

COURT FILE NO. CL-26-00000265-0000

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF  
FRESHSTONE BRANDS INC.**

Applicant

**FACTUM OF THE APPLICANT  
(Re: Amended and Restated Initial Order and SISP Order)  
(Returnable June 18, 2026)**

**June 16, 2026**

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
FRESHSTONE BRANDS INC.**

(Applicant)

**PART I - OVERVIEW**

1. Freshstone Brands Inc. (the "**Applicant**" or "**Freshstone**") was granted protection from its creditors) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an order (the "**Initial Order**") granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 9, 2026.

2. Freshstone is now seeking the granting by the Court of an Amended and Restated Initial Order (the "**ARIO**"), substantially in the form of the draft order attached to Freshstone's Motion Record dated June 13, 2026 (the "**Motion Record**") at **Tab 3**:

(a) Stay of Proceedings. Extending the Stay Period (as defined below) to and including October 16, 2026; and

(b) Administration Charge and Directors' Charge. Increasing the amount of the Administration Charge (as defined below) to an aggregate amount of \$650,000 (which will also secure the fees payable by Freshstone to the Sale Advisor (as defined below)) and an increase to the Directors' Charge (as defined below) to a total amount of \$2,000,000; and

(c) DIP Credit Agreement and DIP Lender's Charge. An increase to the Authorized DIP Amount (as defined below) to a maximum aggregate principal amount at no time exceeding \$7,000,000.

3. Freshstone is also seeking the granting by the Court of a sale and investor solicitation order (the "**SISP Order**"), substantially in the form of the draft order attached to the Motion Record at **Tab 6**, authorizing, *inter alia*:

(a) Conduct of the SISP in Accordance with the SISP Procedures. The conduct of a sale and investor solicitation process (the "**SISP**") during the CCAA Proceedings by Freshstone, with the assistance of the Sale Advisor and under the supervision of the Monitor, in accordance with the procedures appended to the draft SISP Order (the "**SISP Procedures**");

(b) Engagement of Sale Advisor. The approval, *nunc pro tunc*, engagement by Freshstone of GlassRatner Advisory Canada ("**GR**") pursuant to the engagement letter previously entered into between such parties (the "**Sale Advisor Engagement Letter**"), which was filed as Exhibit "T" to the affidavit of Frank Burdzy sworn on June 8, 2026, in support of the Initial order, which provides that GR will act as Freshstone's sale advisor (in such capacity, the "**Sale Advisor**") during the SISP; and

(c) Approval of the Subscription Agreement. The approval, *nunc pro tunc*, of a Subscription Agreement dated June 12, 2026 (the "**Subscription Agreement**") between Freshstone, as issuer, and Mr. Frank Burdzy, on its own behalf or on behalf of an entity to be incorporated by him and designated prior to the Closing, as investor (the "**Stalking Horse Bidder**"), solely for the purpose of serving as a "*stalking horse bid*" in the context of the SISP (the "**Stalking Horse Bid**"), and authorizing Freshstone to pay the to the Stalking Horse Bidder its reasonable, documented, out-of-pocket costs and

expenses, up to a maximum amount of \$50,000, in accordance with the terms of the Subscription Agreement (the “**Expense Reimbursement**”), and granting a charge in favour of the Stalking Horse Bidder to secure the payment of such expenses, which charge is to be subordinated only to the DIP Charge, the Administration Charge and the Directors’ Charge (the “**Expense Reimbursement Charge**”).

## PART II - THE FACTS

4. The facts with respect to this motion are more fully set out in the Affidavit of Frank Burdzy sworn on June 8, 2026 (the “**Burdzy Affidavit**”) and in the Affidavit of Leigh Wilson sworn on June 13, 2025 (the “**Wilson Affidavit**”). Capitalized terms used within this Factum but not otherwise defined have the meanings ascribed to them in the Burdzy Affidavit or the Wilson Affidavit, as applicable.

