Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

MOTION RECORD

(Returnable at a date and time to be determined by the Court)

January 22, 2024

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Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

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(JANUARY 19, 2023)

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TAB 1

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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 ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

NOTICE OF MOTION
(AVO and Ancillary Order)

KPMG Inc. ("**KPMG**"), in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "**OTE Group**") in these proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**") will make a motion to be heard by a judge of the Ontario Superior Court (Commercial List) (the "**Court**") at a date and time to be determined by the Court.

PROPOSED METHOD OF HEARING: The motion is to be heard:

☐ in writing under subrule 37.12.1 (1);

☐ in writing as an opposed motion under subrule 37.12.1 (4);

☐ in person at 330 University Avenue, Toronto, Ontario;

☐ by telephone conference;

☒ by video conference.

THIS MOTION IS FOR:

1. An Order substantially in the form appended to the Motion Record of the Monitor (the "**Approval and Vesting Order**"), among other things:

   (a) authorizing the Monitor to execute the Purchase Agreement (as defined herein) on behalf of the OTE Group;

   (b) approving the Vehicle Transaction (as defined herein); and

   (c) vesting the OTE Group's right, title and interest in certain vehicles in Allstar Auctions Inc. ("**Allstar**").

2. An Order substantially in the form appended to the Motion Record of the Monitor (the "**Ancillary Order**"), among other things:

   (a) approving the key employee retention plan for certain OTE Group employees (the "**KERP**"); and

   (b) sealing the Confidential Appendices to the Seventh Report of the Monitor dated January 22, 2024.

3. Direction to the Monitor in respect of discussions with landlords regarding interest expressed by bidders in the blending and storage equipment located on certain premises leased by the OTE Group, with any potential transaction with respect to such equipment or leased premises being subject to Court approval.

THE GROUNDS FOR THE MOTION ARE:

Background

4. The OTE Group functioned as a wholesale fuel supplier which serviced mainly First Nations' petroleum stations and First Nations' communities across Ontario.

5. The OTE Group was granted protection under the CCAA on January 30, 2023 pursuant to the initial order issued by this Court (the "**Initial Order**"). Among other things, the Initial Order granted a ten-day stay of proceedings in favour of the OTE Group, appointed KPMG as the Monitor. The stay of proceedings was extended pursuant to the Amended and Restated Initial Order issued on February 9, 2023, and has been extended from time to time throughout these proceedings. In its capacity as Monitor, KPMG has participated in these proceedings in accordance with its duties under the Orders granted and the CCAA, and has filed various Reports with the Court.

6. On October 12, 2023, following the adjournment of several motions that were previously brought before the Court, this Court issued the following Orders (which were ultimately unopposed or consented to by the relevant stakeholders):

(a) an Order (the "**Monitor's Enhanced Powers and Amended Bid Process Approval Order**"), among other things, providing the Monitor with enhanced powers in connection with the business and property of the OTE Group, and approving an amended bid process for the sale of the assets of the OTE Group to be carried out by the Monitor (the "**Bid Process**"); and

(b) an Order, among other things, extending the stay period to April 26, 2024, approving certain amendments to the Claims Procedure previously approved by this Court on April 27, 2023, and approving the activities of the Monitor.

Bid Process

7. Pursuant to the Bid Process, the Monitor marketed the property, assets and undertakings of the OTE Group (the "**Property**", which included certain chattels specifically identified at Schedule 1 thereto). The Bid Process was developed by the OTE Group and the Monitor as a means of gauging interest in the OTE Group and/or its assets and determining whether a transaction that could achieve better value than a liquidation is available for the property, assets and undertakings of the OTE Group. Most of the Property of the OTE Group subject to the Bid Process is vehicles in the possession of the OTE Group (the "**Vehicles**") that are encumbered pursuant to loan and security agreements or held pursuant to capital leases.

8. The Monitor was fully involved in all aspects of the Bid Process to ensure that the marketing process was fair and reasonable.

9. The OTE Group's three blending locations Tyendinaga, Whitefish and Six Nations (collectively the "**Fuel Blending Locations**") were excluded from the Property for sale. However, the Bid Process did not preclude any person from expressing an interest in the blending equipment, or leasehold interests and, to the extent that any potential bidders expressed such an interest, the Bid Process provided that the Monitor would use its best reasonable efforts to arrange for discussions between interested parties and applicable landlords, but the Monitor could make no assurances as to the assignability of any interests in the OTE Group to leased premises or fixtures

claimed by any landlord, lessor or licensor. The Monitor ultimately arranged for site visits or discussions with five interested parties.

10. The Monitor received four Binding Offers (as defined in the Bid Process) and one letter of intent to purchase and/or auction all or a portion of the OTE Group's Property, as well as four offers in respect of the blending equipment at the Fuel Blending Locations (the "**Blending Equipment**"). Specifically, the Monitor received:

(a) four Binding Offers for the OTE Group's Property, which did not include any Blending Equipment (the "**Non-Blending Equipment Bids**");

(b) one letter of intent expressing interest in the Blending Equipment and the remaining Property of the OTE Group, with no purchase price provided; and

(c) four offers for the fuel blending equipment at the Fuel Blending Locations (the "**Blending Equipment Expressions of Interest**").

Vehicle Transaction

11. The Monitor evaluated the offers and determined that the Non-Blending Equipment Bid submitted by Allstar (the "**Successful Bid**") to purchase all of the Vehicles was superior in respect of its economic and other terms as compared to the other Binding Offers for the Vehicles. The Successful Bid provides for a better recovery than an appraisal conducted by Gordon Brothers for the orderly liquidation value of the vehicles. The Monitor is also of the view that the proceeds that would be received pursuant to the Successful Bid are greater than the potential recoveries from the other bids received in respect of the Vehicles, and that the Successful Bid provided the most certainty as to recovery.

12. As such, the Monitor has prepared a purchase agreement that was executed by Allstar on January 11, 2024 (the "**Purchase Agreement**"). The Purchase Agreement contemplates that Allstar will acquire all of the OTE Group's right, title, and interest in all of the Vehicles.

13. The Approval and Vesting Order would: (i) authorize the Monitor to execute the Purchase Agreement; (ii) approve the Vehicle Transaction; and (iii) vest all of the OTE Group's right, title, and interest in the Vehicles in Allstar. The Monitor believes consideration received pursuant to the Vehicle Transaction is fair and reasonable and achieves market value. It is therefore of the view that the Approval and Vesting Order is in the best interests of the OTE Group and its stakeholders, and the relief sought is supported by the OTE Group and its secured lender, the Royal Bank of Canada.

14. The Monitor also received Binding Offers in in respect of the office furniture, IT equipment and customer list of the OTE Group. These offers were for *de minimis* value, and much of this Property continues to be in use by the OTE Group. As such, the Monitor has determined not to proceed with a sale of this remaining Property at this time.

Blending Equipment Expressions of Interest

15. The Blending Equipment Expressions of Interest were all received from third parties unrelated to the OTE Group. The completion of any transaction in respect of any of the Blending Equipment would be conditional on (i) the negotiation of acceptable lease agreements with the current landlords of the leased premises in respect of Fuel Blending Locations and additional due diligence, and (ii) Court approval, given that the Bid Process did not expressly include the OTE Group's interests in the Blending Equipment or interests in the leased premises.

16. The Monitor, through its counsel, has been in correspondence with counsel to the landlords of the Whitefish and Tyendinaga premises, who have indicated (among other things) that the landlords intend to terminate the leases with the OTE Group. Given this Court's direction at the case conference dated December 22, 2023 that the Monitor shall not abandon any leases or assets thereon without further Order of this Court, the Monitor is seeking the Court's direction to engage in further discussions with the applicable landlords and the bidders who have expressed an interest in the Blending Equipment. The Monitor intends to report back to the Court in respect thereof in respect of any potential transactions or settlements and to seek any further directions in connection therewith, and no transactions will be entered into by the Monitor on behalf of the OTE Group absent further Order of the Court.

KERP

17. The Monitor, in consultation with the OTE Group, developed and implemented the KERP to incentivize certain key employees (the "**KERP Employees**") that the Monitor and the OTE Group consider critical to the OTE Group's limited ongoing operations and forthcoming wind-up of the OTE Group. The KERP Employees have been and will be integral to completing the residual administrative duties including the collection of any outstanding accounts receivable and filing the necessary tax returns. The KERP Employees do not include any principals, partners or senior management of the OTE Group.

18. The total amount to be paid to the KERP Employees pursuant to the KERP is $51,585, which amounts were paid on January 19, 2024. The Monitor believes that the KERP is appropriate, reasonable and justified in the circumstances to ensure the continued participation of the KERP Employees in the wind-up. The Monitor does not believe that any stakeholder is prejudiced by the

KERP. The Monitor therefore believes that the KERP and the payments made in connection therewith should be approved.

Sealing

19. The Monitor seeks to seal the Confidential Appendices to the Seventh Report, which relate to the assets of the OTE Group and the KERP. The Confidential Appendices contain personal information and competitively sensitive information that could be prejudicial to the KERP Employees and to recoveries for the OTE Group. The Monitor believes the sealing request is appropriately limited in the circumstances and that the benefits outweigh the negative effects.

OTHER GROUNDS FOR THE MOTION ARE:

20. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

21. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194; and

22. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

23. the Seventh Report of the Monitor dated January 22, 2024; and

24. such further and other evidence as counsel may advise and this Honourable Court may permit.

January 22, 2024

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TO: THE SERVICE LIST

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Proceedings commenced in Toronto

Notice of Motion

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TAB 2

Court File No.: CV-23-00693758-00CL

ORIGINAL TRADERS ENERGY LTD. ET AL.

SEVENTH REPORT OF KPMG INC.,
IN ITS CAPACITY AS MONITOR

January 22, 2024

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APPENDICES

CONFIDENTIAL APPENDICES

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ONTARIO
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(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

SEVENTH REPORT OF KPMG INC.
In its capacity as Monitor of the OTE Group

January 22, 2024

I. INTRODUCTION

1. On January 30, 2023 (the "**Filing Date**"), Original Traders Energy Ltd. and 2496750 Ontario Inc. (together, the "**Applicants**") were granted relief under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**") by Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants from January 30, 2023, until February 9, 2023 (the "**Initial Stay**"); the appointment of KPMG Inc. ("**KPMG**") as the monitor in these proceedings (in such capacity, the "**Monitor**"); and other related relief. These proceedings under the CCAA are referred to herein as the "**CCAA Proceedings**".

2. OTE Logistics LP ("**OTE Logistics**") and Original Traders Energy LP ("**OTE LP**" and together with OTE Logistics, the "**Limited Partnerships**") are not Applicants in this proceeding. However, the Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry on operations that are integral to the business of the Applicants. The term "**OTE Group**" throughout this report refers to the Applicants and Limited Partnerships collectively.

3. KPMG has filed various reports with the Court in these proceedings. Copies of materials filed with the Court and other materials pertaining to the CCAA Proceedings, including all reports issued by the Monitor in these proceedings, are available on the Monitor's website: http://home.kpmg/ca/OTEGroup (the "**Monitor's Website**").

II. PURPOSE OF REPORT

4. The purpose of this Seventh Report of the Monitor (the "**Seventh Report**") is to:

   (i) update the Court regarding the Bid Process (as defined herein);

   (ii) update the Court regarding the Reduced Operations Plan (as defined herein) and the wind-down of the OTE Group's business activities;

   (iii) provide the Monitor's recommendation that this Court issue an Order (the "**Approval and Vesting Order**"), among other things, authorizing the Monitor to execute the Purchase Agreement (as defined herein) on behalf of the OTE Group, approving the Vehicle Transaction (as defined herein), and vesting the OTE Group's right, title and interest in certain vehicles in Allstar Auctions Inc. ("**Allstar**");

(iv) provide the Monitor's recommendation that this Court issue an Order (the "**Ancillary Order**"), among other things:

(a) approving the key employee retention plan for certain OTE Group employees (the "**KERP**"); and

(b) sealing the Confidential Appendices to this Seventh Report.

(v) request that this Court provide direction to the Monitor in respect of discussions with landlords regarding interest expressed by bidders in the blending and storage equipment located on certain premises leased by the OTE Group, with any potential transaction with respect to such equipment or leased premises being subject to Court approval.

III. TERMS OF REFERENCE

5. In preparing the Seventh Report, the Monitor has relied on information and documents provided by the OTE Group and their advisors, including unaudited financial information, declarations, in addition to information and documents obtained from third parties that responded to the Monitor's requests for information and other information obtained by the Monitor (collectively, the "**Information Received**"). In accordance with industry practice, except as otherwise described in the Second Report of the Monitor dated March 13, 2023 (the "**Second Report**"), KPMG has reviewed the Information Received for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information Received in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information Received.

6. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. BACKGROUND

7. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is provided in the Monitor's pre-filing report dated January 30, 2023. Since the OTE Group's filing, this Court has granted several Orders, and various materials have been filed in connection therewith. The information below only provides the background on these proceedings

relevant for this Seventh Report. All Orders granted and materials filed in these proceedings can be accessed on the Monitor's Website.

8. The Monitor filed a report with the Court dated September 28, 2023 (the "**Fifth Report**") in support of a motion brought by the OTE Group for an extension of the stay period, approval of amendments to the Claims Procedure and approval of the bid process for the assets and undertakings of the OTE Group. On October 6, 2023, the Monitor filed a supplement to the Fifth Report (the "**Supplemental Fifth Report**"), among other things, seeking an Order approving an amended bid process and providing the Monitor with enhanced powers in connection with the business and property of the OTE Group to address concerns raised by certain stakeholders of the OTE Group.

9. The Fifth Report and Supplemental Fifth Report also described the reduced operations plan implemented by the OTE Group as a result of the loss of key customers (the "**Reduced Operations Plan**").

10. On October 12, 2023, following the adjournment of several motions that were previously brought before the Court and originally scheduled to be heard on October 4, the Court issued the following Orders (which were ultimately consented to or unopposed by the relevant stakeholders):

    (i) an Order (the "**Monitor's Enhanced Powers and Amended Bid Process Approval Order**"), among other things, providing the Monitor with enhanced powers in connection with the business and property of the OTE Group, and approving an amended bid process for the sale of the assets of the OTE Group to be carried out by the Monitor (the "**Bid Process**"); and

    (ii) an Order, among other things, extending the stay period to April 26, 2024, approving certain amendments to the Claims Procedure, and approving the activities of the Monitor.

11. As discussed below, the Monitor has been carrying out the Bid Process and engaging with interested parties since the Monitor's Enhanced Powers and Amended Bid Process Approval Order was issued.

V. BID PROCESS UPDATE

12. As detailed in the Fifth Report and the Supplemental Fifth Report, the Bid Process provided for the Monitor to market the property, assets and undertakings of the OTE Group (collectively, the "**Property**"). The Bid Process was developed by the OTE Group and the Monitor as a means of gauging interest in the OTE Group and/or its assets and determining whether a transaction that could

achieve better value than a liquidation is available for the property, assets and undertakings of the OTE Group.

13. Specifically, the Bid Process provided that the Property being sold at this time consists of the right, title and interests of the OTE Group in the chattels identified at Schedule 1 thereto. Most of the Property subject to the Bid Process consists of vehicles in the possession of the OTE Group (the "**Vehicles**"). Most of the Vehicles are encumbered pursuant to loan and security agreements or held pursuant capital leases with equipment leasing and financing companies, which were served directly or through counsel in connection with the Court-approved Bid Process. Other Property includes office furniture and IT equipment of the OTE Group.

14. The Monitor was fully involved in all aspects of the Bid Process to ensure that the marketing of the Property was fair and reasonable, and that all prospective interested parties were given the ability to make an offer.

15. The Bid Process, as approved by the Court on October 12, 2023, provided that:

    (i) the Bid Process shall be conducted by the Monitor, with the assistance of the OTE Group and in consultation with its secured lender, the Royal Bank of Canada ("**RBC**");

    (ii) on October 16, 2023 an initial offer summary shall be sent by the Monitor to a list of potential interested parties (the "**Interested Parties**");

    (iii) the Monitor shall cause a notice of the Bid Process to be published in the Globe and Mail (National Edition) and such other publications as the Monitor deems appropriate;

    (iv) the Monitor shall establish a data room and provide Interested Parties who have signed a non-disclosure agreement with access;

    (v) Interested Parties shall be required to submit binding offers ("**Binding Offers**") to the Monitor by no later than November 16, 2023 (the "**Bid Deadline**"); and

    (vi) Binding Offers that are deemed acceptable to the Monitor, in consultation with RBC, may be presented to the Court for approval.

16. The OTE Group's three blending locations in Tyendinaga, Whitefish and Six Nations (collectively the "**Fuel Blending Locations**") were excluded from the Property for sale. However, the Bid Process did not preclude any person from expressing an interest in the leasehold interests or blending equipment.

It provided that, to the extent that any potential bidders expressed such an interest, the Monitor would use its best reasonable efforts to arrange for discussions between interested parties and applicable landlords, but the Monitor could make no assurances as to the assignability of any interests in the OTE Group to leased premises or fixtures claimed by any landlord, lessor or licensor. The Monitor ultimately arranged for site visits or discussions with five interested parties. As discussed further below, the Monitor is seeking the Court's directions regarding the expressions of interest that have been received for the OTE Group's interests in the Fuel Blending Locations and/or the assets located thereon.

