Eighth Report of KSV Restructuring Inc. as CCAA Monitor of LoyaltyOne, Co.

September 16, 2024

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Appendices

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

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.

EIGHTH REPORT OF KSV RESTRUCTURING INC.

SEPTEMBER 16, 2024

1.0 Introduction

1. Pursuant to an order (the "**Initial Order**") issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 10, 2023, LoyaltyOne, Co. (the "**Applicant**") was granted protection under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and KSV Restructuring Inc. ("**KSV**") was appointed monitor of the Applicant (in such capacity, the "**Monitor**"). The Initial Order also extended the CCAA stay and certain other relief to LoyaltyOne Travel Services Co./Cie Des Voyages LoyaltyOne, a non-applicant subsidiary of the Applicant ("**Travel Services**" and together with the Applicant, the "**LoyaltyOne Entities**"). At a comeback hearing on March 20, 2023, the Court issued an Amended and Restated Initial Order (the "**ARIO**").

2. Also on March 10, 2023, the Applicant's ultimate parent company, Loyalty Ventures Inc. ("**LVI**"), and three affiliated entities [1] (collectively, the "**US Debtors**"), filed voluntary petitions to commence proceedings (the "**US Proceedings**") under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of Texas (the "**US Court**"). The LoyaltyOne Entities are not debtors in the US Proceedings.

3. The principal purpose of this proceeding (this "**CCAA Proceeding**") was to create a stabilized environment in which the Applicant could:

   a) continue to operate in the ordinary course with the breathing space afforded by filing for protection under the CCAA, including to continue to operate the AIR MILES® Reward Program and to honour redemptions by the collectors of AIR MILES® reward miles in the normal course;

[1] The affiliated Chapter 11 debtor entities are LVI Sky Oak LLC, LVI Lux Holdings S.à r.l. and Rhombus Investments L.P.

b) secure debtor-in-possession ("**DIP**") financing from Bank of Montreal ("**BMO**" and, in such capacity, the "**DIP Lender**") to fund the Applicant's ongoing business and the restructuring proceedings pursuant to a US$70 million DIP loan facility (the "**DIP Facility**"); and

c) identify and complete a going-concern sale transaction pursuant to a Court supervised sale and investment solicitation process ("**SISP**"). In this regard, the Applicant entered into an asset purchase agreement with BMO, the Applicant's largest customer, which provided for a purchase price of US$160 million, subject to certain adjustments, plus the assumption of certain liabilities, to be used as a "stalking horse" bid in the SISP (as amended, the "**Stalking Horse APA**").

4. On March 17, 2023, in connection with the US Proceedings, the US Debtors filed a Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization pursuant to Chapter 11 of the Bankruptcy Code (as applicable, the "**Combined DS and Plan**" or the "**LVI Chapter 11 Plan**"). Among other things, the LVI Chapter 11 Plan provides for the establishment of a liquidating trust to pursue recoveries on behalf of the US Debtors' stakeholders.

5. On April 27, 2023, the Combined DS and Plan was approved and confirmed by the US Court. On May 1, 2023, the Court issued an order granting certain relief sought by the Applicant in connection with the LVI Chapter 11 Plan, which relief was a condition precedent to the LVI Chapter 11 Plan becoming effective. The LVI Chapter 11 Plan became effective on June 2, 2023.

6. On May 12, 2023, the Court issued:

a) an Approval and Vesting Order (the "**AVO**"), among other things:

- approving the transaction with BMO contemplated by the Stalking Horse APA (the "**Transaction**");

- following the Monitor's delivery of the Monitor's certificate substantially in the form attached as Schedule "A" to the AVO (the "**Monitor's Certificate**"), transferring and vesting all of the Applicant's right, title and interest in and to all of the issued and outstanding shares in the capital of Travel Services to an affiliate of BMO, and all of the Applicant's right, title and interest in and to the balance of the Purchased Assets (as defined in the Stalking Horse APA) in another BMO affiliate, in each case free and clear from any encumbrances, except for certain permitted encumbrances;