### A. The Commencement of the CCAA Proceedings and the Granting of the Initial Order

5. On June 9, 2026, the Applicant sought and obtained the Initial Order pursuant to the CCAA, as part of which the Court, *inter alia*:

- (a) Stay of Proceedings. Granted stay of all proceedings and remedies taken or that might be taken against or in respect of Freshstone, any of its respective property or director and officers, except as otherwise set forth in the Initial Order or as otherwise permitted by law (the “**Stay**”), until and including June 18, 2026 (the “**Stay Period**”);
- (a) Appointment of a Monitor. Appointed Deloitte Restructuring Inc. (“**Deloitte**” or the “**Monitor**”) as the monitor of Freshstone in the CCAA Proceedings;
- (b) Administration Charge and Directors’ Charge. Granted an Administration Charge in an initial amount of \$250,000 and a Directors’ Charge in initial an amount of

\$1,750,000 to cover the potential exposure of the beneficiaries of such charges during the initial Stay Period; and

- (c) DIP Financing and DIP Lender's Charge. Approved the DIP Credit Agreement entered into between Garrington Financial Services Inc. (the "**DIP Lender**") and Freshstone, as borrower, and the authorization for the Freshstone to borrow under the DIP Credit Agreement an initial amount of up to \$1,600,000 during the initial Stay Period (the "**Authorized DIP Amount**"). The Authorized DIP Amount is secured by a DIP Lender's Charge, which ranks in priority to all other encumbrances, whether conventional or legal, including over the claims of the federal and provincial governments subject to a deemed trust, but which ranks subordinated to the Administration Charge.

### **PART III - ISSUES**

6. The principal issues to be determined by this Court at the "*comeback hearing*" will be whether this Court should grant:

- (a) the ARIO sought, and more specifically:
- (i) Stay of Proceedings. An extension of the Stay Period until October 16, 2026;
  - (ii) Administration Charge and Directors' Charge. An increase of the Administration Charge to a total amount of \$650,000 and of the Directors' Charge to a total amount of \$2,000,000; and
  - (iii) DIP Financing. An increase of the Authorized DIP Amount to a maximum aggregate principal amount at no time exceeding \$7,000,000; and
- (b) the SISP Order, and, more specifically:

- (i) Engagement of Sale Advisor. The engagement of the Sale Advisor in the context of the SISP, in accordance with the Sale Advisor Engagement Letter;
- (ii) Conduct of the SISP in Accordance with the SISP Procedures. The authorization for Freshstone, with the assistance of the Sale Advisor and under the supervision of the Monitor, to conduct and implement the SISP in accordance with the SISP Procedures;
- (iii) Approval of the Subscription Agreement. The approval, *nunc pro tunc*, of the Subscription Agreement, solely for the purpose of serving as the Stalking Horse Bid, and authorizing Freshstone to pay the Expense Reimbursement, and granting the Expense Reimbursement Charge.

#### **PART IV - THE LAW AND ANALYSIS IN RESPECT OF THE ARIO**

##### **A. The Stay of Proceedings Should be Extended**

7. On an application other than an initial application, section 11.02(2) of the CCAA provides that the Court may make a stay order for any period that the Court considers necessary, if the applicant satisfies the Court that: (a) circumstances exist that make the order appropriate; and (b) that the applicant has acted, and is acting, in good faith and with due diligence<sup>1</sup>.

8. The Applicant is seeking an extension of the Stay Period, as previously ordered by the Court as part of the Initial Order, up to, and including, October 16, 2026.

9. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for continued steps to stabilize the Applicant's business, to further engage with

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<sup>1</sup> CCAA, [s. 11.02\(2\)](#).

stakeholders and to comprehensively explore available restructuring options. In particular, the extension of the Stay Period is necessary to allow the Monitor to carry out the SISP, with the assistance of the Applicant and of the Sale Advisor.

10. An extension of the Stay of Proceedings up to and including October 16, 2026 would advance the policy objectives of the CCAA by allowing the Applicant to continue working diligently to evaluate, put in place and conduct a SISP, and take any other measures that would be in the best interests of its stakeholders.

11. In this regard, the proposed SISP Procedures (further discussed below) contemplate that the Applicant will be required to return before the Court in order to seek its approval in respect of a successful bid.

12. The requested extension of the Stay Period until October 16, 2026 is intended to track the various milestones contemplated in the SISP, which also provides for an outside date for the closing of a transaction on October 16, 2026.

13. As set out in the cash flow projection attached to the Burdzy Affidavit as Exhibit "Q" (the "**Cash Flow Forecast**"), subject to Authorized DIP Amount being increased as contemplated herein, the Applicant is expected to have sufficient liquidity to operate through the proposed extension of the Stay Period to and including October 16, 2026.

