

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

THURSDAY, THE 31st DAY

JUSTICE CAVANAGH

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)
)

OF AUGUST, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED
OF WHYTE'S FOODS INC**

**ORDER
(Approval of DIP Financing, Charges, SISP and Stay Extension)**

THIS MOTION, made by Whyte's Foods Inc. (the "**Applicant**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for an order, among other things: (a) extending the time for the Applicant to file a proposal and granting a corresponding stay of proceedings until and including October 10, 2023 (the "**Stay Period**"); (b) approving, and authorizing the Applicant to access, the DIP Facility (as defined herein); (c) approving the Charges (as defined herein); (d) approving the engagement of Kroll Corporate Finance Canada Limited ("**Kroll**" or the "**Financial Advisor**") in its capacity as Sell-Side M&A Financial Advisor to the Applicant; (e) approving the SISP and authorizing and directing the Applicant, the Financial Advisor and Alvarez & Marsal Canada Inc., in its capacity as Proposal Trustee (the "**Proposal Trustee**") to conduct the SISP, was heard this day by judicial video conference via Zoom.

ON READING the affidavit of Elizabeth Kawaja sworn August 28, 2023 and the exhibits thereto (the "**Kawaja Affidavit**"), and on reading the first report of the Proposal Trustee [dated August 30, 2023](#) (the "**First Report**"), ~~filed~~, and on hearing submissions of the Applicant, the Proposal Trustee, and such other counsel and parties listed on the Participant Information Form,

with no one else appearing although duly served as appears from the affidavit of service of Natasha Rambaran, filed,

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Kawaja Affidavit.
3. **THIS COURT ORDERS** that all references to currency herein shall be in Canadian dollars.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
5. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Kawaja Affidavit or replace it with another substantially similar cash management system (the "**Cash Management System**") and

that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any proposal with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicant except as otherwise provided to the contrary herein, is and shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the filing of the Notice of Intention to Make a Proposal (“**NOI**”) and this Order all in accordance with the [variance to the Approved Cash Flow](#) (as defined in the [Definitive-DIP Facility Agreement](#), defined below) [as set out in section 4.4 of the DIP Facility Agreement or with the approval of the DIP Lender](#). Without limiting the foregoing, the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Proposal Trustee to pay amounts owing for goods or services supplied to the Applicant prior to the date of this Order and the filing by the Applicant of its notice of intention to make a proposal, if, in the opinion of the Applicant and the Proposal Trustee, the supplier is critical to the Applicant's business.

7. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date other than ~~as provided for in the Definitive~~ in accordance with the DIP Facility Agreement and the Approved Cash Flow; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

EXTENSION OF STAY OF PROCEEDINGS

8. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the applicant to file a proposal, and the corresponding Stay Period and stay of proceedings provided for in section 69 of the BIA, be and is hereby extended until and including October 10, 2023.

PROPOSAL TRUSTEE

9. **THIS COURT ORDERS** that the Proposal Trustee continues to be and is hereby authorized to take all steps required to fulfill its duties under the BIA or as an officer of the Court including, to perform such duties are required to give effect to the terms of this Order and such Other orders as may be made by this Court from time to time.

10. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in management or supervision of the management of the Applicant's business and shall not, in carrying out the SISP, or otherwise fulfilling its obligations hereunder or pursuant to the BIA, be deemed to have taken possession or control of the Applicant's business or the Property, or any part thereof.

11. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or any other Orders which may be made by this Court from time to time, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by the BIA or any applicable legislation.

APPOINTMENT OF FINANCIAL ADVISOR

12. **THIS COURT ORDERS** that the agreement dated as of August 22, 2023 pursuant to which the Applicant engaged Kroll to act as Financial Advisor, a copy of which is attached as Exhibit "P" to the Kawaja Affidavit, as may be amended by the parties thereto with the consent of the Proposal Trustee (the "**Financial Advisor Engagement Letter**"), and the appointment of the Financial Advisor pursuant to the terms thereof, and are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

SALE AND INVESTMENT SOLICITATION PROCESS

13. **THIS COURT ORDERS AND DECLARES** that the SISP (subject to any amendments thereto that may be made by the Proposal Trustee, in consultation with the Applicant, and in accordance with the terms of the SISP) attached hereto as Schedule "A" is hereby approved.

