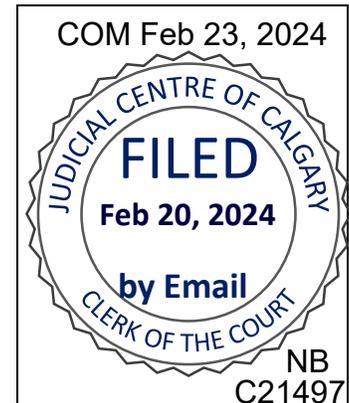


COURT FILE NUMBER 25-2958981
2301 - 13922
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE RECEIVERSHIP OF
OGEN HOLDINGS LTD., OGEN LTD., EDWARDS
CONCRETE INC., AND MORRISON HOMES (CALGARY)
LTD



PLAINTIFF/APPLICANT CONNECT FIRST CREDIT UNION LTD.
DEFENDANT/RESPONDENT OGEN HOLDINGS LTD., OGEN LTD., EDWARDS
CONCRETE INC., and MORRISON HOMES (CALGARY)
LTD.

DOCUMENT

**WRITTEN SUBMISSIONS ON BEHALF OF
HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by the Minister of National Revenue
HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by the Minister of National Revenue**

PARTY FILING THIS
DOCUMENT

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AND CONTACT
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File: LEX-500146557

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A. OVERVIEW

1. The Canada Revenue Agency (“CRA”) submits that this is an appropriate time to address the issue of whether their ability to cancel the cannabis licences of Ogen Ltd. (“Ogen”) is stayed by Justice Mah’s receivership order of November 3, 2023. Alvarez & Marsal Canada Inc. (the “Receiver”) has brought an application for approval for the sale and investment solicitation process (“SISP Application”). The status of Ogen’s CRA licence may be important to a prospective purchaser of Ogen.
2. Currently, the CRA has advised Ogen that its CRA licence allowing it to cultivate, produce and package cannabis will be cancelled on March 1, 2024. The CRA licence will be cancelled pursuant to the *Regulations Respecting Excise Licences and Registrations* (“*Regulations*”)¹ for the following reasons:
 - Ogen is in receivership of its debts (paragraphs [12](#)(1)(c) and 2(2)(a) of the *Regulations*;
 - Ogen does not have sufficient financial resources to conduct its business in a responsible manner (paragraphs [12](#) (1)(c) and 2(2)() of the *Regulations*); and
 - Ogen has ceased to carry on the business for which the CRA licence was issued (paragraph [12](#) (1)(d) of the *Regulations*).
3. If the cancellation of Ogen’s CRA licence is stayed by Justice Mah’s receivership order of November 3, 2023, it is submitted that the Alberta Court of King’s Bench does not have the jurisdiction to make such an order. The Federal Court of Canada has the exclusive

¹ [SOR/2003-115](#).

jurisdiction with respect to administrative decisions by the Minister under the *Excise Act, 2001*.

4. In the alternative, if Alberta Court of Kings Bench has the jurisdiction to make a stay order and the cancellation is stayed, it is submitted that the stay ought to be lifted. The standard of review for the CRA's decision to cancel the licence is reasonableness. The CRA's decision was reasonable because the cancellation of Ogen's CRA licence is explicitly authorized by paragraphs 12(1)(c) and (d) of the *Regulations*.

B. FACTS

5. Ogen was granted a CRA licence to cultivate, produce and package cannabis on October 17, 2018.²
6. On June 26, 2023, Ogen filed a Notice of Intention pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*.³
7. On July 12, 2023, the CRA issued a letter to Ogen proposing to cancel its CRA licence pursuant to paragraphs 12(1)(d) and 2(2)(e) of the *Regulations* for the following reasons:

The cannabis licence is being proposed for cancellation at this time as OGEN Ltd. no longer possesses sufficient financial resources to conduct business in a responsible manner, in contravention of the requirements of the *Regulations Respecting Excise Licences and Registrations*.

