

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

B E T W E E N:

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  
SANDVINE CORPORATION, SANDVINE HOLDINGS UK LIMITED, PROCERA  
NETWORKS, INC., PROCERA HOLDING, INC., NEW PROCERA GP COMPANY, and  
SANDVINE OP (UK) LTD.

Applicants

**FACTUM OF THE APPLICANTS  
(Motion for Approval and Vesting Order and Post-Closing  
Administration Order returnable, January 30, 2025)**

January 27, 2025

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## PART I - NATURE OF THE APPLICATION

1. On November 7, 2024, Sandvine Corporation (“**Sandvine Canada**”), and the other applicant companies (collectively, the “**Applicants**”, and together with the partnership Procera II LP, the “**Sandvine Entities**”, and collectively with certain non-filing entities, “**Sandvine**” or the “**Company**”), were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**,” and the within proceedings, the “**CCAA Proceedings**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).

2. Prior to the commencement of the CCAA Proceedings, Sandvine and the Existing Loan Lenders under its First Lien Credit Agreement negotiated a set of comprehensive financing and restructuring transactions, which were set out in a restructuring support agreement (the “**RSA**”) and attached term sheet (the “**Restructuring Term Sheet**”) entered into by Sandvine and the holders of 97% of Sandvine’s Existing Loans (the “**Consenting Stakeholders**”). The RSA and the Restructuring Term Sheet contemplated a sale and investment solicitation process (the “**SISP**”), whereby Sandvine’s business and assets would be marketed as part of restructuring proceedings. The Consenting Stakeholders, along with certain other parties, further negotiated the economic terms of a restructuring transaction which would act as a floor bid in the SISP.

3. On November 15, 2024, the Court granted an order (the “**SISP Order**”) approving the proposed SISP and authorizing the Sandvine Entities to enter in a stalking horse agreement (the “**Stalking Horse Transaction Agreement**,” and the transactions contemplated therein the “**Transactions**”) on substantially the same economic terms as provided for in the Restructuring Term Sheet. Accordingly, on December 18, 2024, the Purchasers and Sellers (each as defined

below) entered into the Stalking Horse Transaction Agreement. In connection with the Stalking Horse Transaction Agreement, the parties further negotiated an agreement (the “**Transition Services Agreement**”), dealing with the provision of Transition Services (as defined below) following the closing of the Transactions. As Sandvine has committed to terminating the provision of its services in certain jurisdictions, the Transition Services are intended to assist customers located in such jurisdictions with their transition to other service providers and to ensure that the discontinuance of Sandvine’s services proceeds in an orderly and responsible manner.

4. Following the granting of SISP Order, the Applicants, supported by the Financial Advisor and the Monitor (each as defined below), worked diligently to implement the SISP and to solicit interest in Sandvine’s business and assets. While a number of parties participated in the process, ultimately no letters of intent were submitted by the deadline set out in the SISP. As a result, and in accordance with the terms of the SISP Order, the SISP was terminated and the Stalking Horse Transaction Agreement was determined to be the Successful Bid (as defined below).

5. In order to implement the Transactions, the Applicant therefore seek an Approval and Vesting Order (the “**AVO**”), *inter alia*:

- (a) approving, authorizing the execution of, and authorizing the parties thereto and the Monitor to comply with and perform their obligations under, the Stalking Horse Transaction Agreement and the Transition Services Agreement;
- (b) subject to the payment of any applicable Cure Costs (as defined below), assigning certain contracts to the applicable Purchaser pursuant to s. 11.3 of the CCAA;
- (c) granting certain releases to the Released Parties (as defined below); and
- (d) sealing the confidential report of the Financial Advisor.

6. In order to facilitate the performance of various post-closing tasks and obligations, the Applicants additionally seek an order (the “**Post-Closing Administration Order**”), *inter alia*:

- (a) expanding the powers of the Monitor, including by authorizing and empowering the Monitor to take any steps on behalf of the Remaining Sandvine Entities (as defined below) to facilitate their performance of post-closing obligations, and granting the Monitor certain protections in light of its expanded role; and
- (b) extending the Stay of Proceedings (as defined below) to June 30, 2025.

7. The Stalking Horse Transaction Agreement represents the only executable transaction to have emerged following a thorough canvassing of the market pursuant to the terms of the court-approved SISF. Approving the Transactions will allow the Applicants and their stakeholders to realize the highest and best value for their assets, while ensuring that the Applicants’ business continues as a going concern, for the benefit of creditors, employees, and stakeholders generally.

## **PART II - SUMMARY OF FACTS**

8. The facts are more fully set out in the Second Affidavit of Jeffrey A. Kupp,<sup>1</sup> the Affidavit of Michael Sellinger,<sup>2</sup> and the Second Report of the Monitor.<sup>3</sup>

### **A. The CCAA Proceedings**

9. On November 7, 2024, the Court granted the Initial Order, *inter alia*, (i) appointing KSV Restructuring Inc. as monitor of the Applicants in these proceedings (the “**Monitor**”); (ii) granting a stay of proceedings (the “**Stay of Proceedings**”) in respect of the Applicants for the initial 10-

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<sup>1</sup> Affidavit of Jeffrey A. Kupp, sworn January 16, 2025 [Second Kupp Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Second Kupp Affidavit.

<sup>2</sup> Affidavit of Michael J. Sellinger, sworn January 16, 2025 [Sellinger Affidavit].

<sup>3</sup> Second Report of the Monitor dated January 24, 2025 [Second Report].

day period and extending the benefit of the Stay of Proceedings and the Initial Order to Procera II LP; (iii) extending the Stay of Proceedings to the Non-Applicant Stay Parties; (vi) approving the engagement of GLC Advisors & Co., LLC and GLC Securities, LLC (together, the “**Financial Advisor**”) as the independent financial advisor to Sandvine; (v) approving the DIP Credit Agreement between Sandvine Canada and Procera US, as borrowers, and the DIP Lenders which provided for a DIP Facility of up to US \$30 million (the “**DIP Credit Agreement**”); and (vi) granting various court-ordered charges.<sup>4</sup>

10. At the comeback hearing held on November 15, 2024, the Court granted the Amended and Restated Initial Order, *inter alia*, (i) extending the Stay of Proceedings until January 31, 2025; (ii) authorizing Sandvine to borrow up to US \$30 million under the DIP Credit Agreement; (iii) increasing the amount of certain charges authorized by the Initial Order; and (iv) granting a Transaction Fee Charge in favour of the Financial Advisor of US \$7 million.<sup>5</sup> On the same day, this Court granted the SISP Order, *inter alia*: (i) approving the SISP to solicit offers or proposals for a sale, restructuring, or recapitalization transaction in respect of the Sandvine Entities’ assets and business operations; (ii) authorizing and directing the Sandvine Entities and the Financial Advisor, under the supervision and oversight of the Monitor, to commence the SISP on November 18, 2024; and (iii) authorizing the Sandvine Entities to enter into the Stalking Horse Transaction Agreement.<sup>6</sup>

## **B. The Chapter 15 Proceedings**

11. On November 7, 2024, Sandvine Canada, as Foreign Representative of the Applicants, commenced proceedings in the United States Bankruptcy Court for the Northern District of Texas

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<sup>4</sup> Second Kupp Affidavit at para. 8.

