

**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 TEHAMA INC.

FACTUM OF THE APPLICANT

(Returnable March 29, 2023)

March 27, 2023

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PART I – OVERVIEW

1. On January 20, 2023, Tehama Inc. (the “**Company**”) sought and obtained an order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”), among other things:
 - (a) appointing Deloitte Restructuring Inc., as monitor in these proceedings (in such capacity, the “**Monitor**”); and
 - (b) granting a stay of proceedings up to and including January 30, 2023 (the “**Stay Period**”).
2. On January 30, 2023, the Company sought and obtained an amended and restated Initial Order (“**ARIO**”), among other things, extending the Stay Period to and including March 31, 2023.
3. On February 9, 2023, the Company sought and obtained an order (the “**SISP Approval Order**”) approving 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**”).
4. The Company files this factum in support of its motion for:
 - (a) an order (the “**Approval and Vesting Order**”) 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); and
 - (b) an order (the “**Ancillary Order**”):

- (i) extending the Stay Period up to and including April 21, 2023;
- (ii) approving 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
- (iii) approving 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).

PART II – FACTS

5. The facts relevant to this proceeding are fully set out in the affidavits of Rob White sworn January 20, 2023 (the “**First White Affidavit**”),¹ January 26, 2023 (the “**Second White Affidavit**”)² and February 7, 2023 (the “**Third White Affidavit**”),³ respectively, and the affidavit of Michael Aiello sworn March 27, 2023 (the “**Aiello Affidavit**”).⁴

A. Overview of the Company’s Business and Need for CCAA Relief

6. The Company is in the business of providing a next-generation “desktop as a service” (DaaS) platform which enables customers to utilize cloud-based virtual offices, room and desktops

¹ First White Affidavit, the Company’s Motion Record dated March 27, 2023 (the “**Motion Record**”), Tab 2A.

² Second White Affidavit, Motion Record, Tab 2B.

³ Third White Affidavit, Motion Record, Tab 2C.

⁴ Aiello Affidavit, Motion Record, Tab 2.

from anywhere in the world. The Company's services are often used in the context of critical services delivery, including services to support IT infrastructure.⁵

7. Following months of liquidity challenges, the Company recently faced a severe liquidity crisis, had limited cash on hand, and was generally unable to meet its obligations as they became due. After exploring various strategic alternatives, the Company's board of directors determined to seek urgent relief under the CCAA. Accordingly, on January 20, 2023, the Company sought and obtained the Initial Order and on January 30, 2023, sought and obtained the ARIO.⁶

B. The Company's Activities Since the ARIO and SISP Approval Order were Granted

8. Since the granting of the ARIO and the SISP Approval Order, the Company has, with the assistance and oversight of the Monitor, and in consultation with the Independent Director, acted in good faith and with due diligence to, among other things:

- (a) stabilize and continue the Company's business and ordinary course operations;
- (b) communicate with key stakeholders regarding the CCAA proceedings and the granting of the ARIO;
- (c) submit advance requests to the DIP Lender to borrow under the DIP Facility in accordance with the DIP Commitment;
- (d) through the Independent Director, assist the Monitor with the implementation of the SISP and in particular: (i) the development of a list of potential bidders that may

⁵ Aiello Affidavit, at para. 7, Motion Record, Tab 2.

⁶ Aiello Affidavit, at paras. 8, 10, Motion Record, Tab 2.

have an interest in a transaction involving the business or assets of the Company, (ii) the preparation of the Solicitation Notice and form of NDA, and (iii) the negotiation of NDAs and responding to general requests for information regarding the SISP;

- (e) take steps to be in a position to consummate a transaction in accordance with the terms of the SISP; and
- (f) prepare the materials in support of this motion for the Approval and Vesting Order and Ancillary Order.⁷

C. Outcome of the SISP⁸

9. The SISP is described in detail in the Third White Affidavit. The SISP was developed as the best viable going concern exit strategy for the Company to exit from these CCAA Proceedings. The SISP provided a fair and reasonable process to canvass the market to confirm whether the Stalking Horse APA was the best transaction available for the benefit of the Company's stakeholders.⁹

10. 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

⁷ Aiello Affidavit, at para. 16, Motion Record, Tab 2.

⁸ Capitalized terms used but not otherwise defined in this section of have the meanings given to them under the SISP.

