors include (i) the location of the debtor's headquarters, (ii) the location of those who actually manage the debtor, (iii) the location of the debtor's creditors or a majority of the creditors who would be affected by the case, (iv) the location of a debtor's assets, and (v) the jurisdiction whose law would apply to most disputes. *Id*. at 137; *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006).

91. Moreover, when a foreign debtor is part of corporate group, a court's COMI analysis will take into account the debtor's integration into and function within an integrated corporate group, particularly where the debtor has no function independent from that of its group.

See, e.g., In re OAS S.A., 533 B.R. 83, 101-03 (Bankr. S.D.N.Y. 2015) (COMI analysis for a foreign debtor included consideration of its participation in a larger corporate group).

92. Here, there should be little question that the COMI of each of the Debtors is in Canada, despite the fact that Goli US is incorporated in the United States. Indeed, as described above:

- all strategic decisions for both of the Debtors are made in Canada by the senior management of Goli Canada;
- All of Goli US's employees take direction from senior management at Goli Canada;
- Goli US's board is comprised of only one member, the founder of Goli Canada, who is located in Canada;
- the vast majority of the Debtors' assets (including its accounts receivable in the approximate amount of $11 million and its intellectual property rights) are managed and located in Canada;
- all human resource matters for both Debtors are managed through personnel in Canada by Goli Canada or parties contracted with Goli Canada;
- the Debtors utilize shared services administered in Canada, including among other areas, human resources, accounting, legal, information technology, marketing and sales and business applications (all of which, with the exception of the Chief Marketing Officer, are employed by Goli Canada);
- the Debtors' largest creditors, the Lenders, are located in Canada; and
- the Credit Agreement, which evidences the Debtors' most significant indebtedness, is governed by Canadian law.

93. Although not binding on this Court, it should be noted that the Canadian Court has determined, and as reflected in the Initial Order, that the Debtors' COMI is in Canada. Specifically, and consistent with the foregoing, the Canadian Court expressly determined as follows:

- Section 45(2) of the CCAA sets out that a debtor's company registered office is deemed the center of its main interest. This office is in Montreal both for GOLI Canada and GOLI USA.
- The Debtors operate on a consolidated basis and all of the important decisions are taken in Canada by the senior management of GOLI Canada.

- The majority of the Debtors' Assets are located in Canada and/or owned by GOLI Canada. GOLI Canada is the sole owner of the Assets found in the United States of America.
- GOLI Canada is the ultimate parent, and sole beneficial owner of GOLI USA.
- All human resource matters for GOLI USA are managed through personnel in Canada on GOLI Canada payroll.
- GOLI Canada and GOLI USA utilize shared services, including among other areas, human resources, accounting, legal, information technology, marketing and sales and business applications (all of which, with the exception of the Chief Marketing Officer, are employed or subcontracted by GOLI Canada).

See Initial Order at ¶ 83.

94. In short, the principal corporate management and strategic functions of the Debtors are undertaken on a consolidated basis in Canada, and the Debtors' Canadian and United States operations are integrated and function in a coordinated way such that Goli US would be unable to operate or function independently. At this time, Goli US's primary, if not sole, function is as the counterparty to the Norco Lease. In the foregoing circumstances, where there is a fully integrated corporate group, bankruptcy courts have found COMI to be in the jurisdiction of the group's COMI rather than that of a specific debtor's registered office, even if that registered office is in the United States. *See, e.g., In re OAS S.A.*, 533 B.R. at 101-03 (COMI of debtor incorporated in Austria was Brazil rather than Austria where, among other things, it "was part of, and inseparable from, the OAS Group located in Brazil"); *see also In re Spectra Premium Corp.*, No. 20-10614 (Bankr. D. Del. Mar. 11, 2020) (recognizing Canadian proceeding as foreign main with respect to one United States debtor and Canadian debtors); *In re Kraus Carpet Inc.*, Case No. 18-12057 (KG) (Bankr. D. Del. Oct. 1, 2018) (recognizing Canadian proceeding as foreign main proceeding with respect to one United States debtor and five Canadian debtors); *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW) (Bankr. D. Del. Mar. 5, 2012) (recognizing Canadian proceeding as foreign main proceeding with respect to eight United States debtors and nine Canadian debtors); *In re Angiotech*

Pharm., Case No. 11-10269 (KG) (Bankr. D. Del. Feb. 22, 2011) (recognizing Canadian proceeding as foreign main proceeding with respect to 14 United States debtors and three Canadian debtors); *In re Fraser Papers, Inc.*, Case No. 09-12123 (KJC) (Bankr. D. Del. July 14, 2009) (recognizing Canadian proceeding as foreign main proceeding with respect to two Canadian debtors and four United States debtors).

95. Accordingly, given their predominant presence in Canada, each Debtor's COMI is Canada and the Canadian Proceedings are "foreign main proceedings" with respect to each Debtor under section 1517(b)(1) of the Bankruptcy Code.

B. Alternatively, the Canadian Proceedings Could be Considered Foreign Nonmain Proceedings

96. As demonstrated above, the Canadian Proceedings should be recognized as foreign main proceedings. Nevertheless, should this Court conclude that any of the Debtors does not have its COMI in Canada, the Petitioner submits, that, in the alternative, the Canadian Proceeding of such Debtor should be recognized as a "foreign nonmain proceeding," and that discretionary relief should be granted under section 1521 of the Bankruptcy Code, namely, the application of the automatic stay to the full extent set forth in section 362 with respect to any such Debtor and its property located in the United States.

97. A "foreign nonmain proceeding" is a "foreign proceeding" pending where the debtor has an "establishment." Section 1502(2) of the Bankruptcy Code broadly defines "establishment" as "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2). "Non-transitory" economic activity requires "a seat for local business activity" in the applicable country with a "local effect on the marketplace." *See Beveridge v. Vidunas (In re O'Reilly)*, 598 B.R. 784, 806 (Bankr. W.D. Pa. 2019); *Mood Media*, 569 B.R. 556, 561–63 (Bankr. S.D.N.Y. 2017). As described above, the Debtors have an "establishment"

in Canada given the scope of their business connections to Canada, and the Canadian Proceedings should, in the alternative, be recognized as "foreign nonmain proceedings."

98. Should the Court recognize the Canadian Proceedings with respect to any of the Debtors as a foreign nonmain proceeding, then the Petitioner requests discretionary relief with respect to such Debtor and its property located in the United States pursuant to section 1521 of the Bankruptcy Code. Specifically, the Petitioner requests that any relief that is granted pursuant to the Provisional Relief Motion be extended pursuant to section 1521(a)(6) of the Bankruptcy Code, including the continued application of section 362 and 365(e) with respect to any such Debtor and its property located in the United States.[8]

IV. The Requested Relief Should be Granted

99. As set forth below certain of the requested relief by the Petitioner is automatically available under section 1520 of the Bankruptcy Code, which provides for automatic relief upon recognition of a foreign main proceeding. *See* 11 U.S.C. § 1520. Other portions of the requested relief are available under section 1521 of the Bankruptcy Code, which provide this Court with discretion to grant additional relief upon recognition of a foreign proceeding. *See* 11 U.S.C. § 1521.[9]

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[8] Section 1521(a) provides that, upon recognition of a foreign main proceeding or foreign nonmain proceeding and at the request of the foreign representative, a court may grant "any appropriate relief" necessary to effectuate the purpose of Chapter 15 and to protect the assets of the debtor or the interest of the creditors, including "extending relief granted under section 1519(a)."

[9] If this Court were to conclude that any of the requested relief is not available as a matter of right under section 1520 or at this Court's discretion under section 1521, relief may be granted pursuant to section 1507 of the Bankruptcy Code. Section 1507 authorizes this Court to "provide additional assistance to a foreign representative under [the Bankruptcy Code] or under other laws of the United States." 11 U.S.C. § 1507. In deciding whether to extend relief under section 1507, this Court must consider principles of comity and determine whether the requested relief would reasonably assure: (a) just treatment of the Debtors' creditors and equity holders; (b) protection of the Debtors' United States creditors against prejudice and inconvenience in claim processing; (c) prevention of preferential or fraudulent dispositions of the Debtors' property; and (d) distribution of the Debtors' property substantially in accordance with the Bankruptcy Code's priority scheme. *See id.* "These provisions embody the protections that were previously contained in section 304 of the Bankruptcy Code . . . ." *In re Rede*

A. The Petitioner is Entitled to Relief under Section 1520

100. Upon recognition of a foreign main proceeding, certain relief is automatically granted as a matter of right. *See In re Rede Energia S.A.*, 515 B.R. at 89 ("If a foreign case is recognized as a foreign main proceeding, as it was here, certain relief automatically goes into effect, pursuant to 11 U.S.C. § 1520 . . . ."); 11 U.S.C. § 1520. This relief includes, among other things, imposition of an automatic stay with respect to the foreign debtor and all of its property in the United States. *See* 11 U.S.C. § 1520(a)(l) ("Upon recognition of a foreign proceeding that is a foreign main proceeding . . . sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States.").

101. An order recognizing a foreign proceeding shall be entered if all of the requirements for recognition have been met. *See* 11 U.S.C. § 1517. As set forth above: (i) the Debtors are eligible to be debtors pursuant to section 109(a) of the Bankruptcy Code; (ii) the Canadian Proceedings are foreign proceedings; (iii) the Petitioner is the Debtors' foreign representative; and (iv) the Petition satisfies the requirements of section 1515 of the Bankruptcy Code. Therefore, this Court should enter an order recognizing the Canadian Proceedings as to each Debtor as a foreign main proceeding and grant all relief that is automatically available upon recognition of a foreign main proceeding, including imposition of the automatic stay with respect to all of the Debtors' property in the United States.

Energia S.A., 515 B.R. 69, 95 (Bankr. S.D.N.Y. 2014). Given the long history of Canadian proceedings being recognized and virtually identical relief being granted under former section 304, there can be no doubt that these criteria are satisfied. *See In re Davis,* 191 B.R. 577, 587 (Bankr. S.D.N.Y. 1996) ("Courts in the United States uniformly grant comity to Canadian proceedings.").

B. The Petitioner is Entitled to the Relief Requested under Section 1521

102. Should the Court find that the Canadian Proceedings are foreign nonmain proceedings with respect to any of the Debtors, then the Petitioner requests that the Court grant discretionary relief with respect to such Debtor and its US-located property pursuant to section 1521 of the Bankruptcy Code. Under section 1521 of the Bankruptcy Code, upon recognition of a foreign proceeding, at the request of the foreign representative, the Court may, "where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of creditors . . . grant any appropriate relief." 11 U.S.C. § 1521(a).[10]

103. Here, the Petitioner requests that any injunctive relief that is the subject of the Provisional Relief Motion be extended pursuant to section 1521(a)(6) of the Bankruptcy Code,[11] including the continued application of the sections 362 and 365(e) with respect to any such Debtor and its property within the territorial jurisdiction of the United States.[12] *See* 11 U.S.C. §1521(a)(6); Provisional Relief Motion ¶ 23.

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[10] In addition, section 105(a) of the Bankruptcy Code empowers the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title" which, in a Chapter 15 case, include the purposes set forth in section 1501 of the Bankruptcy Code including fostering cooperation, greater legal certainty, fair and efficient administration, maximization of stakeholder value, and the rescue of financially distressed businesses in the context of cross-border insolvency cases. 11 U.S.C. § 105(a), 1501(a)(1).

[11] Section 1521(a) provides that, upon recognition of a foreign main proceeding or nonmain proceeding and at the request of the foreign representative, a court may grant (with exceptions not here relevant) "any appropriate relief" necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of the creditors, including "extending relief granted under section 1519(a)." 11 U.S.C. § 1521(a)(6). Section 1521 relief is available upon recognition of a foreign nonmain proceeding where "the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding." 11 U.S.C. § 1521(c).

[12] The Petitioner is entitled to the continued application of the protective stay even if the Court were to recognize the Canadian Proceedings as foreign nonmain proceedings with respect to any of the Debtors because "chapter [15] gives the bankruptcy court the ability to grant substantially the same types of relief in assistance of foreign nonmain proceedings as main proceedings." *SPhinX*, 351 B.R. at 116. "The Court has power to grant extensive relief, whether the foreign proceeding is recognized as main or nonmain." *In re Manley Toys Ltd*, 580 B.R. 632, 644-45 (Bankr. D.N.J. 2018).

104. To exercise its discretionary powers under section 1521, the Court must ensure that "the interests of the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a); *see In re Grant Forest Products, Inc.*, 440 B.R. 616, 621 (Bankr. D. Del. 2010) (noting that "broad power" to grant section 1521 relief is subject to 1522). Relief under section 1521 will not be permitted if "it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors." H.Rep. No. 109-31, Pt. 1, at 116; *see In re Energy Coal S.P.A.*, 582 B.R. 619, 627 (Bankr. D. Del. 2018) (noting that under section 1522 "the court can place conditions on the granting of relief under §1521"). A determination of sufficient protection requires a balancing of the respective parties' interests. *CT Inv. Mgmt. Co. v. Cozumel Caribe, S.A. de C.V.*, 482 B.R. 96, 108 (Bankr. S.D.N.Y. 2012); *see In Toft*, 453 B.R. 186, 196 n.11 (Bankr. S.D.N.Y. 2011) ("[A] court should tailor balancing the interest of the foreign representative and those affected by the relief."

105. Here, the balance of interests weighs in favor of granting the relief requested. First, recognition and the application of the stay will allow for the efficient and orderly administration of the Debtors' assets and affairs in a centralized, organized proceeding, thus protecting the interests of creditors and maximizing the value of assets through ensuring their equitable distribution and preventing certain opportunistic creditors from circumventing the Canadian Proceedings and commencing actions in the United States at the expense of the broader process.

106. Furthermore, the interested parties will have the ability to participate in the Canadian Proceedings and assert their claims therein along with all similarly situated creditors. As set forth more fully below and in the Zucker Declaration, the Canadian Proceedings afford significant procedural protections to creditors and other stakeholders to ensure a fair and equitable process by providing many of the same procedural safeguards present in chapter 11 of the

Bankruptcy Code. *See* Zucker Declaration ¶¶ 28, 40. The stay will not bar or otherwise disenfranchise parties from participating in the Canadian Proceedings, where each creditor's right to be heard will remain unaffected. Nor will the requested stay preclude a creditor that feels unduly burdened by the Court's grant of the requested relief to seek to lift the stay for "cause." *See generally* 11 U.S.C. § 362(d). Instead, the Petitioner merely seeks to prevent creditors from attempting to end-run the Canadian Proceedings. Accordingly, any prejudice to creditors caused by the discretionary relief requested is extremely limited.