<sup>5</sup> Second Kupp Affidavit at para. 9.

<sup>6</sup> Second Kupp Affidavit at para. 10.

(Dallas Division) (the “**U.S. Court**”) seeking the recognition of the CCAA Proceedings under chapter 15 of title 11 of the United States Code.<sup>7</sup>

12. On November 7, 2024, the U.S. Court entered orders, among other things, recognizing and enforcing the Initial Order and granting a stay of proceedings in the United States. On December 3, 2024, the U.S. Court entered an order, among other things, recognizing the CCAA Proceedings as foreign main proceedings in the United States and granting certain relief on a final basis.<sup>8</sup>

### **C. The SISP**

13. The SISP was developed by Sandvine in consultation with its counsel, the Financial Advisor, and the Monitor, and was structured to provide a fair and reasonable process to canvass the market for interest in Sandvine’s business or assets. The backstop provided by the Stalking Horse Transaction Agreement further provided stakeholders with the certainty of a “floor” bid, ensuring that the Applicants’ business would ultimately continue as a going concern.<sup>9</sup>

14. The SISP, as approved in the SISP Order, contemplated a two-stage bidding process. At the first stage, interested parties were required to enter into NDAs and submit letters of intent to bid by December 18, 2024 (the “**Phase 1 Bid Deadline**”). At the second stage, bidders were to be required to submit a “Qualified Bid” (as defined in the SISP Order) by January 27, 2025 (the “**Qualified Bid Deadline**”). The SISP provided that if no LOI was received on or before the Phase 1 Bid Deadline, or if no Qualified Bid was received on or before the Qualified Bid Deadline, the

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<sup>7</sup> Second Kupp Affidavit at para. 13.

<sup>8</sup> Second Kupp Affidavit at paras. 14-15.

<sup>9</sup> Second Kupp Affidavit at para. 17; Sellinger Affidavit at paras. 6-7.

SISP was to be terminated and transactions contemplated by the Stalking Horse Transaction Agreement were to be considered the “**Successful Bid**,” subject to approval by the Court.<sup>10</sup>

15. Following the comeback hearing, the Sandvine Entities and the Financial Advisor, under the supervision and oversight of the Monitor, conducted the SISP in accordance with the terms of the SISP Order. The Financial Advisor promptly reached out to approximately 110 parties to solicit interest in the SISP, and provided those parties with a teaser letter, a form of NDA, and other materials related to the SISP. Potentially interested parties were identified by the Financial Advisor, with the assistance of the Applicants and in consultation with the Monitor, based on research on industry participants, discussions with the Applicants’ management, and direct inbound inquiries. The Financial Advisor later followed up with potential bidders who had not responded to the initial outreach.<sup>11</sup>

16. Ultimately, phone calls were conducted with twenty potential bidders. Thirteen interested parties executed a form of NDA and were provided with access to the Applicants’ virtual data room, which contained, among other things, the Confidential Information Presentation (the “**CIP**”). The Financial Advisor, in coordination with the Applicants and the Monitor, responded to diligence requests from interested parties throughout the SISP.<sup>12</sup>

17. Despite the considerable efforts of the Applicants, as supported by the Monitor and the Financial Advisor, no LOIs were received by the Phase 1 Bid Deadline. As a result, and in accordance with the terms of the SISP Order, the Transactions were declared as the Successful Bid and the SISP was terminated. On December 20, 2024, the Service List was notified of the selection

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<sup>10</sup> Second Kupp Affidavit at paras. 18, 24; Sellinger Affidavit at para. 8.

<sup>11</sup> Second Kupp Affidavit at para. 19; Sellinger Affidavit at paras. 11-14.

<sup>12</sup> Second Kupp Affidavit at paras. 20-21; Sellinger Affidavit at paras. 14-16.

of the Transactions contemplated by the Stalking Horse Transaction Agreement as the Successful Bid, and of the timing of this hearing.<sup>13</sup>

#### **D. The Stalking Horse Transaction Agreement**

18. In accordance with the terms of the SISP, on December 18, 2024, Sandvine Canada and Procera US (collectively the “**Sellers**”), and Sandvine Holdings UK Limited and Dune Parent LLC (“**NewCo Parent**”) for entities to be formed in accordance with the Implementation Steps to the Stalking Horse Transaction Agreement (collectively, the “**Purchasers**”) entered into the Stalking Horse Transaction Agreement.<sup>14</sup>

19. The terms of the Stalking Horse Transaction Agreement substantially accord with the economic terms set out in the Restructuring Term Sheet. The proposed Transactions will result in: (i) any claims arising in connection with the US \$337 million in loans under the First Lien Credit Agreement being converted into 50% of the common equity of the NewCo Parent (the “**New Parent Equity**”), subject to dilution by the management incentive plan; (ii) the outstanding DDTL Tranche A Loans, DDTL Tranche B Loans, and DIP Loans being converted into and exchanged for approximately US \$125 million in exit facility first lien term loans on a dollar-for-dollar and *pari passu* basis; (iii) DDTL Tranche A Commitment Parties receiving 50% of the New Parent Equity, subject to dilution by the management incentive plan; (iv) certain intercompany debts and intercompany receivables owing by a Seller being assumed by the applicable Purchaser; (v) all General Unsecured Claims not assumed or retained and all existing equity interests in New Procera

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<sup>13</sup> Second Kupp Affidavit at paras. 25-27; Sellinger Affidavit at paras. 19-21.

<sup>14</sup> Second Kupp Affidavit at paras. 2(a), 28.