⁹ Aiello Affidavit, at para. 17, Motion Record, Tab 2.

before March 2, 2023 (“**Stage 1**”); and (b) all Qualified Bids required to be submitted on or before March 16, 2023.¹⁰

11. In accordance with the SISP, the following efforts were made to solicit interest in the Property:

- (a) the Company and the Monitor prepared a list of Potential Bidders who were identified as potentially having an interest in a transaction involving the business or assets of the Company, and established a data room containing diligence information the purposes of the SISP;
- (b) on February 9, 2023, the Monitor posted a copy of the SISP Approval Order and SISP on the Monitor’s Website;
- (c) on February 10, 2023, the Monitor distributed the Solicitation Notice to Potential Bidders that described the opportunity and invited Potential Bidders to participate in the SISP; and
- (d) on February 10, 2023, the Monitor distributed a letter describing the SISP to all of the Company’s creditors with a claim exceeding \$1,000, notifying them of the SISP Approval Order and SISP; and

¹⁰ Aiello Affidavit, at para. 18, Motion Record, Tab 2.

(e) on March 11, 2023, after consultation with the Company and the Independent Director, the Monitor caused a notice of the SISP (the “**Newspaper Advertisement**”) to be published in *The Globe and Mail (National Edition)*.¹¹

12. In total, the Monitor distributed the 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.¹²

13. During Stage 1, the Company and the Monitor negotiated and entered into two (2) non-disclosure agreements with Potential Bidders (the “**NDA Parties**”). On March 2, 2023, following a request by one of the NDA Parties, the Monitor and the Company agreed to provide a short extension to the Participation Deadline and, as a result, the Monitor informed the NDA Parties in writing that the Participation Deadline would be extended to March 3, 2023 at 12:00 p.m. (Toronto time) (the “**Extended Participation Deadline**”). The NDA Parties were the only parties that expressed an interest in participating in the SISP at the time of the Participation Deadline.¹³

14. As stipulated by the SISP, all interested parties who wished to participate in the SISP were required to submit a Participation Letter prior to the Extended Participation Deadline. 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.¹⁴

¹¹ Aiello Affidavit, at para. 20, Motion Record, Tab 2.

¹² Aiello Affidavit, at para. 21, Motion Record, Tab 2.

¹³ Aiello Affidavit, at para. 22, Motion Record, Tab 2.

¹⁴ Aiello Affidavit, at para. 23, Motion Record, Tab 2.

15. The Monitor, in consultation with the Independent Director, subsequently extended the Bid Deadline from March 16, 2023, to March 20, 2023 (the “**Extended Bid Deadline**”), as a result of an inadvertent delay in having the Newspaper Advertisement published. The Extended Bid Deadline was intended to ensure that all potential interested parties were given a further opportunity to express their interest in participating in the SISP, in order to maintain the efficacy and fairness of the process, and also to continue the Monitor’s thorough canvassing of the market.¹⁵ The Monitor’s efforts to notify all parties and keep the process open are detailed in the Third Report.¹⁶

16. The Monitor did not receive a Participation Letter or Qualified Bid prior to the expiry of the Extended Bid Deadline.¹⁷

17. 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.¹⁸

¹⁵ Aiello Affidavit, at para. 23, Motion Record, Tab 2.

¹⁶ Third Report, at paras. 11-24.

¹⁷ Aiello Affidavit, at para. 25, Motion Record, Tab 2.

¹⁸ Aiello Affidavit, at para. 26, Motion Record, Tab 2.

18. Accordingly, the Stalking Horse APA represents the best transaction available to the Company.¹⁹

D. The Stalking Horse APA²⁰

19. The Stalking Horse APA is described in detail in the Third White Affidavit. In summary, the purchase price for the Purchased Assets 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. No break fee or other fees are payable pursuant to the Stalking Horse APA.²¹

20. Potential Bidders and any other interested parties have been provided with a sufficient period of time to review and consider the opportunity set forth in the SISP. 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.²²

21. The Stalking Horse APA provides significant benefits to the stakeholders of the Company. Among other things:

- (a) the transaction terms represent the best bid and preserves the asset value for the benefit of the Company's stakeholders;

¹⁹ Aiello Affidavit, at para. 28, Motion Record, Tab 2.

²⁰ Capitalized terms used but not otherwise defined in this section have the meanings given to them in the Stalking Horse APA.

²¹ Aiello Affidavit, at paras. 30-32, Motion Record, Tab 2.

²² Aiello Affidavit, at para. 33, Motion Record, Tab 2.

