

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF LOYALTYONE, CO.

(the "**Applicant**")

**MOTION RECORD  
(STAY EXTENSION)**

June 6, 2024

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF LOYALTYONE, CO.

(the "**Applicant**")

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# TAB 1

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF LOYALTYONE, CO.

(the "**Applicant**")

**NOTICE OF MOTION  
(STAY EXTENSION)**  
(returnable June 13, 2024)

The Applicant will make a Motion before the Honourable Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on Thursday, June 13, 2024 at 10:00 a.m., or as soon after that time as the Motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

- In writing under subrule 37.12.1(1) because it is  
[insert on consent, unopposed or made without notice];
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

Video conference zoom at the following link:

<https://ca01web.zoom.us/j/61474879934?pwd=NDQvb3ZKRkN0b3hpTWNPU1RaaWt0QT09>.

**THE MOTION IS FOR**

- (a) An order (the “**Stay Extension Order**”) substantially in the form attached at Tab 2 of the Applicant’s Motion Record,
  - (i) extending the Stay Period (as defined in the Initial Order, as defined below) until and including June 12, 2025, and directing the Monitor (as defined below) to report to the Court and the Applicant’s stakeholders during the extended Stay Period no less frequently than every six months;
  - (ii) declaring that, pursuant to subsection 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act (Canada)*, SC 2005, c 47, s 1 (the “**WEPPA**”), the Applicant meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the “**WEPP Regulations**”) and the Applicant’s former employees are individuals to whom the WEPPA applies;
  - (iii) approving the Fifth Report of the Monitor dated November 23, 2023 (the “**Fifth Report**”), the Supplement to the Fifth Report of the Monitor dated March 13, 2024 (the “**Supplement to the Fifth Report**”), the Sixth Report of the Monitor dated April 19, 2024 (the “**Sixth Report**”) and the Seventh Report of the Monitor, to be filed (the “**Seventh Report**”), and the activities and the conduct of the Monitor set out in such reports; and
  - (iv) approving the fees and expenses of the of the Monitor (as defined below) and its legal counsel as set out in the Seventh Report, and the affidavits attached thereto; and



- (b) such further and other relief as to this Court may deem just.

## THE GROUNDS FOR THE MOTION ARE

### *Background*

- (a) The Applicant, a Nova Scotia unlimited liability company, historically operated the marketing program known as the AIR MILES® Reward Program;
- (b) the Applicant is an indirect subsidiary of Loyalty Ventures Inc. (“**LVI**”), a Delaware corporation;
- (c) LVI is a holding company that was formed as part of a ‘spin-off’ from Bread in November 2021 (the “**Spin-off Transaction**”), which involved LVI and Bread entering into a series of transactions to, among other things:
- (i) spin-off LVI from Bread’s business; and
  - (ii) transfer direct ownership of certain subsidiaries, including the Applicant, to LVI;
- (d) as part of the Spin-off Transaction:
- (i) on October 21, 2021, Joseph L. Motes III (“**Motes**”), one of Bread’s senior executives and the only director of the Applicant at that time, caused the Applicant to pay to Bread a dividend of US\$100 million (the “**Dividend**”);
  - (ii) on November 3, 2021, Bread Financial Holdings, Inc. (“**Bread**”) (previously known as Alliance Data Systems Corporation) required LVI to borrow, and the Applicant to guarantee (the “**Guarantee**”), US\$675 million pursuant to

the Credit Agreement (as defined below) and then caused LVI to transfer certain proceeds of the Credit Agreement to Bread; and

- (iii) a number of agreements were entered into between Bread and LVI (and not by the Applicant), including the Tax Matters Agreement dated November 5, 2021 (the “**TMA**”) which purports to require the Applicant to pay to Bread an amount equivalent to any proceeds received in respect of certain tax disputes (the “**Proceeds Payment Provisions**”);
- (e) on March 10, 2023, the Applicant was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pursuant to an initial order of this Court (as amended and restated, the “**Initial Order**”) in this proceeding (the “**CCAA Proceeding**”);
- (f) pursuant to the Initial Order, KSV Restructuring Inc. (in its capacity as Monitor of the Applicant, the “**Monitor**”) was appointed as monitor of the Applicant;
- (g) also on March 10, 2023, the Applicant’s ultimate parent, LVI, and three of its affiliates, commenced cases under chapter 11 of title 11 of the United States Code before the United States Bankruptcy Court for the Southern District of Texas;
- (h) on June 1, 2023, the Applicant closed a transaction with Bank of Montreal (“**BMO**”) to sell substantially all of its business and operations to affiliates of BMO pursuant to an asset purchase agreement approved by this Court on May 12, 2023 (the “**Sale Transaction**”);
- (i) the purchase price under the Sale Transaction, after adjustments, was US\$156,741,933.66;