GP Company and Procera II LP being extinguished or cancelled for no consideration; and (vi) ultimately, the liquidation of Procera US.<sup>15</sup>

20. Under the terms of the Stalking Horse Transaction Agreement:<sup>16</sup>

- (a) The Purchasers will pay to the Sellers an aggregate purchase price comprised of:
  - (i) the assumption of the Assumed Liabilities by the Purchasers; and (ii) the transfer of, in aggregate, 50% of the New Parent Equity (or, if applicable, the Excess Value Debt) and the Exit Term Loans, in each case, by the applicable Purchaser to the applicable Seller. The Assumed Liabilities include, among other things: (i) all liabilities and obligations arising under or in respect of the Personal Property Leases, Employee Plans, Permits and Licenses, and the Assigned Contracts, including any Cure Costs; (ii) all employee liabilities and obligations; and (iii) all liabilities relating to the ownership or use of the Purchased Assets and the operation of the Business.<sup>17</sup>
  
- (b) In exchange, the Purchasers will acquire the Purchased Assets, which include: (i) all cash, accounts receivable, prepaid expenses and deposits, and Purchased Intercompany Receivables; (ii) all Inventory and fixed assets and equipment; (iii) all Personal Property Leases; and (iv) the Assigned Contracts.<sup>18</sup> Certain assets and liabilities of the Applicants will be excluded from the Purchased Assets.<sup>19</sup> The

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<sup>15</sup> Second Kupp Affidavit at para. 29.

<sup>16</sup> See Second Kupp Affidavit at paras. 29, 33, for a detailed summary of the Stalking Horse Transaction Agreement.

<sup>17</sup> See Second Kupp Affidavit at pp. 23-24 for a detailed list of the Assumed Liabilities.

<sup>18</sup> See Second Kupp Affidavit at pp. 21-22 for a detailed list of the Purchased Assets.

<sup>19</sup> See Second Kupp Affidavit at p. 22 for a detailed list of the Excluded Assets, and at p. 24 for a detailed list of the Excluded Liabilities.

Purchased Assets will be acquired free and clear of all encumbrances, other than the Assumed Liabilities and Permitted Encumbrances.<sup>20</sup>

- (c) Each Seller will assign to the applicable Purchaser all of its rights, benefits, and interests in, to, and under the Assigned Contracts.<sup>21</sup>

21. The Target Closing Date of the Transactions is 30 Business Days after a Vesting Recognition Order is entered by the U.S. Court, with an Outside Date of March 21, 2025; currently, the intention is to close the Transactions on or before February 28, 2025.<sup>22</sup>

22. The closing of the Transactions is subject to a number of customary conditions precedent, including the granting by the Court of an AVO in a form satisfactory to the Purchasers, including in respect of the releases and other terms of the Stalking Horse Transaction Agreement.<sup>23</sup>

#### **E. The Transition Services Agreement**

23. Sandvine has committed to terminating the provision of its services by March 31, 2025 for government of Egypt customers, and by December 31, 2025 for non-governmental Egyptian communications companies and all other customers in the Additional Terminated Jurisdictions (collectively, the “**Transition Customers**”, and all contracts with such customers being the “**Transition Contracts**”).<sup>24</sup>

24. In light of the critical internet access services Sandvine provides to its customers, and to minimize the likelihood of disrupting internet connectivity for millions of people, Sandvine Canada and Procera US (in such capacity, the “**OldCos**”) and New OpCo I, New OpCo II, and

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<sup>20</sup> See Second Kupp Affidavit at pp. 22-23 for a detailed list of Assumed Liabilities.

<sup>21</sup> The Assigned Contracts are listed in Schedule “C” to the Stalking Horse Transaction Agreement.

<sup>22</sup> Second Kupp Affidavit at p. 26.

<sup>23</sup> Second Kupp Affidavit at para. 31, 56.

<sup>24</sup> Second Kupp Affidavit at para. 34.

Canadian NewCo (the “**NewCos**”) entered into the Transition Services Agreement, which provides for continued services to the Transition Customers until the scheduled exit date for each Transition Customer (the “**Transition Period**”). Under the terms of the Transition Services Agreement, the NewCos will provide the OldCos with certain services required to facilitate the OldCos’ continued performance under the Transition Contracts or to otherwise support the discontinuance of the use of the Purchased Assets by the Transition Customers (the “**Transition Services**”).<sup>25</sup>

### **PART III - THE ISSUES AND THE LAW**

25. This Factum addresses the following issues:

- (a) the Stalking Horse Transaction Agreement should be approved;
- (b) the Assigned Contracts should be assigned to the applicable Purchasers;
- (c) the Releases (as defined below) should be approved;
- (d) the Confidential Report of the Financial Advisor should be sealed;
- (e) the Monitor should be granted expanded powers; and
- (f) the Stay of Proceedings should be extended to June 30, 2025.

#### **A. The Stalking Horse Transaction Agreement should be Approved**

26. It is well recognized that a CCAA court has jurisdiction to approve a sale of all or substantially all of a CCAA debtor’s business and assets, provided that the approval of the court is first obtained. Section 36 of the CCAA sets out the legal test for obtaining court approval, and requires the court to consider, among other things: (i) whether the sale process was reasonable in

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<sup>25</sup> Second Kupp Affidavit at para. 35. See Second Kupp Affidavit at paras. 36-43 for a detailed description of the Transition Services and the obligations of the NewCos and OldCos under the Transition Services Agreement.

the circumstances; (ii) whether the Monitor approved of the sale process and filed a report supporting the sale; (iii) the extent to which creditors were consulted; (iv) the effect of the sale on creditors and stakeholders; and (v) whether the purchase price is fair and reasonable.<sup>26</sup>

27. The purpose of s. 36 is to provide a debtor company with greater flexibility in dealing with its property, while limiting the possibility of abuse.<sup>27</sup> The factors listed in s. 36(3) are therefore not intended to be exhaustive, nor to be a formulaic checklist that must be followed in every case.<sup>28</sup>

28. The s. 36(3) factors overlap to a large extent with the factors that were applied in approving sale transactions prior to the enactment of s. 36, and these factors remain relevant in determining whether a sale should be approved.<sup>29</sup> Under the prior *Soundair* test, it was necessary for the court to consider: (i) whether sufficient efforts had been made to obtain the best price and that the debtor had not acted improvidently; (ii) whether the interests of all parties had been considered; (iii) the integrity and efficacy of the process for obtaining offers; and (iv) whether there was any unfairness in working out the process.<sup>30</sup>

29. Both s. 36(3) factors and the *Soundair* criteria are satisfied, for the following reasons:

- (a) **Conduct of the SISP:** Whether the process for achieving a sale transaction under the CCAA is fair and reasonable must be examined contextually, in light of the particular circumstances existing at the time.<sup>31</sup> This inquiry does not require the

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<sup>26</sup> CCAA, s. 36(3).

