



No. **S22 45481**
Vancouver Registry

In the Supreme Court of British Columbia

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

AND

IN THE MATTER OF THE COOPERATIVE ASSOCIATION ACT, S.B.C. 1999, C 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS
INDUSTRIES LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

PETITION TO THE COURT

ON NOTICE TO:

Those parties set out in **Schedule "A"** attached hereto.

The address of the registry is:

The Law Courts
800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

The Petitioners estimate that the hearing of the petition will take 2 hours.

☐ This matter is an application for judicial review.

☒ This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by the Petitioners.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or, and
- (d) if the time for response has been set by order of the court, within that time.

(1)	<p>The ADDRESS FOR SERVICE of the petitioners is:</p> <p>Norton Rose Fulbright Canada LLP 1800 – 510 West Georgia Street Vancouver, British Columbia V6B 0M3</p> <p>Fax number address for service (if any) of the petitioners: N/A</p> <p>E-mail address for service (if any) of the petitioners: howard.gorman@nortonrosefulbright.com candace.formosa@nortonrosefulbright.com</p>
(2)	<p>The name and office address of the petitioners' lawyer is:</p> <p>Norton Rose Fulbright Canada LLP 1800 – 510 West Georgia Street Vancouver, British Columbia V6B 0M3</p> <p>Attention: Howard A. Gorman, K.C. and Candace Formosa</p>

Claim of the Petitioners

Part 1: ORDERS SOUGHT

1. The Petitioners, BC Tree Fruits Cooperative ("BCTFC"), BC Tree Fruits Industries Limited ("BCTF Industries") and Growers Supply Company Limited ("GSC", together with BCTFC and BCTF Industries, the "Petitioners") seek an initial order (the "Initial Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the

"CCAA"), on the terms substantially as set out in the draft Initial Order attached hereto as **Schedule "B"**, and which shall grant certain relief including, among other things:

- (a) abridging the time for service of this Petition and the Petition Record and dispensing with further service thereof other than in accordance with the Initial Order;
- (b) declaring that the Petitioners are entities to which the CCAA applies;
- (c) staying all proceedings and remedies taken or that might be taken in respect of the Petitioners or any of their property, except as set forth in the Initial Order or as otherwise permitted by law, for 10 days (as may be extended by the Court thereafter);
- (d) authorizing the Petitioners to carry on business in a manner consistent with the preservation of its property and business;
- (e) appointing Alvarez & Marsal Canada Inc. as the monitor of the Petitioners ("**A&M**" or the "**Proposed Monitor**") under section 11.7 of the CCAA;
- (f) approving certain priority charges with respect to activities occurring in the first 10 days following pronouncement of the Initial Order, including the Administration Charge, Interim Lender Charge, and D&O Charge, as defined below;
- (g) authorizing payment of the reasonable fees and disbursements of the Proposed Monitor, the Proposed Monitor's legal counsel, and the Petitioners' counsel;
- (h) waiving the requirement for the BCTFC Board, as defined below, to requisition a special general meeting within 7 days of August 3, 2024;
- (i) scheduling a comeback hearing (the "**Comeback Hearing**") for August 19, 2024, at a time to be set by this Honourable Court; and
- (j) such further and other relief as the Petitioners may request and this Honourable Court may deem just.

Part 2: FACTUAL BASIS

BACKGROUND AND OVERVIEW

1. BCTFC is a cooperative association incorporated by or under the *Cooperative Association Act*, S.B.C. 1999, c 28 (the "**Cooperative Association Act**"). Through its predecessors, BCTFC has operated in the Okanagan Valley serving Okanagan fruit producers since 1936. Its head office is located at 3335 Sexsmith Road, Kelowna, BC V1X 7T5, with a mailing address of PO Box 2668, Kelowna, BC V1X 6A7.
2. A division of BCTFC is BC Tree Fruits Cider Co. ("**BCTF Cider**"), which is in the business of crafting a premium cider using only fruit from the Growers. The cidery is located at 826 Vaughan Avenue, Kelowna, BC V1Y 7E4.
3. BCTF Industries, a wholly owned subsidiary of BCTFC, is a dormant company with no revenue reported since the year end May 31, 2023.
4. GSC, a wholly owned subsidiary of BCTFC, is a company incorporated pursuant to the laws of British Columbia, with a head office located at 2605 Acland Road, Kelowna, BC V1X 7J4. GSC is a premier agricultural supplier in the Okanagan Valley and the surrounding district which provides services and sells products related to irrigation design, custom packaging, soil testing and other lab services, fencing solutions, crop protection, crop inputs, animal feed and other farm supplies. GSC has been serving local fruit growers in the Okanagan region of British Columbia for over 83 years with a goal to providing everything a professional grower requires at an affordable price and convenient location.
5. The Petitioners are currently in the midst of a liquidity crisis that has been building for many years. There are many factors that have led to this crisis, including decreasing tree fruit volumes, an increase in local packing house competition, aging facilities, aging equipment, market pricing pressures locally and from Washington state, a reduction in contracted BCTFC growers/members, and significant impacts from a changing climate.
6. Past attempts to "right size" BCTFC and its subsidiaries were met with resistance from certain parts of the BCTFC membership. In May 2019, the then board and management purchased a plot of land in Kelowna with the intent to embark on a consolidation plan. In September of 2019, a new CEO was appointed and, after further evaluation, determined that the historically significant debt load and financial position of BCTFC did not allow for

the necessary financing to begin the then planned consolidation at the new Kelowna site. After enduring the pandemic, rightsizing operational costs and divesting of three properties, BCTFC was then in a position to seek financing to allow it to embark on a consolidation and equipment upgrade plan in early 2022. However, additional analysis conducted showed that a new build on the designated Kelowna site was not financially feasible for BCTFC, so an alternate plan involving the expansion and upgrade of BCTFC's existing Oliver facility was chosen by the then board.

7. The change in the consolidation plan from Kelowna (in the North Okanagan region) to Oliver (in the Southern Okanagan region) amplified already differing regional views among BCTFC's members, leading to multiple requests for special meetings of BCTFC members to prohibit property sales and governance changes which were ultimately defeated but which caused, delays in property divestments (which led to increased interest costs being incurred by BCTFC and decreased returns given the declining property market), delays in equipment installations and an increase in growers electing to resign their membership and/or send their fruit to BCTFC's competitors.
8. The final tipping point in the already precarious financial position of BCTFC was the unexpected and significant crop reduction caused by unusually severe weather pattern in 2024. As a result, the 2024 crop saw a reduction in volume by 85-90% in cherries and all other stone fruit were reduced to zero due to those weather events. Received apple volumes, the largest commodity of BCTFC, had already been dropping over the preceding years but 2024 estimated volumes provided to BCTFC in July 2024 from apple growers showed a staggering approximately 50% reduction in projected apple volumes from the 2023 volumes, significantly less than expected. With rising carrying and debt costs from delayed property sales and significantly reduced fruit volumes, BCTFC is no longer able to meet its overhead requirements, pay its growers or other creditors.
9. As at August 9, 2024, the Petitioners have an outstanding borrowing of approximately \$51 million. Over \$50 million of such borrowings relate to the credit facilities (the "**CIBC Facilities**") with the Petitioners' senior secured lender, the Canadian Imperial Bank of Commerce ("**CIBC**"). The Petitioners are currently non-compliant and in breach of their debt service loan covenant and certain reporting covenants under the CIBC Facilities.

10. In addition, the Petitioners owe significant payments to BCTFC members and other contracted growers who are fruit suppliers for the 2023 and 2024 fruit deliveries.
11. As a result of these factors and based on current cash balance, the Petitioners will be unable to fund their financial commitments in 2024 absent a restructuring of their affairs.

Cooperative Organization

12. BCTFC is a member-owned and directed cooperative that specializes in caring, picking and transporting fruit to BCTFC for distribution to its customers. It currently consists of approximately 290 local fruit grower and orchardist families (the “**Growers**”) that work together as part of a larger community.
13. BCTFC constantly works to improve the quality of the fruit the Growers produce. Each grower nurtures their orchards to create the best possible fruit, and is responsible for the care, picking of, and transporting the fruit to BCTFC. In return, BCTFC provides expertise in receiving and storage, sorting and packing, marketing and then transporting the product to customers.
14. As of July 16, 2024, there were 174 voting members of BCTFC.
15. On August 3, 2024, two members of BCTFC issued a member requisition to the BCTFC Board, as defined below, for a special general meeting to be called within 7 days. The stated purpose for the special general meeting is to address concerns regarding the fiduciary duties and authority of the directors of BCTFC to continue to act.

