

COURT FILE NUMBERS 2301-13922  
~~25-2958981~~

COURT COURT OF KING'S BENCH OF  
ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF CONNECT FIRST CREDIT UNION LTD.

DEFENDANTS OGEN HOLDINGS LTD., OGEN LTD., EDWARDS CONCRETE  
INC. and MORRISON HOMES (CALGARY) LTD.

DOCUMENT **APPLICATION (APPOINTMENT OF RECEIVER)**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**Burnet, Duckworth & Palmer LLP**

2400, 525 – 8 Avenue SW  
Calgary, Alberta T2P 1G1

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File No. 43621-128



NB

C102245

## NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

**Date:** November 3, 2023

**Time:** 10:00 AM

**Where:** Edmonton Courts Centre, via Webex

**Before Whom:** The Honourable Justice D.R. Mah

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. The Applicant, Connect First Credit Union ("**CFCU**" or the "**Lender**") brings the within Application (the "**Application**") to seek an Order, substantially in the form attached as **Schedule "A"**:
  - (a) declaring that the time for service of the Application and supporting materials be abridged, that the Application is properly returnable today and that further service of the Application be dispensed with;
  - (b) declaring that the Respondents, OGEN Holdings Ltd. ("**OHL**") and OGEN Limited ("**OL**" and together with OHL, the "**Debtors**" or the "**Borrowers**" and each a "**Debtor**" or a "**Borrower**") are no longer subject to the stay of proceedings (the "**Stay**") provided for pursuant to section 69(1) of the *Bankruptcy and Insolvency Act* (Canada) the ("**BIA**"); or, in the alternative
  - (c) lifting the Stay pursuant to section 69.4 of the BIA and authorizing CFCU to proceed with the Application and the issuance of Statement of Claim *nunc pro tunc*;
  - (d) appointing Alvarez & Marsal Canada Inc. ("**A&M**") pursuant to section 243 of the BIA section 13 of the *Judicature Act* (Alberta) and section 65(7) of the *Personal Property Security Act* (Alberta) as receiver and manager (A&M in such capacity, the "**Receiver**") without bond, of all of the current and future assets, undertakings and properties of the Debtors (collectively the "**Property**"); and
  - (e) granting such other relief as may be sought by BMO and granted by this Honourable Court.

**Grounds for making this application:**

**The Loans and Indebtedness**

2. The Lender extended credit facilities and related services to OHL (collectively, the "**OHL Loans**") pursuant to, among others:
  - (a) a Commitment Letter dated December 18, 2020 among the Lender and OHL;

- (b) a Promissory Note dated April 27, 2021 granted by OHL in favour of the Lender in the amount of \$12,300,000.00;
- (c) a Promissory Note dated January 4, 2021 granted by OHL in favour of the Lender in the amount of \$15,139,433.39; and
- (d) a Cross-Default Agreement among the Lender, the Borrowers and the Guarantors (as defined below),

(collectively, and as amended, the "**OHL Loan Agreements**").

3. The Lender also extended credit facilities and related services to OL (collectively, the "**OL Loans**" and together with the OHL Loans, the "**Loans**") pursuant to, among others:
  - (a) a Commitment Letter dated August 13, 2021; and
  - (b) an Overdraft Protection Agreement dated August 17, 2021 in the amount of \$1,500,000;
  - (c) (collectively, and as amended, the "**OL Loan Agreements**" and together with the OHL Loan Agreements, the "**Loan Agreements**").
4. Each of OL, and the Respondents Edwards Concrete Inc. ("**Edwards**") and Morrison Homes (Calgary) Ltd. ("**Morrison**") provided a Guarantee and Postponement of Claim in favour of the Lender (the "**OHL Guarantees**") in respect of the amounts owing by OHL to the Lender (OL, Edwards and Morrison in such capacity, the "**OHL Guarantors**").
5. Additionally, each of OHL, Edwards and Morrison provided a Guarantee and Postponement of Claim in favour of the Lender (the "**OL Guarantees**" and together with the OHL Guarantees, the "**Guarantees**" and each a "**Guarantee**") in respect of the amounts owing by OL to the Lender (OHL, Edwards and Morrison such capacity, the "**OL Guarantors**" and together with the OHL Guarantors, the "**Guarantors**" and each a "**Guarantor**").
6. As at October 20, 2023, the Borrowers were indebted to the Lender in the amount of approximately \$21,994,759.60 under the Loan Agreements plus interest and costs, which, which continue to accrue (the "**Indebtedness**").