<sup>27</sup> *Canwest Global Communications Corp. (Re)*, [2009 CanLII 63368](#) (ON SC) at para. 32.

<sup>28</sup> *Target Canada Co. (Re)*, [2015 ONSC 2066](#) at para. 15 [*Target*].

<sup>29</sup> *Target*, at para. 15.

<sup>30</sup> *Canwest Publishing Inc./Publications Canwest Inc. (Re)*, [2010 ONSC 2870](#) at para. 13, citing *Royal Bank v. Soundair Corp.*, [\[1991\] O.J. No. 1137](#) (C.A.) at para. 16 [*Soundair*].

<sup>31</sup> See *White Birch Paper Holding Co. (Re)*, [2010 QCCS 4915](#), at para. 49: “The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA.”

court to examine in minute detail all of the circumstances leading up to the acceptance of a particular offer,<sup>32</sup> or to hold the sales process to a standard of perfection.<sup>33</sup> Here, the SISP was structured in order to provide a fair and reasonable process for canvassing the market,<sup>34</sup> and the form of the SISP was approved by this court. The SISP was overseen by the Monitor as a Court Officer, was conducted in accordance with its court-approved terms, and 13 interested parties executed NDAs and were given access to the data room. All interested parties were treated fairly, and the CIP was made available to all parties that executed an NDA. The Financial Advisor, in coordination with the Applicants and the Monitor, actively responded to diligence request inquiries from interested parties.<sup>35</sup> The SISP was therefore reasonable and fair in the circumstances.

- (b) **Purchase Price:** In order to establish that a purchase price is fair and reasonable, a debtor must show that sufficient efforts have been made to obtain the best price, and that the debtor has not acted improvidently, based on the information available at the time the offer was accepted.<sup>36</sup> Significant deference is given to a debtor's business judgment, absent clear evidence that the purchase price of the transaction is unreasonably low.<sup>37</sup> In this case, the Transactions are the only executable transaction which emerged from a thorough canvassing of the market pursuant to the terms of the court-approved SISP, and the Applicants and the Financial Advisor

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<sup>32</sup> *Soundair*, at paras. 48-49.

<sup>33</sup> *Sanjel Corporation (Re)*, [2016 ABQB 257](#) at para. 80 [*Sanjel*].

<sup>34</sup> Second Kupp Affidavit at para. 17; Sellinger at para. 7.

<sup>35</sup> Second Kupp Affidavit at para. 21; Sellinger Affidavit at paras. 15-16.

<sup>36</sup> See for example *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) at paras. 50-55 [*Terrace Bay*].

<sup>37</sup> *Soundair* at paras 21 and 30-31; see also *Sanjel* at para. 56 and *Terrace Bay* at paras. 45 and 51-52.

believe that the Transactions represent the highest and best value available to the Applicants and their stakeholders in the circumstances.<sup>38</sup>

- (c) **Benefits to Creditors and Stakeholders:** In addition to the purchase price, the Transactions provide a number of other benefits to the Applicant's creditors and to their stakeholders generally, including: (i) the business of Sandvine will be preserved and continued uninterrupted as a going concern; (ii) the majority of Sandvine's contracts, other than Excluded Contracts, with its vendors and customers will continue in the normal course for the benefit of all parties thereto; (iii) the employment of applicable Sandvine employees will be preserved; (iv) the Transition Services Agreement will reduce any potential disruptions to essential services and mitigate against risks to the stability and security of worldwide telecommunications and internet networks; (v) the Transactions will reduce Sandvine's pre-filing indebtedness by approximately US \$307 million; and (vi) the orderly wind-down of the CCAA Proceedings and Chapter 15 Proceedings.<sup>39</sup>
- (d) **Support of the Monitor:** The SISP was conducted under the Monitor's supervision and oversight,<sup>40</sup> and the Monitor was consulted with respect to potential bidders and joined in discussions with certain potential bidders.<sup>41</sup> The Monitor supports the requested relief, on the basis that the SISP was commercially reasonable and the Transactions provide for the greatest recovery available in the circumstances.<sup>42</sup>

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<sup>38</sup> Second Kupp Affidavit at para. 64; Sellinger Affidavit at para. 22.

<sup>39</sup> Second Kupp Affidavit at para. 65. See Second Kupp Affidavit at p. 24 for a detailed description of the treatment of employees.

<sup>40</sup> Second Kupp Affidavit at para. 17; Sellinger Affidavit at para. 22; Second Report at para. 4.3.1(a).

<sup>41</sup> Second Kupp Affidavit at paras. 19, 22; Sellinger Affidavit at paras. 10-11.

<sup>42</sup> See Second Report at para. 4.3.1 for a detailed description of the Monitor's support for the Transactions.

30. Further, the other statutory requirements for obtaining relief under s. 36 have been satisfied:
- (a) All parties who have registered security interests in the Purchased Assets and who might be affected by the relief requested on this application have been notified in accordance with s. 36(2) of the CCAA.
  - (b) Section 36(4) of the CCAA provides that, in the case of a sale or disposition to a related party, the court must be satisfied that: (i) good faith efforts were made to sell or dispose the assets to non-related parties; and (ii) that the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the sale process. These criteria are fulfilled.<sup>43</sup>
  - (c) Section 36(7) of the CCAA provides that relief under s. 36 cannot be granted unless the court is satisfied that the company can and will make the payments that would have been required under ss. 6(5)(a) and 6(6)(a) of the CCAA if the court had sanctioned the compromise or arrangement. Payments of this type are not at issue.

**B. The Assigned Contracts Should be Assigned Pursuant to Section 11.3**

31. A critical part of the proposed Transactions is the assumption by the Purchasers of the rights and obligations of the Sellers with respect to the Assigned Contracts, which include supplier and customer contracts that are core to the Company's business.<sup>44</sup>

32. Of the Assigned Contracts, many of the customer contracts, along with a number of the supplier contracts, require counterparty consent in order to affect an assignment (such contracts, the "**Consent Contracts**"). Given the number of Consent Contracts, it would be extremely

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<sup>43</sup> Second Kupp Affidavit at para. 64; Sellinger Affidavit at para. 22; Second Report at para. 4.3.1(g).

