

**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

**FACTUM OF FRESHSTONE BRANDS INC.
(Re: Approval and Reverse Vesting Order)
(Returnable October 2, 2026)**

September 25, 2026

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Guy Martel
Tel: (514) 397-3163
E-mail: gmartel@stikeman.com

Danny Duy Vu
Tel: (514) 397-6495
E-mail: ddvu@stikeman.com

Anna Arapovic
Tel: (514) 397-3121
E-mail: aarapovic@stikeman.com

Nick Avis (LSO #76781Q)
Tel: (418) 869-5563
E-mail: navis@stikeman.com

Lawyers for Freshstone Brands Inc.

**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)

Table of Contents

PART I – OVERVIEW	2
PART II – SUMMARY OF FACTS	4
PART III – ISSUES	9
PART IV – LAW AND ARGUMENTS.....	9
PART V – CONCLUSION	31
SCHEDULE “A” – LIST OF AUTHORITIES.....	32
SCHEDULE “B” – RELEVANT LEGISLATION	34

PART I – OVERVIEW¹

1. On June 9, 2026, Freshstone Brands Inc. (“**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 initial order (the “**Initial Order**”) issued by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). As part of the Initial Order, Deloitte Restructuring Inc. (“**Deloitte**”) was appointed to act as monitor (the “**Monitor**”) of Freshstone in these proceedings (the “**CCAA Proceedings**”).
2. On June 18, 2026, this Court issued an Amended and Restated Initial Order (the “**ARIO**”) and a SISP Approval Order (the “**SISP Order**”), which, among other things, approved the conduct by Freshstone of a sale and investment solicitation process (the “**SISP**”) and the execution by Freshstone of a Subscription Agreement dated June 12, 2026 (the “**Subscription Agreement**”) between Freshstone and Mr. Frank Burdzy (the “**Investor**”), to be used as a stalking horse bid in the SISP (the “**Stalking Horse Bid**”).

¹ All capitalized terms not defined herein shall have the meaning assigned to them in the Burdzy Affidavit, the Wilson Affidavit or the Second Wilson Affidavit (as applicable, and as these terms are defined below).

3. As part of the SISP, 139 prospective bidders were solicited and 27 confidentiality agreements were executed. However, no Letters of Intent were received by the LOI Deadline or thereafter (as such terms are defined in the SISP Procedures attached to the SISP Order (the “**SISP Procedures**”)).
4. Accordingly, and in accordance with the SISP Procedures, the Stalking Horse Bid was declared the Successful Bid (as such term is defined in the SISP Order).
5. Freshstone is now seeking the issuance by the Court of an Approval and Reverse Vesting Order (the “**ARVO**”), substantially in the form of the draft order attached to Freshstone’s Motion Record dated September 11, 2026 (the “**Motion Record**”) at Tab 2, which provides for, *inter alia*:
 - a) Approval of the Transactions. The approval of the transactions (the “**Transactions**”) contemplated in the Subscription Agreement, as amended on July 15, 2026, July 28, 2026, August 14, 2026 and September 11, 2026 (the “**Amended Subscription Agreement**”);
 - b) Vesting of Excluded Contracts, Excluded Liabilities. The transfer of all Excluded Liabilities (being all Liabilities other than the Retained Liabilities), all Excluded Contracts (being all Contracts other than the Retained Contracts), the Excluded Employees and the Excluded Employee Plans (each as defined in the Subscription Agreement) in 9576-0385 Québec Inc. (“**ResidualCo.**”),² and the release of Freshstone from any and all obligations in relation to the Excluded Liabilities, the Excluded Contracts, the Excluded Employees and the Excluded Employee Plans;
 - c) Addition of ResidualCo. to the CCAA Proceedings and termination of the CCAA Proceedings in respect of Freshstone. The addition of ResidualCo. as company subject to the present CCAA Proceedings and the termination of such CCAA Proceedings in respect of Freshstone;
 - d) Enhancement of the Monitor’s powers: The enhancement of the Monitor’s powers in order to: (a) distribute any cash proceeds received upon closing of the Transactions in accordance with the Amended Subscription Agreement, and (b) if deemed advisable, exercise any powers which may be properly exercised by any board of directors of ResidualCo., including to wind-down and ResidualCo. into bankruptcy following the closing of the Transactions;
 - e) Release of the D&Os: The granting of a release in favour of Freshstone’s directors and officers upon closing of the transactions contemplated in the Amended Subscription Agreement, subject to the standard caveats described in the ARVO; and
 - f) Extension of the Stay Period: An extension of the Stay Period (as defined below) until November 30, 2026, namely to allow for the closing of the Transactions, the distribution by the Monitor of

² As part of the Fourth Amendment to the Amended Subscription Agreement (Exhibit “E” to the Second Wilson Affidavit (as defined below)), the Investor has confirmed that there are no “Excluded Assets”, rendering the incorporation of a second “ResidualCo.” unnecessary.

the cash proceeds to be received thereunder and the filing by the Monitor of voluntary assignment in bankruptcy for ResidualCo.

6. As part of its Motion, Freshstone was also seeking an order (the “**WEPPA Order**”) substantially in the form of the draft order attached to the Motion Record at Tab 3, declaring that Freshstone and ResidualCo. meet the conditions prescribed by sections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act*, SC 2005, c 47, s. 1 (the “**WEPPA**”), and the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the “**WEPPR**”). However, after discussions with the Attorney General of Canada (acting on behalf of Employment and Social Development Canada), Freshstone agreed, without any admission whatsoever, to adjourn its motion for the issuance of a WEPPA Order, given that the Ontario Court of Appeal is expected to render, in short order, a decision on a motion for leave to appeal which was recently filed by the Attorney General of Canada in the matter of 1001270243 Ontario Inc. (formerly *Synaptive Medical Inc.*)³, where the application of the WEPPA and of the WEPPR in the context of a reverse vesting transaction is also at issue.

PART II – SUMMARY OF FACTS

7. 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**”), the Affidavit of Leigh Wilson sworn on June 13, 2026 (the “**First Wilson Affidavit**”), and the Second Affidavit of Leigh Wilson sworn on September 11, 2026 (the “**Second Wilson Affidavit**”).

I. BACKGROUND

8. Freshstone is a leading Canadian manufacturer of prepared meals with operations strategically located mainly in Ontario, near the U.S. market, specializing in fresh, high-quality products for retail, foodservice and co-manufacturing channels. Its differential business model is focused on innovation, product breadth and flexibility, making it difficult for competitors to replicate.⁴
9. Freshstone has faced significant financial challenges as a result of the current economic context. Persistent inflationary pressures affecting raw material costs, labor expenses, and supply chain logistics have substantially increased Freshstone’s cost of operations. At the same time, these inflationary conditions have led to reduced consumer demand due to increased price-sensitive purchasing behavior. The combination of rising costs and declining sales volumes has compressed Freshstone’s margins and generated material financial difficulties.⁵

³ 1001270243 Ontario Inc., [2026 ONSC 3967](#) [Synaptive].

⁴ Burdzy Affidavit, at para. 7.

⁵ Burdzy Affidavit, at para. 8.

10. Prior to the commencement of the CCAA Proceedings, Freshstone proceeded with the sale of its Kitchen Partners division and related business assets (the “**Kitchen Partners Transaction**”) in an effort to enhance its liquidities.⁶ While the Kitchen Partners Transaction enabled Freshstone to satisfy its obligations to its then senior secured creditor and effect a material reduction in its total indebtedness,⁷ Freshstone was still unable to restore financial stability.
11. Accordingly, and after due consideration, Freshstone ultimately determined that it would be in its best interest and that of its creditors and other stakeholders to commence the present CCAA Proceedings.⁸

II. THE CCAA PROCEEDINGS

12. On June 8, 2026, Freshstone filed an initial Application (the “**Initial Application**”) before the Court in order to, *inter alia*, seek creditor protection pursuant to the CCAA and SISP in respect of its business and assets.⁹
13. On June 9, 2026, Justice Black granted the Initial Application, and issued an Initial Order that provided for, *inter alia*, (i) a stay of proceedings in favour of Freshstone for an initial period of 10 days (the “**Stay Period**”), (ii) the appointment of Deloitte as Monitor of Freshstone in the CCAA Proceedings, (iii) an Administration Charge and a Director’s Charge, and (iv) the approval of a DIP Credit Agreement and related DIP Lenders’ Charge.¹⁰
14. On June 18, 2026, Justice Black rendered the following orders¹¹:
 - a) the ARIO, which provided for, *inter alia*, (i) an extension of the Stay Period, (ii) an increase of the Administration Charge and of the Directors’ Charge, and (iii) an increase of the amount which Freshstone was authorized to borrow under the DIP Credit Agreement; and
 - b) The SISP Order, which provided for, *inter alia*, (i) the authorization to conduct and implement the SISP in accordance with the SISP Procedures attached to the SISP Order; (ii) the approval of the engagement of GR as sale advisor to Freshstone in the context of the SISP, and (iii) the approval,

⁶ Burdzy Affidavit, at paras. 9-10.

⁷ Burdzy Affidavit, at paras. 9-10.

⁸ Burdzy Affidavit, at para. 11.

⁹ Second Wilson Affidavit, at para. 6.

¹⁰ Second Wilson Affidavit, at para. 7.

¹¹ Second Wilson Affidavit, at paras. 8-9.

nunc pro tunc, of the execution of the Subscription Agreement to be used as a stalking horse bid in the SISP.

