

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
COURT. No.: 500-11-063787-242

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

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

15938759 CANADA INC. (RESIDUAL CO.)

- and -

GOLI NUTRITION INC.

Debtors

- and -

DELOITTE RESTRUCTURING INC.

Monitor

**THIRD REPORT TO THE COURT
SUBMITTED BY DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS MONITOR**

(Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended)

INTRODUCTION

- 1) On March 15, 2024, Goli Canada and Goli US (the "**Initial Debtors**" or the "**Company**") filed the CCAA Application before the Court seeking, *inter alia*, a first-day initial order commencing proceedings in respect of the Initial Debtors under the CCAA and appointing Deloitte as the monitor of the Initial Debtors.
- 2) On March 16, 2024, Deloitte filed its first report to the Court (the "**First Report**") as part of the CCAA Proceedings. The purpose of the First Report was to provide information to the Court with respect to i) Deloitte's qualifications to act as monitor; ii) the business, financial affairs and financial results of the Company; iii) the Company's creditors; iv) the SISP; v) the Proposed Transactions; vi) the Company's cash flow forecast; vii) the CCAA Charges; viii) the Chapter 15 Case; and ix) the Proposed Monitor's conclusions and recommendations.
- 3) On March 18, 2024, the Court granted a first-day initial order (as amended and restated, the "**Initial Order**"), which provided for, *inter alia*, i) a stay of proceedings against the Initial Debtors until and including March 27, 2024; a stay of proceedings against the directors of the Initial Debtors; iii) the appointment of Deloitte as the Monitor; and iv) the granting of the Administration Charge in the amount of \$300K and the D&O Charge in the amount of \$330K.

- 4) On March 26, 2024, the Initial Debtors amended the CCAA Application and the proposed Amended and Restated Initial Order in contemplation of the Transaction Approval Hearing to be held on April 9, 2024.
- 5) On March 27, 2024, the Court amended and restated the Initial Order to provide for, *inter alia*, i) an extension of the stay period to June 28, 2024; and ii) an increase of the Administration Charge from \$300K to \$750K.
- 6) On April 8, 2024, the Hoffman Parties filed an opposition to the issuance of the Liquidation Order, on the basis of alleged proprietary rights regarding certain equipment located at the Norco Facility, namely the Alleged RGL Equipment.
- 7) On April 8, 2024, the Monitor filed its second report to the Court (the "**Second Report**") as part of the CCAA Proceedings. The purpose of the Second Report was to provide information to the Court with respect to the Monitor's activities and Company's operations since the First Report and was filed in support of the Proposed Transactions in accordance with the Transaction Approval Orders as well as a further amendment and restatement to the Initial Order.
- 8) On April 9, 2024, the Court rendered an order approving and authorizing the implementation of the Principal Transaction (as rectified on April 17, 2024, the "**Reverse Vesting Order**").
- 9) The Transaction Approval Hearing with respect to Atos Transaction was adjourned and proceeded on April 11, 2024. Despite the Hoffman Parties' objection, the Court issued that same day an order approving and authorizing the implementation of the Atos Transaction (the "**Liquidation Order**" and together with the Reverse Vesting Order, the "**Transaction Approval Orders**") as well as a judgment providing the Court's reasons for rendering the Reverse Vesting Order and the Liquidation Order (the "**Approval Judgment**").
- 10) On April 11, 2024, the Court granted the Liquidation Order and the Court amended and restated the Initial Order to provide for, *inter alia*, additional powers of the Monitor upon closing of the Principal Transaction to implement the Atos Transaction, for and on behalf of Residual Co., and to complete any other matters that may be required in the CCAA Proceedings.
- 11) Pursuant to the Approval Judgment, the Court scheduled a hearing on April 30, 2024, to adjudicate any claim the Hoffman Parties may assert with regard to the proceeds resulting from the sale of the equipment at the Norco Facility covered by the Liquidation Order (the "**Norco Equipment**") as well as any related claims of the Monitor, including for the retroactive payment of expenses related to such equipment (the "**Hoffman Hearing**").
- 12) On April 26, 2024, the Monitor, acting for and on behalf of Residual Co. (15938759 Canada Inc. and Goli US (the "**Residual Debtors**" and collectively with the Initial Debtors, the "**Debtors**") in accordance with the Initial Order, notified an application seeking the termination of the CCAA Proceedings, the discharge and release of the Monitor and certain other ancillary relief (the "**Termination Application**"), the whole in accordance with the terms of the proposed termination and discharge order communicated in support of the Termination Application (the "**Proposed Termination Order**").
- 13) Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Second Report.

