

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF THE BODY SHOP CANADA LIMITED,
IN THE CITY OF TORONTO, IN THE PROVINCE OF
ONTARIO (the “**Applicant**”)

**AIDE MEMOIRE OF THE ATTORNEY GENERAL OF CANADA
(MOTION OF THE BODY SHOP RETURNABLE DECEMBER 13, 2024)**

1. The Attorney General of Canada (“**AGC**”) represents Service Canada and the Wage Earner Protection Program.
2. The Applicant’s motion returnable December 13, 2024 seeks a determination that the Applicant meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations* (“**WEPPR**”) – that the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations. The AGC does not oppose this relief sought.
3. The Applicant’s draft Order also seeks the Court’s declaration pertaining to the former employees’ eligibility to receive payments under the *Wage Earner Protection Program Act* (“**WEPPA**”). The AGC objects to the proposed content of the draft Order and, on December 10, 2024, suggested the following change to the draft Order:

WAGE EARNER PROTECTION PROGRAM ACT

8. **THIS COURT ORDERS** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“**WEPPA**”), the Applicant meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 ~~and the Applicant’s former employees are eligible to receive payments under and in accordance with WEPPA following the termination of their employment.~~

4. The WEPPA and the WEPPR originally came into force in 2008. The WEPPA allows Canada to make payments to individuals for wages owed to them by a bankrupt or insolvent employer up to a maximum amount. “Eligible wages” includes wages such as salaries, commissions, compensation for services, and vacation pay that were earned within a specified period prior to the insolvency event in question, as well as termination and severance pay that relate to employment that ended during that period, or after the date of the insolvency event but before a trustee is discharged or a receiver completes their duties, as the case may be.

5. The Minister of Labour (the “**Minister**”), who is designated under the WEPPA, is responsible for determining if an individual is eligible for a WEPP payment and the amount they are eligible to receive. Sections 9 and 10 of the WEPPA state:

Minister’s determination of eligibility

9 If the Minister determines that the applicant is eligible to receive a payment, the Minister shall make the payment.

Notification

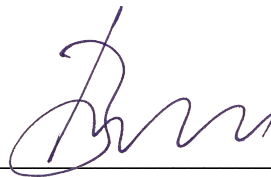
10 (1) The Minister is to inform the applicant of their eligibility or ineligibility to receive a payment.

6. This Court has previously issued Orders in the form the AGC requests here, and in the context of CCAA matters. See example at paragraph 8 of the Order dated September 25, 2024 IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EASTERN MEAT SOLUTIONS INC., et al., attached herein.

7. At paragraph 16 of [*Attorney General of Canada c. Former Gestion Inc.*](#), 2024 QCCA 1441 (CanLII), the Court of Appeal stated “... it is undisputed, and I agree, that it is for the Minister to decide if an applicant under the *WEPPA* is *eligible* to receive a payment.”

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto, Ontario this 12th day of December, 2024



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
National Litigation Sector
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, ON, M5H 1T1

Per: Walter Kravchuk

LSO#: 57160U

Tel: 365-375-2752

Email: walter.kravchuk@justice.gc.ca

Counsel for the Attorney General of Canada

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

| | | |
|----------------|---|-------------------------------|
| THE HONOURABLE |) | TUESDAY, THE 25 th |
| |) | |
| JUSTICE PENNY |) | DAY OF SEPTEMBER, 2024 |

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF EASTERN MEAT SOLUTIONS INC.,
SIERRA CUSTOM FOODS INC., SIERRA SUPPLY CHAIN
SERVICES INC., SIERRA REALTY CORPORATION,
RVB HOLDINGS INC., VANDEN BROEK HOLDINGS
(2008) INC., SIERRA REALTY CALGARY CORPORATION
AND EASTERN MEAT SOLUTIONS (USA) CORP.**

Applicants

ORDER

(Re: Stay Extension, KERP Approval, DIP Amendment & Fee Approval)

THIS MOTION made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by videoconference in Toronto, Ontario, in accordance with the Guidelines to Determine Mode of Proceeding in Civil Proceedings, effective April 19, 2022.

ON READING the Affidavit of Robert Vanden Broek sworn September 19, 2024 (the "**Vanden Broek Affidavit**"), the Second Report dated September 23, 2024 (the "**Second Report**") of Deloitte Restructuring Inc., solely in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**"), the Affidavit of Jordan Sleeth sworn September 19, 2024 (the "**Sleeth Affidavit**"), and the Affidavit of Robert Kennedy sworn September 20, 2024 (the "**Kennedy Affidavit**") and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and such other counsel that were present, no one else

appearing for any other parties, although duly served as it appears from the Affidavit of Service of Shurabi Srikaruna sworn September 23, 2024, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Vanden Broek Affidavit and the motion record of the Applicants is hereby validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that all capitalized terms not expressly defined herein are defined, and have the meanings set forth, in the Amended and Restated Initial Order of the Honourable Justice Penny dated May 21, 2024 (the “**Initial Order**”).

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period, as ordered in paragraph 16 of the Initial Order, is hereby extended from September 30, 2024, until and including January 31, 2025.