Operation of the Petitioners

16. BCTFC is responsible for transporting, packing, promoting, and selling the fruit produced by the Growers. To do so, BCTFC operates one packing facility and four fruit storage facilities which are located in British Columbia
17. GSC currently operates five supply stores across the Okanagan region of British Columbia and an online e-commerce website selling a wide variety of grower supplies and services (collectively, the “**GSC Supply Stores**”).

18. GSC has entered into lease agreements for the GSC Supply Stores in British Columbia (the "**GSC Leases**"). As of August 6, 2024, GSC has approximately \$70,000 in rent arrears in respect of the GSC Leases.
19. BCTFC has ten directors on its board, consisting of Rob Stewart (Chair), Brian Meyers, (Vice Chair), David Bentall, John Kay, Greg Sanderson, Lakhmer Klar, Ron Vollo, Chamanjit Sharma, Surinder Gosal, and Gurjit Pabla (the "**BCTFC Board**").
20. The board of directors of BCTFC, by way of resolution on July 25, 2024, determined that due to extremely low estimated fruit volumes and the difficult market and financial conditions facing BCTFC, BCTFC would not be able to effectively operate the business through 2024.
21. On July 26, 2024, BCTFC released a letter to all Growers informing them that BCTFC will not be receiving fruit beginning July 26, 2024, as BCTFC would not be able to pay the Growers for the fruit, as required (via pool returns).

Employees and Senior Management

22. GSC has approximately 49 employees as of July 31, 2024. Its' senior management consists of Robert Bartosequicz, Director of Finance, and Mark Welton, General Manager.
23. The directors of GSC are the same as the BCTFC Board (the "**GSC Board**", together with the BCTFC Board, the "**Boards**").
24. As of July 25, 2024, BCTFC had approximately 193 employees, consisting of:
 - (a) 115 active union employees;
 - (b) 12 union employees on unpaid leave;
 - (c) 39 active salaried non-union employees;
 - (d) 14 active hourly non-union employees;
 - (e) 6 active temporary non-union employees;
 - (f) 3 non-union employees on paid leave; and

- (g) 4 non-union employees on long-term disability.
25. The union employees are part of the United Food and Commercial Workers Union, Local 247.
26. The employment relationship between BCTFC and the union workers is governed by a collective agreement between BCTFC and the United Food and Commercial Workers Union, Local 247 dated for reference October 2, 2023.
27. On July 29, 2024, BCTFC laid off 157 employees, advising such employees that BCTFC, and all of its subsidiaries, were in the process of ceasing or reducing operations. An additional 11 employees were laid off on August 5, 2024. 21 employees are currently employed on a short-term basis to assist with the shutdown and decommissioning of the facilities.
28. Currently, BCTFC's senior management consists of:
- (a) Douglas Pankiw, as Interim Chief Executive Officer and Chief Financial Officer;
 - (b) Laurel Van Dam, Vice President, Grower Relations & Corporate Affairs;
 - (c) Brent MacKinnon, Vice President, People & Culture; and
 - (d) Craig Ogilvie, Vice President, Supply Chain,
- (collectively, the "**Management**").
29. The Boards and the Management have been and remain engaged in the initiatives and actions set out herein. It is contemplated that many of the Petitioners' directors will continue in their roles during the CCAA proceeding, if the Petitioners' application is granted.
30. Directors on BCTFC's Board are elected by the members of the cooperative for three-year terms. BCTFC must have at least six directors but no more than ten at one time.
31. The Petitioners have arranged and funded standard director and officer liability insurance.

Recent Market Circumstances

32. Fruit processed by BCTFC includes apples, cherries, pears, apricots, peaches, plums, prune plums, nectarines, and table grapes. For the 2023 crop, the commodity volume percentage per fruit was 89% apples, 7% cherries, 2% peaches, and 2% other.
33. BCTFC's apple volume has declined significantly over the years from approximately 122 million lbs. in 2018 to 60 million lbs. in 2022 and 2023 as a result of catastrophic weather events, including the heat dome in 2021, wildfires in 2023 and most recently the arctic air in 2024. BCTFC has also lost market share to independent packers, leading to increased competition, including from the Washington State (US) apple farmers. These factors have also affected GSC as it has reduced demand for grower supplies.
34. Commencing 2020, BCTFC implemented an Apple Quality Income Assurance Program (the "**AQ Program**") for apple growers with full-service apple contracts to ensure product quality and improve returns for the Growers.
35. The AQ Program provides minimum fixed returns and an earn up incentive for Growers who produce apples that reach a certain grade. BCTFC implemented the AQ Program for the 2020-2023 crop years and was committed to maintaining this program for the 2024 harvests.
36. The AQ Program provided apple growers with an assurance of a greater return for certain varieties, grades, and sizes of apples preferred by customers. However, the return to Growers exceeded the respective operating income for the 2023 year, meaning that the excess returns were funded by debt or proceeds from real estate sales.
37. In 2022, the BCTFC Board considered the need to expand and renovate its aging facilities. It was determined that the facilities needed to be upgraded and modernized in order to improve the Growers returns.
38. After consideration, the BCTFC Board resolved to proceed with the Oliver facility capital project expansion (the "**Oliver Project**") as it was determined to be the most cost-effective solution. The expansion would improve the packing facility in Oliver by increasing the apple packing capacity to 80 million lbs. per year, install a new cherry packing line and enhance shipping and storage facilities, among other things.

39. On or about December 18, 2022, BCTFC, as owner, entered into an agreement with Fillmore Construction Management Inc. ("**Fillmore Construction**"), as construction Manager, in which Fillmore Construction was to perform the services and work related to the Oliver Project.
40. In the meantime, in an attempt to reduce its indebtedness to creditors, BCTFC considered selling its non-operational real estate. However, the sale of real estate has not proceeded as quickly as anticipated due to a dispute amongst members on whether it should be sold as well as a decline in the real estate market.
41. The Oliver Project was implemented as a restructuring initiative to reduce capital expenditures and interest burden while modernizing and increasing cost efficiencies in order to improve BCTFC's financial liquidity and Grower returns. Once the Oliver Project is complete, BCTFC planned to decommission its other packaging facilities.
42. The Oliver Project was to be funded by the CIBC Facilities and the sale of certain of BCTFC's real estate to, in turn, reduce the incremental funding from CIBC related to the project.
43. In December 2023, BCTFC engaged Alvarez & Marsal Canada ULC to review and assess the current financial position of BCTFC, among other things, to assist with near-term liquidity issues.
44. On July 31, 2024, BCTFC received a letter from counsel for Fillmore Construction enclosing Claim of Lien no. CB1475172 filed on behalf of Fillmore Construction in the Kamloops Land Title Office regarding monies allegedly owing to Fillmore Construction relating to its role as construction manager for the Oliver Project.

Assets and Liabilities

Recent Financial Statements

45. BCTFC's and GSC's 2022 and 2023 Financial Statements are attached as Exhibits "J" and "K", respectively, to Affidavit #1 of Douglas Pankiw, affirmed August 8, 2024 ("**Pankiw Affidavit #1**").

Net Losses

46. In the last three years, BCTFC's net earnings or losses can be summarized as follows:

Fiscal Year	Net Earnings or (Operating Loss)
2021	\$8,023,666
2022	\$15,278,735
2023	(\$4,514,799)

47. In the last three years, GSC's net earnings or losses can be summarized as follows:

Fiscal Year	Net Earnings or (Operating Loss)
2021	(\$121,290)
2022	\$613
2023	(\$980,870)

48. The net earnings and operating losses noted above include a gain on sale of investments, among other things: \$7 million in 2021 and \$21.8 million in 2022.
49. Earnings, when available, are distributed to the Growers based upon the product delivered to the cooperative.

Assets

50. BCTFC's assets consist primarily of owned and leased real property, equipment, inventory, accounts receivable, membership list and goodwill. As of May 31, 2023, BCTFC recorded a book value of \$92,417,705 in current and long-term assets, which included:
- (a) \$19,878,314 in current assets, mainly comprised of receivables, inventory, prepaid expenses, and property held for sale;
 - (b) \$71,619,821 in property, plant and equipment; and
 - (c) \$917,518 in intangible assets.

51. BCTFC owns the following real estate properties:

Address	2024 BC Assessment Value
101-8911 Jubilee Road E, Summerland, BC	\$6,602,000
327 Co-op Ave, Oliver, BC	\$5,247,000
334 Packing House Lane, BC	\$3,127,000
880 Vaughan Avenue, Kelowna, BC	\$21,101,000
3335 & 3345 Sexsmith Road, Kelowna, BC	\$26,651,600
3670 Highway 97, Kelowna, BC	\$2,899,000
9718 Bottom Woodlake Road, Lake Country, BC	\$9,762,000
2605 Acland Road, Kelowna, BC	\$7,995,000
528 10 th Avenue Keremeos, Keremeos, BC	\$2,690,000
754 35 th Avenue S Creston, Creston, BC	\$1,804,400
1200 Waddington Drive, Vernon, BC	\$2,207,000

52. The property with a civic address of 880 Vaughan Avenue, Kelowna, British Columbia is currently subject to a purchase and sale agreement. The buyer of the property has until August 30, 2024, to remove conditions.
53. GSC's assets primarily consist of leased real property, equipment, inventory, accounts receivable, and goodwill. As at December 31, 2023, GSC recorded a book value of current and long-term assets in the amount of \$19,400,368.