17. A summary of the results of the Bid Process are as follows:

(i) on October 16, 2023, the Monitor began to contact Interested Parties to advise of an opportunity to acquire the Property of the OTE Group. The Monitor also caused a notice of the Bid Process to be published in the Globe and Mail;

(ii) each Interested Party was provided with a copy of the initial offering summary (the "**Teaser Letter**"), a bid process letter (the "**Bid Process Letter**") and form of non-disclosure letter (the "**NDA**"). In total, 41 parties were contacted by the Monitor;

(iii) of the 41 parties contacted, 12 executed the NDA and were provided access to the electronic data room (the "**Data Room**") to provide Interested Parties with access to relevant information relating to the OTE Group;

(iv) through the course of the Bid Process, the Monitor facilitated due diligence efforts by, among other things, arranging for the inspection of the OTE Group's Property by the Interested Parties, coordinating meetings with landlords when requested, and updating the Data Room as new information became available;

(v) four (4) Binding Offers and one (1) letter of intent to purchase and/or auction all or a portion of the OTE Group's Property were received prior to the Bid Deadline. Additionally, four (4) offers were received in respect of the blending equipment at the Fuel Blending Locations (the "**Blending Equipment**"). The details of the offers received are summarized below:

(a) four (4) Binding Offers were received for the OTE Group's Property, which did not include the Blending Equipment (the "**Non-Blending Equipment Bids**");

(b) one (1) letter of intent (the "**LOI**") was received expressing interest in the Blending Equipment and the remaining Property of the OTE Group, with no purchase price provided; and

(c) four (4) offers were received for the Blending Equipment (the "**Blending Equipment Expressions of Interest**").

18. A summary of the key terms of each of the offers received is attached hereto as **Confidential Appendix "1"**.

19. As discussed further below, the Monitor believes that it is appropriate and in the best interests of the OTE Group and its stakeholders to proceed with the sale of the Vehicles to Allstar pursuant to a purchase agreement prepared in respect of Allstar's Binding Offer to purchase the Vehicles.

Non-Blending Equipment Bids – Vehicles

20. Two of the four Non-Blending Equipment Bids and one LOI pertained primarily to the Vehicles of the OTE Group. The other two Non-Blending Equipment Bids pertained solely to other Property.

21. In connection with the Bid Process, the Monitor commissioned an appraisal to be conducted by Gordon Brothers to provide a net orderly liquidation value for the Vehicles (the "**Vehicle Appraisal**"). The Vehicle Appraisal was provided to the Monitor on November 21, 2023, and provides an appraisal value for the Vehicles as of November 16, 2023. The Vehicle Appraisal is attached hereto as **Confidential Appendix** "**2**".

22. The Monitor evaluated the Non-Blending Equipment Bids and the LOI and determined that the Non-Blending Equipment Bid submitted by Allstar in respect of the Vehicles (the "**Successful Bid**") was superior in respect of its economic and other terms as compared to the other Binding Offers for the Vehicles. The Successful Bid provided that Allstar would purchase all of the Vehicles for a price higher than the appraisal value provided by the Gordon Brothers, and higher than the amounts offered by the other offers received for the Vehicles.

23. As mentioned above, aside from the Successful Bid, one LOI and one other Binding Offer (the "**Other Bid**") were also submitted for the Vehicles. The Monitor believes the Successful Bid is superior to the LOI and the Other Bid based on the following:

(i) The LOI had significant uncertainty, including regarding the assets to be purchased and the price to be paid. It did not specify the assets to be purchased – it only expressed interest in purchasing "certain equipment and also assuming certain equipment leases" of the OTE Group. Further, it did not specify a purchase price; and

(ii) The Other Bid included a minimum guaranteed amount to be paid as the purchase price, which amount was less than the purchase price provided for in the Successful Bid. It also provided that the bidder in respect of the Other Bid (the "**Other Bidder**") would auction the Vehicles and remit 95% of any proceeds in excess of the purchase price to the OTE Group. Based on conversations with the Other Bidder, the Monitor believes it is unlikely that the gross proceeds would be greater than the amount bid by Allstar.

24. Given that the Successful Bid provided the best price and most certainty for recovery in respect of the Vehicles, the Monitor has negotiated, subject to Court approval, an agreement of purchase of sale with Allstar in respect of the Successful Bid (the "**Purchase Agreement**", and the transaction contemplated therein, the "**Vehicle Transaction**"). The Purchase Agreement was executed by Allstar on January 11, 2024. The key terms of the Purchase Agreement are provided below:

(i) **Purchased Assets:** Allstar shall purchase the OTE Group's right, title and interest in all of the Vehicles;

(ii) **Purchase Price:** The Monitor is seeking to seal the purchase price to be paid by Allstar (the "**Purchase Price**") pending closing of the Vehicle Transaction or further Order of this Court;

(iii) **Deposit:** Allstar has paid the Monitor, on behalf of the OTE Group, a deposit in the amount of 10% of the Purchase Price;

(iv) **Approval and Vesting Order:** The Monitor shall seek an Order authorizing the Vehicle Transaction and vesting effective as of the time of closing is executed all of the OTE Groups' right, title and interest in and to the Purchased Assets in Allstar. The Purchase Agreement is immediately binding upon Allstar's execution, but the Monitor is not required to execute the Purchase Agreement on behalf of the OTE Group and the Purchase Agreement shall not be binding on the Monitor or the OTE Group unless and until the Court issues the Approval and Vesting Order; and

(v) **Closing:** The Purchase Agreement shall close after the issuance of the Approval and Vesting Order and the Monitor's receipt of the balance of the Purchase Price from Allstar.

25. A copy of the Purchase Agreement, with the price redacted, is attached hereto as **Appendix** "**A**", and an unredacted copy of the Purchase Agreement is attached hereto as **Confidential Appendix** "**3**".

26. The Monitor's counsel has not yet completed a security review in respect of Vehicles. The Monitor will hold the proceeds of the Vehicle Transaction in trust pending that review, and will report to Court on any proposed distributions at a later date.

27. The Monitor believes that the Bid Process that resulted in the Successful Bid and the Purchase Agreement was fair and reasonable, and that the Vehicle Transaction achieves better value for the relevant Property than what would be achieved in a liquidation. The consideration to be received pursuant to the Vehicle Transaction is fair and reasonable and achieves market value for the Vehicles. RBC, in its capacity as secured lender to the OTE Group, has been consulted throughout and supports the approval of the Vehicle Transaction. The Vehicle Transaction is also supported by the OTE Group. The Monitor therefore believes that the Approval and Vesting Order is in the best interests of the OTE Group and its stakeholders.

Non-Blending Equipment Bids – Other Property

28. The Binding Offers in respect of the office furniture, IT equipment and customer list of the OTE Group were for *de minimis* value. Much of this office property and IT equipment continues to be in use by the OTE Group. As such, the Monitor has determined not to proceed with a sale of this remaining Property at this time.

Blending Equipment Expressions of Interest

29. As noted above, paragraph 3 of the Bid Process provides that, if a bidder wishes to negotiate the potential use of leased premises or fixtures as part of its bid, the Monitor will use its best reasonable efforts to arrange for discussions between the bidders and applicable landlords, but the Monitor can make no assurances as to the assignability of any interests in the OTE Group to leased premises or fixtures claimed by any landlord, lessor or licensor.

30. All Blending Equipment Expressions of Interest received by the Monitor are from third parties unrelated to the OTE Group. The completion of any transaction in respect of any of the Blending Equipment would be conditional on (i) the negotiation of acceptable lease agreements with the current landlords of the leased premises in respect of Fuel Blending Locations and additional due diligence, and (ii) Court approval, given that the Bid Process did not expressly include the OTE Group's interests in the Blending Equipment or interests in the leased premises.

31. The Monitor has received letters from counsel to landlords of the Whitefish and Tyendinaga premises. These landlords have indicated that they plan to terminate the leases with the OTE Group. In each case, counsel to the Monitor notified the landlords that the stay of proceedings provided for in the Initial Order and Amended and Restated Initial Order prevents such termination. Counsel for the landlord in respect of the premises leased in Tyendinaga has also indicated that his client may assert trespass against the Monitor. The Monitor responded to remind that landlord that the Monitor is not in possession of any of the OTE Group's property, and in any event, such an action is also stayed by the stay of proceedings. The correspondence between counsel to the landlords and counsel to the Monitor is attached hereto at **Appendix** "**B**".[1]

32. At a case conference dated December 22, 2023 (which is discussed further below), this Court directed that the Monitor shall not abandon any leases or assets thereon without further Order of this Court. The Monitor is therefore seeking the Court's direction to engage in further discussions with the applicable landlords and the bidders who have expressed an interest in the blending equipment. The Monitor intends to report back to the Court in respect thereof in respect of any potential transactions or settlements or to seek any further directions in connection therewith, and no transactions will be entered into by the Monitor on behalf of the OTE Group absent further Order of the Court.

VI. UPDATE ON REDUCED OPERATIONS PLAN

33. As described in the Fifth Report, the OTE Group was facing a variety of challenges, including the retention of its customers, leading to unfavorable impacts on its sales volumes. After reviewing mitigation strategies and scenarios to reduce the cash loss resulting from lost sales volumes, the Reduced Operations Plan was prepared in order to reduce the operating costs, overhead costs and conserve liquidity.

34. As part of the Reduced Operations Plan, the Six Nations blending location was servicing the limited customers of the OTE Group while the operations at the Tyendinaga and Whitefish blending locations were discontinued.

35. Certain time limited gas licenses and fuel licenses (the "**Gas and Fuel Licenses**") expired on December 31, 2023. As a result, there is no longer any sale or distribution of fuel by the OTE Group. However, employees of the OTE Group are required to maintain the sites of the leases and to provide

[1] Counsel for the landlord of the Tyendinaga premises also indicated in a letter that certain post-filing rent amounts had not been paid by the OTE Group. The Monitor, on behalf of the OTE Group, since coordinated the payment of the post-filing amounts on December 28, 2023.

security in respect of those premises. The Monitor also expects there to be administrative and collection activities for a short period to allow for the completion of OTE Group's wind-up. As at January 1, 2024, all but nine employees of the OTE Group have been terminated. The Monitor expects there to be further terminations as the administrative duties are completed.

VII. KEY EMPLOYEE RETENTION PLAN

36. Shortly after the expiry of the Gas and Fuel Licenses, and subject to the Court's approval of the Purchase Agreement and direction regarding the Plan proposed by OTE USA LLC (discussed further below), the Monitor expects to complete the wind-up of the OTE Group's operations.

37. The Monitor, in consultation with the OTE Group, developed and implemented the KERP to incentivize certain key employees (the "**KERP Employees**") that the Monitor and the OTE Group consider critical to the OTE Group's limited ongoing operations and forthcoming wind-up of the OTE Group. The KERP Employees have been and will be integral to completing the residual administrative duties including the collection of any outstanding accounts receivable and filing the necessary tax returns. The KERP Employees do not include any principals, partners or senior management of the OTE Group.

38. Pursuant to letters sent by the Monitor on behalf of the OTE Group in November 2023, a total of $51,585 was offered to five (5) KERP Employees to be paid within ten (10) business days of the Target Date, which is defined as the earlier of:

    (i) January 12, 2024; and

    (ii) the date on which the earliest of the following events occurs in respect of the OTE Group:

        (a) the implementation of a plan of compromise or arrangement in the CCAA Proceedings;

        (b) the completion of the of or substantially all of the assets of the OTE Group or other restructuring transactions;

        (c) assignment of the OTE Group into bankruptcy;

        (d) the appointment of a receiver over the assets of the OTE Group; and

        (e) the termination of the CCAA Proceedings.

39. The payment of the KERP amounts was made on January 19, 2024 (the "**KERP Payments**").

40. Copies of the KERP letters are attached hereto at **Confidential Appendix** "**4**".

41. The Monitor believes that the KERP is appropriate, reasonable and justified in the circumstances to ensure the continued participation of the KERP Employees in the wind-up. The KERP is supported by the OTE Group, and the Monitor does not believe that any stakeholder is prejudiced by the KERP The Monitor therefore believes that the KERP and the KERP Payments should be approved.

VIII. SEALING

42. The Monitor seeks to seal Confidential Appendices 1, 2, 3 and 4 (together, the "**Confidential Appendices**"). As discussed above, the first three Confidential Appendices relate to the Vehicle Transaction and to offers and expressions of interest received by the Monitor in connection with the Bid Process. Confidential Appendix 1 is a summary of all offers received for chattels marketed pursuant to the Bid Process as well as all expressions of interest received for the Blending Equipment, Confidential Appendix 2 is the Vehicle Appraisal, and Confidential Appendix 3 is an unredacted copy of the Purchase Agreement showing the purchase price. The Monitor seeks to seal Confidential Appendix 1 pending further Order of this Court. The Monitor is of the view that it would be appropriate for Confidential Appendix 1 to be unsealed once the treatment of the Blending Equipment and the leases has been determined. The Monitor also seeks to seal Confidential Appendices 2 and 3 until further Order of this Court, provided that upon closing of the Vehicle Transaction, the Monitor's Report shall be re-published on the Monitor's Website containing those appendices and that the Monitor shall re-file that version of the Report with the Court.

43. Confidential Appendices 1, 2 and 3 contain detailed and competitively sensitive information related to the assets marketed pursuant to the Bid Process and the Blending Equipment Expressions of Interest. The disclosure of this information could prejudice the Monitor's ability to maximize value for stakeholders by hindering its ability to pursue alternate transactions. The information to be sealed is limited to key information, and the information will only be kept from the public record for a limited time. The Monitor therefore believes that the sealing request is necessary and proportionate in the circumstances.

44. The Monitor also seeks to seal Confidential Appendix 4, which includes the signed offer letters setting out the KERP details for each of the KERP Employees. Confidential Appendix 4 reveals individually identifiable information, including, among other things, compensation information. The KERP

Employees have a reasonable expectation that their personal information will be kept confidential. The Monitor does not believe the sealing will have a negative impact on any stakeholder, and sees no benefit to revealing this confidential information. The Monitor believes that this sealing request is also necessary and proportionate in the circumstances.

IX. OTE USA RESTRUCTURING PROPOSAL MOTION

45. On December 21, 2023, this Court heard the Monitor's motion for, among other things, a Mareva Injunction Order against Glenn Page, Mandy Cox, and 2658658 Ontario Inc. (collectively, the "**Mareva Respondents**", and that motion, the "**Mareva Motion**"). The Court issued a decision in respect of the Mareva Motion on January 16, 2024. The Court (i) granted the relief sought by the Monitor in the Mareva Injunction Order against Glenn Page and 2658658 Ontario Inc., and (ii) granted a limited Order requiring Mandy Cox to deliver a statement of worldwide assets. A copy of the January 16 decision is attached hereto at **Appendix** "**C**".

46. On December 22, 2023, counsel for the Monitor, counsel for the Mareva Respondents, and counsel for OTE USA LLC ("**OTE USA**") attended a scheduling case conference before Justice Kimmel. OTE USA requested this Court schedule a motion authorizing it to, among other things, engage in discussions with the creditors of the OTE Group to discuss a proposed CCAA plan of arrangement, the terms of which are set out in a term sheet that has been submitted to the Monitor (the "**OTE USA Motion**"). The Monitor expressed its view that it would be inappropriate to schedule such a motion until this Court has issued a decision in respect of the Mareva Motion given that OTE USA is controlled by Page, one of the Mareva Respondents.

47. The Court ultimately scheduled the hearing of the OTE USA Motion, and approved a timetable in connection therewith pursuant to an endorsement (the "**December 22 Endorsement**"). The Monitor has received a copy of OTE USA's motion materials and is reviewing with counsel to the Monitor and counsel to the OTE Group for confidential information. Once those views on any required redactions are provided, OTE USA will serve its redacted motion record on the service list, along with a copy of the December 22 Endorsement. The Monitor intends to respond to OTE USA's motion in accordance with the timetable set out in the December 22 Endorsement.

X. MONITOR'S RECOMMENDATIONS

48. For the reasons set out in this Seventh Report, the Monitor is of the view that the relief sought in the Approval and Vesting Order and the Ancillary Order is necessary and appropriate in the

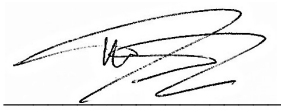
circumstances. As such, the Monitor respectfully requests that this Court issue the Approval and Vesting Order and Ancillary Order.

All of which is respectfully submitted this 22nd day of January 2024.

KPMG Inc.
In its capacity as Monitor of
Original Traders Energy Group
And not in its personal or corporate capacity

Per:

Paul van Eyk
CPA, CA-IFA, CIRP, LIT, Fellow of INSOL
President



Duncan Lau
CPA, CMA, CIRP
Senior Vice President

APPENDIX “A”

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "**Agreement**") is made and entered into as of January 11, 2024, by and among Original Traders Energy Ltd., 2496750 Ontario Inc., OTE Logistics LP, and Original Traders Energy LP (collectively, the "**OTE Group**" or the "**Vendors**") and Allstar Auctions Inc. (the "**Purchaser**");

WHEREAS the Ontario Superior Court of Justice (Commercial List) issued an order on October 12, 2023 (the "**Monitor's Enhanced Powers and Bid Process Approval Order**") approving a bid process (the "**Bid Process**") in respect of the certain of the assets of the Vendors. Any capitalized terms not otherwise defined herein have the meanings ascribed to them in the Monitor's Enhanced Powers and Bid Process Approval Order or the Bid Process, as applicable;

WHEREAS the Monitor's Enhanced Powers and Bid Process Approval Order granted enhanced powers to KPMG Inc., in its capacity as the Court-appointed Monitor of the OTE Group (in such capacity, the "**Monitor**"), and authorized the Monitor, on behalf of the OTE Group, to, among other things, enter any agreements and to take any actions or steps necessary to carry out the Bid Process;

WHEREAS pursuant to the Bid Process, the Monitor, on behalf of the Vendors and in consultation with RBC has selected the Purchaser as the Successful Bidder in respect of any right, title and interest of the Vendors in and to the assets listed in Schedule "A" hereof (the "**Purchased Assets**"), subject to approval by the Ontario Superior Court of Justice (*Commercial List*) (the "**Court**") pursuant to the Approval and Vesting Order (as defined below);

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Conveyance**. Subject to the terms and conditions of this Agreement, at Closing, for good and valuable consideration in the amount of [redacted] (the "**Purchase Price**"), the receipt and sufficiency of which the Vendors hereby acknowledge, the Vendors shall irrevocably sell, assign, transfer, convey, grant, bargain, and deliver to the Purchaser, all of their respective rights, title, and interest in and to the Purchased Assets (the "**Transaction**").

