

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**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
BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM
CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN
LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH
ROAD HOLDING CORP. AND FINAL BELL CORP.**

Applicants

**SUPPLEMENTARY TRANSCRIPT BRIEF OF
FINAL BELL HOLDINGS INTERNATIONAL LTD.**

September 12, 2024

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TO: **THE SERVICE LIST**

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TAB A

Court File No. CV-24-00715773-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

JF-C/sp

B E T W E E N:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 185, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM
CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093
SASKATCHEWAN LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN
ORGANIC INC., HIGH ROAD HOLDING CORP. AND FINAL BELL CORP.

Applicants

This is the Cross-Examination of DEEPAK ALAPPATT on
his Affidavit sworn the 6th day of August, 2024, taken at
the Offices of VICTORY VERBATIM REPORTING SERVICES, Suite
900, 222 Bay Street, Toronto-Dominion Centre, Toronto,
Ontario, on the 4th day of September, 2024.

A P P E A R A N C E S:

JOSEPH BLINICK	---	for the Applicants
ANDREW WINTON	---	for the Respondent,
BRENDAN BOHN		Final Bell Holdings
JOANNA VASILIOU		International Ltd.
ALAN MERSKEY	---	for the Respondent,
COLIN PENDRITH		Cortland Credit Lending Corporation
NICHOLAS AVIS	---	for the Court- Appointed Monitor

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1 --- upon convening at 1:00 p.m.

2 --- upon commencing at 1:06 p.m.

3

4 DEEPAK ALAPPATT, affirmed

5 CROSS-EXAMINATION BY MR. WINTON:

6

7 1. Q. Good afternoon, Mr. Alappatt.

8 A. Good afternoon.

9 2. Q. Before I begin asking questions, I
10 just want to establish this is a cross-examination
11 on your affidavit sworn August 6th, 2024, and for
12 that reason, Counsel, I don't want to get any
13 answers to questions from Counsel.

14 If you object to a question, please just
15 say you object, and briefly state the basis for your
16 objection, and then stop there. Counsel, is that
17 okay?

18 MR. MERSKEY: We understand what a
19 cross-examination is, Mr. Winton. We'll
20 comport ourselves in accordance with the
21 Rules.

22 3. MR. WINTON: I appreciate that. I just
23 want to make sure there is no
24 misunderstanding as...

25 MR. MERSKEY: That's fine.

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1 4. MR. WINTON: ...we go. Thank you.

2
3 BY MR. WINTON:

4 5. Q. Now, Mr. Alappatt, you have sworn
5 two affidavits in response to...or in connection
6 with Final Bell's claim against BZAM, correct?

7 A. That's correct.

8 6. Q. You recall your first affidavit was
9 sworn March 25th, 2024?

10 A. That's correct.

11 7. MR. WINTON: And Counsel, are we fine
12 with that affidavit forming part of the
13 record, without having to enter it as an
14 exhibit to today's cross?

15 MR. MERSKEY: That's fine. We have not
16 given consideration as to what parts, if
17 any, are spent, but as long as you confine
18 yourself to the portions that are relevant
19 for the present motion, we have no
20 objection, and you don't need to make it an
21 exhibit again. That's for sure.

22 8. MR. WINTON: Thank you.

23
24 BY MR. WINTON:

25 9. Q. You recall, Mr. Alappatt, you were

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1 cross-examined by one of my colleagues on that
2 affidavit on April 8th, 2024?

3 A. That's correct.

4 10. Q. That was a video cross-examination
5 by Zoom, correct?

6 A. That's correct.

7 11. Q. At some point after your cross-
8 examination, a transcript was prepared. Did you
9 have an opportunity to review the transcript of your
10 cross-examination?

11 A. I did.

12 12. Q. And you did review the transcript of
13 your cross-examination?

14 A. Yes, I did.

15 13. Q. And I take it, since I haven't heard
16 from your counsel, you have no corrections or
17 clarifications to the transcript of your April 8th
18 cross-examination?

19 A. No. There may be a minor edit
20 required, but I didn't think it was critical enough.

21 14. Q. Okay. Let's pull up the more recent
22 affidavit that you swore on August 6th, 2024, which
23 is tab 2 of the Cortland motion record. Let's just
24 go to page 21 of the record, which is the last page
25 of your affidavit. Maybe we can just close off the

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1 bookmarks and just make it a little larger on the
2 screen for the witness. Perfect, thank you.

3 All right, now, I just want to ask you
4 some questions about what is called the jurat, which
5 is the part of the...underneath paragraph 36, just
6 to get some housekeeping out of the way.

7 You were in Milton when you swore your
8 affidavit, sir?

9 A. That's correct.

10 15. Q. And I take it, then, you swore your
11 affidavit electronically over some sort of video
12 conferencing application?

13 A. That's correct.

14 16. Q. Zoom or Facetime, something like
15 that?

16 A. Zoom.

17 17. Q. Zoom, okay. You were on a Zoom with
18 Mr. Pendrith when you swore your affidavit?

19 A. That's correct.

20 18. Q. And you applied what appears to be a
21 digital signature to the affidavit?

22 A. That's correct.

23 19. Q. That's not your handwritten
24 signature, correct?

25 A. No.

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1 20. Q. But it's one that you applied to the
2 affidavit?

3 A. Yes.

4 21. Q. On August 6th?

5 A. That's right.

6 22. Q. Thank you. If we go back to page 10
7 of the record, just take a look at paragraph 2 of
8 your affidavit. Let me know when you have finished
9 reviewing it.

10 A. Yes.

11 23. Q. So the first sentence states:

12 "...I am authorized to swear this affidavit
13 on behalf of Cortland..."

14 I'm just curious about that. What is the authority
15 that you're referring to in that first sentence of
16 paragraph 2?

17 A. I have been authorized by the senior
18 management of Cortland.

19 24. Q. Okay, and when you refer to "senior
20 management" are you referring to Sean Rogister?

21 A. Sean Rogister, Bruce Sherk and
22 James.

23 25. Q. Who is James?

24 A. James is a minority shareholder at
25 Cortland.

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1 remind the witness to wait until your
2 question is finished to state his answer,
3 because he is overlapping you slightly.

4 33. MR. WINTON: Thank you.

5 MR. MERSKEY: Just for the clarity of
6 the record.

7 34. MR. WINTON: Thank you.

8
9 BY MR. WINTON:

10 35. Q. It's good advice. We all agree with
11 that, and it's hard to do, I understand, and
12 sometimes, with my questions, you want to just take
13 a pause to make sure I'm done asking, but if you do
14 make that effort, it will be a lot better for the
15 transcript, sir. Thank you.

16 You understood, just looking to the second
17 sentence of paragraph 2, you understood at the time
18 you were swearing this affidavit it was in
19 connection with a motion that Cortland is bringing
20 concerning Final Bell's claim to a constructive
21 trust, correct?

22 A. That is correct.

23 36. Q. All right. I take it you had an
24 understanding at the time you swore this affidavit
25 as to the consequences of Final Bell's claim to a

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1 constructive trust succeeding?

2 A. The way we would look at it is we
3 wanted to get clarity on the priority of the DIP
4 agreement.

5 37. Q. Thank you. But you were aware
6 that's the issue that is going to be spoken to at
7 the upcoming motion?

8 A. Priority of the DIP agreement, yes.

9 38. Q. Yes, okay. You're also aware or
10 were aware at the time you swore this affidavit that
11 Final Bell is claiming that it was defrauded by
12 BZAM?

13 A. I'm aware of the litigation...

14 39. Q. Right.

15 A. ...and the acquisitions.

16 40. Q. Aware of the nature of the claim,
17 Final...

18 A. The nature of the claim.

19 41. Q. So let me just finish, sorry.

20 You're aware that the nature of Final Bell's claim
21 against BZAM includes an allegation that Final Bell
22 was defrauded by BZAM?

23 A. I'm aware of the nature of the
24 claim, yes.

25 42. Q. And that it includes...I just want

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1 to make sure we don't have...we're not quibbling
2 over or disputing over this, sir. That awareness
3 includes that there is a claim for fraud?

4 A. That is correct.

5 43. Q. Thank you. If we go back, in fact,
6 to March, 2024, you were aware that Final Bell was
7 claiming it had been defrauded by BZAM before you
8 swore the March 25th affidavit, correct?

9 A. The court documents say the claims
10 that were made by Final Bell, and we are aware of it
11 through the documentation.

12 44. Q. Okay, so maybe I can put it to you
13 this way. Prior to swearing your March 25th
14 affidavit, you had reviewed Final Bell's notice of
15 motion that was dated March 18, 2024, correct?

16 A. That is correct.

17 45. Q. And were aware of the nature of the
18 allegations set out in that notice of motion?

19 A. That is correct.

20 46. Q. Okay, thank you. Are you aware that
21 on April 16th, and maybe the date will or won't
22 matter, but at least prior to the originally
23 scheduled trial date, are you aware that Final Bell
24 delivered a written opening statement?

25 A. Is this part of the emergency motion

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1 that was there in front of the judge just before the
2 litigation?

3 47. Q. No, this is something different,
4 sir. So this was an opening statement that Final
5 Bell delivered, outlining its summary of its case
6 before the trial was scheduled to begin on April
7 22nd.

8 A. If you can pull that up...

9 48. Q. Sure, why don't we?

10 A. ...on the screen, that will be
11 helpful.

12 49. Q. Okay. So let's go to the responding
13 motion record of Final Bell, volume 2, tab 6(e), and
14 this is page 1050 of Final Bell's responding motion
15 record. Do you see that up on the screen there,
16 sir?

17 A. Yes, I did see this at that time.

18 50. Q. At or around that time?

19 A. Yes, yes.

20 51. Q. Thank you. Then if we go to tab
21 6(f), page 1101 of the record, this is a shorter
22 supplementary opening submission, dated April 17th,
23 2024.

24 A. Yes.

25 52. Q. You saw that at or around the same

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1 time?

2 A. Yes.

3 53. Q. Thank you. So we're pulling up on
4 the screen, and I'm also going to hand you, sir, a
5 hard copy for you and your counsel, of our notice of
6 examination dated August 27th, 2024.

7 MR. MERSKEY: Are these questions going
8 to be for Mr. Alappatt or for counsel?

9 54. MR. WINTON: Probably both.

10 MR. MERSKEY: Just tell us which is
11 which.

12 55. MR. WINTON: I will. Thank you.

13
14 BY MR. WINTON:

15 56. Q. Mr. Alappatt, you had received and
16 reviewed a copy of this notice of examination prior
17 to today?

18 A. Yes.

19 57. MR. WINTON: Can we enter this as an
20 exhibit, please?

21 MR. MERSKEY: That's fine.

22 58. MR. WINTON: Thank you. It is the
23 notice of examination, dated August 27th,
24 2024.

25

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1 way, but I appreciate there are some
2 questions that I will ask that I will
3 address to counsel. I'm just right now
4 trying to understand the witness' awareness
5 of what was and wasn't produced, and then
6 we'll go from there. So just to review my
7 question...

8 MR. MERSKEY: The one hesitation I have,
9 and the witness has been given a copy of
10 the productions set, he is just not going
11 to be as familiar with them, nor may he be
12 able to correlate them to your individual
13 categories which counsel can do for you.

14 62. MR. WINTON: Right.

15 MR. MERSKEY: That's why I proposed the
16 order but...

17 63. MR. WINTON: I appreciate that. Thank
18 you.

19
20 BY MR. WINTON:

21 64. Q. Mr. Alappatt, are you aware or not,
22 because you may not be aware, that Cortland has not
23 produced documents responsive to all 14 categories?

24 A. That is correct.

25 65. Q. You are aware of that?

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1 A. That is correct.

2 66. Q. That's all that question sought to
3 ask, all right. If you could turn up page 2 of the
4 notice, just review category 1 and let me know when
5 you're ready.

6 A. Okay.

7 67. Q. All right. To your knowledge, sir,
8 does there exist correspondence between Cortland and
9 the applicants during the date range set out in the
10 notice, paragraph 1, that concerns or is relevant to
11 BZAM's excise tax obligations?

12 A. We definitely would have something
13 with regards to diligence that we continuously do on
14 BZAM, and we have reporting that comes back from
15 BZAM for the borrowing bases and all of that.

16 So I haven't done a full review of what
17 documents are available. So I don't know if I can
18 answer that question confidently on what is
19 available.

20 68. Q. But to your knowledge or at least, I
21 guess...your expectation is that between December
22 5th and February...December 5th, 2023 and February
23 28th, 2024 there was correspondence between BZAM and
24 Cortland that would include disclosure of BZAM's
25 excise tax obligations?

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1 MR. MERSKEY: Just pause there because
2 the witness did say he thought there might
3 be such correspondence, but he did not
4 delve it into any further, and that's
5 because of the position taken on relevance
6 with the advice of counsel.

7 So if you want the position on
8 relevance now, I can tell you. I
9 understand you want to establish whether
10 the documents possibly exist, and I think
11 you have that possibly. No further
12 exercise was undertaken past the review of
13 those categories in the notice of
14 examinations, Mr. Winton.

15 69. MR. WINTON: Okay.