107. In contrast, failure to grant the discretionary relief requested will cause tremendous harm to the Debtors and their stakeholders. As detailed more fully in the Petitioner's Provisional Relief Motion, absent relief, the Debtors are at risk to adverse creditor action which could threaten the proposed Sale Transactions and, in turn, the Debtors' ability to continue as a going concern. Accordingly, the balance between the minimal harm to those seeking to bring adverse actions against the Debtors, and the potential harm to the Debtors and the orderly administration of the Debtors' assets, tips in favor of granting the discretionary relief requested.

108. Finally, section 1521(e) provides that the standards, procedures and limitations of an injunction apply to relief sought under section 1521(a)(6). 11 U.S.C. § 1521(e). Assuming the Court grants the Provisional Relief Moton, it would be appropriate to extend such relief post-recognition on the same basis.

V. Granting Recognition and Provisional Relief Would Not be Manifestly Contrary to the Public Policy of the United States

109. Section 1506 of the Bankruptcy Code provides that nothing in Chapter 15 requires this Court to take any action that would be manifestly contrary to the public policy of the United States. 11 U.S.C. § 1506. "[F]ederal courts in the United States have uniformly adopted the narrow application of the public policy exception." *In re OAS S.A.*, 533 B.R. at 103 (citing

Fairfield Sentry, 714 F.3d at 139). The relief requested by the Petitioner is not manifestly contrary to, but rather consistent with, United States public policy.

110. One of the fundamental goals of the Bankruptcy Code is the centralization of disputes involving the debtor. *See, e.g., In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 989 (2d Cir. 1990) ("The Bankruptcy Code 'provide[s] for centralized jurisdiction and administration of the debtor, its estate and its reorganization in the Bankruptcy Court . . .'"). Indeed, "the firm policy of American courts is the staying of actions against a corporation which is the subject of a bankruptcy proceeding in another jurisdiction." *Cornfeld v. Investors Overseas Servs., Ltd.*, 471 F. Supp. 1255, 1259 (S.D.N.Y. 1979) (recognizing that a Canadian liquidation proceeding would not violate the laws or public policy of New York or the United States). The Canadian Proceedings, like a case under the Bankruptcy Code, provides a centralized process to (i) assert and resolve claims against an estate and (ii) make distributions to creditors. Recognizing the Canadian Proceedings and granting the requested relief would assist in the centralization of disputes in a single jurisdiction. That result is demonstrably consistent with the public policy of the United States. *See id.*

111. Further, recognition of the Canadian Proceedings would be consistent with the purpose of Chapter 15 and its predicate, the UNCITRAL Model Law on Cross-Border Insolvency. Section 1501 of the Bankruptcy Code provides, in pertinent part that:

> The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of -
>
> (1) cooperation between -
>
> * * *
>
> (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
>
> * * *

> (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;
>
> (4) protection and maximization of the value of the debtor's assets.

11 U.S.C. § 1501.

112. Granting recognition to the Canadian Proceedings and granting the Petitioner the relief requested is consistent with, and critical to effectuate, the objectives of Chapter 15 for multiple reasons. First, recognition of the Canadian Proceedings would foster cooperation between the Canadian Court and United States courts because it would enable the Petitioner to assist the Canadian Court in administering the assets that are located in the United States and subject to the Canadian Court's supervision.

113. Second, recognition of the Canadian Proceedings and related relief would enhance the Debtors' ability to maximize the value of their assets for the benefit of all creditors by ensuring that they can implement the restructuring centered around the sale of the Debtors' business and assets. As described above, the Debtors have entered into the Sale Transactions embodied in the Subscription Agreement and the Agency Agreement. Both of the Sale Transactions are subject to and conditioned on this Court entering an order recognizing and enforcing the RVO and Atos Sale Order. Absent this Court's assistance, the Debtors may be unable to implement the Principal Transaction or Atos Equipment sale and effectuate a successful restructuring that would maximize value for creditors and permit the Debtors' business to continue as a going concern.

114. Finally, Chapter 15 relief will provide the Debtors and the Petitioner with the traditional relief conferred on foreign debtors and representatives. In particular, Chapter 15 relief would result in a stay of actions against the Debtors or their assets in the United States. If such actions are not stayed, the orderly administration of the Debtors may be jeopardized and the

Debtors may be forced to expend resources unnecessarily (i) to defend actions against the Debtors or their assets in the United States, or (ii) to bring actions to enjoin the transfer of the Debtors' assets or to preserve the proceeds of such transfers for the benefit of all creditors and parties in interest.

115. Accordingly, the relief requested would further the objectives of Chapter 15 by assisting the implementation of the Canadian Proceedings.

OTHER PROCEEDINGS INVOLVING THE COMPANY

116. Pursuant to section 1515 of the Bankruptcy Code, a Chapter 15 must "be accompanied by a statement identifying all foreign proceedings (as defined in the Bankruptcy Code) with respect to the debtor that are known to the foreign representative." 11 U.S.C. § 1515(c).

117. Other than the Canadian Proceedings, the Petitioner is not aware of any other foreign proceeding involving the Debtors. The Petitioner will promptly inform this Court if it becomes aware of any such foreign proceeding, or if it commences a foreign proceeding in another jurisdiction to aid in the administration of the Debtors' reorganization in the Canadian Proceedings.

NOTICE

118. Pursuant to section 1517(c) of the Bankruptcy Code, a petition for recognition shall be decided at the "earliest possible time." Accordingly, the Petitioner requests that this Court set the Recognition Hearing for a date at the earliest possible convenience of the Court and in accordance with the Local Rules and Federal Rules of Bankruptcy Procedure. In addition, the Petitioner requests that this Court approve the manner of service set forth in the *Petitioner's Motion for Entry of an Order Specifying Form and Manner of Service and Notice*, filed contemporaneously herewith.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests that this Court grant the relief requested herein and such other and further relief as may be just and proper.

[*Signature on following page*]

Dated: March 19, 2024
Wilmington, Delaware

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Counsel to the Petitioner

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 15
GOLI NUTRITION INC., *et al.*,[1]	:	Case No. 24-_____ (___)
	:	Joint Administration Requested
Debtors in a Foreign Proceeding.	:	

I, Benoit Clouâtre, a Partner of Deloitte Consulting Inc., in its capacity as the Monitor of Goli Nutrition, Inc. and its affiliated Debtors (the "Monitor"), pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

I have the full authority to verify this petition on behalf of the Monitor.

I have read the foregoing petition, and I am informed and believe that the factual allegations contained therein are true and accurate.

I declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Executed this 19th day of March 2024 in Montreal, Canada

Benoit Clouâtre, on behalf of Deloitte Consulting, Inc., in its capacity as the Monitor of Goli Nutrition Inc. and its affiliated Debtor

[1] The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor's federal identification number, are: Goli Canada (as defined herein), federal tax identification number 732063086RC0002; and Goli US (as defined herein), federal tax identification number 35-2662655. The Debtors are collectively managed from their corporate headquarters which are located at 2205 Boul. De la Côte-Vertu, suite 200, Montreal, Québec, Canada.

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 15
GOLI NUTRITION INC., *et al.*,[1]	:	Case No. 24-_____ (___)
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	**Ref. No. ___**

FINAL ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDINGS AND CERTAIN RELATED RELIEF

This matter came before the Court upon the *Petitioner's Verified Petition Under Chapter 15 for Recognition of the Canadian Proceedings and Request for Related Relief* (the "Verified Petition")[2] of Deloitte Restructuring Inc. (the "Petitioner"), in its capacity as the court-appointed monitor of the above captioned debtors (collectively, the "Debtors") in insolvency proceedings (the "Canadian Proceedings") commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "CCAA") pending before the Superior Court, sitting in the Commercial Division for the district of Montréal (the "Canadian Court") and as the duly authorized foreign representative as defined by section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"); and the Court having jurisdiction to consider the Verified Petition and the relief requested therein in accordance with sections 157 and 1334 of title 28 of the United States Code, sections 109 and 1501 of the Bankruptcy Code, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012 (the "Amended Standing Order"); and consideration of the Verified Petition and the relief

[1] The Debtors in these Chapter 15 cases, are: Goli Nutrition, Inc., a company incorporated in Québec, Canada and the last 4 digits of its Canadian business number is 0002; and Goli Nutrition Inc., a company incorporated in Delaware and the last 4 digits of its federal tax identification number is 2655. The Debtors are collectively managed from their corporate headquarters which are located at 2205 Boul. De la Côte-Vertu, suite 200, Montreal, Québec, Canada.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Verified Petition.

requested therein being a core proceeding pursuant to section 157(b) of title 28 of the United States Code; and due and proper notice of the relief sought in the Verified Petition having been provided; and it appearing that no other or further notice need be provided; and the Court having entered the Provisional Relief Order on March __, 2024; and a hearing having been held to consider the relief requested in the Verified Petition (the "Hearing") on a final basis; and the appearances of all interested parties having been noted in the record of the Hearing; and the Court having considered, among other things, (i) the Verified Petition, (ii) the *Declaration of Noah Zucker in Support of (A) Petitioner's Verified Petition Under Chapter 15 for Recognition of the Canadian Proceedings and Request for Related Relief, and (B) Motion for Provisional Relief and (C) Motion for Order Enforcing CCAA Vesting Orders* (collectively, the "Chapter 15 Papers"), (iii) the record of the Hearing, and (iv) all of the proceedings before the Court in these Chapter 15 cases; and the Court having found and determined that the relief sought in the Verified Petition is in the best interests of the Debtors, their creditors, and all parties in interest and that the legal and factual bases set forth in the Chapter 15 Papers and at the Hearing establish just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to sections 157 and 1334 of title 28 of the United States Code and the Amended Standing Order.

C. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code.

D. Venue for this proceeding is proper before this Court pursuant to section 1410 of title 28 of the United States Code.

E. On March 19, 2024, these Chapter 15 cases were commenced by the Petitioner's filing of a voluntary Chapter 15 Petition for Recognition of a Foreign Proceeding for each Debtor contemporaneously with the filing of the Verified Petition. Attached to the Verified Petition is an order (the "Initial Order") of the Canadian Court entered in the Canadian Proceedings appointing the Petitioner as Monitor and foreign representative of the Debtors and granting additional relief.

F. Each of the Canadian Proceedings is a "foreign proceeding" as defined by section 101(23) of the Bankruptcy Code.

G. The Petitioner is the duly appointed "foreign representative" of each of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

H. These Chapter 15 cases were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

I. The Petitioner has satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 2002(q).

J. Each of the Canadian Proceedings is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

K. Canada is the center of main interests of each of the Debtors, and accordingly, each of the Canadian Proceedings is a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(l) of the Bankruptcy Code.

L. The Petitioner is entitled to all the relief available pursuant to section 1520 of the Bankruptcy Code, including, without limitation, application of the automatic stay pursuant to section 362 of the Bankruptcy Code and application of section 365(e) of the Bankruptcy Code.

M. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to sections 1517, 1520, and 1521 of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Verified Petition is granted as to each of the Debtors as set forth herein.

2. Each of the Canadian Proceedings in respect of the Debtors is granted recognition as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

3. The Initial Order is hereby enforced on a final basis and given full force and effect in the United States, including, without limitation, the stay of proceedings to the extent set forth in the Initial Order.

4. All relief afforded to foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is hereby granted to each of the Canadian Proceedings, each of the Debtors, and the Petitioner, as applicable.

5. Section 362 of the Bankruptcy Code shall hereby apply with respect to each of the Debtors and their respective property that is within the territorial jurisdiction of the United States.

6. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Petitioner and its authorized representatives and/or agents are hereby enjoined from, without limitation:

(a) enforcing any rights or obligations or otherwise executing against any of the Debtors' assets or other properties;

(b) commencing or continuing, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim,

including without limitation any and all unpaid judgments, settlements, or otherwise against the Debtors in the United States;

(c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Debtors or any of their property;

(d) transferring, relinquishing, or disposing of any property of the Debtors to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Petitioner;

(e) enforcing, commencing, or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations, or liabilities; and

(f) terminating any agreements, leases, contracts, or understandings, or otherwise enforcing rights, accelerating obligations, or exercising remedies of any kind in respect thereof.

7. Subject to sections 1520 and 1521 of the Bankruptcy Code, the Canadian Proceedings, and the Initial Order, and the transactions consummated or to be consummated thereunder, shall be granted comity and given full force and effect in the United States to the same extent as in Canada, and each is binding on all creditors of the Debtors and any of their successors and assigns.

8. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to the Debtors or the Petitioner by this Court pursuant to section 1519(a) of the Bankruptcy Code shall be extended and the Provisional Relief Order shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

9. Notwithstanding any applicable Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Petitioner is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Verified Petition.

11. The Petitioner, the Debtors, and/or each of their successors, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the

Bankruptcy Code.

12. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief, any adversary proceeding brought in and through these Chapter 15 cases, and any request by an entity for relief from the provisions of this Order that is properly commenced and within the jurisdiction of this Court.