- (j) pursuant to an Ancillary Relief Order granted by this Court on May 12, 2023 (the “**Ancillary Relief Order**”), upon closing of the Sale Transaction, the Applicant’s directors and officers were deemed to have resigned (subject to certain limited exceptions) and the Monitor was authorized and empowered to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicant;
- (k) on July 5, 2023, this Court granted an Order (the “**Stay Extension and Distribution Order**”) authorizing the Applicant to make distributions of Cash (as defined below) to the administrative agent for the Applicant’s secured lenders (the “**Credit Facility Agent**”) up to the full amount of the Applicant’s “Obligations” (as that term is defined in the credit agreement entered into between LVI, Brand Loyalty Group B.V., Brand Loyalty Holding B.V. and Brand Loyalty International B.V., as borrowers, the Applicant and certain other subsidiaries of LVI, as guarantors, the lenders party thereto, and the Credit Facility Agent dated as of November 3, 2021, as amended, the “**Credit Agreement**”);
- (l) initial distributions have been made by the Applicant to the Credit Facility Agent in July of 2023 and January of 2024 pursuant to the Stay Extension and Distribution Order;
- (m) the Applicant is holding the remaining portion of the net proceeds from the Sale Transaction and cash on hand (collectively with the net sale proceeds, the “**Cash**”) subject to the terms of the Stay Extension and Distribution Order;
- (n) the Applicant’s remaining assets consist of the following, which will not be sufficient to repay its secured lenders in full:

- (i) the undistributed portion of the Cash, all of which is subject to a security interest in favour of the Credit Facility Agent; and
- (ii) contingent claims including
  - (1) a claim against the Canada Revenue Agency (“**CRA**”) for reimbursement of approximately \$96 million paid to CRA, without admission of liability, in respect of the disputed assessment of taxes for the Applicant’s 2013 tax year (the “**Tax Dispute**”), a trial in respect of which has been scheduled for the fall of 2024; and
  - (2) a claim for damages in the amount of US\$775 million on a joint and several basis (y) as against Motes for breach of his fiduciary duty and breach of his duty of care to the Applicant and (z) as against Bread for, among other things, knowingly causing, participating in and receiving the benefits of Motes’s breaches of his duties to the Applicant, in each case in relation to the Spin-off Transaction, including as a result of the Dividend and Guarantee;
- (o) Bread asserts that pursuant to the Proceeds Payment Provisions of the TMA the Applicant is required to pay to Bread an amount equivalent to any proceeds received in respect of the Tax Dispute;
- (p) the Applicant and the Monitor have jointly brought a motion in the CCAA Proceeding seeking, among other things, a declaration that the TMA (which the Applicant did not sign or authorize anyone to agree to it on its behalf) was never

binding on the Applicant such that the Proceeds Payment Provisions are not applicable to the Applicant or the proceeds of the Tax Dispute;

- (q) the Applicant and the Monitor's joint motion on the TMA is scheduled to be heard by the Court on June 13 and 14, 2024;

*Proposed Stay Extension*

- (r) the Applicant requires additional time to (i) complete the realization of its remaining assets, including prosecution of the contingent claims and (ii) pursue other remaining wind-up activities for the benefit of the Applicant's creditors;
- (s) as a result, the Applicant is seeking an extension of the Stay Period to June 12, 2025, at which point it will return to Court to seek a further extension, as necessary. In the interim, consistent with the terms of the Stay Extension and Distribution Order, the Monitor will continue to report to Court no less frequently than every 6 months in order to keep the Court and the Applicant's stakeholders apprised of any material developments;

*Wage Earner Protection Program*

- (t) all of the Applicant's employees have either been terminated or assumed by affiliates of BMO in connection with the Sale Transaction;
- (u) the proposed Stay Extension Order declares that the Applicant meets the criteria prescribed by section 3.2 of the WEPP Regulations, and the Applicant's former employees will be individuals to whom the WEPPA applies;
- (v) this proposed WEPPA declaration is intended to ensure that former employees of the Applicant who may be owed termination and severance pay are able to access

benefits under the WEPPA. If such a declaration is made, the Monitor has indicated that it intends to identify all former employees of the Applicant that may be eligible for payments under the WEPPA and assist such individuals in making submissions to Service Canada in respect of those payments;