2. **Deposit.** The Monitor acknowledges that the Purchaser has paid a deposit in the amount of [redacted] to the Monitor in trust pursuant to the Bid Process, which shall be applied by the Monitor toward the Purchase Price subject to the terms and conditions of this Agreement. The Monitor shall not be required to invest the deposit in an interest-bearing account and shall not be required to pay any interest on the Deposit.

3. **Approval and Vesting Order**. The Monitor shall seek an Order substantially in the form attached as Schedule "B" hereto (1) authorizing the Transaction; and (2) vesting effective as of the time that the Monitor receives the Purchase Price from the Purchaser and in accordance with the Order, all of the Vendors' right, title and interest in and to the Purchased Assets in the Purchaser (the "**Approval and Vesting Order**"). For greater certainty, this Agreement shall be binding upon the Purchaser immediately upon the Purchaser's execution but the Monitor shall not be required to execute this Agreement on behalf of the Vendors and this Agreement

shall not be binding upon the Vendors or the Monitor unless and until the Court issues the Approval and Vesting Order. In the event that the Court declines to issue the Approval and Vesting Order, the Purchaser, the Vendors and the Monitor shall be released from any and all obligations under this Agreement and the Monitor shall return the Deposit to the Purchaser.

4. **Disclaimer of Warranties**. THE PURCHASED ASSETS SHALL BE SOLD TO THE PURCHASER ON AN "AS IS, WHERE IS BASIS". THE VENDORS, THE MONITOR AND THEIR RESPECTIVE EMPLOYEES, PARTNERS, REPRESENTATIVES OR AGENTS MAKE NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THE PURCHASED ASSETS, INCLUDING ANY REPRESENTATION OR WARRANTY OF: (A) CONDITION, OPERABILITY, MERCHANTABILITY; (B) FITNESS FOR A PARTICULAR PURPOSE; (C) TITLE; OR (D) AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BY EXECUTING THIS AGREEMENT, THE PURCHASER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION, CONDITION OR WARRANTY MADE BY THE VENDORS, THE MONITOR OR THEIR RESPECTIVE EMPLOYEES, PARTNERS, REPRESENTATIVES OR AGENTS OR ANY OTHER PERSON ON THEIR BEHALF.

5. **Payment of Purchase Price.** Full payment of the balance of the Purchase Price (less the Deposit already paid) shall be paid by the Purchaser to the Monitor on behalf of the Vendors within five (5) business days after the issuance of the Approval and Vesting Order being issued by the Court.

6. **Closing Date.** The parties shall use commercially reasonable efforts to consummate the closing of the Transaction (the "**Closing**") within ten (10) business days after the issuance of the Approval and Vesting Order being issued by the Court. (the "**Closing Date**"), which Closing shall occur upon the Monitor's receipt of the balance of the Purchase Price and the completion of any other steps required under the Approval and Vesting Order (if any) to effect the Closing.

7. **Currency**. All references in this Agreement to "dollars" or "$" are references to Canadian dollars, unless otherwise stated.

8. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to principles of conflicts of law.

9. **Effective Time.** This Agreement shall be effective as of the 12:01 A.M. (Toronto time) on the Closing Date.

10. **Successors and Assigns**. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

11. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A PDF or other electronic reproduction of this Agreement may be executed by

one or more parties hereto, and an executed copy of this Agreement may be delivered by one or more parties by an electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party, all parties agree to execute an original of this Agreement as well as any PDF or other electronic reproduction hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed and delivered on the date first above written.

KPMG Inc., in its capacity as the Court-Appointed Monitor, on behalf of the Vendors, ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS LP AND ORIGINAL TRADERS ENERGY LP

By: _____
Name:

ALLSTAR AUCTIONS INC.

By: _____
Name: Brett Askin

SCHEDULE A

Purchased Assets

Unit #	Make	Model	Year	VIN	Bid Price Allocation
20-05	INTL	PRO	2020	3HCDZAPT1LL434337	1.27%
4A-2	TREM	TRA	2020	1T9JAFV4XLS588072	2.44%
6A-1	TREM	TRA	2020	1T9JAGX67LS588082	3.31%
6A-2	TREM	TRA	2020	1T9JAGX69LS588083	3.31%
6A-3	TREM	TRA	2021	2TLSL5262MB000475	3.44%
6A-4	TREM	TRA	2021	2TLSL5260MB000474	3.44%
6A-5	TREM	TRA	2022	1T9JAGX67NS588022	3.67%
6A-6	TREM	TRA	2021	1T9JAGX69NS588023	3.44%
6A-7	TREM	TRA	2022	1T9JAGX60NS588024	3.67%
6A-8	TREM	TRA	2022	1T9JAGX62NS5688025	3.67%
ST-04	WSTR	CNV	2022	5KKHAXDV7NPMW6004	5.39%
SB003	TREC	TRA	2020	1T9AA9825LS588105	3.96%
PUP	TREC	TRA	2020	1T9AA9H32LS588104	
SB004	TREC	REM	2020	1T9AA9H37LS588115	3.96%
PUP	TREC	TRA	2020	1T9AA982XLS588116	
SB005	TREM	TRA	2021	1T9AA9H38LS588107	4.22%
PUP	TREM	TRA	2020	1T9AA9820LS588108	
4A-6	TREM	TRA	2021	2TLSL5043MB000471	2.60%
ST-05	WSTR	CNV	2021	5KKHAXDV8MPMU4740	4.61%
4A-3	TREM	TRA	2021	1T9JAGV43MS588003	2.60%
4A-4	TREM	TRA	2021	1T9JAGV45MS588021	2.60%
4A-5	TREM	TRA	2021	2TLSL504XMB000421	2.60%
SB006	TREC	TRA	2021	1T9AA9H33MS588016	4.22%
PUP	TREC	TRA	2021	1T9AA9826MS588017	
20-08	INTL	LT6	2020	3HSDZAPT6LN547144	1.27%
ST-06	WSTR	CNV	2022	5KKHAXDV5NPNJ8164	5.39%
23-01	VOLVO	VNR	2023	4V4WC9EH7PN305453	2.92%
23-02	VOLVO	VNR	2023	4V4WC9EH5PN305452	2.92%
23-03	VOLVO	VNR	2023	4V4WC9EXHPN305401	2.92%
20-09	INTL	LT6	2020	3HSDZAPT1LN547181	1.27%
21-01	MACK	600	2021	1M1AN4GY7MM020317	1.69%
20-07	VOLV	ARO	2020	4V4WC9EH3LN240594	1.27%
21-02	VOLV	ARO	2021	4V4WC9EH1MN281081	1.43%
20-06	VOLV	ARO	2020	4V4WC9EHXLN240592	1.27%
20-01	INTL	PRO	2020	3HCDZAPT8LL823640	1.27%
20-02	INTL	PRO	2020	3HCDZAPT7LL844673	1.27%
20-03	INTL	PRO	2020	3HCDZAPT1LL804671	0.65%
20-04	VOLV	ARO	2020	4V4WC9EH1LN240593	1.27%
ST-01	WSTR	CNV	2011	5KKHALDV6BPAZ5828	2.44%
SB001	HUTC	TRI	2014	2H9AE9HG5ET002332	2.27%
PUP	HUTC	TAN	2014	2H9AA8HF0ET002333	
Total					**100.00%**

APPENDIX “B”

Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5
T 416-593-1221
W Blaney.com

John C. Wolf
D: 416-593-2994 F: 416-596-2044
jwolf@blaney.com

November 7th, 2023

Delivered & Via Email (glenn.page@originaltradersenergy.com)

ORIGINAL TRADERS ENERGY LP
7331 Indian Line Road
Wilsonville, ON N0E 1Z0

Attention: Glenn Page, President

Dear Sir:

Re: **Atikameksheng Anishnawbek ("Lessor") and Chi-Zhiingwaak Business Park Inc. ("Lessee") by lease dated March 8th, 2021 ("Head Lease") for the premises designated as Lots 13, 14 & 15, Business Park Road, Chi-Zhiingwaak Business Park, Naughton, Ontario ("Premises")**

And Re: **Commercial Lease Agreement dated August 24th, 2021 ("Lease") between Chi-Zhiingwaak Business Park Inc. and Original Traders Energy LP ("Tenant") in respect of the Premises**

And Re: **Notice of Acceptance of Tenant's Repudiation of The Lease and the Termination of Lease ("Notice")**

We are litigation counsel and agents to the Lessee and Atikameksheng Anishnawbek.

Capitalized terms are as defined in the Lease or in this Notice.

Overview

We understand that the Monitor advised the Lessee on or about Friday, August 18th, 2023 that it intended to disclaim the Lease in September 2023 (but to date a disclaimer of lease has yet to be delivered); and that the Monitor has removed Tenant property of value to other business sites.

We are further advised that the Monitor has indicated that provincial licences to operate the Tenant's business will be allowed to lapse December 31st, 2023.

Lastly, we note that no Fuel Royalty has been paid since the Tenant ceased operating from the Premises. Fuel Royalty payments constitute the overriding majority of income payable in respect of the Lease.

Act of Default

The Tenant has committed an Act of Default in that the Tenant permitted the Premises to become vacant or remain unoccupied for a period of thirty (30) consecutive days; and/or the Premises have not been open for business on more than thirty (30) business days in any twelve (12) month period or on twelve (12) consecutive business days all contrary to subparagraphs 11 (a) (iv) (A) & (B) of the Lease.

Such actions or omissions by the Tenant, individually or collectively, constitute a repudiation of the Lease and/or give rise to a Landlord right of Lease termination. The Landlord hereby notifies you that, in view of the Tenant's repudiation of the Lease and/or other acts, the Landlord has elected to re-enter the Premises and terminate the Lease.

In the event that any property remains on site after delivery of this Notice that the Tenant is contractually entitled to remove is not removed within twenty (20) business days of the date of this Notice, it shall be deemed to be abandoned and disposed of by the Lessee as it sees fit including by dumping. Please direct any requests to remove any remaining property to Blaney McMurtry LLP.

CCAA Application of 2496750 Ontario Inc. and Ontario Traders Energy Ltd. ("CCAA Application")

Our clients are mindful that the CCAA Application contains the customary stay of exercise of rights or remedies at section 18 of the Initial Order.

In the event the Monitor or Tenant objects to the Notice, our clients will work with those parties to co-ordinate a hearing in the CCAA Application seeking leave of the Court to terminate the Lease.

We would be pleased to speak with you in terms of next steps.

BLANEY MCMURTRY LLP
COUNSEL AND AGENT TO CHI-ZHIINGWAAK BUSINESS PARK INC. AND
ATIKAMEKSHENG ANISHNAWBEK

John C. Wolf

John C. Wolf
JCW/gf

c.c. Aird & Berlis LLP
Attention: Steven Graff, Miranda Spence, Tamie Dolny and Samantha Hans
Counsel for the OTE Group

c.c. Bennett Jones LLP
Attention: Raj S. Sahni and Thomas Gray
Counsel for KPMG

c.c. David T. Ullmann

Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto, Ontario, Canada M5X 1A4
Tel: 416.863.1200 Fax: 416.863.1716

Raj S. Sahni
Partner
Direct Line: 416.777.4804
e-mail: sahnir@bennettjones.com

November 14, 2023

"Without Prejudice"
Via E-Mail

Blaney McMurtry LLP
Suite 1500
2 Queen Street East
Toronto, Ontario M5C 3G5

Attention: John C. Wolf
Dear Sirs:

Re: Atikameksheng Anishnawbek ("Lessor") and Chi-Zhiingwaak Business Park Inc. ("Lessee") by lease dated March 8th, 2021 ("Head Lease") for the premises designated as Lots 13, 14 & 15, Business Park Road, Chi-Zhiingwaak Business Park, Naughton, Ontario ("Premises")

And Re: Commercial Lease Agreement dated August 24th, 2021 ("Lease") between Chi-Zhiingwaak Business Park Inc. and Original Traders Energy LP ("Tenant") in respect of the Premises

And Re: Notice of Acceptance of Tenant's Repudiation of The Lease and the Termination of Lease ("Notice")

We are counsel to KPMG Inc., the Court-appointed monitor (the "**Monitor**") in the proceedings of Original Traders Energy LP (the "**Tenant**"), Original Traders Energy Ltd., 2496750 Ontario Inc. and OTE Logistics LP (collectively with the Tenant, the "**OTE Group**") pursuant to the *Companies Creditors Arrangement Act* ("**CCAA**") before the *Ontario* Superior Court of Justice (Commercial List) (the "**Court**"). We write in response to your letter of November 7, 2023, which was addressed to Glenn Page. Please note that Glenn Page has not been employed by the OTE Group since prior to the commencement of the OTE Group's CCAA proceedings and any future correspondence should be addressed to KPMG Inc. as the Monitor, to the attention of Paul van Eyk and Duncan Lau, with a copy to us as the Monitor's counsel and Steven Graff of Aird & Berlis as the OTE Group's counsel.

The Monitor disagrees with your client's purported termination of the Lease. As you note in your letter, there is a stay of proceedings in place in the CCAA proceeding, which stays the enforcement of any rights or remedies your client may have and also expressly prohibits any Person from

discontinuing, failing to honour, altering, interfering with, repudiating, terminating or ceasing to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the OTE Group, except with the written consent of the OTE Group and the Monitor, or leave of the Court. We refer you to paragraphs 18 and 20 of the Initial Order of the Court dated January 30, 2023 and paragraphs 18 and 21 the Amended and Restated Initial Order dated February 9, 2023. These Orders, together with the Monitor's reports and other documents in respect of the OTE Group's CCAA proceedings can be found on the Monitor's website at: https://kpmg.com/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html

As you may also be aware, the Court approved a bid process (the "**Bid Process**") for the assets of the OTE Group pursuant to a Court Order made on October 12, 2023. While the Bid Process is not intended to solicit offers for any leasehold interests or any property or assets belonging to or claimed by landlords or other third parties, as noted in the Bid Process, if a bidder wishes to negotiate the potential use of leased premises or fixtures as part of its bid, the Monitor will use its best reasonable efforts to arrange for discussions between Qualified Bidders (as defined in the Bid Process) and applicable landlords. The Bid Process is attached as Appendix "B" to the Supplement to the Monitor's Fifth Report dated October 6, 2023, which can be found on the Monitor's website.

It is possible that as part of the Bid Process, a Qualified Bidder may seek to purchase assets of the OTE Group that are still situated on the Premises and/or may seek an assignment of the Lease (as defined in your November 7, 2023 letter). The Monitor is hopeful that a consensual agreement can be reached in such an event; however, the Monitor reserves all rights and remedies on behalf of the Tenant in the event that no consensual agreement is reached, including without limitation the right to seek a determination by the Court regarding any ownership or other rights of the Tenant or other members of the OTE Group in any assets or property on the Premises and the right of the Tenant to assign the Lease or any interests therein to any Qualified Bidder or other person.

Yours truly,

Raj S. Sahni

RSS:mv

Cc: Aird & Berlis LLP
Attention: Steven Graff, Martin Henderson and Samantha Hans Counsel for the OTE Group

CC: Blaney McMurtry LLP
Attention: David T. Ullmann

CC: KPMG Inc.
Attention: Paul van Eyk and Duncan Lau

CC: Bennett Jones LLP
Thomas Gray

TEMPLEMAN

HAROLD VAN WINSSEN, LL.B Partner
T: 613.966-2620 E: hvwinssen@tmlegal.ca

Please Reply to the Belleville Office

December 13, 2023

Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto, Ontario
M5X 1A4

Via email: grayt@bennettjones.com

Original Traders Energy Ltd.
Also known as Original Traders Energy Limited Partnership
7331 Indian Line Road
Wilsonville, Ontario
N0E 1Z0

Attention: Glen Page, President (glen.page@originaltradersenergy.com)

RE: OTE Group – Court File No. VCV-23-00693758-00CL
Leases with the Original Traders Energy Limited Partnership- Tyendinaga – Mohawks of the Bay of Quinte

We are the solicitors for the Landlord's respectively of the office building and the blending facility under two leases, the first being in respect of the blending facility dated February 18, 2020 and the second from 2023 in respect of the office administration building.

We are writing you to inform you that the tenant is in default under the terms of both of the said leases

Blending Facility
In respect of the blending facility there are a number of defaults under the terms of the Lease. However the most important of the defaults is the failure to pay Additional Basic Rent called for under the terms of the Lease Agreement since the date of the CCAA Order. Under section 3.2 of the Lease the Tenant was to pay one cent ($0.01) per litre of fuel shipped from the premises per calendar month. No payments in this regard have been made since the CCAA Order. Our clients are not in possession of the necessary records which are in the possession of the Tenant as to the amount of fuel shipped but based on prior years shipping the amount of Additional Basic Rent owing is well into six figures.