16
17 BY MR. WINTON:

18 70. Q. Do you agree with what counsel said,
19 that these documents described in category 1
20 possibly exist?

21 A. I cannot confidently say yes or no
22 to it. There is...it's possible that there is
23 communication, because as part of the reporting
24 requirements of the company, there is tax
25 obligations that get reported. So it should be

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1 SARCA, also I think referred to as SARCA, you
2 understand, Mr. Alappatt, that's a reference to the
3 second amended and restated credit agreement between
4 BZAM and Cortland?

5 A. That's right.

6 77. Q. Or maybe to be more technical, The
7 Green Organic Dutchman, TGOD, and Cortland?

8 A. Yes, that's correct.

9 78. Q. Thank you. To your knowledge, sir,
10 do documents exist that are captured by the
11 description in paragraph 3 of the notice?

12 A. That is correct. It is the...I
13 think it's the same answer for all three.

14 79. MR. WINTON: Okay, and Counsel, do I
15 take it, then, the same objection for
16 category 3 is relevance?

17 MR. MERSKEY: That is correct.

/R

18 80. MR. WINTON: Thank you.

19
20 BY MR. WINTON:

21 81. Q. Let's skip ahead to category 5.
22 While we do that, let's pull up on the screen the
23 Cortland motion record, your affidavit, paragraph
24 15, which is on page 13 of the record, because...or
25 sorry, 15. That's the same...page 13, yes,

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1 paragraph 15, which, as you can see, is referenced
2 in category 5 of the notice.

3 I just want to give you an opportunity to
4 review the paragraph in your affidavit before I ask
5 questions about category 5.

6 A. Yes, I'm good.

7 82. Q. Okay, thank you. Are there
8 documents, to you knowledge, in Cortland's power,
9 possession or control that exist as described in
10 category 5 of the notice of examination?

11 A. I would say yes, and again, I
12 haven't done a review of it at this time, but it's
13 possible.

14 MR. MERSKEY: I think, Mr. Winton, we
15 need to focus on the aspect of that request
16 that says, "Documents that Cortland relies
17 upon in support of the statement," because
18 Cortland only relies upon what it has
19 placed in the record, and as a
20 result...which is what the question asked.
21 As a result, there are no additional
22 documents in category 5 and some of the
23 other categories that Cortland relies upon
24 for the purpose of the motion.

25 83. MR. WINTON: I see. So from a legal

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1 point of view on the issue of reliance,
2 Cortland's position is it only relies on
3 the, I'll call it, evidence or documents
4 attached to Mr. Alappatt's August 6th
5 affidavit?

6 MR. MERSKEY: To the extent there is
7 anything otherwise in the record, but they
8 are not Cortland documents. There may
9 be...until we fleshed out the argument with
10 you, Mr. Winton, I can't tell you off the
11 top of my head if there may be legal
12 submissions that, for instance, your client
13 has made in the proceeding or that BZAM has
14 made, but there are no documents
15 originating in Cortland's power, possession
16 or control, as that term is understood in
17 the discovery context, that Cortland is
18 asking the court to take into account with
19 respect to this motion.

20 84. MR. WINTON: All right, thank you.

21 MR. MERSKEY: And you'll see that, then,
22 because of the phraseology of some of the
23 listing, applies to certain of the other
24 questions.

25 85. MR. WINTON: Okay.

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1 MR. MERSKEY: I think you would rather
2 object if we did try to rely on any
3 documents that we hadn't already pointed
4 you to.

5 86. MR. WINTON: Well, except that I asked
6 for them, but I have got your answer, and I
7 appreciate it. Thank you.

8 MR. MERSKEY: In any event, we have a
9 mutual understanding of what the record
10 before the court is.

11
12 BY MR. WINTON:

13 87. Q. Okay. If you review paragraph 16 of
14 your affidavit, which is at the bottom of page 13,
15 top of page 14 of the record...I think actually we
16 got that.

17 MR. MERSKEY: Yes, those have been
18 disclosed, Mr. Winton.

19 88. MR. WINTON: That's right. Sorry, let's
20 move on to category 7.

21 MR. MERSKEY: It is the same...it's not
22 the same question, but it's the same
23 framing as question 5, Mr. Winton, with the
24 same position as a result.

25 89. MR. WINTON: Thank you. And 8?

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- 1 MR. MERSKEY: I'll just check. That's
2 correct.
- 3 90. MR. WINTON: And 9?
4 MR. MERSKEY: That is correct.
- 5 91. MR. WINTON: Okay.
6 MR. MERSKEY: I think I stated before
7 that anything obviously attached to his
8 affidavit he relies upon.
- 9 92. MR. WINTON: Yes, you did. Thank you.
10 I think we have 10.
11 MR. MERSKEY: Let me see. Yes.
- 12 93. MR. WINTON: At least for a certain time
13 period. So we have 10, starting from
14 January 1st, 2024.
15 MR. MERSKEY: Yes, we chose the timing
16 of your client's transaction with BZAM as
17 the outer range for the period.
- 18 94. MR. WINTON: Thank you. We have 11, 12.
19 I believe we have 13, as well, correct? We
20 have the requests for advances and the
21 emails approving the advances.
22 MR. MERSKEY: Correct.
- 23
- 24 BY MR. WINTON:
- 25 95. Q. And we do not have 14. Let me

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1 direct your attention to category 14 on page 4 of
2 the notice, sir. Let me...when you're ready, I'll
3 ask you some questions.

4 A. Okay.

5 96. Q. Thank you. Just starting off, sort
6 of, at a very basic level, you're aware of the
7 existence of a stalking horse bid in the sales
8 process?

9 A. That's correct.

10 97. Q. And you're aware that a stalking
11 horse bidder is a company owned or controlled by the
12 largest shareholder of BZAM?

13 A. That is correct.

14 98. Q. Okay, and you're aware that Cortland
15 is...how do I put this? Let me start over a
16 different way.

17 To your knowledge, was Cortland involved
18 in any of the discussions concerning extensions of
19 the deadline to close on the stalking horse bid?

20 A. With who?

21 99. Q. With the monitor or the applicants
22 or the bidder.

23 A. I think with the monitor and the
24 applicants, they did request extensions.

25 100. Q. Were you a party to...

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1 A. And...sorry.

2 101. Q. I didn't mean to interrupt.

3 A. Sorry. They did request extensions
4 on the DIP agreement for the DIP financing. So I
5 would assume that's part of the bullet 14 here.

6 102. Q. So it's not...it may be, but that's
7 not what I'm asking. My question was directed
8 at...so let me try and narrow my question.

9 So leaving aside extensions of the DIP
10 agreement, but to the extent that there were
11 communications concerning the extension of the
12 outside date to close on the stalking horse bid, do
13 you know whether Cortland participated in any such
14 communications?

15 A. If I remember right, the first time
16 this conversation on a potential close came up is
17 when you questioned our legal counsel on it, why the
18 transaction is not closing. That is my
19 understanding. Maybe I am...I misunderstood, but
20 that's my understanding on any discussions about
21 close itself.

22 My understanding until that time was they
23 were asking us for DIP extensions because they did
24 not intend on closing it before this matter was
25 resolved.

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1 MR. MERSKEY: On the issue of
2 documentation, Mr. Winton, inquiries
3 weren't made because a view on relevance
4 was taken.

5 103. MR. WINTON: Thank you.

6 MR. MERSKEY: If that assists your
7 question.

8
9 BY MR. WINTON:

10 104. Q. That anticipates a question I was
11 going to ask, but let me just unpack what you just
12 said, Mr. Alappatt.

13 Prior to the request for DIP extensions,
14 and we will talk about that in some more detail in a
15 bit, to your knowledge, Cortland was not involved in
16 any discussions concerning the outside date for
17 closing on the stalking horse bid?

18 MR. MERSKEY: So pause there, Mr.
19 Alappatt. I'm going to let you proceed
20 with the question, Mr. Winton.

21 105. MR. WINTON: Yes.

22 MR. MERSKEY: I'm going to express a
23 reservation now which you'll appreciate
24 from my comment about the document search.
25 I want to hear the line of questioning so I

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1 can understand it properly, but in terms of
2 principle, it's Cortland's view that the
3 negotiations, such as they were, with
4 respect to the extension of the deadline of
5 the stalking horse bid, don't bear on the
6 issues on this motion.

7 So I'm not foreclosing you from
8 asking some more questions in the area, but
9 I'm telling you the objection now, so I'm
10 not heard to be...not to be told in five or
11 10 questions that, "Well, you didn't object
12 when it came up."

13 106. MR. WINTON: Thank you.

14 MR. MERSKEY: If you appreciate that.

15 107. MR. WINTON: I do.

16
17 BY MR. WINTON:

18 108. Q. Back to my question, Mr. Alappatt.

19 To your knowledge, were you aware of any
20 communications involving Cortland, not including DIP
21 extensions, concerning the extension of the deadline
22 to close on the stalking horse bid?

23 A. I'm not aware of any, or I can't
24 remember any.

25 109. Q. Is it possible, to the extent such

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1 discussions did take place, that they would
2 have...communications or correspondence took place
3 between other employees at Cortland, not including
4 yourself?

5 A. I don't think it will be employees
6 of Cortland, if there is communication on that. It
7 probably would have been our financial advisor and
8 our legal team that...

9 110. Q. Is the financial advisor an outside
10 entity you're referring to?

11 A. Yes, it is KSV.

12 111. Q. Okay. Counsel, you're referring to
13 Cassels?

14 A. That's correct.

15 112. Q. But is it possible those individuals
16 were communicating with the senior management team
17 members other than yourself about this issue?

18 A. The chances are less.

19 113. Q. Okay. I want to pick up on
20 something you said earlier today and reconcile it
21 with something, some evidence, you gave on April
22 8th, and this isn't a gotcha at all. I just want to
23 make sure I understand correctly.

24 I can show this if you want, but in your
25 April 8th cross-examination you had said that the

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1 four people with carriage of the TGOD/BZAM file were
2 yourself, Mr. Sherk, Mr. Rogister and Mr.
3 Preobrazenski.

4 A. That is correct.

5 114. Q. Okay. Then today you mentioned this
6 individual James. Was Mr. James also someone who
7 you would add to that list? Did I say Mr. James?
8 Was James, last name to be determined, someone who
9 you would add to that list of people with carriage
10 over the TGOD/BZAM file?

11 A. No.

12 115. Q. Okay. Your role was...your title
13 was director of risk until November, 2023, correct?

14 A. That's correct.

15 116. Q. And then you were promoted to
16 managing director of risk in November of 2023?

17 A. That is correct.

18 117. Q. Mr. Preobrazenski is the managing
19 director, underwriting and portfolio manager?

20 A. That is correct.

21 118. Q. Okay. Do I have it right then that
22 Mr. Rogister and Mr. Sherk are senior to you at
23 Cortland?

24 A. That is correct.

25 119. Q. And both you and Mr. Preobrazenski

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1 are managing directors. Are you considered to be on
2 the same level on the org chart?

3 A. As?

4 120. Q. You and Mr. Preobrazenski.

5 A. Sure, I would like to think so.

6 121. Q. Okay. As between you and Mr.

7 Preobrazenski, who has more responsibility for the
8 decision whether or not to enter into a credit
9 agreement with TGOD or BZAM?

10 A. That is not an individual decision.
11 We do have a credit committee or an investment
12 committee that would make those decisions, if I
13 understood the question right.

14 122. Q. You did. Okay, so let's...going
15 back to the first amended restated credit agreement,
16 which we can get the dates for you, if that helps.
17 It's Exhibit D to your affidavit, page 195 of the
18 record, dated September 29th, 2021. Do you see that
19 there?

20 Do you know who was on the credit
21 committee in September, 2021?

22 A. Yes, I do.

23 123. Q. And who was that?

24 A. It was Bruce, Sean, Alex and myself.

25 124. Q. And so the four of you had

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1 collective responsibility for deciding whether or
2 not to enter into the credit agreement with TGOD?

3 A. That is correct.

4 125. Q. Okay. I may be making the same
5 mischaracterization, but let me ask the question,
6 and we'll see if I get this right. As between you
7 and Mr. Preobrazenski, who has greater
8 responsibility for monitoring the TGOD or BZAM
9 account on an ongoing basis?

10 A. I think the two of kind of work as a
11 team while monitoring it. I take on a greater role
12 on the TGOD file than he does, but we try to keep
13 ourselves up to date on the file regularly.

14 126. Q. Okay. So you referenced...when I
15 was asking questions about documents, reporting
16 requirements under the credit agreements, were those
17 reports...were they shared with you?

18 A. Me personally?

19 127. Q. Yes.

20 A. Yes, along with my team.

21 128. Q. And you reviewed them?

22 A. That's a tough question. Like, the
23 team has...I have got a team...

24 129. Q. Yes.

25 A. ...that takes...like, you know,

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1 reviews the documents in detail.

2 130. Q. M'hm.

3 A. And from time to time, I would
4 review it in detail as well. So it's a team effort
5 going through the monitoring of the file itself.

6 131. Q. And am I right to suggest that if a
7 member of your risk team reviewed a report that you
8 hadn't reviewed in detail, and they saw something of
9 concern, your expectation would be they would raise
10 that concern with you?