Liabilities

54. The Petitioners liabilities are comprised primarily of amounts owed in respect of the CIBC Facilities, payables and accruals and funds due to Growers.
55. BCTFC's current and long-term liabilities, as reported in its May 31, 2023, Financial Statements, totaled \$42,980,037. This amount consists of:

- (a) \$40,974,444 in current liabilities; and
 - (b) \$2,005,593 in long-term liabilities related to the Growers' loan certificates.
56. GSC's current and long-term liabilities, as reported in its December 31, 2023, Financial Statements, totaled \$15,516,061.
57. The Petitioners' financial obligations are discussed in further detail below. Capitalized terms not otherwise defined herein have the meaning from the respective financial agreements.

The CIBC Credit Facilities

58. On March 23, 2012, GSC, as borrower, entered into a credit agreement with CIBC, as lender (as amended¹, the "**GSC Credit Agreement**").
59. Security for GSC's obligations under the GSC Credit Agreement is summarized as follows:
- (a) a general security agreement against all present and future undertakings and personal property;
 - (b) security under section 427 of the Bank Act (Canada);
 - (c) a guarantee from BCTFC;
 - (d) a mortgage in the amount of \$7,820,000 against the property located at 2605 Acland Road, Kelowna, BC;
 - (e) an acknowledged assignment of insurance; and
 - (f) a letter of acknowledgement from BCTFC and GSC dated December 21, 2023, confirming the above referenced security.

¹ The GSC Credit Agreement was amended as follows: Amendment #1 dated May 4, 2012; Amendment #2 dated July 24, 2012; Amendment #3 dated August 14, 2012; Amendment #4 dated September 19, 2012; Amendment #5 dated December 20, 2012; Amendment #6 dated April 17, 2014; Amendment #7 dated August 4, 2015; Amendment #8 dated December 11, 2015; Amendment #9 dated December 30, 2015; Amendment #10 dated December 22, 2017; Amendment #11 dated September 28, 2020; Amendment #12 dated January 28, 2022; Amendment #13 dated July 11, 2022; Amendment #14 dated November 21, 2022; and Amendment #15 dated December 8, 2023.

60. On January 3, 2018, BCTFC, as borrower, entered into a credit agreement with CIBC, as lender (as amended², the "**BCTFC Credit Agreement**").
61. Security for BCTFC's obligations under the BCTFC Credit Agreement is as follows:
- (a) a general security agreement against all present and future undertakings and personal property;
 - (b) a mortgage in the initial amount of \$40,000,000 against all real estate owned by BCTFC;
 - (c) a guarantee from BCTF Industries, as secured by a general security agreement and pledge of Duplicate Certificate of Title in an unspecified amount against the property located at 1473 Water Street Kelowna, BC;
 - (d) a guarantee from GSC;
 - (e) an acknowledged assignment of insurance;
 - (f) a guarantee provided by Her Majesty the Queen in the Rights of Canada;
 - (g) an environmental indemnity agreement dated October 9, 2008, between BCTFC and CIBC;
 - (h) an environmental indemnity dated August 21, 2019, between BCTFC and CIBC;
 - (i) a letter of acknowledgement from BCTFC, BCTF Industries and GSC dated December 21, 2023, confirming the above security; and
 - (j) an assignment of proceeds granted by BC Tree dated December 21, 2023, with respect to deposits and sale proceeds relating to 880 Vaughn Avenue, Kelowna, British Columbia.

² The BCTFC Credit Agreement was amended as follows: Amendment #1 dated August 9, 2018; Amendment #2 dated September 13, 2019; Amendment #3 dated November 29, 2019; Amendment #4 dated February 12, 2021; Amendment #5 dated January 28, 2022; Amendment #6 dated March 29, 2022; Amendment #7 dated June 10, 2022; Amendment #8 dated February 23, 2023; Amendment #9 dated July 31, 2023; Amendment #10 dated August 23, 2023; Amendment #11 dated September 11, 2023; Amendment #12 dated October 10, 2023; Amendment #13 dated December 8, 2023; Amendment #14 dated January 22, 2024; Amendment #15 dated February 22, 2024; and Amendment #16 dated March 25, 2024.

62. BCTFC and GSC were found to have been non-compliant with the Adjusted Fixed Charge Cover Ratio under the Credit Agreements as of the 2022 and 2023 fiscal year ends. As a result, CIBC issued a forbearance letter to BCTFC dated January 22, 2024 noting this non-compliance and requesting, among other things, that BCTFC ensure compliance going forward.
63. As of August 9, 2024, approximately \$50.7 million has been borrowed under the Credit Facilities. The Petitioners are currently unable to repay the Credit Facilities. On August 6, 2024, CIBC issued demands for repayment and notices under section 244 of the *Bankruptcy and Insolvency Act*.
64. CIBC has confirmed its support for the filing of this CCAA proceeding and the relief sought herein, and as discussed further below, has agreed to provide interim financing to the Petitioners to allow them to maintain operations and complete restructuring.

Other Liabilities/Security

65. The Petitioners have other secured creditors with security registrations (mainly relating to equipment such as computers, as well as several vehicles) in the British Columbia Personal Property Registry.
66. On July 29, 2024, Claim of Lien no. CB14753210 was filed on behalf of Glacier Heights Refrigeration Inc. in the Kamloops Land Title Office regarding monies allegedly owing by BCTFC to Glacier Heights Refrigeration Inc. relating to work done at the property with parcel identifier number 012-603-911.
67. Further, the Petitioners owe amounts to Growers, suppliers, landlords, and other creditors.

CCAA Relief and the Insolvency of the Petitioners

Circumstances Preceding CCAA Filing

68. The Petitioners are currently in the midst of a liquidity crisis, primarily due to (a) adverse weather resulting in a reduction of fruit volumes and increased competition and (b) the internal dispute among members regarding disposal of non-operational real estate owned by BCTFC. These factors, among other things, have necessitated a restructuring of the

Petitioners' affairs, including the sale of certain real estate assets to reduce the Petitioners' indebtedness.

Statutory Requirements of the CCAA

69. The Petitioners are entities to which the CCAA applies and have debts in excess of \$5,000,000.
70. As set out above, and as shown in the Petitioners' financial statements, on a consolidated basis, the Petitioners are in the midst of a liquidity crisis. They are (on a consolidated basis) insolvent on a cash flow basis and are unable to meet their obligations as they generally come due.
71. Alvarez & Marsal Canada Inc. (the "**Proposed Monitor**") is an affiliate of the financial advisors that were engaged by the Petitioners in December 2023 to assist with the review of the Petitioners' business and operations and is prepared to act as Court-appointed Monitor should an Initial Order be obtained. The Petitioners in conjunction with the Proposed Monitor have prepared a 13-week cash flow statement (the "**Cash Flow Statement**"). Although the Cash Flow Statement is the best forecast currently available, there is an expectation that there will be some changes and/or adjustments as the path forward becomes clearer.
72. Pursuant to the Cash Flow Statement, the Petitioners are forecasted to draw approximately \$4,041,000 in order to meet their obligations through to the end of the Cash Flow Statement period.

Stay of Proceedings

73. A stay of proceedings is essential to maintaining the status quo in order to preserve the value of the Petitioners' business and to ensure that no unsecured creditor of the Petitioners receives preferential treatment relative to other unsecured creditors. Such a stay would provide the Petitioners with the opportunity to conduct the SISF with the intention to reduce or repay secured indebtedness to reduce expenses and to formulate and present a transaction for approval to this Court and prepare a CCAA plan of arrangement.