III. THE CONDUCT OF THE SISP¹²

15. In accordance with the SISP Order and the SISP Procedures appended thereto, Freshstone, with the assistance of the Sale Advisor and under the supervision of the Monitor, conducted the SISP in respect of its business and assets in accordance with following the events and milestones described below:¹³

EVENT¹⁴
PHASE 1
<u>Solicitation Materials</u> Distribution of a Teaser Letter to Prospective Bidders
<u>VDR and Confidential Information</u> Preparation and granting access to, to parties having executed the Confidentiality Agreement (Prospective Bidders), the Data Room and other confidential information
<u>LOI Deadline (By no later than August 14, 2026, at 5:00 p.m. (Toronto time))</u> LOI Deadline (for delivery of non-binding LOIs in accordance with the SISP Procedures)

16. As part of the SISP:
- a) a total of 139 Prospective Bidders were solicited and provided with a copy of a “Teaser Letter”, and were ultimately invited to participate in the SISP; and
 - b) of these Prospective Bidders, 27 executed a Confidentiality Agreement and were provided with access to a virtual Data Room prepared by Freshstone and the Sale Advisor.
17. Ultimately, Phase 2 of the SISP was not conducted, as no LOIs were received either prior to or after the LOI Deadline of August 14, 2026 at 5:00 p.m. Toronto time.¹⁵
18. In accordance with paragraph 17 of the SISP Procedures, the Stalking Horse Bid was formally declared as the Successful Bid in the SISP.¹⁶

IV. THE TERMS AND CONDITIONS OF THE SUBSCRIPTION AGREEMENT

19. The key terms of the Amended Subscription Agreement are summarized below:¹⁷

Key Terms	Stalking Horse Bid
Investor	Frank Burdzy, on his own behalf or on behalf of an entity to be incorporated

¹² All capitalized terms in this section shall have the meaning ascribed to them in the Amended Subscription Agreement.

¹³ Second Wilson Affidavit, at para. 12.

¹⁴ Since no LOI was submitted by the LOI Deadline, no Phase 2 of the SISP was conducted.

¹⁵ Second Wilson Affidavit, at para. 13.

¹⁶ Second Wilson Affidavit, at para. 14.

¹⁷ All capitalized terms in this paragraph shall have the meaning ascribed to them in the Amended Subscription Agreement.

Key Terms	Stalking Horse Bid
	by him and designated prior to the Closing.
Subscription	At the Closing, the Investor shall subscribe for new common shares in the capital of Freshstone, which at Closing shall represent all of the issued and outstanding share capital of Freshstone. Concurrently with such subscription, all other Equity Interests in the capital of Freshstone shall be cancelled without consideration.
Subscription Price	The subscription price for the Subscription Shares (the “Subscription Price”) shall be an amount equal to the aggregate of the following: • the Credit Bid Amount, being an amount equal to the outstanding amount of the Credit Bid Notes (pursuant to which Freshstone’s indebtedness totaled approximately, as of the date of the motion, \$7,733,270); • an amount equal to the Priority Payables (i.e., the amounts secured by the Administration Charge, the DIP Lender’s Charge, the Directors’ Charge, and any other Court-ordered priority charge) (which, as at the date of the Motion, totaled approximately \$1,530,250); • an amount equal to the Administrative Reserve Amount (i.e., an amount reasonably determined by the Monitor prior to Closing, in consultation with the Investor, to pay the estimated fees and expenses of (i) completing the CCAA Proceedings, and (ii) the receivership, bankruptcy or wind-up of ResidualCo. 1 and Residual Co. 2) (which the Monitor currently anticipate will amount to approximately \$250,000); and • the amount of the Retained Liabilities, being: (i) all Liabilities arising under the Retained Contracts to the extent first arising and relating to the period on or after the Closing Time, and any Cure Costs under such Retained Contracts which are not being paid in cash on Closing as Known Cure Costs (which Known Cure Costs, as at the date of the Motion, amounted to approximately \$338,205); (ii) all Liabilities to the extent first arising out of the operation of the Retained Assets for the periods on and after the Closing Time; (iii) all Liabilities of the Issuer relating to Retained Employees and/or the Retained Employee Plans (which, as at the date of the Motion, amounted to approximately \$4,561,130); (iv) any Liabilities arising after the granting of the Initial Order, other than any such Liabilities to be paid in cash on Closing (which, as at the date of the Motion, amounted to approximately \$1,565,149); (v) unremitted employee source deductions, vacation pay and other employee priority claims as at the Closing Time (which, as at the date of the Motion, amounted to approximately \$1,090,960);

Key Terms	Stalking Horse Bid
	(vi) if any, unremitted GST/HST as at the Closing Time¹⁸; (vii) the indebtedness, liabilities and obligations arising under the Fourth Promissory Note (which, as at the date of the Motion, amounted to approximately \$2,806,705); (viii) if any, other liabilities secured by deemed trusts and statutory priority claims existing as at the Closing Time; and (ix) if any, any amounts accrued and not yet owing in respect of the Priority Payables that are not paid by the Investor at the Closing.
Deposit	5% of the estimated cash portion of the Subscription Price, being \$50,665 which was previously paid by the Investor as a deposit, will be applied to the Subscription Price.
Transaction Structure	Reverse Vesting Structure, whereby, <i>inter alia</i> , all Excluded Liabilities, Excluded Employees, Excluded Employee Plans and Excluded Contracts will be transferred and vested into ResidualCo.
Employees	Investor may designate employees to be terminated no later than five (5) Business Days prior to the Closing Date. However, the Investor's intention remains to retain substantially all of the employees on Closing.
Regulatory Approvals	None.
Target Closing Date	Closing shall occur five (5) Business Days following the satisfaction of all conditions to Closing, other than the payment of the Subscription Price, or any other date mutually agreed by the Parties, providing Closing shall not occur later than on the Outside Date.
Outside Date	November 27, 2026, although the Investor remains committed in closing the Transactions five (5) Business Days following the satisfaction of all conditions to Closing.
Key Conditions to Closing	Key conditions include: (a) Declaration of stalking horse bid as the successful bid in the SISP (which condition has been satisfied); and (b) Issuance of the ARVO.
Other	Upon Closing, the Investor shall provide and deliver a full and final release to Freshstone's directors and officers and other representatives, as well as to the Monitor and its legal counsel.

¹⁸ For greater certainty, this excludes any claim or assessment pursuant to 296(1)(b) of the Excise Tax Act.

PART III – ISSUES

20. The issues to be determined by the Court are as follows:

- a) Should the Court approve the Transactions, including their “reverse vesting” structure, as contemplated in the draft ARVO?
- b) Should the Court order the enhancement of the Monitor’s powers, as contemplated in the draft ARVO?
- c) Should the Court grant the requested releases in favour of Freshstone’s directors and officers, as contemplated in the draft ARVO?
- d) Should the Court order an extension of the Stay Period, as contemplated in the draft ARVO?

PART IV – LAW AND ARGUMENTS

I. THE TRANSACTIONS CONTEMPLATED IN THE AMENDED SUBSCRIPTION AGREEMENT SHOULD BE APPROVED

A. The Factors under Subsection 36(3) of the CCAA are Satisfied

21. Section 36 of the CCAA sets out the applicable legal test for obtaining court approval of a sale outside the ordinary course of business during a CCAA proceeding, whether such sale is structured as traditional asset deal or a share deal to be implemented by way of a “reverse vesting” structure.¹⁹
22. In particular, subsection 36(3) outlines certain factors that the Court may consider when deciding whether to approve a sale:

Factors to be considered

36 (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;

¹⁹ *Harte Gold Corp. (Re)*, [2022 ONSC 653](#), at [para. 20](#) and [23](#) [*Harte Gold*]; *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#), at [para. 87](#), leave to appeal refused by the Court of Appeal of Quebec *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCA 1073](#) and by the Supreme Court of Canada, *Winner World Holdings Limited, et al. v. Blackrock Metals Inc., et al.*, [2023 CanLII 36969](#) [*Blackrock*]; *Arrangement relatif à Nemaska Lithium inc.*, [2020 QCCS 3218](#), at [paras. 71-72](#), leave to appeal to QCCA refused, *Arrangement relatif à Nemaska Lithium Inc.*, [2020 QCCA 1488](#), leave to appeal to SCC denied, *Arrangement relatif à Nemaska Lithium Inc.*, 2021 CarswellQue 4589 [*Nemaska*].

(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.²⁰

23. These factors are largely based on those previously articulated in the *Soundair* case (prior to the enactment of section 36 of the CCAA) for the approval of the sale of assets in an insolvency scenario. The *Soundair* factors included: (a) whether the debtor company has made sufficient effort to obtain the best price and has not acted improvidently; (b) whether the debtor company has considered the interests of all parties; (c) the efficacy and integrity of the process by which offers have been obtained; and (d) whether there has been unfairness in the working out of the process.²¹
24. The factors enumerated in subsection 36(3) of the CCAA are not intended to be exhaustive, nor are they intended to constitute a checklist that must be followed in every CCAA sale transaction, as the Court's approval of a sale transaction may depend on the specific facts of each case.²²
25. Moreover, courts have noted that the informed business judgement of a debtor and the opinion of the monitor are generally entitled to deference in relation to a sale transaction.²³
26. For the reasons that follow, Freshstone submits that the Transactions satisfy each of the factors set out in section 36(3) of the CCAA and that, ultimately, the approval of the Transactions is consistent with the remedial purpose of the CCAA.

(i) The Process Leading to the Transactions was Fair and Reasonable in the Circumstances

27. In the matter at hand, the process leading to the Transactions (i.e. the SISP) was developed by Freshstone, with the assistance of the Sale Advisor and the Monitor, and was ultimately approved by the Court pursuant to the SISP Order.²⁴
28. The SISP was conducted by Freshstone and the Sale Advisor, under the supervision of the Monitor, in accordance with the SISP Order (and the SISP Procedures annexed thereto).²⁵

²⁰ CCAA, [s. 36\(3\)](#).