14. **THIS COURT ORDERS** that the Proposal Trustee and the Financial Advisor, in consultation with the Applicant and its advisors, are hereby authorized and directed to implement the SISP pursuant to the terms thereof and the Applicant, the Proposal Trustee and the Financial Advisor are authorized to take all steps and do all things reasonably necessary or incidental to implement the SISP.

15. **THIS COURT ORDERS** that the Proposal Trustee shall be authorized to maintain a single account for purposes of receiving any deposits submitted pursuant to the SISP.

16. **THIS COURT ORDERS** that in connection with the SISP and pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Applicant, the Proposal Trustee and the Financial Advisor, as applicable, may disclose personal information of identifiable individuals to prospective bidders in the SISP 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 (as defined in the SISP). Each prospective bidder to whom any 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 Property and if it does not complete a purchase of the Property, shall return all such information to the Applicant or in the alternative shall destroy all such information and certify such destruction to the Applicant and the Proposal Trustee. The purchaser of any Property shall be entitled 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 Applicant and shall return all other personal information to the Applicant or ensure that all other personal information is destroyed.

DIP FINANCING

17. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Wells Fargo Capital Finance Corporation (the “**DIP**

Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$2,700,000 unless permitted by further Order of this Court.

18. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the Third Amendment to the Credit Agreement and Forbearance between the Applicant and the DIP Lender dated as of August 22, 2023, which amends the credit agreement dated as of October 14, 2022, as amended January 6, 2023 and April 19, 2023 (as the same may be further amended from time to time, the "**DIP Facility Agreement**").

19. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such ancillary credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, (including fees and disbursements of the DIP Lender's counsel and financial advisors), liabilities and obligations to the DIP Lender under and pursuant to the DIP Facility Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

20. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on all of the present and future assets, property and undertaking of the Applicant (the "**DIP Property**"), which DIP Lender's Charge shall not secure an obligation that exists before the date of the filing of the NOI. The DIP Lender's Charge shall have the priority set out in paragraphs 29 and hereof.

21. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 days notice to the Applicant and the Proposal Trustee, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Facility Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Facility Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

22. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by the Applicant under the BIA, with respect to any advances made under the DIP Facility Agreement.

23. **THIS COURT ORDERS AND DECLARES** that FCC shall be treated as unaffected in any proposal filed by the Applicant under the BIA.

24. ~~23.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized to pay the DIP Lender, in accordance with the terms of the DIP Facility Agreement, amounts owing under the DIP Facility Agreement and any and all amounts owing by the Applicant on account of pre-filing obligations, from funds on hand or from funds generated by post-filing sales of inventory or otherwise, but not for certainty, from advances made by the DIP Lender following the filing of the NOI.

ADMINISTRATION CHARGE

25. ~~24.~~ **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and the Applicant's counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and the Applicant's counsel (for work performed in connection with these proceedings) on a weekly basis or as such accounts are otherwise rendered.

26. ~~25.~~ **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice (Commercial List).

27. ~~26.~~ **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which Administration Charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the date of this Order in respect of these proceedings. The Administration Charge shall have the priority set out at paragraphs 29 and hereof.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

28. ~~27.~~ **THIS COURT ORDERS** that the Applicant shall indemnify its current and future directors and officers (the “**Directors and Officers**”) against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of these proceedings, except to the extent that, with respect to any Officer or Director, the obligation or liability was incurred as a result of the Director’s or Officer’s gross negligence or wilful misconduct.

29. ~~28.~~ **THIS COURT ORDERS** that the Directors and Officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$700,000, as security for the indemnity provided in paragraph 29 of this Order. The Directors’ Charge shall have the priority set out in paragraph 29 and hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

30. ~~29.~~ **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge and the DIP Lender’s Charge, as among them, shall be as follows:

First – the Administration Charge (to the maximum amount of \$250,000);

Second – the Directors’ Charge (to the maximum amount of \$350,000 as against the DIP Property);

Third – the DIP Lender’s Charge (to the maximum amount of \$2,700,000), as against the DIP Property; and

Fourth – for the balance of the Director’s Charge of \$350,000 as against the FCC Collateral (as defined herein).