- (b) maintains relationships with critical suppliers and ensures the uninterrupted supply of services to the Company's customers (which includes hospitals); and
- (c) preserves the ongoing employment of the existing employees.²³

22. As set out in the 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.²⁴

E. Stay Extension and Approvals

23. The Company requests that the Stay Period be extended to April 21, 2023. The extension to the Stay Period is necessary and appropriate in the circumstances in order to maintain the *status quo* and allow a reasonable period of time to permit the Company to close the Sale Transaction and address any other ancillary matters that may arise post-closing.²⁵

24. 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.²⁶

25. With the Stay Period extended, the Company has and will continue to act with due diligence and in good faith with respect to the CCAA Proceedings, its business and operations.²⁷

²³ Aiello Affidavit, at para. 34, Motion Record, Tab 2.

²⁴ Third Report, at paras. 27-28.

²⁵ Aiello Affidavit, at para. 36, Motion Record, Tab 2.

²⁶ Aiello Affidavit, at para. 37, Motion Record, Tab 2.

²⁷ Aiello Affidavit, at para. 38, Motion Record, Tab 2.

26. The Company further understands that the Monitor is seeking approval of its activities, as detailed in the Monitor's Reports, together with approval of the fees and disbursements of the Monitor and its counsel, as detailed in the Fee Affidavits. The Company has reviewed these fees and disbursements and support the approval of same.²⁸

PART III – ISSUES

27. The issue before this Honourable Court is whether this Court should grant the Approval and Vesting Order and the Ancillary Order.

PART IV – LAW AND ARGUMENT

A. The Approval and Vesting Order Should be Granted

28. Section [36](#) of the CCAA authorizes this Court to approve a sale of a debtor company's assets outside of the ordinary course of business.²⁹ Pursuant to subsection [36\(6\)](#), any such sale may be authorized "free and clear of any security, charge or other restriction".³⁰ In deciding whether to authorize such a sale, subsection [36\(3\)](#) of the CCAA requires courts to consider the following non-exhaustive factors:

- (a) whether the process leading to the proposed sale was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale;

²⁸ Aiello Affidavit, at paras. 39-40, Motion Record, Tab 2.

²⁹ CCAA, s. [36\(1\)](#).

³⁰ *Nelson Education Ltd, Re*, 2015 ONSC 5557 at para [38](#); *Target Canada Co, Re*, 2015 ONSC 1487 at paras [14-15](#); *Canwest Publishing Inc/Publications Canwest Inc, Re*, 2010 ONSC 2870 at para [13](#).

- (c) whether the monitor filed a report stating that in its opinion the proposed sale would be more beneficial to creditors than a sale or disposition under a bankruptcy;
- (d) the effects of the proposed sale on the creditors and other interested parties;
- (e) the extent to which creditors were consulted; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

29. These factors are often read in conjunction with the factors set out in *Royal Bank v. Soundair* (“**Soundair**”):³¹

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the efficacy and integrity of the process by which offers have been obtained;
- (c) whether the interests of all parties have been considered; and
- (d) whether there has been unfairness in the working out of the process.³²

30. Applied here, the factors enumerated in subsection [36\(3\)](#) of the CCAA and *Soundair* support the approval of the Sale Transaction and the granting of the Approval and Vesting Order:

- (a) ***The SISP was Extensive, Reasonable, Fair and Transparent*** – the Stalking Horse APA is the culmination of a comprehensive, fair and transparent Court-approved

³¹ *Royal Bank v Soundair Corp*, [1991 46 OAC 321](#) at para 16 (“**Soundair**”); *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.

³² *Ibid.*

SISP conducted by the Monitor, in consultation with the Independent Director, and with the assistance of the Company.³³

- (b) ***The Monitor Conducted the SISP*** – the Monitor was actively engaged in the development of the SISP and supported its approval.³⁴

- (c) ***The Monitor Supports the Stalking Horse APA*** – the Monitor is supportive of the Stalking Horse APA and believes the Stalking Horse APA’s approval is in the best interests of the Company’s stakeholders as “it preserves the asset value for the benefit of [the Company’s] stakeholders, preserves ongoing employment of the existing employees, and ensures no disruption of services to [the Company’s] customers.”³⁵

- (d) ***No Other Bids Received*** – the Monitor sent a teaser and introductory email to 76 Potential Bidders and also sent a notice to all 18 of the Company’s known creditors; despite this, no Participation Letters or Bids were received by the Extended Bid Deadline.³⁶

- (e) ***The Stalking Horse APA is in the Best Interests of the Company’s Creditors*** – no Potential Bidder or creditor of the Company came forward during the SISP to submit a Qualified Bid with consideration equal to or greater than that offered under the Stalking Horse APA (or any competing Bid at all). Thus, the Stalking Horse

³³ Aiello Affidavit, at para. 27, Motion Record, Tab 2.