On June 26, 2023, OGEN Ltd. filed a Notice of Intention under the *Bankruptcy and Insolvency Act* as an Insolvent Person. This clearly

² Affidavit of Jason Sterling dated February 5, 2023, at paragraph 37

³ Affidavit of Jason Sterling dated February 5, 2023, at paragraph 38

demonstrates that you do not possess sufficient financial resources to conduct business in a responsible manner.⁴

8. This notice of licence cancellation gave Ogen ninety days to provide representation as to why its licence should not be cancelled. If no representations were received, Ogen's CRA would be cancelled effective October 10, 2023.⁵
9. The CRA did not receive representations from Ogen.⁶ However, it was aware that there was a Meeting of Creditors for a proposal vote on November 2, 2023. Consequently, on October 10, 2023, the CRA sent Ogen Ltd. a letter extending the cancellation date of the licence as follows:

Given that the Meeting of Creditors for the proposal vote has been adjourned until November 2, 2023, the licence cancellation will also be postponed. Should the proposal be rejected, the cancellation date of the licence will be November 8, 2023; however, if the proposal is approved, the cancellation date will be delayed until November 30, 2023.⁷

10. Connect First Credit Union Ltd. then brought a receivership application on November 3, 2023 and a receivership order was granted by Justice Mah.⁸
11. During the receivership application, the CRA raised Ogen's ineligibility for a CRA licence pursuant to the *Regulations*. In particular, paragraph 3(2)(a) of the *Regulations* specifically

⁴ Affidavit of Jason Sterling dated February 5, 2023 at paragraph 39 and Exhibit E

⁵ Affidavit of Jason Sterling dated February 5, 2023 at paragraph 40

⁶ Affidavit of Jason Sterling dated February 5, 2023 at paragraph 41

⁷ Affidavit of Jason Sterling dated February 5, 2023 at paragraph 42, 43 and Exhibit F

⁸ Affidavit of Jason Sterling dated February 5, 2023 at paragraph 44

states that a person cannot be eligible for a CRA licence if it is “subject of a receivership in respect of their debts.”

12. Because the ineligibility issue had just been raised in oral argument at the receivership hearing, Justice Mah requested that the issue of the cancellation of the CRA be dealt with at a future time to allow for more fulsome written argument. As well, Ogen still had a significant amount of cannabis in its possession and required the CRA licence to deal with it properly. The CRA therefore continued Ogen’s CRA licence.
13. Since November 2023, the CRA has been working with Ogen Ltd. and their trustee in receivership to sell and otherwise properly dispose of all Ogen’s cannabis and cannabis products.⁹ It is the CRA’s understanding that any sales of cannabis will be complete by the end of February, 2024 and that the remaining cannabis and cannabis excise stamps will be destroyed at that time.¹⁰
14. The CRA has now advised Ogen that its CRA licence will be cancelled on March 1, 2024 as follows:

Further to our letter of October 10, 2023 regarding the proposed cancellation of cannabis licence number 81004 6599 RD0001 issued to OGEN Ltd., we are writing to inform you that the effective date of the cancellation has been revised and will now be cancelled effective March 1, 2024.

The cannabis licence is being cancelled at this time because:

- Your business is the subject of a receivership in respect of their debts
- Your business does not have sufficient financial resources to conduct their business in a responsible manner

⁹ Affidavit of Jason Sterling dated February 5, 2023 at paragraph 46

¹⁰ Affidavit of Jason Sterling dated February 5, 2023 at paragraph 47

- Your business will cease to carry on the business for which the licence was issued¹¹

C. ARGUMENT

a. The Receivership Order of November 3, 2023 does not Stay the Expiry of the CRA Licence

15. It is submitted that Justice Mah’s receivership order of November 3, 2023, does not stay the CRA’s ability to cancel Ogen’s CRA licence for breaches of the *Regulations*.

Paragraph 11(ii)

16. Paragraph 11(ii) of the receivership order specifically states that the receivership order of November 3, 2023 does not “affect a Regulatory Body’s investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court.”
17. This is an important clause. It recognizes that the CRA’s enforcement of the *Excise Act, 2001* and *Regulations* is in the public interest and the CRA’s discretion in that respect ought not to be interfered with.
18. In this case, the Ogen is in violation of the *Regulations* and the CRA is exercising its statutory duty to cancel Ogen’s CRA licence.

¹¹ Affidavit of Jason Sterling dated February 5, 2023 at paragraph 48 and Exhibit G

Paragraph 12(a)

19. Paragraph 12(a) of the receivership order states that it does not empower Ogen to “carry on” a business that it is “not lawfully entitled to carry on.” Once Ogen’s CRA licence is cancelled on March 1, 2024, Ogen will not be lawfully entitled to carry on a business involving cannabis. Justice Mah’s receivership order therefore does not allow Ogen to continue its cannabis business.