11 A. Absolutely.

12 132. Q. Thank you. Now, if we turn to page
13 218 of the record, the motion record, this is the
14 signature page, one of the signature pages, for the
15 first amended restated credit agreement. It's Mr.
16 Sherk who signs on behalf of Cortland, correct?

17 A. That's correct.

18 133. Q. Did you have authority to sign the
19 credit agreement on behalf of Cortland?

20 A. No.

21 134. Q. Okay. Let's go to the next exhibit,
22 E, to your affidavit, and at page 352, this is the
23 second ARCA, dated January 28th, 2024. Do you
24 recall who were the members of the credit committee
25 in January, 2024?

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1 A. Yes.

2 135. Q. And was it the same people?

3 A. Yes.

4 136. Q. You, Bruce, Sean and Alex?

5 A. That is correct.

6 137. Q. Thank you. Can we turn to page 375

7 of the record? The second ARCA is signed by Mr.

8 Rogister on behalf of Cortland, correct?

9 A. That is correct.

10 138. Q. And am I correct, then, in January,

11 2024, you did not have signing authority to sign

12 this credit agreement on behalf of Cortland?

13 A. That is correct.

14 139. Q. And within the credit committee,

15 does it require unanimous agreement before you

16 decide to go ahead with an agreement, or do certain

17 members have more say or control over the outcome

18 than others?

19 A. It's a unanimous agreement.

20 140. Q. Okay. So if Mr. Rogister, Mr.

21 Sherk, Mr. Preobrazenski all agree to go ahead, but

22 you object, then the agreement won't be signed. Is

23 that right?

24 A. That is correct.

25 141. Q. Okay. Just one second. I'm just

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1 trying to find something here. If we could turn to
2 paragraph 16 of your August 6th affidavit, the DIP
3 agreement was an agreement that was negotiated over
4 the course of February, 2024, correct?

5 A. That is correct.

6 142. Q. Right. Were you involved in the
7 negotiation of the terms of the DIP agreement?

8 A. Yes.

9 143. Q. Okay. Were the other members of the
10 credit committee also involved?

11 A. In the decision-making, yes.

12 144. Q. What about in the review and
13 negotiation of terms?

14 A. Maybe not all of them.

15 145. Q. Okay, but you were?

16 A. Yes.

17 146. Q. And I take it you reviewed drafts of
18 the agreement as it evolved?

19 A. Yes.

20 147. Q. And you reviewed the final draft
21 before Cortland committed itself to or decided to
22 sign the DIP agreement?

23 A. With the help of my...other members
24 of Cortland, yes.

25 148. Q. Right, and was this a credit

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1 committee decision as well, whether or not to enter
2 into the DIP agreement?

3 A. Yes.

4 149. Q. Okay. So the same basis, that it
5 needed to be a unanimous decision by the credit
6 committee before the DIP agreement would be entered
7 into?

8 A. That is correct.

9 150. Q. Thank you. You were aware that the
10 DIP agreement was...required court approval?

11 A. Yes.

12 151. Q. And aware that the approval of the
13 DIP agreement would be set out in the court's
14 initial order in the CCAA proceeding?

15 A. Yes.

16 152. Q. That was explained to you by
17 someone?

18 MR. MERSKEY: You're not asking him to
19 get into advice, just to clarify to the
20 witness, just that he was aware that it was
21 being approved in the initial order?

22 153. MR. WINTON: Well, I want to start with
23 the existence of advice, and then we can
24 maybe see if we're going to have a fight
25 about disclosure of that advice, but first,

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1 I want to know whether such advice exists.

2 MR. MERSKEY: Can you ask the witness
3 then?

4 154. MR. WINTON: That's my intention.

5 MR. MERSKEY: Okay.

6

7 BY MR. WINTON:

8 155. Q. So the awareness was from advice
9 given to Cortland, and communications you
10 participated in with legal counsel?

11 A. That is correct.

12 156. Q. And is it the same answer for the
13 amended and restated initial order that was made
14 March 8th?

15 A. That is correct.

16 157. Q. That the explanation or any
17 discussion or awareness of the terms of that order
18 were provided to you by counsel?

19 A. That is correct, yes.

20 158. Q. Was any of that advice provided in
21 writing?

22 A. I would think so. It's...there
23 should be email exchanges on the discussions on the
24 DIP agreement.

25 MR. MERSKEY: I'm just going to caution

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1 Mr. Alappatt. Counsel isn't asking you to
2 guess.

3 THE DEPONENT: Yes.

4 MR. MERSKEY: If you know yes, you can
5 say yes. If you don't remember, you can
6 say you don't remember.

7 THE DEPONENT: The truth is I don't know
8 exactly what your question is, because if
9 I'm understanding your question properly,
10 is there correspondence between legal
11 counsel and Cortland when the DIP agreement
12 was being negotiated, yes. Were we getting
13 advice from legal counsel throughout the
14 DIP agreement process, yes. Is that in
15 writing, probably yes, and I would say it's
16 yes.

17 159. MR. WINTON: Thank you. Counsel, so now
18 is the part...this is addressed to counsel,
19 but I would ask that Cortland produce the
20 written advice it received from its legal
21 counsel explaining how the terms of the
22 initial order...and this is at the time,
23 the contemporaneous correspondence or
24 communications, written communications,
25 setting out the advice that Cortland

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1 received from its counsel concerning the
2 terms of the initial order, and the amended
3 restated initial order as it affects the
4 DIP agreement.

5 MR. MERSKEY: I don't think you're
6 entitled to that. /R

7 160. MR. WINTON: Well, we can disagree on
8 that, but I'll take that as an objection.
9 Thank you.

10 MR. MERSKEY: Fair enough.

11
12 BY MR. WINTON:

13 161. Q. If we can pull up, back to the first
14 ARCA, Exhibit D to your affidavit, page 195, just
15 before we get into, sort of, some review of some
16 specific terms, just the overall structure of the
17 credit Cortland advanced to TGOD, The Green Organic
18 Dutchman Limited, it consisted of a, sort of, two
19 tiers of loan, correct, buckets of funds that were
20 advanced?

21 A. As of September, 2021 or...

22 162. Q. Yes. By that, let me just see
23 before you...let me see if I can be better about
24 this. There is a base facility amount, and on top
25 of a base loan, there is a revolving loan, correct?

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1 A. That evolved over time. So if
2 you're asking me when it was there, it...the
3 amounts, itself, evolved over time. So I'll have to
4 get back to you.

5 Are you asking is it that way now or was
6 it that way in September?

7 163. Q. That that was the structure of the
8 first amended and restated credit agreement.

9 A. Okay, so yes, there is a base
10 facility in a revolver.

11 164. Q. The amounts changed over time?

12 A. Yes.

13 165. Q. Right, but just as far as a
14 structure goes, you have a sort of base amount that
15 is loaned on a more longer term basis, and then
16 there is a revolving amount that is advanced or
17 repaid at various points in time.

18 A. So the loan agreement, the way it
19 was structured, was as a revolver, and the
20 collateral that was used to support the entire loan
21 was categorized as...within the borrowing base as
22 base amount and then a revolver that revolves with
23 an A/R.

24 166. Q. Thank you. The first ARCA
25 established what is called a collections account,

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1 which is the account into which TGOD was required to
2 deposit any payments made to it, correct?

3 A. That's correct.

4 167. Q. And Cortland would conduct what was
5 called, I guess, a sweep of the collections account
6 on a daily basis?

7 A. That is correct.

8 168. Q. So those...the funds in the
9 collections account would be paid to Cortland on a
10 daily basis or transferred to Cortland on a daily
11 basis?

12 A. That is correct.

13 169. Q. And used to reduce the amount
14 outstanding under the revolver portion of the
15 facility, the credit facility?

16 A. The entire facility, I would say.

17 MR. MERSKEY: Just to be clear, Mr.

18 Winton, he clarified there is only a
19 revolving portion of the credit facility
20 itself. What the collateral is based on
21 has different categorizations.

22 170. MR. WINTON: Thank you.

23
24 BY MR. WINTON:

25 171. Q. So the entire facility would be paid

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1 down through the suite of the collections account?

2 A. That is correct.

3 172. Q. Right. Then if TGOD needs fund to
4 fund operations, it would borrow funds under the
5 credit facility to fund those operations?

6 A. That is correct.

7 173. Q. Those funds required request for
8 funds from Cortland before they would be advanced?

9 MR. MERSKEY: From BZAM? I think you
10 said Cortland, Mr. Winton.

11
12 BY MR. WINTON:

13 174. Q. Sorry, a request would be submitted
14 by TGOD or BZAM to Cortland before the funds would
15 be advanced by Cortland, correct?

16 A. That is correct.

17 175. Q. And at the time Cortland is
18 considering whether or not to advance the funds
19 requested, there would be an analysis of the
20 collateral that is...exists at the time, and how
21 that would secure, support the funds that are being
22 sought?

23 A. That is correct.

24 176. Q. And everything we just discussed
25 also applies to the receipt of excise tax payments

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1 from BZAM's customers?

2 MR. MERSKEY: Don't answer that, Mr.
3 Alappatt. I would like to understand the
4 purpose of the question, Mr. Winton.

5 177. MR. WINTON: Okay. I just want to
6 establish that to the extent customers paid
7 funds to BZAM that were payments of excise
8 taxes collected by BZAM, those payments
9 also went directly into the collections
10 account.

11 MR. MERSKEY: If you know, you can
12 answer the question.

13 THE DEPONENT: That is...so the
14 customers pay the invoices.

15
16 BY MR. WINTON:

17 178. Q. Yes.

18 A. The entire payment goes into the
19 collections account.

20 179. Q. Right, and later when BZAM needs to
21 pay its excise tax obligations to the CRA, it would
22 seek an advance from Cortland to the extent it
23 doesn't have the funds on hand to make that payment?

24 A. Well, this works as a revolver. So
25 like, they would be requesting funds on a weekly

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1 basis for all their operating needs.

2 180. Q. Including payment of excise taxes?

3 A. Sure.

4 MR. MERSKEY: Mr. Winton, I'm going to
5 pause you there, because I have allowed you
6 to explore the mechanical operation of the
7 revolver, but I'm going to object to any
8 more questions on the specifics of the
9 excise fund collections.

10
11 BY MR. WINTON:

12 181. Q. Let me just ask one more question,
13 and before you answer, Counsel may object, but I
14 want to get it in the record.

15 Given the answers you just gave me, you're
16 aware that BZAM did not segregate excise taxes in a
17 separate account, separate and apart from the
18 collections account?

19 MR. MERSKEY: I'll take it under
20 advisement.

U/A

21
22 BY MR. WINTON:

23 182. Q. If we turn to page 201 of the
24 record...actually, let's start at page, sorry, 199
25 of the record, article 6 of the first ARCA sets out

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1 a list of representations and warranties that are
2 being made by BZAM, correct?

3 A. Yes.

4 183. Q. Okay.

5 MR. MERSKEY: I just want to pause for
6 one second, Mr. Winton, just to observe
7 that while...you have asked us to limit our
8 comments. So we have not expressed the
9 rationale for positions taken on privilege
10 or relevance on the record. We're prepared
11 to do so if you want, but I'm not seeking
12 to clutter your transcript, but if you're
13 going to make an issue of it, we would like
14 notification so we can include that in our
15 legal argument.

16 184. MR. WINTON: Thank you, understood.

17
18 BY MR. WINTON:

19 185. Q. Okay, if we turn to page 201, there
20 is...at 6(k) near the top of the page you see a
21 representation from BZAM that it is solvent.

22 A. I see that.

23 186. Q. Yes, and you understood, as a member
24 of the credit committee and as the director or
25 managing director of risk, that it was important to

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1 Cortland that this representation remain true before
2 Cortland advances any funds to BZAM?

3 A. That is correct, or we...if there
4 are situations where we need to understand what the
5 situation is...like, for example, in February
6 when...mid-February when they announced that they
7 need to go through a process, we still funded them,
8 because we knew that now they were getting into this
9 process...even though we knew they were getting into
10 this process.

11 187. Q. Okay, so if it's not solvent, if
12 they tell you, "Okay, we can't continue that
13 representation. We're no longer solvent," that
14 generates a discussion about what to do next, which
15 in the actual circumstances of February led to the
16 negotiation and agreement of the DIP agreement?

17 A. That is correct.

18 188. Q. Okay, but it is a discussion that
19 has to take place between BZAM and Cortland?

20 A. Sorry, on the next steps to be
21 taken?

22 189. Q. Yes.

23 A. Yes.

24 190. Q. You wouldn't just advance the funds
25 without...if they tell you they're no longer

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1 solvent, you wouldn't just advance the funds without
2 engaging in some sort of discussion about how or
3 what that means?

4 A. That is correct.

5 191. Q. Okay. A little further down the
6 page, just 6(q) refers to BZAM having remitted on a
7 timely basis amounts to have been withheld and
8 remitted. Just review that representation there.

9 A. Sorry, where am I looking?

10 192. Q. 6(q) "Statutory liens".

11 MR. MERSKEY: What is your question, Mr.
12 Winton, once he has read it?

13 193. MR. WINTON: Once he has read it.

