

No. S-235288
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
NEXTPOINT FINANCIAL, INC. AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

THIRD REPORT OF THE MONITOR

October 11, 2023

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INTRODUCTION

1. On July 25, 2023, NextPoint Financial, Inc. (“**NPI**”) and 29 other petitioners were granted an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) in the Supreme Court of British Columbia Action No. S-235288, Vancouver Registry (the “**CCAA Proceedings**”).
2. The Initial Order provided for, among other things:
 - a. a stay of proceedings (the “**Stay of Proceedings**”) against the Petitioners until August 3, 2023;
 - b. the appointment of FTI Consulting Canada Inc. as Monitor of the Petitioners (the “**Monitor**”); and
 - c. the appointment of Peter Kravitz of Province Fiduciary Services, LLC (together with Province LLC, “**Province**”) as the Petitioners’ Chief Restructuring Officer (“**CRO**”).
3. On July 27, 2023, the Petitioners obtained orders in the U.S. Bankruptcy Court for the District of Delaware (the “**US Bankruptcy Court**”) under Chapter 15 of the United States Bankruptcy Code recognizing the CCAA Proceedings as a foreign main proceeding and granting certain additional provisional relief relating to the recognition of the Initial Order.
4. On August 3, 2023, this Honourable Court granted the following orders:
 - a. an amended and restated Initial Order (the “**ARIO**”) which, among other things:
 - i. extended the Stay of Proceedings up to and including October 20, 2023;

- ii. increased the amounts of certain priority charges granted in the Initial Order;
 - iii. clarified the priority of a charge granted on certain property of Liberty Tax in an amount equal to the value of the indebtedness, interest, fees, liabilities and obligations to First Century Bank N.A. incurred after the granting of the Initial Order; and
 - iv. approved an increase in the amount of the interim financing facility (the “**Interim Facility**”) to the maximum principal amount of \$25.0 million and increasing the amount of the charge on the Petitioners’ property to secure the obligations under the Interim Facility; and
 - b. an order (the “**SISP Order**”) approving a restructuring support agreement dated July 25, 2023 (the “**RSA**”) among the Petitioners and certain secured creditors and a sales and investment solicitation process (the “**SISP**”). The SISP included a stalking horse purchase agreement among certain of the Petitioners and certain of their lenders.
- 5. On August 16, 2023, the US Bankruptcy Court entered an order recognizing and approving, among other relief, the SISP Order and ARIO.
- 6. On September 19, 2023, this Honourable Court granted an order:
 - a. removing LoanMe Trust Prime 2018-1 and LoanMe Trust SBL 2019-1 (together, the “**LoanMe Income Trusts**”) as Petitioners in these CCAA Proceedings;
 - b. providing for a limited Stay of Proceedings against the LoanMe Income Trusts (the “**LoanMe Stay**”); and
 - c. adding LM BP Holdings, LLC as a Petitioner in these CCAA Proceedings.

7. On October 10, 2023, the Petitioners (as set out in Schedule A) filed a notice of application returnable October 13, 2023, for an order amending and restating the ARIO (the “**Second ARIO**”), which amends the ARIO as follows:
 - a. extending the Stay of Proceedings up to and including November 20, 2023 (the “**Stay Extension**”);
 - b. extending the LoanMe Stay; and
 - c. expanding the powers to be exercised by the CRO.
8. The Petitioners anticipate that the Petitioners will file a further application in respect of the transaction contemplated by the Stalking Horse Bid, as will be amended by the Petitioners and the BP Lenders (the “**Transaction Agreement**”).
9. The Monitor intends to file a report in connection with the forthcoming sale approval application and outlining the details of the Transaction Agreement once they are finalized. The Monitor understands that the sale approval timelines under the RSA have been extended by consent.

PURPOSE

10. The purpose of this report is to provide this Honourable Court and the Petitioners’ stakeholders with information with respect to:
 - a. the Petitioners’ application to enhance the powers of the CRO;
 - b. the Petitioners’ actual cash receipts and disbursements for the 10-week period that ended September 29, 2023 (“**Reporting Period**”) as compared to the cash flow statement included in the First Report of the Monitor dated August 2, 2023;

- c. an updated cash flow statement (the “**Second Cash Flow Statement**”) for the 18-week period ending November 24, 2023, including the key assumptions on which the cash flow statement is based;
- d. the Petitioners’ application for the Stay Extension; and
- e. the Monitor’s conclusions and recommendations.