- concurrent with or immediately following delivery of the Monitor's Certificate, directing the Applicant to repay in full all obligations owing under the DIP Facility and discharging the corresponding DIP Lender's Charge (as defined in the ARIO);

- concurrent with or immediately following delivery of the Monitor's Certificate, directing the Applicant to pay in full certain transaction fees owing to PJT Partners LP, the Applicant's financial advisor, and discharging the corresponding Financial Advisor Charge (as defined in the ARIO);

b) an Assignment Order, which, among other things, following delivery of the Monitor's Certificate, assigned all of the Applicant's rights and obligations in respect of certain contracts to BMO; and

c) an Ancillary Relief Order that, among other things:

- provided that, following delivery of the Monitor's Certificate, all of the then existing directors and officers of the Applicant (other than certain officers of the Applicant who remained employed by the Applicant upon closing) were deemed to resign, and authorized and empowered the Monitor to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicant;

- removed Travel Services from the purview of these CCAA Proceeding (in light of the sale of its shares pursuant to the Transaction);

- requires the Monitor to obtain the consent of certain of the Applicant's secured lenders or further Order of this Court to cause the Applicant to settle or compromise any proceedings instituted with respect to the Applicant, including the Tax Appeal (as defined below); and

- extended the stay of proceedings to July 14, 2023.

7. The Transaction closed on June 1, 2023.

8. On July 5, 2023, the Court issued a Stay Extension and Distribution Order (the "**Stay Extension and Distribution Order**") that, among other things, (i) approved the distribution of a portion of the proceeds from the Transaction and other cash held by the Applicant (or held by the Monitor on behalf of the Applicant) to the Applicant's secured creditors, and (ii) extended the stay of proceedings to June 28, 2024.

9. Since the closing of the BMO Transaction, the focus of these proceedings has been to realize on the Applicant's remaining assets (i.e. those that were excluded from the Transaction) to fund additional distributions to creditors.

10. On June 13, 2024, the Court issued an Order, which, among other things, extended the Stay of Proceedings from June 28, 2024 until and including June 12, 2025 to provide the Applicant, under the oversight and supervision of the Monitor, with additional time to advance the realization of its remaining assets and progress the other outstanding issues in these proceedings, including the Tax Appeal and certain disputes with Bread Financial Holdings, Inc. ("**Bread**").

1.1 Purposes of this Report

1. The purposes of this report (the "**Eighth Report**") are to:

a) provide background information regarding the Applicant and these proceedings;

b) provide an update on the Tax Appeal and the proposed settlement thereof;

c) provide an update on the TMA Litigation (as defined and discussed below); and

d) recommend the Court issue an Order (the "**Settlement Authorization Order**"), among other things:

- approving the Minutes of Settlement and Consent to Judgment (each as defined below) between the Applicant and His Majesty the King that will resolve the Tax Appeal; and

- authorizing, empowering and directing the Monitor to cause the Applicant to enter into the Minutes of Settlement and Consent to Judgment, *nunc pro tunc*.

1.2 Restrictions

1. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Eighth Report in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

2. Future oriented financial information relied upon in this Eighth Report is based upon assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance on whether these results will be achieved.

1.3 Currency and Definitions

1. Unless otherwise noted, all currency references in this Eighth Report are in Canadian dollars.

2. Capitalized terms used in this Eighth Report and not otherwise defined have the meanings given to them in the previous reports of the Monitor.

2.0 Background

2.1 Overview

1. Prior to the Transaction, the LoyaltyOne Entities operated the marketing program known as the AIR MILES® Reward Program (the "**AIR MILES® Reward Program**" or "**AIR MILES®**"). The Applicant is a Nova Scotia unlimited liability company that is headquartered in Toronto, Ontario.

2. All Court materials filed in this proceeding, including the Monitor's reports, are available on the Monitor's website at the following link: https://www.ksvadvisory.com/experience/case/loyaltyone.