Dated: _____, 2024
Wilmington, Delaware

_____
Honorable _____
United States Bankruptcy Judge

Exhibit B

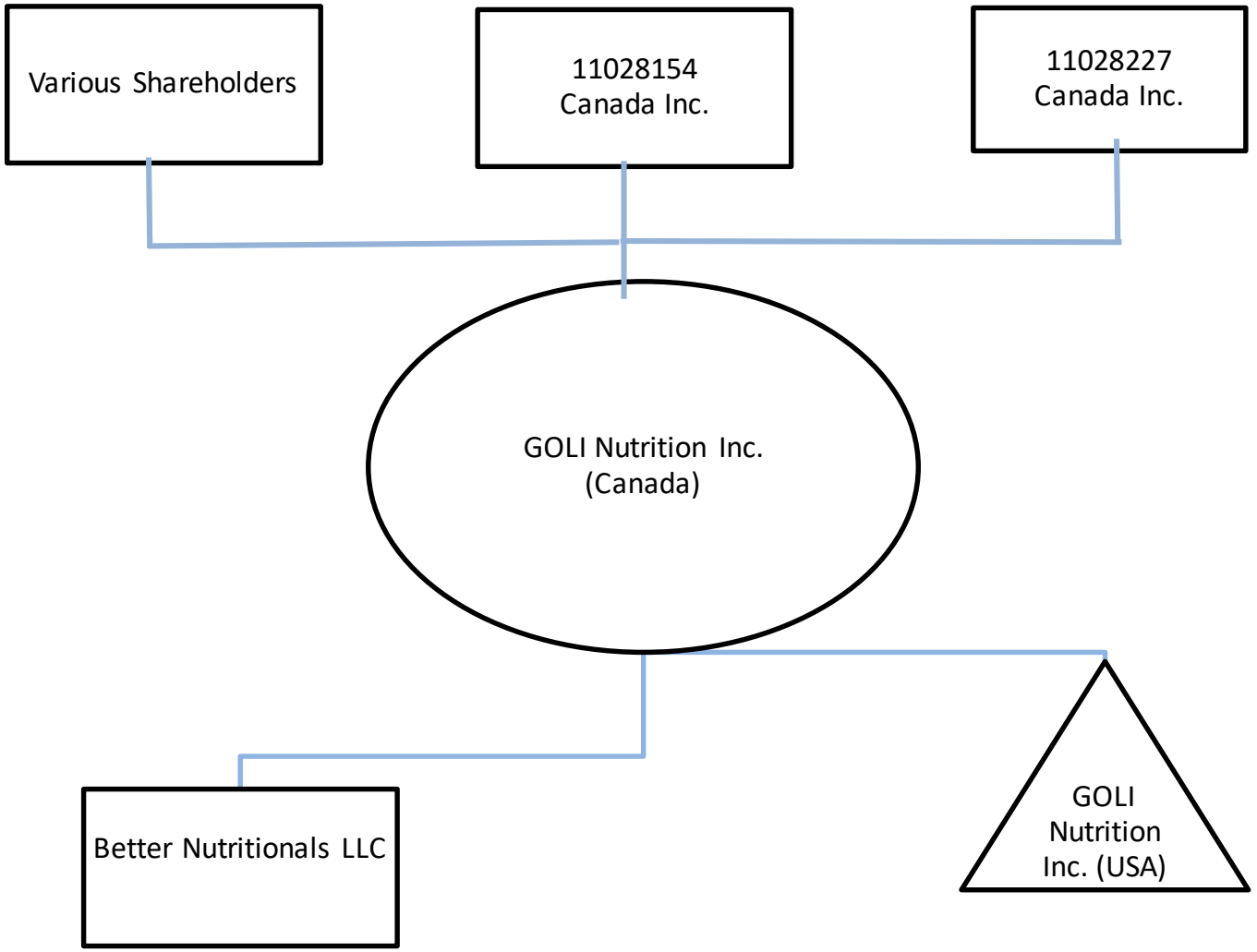
Various Shareholders
11028154 Canada Inc.
11028227 Canada Inc.
GOLI Nutrition Inc. (Canada)
Better Nutritionals LLC
GOLI Nutrition Inc. (USA)

Exhibit C

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-0637787-242

DATE: March 18, 2024

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

GOLI NUTRITION INC.
and
GOLI NUTRITION INC.
Debtors - Applicants
v.
DELOITTE RESTRUCTURING INC.
Monitor

JUDGMENT ON APPLICATION FOR THE ISSUANCE OF A FIRST DAY INITIAL ORDER, AN AMENDED AND RESTATED INITIAL ORDER AND OTHER RELIEF, INCLUDING THE APPROVAL OF A TRANSACTION AND AN AGENCY AGREEMENT

(Sections 9, 10, 11,11.02, 11.03, 11.2, 11.52, 23 and 36 of the *Companies' Creditors Arrangement Act* ("**CCAA**"), RSC 1985, c C-36)

OVERVIEW

[1] Applicants, Goli Nutrition Inc. ("**GOLI Canada**") and Goli Nutrition Inc. ("**GOLI USA**", collectively with GOLI Canada the "**Debtors**" or "**GOLI**") are wellness brand companies which sell and distribute nutritional products and supplements. They are facing significant cash flow challenges.

[2] Eventually, GOLI proposes to address these cash flow and operation issues through a transaction (the "**Contemplated Transaction**") which involves the sale of the Atos Equipment (as defined below) and the signing of an agency agreement between GOLI Canada and Gordon Brothers Commercial & Industrial, LLC (on behalf of its contractual joint venture with Brandford Auctions, LLC) (the "**Agent**") pursuant to which the Agent shall be engaged for the purpose of proceeding with the orderly liquidation of the Atos Equipment.

[3] The Contemplated Transaction was designed in consultation with the proposed monitor and with the consent of GOLI's principal lenders.

[4] At the present stage, Debtors seek the issuance of a first day initial order under the CCAA (the "**Initial Order**") comprising of:

4.1. a declaration that the Applicants are corporations to which the CCAA applies;

4.2. a stay of all proceedings and remedies taken or that might be taken in respect of the Applicants and their respective past, present or future directors and officers, or any of their property, except as otherwise set forth in the Initial Order or as otherwise permitted by law (the "**Stay**"), for an initial period of ten (10) days in accordance with the CCAA (the "**Stay Period**");

4.3. the appointment of Deloitte Restructuring Inc. ("**Deloitte**" or the "**Monitor**") as the monitor of the Applicants in these proceedings and granting the Monitor certain powers;

4.4. an Administration Charge and D&O Charge (each as defined below) in amounts sufficient to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period;

4.5. a declaration that Québec is the "center of main interest" of the Debtors and, accordingly, an authorization that the Applicants or the Monitor may apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of these proceedings, including, without limitation, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532 (the "**U.S. Bankruptcy Code**");

4.6. a sealing order to apply to certain confidential exhibits which may be filed in support of this Application; and

4.7. other relevant first day relief.

1. The Debtors

1.1 GOLI Canada

[5] GOLI Canada was incorporated by its founders Michael Bitensky and Deepak Agarwal (each a "**Founder**") on October 4, 2018, under the *Canada Business Corporations Act* ("**CBCA**").[1] Its domicile is in Saint-Laurent, Québec.

[6] GOLI Canada's main shareholders are:

6.1. 11028154 Canada Inc. ("**11028154**") which owns 40.59% and is ultimately controlled by Melina del Carmen Ash (the wife of Mr. Deepak Agarwal);

6.2. 11028227 Canada Inc. ("**11028227**") which owns 40.59% and is ultimately controlled by Michael Bitensky;

6.3. 9204-1797 Québec Inc. which owns 7.95% and is ultimately controlled by Mr. Martin Leroux;

6.4. VMG Partners IV L.P. and VMG Partners Mentors Circle IV L.P. (collectively "**VMG Partners**" (a California investment firm) which in the aggregate own 4.91%.

[7] The balance of the shares are owned by various other entities including, Bank of Montreal (doing business as BMO Capital partners).

[8] GOLI Canada employs approximately 35 employees most of whom are located and employed in Québec.

[9] It also has an outsourcing contract with Liveketo Private Limited ("**Liveketo**") based in India, who provides services for finance, human resources, business intelligence, supply chain and retailer support services. It has also retained the services of Direct Digital Solutions ("**Direct Digital**") based in the Philippines for customer service, shipping, influencers and sales support.

[10] GOLI Canada owned 25% of Better Nutritionals ("**BN**"), a corporation currently under chapter 7 of the US Bankruptcy Code. BN was previously GOLI's primary manufacturer.

[11] GOLI Canada is also the sole shareholder of GOLI USA.[2]

1.2 GOLI USA

[12] GOLI USA was incorporated on April 30, 2019, pursuant to the General Corporation Law of the State of Delaware. Even though it is a Delaware corporation, its principal place

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1 *Canada Business Corporations Act*, L.R.C. 1985, c. C-44.

2 Exhibit P-3.

of business is located at GOLI Canada's domicile in Montreal, Québec. All operational and financial decisions of GOLI USA are made by GOLI Canada.

[13] GOLI USA employs approximately 4 employees located in various states throughout the United States.

[14] GOLI USA is a tenant under the lease ("**Norco Lease**")[3] for facilities located in Norco, California (the "**Norco Facility**") where the Atos Equipment (as defined below) is located. The understanding was that BN would occupy the Norco Facility and pay the rent as well as other expenses. BN's inability to do so compounded GOLI's financial difficulties.

[15] GOLI markets and sells a variety of nutritional and dietary supplements under the Goli® brand ("**GOLI Products**"). GOLI Products are sold in retail locations throughout Canada, the United States and worldwide, including retailers such as Walmart, Target, Kroger, Walgreens, GNC, The Vitamin Shoppe and others. It also sells its products through its online website www.goli.com, as well as online marketplaces such as Amazon, Walmart.com and others.

[16] All GOLI Products are manufactured by contract manufactures located in the United States.

[17] To distribute its products, GOLI relies on third-party logistics providers ("**3PL**"), such as Emerson Healthcare, LLC, Amazon, Media Solutions Group Canada and Amware Fulfillment LLC. GOLI distributes its to these 3PLs who then in turn handle the shipments to consumers in accordance with agreements in place between GOLI and the 3PL. The vast majority of GOLI products are thus held in 3PL storage facilities until they are sold. From December 2021 to December 2023, the book value of GOLI Canada's inventory decreased from $70M to $5.1M as a result of inventory obsolescence.

[18] GOLI's operations are conducted on a consolidated basis. The majority of the assets, including the Atos Equipment (as defined below) located in the Norco Facility, are owned by GOLI Canada.

2. Debtors' Financial Situation

2.1 Assets

[19] GOLI's assets include a combination of cash, accounts receivables, inventory, intellectual property (including the rights to the brand name GOLI, various trademarks and patents) as well as property and manufacturing equipment (collectively the "**Assets**").

[20] The manufacturing equipment comprises of equipment purchased by GOLI Canada from Atos on June 29, 2022 (the "**Atos Equipment**") in the course of a settlement

[3] Exhibit P-12.

agreement with the manufacturer. The Atos Equipment is located at the Norco Facility leased by GOLI USA.

2.2 The Secured Indebtedness

[21] GOLI Canada's predecessors had previously entered into an initial credit agreement dated October 21, 2021 (as amended on December 8, 2021) with the Bank of Montreal (in its capacity as lender and administrative agent), National Bank of Canada, Fédération des Caisses Desjardins and HSBC Bank Canada (collectively, the "**Lenders**").[4] GOLI remains indebted to the Lenders pursuant to a syndicated amended and restated credit agreement dated September 2, 2022, amongst GOLI Canada, as Borrower, GOLI USA, as guarantors and the Lenders (as amended on April 14, 2023, the "**Credit Agreement**").[5]

[22] GOLI's operations are principally financed by the credit facilities provided under the Credit Agreement which include

22.1. a revolving credit facility up to a maximum of US$50,000,000 (the "**Revolving Credit Facility**"); and

22.2. a term facility up to a maximum of US$63,000,000 (the "**Term Facility**" and together with the Revolving Credit Facility, the "**Credit Facilities**").

[23] The total amount outstanding under the Credit Facilities in principal, interest and fees as of the date of the present Application is approximately US$100,000,000 (the "**Loan**"), subject to adjustments.

[24] Concretely, the Lenders' security (the "**Lender's Security**")[6] under the Credit Agreement can be summarized as follows:

24.1. A first ranking hypothec (or with respect to the Assets located outside of the Province of Québec a first ranking lien) of $300,000 on the universality of all present and future Assets of GOLI; and

24.2. A pledge by GOLI of all Capital stock issued to it by any GOLI entity.

[25] The Lender's Security is registered at the appropriate registries.[7]

[26] A review by independent legal professionals in Canada and the United States mandated by the Proposed Monitor confirms that the Lenders' Security is valid and enforceable.

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4 Exhibit P-4.
5 Exhibit P-5.
6 Lenders' deed of hypothec ("**Deed of Hypothec**"), the US guarantee and security agreement ("**GOLI USA GSA**") and the US general security agreement ("**Borrower GSA**" together with the GOLI USA GSA the "**US Security Documents**"), exhibits P-6 and P-7.
7 Exhibits P-8 and P-9.

[27] GOLI is in default under the terms of the Credit Agreement since the spring of 2023.

[28] As of the date of the application, the Lenders are the only secured creditors of the Debtors except for approximately US$700,000 advanced by 11028154 and 11028227 on October 2, 2023 (the "**Guarantees**").[8] These Guarantees rank subsequent to the Lenders' security.

2.3 Unsecured Indebtedness

[29] At present, the Debtors also owe approximately US$69M to unsecured creditors.

[30] The most significant of these unsecured creditors (other than the loans made by some shareholders) include:

30.1. DLA Piper (US) LLP for an amount claimed to be approximately US$8,000,000 for unpaid legal fees;

30.2. Income, goods and services as well as foreign taxes in the amount of approximately US$12.8M.

30.3. GOLI US owes approximately $1.5M in connection with outstanding rent, broker's fees, utilities and security personnel providers regarding the Norco Facility;

30.4. Credit card facilities for an amount of approximately US$7,500,000;

30.5. Advertising and promotion suppliers for an amount of approximately US$5,486,000; and

30.6. Third-party logistics and shipping supplies for an amount of approximately US$1,508,000.

2.4 Obligations and Contingent Liabilities

[31] The Debtors are current in their payroll obligations aside for vacation back pay. There are no pension plans in place for GOLI employees.

[32] GOLI intends to continue to pay their employees in the normal course of business throughout the CCAA proceedings.

[33] The Debtors are also defendants in various litigation proceedings in the United States (some of which have been settled). At this time, it is impossible to quantify the probable liability of these cases. Nonetheless, the Debtors face a potential exposure in

[8] Exhibits P-10 and P-11.

the event of unfavourable judgments, as well as the legal expenses to further litigate these matters.

[34] Finally, under the terms of the Norco Lease, the Debtors Applicants continue to owe the Norco Landlord approximately $550,000 per month. On March 12, 2024, the Applicants received a Three-Day Notice to Pay Rent or Quit.[9]

[35] The Debtors and the Proposed Monitor believe that it is crucial that the present CCAA application be approved in order to protect the going concern value of GOLI and to ensure maximum creditor recovery.

3. Financial Difficulties

[36] The Debtors have suffered recurring operating losses. They have insufficient cash flow to meet their obligations as they become due.