14. The Applicant and the Monitor do not believe that any creditor will suffer any material prejudice if the Stay is extended as requested, and the Applicant's stakeholders will benefit from the extension of the Stay Period. Additionally, the Monitor and the DIP Lender are both supportive of the proposed extension of the Stay Period as being necessary to implement the SISP.

**B. The Increased Administration Charge and Directors' Charge Should be Granted**

15. The Initial Order approved the Administration Charge in the amount of \$250,000 and a Directors' Charge in the amount of \$1,750,000. The Applicant now seeks to increase the Administration Charge to \$650,000 and the Directors' Charge to \$2,000,000.

16. The increase being sought to the Administration Charge reflect the Applicant's estimated professional fees which could be outstanding during the CCAA proceedings. The professional fees to be secured by the increased Administration Charge would include the fees and disbursements of the Monitor, counsel to the Monitor, counsel to the Applicant and the proposed Sale Advisor for the payment of its Success Fee (as defined below) in accordance with the Sale Advisor Engagement Letter.

17. As for the increase being sought to the Directors' Charge, such increase reflects the amount required for Freshstone to properly indemnify its D&Os in connection with any claim that may be asserted against them, personally, from and after the commencement of the CCAA Proceedings, to the extent that such liability is not covered by the directors' and officers' liability insurance maintained by Freshstone.

18. The Court has discretion to grant and increase charges in amounts that the Court considers appropriate pursuant to sections 11.51 and 11.52 of the CCAA<sup>2</sup>.

19. The Monitor was involved in the calculation of the Administration Charge and Directors' Charge and supports the increase, given the complexity of the CCAA Proceedings and the expected contributions to be provided by the beneficiaries of the Administration Charge and the Directors' Charge.

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<sup>2</sup> CCAA, [s. 11.51](#) and [11.52](#).

20. As mentioned in the Burdzy Affidavit, the only secured creditor of the Applicant is Mr. Burdzy, who is also supportive of the above charges priming his security interest.

**C. This Court Should Increase the Authorized DIP Amount and the Corresponding DIP Lender's Charge**

21. Pursuant to the Initial Order, the court approved the DIP Credit Agreement, and authorized Freshstone to borrow under the DIP Credit Agreement an initial amount of up to \$1,600,000 during the initial Stay Period which amount was to be secured by the DIP Lender's Charge. The DIP Lender's Charge is subordinated only to the Administration Charge.

22. Approval is now sought for Freshstone to borrow up to the maximum amount available under the DIP Credit Agreement, from \$1,600,000 to \$7,000,000 (the "**Increased Authorized DIP Amount**"). A corresponding increase to the amount of the DIP Lender's Charge is also requested.

23. Section 11.2 of the CCAA provides the court with the jurisdiction to approve interim financing and a related charge<sup>3</sup>. Section 11.2(4) lists the following non-exhaustive factors that the court is required to consider:

***Factors to be considered***

***(4) In deciding whether to make an order, the court is to consider, among other things,***

***(a) the period during which the company is expected to be subject to proceedings under this Act;***

***(b) how the company's business and financial affairs are to be managed during the proceedings;***

***(c) whether the company's management has the confidence of its major creditors;***

***(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;***

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<sup>3</sup> CCAA, [s. 11.2](#).

*(e) the nature and value of the company's property;*

*(f) whether any creditor would be materially prejudiced as a result of the security or charge; and*

*(g) the monitor's report referred to in paragraph 23(1)(b), if any<sup>4</sup>.*

24. In *Canwest Global*, Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) in addition to those found in s. 11.2(4), namely:

- (a) whether notice has been given to secured creditors likely to be affected by the security or charge;
- (b) whether the amount granted under a DIP facility is appropriate having regard to the debtors' cash-flow statement; and
- (c) whether the DIP charge secures an obligation that existed before the order approving the DIP financing was made<sup>5</sup>.

25. The criteria from section 11.2(1) and 11.2(4) support approving the DIP Lender's Charge on the terms sought in the Initial Order:

- (a) The DIP Lender's Charge does not prime any secured party with a perfected security interest who has not received notice;
- (b) The Applicant has immediate liquidity needs, and given its current financial circumstances, the Applicant faces great obstacles in obtaining alternative financing outside of these CCAA Proceedings;

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<sup>4</sup> CCAA, [s. 11.2\(4\)](#).