³⁴ Aiello Affidavit, at paras. 17-18, Motion Record, Tab 2; Third Report, at paras. 11-19.

³⁵ Third Report, at paras. 26(d), 27.

³⁶ Aiello Affidavit, at paras. 21, 25, Motion Record, Tab 2.

APA is the best transaction available to the Company and is in the best interests of the Company's creditors in the circumstances.³⁷

- (f) *The SISP Provided for Meaningful Creditor Consultation* – in addition to the Monitor's consultation and oversight, as noted above, all known creditors of the Company were notified of the SISP and the SISP further provided consultation rights to the Independent Director.³⁸
- (g) *The Consideration Received is Fair and Reasonable* – based on the results of the SISP, the Stalking Horse APA is commensurate with the market value of the Purchased Assets in the circumstances.³⁹

31. In light of the foregoing, the Company respectfully submits that the Court should approve the Sale Transaction and grant the Approval and Vesting Order.

B. The Ancillary Order Should be Granted

The Stay Period Should be Extended

32. The Stay Period currently expires on March 31, 2023. Section [11.02\(2\)](#) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period it “considers necessary”. To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the Company has acted, and is acting, in good faith and with due diligence.⁴⁰

³⁷ Aiello Affidavit, at paras. 25-28, Motion Record, Tab 2.

³⁸ Aiello Affidavit, at paras. 39-40, Motion Record, Tab 2.

³⁹ Aiello Affidavit, at paras. 27-28, Motion Record, Tab 2; Third Report, at paras. 19, 27.

⁴⁰ CCAA, s. [11.02\(2\)](#).

33. A stay of proceedings is appropriate where it provides the debtors with breathing room while they seek to restore their solvency and emerge from their restructuring on a going concern basis. Further, a stay of proceedings will be appropriate where it advances the purposes of the CCAA – including avoiding the social and economic effects of bankruptcy.⁴¹

34. As detailed in the Aiello Affidavit and the Third Report, the Company requires the Stay Period to, among other things, allow the Company to close the Sale Transaction, should the Approval and Vesting Order be granted.⁴²

35. Since the granting of the ARIO and the SISP Approval Order, the Company has acted and continues to act in good faith and with due diligence to advance its restructuring under the CCAA, while maintaining its ordinary course operations and assisting the Monitor, in consultation with the Independent Director, with the SISP. The Monitor supports the requested extension of the Stay Period, and the Company is forecasted to have sufficient liquidity to fund its obligations and the costs of the CCAA Proceedings through to the end of the proposed extension.⁴³

⁴¹ *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#), at para. 14.

⁴² Aiello Affidavit, at paras. 36-38, Motion Record, Tab 2; Third Report, at paras. 43-44.

⁴³ *Ibid.*

PART V – RELIEF REQUESTED

36. The Company submits that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court in other CCAA proceedings and respectfully request that the proposed Approval and Vesting Order and Ancillary Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on March 27, 2023.



DENTONS CANADA LLP
Counsel for the Applicant

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Nelson Education Limited (Re)*, [2015 ONSC 5557 \(CanLII\)](#)
2. *Target Canada Co. (Re)*, [2015 ONSC 1487 \(CanLII\)](#)
3. *Canwest Global Communications Corp.*, [2010 ONSC 2870 \(CanLII\)](#)
4. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
5. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354 \(CanLII\)](#)
6. *Harte Gold Corp. (Re)*, [2022 ONSC 653 \(CanLII\)](#)
7. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60 \(CanLII\)](#)

**SCHEDULE “B”
RELEVANT STATUTES**

[Companies' Creditors Arrangement Act, RSC 1985, c C-36](#)

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.

Restriction on disposition of business assets

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

Notice to creditors

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

Factors to be considered

- (3) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

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

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

- (5) For the purpose of subsection (4), a person who is related to the company includes
- (a) a director or officer of the company;

- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

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

Restriction — employers

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

Restriction — intellectual property

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

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