[37] The latest consolidated financial statements ending in December 31, 2023, show a reported EBITDA loss of approximately US$42.9 million in FY2023 and a net loss of $62.7M. The balance sheet shows a net deficit (shareholder deficiency) of CAN$110.9M. The Monitor's Pre-Filling Report (the "**Pre-Filling Report**") includes a 12-week cash flow forecast which illustrates a further cash flow shortfall.[10]

[38] Factors contributing to the Debtors' financial difficulties including the following:

38.1. Decreased demand for GOLI's products which translated into an important reduction in sales. Excess inventory and short shelf life causing aging issues requiring significant write-offs of inventory, retailer chargebacks, refunds and penalties.

38.2. Increased marketing costs following the implementation of the IOS changes.

38.3. Costly legal disputes involving GOLI and certain of its directors and officers. Debtors have spent over US$10M in legal expenses defending such cases, including on the defense of a trademark dispute in which GOLI was ultimately successful.

38.4. BN's filing under Chapter 11 of the U.S. Bankruptcy Code (which was later converted to a Chapter 7) since GOLI USA had agreed to take on the primary responsibility for (a) the Norco Lease to be occupied by BN, in exchange for BN's promise to pay the deposit and monthly rent and expenses for the space and (b) the Atos Equipment under the same understanding and promise that BN would make all of the payments. Unfortunately, although BN initially made the payments, it has since ceased making these payments. As a result, the

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9 Exhibit P-13

10 Exhibit P-14.

Debtors (as well as a number of their directors and officers) have been dragged into a number of costly litigation matters. At the risk of repossession of the Atos Equipment and being evicted from the Norco Facility, which was at the time being occupied by BN (GOLI's primary manufacturer), the Applicants were left with no choice but to resolve such matters directly by GOLI Canada making a settlement payment of $32M for the acquisition of the Atos Equipment and GOLI USA attending to the payment of the rent of the Norco Facility.

38.5. In addition, as a result of the significant arrears outstanding under the Norco Lease, the Norco Landlord sent a Notice of Events of Default for failure to pay rent when due on February 21, 2024. On February 29, 2024, the Norco Landlord applied a portion of its deposit in payment of the arrears (leaving a deposit balance of approximately $1.2M) and requested that the debtors replenish said deposit within 10 days. Since the Debtors will not be able to replenish the deposit and have not paid rent for the current month (in respect of which the Three-Day Notice to Pay Rent or Quit was sent), they are now at serious risk of being evicted from the Norco Facility, where the Atos Equipment is located.

38.6. Additionally, as a result of GOLI's cash flow issues it has, at times, been unable to pay suppliers and manufacturers in a timely manner which has created further disputes and has required the implementation of various payment plans putting further strain on the Debtors' cash flow.

4. Pre-Filing Restructuring Efforts and Pre-Filing SISP

[39] GOLI has worked hard to address the above-noted issues in a timely fashion and has implemented a series of operational restructuring efforts to try to remedy its financial situation.

[40] GOLI has optimized and rationalized its operations in the United States, Canada and worldwide and developed strategies to improve profitability. It conducted a review of its operations to identify potential synergies and costs savings across the board. Many changes were made, including but not limited to (i) negotiating the early termination of one of their leased office space and the non-renewal of other leased office spaces (which was possible given that, following the COVID-19 pandemic, most of the employees were working from home); (ii) developing a new pricing strategy for both retailers and direct-to-consumer sales; (iii) reduction in the workforce and payroll (including, no bonuses being paid to management and the Founders drawing no salary or other employment remuneration); (iv) terminating any non-essential services; (v) engaging in negotiations with various vendors, service providers and suppliers for additional cost savings; (vi) settling (whether for monetary amount or otherwise) certain legal disputes to try to avoid the substantial continued expense of further litigation; and (vii) subletting portions of the Norco Property to help with the financial burden.

[41] Unfortunately, these efforts have not been sufficient to offset the ongoing cash flow issues the Debtors have been plagued with over the last several months or to allow the Debtors to pay liabilities as they become due.

[42] On May 30, 2023, the Lenders wrote to the Debtors informing them of the occurrence of various events of default under the terms and conditions of the Credit Agreement, calling the Loan, and providing the statutory security enforcement notices under the *Civil Code of Québec* ("**CCQ**") and the *Bankruptcy and Insolvency Act* ("**BIA**") ("**Notice of Default**").[11]

[43] On June 6, 2023, formal statutory security enforcement notices under the *Civil Code of Québec* and the Bankruptcy and Insolvency Act (the "**Prior Notices**") were served on the Debtors.[12]

[44] In June 2023, GOLI engaged the services of BMO Capital Markets to develop and implement a Sale and Investment Solicitation Process (the "**Pre-Filing SISP**") with a view to identifying one or more transactions in respect of the sale, investment in, or refinancing of all or part of the business and/or the property and/or Assets of the Debtors that would allow the repayment of their substantial indebtedness, with any balance to be used to pay creditors and allow for the continuation of all or part of the Debtors' activities on a going concern basis.

[45] BMO Capital Markets, with the assistance of the Debtors, managed all SISP related documents (including the preparation of a teaser letter, a target list of potential purchasers or investors, and non-disclosure agreements) and provided all required information to potential bidders. BMO Capital Markets kept the Proposed Monitor apprised of the process. For their part, the Founders and other key management figures of the Debtors (including in-house counsel Randy Bitensky) worked to keep the employees motivated, and the business afloat as a going concern.

[46] The teaser letter[13] was sent to 42 potential bidders from both strategic and financial sectors inviting potential bidders to submit a non-binding letter of intent for the entirety of GOLI's business and Assets, including the Atos Equipment.

[47] In Phase 1 of the Pre-Filing SISP, BMO Capital Markets invited potential bidders to sign confidentiality agreements to access the virtual data room ("**VDR**"). Ultimately, 29 parties signed confidentiality agreements. Following this, interested parties were invited to submit non-binding letters of intent by no later than August 8, 2023.

[48] On July 24, 2023, the Lenders wrote to the Debtors to restate the defaults under the Credit Agreement. They agreed to suspend exercising their rights until August 8, 2023, to allow the continuance of the Pre-Filing SISP (the "**July Lenders' Letter**").[14] The

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11 Exhibit P-15.
12 Exhibit P-16.
13 Exhibit P-17.
14 Exhibit P-18.

suspension was conditional upon the Debtors receiving at least one letter of intent prior to the deadline.

[49] On August 8, 2023, the debtors received four (4) non-binding indications of interest for GOLI's business. However, all four of these indications of interest excluded the Atos Equipment.

[50] BMO Capital Markets then initiated Phase 2 of the Pre-Filing SISP and the four interested parties were invited to continue their due diligence and submit further indications of interest by September 26, 2023.

[51] On September 13, 2023, the Lenders further wrote to the Applicants to repeat the contractual defaults under the Credit Agreement and inform the Applicants that the Lenders would continue to refrain from exercising their rights until October 15, 2023, on the condition that the Applicants obtain one binding offer in the context of the Pre-Filing SISP (the "**September Lenders' Letter**").[15]

[52] By the September 26, 2023, deadline, BMO Capital Markets had only received two verbal indications of interest. The Pre-Filing SISP was extended to allow parties to conduct additional due diligence with the hopes of receiving one or multiple binding offers.

[53] On October 31, 2023, BMO Capital Markets informed all remaining interested parties that binding offers were to be submitted by November 14, 2023, at which date the Pre-Filing SISP would terminate.[16]

[54] In November 2023, BMO Capital Markets received three non-binding offers from bidders. After further due diligence, one of the bidders withdrew their indication of interest.

[55] The two other bidders continued their due diligence and engaged in discussions about the structure of a potential transaction. Ultimately, after conducting further due diligence, and considering the indebtedness of GOLI, and the unwillingness to proceed with a transaction as part of insolvency proceedings, sometime in December/early January the remaining bidders ultimately withdrew their indication of interests.

[56] In January 2024, three new parties expressed potential interest. After receiving access to the VDR and conducting initial due diligence, two of them expressed that they were no longer interested. On January 9, 2024, Group KPS (a healthcare company) in partnership with Bastion Capital (an investment management firm) (collectively, "**KPS-Bastion**") and conditional on the participation of Mr. Agarwal, sent a letter of interest for the purchase of GOLI's business, subject to certain terms and conditions, including the exclusion of the Atos Equipment.

[57] Group KPS is a healthcare company with an extensive distribution network in Latin America. Group KPS currently distributes Goli products in Mexico and has a deep

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15 Exhibit P-19.

16 Exhibit P-20.

understanding of its brand and the potential for growth. Bastion Capital has an extensive track record of financing and supporting successful consumer-based businesses.

[58] After negotiations with the Lenders, on February 3, 2024, KPS-Bastion, with the confirmed participation of Mr. Dee Agarwal, presented a revised offer to purchase GOLI's business to the Debtors and the Lenders (the "**KPS-Bastion Offer**").[17] KPS-Bastion also specified in the KPS-Bastion Offer that other existing shareholders of GOLI could participate in the transaction contemplated by the offer (the "**Contemplated Transaction**").

[59] On February 5, 2024, concerned that without a going concern transaction, there will likely be a material erosion to the value of the Lenders' security, thereby causing irreparable prejudice to the Lenders, the Lenders accepted the KPS-Bastion Offer and the Contemplated Transaction despite the fact that they will suffer a significant loss on the Loan.

[60] The Contemplated Transaction requires that GOLI's business be conveyed to the purchaser through a formal insolvency process. The Applicants, the Lenders and the Proposed Monitor are of the view that the Contemplated Transaction represents the best outcome available for GOLI and its stakeholders in the circumstances.

5. Restructuring Objectives

[61] The Debtors and the Lenders have concluded that the only realistic option for a going concern transaction is to engage in a formal restructuring process in order to conclude the Contemplated Transaction. At the comeback hearing, Debtors will thus seek the approval of the Contemplated Transaction and of the Agency Agreement in order to proceed with the orderly liquidation of the Atos Equipment without further delay.

ANALYSIS

[62] The purpose of the CCAA is to create "breathing room for an insolvent debtor to negotiate a way out of insolvency".[18] It is based on the premise that "debtor companies retain more value as going concerns than in liquidation scenarios".[19] As such, the act embraces "the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress […] and enhancement of the credit system generally".[20]

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17 Exhibit P-21.

18 *Canada* v. *Canada North Group Inc.*, 2021 SCC 30, para. 19.

19 *Ibid*, para. 20; *Century Services Inc.* v. *Canada (Attorney General)*, 2010 SCC 60, para. 18.

20 *9354-9186 Québec inc.* v. *Callidus Capital Corp.*, 2020 SCC 10, at para. 42, quoting Janis Pearl Sarra, *Rescue! The Companies' Creditors Arrangement Act*, 2nd ed., Toronto, Carswell, 2013, p. 14.

[63] Through its initial order, the court "preserves the *status quo* by freezing claims against the debtor while allowing it to remain in possession of its assets in order to continue carrying on business".[21]

[64] The various criteria for the issuance of an initial order under the CCAA are met.

[65] The Debtors are debtor companies within the meaning of section 2 of the CCAA. The parent company, GOLI Canada is a Canadian corporation incorporated under the CBCA. GOLI USA is a wholly owned subsidiary of GOLI Canada. Even though GOLI USA is a Delaware corporation, its principal place of business is located in Montreal. The operational and financial decisions regarding GOLI USA are made by GOLI Canada. Most of GOLI's employees are in Canada.

[66] The Debtors are insolvent because the value of their assets in a liquidation context would be insufficient to meet all their obligations to their creditors. They are also unable to meet their obligations as they become due.[22]

[67] The Debtors' total indebtedness exceeds the CAN$5,000,000 threshold required by the CCAA.

[68] The Debtors, in collaboration with the Lenders, wish to proceed with a restructuring, while ensuring the continuity of their activities in a viable manner. To do so, they need CCAA protection and the assistance of the Monitor to implement a court-supervised restructuring process.

[69] The clauses of the draft Initial Order are in line with the standard Initial Order.

1. The Stay

[70] Without CCAA protection, the Debtors are in real danger of no longer being able to maintain their activities. A stay of proceedings for an initial period of 10 days, subject to extensions (the "**Stay Period**") is necessary to avoid a possible liquidation at a discount of the Debtors' assets in the context of multiple litigations and hypothecary recourses by the various creditors of the Debtors. Initial orders may be issued for the benefit of the debtor's officers and directors when required.[23]

2. The Appointment Of The Monitor

[71] The appointment of Deloitte, a licensed insolvency trustee, to act as Monitor under the provisions of the CCAA is appropriate.

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21 *Canada* v. *Canada North Group Inc.*, *supra*, note 18, para. 19.
22 *Stelco Inc., Re*, 48 C.B.R. (4th) 299, paras. 26 and 28.
23 *Great Basin Gold Ltd. (Re)*, 2015 BCSC 1199, para. 32.

[72] Deloitte is not subject to any of the restrictions set out in Section 11.7(2) of the CCAA. Mr. Clouatre and Mr. Nadon and their team have significant experience acting as a CCAA monitor including in multi-jurisdictional proceedings.

[73] Deloitte has been working with the Lenders since April 27, 2023, to address the debtors' financial and operational concerns. Deloitte has been involved in the Pre-Filing SISP.

3. The Administration Charge

[74] An Administration Charge of $300,000 is warranted under the circumstances.

[75] Such charges "are required to derive the most value for the stakeholders". They are "beneficial to all creditors".[24]

4. Directors and Officers Charge

[76] Debtors also ask that a D&O Charge be put in place to guarantee the active and committed involvement and continued participation of the Debtors' directors and officers.

[77] Such charges are appropriate to alleviate the concern that directors and officers may have about the possibility of personal liability. Even when the directors may benefit from some insurance coverage, such coverage may prove insufficient or be subject to standard exclusions which could make it difficult to cover all potential liabilities that can arise in the context of an insolvency process. More often than not, the continued service and involvement of the director and officers in CCAA proceedings is conditional upon the granting of an Order which includes a directors and officers charge.[25]

[78] The amount requested of CAN$330,000 is reasonable. The D&O Charge will take rank after the Lenders' security.

[79] The Applicants submit that the requested D&O Charge is reasonable and adequate given, notably, the potential expose of the directors and officers to personal liability.

[80] The Lenders and the Monitor support putting in place the Administration Charge and the D&O Charge. The amounts are explained in the Monitor's report.