14
15 BY MR. WINTON:

16 194. Q. Do you have an understanding, any
17 understanding, as to whether or not that
18 representation and warranty also applies to excise
19 taxes?

20 MR. MERSKEY: Don't answer that question. /R

21 195. MR. WINTON: And the basis for the
22 objection?

23 MR. MERSKEY: Relevance.

24 196. MR. WINTON: Thank you.

25

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1 BY MR. WINTON:

2 197. Q. Flipping ahead to page 205 of the
3 record, section or article 7 of the first ARCA
4 refers to the reporting covenants. Do you see that,
5 sir?

6 A. 2(a)(i) and (ii)?

7 198. Q. Well, 7...I'm looking at 7(a). I'm
8 actually going to focus your attention on 7(a)(v)
9 and (vi), but let's start with 7(a)(v), the monthly
10 reporting.

11 Were these monthly reports described in
12 7(a)(v) of the first ARCA a report that you or your
13 team would review?

14 A. That is correct.

15 199. Q. Okay. Does the same go for
16 7(a)(vi), which is at the bottom of page 205 and top
17 of page 206?

18 A. That is correct.

19 200. Q. Okay. Did the weekly reports
20 include in the reporting of accounts payable summary
21 reports...or did the accounts payable summary
22 include a line item for excise taxes...

23 MR. MERSKEY: Refused.

24
25 BY MR. WINTON:

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1 that...I'll hold that off for a second.

2 Thanks. Is the relevance a

3 matter...because this is a question about

4 the first ARCA and not the second ARCA?

5 MR. MERSKEY: No, the relevance, and

6 appreciating that we don't have pleadings

7 in the sense of a Statement of Defence that

8 fully articulates your theory...

9 205. MR. WINTON: Yes.

10 MR. MERSKEY: ...and that's not your

11 fault. Of course, it's a motion...we have

12 to make inferences, and we understand that

13 Final Bell's claims against...excuse me,

14 Final Bell's claims against BZAM get into

15 what it was told by BZAM about various

16 things, including, I believe, excise taxes

17 and when, but there has been no foundation

18 laid to suggest that such knowledge, if it

19 existed on the part of Cortland at any

20 given point in time, would have any bearing

21 on the issues on this motion.

22 206. MR. WINTON: I see. Can we go off the

23 record for a minute, please?

24
25 --- DISCUSSION OFF THE RECORD

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1 BY MR. WINTON:

2 207. Q. Just on page 206 of the motion
3 record, Mr. Alappatt, just review covenant 8(d).
4 Just my question is, is it agreed or did you...let
5 me put it this way. Did you understand that
6 Cortland required BZAM to pay excise taxes when they
7 became due and payable?

8 MR. MERSKEY: I'm going to object on the
9 grounds previously stated, for relevance.
10 I'm not going to expand the objection
11 further, given our discussion off the
12 record, unless you want it stated on the
13 transcript. /R

14 208. MR. WINTON: No, I think your on the
15 record explanation before was sufficient...

16 MR. MERSKEY: That's fine.

17 209. MR. WINTON: ...for these refusals.
18 Thank you, Counsel.

19
20 BY MR. WINTON:

21 210. Q. 8(c) requires BZAM to advise
22 Cortland of any default or event of default. Do you
23 see that, sir?

24 A. Yes.

25 211. Q. Okay. Am I right, then, that the

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1 expectation within Cortland was if BZAM becomes
2 aware of facts or a situation that would be an event
3 of default, its expectation was BZAM would notify
4 Cortland of that event?

5 MR. MERSKEY: I'll take that under
6 advisement.

U/A

7 I'm not sure if it relates to the
8 prior line or if it's just overly broad,
9 but I don't have the context for it, Mr.
10 Winton.

11
12 BY MR. WINTON:

13 212. Q. Okay. The first amended restated
14 credit agreement was amended six times after the
15 first iteration of this agreement was concluded,
16 correct?

17 A. That is correct.

18 213. Q. You attach for convenience all six
19 amendments to Exhibit D to your affidavit.

20 A. That is correct.

21 214. Q. Okay. If we go to page 338 of the
22 record we're going to just skip ahead to the sixth
23 amendment dated August 30th, 2023. This is the last
24 of the amendments to the first amended restated
25 credit agreement, correct?

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1 A. That is correct.

2 215. Q. And so this is the state of the
3 agreement between Cortland and BZAM prior to
4 entering into the second amended restated credit
5 agreement, correct?

6 A. That is correct.

7 216. Q. So in the period of, I guess...I
8 think you gave this...I just want to make sure I get
9 this right in the precise way. Between August 30th,
10 2023 and January 8th, 2024 the credit agreement as
11 amended by all the previous amendments and this
12 amendment, the first credit agreement and those six
13 amendments are the terms in force?

14 A. That is correct.

15 217. Q. Okay. At the time that Cortland
16 agreed to the sixth agreement to the first amended
17 and restated credit agreement, were you, or to your
18 knowledge, anyone else at Cortland aware that BZAM
19 had entered into an excise tax arrears payment plan
20 with the CRA in July of 2023?

21 MR. MERSKEY: Don't answer that question. /R

22 218. MR. WINTON: Relevance?

23 MR. MERSKEY: Yes.

24 219. MR. WINTON: Thank you.

25

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1 BY MR. WINTON:

2 220. Q. Was the fact of the arrears
3 disclosed to Cortland before BZAM entered into its
4 payment plan with CRA?

5 MR. MERSKEY: Same objection. /R

6
7 BY MR. WINTON:

8 221. Q. Was Cortland's authorization required
9 or approval required before BZAM entered into the
10 payment plan with the CRA in July of 2023?

11 MR. MERSKEY: Same objection. /R

12
13 BY MR. WINTON:

14 222. Q. And just to close out this line of
15 questioning, if Cortland wasn't aware prior to the
16 entering into of the sixth amendment, when did it
17 become aware?

18 MR. MERSKEY: Same objection. /R

19 223. MR. WINTON: And what did it do about
20 it?

21 MR. MERSKEY: Same objection. /R

22 224. MR. WINTON: Okay.

23
24 BY MR. WINTON:

25 225. Q. Let's turn to the section ARCA,

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1 Exhibit E to your affidavit, page 352 of the record.
2 The negotiation of this second amended and restated
3 credit agreement, was it initiated by the share
4 exchange agreement between BZAM and Final Bell?

5 A. That is correct.

6 226. Q. If Final Bell and BZAM had not
7 entered into their share exchange agreement, there
8 wouldn't have been a negotiation of a second ARCA?

9 A. That's correct.

10 227. Q. Is it also then correct that if the
11 share exchange agreement did not close on Jan. 5th
12 for any reason, the second ARCA wouldn't have closed
13 or been signed on Jan. 8th?

14 A. That's correct.

15 228. Q. Okay. Cortland had access to the
16 share exchange agreement before or while it was
17 negotiating the terms of the second ARCA, correct?

18 A. That is correct.

19 229. Q. Just to put this in time, the share
20 exchange agreement is signed December 5th, 2023?

21 A. That's correct.

22 230. Q. And after it is signed, it's
23 disclosed to Cortland?

24 A. That's correct. I don't remember
25 the dates, but yes.

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1 231. Q. And then Cortland and BZAM and to
2 some extent Final Bell, are involved in the
3 negotiation of the second ARCA?

4 A. That is...it's primarily between
5 BZAM and Cortland that the negotiation of the second
6 ARCA took place.

7 232. Q. Fair enough. At the time, you may
8 or may not have been aware of how much Final Bell
9 was being apprised or kept up to date on those
10 negotiations?

11 A. That's fair, yes.

12 233. Q. Right. You're now aware that there
13 was at least some effort by BZAM to keep Final Bell
14 in the loop?

15 A. That is correct.

16 234. Q. But as far as Cortland was
17 concerned, it was negotiating with BZAM?

18 A. That is correct.

19 235. Q. Did you specifically review the
20 share exchange agreement as part of your
21 preparation, negotiation, consideration of the terms
22 of the second ARCA?

23 A. Yes.

24 236. Q. If we turn to section...page 356 of
25 the record, section or article 6 of the second ARCA,

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1 again, it's structured in the same way, and you see
2 the representations and warranties are set out in
3 article...section 6 of the second ARCA?

4 A. Yes.

5 237. Q. You see that, okay. Again, just
6 again flipping to page 358, we have got the similar
7 representation at 6(k) about insolvency, correct?

8 A. That is correct.

9 238. Q. And I take it your answers before
10 about the solvency representation on the first ARCA
11 apply as well to your expectations once the second
12 ARCA is completed and in place, as far as if there
13 is an insolvency, they are to talk to you and you'll
14 discuss it.

15 I'm not going to...I'm not trying to
16 characterize your evidence. I'm just trying to
17 remind you that you gave a certain answer about
18 insolvency at the time, and I assume it's the same
19 answer for the second ARCA, correct?

20 A. That is correct.

21 239. Q. Okay. If we turn to page 361 of the
22 record, section 7 of...the second ARCA sets out the
23 reporting covenants. Do you see those?

24 A. Yes.

25 240. Q. If we turn to page 362, conveniently

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1 it's all on the same page, you have got at 7(a)(v)
2 and (vi) the monthly and weekly reports that are
3 required under the second ARCA, correct?

4 A. That is correct.

5 241. Q. And you can agree with me or not,
6 but I think it's...we would agree that those are the
7 same reports...the same content of those reports as
8 the content of the reports that were required under
9 the first ARCA?

10 A. That's correct.

11 242. Q. The reporting requirements didn't
12 change?

13 A. I will have to compare the two, but
14 generally these are standard reporting requirements
15 for us.

16 243. MR. WINTON: Right, okay. I take it,
17 Counsel, then, there is a refusal to answer
18 whether the accounts payable summary
19 required under 7(a)(vi) of the second ARCA
20 included a line item for excise taxes?

21 MR. MERSKEY: That is correct.

/R

22 244. MR. WINTON: I'm going to ask, and I
23 will wait for your refusal, but I'm going
24 to ask that you please produce the weekly
25 reports under the first and second ARCA

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1 that were delivered by BZAM to Cortland for
2 the periods spanning November and December,
3 2023 and January, 2024.

4 MR. MERSKEY: Refused for the reasons
5 previously given. /R

6 245. MR. WINTON: Thank you.

7
8 BY MR. WINTON:

9 246. Q. Just pause after I ask this
10 question, but at some point in time, whether it's in
11 November or December of 2023, or January of 2024 or
12 some time afterwards, did you become aware that BZAM
13 had not paid its October and November, 2023 excise
14 taxes when those taxes were due?

15 MR. MERSKEY: Refused for the reasons
16 previously stated. /R

17 247. MR. WINTON: Thank you. Why don't we
18 take a break now? It's a good time. We
19 have been going for a while. Off the
20 record.

21
22 --- upon recessing at 2:29 p.m.

23 --- A BRIEF RECESS

24 --- upon resuming at 2:43 p.m.
25

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1 DEEPAK ALAPPATT, resumed

2 CONTINUED CROSS-EXAMINATION BY MR. WINTON:

3
4 248. Q. Just before we went back on the
5 record, Mr. Alappatt, I handed you a document that
6 has at the very top of it "The Green Organic
7 Dutchman advance tracker", which is a document that
8 was provided to us yesterday afternoon by your
9 counsel in response to one of the categories or one
10 or more of the categories set out in your notice of
11 examination. Do you recognize this document?

12 A. Yes, I do.

13 249. Q. We haven't numbered the pages, but
14 the first four pages set out from January 1st, 2024
15 through to June 4th, 2024 the amounts that were
16 advanced, repaid and the ending balance of the debt
17 under the second ARCA, correct, or the first and
18 second ARCA, given the timing. Is that correct?

19 A. That is correct.

20 250. Q. And then starting at page 5, the
21 balance of the document sets out the amounts that
22 were advanced and later repaid and the balance owing
23 for the DIP loan, correct?

24 A. That is correct.

25 MR. MERSKEY: Which line just so...hold

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1 on a second, Mr. Winton...

2 251. MR. WINTON: Sure.

3 MR. MERSKEY: ...so that we...Mr.

4 Winton, this was produced to you in

5 electronic format.

6 MR. MERSKEY: Yes.

7 252. MR. WINTON: And I have no objection to

8 the printing, but the printing doesn't

9 have, I think, the line numbers on the

10 original sheet. So just for identification

11 purposes, we should probably mark this

12 document as an exhibit, just to make sure

13 there is no confusion.

14 253. MR. WINTON: Okay, what I was going to

15 propose is we mark this as an exhibit...a

16 numbered exhibit.

17 MR. MERSKEY: Okay, that's fine.

18 254. MR. WINTON: And I think by line numbers

19 you mean is in the Excel spreadsheet that

20 was produced.

21 MR. MERSKEY: Correct.

22 255. MR. WINTON: Right, and what I'm going

23 to suggest is we can label this as the...to

24 the extent this represents or reproduces

25 the, what I'll call, relevant or useful

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1 information...because it is all by date, we
2 don't need the line items. We can agree
3 this can go in as evidence for the motion.

4 MR. MERSKEY: That's fine. We have the
5 printed copy. You're going to make the
6 printed copy an exhibit. That means we
7 have a consistent reference base is my only
8 concern.