²¹ *Royal Bank of Canada v. Soundair Corp.*, [1991] O.J. No. 1137, at [para. 16](#) [*Soundair*].

²² *Target Canada Co. (Re)*, 2015 ONSC 1487, at [para. 16](#) [*Target*].

²³ *Target*, 2015 ONSC 1487, at [para. 18](#); *AbitibiBowater, Inc (Re)*, 2010 QCCS 1742, at [paras. 70-72](#).

²⁴ Second Wilson Affidavit, at para. 12.

²⁵ Second Wilson Affidavit, at para. 12.

29. For these reasons, Freshstone respectfully submits that the process leading to the Transactions was fair and reasonable in the circumstances.

(ii) The Monitor Approved the Process Leading to the Transactions

30. In the matter at hand, the Monitor was actively involved and approved the entire process leading to the Transactions.
31. More specifically, the Monitor has confirmed the following in its First Report to the Court dated June 13, 2026 and/or in its Third Report to the Court dated September 15, 2026 (the “**Third Report**”):
- a) the Monitor has had a major role in the development of the SISP;
 - b) the Monitor approved the SISP and recommended the Court’s approval of same;²⁶
 - c) the Monitor oversaw the implementation of the SISP and declared that it was satisfied that it was carried out in accordance with the SISP Procedures; and ultimately;²⁷
 - d) the Monitor was involved in the negotiations that resulted in the execution of the Subscription Agreement, as well as the various amendments thereto.²⁸
32. For these reasons, Freshstone respectfully submits, once again, that this second factor to be considered by the court has also been satisfied.

(iii) The Monitor Filed with the Court a Report Stating that in its Opinion, the Sale or Disposition Would be More Beneficial to Creditors than a Sale or Disposition Under a Bankruptcy

33. The Monitor has considered whether the completion of the Transactions pursuant to the Subscription Agreement would be more beneficial to creditors of Freshstone and Freshstone’s stakeholders generally than a sale or disposition of the business and assets of Freshstone under a bankruptcy.²⁹
34. As appears from the Third Report, the Monitor has observed and determined the following:
- a) the offer made by the Investor as part of the Amended Subscription Agreement not only constituted the highest and best offer received by Freshstone as part of the SISP, but it also constitutes the only offer received;
 - b) such offer, if approved by the Court and implemented in accordance with the terms of the Amended Subscription Agreement, will allow the preservation of the business and assets of Freshstone as a going concern;

²⁶ Second Wilson Affidavit, at para. 20.

²⁷ Third Report, at para. 48.

²⁸ Third Report, at para. 48.

²⁹ Third Report, at para. 48.

- c) the consideration offered as part of the Amended Subscription Agreement exceeds the net liquidation value of Freshstone's assets;³⁰
 - d) the completion of the Transactions is in the best interests of the creditors of Freshstone and its stakeholders generally; and
 - e) given the above, the Monitor recommends the Court's approval of the Transactions.³¹
35. For these reasons, Freshstone respectfully submits, once again, that this third factor to be considered by the court has also been satisfied.

(iv) Adequate Creditor Consultation was Made

36. In the matter at hand, it is important to note that Freshstone's only secured creditors are Garrington Financial Services Inc., in its capacity as DIP Lender to Freshstone and Mr. Burdzy, as pre-filing senior secured creditor of Freshstone.³²
37. The DIP Lender was thoroughly consulted throughout the SISP and the CCAA Proceedings in accordance with the DIP Credit Agreement, and Mr. Burdzy, being the Investor, was obviously aware of the effect which the Transactions would have on its secured indebtedness towards Freshstone.³³
38. As for Freshstone's unsecured creditors, each of them were in a position to obtain a copy of the Amended Subscription Agreement, which was either transmitted directly to those who filed a notice of appearance in these CCAA proceedings or who requested a copy of same, or was otherwise made available to the public on the Monitor's website.³⁴
39. Throughout the CCAA Proceedings, Freshstone and the Monitor have responded to questions or inquiries made by certain creditors relating to such proceedings, as well as to the impact of the Transactions on their respective claims.
40. Finally, Freshstone's Motion Record seeking the approval of the Transactions contemplated in the Amended Subscription Agreement was served on September 11, 2026 not only to those parties and creditors who filed a notice of appearance in these CCAA Proceedings, but also to: (i) all counterparties to the Retained Contracts (as defined in the Amended Subscription Agreement), and (ii) all counterparties to the known Excluded Contracts (as defined in the Amended Subscription Agreement). The Monitor's Third Report to the Court (in support of Freshstone's Motion) was served to all of the above parties on September 15, 2026.
41. Since then, no party has advised Freshstone or the Monitor of any issue or opposition relating to the Transactions or to the relief sought by Freshstone as part of the ARVO.

³⁰ Third Report, at para. 51.

³¹ Third Report, at para. 49.

³² Second Wilson Affidavit, at para. 20.

³³ Second Wilson Affidavit, at para. 20.

³⁴ Third Report, at para. 116.

42. For these reasons, Freshstone respectfully submits, once again, that this fourth factor to be considered by the court has also been satisfied.

(v) The Effects of the Proposed Sale or Disposition on the Creditors and Other Interested Parties

43. As further reflected in the Second Wilson Affidavit and in paragraph 19 hereof, the Transactions will result in:
- a) the payment or satisfaction of a substantial portion of Freshstone's secured indebtedness (through a credit-bid) and priority payables;
 - b) the assumption and/or payment of certain unsecured claims which would not otherwise receive any recovery whatsoever in a bankruptcy scenario; and, more importantly,
 - c) the pursuit of Freshstone's business as a going concern, and the continued employment of hundreds of employees.³⁵
44. In its Third Report, the Monitor has stated that the completion of the Transactions is in the best interests of the creditors of Freshstone and its stakeholders generally, as such Transactions will allow for: (a) the retention and payment in full of the Retained Liabilities, (b) continued employment for over 200 employees; (c) ongoing business opportunities for suppliers of goods and services, and (d) continuation of supply to customers without the potential issues and delays that may be caused from having to source alternate supply.³⁶
45. Since no other offer has been received by Freshstone as part of the SISP, the only alternative to the Transactions is a bankruptcy of Freshstone, which, as confirmed by the Monitor, will not be beneficial to any creditor or other stakeholder of Freshstone.³⁷
46. For these reasons, Freshstone respectfully submits, once again, that this fifth factor to be considered by the court has also been satisfied.

(vi) The Consideration to be Received is Fair and Reasonable

47. The Subscription Price offered in the Amended Subscription Agreement is reasonable and fair, taking into account the market value of Freshstone's business and/or assets, as reflected by the SISP.³⁸
48. Once again, the offer made by the Investor as part of the Amended Subscription Agreement not only constitutes the highest and best offer received by Freshstone as part of the SISP, but it also constitutes the only offer received.³⁹

³⁵ Second Wilson Affidavit, at para. 20.

³⁶ Third Report, at para. 58.

³⁷ Second Wilson Affidavit, at para. 53.

³⁸ Second Wilson Affidavit, at para. 20.

³⁹ Second Wilson Affidavit, at para. 20.

49. For these reasons, Freshstone respectfully submits, once again, that this sixth factor to be considered by the court has also been satisfied.

(vii) The Factors Under Subsection 36(4) of the CCAA Are Also Satisfied

50. In addition to the factors set out in subsection 36(3) of the CCAA, subsection 36(4) of the CCAA outlines certain additional factors that the Court may consider when deciding whether to approve a sale made to a “related person” pursuant to section 36(5) of the CCAA:

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.⁴⁰

51. As Chief Executive Officer and as a member of the Board of Directors of Freshstone,⁴¹ the Investor, Mr. Burdzy, is a “related person” to Freshstone pursuant to subsection 36(5) of the CCAA, which provides that a person who is related to a company includes, namely: (a) a director or officer of the company; or (b) a person who has or has had, directly or indirectly, control in fact of the company.⁴²
52. In the context of the present matter, Freshstone submits that the factors set out in section 36(4) of the CCAA are also satisfied in light of the following:
- a) good faith efforts were made to sell or otherwise dispose of Freshstone’s assets to persons who are not related to it, as a total of 139 Prospective Bidders were solicited as part of the SISF; and
 - b) the consideration to be received under the Transactions can be said to be superior to the consideration that would be received under any other offer made as part of the SISF, since no such other offer was made.⁴³

⁴⁰ CCAA, [s. 36\(4\)](#).

⁴¹ Burdzy Affidavit, at para. 1.

⁴² CCAA, [s. 36\(5\)](#).

⁴³ Second Wilson Affidavit, at para. 21.

II. THE “REVERSE VESTING” STRUCTURE CONTEMPLATED IN THE AMENDED SUBSCRIPTION AGREEMENT SHOULD BE APPROVED

A. The Court Has the Jurisdiction to Approve an RVO Transaction

53. RVO transactions generally involve a series of steps whereby: (a) the purchaser or investor becomes the sole shareholder of the debtor company; (b) the debtor company retains its assets, including key contracts and permits; and (c) the liabilities not assumed by the purchaser, together with any excluded assets, if any, are vested out and transferred to one or more newly incorporated entities (generally referred to as ResidualCos), which are usually bankrupted following the closing of the transactions.⁴⁴
54. The jurisdiction to approve a transaction implemented through an RVO is found in section 11 of the CCAA, which gives the Court broad powers to make any order it thinks fit.⁴⁵
55. Today, the Court’s jurisdiction to grant the ARVO is beyond doubt, as courts across Canada have granted RVOs in several dozens of cases in recent years. The jurisprudence establishes that RVOs are generally appropriate when one or more of the circumstances described below are present:
- a) the debtor operates in a highly regulated environment in which its existing permits, licences or other rights would be difficult or impossible to assign to a purchaser;⁴⁶
 - b) the debtor is party to certain key agreements that would be difficult or impossible to assign to a purchaser;⁴⁷
 - c) maintaining the existing legal entity would allow the debtor to preserve tax attributes that would otherwise be lost in a traditional asset sale;⁴⁸ and
 - d) maintaining the existing legal entity would allow the investor to avoid having to pay for transfer taxes.⁴⁹

⁴⁴ *Just Energy Group Inc. et al. v. Morgan Stanley Capital Group Inc. et al.*, [2022 ONSC 6354](#), at [para. 27](#) [*Just Energy*].