<sup>5</sup> *Canwest Global Communications Corp. (Re)*, [2009] OJ No 4286, at [paras. 31-34](#).

- (c) The Increased Authorized DIP Amount is necessary in order for the Applicant to implement its restructuring strategy, which will preserve the employment of many individuals and maximize value for the Applicant's stakeholders;
- (d) Without the Increased Authorized DIP Amount, the Applicant will not be able to continue operating;
- (e) The quantum of the Increased Authorized DIP Amount is reasonable and appropriate having regard to the Cash Flow Statement, and has been limited to what is required for the proposed initial Stay Period; and
- (f) The proposed Monitor is of the view that the DIP Credit Agreement and the DIP Lender's Charge are appropriate and limited to what is reasonably necessary in the circumstances.

26. The amount was determined in consultation with the proposed Monitor and is consistent with the Applicant's required borrowings as shown in the Cash Flow Statement. Providing the ability for Freshstone to borrow under the DIP Credit Agreement will protect its stakeholders and allow the business to continue operating while the Applicant works to complete its restructuring, including by pursuing the SISP.

27. As mentioned in the Burdzy Affidavit, the only secured creditor of the Applicant is Mr. Burdzy, who is also supportive of the above charges priming his security interest.

## **PART V - THE LAW AND ANALYSIS IN RESPECT OF THE SISP ORDER**

### **A. This Court Should Grant the SISP Order and Approve the SISP Procedures**

28. The proposed SISP is to be conducted in two (2) phases, for which the milestones and milestones' dates agreed upon between the Applicant, the Monitor and the Sale Advisor are as follows:

<b>EVENT<sup>6</sup></b>
<b>PHASE 1</b>
<b><u>Solicitation Materials</u></b>  Distribution of a Teaser Letter to Prospective Bidders
<b><u>VDR and Confidential Information</u></b>  Preparation and granting of access to parties having executed the Confidentiality Agreement (Prospective Bidders), the Data Room and other confidential information
<b><u>LOI Deadline (By no later than August 14, 2026, at 5:00 p.m. (Toronto time))</u></b>  LOI Deadline (for delivery of non-binding LOIs in accordance with the SISP Procedures)
<b><u>Determination of Qualified Phase I Bidders</u></b>  Notification to each party of whether it has been determined to be a Qualified Phase I Bidder based on the assessment of its LOI
<b>PHASE 2 (if there are Qualified Phase I Bidders that warrant the continuation of the SISP onto Phase 2)</b>
<b><u>Bid Deadline (By no later than September 29, 2026, at 5:00 p.m. (Toronto time))</u></b>  Bid Deadline (for delivery of binding offers by Qualified Phase I Bidders in accordance with the SISP Procedures)
<b><u>Auction (if required)</u></b>
<b><u>Approval Motion – Successful Bid</u></b>  Approval Motion in respect of Successful Bid to be held on a date to be scheduled by the Court and to be heard as soon as possible after selection of Successful Bid
<b><u>Closing – Successful Bid (By October 16, 2026)</u></b>  Anticipated deadline for closing of Successful Bid

29. The SISP is intended to offer a fair, efficient and transparent process that will allow a proper and board canvassing of the market, which, in turn, will allow for the exploration of all available option for Freshstone in order to maximize the value of Freshstone's assets and the

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<sup>6</sup> All capitalized terms in this table have the meaning ascribed to them in the SISP Procedures.

pursuit of its business operations as a going concern, all for the benefit of its creditors and other stakeholders.

30. The CCAA confers broad powers to the Court to facilitate restructurings, including the power to approve a solicitation process in relation to a CCAA debtor and its business and assets prior to, or in the absence of, a plan of compromise and arrangement. The Supreme Court has explicitly stated that CCAA liquidation proceedings or sales processes are not inconsistent with such remedial objectives<sup>7</sup>.

31. In *Nortel*, the Ontario Superior Court of Justice identified several factors to be considered in determining whether to approve a sales process, which have since been consistently applied:

- (a) Is a sale warranted at this time?
- (b) Will the sale be of benefit to the whole “economic community”?
- (a) Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
- (b) Is there a better viable alternative<sup>8</sup>?

