



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00693280-00CL

DATE: 29 March 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: TEHAMA INC.

BEFORE MADAM JUSTICE: KIMMEL

**PARTICIPANT INFORMATION**

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**For Defendant, Respondent, Responding Party, Defence:**

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## **ENDORSEMENT OF MADAM JUSTICE KIMMEL**

[1] The court granted an initial order and amended and restated initial order in respect of Tehama Inc. (the "Company") on January 20 and 30, 2023, respectively (the "Initial Order"). By order dated February 9, 2023 (the "SISP Approval Order") the court approved the sale and investment solicitation process ("SISP") and stalking horse purchase agreement dated February 7, 2023 (the "Stalking Horse APA") between the Company and 14667913 Canada Inc. (the "Stalking Horse Bidder").

[2] The Company now seeks an order (the "AVO") approving the sale transaction (the "Sale Transaction") contemplated by the Stalking Horse APA and vesting in the Stalking Horse Bidder all of the Company's right, title and interest in and to the Purchased Assets (as defined in the Stalking Horse APA). Various ancillary relief is also sought, including the extension of the stay until April 21, 2023 to allow for the closing of the Sale Transaction and any follow up, the approval of the first report of the Monitor dated January 26, 2023 (the "First Report"), the second report of the Monitor dated February 8, 2023 (the "Second Report"), and the third report of the Monitor dated March 27, 2023 (the "Third Report", and together with the First Report and Second Report, the "Monitor's Reports"), as well as the activities described in the Monitor's Reports, and the approval of the fees and disbursements of the Monitor and its counsel as set out in the Third Report and the Fee Affidavits (as defined in the Third Report). (the "Ancillary Order").

[3] The service list was served with this motion. No one appeared to oppose or raise any concerns about the requested orders. The Monitor also reported to the court that after the last court attendance when the SISP Approval Order was granted, all identified creditors were given notice of the SISP and invited to add their names to the service list, and none asked to be added.

### The AVO

[4] Since granting of the SISP Approval Order, the Monitor, in consultation with the Independent Director, has taken steps to implement and advance the SISP in accordance with the timelines stipulated in the SISP. The SISP was designed with two submission deadlines: (a) the delivery of a Participation Letter, which was required to be submitted by Potential Bidders on or before March 2, 2023; and (b) all Qualified Bids required to be submitted on or before March 16, 2023. The bid deadline was subsequently extended to March 20, 2023 as a result of an inadvertent delay in having the Newspaper Advertisement published.

[5] The Monitor distributed a solicitation notice to 76 potential bidders and also sent a notice of the SISP to all 18 of the Company's creditors, including its landlord. The Company and the Monitor negotiated and entered into two (2) non-disclosure agreements with Potential Bidders (the "NDA Parties"), and extended the participation deadline by one day at the request of one of the NDA Parties. Prior to the expiry of the Extended Participation Deadline, the NDA Parties informed the Monitor that they were declining to move forward in the SISP and indicated that they would not be submitting a Participation Letter. Additionally, despite the efforts of the Monitor and the Company to solicit interest in the opportunity, the Monitor did not receive a Participation Letter from any other Potential Bidder or third party prior to the expiry of the Extended Participation Deadline and did not receive a Qualified Bid prior to the expiry of the Extended Bid Deadline.

[6] Paragraph 22 of the SISP provides that, in the event that no Participation Letters are received by the Extended Participation Deadline, or that no Qualified Bid other than the Stalking Horse Bid is received by the Extended Bid Deadline, then: (a) there will be no Auction; (b) the Stalking Horse Bid will be deemed to be the Successful Bid; and (c) the Company would seek approval of, and authority and direction

for the Company to consummate, the Stalking Horse APA and the transactions provided for therein at the Approval Motion. It does so by this motion.

[7] The purchase price for the Purchased Assets under the Stalking Horse APA is based on a credit bid of the amount of the secured debt owing by the Company which was acquired by the Stalking Horse Bidder from CIBC. The credit bid amount is \$2,812,833.33. The Company and the Monitor have made good faith efforts to solicit interest in the Property and notwithstanding these efforts, the Sale Transaction remains the only executable offer submitted pursuant to the CCAA Court-approved SISP. Accordingly, the Stalking Horse APA represents the best transaction available to the Company.

[8] As set out in the Monitor's Third Report, the Monitor views the Sale Transaction as fair and reasonable in the circumstances and therefore supports the Sale Transaction in accordance with the terms of the Stalking Horse APA.

[9] I am satisfied that the SISP was run and the market was canvassed in accordance with the court's SISP Approval Order. The fairness, efficacy and integrity of the sale process has been established. The Stalking Horse APA represents the highest and best price available, and that it achieves a fair and reasonable outcome for the applicant's stakeholders.

[10] Upon consideration of the non-exhaustive factors for the authorization of a proposed sale transaction under s. 36(3) of the CCAA, in conjunction with the factors set out in *Royal Bank v Soundair Corp.*, 1991 46 OAC 321 at para 16, I am satisfied that the AVO should be granted. The relevant factors are detailed in paragraph 30 of the Company's factum. See also: *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354, at para. 32; *Harte Gold Corp. (Re)*, 2022 ONSC 653, at paras. 20-21.

[11] The additional considerations under s. 36(4) of the CCAA, arising in this case because the Stalking Horse Bidder is a related party, have also been appropriately addressed. I am satisfied the Company and the Monitor and the Independent Director carried out the SISP in good faith and reasonable efforts were made to find another bidder, however none materialized and there are no other offers to consider.

[12] The AVO is consistent with the form of model order, with appropriate administrative and other changes to reflect the specific circumstances of these proceedings.

### The Ancillary Order

[13] The professional fees claimed for the Monitor and its counsel are supported by affidavits and reflect the work that has been done in the applicable time period. The past fees are commensurate with the tasks performed. I also find the forecasted fee accruals to be reasonable, although those will be subject to verification of actual fees and disbursements incurred at a future court attendance. I find the fees and disbursements to be fair, reasonable and justified in the circumstances. This is supported by the fact that they are within the budget and covered by the existing DIP financing which will be incorporated into the purchase price to be paid under the Stalking Horse APA.

[14] The approval of the activities of the Monitor as described in the Monitor's Reports contains the appropriate provisional/qualifying language limiting the reliance on such approval to the Monitor, and the activities described therein are appropriate and consistent with the contemplated activities of the Monitor under the previous court orders.

[15] The proposed stay extension of a few weeks beyond the anticipated closing date of the Transaction is prudent. The Company, with the assistance of the Monitor, has prepared a revised cash flow forecast

for the period ending April 21, 2023 that demonstrates that the Company will have sufficient cash to support its ordinary course business operations during the proposed extension to the Stay Period.

[16] A 9:30 appointment has been booked on April 20, 2023 for 30-minutes, in advance of the expiry of the stay now extended to April 21, 2023.

[17] Orders to go in the forms signed by me today with immediate effect and without the necessity of formal issuance and entry.

A handwritten signature in cursive script, appearing to read "Kimmel J.", written in black ink.

KIMMEL J.

**29 March 2023**