PURPOSE

- 14) The purpose of this third report of the Monitor (the "**Third Report**") is to provide information to the Court with respect to:
 - a) An update regarding the Company's operations;
 - b) The Monitor's activities since the Second Report;
 - c) Update on the Principal Transaction and the Atos Transaction;
 - d) The receipts and disbursements of the Company;
 - e) A material adverse change in respect of the Residual Debtors' projected cash flow and financial circumstances;
 - f) The Proposed Termination Order;
 - g) The Monitor's conclusions and recommendations.
- 15) In preparing this Third Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, the Debtors' books and records and financial information prepared by the Debtors and discussions with Management (the "**Information**").
- 16) The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with GAAS pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
- 17) Except otherwise indicated, the Monitor's understanding of factual matters expressed in the Third Report concerning the Debtors and its business is based on the Information, and not independent factual determinations made by the Monitor.
- 18) Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in United States dollars.

UPDATE REGARDING THE COMPANY'S OPERATIONS

- 19) Since the issuance of the Second Report on April 8, 2024, the Company has continued its operations on an ongoing basis. Except for certain costs pertaining to the Norco Facility, which are addressed below, all current expenses have been paid in the ordinary course of business.
- 20) During the week ended April 19, 2023, the Company's sales receipts were materially lower than projected due to two retailers putting Goli Canada's account on "hold" status due to the pending Chapter 15 Case. An update on the Company's cash flows is described more fully in a later section of this Third Report.
- 21) The Debtors, with the support of the Monitor, have continued to have discussions and exchanges of information with their main suppliers and stakeholders in relation to the CCAA Proceedings and the Chapter 15 Case (together, the "**Restructuring Proceedings**").

- 22) As further described below, the Principal Transaction closed on April 24, 2024, allowing Goli Canada to continue to operate as a going concern. The Purchaser is now responsible for all operations, cash flows and obligations in respect of Goli Canada.

THE MONITOR'S ACTIVITIES SINCE THE SECOND REPORT

- 23) Since its appointment, the Monitor has been involved with numerous aspects of the CCAA Proceedings with a view to fulfilling its statutory and court-ordered duties and obligations. The Monitor has described some of the more significant matters it has undertaken in the foregoing paragraphs.
- 24) The Monitor has continued to post to its website at www.insolvencies.deloitte.ca/goli various materials including, *inter alia*, the Monitor's reports, motion materials and Orders granted in the Restructuring Proceedings.
- 25) The Monitor has also maintained a toll-free hotline number and a dedicated email inbox to allow creditors and other stakeholders to contact the Monitor to obtain additional information concerning the Restructuring Proceedings.

Chapter 15 Case

- 26) As noted in the Second Report, the US Court scheduled the Recognition Hearing on April 15, 2024, to consider the Monitor's request to recognize and enforce the CCAA Proceedings and the other relief sought pursuant to the petitions filed in the Chapter 15 Case.
- 27) On March 25 and 26, 2024, the Monitor sent to the Notice Parties a package including various documents relevant to the Restructuring Proceedings.
- 28) On April 10, 2024, the Monitor sent to the Notice Parties, via either two-day courier service or first-class postage prepaid, depending on which option proved to be the fastest, a supplemental notice of the transactions package enclosing complete copies of the Subscription Agreement in respect of the Principal Transaction and the Agency Agreement in respect of the Atos Transaction.
- 29) The Monitor and its legal counsel attended at the US Court for the Recognition Hearing on April 15, 2024. The Hoffman Parties opposed the recognition and enforcement of the Liquidation Order based on alleged proprietary or other claims asserted against certain properties located in the Norco Facility.
- 30) Following the Recognition Hearing, the Monitor and its legal counsel participated in discussions with legal counsel to the Hoffman Parties in relation to the form and content of the order recognizing and enforcing the CCAA Proceedings and the Reverse Vesting Order.
- 31) On April 18, 2024, the US Court rendered a Bench Ruling (the "**Bench Ruling**"), indicating that it would issue orders recognizing and enforcing the CCAA Proceedings and the Reverse Vesting Order in the United States.
- 32) Pursuant to the Bench Ruling, the US Court also concluded that the ownership issue raised by the Hoffman Parties had to be determined before the US Court could grant the relief requested in connection with the Atos Transaction and that such determination should be made by this Court at the Hoffman Hearing. As such, the US Court decided to hold the motion to recognize and enforce the Liquidation Order in

abeyance until a decision on the alleged ownership rights of the Hoffman Parties is rendered.