5. United States Bankruptcy Chapter 15 Case

[81] GOLI has operations, assets and valuable business and trade relationships with a number of parties in the United States.

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[24] *Canada* v. *Canada North Group Inc.*, *supra*, note 18, paras. 28 to 30; *Syndic de Chronométriq inc.*, 2023 QCCA 1295, para. 33.

[25] *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1422, paras. 56 and 57.

[82] After the commencement of CCAA proceedings in Canada, Debtors and the Monitor intend to initiate a case under Chapter 15 of the *U.S. Bankruptcy Code*, seeking an order to recognize and enforce these CCAA proceedings in the U.S. as foreign main proceedings and grant protection against any potential adverse action taken by GOLI's U.S. creditors and stakeholders (the "**Chapter 15 Case**").

[83] Debtors ask that the Initial Order specify that the Debtors' center of main interest is in Canada. Such an order is appropriate here given that:

83.1. Section 45(2) of the CCAA sets out that a debtor's company registered office is deemed the center of its main interest. This office is in Montreal both for GOLI Canada and GOLI USA.

83.2. The Debtors operate on a consolidated basis and all of the important decisions are taken in Canada by the senior management of GOLI Canada.

83.3. The majority of the Debtors' Assets are located in Canada and/or owned by GOLI Canada. GOLI Canada is the sole owner of the Assets found in the United States of America.

83.4. GOLI Canada is the ultimate parent, and sole beneficial owner of GOLI USA.

83.5. All human resource matters for GOLI USA are managed through personnel in Canada on GOLI Canada payroll.

83.6. GOLI Canada and GOLI USA utilize shared services, including among other areas, human resources, accounting, legal, information technology, marketing and sales and business applications (all of which, with the exception of the Chief Marketing Officer, are employed or subcontracted by GOLI Canada).

[84] The relief sought has been ordered by other Initial Orders in the same circumstances.[26]

6. Sealing of Confidential Documents

[85] Debtors seek an order declaring the exhibits P-14 (Annexes A,B and D), P-21, P-24 and P-25 be filed under seal. They submit that these exhibits contain sensitive information regarding the valuation of the Assets which are commercially sensitive and risk impacting the closing of the Contemplated Transaction.

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[26] *In the matter of the compromise of Xebec*, September 29, 2022, 500-11-061483-224; *In the matter of the compromise of Stornoway Diamond*, September 9, 2019, 500-11-057094-191.

7. Execution Notwithstanding Appeal

[86] Article 661 of the *Civil Code of Procedure* allows the court, upon application, to order provisional execution for the whole or a part only of the judgment, "if bringing an appeal is likely to cause serious or irreparable prejudice to one of the parties".

[87] Given the urgency and severity of the circumstances confronting the Debtors, it is essential that the execution of the order sought herein be granted notwithstanding appeal. Without it, the restructuring efforts of the debtors would be put in serious jeopardy.

FOR THESE REASONS, THE COURT:

[88] **GRANTS** the Application for the Issuance of the First Day Initial Order;

[89] **SIGNS** the draft Initial Order submitted by the parties this day, March 18, 2024;

[90] **THE WHOLE** without costs.

_____

MARTIN F. SHEEHAN, J.S.C.

Mtre Christian Lachance
Mtre Benjamin Jarvis
DAVIES WARD PHILLIPS & VINEBERG S.E.N.C.R.L, S.R.L
Counsel for the Debtors - Applicants

Mtre Noah Zucker
NORTON ROSE FULBRIGHT CANADA S.E.N.C.R.L., S.R.L.
Counsel for the Monitor

Mtre Sandra Abitan
OSLER, HOSKIN & HARCOURT, S.E.N.C.R.L., S.R.L.
Counsel for the Lender

Hearing date: March 18, 2024

Exhibit D

Deloitte.

Deloitte Restructuring Inc.
1190, Avenue des Canadiens-de-Montréal
Suite 500
Montreal QC H3B 0M7
Canada

Tel: 514-393-7115
Fax: 514-390-4103
www.deloitte.ca

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
COURT. No.: ●
OFFICE No.: ●

S U P E R I O R C O U R T
Commercial Division

IN THE MATTER OF A PLAN OF ARRANGEMENT OR COMPROMISE OF:

GOLI NUTRITION INC., a duly incorporated company under the laws of Canada having its principal place of business at 2205 Boul. De la Côte-Vertu, suite 200, in the city and judicial district of Montreal, Quebec, H4R 1N8;

- and –

GOLI NUTRITION INC., a duly incorporated company under the laws of Delaware having its principal place of business at 2205 Boul. De la Côte-Vertu, suite 200, in the city and judicial district of Montreal, Quebec, H4R 1N8

Debtors

- and -

DELOITTE RESTRUCTURING INC., a duly incorporated company having a place of business at 500-1190 Ave des Canadiens-de-Montréal, in the city and district of Montreal, province of Quebec, H3B 0M7.

Proposed Monitor

FIRST REPORT TO THE COURT
SUBMITTED BY DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSED MONITOR
(*Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended)

INTRODUCTION

1) Goli Nutrition Inc. ("**Goli Canada**") and Goli Canada's wholly owned subsidiary based in the United States, Goli Nutrition Inc. ("**Goli US**", and together with Goli Canada, the "**Debtors**" or the "**Company**") have filed an application (the "**CCAA Application**") before the Superior Court of Québec (commercial division) sitting in the district of Montreal (the "**Court**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), seeking, *inter alia,* a first-day initial order (the "**Initial Order**") commencing proceedings in respect of the Debtors under the CCAA (the "**CCAA Proceedings**") and

appointing Deloitte Restructuring Inc. as the CCAA monitor of the Debtors ("**Deloitte**" or the "**Proposed Monitor**").

2) At the comeback hearing on the CCAA Application (the "**Comeback Hearing**"), the Debtors will be seeking an amended and restated initial order (the "**Amended and Restated Initial Order**") as well as orders (the "**Transaction Approval Orders**") approving and granting accessory relief in connection with:

   a) a transaction involving the transfer of substantially all of Goli Canada's business and assets, other than the Atos Equipment (as defined below), to an acquisition group, which includes one of the principal shareholders of Goli Canada (the "**Principal Transaction**"); and

   b) the transactions resulting from an Agency Agreement (the "**Agency Agreement**") concluded with Gordon Brothers Commercial & Industrial, LLC ,on behalf of a contractual joint venture between itself and Branford Auctions, LLC, (collectively, the "**Agent**") in respect of the Atos Equipment (the "**Atos Transaction**" and together with the Principal Transaction, the "**Proposed Transactions**").

3) The proposed Initial Order to be sought at the "first day" hearing of the CCAA Application includes, among other things, the following proposed relief:

   a) a stay of proceedings in favor of the Debtors, their property and their directors and officers for an initial period of ten (10) days;

   b) the appointment of Deloitte as monitor pursuant to section 11.7 of the CCAA;

   c) the granting of an administration charge (the "**Administration Charge**") and a directors' and officers' charge (the "**D&O Charge**" and together with the Administration Charge, the "**CCAA Charges**");

   d) a declaration that Montreal, Québec is the "center of main interest" of the Debtors and authorizing the Debtors or the Proposed Monitor to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize, enforce and/or assist in carrying out the terms of the Initial Order and any subsequent orders rendered in the CCAA Proceedings, including, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532 ("**Chapter 15**"); and

   e) scheduling of the Comeback Hearing on terms to be determined by the Court;

4) Since the Debtors have activities and assets in the United States, the Proposed Monitor intends to institute proceedings before the United States Bankruptcy Court for the District of Delaware, immediately following the issuance of the Initial Order, seeking the recognition of the CCAA Proceedings as foreign main proceedings under Chapter 15 as well as the recognition of Deloitte as foreign representative of the Debtors and certain other related relief (the "**Chapter 15 Case**").

5) The Debtors' primary secured creditors are a syndicate of lenders composed of Bank of Montreal, as Administrative Agent, HSBC Bank Canada, National Bank of Canada and Fédération Des Caisses Desjardins Du Québec (collectively, the "**Syndicated Lenders**")

6) This report (this "**First Report**") has been prepared by the Proposed Monitor in contemplation of its proposed appointment as monitor in the CCAA Proceedings to

provide information to the Court in respect of the relief sought at the initial hearing of the CCAA Application as well as at the Comeback Hearing.

7) If the Initial Order is granted, the Debtors intend to seek the issuance, at the Comeback Hearing, of the Transaction Approval Orders as well of the Amended and Restated Initial Order, which provides, *inter alia*, for additional powers for the Monitor to complete the Atos Transaction and any remaining restructuring steps following the closing of the Principal Transaction.

8) The Proposed Monitor intends to file a supplemental report to provide further information, including on the Proposed Transactions, as required, as well as its views and recommendations to the Court in respect of the relief to be sought by the Debtors at the Comeback Hearing.

PURPOSE

9) The purpose of the First Report is to provide information to the Court with respect to:

a) Deloitte's qualification to act as monitor;

b) The business, financial affairs and financial results of the Company;

c) The Company's creditors;

d) The sale and investment solicitation process;

e) The Proposed Transactions;

f) The Company's cash flow forecast;

g) The CCAA Charges;

h) The Chapter 15 Case; and

i) The Proposed Monitor's conclusions and recommendations.

10) In preparing this First Report and making the comments herein, the Proposed Monitor has been provided with, and has relied upon, unaudited financial information, the Debtors' books and records and financial information prepared by the Company and discussions with management ("**Management**") of the Company (collectively, the "**Information**").

11) Except as described in this First Report in respect of the Debtors' Cash Flow Statement (as defined below):

a) The Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and

b) Some of the information referred to in this First Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as

outlined in Chartered Professional Accountants Canada Handbook, has not been performed.

12) Future oriented financial information referred to in this First Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

13) Except otherwise indicated, the Proposed Monitor's understanding of factual matters expressed in the First Report concerning the Company and its business is based on the Information, and not independent factual determinations made by the Proposed Monitor.

14) Unless otherwise stated, all monetary amounts contained in this First Report are expressed in United States dollars.

DELOITTE'S QUALIFICATION TO ACT AS MONITOR

15) Deloitte is a Licensed Insolvency Trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada).

16) Deloitte is not subject to any of the restrictions to act as the Proposed Monitor as set out in Section 11.7(2) of the CCAA.

17) Deloitte has significant experience acting as a CCAA monitor and in other court officer capacities in formal insolvency proceedings.

18) Deloitte has been acting as financial advisor to the Syndicated Lenders since April 27, 2023, to, among other things, assist the Syndicated Lenders in understanding the Debtors' current financial situation and performance, evaluate the Company's assets and liabilities and undertake an assessment of the Syndicated Lenders' security position. Deloitte has also worked with Management over this time to prepare and update a 13-week cash flow forecast.

19) In the context of the foregoing, the Proposed Monitor's professional personnel associated with this matter have acquired knowledge of the Company and its business. The Proposed Monitor has spent time with Management understanding the operations and financial performance and has assisted in the preparation of the Cash Flow Forecast. The Proposed Monitor has also reviewed the CCAA Application materials, and various financial and other information and is, therefore, in a position to act as court-appointed monitor of the Debtors in an efficient and diligent manner in the CCAA proceedings for the benefit of all of the stakeholders.

20) Deloitte has determined that it is not in a position of conflict, in fact, or in perception. The Proposed Monitor is, therefore, in a position to act as a court-appointed monitor without delay, in a sufficient and diligent manner in the CCAA Proceedings.

21) Accordingly, Deloitte has consented to act as monitor of the Debtors should the Court grant the Initial Order materially on the terms sought and as foreign representative of certain Debtors in any ancillary foreign recognition proceedings, including the Chapter 15 Case.

22) The Proposed Monitor has retained Norton Rose Fulbright Canada LLP and Norton Rose Fulbright US LLP (collectively, "**NRF**") to act as its independent legal counsel in the

CCAA Proceedings and the Chapter 15 Case. Deloitte and/or NRF have also retained Holland & Knight LLP as well as Landis Rath & Cobb LLP to support NRF with certain aspects of the CCAA Proceedings and the Chapter 15 Case.

THE BUSINESS, FINANCIAL AFFAIRS AND RESULTS OF THE COMPANY

Business and financial affairs

23) The Company is a wellness brand company, using the "Goli" name, with a focus on selling and distributing nutritional gummies. The Company has a variety of different gummy products, with Apple Cider Vinegar gummies and Ashwagandha gummies being the largest sellers. The Company sells its products both directly to consumers ("**DTC**") through its own website and Amazon, and also through retailers ("**BTB**"), primarily in the United States, including Walmart, Walgreens and Kroeger, among others.

24) The Company was started in 2018 and grew rapidly to over $560 million in revenue by 2021. The Company uses several contract manufacturers based in the United States to manufacture its products, with inventory being distributed to consumers and retailers by a number of third-party logistics providers.

25) The primary beneficial shareholders of the company include the founders, Mr. Michael Bitensky ("**Mr. Bitensky**") and Mr. Deepak Agarwal ("**Mr. Agarwal**"), as well as VMG Partners (a private equity fund) which acquired a minority stake (5%) in the Company in late 2021.

26) The Company's corporate headquarters are located in Montreal, Quebec. As of the date of this First Report, Goli Canada employed approximately 35 people in Canada and the United States and Goli US employed 4 employees in the United States.

27) The Company has an outsourcing contract with Liveketo Private Limited ("**Liveketo**") based in India pursuant to which Liveketo provides the services of approximately 17 people to the Company in the functions of finance, human resources, business intelligence, supply chain and retailer support services.

28) The Company also has an outsourcing contract with Direct Digital Solutions ("**Direct Digital**") based in the Philippines pursuant to which Direct Digital provides the services of approximately 54 people to the Company in the functions of customer service, shipping, influencer and sales support.

29) In March 2020, Goli US entered into a lease in respect of four buildings in Norco, California (the "**Norco Facility**"), based on an understanding with Better Nutritionals LLC ("**BN**"), a former co-manufacturer for the Company, that BN would occupy the Norco Facility and pay the rent as well as other expenses related to the premises.

30) The Company's financial difficulties were aggravated due to the inability of BN, which is now subject to bankruptcy proceedings in the United States, to meet certain of its obligations related to the Norco Facility as well as to certain leased production line and manufacturing equipment located at the Norco Facility (the "**Atos Equipment**").