⁴⁵ CCAA, [s. 11](#); *Blackrock*, [2022 QCCS 2828](#), at [para. 87](#); *Quest University Canada (Re)*, [2020 BCSC 1883](#), at [para. 56](#) [*Quest University*]; *Harte Gold*, [2022 ONSC 653](#), at [paras. 36-37](#).

⁴⁶ *Blackrock*, [2022 QCCS 2828](#), at [para. 114](#); *Harte Gold*, [2022 ONSC 653](#), at [para. 71](#); *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#), at [paras. 13-14](#) and [21](#) [*Acerus*]; *Just Energy* at [para. 34](#); *Arrangement relatif à MedXL*, [2024 QCCS 4269](#), at [para. 32](#) [*MedXL*]; *In the Matter of CannaPiece*, [2023 ONSC 841](#), at [para. 63](#); *Tacora Resources Inc. (Re)*, [2024 ONSC 4436](#), at [para. 12](#) [*Tacora*].

⁴⁷ *Blackrock*, [2022 QCCS 2828](#), at [paras. 114-116](#); *Acerus*, [2023 ONSC 3314](#), at [paras. 13-14](#) and [21](#); *Proposition de Brunswick Health Group Inc.*, [2023 QCCS 464](#) at [paras. 61-69](#) [*Brunswick Health*]; *Just Energy* at [para. 41](#).

⁴⁸ *Blackrock*, [2022 QCCS 2828](#), at [paras. 111 and 114](#); *Acerus*, [2023 ONSC 3314](#), at [paras. 14](#) and [21](#); *Quest University*, [2020 BCSC 1883](#), at [paras. 131](#) and [136](#); *Re Comark Holdings Inc et al*, Toronto [CV-20-00642013-00CL](#) (ONSC) at [para. 142](#) [*Comark*]; *JMB Crushing Systems Inc (Re)*, [2020 ABQB 763](#) at [para. 25](#) (leave for appeal dismissed, [2021 ABQB 8](#)) [*JMB Crushing*]; *Just Energy* at [paras. 41](#) and [56](#); *British Columbia v. Tacora*, [2024 ONSC 4436](#), at [paras. 3](#) and [12](#); *Dans l’affaire des avis d’intention de faire une proposition de Les Produits Horticoles Demers Inc. et al.*, 200-11-030598-265 (Superior Court of Quebec), Requête pour l’émission d’une ordonnance d’approbation et de dévolution ainsi que d’une ordonnance d’approbation et de dévolution inversée (*Application for the Issuance of an Approval Vesting Order and an Approval and Reverse Vesting Order*), at [para. 41](#) and [Ordonnance d’approbation et de dévolution inversée](#) (*Approval and Reverse Vesting Order*) [*Produits Horticoles*].

⁴⁹ *British Columbia v. Peakhill Capital Inc.*, [2024 BCCA 246](#), at [paras. 30-31](#) [*Peakhill*];

56. As further discussed in the Second Wilson Affidavit, the Amended Subscription Agreement contemplates a reverse vesting order (“**RVO**”) structure that vests out and transfers the Excluded Liabilities, Excluded Contracts, Excluded Employees and Excluded Employee Plans to ResidualCo.⁵⁰
57. To determine whether an RVO structure is appropriate in the circumstances, the Court must apply the *Harte Gold* factors described below.⁵¹

B. The Harte Gold Factors Are Satisfied

58. In *Harte Gold Corp. (Re)*, Justice Penny held that scrutiny of a proposed reverse vesting transaction may be informed by the following enquiries:

- (a) *why the RVO is necessary in this case;*
- (b) *whether the reverse vesting transaction structure produces an economic result at least as favourable as any other viable alternative;*
- (c) *whether any stakeholder is worse off under the reverse vesting transaction structure than they would have been under any other viable alternative; and*
- (d) *whether the consideration being paid for the debtor’s business reflects the importance and value of the licences and permits (or other intangible assets) being preserved under the reverse vesting transaction structure.*⁵²

59. As submitted further below, compelling circumstances justifying this relief exist in the present matter.

(i) The Proposed “Reverse Vesting” Structure is Necessary

60. In the matter at hand, the proposed RVO is necessary for at least four independent reasons, each of which fall squarely within the recognized circumstances justifying an RVO.

➤ **The Proposed “Reverse Vesting” Structure will Allow the Preservation of Freshstone’s Licences, Certificates and Registrations Necessary for its Operations**

61. In order to operate from its Facilities, Freshstone must maintain several licences, certificates and registrations further described in the Second Wilson Affidavit with the following entities:

- a) the Canadian Food Inspection Agency (“**CFIA**”) pursuant to the Safe Food for Canadians Regulations, SOR/2018-108 (the “**SFCR**”), whose mission is to ensure, through licensing and prevention, that imported and exported food products are safe for Canadians and international consumers. The SFCR applies to all businesses that import, export or inter-provincially trade food for human consumption (including ingredients) for commercial purposes, which includes Freshstone;

⁵⁰ Second Wilson Affidavit, at paras. 18 and ff.

⁵¹ *Harte Gold*, [2022 ONSC 653](#), at [para. 38](#).

⁵² *Harte Gold*, [2022 ONSC 653](#), at [para. 38](#); *MedXL*, [2024 QCCS 4269](#), at [paras. 32-36](#).

- b) the Safe Quality Food (“**SQF**”) Institute, established to administer the SQF Program, a leading global food safety and quality certification and management system that is recognized by retailers, brand owners and foodservice providers worldwide; and
 - c) the U.S. Food and Drug Administration (the “**FDA**”), a U.S. federal agency of the United States Department of Health and Human Services that is responsible for protecting and promoting public health through the control and supervision of food safety, among others.⁵³
62. In addition to the foregoing, Freshstone is also the beneficiary of a Letter of Certification received from the Kashruth Council of Canada, which is the largest kosher certification agency in Canada, certifying products across the country and around the world, which enables Freshstone to certify to its customers that certain of its products manufactured for its clients are kosher.⁵⁴
63. Freshstone’s understanding is that these licences, certificates and registrations cannot be assigned or otherwise transferred to a third-party, and if the Transactions were to be implemented as an asset deal to be approved by the Court by way of a traditional approval and vesting order, the Investor would be required to re-apply and re-submit the relevant applications in order to obtain the above licences, certifications and registrations, without which the Investor would not be able to operate.⁵⁵
64. While the new applications for the above licences, certificates and registrations could potentially be made by the Investor, it is important to note the following:
- a) there is no guarantee that the organizations above will agree to issue any or all of the relevant licences, certifications and registrations necessary to allow the Investor to pursue Freshstone’s operations; and
 - b) in any event, even if all of the above licences, certifications and registrations could be re-issued by the relevant organizations above (which is not guaranteed), based on its own experience, including in relation to its prior sale of Kitchen Partners and related business assets (further described in the Burdzy Affidavit), Freshstone expects that such application and approval process could take, at a minimum, eight (8) weeks, and perhaps several more weeks with the FDA, thereby significantly delaying and potentially putting at risk the Transactions, to the detriment of Freshstone and its stakeholders.⁵⁶
65. It is important to note that while the Amended Subscription Agreement is not subject to any regulatory approval, it is nevertheless conditional upon the Transactions being implemented by way of a “reverse vesting” structure so as to allow Freshstone to preserve all of its licenses, certificates and registrations that are necessary for its on-going operations.⁵⁷

⁵³ Second Wilson Affidavit, at para. 26.

⁵⁴ Second Wilson Affidavit, at para. 28.

⁵⁵ Second Wilson Affidavit, at para. 29.

⁵⁶ Second Wilson Affidavit, at para. 30.

⁵⁷ Second Wilson Affidavit, at para. 31.

66. Canadian case law has established the preservation of permits and licenses as an appropriate justification to allowing a transaction under an RVO structure, in order to achieve the timely and efficient preservation of the necessary licences and permits necessary for a debtor's operations.⁵⁸
67. In fact, courts recognize that the approval of RVO structures in the context of transactions involving parties operating in the food or nutrition industry are appropriate, due to the complexities associated with the transfer of permits in highly regulated environments:

[47] Nonetheless, it is now recognised [sic] that courts have jurisdiction to approve RVOs under the various insolvency legislations and that such orders may be appropriate to allow businesses to continue through the debtor company when the debtor company owns valuable assets that cannot be transferred. Examples include:

47.1. Debtors that operate in highly regulated environments where existing permits, licenses or other rights are complicated to reassign.

47.2. Debtors who are parties to key agreements that would be difficult or impossible to assign to a purchaser; or

47.3. Where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order.

*[48] Given the above, many RVOs have been approved in the mining, health care, pharmaceutical and nutrition industries.*⁵⁹

[Our emphasis]

68. In light of the foregoing, Freshstone believes that the preservation of the above licences, certificates and registrations constitutes an important reason justifying the “reverse vesting” structure proposed as part of the Amended Subscription Agreement.