9 256. MR. WINTON: Correct, okay, we're on the
10 same page. Thank you, Counsel. So I am
11 going to...because I don't want to stamp
12 any of the useful information on this, I am
13 going to stamp the back of the last page
14 with the exhibit stamp, and we'll label
15 this Exhibit 2.

16 MR. MERSKEY: That's fine.

17 257. MR. WINTON: Thank you. So for the
18 record, this is the printout of the Excel
19 spreadsheet disclosing amounts advanced
20 under the ARCA and the DIP from January
21 1st, 2024 to August 31st, 2024.

22 MR. MERSKEY: That's fine.

23 258. MR. WINTON: Thank you.

24
25 --- EXHIBIT NO. 2: Excel printout of spreadsheet

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1 showing ARCA and the DIP, January 1,
2 2024 to August 31, 2024
3

4 BY MR. WINTON:

5 259. Q. Back to some excise tax questions,
6 just so I can close off a bit on this. So just
7 pause, Mr. Alappatt. Would the failure...would it
8 be Cortland's understanding or your understanding
9 that the failure of BZAM to pay excise taxes when
10 those taxes are due and payable, that that failure
11 would be an event of default under the first or
12 second ARCA?

13 MR. MERSKEY: Refused.

/R

14 260. MR. WINTON: Relevance?

15 MR. MERSKEY: Same, yes.

16 261. MR. WINTON: Thank you.
17

18 BY MR. WINTON:

19 262. Q. If we look at Exhibit 2, the
20 spreadsheet, the first page, if I am reading this
21 correctly, just on January 5th, 2024 the ending
22 balance of the loan, which at that time is under the
23 first ARCA, is \$26,792,539.77, correct?

24 A. That is correct.

25 263. Q. That amount remains the same for the

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1 next two days, which are a Saturday and Sunday, and
2 then on Monday, January 8th we have an advance paid
3 to BZAM and a repayment from BZAM, leaving an ending
4 balance of \$27,522,800.72, correct?

5 A. That's correct.

6 264. Q. Okay. Just to understand your...how
7 this document lines up with the evidence you gave in
8 your March 25th affidavit and April 8th testimony,
9 it was...following the closing of the share exchange
10 agreement between BZAM and Final Bell, the
11 incorporation of Final Bell Canada assets into
12 BZAM's borrowing base was a basis for BZAM being
13 able to borrow more funds under the second ARCA,
14 correct?

15 A. That is...

16 265. Q. I should be more precise.

17 A. Yes.

18 266. Q. It expanded the borrowing base?

19 A. Yes, there is more assets that were
20 included.

21 267. Q. Right.

22 A. I don't remember the exact date that
23 those assets were included.

24 268. Q. Okay, but at some point after
25 January 5th...

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1 A. After January 5th, yes.

2 269. Q. Right. So I just want to appreciate
3 I guess, are there documents or is there something
4 in your records that would disclose when the
5 borrowing base was considered expanded and there
6 were more funds available under the credit
7 agreement?

8 MR. MERSKEY: Well, rather than just
9 documents, if the witness knows, he can
10 tell you. Do you know?

11 270. MR. WINTON: I think he just said he
12 didn't know, though.

13
14 BY MR. WINTON:

15 271. Q. Do you know?

16 A. I don't know the specific date...

17 272. Q. Yes?

18 A. ...that it was in, but yes, I know
19 that it is in.

20 273. Q. Do you know the approximate date?
21 Like, would it be a few days later, a few weeks
22 later? How long does it take before the assets are
23 incorporated?

24 A. It would have been in the...can I
25 get back to you on that?

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1 274. MR. WINTON: I'll let counsel decide.

2 MR. MERSKEY: We'll take it under
3 advisement...

U/A

4 275. MR. WINTON: Okay.

5 MR. MERSKEY: ...more just so we can
6 discuss the parameters with the witness...

7 276. MR. WINTON: Understood.

8 MR. MERSKEY: ...as we answer it.

9 277. MR. WINTON: Let me assist with that
10 then. I appreciate that, thank you.

11

12 BY MR. WINTON:

13 278. Q. By January 15th...so on January
14 15th, 2024 there is an advance of approximately 2.4
15 million dollars to BZAM, correct?

16 A. That is correct.

17 279. Q. I guess what I would like to know is
18 if by the period up to or prior to that advance, the
19 Final Bell Canada assets had been incorporated into
20 the collateral consideration for the borrowing base
21 certificate?

22 MR. MERSKEY: So can you just give me
23 the...

24 THE DEPONENT: Yes, that's the way I
25 would think. It was the 15th, but I just

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1 don't want to give something that I may not
2 know if it is right or not, so...

3 MR. MERSKEY: So I think the witness'
4 evidence is that by the 15th, based on the
5 amount of the advance, it would have been
6 incorporated, and you're asking us if there
7 is any date prior to that on which it was
8 incorporated.

9 280. MR. WINTON: No, if that's the evidence,
10 then I'll accept that and we can probably
11 move on and withdraw the request for an
12 undertaking.

13 MR. MERSKEY: So let's just confirm, is
14 that accurate?

15 THE DEPONENT: Yes, I think so. Let's
16 take the 15th because...

17 MR. MERSKEY: Well, you can take it
18 unless we correct it, that this is correct.

19 281. MR. WINTON: And if a correction is
20 required, I would ask that it be corrected
21 with the...

22 MR. MERSKEY: Date.

23 282. MR. WINTON: ...best available...right,
24 the knowledge as to the best available
25 date.

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1 MR. MERSKEY: Yes, that's fine. U/T

2 283. MR. WINTON: Thank you.

3

4 BY MR. WINTON:

5 284. Q. Now, is it...am I right that on...is
6 it on a daily basis or weekly basis that Cortland
7 calculates the maximum credit available to BZAM
8 under the credit facility?

9 A. It's weekly.

10 285. Q. Weekly, okay.

11 A. Sorry, correction. Maximum
12 availability based on the borrowing base
13 calculations?

14 286. Q. Yes.

15 A. Borrowing base review, yes, it's
16 done weekly.

17 287. Q. Weekly, okay. So is it done on the
18 same day every week? Is it consistent that way?

19 A. For the most part, yes.

20 288. Q. Which day of the week is it?

21 A. The reporting is done on a Friday
22 for a Monday draw.

23 289. Q. Okay. Then...

24 A. But there are exceptions, so...

25 290. MR. WINTON: Okay. So what I would ask

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1 is if you can review the record and provide
2 us with the report that is either
3 immediately before or on Friday, January
4 5th, or just provide us with the amount of
5 the maximum credit that was available to
6 BZAM under the credit agreement as of
7 January 5th, 2024.

8 MR. MERSKEY: So I'm going to take it
9 under advisement. U/A

10 291. MR. WINTON: Okay.

11 MR. MERSKEY: Because I'm not sure of
12 the parameters of the question, but we'll
13 look into it, but I want to make sure I
14 have the inquiry down correctly.

15 292. MR. WINTON: Okay.

16 MR. MERSKEY: So you want to know that
17 as of Friday, January 5th, 2024 what the
18 maximum amount of the borrowing base was?

19 293. MR. WINTON: Correct. Well, I don't
20 know if I would call it the maximum amount
21 of the borrowing base, but what the maximum
22 amount of credit was available.

23 MR. MERSKEY: Credit availability?

24 294. MR. WINTON: Correct.

25 MR. MERSKEY: Okay, I understand the

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1 question.

2 295. MR. WINTON: Thank you.

3 MR. MERSKEY: If we give you a number,
4 you don't require a document?

5 296. MR. WINTON: That's correct.

6 MR. MERSKEY: Okay. All right, we'll
7 look into it. I'm taking it as an under
8 advisement because I don't have a full
9 understanding of the available
10 documentation, Mr. Winton.

11 297. MR. WINTON: Thank you. To the extent
12 there is some...I would like us to be able
13 to...if the answer is that there is
14 different information available, I am
15 interested in knowing what the status of
16 the credit available as of January 5th was.

17 So to the extent there may not be
18 documentation precisely on that date, but
19 before that date, I don't want to be seen
20 as limiting my question.

21 MR. MERSKEY: I didn't understand the
22 question to be limited in that fashion.

23 298. MR. WINTON: Okay, thank you.

24 MR. MERSKEY: It was a general
25 availability concern, and I need to review

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1 what is available and understand the
2 question against it. So I'm not giving it
3 as an undertaking. That's why.

4 299. MR. WINTON: Thank you. Here is where I
5 think I'll revert to an omnibus statement
6 that given the refusals to date about
7 excise taxes, I have more specific
8 questions about the reporting to Cortland
9 the information in Cortland's possession
10 concerning the payment or non-payment of
11 excise taxes by BZAM in January...November,
12 December, 2023 and January, 2024, but in
13 the interests of time, I will consider it
14 as I don't agree with your objection, and
15 would have asked many more questions about
16 that information if the other questions had
17 been answered.

18 MR. MERSKEY: I agree that any such
19 questions would be refused for the same
20 basis given before, and that you don't need
21 to ask every individual question on the
22 record in order to be able to take the
23 position that they were asked.

24 In the context of the motion, what
25 relief that gives to rise to versus what

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1 you would get on a discovery may be a bit
2 different, but that's not a today issue.
3 So we can leave it at that.

4 300. MR. WINTON: Got it. Thank you.

5
6 BY MR. WINTON:

7 301. Q. Mr. Alappatt, you're aware that the
8 trial of Final Bell's claim was adjourned from its
9 originally scheduled date to a later date, just on
10 the business day before it was scheduled to begin?

11 A. That is correct, from April...

12 302. Q. It was adjourned from April 22nd...

13 A. 2nd to September 18.

14 303. Q. To September and now it has been
15 adjourned again.

16 A. Yes.

17 304. Q. We have this motion that is neither
18 here nor there for now, but I want to use that to
19 establish a sort of touchstone date for my next
20 questions.

21 After the adjournment of the original
22 trial date, are you aware that Final Bell sought
23 further disclosure of documents from BZAM?

24 A. Yes.

25 305. Q. And you're aware that BZAM did, in

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1 fact, disclose additional documents to Final Bell in
2 late April of this year?

3 A. That is correct.

4 306. Q. And I'm not asking any questions
5 that go to the content of any legal advice, but I
6 just want to know if those documents that were
7 disclosed by BZAM were shared with you or others at
8 Cortland at or around the time they were produced.

9 A. I can't remember if those specific
10 documents that were submitted to Final Bell was
11 provided to Cortland, but we are aware in general on
12 what the question was and the documents were.

13 307. Q. Okay. So at least you would agree
14 that Cortland had an opportunity to review the
15 documents that BZAM produced to Final Bell in late
16 April?

17 A. Sure.

18 308. Q. Okay. You're aware that there was a
19 security for costs motion that was heard and argued
20 in early June of this year?

21 A. That is correct.

22 309. Q. Did you have an opportunity to
23 review Final Bell's written argument, the factum
24 that it delivered in response to the BZAM motion?

25 A. At that time, yes.

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1 310. Q. So you were aware by June 3rd there
2 was the allegation from Final Bell that it had
3 documentation demonstrating that BZAM had used funds
4 advanced by Cortland after the closing of the share
5 exchange agreement to pay preclosing tax
6 obligations?

7 A. I can't remember that specifically
8 on the document, but I kind of remember it as
9 something to do with the excise tax and that's
10 the...that was what caused the push from April to
11 September...

12 311. Q. Okay.

13 A. And I know I...I just can't remember
14 it off the top of my head.

15 312. Q. That's fine, thank you, okay. Let's
16 turn to the DIP agreement which is at tab 2(i) of
17 the motion record, page 466. If we turn to page
18 469, article 2 of the DIP agreement sets out
19 representations and warranties from BZAM, and at the
20 top of page 471, the rep and warranty 2.12 concerns
21 actions, suits or proceedings, including tax-related
22 matters, and a representation concerning those
23 matters, and it references schedule E. Do you see
24 that, sir, the reference to schedule E? Just review
25 212, please.

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1 A. Okay.

2 313. Q. If we flip ahead to 492 of the
3 record, you will agree with me, sir, that schedule E
4 to the DIP agreement did not disclose any action,
5 suit or proceeding by Final Bell against BZAM?

6 MR. MERSKEY: Could you say that again,
7 please, so I can understand it?

8
9 BY MR. WINTON:

10 314. Q. Sure, schedule E on page 492 of the
11 record does not disclose an action or suit or a
12 proceeding by Final Bell against BZAM? I don't
13 think that's a controversial statement.

14 MR. MERSKEY: If you tell us that it's
15 not there, and you're not trying to sandbag
16 us, Mr. Winton, we accept what you're
17 saying. You don't need to get the witness
18 to say it.

19
20 BY MR. WINTON:

21 315. Q. I think, just to be fair to you,
22 let's...in time, the first time Final Bell
23 articulated the fact that it might have a claim
24 against BZAM was at the March 8th comeback hearing,
25 correct?

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1 A. That's my knowledge, yes.

2 316. Q. All right, okay. Back to page 472
3 of the record in the DIP agreement, 3.1, I just want
4 to make sure I understand this correctly. The DIP
5 facility has a...I'll call it a top limit of 41
6 million dollars in terms of how much would be
7 extended to BZAM, correct?