<sup>44</sup> Second Kupp Affidavit at para. 44.

resource and time intensive to individually secure the consents of the relevant customers and suppliers, and seeking such consents would disrupt and distract Sandvine's management at a critical time in the restructuring.<sup>45</sup>

33. Sandvine therefore seeks, after consultation with its advisors and the Monitor, to assign the Assigned Contracts under the CCAA, including those Assigned Contracts that may not require the counterparty's consent to an assignment.<sup>46</sup>

34. Section 11.3 of the CCAA gives this Court the jurisdiction and the discretion to make an order assigning the rights and obligations of a debtor company under an agreement to a third party who agrees to such assignment. The requirements as set out in s. 11.3 have been fulfilled:

- (a) **No Exception Applies:** Pursuant to s. 11.3(2), no assignment can be granted in respect of: (i) obligations that are not assignable by reason of their nature; (ii) an agreement entered into on or after the filing date; (iii) an eligible financial contract; or (iv) a collective agreement. None of these exceptions applies.
  
- (b) **Assignment is Appropriate:** Pursuant to s. 11.3(3), the Court must consider, among other things: (i) whether the Monitor approves of the proposed assignments; (ii) whether the persons to whom the rights and obligations will be assigned will be able to perform such obligations; and (iii) whether it would be appropriate to assign the rights and obligations to that person. Each of these considerations is fulfilled. The Monitor supports the proposed assignments as necessary and appropriate in the circumstances.<sup>47</sup> Further, the restructured business which will emerge from the

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<sup>45</sup> Second Kupp Affidavit at paras. 45-46

<sup>46</sup> Second Kupp Affidavit at para. 47.

<sup>47</sup> Second Report at para. 4.3.1(f).



Transactions will be well capitalized and have a significantly improved balance sheet, such that it will be well positioned financially to perform its obligations under the Assigned Contracts.<sup>48</sup> Finally, the requested assignments are a vital part of Sandvine's restructuring and are appropriate in the circumstances. Ensuring the continuity of Sandvine's relationship with its contractual counterparties, including with customers that contract with Sandvine's resellers and distributors, is vital for the success of Sandvine as a going concern going forward,<sup>49</sup> and will ensure that essential services continue to be provided to Sandvine's continuing customers.

- (c) **Monetary Defaults Cured:** Pursuant to s. 11.3(4), the Court must be satisfied that all monetary defaults in relation to the agreement – other than those arising by reason only of the company's insolvency, the commencement of proceedings under the CCAA or the company's failure to perform a non-monetary obligation – will be remedied on or before a day fixed by the Court. While the Sandvine Entities and the Monitor are not currently aware of any Cure Costs that would need to be paid with respect to the Assigned Contracts, the Stalking Horse Transaction Agreement provides that any Cure Costs related to the Assigned Contracts will be assumed by the applicable Purchaser and will be paid within fifteen calendar days of the delivery of the Monitor's certificate.<sup>50</sup>

35. The proposed assignments are a necessary and vital part of Sandvine's proposed restructuring and should be approved by the Court. At least ten calendar days prior to this hearing, Sandvine sent a notice letter to all counterparties to the Assigned Vendor Contracts and Assigned

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<sup>48</sup> Second Kupp Affidavit at para. 51.

<sup>49</sup> Second Kupp Affidavit at para. 49.

<sup>50</sup> Second Kupp Affidavit at para. 50; Second Report at para. 4.3.1(f). The date of repayment may be later where agreed to by the applicable Purchaser and the counterparty to such Assigned Contract, on notice to the Monitor.

Customer Contracts (other than customers whose contract with the Company only consists of an End User License Agreement which can be assigned without the counterparty's consent) notifying such parties that it will be requesting the assignment of the Assigned Contracts at this hearing.<sup>51</sup>

**C. The Releases Should be Approved**

36. The proposed AVO provides for releases of all claims based, in whole or in part, on any act or omission, transaction, offer, investment proposal, dealing or other fact, matter, occurrence or thing existing or taking place on or prior to the Effective Time (as defined in the AVO), or undertaken or completed in connection with or pursuant to the terms of the AVO, in respect of, relating to, or arising out of certain specified matters (including the business and administration of the Sandvine Entities, the CCAA Proceedings, the Chapter 15 Proceedings, the Stalking Horse Transaction Agreement, the Transition Services Agreement, the RSA, the Restructuring Term Sheet, and/or the consummation of the Transactions) (the "**Releases**").

37. The Releases apply in relation to all claims against: (i) the current and former directors, managers, officers, advisors, legal counsel or representatives of the Sandvine Entities; (ii) the Consenting Stakeholders; (iii) each current or former shareholder (or holder of any other Interest, as defined in the RSA) of the Sandvine Entities; (iv) each current or former holder of any current or previous funded debt Claim against the Sandvine Entities, (v) the Existing Loan Agents and the DDTL/DIP Agents and their respective legal counsel; (vi) the Monitor and its legal counsel; (vii) the NewCo Entities and the Purchasers and any shareholder or member of NewCo Parent (solely in its capacity as such); and (viii) with respect of the persons listed in (ii) through (vii), each person's current and former affiliates, and each such persons and their current and former

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<sup>51</sup> Second Kupp Affidavit at para. 47.

affiliates' current and former directors, managers, officers, employees, consultants, legal counsel, partners and advisors (collectively, the “**Released Parties**”).<sup>52</sup>

38. The Court has repeatedly confirmed that it has jurisdiction to grant orders approving releases (including third-party releases) in the context of CCAA proceedings. Such releases may be granted outside of a plan of arrangement, including in circumstances in which no plan is proposed or anticipated,<sup>53</sup> and third-party releases are commonly found in CCAA approval and vesting orders approving sale transactions in cross-border insolvencies outside the context of plans of arrangement.<sup>54</sup> Outside of the plan context, CCAA courts have granted releases to, among other parties: (i) monitors;<sup>55</sup> (ii) debtors and related parties;<sup>56</sup> (iii) the purchasers of a debtor's assets;<sup>57</sup> (iii) DIP lenders and other secured lenders of a debtor;<sup>58</sup> (iv) unsecured creditors of a debtor;<sup>59</sup> and (v) shareholders and other holders of equity securities in a debtor or its affiliates.<sup>60</sup> Such orders

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<sup>52</sup> Second Kupp Affidavit at para. 58.