➤ **The Proposed “Reverse Vesting” Structure will Allow the Preservation of Freshstone’s Membership with the Fruit and Vegetable Dispute Resolution Corporation**

69. Pursuant to the SFCR administered by the CFIA, Canadian companies that buy, sell or import fresh fruits and vegetables inter-provincially and internationally, such as Freshstone, are required, unless exempted, to maintain a membership with the Fruit and Vegetable Dispute Resolution Corporation (the “DRC”). The DRC is a not-for-profit, membership-based, international entity providing a broad range of private, commercial dispute resolution services to the fresh fruit and vegetable trade, which

⁵⁸ *Harte Gold*, 2022 ONSC 653, at para. 70-71; *CannaPiece*, 2023 ONSC 841, at para. 63; *MedXL*, 2024 QCCS 4269, at para. 33; *Blackrock*, 2022 QCCS 2828, at para. 114; *Acerus*, 2023 ONSC 3314, at paras. 13-14.

⁵⁹ *Arrangement relatif à Elna Medical Group Inc./Groupe médical Elna inc.*, 2025 QCCS 1329, at para. 47 [*Elna Medical*].

has over 1,600 members predominantly located in Canada and in the U.S., but also in several other countries around the world.⁶⁰

70. Accordingly, in order to maintain its business operations, Freshstone must also maintain its membership with the DRC. Such membership not only allows Freshstone to operate, but it also allows it to expand its business network, to be identified as a preferred and vetted buyer and seller of food and ingredients, adhering to certain ethical standards and, if necessary, to rely on an organization which assists its members in resolving actual or potential disputes.⁶¹
71. On July 17, 2026, the DRC sent a letter to Freshstone (the “**DRC Letter**”), advising it that, pursuant to its by-laws, if Freshstone becomes a bankrupt company:
- a) Freshstone’s membership to the DRC will automatically be terminated;
 - b) the DRC will report such termination to the CFIA and will make public such termination, the reason and date of such termination as well as the names and titles of the responsibly connected persons, all of whom will be posted on the DRC’s list of “sanctioned parties”; and
 - c) ultimately, the current and future employment of any such “sanctioned parties” with another DRC member may be conditional on that member posting financial security.⁶²
72. If the Transactions were to be implemented as an asset deal to be approved by the Court by way of a traditional approval and vesting order, it is expected that following closing and transfer of Freshstone’s assets to the Investor, a voluntary bankruptcy assignment would be made in respect of Freshstone. Such bankruptcy would, in turn, result in the consequences highlighted in the DRC Letter, thereby potentially impairing the Investor’s ability to operate through any other entity, as the Investor has been identified by the DRC as a responsibly connected person to Freshstone.⁶³
73. Freshstone believes, once again, that the preservation of its membership with the DRC and the avoidance of the consequences that would arise should it become bankrupt constitute additional important reasons justifying the “reverse vesting” structure proposed as part of the Amended Subscription Agreement.

➤ **The Proposed “Reverse Vesting” Structure will Allow the Preservation of Freshstone’s Tax Attributes**

74. The Investor has advised Freshstone that its willingness to implement the Transactions, to satisfy the Subscription Price (including by indirectly assuming the Retained Liabilities) and, ultimately, to pursue the business of Freshstone for the benefit of all of its stakeholders, including its hundreds of direct and indirect employees, is subject to, *inter alia*, its ability to maximize Freshstone’s tax attributes (the “**Tax**

⁶⁰ Second Wilson Affidavit, at paras. 34 and 35.

⁶¹ Second Wilson Affidavit, at paras. 36-37.

⁶² Second Wilson Affidavit, at para. 38.

⁶³ Second Wilson Affidavit, at para. 39.

Attributes”). The Tax Attributes include: (a) approximately **\$36.6 million** in non-capital loss carryforwards, based on Freshstone’s tax return for the year ended December 31, 2024; and (b) more than **\$50 million** in non-capital loss carryforwards, based on Freshstone’s current estimates for the years ended December 31, 2025 and 2026.⁶⁴

75. The Investor has advised Freshstone that, based on its discussions with its advisors, such Tax Attributes could potentially be lost should the Transactions be structured as an asset deal to be implemented through a traditional approval and vesting order, given that these Tax Attributes cannot legally be assigned to a third party.⁶⁵
76. If the Transactions cannot be implemented as a share deal through an approval and reverse vesting order, this could result in the loss of the Tax Attributes, and, in turn, affect the Investor’s willingness or ability to complete the Transactions in their current form, thereby negatively impacting the value of the Transactions and delaying closing, all to the detriment of Freshstone and its stakeholders.⁶⁶
77. Canadian case law has recognized on several occasions that an Investor is entitled to implement an RVO structure in order to preserve tax attributes which would not otherwise be available under a traditional asset deal:

[12] Those enquiries support the granting of the RVO to implement the Transactions contemplated by the Subscription Agreement in this case:

- a. The RVO is necessary: [...]*
- ii. to preserve Tacora’s Tax Attributes for the prospective purchaser, which have been factored into the purchase price under the Subscription Agreement. Without the RVO, the Tax Attributes would have to be accounted for (at the expense of Tacora and its stakeholders) under the possible (but less economically advantageous) alternative transaction structures.*⁶⁷

[Our emphasis; References omitted]

78. Freshstone believes, once again, that the preservation of the Tax Attributes constitutes another important reason justifying the “reverse vesting” structure proposed as part of the Amended Subscription Agreement.

➤ **The Proposed “Reverse Vesting” Structure Will Allow the Preservation and Maintenance of the “Retained Contracts”**

⁶⁴ Second Wilson Affidavit, at para. 41.

⁶⁵ Second Wilson Affidavit, at para. 42.

⁶⁶ Second Wilson Affidavit, at para. 43.

⁶⁷ *Tacora*, [2024 ONSC 4436](#), at [para. 12](#). See also: *Blackrock*, [2022 QCCS 2828](#), at [para. 111](#); *Acerus*, [2023 ONSC 3314](#), at [paras. 14 and 21](#); *Quest University*, [2020 BCSC 1883](#), at [paras. 131 and 136](#); *Re Comark*, [CV-20-00642013-00CL](#) (ONSC), at [para. 142](#); *JMB Crushing*, [2020 ABQB 763](#); *Just Energy* at [paras. 41 and 56](#); *Produits Horticoles*.

79. Pursuant to the Amended Subscription Agreement, the Investor proposes to retain, through Freshstone, all of the “Retained Contracts” set out in Schedule 1.1.6.1 to the Amended Subscription Agreement, which include:
- a) all active customer contracts currently in existence (including pricing sheets), of which there are currently approximately 20-25; and
 - b) all active supplier code of conduct agreements and ancillary documents currently in existence, of which there are currently over 100.⁶⁸
80. The “reverse vesting” structure proposed in the Amended Subscription Agreement is intended, as previously mentioned, to ensure a seamless transition, including by facilitating the retention and maintenance of the above “Retained Contracts”.⁶⁹
81. If the Transactions cannot be implemented as a share deal through an approval and reverse vesting order, all of the “Retained Contracts” would need to be either assigned, to the extent possible, or otherwise renegotiated with the Investor and the relevant counterparty to the “Retained Contracts”. Such process would not be efficient and would potentially delay the closing of the Transactions.⁷⁰
82. Once again, case law has already indicated that the RVO structure can be granted in order to avoid delays and costs related to the assignment of certain agreements:

[75] In addition, Harte Gold has a significant number of contracts that will be retained under the SARSA. Again, the RVO transaction structure will avoid potentially significant delays and costs associated with having to seek consent to assignment from contract counter-parties or, if consents could not be obtained, orders assigning such contracts under s. 11.3 of the CCAA. The Monitor has also pointed out that under the SARSA and the RVO, the purchaser will be required to pay applicable cure costs in respect of the retained contracts which has been structured in substantially the same manner as contemplated by s. 11.3(4) of the CCAA if a contract was assigned by court order.⁷¹

[Our emphasis]

83. The preservation and maintenance of the “Retained Contracts” constitutes another important reason justifying the “reverse vesting” structure proposed as part of the Amended Subscription Agreement.

⁶⁸ Second Wilson Affidavit, at para. 45.

⁶⁹ Second Wilson Affidavit, at para. 46.

⁷⁰ Second Wilson Affidavit, at para. 47.

⁷¹ *Harte Gold*, 2022 ONSC 653, at para. 75. See also: *Elna Medical*, 2025 QCCS 1329, at para. 47.

(ii) The Reverse Vesting Structure Produces an Economic Result at Least as Favourable as Any Other Viable Alternative and No Stakeholder is Worse Off Under Such Structure

84. In discussing and negotiating the Amended Subscription Agreement, including its proposed “reverse vesting” structure, the Investor was informed by the Monitor that such structure needed to produce an economic result at least as favourable as under a traditional “vesting” structure, such that no stakeholder could be worse off as a result of the Investor’s proposed transaction structure.⁷²
85. As appears from the terms of the Amended Subscription Agreement, while no contract will be assigned *per se*, the Investor has agreed nevertheless to pay “cure costs” in respect of “Retained Contracts” to ensure that counterparties to such contracts are not prejudiced by the “reverse vesting” structure.⁷³
86. In addition to the foregoing, in order to ensure that no stakeholder is worse off under the “reverse vesting” structure proposed as part of the Amended Subscription Agreement, Freshstone will also be requesting the Court to grant, at a later date to be determined with the Court, the WEPPA Order so as to ensure that all employees terminated by Freshstone, either prior to or in connection with the Transactions, will be able submit a claim and obtain a recovery pursuant to the Wage Earner Protection Program, in the same manner as if the Transactions had been structured as a traditional “vesting” transaction.⁷⁴
87. As such, in the matter at hand, the reverse vesting structure will produce an economic result at least as favourable as any other viable alternative, and no stakeholder will be worse off under such structure.