TERMS OF REFERENCE

- 11. In preparing this report, the Monitor has relied upon certain information (the “**Information**”) including the Petitioners’ unaudited financial information, books and records and discussions with the CRO and management of the Petitioners (collectively, “**Management**”).
- 12. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
- 13. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 14. Future-oriented financial information reported to be relied on in preparing this report is based on Management’s assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
- 15. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars to be consistent with the Petitioners’ primary reporting currency.

ENHANCED CRO'S POWERS

16. The Petitioners carry a directors and officers insurance policy (the “**D&O Policy**”) that is scheduled to expire before the end of October, 2023. Management has advised the Monitor that the cost to obtain replacement insurance on equivalent terms in the current market is prohibitive.
17. As a result of the anticipated lapse in coverage, the Petitioners advise that NPI’s directors have stated their intention to resign as directors prior to the expiry of the D&O Policy.
18. In order to provide for an orderly transition of governance following the resignation of the Directors, the Petitioners seek to enhance the CRO’s powers including the ability to:
 - a. take any and all actions and steps, and execute all documents and writings, on behalf of and in the name of the Petitioners, to facilitate the performance of their obligations; and
 - b. exercise any powers which may be properly exercised by any board of directors of NPI or its subsidiaries.
19. The Monitor’s comments with respect to the proposed expansion of the CRO’s powers are as follows:
 - a. it is an efficient and cost-effective way to allow for NPI and the Petitioners to complete their obligations under the Transaction Agreement and these CCAA Proceedings following the anticipated departure of the directors;
 - b. the CRO has been working with the Petitioners prior to and during the CCAA Proceedings and its knowledge and familiarity with the Petitioners will allow it to assume the additional responsibilities in an efficient manner;

- c. the expansion of the CRO's powers is supported by certain key stakeholder groups including the Petitioners' senior secured lenders;
- d. no party will be prejudiced by the enhanced powers; and
- e. overall, the enhanced powers afforded to the CRO in the Second ARIO are in the best interests of the Petitioners' stakeholders.

20. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant the expansion of the CRO's powers provided for in the Second ARIO.

CASH FLOW VARIANCE ANALYSIS

21. The Monitor has undertaken weekly reviews of the Petitioners' actual cash flows in comparison to those contained in the Cash Flow Statement. The Petitioners' actual cash receipts and disbursements as compared to the Cash Flow Statement for the period of July 25, 2023 to September 29, 2023, are summarized below:

NextPoint			
Cash Flow Variance Analysis			
Ten Week Period Ended September 29, 2023			
<i>(USD\$ thousands)</i>	Actual	Forecast	Variance
Operating Receipts			
Community Tax Operating Receipts	\$ 4,717	\$ 5,284	\$ (567)
Liberty Operating Receipts	4,482	2,853	\$ 1,629
Total Operating Receipts	9,199	8,137	1,062
Operating Disbursements			
Community Tax Operating Disbursements	(2,307)	(2,655)	\$ 348
Liberty Operating Disbursements	(10,827)	(7,549)	(3,278)
NextPoint Operating Disbursements	(617)	(1,568)	952
LoanMe Operating Disbursements	82	(5)	87
Employee Compensation	(6,482)	(8,394)	1,912
Total Operating Disbursements	(20,151)	(20,172)	21
Net Change in Cash from Operations	(10,951)	(12,034)	1,083
Non-Operating Items			
Non-Operating Receipts	1,100	3,100	(2,000)
Restructuring Professional Fees	(3,689)	(7,001)	3,311
Net Change in Cash from Non-Operating Items	(2,589)	(3,901)	1,311
Financing			
Interim Financing	25,000	25,000	-
Interim Financing Fees and Interest	(366)	(536)	170
Net Change in Cash from Financing	24,634	24,464	170
Net Change in Cash	11,093	8,529	2,564
Opening Cash	4,791	4,791	-
Ending Cash	\$ 15,884	\$ 13,320	\$ 2,564

22. Overall, the Petitioners realized a favourable net cash flow variance of approximately \$2.6 million. The key components of the variance are as follows:

- a. operating receipts were higher than forecast as a result of initiatives to accelerate the collection of Liberty Tax accounts receivable;
- b. operating disbursements were higher than forecast, primarily as a result of funding advanced to franchisees by NPI pending the planned reinstatement of a credit agreement (the “FCB Facility Agreement”) with First Century Bank N.A.