There are a number of other defaults in respect of the Lease including jeopardizing the insurance due to the vacancy of the building, the making of the CCAA bankruptcy proposal etc..

Please take this letter as the fourteen (14) days notice required under Lease for termination of the Lease subject of course to the compliance of the CCAA Order in respect of such termination.

Office Lease
With respect to the office Lease, although there may not be arrears of rent per say, the actions of the Tenant have voided any insurance coverage due to the vacancy, having constituted

abandonment of the premises under the section requiring them not to remain vacant or unoccupied for a period of thirty (30) consecutive days among other defaults. Please take this letter as the required thirty (30) days notice.

It is clear from the Monitor's reports that effectively this blending station and associated office premises have been abandoned. Although there is a procedure for disclaimer my clients are not aware of any disclaimer that has been made by the Monitor or the Tenant.

We understand that a reasonable period of time to determine whether a disclaimer will be issued is the norm but given that we are almost ten (10) months later, it is well past the normal time for making an election to disclaim or not to disclaim the subject Lease.

It would be preferable to have the Monitor and the Tenant agree to terminate the said Leases in order to allow our client to mitigate its losses and lease the premises out to other potential interested parties.

May we please have an immediate response. Failing any response once the fourteen day period from the date of this letter has expired we will be taking necessary steps to terminate the Lease including an application to court if required.

If you have any questions, please feel free to contact the writer. Hopefully we can resolve this on an amicable basis.

Templeman LLP

Harold Van Winssen
HVW:dd

cc: Tom Maracle
cc: Scott scott.hill@originaltradersenergy.com

Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto, Ontario, Canada M5X 1A4
Tel: 416.863.1200 Fax: 416.863.1716

Thomas Gray
Associate
Direct Line: 416.777.7924
e-mail: grayt@bennettjones.com
Our File No.: 92467.4

December 22, 2023

Templeman LLP
205 Dundas Street East
Suite 200 Box 234
Belleville, ON, K8N 5A2

Attention: Harold van Winssen

Dear Mr. van Winssen:

Re: Re: OTE Group – Court File No. CV-23-00693758-00CL – Leases with OTE LP – Tyendinaga – Mohawks of the Bay of Quinte ("Tyendinaga")

We are counsel to KPMG Inc., the Court-appointed monitor (the "**Monitor**") in the proceedings of Original Traders Energy LP (the "**Tenant**"), Original Traders Energy Ltd., 2496750 Ontario Inc. and OTE Logistics LP (collectively with the Tenant, the "**OTE Group**") pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**") before the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). We write in response to your letter sent by email on December 14, 2023, which was addressed to Glenn Page as well as Bennett Jones LLP. Please note that Glenn Page has not been employed by the OTE Group since prior to the commencement of the OTE Group's CCAA proceedings and any future correspondence should be addressed to KPMG Inc. as the Monitor, to the attention of Paul van Eyk and Duncan Lau, with a copy to us as the Monitor's counsel.

You have informed us that your client is the landlord (the "**Landlord**") pursuant to two leases with the Tenant: one in respect of a blending facility (the "**Blending Lease**"), and one in respect of an office building (the "**Office Lease**", and together, the "**Leases**"), both of which are located at Tyendinaga. We note that the Monitor does not appear to have a copy of the Office Lease – please provide a copy as soon as you are able.

You have asserted in your letter that certain defaults have occurred in respect of the Blending Lease (in particular, regarding the payment of the "Additional Basic Rent"), and stated that your letter is being provided as the 14 days' notice required under the Blending Lease for termination of the Blending Lease, subject to compliance with the "CCAA Order". You also have asserted that the Tenant

has abandoned the premises in respect of the Office Lease, and have stated that the letter is being provided as the 30 days' notice required for termination thereunder.

The Monitor is in the process of reviewing with the OTE Group if there is any post-CCAA filing rent that may be owing in respect of the Additional Basic Rent, and will contact you and the Landlord in respect thereof. As you may be aware, there is a stay of proceedings pursuant to the Court's orders in the CCAA proceedings, which stays the enforcement of any rights or remedies your client may have and also expressly prohibits any Person from discontinuing, failing to honour, altering, interfering with, repudiating, terminating or ceasing to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the OTE Group, except with the written consent of the OTE Group and the Monitor, or leave of the Court. We refer you to paragraphs 18 and 20 of the Initial Order of the Court dated January 30, 2023 and paragraphs 18 and 21 the Amended and Restated Initial Order dated February 9, 2023. These Orders, together with the Monitor's reports and other documents in respect of the OTE Group's CCAA proceedings, can be found on the Monitor's website at: http://home.kpmg/ca/OTEGroup.

As you may also be aware, the Court approved a bid process (the "**Bid Process**") for the assets of the OTE Group pursuant to a Court Order made on October 12, 2023. While the Bid Process is not intended to solicit offers for any leasehold interests or any property or assets belonging to or claimed by landlords or other third parties, as noted in the Bid Process, if a bidder wishes to negotiate the potential use of leased premises or fixtures as part of its bid, the Monitor will use its best reasonable efforts to arrange for discussions between Qualified Bidders (as defined in the Bid Process) and applicable landlords. The Bid Process is attached as Appendix "B" to the Supplement to the Monitor's Fifth Report dated October 6, 2023, which can be found on the Monitor's website.

As part of the Bid Process, a Qualified Bidder may seek to purchase assets of the OTE Group that are still situated on the leased premises and/or may seek an assignment of the Leases. Certain Qualified Bidders have expressed interest in the premises leased pursuant to the Leases. The Monitor understands that the Landlord participated in site visits and discussions with these Qualified Bidders in connection with the Bid Process. The Monitor is hopeful that, in the event the Qualified Bidders seek to purchase assets on the premises of the Leases or to seek an assignment of the Leases that a consensual agreement can be reached; however, the Monitor reserves all rights and remedies on behalf of the Tenant in the event that no consensual agreement is reached, including without limitation the right to seek a determination by the Court regarding any ownership or other rights of the Tenant or other members of the OTE Group in any assets or property on the premises and the right of the Tenant to assign the Lease or any interests therein to any Qualified Bidder or other person.

Yours truly,

Thomas Gray

TG:mv

cc. Raj Sahni, Bennett Jones LLP
cc. Paul van Eyk and Duncan Lau, KPMG Inc. as Court-appointed Monitor

TEMPLEMAN

HAROLD VAN WINSSEN, LL.B Partner
T: 613.966-2620 E: hvwinssen@tmlegal.ca

Please Reply to the Belleville Office

January 10, 2024

Thomas Gray
Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto, Ontario
M5X 1A4

Via email: grayt@bennettjones.com

**Re: Original Traders Energy Group –
Court File No. CV-23-00693758-00CL**

We are writing to you further to our letter of December 13, 2023 and your letter of December 22, 2023.

We understand that a payment has been made to Tom Maracle in respect to the Blending Facility Lease but no payment has been made to Jason Maracle in respect to the Blending Facility Lease. We also understand that no reporting has been provided with respect to such payments either to Tom or Jason Maracle, nor have any of the other provisions of the Lease previously noted to be in default been complied with to date.

As per our letter of December 13, 2023 requisite notices have been provided and our client absent the CCAA proceedings would be entitled to terminate the Leases and take possession of the premises forthwith.

We would also note that this Lease is what is referred to as "Buckshee Lease" Buckshee Leases are illegal and unenforceable under the provisions of the Indian Act as you are no doubt aware. Buckshee Leases have been held by the court to be void and unenforceable and occupancy under them to be a trespass.

It will be our position that legally that KPMG is in trespass under the provisions of the Indian Act. We understand that at least one of the potential bidders has brought this issue to your client's attention in the past and you are quite aware of the issue.

We would also note the secured party who moved to appoint KPMG, National Bank has no security rights under the circumstances to the Lease and the writer continues to be baffled as to why you will not simply give up possession of the premises. There is nothing to sell in respect of this Lease, it is void and unenforceable and therefore no purchaser of the overall Original Traders Energy Group business will be entitled obtain anything that is legally enforceable. We understand that there are no material moveable assets located

on the premises, the premises are not being used and you are using the CCAA Application to effectively block my client's rights.

The Lease was also made in anticipation of an active business as the Basic Additional Rent is very much dependent on revenue and volume flowing through the facility which is not occurring. Effectively the facility has been abandoned.

Under the circumstances therefore we will be forced to assume, unless we hear to the contrary by noon on Friday, January 12, 2024, that we will need to make the necessary application to court. Under the circumstances given the trespass, given the void and unenforceable Lease, we will be seeking costs against the Receiver in these somewhat extraordinary circumstances.

Please govern yourself accordingly.

Templeman LLP

Harold Van Winssen
HVW:dd
E. & O. E.

cc: Tom Maracle
cc: Jennifer Ng

https://tmlegal.sharepoint.com/Commercial/Documents/Clients/Maracle, Tom and Lisa/Lease 2023 Scott Hill & OTE/Let T Gray Jan 10, 2024 re OTE Group.docx

Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto, Ontario, Canada M5X 1A4
Tel: 416.863.1200 Fax: 416.863.1716

Thomas Gray
Associate
Direct Line: 416.777.7924
e-mail: grayt@bennettjones.com

January 12, 2024

Templeman LLP
205 Dundas Street East
Suite 200 Box 234
Belleville, ON, K8N 5A2

Attention: Harold van Winssen

Re: OTE Group – Court File No. CV-23-00693758-00CL – Leases with OTE LP – Tyendinaga – Mohawks of the Bay of Quinte ("Tyendinaga")

We are in receipt of your letter dated January 10, 2024. Capitalized terms used herein but not otherwise defined have the meanings ascribed in our letter to you dated December 22, 2023.

We write to respond your incorrect and unfounded accusation of trespass and the erroneous statements made in the January 10 letter, and to remind you of the role of our client, KPMG Inc. ("**KPMG**"), as the Court-appointed monitor (in such capacity, the "**Monitor**") of the OTE Group under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**").

Contrary to the assertion in your January 10 letter, KPMG is not a receiver and was not appointed by a secured creditor. As above, KPMG is the Monitor of the OTE Group in its proceedings under the CCAA. The Monitor is a neutral Court officer that serves as the "eyes and ears" of the Court. The Monitor takes its directions from the Court, including the Orders of the Court made in these CCAA proceedings. As previously noted, you can review these Orders on the Monitor's website: http://home.kpmg/ca/OTEGroup.

The CCAA is a debtor-in-possession regime. The OTE Group remains in possession of its property – this property does not vest in the Monitor, and the Monitor has not taken possession of the OTE Group's property in these proceedings. As such, there could be no action for trespass against the Monitor and any such accusation against the Monitor is incorrect and unfounded.

Moreover, no action can be taken against the OTE Group or the Monitor without leave of the Court in light of the stay of proceedings imposed by the Court (the "**Stay**"). We again refer you to paragraphs 16, 18 and 20 of the Initial Order of the Court dated January 30, 2023 and paragraphs 16, 18 and 21 of the Amended and Restated Initial Order dated February 9, 2023. The Stay was most recently extended by the Third Stay Extension Order dated October 12, 2023.

In your letter delivered by email on December 14, 2023, you stated that the Landlord had not received the "Additional Basic Rent" owed in connection with the Blending Lease. The Monitor understands that payment was made by the OTE Group to your client, Tom Maracle in respect of all post-filing amounts owing on December 28, 2023. The Monitor will request that the OTE Group provide Tom Maracle with the records used to calculate the Additional Basic Rent in the near term. We note that no accusations of trespass were made in your December 14 letter and that such accusations are inconsistent with the prior payments that have been made pursuant to the Blending Lease.

You have stated in your January 10 letter that payments have not been received in respect of the Blending Lease by Jason Maracle. The Blending Lease does not provide for any payment to be made to Jason Maracle, and the Monitor is not aware of any document requiring payments to be made to Jason Maracle. If you have such a document, please provide it forthwith. We note that we also informed you in our December 22 letter that the Monitor is not aware of the Office Lease referenced in your December 14 letter. We requested that you provide a copy of that document, which you have not provided to date.

The Monitor understands that OTE Group may have assets or interests in assets, including material moveable assets, remaining on the premises. As a Court officer (that as noted, is not itself in possession of the premises), the Monitor on behalf of the OTE Group cannot agree to "simply give up possession", as you state it should in your January 10 letter.

In these circumstances, the Monitor will include your letters and our responses in its next Report to the Court, which the Monitor plans to issue next week. Without prejudice to any position the Monitor may take on any of these matters, we intend to ask the Court for directions regarding the treatment of this and other leases, and assets or interests in assets remaining on any of the subject premises, including in light of any expressions of interest made by certain parties in the premises. We will ensure that you are added to the service list and receive service of the Monitor's Report and any related materials served in connection therewith.

Yours truly,

Thomas Gray

cc. Jennifer Ng, Templeman LLP
cc. Raj Sahni, Bennett Jones LLP
cc. Paul van Eyk and Duncan Lau, KPMG Inc. as Court-appointed Monitor

APPENDIX “C”

CITATION: Original Traders Energy Ltd., (Re) 2024 ONSC 325
COURT FILE NO.: CV-23-00693758-00CL
DATE: 20240116

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO INC.

BEFORE: KIMMEL J.

COUNSEL: *Martin Henderson,* for the Applicants, Original Traders Energy Ltd. and 2496750 Ontario Inc.

Richard Swan, Raj Sahni and Shaan Tolani, for the Monitor, KPMG

Monique Jilesen, Bonnie Greenaway and Jonathan Chen, for Glenn Page and 2658658 Ontario Inc.

Jessica Orkin and Natai Shelsen, for Mandy Cox

Massimo Starnino, for OTE USA LLC

Edward Park, for The Attorney General of Canada on behalf of His Majesty the King in Right of Canada as represented by the Canada Revenue Agency (the "CRA")

Laura Brazil and Steven Groeneveld, for His Majesty the King in Right of Ontario as Represented by the Ministry of Finance ("Ontario Minister of Finance")

HEARD: December 21, 2023

ENDORSEMENT
(MONITOR'S MOTION FOR MAREVA INJUNCTION)

This Motion

[1] KPMG Inc., in its capacity as the court-appointed monitor (the "Monitor") of the Applicants, Original Traders Energy LP ("OTE"), and OTE Logistics LP (collectively, the "OTE Group"), seeks an interim or interlocutory Mareva Injunction Order against Glenn Page ("Page"), 2658658 Ontario Inc. ("265") and Mandy Cox ("Cox"). These responding parties (sometimes referred to as the "Mareva Respondents") oppose the requested order. The Mareva injunction is sought in the context of a proceeding under *Companies' Creditors Arrangement Act*, RSC 1985, c. C.36. ("CCAA"). The request for a Mareva injunction is supported by the Applicants.

[2] The two most significant creditors of the applicants are the CRA and the Ontario Minister of Finance. These tax authorities have issued significant Notices of Assessment for taxes claimed to be owing, estimated to be in excess of $310 million (about $20,630,068 in 2019, $47,615,974 in 2020, $107,497,231 in 2021, and $134,103,437 in 2022). While they are neither moving nor responding parties on this motion, they are significant economic stakeholders that appeared on this motion with instructions to advise the court that they appreciate the preservation measures that the Monitor is taking.

[3] OTE USA LLC ("OTE USA") is controlled by Page and his brother Brian. Counsel for OTE USA appeared and advised the court of certain steps it is taking in the CCAA proceedings in parallel with the Monitor's efforts, including a motion that has since been scheduled to be heard on March 22, 2024 by which OTE USA will seek leave to present a proposed Plan of Arrangement to the other stakeholders of the applicants.

[4] The Monitor presented this motion as a logical extension of an earlier Mareva order that was granted by Osborne J. on March 21, 2023 at the request of the applicants (supported by the Monitor at that time), based on a finding of a strong *prima facie* case that the respondents had misappropriated funds from the OTE Group to purchase a yacht and fraudulently prepared and executed documents to do so (the "Yacht Mareva Order"). This order restrained Page, his spouse Cox, and their jointly owned and/or controlled company 265, and those acting on their behalf or in conjunction with them, from directly or indirectly selling, transferring, encumbering or dealing with a 70 foot yacht bearing the name "Cuz We Can" or "Home South" (the "Yacht").

[5] The broader Mareva Injunction Order now requested is based on:

a. further confirmation of concerns previously identified by the Monitor about the alleged fraudulent activities of the Mareva Respondents and their dealings with the assets of the applicants (such as payments made for personal expenditures claimed to have been Page's share of equity distributions, which were made without formal approvals and were accounted for as expenses at times when OTE may have had significant outstanding tax remittances, and the falsification of accounting and financial records);

b. more recently discovered concerns, such as: (i) transfers of the Yacht to two different offshore companies owned by Page five months prior to the Yacht Mareva Order that were not disclosed by them at the time of that order; and (ii) admissions regarding the ownership of the fractional interests in AirSprint jets, originally claimed to be owned by 265 and now acknowledged to belong to the OTE Group);

c. recent dealings with their own assets, such as the sale of their primary residence in Ontario (the "Ontario Home") coupled with their acknowledged ties to St. Lucia, where they have a residence, businesses and bank accounts; and

d. the Monitor's further expanded obligations and powers that were granted pursuant to a consent order of the court made on October 12, 2023 (the "October 2023 Order").

[6] The broader Mareva Injunction Order is primarily objected to by both of the Mareva Respondents because they say that the Monitor's delay and alleged lack of any new evidence since the Yacht Mareva Order was granted should lead the court to conclude that there is not any real risk of dissipation or removal of assets, particularly in light of their willingness to allow more than $13 million in estimated or known net sale proceeds of: their home (the "House Sale Proceeds"), the yacht (the "Yacht Sale Proceeds") and certain fractional interests in private jets ("AirSprint Proceeds") to be frozen pending further court order (the "Frozen Assets"). Without a finding of such risk, the granting of a further Mareva Injunction Order is not warranted. Cox has raised some other grounds for opposing the broader Mareva Injunction Order against her.