(iii) The Consideration Being Paid for Freshstone’s Business Reflects the Importance and Value of the Licences, Certificates and Registrations being preserved under the Reverse Vesting Structure

88. Ultimately, the offer made by the Investor was not only the sole going concern offer submitted to Freshstone in the context of the SISP, but it was also the only offer altogether.⁷⁵
89. Clearly, the Subscription Price offered by the Investor in the Amended Subscription Agreement reflects the going-concern value of Freshstone, which requires, as previously discussed, the preservation of the licences, certificates and registrations.⁷⁶

III. THE MONITOR’S POWERS SHOULD BE ENHANCED

90. If the Transactions and the proposed “reverse vesting” structure are approved by the Court:
- a) all Liabilities (other than the Retained Liabilities) and all Contracts (other than the Retained Contracts) will be transferred and vested into ResidualCo.; and

⁷² Second Wilson Affidavit, at para. 50.

⁷³ Second Wilson Affidavit, at para. 51.

⁷⁴ Second Wilson Affidavit, at para. 52.

⁷⁵ Second Wilson Affidavit, at para. 53.

⁷⁶ Second Wilson Affidavit, at para. 54.

- b) ResidualCo. will be added as a party subject to the CCAA Proceedings, with Freshstone being released from the purview of same.⁷⁷
91. Accordingly, and in order to ensure the completion of the CCAA Proceedings, Freshstone requests to enhance the Monitor's powers to include the power to distribute any cash portion of the Subscription Price in accordance with the Amended Subscription Agreement, and to exercise any powers which may be properly exercised by any board of directors of ResidualCo. (including the opening of one or more new bank accounts on their behalf, the causing of such entities to perform such functions as the Monitor considers necessary or desirable to facilitate the winding-down and the distribution of their property, and the assignment of ResidualCo. into bankruptcy following the closing of the Transactions).⁷⁸
92. Freshstone believes that no creditor or other stakeholder will be prejudiced by such enhancement of the Monitor's powers.⁷⁹
93. The CCAA provides the Court with broad discretion in respect of the Monitor's functions in a particular CCAA proceeding. Section 23(1)(k) of the CCAA provides that the Monitor can "*carry out any other functions in relation to the [debtor] company that the court may direct*". In addition, section 11 of the CCAA authorizes this Court to make any order that is necessary and appropriate in the circumstances.
94. There are several examples of CCAA courts granting expanded powers to the Monitor where such relief is warranted in the circumstances in the context of an RVO.⁸⁰
95. Ultimately, the Monitor is of the opinion that the expanded powers are necessary to complete the Transactions, the CCAA Proceedings and the administration of ResidualCo., and therefore, such relief is reasonable, justified and appropriate.⁸¹

IV. THE D&O RELEASE SHOULD BE GRANTED

A. The Court has Jurisdiction to Approve Third Party Releases

96. Over the course of the past twenty (20) years, there have been numerous CCAA proceedings where Canadian courts granted broad releases in favour of third parties, such as the directors and officers of debtor companies, both on consent and in contested matters.⁸²
97. Such third-party releases have been granted as part of:
- a) sanction orders approving a plan of compromise or arrangement filed by the debtor companies;

⁷⁷ Second Wilson Affidavit, at para. 55.

⁷⁸ Second Wilson Affidavit, at para. 56.

⁷⁹ Second Wilson Affidavit, at para. 57.

⁸⁰ CCAA, [s. 11](#), [s. 23\(1\)\(k\)](#); *Rambler Metals and Mining Limited, Re CCAA*, [2023 NLSC 134](#); *Just Energy*, [2022 ONSC 6354](#); *Razor Energy Corp, Razor Holdings Gp Corp., and Blade Energy Services Corp (Re)*, [2025 ABKB 30](#).

⁸¹ Third Report, at para. 97.

⁸² *Tacora*, [2024 ONSC 4436](#), at [para. 4](#).

- b) approval and vesting orders approving a sale transaction in respect of the debtor companies' assets; and
 - c) approval and reverse vesting orders approving a sale or investment transaction in respect of the debtor companies' business and operations.
98. Although releases are not granted as of right and remain subject to the Court's discretion, Canadian courts, have nevertheless recognized that third-party releases, and perhaps, more specifically, director and officer releases, have become "commonplace" in the context of CCAA proceedings.⁸³
99. In the matter of *Harte Gold*, Justice Penny of the Ontario Superior Court of Justice granted broad releases in favour of the directors and officers of the debtor company, amongst others, as part of an approval and reverse vesting order. In determining whether to grant such releases, Justice Penny considered what are now commonly referred to as the "**Lydian Factors**", which were set out by Justice Morawetz in the *Lydian*⁸⁴ case, and which are listed below:
- (a) *whether the claims to be released are rationally connected to the purpose of the restructuring;*
 - (b) *whether the releasees contributed to the restructuring;*
 - (c) *whether the release is fair, reasonable and not overly broad;*
 - (d) *whether the restructuring could succeed without the release;*
 - (e) *whether the release benefits the debtor as well as the creditors generally; and*
 - (f) *creditors' knowledge of the nature and the effect of the releases.*⁸⁵
100. Justice Penny specified in the *Harte Gold* case that it is not necessary for each of the above factors to apply for a release to be approved, as is often the case in the exercise of discretionary powers.⁸⁶
101. Justice Koehnen of the Court further stated in the *Green Relief* matter that some of the Lydian Factors could assume greater weight depending on the particular facts of the case.⁸⁷
102. In this case, Freshstone submits that each of the Lydian Factors are satisfied and that the breadth and scope of the release order sought as part of the ARVO in favour of its directors and officers is consistent and in line with other release orders previously granted by Canadian Courts in the context of CCAA proceedings.

⁸³ *Blackrock*, 2022 QCCS 2828, at para. 128 and ff.; 8640025 Canada Inc. (Re), 2021 BCSC 1826, at para. 43; *Tacora*, 2024 ONSC 4436, at para. 4; *Arrangement relatif à FormerXBC Inc. (Xebec)*, 2023 QCCS 4975, at paras. 66, 70.

⁸⁴ *In the Matter of the Companies' Creditors Arrangement Act of Lydian International Limited et al.*, 2020 ONSC 4006 at para. 54 [*Lydian*]. Note that in *Lydian*, a plan of compromise or arrangement had been filed.

⁸⁵ *Lydian*, 2020 ONSC 4006 at para. 54.

⁸⁶ See *Harte Gold*, 2022 ONSC 653, at para. 80; *Re Green Relief Inc.*, 2020 ONSC 6837, at para. 28 [*Green Relief*].

⁸⁷ *Green Relief*, 2020 ONSC 6837, at para. 28.

B. The Lydian Factors Are Satisfied

(i) The Releases Are Rationally Connected to the Purpose of the Restructuring

103. The releases sought in favour of the directors and officers of Freshstone (the “D&Os”) are rationally connected to the purpose of Freshstone’s restructuring, as they will have the effect of diminishing claims (if any) against them which, in turn, will diminish indemnification claims by such D&Os against the Directors’ Charge.⁸⁸ Given that a purpose of a CCAA proceeding is to maximize creditor recovery, a release that helps achieve this goal is rationally connected to the purpose of the restructuring.⁸⁹

104. Furthermore, it should be noted that, in this case, the D&Os have advised Freshstone and the Monitor that if a release is not granted in their favour, they will not be in a position to agree to a discharge of the D&O Charge until a D&O claims process is conducted, and any claim against them is assessed and, if applicable, adjudicated.⁹⁰ This would have the effect of significantly delaying the closing of the Transactions (which is conditional upon, *inter alia*, the discharge of the D&O Charge), in addition to forcing Freshstone to incur significant costs relating to the conduct of the aforementioned D&O claims process.

105. As appears from the Third Report, the Monitor has indicated that it also believes that the claims released are rationally connected to the restructuring.⁹¹

(ii) The D&Os Contributed to the Restructuring Efforts

106. It is well recognized that one of the purposes of releasing directors and officers of a debtor company in the context of CCAA proceedings is to incentivize them (at the outset of such proceedings) to work with such debtor company and its stakeholders towards the implementation of a restructuring transaction that will allow the maximization of creditor recovery and/or the pursuit of the debtor company’s business and operations as a going concern, which are the main objectives of any CCAA proceedings.⁹²

107. In *Green Relief*, Justice Koehnen of the Court recognized that a restructuring of a debtor company simply cannot proceed without its directors and officers:

*[50] Releasees necessary and essential: The released parties here were necessary and essential to the restructuring. A CCAA proceeding quite obviously cannot proceed without a Monitor, Monitor’s counsel or company counsel. Similarly, a restructuring cannot proceed without the other releasees like directors, officers and employees. [...]*⁹³

⁸⁸ Third Report, at para. 105.

⁸⁹ *Green Relief*, 2020 ONSC 6837, at para. 52.

⁹⁰ Third Report, at para. 103.

⁹¹ Third Report, at para. 105.

⁹² *Green Relief*, 2020 ONSC 6837, at para. 57.

⁹³ *Green Relief*, 2020 ONSC 6837, at para. 50.