3. All US Court materials filed in the US Proceedings are available at the following link: https://cases.ra.kroll.com/LVI/Home-Index.

2.2 Transaction

1. In accordance with the amended Stalking Horse APA, on closing of the Transaction, BMO paid the cash purchase price of US$160,259,861 as follows: (i) US$77,175,584 to the Applicant; (ii) US$73,084,277 to the DIP Lender to fully repay the DIP Facility and discharge the DIP Lender's Charge; and (iii) US$10 million into an escrow account maintained by the Monitor as escrow agent, to be held in escrow pending the calculation of the purchase price adjustments under the Transaction (the "**Adjustment Escrow Amount**"). The Adjustment Escrow Amount has since been settled and distributed to the Applicant and BMO accordingly.

2. Upon Closing, the Applicant's existing directors and most officers resigned, the Applicant discontinued its operations and substantially all of the Applicant's employees became employees of BMO, except for: (i) 20 employees of the Applicant who remained with the Applicant until June 18, 2023 in order to assist the Applicant with certain necessary corporate and windup matters (the "**Transition Employees**"); and (ii) two employees of the Applicant that did not accept their offer of employment from BMO and were terminated effective on May 31, 2023. On June 19, 2023, after completing the transition matters, the Transition Employees became employees of BMO.

2.3 Secured Lenders

2.3.1 BMO

1. As referenced above, BMO was the DIP Lender in this CCAA Proceeding. Pursuant to the terms of the AVO, on closing, all obligations owing under the DIP Facility were repaid and the corresponding DIP Lender's Charge was discharged.

2.3.2 Credit Agreement Lenders

1. LVI, Brand Loyalty Group B.V., Brand Loyalty Holding B.V. and Brand Loyalty International B.V. (collectively, the "**Borrowers**"), a group of lenders (collectively, the "**Credit Agreement Lenders**") and Bank of America N.A., as administrative agent (the "**Credit Facility Agent**"), entered into a credit agreement dated as of November 3, 2021 (as amended, the "**Credit Agreement**"), whereby the Credit Agreement Lenders established credit facilities for the Borrowers. Certain of LVI's subsidiaries, including the Applicant (but not Travel Services), are guarantors under the Credit Agreement (collectively, the "**Guarantors**").

2. Pursuant to the terms of the Credit Agreement, the Credit Agreement Lenders made available the following facilities (collectively, the "**Credit Facilities**"): (i) a US$175 million Term Loan A facility for the Borrowers due November 3, 2026; (ii) a US$500 million Term Loan B facility for the Borrowers due November 3, 2027; and (iii) a revolving credit facility in the maximum amount of US$150 million for LVI due November 3, 2026. As of March 9, 2023 (i.e. the day prior to the commencement of this CCAA Proceeding), there was approximately US$656 million of principal estimated to be outstanding under the Credit Facilities. Interest and costs have continued to accrue since that date.

3. The obligations under the Credit Agreement are secured by, among other things, a first priority security interest in all present and after-acquired personal property of the Borrowers and the Guarantors, including the Applicant (including shares and other equity interests owned by them), excluding the Excluded Property (as defined in the Credit Agreement) (the "**Credit Agreement Collateral**").

4. As detailed in the Monitor's previous reports to Court, the Credit Facility Agent, on behalf of the Credit Agreement Lenders, is the Applicant's senior secured creditor, subject to the Court-ordered Charges (as defined in the ARIO) in this CCAA Proceeding.

5. Goodmans LLP, the Monitor's legal counsel, has provided an Ontario law opinion to the Monitor that, subject to customary assumptions and qualifications, the security relating to the Credit Agreement creates a validly perfected security interest in favour of the Credit Facility Agent in the Credit Agreement Collateral.

6. Pursuant to the Stay Extension and Distribution Order, the Monitor, on the Applicant's behalf, has made distributions to the Credit Facility Agent from the BMO Transaction Proceeds and remaining cash on hand.