### **The Borrower Security**

7. OHL granted, among others, the following security to the Lender in respect of its obligations, indebtedness, and liabilities under the OHL Loans:

- (a) a Mortgage dated July 16, 2019 granted by OHL in the principal amount of \$20,000,000 (the "**OHL Mortgage**") against the property legally and municipally described as:

PLAN 2007JK BLOCK 2  
Lot 1  
EXCEPTING THEREOUT ALL MINES AND MINERALS

Municipal address: 5430-30th Street SE, Calgary, AB

(the "**Lands**");

- (b) a Mortgage Amending Agreement dated April 14, 2020 increasing the principal amount of the OHL Mortgage to \$22,000,000;
- (c) a Mortgage Amending Agreement dated January 14, 2021 increasing the principal amount of the OHL Mortgage to \$23,511,235;
- (d) an Assignment of Rents and Leases dated January 14, 2021 granted by OHL with respect to the Lands;
- (e) General Security Agreements charging all of OHL's present and after acquired personal property (each, a "**GSA**") dated May 29, 2017 and January 24, 2021; and
- (f) an assignment of insurance proceeds,

(collectively, the "**OHL Security**").

8. OL granted, among others, the following security in favour of the Lender in respect of its obligations, indebtedness, and liabilities under the OL Loans:

- (a) GSAs dated June 10, 2017 and January 14, 2021;
- (b) an Assignment of Receivables Agreement dated January 14, 2021; and
- (c) an assignment of insurance proceeds,

collectively, the OL Security and together with the OHL Security, the "**Borrower Security**").

#### **The Guarantees and the Guarantor Security**

9. The OHL Guarantors granted the following OHL Guarantees:
  - (a) from OL, an unlimited Guarantee;
  - (b) from Edwards, a Guarantee in the principal amount of \$7,000,000; and
  - (c) from Morrison, a Guarantee in the principal amount of \$7,000,000.
10. The OL Guarantors granted the following OL Guarantees:
  - (a) from OHL, an unlimited Guarantee and Postponement of Claim;
  - (b) from Edwards, a Guarantee in the principal amount of \$500,000; and
  - (c) from Morrison, a Guarantee in the principal amount of \$500,000.
11. In support of their obligations under the Guarantees, and in addition to any direct security granted in their capacity as a borrower, each of the Guarantors granted a GSA in support of its obligations under the respective Guarantee (collectively, the "**Guarantor Security**" and together with the Borrower Security, the "**Security**").

#### **Defaults & Demand**

12. The Borrowers have committed certain defaults under the Loan Agreements, including, but not limited to,
  - (a) the failure to make payments against the Loans as required by the Loan Agreements and the Borrower Security;
  - (b) the failure to remit amounts owing to Canada Revenue Agency when due; and
  - (c) commencing proceedings under the BIA,(collectively, the "**Defaults**").

13. As a result of the Defaults, on or about October 23, 2023, the Lender issued a notice of default and demand for payment to the Borrowers (the "**Borrower Demands**"), and concurrently delivered notices of its intention to enforce the Security pursuant to section 244 of the BIA (each, a "**244 Notice**").
14. Also on or about October 23, 2023, the Lender issued notices of default and demands for payment and 244 Notices to each of the Guarantors (the "**Guarantor Demands**" and together with the Borrower Demands, the "**Demands**").
15. Despite the Lender's demands for repayment of the Indebtedness, the Borrower and the guarantors have failed, refused or neglected, and continue to fail, refuse or neglect to repay the Indebtedness, and they are default of their obligations under the Loan Agreements, the guarantees and the Security.

#### **Present Circumstances of the Borrowers**

16. On June 26, 2023, each of the Borrowers filed a Notice of Intention pursuant to section 50.4(1) of the BIA.
17. On or about September 1, 2023, the Borrowers presented a proposal to their creditors (the "**Proposal**"). On September 20, 2023, the Borrowers held the Creditors' Meeting (as defined in the Proposal), which was subsequently adjourned to November 2, 2023.
18. The Lender anticipates that the Proposal will not be approved at the Creditors' Meeting (or any further adjournment thereof) and, as a result, the Borrowers will have been deemed to have made an assignment into bankruptcy prior to the Application and will no longer be subject to the Stay.

#### **Appointment of Receiver**

19. It is a term of the Security that if the Borrowers or the Guarantors are in default of their obligations to the Lender, the Lender may apply to this Honourable Court for the appointment of a receiver and manager.
20. The Borrowers and the Guarantors are in default of their obligations to the Lender and the Lender is entitled to apply to this Honourable Court to appoint a receiver and manager.