[Our emphasis]

108. In the matter at hand, each and every one of Freshstone's directors and officers was involved in these CCAA Proceedings which, subject to this Court's decision on Freshstone's Motion for the issuance of the ARVO, will allow a successful restructuring. Such successful restructuring required extensive efforts by Freshstone's directors and officers who were required to, *inter alia*:

- a) meet on numerous occasions, at least weekly, both prior to and after the commencement of the CCAA Proceedings, to consider various issues pertaining to Freshstone's dire financial situation and assess potential solutions;
- b) negotiate the terms of the interim financing which allowed these restructuring proceedings to be possible;
- c) negotiate the terms of the engagement of the Sale Advisor which allowed a SISP to be conducted;
- d) negotiate the terms of the Stalking Horse Bid at the outset of the CCAA Proceedings in order to establish a floor-price for the sale of its business and/or assets, and, as previously mentioned, ensure that if determined to be the "Successful Bid" in the SISP, the proposed "reverse vesting" structure would produce an economic result at least as favourable as any other viable alternative and that no stakeholder would be worse off under such proposed structure;
- e) take on a hands-on role in conducting the SISP, and deal with various issues in relation to the SISP, and provide extensive information to potential bidders to allow them to conduct their due diligence; and
- f) ensure that Freshstone's on-going operations could be properly conducted and managed during the CCAA Proceedings, which necessitated on-going dialogue with Freshstone's clients, suppliers and employees.⁹⁴

109. If the Transactions are approved by the Court, further work will be required by Freshstone's directors and officers, as they will also be called upon to continue their work to ensure that the closing of the Transactions occurs, and that a post-closing transition can be properly implemented so that the restructured and reorganized Freshstone can pursue its operations as a going concern, for the benefit of all of its stakeholders.⁹⁵

110. In this case, it is particularly important to note that the continued involvement of Freshstone's Chief Executive Officer and member of its board of directors, Mr. Frank Burdzy, has been essential in ensuring the maintenance of Freshstone's operations as a going concern, as he agreed to, *inter alia*:

⁹⁴ Second Wilson Affidavit, at para. 59.

⁹⁵ Second Wilson Affidavit, at para. 60.

- a) advance to Freshstone several millions of dollars in order to protect its business, maintain its operations and the employment of several hundreds of employees; and to
- b) submit the Stalking Horse Bid (with no bid protections, other than a capped expense reimbursement provision) to establish a floor price for the sale of Freshstone's assets and, more importantly, ensure that if no superior offer was submitted in the context of the SISP, Freshstone's operations would still be able to continue as a going concern.⁹⁶

111. Clearly, the D&Os, including Mr. Burdzy, have contributed time, energy, resources and, for Mr. Burdzy, financing, to assist Freshstone in its restructuring efforts, and will continue to be important to implementing the Transactions, if approved.

112. But for the D&Os continued involvement and contribution, a successful restructuring would not have been possible.

(iii) The Releases Are Fair, Reasonable and Not Overly Broad

113. The releases sought are fair, reasonable, appropriately tailored to the circumstances and not overly broad, considering the following:

- a) Identity of the Released Parties. The parties that are proposed to be released are limited to Freshstone's present directors and officers. Each of these D&Os participated, contributed and/or supported Freshstone's restructuring efforts, both prior to and after the commencement of the CCAA Proceedings.⁹⁷ It is common in CCAA vesting orders for both present (and sometimes former) directors and officers to obtain a release, and the policy reason for this is to afford certainty and finality to all D&Os having contributed to the restructuring efforts.⁹⁸
- b) Scope of the Released Claims. The releases cover claims and liabilities in connection with the CCAA Proceedings, the Amended Subscription Agreement and related documents, and Freshstone's assets, business or affairs. The language is consistent with similar precedents

⁹⁶ Second Wilson Affidavit, at para. 63.

⁹⁷ Third Report, at para. 109.

⁹⁸ *In the matter of the Companies' Creditors Arrangement Act of Nemaska Lithium Inc. et al.*, Approval and Vesting Order granted on October 15, 2020, Montreal [500-11-057716-199](#) (QCCS), at para. 41; *Stornoway Diamond Inc. (Re)*, Approval and Vesting Order granted October 7, 2019, Montreal [500-11-05704-191](#) (QCSC), at para. 27; *Bellatrix Exploration Ltd. (Re)*, Approval and Vesting Order granted June 22, 2021, [1901-13767](#) (ABQB), at para. 15; *In the Matter of the Companies Creditors Arrangement Act of Cirque du Soleil Canada Inc. et al.*, Approval and Vesting Order granted on October 26, 2020, Montreal [5001-058415-205](#) (QCCS), at para. 51; *In the Matter of the Companies' Creditors Arrangement Act in Goli Nutrition Inc. et al.*, Approval and Reverse Vesting Order granted on April 9, 2024, Montreal [500-11-063707-242](#) (QCCS), at para. 33; *In the Matter of the Companies' Creditors Arrangement Act in Good Natured Products Inc. et al.*, Approval and Reverse Vesting Order granted on October 31, 2024, Vancouver [S-244212](#) (BCSC), at para. 29(A); *In the Matter of the Companies' Creditors Arrangement Act in Rambler Metals al.*, Approval and Reverse Vesting Order granted on September 11, 2023, [2023 01G 0841](#) (NLSC), at para. 23(A); *In the Matter of the Companies' Creditors Arrangement Act in Elevation Gold Mining Corporation et al.*, Approval and Vesting Order granted on December 17, 2024, Calgary [S-245121](#) (ABKB), at para. 13.

where the same language was used by Canadian courts to release directors and officers in the context of CCAA proceedings.⁹⁹

- c) Exclusions. As is customary in similar release orders, the proposed D&O Release contains the following exclusions: (i) claims arising out of fraud or willful misconduct; and (ii) claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA.¹⁰⁰

114. It should be noted that in this case, neither Freshstone nor the Monitor are aware of any claims against the D&Os.¹⁰¹

115. As previously mentioned:

- a) Freshstone's Motion Record was served on September 11, 2026 to (i) all parties having filed a notice of appearance in these CCAA Proceedings, but it was also served by email to (ii) all counterparties to the Retained Contracts (as defined in the Amended Subscription Agreement), and to (iii) all counterparties to the known Excluded Contracts (as defined in the Amended Subscription Agreement);
- b) The Monitor's Third Report recommending the Court's approval of the relief set out in Freshstone's motion was served to all of the above parties on September 15, 2026; and
- c) Both Freshstone's Motion Record and the Monitor's Third Report were uploaded to the Monitor's website and therefore made available to the entire public shortly thereafter.

116. Since then, no party has asserted any claim against the D&Os, or has raised any objection to the D&O Release sought as part of Freshstone's motion.

117. As appears from the Third Report, the Monitor has confirmed that it is of the view that the D&O release provided in the ARVO is fair and reasonable in the circumstances.¹⁰²

(iv) The Restructuring Could Be Jeopardized Without the Releases

118. The closing of the Transactions is conditional upon, *inter alia*, the issuance by the Court of the ARVO, which includes a release of the D&Os being granted by the Court.¹⁰³

⁹⁹ See for example: *Taiga*, Reverse Vesting Order granted October 10, 2024, Montreal [500-11-064357-243](#) (QCCS), at para. 48; *In the Matter of the Plans of Compromises of FormerXBC Inc. (Formerly Xebec Absorption Inc.) et al*, Sanction Order granted on December 19, 2023, [500-11-061483-224](#) (QCCS), at paras. 34-35; *Harte Gold*, [2022 ONSC 653](#), at [para. 21](#); *In the Matter of the Companies Creditors Arrangement Act of Harte Gold Corp.*, Approval and Reverse Vesting Order granted on January 28, 2022, [CV-21-00673304-00CL](#) (ONSC), at para. 21(A); *In the Matter of the Plan of Arrangement or Compromise of Le Château Inc. et al.*, Approval and Vesting Order granted on June 22, 2021, [500-11-059024-204](#) (QCCS), at para. 24; *In the Matter of the Companies Creditors Arrangement Act of Cirque du Soleil Canada Inc. et al*, Approval and Vesting Order granted on October 26, 2020, [5001-058415-205](#) (QCCS), at para. 51; *In the matter of the Companies' Creditors Arrangement Act of Nemaska Lithium Inc. et al.*, Approval and Vesting Order granted on October 15, 2020, [500-11-057716-199](#) (QCCS), at para. 41.

¹⁰⁰ Second Wilson Affidavit, at para. 65; Third Report, at para. 100.

¹⁰¹ Second Wilson Affidavit, at para. 65.

¹⁰² Third Report, at para. 109.

¹⁰³ Third Report, at para. 110.

119. Without the releases, the D&Os would face ongoing uncertainty and potential claims, which could jeopardize their continued cooperation and participation in implementing the Transactions and completing the restructuring (including as part of any post-closing transition).¹⁰⁴
120. Moreover, and as previously discussed, the D&Os have advised Freshstone and the Monitor that if a release is not granted in their favour, they will not be in a position to agree to a discharge of the D&O Charge until a D&O claims process is conducted, and any claim against them is assessed and, if applicable, adjudicated. This would have the effect of significantly delaying the closing of the Transactions (which is conditional upon, *inter alia*, the discharge of the D&O Charge), in addition to forcing Freshstone to incur significant costs relating to the conduct of the aforementioned D&O claims process.
121. The releases are therefore essential to the finality of these CCAA Proceedings and should be granted by this Court.

(v) The Releases Benefit Freshstone and Creditors Generally

122. The release of the D&Os benefits Freshstone, its creditors and other stakeholders by:
- a) ensuring that the Transactions can close as expeditiously as practicable, without the need for a costly D&O claims process to be conducted; and by
 - b) avoiding the potential of indemnification claims against the Directors' Charge, which would ultimately affect creditor recovery.¹⁰⁵

(vi) Creditors Have Knowledge of the Nature and the Effect of the Releases

123. As previously mentioned, on September 11, 2026, all of the following parties were served with a copy of Freshstone's Motion Record and the Monitor's Third Report recommending the Court's approval of the relief set out in such motion:
- a) all parties having filed a notice of appearance in these CCAA Proceedings;
 - b) all counterparties to the Retained Contracts (as defined in the Amended Subscription Agreement); and
 - c) all counterparties to the known Excluded Contracts.
124. In addition, the Motion Record was also posted on the Monitor's website on September 14, 2026, and is available to the public.¹⁰⁶
125. Ultimately, no creditor or other stakeholder of Freshstone has asserted any claim against the D&Os, or raised any objection to the D&O Release sought by Freshstone.