[7] Pursuant to a consent order dated July 17, 2023 (the "Frozen Funds Order"): (i) the Yacht remains under the Monitor's control and is undergoing a sales process which is expected to recover up to USD$3.2 million (CAD$4,281,200 when converted as of December 15, 2023); and (ii) Page agreed that USD$5,482,779.85 (and any interest accrued, which totalled CAD$7,331,079.78 when converted as of December 15, 2023) was to be remitted to the Monitor pending judicial determination of entitlement to the AirSprint Proceeds. In the course of this motion, it was acknowledged that AirSprint fractional interests purchased in the name of 265 (using an estimated CAD$9 million transferred from OTE) that 265 had been asserting it owned are, in fact, owned by (and held in trust for) OTE.

[8] The Monitor served this motion on November 8, 2023 after it learned about an impending closing of the Ontario Home of Page and Cox (later confirmed to be scheduled for November 30, 2023). The next day, on November 9, 2023, Page and Cox offered to place proceeds of sale of their Ontario Home into the trust account of Page's counsel. Initially, the Monitor rejected this proposal although it was later agreed to as a term of the first adjournment of this motion. The sum of $1,874,058.28 (representing the net proceeds of the sale on closing) was paid into Page's lawyer's trust account on November 30, 2023 pursuant to the court's November 10, 2023 endorsement.

Summary of Outcome

[9] For the reasons that follow, the requested Mareva Injunction Order is granted against Page and 265. A limited order for delivery of a statement of worldwide assets is granted as against Cox at this time.

Factual and Procedural Background

[10] OTE functions as a wholesale fuel supplier which services mainly First Nations' petroleum stations and First Nation communities across Ontario. OTE has serviced or currently services many gas stations throughout Southern Ontario. OTE LP is in the business of blending and selling gasoline to independent gas stations on First Nation reserves. OTE LP has three blending sites, all located on First Nation reserve lands.

[11] OTE has a partnership structure, in which the Mareva Respondents hold a direct or indirect 33% interest. In particular, 265 (a company in which Page and Cox are the only shareholders) is one of three limited partners of OTE LP. OTE is the general partner of OTE LP. The other two limited partners are Scott and Miles Hill, who are described as status Indians.

[12] 2584861 Ontario Inc. ("CCD") was one of the original partners of OTE. Its principals, Nick Capretta, Brian de Nobriga and Lou Cerutti, were active in the OTE Group's business. They also ran Claybar Contracting Inc., a supplier to the business. CCD's units in OTE LP were reassigned in 2019 but, according to Page, CCD and certain of its principals continued to be involved with OTE.

[13] Page was the one who determined the timing and quantum of distributions to the limited partners. It was also Page's responsibility to ensure OTE met its tax remittance obligations for the Ontario and Federal governments, including those involving taxes payable under the *Gasoline Tax Act*, *Fuel Tax Act*, and *Excise Tax Act*. Page was the President of OTE (the general partner) and the senior executive in charge of operating the business of OTE LP.

[14] In late 2021, OTE LP's financial situation became precarious. The relationship between Miles and Page began to deteriorate. Page left the OTE Group in July 2022. In October 2022, the OTE Group and Miles and Scott Hill initiated an action against Page, 265, Cox and others in which various allegations of unjust enrichment, fraud, breach of fiduciary duty and other causes of action were asserted. By this time, KPMG had been engaged by the OTE Group to provide advisory services.

[15] The applicants sought protection under the CCAA and an initial order was made on January 30, 2023 (the "Initial Order") that was amended and restated on February 9, 2023 (the "ARIO") as a result of the serious financial difficulties the OTE Group was facing by that time.

[16] Shortly afterwards, concerns came to light about the source of funds used to purchase the Yacht and the applicants sought and obtained the Yacht Mareva Order. Following the hearing of a contested motion, Osborne J. made certain findings at that time that are repeated here for ease of reference:

> [3] …I appointed KPMG as Monitor [by the Initial Order], with certain investigatory powers in the circumstances, given that the Applicants were unable to locate all books and records, said to be as a result of alleged misconduct of certain former executives, including Mr. Glenn Page…
>
> …
>
> [16] The Respondents control the Yacht, and the evidence on this motion was to the effect that it was up for sale with multiple Boat Brokers (with active listings at the time of the hearing of the motion).
>
> [17] Moreover, the evidence of the OTE Group is that the Respondents have caused a deregistration of the Yacht from Canada, changed its name and taken other steps all in an attempt to remove the asset from the control or reach of the OTE Group, have forged certain documents to fund the purchase of the Yacht, and are otherwise acting in an attempt to frustrate the efforts of the OTE Group and the Monitor to investigate the use of OTE Group funds, the purchase of the Yacht and the whereabouts of the Yacht.

…

[33] The evidence is to the effect that the Respondents transferred funds or permitted and authorized the transfer of funds from OTE accounts, inappropriately and without the right to do so, and used those funds to purchase the Yacht, in part through the alleged misuse of the signing authority of Page at OTE Logistics. The OTE Group received no benefit or consideration for these fund transfers. It appears the Respondents further fraudulently executed and forged signatures on documents to Essex, the party that provided financing for the Yacht.

[34] The Respondents filed no evidence on this motion, perhaps not surprisingly given that they had received only two days-notice. In submissions, counsel for the Respondents submitted not that the transfers of funds did not occur, but rather that they were not improper, or at least they did not constitute *prima facie* evidence of fraud, since they could be said to be distributions of profits to which the Respondents were entitled.

[35] I cannot accept the submission, however, in the complete absence of any evidence to corroborate the suggestion. The books and records of the OTE Group are incomplete and lacking. There is no evidence before me of resolutions, meeting minutes, correspondence or any documents demonstrating or even suggesting that these transfers were in fact, or were even intended to be, distributions of profit or income. There is also no evidence of any corresponding distributions, at the same time or in the same amount, to the other partners who presumably would have been entitled to the same distribution.

[36] Finally, there is no evidence that the partnership had, at the time of the impugned transfers, sufficient profits to fund such distributions in any event.

[37] Even if the Respondents were entitled to distributions of profit that the relevant time, it does not follow that they are somehow entitled to simply take funds and apply them for their own uses.

[38] In short, I am satisfied that the moving parties have established, with sufficient particulars, a strong *prima facie* case.

…

[45] In my view, and as submitted by the OTE Group, the objective facts support my conclusion that there is a serious risk that the asset will be removed from the jurisdiction (in the sense of the jurisdiction and reach of this Court) and/or will be dissipated.

> [46] The Yacht was, and apparently still is, listed for sale although it has been listed for sale in at least two locations (Palm Beach, Florida and Bimini, Bahamas). It has been delisted from Canadian registries. It has been renamed, and listed on the websites of the Boat Brokers as being for sale in Hollywood, Florida. Its GPS locator, whether intentionally disabled or simply malfunctioning, is not active, with the result that the exact location of the vessel cannot be determined.
>
> [47] I am satisfied there is a risk of dissipation of assets. Different jurisdictions are, on the face of the evidence, involved. Proof of the risk of removal/dissipation may be inferred from the surrounding circumstances of the responding parties' misconduct. (See *Ontario Professional Fire Fighters Association v. Atkinson et al*, 2019 ONSC 3877 at para. 6-8, quoting with approval from Sibley v. Ross, 2011 ONSC 2951 at paras. 63, 64 and *Amphenol Canada Corp. v. Sunadrum*, 2019 ONSC 849).
>
> …
>
> [51] Finally, pursuant to Rule 40.03, I am persuaded that the requirement for an undertaking, although provided by the moving parties here, should be dispensed with in the circumstances. The case put forward by the OTE Group is strong, and the OTE group is insolvent and in ongoing CCAA protection from its creditors. In my view, it is appropriate to dispense with the requirement for an undertaking as to damages where, as here, the case of the moving parties is strong and they are insolvent: *Sabourin & Sun Group of Cos. v. Laiken*, [2006] OJ No. 3847 at para. 16.

The Test for a Mareva Injunction

[17] The test for granting a Mareva injunction in a case of alleged fraud and breach of fiduciary duty is the same on this motion as the test that was applied by Osborne J. when the Yacht Mareva Order was granted, as follows:

> [20] The test for a Mareva injunction is well established. This Court has jurisdiction to grant an interlocutory injunction, including a Mareva injunction, pursuant to section 101 of the *Courts of Justice Act*, where it appears just or convenient to do so. Pursuant to Rule 40.01, an interlocutory injunction or mandatory order under section 101 may be obtained on motion to a judge. The order may include such terms as are just, and may be sought on motion made without notice for a period not exceeding 10 days.
>
> [21] That said, the relief is extraordinary. As numerous courts have observed, the harshness of such relief, usually issued ex parte, is mitigated or justified in part by the requirement that the defendant have

an opportunity to move against the injunction immediately. The relief remains extraordinary even in circumstances such as are present here, where the relief was not sought ex parte, but rather on notice to the Respondents, albeit brief.

[22] The factors to be considered in determining whether to grant Mareva relief include whether the moving party has established the following:

(a) a strong *prima facie* case;

(b) particulars of its claim against the defendant, setting out the grounds of its claim and the amount thereof, and fairly stating the points that could be made against it by the defendant;

(c) some grounds for believing that the defendant has assets in Ontario (although this requirement has been modified by more recent jurisprudence discussed below, such that it is perhaps better expressed as: some grounds for believing that the defendant has assets within the jurisdiction of the Ontario Court);

(d) some grounds for believing that there is a serious risk of defendant's assets being removed from the jurisdiction or dissipated or disposed of before the judgment or award is satisfied;

(e) proof of irreparable harm if the injunctive relief is not granted;

(f) the balance of convenience favours the granting of the relief; and

g) an undertaking as to damages.

(See *Aetna Financial Services Ltd. v Feigelman*, [1985] 1 S.C.R. 2 ("Aetna") at paras. 26, 30; *Chitel v. Rothbart*, 1982 CANLII 1956 (ONCA) at para. 60; and *Lakhani et al v. Gilla Enterprises Inc. et al*, 2019 ONSC 1727 at para. 31).

[23] A strong case that a defendant has committed fraud against the plaintiff can be important evidence in support of the relief sought. The "reluctance" of the common law toward allowing execution before judgment has recognized exceptions, including circumstances where the relief is necessary for the preservation of assets, the very subject matter in dispute, or where to allow the adversarial process to proceed unguided would see their destruction before the resolution of the dispute. (See *Aetna*, at para. 9).

[24] The test as to whether a strong *prima facie* case exists has been expressed by the courts as the question of whether the Plaintiff would succeed "if the court had to decide the matter on the merits on the basis

> of the material before it" (See *Petro-Diamond Inc. v. Verdeo Inc.*, 2014 ONSC 2917 at para. 25).
>
> [25] The following elements are required for the tort of civil fraud: a false representation by the defendant; some level of knowledge of the falsehood of the representation by the defendant (i.e., knowledge or recklessness); the false representation caused the plaintiff to act; and, the plaintiff's actions resulted in a loss: *Bruno Appliance and Furniture, Inc. v Hryniak*, 2014 SCC 8 at paras. 17-21.

[18] The Mareva Respondents are right to emphasize that a Mareva injunction is an extraordinary remedy and should only be imposed in the clearest of cases. See *Shaw Communications Inc. v. Young*, 2021 ONSC 7918, at para. 9. It is available to freeze assets where there is a serious risk of harm through either dissipation or removal of assets to avoid judgment. See *Promo-Ad v. Keller*, 2013 ONSC 1633, at para. 51.

[19] Ultimately, as a Mareva is an equitable and discretionary remedy, the court may refuse to grant an order if it has concerns about the case. See *Allen v. Gerstel*, 2023 ONSC 107, at para. 4.

Analysis

[20] In considering the factors relevant to the determination of whether the broader requested Mareva Injunction Order should be granted, the court has also taken into account the following differences in the circumstances now that did not exist when the Yacht Mareva Order was made:

a. Further explanations have been provided by the Mareva Respondents in respect of the distributions that Page claims the OTE LP Partners were entitled to, said to provide an answer to the earlier findings of a strong *prima facie* case of fraud and breach of fiduciary duty;

b. Many of the concerns that underly the allegations of fraud, breaches of duty, knowing receipt, unjust enrichment etc. were first asserted in October 2022 and repeated in March 2023; the delay in seeking a broader Mareva Injunction Order predicated on these facts in the absence of any new facts is alleged to be indicative of an absence of any legitimate apprehension of immediate risk of dissipation or removal of assets said to be relevant to the existence of irreparable harm;

c. The Mareva Respondents have been ordered, or have agreed, to freeze proceeds from the sale of other assets (the Frozen Assets) said to be valued at approximately $13 million, also said to be relevant to the existence of any irreparable harm; and

d. The Mareva Injunction Order is not limited to a single asset alleged to be owned by the OTE Group (the Yacht), but is sought in respect of all assets of the Mareva Respondents, said to be relevant to the balance of convenience.

Is there a Strong Prima Facie *Case?*

[21] This needs to be analyzed for the Mareva Respondents separately.

The Case Against Page and 265 for Misrepresentation and Fraud

[22] The Monitor has further substantiated through the documents and records it has collected and reviewed to date, as well as through its cross-examinations of both Page and Cox on this motion, many of the concerns raised about the conduct of Page (and 265, the company through which he carried out various activities). These concerns are the subject of the 2022 civil action and were among the concerns cited at the time the Initial Order and Yacht Mareva Order were made. Page's answer to the concerns about amounts seemingly paid from OTE for Page and Cox's personal benefit remains unchanged from the Yacht Mareva Injunction: he says they were all legitimate distributions to him, despite the absence of corporate and accounting records to back this up.

[23] Page has, in the course of his response to this motion, attempted to reconcile and substantiate the seemingly disproportionate distributions that he received from OTE that were previously identified. He relies upon the informal processes (said to be reflected in emails) that he says were adopted in order to explain the lack of supporting corporate or financial records documenting the distributions and is critical of the Monitor for not making inquiries of third parties (for example, Scott and Miles Hill and/or principals of CCD) about the distributions they received and/or signed off on.

[24] The applicants had previously disclosed that each of Scott and Miles Hill and Page had received estimated profits of $3 million from the OTE Group, based on the last available financial statement of OTE for the year ended December 31, 2020, dated June 11, 2021. According to Page and 265, while the available records are incomplete to determine the exact payment to each of Scott, Miles and Page, Page has reconstructed through emails and banking and other records that each of the three of the partners received roughly equal amounts of: approximately $1 million in 2019, $2 million in 2020, $1.5 million in 2021 and $100,000 in 2022. Page also points to a spreadsheet of income collected by CCD said to have been prepared by Nick Capretta, which indicates consistent amounts having been received by the limited partners between 2019 and 2022, with CCD also being noted to have received $3.8 million from OTE LP.

[25] Page acknowledges that he was the one who determined the amounts and timing of the distributions but all partners were aware of the distributions and signed off on them, including some that were paid directly to other parties rather than to the partners themselves. He relies heavily on the alleged equivalency of the distributions to each of the partners and the historic informality of their accounting and approval processes.

[26] However, these practices could not be reconciled with the wire transfers from OTE's accounts between March of 2021 and June of 2022 of over $10 million to AirSprint. These funds were used primarily to purchase fractional aircraft interests held in the name of 265. The Mareva Respondents affirmatively asserted through their counsel starting in the fall of 2022 and continuing into the fall of 2023 that the AirSprint fractional interests were not the property of the OTE Group and fell outside the scope of the Monitor's mandate. They continued to affirmatively reserve 265's purported rights in respect of the AirSprint Proceeds when the Frozen Funds Order was made (freezing the AirSprint Proceeds) in the summer of 2023. By way of example, in an October 20, 2022 letter, former counsel for Page and 265 asserted: "None of the travel credits or entitlements

held by AirSprint on GPMC's[1] account should be returned to or held to be used by OTE LP. They are rightfully the property of GPMC."

[27] The import of these earlier assertions would have meant that Page had received distributions far in excess of the other partners. Even if the other partners knew and signed off on some of this because of the informal way they conducted the business and affairs of the OTE Group, it is unlikely that they would have agreed to Page receiving three times as much as them in distributions. When cross-examined on this motion and confronted with this inconsistency in the amounts of distributions, Page disavowed the previous positions taken by counsel and now says that the AirSprint fractional interests were always being held by 265 for OTE.

[28] The Mareva Respondents concede that the $10 million paid by OTE for the purchase of the fractional airline interests in the name of 265 cannot be justified as legitimate partnership distributions to Page. This change in the position of the Mareva Respondents avoids the otherwise inescapable conclusion that Page received disproportionately higher distributions than to the other partners. While this may be a convenient way of rationalizing what happened, it is difficult to accept that these funds were not initially misappropriated by Page, having regard to the aggressive positions that the Mareva Respondents were taking in respect of the AirSprint fractional interests earlier that are now said to have been based on positions taken by their lawyers without their instructions or knowledge.

[29] The shift in positions is facilitated by the lack of any proper corporate books of accounts and records to substantiate either version of events. Page, by his own admission, was the one responsible for creating and keeping these records. The informality of the corporate record keeping and accounting has also been used to try to rationalize significant payments from OTE to pay for personal expenses of the Mareva Respondents (said to be on account of distributions) even though they were at the time improperly accounted for as corporate expenses. There are email records of instructions provided by Page to accounting personnel to record profit distributions as corporate expenses. It appears that, for reasons not explained, at least some of the distributions to the partners were intentionally mischaracterized in the OTE financial records.