Interim Financing

74. It is anticipated that the Petitioners will require incremental financing that will see aggregate indebtedness approach approximately \$48 million. In order to support certain near-term liquidity requirements, CIBC has agreed to act as the interim lender (the “**Interim Lender**”) during these CCAA proceedings, and to provide an interim financing facility (the “**Interim Financing Facility**”) pursuant to the Interim Financing Term Sheet between the Petitioners and the Interim Lender, dated as of August 12, 2024 (the “**Interim Financing Term Sheet**”).
75. The key terms of the Interim Financing Term Sheet are highlighted in the following chart:

Interim Financing – Summary of Key Terms	
Lender	CIBC
Facility type	Non-revolving loan
Maximum amount under the Interim Financing Term Sheet	A maximum principal amount of \$4,050,000 including an initial advance in the amount of \$1,165,000.
Availability	The Interim Financing Facility shall be used to finance the Petitioners operating requirements and restructuring costs in accordance with the applicable cash flow forecast as approved by the Interim Lender.
Interest Rate	9.95% per annum, compounded and calculated weekly.
Maturity Date	Earlier of: <ul style="list-style-type: none">• November 30, 2024 (or such later date as the Interim Lender in its sole and absolute discretion may agree, acting reasonably);• the date of which (i) the stay of proceedings under the CCAA proceeding is lifted without the consent of the Interim Lender or (ii) the CCAA proceedings are terminated for any reason;

	<ul style="list-style-type: none"> • implementation of a plan of compromise or arrangement within the CCAA proceedings which has been approved by the requisite majorities of the Petitioners' creditors and by an order entered by the Court; or • the conversion of the CCAA proceedings into a proceeding under the <i>Bankruptcy and Insolvency Act</i> (Canada) ("BIA") or into a receivership under the BIA or applicable provincial legislation. <p>The Maturity Date will be accelerated upon the occurrence of an event of default.</p>
Interim Lender Charge	The Petitioners must obtain an order granting the Interim Lender Charge in favour of CIBC over all property, assets, and undertakings and having priority over all charges and security other than the Administration Charge.
Reporting Requirements	<ul style="list-style-type: none"> • Weekly report showing actual cash receipts and actual expenditures; • Weekly update and extension to the cash flow forecasts; and • Weekly detailed bridges for each variable line-item of the Petitioners' financial statements and any other line-item variances outside of Management's direct control.

76. Further, the Interim Financing Term Sheet contains, among others, the following provisions:

- (a) the Petitioners must meet certain conditions precent to funding the Initial Advance (as defined thereunder), which includes the Petitioners obtaining the Initial Order;
- (b) the parties agree to a budget in accordance with the Cash Flow Projections (as defined thereunder) under the Interim Financing Term Sheet, which the Petitioners are required to comply with;

- (c) on a bi-weekly basis or as otherwise agreed with the Interim Lender, the Petitioners shall pay all reasonable and documented costs and expenses of the Interim Lender, and all reasonable and documented fees, expenses, and disbursements of outside counsel, appraisers, field auditors, and any financial consultant related to or in connection with the CCAA proceedings;
- (d) it is an Event of Default under the Interim Financing Term Sheet to, among other things, fail to have the Monitor appointed under the Initial Order or the Restated Initial Order on such terms that are acceptable to the Interim Lender in its sole and absolute discretion;
- (e) the Monitor appointed pursuant to the Initial Order will have expanded powers to allow the Monitor, to, among other matters, (a) take any and all actions and steps to manage, operate, and carry on the business and liquidate the Petitioners' property and (b) preserve, protect, and exercise control over the Petitioners' property.
- (f) the Interim Lender Charge will not secure any obligations other than the obligations arising from the Interim Financing Term Sheet;
- (g) the Petitioners shall apply all receipts and deposits from the Petitioners' operations, real and personal property sales, and other activities to pre-filing debt obligations related to the CIBC Facilities; and
- (h) all advances shall be deposited into a CIBC account controlled by the Monitor.

77. In the circumstances, the Petitioners have focused efforts on negotiating an Interim Financing Facility with CIBC, which resulted in the Interim Financing Term Sheet.

Charges on Assets, Properties and Undertakings of the Petitioners

78. It is contemplated that the following Court-ordered charges on the assets, property and undertaking of the Petitioners will be required:
- (a) a first-priority Court-ordered charge in priority to all other charges up to a maximum of \$250,000 (to be increased to \$500,000 under the Amended and Restated Initial

Order) for fees of the Proposed Monitor, counsel to the Proposed Monitor, and counsel to the Petitioners (the “**Administration Charge**”);

- (b) a second-priority Court-ordered charge in priority to all other charges other than the Administration Charge, to secure the obligations of the Petitioners under the Interim Financing Term Sheet (referenced above as the Interim Lender Charge);
- (c) a fourth-priority Court-ordered charge in priority to all other charges other than the Administration Charge, the D&O Charge, and the CIBC Indebtedness, up to a maximum amount of \$350,000 for the Petitioners’ directors and officers (the “**D&O Charge**”).

- 79. In addition, the indebtedness of the Petitioners owing pursuant to their pre-filing credit facilities with CIBC, whether such indebtedness arose before or after the date of the Initial Order will rank in priority to the D&O Charge.
- 80. The Petitioners believe that the Administrative Charge, D&O Charge and the Interim Lender Charge are necessary and are fair and reasonable in the circumstances.
- 81. Further, several of the Petitioners’ directors and officers have expressed the need for certainty with respect to potential personal liability if they continue in their current capacities for the benefit of the Petitioners’ stakeholders during the CCAA proceedings.
- 82. The Petitioners maintain an insurance policy in respect of the potential liability of directors and officers, the limited of which is \$5,000,000 for all claims. The D&O Charge is not intended to duplicate insurance coverage, but only to apply in the event that coverage limitations or exclusions were to become an issue.

SISP

- 83. If the proposed Initial Order is granted, the Petitioners intend to seek approval of the SISF at the Comeback Hearing.
- 84. It is anticipated that the Proposed Monitor will conduct the SISF, with some assistance from third parties.

Payments During the CCAA Proceedings

85. During the course of the CCAA proceedings, the Petitioners intend to make payments for post filing liabilities, as set out in the Cash Flow Statement.

Position of the Secured Creditors

86. These CCAA proceedings and the intended SISF seek to achieve an outcome in which the indebtedness owed to CIBC under the CIBC Facilities be paid out in full from operational receipts and collections and realization under the SISF to allow the Petitioners to emerge or formulate a CCAA plan of arrangement with remaining assets or funds.

Monitor

87. The Proposed Monitor has acted as a monitor in this and other Canadian jurisdictions and is qualified and competent to act as the Monitor of the Petitioners. The Proposed Monitor has advised the Petitioners that it is willing to so act as Monitor, if appointed.

Part 3: LEGAL BASIS

1. The Petitioners plead and rely on:
- (a) the CCAA;
 - (b) the *Cooperative Association Act*;
 - (c) the BIA;
 - (d) the *Supreme Court Civil Rules*;
 - (e) the inherent jurisdiction of this Honourable Court; and
 - (f) such other legal basis as counsel may advise and this Honourable Court may accept.

The CCAA applies to the Petitioners

2. The Court has jurisdiction to grant protection under the CCAA to a "debtor company" where the total claims against such company exceed \$5 million. The CCAA defines

"debtor company" as including "any company that is bankrupt or insolvent" – but it does not define "insolvent".

CCAA, ss. 2 and 3

3. The CCAA defines "company" as including any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province.

CCAA, s. 2(1)

4. The conceptualization of insolvency under the CCAA is informed, but not dictated, by the definition of "insolvent person" under the BIA, which is as follows:

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

BIA, s. 2;

Stelco Inc., Re, 2004 CanLII 24933 (ON SC) [*Stelco*]

5. The conceptualization of insolvency under the CCAA is, indeed, broader than under the BIA in order to give effect to the CCAA's rehabilitative objectives. As such, a financially troubled company is insolvent for the purposes of the CCAA if it is reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.

Stelco, supra, para. 26;

Lemare Holdings Ltd. (Re), 2014 BCSC 893, para. 18

6. In this case, the Petitioners are insolvent on a cash flow basis. As disclosed in Pankiw Affidavit #1, the Petitioners have suffered net operating losses over the past years, caused

by, among other things, disagreements among members regarding operational and business decisions, made worse by the effects of adverse weather.

7. The Petitioners currently have significant obligations under the CIBC Facilities that are in default, and insufficient liquidity to meet those obligations in the near term. As such, the Petitioners are insolvent for the purposes of the CCAA.
8. BCTF Industries and GSC are wholly owned and controlled subsidiaries of BCTFC and are therefore affiliated companies for the purposes of section 3(2) of the CCAA. Further, GSC is insolvent in its own right as a result of the GSC Credit Agreement and having granted a guarantee of BCTFC's obligations under the BCTFC Credit Agreement.
9. As set out in Pankiw Affidavit #1, the total liabilities of the Petitioners are significantly in excess of \$5 million.
10. GSC and BCTF Industries are companies incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16. BCTFC is a cooperative association incorporated under the *Cooperative Association Act*. Accordingly, the Petitioners are "companies" for the purposes of the CCAA as they are companies, corporations or legal persons incorporated under an Act of a provincial legislature.

Cooperative Association Act, s. 1(1)

11. The Petitioners therefore satisfy the statutory requirements of section 3(1) of the CCAA as being companies to which the CCAA applies.