¹⁰⁴ *Harte Gold*, 2022 ONSC 653, at para. 84; *Green Relief*, 2020 ONSC 6837, at para. 52.

¹⁰⁵ Third Report, at para. 114.

¹⁰⁶ Third Report, at paras. 115-116.

126. For all of the above reasons, Freshstone respectfully submits that the D&O Release, which is also supported by the Monitor, should be granted by the Court.

V. THE STAY PERIOD SHOULD BE EXTENDED

127. The current stay period expires on October 16, 2026.

128. Pursuant to s. 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where:

- (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.¹⁰⁷

129. If this Court approves the Transactions and grants the ARVO, the next steps will include the following:

- a) Closing of the Transactions: The “Outside Closing Date” set out in the Subscription Agreement is November 27, 2026. However, the Investor has advised Freshstone that it remains committed in closing the Transactions within five (5) Business Days following the satisfaction of all conditions to Closing, which include the issuance of the ARVO and such ARVO being final and non-appealable;
- b) Bankruptcy of ResidualCo.: Following the closing of the Transactions and the transfer of the Excluded Liabilities, Excluded Contracts, Excluded Employees and Excluded Employee Plans to ResidualCo., the Monitor, subject to the Court enhancing its powers as previously discussed, will need to file voluntary assignment in bankruptcy in respect of ResidualCo.;
- c) Distribution of cash: Under the Amended Subscription Agreement, the Investor will be required to pay a cash component of the Subscription Price in order to pay for the Priority Payables. The Monitor, subject to the Court enhancing its powers as previously discussed, will need to proceed with such distribution in accordance with applicable laws.¹⁰⁸

130. Furthermore, Freshstone also intends to return before the Court in order to present its motion for the issuance of a WEPPA Order, as soon as possible, once the Ontario Court of Appeal in the matter of *Synaptive* provides further clarity with respect to the application of the WEPPA and the WEPPR in the context of reverse vesting transactions.

131. In order to ensure that it does not need to return before the Court prior to October 16, 2026 in order to seek a stay extension after such date (and save the costs associated with a stay extension motion), Freshstone is seeking to extend the stay period to and including November 30, 2026.¹⁰⁹

132. Granting the extension of the Stay Period will allow Freshstone to proceed with the steps described above while at the same time preserving the *status quo* and preventing creditors and others from taking any steps to try and better their positions in comparison to other creditors.

¹⁰⁷ CCAA, [s. 11.02\(2\) and \(3\)](#).

¹⁰⁸ Second Wilson Affidavit, at para. 67.

¹⁰⁹ Second Wilson Affidavit, at para. 68.

133. Generally, no creditors are expected to suffer material prejudice as a result of the extension of the stay of proceedings.¹¹⁰ Freshstone is acting in good faith and will continue to pay its post-filing obligations in the ordinary course. As appears from Freshstone's cash flow forecast, it is expected to have sufficient liquidity to continue its operations during the contemplated extension of the stay.¹¹¹

PART V – CONCLUSION

134. Freshstone respectfully requests that this Court grant the ARVO substantially in the form of the draft order attached at Tab 2 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th of September, 2026.



Stikeman Elliott LLP
Lawyers for Freshstone Brands Inc.

¹¹⁰ Third Report, at para. 119.

¹¹¹ Third Report, at para. 118.

SCHEDULE “A” – LIST OF AUTHORITIES

Jurisprudence

1. 1001270243 Ontario Inc., [2026 ONSC 3967](#)
2. Harte Gold Corp. (Re), [2022 ONSC 653](#)
3. Arrangement relatif à Blackrock Metals Inc., [2022 QCCS 2828](#) (leave to appeal refused by the Court of Appeal of Quebec Arrangement relatif à Blackrock Metals Inc., [2022 QCCA 1073](#) and by the Supreme Court of Canada, Winner World Holdings Limited, et al. v. Blackrock Metals Inc., et al., [2023 CanLII 36969](#))
4. Arrangement relatif à Nemaska Lithium inc., [2020 QCCS 3218](#) (leave to appeal to QCCA refused, Arrangement relatif à Nemaska Lithium Inc, [2020 QCCA 1488](#), leave to appeal to SCC denied, Arrangement relatif à Nemaska Lithium Inc, 2021 CarswellQue 4589)
5. Royal Bank of Canada v. Soundair Corp., [\[1991\] O.J. No. 1137](#)
6. Target Canada Co. (Re), [2015 ONSC 1487](#)
7. AbitibiBowater, Inc (Re), [2010 QCCS 1742](#)
8. Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al, [2022 ONSC 6354](#)
9. Quest University Canada (Re), [2020 BCSC 1883](#)
10. Acerus Pharmaceuticals Corporation (Re), [2023 ONSC 3314](#)
11. Arrangement relatif à MedXL, [2024 QCCS 4269](#)
12. In the Matter of CannaPiece, [2023 ONSC 841](#)
13. Tacora Resources Inc. (Re), [2024 ONSC 4436](#)
14. Proposition de Brunswick Health Group Inc., [2023 QCCS 464](#)
15. Re Comark Holdings Inc et al, (July 13, 2020), Toronto [CV-20-00642013-00CL](#) (ONSC)
16. JMB Crushing Systems Inc (Re), [2020 ABQB 763](#) at [para. 25](#) (leave for appeal dismissed, [2021 ABQB 8](#))
17. British Columbia v. Tacora, [2024 ONSC 4436](#)
18. Dans l'affaire des avis d'intention de faire une proposition de Les Produits Horticoles Demers Inc. et al., 200-11-030598-265 (Superior Court of Quebec), Requête pour l'émission d'une ordonnance d'approbation et de dévolution ainsi que d'une ordonnance d'approbation et de dévolution inversée (*Application for the Issuance of an Approval Vesting Order and an Approval and Reverse Vesting Order*), and [Ordonnance d'approbation et de dévolution inversée](#) (*Approval and Reverse Vesting Order*)
19. British Columbia v. Peakhill Capital Inc., [2024 BCCA 246](#)
20. Arrangement relatif à Elna Medical Group Inc./Groupe médical Elna inc., [2025 QCCS 1329](#)
21. Rambler Metals and Mining Limited, Re CCAA, [2023 NLSC 134](#)
22. Razor Energy Corp, Razor Holdings Gp Corp., and Blade Energy Services Corp (Re), [2025 ABKB 30](#)

23. *8640025 Canada Inc. (Re)*, [2021 BCSC 1826](#)
24. *Arrangement relatif à FormerXBC Inc. (Xebec)*, [2023 QCCS 4975](#)
25. *In the Matter of the Companies' Creditors Arrangement Act of Lydian International Limited et al.*, [2020 ONSC 4006](#)
26. *Re Green Relief Inc.*, [2020 ONSC 6837](#)
27. *In the matter of the Companies' Creditors Arrangement Act of Nemaska Lithium Inc. et al.*, Approval and Vesting Order granted on October 15, 2020, Montreal [500-11-057716-199](#) (QCCS)
28. *Stornoway Diamond Inc. (Re)*, Approval and Vesting Order granted October 7, 2019, Montreal [500-11-05704-191](#) (QCSC)
29. *Bellatrix Exploration Ltd. (Re)*, Approval and Vesting Order granted June 22, 2021, [1901-13767](#) (ABQB)
30. *In the Matter of the Companies Creditors Arrangement Act of Cirque du Soleil Canada Inc. et al.*, Approval and Vesting Order granted on October 26, 2020, Montreal [5001-058415-205](#) (QCCS)
31. *In the Matter of the Companies' Creditors Arrangement Act in Goli Nutrition Inc. et al.*, Approval and Reverse Vesting Order granted on April 9, 2024, Montreal [500-11-063707-242](#) (QCCS)
32. *In the Matter of the Companies' Creditors Arrangement Act in Good Natured Products Inc. et al.*, Approval and Reverse Vesting Order granted on October 31, 2024, Vancouver [S-244212](#) (BCSC)
33. *In the Matter of the Companies' Creditors Arrangement Act in Rambler Metals al.*, Approval and Reverse Vesting Order granted on September 11, 2023, [2023 01G 0841](#) (NLSC)
34. *In the Matter of the Companies' Creditors Arrangement Act in Elevation Gold Mining Corporation et al.*, Approval and Vesting Order granted on December 17, 2024, Calgary [S-245121](#) (ABKB)
35. *Taiga*, Reverse Vesting Order granted October 10, 2024, Montreal [500-11-064357-243](#) (QCCS)
36. *In the Matter of the Plans of Compromises of FormerXBC Inc. (Formerly Xebec Absorption Inc.) et al.*, Sanction Order granted on December 19, 2023, [500-11-061483-224](#) (QCCS)
37. *In the Matter of the Companies Creditors Arrangement Act of Harte Gold Corp.*, Approval and Reverse Vesting Order granted on January 28, 2022, [CV-21-00673304-00CL](#) (ONSC)
38. *In the Matter of the Plan of Arrangement or Compromise of Le Château Inc. et al.*, Approval and Vesting Order granted on June 22, 2021, [500-11-059024-204](#) (QCCS)
39. *In the Matter of the Companies Creditors Arrangement Act of Cirque du Soleil Canada Inc. et al.*, Approval and Vesting Order granted on October 26, 2020, [5001-058415-205](#) (QCCS)

SCHEDULE “B” – RELEVANT LEGISLATION

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

Section 11 – 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, make any order that it considers appropriate in the circumstances.

11.02 - Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (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.

Stays, etc. — other than initial application

(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.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 23 - Duties and functions

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

- (h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;
- (i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;
- (j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and
- (k) carry out any other functions in relation to the company that the court may direct.

Section 36 – 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 unless the court considers that it is not appropriate to do so in the circumstances.

- (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.
- (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.