- 33) That same day the US Court rendered an order recognizing and enforcing the CCAA Proceedings as foreign main proceedings under Chapter 15 and giving full force and effect to the Initial Order in the US.
- 34) On April 22, 2024, the US Court rendered an order recognizing and enforcing the Reverse Vesting Order in the US.

Monitoring of the Debtors' operations

- 35) The Monitor, with the assistance of the Debtors, has been responding to questions and inquiries of various stakeholders in relation to the Restructuring Proceedings.
- 36) The Monitor had multiple communications and discussions with the Debtors and their counsel regarding operations, the Norco Facility, the Atos Equipment and the Proposed Transactions.
- 37) The Monitor has continued its weekly reviews of the Company's receipts and disbursements and had numerous discussions on same with Management.

Claims of the Hoffman Parties

- 38) Since prior to the Transaction Approval Hearing and up until the filing of the Termination Application, the Monitor and its counsel had various discussions with counsel for the Hoffman Parties with a view to reaching a resolution acceptable to all parties. Unfortunately, no agreement could be reached to resolve the claims of the Hoffman Parties.
- 39) On April 19, 2024, the Hoffman Parties filed a motion before this Court seeking determinations in respect of their alleged property interests in certain of the Norco Equipment (the "**Hoffman Motion**"), which was scheduled to be adjudicated at the Hoffman Hearing.
- 40) Pursuant to the Hoffman Motion, the Hoffman Parties claimed ownership interests in a much larger number of assets located at the Norco Facility, including a combination of certain of the Atos Equipment and the assets abandoned by the trustee in the BN Bankruptcy. The number of sale lots to which the Hoffman Parties asserted an ownership interest increased to approximately 533, up from the 41 sale lots originally identified as Alleged RGL Equipment.
- 41) The claims of the Hoffman Parties remain contested by Goli Canada, the Residual Debtors and the Syndicated Lenders and it is the Monitor's understanding that the Hoffman Dispute, if not resolved consensually, will be determined in another forum following the contemplated termination of the CCAA Proceedings.
- 42) The Monitor also understands that the Syndicated Lenders are in discussions with a party related to the Debtors in connection with a potential assignment of their secured rights and position in respect of the Norco Equipment.

UPDATE ON THE PROPOSED TRANSACTIONS

Closing of the Principal Transaction

- 43) Following the recognition and enforcement of the Reverse Vesting Order by the US Court on April 22, 2024, the Monitor assisted with the closing of the Principal Transaction.
- 44) Based on information provided by and representations made by Management, the Monitor determined there to be no Priority Payments Closing Amount (as defined in the Subscription Agreement) that was required to be paid by the Purchaser pursuant to the Subscription Agreement.
- 45) Closing of the Principal Transaction occurred on April 24, 2024 (the "**Principal Transaction Closing Date**"), with the Syndicated Lenders receiving a cash consideration of US\$25,000,000 as provided for by the Subscription Agreement and the Reverse Vesting Order.
- 46) Pursuant to the Subscription Agreement and the Reverse Vesting Order, all of the assets located at the Norco Facility, inclusive of the Atos Equipment, are excluded assets and the Agency Agreement is an excluded contract such that, upon closing of the Principal Transaction, the Atos Equipment and Goli Canada's rights and obligations under the Agency Agreement vested in Residual Co. and Goli Canada is no longer a debtor in the CCAA Proceedings.