APPROVAL OF KEY EMPLOYEE RETENTION PLAN

4. **THIS COURT ORDERS** that the key employee retention plan (the “**KERP**”) described in the Vanden Broek Affidavit, certain details of which are contained in Confidential Exhibit “B” to the Vanden Broek Affidavit, is hereby approved and the Applicants are hereby authorized and directed to make payments in accordance with the terms of the KERP.

5. **THIS COURT ORDERS** that the beneficiaries of the KERP shall be entitled to the benefit of and are hereby granted a charge on the Property in the aggregate amount of \$285,600 (the “**KERP Charge**”) to secure the amounts payable under the KERP pursuant to paragraph 4 of this Order. The KERP Charge shall rank subordinate to the Administration Charge, the DIP Lender’s Charge, the Directors’ Charge, the BMO Security, and the Intercompany Charges, but in priority to all other security interests, trusts, liens, charges, and encumbrances in favour of any Person upon the Property.

SEALING

6. **THIS COURT ORDERS** that Confidential Exhibit “B” to the Vanden Broek Affidavit shall be sealed, kept confidential, and shall not form part of the public record pending further Order of the Court.

DIP AMENDMENT

7. **THIS COURT ORDERS** that: (i) the execution by the Applicants of the DIP Amendment (as defined in the Vanden Broek Affidavit) substantially in the form attached as Appendix “B” to the Second Report is hereby authorized and approved; and (ii) all references to “DIP Credit Agreement” and “DIP Documents” in the Initial Order shall be deemed to include and make reference to the DIP Credit Agreement as amended by the DIP Amendment.

WAGE EARNER PROTECTION PROGRAM ACT

8. **THIS COURT ORDERS** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“**WEPPA**”), the Applicants meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222.

BMO DISTRIBUTIONS

9. **THIS COURT ORDERS** that each applicable Applicant, with the consent of the Monitor, is hereby authorized, without further Order of the Court, to make distributions from the proceeds of its Property, including, without limitation, the proceeds of the transaction contemplated under the APA (as defined in the Vanden Broek Affidavit) in repayment (whether in whole or in part) of the obligations owing to: (i) the DIP Lender under the DIP Credit Agreement; and (ii) BMO under the BMO Credit Agreement or the BMO Guarantees (each as defined in the Affidavit of Robert Vanden Broek sworn May 21, 2024), as applicable, in each case, up to the total amount of the obligations owing by the applicable Applicants thereunder (collectively, the “**BMO Distributions**”).

10. **THIS COURT ORDERS** that the Applicants, with the consent of the Monitor, are hereby authorized to take all necessary steps and actions to effect the BMO Distributions in

accordance with the provisions of this Order and neither the Applicants nor the Monitor shall incur any liability as a result of the BMO Distributions.

11. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

the BMO Distributions shall be made free and clear of all Encumbrances (including the Charges and any other charges granted pursuant to an Order of the Court in these proceedings) and shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF ACTIVITIES & FEES OF MONITOR

12. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor dated May 21, 2024, the First Report of the Monitor dated May 30, 2024, and the Second Report, and the activities, decisions, and conduct of the Monitor as set out therein, are hereby authorized and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

13. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from May 5, 2024 to August 31, 2024, in the amount of \$1,068,960 plus disbursements of \$9,488, administrative expenses of \$32,069, and HST of \$144,367 for a total of \$1,254,884, as set out in the Sleeth Affidavit, are hereby approved.

14. **THIS COURT ORDERS** that the fees and disbursements of Dentons Canada LLP for the period from May 8, 2024 to August 31, 2024, in the amount of \$287,158.50 plus disbursements in the amount of \$80.30 and HST of \$37,341.05 for a total of \$324,579.85, as set out in the Kennedy Affidavit, are hereby approved.

GENERAL

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicants and the Monitor and their 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 Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are 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 Applicants and the Monitor are 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.

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order and is enforceable without the need for entry or filing on the date hereof.



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 EASTERN MEAT SOLUTIONS INC., SIERRA CUSTOM FOODS INC., SIERRA SUPPLY CHAIN SERVICES INC., SIERRA REALTY CORPORATION, RVB HOLDINGS INC., VANDEN BROEK HOLDINGS (2008) INC., SIERRA REALTY CALGARY CORPORATION AND EASTERN MEAT SOLUTIONS (USA) CORP.

Court File No. CV-24-00720622-00CL

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

Proceedings commenced at Toronto, Ontario

ORDER

(Re: Stay Extension, KERP Approval, DIP Amendment & Fee Approval)

Thornton Grout Finnigan LLP

TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

Rebecca L. Kennedy (LSO# 61146S)

Email: rkennedy@tgf.ca

D.J. Miller (LSO#34393P)

Email: djmiller@tgf.ca

Adam Driedger (LSO #77296F)

Email: adriedger@tgf.ca

Shurabi Srikaruna (LSO #90908K)

Email: ssrikaruna@tgf.ca

Tel: (416) 304-1616

Fax: (416) 304-1313

Lawyers for the Applicants

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**AIDE MEMOIRE OF THE
ATTORNEY GENERAL OF CANADA**

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
National Litigation Sector
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, ON, M5H 1T1

Per: Walter Kravchuk
LSO#: 57160U
Tel: 365-375-2752
Email: walter.kravchuk@justice.gc.ca

Counsel for the Attorney General of Canada