31. ~~30.~~ **THIS COURT ORDERS** that that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the DIP Lender’s Charge (collectively, the “**Charges**”) shall

not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

32. ~~31.~~ **THIS COURT ORDERS** that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property (in the case of the Directors' Charge and the Administration Charge) and the DIP Property (in the case of the DIP Lender's Charge), and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than any secured creditors who have not been served with this Motion, and provided that the DIP Lender's Charge shall not rank in priority to any of the security interests, liens, charges and encumbrances granted by the Applicant in favour of Farm Credit Canada over the Non-trade Personal Property (as defined in the Amended and Restated Intercreditor Agreement dated as of April 19, 2023 by and among, *inter alia*, the DIP Lender, Farm Credit Canada and the Applicant) (the "**FCC Collateral**").

33. ~~32.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Proposal Trustee, and the beneficiaries of the Charges, or further Order of this Court.

34. ~~33.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

35. ~~34.~~ **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Facility Agreement, the Definitive Documents and the DIP Lender's Charge shall not be rendered

invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Facility Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Facility Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE AND NOTICE

36. ~~35.~~ **THIS COURT ORDERS** that the Commercial List E-Service Guide (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [\[alvarezandmarsal.com/Whytes\]](http://www.alvarezandmarsal.com/Whytes)<http://www.alvarezandmarsal.com/Whytes>.

37. ~~36.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant’s creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

38. ~~37.~~ **THIS COURT ORDERS** that the Applicant, the Proposal Trustee and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Applicant’s creditors or other interested parties and

their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/ DORS).

GENERAL

39. ~~38.~~ **THIS COURT ORDERS** that the Applicant or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

40. ~~39.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Applicant and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

41. ~~40.~~ **THIS COURT ORDERS** that each of the Applicant and the Proposal Trustee 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.

42. ~~41.~~ **THIS COURT ORDERS** that any interested party (including the Applicant and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3, AS AMENDED OF WHYTE'S FOODS INC

Estate / Court File No. 2978830

Applicant

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

Proceeding commenced at TORONTO

ORDER

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Summary Report	
Title	compareDocs Comparison Results
Date & Time	8/31/2023 10:44:11 AM
Comparison Time	2.47 seconds
compareDocs version	v5.1.700.3

Sources	
Original Document	[#117787971] [v7] Whyte's. Initial Order (Approval of SISIP, DIP, Charges and Stay Extension).docx
Modified Document	[#117787971] [v8] Whyte's. Initial Order (Approval of SISIP, DIP, Charges and Stay Extension).docx

Comparison Statistics	
Insertions	6
Deletions	1
Changes	22
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	29

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Font Changes	
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Merged cells	
Changed lines	Mark outside border.

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Open Comparison Report after saving	General	Always
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Character Level	Word	False
Include Comments	Word	True
Include Field Codes	Word	True
Flatten Field Codes	Word	False
Include Footnotes / Endnotes	Word	True
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
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Include Quotation Marks	Word	False
Show Moves	Word	True
Include Tables	Word	True
Include Text Boxes	Word	True
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Summary Report	Word	End
Detail Report	Word	Separate (View Only)
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ON READING the affidavit of Elizabeth Kawaja sworn August 28, 2023 and the exhibits thereto (the "**Kawaja Affidavit**"), and on reading the first report of the Proposal Trustee dated August 30, 2023 (the "**First Report**"), and on hearing submissions of the Applicant, the Proposal Trustee, and such other counsel and parties listed on the Participant Information Form, with no

one else appearing although duly served as appears from the affidavit of service of Natasha Rambaran, filed,

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3. **THIS COURT ORDERS** that all references to currency herein shall be in Canadian dollars.