8 A. That is correct.

9 317. Q. But there is a formula for
10 calculating how much is actually available such that
11 it could be less than 41 million dollars at any
12 given time?

13 A. Yes, that is correct.

14 318. Q. It can be lower than 41 million
15 dollars, but not higher?

16 A. That is correct, yes. It cannot be
17 higher than 41.

18 319. Q. Right, and that cap hasn't been
19 extended since the DIP agreement was first entered
20 into. The cap remains 41 million dollars, correct?

21 A. That is correct.

22 320. Q. There are then...sort of, if you
23 look at 3.1, it has got four subparagraphs (a)
24 through (d), and then there is another, sort of,
25 stub unnumbered or lettered paragraph beginning,

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1 "Notwithstanding the foregoing..." Do you see that?

2 A. Yes.

3 321. Q. Okay. Just read that paragraph.

4 A. Okay.

5 322. Q. Did you understand at the time the
6 DIP agreement was negotiated and/or entered into,
7 that Cortland was in agreement that funds
8 from...advanced under the DIP could be used to pay
9 any payables owed by BZAM that would rank ahead of
10 Cortland?

11 MR. MERSKEY: I'm going to object to
12 the question on two bases. /R

13 323. MR. WINTON: Okay.

14 MR. MERSKEY: One is I'm not sure of the
15 relevance, but also it appears to be a
16 question that is asking the witness to
17 interpret the legal document.

18 324. MR. WINTON: Got it, okay, thank you.
19 So let me make sure it's clear, then. I
20 will not ask the witness questions
21 concerning his understanding of what the
22 DIP agreement means, and we will save that,
23 I guess, for written submissions, and I
24 won't be precluded from making my
25 submissions on the basis of what it means

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1 on the basis that I haven't asked the
2 witness these questions. Is that fair?

3 MR. MERSKEY: I agree, Mr. Winton. You
4 can make whatever arguments you deem
5 appropriate from the face of the credit
6 agreement.

7 325. MR. WINTON: Thank you.

8 MR. MERSKEY: Sorry, the DIP agreement.

9 326. MR. WINTON: Right, okay.

10 MR. MERSKEY: The credit agreement, too,
11 of course.

12 327. MR. WINTON: Okay.

13
14 BY MR. WINTON:

15 328. Q. You're aware that Final Bell
16 delivered its motion record advancing its claim
17 against BZAM on March 18th, 2024?

18 A. Yes. I don't know the exact dates,
19 but...

20 329. Q. Fine.

21 A. ...like, I'll take your word for it.

22 330. Q. I wasn't trying to trick you.

23 That's the date of the record.

24 A. Yes.

25 331. Q. That may not be when Cortland saw

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1 it. So let me put it to you this way then. Your
2 affidavit sworn...that was sworn in response to
3 BZAM's...sorry, Final Bell's motion is dated March
4 25th, 2024, right?

5 A. That's right.

6 332. Q. Okay, and before you had sworn your
7 March 25th affidavit, you had reviewed all or some
8 of Final Bell's motion record?

9 A. Yes.

10 333. Q. You were aware of the fact before
11 you swore your affidavit that Final Bell was
12 advancing a claim against BZAM for fraud?

13 A. Yes.

14 334. Q. And aware that, as a remedy for the
15 fraud, Final Bell was seeking, among other things,
16 to rescind the share exchange agreement?

17 A. That is correct.

18 335. Q. Right, and I'll allow you to...if
19 you want to review your affidavit, again, I'm not
20 trying to do like a memory test if you need to
21 review it, but I think you would agree the affidavit
22 that you swore on March 25th addressed the reasons
23 why or the basis upon which Cortland objected to the
24 recession of the share exchange agreement?

25 A. That's correct.

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1 336. Q. Because by March 25th Cortland
2 understood that rescission of the share exchange
3 agreement would prejudice its ability to recover
4 funds advanced under the credit agreements and/or
5 the DIP agreement?

6 A. That is correct.

7 337. Q. Just flipping to 476 of the motion
8 record, at the bottom of the page, there is an
9 article 3(10) entitled "Status calls". Do you see
10 that, sir?

11 A. Yes.

12 338. Q. And there is a reference here to an
13 obligation:

14 "...Upon request from Cortland from time to
15 time BZAM shall arrange and participate in
16 conference calls with Cortland and the
17 monitor to discuss the performance of BZAM
18 and other credit parties..."

19 And then it goes on from there. Did you participate
20 in status calls with BZAM and the monitor?

21 A. I participated in calls with BZAM.

22 339. Q. Yes?

23 A. KSV has participated in calls with
24 the monitor, and KSV is our financial advisor.

25 340. Q. M'hm.

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1 A. But I don't think we have had a call
2 between Cortland, BZAM and the monitor, all three
3 together. When I say Cortland, it is Cortland
4 employees, not KSV...

5 341. Q. I understand.

6 A. ...all at the same time.

7 342. Q. Okay. Who at Cortland participated
8 in the calls that you just described?

9 A. The calls with BZAM, it's myself,
10 Bruce and Alex, and a combination of the three of
11 us. We have had multiple calls.

12 343. Q. Okay. Does Cortland keep notes or
13 minutes of the status calls with BZAM?

14 MR. MERSKEY: Without foundation for a
15 particular call, I don't think that's
16 relevant. /R

17 344. MR. WINTON: I don't get to even know if
18 the documents exist?

19 MR. MERSKEY: No.

20 345. MR. WINTON: Okay.

21 MR. MERSKEY: It's a very at-large
22 question in the first place, Mr. Winton.

23 346. MR. WINTON: That's how I operate. I'll
24 just be more specific then, I guess. Well,
25 I don't think that's a proper objection,

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1 given everything going on, but that's okay.

2
3 BY MR. WINTON:

4 347. Q. Was the Final Bell claim discussed
5 during any of the status calls with BZAM?

6 A. I would say yes, basically, yes. I
7 would say yes.

8 348. Q. Okay. Were notes or minutes of the
9 status calls at which the Final Bell claim was
10 discussed kept by Cortland?

11 A. I'll have to go and check. There
12 was no...I can say this much. There are no official
13 notes being kept for the calls, but there is
14 potential for some scribbly notes in the notebooks,
15 but...

16 MR. MERSKEY: You'll appreciate, Mr.
17 Winton, the witness doesn't give the
18 undertakings. We do.

19 349. MR. WINTON: I do. I do appreciate
20 that.

21 MR. MERSKEY: I understand. So he said
22 there may or there may not be.

23 350. MR. WINTON: I appreciate that, and I'm
24 not going to hold you to the...you'll have
25 to go look, but I will ask now for an

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1 court materials and documents prepared by BZAM in
2 connection with the CCAA proceedings. To your
3 knowledge, Mr. Alappatt, did BZAM provide drafts...a
4 draft or drafts of its March 18th motion record to
5 Cortland before it was served on the parties to the
6 proceeding?

7 MR. MERSKEY: Objection, relevance. /R

8 353. MR. WINTON: Okay.

9 MR. MERSKEY: I also say that on the
10 basis, Mr. Winton, that you have been
11 permitted lines of questioning
12 demonstrating the knowledge of the legal
13 positions that your clients asserted in the
14 positions at or about the dates they were
15 taken, and Cortland has not suggested it
16 did not have that knowledge.

17 354. MR. WINTON: Understood. You had me at,
18 "Objection, relevance," but okay.

19 MR. MERSKEY: Sometimes I like to help
20 you more.

21 355. MR. WINTON: Thank you.

22
23 BY MR. WINTON:

24 356. Q. Is there a written communication
25 from BZAM to Cortland informing Cortland that Final

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1 Bell's claim was or could be a material adverse
2 change under the DIP agreement?

3 MR. MERSKEY: I'll take that under
4 advisement.

U/A

5 357. MR. WINTON: If there is such a written
6 communication, I would ask that it be
7 produced.

8 MR. MERSKEY: I understand that's
9 incorporated by the question. I'm
10 hesitating on the relevance, but I will
11 want to give it a bit of additional
12 thought.

13 358. MR. WINTON: Okay. Just on page 482 of
14 the record, article 3(18) entitled
15 "Termination", I just want to make sure
16 we're agreed, sir, this DIP agreement that
17 is attached as Exhibit I to your affidavit
18 terminated no later than July 15th, 2024,
19 correct?

20 MR. MERSKEY: I think it might be more
21 accurately phrased to say it was due to
22 terminate, and you can ask the witness what
23 the...

24 359. MR. WINTON: Oh, sorry.

25

1 BY MR. WINTON:

2 360. Q. According to the terms of this
3 agreement, it would terminate on July 15th...no
4 later than July 15th, 2024, unless it was extended
5 by further agreement. Do you agree with that?

6 A. Yes, that's...yes.

7 361. Q. Okay. At the time I guess
8 in...February 28th when this is signed, do you agree
9 Cortland was not under any obligation to extend the
10 agreement beyond July 15th, 2024?

11 A. Yes.

12 362. Q. Later on, as July 15th approached,
13 Cortland did agree to extend the DIP beyond July
14 15th, correct?

15 A. That is correct.

16 363. Q. It signed a...I have got it here, a
17 first amendment to the DIP facility, correct?

18 A. That's correct.

19 364. MR. WINTON: Let me just show that
20 document to you and your counsel. So I
21 just handed you a copy of the first
22 amendment dated as of July 12th, 2024 to
23 the DIP facility agreement. You can see on
24 the last page, signed by Mr. Rogister on
25 behalf of Cortland. Can we enter this,

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1 Counsel, as the next exhibit?

2 MR. MERSKEY: Yes.

3 365. MR. WINTON: Thank you. The title of
4 Exhibit 3 will be first amendment dated as
5 of July 12, 2024 to DIP facility agreement.
6 Thank you. I'm going to again stamp this
7 on the back part of the last page as
8 Exhibit 3.

9
10 --- EXHIBIT NO. 3: First amendment to DIP facility
11 agreement, July 12, 2024

12
13 BY MR. WINTON:

14 366. Q. Now, were you involved in the
15 negotiation and/or the approval of the terms of this
16 first amendment, Mr. Alappatt?

17 A. Yes.

18 367. Q. On the first page, if you look at
19 the third recital, it says:

20 "...and whereas the ongoing litigation
21 brought by Final Bell Holdings
22 International Limited against the credit
23 parties before the court (the FBC
24 litigation) constitutes an event of default
25 under the DIP facility agreement..."

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1 Do you see that?

2 MR. MERSKEY: We see the recital, Mr.
3 Winton.

4 368. MR. WINTON: Thank you.

5

6 BY MR. WINTON:

7 369. Q. Do you know, sir, when Cortland
8 first took the position that the Final Bell
9 litigation constituted an event of default?

10 A. It has got to be after the March 8th
11 date, but I can't remember the...I will have to go
12 and review that to see if there is anything to say
13 exactly when we took it, but...

14 370. Q. Let me ask you this then. I
15 appreciate that.

16 A. Yes.

17 371. Q. And I'm not holding you to that. If
18 I have an undertaking to ask, I'll ask it of
19 counsel, but let me just...based on that answer, was
20 it to your knowledge before March 25th when you
21 swore your first affidavit that Cortland took the
22 position that the Final Bell litigation was an event
23 of default?

24 A. I don't think so.

25 372. Q. Okay.

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1 A. But...

2 MR. MERSKEY: It's...I permitted the
3 question. I'm just going to remind the
4 witness not to guess. That's all, Mr.
5 Winton.

6
7 BY MR. WINTON:

8 373. Q. I agree. This is something that, I
9 guess...am I correct you anticipated, if you had an
10 opportunity to review your records, you might be
11 able to determine a more precise date by which
12 Cortland determined that the Final Bell litigation
13 was an event of default under the DIP agreement?

14 A. I think so. So now I'm just trying
15 to think if we actually sent a notice of default,
16 and I will have to go and look through the legal
17 docs, to see if we actually sent a notice of
18 default, or if it was directly just in the amendment
19 that the default was notified.

20 It's going to be very difficult for me
21 to...I think it's going to be very difficult for me
22 to exactly identify when we decided the event of
23 default...it's an event of default, but we should be
24 able to kind of when give you when we actually
25 notified the event of default, and I think it's

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1 going to be at the amendment level.

2 374. Q. Okay. So just to revisit
3 then...this is, I think, more for your counsel.
4 When I was asking for notes or minutes of the status
5 calls between Cortland and BZAM with the discussion
6 of the Final Bell claim, while I still think I would
7 ask for any notes or minutes where the claim is
8 discussed, on a narrower question I would ask that
9 any notes where during those status calls the event
10 of default issue or a material adverse change issue
11 is discussed, that those notes be produced to us?

12 MR. MERSKEY: I'll take it under
13 advisement.

U/A

14 It still gets, given the witness'
15 evidence, to some proportionality issues.

16 375. MR. WINTON: Then back to the objection
17 as to relevance on my request
18 that...whether BZAM advised Cortland that
19 the Final Bell claim could be a material
20 adverse change, I just want to expand to
21 whether there was a communication from BZAM
22 that the Final Bell claim could be an event
23 of default, and if there is anything in
24 writing to that effect, that be produced
25 for us.