Termination of the Atos Transaction and next steps

- 47) Since the claims of the Hoffman Parties were initially asserted, the Monitor has had numerous discussions with representatives of the Syndicated Lenders and the Agent in connection with the contemplated implementation of the Atos Transaction.
- 48) The Agency Agreement was conditional on the issuance of the Liquidation Order as well as an order in a form satisfactory to the parties recognizing and enforcing such order in the United States as part of the Chapter 15 Case by April 19, 2024. This condition precedent has not been met, such that the Agency Agreement is now expired.
- 49) The Agency Agreement provided for a first instalment payment to the Monitor of \$3,000,000 of the \$5,000,000 net minimum guarantee (the "**Guaranteed Minimum Amount**"), which was to provide for working capital to continue to pay the obligations of Goli US in respect of rent, utilities and insurance at the Norco Facility as well as other costs associated with the Restructuring Proceedings, as required. Since this partial payment has not been received by the Monitor, the Residual Debtors have no funds to satisfy these obligations and expenses.
- 50) Accordingly, on April 25, 2024, the Monitor contacted the Norco Facility landlord to provide an update on the status of the Restructuring Proceedings and to notify them that Goli US was unable to continue paying rent.
- 51) On April 25, 2024, after consulting with the Syndicated Lenders and counsel to the Debtors, the Monitor's counsel advised the Court and the Service List of recent developments relevant to: (i) the implementation of the Principal Transaction and the Atos Transaction (ii) the Residual Debtors' projected cash flow and financial situation; and (iii) the Hoffman Hearing, as well as its intention to seek the termination of the CCAA Proceedings on April 30, 2024.

- 52) On April 26, the Monitor notified the Termination Application and the Proposed Termination Order to the Service List.

ACTUAL RECEIPTS AND DISBURSEMENTS

- 53) Appendix C of the Second Report set out the Company's cash flow projection for the 13-week period from March 30, 2024, to June 28, 2024 (the "**Cash Flow Projection**").
- 54) The Company's actual cash flows for the three-week period of March 30 to April 19, 2024, is compared to the Cash Flow Projection in the table attached as **Appendix A** of this Third Report.
- 55) The Company's closing cash balance as of March 29, 2024, was \$2,000, constituting a favourable variance in the same amount. The Monitor has the following comments regarding the key elements of the Company's cash flow to April 19, 2024:
- a) Net receipts were \$405,000 (13%) lower than projected, primarily due to lower than anticipated receipts from retailers as two customers put payments on hold due to the Chapter 15 Case.
 - b) As a result of the lower than anticipated receipts, the Company deferred payment of rent to the Norco Facility landlord for the week ended April 19, which was the primary driver of the \$142,000 favourable variance in the "rent and facilities" category. In addition, the Company decreased its payments in respect of product purchases and freight by an amount of \$255,000 and \$177,000, respectively.
 - c) Professional fees were \$163,000 lower than projected, primarily due to a timing difference related to payment of certain invoices. There was a corresponding decrease in the purchaser funding of fees in the amount of \$351,000. Overall, there was a combined negative variance of \$189,000 in respect of professional fees and funding, which represents higher than projected payments to the Company's counsel and other professionals, in part due to the disputed Transaction Approval Hearing and Recognition Hearing.
 - d) The Cash Flow Projection contemplated that closing of the Principal Transaction would occur on April 19, 2024. Since closing did not occur until April 24, 2024, the projected assumption of cash by the Purchaser in the amount of \$42,000 did not occur until April 24, 2024, and the assumption of cash is understood to have been in the amount of approximately \$19,000.
- 56) The Monitor notes that prior to the commencement of the Restructuring Proceedings, the Syndicated Lenders received a garnishment demand by the Canada Revenue Agency in respect of two accounts of Goli US, containing a total amount of approximately \$152,000. The Monitor understands that this amount was applied by the Syndicated Lenders against its outstanding secured debt.
- 57) As of the date of this Third Report, the Monitor understands that all post-filing expenses incurred by Goli Canada have been or will be paid in the normal course of business and are Retained Liabilities (as defined in the Subscription Agreement) under the Subscription Agreement. The Monitor further notes, however, that not all post-filing expenses incurred by Goli US have been paid, as more fully described below.

MATERIAL ADVERSE CHANGE

- 58) In relation to the "Norco Cash Flows" section of the Cash Flow Projection shown in Appendix A, due to the delayed closing of the Principal Transaction and the inability to

move ahead with the Agency Agreement, the Monitor will not receive the initial instalment of the Guaranteed Minimum Amount of \$3,000,000. This represents a material adverse change in the projected cash flow and financial circumstances of the Residual Debtors since there is no source of funding to meet any further cost obligations of Goli US in respect of the Norco Facility or to fund the continuation of the CCAA Proceedings and the Chapter 15 Case in respect of the Residual Debtors.