21. The immediate appointment of a receiver is necessary to realize upon the Property and to recover the Indebtedness and to protect, preserve and avoid further erosion of the Lender's security interests at this time.
22. It is just and convenient to appoint a receiver without delay.
23. A&M has consented to act as Receiver.
24. Such further and other grounds as counsel may advise and as this Honourable Court may permit.

**Material or evidence to be relied on:**

25. Affidavit No.1 of Kunle Popoola, to be sworn.
26. Consent of A&M to act as Receiver, to be filed.
27. Bench Brief in support of Receivership Application.
28. Pleadings and proceedings in Action No. 25-2958981 and 2301-13922.

**Applicable rules:**

29. *The Alberta Rules of Court.*

**Applicable Acts and regulations:**

30. *Bankruptcy and Insolvency Act (Canada).*
31. *Judicature Act (Alberta).*
32. *Personal Property Security Act (Alberta).*

**How the application is proposed to be heard or considered:**

33. Before the Honourable Justice D.R. Mah on the Commercial List via Webex.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.



## Schedule "A"

COURT FILE NUMBER 2301-13922  
25-2958981

Clerk's Stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT(S) CONNECT FIRST CREDIT UNION LTD.

RESPONDENT(S) OGEN HOLDINGS LTD., OGEN LTD.,  
EDWARDS CONCRETE INC., and  
MORRISON HOMES (CALGARY) LTD.

DOCUMENT RECEIVERSHIP ORDER

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**Burnet, Duckworth & Palmer LLP**  
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Calgary, Alberta T2P 1G1  
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Fax Number: (403) 260-0332  
Email Address: dlegeyt@bdplaw.com /  
ralgar@bdplaw.com  
File No. 43621-128

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**DATE ON WHICH ORDER WAS PRONOUNCED:** November 3, 2023

**LOCATION OF HEARING:** Edmonton

**NAME OF JUSTICE WHO GRANTED THIS ORDER:** The Honourable Justice D.R. Mah

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**UPON** the application of Connect First Credit Union Ltd. ("**CFCU**") in respect of OGEN Holdings Ltd. and OGEN Ltd (collectively the "**Debtors**" and each a "**Debtor**"); **AND UPON** having read the Application, Affidavit No.1 of Kunle Popoola, sworn October [•], 2023; and the Affidavit of Service of Anne-Marie Gillis Tapp, sworn [•], 2023, to be filed; **AND UPON** reading the consent of Alvarez & Marsal Canada Inc. ("**A&M**") to act as receiver and manager (the "**Receiver**") of the Debtors, filed; **AND UPON** hearing counsel for CFCU, counsel for the proposed Receiver and

any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

### **Service**

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

### **Lifting of Stay**

2. To the extent necessary to permit CFCU to bring the within Application and file its Statement of Claim in Action No. 2301-13922, the stay of proceedings provided for in section 69(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”) is hereby lifted with respect to the Debtors pursuant to section 69.4 of the BIA, *nunc pro tunc*.

### **Appointment**

3. Pursuant to section 243(1) of the BIA, and sections 13(2) of the *Judicature Act*, RSA 2000, c.B-9, and 65(7) of the *Personal Property Security Act*, RSA 2000, c.P-7, A&M is hereby appointed Receiver, without security, of all of the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, and specifically including but not limited to the real property legally described as:

PLAN 200JK  
BLOCK 2  
LOT 1  
EXCEPTING THEREOUT ALL MINES AND MINERALS

but excluding the Excluded Assets as defined herein (collectively the “**Property**”).

4. For greater certainty, the Property shall specifically not include, and the Receiver shall not take possession of, nor be deemed to take possession of, any of the Debtors' assets for which any permit or license is issued or may be issued in accordance or connection with the following or similar legislation (collectively, the “**Controlled Substances Legislation**”):

- (a) the *Excise Tax Act*, 2001, SC 2002, c. 22;
- (b) the *Cannabis Act*, SC 2018, c C 16;
- (c) the *Cannabis Control and Licensing Act*, SBC 2018, c 29;

- (d) the *Gaming, Liquor and Cannabis Act*, RSA 2000, c G-1;
- (e) the *Cannabis Control (Saskatchewan) Act*, SS 2018, c C-2.111;
- (f) *The Liquor, Gaming and Cannabis Control Act*, CCSM c L153;
- (g) the *Ontario Cannabis Retail Corporation Act*, 2017, SO 2017, c 26, Sch 1; and
- (h) the *Cannabis Control Act*, SNB 2018, c 2,

which shall include any controlled substances subject to the Controlled Substances Legislation and the Receiver shall not be deemed to be in possession of any Property within the meaning of the Controlled Substances Legislation (the “**Excluded Assets**”).