<sup>53</sup> See, i.e., *ENTREC Corporation (Re)*, [2020 ABQB 751](#) at paras. 5-9 and *UrtheCast Corp. (Re)*, [2021 BCSC 1819](#) at paras. 91-95.

<sup>54</sup> See, i.e., *Canadian Overseas Petroleum Limited (Re)*, (April 24, 2024), A.B.K.B., 2401-03404 ([Approval and Vesting Order](#)) at para. 12 [COPL]; *Lighthouse Immersive Inc. et al. (Re)*, (November 27, 2023), Ont. S.C.J [Commercial List], CV-23-00703509-00CL ([Approval and Vesting Order](#)) at para. 9 [*Lighthouse Immersive*].

<sup>55</sup> See, i.e., *Cirque du Soleil Canada inc.*, [2020 QCCS 4849](#) at para. 51 [*Cirque de Soleil*]; COPL, at para. 12; *Lighthouse Immersive*, at para. 9; *Mobility (Re)*, (June 29, 2015), Ont. S.C.J [Commercial List], CV-13-10274-00CL ([Order \(Vesting\)](#)) at p.2 and Schedule “C” [*Mobility*]; *Nexii Building Solutions Inc. et al. (Re)*, (June 28, 2024), B.C.S.C., No. S240195, Vancouver Registry ([Ancillary Order](#)) at para. 13 [*Nexii (Ancillary Order)*]; *Rambler Metals and Mining Limited (Re)*, [2023 NLSC 134](#) at paras. 90-92 [*Rambler Metals*]. Note that *Cirque de Soleil* and *Rambler Metals* dealt with a reverse vesting order structure; however, the principles governing third-party releases remains the same in each case.

<sup>56</sup> See, i.e., *CannaPiece Group Inc. et al. (Re)*, (February 10, 2023), Ont. S.C.J [Commercial List], CV-22-00689631-00CL ([Approval and Vesting Order](#)) at paras. 11, 17 [*Cannapiece (AVO)*]; *Mobility*, at p.2 and Schedule “C”. Note that *Cannapiece* dealt with a reverse vesting order structure.

<sup>57</sup> See, i.e., *Cannapiece (AVO)*, at para. 11; COPL, at para. 12; *Lighthouse Immersive*, at para. 9; *Mobility*, at p.2 and Schedule “C”; *Nexii Building Solutions Inc. et al. (Re)*, (June 28, 2024), B.C.S.C., No. S240195, Vancouver Registry ([Approval and Vesting Order](#)) at para. 15; *Rambler Metals*, at paras. 90-92.

<sup>58</sup> See, i.e., *CannaPiece Group Inc v. Marzilli*, [2023 ONSC 3291](#) at paras. 23-24 [*Cannapiece (Endorsement)*]; *Mobility*, at p.2 and Schedule “C”; *Nexii (Ancillary Order)*, at para. 13; *Rambler Metals*, at paras. 90-92.

<sup>59</sup> *Canwest Global Communications Corp. (Re)*, [2010 ONSC 4209](#) at para. 30; *Mobility*, at p.2 and Schedule “C”.

<sup>60</sup> See, i.e., *Mobility*, at p.2 and Schedule “C”, in which “Securityholders Released Parties” included “holders of equity securities in any applicant, and their respective subsidiaries and affiliates, officers, directors, employees, auditors, financial counsel, and legal counsel.” See also *Cirque de Soleil*, at para. 51, in which the shareholders and equity holders of the released parties were released.

frequently release a broad range of persons associated with the released parties, including affiliates, directors and officers, employees, consultants, legal counsel, partners and advisors.<sup>61</sup>

39. The test for evaluating a third-party release is well-established. The Court must ask:

- (a) whether the parties to be released were necessary and essential to the restructuring of the debtor;
- (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it;
- (c) whether the restructuring could succeed without the releases;
- (d) whether the parties being released contributed to the restructuring; and
- (e) whether the releases benefit the debtors as well as the creditors generally.<sup>62</sup>

40. It is not necessary for each of these factors to apply in order for a release to be granted.<sup>63</sup>

41. The proposed releases satisfy this test. Each of the Released Parties have made significant and material contributions to Sandvine's efforts to address its financial difficulties, the CCAA Proceedings, and the SISP in a manner which allowed Sandvine's business to continue until such time as it could be sold as a going concern for the benefit of all stakeholders. In particular:

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<sup>61</sup> See *Cirque de Soleil*, at para. 51, in which the "respective affiliates, funds under management, affiliated funds, shareholders, members, equity holders, trustees, directors, officers, managers, employees, partners, legal counsel, advisors and other representatives" of the other released parties were released. See also *COPL*, at para. 12; *Lighthouse Immersive*, at para. 9; *Rambler Metals*, at paras. 90-92; *Mobilicity*, at p.2 and Schedule "C"; *Stornoway Diamond Corporation. (Re)*, (October 7, 2019), Q.C.S.C., District of Montreal, No. 00-11-057094-191 ([Approval and Vesting Order](#)) at para. 27. Note that *Stornoway Diamond Corporation* involved a reverse vesting order structure.

<sup>62</sup> *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para. 54.

<sup>63</sup> *Green Relief Inc. (Re)*, [2020 ONSC 6837](#) at para. 28.

- (a) The Sandvine Entities and the Purchasers are necessary parties to the Transactions. As noted above, releases in favour of purchasers, vendors, and their affiliates (along with their directors, officers, and other advisors) are commonly granted as part of CCAA sale approvals.
- (b) Sandvine's Existing Loan Lenders have been indispensable to Sandvine's continued operations and restructuring efforts. By continuing to support Sandvine following the Entity List designation, including by negotiating the June 2024 Reorganization which provided for a significant reduction in Sandvine's funded debt obligations by approximately US \$92 million, the Existing Loan Lenders demonstrated their commitment to Sandvine's continued operations, and gave Sandvine the breathing space needed to successfully address the BIS's concerns and to be de-listed from the Entity List. Further, the 97% of Existing Loan Lenders that took part in the RSA as Consenting Stakeholders and provided additional financing (including DIP financing) pursuant thereto, have ensured that the Applicants had the funding necessary to maintain operations during the CCAA Proceedings and to successfully conduct the SISP. This is the exact type of "keep the lights on" relief which courts have found justifies a third-party release.<sup>64</sup> Finally, by negotiating the Stalking Horse Transaction Agreement, the Consenting Stakeholders set the stage for a successful SISP, and facilitated the best and only sale transaction available in the circumstances.<sup>65</sup>
- (c) The Company's directors and officers have successfully managed the consequences of the Entity List designation, including by: (i) coordinating and communicating

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<sup>64</sup> *Cannapiece* (Endorsement), at para. 24.