*Approval of the Monitor's Reports and Fees*

- (w) the proposed Stay Extension Order seeks approval of the Fifth Report, the Supplement to the Fifth Report, the Sixth Report, and the Seventh Report, and the activities and conduct of the Monitor described in such reports;
- (x) the Monitor and its counsel also seek approval of their fees and disbursements as will be set out in the Seventh Report, and the affidavits attached thereto;
- (y) the Monitor and its counsel have maintained appropriately detailed records of their professional costs and time incurred, as set out in the Seventh Report and the affidavits attached thereto. The fees and disbursements charged by the Monitor and its counsel are consistent with market professional rates for significant commercial restructuring matters;
- (z) the fees and disbursements incurred by the Monitor and its counsel, to be described in the Seventh Report and the affidavits attached thereto, are reasonable in the circumstances and have been, and will be, validly incurred in accordance with the provisions of the Orders granted in this proceeding;

*Other Grounds*

- (aa) in addition to the other grounds discussed in this Notice of Motion, the Applicant relies on:
- (i) the provisions of the CCAA, including section 11, and the inherent and equitable jurisdiction of this Honourable Court;
  - (ii) rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
  - (iii) such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The Fifth Report, the Supplement to the Fifth Report, the Sixth Report, the Seventh Report and the exhibits attached thereto; and
- (b) such further and other evidence as the lawyers may advise and this Court may permit.

June 6, 2024

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

Court File No. CV-23-00696017-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION  
(STAY EXTENSION)**

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# TAB 2

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

THE HONOURABLE ) THURSDAY, THE 13<sup>TH</sup>  
 )  
JUSTICE CONWAY ) DAY OF JUNE, 2024

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF LOYALTYONE, CO.

(the "**Applicant**")

**STAY EXTENSION ORDER**

**THIS MOTION** made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*: (i) approving an extension to the Stay Period until and including June 12, 2025; (ii) declaring that WEPPA (as defined below) applies to the former employees of the Applicant; (iii) approving certain reports filed in this CCAA proceeding by KSV Restructuring Inc., in its capacity as Monitor of the Applicant (in such capacity, the "**Monitor**"), and the activities and conduct of the Monitor described therein; (iv) approving the fees and disbursements of the Monitor and its counsel, as described in the Seventh Report of the Monitor, dated June [●], 2024 (the "**Seventh Report**"), and the affidavits attached thereto sworn in support thereof; and (v) granting certain related relief, was heard this day by Zoom videoconference.

**ON READING** the Notice of Motion of the Applicant, the Seventh Report of the Monitor, filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the Consenting Stakeholders, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Stephanie Fernandes sworn June [●], 2024, filed.

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated March 20, 2023 or the Seventh Report, as applicable.

## **EXTENSION OF THE STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including June 12, 2025. During the Stay Period, as extended pursuant to this paragraph 3, the Monitor shall report to the Court and the Applicant's stakeholders no less frequently than every six months by preparing a report that will be served on the Service List, filed with this Court and posted on the Monitor's case website for this CCAA proceeding.

## **WAGE EARNER PROTECTION PROGRAM ACT**

4. **THIS COURT DECLARES** that pursuant to subsection 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act (Canada)*, SC 2005, c 47, s 1 ("**WEPPA**"), the Applicant meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and the Applicant's former employees are individuals to whom the WEPPA applies.

## **APPROVAL OF MONITOR'S ACTIVITIES**

5. **THIS COURT ORDERS** that the Fifth Report of the Monitor dated November 23, 2023, the Supplement to the Fifth Report of the Monitor dated March 13, 2024, the Sixth Report of the Monitor dated April 19, 2024 and the Seventh Report, are each hereby approved, and the activities and conduct of the Monitor prior to or on the date hereof in relation to the Applicant and this CCAA proceeding (including as described in each of the foregoing reports) are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with

respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

**APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR AND ITS COUNSEL**

6. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from June 1, 2023 to May 31, 2024, all as set out in the affidavit of Noah Goldstein sworn June [●], 2024, are hereby approved.

7. **THIS COURT ORDERS** that the fees and disbursements of Goodmans LLP, in its capacity as counsel to the Monitor, for the period from June 7, 2023 to May 31, 2024, all as set out in the affidavit of Christopher Armstrong sworn June [●], 2024, are hereby approved.

**GENERAL**

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are each 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.

10. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

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Conway, J.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

Court File No. CV-23-00696017-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**STAY EXTENSION ORDER**

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

PROCEEDING COMMENCED AT  
TORONTO

**MOTION RECORD  
(STAY EXTENSION)**

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