(“FCB”), partially offset by lower employee compensation than forecast and reduced non-restructuring professional fee disbursements at NPI;

- c. non-operating receipts were \$2.0 million lower than forecast due to a timing difference in respect of the collection of proceeds from the sale of a minority interest in Trilogy Software Inc.;
- d. restructuring professional fees were approximately \$3.3 million lower than forecast as a result of timing differences that are expected to reverse in the coming weeks. A summary of the restructuring professional fee disbursements made in the CCAA Proceedings to date is set out in the following table:

Professional Fee Summary						
Ten Week Period Ended September 29, 2023						
<i>(USD thousands)</i>						
Firm	Role	Fees	Disbursements	Taxes		Total
Province	Financial Advisor / CRO	\$ 1,135	\$ 7	\$ -		\$ 1,142
DLA Piper	Counsel to NextPoint	920	72	-		991
FTI	Monitor	262	2	13		277
Fasken	Monitor's Counsel	119	4	11		134
Kirkland	Lender Counsel	638	17	-		656
Osler	Lender Counsel	188	15	-		203
Portage	Lender Financial Advisor	160	-	-		160
Cole Schotz	Lender Counsel	51	1	-		52
Other	Other Restructuring Professionals	13	60	-		73
Total		\$ 3,487	\$ 178	\$ 24		\$ 3,689

23. Overall, the Petitioners have drawn \$25.0 million under the Interim Facility and are holding a cash balance of approximately \$15.9 million.

SECOND CASH FLOW STATEMENT

24. Management has prepared the Second Cash Flow Statement for the 28-week period ending November 24, 2023. A copy of the Second Cash Flow Statement is attached as Appendix “B”.

25. A summary of the Second Cash Flow Statement is set out in the table below:

NextPoint Second Cash Flow Statement Twenty Eight Week Period Ended November 24, 2023			
<i>(USDS thousands)</i>	Weeks 1-10 Actual	Weeks 11-28 Forecast	Weeks 1-28 Total
Operating Receipts			
Community Tax Operating Receipts	\$ 4,717	\$ 5,136	\$ 9,853
Liberty Operating Receipts	4,482	2,645	7,127
Total Operating Receipts	9,199	7,780	16,980
Operating Disbursements			
Community Tax Operating Disbursements	(2,307)	(2,359)	(4,666)
Liberty Operating Disbursements	(10,827)	(6,133)	(16,960)
NextPoint Operating Disbursements	(617)	(1,361)	(1,978)
LoanMe Operating Disbursements	82	(5)	78
Employee Compensation	(6,482)	(6,081)	(12,563)
Total Operating Disbursements	(20,151)	(15,938)	(36,089)
Net Change in Cash from Operations	(10,951)	(8,158)	(19,110)
Non-Operating Items			
Non-Operating Receipts	1,100	2,000	3,100
Restructuring Professional Fees	(3,689)	(7,333)	(11,022)
Net Change in Cash from Non-Operating Items	(2,589)	(5,333)	(7,922)
Financing			
Franchisee Financing Recapitalization	-	3,262	3,262
Interim Financing	25,000	-	25,000
Interim Financing Fees and Interest	(366)	(452)	(818)
Net Change in Cash from Financing	24,634	2,810	27,444
Net Change in Cash	11,093	(10,680)	413
Opening Cash	4,791	15,884	4,791
Ending Cash	\$ 15,884	\$ 5,203	\$ 5,203

26. The Second Cash Flow Statement is based on the following key assumptions:

- a. operating receipts and disbursements are assumed to be largely consistent with recent performance and typical seasonality for the applicable business lines, with assumptions listed in greater detail in Appendix "B";
- b. non-operating receipts are assumed to include a \$2.0 million receipt from the sale of a minority interest granted as consideration in the sale of Trilogy Software Inc. which represents a reversal of the timing difference references in the variance analysis above;

- c. restructuring professional fees include the CRO, the Petitioners' legal counsel; the Monitor, the Monitor's legal counsel, the Interim Lenders' advisors and legal counsel and other professionals;
- d. the reinstatement of the FCB Facility Agreement is projected to provide an additional \$3.3 million of liquidity to the Petitioners as a result of the refinancing of certain loans by NPI to various franchisees; and
- e. the ending cash includes amounts advanced under the Interim Facility and held in a segregated, escrow bank account in support of professional fees as provided for under the Interim Facility terms.