32. It should be noted that Section 36 of the CCAA directly applies only in the context of the approval of a sale, not a sale process<sup>9</sup>, such that it is not this Court's role in approving a sale process to apply the section 36 criteria.

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<sup>7</sup> 9354-9186 *Québec Inc. v. Callidus Corp.*, 2020 SCC 10, at [paras. 45-46](#); *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC), at [paras 47-48](#) [*Nortel*]; CCAA, [s. 11](#) and [36](#).

<sup>8</sup> *Nortel*, at [para. 49](#).

<sup>9</sup> *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ON SC), at [para. 17](#) [*Brainhunter*]; *Tacora Resources Inc. (Re)*, 2023 ONSC 6126, at [para. 165](#) [*Tacora*].

33. Nonetheless, the *Nortel* criteria for approving a sales process should be evaluated in light of the considerations that may ultimately apply when seeking approval for a concluded sale under section 36 of the CCAA, including whether the proposed solicitation process is likely to satisfy the requirement that it is reasonable in the circumstances, whether the monitor approved the solicitation process and the extent to which the creditors were consulted<sup>10</sup>.

34. In *Walter Energy*, the Ontario Superior Court of Justice considered the following additional factors in approving sale procedures in a CCAA proceeding:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale<sup>11</sup>.

35. In light of the above criteria and factors, the SISP should be approved as:

- (a) the SISP is fair and reasonable in the circumstances;
- (b) the SISP and the SISP Procedures are the result of extensive discussions between the Applicant, the Monitor, the Sale Advisor, the DIP Lender, and their respective legal advisors;
- (c) the SISP will provide for a fair, efficient and transparent process that will allow a proper canvassing of the market, and, if applicable, for the conduct of an auction,

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<sup>10</sup> *Brainhunter*, at [para. 16](#); *Tacora*, at [para. 165](#).

<sup>11</sup> *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107, at [paras. 20-21](#) [*Walter Energy*]; *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, at [para. 6](#); *Bron Media Corp. (Re)*, 2023 BCSC 1563, at [para. 41](#); *Tacora*, at [para. 167](#).

all of which, in turn, will allow for the maximization of the value of the Applicant's assets, all for the benefit of the Applicant's creditors and other stakeholders;

- (d) the SISP will be conducted by the Applicant, with the assistance of the Sale Advisor and under the supervision of the Monitor, and, ultimately, of the Court;
- (e) the Applicant is insolvent, unable to indefinitely continue operations in their current state and must restructure to preserve its business. A sale and/or investment will maximize value for the Applicant's stakeholders through ascribing fair market value to the business and assets of the Applicant;
- (f) the Applicant does not believe that any creditor has a reasonable basis to object to the SISP;
- (g) the SISP is the best option in the circumstances for maximizing the best possible price for the assets, particularly in consideration of the Applicant's liquidity constraints;
- (h) the Monitor (and the Sale Advisor) believe that the factors to be considered in arriving at a Successful Bid (as defined in the SISP Procedures) are appropriate in the circumstances; and
- (i) the Monitor (and the Sale Advisor) believe that the timelines and the terms of the SISP are reasonable and are supportive of the SISP.

36. To the extent that a transaction is secured in the context of the SISP, the Applicant will return before the Court to seek its approval thereof in accordance with section 36 of the CCAA.

**B. This Court Should Approve the Appointment of the Sale Advisor in Accordance with the Terms of the Sale Advisor Engagement Letter**

37. As part of the SISP Order, the Applicant also requests that this Court approves its execution of the Sale Advisor Engagement Letter, which essentially provides for the engagement of the Sale Advisor to assist the Applicant in the conduct of the proposed SISP, in consideration for the payment of the following success fee (the “**Success Fee**”) payable on successful completion of a Transaction (as defined in the Sale Advisor Engagement Letter):

- (a) if only the first phase of the SISP is required, the Success Fee shall be \$75,000;  
and
- (b) if the second phase of the SISP is also required, an additional \$75,000 shall be payable, thereby increasing the Success Fee to a total amount of \$250,000.

38. The Sale Advisor Engagement Letter also provides for the reimbursement of all reasonable out-of-pocket expenses relating to the engagement.