Urgency

12. The Petitioners provided short notice of this application to the Growers and only certain (builder lien) creditors.
13. Section 11 of the CCAA states that:

... if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

14. *Supreme Court Civil Rule 8-5(6)* provides that the Court may make an order without notice in the case of urgency.
15. In this case, the Petitioners require urgent relief due to its liquidity challenges and its current inability to pay creditors, including CIBC, the Growers, and employees. In the result, the Petitioners have sought to have this application heard on short notice to preserve and maintain the assets of the Petitioners and to prevent enforcement steps from being taken in respect of the various liabilities in the hope of achieving a successful SISP and plan of arrangement.

The Discretion of the Court

16. An Initial Order under the CCAA should be granted if it accords with the remedial purposes of the CCAA, which include rehabilitation, the avoidance of social and economic loss resulting from liquidation, and the building of consensus among interested stakeholders.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60, paras. 15, 59, and 70

17. An Initial Order may include any relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course during the restructuring period. Such relief typically includes a stay of proceedings, which ensures that creditor enforcement does not interfere with the company's ability to maintain operations while restructuring its affairs. The stay of proceedings maintains the status quo while the company develops a plan for the benefit of its creditors.

CCAA, s. 11.01, 11.02;

Century Services, supra, paras. 60-62;

Lehndorff General Partner Ltd. (Re), [1993] O.J. No 14 (S.C.), paras. 5-6

18. The threshold for a debtor company to obtain a stay of proceedings under the CCAA is low. The company only has to satisfy the Court that a stay of proceedings would "usefully further" its efforts to reorganize. The debtor company is not required to put forward anything more than a germ of a plan that requires protection.

Century Services, supra, para. 70;

Industrial Properties Regina Limited v Copper Sands Land Corp., 2018 SKCA 36
[*Industrial Properties*], para. 21

19. A debtor company is expected to act in good faith and with due diligence both before and after the commencement of proceedings under the CCAA; however, any in-depth analysis of good faith and due diligence is ordinarily deferred to subsequent applications. In any event, the existence of financially challenging circumstances is not evidence of an absence of good faith or due diligence on the part of the debtor company.

Industrial Properties, supra, paras. 22-23

20. Here, the Petitioners have acted with good faith and due diligence in addressing its cash flow and illiquidity, and by filing under the CCAA to facilitate a restructuring of its business and affairs.

The Monitor Should be Appointed

21. The Proposed Monitor is a licensed trustee within the meaning of section 2 of the BIA and has signed a consent to act as the Monitor of the Petitioners. The Proposed Monitor is qualified to act as Monitor under section 11.7 of the CCAA.

The Statutory Requirements are Satisfied

22. Section 10(2) of the CCAA provides that an initial application under the CCAA must be accompanied by:
- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
 - (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
 - (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.
23. These conditions have been satisfied based on the evidence provided in Pankiw Affidavit #1.

The Charges are Necessary and Appropriate

24. The Petitioners are seeking charges that are usual and customary for a proceeding of this nature.
25. CIBC is the Petitioners' senior secured lender and supports the granting of the charges sought in the draft initial order.

The Administration Charge

26. The CCAA authorizes the Court to grant a priority charge in respect of professional fees and disbursements on notice to affected secured creditors. The factors to consider in determining whether to approve an administration charge include:
 - (a) the size and complexity of the businesses being restructured;
 - (b) the proposed role of the beneficiaries of the charge;
 - (c) whether there is an unwarranted duplication of roles;
 - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
 - (e) the position of the secured creditors likely to be affected by the charge; and
 - (f) the position of the Monitor.

CCAA, s. 11.52;

Canwest Publishing Inc., 2010 ONSC 222 [*Canwest*], para. 54

27. Courts have recognized that administration charges, as well as charges in favour of directors and officers, are often necessary to ensure a debtor company's successful restructuring. For example, in *Re Timminco*, Justice Morawetz (now Chief Justice) stated that failing to provide such charges would "result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings".

Timminco Limited (Re), 2012 ONSC 506, para. 66

28. In the instant case, the Administration Charge is required to secure the collective fees and disbursements incurred before and after the commencement of these proceedings of legal counsel for the Petitioners, the Proposed Monitor and its counsel. The charge is necessary in light of the size and complexity of the restructuring and the necessary involvement of qualified professionals. The Petitioners require the knowledge, expertise and continuing participation of the beneficiaries of the proposed Administration Charge in order to successfully complete the SISP process and restructure its significant debt.
29. The proposed quantum of the Administration Charge, in the amount of \$350,000, is reasonable in the circumstances, including the size and complexity of the Petitioners' operations and assets. The Proposed Monitor has advised in its Pre-Filing Report that such quantum is appropriate in light of the nature of the Petitioners' assets, the scope of duties of the Monitor, and the scope of duties of counsel to the Petitioners and the Monitor.

The Interim Lender Charge

30. As discussed above, CIBC has agreed to provide the Petitioners with the Interim Financing Facility to finance the costs of restructuring in these CCAA proceedings.
31. The CCAA authorizes the Court to grant interim financing and to also order a charge with respect to the same, over the assets of the debtor company in priority of any secured creditor of the debtor, on notice to the secured creditors who are likely to be affected by such security or charge and in an amount that the court considers appropriate having regard to the debtor company's cash flow statement. The security or charge may not secure an obligation that exists before the order granting the charge is made.

CCAA, s. 11.2(1)

32. As section 11.2 of the CCAA provides the statutory jurisdiction to grant an interim lender charge, the Court should first address whether the proposed charge complies with that section before moving on to address the enumerated factors under s. 11.2(4) of the CCAA, which are discussed below.

Canwest, supra, para. 42

Section 11.2(1) of the CCAA

33. The Petitioners submit the Interim Lender Charge complies with s. 11.2(1) of the CCAA and does not secure any of the Petitioners' pre-filing obligations to CIBC.
34. It is an express term of the Interim Financing Term Sheet that advances made under the Interim Financing Facility may not be used to satisfy pre-filing obligations under the Credit Agreements or any other pre-filing debt.
35. While the terms of the Interim Financing Term Sheet provide that post-filing receipts collected by the Petitioners shall be applied to pay down the Petitioners' pre-filing debt under the Credit Agreements, mechanisms in interim financing agreements whereby pre-filing obligations are paid from proceeds derived by post-filing operations are not contrary to s. 11.2(1) of the CCAA.
36. In a 2016 decision in *Performance Sports Group Ltd., Re*, Justice Newbould of the Ontario Superior Court examined a similar interim financing facility and concluded as follows:

Section 11.2(1) of the CCAA provides that security for a DIP facility may not secure an obligation that existed before the order authorizing the security was made. The effect of this provision is that advances under a DIP facility may not be used to repay pre-filing obligations. In this case, the ABL DIP Facility is a revolving facility. Under its terms, receipts from operations of the PSG Entities post-filing may be used to pay down the existing ABL Facility. The applicants submit that in this case, the ABL DIP Facility preserves the pre-filing status quo by upholding the relative pre-stay priority position of each secured creditor. By requiring that the PSG Entities only use post-filing cash receipts to pay down the accrued balance under the revolving credit facility, the ABL DIP Lenders are in no better position with respect to the priority of their pre-filing debt relative to other creditors. I accept that no advances under the ABL DIP Facility will be used to pay pre-filing obligations and there has been inserted in the Initial Order a provision that expressly prevents that. The provision that receipts from operations of the PSG Entities post-filing may be used to pay down the existing ABL Facility is approved.

Re: Performance Sports Group Ltd., 2016 ONSC 6800, para. 22

37. In *Re: Comark Inc.*, Justice Morawetz reviewed a similar interim financing facility, whereby pre-filing obligations of the debt would be reduced by proceeds from post-filing operations, which would be deposited into a blocked account and swept by the lender in order to reduce the pre-filing debt.

Comark Inc. (RE), 2015 ONSC 2010 [*Comark*], paras. 19 and 24

38. In considering whether that interim financing complied with s. 11.2(1) of the CCAA, Justice Morawetz noted that:

- (a) the proposed facility would not result in a greater level of secured debt than was contemplated under the pre-filing facilities;
- (b) the proposed charge would not prime other secured creditors' purchase money security interests; and
- (c) the proposed charge would increase while the pre-filing facility would be paid down.

Comark, supra, para. 26

39. Justice Morawetz then accepted the submissions from the debtor and the proposed monitor that since the pre-filing obligations were being reduced by the use of the debtor's cash generated from its business, the proposed charge only secured post-filing advances made under the interim facility, and confirmed that such a facility does not contravene s. 11.2(1) of the CCAA.