31) In June 2022, Goli Canada entered into a settlement agreement with the owner of the Atos Equipment, pursuant to which Goli Canada acquired such equipment for $32 million. The acquisition was funded by two of Goli Canada's shareholders, 11028227 Canada Inc. and 11028154 Canada Inc., entities related to Mr. Bitensky and

Mr. Agarwal. Accordingly, ownership of the Atos Equipment was transferred to Goli Canada.

32) Goli Canada's main assets are its accounts receivable, inventory, the Atos Equipment, brand and other intellectual property as described in more detail below:

a) Accounts receivable: As of December 31, 2023, the latest available internal financial statements, Goli Canada had ~$11.2 million in accounts receivable, owing from BTB customers, of which ~$10.6 million (54 accounts) related to sales to North American customers and ~$0.6 million (6 accounts) related to sales to customers in Europe and other global markets.

b) Inventory: As of December 31, 2023, Goli Canada had ~$3.9 million in gummy and packaging inventory, of which ~$1.6 million was located at a fulfilment centre in Indianapolis operated by Emerson Healthcare LLC (third party logistics company serving the Company's BTB customers). A significant portion is also located at Amazon fulfilment centres across North America (~$0.7 million) and at three different facilities operated by Staci Americas (~$1.1 million) in Vannuys (Los Angeles), Bolingbrook (Illinois) and Milton (Ontario). When manufactured, most of the gummy products have a shelf life of approximately 18 months. However, the larger retailers will only accept inventory with a shelf life of at least 9 months. Of the $3.9 million in inventory, approximately $1.3 million has a shelf life of less than 9 months.

c) Atos Equipment: The Atos Equipment comprises various installed and uninstalled manufacturing and production equipment located at the Norco Facility.

33) The table below demonstrates the Company's historical balance sheet, with an increasing working capital deficit and decreasing equity position over time:

The Company Balance Sheet

US $'000	Dec-21	Dec-22	Dec-23
Assets			
Cash	12,771	-	639
Accounts receivable	25,684	30,579	10,528
Inventory	66,970	29,557	5,143
Investment in lease / Norco Equipment	40,766	40,742	38,986
Intangible assets	4,627	2,957	495
Other assets	12,835	9,171	6,816
Total assets	**163,653**	**113,006**	**62,608**
Liabilities			
Accounts payable	39,253	34,020	31,308
Other payables and provisions	39,957	26,403	36,844
Due to related parties	-	45,403	17,590
Revolving credit facility	42,798	35,293	34,031
Long-term loans	88,599	56,698	53,732
Capital leases	15,824	-	-
Total liabilities	**226,431**	**197,817**	**173,506**
Shareholders' deficiency	**(62,778)**	**(84,811)**	**(110,897)**

Source: Dec-21 and Dec-22 draft audited accounts; Dec-23 draft internal financials

34) From December 2021 to December 2023, the book value of Goli Canada's inventory decreased from $70.0 million to $5.1 million. The Company experienced significant inventory obsolescence issues as its revenues declined, resulting in inventory write-offs and discounted liquidation sales.

35) As of the date of this First Report, Management estimates that the Company's working capital is not sufficient to allow it to meet its financial obligations, commitments and necessary budgeted expenditures for the foreseeable future. The balance sheet indicates a net deficit (shareholder deficiency) of $110.9 million as of December 31, 2023.

36) Consequently, the Proposed Monitor is on the view that both Goli Canada and Goli US are insolvent.

Recent financial results

37) The Company has faced a number of challenges, including a material reduction in sales as consumer health trends changed coming out of the Covid-19 pandemic. The Company has also suffered from several supply chain and inventory management issues, resulting in margin erosion and a tightening of liquidity.

38) The following table provides a summary of the Debtors' consolidated revenue and net profit/loss, highlighting the negative trend in 2022 and 2023 in the business and material slowdown in sales:

The Company Summary Income Statement

US $'000	FY21	FY22	FY23
Revenue	**501,939**	**187,342**	**118,174**
Cost of goods sold	173,799	82,567	80,004
Gross profit	**328,140**	**104,775**	**38,170**
Expenses			
Advertising and promotion	188,936	55,811	18,020
Delivery	55,012	22,905	19,020
Processing fees	20,020	8,811	6,356
Salaries and benefits	7,936	9,656	6,098
Professional fees	5,588	9,051	12,500
Office and miscellaneous	4,301	6,861	19,051
Other, interest, depreciation	15,981	23,100	19,844
Total expenses	**297,774**	**136,195**	**100,889**
Net income/(loss) before tax	**30,366**	**(31,420)**	**(62,720)**

Source: FY21 and FY22 draft audited accounts; FY23 draft internal financials

39) The Company has sustained significant losses since March 2022. According to Management, these losses are attributed to, among other things:

a) Decreased demand for the Company's primary product, Apple Cider Vinegar gummies;

b) Inventory purchases exceeding demand, resulting in inventory obsolescence issues, material charge backs from retailers, inventory write-offs and erosion of gross margins;

c) Various litigation in the United States resulting in significant legal and settlement costs for the Company;

d) Liquidity constraints impacting the Company's ability to advertise and promote its products; and

e) Competition in the sector requiring sales prices of the Company's products to be decreased.

40) The Proposed Monitor's review of the latest financial statements for the year ended December 31, 2023 ("**FY23**") shows that gross revenues decreased by $69.2 million (37%) over the prior year and gross profit declined to $38.2 million. The Company estimates that inventory related write-offs and charge backs from retailers contributed to the losses of the Company by approximately $30.9 million during FY23.

41) Overall, the Company suffered an EBITDA loss of $42.9 million in FY23 and a net loss of $62.7 million, resulting in significant liquidity constraints on the business.

THE COMPANY'S CREDITORS

Secured creditors

42) Goli Canada is the borrower under an amended and restated credit agreement dated September 2, 2022 (as amended, the "**Senior Credit Agreement**") with the Syndicated Lenders. Pursuant to the Senior Credit Agreement, the Syndicated Lenders provided a Revolving Facility, a Term Facility, and Credit Card Facilities to Goli Canada (collectively, the "**Credit Facilities**"). Goli US has guaranteed all of Goli Canada's obligations to the Syndicated Lenders under the Credit Facilities.

43) As of the date of this Report, the total indebtedness under the Credit Facilities is approximately $99.1 million, as shown in the table below.

The Company Secured Creditors

US $'000	
Senior Lender Credit Facilities	
Revolving facility	36,991
Term facility	60,493
Credit card facilities	1,581
Total Senior Lender obligations	**99,065**
Other secured obligations	
Related party loans	654
Total other secured obligations	**654**
Total secured obligations	**99,719**

Source: Financial information from Goli dated March 14, 2024

44) The Syndicated Lenders hold various registered security interests over all of the present and after-acquired movable and immovable (personal and real) property of Goli Canada and Goli US (collectively, the "**Syndicated Lenders' Security**"). According to searches conducted in public registries, the Syndicated Lenders hold first ranking security over the Company's assets in Canada and in the United States.

45) The Proposed Monitor has caused to be performed, by NRF and Holland & Knight LLP, an independent review of the Syndicated Lenders' Security, which has confirmed that such security is valid and enforceable in Canada and the United States.

46) Goli Canada is in default under the terms of the Senior Credit Agreement and has been since the spring of 2023. The Syndicated Lenders have sent various notices of default and of their intention to enforce their security but agreed to refrain from exercising their rights and recourses for a limited period, particularly to allow for the Company to implement the SISP (as defined below), which has culminated in the Proposed Transactions.

47) Goli Canada owes $0.7 million to 11028227 Canada Inc. and 11028154 Canada Inc., entities related to Mr. Bitensky and Mr. Agarwal, respectively, in connection with loans

advanced in October 2023 for the purpose of funding certain working capital obligations of the Company (the "**Related Party Loans**"). The Related Party Loans are secured by security registered over all of the Company's present and after-acquired real and personal property, which, according to searches conducted at public registries, ranks junior to the Syndicated Lenders' Security.

Unsecured creditors

48) According to the Company's books and records, the following table summarizes the obligations of the Company to unsecured creditors as of March 14, 2024:

The Company Unsecured Creditors

US $'000	
Vendors	
Professional fees	10,454
Contract manufacturers and packaging	9,717
Advertising and promotion	5,306
Third party logistics and shipping	2,111
Other vendors	2,760
Total vendor creditors	**30,349**
Other unsecured obligations	
Taxes payable	12,748
Credit card providers	6,854
Norco facility rent and other liabilities	1,489
Employees (vacation accrual)	71
Related party loans	15,525
Litigation settlement payments	1,945
Total other unsecured obligations	**38,632**
Total unsecured obligations	**68,981**

Source: Financial information from Goli dated March 14, 2024

49) The Company has several outstanding tax-related liabilities, including:

a) Approximately $8.7 million owing to the Canada Revenue Agency ("**CRA**") in respect of income taxes for the financial years ended December 31, 2020 and 2021, in addition to penalties and interest;

b) Goods and service taxes in the amount of approximately $0.2 million;

c) State sales taxes of approximately $0.9 million owing to several different States including Virginia, Iowa, Nevada, Mississippi, New Mexico, Hawaii, Oklahoma and Arkansas; and

d) Foreign sales taxes of approximately $2.9 million owing in respect of sales made to the United Kingdom, Australia, New Zealand, and the United States.

50) The Company utilizes several accounts payable finance and credit card facilities to fund its inventory purchases and working capital requirements. As of the date of this First Report, we understand that the Debtors owe a total of approximately $6.9 million to four different service providers including American Express, Parker Group Inc., Brex Inc., and Slope Tech Inc (excluding the credit card facilities provided by the Syndicated Lenders).

51) In respect of the Norco Facility, Goli US owes amounts in connection with outstanding rent, brokers' fees, utilities and security personnel providers totalling approximately $1.5 million.

52) According to Management, payroll obligations are current, other than accrued vacation totalling approximately $0.1 million. Payments are made on a biweekly basis using outsourced payroll companies, namely ADP, for Canadian employees, and Trinet, for American employees. As per Management, all source deductions are current.

53) Goli Canada owes a further $15.5 million to 11028227 Canada Inc. and 11028154 Canada Inc. through unsecured loans.

54) The Debtors owe various parties approximately $1.9 million in respect of litigation settlement payments. The Debtors are also subject to several ongoing litigation proceedings for which the Company's exposure has not been quantified.

THE SALE AND INVESTMENT SOLICITATION PROCESS

55) In June 2023, the Company retained BMO Capital Markets ("**BMOCM**") to proceed with a sale and investment solicitation process in respect of the business and assets of the Debtors (the "**SISP**"). Various marketing materials and a data pack were prepared by BMOCM with the support of the Company including, among other things, an executive summary providing an overview of the Company's business and operations and describing the investment opportunity (the "**SISP Executive Summary**"), a financial model, and a virtual data room ("**VDR**").

56) The SISP Executive Summary is attached, *under seal*, as **Appendix B** to this First Report. The SISP Executive Summary and information populated in the VDR provided additional information considered relevant to the opportunity and detailed analysis about the business to enable potential interested parties to make an informed assessment of the opportunity.

57) BMOCM, in collaboration with Management, established a list of forty-four (44) potential investors and purchasers, including national and international companies and private equity groups operating in the same industry as the Company.

58) BMOCM started to reach out to potential buyers in June 2023 and the full SISP process was undertaken over a seven (7) month period to January 2024.

59) The SISP conducted by BMOCM can be summarized as follows:

a) Forty-four (44) potential buyers were contacted by BMOCM;

b) Twenty-nine (29) interested parties (seven (7) strategic and twenty-two (22) financial) executed non-disclosure agreements were provided with a copy of the SISP Executive Summary and were granted access to the VDR;

c) Five (5) interested parties submitted a non-binding letter of interest ("**LOI**") through the process, including four (4) LOIs received in August 2023 and one (1) LOI received in November 2023 from a late entrant into the SISP;

d) Management presentations were made both virtually and in person in California to several parties that submitted LOIs in September 2023, with the full Management team;

e) On October 31, 2023, BMOCM sent a process letter to five (5) interested parties inviting the submission of final, binding proposals and including a draft definitive agreement for review and mark-up. A deadline for submission of proposals was set as November 14, 2023 ("**Binding Proposal Deadline**"). A copy of the process letter is attached hereto as **Appendix C**;

f) No binding offers were received by the Company by the Binding Proposal Deadline;

g) BMOCM continued its efforts to advance a transaction with interested parties and to facilitate due diligence requests, but several of the parties raised concerns regarding the operating results of the Company and required more time for the Company to demonstrate an improvement in its results;

h) A few interested parties undertook financial and commercial due diligence from September 2023 to January 2024; and

i) Ultimately, none of these parties decided to proceed with submitting a binding offer to acquire the Company.

60) The Proposed Monitor, then acting as financial advisor to the Syndicated Lenders, was kept apprised of the progress of the SISP and, in particular, received reports from BMOCM on the solicitation efforts, the due diligence process and any indications of interest or offers received in connection with the Company's business and assets, including the Atos Equipment.

61) The Proposed Monitor understands that the interested parties decided not to advance binding proposals for a variety of reasons, including concerns in relation to the Company's business model and profit margins, the Company's ability to grow its revenues and the overall viability of the business, as well as the additional liquidity that would be required to be invested following a transaction to support the Company.

62) In addition, some of the parties expressed concerns regarding the balance sheet of the Company and its material working capital deficit and were not interested in acquiring the Company through an insolvency process. The Proposed Monitor understands from BMOCM that all parties involved understood that they had the opportunity to acquire the business at an opportunistic value given the financial situation, but ultimately, they still decided not to move forward with any binding offers.

63) On January 15, 2024, considering the worsening liquidity position of the Company and the failure of the SISP to generate a binding offer, a strategic investor and financial sponsor that had not previously participated in the SISP, Group KPS and Bastion Capital, with the contemplated participation of one of the Company's founders, Mr. Agarwal, (the "**Consortium**") decided to submit a LOI to the Company (the "**Initial Consortium LOI**"). The terms of the Initial Consortium LOI provided for a rapid transaction that would preserve the value of the business as a going concern and allow it to continue its operations.

64) The Consortium's ability to pursue the acquisition quickly was facilitated by Mr. Agarwal's in-depth knowledge of the business, the lack of any requirement for due diligence and his confidence in being able to improve the financial performance of the Company.