39. However, no work fee or other fees are payable under the Sale Advisor Engagement Letter.

40. All obligations of Freshstone under the Sale Advisor Engagement Letter are proposed to be secured by the Administration Charge, on a *pari passu* basis with the other beneficiaries of such charge.

41. Section 11 of the CCAA provides this Court with the authority to allow debtor companies to enter into arrangements to facilitate a restructuring, which may include the retention of expert advisors, including financial advisors, where necessary to help with the restructuring efforts<sup>12</sup>.

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<sup>12</sup> *Tacora*, at [para. 158](#); *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371, at [para. 27](#).

42. Courts have approved the appointment of consultants and financial advisors pursuant to section 11 of the CCAA in restructuring proceedings, as well as corresponding charges to secure such advisors' professional fees, where such advisors' knowledge and experience is critical to assisting the debtor with a successful restructuring or is necessary to assist the debtor with a liquidation sale, or the conduct and implementation of a sale process<sup>13</sup>.

43. The Applicant will benefit from the approval of the Sale Advisor and its engagement in these CCAA proceedings. GR is a consulting firm with a global reach, and with insights into the business and operations of Freshstone.

44. The Applicant believes that the implementation of the SISF in accordance with the SISF Procedures, and the engagement of GR as its Sale Advisor constitutes, in the present circumstances, the best path forward to maximize creditor recovery and enhance the chances preserving the operations of Freshstone as a going concern.

45. GR will be essential in providing advisory services with respect to the exploration of strategic alternatives with a view to close a transaction in respect of the business and/or assets of Freshstone.

46. The Monitor has reviewed the Sale Advisor Engagement Letter and is supportive of GR as the Sale Advisor to Freshstone in accordance with the terms of such engagement letter, as well as the inclusion of the Sale Advisor as a beneficiary to the Administration Charge.

**C. This Court Should Approve the Execution of the Subscription Agreement**

47. As previously announced to the Court, on June 12, 2026, the Applicant, in consultation with the Sale Advisor and the Monitor, entered into a Subscription Agreement with Mr. Frank

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<sup>13</sup> *Tacora*, at [para. 158](#); *Target Canada Co. (Re)*, 2015 ONSC 303, at [para. 72](#).

Burdzy, with the intent to use such agreement as a “*stalking horse bid*” in the context of the SISP.

48. The key terms of the Subscription Agreement are summarized in the Wilson Affidavit.

49. When determining whether to approve a stalking horse agreement as part of a SISP, courts often consider: (i) the fairness, transparency and integrity of the proposed process; (ii) the commercial efficacy of the proposed process in light of the circumstances; and (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale<sup>14</sup>. Taken together, these factors militate in favour of approving the Subscription Agreement.

50. The Subscription Agreement is integral to the SISP, as the use thereof as a “*stalking horse bid*” will allow the Applicant to establish a floor price for the sale of substantially all business and assets, while leaving the door open for superior bids.

51. More importantly, one of the other benefit of the Subscription Agreement is that it will allow the Applicant to signal to the market that even if there are no superior bids submitted in the context of the SISP, the Applicant will still be able to continue its operations as a going concern, upon implementation of the transaction contemplated in the Subscription Agreement.

52. This benefit is significant, in a context where hundreds of employees, suppliers and clients all rely on the continuation of the Applicant’s business as a going concern.

53. In this case, it is important to note that the Subscription Agreement was entered into with Mr. Burdzy, who is not a party dealing at arm’s length with the Applicant. However, it is equally important to note that, prior to its execution, the Subscription Agreement was discussed at

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<sup>14</sup> *Royal Bank of Canada v 2668144 Ontario Inc.*, 2024 ONSC 1680, at [para. 9](#).

length with the Monitor (both prior to and after its appointment by the Court as such), to ensure that the Monitor would be supportive of same (which it is).

54. As appears from the Subscription Agreement, certain features normally found in any standard “*stalking horse bid*” (such as the payment of a “*break fee*”) are absent from the Subscription Agreement, despite the fact that Courts have frequently approved such “*break fees*” and similar bid protections in the past<sup>15</sup>. The objective was to remove any potential prejudice that potentially could be suffered by the Applicants’ creditors as a result of the payment of such fee (if applicable), which would typically payable as part of any other “*stalking horse bid*”.