3.0 The Tax Appeal and the Proposed Settlement

1. In September 2015, CRA initiated an income tax audit of the Applicant for the tax year ending December 31, 2013.

2. As a result of that audit, in December 2019, CRA issued an assessment which disallowed deductions claimed by the Applicant associated with deferred revenue for services in the amount of $348.5 million. This resulted in additional taxes for the Applicant of $85.5 million, plus interest and penalties of $24.3 million, for a total amount of $109.8 million (the "**2013 Tax Assessment**").

3. The Applicant contested the 2013 Tax Assessment by filing a notice of objection with CRA and in July 2020 filed a Notice of Appeal of the 2013 Tax Assessment (the "**Tax Appeal**") with the Tax Court of Canada (the "**Tax Court**").

4. In 2020, CRA completed audits for the 2014, 2015, and 2016 taxation years and, based on the same substantive reserve issue as in the 2013 Tax Assessment, issued assessments in the amounts of $11.1 million for 2014 and $4.0 million for 2015. The Applicant has filed notices of objections with CRA with respect to these assessments.

5. Taxation authorities in Alberta and Quebec have issued consequential assessments based on the 2013 Tax Assessment with respect to the Applicant's 2013, 2014, 2015 and 2016 tax years. The Applicant has filed notices of objections with respect to such reassessments.

6. The Applicant satisfied approximately $96 million of the federal and provincial amounts assessed in the 2013 Tax Assessment through a combination of payments (and having other amounts applied) to the 2013 Tax Assessment.

7. Over the course of 2023 and 2024, the Applicant, with the assistance of its tax counsel, advanced preparation for the trial of the Tax Appeal that was scheduled to commence before the Tax Court on September 9, 2024 (the "**Tax Appeal Trial**").

8. In accordance with the Endorsement of the Court dated December 15, 2023, the Applicant and the Monitor have coordinated regular update meetings between the Applicant's tax counsel, Bread and its advisors and the lenders' advisors regarding the status of the Tax Appeal.

3.1 Proposed Settlement of the Tax Appeal

1. In the summer of 2024, counsel to His Majesty the King approached the Applicant's tax counsel with an offer to resolve the Tax Appeal. Negotiations between the parties ensued over the course of the summer, ultimately resulting in the settlement reflected in minutes of settlement (the "**Minutes of Settlement**") and a related consent to judgment (the "**Consent to Judgment**") entered into between the Applicant and His Majesty the King, each dated September 3, 2024. Copies of the Minutes of Settlement and the Consent to Judgment are attached as Appendices "A" and "B", respectively.

2. The Applicant and the Monitor kept key stakeholders (including Bread and the Applicant's secured lenders) apprised on a regular basis of all material developments regarding the potential settlement, including providing and consulting with those stakeholders on the various drafts of the Minutes of Settlement and Consent to Judgment received and negotiated.

3. A summary of the key terms of the Minutes of Settlement and Consent to Judgment are as follows:

    a. The parties will execute the Consent to Judgment;

    b. The Consent to Judgment provides that the Tax Appeal is allowed, without costs, and the matter is referred back to the Minister of National Revenue (the "**Minister**") for reconsideration and reassessment on the basis that the Applicant is entitled to a further reserve under paragraph 20(1)(m) of the *Income Tax Act* (Canada) in the amount of $348,527,381, as originally claimed by the Applicant in its income tax return for the December 31, 2013 taxation year in respect of the service component;

    c. Upon receiving an order from the Tax Court of Court of Canada with respect to the Consent to Judgment (the "**Tax Court Order**"), the Minister shall promptly issue to the Applicant a reassessment on the terms of the Tax Court Order for the Applicant's 2013 taxation year; and

    d. Each party shall bear its own costs in connection with the settlement of the Tax Appeal.

4. Accordingly, the effect of the Consent to Judgment and Minutes of Settlement, if approved and implemented, is that CRA will reassess the Applicant's 2013 tax return on the basis originally claimed by the Applicant (and sought by the Applicant through the Tax Appeal).

5. The Minutes of Settlement are subject to this Court granting an Order approving them. In addition, they contemplate that the parties will seek the Tax Court Order giving effect to the Consent to Judgment.