[30] For example, in various emails sent by Page in 2019, he instructed that cheques be made payable to various contractors working on their Ontario Residence and be characterized as "Blending Repairs & Maintenance", "Consulting Blending" and "Consulting" and provided similar instructions for how to account for distributions to the Hills and CCD as well (for example, as "professional fees", "maintenance" or "consulting"). There is evidence of this practice continuing in later years and Page admitted on cross-examination that the payments to contractors working on their Ontario Residence that he says were his share of distributions continued to be characterized as company expenses on the OTE Group's financial statements (the example provided being for the financial year ended December 31, 2020).

[31] While this mischaracterization of distributions as expenses appears to have been done in respect of distributions made to the other partners as well, these misleading accounting practices

[1] GPMC is how the parties sometimes refer to 265, using the initials of Page and Cox.

are particularly troubling when considered in the context of other misleading financial information that Page provided to the OTE Group's bank.

[32] When questioned on May 5, 2022 by RBC's wire investigations group about a payment from the OTE Group's corporate bank account to RJB Hotel supplies in St. Lucia, Page responded: "Yes it is correct and it is for a facility we are building." Page admits that this was a payment for new appliances for the house he and Cox own in St. Lucia. When cross-examined he stated that the "facility" they were building was a reference to the house that was already built and that they were renovating for their personal use. To suggest that appliances for a personal residence are legitimate and approved corporate expenses associated with a facility being built by the entity whose bank account was being questioned is blatantly misleading.

[33] Furthermore, it is beyond doubt that the OTE financial statements for the year ended December 31, 2021 are a complete fabrication. Page has now admitted (during his cross-examination on this motion) that the 2021 year-end financial statements that were provided by him to the OTE Group's bank were entirely falsified — that is, made up and placed on the accounting firm's letterhead without its knowledge or approval or involvement. Page claims that this was done without his knowledge by an unnamed accounting clerk. Page acknowledges that he was the one responsible for the financial books, records and accounting for the OTE Group and offers no possible reason for why an accounting clerk would falsify financial statements for the company. It is entirely implausible that Page was not involved in, or at least aware of, this fraud.

[34] This case is not solely about fraud on OTE's limited partners (those who Page says received proportionate distributions and condoned the informal and irregular accounting practices). The accounting fraud and irregularities, for which there is a very strong *prima facie* case, go beyond the equity stakeholders and must be viewed in its full context as a fraud on OTE creditors and other stakeholders.

[35] The Monitor further argues that, given the state of the accounting records, and Page's own admission that he did not do any type of solvency analysis prior to deciding to make the distributions, there was no basis upon which Page could have determined his (or the other partners') entitlement to any profit distributions from OTE in financial years 2021 or 2022. Nevertheless, Page caused millions of dollars to be distributed to himself (or his companies) and the other partners from OTE over that period. He did this while he was (admittedly) intentionally withholding tax remittances. For example, Page stated the following in a March 23, 2022 email:

> CRA are still holding back payments .... However I am holding back equivalent Carbon Tax and Fed Excise Tax funds to force the departments to pressure each other.
>
> …
>
> I have the Ministry of Finance (Ontario) also pushing on the IRS as we owe them approximately $9 million Cdn but they understand the dilemma.

The OTE Group is now facing claims from the tax authorities of in excess of $300 million.

[36] The Monitor's sixth report filed in support of this motion contained some evidence involving historic records it received, reviewed and interpreted that the Monitor considers to be confirmatory of concerns previously identified. That report supplements the evidence that was before the court at the time of the Yacht Mareva Order, when the court found a strong *prima facie* case to have been demonstrated by the Monitor in respect of many of the same impugned transactions as are relied upon for this motion.

[37] Page's explanations about the impugned transactions identified by the Monitor are unsatisfactory (examples of which have shown them to be sometimes inconsistent with the records or other testimony and sometimes implausible) and his shifting positions reinforce the records relied upon by the Monitor as evidence of financial fraud and irregularities. Much of the evidence of the strong *prima facie* case of fraud and breach of fiduciary duty against Page (and 265, the corporate vehicle through which various fraudulent transactions were implemented) comes from Page himself: his actions, his emails and his sometimes shifting, sometimes conflicting and sometimes implausible explanations when confronted with them on cross-examination. Where there is strong evidence of fraud from a paper trail, as there is in this case, the Monitor is not obligated (as the Mareva Respondents appear to suggest) to conduct extensive witness interviews, including of the persons implicated in the fraud, before bringing a motion for a Mareva injunction.

[38] I am satisfied that the onus for establishing a strong *prima facie* case in respect of the claims for misrepresentation, fraud, breach of fiduciary duty and unjust enrichment against Page (and 265, where implicated as the beneficiary) has been met, in that the Monitor has satisfied me that it is "almost certain to win" on these claims based on the evidence presented, even though the full extent of the damages is not yet known. See *10390160 Canada Ltd. v. Casey*, 2022 ONSC 628, at para. 3; see also *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, [2018] 1 S.C.R. 196, at para. 17. See also *Petro-Diamond Inc. v. Verdeo Inc.*, 2014 ONSC 2917, 13 C.B.R. (6th) 211, at para. 25).

[39] Page argues, in the alternative, that the identified impugned transactions (said to have been legitimate distributions, but even if that is not established) only add up to a total of approximately $16,500,000:

a. AirSprint: $9,032,298;

b. Direct Cheques and Bank Wires: $1,281,426;

c. Pride Marine: $4,227,335 ($1.3 million of which the Mareva Respondents say was transferred into the OTE bank account by a financing company, Essex Financial, and never belonged to OTE, but has since been repaid by a company related to Page), so the amount in question for the Yacht may actually be approximately $2.9 million;

d. Alleged Personal Expenses: $1,963,002; and

e. Receiver General/CRA: $79,000.

Thus, Page and 265 suggest that, even if there is a strong *prima facie* case of misrepresentation, fraud, breach of fiduciary duty and/or unjust enrichment in respect of them, the Mareva Injunction

Order should not cover all of their assets, but should only cover (or should be capped at) assets representing the value of the impugned transactions.

[40] Their position is that it is unfair to tie up all of their assets when the value of those assets is well beyond the values of the known claims against Page and 265. See *Massa v. Sualim*, 2013 ONSC 7926, at para. 23. There are a few problems with this. First, the total value of their assets is not known as they have not produced a statement of their worldwide assets.

[41] Second, the estimated value of the known claims does not account for the Notices of Assessment. CRA's notice of assessment was for taxes as at September 30, 2023 of $170 million and the Ontario Minister of Finance's notice of assessment was for unremitted fuel and gas taxes of $127 million. Page faces personal liability for some of these tax claims as an officer and director (and the directing mind) of OTE during most of the periods in which the taxes are claimed. If Page breached his fiduciary or other duties to the OTE Group in respect of tax remittances, any amounts for which he is found liable directly to the tax authorities, or to the OTE Group for the value of distributions he improperly received or authorized, would reduce OTE liability to the tax authorities.

[42] In response to this, Page argues that these are as of yet unproven unsecured claims against OTE and they remain under review and are not sufficient to form the basis for finding a strong *prima facie* case against Page personally. While these tax claims may still be unproven, Page admitted under cross examination that it was his responsibility to collect and remit any taxes owing. He also admitted that he did no solvency or tax analysis when he informally announced and implemented distributions to the partners, which further calls into question the legitimacy of all distributions, including even those that he claims were legitimately made pursuant to an informal and oral “approval” process among the three partners in the 2019 to 2022 timeframe.

[43] The failure to undertake a solvency analysis is a breach of the Ontario *Limited Partnerships Act*, R.S.O. 1990, c. L.16, which provides at section 11(2): No payment of a share of the profits or other compensation by way of income shall be made to a limited partner from the assets of the limited partnership or of a general partner if the payment would reduce the assets of the limited partnership to an amount insufficient to discharge the liabilities of the limited partnership to persons who are not general or limited partners.

[44] The third problem is that Page and 265 are essentially saying that they should only be held accountable for the misconduct associated with the transactions they have so far been confronted with, and that they should be left to do what they please with their remaining assets, at least until the Monitor discovers something else that can then be addressed. This is unacceptable in a situation such as this where there has been a demonstrated pattern of failing to keep proper books, records and accounts, financial mismanagement, disproportionate distributions and changing positions to retroactively reconcile them, after the fact re-characterizations of payments now said to be distributions but originally accounted for as expenses, falsification of financial statements, misleading information provided to the bank and significant tax claims.

[45] Having established a strong *prima facie* case against Page and 265 for fraud and breach of fiduciary duty (and unjust enrichment), it would not be in the interests of justice to limit the Mareva Injunction Order to the already frozen assets associated with the fraudulent transactions that have

been identified thus far. This is discussed again in the section dealing with the balance of convenience, which allows for the possibility of a cap being reintroduced at a later time.

[46] This situation is distinguishable from *Massa* relied upon by the Mareva Respondents. In that case, the court was not prepared to freeze assets beyond those sufficient to satisfy the plaintiff's compensatory damages claimed (and some additional amounts for costs and punitive damages) where there existed only the potential at that time for other future similar compensatory claims being brought in the future by other parties. See *Massa*, at paras. 9, 10 and 20.

[47] The concern in *Massa* was about issuing an "uncapped" Mareva injunction on a theoretical or punitive basis. Here the concern is not theoretical or punitive; the full scope of it and the extent of the damages that may have been caused by the breaches is just not yet known, largely due to Page's own breaches of duties with respect to corporate accounting and tax remittances. The full extent of the benefits that Page and his company 265 have received are known only to them right now because of their failure to maintain proper books, records and accounts and because of their fraudulent and misleading accounting practices and reporting.

[48] At least until the disclosure of worldwide assets and accounting contemplated by the Mareva Injunction Order have been provided, it is not in the interests of justice for there to be a cap that is limited to only what has been uncovered by the applicants and the Monitor to date. The Monitor of the OTE entities that are under CCAA protection has an obligation to preserve the assets of potential sources of recovery and the Mareva Injunction Order is in furtherance of that mandate.

The Case Against Cox for Fraud or Knowing Assistance

[49] This is the Monitor's motion. In support of it, the claims asserted against Cox are for fraud, knowing assistance and knowing receipt. To obtain a Mareva, the Monitor has the burden of establishing a strong *prima facie* case against Ms. Cox on at least one cause of action. See *Shaw Communications*, at para. 10; *Christian-Philip v. Rajalingam*, 2020 ONSC 1925, 58 C.P.C. (8th) 146, at paras. 8–9.

[50] Each of the asserted causes of action against Cox has a required element of knowledge — knowledge that the funds or benefits she received or benefitted from were not legitimate distributions to the partners of the OTE LP. It is in this respect that the elements of the claims against Cox are lacking.

[51] The Monitor must establish that Cox had actual knowledge or was reckless or willfully blind to the wrongful conduct to make out a case for knowing assistance. Mere suspicion is not enough. See *Caja Paraguava de Jubilaciones y Pensiones del Personal de Itaipu Binacional v. Garcia*, 2020 ONCA 412, at paras. 33 and 34, leave to appeal refused 2021 CanLII 13274 (SCC). This is a subjective standard of fault that depends on the stranger's actual state of mind, and cannot be based on "constructive knowledge". See *Garcia* at paras. 37 and 38.

[52] To satisfy the "knowledge" element of the test for knowing receipt, the Monitor must establish either that Cox had actual knowledge or that she had "knowledge of facts which would put a reasonable person on inquiry [and] fail[ed] to inquire as to the possible misapplication of the trust property". See *Garcia*, at para. 57 and *Citadel General Assurance Co. v. Lloyds Bank*

Canada, [1997] 3 S.C.R. 805, at para. 49. To the contrary, Cox's evidence is that she believed that the lifestyle that she shared with Page was entirely consistent with his (and their) income and wealth. Her situation is quite different from other cases in which one might reasonably inquire as to "how could a reasonable person think that their minor salary increments and the scanty earnings from [their] side jobs could support the lifestyle they enjoyed?" Constructive knowledge requires some basis for questioning the source of funds. See *Cambrian Excavators Ltd, et al v. Taferner and Taferner*, 2006 MBQB 64, 202 Man. R. (2d) 94, at para. 52 and *Vancouver Coastal Health Authority v. Mascipan*, 2019 BCCA 17, 20 B.C.L.R. (6th) 303, at paras. 30–35, 62–63.

[53] The knowledge requirement for knowing receipt is subject to the same parameters. The cause of action thus "requires an intentional wrongful act on the part of the 'stranger' or accessory to knowingly assist in the fraudulent and dishonest breach of fiduciary duty." See *DBDC Spadina Ltd v. Walton*, 2018 ONCA 60, 56 C.B.R. (6th) 173, at para. 216 (per van Rensburg JA dissenting, whose dissent was adopted in its entirety by the SCC on appeal: *Christine DeJong Medicine Professional Corp. v. DBDC Spadina Ltd.*, 2019 SCC 30, [2019] 2 SCR 530, at para. 1.

[54] It is not sufficient to simply lump Cox in with Page because she was married to him. See *Bank of Montreal v. Garasymovich*, 2023 ONSC 3630, 8 C.B.R. (7th) 136, at para. 33; see also *Royal Bank of Canada v. Korman*, 2010 ONCA 63, 264 O.A.C. 355, at para. 25. The *Rules of Civil Procedure*, RRO 1990, Reg 194, require fraud to be pleaded with particularity: see r. 25.06(8). Nor is it sufficient to implicate her simply because she was a director and minority shareholder of 265, the company that Page controlled and sometimes carried out impugned transactions through, absent some demonstration of independent tortious conduct on her part. *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd*. (1995), 26 O.R. (3d) 481 (C.A.), at p. 491.

[55] There is no evidence that Cox had actual knowledge of the activities that Page was engaged in that form the basis of the claims against him. Cox testified that she was generally aware that Page on occasion directed that his OTE distribution funds be used directly to pay for personal expenses, and believed that this was appropriate and legitimate; she had no involvement in OTE's bookkeeping or financial arrangements in respect of these payments or the distribution payments owed to 265. She was also generally aware that the other partners of OTE (Miles Hill, Scott Hill and CCD) received regular distribution payments. She believed that the lifestyle that she shared with Mr. Page was entirely consistent with his (and their) income and wealth.

[56] Cox argues that her unchallenged and uncontradicted evidence is that she played little to no role in the day-to-day operations or decision-making relating to 265, in which Mr. Page is the President and majority shareholder. She says she had no substantive involvement in and very limited knowledge of the business and financial management of 265, in which she is a director and minority shareholder. She says she signed certain documents and authorized certain wire transfers at the request of Page.

[57] Cox also says she was not involved with OTE's bookkeeping or finances, apart from approving banking transactions when requested. Following her termination from OTE and a transition period, she eventually had very little role in OTE's operations, and had never been involved in its financial management or bookkeeping. The few financial transactions that she did participate in (by approving wire transfers she considered to be consistent with prior distributions to Page and signing documents that Page asked her to sign) are not enough to establish actual

knowledge of any fraud or breach of fiduciary duty by Page, nor is this enough to implicate her directly in any fraud. She says that she did not suspect, and had no reason to suspect.

[58] The Monitor alleges that Page wrongfully directed OTE funds towards his personal expenses, and that Cox benefitted personally from these wrongful expenditures by virtue of her relationship with Page. The Monitor has generally identified the following categories of payments that Cox may have benefitted from personally: (a) $90,000 in "suspicious" transactions directed towards her personally or to her consulting company, Picassofish; (b) payments for the construction of her Ontario Residence and various home renovation-related expenses; (c) a payment to BodyHoliday for a lengthy vacation enjoyed by her and Page and friends and family members; (d) a payment for certain appliances for their St. Lucia home; (e) payments for expenses relating to her wedding in Italy; (f) payments toward the purchase of an RV; and (g) flights taken on the AirSprint airplanes.

[59] The specific transactions that Cox is alleged to have been directly involved in, such as payments to her directly (category (a)), are explained as salary or other compensation for services she was retained to provide to the OTE Group. The payments to Cox and Picassofish, a company under her control, totalling $90,557.74, have been shown, through the OTE Group's own records, to have been made for services rendered by Cox and Picassofish. The cheques issued by OTE LP to Picassofish up to and including April 2020 have no connection to Ms. Cox. The Monitor has not established a strong *prima facie* case that these funds received by Cox were not legitimate payments for services rendered.

[60] With respect to the categories (b) through (f), the evidence proffered by the Monitor indicates that Page arranged for certain personal expenses to be paid using OTE funds. Cox does not deny that she benefitted personally from the goods and services that were purchased with these funds. Page and 265 maintain that the funds used to pay these personal expenses were distribution amounts to which Page was entitled as a partner of OTE LP and/or OTE Logistics, that he directed these distributions to payments for personal expenses, and that all OTE partners were aware of these practices. The Monitor has not established a strong *prima facie* case of that Cox was involved in any of the now challenged practices or decision-making with respect to the distributions that Page and 265 received.

[61] Cox had some peripheral involvement in one of these personal expense transactions, involving the payment to the BodyHoliday Spa. She mistakenly sent a wire transfer of USD $1 million to BodyHoliday in St. Lucia for a deposit for a company retreat for OTE LP, OTE Logistics LP and their related companies which was to take place at the BodyHoliday Spa in St. Lucia in early 2022. The deposit was supposed to be for $100,000. Contemporaneous documentation confirms that until at least mid-December 2021, Mr. Hill, Mr. Capretta and Mr. de Nobriga and their spouses were expected to attend for stays of one or two weeks at BodyHoliday, and rooms had been booked for them.