<sup>65</sup> Second Kupp Affidavit at paras. 60-62.

with BIS and other United States government officials; (ii) undertaking steps to address the concerns which led to the Entity List designation; (iii) conducting a general review of the countries in which Sandvine operates; (iv) developing plans to cease operations in certain countries, while taking steps to ensure that this cessation happens on a reasonable timeframe to facilitate a smoother transition; and (v) adopting an updated methodology to refine its business review process. These efforts resulted in Sandvine being de-listed from the Entity List prior to the CCAA Proceedings. Additionally, Sandvine's directors and officers have continued to play an important role in overseeing and operating the business since the commencement of the CCAA Proceedings, including the development and conduct of the SISF and the negotiation of the Stalking Horse Transaction Agreement.<sup>66</sup>

42. Further, the proposed Releases are appropriately limited in scope. The proposed Releases do not apply in respect of any claim or liability arising out of any actual fraud, wilful misconduct, or gross negligence of the Released Parties. Further, the proposed Releases do not apply in respect of: (i) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA; (ii) any claims in relation to post-Effective Time obligations under any agreements executed to implement the Transactions.

43. Finally, granting the Releases will provide certainty and finality to all parties, as they are a necessary part and condition precedent to the consummation of the Transactions, and are a crucial and necessary precondition to the continuation of Sandvine's business as a going concern.<sup>67</sup> The Monitor supports granting the proposed Releases, which are consistent with releases granted in

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<sup>66</sup> Second Kupp Affidavit at para. 63.

<sup>67</sup> Second Kupp Affidavit at para. 59.

recent CCAA proceedings where there is no plan, and believes that the Released Parties have been, and will remain, integral in facilitating the CCAA Proceedings and completing the Transactions.<sup>68</sup>

**D. The Confidential Report of the Financial Advisor Should be Sealed**

44. Pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. c. C.43, the Applicants request that the Confidential Report of the Financial Advisor be treated as confidential and sealed until further order of the Court.

45. The test for a sealing order was established by the Supreme Court in *Sierra Club*, and subsequently recast in *Sherman Estate*. The test considers the following factors: (i) whether court openness poses a serious risk to an important public interest; (ii) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measure will not prevent this risk; and (iii) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>69</sup>

46. Each of these considerations supports sealing the Confidential Report:

- (a) **Public Interest:** The maximization of recovery in insolvency has been found to constitute an important public interest for the purpose of obtaining a sealing order. The granting of a sealing order in respect of commercially sensitive information is therefore “standard practice” in insolvency proceedings,<sup>70</sup> and courts have approved sealing orders where they are required to protect commercially sensitive information, including where the disclosure would jeopardize “value-maximizing

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<sup>68</sup> Second Report at para. 5.0.3.

<sup>69</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para. 38.

<sup>70</sup> *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#) at para. 39.

dealings” with third parties moving forward.<sup>71</sup> The Confidential Report, which includes feedback received from potential bidders during the SISP, contains precisely this type of commercially sensitive information, which, if disclosed, could be harmful to the business’s future going concern operations.<sup>72</sup>

- (b) **Lack of a Reasonable Alternative:** There is no reasonable alternative to the sealing order which would protect the commercial interests of the business as a going concern moving forward.
- (c) **Proportionality:** The benefits of the proposed sealing order greatly exceed any negatives. No party will be prejudiced by the sealing of the commercially sensitive information, and no public interest will be served if it is made public, thereby prejudicing the business’s going concern operations in the future.

47. Finally, the proposed sealing order is supported and recommended by the Monitor.<sup>73</sup> CCAA courts have referred to the support of the monitor as a relevant factor in determining whether the *Sherman Estate* test is met.<sup>74</sup>

#### **E. The Monitor Should be Granted Enhanced Powers**

48. Following the closing of the Transactions, the OldCos will continue to provide Transition Services to Transition Customers for the duration of the Transition Period, following which they will ultimately proceed with an orderly wind-down of operations. Given that Sandvine’s employees will become employees of the NewCos, it is necessary for the Monitor to have the

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<sup>71</sup> *Danier Leather Inc., Re*, [2016 ONSC 1044](#) at para. 84. See also *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, [2013 ONSC 7009](#) at para. 48.

<sup>72</sup> Sellinger Affidavit at para. 19.

<sup>73</sup> Second Report at paras. 4.3.1-4.3.4.

<sup>74</sup> *Original Traders Energy Ltd. (Re)*, (January 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00693758-00CL ([Endorsement of Justice Osborne](#)), at paras. 60, 64.



authority to ensure that the OldCos continue to operate and fulfil their obligations under the Transition Services Agreement and the Stalking Horse Transaction Agreement, and to supervise the OldCos orderly wind-down.<sup>75</sup>

49. The Applicants therefore seek enhanced powers for the Monitor, which would authorize and empower the Monitor to, among other things, take any and all actions and steps to facilitate the performance of the obligations of Sandvine Canada, Sandvine UK, Procera US, New Procera GP Company and Procera II LP (the “**Remaining Sandvine Entities**”) following the delivery of the Monitor’s Certificate, and to facilitate the wind-down, dissolution, or liquidation of the Remaining Sandvine Entities.<sup>76</sup>

50. The CCAA provides the Court with broad discretion in respect of the Monitor’s functions. Section 23(1)(k) of provides that the Monitor can “carry out any other functions in relation to the [debtor] company that the court may direct.” In addition, s. 11 of the CCAA authorizes this Court to make any order that is necessary and appropriate in the circumstances. Courts have expanded the monitor’s powers where the expanded powers are necessary to conduct an orderly wind-down and administer CCAA proceedings,<sup>77</sup> and where the exercise of such powers are necessary to obtain the benefit of the transaction for stakeholders.<sup>78</sup>

#### **F. The Stay of Proceedings Should be Extended**

51. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor

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<sup>75</sup> Second Kupp Affidavit at para. 68.

<sup>76</sup> See Second Kupp Affidavit at para. 67 for a detailed summary of the Monitor’s enhanced powers.