6. On September 3, 2024 (being the date scheduled for a pre-hearing conference in the Tax Appeal), the Applicant and His Majesty the King appeared before the Tax Court to update the court on the settlement reached by the parties and to seek an adjournment of the Tax Appeal Trial until the Applicant could bring a motion before this Court seeking approval of the Minutes of Settlement and Consent to Judgment. Subject to this Court granting the Settlement Authorization Order, it is anticipated that the parties will return before the Tax Court to seek the Tax Court Order on or before October 4, 2024.

3.2 Monitor's Observations and Recommendation

1. The Monitor is of the view that the settlement of the Tax Appeal on the terms described in the Minutes of Settlement and Consent to Judgment is in the best interests of the Applicant and all of its stakeholders.

2. The settlement results in a complete acceptance of the Applicant's position on the substantive tax dispute at issue on the Tax Appeal and avoids any further costs being incurred by the Applicant in connection with the Tax Appeal and the attendant risks of pursuing the Tax Appeal (which, in any event, would serve no purpose given the settlement accepts the Applicant's original filing position on the substantive tax dispute in its entirety).

3. As relates to the without costs nature of the settlement, the Monitor understands it is customary for tax appeals to be settled without costs, that there is risk of the Applicant being liable for costs if His Majesty the King were to be successful in reducing the Applicant's reserve claim by even a small amount and that, in any event, any cost award would ultimately be in the discretion of the Tax Court.

4. Upon implementation of the settlement, the Minister will be required to promptly issue a reassessment for the Applicant's 2013 tax year consistent with the Applicant's position on the underlying tax reserve issue that had been in dispute. The Monitor understands this is the most that the Applicant could have achieved on the Tax Appeal had it been entirely successful.

5. As described below, the Applicant continues to work with its advisors to determine the amount owing to the Applicant as a result of the contemplated 2013 reassessment and resulting impacts for subsequent tax years. Receipt of the reassessment from CRA in respect of the 2013 tax year is a critical input in that analysis. Relatedly, and outside of the context of the settlement reached with CRA on the Tax Appeal, CRA has generally reserved its rights to seek to set-off amounts payable to the Applicant against any amounts that may be owing by the Applicant to CRA.

6. The final version of the Consent to Judgment and Minutes of Settlement acceptable to CRA were received by the Applicant on Friday, August 30, 2024, with a pre-hearing appearance before the Tax Court scheduled for the morning of Tuesday, September 3, 2024. The Applicant's counsel promptly distributed these materials to the advisors to Bread and the Applicant's secured lenders on the afternoon of August 30, 2024, requested any additional comments or feedback through the weekend, and indicated the Applicant intended to proceed with advising the Tax Court of the settlement on September 3, with its effectiveness being subject to obtaining this Court's approval. Counsel for the Applicant's secured lenders indicated that they supported the settlement. Counsel for Bread indicated that they did not have sufficient time to obtain their client's consent before the Applicant was required to appear at the Tax Court.

Counsel for Bread also requested some additional information related to the tax impacts of the settlement which the Applicant confirmed that it is working on with its tax advisors and that will largely be driven by the reassessment issued by CRA if the settlement is approved and implemented, as well as any setoff claims the CRA may seek to assert. As described in the Applicant' s notice of motion, the Applicant, with the assistance of the Monitor, intends to engage with CRA and the Applicant's key stakeholders (including the lenders and Bread) on these issues through resolution.

7. In light of the foregoing, the Monitor recommends that this Court grant the proposed Settlement Authorization Order. Further, in light of the pending adjournment of the Tax Appeal Trial and the need to update the Tax Court on the status of the settlement before October 4, 2024, the Monitor is of the view that it is critical that Court approval be obtained at the hearing on this motion, failing which there is a risk the Applicant may be required to proceed with the Tax Appeal Trial.