55. In this case, the Subscription Agreement only provides for the payment of the Stalking Horse Bidder’s reasonable, documented, out-of-pocket costs and expenses, and even then, only up to a maximum amount of \$50,000 (the “**Expense Reimbursement**”).

56. The proposed SISP Order contemplates that the Stalking Horse Bidder will be granted a charge on Freshstone’s property up to secure the Expense Reimbursement (the “**Expense Reimbursement Charge**”). However, such charge is proposed to rank behind the Administration Charge, the Directors’ Charge and the DIP Lender’s Charge.

57. The Applicant submits that the Expense Reimbursement and the Expense Reimbursement Charge are reasonable in the circumstances and are ultimately supported by the Monitor.

58. Furthermore, and as previously discussed in the Burdzy Affidavit, the only secured creditor of the Applicant is Mr. Burdzy, who has advised the Applicant that it is supportive of all

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<sup>15</sup> *Re Danier Leather Inc*, 2016 ONSC 1044, at [para. 41](#).

of the above charges (including the Expense Reimbursement Charge) priming his security interests.

59. The Court has previously approved such transaction charges in circumstances where, as here, the amounts that are proposed to be paid to the stalking horse bidder are appropriate have the support of all affected parties<sup>16</sup>.

60. The Monitor supports the Expense Reimbursement Charge.

#### **PART VI - ORDER SOUGHT**

61. The Applicant respectfully request that this Court grant the requested ARIO substantially in the form of the draft order attached at Tab 3 of the Motion Record and the requested SISP Order substantially in the form of the draft order attached at Tab 6 of the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of June, 2026.

*Stikeman Elliott LLP*

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**Stikeman Elliott LLP**  
Lawyers for the Applicant

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<sup>16</sup> *BZAM Ltd Plan of Arrangement*, 2024 ONSC 1685 at [paras. 12](#) and [20](#).

**SCHEDULE “A”  
LIST OF AUTHORITIES**

**Cases**

1. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#)
2. *9354-9186 Québec inc. c. Callidus Capital Corp.*, [2020 CSC 10 \(CanLII\)](#)
3. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ON SC\)](#)
4. *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#)
5. *Tacora Resources Inc. (Re)*, [2023 ONSC 6126 \(CanLII\)](#)
6. *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107 \(CanLII\)](#)
7. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750 \(CanLII\)](#)
8. *Bron Media Corp. (Re)*, [2023 BCSC 1563 \(CanLII\)](#)
9. *Victorian Order of Nurses for Canada (Re)*, [2015 ONSC 7371 \(CanLII\)](#)
10. *Target Canada Co. (Re)*, [2015 ONSC 303 \(CanLII\)](#)
11. *Royal Bank of Canada v. 2668144 Ontario Inc. et al.*, [2024 ONSC 1680 \(CanLII\)](#)
12. *Danier Leather Inc. (Re)*, [2016 ONSC 1044 \(CanLII\)](#)
13. *BZAM Ltd. Plan of Arrangement*, [2024 ONSC 1685 \(CanLII\)](#)

**SCHEDULE “B”  
RELEVANT STATUTES**

***Companies’ Creditors Arrangement Act, RSC 1985, c C-36***

**General power of court**

11. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**Stays, etc. — initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[...]

**Interim financing**

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

**Priority — secured creditors**

**(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

**Priority — other orders**

**(3)** The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

**Factors to be considered**

- (4) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
  - (b) how the company's business and financial affairs are to be managed during the proceedings;
  - (c) whether the company's management has the confidence of its major creditors;
  - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
  - (e) the nature and value of the company's property;
  - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
  - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

**Additional factor — initial application**

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

**Security or charge relating to director's indemnification**

**11.51 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

**Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

**Restriction — indemnification insurance**

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

**Negligence, misconduct or fault**

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

[...]

### **Court may order security or charge to cover certain costs**

**11.52 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[...]

### **Restriction on disposition of business assets**

**36 (1)** A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

### **Notice to creditors**

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

### **Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

#### **Additional factors — related persons**

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

#### **Related persons**

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

#### **Assets may be disposed of free and clear**

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

#### **Restriction — employers**

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

**Restriction — intellectual property**

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C  
36, AS AMENDED**

Court File No.: CL-26-00000265-0000

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FRESHSTONE  
BRANDS INC.**

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

Proceeding commenced at Toronto

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(RETURNABLE JUNE 18, 2026)**

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