<sup>77</sup> *DCL Corporation (Re)*, [2023 ONSC 4475](#) at para. 7; *Atlas Global Brands et. al. (Re)*, (October 29, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00722386-00CL ([Endorsement of Justice Steele](#)) at paras. 37-39.

<sup>78</sup> *Harte Gold Corp. (Re)*, [2022 ONSC 653](#) at paras. 91-92; *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, [2023 NLSC 88](#) at paras. 84-85.

company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

52. The Applicants have acted in good faith and with due diligence throughout the CCAA Proceedings. The Applicants, as supported by the Monitor, ask that the Stay of Proceedings be extended up to and including June 30, 2025, in order to maintain stability during the continuation of the CCAA Proceedings and the implementation of the Stalking Horse Transaction Agreement, and to allow for the provision of Transition Services and the commencement of certain wind-down activities. The Monitor does not believe that any creditor will be materially prejudiced by the extension, and that Sandvine will have sufficient liquidity to fund its operations and the cost of the CCAA Proceedings through the requested extension including through the Administrative Expense Reserve.<sup>79</sup>

#### **PART IV - NATURE OF THE ORDER SOUGHT**

53. The Applicants therefore request that this court grant an AVO substantially in the form of the draft order attached at Tab 2 of the Motion Record and a Post-Closing Administration Order substantially in the form of the draft order attached at Tab 3 of the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 27<sup>th</sup> day of January, 2025:



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**OSLER, HOSKIN & HARCOURT, LLP per Karin Sachar**

P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Lawyers for the Applicants

**TO: THE ATTACHED SERVICE LIST**

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<sup>79</sup> Second Kupp Affidavit at paras. 70-74; Second Report at para. 8.0.2.

## SCHEDULE “A”: LIST OF AUTHORITIES

1. *Atlas Global Brands et al. (Re)*, (October 29, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00722386-00CL ([Endorsement of Justice Steele](#))
2. *Canadian Overseas Petroleum Limited (Re)*, (April 24, 2024), A.B.K.B., 2401-03404 ([Approval and Vesting Order](#))
3. *CannaPiece Group Inc. et al. (Re)*, (February 10, 2023), Ont. S.C.J [Commercial List], CV-22-00689631-00CL ([Approval and Vesting Order](#))
4. *CannaPiece Group Inc v. Marzilli*, [2023 ONSC 3291](#)
5. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 63368](#) (ON SC)
6. *Canwest Global Communications Corp. (Re)*, [2010 ONSC 4209](#)
7. *Canwest Publishing Inc./Publications Canwest Inc. (Re)*, [2010 ONSC 2870](#)
8. *Cirque du Soleil Canada inc* [2020 QCCS 4849](#)
9. *Danier Leather Inc., Re*, [2016 ONSC 1044](#)
10. *DCL Corporation (Re)*, [2023 ONSC 4475](#)
11. *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, [2013 ONSC 7009](#)
12. *ENTREC Corporation (Re)*, [2020 ABQB 751](#)
13. *Green Relief Inc. (Re)*, [2020 ONSC 6837](#)
14. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#)
15. *Lighthouse Immersive Inc. et al. (Re)*, (November 27, 2023), Ont. S.C.J [Commercial List], CV-23-00703509-00CL ([Approval and Vesting Order](#))
16. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
17. *Mobility (Re)*, (June 29, 2015), Ont. S.C.J [Commercial List], CV-13-10274-00CL ([Order Vesting](#))
18. *Nexii Building Solutions Inc. et al. (Re)*, (June 28, 2024), B.C.S.C., No. S240195, Vancouver Registry ([Ancillary Order](#))
19. *Nexii Building Solutions Inc. et al. (Re)*, (June 28, 2024), B.C.S.C., No. S240195, Vancouver Registry ([Approval and Vesting Order](#))
20. *Original Traders Energy Ltd. (Re)*, (January 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00693758-00CL ([Endorsement of Justice Osborne](#))
21. *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, [2023 NLSC 88](#)

22. *Rambler Metals and Mining Limited (Re)*, [2023 NLSC 134](#)
23. *Royal Bank v. Soundair Corp.*, [\[1991\] O.J. No. 1137](#) (C.A.)
24. *Sanjel Corporation (Re)*, [2016 ABQB 257](#)
25. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
26. *Stornoway Diamond Corporation. (Re)*, (October 7, 2019), Q.C.S.C., District of Montreal, No. 00-11-057094-191 ([Approval and Vesting Order](#))
27. *Target Canada Co. (Re)*, [2015 ONSC 2066](#)
28. *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#)
29. *UrtheCast Corp. (Re)*, [2021 BCSC 1819](#)
30. *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#)

I certify that I am satisfied as to the authenticity of every authority.

Date January 27, 2025



Signature

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

***COMPANIES’ CREDITORS ARRANGEMENT ACT***

R.S.C., 1985, c. C-36, as amended

**General power of court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, 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.

[...]

**Stays, etc. — initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Stays, etc. — other than initial application**

**(2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

### **Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

[...]

### **Assignment of agreements**

**11.3 (1)** On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

### **Exceptions**

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(a) an agreement entered into on or after the day on which proceedings commence under this Act;

(b) an eligible financial contract; or

(c) a collective agreement.

### **Factors to be considered**

(3) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed assignment;

(b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and

(c) whether it would be appropriate to assign the rights and obligations to that person.

### **Restriction**

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

### **Copy of order**

(5) The applicant is to send a copy of the order to every party to the agreement.

[...]

### **Duties and Functions**

23 (1) The monitor shall

[...]

(k) carry out any other functions in relation to the company that the court may direct.

[...]

### **Restriction on disposition of business assets**

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

### **Notice to creditors**

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

### **Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

#### **Additional factors — related persons**

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

#### **Related persons**

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

#### **Assets may be disposed of free and clear**

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

#### **Restriction — employers**

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

#### **Restriction — intellectual property**



(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

*COURTS OF JUSTICE ACT*

R.S.O., 1990, c. C.43, as amended

**Documents public**

**137 (1)** On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

**Sealing documents**

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED Court File No: CV-24-00730836-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SANDVINE CORPORATION, SANDVINE HOLDINGS UK LIMITED, PROCERA NETWORKS, INC., PROCERA HOLDING, INC., NEW PROCERA GP COMPANY, and SANDVINE OP (UK) LTD.

Applicants

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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**FACTUM OF THE APPLICANTS**

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