4.0 Next Steps on Tax Matters

1. As set out in the Supplement to the Fifth Report, on January 10, 2024, the Applicant received a corporation income tax assessment from CRA dated December 15, 2023 reflecting a balance owing of $72,769,840.82 for the taxation period ending June 1, 2023.

2. In an email dated May 31, 2024, CRA advised the Applicant, the Applicant's legal counsel, Bread's legal counsel and the Monitor and its legal counsel that:

> *In the event that there is a successful Tax Court appeal, and to the extent that gross tax refunds become payable by the Crown, we just wanted to make it clear that the CRA reserves the right of set-off as provided by applicable law (ie. Montréal v Deloitte, 2021 SCC 53). Assuming that the stay is still in effect at the time, we acknowledge that the CRA would require the consent of the Applicant and Monitor, or a Court Order, prior to exercising the right of set-off.*

3. Assuming approval and implementation of the proposed settlement of the Tax Appeal and receipt of the contemplated 2013 reassessment, the Applicant and the Monitor intend to continue to work with their tax advisors, the Applicant's key stakeholders (including its secured lenders and Bread) and the CRA to determine the quantum of amounts owing to the Applicant as a result of the reassessment and any other amounts owing to the Applicant for related reassessments for tax years subsequent to 2013. If CRA asserts setoff claims, those claims, and the ability of CRA to effect a setoff, will need to be discussed between the parties and may ultimately need to be addressed by this Court to determine the amounts to be received by the Applicant.

4. In light of the foregoing, the Monitor anticipates that there could be a delay in the Applicant receiving any payment from CRA.

5.0 Update on TMA Litigation

1. The Applicant, the Monitor and Bread are engaged in a litigation process relating to the Tax Matters Agreement between Alliance Data Systems Corporation (now known as Bread) and Loyalty Ventures Inc. dated November 5, 2021 ("**TMA**"), and in particular, provisions of the TMA that purport to require the Applicant to pay to Bread an amount equivalent to the proceeds received (or to be received) in respect of certain disputed tax amounts (the "**TMA Litigation**"). The TMA Litigation has been the subject of prior Monitor reports, and accordingly, is not detailed in this Eighth Report.

2. A hearing on the TMA Litigation proceeded before the Court on June 13 and 14, 2024.

3. On July 10, 2024, this Court made an endorsement in respect of the TMA Litigation (the "**TMA Litigation Endorsement**"), in which the Court, among other things:

    a. determined that the Applicant is a party to the TMA and that a disclaimer of the TMA was not permitted; and

    b. did not grant Bread's request for a constructive trust or propriety claim over the tax refund received by the Applicant in connection with the Tax Appeal (the "**Tax Proceeds**") or an order directing the Applicant to comply with the TMA, and found that it was premature to address these matters.

4. On July 31, 2024, the Applicant and the Monitor filed a motion for leave to appeal certain aspects of the order to be made pursuant to the TMA Litigation Endorsement to the Ontario Court of Appeal. It is expected that that briefing on the leave to appeal motion will be completed in the fall 2024 timeframe.

6.0 Conclusion and Recommendation

1. For the reasons discussed herein, the Monitor respectfully recommends that this Honourable Court grant the Settlement Authorization Order.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS MONITOR OF
LOYALTYONE, CO.
AND NOT IN ITS PERSONAL CAPACITY

Appendix “A”

Court File No.: 2020-1038(IT)G

TAX COURT OF CANADA

BETWEEN:

LOYALTYONE CO.

Appellant

– and –

HIS MAJESTY THE KING

Respondent

MINUTES OF SETTLEMENT

WHEREAS on December 10, 2019 the Minister of National Revenue (the "**Minister**") issued a reassessment in respect of the Appellant's taxation year ending December 31, 2013 in an aggregate amount of $109,761,513.71 (the "**Reassessment**" and the "**2013 Taxation Year**", respectively) disallowing an amount of $348,527,381.00 from the total claimed by the Appellant as a reserve for the 2013 Taxation Year pursuant to paragraph 20(1)(m) of the *Income Tax Act* (the "Act").