65) The transaction value put forward in the Initial Consortium LOI was significantly less than the amount owed to the Syndicated Lenders under the Credit Facilities. Accordingly, being the stakeholder with the primary economic interest in the outcome of the transaction, over the next three (3) weeks, the Syndicated Lenders worked with

the Consortium to negotiate a transaction, including an increase to the proposed transaction value.

66) On February 3, 2024, the Consortium entered into a non-binding LOI with the Syndicate Lenders pursuant to which the Syndicate Lenders agreed to work towards the drafting and execution of a definitive purchase agreement.

67) With respect to the Atos Equipment, the Debtors received only one indication of interest over the course of the SISP. The interested party was granted access to the VDR and visited the Norco Facility to conduct due diligence, but, by early October 2023, it became clear that the prospective bidder was not interested in moving forward with a transaction in respect of those assets. In the absence of alternatives, the Debtors and the Syndicated Lenders initiated a process to liquidate the Atos Equipment through an auction.

68) After receipt of four (4) proposals from different auctioneers and following extensive negotiations, the Debtors and the Syndicated Lenders accepted a proposal submitted by the Agent, which ultimately offered the highest guaranteed return and, given its familiarity and knowledge of the equipment in question, the strongest chances of selling the equipment and maximizing value. The Agent will market the Atos Equipment for sale and is expected to hold the auction in late April or the first week of May.

69) Following further negotiations between the Debtors, the Syndicated Lenders and the Agent, in consultation with the Proposed Monitor, the terms of the Agency Agreement were agreed to in connection with the disposition of the Atos Equipment pursuant to the Atos Transaction.

THE PROPOSED TRANSACTIONS

The Principal Transaction

70) On March 15, 2024, Goli Canada entered into a binding subscription agreement (the "**Subscription Agreement**") with the Consortium, pursuant to which a newly constituted entity will subscribe for new shares in Goli Canada and effectively acquire 100% of the equity interest in Goli Canada, the whole in accordance with the terms and conditions of the Subscription Agreement (the "**Principal Transaction"**). The Principal Transaction is described in the CCAA Application and a copy of the Subscription Agreement is communicated in support thereof *under seal* as Exhibit P-25.

71) The Principal Transaction is intended to be approved and implemented as a "pre-pack" transaction under the CCAA pursuant to a reverse vesting order ("**RVO**") and thereafter recognized and enforced in the United States in the Chapter 15 Case. Certain excluded assets (including notably the Atos Equipment) as well as certain contracts and liabilities will be vested out of the Company and transferred to a "ResidualCo" as part of the contemplated RVO structure.

72) Under the terms of the Subscription Agreement, consideration payable by the Consortium will include a cash payment, the payment of any priority claims to which the Company is subject and payment to cover the professional fees of the Proposed Monitor, its legal counsel and the legal counsel to the Syndicated Lenders. The aggregate consideration payable by the Consortium under the Subscription Agreement (the "**Consideration**") is set out in the schedule (the "**Consideration Schedule**") attached to this Report as *under seal* as **Appendix D**;

73) Pursuant to the terms of the Subscription Agreement, closing of the Principal Transaction is scheduled to occur on or around April 11, 2024, or as otherwise agreed upon by the Company and the Consortium with the consent of Proposed Monitor and the Syndicated Lenders. The Principal Transaction is not subject to any financing condition and the Consortium has provided certain documents to the Syndicated Lenders and the Proposed Monitor to demonstrate its ability to fund the Consideration.

74) Closing is conditional on approval of the Principal Transaction pursuant to the contemplated RVO by the Court and the recognition and enforcement of the RVO in the United States in the Chapter 15 Case.

Appropriateness of RVO structure

75) The Proposed Monitor is of the view that the RVO structure contemplated for the Principal Transaction is appropriate for the following reasons:

a) Various agreements, licences and authorizations are part of the purchased assets that must be transferred to the Consortium as part of the Principal Transaction. It will be more complicated and costly to transfer these assets under a traditional vesting order structure since consents, approvals or authorizations may be required.

b) The Proposed Monitor understands that certain of the Company's permits and licenses may take many months to be transferred or obtained, which could importantly impair the Company's ability to conduct its activities. An RVO structure will limit the risks, costs and delays related to the transfer of the Company's business and facilitate a smooth transition to the Consortium; and

c) The creditors and other stakeholders affected by the Principal Transaction will not be in a worse position than they would be if the transaction was implemented pursuant to a traditional vesting order structure. In particular, given that the Syndicated Lenders will suffer a significant shortfall on their senior secured position, the Company's later ranking creditors, including unsecured creditors, will not be in a position to obtain recovery, regardless of the structure employed.

The Atos Transaction

76) On March 15 2024, the Company, after having consulted with the Proposed Monitor and the Syndicated Lenders, entered into the Agency Agreement with the Agent for the purpose of liquidating the Atos Equipment for the benefit of the Debtors' creditors. A copy of the Agency Agreement is communicated in support of the CCAA Application *under seal* as Exhibit P-24.

77) Pursuant to the Agency Agreement, the Agent will provide a net minimum guarantee, consisting of an up front cash payment with the balance payable following the sale of the Atos Equipment, and will share any further proceeds realized from the sale of such equipment with the Company. The Agent is also entitled to mark up the price of the Atos Equipment by a certain percentage (the buyer's premium) and to retain the benefit of that markup. The amount of the net minimum guarantee, the allocation of excess revenue and the Agent's mark-up are set out in the Consideration Schedule (Appendix D *under seal*).

78) Under the Agency agreement, the Agent will benefit from a court-ordered priority charge on the Atos Equipment and the proceeds derived from their contemplated sale, in order to secure the payment of the Company's obligations towards the Agent under the Agency Agreement, as is customary in these agreements.

79) The Agent also requires access to the Norco Facility for a period of at least 120 days after the approval by the Court of the Agency Agreement to complete the sale of the Atos Equipment, during which time Goli US will pay occupation rent and certain other related expenses.

80) The implementation of the Agency Agreement is conditional on approval of the Atos Transaction by the Court and the recognition and enforcement of the applicable Transaction Approval Order in the United States as part of the Chapter 15 Case.

Proposed Monitor's assessment of the Proposed Transactions

81) The Proposed Monitor is of the view that the SISP in this matter was robust in the circumstances and that the market was extensively canvassed by BMOCM over the course of the seven (7) month process prior to the initiation of the CCAA Proceedings. The Proposed Monitor was kept apprised of the progress of the SISP and considers that the process was conducted in a fair and transparent manner and that it was reasonable in the circumstances.

82) Ultimately, the SISP did not result in any binding offers to acquire the Company's business or assets other than the offer that has culminated in the Principal Transaction. Consequently, the Principal Transaction is the best and only option available in the circumstances that will allow for the preservation of the Company's going concern.

83) Furthermore, no offers were received through the SISP or through other approaches undertaken by the Company in the last several months for the Atos Equipment and the disposal of those assets pursuant to the Atos Transaction and in accordance with the Agency Agreement is the only viable option available to maximize recovery for the Company's creditors while limiting the ongoing hold costs associated with the Norco Facility.

84) The Proposed Monitor is further of the view that:

a) the aggregate consideration provided for under each of the Proposed Transactions is fair and reasonable in the circumstances, taking into account the market value of the assets being disposed of;

b) The Syndicated Lenders, the creditors with the only economic interest in the assets being disposed of, are supportive of the Proposed Transactions, notwithstanding that they will suffer a significant shortfall on the Credit Facilities;

c) The Proposed Transactions will be more beneficial to the Company's creditors than a liquidation under a bankruptcy, which would, in particular, likely result in a materially worse outcome for the Syndicated Lenders;

d) The Company's stakeholders stand to benefit from the business being transferred as a going concern pursuant to the Principal Transaction, including current employees and subcontractors of the Company as well as its vendors, customers and other trading partners;

e) There is no evidence to suggest that any viable alternative exists that would result in a better outcome for the Company's creditors and other interested parties; and

f) Good faith efforts were made to sell or otherwise dispose of the assets covered by the Principal Transaction to persons who are not related to the Company and no binding offers were received through the SISP.

85) Based on the foregoing, the Proposed Monitor considers that the approval of the Proposed Transactions is in the best interests of the Company's stakeholders generally and will maximize the value of the Company's assets for the benefit of its creditors.

THE COMPANY'S CASH FLOW FORECAST

86) The Company, with the assistance of the Proposed Monitor, has prepared the statement of projected cash flow (the "**Cash Flow Statement**") for the 15-week period from March 18, 2024 to June 28, 2024, (the "**Cash Flow Period**") for the purpose of projecting the Company's estimated liquidity needs during the Cash Flow Period. A copy of the Cash Flow Statement is attached *under seal* as **Appendix A** to this First Report.

87) The Cash Flow Statement has been prepared by the Company using probable and hypothetical assumptions set out in the notes to the Cash Flow Statement.

88) The Proposed Monitor's review of the Cash Flow Statement consisted of inquiries, analytical procedures and discussions related to information supplied by Management. Since the hypothetical assumptions need not to be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Statement. The Proposed Monitor also reviewed the support provided by Management for the probable assumptions, and the preparation and presentation of the Cash Flow Statement.

89) Based on the Proposed Monitor's review and the foregoing qualifications and limitations, nothing has come to its attention that causes it to believe that, in all respects:

a) The hypothetical assumptions are not consistent with the purpose of the Cash Flow Statement;

b) As at the date of this First Report, the probable assumptions developed by Management are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the Cash Flow Statement, given the hypothetical assumptions; or,

c) The Cash Flow Statement does not reflect the probable and hypothetical assumptions.

90) Since the Cash Flow Statement is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Proposed Monitor expresses no opinion as to whether the projections in the Cash Flow Statement will be achieved. The Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report. Neither does the Proposed Monitor express any opinion as to the performance of the Company's statutory obligations with regard to projected payments to be made in accordance with the Cash Flow Statement, *inter alia* the payment of wages, the government remittances and the payroll deductions to be made by the Company.

91) The Cash Flow Statement has been prepared solely for the purpose described in the Notes to the Cash Flow Statement, and readers are cautioned that the Cash Flow Statement may not be appropriate for other purposes.

92) The key assumptions used in the Cash Flow Statement are based on the revised 2024 fiscal year operating plan as well as the historical results of 2023. The Company's consolidated cash balance as of March 15, 2024, was approximately $15,000. The Cash

Flow Statement demonstrates that this liquidity level should be sufficient to fund the operations during the initial 15-week period (until June 28, 2024).

93) Management anticipates more restrictive payment terms for purchases from suppliers following the announcement of the CCAA proceedings. As such, Management has anticipated certain "cash on delivery" purchases.

94) As appears from the Cash Flow Statement and the Application, in order to preserve the going concern value of its operations with the view to completing the proposed Transaction, the Company intends to continue to pay its trade creditors for services rendered and goods supplied in the normal course of business during these CCAA proceedings.

95) Management has advised the Proposed Monitor that it believes that the forecast reflected in the Cash Flow Statement is reasonable.

CCAA CHARGES SOUGHT IN THE PROPOSED INITIAL ORDER

Administration Charge

96) The Initial Order being sought provides for an administration charge in the amount of CDN $300,000 in favor of the Proposed Monitor, the Proposed Monitor's legal counsel, the Debtors' legal counsel and the legal counsel of the Syndicated Lenders as security for their professional fees and disbursements incurred both before and after the making of the Initial Order in respect of the CCAA Proceedings (the "**Administration Charge**").

97) The amount and beneficiaries of the Administration Charge have been determined based on the respective professionals' previous experience with cross-border restructurings of similar magnitude and complexity and taking into account that the Subscription Agreement contemplates certain funding being allocated to cover professional costs related to the CCAA Proceedings and the Chapter 15 Case.

98) The Proposed Monitor is of the view that the Administration Charge is necessary to implement the proposed restructuring and that the proposed amount and beneficiaries are reasonable in the circumstances.

D&O Charge

99) The Proposed Monitor understands from the information provided by Management that the Company holds insurance which provides for coverage with respect to directors' and officers' liability ("**D&O Insurance**") but that such coverage may be insufficient in respect of certain potential directors' and officers' liabilities, notably employee-related obligations.

100) The proposed Initial Order provides for a charge, ranking after the Syndicated Lenders' Security, in an amount of CDN $330,000, to secure the indemnity provided to the directors and officers of the Company in respect of liabilities incurred in such capacity after the contemplated issuance of the Initial Order, except to the extent that such obligations or liabilities were incurred as a result of the directors' and officers' gross negligence or willful misconduct (the "**D&O Charge**"). The D&O Charge becomes effective only if the existing D&O Insurance is not responsive or sufficient.

101) The amount of the D&O Charge has been calculated by the Proposed Monitor, taking into consideration the periodic payroll costs of existing employees, the accruing and

accrued vacation and average sales tax payments, having considered the analysis prepared by the Company in that regard. The details of the calculation are set out in the table attached as **Appendix E** to this First Report.

102) The Proposed Monitor is of the view that the D&O Charge, ranking after the Syndicated Lenders' Security and in the amount proposed by the Debtors, is reasonable in the circumstances.

Increase in CCAA Charges sought in the Amended and Restated Initial Order

103) The amount of the Administration Charge is proposed to be adjusted as part of the Amended and Restated Initial Order that will be sought at the Comeback Hearing.

104) Pursuant to the Amended and Restated Initial Order, the Debtors will seek an increase in the amount of the Administration Charge to CDN $750,000. No increase in the amount D&O Charge is currently contemplated.

105) The Proposed Monitor's view on the reasonableness of the increases to the Administration Charge sought in the Amended and Restated Initial Order will be set out in its supplemental report.

RECOGNITION PROCEEDINGS IN THE UNITED STATES

106) Since the Company has activities and assets in the United States, Deloitte, provided it is authorized to act as foreign representative of the Debtors pursuant to the Initial Order, intends to file with the United States Bankruptcy Court for the District of Delaware (the "**US Court**"), immediately following the issuance of the Initial Order, petitions seeking recognition of the CCAA Proceedings as foreign main proceedings and its appointment as foreign representative of the Debtors, the whole in the context of the Chapter 15 Case.

107) It is also contemplated that Deloitte, in its capacity as foreign representative of the Debtors, will seek the recognition and enforcement of the Amended and Restated Initial Order as well as the Transaction Approval Orders to the extent they are granted at the Comeback Hearing.