Paragraph 12(d)

20. Paragraph 12(d) also does not exempt Ogen from “compliance with statutory or regulatory provisions relating to public health, public safety or the environment, including under the *Cannabis Act* or *Excise Act*.”
21. Cannabis is regulated for the health and safety of Canadians. The receivership order does not exempt Ogen from meeting the eligibility requirements under the *Excise Act, 2001* and *Regulations* or from the requirement to renew its CRA licence.
22. The underlying concerns of the legislation are of particular relevance here. The legislature has stated it is not in the public interest that cannabis be dealt with by companies such as Ogen who are in “receivership” or without “sufficient financial resources to conduct their business in a responsible manner.”¹² These are all reasons established by legislation for not allowing a business to be issued a licence to engage in the cultivation, production and packaging of cannabis in Canada. As well, once its cannabis has been dealt with, Ogen will

¹² *Regulations*, s. 2.

have ceased to carry on the business for which the CRA licence was issued, which the *Regulations* set out as grounds to suspend or cancel a licence.¹³

Paragraph 14

23. Paragraph 14 also must be read as subordinate to paragraphs 11(ii), 12(a) and 12 (d). This interim receivership order would contradict itself if paragraph 14 stayed what 11(ii), 12(a) and 12 (d) specifically allow.

b. The Honourable Court Does Not Have the Jurisdiction to Stay the Expiry of the CRA Licence

i. The Federal Court of Canada has the exclusive jurisdiction with respect to administrative decisions by the Minister under the *Excise Act, 2001*

24. It is submitted that the Alberta Court of King's Bench does not have the jurisdiction to stay the cancellation of the CRA licence. The Federal Court of Canada has the exclusive jurisdiction with respect to administrative decisions by the Minister under the *Excise Act, 2001*.

¹³ *Regulations*, ss. 10(d), 12(d).

25. Section [18](#) of the *Federal Courts Act*¹⁴ confers exclusive jurisdiction of such federal administrative decisions to the Federal Courts.¹⁵ Section [18](#)(1) of the *Federal Courts Act* states:¹⁶

(1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

26. The regulation of CRA licences by the Minister are administrative decisions under the *Excise Act, 2001*, which are subject to the exclusive jurisdiction of the Federal Court.¹⁷ To prohibit the expiry of the CRA licence, Ogen must seek recourse to the Federal Court of Canada.¹⁸

¹⁴ [RSC 1985, c F-7](#).

¹⁵ *Canada (Citizenship and Immigration) v Khosa*, [2009 SCC 12](#) at para [34](#); *Canada Labour Relations Board et al v Paul L'Anglais Inc et al*, [1983 CanLII 121](#) (SCC), [1983] 1 SCR 147 (“It is well established that the effect of s. 18 was to transfer all superintending and reforming power over federal agencies from the superior courts to the Federal Court”). Exceptions exist for constitutional law challenges, which cannot be removed from the concurrent jurisdiction of the superior courts.

¹⁶ [RSC 1985, c F-7](#).

¹⁷ *Legal v Canada (Attorney General)*, [2010 FC 554](#).

¹⁸ *McKinnon v Canada (Attorney General of)*, [2002 BCSC 1765](#) at paras [7-8](#) (No jurisdiction to order that the Plaintiffs are entitled to a federally issued permit, which is in the exclusive jurisdiction of the Federal Court); *861808 Ontario Inc v Canada Revenue Agency*, [2013 ONCA 604](#) at paras [1-8](#) (The Federal Court has exclusive original jurisdiction to grant injunctions and other transferred relief when CRA is acting as a federal board, commission, or other tribunal as defined under the Federal Courts Act), leave to appeal to SCC refused, [2014 CanLII 11031](#) (SCC); *Arrangement relatif à Rising Phoenix International Inc*, [2022 QCCS 1670](#) at para [20](#) (“Moreover,

ii. **These are not extraordinary circumstances justifying a stay pursuant to section 183(1)(c) of the *Bankruptcy and Insolvency Act***