Comark, supra, para. 28

40. Similarly, Justice Fitzpatrick noted the following in *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586 at paragraphs 48 and 49:

48 The Interim Financing agreements are amendments to the Credit Facility, pursuant to which the Lenders will provide further liquidity to MEC despite any defaults under the Credit Facility. It is an express term of the Interim Financing that advances made under the Interim Financing cannot be used to satisfy pre-filing obligations under the Credit Facility or any other pre-filing debt. In addition, the Interim Financing Charge does not secure any of MEC's pre-filing obligations and includes a "carve out" to ensure that other secured creditors (such as those with Purchase Money Security Interests (PMSIs)) are not primed by the Charge.

49 While the terms of the Interim Financing provide that post-filing receipts collected by MEC will be applied to pay down MEC's pre-filing debt under the Credit Facility, I agreed with MEC that mechanisms in interim financing agreements by which pre-filing obligations are paid from

proceeds derived by post-filing operations do not contravene s. 11.2(1) of the CCAA.

Section 11.2(4) of the CCAA

41. In determining whether an interim financing charge is appropriate, the Court is also required to consider the following factors under s. 11.2(4) of the CCAA:
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

League Assets Corp. (Re), 2013 BCSC 2043, para. 24

42. The Petitioners submit the application of the above factors in this case support the approval of the Interim Financing Facility and the granting of the Interim Lender Charge, for the following reasons:
- (a) the Interim Financing Facility is required so that the Petitioners will have the necessary liquidity to fund its business and restructuring efforts during the CCAA proceeding, including conducting the SISP. Without the Interim Financing Facility, the Petitioners will not be able to fund their business and restructuring efforts, and the value of the Petitioners' assets would be diminished as a result;

- (b) the Petitioners have the confidence of CIBC, which is the Petitioners' senior secured lender. CIBC supports the approval of the Interim Financing Facility and the granting of the Interim Lender Charge;
- (c) CIBC has required the security of a court-ordered priority charge under the CCAA before advancing any funds; and
- (d) the Proposed Monitor supports the approval of the Interim Financing Facility and the granting of the Interim Lender Charge.

Section 11.2(5) of the CCAA

43. Pursuant to section 11.2(5) of the CCAA, when an order is made for interim financing at the same time as the granting of the Initial Order, the Court shall not grant the interim financing order unless it is satisfied that the terms of the financing are limited to those terms that are reasonably necessary for continued operations of the debtor in the ordinary course of business during the time period of the initial stay.

CCAA, s. 11.2(5);

Miniso International Hong Kong Limited v Migu Investments Inc., 2019 BCSC 1234,
paras. 79-90

44. While the draws on the Interim Financing Facility are subject to projections in the Cash Flow Statement, it is anticipated that approximately \$4,041,000 will be required from the date of the Initial Order to the date of the Comeback Hearing. The Petitioners and the Proposed Monitor believe this amount is reasonable given what is required to operate the Petitioners in the ordinary course, and to fund the various costs of the restructuring during that period.

The D&O Charge

45. The Court may grant a charge in favour of directors and officers in an amount the Court considers appropriate. The purpose of the D&O Charge is to indemnify directors and officers against any obligations or liabilities that may arise after the Initial Order is granted.

CCAA, s. 11.51

46. As with other charges, the Petitioners must give notice to the secured creditors who are likely to be affected by the D&O Charge. CIBC supports the D&O Charge, and the other secured creditors were given notice.
47. The D&O Charge is intended to protect as against post-filing liabilities, not protected by any existing D&O insurance policy.
48. The purpose of a D&O Charge is “to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they could incur during the restructuring” in order to avoid destabilization and assist with the restructuring.

Canwest Global Communications Corp. (Re), [2009] OJ No 4286 (S.C.), para. 48

49. In this case, a successful completion of the SISP and restructuring of the Petitioners’ debt requires the continued participation of the directors and officers. These individuals have significant knowledge and expertise that cannot be replicated.
50. In addition, the Petitioners’ directors and officers have expressed the need for certainty with respect to potential personal liability if they continue in their current capacities during the CCAA proceedings.
51. The term of the Initial Order regarding the D&O Charge is consistent with the B.C. Model CCAA Initial Order. The Proposed Monitor is aware that the Petitioners are seeking the D&O Charge in the amount of \$350,000 and confirms such figure is reasonable in the circumstances.

Other Relief Sought

Enhanced Monitor Powers

52. Section 23(1)(k) of the CCAA expressly allows this Court to expand the list of duties and functions of the Monitor by directing the latter to “carry out any other functions in relation to the debtor company that the court may direct”.
53. The expansion of a Monitor’s powers is not uncommon in CCAA proceedings, and have been granted in previous cases, including by this Honourable Court.

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 1746;

North American Tungsten Corporation Ltd. (Re), 2016 BCSC 12;
Mountain Equipment Co-Operative, 2020 BCSC 2037, paras. 9-10

54. Courts have expanded the scope of the powers of the Monitor if it furthers the purposes of the CCAA. In *Arrangement relatif à Bloom Lake General*, Justice Pinsonnault determined it was necessary and appropriate to expand the Monitor's powers to enable the Monitor to, among other things:
- (a) fulfill its statutory duties to investigate and properly value the assets and the liabilities of the debtor companies;
 - (b) further the valid purpose of the CCAA to maximize the recovery of the plan creditors, by assisting the debtor companies with the recovery of value for the debtor companies' creditors from the last significant asset remaining in the estate other than tax refunds; and
 - (c) facilitate the winding up and termination of the CCAA proceedings.

Arrangement relatif à Bloom Lake General, 2021 QCCS 2946, paras. 73 and 75

55. In this case, the Petitioners are not actively managing business operations and there are internal disputes among members and the Boards that have prevented a timely sale of the real estate assets. Further, CIBC has requested, as a condition to providing the Interim Financing Facility, that the Proposed Monitor be granted enhanced powers and has consented to the initial order, as sought.
56. The Petitioners submit that the enhanced powers of the Monitor being sought are necessary and appropriate in the circumstances and will allow for the within CCAA proceedings to proceed in an efficient and cost-effective manner with the professional oversight and direction of the Proposed Monitor.

Part 4: MATERIALS TO BE RELIED ON


57. Affidavit #1 of Douglas Pankiw, to be filed;
58. The pre-filing report of the Proposed Monitor, to be filed; and

59. Such further and other materials that counsel may advise, and this Honourable Court may accept.

Norton Rose Fulbright Canada LLP

per:

Date: 12/Aug/2024


Signature of

☐ petitioner ☒ lawyer for petitioners

Howard A. Gorman, K.C.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this petition

☐ with the following variations and additional terms:

Date: _____

Signature of ☐ Judge ☐ Associate Judge

SCHEDULE "A" – List of Parties and Counsel

<p>Norton Rose Fulbright Canada LLP</p> <p>1800 – 510 West Georgia Street Vancouver, BC V6B 0M3</p> <p>Attention: Howard A. Gorman, K.C.</p> <p style="text-align: center;">Candace Formosa</p> <p>Email: howard.gorman@nortonrosefulbright.com candaceformosa@nortonrosefulbright.com</p> <p>Tel: 403.267.8144</p> <p><i>Counsel for the Petitioners, BC Tree Fruits Cooperative and Growers Supply Company Limited</i></p>	<p>Alvarez & Marsal Canada Inc.</p> <p>902 – 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: Todd Martin Anthony Tillman Pinky Law</p> <p>Email: tmartin@alvarezandmarsal.com atillman@alvarezandmarsal.com pinky.law@alvarezandmarsal.com</p> <p>Tel: 604.638.7445</p> <p><i>Monitor</i></p>
<p>Fasken Martineau DuMoulin LLP</p> <p>2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attention: Kibben Jackson</p> <p>Email: kjackson@fasken.com</p> <p>Tel: 604.631.4786</p> <p><i>Counsel for the Monitor, Alvarez & Marsal Canada Inc.</i></p>	<p>Blake, Cassels & Graydon LLP</p> <p>3500 – 1133 Melville Street Vancouver, BC V6E 4E5</p> <p>Attention: Peter Rubin Peter Bychawski</p> <p>Email: peter.rubin@blakes.com peter.bychawski@blakes.com</p> <p>Tel: 604.631.3315</p> <p><i>Counsel for Canadian Imperial Bank of Commerce</i></p>
<p>Boughton Law Corporation</p> <p>700 – 595 Burrard Street Vancouver, BC V7X 1S8</p> <p>Attention: Scott M. MacKenzie</p> <p>Email: smackenzie@boughtonlaw.com info@boughtonlaw.com</p> <p>Tel: 604.647.4116</p> <p><i>Counsel for Fillmore Construction Management Inc.</i></p>	<p>FH&P Lawyers LLP</p> <p>4000 – 1628 Dickson Avenue Kelowna, BC V1Y 9X1</p> <p>Attention: Clayton Bruce Williams</p> <p>Email: cwilliams@fhplawyers.com infor@fhplawyers.com</p> <p>Tel: 778-940-1575</p> <p><i>Counsel for Glacier Heights Refrigeration Inc.</i></p>

<p>Department of Justice Canada</p> <p>900 - 840 Howe Street Vancouver, British Columbia V6Z 2S9</p> <p><i>The Attorney General of Canada on behalf of His Majesty the King in Right of Canada as represented by the Ministry of National Revenue</i></p>	
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SCHEDULE B – Draft Initial Order

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *COOPERATIVE ASSOCIATION ACT*, S.B.C. 1999, C 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES
LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
MADAM JUSTICE GROPPER) 13/08/2024
)

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 13th day of August, 2024 (the "**Order Date**"); AND ON HEARING Howard A. Gorman, K.C. and Candace Formosa, counsel for the Petitioners and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Affidavit of Douglas Pankiw sworn August 11, 2024 and the consent of Alvarez & Marsal Canada Inc. ("**A&M**") to act as Monitor; AND UPON BEING ADVISED that the secured creditors [and others] who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The petition is properly returnable today.