27. The Second Cash Flow Statement does not include any receipts or disbursements that may result from the closing of the Transaction Agreement which may occur during the period.

STAY EXTENSION

28. The Monitor's comments with respect to the Petitioners' application for the Stay Extension are as follows:

- a. the Stay Extension will allow the Petitioners time to finalize the Transaction Agreement and apply for its approval and to develop a plan to facilitate the wind-down of the LoanMe entities;
- b. the Second Cash Flow Statement forecasts that the Petitioners will have sufficient liquidity during the term of the proposed Stay Extension;
- c. there will be no material prejudice to the Petitioners' creditors and other stakeholders as a result of the Stay Extension;
- d. the Petitioners are acting in good faith and with due diligence; and

e. the Petitioners overall prospects of effecting a viable restructuring transaction will be enhanced by the Stay Extension.

29. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant the Stay Extension.

All of which is respectfully submitted this October 11, 2023.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Petitioners



Tom Powell
Senior Managing Director



Craig Munro
Managing Director

Appendix A

List of Petitioners

1. NextPoint Financial, Inc.
2. NPI Holdco LLC

Liberty Tax Entities

3. LT Holdco, LLC
4. LT Intermediate Holdco, LLC
5. SiempreTax+ LLC
6. JTH Tax LLC
7. Liberty Tax Holding Corporation
8. Liberty Tax Service, Inc.
9. JTH Financial, LLC
10. JTH Properties 1632, LLC
11. Liberty Credit Repair, LLC
12. Wefile LLC
13. JTH Tax Office Properties, LLC
14. LTS Software LLC
15. JTH Court Plaza, LLC
16. 360 Accounting Solutions, LLC
17. LTS Properties, LLC

Community Tax Entities

18. CTAX Acquisition LLC
19. Community Tax Puerto Rico LLC
20. Community Tax LLC

LoanMe Entities

21. NPLM Holdco LLC
22. MMS Servicing LLC
23. LoanMe, LLC
24. LoanMe Funding, LLC
25. LM Retention Holdings, LLC
26. LoanMe Stores LLC
27. InsightsLogic LLC
28. LM 2020 CM I SPE, LLC
29. LM BP Holdings, LLC