### **Receiver’s Powers**

5. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver's ability:
    - i. to abandon, dispose of, or otherwise release any interest in any of the Debtors' real or personal property, or any right in any immovable; and
    - ii. upon further order of the Court, to abandon, dispose of, or otherwise release any license or authorization issued by a regulator empowered under the Controlled Substances Legislation, or any other similar government authority;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;

- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - i. without the approval of this Court in respect of any transaction not exceeding \$[•], provided that the aggregate consideration for all such transactions does not exceed \$[•]; and
  - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land

Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal capacity;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to assign the Debtors into bankruptcy, and to act as the Trustee in Bankruptcy of the Debtors; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, and without interference from any other Person (as defined below).

#### **Duty to Provide Access and Co-operations to the Receiver**

6. (i) The Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
7. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers,

records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

8. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

#### **No Proceedings Against the Receiver**

9. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **No Proceedings Against the Debtors or the Property**

10. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court



and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

### **No Exercise of Rights of Remedies**

11. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtors or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided, however, that nothing in this Order shall:
  - (a) empower the Debtors to carry on any business that the Debtors are not lawfully entitled to carry on;
  - (b) prevent the filing of any registration to preserve or perfect a security interest;
  - (c) prevent the registration of a claim for lien; or
  - (d) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.
12. Nothing in this Order shall prevent any party from taking an action against the Debtors where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

### **No Interference with the Receiver**

13. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Receiver, or leave of this Court.

### **Continuation of Services**

14. All persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Debtors, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtors,

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtors or exercising any other remedy provided under such agreements or arrangements. The Debtors shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with the payment practices of the Debtors, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors and the Receiver, or as may be ordered by this Court.

### **Receiver to Hold Funds**

15. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net

of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

### **Employees**

16. Subject to employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c.47 ("**WEPPA**").
17. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **Limitations on Environmental Liabilities**

18. Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
  - i. before the Receiver's appointment; or

- ii. after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph 18 exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph 18 hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
  - i. if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause ii below, the Receiver:
    - A. complies with the order, or
    - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
  - ii. during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by:
    - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
    - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

- iii. if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

### **Limitation on the Receiver's Liability**

19. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

### **Receiver's Accounts**

20. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the **"Receiver's Charge"**) on the Property, which charge shall not exceed an aggregate amount of \$[•], as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the BIA.
21. The Receiver and its legal counsel shall pass their accounts from time to time.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **Funding of the Receivership**

23. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$[•] (or such

greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

24. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
25. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.
26. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
27. The Receiver shall be authorized to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

#### **Allocation**

28. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property

#### **General**

29. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
32. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
33. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
34. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.
35. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

## Filing

36. This Order is issued and shall be filed in Court of King's Bench Action No.2301-13922 and Court of King's Bench in Bankruptcy Action No. 25-2958981, which actions are not consolidated. All further proceedings shall be taken in both actions unless otherwise ordered.
37. The Receiver shall establish and maintain a website in respect of these proceedings at [alvarezandmarsal.com/\[\]](http://alvarezandmarsal.com/[]) (the "**Receiver's Website**") and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
38. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
    - i. the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
    - ii. any other person served with notice of the application for this Order;
    - iii. any other parties attending or represented at the application for this Order; and
  - (b) posting a copy of this Order on the Receiver's Website
- and service on any other person is hereby dispensed with.
39. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



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Justice of the Court of King's Bench of Alberta

## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of OGEN Holdings Inc. and OGEN Ltd. appointed by Order of the Court of King's Bench of Alberta and Court of King's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated the 3<sup>rd</sup> day of November, 2023 (the "**Order**") made in action numbers 2301-13922 and 25-2958981, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$[•], being part of the total principal sum of \$[•] that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded daily after the date hereof at a notional rate per annum equal to the rate of [•] per cent above the prime commercial lending rate of Connect First Credit Union Ltd. from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at 200, 2850 Sunridge Blvd NE, Calgary, AB T1Y 6G2.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED this • day of •, 2023

**ALVAREZ & MARSAL CANADA INC.**, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: \_\_\_\_\_

Name: Orest Konowalchuk

Title: Senior Vice President