JURISDICTION

2. The Petitioners are companies to which the CCAA applies.

SUBSEQUENT HEARING DATE

3. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph 15 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at _____.m. on the _____ day of August, 2024 or such other date as this Court may order.

PLAN OF ARRANGEMENT

4. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. Subject to this Order and any further order of this Court, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "**Property**"), and continue to carry on their business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

6. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**"); and
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
 - (ii) any litigation in which the Petitioners are named as a party or are otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters.

7. Except as otherwise provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and

- (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.

8. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan and (iii) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Order Date shall also be paid.

10. Except as specifically permitted herein, the Petitioners are hereby directed, until further order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of their creditors as of the Order Date except that the Petitioners: (a) are hereby authorized and directed to remit to the Canadian Imperial Bank of Commerce ("**CIBC**") all funds received after the Order Date from the Petitioners' operations, real and personal property sales, and other activities (but for clarity not including any funds received by way of advances under the Interim Financing Term Sheet (as defined below)) on account of the indebtedness of the Petitioners owed pursuant to their pre-filing credit facilities with CIBC, whether such indebtedness arose before or after the Order Date (the "**CIBC Indebtedness**"), and (b) make payments as are authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

11. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for their Business or Property, in whole or part;

all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to

notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

15. Until and including 10 days from the Order Date, or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently

under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

16. Except as otherwise provided herein and in the Interim Financing Term Sheet, during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

17. Nothing in this Order, including paragraphs 15 and 16, shall: (a) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (d) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no Person shall 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 Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, 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 Business or the Petitioners, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

22. The Petitioners shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. The directors and officers of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$350,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 53 and 55 herein.

24. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioners' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and the Petitioners and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (b) advise the Petitioners in their development of the Plan and any amendments to the Plan;
- (c) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan; and
- (d) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

MONITOR'S EXPANDED POWERS

27. In addition to its authority and duties prescribed pursuant to the CCAA and the powers and duties set out in paragraph 26 of this Order, and without altering in any way the limitations on and obligations of the Petitioners arising under the CCAA and this Order, the Monitor shall be exclusively authorized and empowered to:

- (a) cause the Petitioners to take any action permitted to be taken by the Petitioners pursuant to the CCAA, this Order, and any other order granted in these proceedings;
- (b) take all actions and steps in the name and on behalf of the Petitioners to administer the Petitioners' restructuring, including but not limited to, winding-down the Business, liquidating the Property, disposing of assets, or such other activities as may, in the Monitor's sole opinion, be necessary or appropriate;
- (c) manage, operate and carry on the Business of the Petitioners, including the power 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 contract of the Petitioners, including in the name and on behalf of the Petitioners;

- (d) exercise any rights or obligations of the BC Tree Fruits Cooperative under the *Cooperative Association Act*, SBC 1999, c 28;
- (e) preserve, protect and maintain control of all the Property or any part or parts thereof;
- (f) have full and complete access to the Property, including all books, records, data, including data in electronic form, and other financial documents of the Petitioners;
- (g) rely on the books and records of the Petitioners without independent investigation, unless otherwise ordered by this Court, and, for greater certainty, the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;
- (h) disseminate, to the Interim Lender (as hereinafter defined), its counsel and financial advisor, financial and other information as agreed to between the Monitor and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
- (i) with the assistance of the Petitioners, prepare the Petitioners' cash flow statements and reporting, including as required by the Interim Lender, which information shall be delivered to the Interim Lender, its counsel and financial advisor on a periodic basis, as required under the Interim Financing Term Sheet, or as otherwise agreed to with the Interim Lender;
- (j) engage, retain, or terminate the services of, or cause the Petitioners to engage, retain or terminate the services of, any officer, employee, consultant, agent, representative, advisor, or other persons or entities, all under the supervision and direction of the Monitor, as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of its powers and duties;

- (k) facilitate or assist in the preparation of the Petitioners' statutory tax and financial requirements, including employee-related remittances, T4 statements, and records of employment, in each case based solely upon the information available from the Petitioners' books and records on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such reporting, remittances, statements and records;
- (l) act as an authorized representative of the Petitioners in respect of dealings with any taxing authority including the Canada Revenue Agency ("CRA"), and the Monitor shall hereby be entitled to execute any appointment or authorization form on behalf of the Petitioners that such taxing authority or CRA may require to confirm the Monitor's appointment as an authorized representative of the Petitioners for such purposes;
- (m) deal with any regulatory authority, including to execute any appointment or authorization form on behalf of the Petitioners that any regulatory authority may require to confirm the Monitor's appointment as an authorized representative of the Petitioners for such purposes;
- (n) in the name of and on behalf of the Petitioners, execute any agreement, document, instrument or writing of whatever nature in respect of any of the Petitioners' Business or Property, for any purpose pursuant to the CCAA, this Order and any other order granted in the proceedings;
- (o) exercise any shareholder, partnership, joint venture or other similar rights of the Petitioners;
- (p) market, conduct, supervise, and direct the sale, conveyance, transfer, lease, assignment or disposal of any Property or any part or parts thereof, whether or not outside of the normal course of business, subject to any approval of this Court as may be required pursuant to the CCAA and this Order, and to sign or execute on behalf and in the name of the Petitioners any conveyance or other closing documents in relation thereto;

- (q) receive and collect all monies and accounts now owed or hereafter owing to the Petitioners;
- (r) conduct, supervise and direct the continuation or commencement of any process or effort to recover money, Property, or other assets belonging or owing to the Petitioners and exercise all remedies of the Petitioners in collecting such money, Property, or other assets;
- (s) claim or cause the Petitioners to claim all insurance refunds or tax refunds, including refunds of goods and services taxes and harmonized sales taxes, to which the Petitioners are entitled;
- (t) initiate, prosecute and continue the prosecution of all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Petitioners (or their subsidiaries), the Property or the Monitor, and to settle or compromise any such proceedings;
- (u) engage, deal, communicate, negotiate, agree and settle with any creditor of the Petitioners in the name of and on behalf of the Petitioners;
- (v) to report to, meet with and discuss with such affected Persons as the Monitor considers appropriate on all matters relating to the Business, Property, and these proceedings, and to receive and share information, subject to such confidentiality terms as the Monitor considers appropriate;
- (w) in accordance with the CCAA and this Order, disclaim any contracts of the Petitioners;
- (x) propose or cause the Petitioners to propose one or more plans of distribution or plans of compromise and arrangement, provided that the Petitioners shall be deemed to have formulated any such plans and any distributions made thereunder shall be deemed to have been made by the Petitioners and not the Monitor;

- (y) assign the Petitioners into bankruptcy, and the Monitor shall be entitled but not obligated to act as the bankruptcy trustee for any of the Petitioners assigned into bankruptcy;
- (z) cause the Petitioners to perform such other functions or duties that the Petitioners are authorized to perform under the CCAA, this Order, or applicable law, in each case as the Monitor considers necessary or desirable to facilitate or assist the Petitioners in dealing with the Business, Property, operations, restructuring, wind-down, liquidation, distribution of proceeds, and any other related activities;
- (aa) perform such other duties or take any steps reasonably incidental to the exercise of any powers and obligations conferred on the Monitor by this Order or any other order of this Court; and
- (bb) apply to this Court for advice and directions in respect of the exercise and discharge of its powers and duties hereunder.

28. For greater certainty, in each case where the Monitor takes any actions or steps authorized by this Order, the CCAA, or the preceding paragraph 27, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Petitioners and their past or present directors, officers, members, and shareholders, and without interference from any other Person. The power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Petitioners or any other Person with respect to such matters.