108) The Proposed Monitor is of the view that the recognition of the CCAA Proceedings pursuant to the Chapter 15 Case is essential to properly initiate and implement the contemplated restructuring process for the benefit of the Company's creditors and other stakeholders. Such recognition is also a condition to both of the Proposed Transactions.

THE PROPOSED MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

109) In light of the foregoing, the Proposed Monitor is of the view that the Debtors qualify for and should be granted the benefit of protection under the CCAA as provided for in the proposed Initial Order, including the CCAA Charges provided for therein, in order to allow the Debtors the opportunity to proceed with the contemplated restructuring.

110) The Proposed Monitor respectfully recommends, for the reasons set out in this First Report, that the Debtors' request for the Initial Order be granted by the Court.

111) The Proposed Monitor respectfully submits to the Court its First Report.

DATED AT MONTREAL, this 16th day of March 2024.

DELOITTE RESTRUCTURING INC.
In its capacity as Proposed Court-Appointed Monitor of
Goli Nutrition Inc. (Canada) and Goli Nutrition Inc. (US)

Per: Benoit Clouatre, CPA, CIRP, LIT
Senior Vice-President

Jean-François Nadon, CPA, CIRP, LIT
President

Exhibit E

SUPERIOR COURT

(Commercial Division)
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-063787-242

DATE: March 18, 2024

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

GOLI NUTRITION INC.
and
GOLI NUTRITION INC.
Applicants/Debtors

and
DELOITTE RESTRUCTURING INC.
Monitor

FIRST INITIAL ORDER

ON READING the Applicants' *Application for the Issuance of a First Day Initial Order, an Amended and Restated Initial Order and Other Relief, Including the Approval of a Transaction* pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**") and the exhibits, the affidavit filed in support thereof (the "**Application**"), the consent of Deloitte Restructuring Inc., a licensed insolvency trustee, to act as monitor (the "**Monitor**"), relying upon the submissions of counsel and being advised that the interested parties, including secured creditors who are likely to be affected by the charges created herein were given prior notice of the presentation of the Application;

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

1. **GRANTS** the Application.

2. **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:

    - Service
    - Application of the CCAA and Administrative Consolidation
    - Effective Time
    - Plan of Arrangement
    - Stay of Proceedings against the Applicants and the Property
    - Stay of Proceedings against the Directors and Officers
    - Possession of Property and Operations
    - No Exercise of Rights or Remedies;
    - No Interference with Rights
    - Continuation of Services
    - Non-Derogation of Rights
    - Syndicated Lenders Unaffected
    - Directors' and Officers' Indemnification and Charge
    - Restructuring
    - Powers of the Monitor
    - Priorities and General Provisions Relating to CCAA Charges
    - Comeback Hearing
    - General

Service

3. **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.

4. **DECLARES** that sufficient prior notice of the presentation of this Application has been given by Goli Nutrition Inc. ("**Goli**"), a corporation existing under the laws of Canada, and Goli Nutrition Inc., a corporation existing under the laws of Delaware ("**Goli US**" and, with Goli, the "**Applicants**"), to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

Application of the CCAA and Administrative Consolidation

5. **DECLARES** that each of the Applicants is a debtor company to which the CCAA applies.

6. **ORDERS** the consolidation of these CCAA proceedings of the Applicants (the "**CCAA Proceedings**") under one single Court file and that all proceedings, filings, and other matters in the CCAA Proceedings be filed jointly and together in Court file number 500-11-063787-242.

7. **DECLARES** that the consolidation of the CCAA Proceedings in respect of the Applicants shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each Applicant, including, without limitation, for the purposes of any Plan or Plans that may be hereafter proposed.

Effective time

8. **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on the date of this Order (the "**Effective Time**").

Plan of Arrangement

9. **DECLARES** that the Applicants, in consultation with the Monitor, shall have the authority to file with this Court and to submit to their creditors one or more Plans in accordance with the CCAA.

Stay of Proceedings against the Applicants and the Property

10. **ORDERS** that until and including March 27, 2024 (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants, or affecting the Applicants' business operations and activities (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 14

hereinbelow except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

11. **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of Subsection 11.09 CCAA.

Stay of Proceedings against the Directors and Officers

12. **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Applicants nor against any person deemed to be a director or an officer of the Applicants under subsection 11.03(3) CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Applicants where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

Possession of Property and Operations

13. **ORDERS** that each of the Applicants shall remain in possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this order.

No Exercise of Rights or Remedies

14. **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

15. **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Applicants or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Applicants become bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**") is appointed in respect of the Applicants, the

period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Applicants in determining the 30 day period referred to in Section 81.1 of the BIA or the 15 day period referred to in Section 81.2 of the BIA.

No Interference with Rights

16. **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or with leave of this Court.

Continuation of Services

17. **ORDERS** that during the Stay Period and subject to paragraph 19 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility, or other goods or services made available to the Applicants, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Applicants, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and the Applicants, with the consent of the Monitor, or as may be ordered by this Court.

18. **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Applicants on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Applicants.

19. **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Applicants with any Person during the Stay Period, whether in an operating account or otherwise for themselves or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing themselves for the amount

of any cheques drawn by Applicants and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Applicants' account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

20. **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Applicants shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Syndicated Lenders Unaffected

21. **ORDERS** and **DECLARES** that Bank of Montreal ("**BMO**"), National Bank of Canada, Fédération des Caisses Desjardins and HSBC Bank Canada (collectively, the "**Syndicated Lenders**") are unaffected by this Order or the CCAA Proceedings, or pursuant to any proposal to be filed pursuant to the BIA or any other proceedings initiated thereunder, and the relationship between the Applicants and the Syndicated Lenders shall continue as if this Order had not been granted. Without limiting the generality of the foregoing, the Syndicated Lenders shall not be subject to the stay of proceedings, as ordered herein, including during the Stay Period or any renewal or extension thereof, or to any other limitations of creditors' right or recourses under this Order. Nothing in this Order shall prevent the Syndicated Lenders from enforcing their security or their contractual rights as against the applicable Applicant, subject only to the Syndicated Lenders providing at least 5 business days advance written notice of their intention to do so to the Applicants and to the Monitor (the "**Syndicate Notice Period**"). Upon expiration of the Syndicated Notice Period, nothing in this Order shall preclude BMO, in its capacity as administrative agent for the Syndicated Lenders, from taking any and all steps under the loan documents and otherwise permitted at law, but without having to send any demands or notices under Section 244 of the BIA.

22. **ORDERS** that the Syndicated Lenders shall be treated as unaffected creditors in any Plan and, notwithstanding anything contained in such Plan, shall be completely unaffected thereby.

Directors' and Officers' Indemnification and Charge

23. **ORDERS** that the Applicants shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Applicants after the Effective Time, except where such obligations or liabilities

were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.

24. **ORDERS** that the Directors of the Applicants shall be entitled to the benefit of and are hereby granted a charge and security in the Property of the Applicants to the extent of the aggregate amount of $330,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 23 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 38 and 39 of this Order.

25. **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph 24 of this Order.

Restructuring

26. **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Applicants shall, in consultation with the Syndicated Lenders, have the right, subject to approval of the Monitor or further order of the Court, to:

    (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;

    (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);

    (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed $500,000 or $1,500,00 in the aggregate;

    (d) terminate the employment of their employees or temporarily or permanently lay off their employees as they deem appropriate and, to the extent that any amounts in lieu of notice, termination, or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Applicants

and such employees or, failing such an agreement, make provision to deal with, any consequences thereof in the Plan, as the Applicants may determine;

(e) subject to the provisions of section 32 CCAA, disclaim or resiliate any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliations to be on such terms as may be agreed between the Applicants and the relevant party or, failing such an agreement, to make provision for the consequences thereof in the Plan; and

(f) subject to section 11.3 CCAA, assign any rights or obligations of the Applicants.

27. **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Applicants pursuant to section 32 of the CCAA and subsection 26(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Applicants and the Monitor 24 hours' prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as the landlord may determine, without waiver of, or prejudice to, any claims or rights of the landlord against the Applicants, provided nothing herein shall relieve a landlord of its obligation to mitigate any damages claimed in connection therewith.

28. **ORDERS** that the Applicants shall provide to any relevant landlord notice of the Applicants' intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Applicants have already vacated the leased premises, they shall not be considered to be in occupation of such location pending the resolution of any dispute between the Applicants and the landlord.

29. **DECLARES** that, in order to facilitate the Restructuring, the Applicants may, subject to the approval of the Monitor or further order of the Court, settle claims of customers and suppliers that are in dispute.

30. **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, and equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c. P-39.1, the Applicants are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers, or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction

for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Applicants binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Applicants or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Applicants.

Powers of the Monitor

31. **ORDERS** that Deloitte Restructuring Inc., a licensed insolvency trustee, is hereby appointed to monitor the business and financial affairs of the Applicants as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in section 23 of the CCAA:

(a) shall, without delay, (i) publish in the National Post, La Presse and the Wall Street Journal and (ii) within five (5) business days after the date of this Order, (A) post on the Monitor's website (the "**Website**"), a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Applicants of more than $1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

(b) shall monitor the Applicants' receipts and disbursements;

(c) shall assist the Applicants, to the extent required by the Applicants, in dealing with their creditors and other interested Persons during the Stay Period;

(d) shall assist the Applicants, to the extent required by the Applicants, with the preparation of their cash-flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;

(e) shall advise and assist the Applicants, to the extent required by the Applicants, to review the Applicants' business and assess opportunities for cost reduction, revenue enhancement, and operating efficiencies;

(f) shall assist the Applicants, to the extent required by the Applicants, with the Restructuring and in their negotiations with their creditors and other

interested Persons and with the holding and administering of any meetings held to consider the Plan;

(g) shall report to the Court on the state of the business and financial affairs of the Applicants or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;

(h) shall report to the Syndicated Lenders on the state of the operations, business and financial affairs of the Applicants or developments in the CCAA Proceedings or any related proceedings;

(i) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;

(j) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;

(k) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;

(l) may act as a "foreign representative" of the Applicants or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;

(m) may give any consent or approval as may be contemplated by the Order or the CCAA; and

(n) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Applicants, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Applicants.

32. **ORDERS** that the Applicants and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Applicants in connection with the Monitor's duties and responsibilities hereunder.

33. **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Applicants with information in response to requests made by them in writing addressed to the Monitor and copied to the Applicants' counsel. In the case of information that the Monitor has been advised by the Applicants is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Applicants, unless otherwise directed by this Court.

34. **DECLARES** that, if the Monitor, in its capacity as Monitor, carries on the business of the Applicants or continues the employment of the Applicants' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.

35. **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor, or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least ten (10) days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 31(j) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

36. **ORDERS** that Applicants shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Applicants' legal counsel, and other advisers that are directly related to these proceedings, the Plan, and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

37. **DECLARES** that the Monitor, the Monitor's legal counsel (Norton Rose Fullbright Canada LLP and Norton Rose Fullbright US LLP), the Applicants' legal counsel (Davies Ward Phillips & Vineberg LLP), legal counsel to the Syndicated Lenders (Osler Hoskin & Harcourt LLP and McDonald Hopkins), as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Plan, and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property of the Applicants to the extent of the aggregate amount of $300,000 (the "**Administration Charge**"), having the priority established by paragraphs 38 and 39 hereof. Davies Ward Phillips & Vineberg LLP shall rank first amongst the beneficiairies of the Administation Charge listed in this paragraph.

Priorities and General Provisions Relating to CCAA Charges

38. **DECLARES** that the priorities of the Administration Charge, the Directors' Charge (collectively, the "**CCAA Charges**") and the Syndicated Lenders' Security (as defined in the Application), as between them with respect to any Property to which they apply, shall be as follows:

    (a) first, the Administration Charge;

(b) second, the Syndicated Lenders' Security; and

(c) third, the Directors' Charge.

39. **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances, other than the Directors' Charge, which shall rank after the Syndicated Lenders' Security.

40. **ORDERS** that, except as otherwise expressly provided for herein, the Applicants shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges, unless the Applicants obtain the prior written consent of the Monitor, the Syndicated Lenders, and the prior approval of the Court.

41. **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Applicants, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

42. **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any application for a bankruptcy order filed pursuant to the BIA in respect of the Applicants or any bankruptcy order made pursuant to any such application or any assignment in bankruptcy made or deemed to be made in respect of the Applicants; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt, or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Applicants (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

(a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Applicants of any Third Party Agreement to which it is a party; and

(b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

43. **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any application for a bankruptcy order filed pursuant to the BIA in respect of the Applicants and any bankruptcy order allowing such application or any assignment in bankruptcy made or deemed to be made in

respect of the Applicants, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Applicants pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, transfers at undervalue or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

44. **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Applicants and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Applicants, for all purposes.

Comeback Hearing

45. **ORDERS** that the comeback hearing on the Application shall take place on March 27, 2024 at 9:30 am by videoconference and in room 16.11, and **PRAYS ACT** of the undertaking of Debtors' counsel to communicate this information in advance of such hearing to the parties having responded to the Application or identified on the service list maintained for these CCAA proceedings.

General

46. **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel, or financial advisers of the Applicants or of the Monitor in relation to the Business or Property of the Applicants, without first obtaining leave of this Court, upon ten (10) days' written notice to the Applicants and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

47. **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Applicants under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

48. **DECLARES** that, except as otherwise specified herein, the Applicants and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery, or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Applicants and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

49. **DECLARES** that the Applicants and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.

50. **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings unless such Person has served a Notice of Appearance on the solicitors for the Applicants and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the Monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.

51. **DECLARES** that the Applicants or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.

52. **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

53. **AUTHORIZES** the Monitor or the Applicants to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as “Foreign Main Proceedings” in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor, shall be the foreign representative of the Applicants. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Applicants and the Monitor as may be deemed necessary or appropriate for that purpose.

54. **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Applicants in any foreign proceeding, to assist the Applicants, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

55. **DECLARES** that, for the purposes of any applications authorized by paragraphs 53 and 54 of this Order, the Applicants’ centre of main interest is located in Montréal, Québec, Canada.

56. **ORDERS** that Exhibits P-21, P-24 and P-25 and the Appendices A, B and D of Exhibit P-14 be kept under seal until further order from this Court.

57. **ORDERS** the provisional execution of the Order notwithstanding any appeal.

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MARTIN F. SHEEHAN, J.S.C.