[62] Cox tried to correct this error when it was identified. BodyHoliday eventually returned $575,408, and kept $424,592, corresponding to the value of the bookings that were at that time held by BodyHoliday in Page's name. There is no evidence that Cox knew that the forfeited deposit towards which the balance of this wire transfer was applied was not a legitimate business expense given that there had been a plan for a company retreat that others were planning to attend before

the pandemic shut things down. There is no evidence that Cox was involved in any of the subsequent bookkeeping or accounting entries regarding her and Page's extended stay at the BodyHoliday Spa in 2020.

[63] The Monitor has also failed to establish a strong *prima facie* case against Cox in respect of the last category, flights taken by Cox on the AirSprint airplanes. It is not contested that she took flights on the AirSprint airplanes, both for business and personal reasons. Cox has explained her understanding, at the time of these flights, regarding the availability of the AirSprint airplanes for use by the OTE partners, and regarding the payments that she understood were being made by 265 or other entities for her use of these planes.

[64] The evidence indicates that Cox also had no involvement in the purchase of the AirSprint interests by 265, was not aware that 265 had purchased the AirSprint interests, and was not involved in any decision-making relating to the purchase of the AirSprint interests or regarding how the purchase would be funded. The required knowledge of misapplication of trust moneys cannot be established in the face of this evidence, which has not been contradicted or contested by the Monitor.

[65] Further, although Cox was shown on paper to have some involvement in the Yacht, she testified that she signed documents that Page asked her to sign believing they were purchasing the Yacht for a separate business to be operated from St. Lucia.

[66] Cox's alternative position is that if a Mareva Order is granted against her, its quantum should be capped at $385,499.95, which is the amount of the harm that can be attributed to her, accepting the Monitor's record against her at its highest.

[67] Insofar as Cox's interests may be tied up with Page's, her counsel advised that she does not object, if the court so orders, to assets she jointly owns with Page (including 265) being subject to any Mareva Injunction Order made against Page and 265. In that regard, she has agreed to allow the House Sale Proceeds to remain frozen, which would cover her share of any benefits she received if it is established that payments from the OTE Group for work done or purchases made in respect of the Ontario Home that Page and 265 seek to characterize as distributions were improper. Similarly, to the extent she has any interest in the Yacht, she has consented to the Yacht Sale Proceeds remaining frozen. She does not claim, and has not indicated to have, any interest in the AirSprint fractional interests, but they are in the name of 265 and she would thus not assert any entitlement or interest in or to the proceeds of the sale of those interests through her interest in 265.

[68] The applicants argued at the hearing of this motion that the claim for unjust enrichment against Cox does not have a knowledge requirement and could be relied upon as a foundation for a broader Mareva Injunction Order to freeze her solely assets as well. This was not one of the causes of action that the Monitor's motion had focused on. Cox raised a concern about the procedural fairness of having to respond to this argument, raised for the first time at the hearing by the applicants, not the Monitor, as a basis for justifying a full-blown freezing order in respect of her assets. See *2038724 Ontario Ltd. v. Quizno's Canada Restaurant Corporation*, 2008 CanLII 5978 (Ont. S.C.), at para. 10: "Due process underlies rule 37.06 of the Rules of Civil Procedure, which directs that a notice of motion shall contain the precise relief sought and the grounds to be

argued, and due process requires that a party be given fair notice of the case he or she must meet and a fair opportunity to answer that case."

[69] This type of irregularity cannot be saved by the Notice of Motion indicating reliance upon "such further and other grounds". See *Foster Wheeler Canada Ltd. v. MBB Power Services Inc.*, 2007 CanLII 8017 (Ont. S.C.), at paras. 4–6.

[70] On a Mareva injunction motion a party should be on notice in advance of all causes of action that are relied upon to support the strong *prima facie* case requirement. There may be a claim for unjust enrichment asserted against Cox, but it is not a justification at this time to freeze all of her assets.

[71] The net proceeds of sale from the Ontario Home of $1,874,058.28 are currently being held in trust by Page and 265's counsel. Cox's share of the matrimonial home proceeds (one half interest) amounts to $937,029.14, which is more than the value of the impugned transactions that Cox is even alleged to have been involved in. She is prepared to allow these funds to remain in trust. The existing freezing orders, and her consent to their continuation in respect of jointly held assets, are sufficient at this time to address the current concerns that the Monitor has raised, as against Cox.

[72] The Monitor can come back to court if something is discovered that would warrant a Mareva injunction against Cox. In the meantime, however, the court is concerned that there be transparency and disclosure about all assets that might ultimately be shown to have benefitted from improper distributions from the OTE Group, given the historic pattern that has been demonstrated, in which, even if unknowingly, Cox has benefitted from and been unjustly enriched by distributions controlled by Page. Further, insofar as assets jointly owned by Page and Cox will be covered by the Mareva Injunction Order against Page, those jointly owned assets need to be identified.

[73] Cox is therefore ordered to deliver a statement of her worldwide assets and she remains obligated to co-operate with the Monitor if it seeks information or documents from her. That may include any requested interview by the Monitor.

Are There Grounds for Believing that the Mareva Respondents Have Assets in Ontario?

[74] This ground is not seriously contested. The Mareva Respondents admit to having assets in Ontario, including but not limited to the now frozen net House Sale Proceeds. Given their evidence about their other business interests and ties to Canada, it is reasonable to infer that they have other assets in Ontario.

Are There Grounds for Believing that there is a Serious Risk of Dissipation of Assets or their Removal out of the Reach of the Ontario Court?

[75] The Monitor asks the court to infer from the conduct of the Mareva Respondents that there is a real risk of dissipation of assets. Such an inference may indeed be made when a strong *prima facie* case of fraud is established. See for example, *663309 Ontario Inc. v. Bauman* (2000), 190 D.L.R. (4th) 491 (Ont. S.C.), at para. 41; *Sibley & Associates LP v. Ross*, 2011 ONSC 2951, 106 O.R. (3d) 494, at paras. 63–65.

[76] As was noted by Osborne J. (at para. 47 of the endorsement for the Yacht Mareva Order): "Proof of the risk of removal/dissipation may be inferred from the surrounding circumstances of the responding parties' misconduct. (See *Ontario Professional Fire Fighters Association v. Atkinson et al*, 2019 ONSC 3877 at para. 6-8, quoting with approval from Sibley v. Ross, 2011 ONSC 2951 at paras. 63, 64 and *Amphenol Canada Corp. v. Sunadrum*, 2019 ONSC 849)."

[77] However, the court must carefully take into account the surrounding circumstances to decide whether such an inference is supportable. See *Voysus Connection Experts Inc. v. Shaikk*, 2019 ONSC 6683, 58 C.C.E.L. (4th) 192, at paras. 86–97.

[78] Further, this inference is permissive, not mandatory or inevitable. In *HZC Capital Inc. v. Lee*, 2019 ONSC 4622, despite finding that a strong *prima facie* case of misappropriation of corporate funds had been made out against one of the defendants (para. 66), the court refused to apply the inference, holding that it was not warranted in the circumstances, given the defendants' roots in the jurisdiction, the initiation of legal action by the defendants against the plaintiff, and the plaintiff's delay in bringing the motion for a Mareva injunction (para. 83).

[79] While the circumstances are different now than at the time of the Yacht Mareva Order, when it had been discovered that the Yacht was up for sale, had been deregistered in Canada and was on the move, the strength of the *prima facie* case against Page for fraud, misrepresentation, breach of fiduciary duty and unjust enrichment has increased through the further records and his own evidence. The strong *prima facie* case that has been established against him, combined with the sale of the Ontario Home of Page and Cox and their known ties to St. Lucia, is sufficient for me to infer, as I do, that there is a real risk of Page himself (and 265) dissipating assets or removing them from the reach of this court.

[80] While the inference is permissive, I find that it is warranted here.

[81] The Mareva Respondents ask the court to consider their personal, family and business ties to Ontario as part of the full context, before inferring that there is a risk of removal or dissipation of assets in Ontario, including that:

a. Page states in his affidavit: He is a citizen of Canada and St. Lucia. He is a tax-paying resident of Canada and was in the country when his affidavits were sworn on this motion. He has many familial and financial ties to Ontario and sub-leases a condo. He manages and operates businesses across Ontario, including certain Gen 7 fuel stations.

b. Cox states in her affidavit that she has no plans to leave Ontario. She has significant ties to Canada, including, notably, her two children who continue to reside with her, and her aging mother for whom she provides care. She is only 55 years old, continues to operate businesses in Ontario, and clearly stated that she does not plan to retire any time soon.

[82] Given the unreliability of Page's testimony (based on changes in his testimony and implausible explanations previously noted in this endorsement), his testimony is not sufficient to rebut the presumption that there is a risk that he will relocate himself and/or his or 265's assets to St. Lucia (or elsewhere) and out of the reach of this court.

[83] The Mareva Respondents primarily rely upon the delay in bringing this motion to rebut any inference of a risk of removal or dissipation of assets from Ontario. They maintain that all, or virtually all, of the allegations made on this motion were made: (a) in the OTE Statement of Claim in October 2022 (the "Statement of Claim") which asserts various causes of action including breach of fiduciary duty, theft and misappropriation of funds; (b) in Scott Hill's Affidavit on the Initial CCAA Application in January 2023; and (c) on OTE's motion for a Mareva Injunction in respect of the Yacht in March 2023.

[84] The Mareva Respondents have prepared a timeline dating back to October 2022 identifying the evidence and allegations that KPMG knew about prior to or at the time of its appointment as Monitor. Since its appointment, as Monitor KPMG has had enhanced investigative powers to obtain any supporting evidence it needed. The Monitor had enhanced investigative powers from the outset under the Initial Order that gave it the right to investigate and compel production of information and to examine witnesses under oath, beyond the normal powers that are typically granted under the Commercial List model initial CCAA order.

[85] It is well-established that delay can be fatal to any injunction application if the plaintiff fails to act in a reasonable time, and injunctions should not be awarded to parties who show no sense of urgency. As stated in Robert J. Sharpe, *Injunctions and Specific Performance* (Toronto: Thomson Reuters, 2023) at § 1:28:

> On interlocutory applications, delay has somewhat different implications. The evidentiary factor becomes much more significant. To succeed, the plaintiff must show a substantial risk of irreparable harm in the period leading up to trial. The very fact of delay by the plaintiff, quite apart from any question of prejudice to the defendant, may often serve as evidence that the risk is not significant enough to warrant interlocutory relief.
>
> See also: *Lee v. Chang*, 2018 ONSC 2091, at para. 3 (Div Ct.); *Erie Manufacturing Co. (Canada) v. Rogers*, 1981 CarswellOnt 417 (Ont. H.C.), at paras. 2-4; *Hollinger Inc. et al. v. Radler et al*., 2006 BCSC 1712, at para. 26, aff'd 2006 BCCA 539, at para. 31; *Union Bank of Switzerland v. Batky*, 1998 CanLII 14887, at paras. 33, 76 (Div Ct.); *Chiu v. Jao*, 1998 CanLII 6693, at paras., 15-16 (BCSC).

[86] In *Hollinger*, the court concluded that an eleven-month delay in bringing the motion for a Mareva order was evidence from which an inference could be drawn that the risk of dissipation of assets was not immediate or significant enough to warrant relief. In *Lee*, a delay of six weeks (pending a motion for leave to appeal) was enough for the court to conclude (at paras. 1 and 3) that "[i]f harm was urgently feared, it would have happened by now [...] There is nothing an injunction can do to help the plaintiffs today."

[87] The Mareva Respondents contend that the fact that no motion was brought long ago and that Page has been an active participant in these proceedings, including having recently agreed to the orders freezing a total of approximately $13 million in sale proceeds, demonstrates that there is no risk of dissipation.

[88] Each case will depend on its own circumstances in terms of when there has been enough delay to cause the court to infer that there is no urgency to a Mareva injunction request. In this case, the process has been iterative. KPMG's role has evolved, as has its authority and powers. It was only at the time of the October 2023 Order that the Monitor obtained "super-monitor" powers and was mandated to "preserve and protect" the property of the OTE Group. It brought this motion on November 8, 2023.

[89] It is not clear to me that the Monitor (as opposed to the applicants) even had the authority or power to bring a motion for a Mareva injunction prior to the October 2023 Order. The Yacht Mareva Order was made on a motion by the applicants after the Monitor had been appointed. But even if the Monitor could have done so, the trigger for this motion was the discovery, shortly after the October 2023 Order, of the sale of the Ontario Home of Page and Cox (one of their residences that was improved through renovations and accoutrements paid for by OTE directly that Page now seeks to justify as his legitimate distributions) and the closing was imminent. The sale of the Ontario Home is not something that the Mareva Respondents disclosed, but rather they say it was "discoverable" through public listing records.

[90] With its enhanced powers, and having learned of the imminent closing of the Ontario Home of Page and Cox, the Monitor considered some of the other (previously known) concerns that had been identified in a different light, such as that Page and Cox:

a. have another home in, and are both citizens of, St. Lucia;

b. have companies and bank accounts in St. Lucia; and

c. have confirmed that they did receive the benefit of the significant payments from OTE previously identified by the Monitor (in the Statement of Claim and the Monitor's sixth report previously filed) as having been for their personal expenses — for their homes, wedding, private jets, pool, stays at resorts — and that these benefits are not denied, but rather should be accounted for as legitimate profit distributions.

[91] In the latter respect, and as discussed earlier in this endorsement, the Monitor's focus has now shifted from establishing that these were payments applied towards personal uses of the Mareva Respondents (now admitted by them, for the most part) to verifying the legitimacy of the distributions in the face of the shifting positions that Page has taken, for example in respect of the ownership of the AirSprint fractional interests, the accounting for distributions and the complete falsification of the 2021 financial statements (originally denied and now blamed on an accounting clerk).

[92] Each time a sale or potential transaction was identified, steps were taken by the Monitor that have led to the pool of approximately $13 million in Frozen Assets (the House Sale Proceeds, Yacht Sale Proceeds and AirSprint Proceeds). However, it is not unreasonable for the Monitor, now in possession of the assets and undertaking of the applicants and now charged expressly with the responsibility of identifying, preserving and protecting those assets for the benefit of all stakeholders under the October 2023 Order, to carry through with this motion even after Page and Cox agreed to freeze their net House Sale Proceeds.

[93] The Monitor has determined that it must be proactive, rather than reactive. That is not an unreasonable determination having regard to the past conduct of Page, in particular. But this is not a case of over a year of "delay" by the Monitor in bringing this motion, but is rather a case of cumulative concerns finally coming to a head. Unlike in the *Hollinger* case relied on by the Mareva Respondents, the requested Mareva Injunction Order in this case is not based only on previously identified misconduct, but on that conduct considered in light of new events and evolving positions.

[94] As detailed earlier in this endorsement, there are still questions about the alleged distributions that Page claims were legitimate and approved, for the benefit of all of the OTE Group partners. Some of the details only came to light through the review of documents and examinations of Page and Cox on this motion. Since, by his own admission, Page was the one who called all of the shots with respect to the distributions, it is not unreasonable for the Monitor to want to have his version of what happened pinned down before asking others who may have been involved, including the other partners and third parties.

[95] Conversely, it is not reasonable to suggest, as the Mareva Respondents do, that the Monitor should fully exhaust its investigative powers before seeking a Mareva Injunction Order, in the face of the identified concerns and the evolving events and explanations so far provided. As discussed earlier in this endorsement, it only came out or was confirmed in the context of the development of the evidentiary record for this motion that:

a. OTE, and not 265, owned the AirSprint fractional interests. This was a complete reversal of earlier positions asserted on behalf of all of the Mareva Respondents (at the time, made to purportedly justify their continued use of the corporate private jets after the Initial CCAA Order was made); and

b. the OTE 2021 year-end financial statements were falsified. While there were concerns about this much earlier, it was only in the face of the confirmation from the accountants that they did not prepare these financial statements (which had been presented on their letterhead) that Page acknowledged that they were falsified and pivoted to try to blame a former employee in the OTE accounting group.

[96] In the circumstances of this case, I do not find that the considered actions of the Monitor in identifying, isolating and challenging known suspicious transactions and eventually determining that a Mareva injunction was necessary when the alarm bells went off that Page and Cox may be imminently relocating to St. Lucia where they have citizenship, a residence, businesses and assets, to reflect undue delay in the pursuit of this Mareva Injunction Order.

[97] It is also a relevant consideration that Page and 265 have led no evidence of prejudice to them caused by the timing of bringing this motion. Such failure to establish prejudice can be fatal to an asserted delay defence on a Mareva motion. See, for example, *Sabourin and Sun Group of Companies v. Laikin*, 2006 CanLII 32915 (Ont. S.C.), at para. 14; *Henenghaixin Corp v. Deng*, 2021 ABQB 168, at para. 83. See also, *United States Securities and Exchange Commission v. Sharp*, 2023 BCSC 425, 528 C.R.R. (2d) 66, where the plaintiff brought a Mareva injunction in British Columbia one year after filing a related complaint in the US. The BC Supreme Court held at para. 95: “[E]ach case must be decided on its own facts and the issue of delay must be considered

in the context of the case as a whole. In the circumstances of this case, given the seriousness of the fraud alleged, I cannot find that the delay undermines the real risk that assets will be depleted such as to impair the ability of the plaintiff to collect on a future judgment in the U.S. Proceeding."

[98] I agree with the Monitor that, in this case, the seriousness of the strong *prima facie* case of fraud and misappropriation against Page and 265 gives rise to a legitimate apprehension of immediate risk of dissipation of assets by them that offsets any delay.