AND WHEREAS the Reassessment resulted in a liability of $109,761,513.71 as follows:

Part I tax	$51,777,579.00
Nova Scotia tax	$985,165.00
Ontario tax	$32,688,555.00
Instalment interest	$13,468.78
Instalment penalty	$5,143.01
Arrears interest	$24,291,602.92
Total	$109,761,513.71

AND WHEREAS the Appellant made payments (and had amounts applied) in respect of the Reassessment, plus additional arrears interest in respect of the liability described above.

AND WHEREAS on March 6, 2020, the Appellant filed a Notice of Objection with respect to the Reassessment.

AND WHEREAS on July 3, 2020, the Appellant filed a Notice of Appeal with the Tax Court of Canada (which was assigned Court File No. 2020-1038(IT)G) seeking to have the Reassessment referred back to the Minister for reconsideration and reassessment on the basis that the Appellant correctly computed its reserve under paragraph 20(1)(m) of the Act for the 2013 Taxation Year (the "**Appeal**").

AND WHEREAS on March 10, 2023 the Appellant commenced proceedings under the *Companies' Creditors Arrangement Act* in the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") (which was assigned Court File No. CV-23-00696017-00CL) (the "CCAA Proceeding"). Pursuant to the initial order entered by the CCAA Court, KSV Restructuring Inc. was appointed as Monitor of the Appellant (the "**Monitor**").

AND WHEREAS the Appellant advises that on May 12, 2023, the CCAA Court entered an order that expanded the Monitor's powers such that 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 Appellant. The order requires a further order of the CCAA Court or the consent of the Appellant's Consenting Stakeholders (as defined in the Amended and Restated Initial Order made by the CCAA Court in the CCAA Proceeding on March 20, 2023) for the Monitor to cause the Appellant to settle or compromise any proceedings instituted in respect of the Appellant, including the Appeal.

AND WHEREAS paragraph 20(1)(m) of the Act allows for the deduction of a reasonable amount as a reserve in respect of specified items therein.

AND WHEREAS the parties have agreed to resolve the Appeal on the basis that the Minister accepts that the Appellant is entitled to an additional reserve of $348,527,381.00

as originally claimed by the Appellant under paragraph 20(1)(m) for the 2013 Taxation Year.

AND WHEREAS the parties have also agreed to resolve the Appeal with respect to the 2013 Taxation Year by entering into these Minutes of Settlement (the "**Minutes**") and filing a consent to judgment with the Tax Court of Canada (the "**Consent**"), the effectiveness of the foregoing being subject to the Appellant obtaining an order of the CCAA Court reasonably acceptable to the parties, authorizing and approving the Minutes and Consent.

THEREFORE, these Minutes, executed by counsel for the Appellant and counsel for the Respondent, in accordance with the authorization of, and instructions from the Appellant, Respondent and the Minister, respectively, constitute the parties' agreement to dispose of the Appeal on the terms set out below:

1. The parties will execute the Consent attached as Appendix A.

2. The Appellant will bring a motion as soon as possible (to be scheduled subject to the CCAA Court's availability) seeking approval from the CCAA Court of these Minutes and the Consent (the "**CCAA Approval Order**") or alternatively obtain the approval of the Consenting Stakeholders with respect to the Minutes and the Consent.

3. The Appellant shall notify the Respondent promptly upon the granting or denial of the CCAA Approval Order by the CCAA Court or upon obtaining the approval of the Consenting Stakeholders in accordance with paragraph 2 above.

4. As soon as possible following receipt of the CCAA Approval Order or the approval of the Consenting Stakeholders as described in paragraph 2 above, the parties shall file the Consent with the Tax Court of Canada with a copy delivered to the Monitor.

5. In the event that the Appellant has not obtained a CCAA Approval Order or the approval of the Consenting Stakeholders by September 2, 2024, the parties shall present a copy of the executed Consent to the Tax Court of Canada at the pre-hearing conference scheduled by Order of the Tax Court of Canada to take place

on September 3, 2024 and advise the Tax Court of Canada that in light of the orders in the CCAA Proceeding, the ability of the Appellant to agree to the Consent is subject to receipt of the CCAA Approval Order or obtaining approval of the Consenting Stakeholders.