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4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
5. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Kawaja Affidavit or replace it with another substantially similar cash management system (the "**Cash Management System**") and

that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any proposal with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicant except as otherwise provided to the contrary herein, is and shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the filing of the Notice of Intention to Make a Proposal ("**NOI**") and this Order all in accordance with the variance to the Approved Cash Flow (as defined in the DIP Facility Agreement, defined below) as set out in section 4.4 of the DIP Facility Agreement or with the approval of the DIP Lender. Without limiting the foregoing, the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Proposal Trustee to pay amounts owing for goods or services supplied to the Applicant prior to the date of this Order and the filing by the Applicant of its notice of intention to make a proposal, if, in the opinion of the Applicant and the Proposal Trustee, the supplier is critical to the Applicant's business.

7. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date other than in accordance with the DIP Facility Agreement and the Approved Cash Flow; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

EXTENSION OF STAY OF PROCEEDINGS

8. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the applicant to file a proposal, and the corresponding Stay Period and stay of proceedings provided for in section 69 of the BIA, be and is hereby extended until and including October 10, 2023.

PROPOSAL TRUSTEE

9. **THIS COURT ORDERS** that the Proposal Trustee continues to be and is hereby authorized to take all steps required to fulfill its duties under the BIA or as an officer of the Court including, to perform such duties are required to give effect to the terms of this Order and such Other orders as may be made by this Court from time to time.

10. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in management or supervision of the management of the Applicant's business and shall not, in carrying out the SISP, or otherwise fulfilling its obligations hereunder or pursuant to the BIA, be deemed to have taken possession or control of the Applicant's business or the Property, or any part thereof.

11. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or any other Orders which may be made by this Court from time to time, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by the BIA or any applicable legislation.

APPOINTMENT OF FINANCIAL ADVISOR

12. **THIS COURT ORDERS** that the agreement dated as of August 22, 2023 pursuant to which the Applicant engaged Kroll to act as Financial Advisor, a copy of which is attached as Exhibit "P" to the Kawaja Affidavit, as may be amended by the parties thereto with the consent of the Proposal Trustee (the "**Financial Advisor Engagement Letter**"), and the appointment of the Financial Advisor pursuant to the terms thereof, and are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

SALE AND INVESTMENT SOLICITATION PROCESS

13. **THIS COURT ORDERS AND DECLARES** that the SISP (subject to any amendments thereto that may be made by the Proposal Trustee, in consultation with the Applicant, and in accordance with the terms of the SISP) attached hereto as Schedule "A" is hereby approved.

14. **THIS COURT ORDERS** that the Proposal Trustee and the Financial Advisor, in consultation with the Applicant and its advisors, are hereby authorized and directed to implement the SISP pursuant to the terms thereof and the Applicant, the Proposal Trustee and the Financial Advisor are authorized to take all steps and do all things reasonably necessary or incidental to implement the SISP.

15. **THIS COURT ORDERS** that the Proposal Trustee shall be authorized to maintain a single account for purposes of receiving any deposits submitted pursuant to the SISP.

16. **THIS COURT ORDERS** that in connection with the SISP and pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Applicant, the Proposal Trustee and the Financial Advisor, as applicable, may disclose personal information of identifiable individuals to prospective bidders in the SISP 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 (as defined in the SISP). Each prospective bidder to whom any 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 Property and if it does not complete a purchase of the Property, shall return all such information to the Applicant or in the alternative shall destroy all such information and certify such destruction to the Applicant and the Proposal Trustee. The purchaser of any Property shall be entitled 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 Applicant and shall return all other personal information to the Applicant or ensure that all other personal information is destroyed.

DIP FINANCING

17. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Wells Fargo Capital Finance Corporation (the “**DIP**

Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$2,700,000 unless permitted by further Order of this Court.

18. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the Third Amendment to the Credit Agreement and Forbearance between the Applicant and the DIP Lender dated as of August 22, 2023, which amends the credit agreement dated as of October 14, 2022, as amended January 6, 2023 and April 19, 2023 (as the same may be further amended from time to time, the "**DIP Facility Agreement**").

19. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such ancillary credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, (including fees and disbursements of the DIP Lender's counsel and financial advisors), liabilities and obligations to the DIP Lender under and pursuant to the DIP Facility Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

20. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on all of the present and future assets, property and undertaking of the Applicant (the "**DIP Property**"), which DIP Lender's Charge shall not secure an obligation that exists before the date of the filing of the NOI. The DIP Lender's Charge shall have the priority set out in paragraphs 29 and hereof.

21. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 days notice to the Applicant and the Proposal Trustee, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Facility Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Facility Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

22. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by the Applicant under the BIA, with respect to any advances made under the DIP Facility Agreement.

23. **THIS COURT ORDERS AND DECLARES** that FCC shall be treated as unaffected in any proposal filed by the Applicant under the BIA.

24. **THIS COURT ORDERS** that the Applicant is hereby authorized to pay the DIP Lender, in accordance with the terms of the DIP Facility Agreement, amounts owing under the DIP Facility Agreement and any and all amounts owing by the Applicant on account of pre-filing obligations, from funds on hand or from funds generated by post-filing sales of inventory or otherwise, but not for certainty, from advances made by the DIP Lender following the filing of the NOI.

ADMINISTRATION CHARGE

25. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and the Applicant's counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and the Applicant's counsel (for work performed in connection with these proceedings) on a weekly basis or as such accounts are otherwise rendered.

26. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice (Commercial List).

27. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which Administration Charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the date of this Order in respect of these proceedings. The Administration Charge shall have the priority set out at paragraphs 29 and hereof.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

28. **THIS COURT ORDERS** that the Applicant shall indemnify its current and future directors and officers (the “**Directors and Officers**”) against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of these proceedings, except to the extent that, with respect to any Officer or Director, the obligation or liability was incurred as a result of the Director’s or Officer’s gross negligence or wilful misconduct.

29. **THIS COURT ORDERS** that the Directors and Officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$700,000, as security for the indemnity provided in paragraph 29 of this Order. The Directors’ Charge shall have the priority set out in paragraph 29 and hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

30. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge and the DIP Lender’s Charge, as among them, shall be as follows:

First – the Administration Charge (to the maximum amount of \$250,000);

Second – the Directors’ Charge (to the maximum amount of \$350,000 as against the DIP Property);

Third – the DIP Lender’s Charge (to the maximum amount of \$2,700,000), as against the DIP Property; and

Fourth – for the balance of the Director’s Charge of \$350,000 as against the FCC Collateral (as defined herein).

31. **THIS COURT ORDERS** that that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the DIP Lender’s Charge (collectively, the “**Charges**”) shall

not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

32. **THIS COURT ORDERS** that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property (in the case of the Directors' Charge and the Administration Charge) and the DIP Property (in the case of the DIP Lender's Charge), and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than any secured creditors who have not been served with this Motion, and provided that the DIP Lender's Charge shall not rank in priority to any of the security interests, liens, charges and encumbrances granted by the Applicant in favour of Farm Credit Canada over the Non-trade Personal Property (as defined in the Amended and Restated Intercreditor Agreement dated as of April 19, 2023 by and among, *inter alia*, the DIP Lender, Farm Credit Canada and the Applicant) (the "**FCC Collateral**").

33. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Proposal Trustee, and the beneficiaries of the Charges, or further Order of this Court.

34. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

35. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Facility Agreement, the Definitive Documents and the DIP Lender's Charge shall not be rendered

invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Facility Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Facility Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE AND NOTICE

36. **THIS COURT ORDERS** that the Commercial List E-Service Guide (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.alvarezandmarsal.com/Whytes>.

37. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant’s creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

38. **THIS COURT ORDERS** that the Applicant, the Proposal Trustee and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Applicant’s creditors or other interested parties and

their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/ DORS).

GENERAL

39. **THIS COURT ORDERS** that the Applicant or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

40. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Applicant and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

41. **THIS COURT ORDERS** that each of the Applicant and the Proposal Trustee 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.

42. **THIS COURT ORDERS** that any interested party (including the Applicant and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3, AS AMENDED OF WHYTE'S FOODS INC**

Estate / Court File No. 2978830

Applicant

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

Proceeding commenced at TORONTO

ORDER

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