27. The cancellation of Ogen's CRA licence is also not an extraordinary situation, which may allow this Court to exercise its jurisdiction under section 183(1)(c) of the *Bankruptcy and Insolvency Act*¹⁹ as was done in *Tantalus Labs Ltd. (Re)*.²⁰
28. In *Tantalus Labs Ltd. (Re)*, the CRA licence expired on the day of the hearing and Justice Fitzpatrick relied on 183(1)(c) of the *Bankruptcy and Insolvency Act* to temporarily stay the expiry on emergency grounds. *Tantalus* was still operating and the emergency arose because, without the short stay, approximately two million dollars of cannabis inventory would have to be destroyed.
29. In the present case, there is no such emergency. Ogen has been allowed to sell and otherwise properly dispose of its remaining cannabis and cannabis products.

c. **In the Alternative, the Decision to Cancel Ogen's CRA Licence is Reasonable**

30. In the alternative, if the receivership order of November 3, 2023 does stay the cancellation of the CRA licence, the stay ought to be lifted and the cancellation allowed. The CRA's decision is reasonable because it is explicitly authorized by paragraphs 12(1) and 2(2) of

another legal impediment exists: the Superior Court of Québec has no jurisdiction to make an order of mandamus, or other injunctive order, against the federal minister, since this prerogative is reserved exclusively to the Federal Court of Canada under s. 18 (1) of the Federal Courts Act." Paragraphs 13-16 are also apt with regard to the Court not using the powers of section 11 of the CCAA to usurp the role of the ministers in question and substitute its decision.)

¹⁹ [RSC 1985, c B-3](#).

²⁰ [2023 BCSC 1450](#).

the *Regulations*. Deference must be given to the regulatory regime established by the *Excise Act, 2001* and *Regulations*.

31. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, the Supreme Court of Canada established a “presumption that reasonableness” as “the applicable standard whenever a court reviews administrative decisions.”²¹ A “[r]easonableness review aims to give effect to the legislature’s intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law.”²²
32. When determining whether a decision is reasonable, the Court must ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision.”²³
33. The CRA’s decision to cancel Ogen’s CRA licence is reasonable because it is simply enforcing the *Regulations*. The CRA’s decision is therefore transparent, intelligible and justified in relation to the relevant factual and legal context of this case.
34. The first reason for cancellation provided by the CRA is that paragraph 2(a) of the *Regulations* specifically states that an individual is not eligible for a CRA licence if it is “subject of a receivership in respect of their debts.” This is an explicit ground for

²¹ [2019 SCC 65](#) at para [16](#).

²² *Ibid* at para [82](#).

²³ *Vavilov*, *supra*, at paragraph 99.

cancellation of the CRA licence pursuant to paragraph 12(1)(c) of the *Regulations*. Cancelling the CRA licence for being in receivership is therefore reasonable.

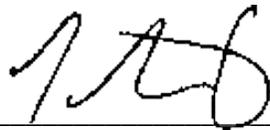
35. The second reason for cancellation provided by the CRA is that section 23(3)(b) of the *Excise Act, 2001* and subparagraph 2(c)(ii) and paragraph 5(1)(b) of the *Regulations* require Ogen to have “sufficient financial resources to conduct their business in a responsible manner” and to provide security sufficient to ensure payment of a cannabis duty. It is in the public interest to only have financially secure companies deal with cannabis. Ogen ought not to be allowed to continue to hold a CRA licence because is it not financially secure.
36. The third reason for cancellation provided by the CRA is that, upon the final disposal of its cannabis and cannabis products, Ogen will have ceased “to carry on the business for which the licence or registration was issued.” This is a ground for both suspension and cancellation of its CRA licence under paragraphs [10](#) and [12\(1\)\(d\)](#) of the *Regulations*. The regulation of cannabis would not be possible if CRA licences were not limited to the businesses for which they were granted.
37. Continuing the stay of the expiry of Ogen’s CRA licence in these circumstances would be a fundamental violation of the entire regulatory scheme for cannabis as established by the *Excise Act, 2001* and the *Regulations*. Deference ought to be given to the regulatory scheme and to the CRA’s request to not continue the stay.