6. Upon receiving an order from the Tax Court of Canada with respect to the Consent (the "**Order**"), the Minister shall promptly issue to the Appellant a reassessment on the terms of the Order for the Appellant's 2013 Taxation Year (the "**Settlement Reassessment**").

7. The Appellant waives its right to object to, or appeal from, the adjustments in the Settlement Reassessment detailed above, pursuant to subsections 165(1.2) and 169(2.2) of the Act, except to the extent of any inconsistency with these Minutes and the Consent on the condition that the Minister reassess in accordance with these Minutes.

8. Each party shall bear its own costs in connection with this settlement of the Appeal.

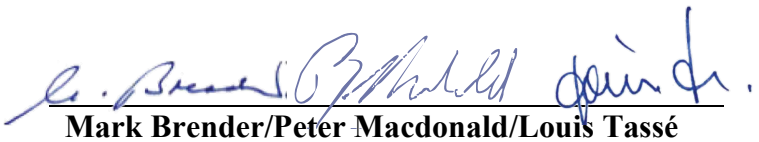
9. Each individual signing these Minutes warrants and represents that they have full authority and is duly authorized and empowered to execute these Minutes on behalf of the party for which they sign, and to carry out such party's obligations in accordance with the terms of these Minutes and that, subject to the CCAA Court's approval of the Minutes and Consent, these Minutes constitute a valid and binding obligation of such party enforceable against such party in accordance with the terms of these Minutes. For greater certainty, these Minutes are subject to the CCAA Court granting the CCAA Approval Order.

10. These Minutes and all of the terms and provisions hereof including the recitals will be binding upon the parties and their respective predecessors, successors and assigns.

11. These Minutes may be signed in any number of counterparts simultaneously or otherwise, each of which when so executed and delivered (including transmission by facsimile and/or email) will be an original and all counterparts together will constitute one and the same agreement. The fact of execution of these Minutes by

one party may be communicated to the other by email or facsimile transmission of the signature page of these Minutes.

DATED at the City of Montréal, in the Province of Québec, this 3rd day of September, 2024



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Counsel for the Appellant, LoyaltyOne, Co.

DATED at the City of Edmonton, in the Province of Alberta, this 3rd day of September, 2024

Carla Lamash/Daniel Segal/Bryn Frape

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Counsel for the Respondent, His Majesty the King

Appendix “B”

Appendix A

Court File No. 2020-1038(IT)G

TAX COURT OF CANADA

BETWEEN:

LOYALTYONE, CO.

Appellant

- and -

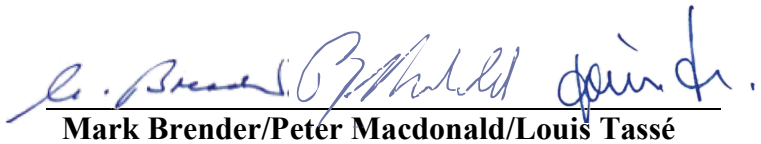
HIS MAJESTY THE KING

Respondent

CONSENT TO JUDGMENT

The Appellant and the Respondent consent to judgment allowing the appeal in respect of the notice of reassessment dated December 10, 2019 for the Appellant's taxation year ending December 31, 2013, without costs, and referring the matter back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to a further reserve under paragraph 20(1)(m) of the *Income Tax Act* (Canada) in the amount of $348,527,381.00, as originally claimed by the Appellant in its income tax return for the December 31, 2013 taxation year in respect of the service component.

DATED at the City of Montréal, in the Province of Québec, this 3rd day of September, 2024



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Counsel for the Appellant, LoyaltyOne, Co.

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Per: Carla Lamash

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Counsel for the Respondent, His Majesty the King

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

EIGHTH REPORT OF THE
MONITOR (SEPTEMBER 16, 2024)

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