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1 MR. MERSKEY: I either refused it or
2 took it under advisement, so...

3 376. MR. WINTON: You took it under
4 advisement.

5 MR. MERSKEY: We take the same position
6 then.

7 377. MR. WINTON: Okay. At the very least,
8 if you won't produce the document, to
9 advise us of the date on that document. So
10 I just would like to have an understanding
11 as to the date that that communication took
12 place, if it took place.

13 MR. MERSKEY: The same position, and I
14 may need to see the transcript to evaluate
15 it, Mr. Winton. I just...I understand
16 you're trying to determine when Cortland
17 may have had information sufficient to give
18 rise to a conclusion of an event of
19 default, but that said, your question
20 presupposes there was an obligation on BZAM
21 to advise of the conclusion, rather than
22 the facts, and I hesitate on the
23 appropriateness of that assumption.

24 378. MR. WINTON: Okay.

25 MR. MERSKEY: I'm sure Mr. Blinick

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1 would, too, as well, but we can spare him
2 talking.

3 379. MR. WINTON: Okay.

4
5 BY MR. WINTON:

6 380. Q. This first amendment to the DIP
7 facility agreement extended the...if you look at
8 article 1.1 on the first page, it extended the
9 termination date from July 15th, 2024 to August
10 28th, 2024, correct?

11 A. That is correct.

12 381. Q. And do you recall that prior to
13 finalizing this amendment, there was discussion as
14 between Cortland and BZAM as to how long Cortland
15 was willing to extend the DIP agreement?

16 A. I would say yes.

17 382. Q. And the discussion...during that
18 discussion Cortland's initial position was it only
19 wanted to extend the DIP agreement for seven to 10
20 days?

21 MR. MERSKEY: So pause, Mr. Alappatt.

22 I'm going to object for relevance.

/R

23 383. MR. WINTON: Okay. Well, we have a
24 document that I want to...can you bring up
25 that email from July 12th? We're showing

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1 you a document that was produced to us
2 yesterday in response to the notice of
3 examination. It is an email from Mr.
4 Scalia to Mr. Ernst and Ms. Levine
5 or...yes, copies, I guess, Ms. Levine and
6 others are copied on it. It's dated
7 Friday, July 12th, 2024, and this document,
8 if you scroll down the email, there is an
9 email as part of this chain, going
10 down...let's see if I can find it.

11 Okay, here is an email from July 7th
12 sent from Mr. Shakra at Bennett Jones to
13 Ms. Levine, and others are copied on it.
14 If you look at the third paragraph, the
15 company and the monitor are of the view
16 that a seven to 10-day stay extension is
17 going to be viewed by the court as overly
18 tactical, and it continues from there.

19 Based on the email chain, it appears
20 that that response from Mr. Shakra is in
21 response to a position communicated by
22 Cortland that it only wanted to extend the
23 DIP facility by seven to 10 days. I just
24 want to know if that was Cortland's
25 position prior to the delivery of this

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1 email by Mr. Shakra.

2 MR. MERSKEY: The objection is
3 maintained.

4 384. MR. WINTON: Okay. I would like to
5 enter this as an exhibit, and to the extent
6 you object, we can perhaps enter it
7 as...mark it for identification.

8 MR. MERSKEY: I don't...yes, that's
9 fine. Mark it for identification. Unless
10 you have a printed copy, what we should do
11 is after the examination, just so we're all
12 on the same reference base, you should
13 email us a copy and other parties present,
14 and just confirm that it is...what are we
15 going to call this, Exhibit A for
16 identification?

17 385. MR. WINTON: Yes.

18 MR. MERSKEY: Okay.

19 386. MR. WINTON: So Exhibit A is, just for
20 the record, is an email dated July 12th,
21 2024 from Anthony Scalia to Jamie Ernst and
22 others, including prior emails.

23
24 --- EXHIBIT A: Email dated July 12, 2024 from
25 Anthony Scalia to Jamie Ernst and

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1 others, including prior emails

2
3 387. MR. WINTON: Then we will send around
4 the electronic copy of this in a PDF form
5 or something like that for everyone.

6 MR. MERSKEY: That's fine.

7 388. MR. WINTON: Okay.

8 MR. MERSKEY: We'll trust you to put the
9 exhibit stamp on it at the same time.

10 389. MR. WINTON: We'll figure that out.

11 Thanks.

12 MR. MERSKEY: Just trying to facilitate
13 your process, Mr. Winton.

14 390. MR. WINTON: Thank you.

15
16 BY MR. WINTON:

17 391. Q. Now, Mr. Alappatt, I'm handing you a
18 copy of the second amendment dated as of August
19 21st, 2024 to the DIP facility agreement. Do you
20 recognize this document?

21 A. Yes.

22 392. Q. And you were involved in the
23 negotiation and approval of the terms of this
24 document?

25 A. Yes.

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1 393. MR. WINTON: Can we mark this as Exhibit
2 4, Counsel?

3 MR. MERSKEY: Yes.

4 394. MR. WINTON: Thank you.

5
6 --- EXHIBIT NO. 4: Second amendment of DIP facility
7 agreement, August 21, 2024
8

9 BY MR. WINTON:

10 395. Q. In response to one of our requests
11 in the notice of examination we were provided with
12 an Excel document that appears to be, I think, the
13 borrowing base certificate from BZAM sent to
14 Cortland in March...March, 2024. Can you pull that
15 Excel document out?

16 So this is a document that has a file name
17 COR0000365. Do you recognize this document, Mr.
18 Alappatt?

19 A. Yes.

20 396. Q. Okay. Is this a document that BZAM
21 produces and delivers to Cortland?

22 A. Yes.

23 397. Q. And this is the document with
24 the...as of the date of the document, the financial
25 reporting that BZAM relies upon to, say, justify

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1 your support, a fund advance request?

2 A. The details behind the borrowing
3 base, yes.

4 398. Q. Right, okay. So for instance, if we
5 look, this document has several different tabbed
6 worksheets on it, correct?

7 A. Yes.

8 399. Q. So if we go to the second tab, which
9 is entitled BBC, this is the...I guess the rolled up
10 borrowing base calculation that BZAM delivers to
11 Cortland as part of its request for funds, correct?

12 A. That is correct.

13 400. MR. WINTON: We didn't print this out
14 because I don't think it's possible to do
15 so, but can we mark the digital copy of
16 this as Exhibit 5?

17 MR. MERSKEY: Just let's...I'm just
18 trying to think, Mr. Winton, about how we
19 just make sure that we're all referring to
20 the same document in the future. Is there
21 an identifier?

22 401. MR. WINTON: It is...well, it's
23 COR0000365.

24 MR. MERSKEY: Okay.

25 402. MR. WINTON: So I think that would be

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1 the way to identify it.

2 MR. MERSKEY: That's fine. We can
3 identify it from that Bates number. That's
4 fine.

5 403. MR. WINTON: So Exhibit 5 is document
6 entitled COR0000365.

7
8 --- EXHIBIT NO. 5: Document COR0000365

9
10 404. MR. WINTON: Now, we did not receive
11 borrowing base calculations from other time
12 periods, and it may have been a deficiency
13 in my request, but I would ask if Cortland
14 could please produce the borrowing base
15 certificate that was delivered in support
16 of...I'm looking at Exhibit 2. My request
17 may help to look at that, but the borrowing
18 base certificate delivered to support the
19 request for the advance made on January
20 8th, 2024.

21 MR. MERSKEY: We'll take it under
22 advisement.

U/A

23 405. MR. WINTON: The advance made on January
24 15th, 2024.

25 MR. MERSKEY: We'll take it under

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1 green, but a lighter green, and I'm just clicking on
2 one that is "A/R details TGOD". Do you see that,
3 sir?

4 A. Yes.

5 411. Q. And these are the account receivable
6 details for the borrowing base certificate
7 calculation for The Green Organic Dutchman portion
8 of the business, correct, or entities within the
9 business?

10 A. I would think so. If there is
11 anything other than TGOD on column B, then it's not,
12 but my understanding is it's all TGOD.

13 412. Q. Right. So just looking down, you
14 can see all of column B is TGOD all the way through,
15 and then flipping ahead a few tabs, in orange there
16 is a tab "AR details BZAM". These are the accounts
17 receivable for the BZAM entity, correct?

18 A. That is correct.

19 413. Q. Then flipping ahead a few tabs, the
20 blue tab "AR details FB", these are the Final Bell
21 Canada receivables, correct?

22 A. That is correct.

23 414. Q. Okay. I don't think I have got
24 anything...right. I think I want to make sure I
25 understand this correctly. The column H, amount

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1 in...maybe you can help me. Is that Canadian
2 currency, CC currency?

3 A. It's all Canadian dollars.

4 415. Q. Yes.

5 A. So I'm not sure what CC stands for.

6 416. Q. Okay. That's, to your

7 understanding, the amount of the invoice that is
8 being accounted for as a receivable?

9 A. That's right.

10 417. Q. And so column H, as of...and this
11 is...it appears to be dated as of March...if you
12 look at cell H7, it's as of March 8th, 2024?

13 A. That's correct.

14 418. Q. Okay. So under column H, the Final
15 Bell Canada receivables that are being referenced
16 here total just over 6.6 million dollars?

17 A. Sure.

18 MR. MERSKEY: Are you asking if they are
19 all outstanding as of that date?

20 419. MR. WINTON: Well, it appears that is
21 what is outstanding. I'm messing things
22 up, am I?

23 MR. MERSKEY: I'm asking that because
24 it's not clear from the way the spreadsheet
25 is presented. Just I don't think your

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1 question was deliberate, Mr. Winton, but
2 this appears to be a recording of all
3 receivables, but other columns indicate
4 what the aging status is as well.

5 420. MR. WINTON: Right.

6 MR. MERSKEY: And they're not the same
7 amounts, which means this is a dynamic
8 spreadsheet that at reporting periods is
9 picking up each new invoice, but that
10 doesn't mean that if you summed column H it
11 would be the total of outstanding invoices.

12 421. MR. WINTON: Right. So then that's
13 possibly helpful.

14
15 BY MR. WINTON:

16 422. Q. Is it the...because there is no
17 total for column I, but maybe you can help us, Mr.
18 Alappatt. Do you review this from time to time?

19 A. Yes.

20 423. Q. And maybe you can explain to us
21 which column is the column that is significant for
22 understanding the borrowing base for the borrower?
23 Is it the amount or the aging...

24 A. Well, I would start with the BBC and
25 go backwards.

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1 424. Q. Okay, so I'm going to go to the BBC,
2 yes.

3 A. And that's where you start.

4 425. Q. Yes.

5 A. Yes.

6 426. Q. So the gross accounts receivable we
7 see is that same amount, that total of 6.6 million
8 odd dollars, right?

9 A. That's right.

10 427. Q. Okay. If you look at line 16, there
11 are less accounts that are excluded by Cortland?

12 A. That's right.

13 428. Q. So not every receivable qualifies
14 for inclusion in the borrowing base for whatever
15 reason, possibly due to aging or some other reason?

16 A. That's right.

17 429. Q. Okay, and then the total...after you
18 get total ineligible, you have, in line 26, the
19 eligible accounts receivable, correct?

20 A. That's correct.

21 430. Q. Okay, but leaving aside eligibility
22 for the borrowing base, it starts with a calculation
23 of the accounts receivable that are being reported
24 to Cortland by BZAM split out by the three different
25 entities, correct?

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1 A. Sure, yes.

2 431. Q. Okay, thank you. Let's go back to
3 Exhibit 2. This is the printout of the spreadsheet.
4 Is this a document that was prepared specifically to
5 respond to the notice of examination by Cortland or
6 is this a document that is kept by Cortland on a
7 regular basis?

8 A. It is a document that is kept by
9 Cortland regularly. There is a little more
10 information in there, but that is very specific to
11 Cortland.

12 432. Q. Okay. So this particular document
13 is an adaptation or a selection of data that is
14 stored in another document kept by Cortland...

15 A. That's right.

16 433. Q. ...to track its advances to BZAM?

17 A. That's right.

18 MR. MERSKEY: It's an extraction from
19 their databases of the information that was
20 responsive to what you asked for in the
21 notice of examination.

22 434. MR. WINTON: Thank you.

23 MR. MERSKEY: Based on the date range
24 that we determined to be relevant.

25 435. MR. WINTON: Thank you.

1 BY MR. WINTON:

2 436. Q. The data here is data that you would
3 review on a regular basis in the...whatever original
4 data format it is kept in?

5 A. That is correct.

6 437. Q. Okay. We established...I think this
7 is set out in your March 25th affidavit, and we
8 discussed it just in summary form today, that you
9 and by extension Cortland understood by March 25th
10 that if Final Bell's claim for rescission succeeded,
11 that would affect Cortland's ability to recover the
12 funds loaned to BZAM, correct?

13 A. That is correct.

14 438. Q. Okay. Was there discussion within
15 Cortland at the time that the Final Bell claim could
16 justify the termination of the DIP agreement on or
17 at some point around March 25th?

18 A. Not really with regards to
19 termination of the DIP agreement, but it was more
20 generally on the situation itself, what...the
21 documents itself that came through.