- 59) Furthermore, the Monitor notes that as of the Principal Transaction Closing Date, there were accrued and unpaid costs related to the Norco Facility in the amount of approximately \$187,000, of which \$167,000 related to rent. The Monitor requested that the Company make payment of this amount prior to closing of the Principal Transaction, but Management advised the Monitor that the Company did not have sufficient liquidity to do so. As of the date of this Third Report, accrued and unpaid costs related to the Norco Facility are estimated to amount to approximately \$288,000.

Professional Costs Budget

- 60) The Professional Costs Budget Amount is available for the payment of the fees and disbursements of the Monitor, the Monitor's legal counsel, and the Syndicated Lenders' counsel (collectively, the "**Subject Professionals**") for the duration of the Restructuring Proceedings. Any remaining portion of the Professional Costs Budget Amount as of the date that the Monitor is discharged as CCAA monitor in the CCAA Proceedings and as foreign representative in the Chapter 15 Case shall be held in trust on behalf of Goli Canada.
- 61) As of the date of this Third Report, pursuant to section 9.4(a) of the Subscription Agreement, the Monitor has made payments from the C\$2,000,000 Professional Costs Budget Amount (as defined in the Subscription Agreement) totalling approximately C\$1,366,000, which excludes material amounts incurred by the Subject Professionals for work in progress.
- 62) The fees and disbursements of the Subject Professionals that will be incurred in connection with any matters that are incidental to the termination of the Restructuring Proceedings will be paid from the remaining Professional Costs Budget Amount. Following Deloitte's discharge and payment of all the fees and disbursements of the Subject Professionals up to the discharge date, the Monitor will release the balance of the Professional Costs Budget Amount, if any, to Goli Canada. Following this release, the Monitor will have completed all the matters remaining in this estate.

THE PROPOSED TERMINATION ORDER

- 63) In light of the foregoing, the Monitor considers that it is necessary and appropriate to terminate the CCAA Proceedings at this time and respectfully submits that the Proposed Termination Order should be granted.
- 64) The Proposed Termination Order contemplates, in particular:
- a) the termination of the CCAA proceedings as of the date of the Proposed Termination Order (the "**CCAA Termination Date**");
 - b) the release of the D&O Charge on the CCAA Termination Date and the release of the Administration Charge upon the filing of a certificate by Deloitte confirming that it has been advised that all beneficiaries of such charge have been paid the amounts secured by such charge;

- c) the approval of the Monitor's activities in the CCAA Proceedings, the discharge of the Monitor from its duties as CCAA monitor of the Residual Debtors, and the granting of releases for the Monitor and its advisors; and
 - d) certain other ancillary relief related to the implementation of the Proposed Termination Order and its contemplated recognition and enforcement in the Chapter 15 Case.
- 65) Upon the termination of the CCAA Proceedings, the Residual Debtors will no longer benefit from the protections of the Initial Order such that any parties with claims against the Residual Debtors, including the Hoffman Parties, the Syndicated Lenders or others will be free to exercise their rights and remedies in accordance with ordinary procedures. For greater certainty, the termination of the CCAA Proceedings will not limit any claims of or against the Residual Debtors, in relation to the Norco Equipment or otherwise.
- 66) The Residual Debtors and Syndicated Lenders support the termination of the CCAA Proceedings in accordance with the Proposed Termination Order.

THE MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

- 67) The Monitor is of the view that stakeholders have benefited generally from the restructuring accomplished in the CCAA Proceedings, which has notably allowed for the preservation of the business operated by Goli Canada as a going concern through the Principal Transaction.
- 68) The fact remains, however, that the Residual Debtors do not have access to the funding required to meet their ongoing obligations or to pursue the realization of their rights in the Norco Equipment in the context of the CCAA Proceedings.
- 69) The Monitor is therefore of the view that it is appropriate to terminate the CCAA Proceedings at this time, in accordance with the Proposed Termination Order.
- 70) The Monitor respectfully submits to the Court its Third Report.

DATED AT MONTREAL, this 29th day of April 2024.

DELOITTE RESTRUCTURING INC.

In its capacity as Court-Appointed Monitor of
15938759 Canada Inc. (Residual Co.) and Goli Nutrition Inc. (US)



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



Jean-François Nadon, CPA, CIRP, LIT
President

**Appendix A
(Under seal)**

CASH FLOW VARIANCE SUMMARY