29. The Petitioners and their consultants, agents, representatives and advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order and shall provide such assistance as the Monitor may reasonably request from time to time to enable the Monitor to carry out its duties and powers pursuant to the CCAA, this Order, and any other order granted in these proceedings. The Petitioners' directors or officers (past or present) shall not be liable for any actions taken by them in accordance with a direction of the Monitor.

30. The Monitor is authorized and empowered to operate and control, on behalf of the Petitioners, all of the Petitioners' existing accounts wherever situated, including CIBC (each an "**Account**" and collectively the "**Accounts**") in such manner as the Monitor deems necessary or appropriate, including, without limitation, to:

- (a) exercise control over the funds credited or deposited to the Accounts;
- (b) effect any disbursement from the Accounts permitted by this Order or any other order granted in these proceedings;
- (c) give instructions from time to time with respect to the Accounts and the funds credited or deposited thereto, including to transfer the funds credited or deposited to such Accounts to such other account or accounts as the Monitor may direct; and
- (d) add or remove persons having signing authority with respect to any Account or to direct the closing of any Account,

and CIBC shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions, and CIBC shall be authorized to act in accordance with and in reliance upon the instructions of the Monitor without any liability to any Person in respect thereof.

31. The Monitor is hereby authorized, but not required, to open one or more new accounts in its own name with CIBC (the "**Monitor's Accounts**") and receive third party funds into the Monitor's Accounts or transfer into the Monitor's Accounts such funds of the Petitioners as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties set out herein, provided that the monies standing to the credit of the Monitor's Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order and any other applicable orders made in this proceeding, including to make disbursements and pay any obligations of the Petitioners.

32. Notwithstanding paragraphs 27-31, the directors or officers of the Petitioners are authorized and empowered to retain and instruct counsel to the Petitioners in these proceedings to bring applications and make submissions in these proceedings on behalf of the Petitioners on all matters affecting or relating to these proceedings.

33. **MONITOR'S PROTECTIONS**

34. In addition to the rights and protections afforded to the Monitor under this Order, under the CCAA, or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment, the carrying out of the provisions of this Order, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except for any gross negligence or wilful misconduct on its part.

35. The Monitor is not and shall not be deemed to be a director, officer, or employee of the Petitioners.

36. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor:

- (a) is not, and shall not be deemed to be, an owner of any of the Property for any purpose including without limitation for purposes of Environmental Legislation (for purposes of this Order, the term "**Environmental Legislation**" shall mean any federal, provincial, territorial or other jurisdictional legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination, including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder);
- (b) is not required or allowed to occupy or to take control, charge, occupation, possession or management (separately and/or collectively, "**Possession**") of any part of the Property which may be a pollutant or contaminant or cause or

contribute to a spill, discharge, release or deposit of a substance contrary to any Environmental Legislation, For greater certainty, the Monitor shall not, as a result of this Order or anything done in furtherance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

37. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purpose of this Order, the term "**Adverse Environmental Condition**" shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the Order Date.

38. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof that arose, occurred, or continued after the date of this Order unless such Adverse Environmental Condition is caused by the gross negligence or wilful misconduct of the Monitor.

39. Notwithstanding the immediately preceding paragraph, the Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof which is caused by the gross negligence or wilful misconduct of the Monitor beyond the net realized cash value received and available to the Monitor from the Property.

40. All employees of the Petitioners shall remain the employees of the Petitioners. Nothing in this Order, including without limitation the enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Petitioners of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties, shall be construed as resulting in the Monitor being an employer, successor employer or related employer of the Petitioners' employees, within the meaning of any provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by

the Petitioners. The Monitor shall not be liable for any employee related liabilities of the Petitioners, including any successor employer liabilities as provided for in section 14.06(1.2) of the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Petitioners, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

41. The enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Petitioners of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties shall not constitute the Monitor as the employer, successor employer or related employer of the employees of the Petitioners within the meaning of any provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by the Petitioners. In particular, the Monitor shall not be liable to any of the employees for any wages, including severance pay, termination pay, and vacation pay except for such wages as the Monitor may specifically agree to pay.

42. Nothing in this Order or any other Order granted in these proceedings shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Petitioners within the meaning of any relevant legislation, including subsection 159(2) of the *Income Tax Act* (Canada), as amended (the "**ITA**"), and any distributions to creditors of the Petitioners by the Monitor will be deemed to have been made by the Petitioners themselves. Nothing in this Order shall constitute or be deemed to constitute the Monitor as a person subject to subsection 150(3) of the ITA.

43. The Monitor shall provide any creditor of the Petitioners and the Interim Lender with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners is confidential, the Monitor shall not provide such information to creditors unless otherwise

directed by this Court, required to be provided pursuant to the terms of the Definitive Documents, or on such terms as the Monitor and the Petitioners may agree.

ADMINISTRATION CHARGE

44. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioners, retainers in the amount of \$75,000, \$25,000, and \$75,000 [respectively] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time, in addition to any existing retainers currently being held by the Monitor, counsel to the Monitor, and counsel to the Petitioners.

45. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

46. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000 during the Stay Period as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs 53 and 55 hereof.

INTERIM FINANCING

47. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from CIBC (the "**Interim Lender**") in order to finance the continuation of the

Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed \$4,041,000 unless permitted by further Order of this Court.

48. Such credit facility shall be on the terms and subject to the conditions set forth in the Interim Financing Term Sheet dated August 12, 2024 (the "**Interim Financing Term Sheet**"), which is attached to Monitor's Pre-Filing Report.

49. The Petitioners are hereby authorized and empowered to execute and deliver the Interim Financing Term Sheet and such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Interim Financing Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

50. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 53 and 55 hereof.

51. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender's Charge, the Interim Lender, may cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioners against the obligations of the Petitioners to the Interim Lender under the Interim Financing Term Sheet, the Definitive Documents or the Interim Lender's Charge, and upon three (3) business days

notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Interim Financing Term Sheet, Definitive Documents and the Interim Lender's Charge, including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

52. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the BIA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

53. The priorities of the Administration Charge, the Directors' Charge, the CIBC Indebtedness and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000 during the Stay Period);

Second – Interim Lender's Charge;

Third – the CIBC Indebtedness; and

Fourth – Directors' Charge (to the maximum amount of \$350,000).

54. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Lender's Charge, and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or

interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

55. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors that were provided with the filed materials referred to in the recitals of this Order, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by Section 11.8(8) of the CCAA. The Court may expand the priority of the Charges over claims of all secured creditors of the Petitioners at the Comeback Hearing.

56. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtains the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge and the Director's Charge.

57. The Administration Charge, the Director's Charge, the Interim Financing Term Sheet, the Definitive Documents and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Interim Financing Term Sheet or the Definitive

Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners entering into the Interim Financing Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the Interim Financing Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

58. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners' interest in such real property leases.

SERVICE AND NOTICE

59. The Monitor shall (a) without delay, publish in the Vancouver Sun and the Kelowna Daily Courier a notice containing the information prescribed under the CCAA, (b) within five days after Order Date, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

60. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or

electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

61. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the “**Service List**”) to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on its website at: www.alvarezandmarsal.com/bctreefruits.

62. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.alvarezandmarsal.com/bctreefruits.

63. Notwithstanding paragraphs 60 and 62 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

OTHER

64. The requirement for the Petitioners to requisition a special general meeting within 7 days of August 3, 2024, is hereby waived.

GENERAL

65. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

66. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

67. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

68. Each of the Petitioners and the Monitor 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 the Monitor 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, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

69. The Petitioners may (subject to the provisions of the CCAA and the BIA and with the approval of the Monitor) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determines that such a filing is appropriate.

70. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

71. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

72. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

73. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.

74. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of

☐ Party ☒ Lawyer for the Petitioners

Howard A. Gorman, K.C.

BY THE COURT

REGISTRAR

Schedule "A"

Name of Counsel	Party
Kibben Jackson	<i>Counsel for the Proposed Monitor, Alvarez & Marsal Canada Inc.</i>
Peter Rubin	<i>Counsel for Canadian Imperial Bank of Commerce</i>

No. _____
Vancouver Registry

In the Supreme Court of British Columbia

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

AND

IN THE MATTER OF THE *COOPERATIVE ASSOCIATION ACT*,
S.B.C. 1999, C 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC
TREE FRUITS INDUSTRIES LIMITED and GROWERS SUPPLY
COMPANY LIMITED

Petitioners

Petition to the Court

NORTON ROSE FULBRIGHT CANADA LLP

Barristers & Solicitors

1800 – 510 West Georgia Street

Vancouver, BC V6B 0M3

Attention: Howard A. Gorman, K.C. & Candace Formosa

CLF/

Matter# 1001252553