Appendix B

Cash Flow Statement for the 18-week period ending
November 24, 2023

NextPoint

Cash Flow Statement

For the 18-week period ending November 24, 2023

(USD\$ Millions)	Week Ending	Notes	Weeks 1-10		Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Total
			29-Sep-23	6-Oct-23	13-Oct-23	20-Oct-23	27-Oct-23	3-Nov-23	10-Nov-23	17-Nov-23	24-Nov-23		
			Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
Operating Receipts													
Community Tax Operating Receipts	[1]		\$ 4,717	\$ 665	\$ 532	\$ 798	\$ 619	\$ 495	\$ 743	\$ 618	\$ 9,853		
Liberty Operating Receipts	[2]		4,482	310	310	310	351	351	351	351	7,127		
Total Operating Receipts			9,199	975	842	1,108	975	847	1,094	970	16,980		
Operating Disbursements													
Community Tax Operating Disbursements	[3]		(2,307)	(323)	(281)	(281)	(344)	(298)	(256)	(256)	(4,666)		
Liberty Operating Disbursements	[4]		(10,827)	(1,393)	(362)	(399)	(849)	(1,495)	(395)	(395)	(16,960)		
NextPoint Operating Disbursements	[5]		(617)	(401)	(112)	(112)	(114)	(372)	(83)	(83)	(1,978)		
LoanMe Operating Disbursements	[6]		82	(2)	(2)	(2)	(2)	(2)	(2)	(2)	78		
Employee Compensation	[7]		(6,482)	(1,418)	(1,843)	(1,843)	(1,410)	(1,410)	(1,410)	(1,410)	(12,563)		
Total Operating Disbursements			(20,151)	(3,538)	(755)	(2,636)	(1,307)	(734)	(2,144)	(1,248)	(36,089)		
Net Change in Cash From Operations			(10,951)	(2,563)	87	(1,528)	(332)	113	(1,049)	(278)	(19,110)		
Non-Operating Items													
Non-Operating Receipts	[8]		1,100	-	-	-	2,000	-	-	-	3,100		
Restructuring Professional Fees	[9]		(3,689)	(15)	(2,989)	(663)	(663)	(663)	(1,013)	(663)	(11,022)		
Net Change in Cash From Non-Operating Items			(2,589)	(15)	(2,989)	(663)	1,337	(663)	(1,013)	(663)	(7,922)		
Financing													
Franchisee Financing Recapitalization	[10]		-	-	3,262	-	-	-	-	-	3,262		
Interim Financing	[11]		25,000	-	-	-	-	-	-	-	25,000		
Interim Financing Fees and Interest	[12]		(366)	(212)	(212)	(212)	(240)	(240)	(240)	(240)	(818)		
Net Change in Cash From Financing			24,634	(212)	3,262	(240)	(240)	-	-	-	27,444		
Net Change in Cash			11,093	(2,790)	360	(2,191)	1,005	(900)	(1,712)	(941)	413		
Opening Cash			4,791	15,884	13,093	13,453	11,262	8,757	7,857	6,145	4,791		
Ending Cash	[13]		\$ 15,884	\$ 13,093	\$ 13,453	\$ 11,262	\$ 12,267	\$ 8,757	\$ 6,145	\$ 5,203	\$ 5,203		

Peter Kravitz, Chief Restructuring Officer
Nextpoint Financial Inc.

Notes:

Management has prepared this Cash Flow Statement solely for the purposes of determining the liquidity requirements of NextPoint during the CCAA Proceedings

The Cash Flow Statement is based on the probable and hypothetical assumptions detailed below. Actual results will likely vary from performance projected and such variations may be material.

[1] Community Tax operating receipts are forecast based on 2022 actuals, adjusted for differences in Internal Revenue Service (IRS) activity in pursuing collections (with the accompanying impact on demand for debt resolution work).

[2] Liberty Tax operating receipts are primarily derived from collections relating to financial products and royalties from franchisees, and are assumed to be consistent with current run rates and seasonality.

[3] The most material component of Community Tax operating disbursements is advertising expenses which are critical to the Petitioners for customer relationship and revenue origination.

[4] Liberty Tax operating disbursements relates to software licenses, rent, utilities and general accounts payable.

[5] NextPoint operating disbursements are primarily comprised of corporate overhead costs, adjusted for recent restructuring initiatives.

[6] LoanMe operating disbursements are very limited as the entity is in the process of being wound down.

[7] Employee compensation consists of total payroll and benefits on a consolidated basis between the NextPoint, Liberty Tax, and Community Tax.

[8] Non-operating receipts are assumed to include a \$2.0 million receipt from the sale of a minority interest granted as consideration in the sale of Trilogy Software Inc.

[9] Restructuring professional fees include the fees and disbursements of the Petitioners' legal counsel, Chief Restructuring Officer, the Monitor, the Monitor's legal counsel, and the financial advisor and legal counsel to the lending syndicate. The CRO Success Fee is not included in the Cash Flow Statement and is expected to be paid upon closing of an applicable transaction.

[10] The reinstatement of the FCB Franchisee Financing Agreement is projected to provide an additional ~\$3.3 million in funds to the Debtors as a result of the refinancing of outstanding loans from Liberty to various franchisees.

[11] Interim financing of \$25.0m is anticipated to be advanced over the forecast period.

[12] Interim financing fees and interest include a commitment fee of 1% payable in full on the date of the initial advance, and interest of SOFR plus 6.5% per annum.

[13] Ending cash includes advanced amounts under the Interim Facility including amounts that may be held in a segregated, escrow bank account in support of professional fees.