[99] While the same risk may exist for Cox, her circumstances are one-step removed from the alleged fraud and breaches by Page. Since I have not found that there is a strong *prima facie* case against her directly for fraud or breach of fiduciary duty or knowing assistance in the facilitation of Page's misconduct, there is not a strong inference that can be drawn against her. See *1773907 Alberta Ltd. v. Davidson*, 2016 ABQB 2 at paras. 86, 89–91, aff'd 2017 ABCA 267.

[100] Nor can that inference be drawn from Cox's refusal to answer broad questions about her assets while being cross-examined on this motion, as the Monitor suggested it be. That is the relief that this motion seeks, if successful. She should not be penalized for waiting for the court's decision about whether to order that aspect of the relief sought. In any event, the inference of a risk would not have been a ground to grant an injunction against Cox in the absence of proof of a strong *prima facie* case against her.

Will the Applicants Suffer Irreparable Harm if the Mareva Injunction Order is not Granted?

[101] In this case, the alleged irreparable harm is tied to the risk of dissipation or removal of assets in Ontario. In the case of Page and 265, irreparable harm has been established for the reasons outlined in the previous section of this endorsement.

Does the Balance of Convenience Favour Granting of the Mareva Injunction Order?

[102] The court must balance the established risk of dissipation or removal of assets and the corresponding irreparable harm to the Monitor (and other OTE stakeholders) if that risk were to become a reality against the inconvenience to the affected parties in having their assets frozen. As noted earlier in this endorsement, the Mareva Respondents have not led any evidence of prejudice, aside from the speculative concern that the existence of a Mareva Injunction Order against them might cause third parties with whom they deal in their other businesses (such as the Gen 7 Gas Stations, some of whose shares will be frozen by the Mareva Injunction Order if held by Page or 265) to treat them differently because of the stigma of the Mareva Injunction.

[103] Page and 265 have not offered any concrete evidence that the banks or other third parties will change their manner of dealing with Gen 7 Gas Stations — nor is there any evidence of personal guarantees or cross-collateralization or default provisions that might provide a foundation for the theoretical concerns raised. There have already been two freezing orders in this case (the Yacht Mareva Order and the Frozen Funds Order) and no evidence of stigma-related prejudice or inconvenience to the Mareva Respondents arising out of those orders. This theoretical concern is not a reason not to grant a Mareva injunction.

[104] The absence of proof of prejudice to the Mareva Respondents is also discussed earlier in this endorsement, in connection with the alleged delay. On a related point, Page and 265 have not

advanced any justification for the court declining to exercise its discretion to grant the requested Mareva Injunction.

[105] The balance of convenience is what typically drives the standard exception to Mareva injunction orders, that the affected parties be afforded the right to seek access to their frozen assets to cover reasonable living and legal expenses. This exception is provided for in the proposed Mareva Injunction Order in this case.

[106] Another consideration in the balance of convenience is whether there should be a cap on the assets to be frozen. In this case, the Mareva Respondents propose that the cap be limited to the $13 million pool of already Frozen Assets.

[107] The already Frozen Assets are said to represent a viable alternative remedy to protect the assets about which concerns have been raised. Page and 265 contend that when the subject asset is already protected that alone is a reason not to grant the Mareva Injunction. See *Access Human Resources v. Earl,* 2018 BCSC 2347, at para. 38. This again is tied to the assumption that the only concerns that can be raised for the court's consideration are the ones that have been admitted to, and that there is no legitimate basis for a concern that there have been other instances of misconduct.

[108] For the reasons previously outlined in this endorsement, I do not consider the proposed cap for the Mareva Injunction Order, limiting it to the Frozen Assets, to be in the interests of justice. In this case, imposing a Mareva cap equal to the frozen assets would not serve the fundamental principle that a Mareva order is meant to protect a moving party's ability to recover the fruits of the judgment it can demonstrate that it might obtain (*Massa*, at paras. 6–10) when court has found that the fraud is likely broader than what the Monitor has thus far been able to untangle and discover from the woefully deficient accounting and other records that were maintained when Page was in control of the business of the OTE Group.

[109] The Monitor raises an important consideration about the inextricable joint ownership of assets and bank accounts that Cox has with Page, requiring that any freezing order must cover their joint assets. As outlined previously in this endorsement, Cox has agreed to allow her share to remain frozen of any jointly owned assets or assets subject to a joint interest that she may assert if a freezing/Mareva injunction order is made against Page and 265 and their assets.

Should the Monitor be Required to Provide an Undertaking as to Damages?

[110] The undertaking as to damages is typically required to mitigate against the potential prejudice to the parties affected by a Mareva injunction, as a part of the balance of convenience. Page and 265 argue that it is patently unfair for there to be no undertaking as to damages from the Monitor.

[111] The situation as it relates to this undertaking as to damages remains essentially the same as existed when Osborne J. determined that one was not required for purposes of the Yacht Mareva Injunction Order.

[112] Osborne J. concluded in his endorsement on the Yacht Mareva Order (at para. 51) that:

> [P]ursuant to rule 40.03, I am persuaded that the requirement for an undertaking, although provided by the moving parties here, should be dispensed with in the circumstances. The case put forward by the OTE group is strong, and the OTE group is insolvent and in ongoing CCAA protection from its creditors. In my view, it is appropriate to dispense with the requirement for an undertaking as to damages where, as here, the case of the moving parties is strong and they are insolvent: *Sabourin & Sun Group of Cos. v. Laiken*, [2006] OJ No. 3847 at para. 16.

[113] More information has come to light, as a result of which, more assets have been frozen, but the situation remains unchanged. If anything, the solvency concerns in respect of the OTE Group have gotten worse. I consider it to be appropriate to dispense with the requirement for an undertaking as to damages from the Monitor in the context of the Mareva Injunction Order that I am granting against Page and 265, in the circumstances of this case.

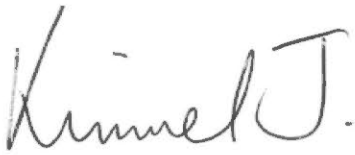
Final Order and Costs

[114] The requested Mareva Injunction is granted as against the respondents Page and 265. The only order made at this time against the respondent Cox is for her to provide a statement of her worldwide assets, which is required, in part, as a result of the acknowledged benefits that she has enjoyed from the misconduct of Page (whether knowingly or otherwise), the extent of her jointly owned assets with the other Mareva Respondents and the concession made by her that if an order is not made against her but is made against the others, she would agree that assets she jointly owns with the others can remain subject to the Mareva Injunction Order if made. The Monitor and the court require transparency and a full appreciation of the jointly held assets of the Mareva Respondents and what they claim to be their separate assets so that the court's order can be put into effect and can be properly monitored.

[115] All other terms of the proposed draft order submitted by the Monitor are approved, with the necessary modifications.

[116] The parties agreed to exchange cost outlines and submissions by January 5, 2023. That exchange occurred and the parties subsequently confirmed in an email to the court that a costs arrangement satisfactory to the Monitor, Page and Cox has been settled through their respective counsel. Unless further directions are requested, the court does not expect to review or consider the costs outlines that were exchanged and does not expect to receive any further submissions or make any other direction or order as to costs at this time.

[117] The Monitor shall submit a revised form of order to reflect the above first for approval as to form and content by the Mareva Respondents and then for the court's signature. If the parties have difficulty settling the form of order, a case conference before me may be requested through the Commercial List Office.



Kimmel J.

Date: January 16, 2024

CONFIDENTIAL APPENDICES

CONFIDENTIAL APPENDIX “1”

CONFIDENTIAL APPENDIX “2”

CONFIDENTIAL APPENDIX “3”

CONFIDENTIAL APPENDIX “4”

IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO INC.
Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

Seventh Report of the Monitor

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Lawyers for the Monitor

TAB 3

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	[●], THE [●]
	)	
JUSTICE [●]	)	DAY OF [●], 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 ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC. (each, an "Applicant" and collectively, the "Applicants")

APPROVAL AND VESTING ORDER

THIS MOTION, made by made by KPMG Inc., in its capacity as the monitor (in such capacity, the "**Monitor**") of the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "**OTE Group**") for an order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**") approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Purchase Agreement**") between the Monitor, on behalf of the OTE Group, and Allstar Auctions Inc. (the "**Purchaser**") dated January 11, 2024 and appended to the Seventh Report of the Monitor dated January 22, 2024 (the "**Seventh Report**"), and vesting in the Purchaser the OTE Group's right, title and interest in and to the assets described in the Purchase Agreement (the "**Purchased Assets**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Seventh Report and on hearing the submissions of counsel for the Monitor, those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the affidavit of service of [●] dated [●], 2024:

DEFINED TERMS

1. **THIS COURT ORDERS** that capitalized terms used herein but not otherwise defined have the meanings ascribed in the Seventh Report.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Monitor's Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF TRANSACTION

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Monitor on behalf of the OTE Group is hereby authorized and approved, with such minor amendments as the Monitor may deem necessary. The Monitor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon the Monitor's receipt of the Purchase Price from the Purchaser, all of the OTE Group's right, title and interest in and to the Purchased Assets described in the Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Osborne dated January 30, 2023 (as amended and restated) or any other Order made in these CCAA Proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry; and (iii) all Claims of capital lessors, lenders and financiers in respect of any capital leases, loan and security agreements or other agreements in respect of the of the Purchased Assets (all of

which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the Monitor's receipt of the Purchase Price from the Purchaser, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale, provided that such net proceeds shall not be distributed pending further order of this Court.

6. **THIS COURT ORDERS** that as of the date hereof, the OTE Group and the Monitor shall have no further obligation to make any payments pursuant to the loan and security agreements, capital leases, or other agreements, to the lenders, financiers or capital lessors in respect of the Purchased Assets.

7. **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 OTE Group and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of the OTE Group; and

(d) the provision of any federal or provincial statute;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the OTE Group and shall not be void or voidable by creditors of the OTE Group, 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.

GENERAL

8. **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 Monitor 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

10. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01am Eastern Time on the date hereof without any need for filing or entry.

_____

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

APPROVAL AND VESTING ORDER

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Lawyers for the Monitor

TAB 4

~~Revised: January 21, 2014~~

Court File No. ~~———~~**CV-23-00693758-00CL**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ~~———~~	)	~~WEEKDAY~~**[●]**, THE #**[●]**
	)	
JUSTICE ~~———~~**[●]**	)	DAY OF ~~MONTH~~**[●]**, ~~20YR~~**2024**

~~B E T W E E N:~~

~~**PLAINTIFF**~~

~~Plaintiff~~

~~and~~

~~**DEFENDANT**~~

~~Defendant~~

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 ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC. (each, an "Applicant" and collectively, the "Applicants")

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~**made by KPMG Inc.,** in its capacity as the ~~Court-appointed receiver (~~**monitor (in such capacity,** the ~~"Receiver"~~**"Monitor"**) of the ~~undertaking, property and assets of [DEBTOR] (the "Debtor"~~**Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "OTE Group")** for an order **pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA", and these proceedings, the "CCAA Proceedings")** approving the sale transaction (the ~~"~~**"Transaction"**~~"~~) contemplated by an agreement of purchase and sale (the

~~"Sale~~**"Purchase Agreement**~~"~~") between the ~~Receiver and [NAME OF PURCHASER]~~**Monitor, on behalf of the OTE Group, and Allstar Auctions Inc.** (the ~~"~~**"Purchaser**~~"~~) dated ~~[DATE]~~**January 11, 2024** and appended to the **Seventh** Report of the ~~Receiver~~**Monitor** dated ~~[DATE]~~**January 22, 2024** (the ~~"~~**"Seventh Report**~~"~~), and vesting in the Purchaser the ~~Debtor~~**OTE Group**'s right, title and interest in and to the assets described in the ~~Sale~~**Purchase** Agreement (the ~~"~~**"Purchased Assets**~~"~~), was heard this day ~~at 330 University Avenue,~~**by judicial videoconference via Zoom in** Toronto, Ontario.

ON READING the **Seventh** Report and on hearing the submissions of counsel for the ~~Receiver, [NAMES OF OTHER PARTIES APPEARING]~~**Monitor, those other parties listed on the counsel slip**, no one **else** appearing ~~for any other person on the service list,~~ although ~~properly~~**duly** served as **it** appears from the affidavit of ~~[NAME] sworn [DATE] filed~~[1]**service of [●] dated [●], 2024**:

DEFINED TERMS

1. **THIS COURT ORDERS that capitalized terms used herein but not otherwise defined have the meanings ascribed in the Seventh Report.**

SERVICE

2. THIS COURT ORDERS that the time for service of the Monitor's Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF TRANSACTION

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,~~[2]~~ and the execution of the ~~Sale~~**Purchase** Agreement by the ~~Receiver~~[3]**Monitor on behalf of the**

~~[1] This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

~~[2] In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

OTE Group is hereby authorized and approved, with such minor amendments as the ~~Receiver~~**Monitor** may deem necessary. The ~~Receiver~~**Monitor** is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the ~~delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate")~~**Monitor's receipt of the Purchase Price from the Purchaser**, all of the ~~Debtor's~~**OTE Group's** right, title and interest in and to the Purchased Assets described in the ~~Sale~~**Purchase** Agreement ~~[and listed on Schedule B hereto]~~[4] shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the ~~"~~**"Claims"**[5]~~"~~) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~**Osborne** dated ~~[DATE]~~**January 30, 2023 (as amended and restated) or any other Order made in these CCAA Proceedings**; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry ~~system~~; and (iii) ~~those~~**all** Claims ~~listed on Schedule C hereto~~**of capital lessors, lenders and financiers in respect of any capital leases, loan and security agreements or other agreements in respect of the of the Purchased Assets** (all of which are collectively referred to as

---

~~[3] In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

~~[4] To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

~~[5] The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

the "“**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D”), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*][6], the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. 4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds[7] from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery**Monitor's receipt** of the Receiver's Certificate**Purchase Price from the Purchaser,** all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale[8], as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof**, provided that such net proceeds shall not be distributed pending further order of this Court**.

---

[6] Elect the language appropriate to the land registry system (Registry vs. Land Titles).

[7] The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

[8] This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

6. **THIS COURT ORDERS** that~~, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor~~ **as of the date hereof, the OTE Group and the Monitor shall have no further obligation to make any payments pursuant to the loan and security agreements, capital leases, or other agreements, to the lenders, financiers or capital lessors in respect of the Purchased Assets**.

7. **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 ~~Debtor~~**OTE Group** and any bankruptcy order issued pursuant to any such applications;~~ and~~

(c) any assignment in bankruptcy made in respect of the ~~Debtor~~**OTE Group; and**

(d) the provision of any federal or provincial statute;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~**OTE Group** and shall not be void or voidable by creditors of the ~~Debtor~~**OTE Group**, 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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

GENERAL

8. ~~9.~~ **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 ~~Receiver~~**Monitor** 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~~**Monitor**, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver~~**Monitor** and its agents in carrying out the terms of this Order.

9. THIS COURT ORDERS that the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

10. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01am Eastern Time on the date hereof without any need for filing or entry.

~~Revised: January 21, 2014~~

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

APPROVAL AND VESTING ORDER

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Lawyers for the Monitor

~~**Schedule A – Form of Receiver's Certificate**~~

Court File No. _____

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

PLAINTIFF

Plaintiff

- and -

DEFENDANT

Defendant

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

~~[NAME OF RECEIVER], in its capacity as Receiver of the undertaking, property and assets of [DEBTOR], and not in its personal capacity~~

~~Per:~~ _____

~~Name:~~

~~Title:~~

Schedule B – Purchased Assets

Schedule C – Claims to be deleted and expunged from title to Real Property

Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(unaffected by the Vesting Order)

TAB 5

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	[●], THE [●]
	)	
JUSTICE [●]	)	DAY OF [●], 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 ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC. (each, an "Applicant" and collectively, the "Applicants")

ORDER
(Ancillary Order)

1. **THIS MOTION**, made by KPMG Inc., in its capacity as the monitor (in such capacity, the "**Monitor**") of the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "**OTE Group**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**") for an order, among other things, approving the KERP and sealing the Confidential Appendices (each as defined below) was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

2. **ON READING** the Motion Record of the Monitor, including the Seventh Report of the Monitor dated January 22, 2024 (the "**Seventh Report**"), and on hearing the submissions of counsel for the Monitor and those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the affidavit of service of [●] dated [●], 2024.

SERVICE

3. **THIS COURT ORDERS** that the time for service of the Motion Record of the Monitor is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

4. **THIS COURT ORDERS** that capitalized terms used within this Order and not expressly defined herein shall have the meanings set forth in the Seventh Report.

KERP

5. **THIS COURT ORDERS** that the key employee retention plan described in the Seventh Report (the "**KERP**") and the payments made by the OTE Group in accordance with the terms thereof are hereby approved.

6. **THIS COURT ORDERS** that the payments made by the OTE Group pursuant to this Order in respect of the KERP do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SEALING

7. **THIS COURT ORDERS** that Confidential Appendices 1, 2, 3 and 4 are hereby sealed and shall not form part of the public record pending further Order of this Court.

8. **THIS COURT ORDERS** that upon the closing of the Vehicle Transaction, the Monitor shall publish a revised Seventh Report containing Confidential Appendices 2 and 3 on its website, and shall file that revised version of its Report with the Court.

GENERAL

9. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Monitor 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its respective agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order is effective as of 12:01am EST on the date of this Order without the need for entry or filing.

_____

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

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ORDER
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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MOTION RECORD
(Returnable at a date and time
to be determined by the Court)

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