D. RELIEF REQUESTED

38. The CRA respectfully requests that this Honourable Court:

- a) A declaration that Justice Mah's Receivership Order of November 3, 2023 does not stay the Canada Revenue Agency's cancellation of Ogen Ltd.'s licence pursuant to the *Excise Act, 2001* to cultivate, produce and package cannabis on March 1, 2024.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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E. LIST OF AUTHORITIES

Appendix A – Statutes and Regulations

1. [*Excise Act, 2001, SC 2002, c 22*](#)
2. [*Regulations Respecting Excise Licences and Registrations, SOR/2003-115*](#)
3. [*Federal Courts Act, RSC 1985, c F-7*](#)
4. [*Bankruptcy and Insolvency Act, RSC 1985, c B-3*](#)

Appendix B – Authorities

1. [*Canada \(Citizenship and Immigration\) v Khosa, 2009 SCC 12 \(CanLII\), \[2009\] 1 SCR 339*](#)

2. [Canada Labour Relations Board et al v Paul L'Anglais Inc. et al, 1983 CanLII 121 \(SCC\), \[1983\] 1 SCR 147](#)
3. [Legal v Canada \(Attorney General\), 2010 FC 554](#)
4. [McKinnon v Canada \(Attorney General of\), 2002 BCSC 1765](#)
5. [861808 Ontario Inc. v. Canada \(Revenue Agency\), 2013 ONCA 604 \(CanLII\)](#)
6. [861808 Ontario Inc. v. Canada \(Revenue Agency\), 2014 CanLII 11031 \(SCC\)](#)
7. [Arrangement relatif à Rising Phoenix International Inc., 2022 QCCS 1670 \(CanLII\)](#)
8. [Tantalus Labs Ltd. \(Re\), 2023 BCSC 1450](#)
9. [Canada \(Minister of Citizenship and Immigration\) v Vavilov, 2019 SCC 65 \(CanLII\), \[2019\] 4 SCR 653](#)
10. *Canada (Minister of Citizenship and Immigration) v Vavilov 2019 SCC 65*

Appendix C – Receivership Order

1. Receivership order of Justice Mah dated November 3, 2022

B201 958977

COURT FILE NUMBER 2301-13922
25-2958977

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT CONNECT FIRST CREDIT UNION LTD.

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

DOCUMENT **CONSENT RECEIVERSHIP ORDER**



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File No. 43621-128

DATE ON WHICH ORDER WAS PRONOUNCED: November 3, 2023

LOCATION OF HEARING: Edmonton

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

UPON the application of Connect First Credit Union Ltd. ("**CFCU**") in respect of OGEN Holdings Ltd. and OGEN Ltd (collectively the "**Debtors**" and each a "**Debtor**"); **AND UPON** having read the Application, Affidavit No.1 of Kunle Popoola, sworn October 24, 2023 and the Affidavit of Service of Anne-Marie Gillis Tapp;

AND UPON having read the Order (Stay Extension and Miscellaneous Relief) granted July 21, 2023 (the "**Stay Extension Order**") granted by Justice E.J. Sidnell in Estate Nos. 25-

2958981 and 25-295877 (collectively, and as subsequently consolidated into Estate No. 25-2958977, the "**NOI Proceedings**")

UPON reading the consent of Alvarez & Marsal Canada Inc. ("**A&M**") to act as receiver and manager (the "**Receiver**") of the Debtors, filed;

AND UPON hearing counsel for CFCU, counsel for the proposed Receiver and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

Service

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

Interpretation

2. Capitalized terms not otherwise defined in this Order have the meaning set forth in the Stay Extension Order.

Lifting of Stay

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

Appointment

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

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

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

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

- (a) the *Excise Act, 2001*, SC 2002, c. 22 (the "**Excise Act**")
- (b) the *Cannabis Act*, SC 2018, c C 16 (the "**Cannabis Act**")
- (c) the *Cannabis Control and Licensing Act*, SBC 2018, c 29;
- (d) the *Gaming, Liquor and Cannabis Act*, RSA 2000, c G-1;
- (e) the *Cannabis Control (Saskatchewan) Act*, SS 2018, c C-2.111;
- (f) *The Liquor, Gaming and Cannabis Control Act*, CCSM c L153;
- (g) the *Ontario Cannabis Retail Corporation Act*, 2017, SO 2017, c 26, Sch 1; and
- (h) the *Cannabis Control Act*, SNB 2018, c 2,

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

Receiver's Powers

6. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver's ability:

- i. to abandon, dispose of, or otherwise release any interest in any of the Debtors' real or personal property, or any right in any immovable, including but not limited to the surrender all unused excise and duty stamps (the "**Stamps**") to CRA or to destroy the Stamps in the presence of a Canada Revenue Agency ("**CRA**") official; and
 - ii. upon further order of the Court, to abandon, dispose of, or otherwise release any license or authorization issued by a regulator empowered under the Controlled Substances Legislation, or any other similar government authority;
 - iii. to provide access to the books and records relating to all activities involving cannabis, including to the CRA and/or Health Canada officials;
 - iv. to provide access to the facilities of the Debtors with respect to the destruction of any Excluded Assets in accordance with paragraph 6(s) hereof, including CRA and/or Health Canada officials to witness such destruction;
- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - i. without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$350,000; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal capacity;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) notwithstanding the provisions of paragraph 5 hereof, to engage, and enter into agreements with, a third party or parties who have the necessary qualifications to,

and are capable of, disposing or destroying the Excluded Assets in accordance with applicable law, including the requirements of the Cannabis Act and the Excise Act or as otherwise authorized by Health Canada and the CRA, respectively. For greater certainty, nothing herein shall: (i) deem the Receiver to have taken possession of or distributed the Excluded Assets or (ii) obligate the Receiver to dispose of or destroy the Excluded Assets; and

- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

Duty to Provide Access and Co-operations to the Receiver

7. (i) The Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
8. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be

disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

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

No Proceedings Against the Receiver

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

No Proceedings Against the Debtors or the Property

11. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body’s investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a

payment order by the Regulatory Body or the Court. “**Regulatory Body**” means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

No Exercise of Rights of Remedies

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

No Interference with the Receiver

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

Continuation of Services

15. All persons having:
 - (a) statutory or regulatory mandates for the supply of goods and/or services; or

- (b) oral or written agreements or arrangements with the Debtors, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtors,

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

Receiver to Hold Funds

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

Employees

17. Subject to employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections

81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c.47 (“**WEPPA**”).

18. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

Limitations on Environmental Liabilities

19. Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - i. before the Receiver's appointment; or
 - ii. after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph 19 exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph 19 hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply

with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

- i. if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause ii below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- ii. during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by:
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- iii. if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Limitation on the Receiver's Liability

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

Receiver's Accounts

21. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the BIA.
22. The Receiver and its legal counsel shall pass their accounts from time to time.
23. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

Funding of the Receivership

24. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

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

CONTINUATION OF STAY OF PROCEEDINGS, CHARGES AND PRIORITIES OF CHARGES

29. For clarity, the Stay provided for in the NOI Proceedings shall continue uninterrupted pursuant to the terms of this Order.
30. Each of the Administration Charge, D&O Charge and the Interim Lender's Charge (each as defined in the Stay Extension Order) shall continue to constitute valid and enforceable charges against the Property.
31. The priority of the Charges created in the NOI Proceedings and continued by this Order in relation to the Receiver's Charge and the Receiver's Borrowing Charge shall be as follows:

First – the Receiver's Charge;

Second – the Receiver's Borrowings Charge;

Third – the Administration Charge;

Fourth – the D&O Charge; and

Fifth – the Interim Lenders' Charge.

Allocation

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

General

33. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
34. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
35. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
36. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
37. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
38. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a

solicitor-client full indemnity basis, to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

39. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Filing

40. This Order is issued and shall be filed in the Receivership Proceedings and the NOI Proceedings, which actions are not consolidated. All further proceedings shall be taken in both actions unless otherwise ordered.
41. The Receiver shall establish and maintain a website in respect of these proceedings at alvarezandmarsal.com/ogen (the "**Receiver's Website**") and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
42. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
 - i. the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - ii. any other person served with notice of the application for this Order;
 - iii. any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Receiver's Website
- and service on any other person is hereby dispensed with.

43. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King's Bench of Alberta

CONSENTED TO:

BENNETT JONES LLP

Per: _____
Michael Selnes
Counsel to OGEN Ltd. and OGEN Holdings Ltd.

MLT AIKINS LLP

Per: _____
Jonathan Bouchier / Catrina Webster
Counsel to KSV Restructuring Inc., in its
capacity as proposal trustee of OGEN
Ltd. and OGEN Holdings Inc.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

DATED this • day of •,2023

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

Per: _____

Name: Orest Konowalchuk

Title: Senior Vice President