22 439. Q. So was there discussion within
23 Cortland about what should Cortland do in...not to
24 say in response to, but in the situation where Final
25 Bell was advancing this claim for rescission?

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1 A. I would say yes.

2 440. Q. And consideration of the options
3 available to Cortland as a consequence of the claim
4 advanced by Final Bell?

5 A. We definitely did discuss about the
6 consequence to Cortland, because we were lending
7 money based on the facts that we had at that time,
8 and as the facts changed, we definitely did discuss
9 internally within Cortland.

10 441. Q. What your options were or what you
11 should do about the change to the situation?

12 A. Well, the potential for change,
13 right.

14 442. Q. Yes.

15 A. Like, there was a Final Bell
16 recission of transaction filing, but definitely we
17 did discuss internally on what that means to
18 Cortland.

19 443. Q. Right, okay. What we know from
20 Exhibit 2...so if you just turn, for instance, to
21 the DIP tracker portion of Exhibit 2, on the first
22 page of the...no...yes, the first page of the DIP
23 tracker, just if you look at the March...the period
24 after March 25th, you agree that whatever else was
25 discussed, Cortland had made the decision to

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1 continue to advance funds under the DIP to BZAM?

2 A. That is correct.

3 444. Q. Okay. As part of the response to
4 the notice of examination, we were given copies of
5 the funds advance requests and the approvals of
6 those requests under the DIP, and I just want to
7 direct your attention to some of those requests and
8 approvals for the purposes of this cross, Mr.
9 Alappatt.

10 Beginning with March 22nd, 2024, we have a
11 request...yes, a request from BZAM to Cortland sent
12 by email. It's an attachment to that request. Do
13 you see that, sir?

14 A. Yes.

15 445. Q. And this is the form of how funds
16 advance requests were made to Cortland. There would
17 be an email from BZAM attaching an advance request
18 document?

19 A. That's correct.

20 446. Q. Okay, and if we open the advance
21 request that's attached, it's a PDF document
22 entitled "Advance request certificate". This one is
23 dated March 25th, 2024, and signed by Mr. Milich,
24 correct?

25 A. That's correct.

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1 447. Q. Okay. You see that there is a
2 representation from BZAM in paragraph 2 that since
3 the date of the latest financial statements of the
4 borrower provided to the agent in connection with
5 the transaction documents, no material adverse
6 change has occurred, and in paragraph 3 it says:

7 "...Also no event of default, other than
8 the breach of section 8(2) of the credit
9 agreement..."

10 Do you see that, sir, those representations?

11 A. Yes.

12 448. Q. Right, and do you agree with me that
13 there is no representation from BZAM in this advance
14 request referencing the Final Bell claim as either a
15 material adverse change or an event of default?

16 A. Not in this document.

17 449. Q. Right, okay. If that was
18 communicated, and we don't know it is...I mean, we
19 discussed this. It may be in some other document,
20 but it wasn't in this advance request form, correct?

21 A. That is correct.

22 450. MR. WINTON: Okay. Can we enter the
23 March 22nd email and certificate as an
24 exhibit, please?

25 MR. MERSKEY: Do we have a Bates number?

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1 451. MR. WINTON: I don't think we did get
2 Bates numbers for these specific documents,
3 but they are dated. So there is the email
4 dated March 22nd with the attachment.

5 MR. MERSKEY: Yes, it's two pages. Yes,
6 you can enter it as an exhibit, but again,
7 let's...send us a copy after the
8 examination with the exhibit stamp on it,
9 so that...

10 452. MR. WINTON: Will do. That is now
11 Exhibit 6, which would be advance request
12 dated March 22nd, 2024 - email and
13 attachment.

14
15 --- EXHIBIT NO. 6: Advance request dated March 22, 2024
16 - email and attachment

17
18 BY MR. WINTON:

19 453. Q. So we can close that one and let's
20 open up...we're going to open up March 29th, and
21 there is no secret to this. The March 22nd predates
22 the swearing of your March 25th affidavit. The
23 March 29th postdates the swearing of your March 25th
24 affidavit. So I just want to show you on March 29th
25 there is a similar email from BZAM with a similar

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1 certificate...well, yes, certificate attached.

2 We'll open the attachment dated March 29th.

3 Again, if you look at...we're going to
4 just enlarge it for you, but the March...it's dated
5 April 1st, but this advance certificate, sir, also
6 does not reference the Final Bell claim, correct?

7 A. That is correct.

8 454. MR. WINTON: Can we enter the March 29th
9 email and the attachment as the next
10 exhibit?

11 MR. MERSKEY: What is number?

12 455. MR. WINTON: Exhibit 7.

13 MR. MERSKEY: Yes, you can enter it as
14 Exhibit 7. Please circulate a copy after
15 the examination with the stamp on it.

16 456. MR. WINTON: We will, thank you.

17
18 --- EXHIBIT NO. 7: Advance request dated March 29, 2024
19 - email and attachment
20

21 BY MR. WINTON:

22 457. Q. Next, I want to pull up the May 10th
23 advance request.

24 MR. MERSKEY: Is your question going to
25 be the same, Mr. Winton?

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1 458. MR. WINTON: It is.

2 MR. MERSKEY: Will you represent to us
3 that the document doesn't contain what
4 you're suggesting?

5 459. MR. WINTON: We will open it up. We're
6 almost done. I believe it does. I want to
7 be sure.

8
9 BY MR. WINTON:

10 460. Q. So the same goes for this May 10th
11 email, attaching a May 13th advance request
12 certificate, correct, sir?

13 A. Yes.

14 461. MR. WINTON: Can we mark that as Exhibit
15 8?

16 MR. MERSKEY: Yes, same circulation
17 request, please.

18 462. MR. WINTON: Of course, of course.

19
20 --- EXHIBIT NO. 8: Advance request dated May 10, 2024 -
21 email and attachment

22 BY MR. WINTON:

23 463. Q. And then lastly, just to make sure
24 I'm complete here, on May 17th there is an advance
25 request with an advance request certificate that we

D. Alappatt - 111

1 will open in a second.

2 So here we have the certificate dated May
3 17th, 2024, and again, just to confirm, no reference
4 to the Final Bell claim in this certificate?

5 A. In this certificate, no.

6 464. Q. Yes.

7 A. Yes.

8 465. MR. WINTON: Thank you. Can we enter
9 that as Exhibit 9?

10 MR. MERSKEY: Yes.

11 466. MR. WINTON: Thank you. We will
12 circulate it.

13 MR. MERSKEY: Thank you.

14
15 --- EXHIBIT NO. 9: Advance request dated May 17, 2024 -
16 email and attachment
17

18 BY MR. WINTON:

19 467. Q. No dispute, Mr. Alappatt, that all
20 of these requests were approved by Cortland,
21 correct?

22 A. That is correct.

23 468. MR. WINTON: Okay. Let's go off the
24 record.
25

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1 --- upon recessing at 4:05 p.m.

2 --- A BRIEF RECESS

3 --- upon resuming at 4:12 p.m.

4

5 DEEPAK ALAPPATT, resumed

6 CONTINUED CROSS-EXAMINATION BY MR. WINTON:

7

8 469. MR. WINTON: If we can pull up your
9 August 6th affidavit? Let's go to page 13
10 of the record. Back to paragraph 15 of
11 your affidavit, if you just have a look at
12 that? The position, Counsel, in response
13 to the request for documents was that the
14 documents Cortland relies on to support the
15 statement in paragraph 15 are...that were
16 in Cortland's power, possession or control
17 were attached to the...Mr. Alappatt's
18 affidavit, correct? You may want to look
19 at the notice of examination. I just want
20 to sort of establish a baseline.

21 MR. MERSKEY: Can you give me the item
22 in your notice of examination?

23 470. MR. WINTON: Yes, it's item 5, page 3.

24 MR. MERSKEY: The documents that
25 Cortland relies on for the motion are

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1 either not a document, because they are Mr.
2 Alappatt's evidence as stated in his
3 affidavit, they are attached to this
4 affidavit, or just to be comprehensive, and
5 you have been going through the other one,
6 anyway, I don't think they are, but maybe
7 they are attachments to the March affidavit
8 as well, but there would be
9 documents...apologies for the
10 repetition...documenting when Cortland
11 understood that FBC formed part of BZAM's
12 asset base.

13 We're not asking the court to review
14 those or rely upon them any further than
15 Mr. Alappatt's direct knowledge there in
16 paragraph 15.

17 471. MR. WINTON: All right.

18
19 BY MR. WINTON:

20 472. Q. So let's explore that. Mr.

21 Alappatt, do you have direct knowledge of the terms
22 of the second ARCA that Cortland relied upon in what
23 it calls its reliance prior to making advances to
24 BZAM after the share exchange agreement closed?

25 MR. MERSKEY: Do you understand what he

D. Alappatt - 114

1 means by the question, direct knowledge
2 of...

3 THE DEPONENT: Can...like, if...let me
4 say what I understood. The terms in which
5 we are lending to BZAM post the
6 acquisition?

7 MR. MERSKEY: Yes.

8 THE DEPONENT: Right, yes, I'm aware of
9 that, of the terms.

10
11 BY MR. WINTON:

12 473. Q. Okay. All right, let me try
13 something different, sorry. Let's go to paragraph
14 32 on page 20 of the record. You state in your
15 affidavit:

16 "...Cortland would not have elected to
17 provide the DIP loan agreement if it had
18 known that Final Bell would or could assert
19 it's entitled to a constructive trust
20 priority..."

21 Correct, that's your evidence?

22 A. That is correct.

23 474. Q. Or in the second-to-last line:

24 "...or if it had known that the DIP
25 lender's charge could be primed by Final

D. Alappatt - 115

1 Bell's then unasserted constructive trust
2 claim..."

3 A. That is correct.

4 475. Q. Okay.

5 A. Again, I think I have already
6 mentioned this before. There were steps taken and
7 decisions made based on the facts that were
8 available, and the DIP agreement...we agreed to do
9 the DIP based on the facts that were available at
10 that time.

11 476. Q. Right. Is it also correct that
12 Cortland would not have elected to provide the DIP
13 loan if it had known that Final Bell would assert an
14 entitlement to rescind the share exchange agreement?
15 So does the same reasoning apply to the rescission
16 claim?

17 A. It would be discussed at that time,
18 and I don't know what the conclusion would be, but
19 definitely we would consider the facts at that time.

20 477. Q. Right. When the constructive...you
21 became aware of the constructive trust claim at some
22 point on or just after May 9th, 2024 when the
23 amended notice of motion was delivered by Final
24 Bell, correct?

25 A. The constructive trust, that is

D. Alappatt - 116

1 correct.

2 478. Q. It is Exhibit Q to your affidavit,
3 but that is a...the constructive trust claim is
4 specifically added to the notice of motion on May
5 9th.

6 A. That's correct.

7 479. Q. And on that date or maybe a day or
8 two or a few days later, Cortland becomes aware of
9 the constructive trust claim, correct?

10 A. That is correct.

11 480. Q. And there are discussions within
12 Cortland about what to do about this change in
13 circumstance, correct?

14 A. Yes, what does this mean to us, yes.

15 481. Q. And, "What do we do about it?"

16 MR. MERSKEY: You asked him those
17 questions before.

18 482. MR. WINTON: Well, I asked him about the
19 March claim, I don't know if I have
20 specifically about the May claim.

21

22 BY MR. WINTON:

23 483. Q. So I just want to focus and make
24 sure we're right about...I have that in the record,
25 that you also had the same...similar to what

D. Alappatt - 117

1 happened in March, when there was the recission
2 claim, you had similar discussions in May. Is that
3 fair?

4 A. That's right.

5 484. Q. Okay. The decision was made to
6 continue to advance funds to BZAM under the DIP?

7 A. That is right. Again, the reasoning
8 behind our continuing to fund BZAM is we have got to
9 make sure that the collateral value is maintained,
10 and that requires the continued operations of BZAM,
11 to make sure that the collateral is maintained.

12 By not funding them, the value of the
13 company just would deteriorate quite dramatically.

14 485. Q. There was also...

15 A. So there were business decisions
16 that were made...

17 486. Q. Yes.

18 A. ...on why we continued to fund
19 throughout this process.

20 487. Q. Right. Knowing there was a risk
21 that Final Bell's constructive trust claim could
22 succeed?

23 A. Well, we based our decisions on what
24 the DIP agreement and what the courts have blessed
25 the DIP agreement with. We were having the senior

D. Alappatt - 118

1 security on all our collateral.

2 488. Q. Yes.

3 A. So we based our decisions on the
4 facts that were available at that time.

5 489. Q. Right, which included the fact that
6 Final Bell was advancing a claim to prime Cortland?

7 A. But that wasn't a real concern to us
8 because at no point of time did Final Bell be in a
9 position to be priming our collateral.

10 490. Q. But that is the risk coming out of
11 Final Bell's claim.

12 A. Again, based on what the courts have
13 blessed us with, with the DIP agreement, I don't see
14 how Final Bell can come to prime us.

15 491. Q. Were you given a legal opinion that
16 said there was no chance that Final Bell would be
17 able to prime you?

18 MR. MERSKEY: Refused, privileged. /R

19 492. MR. WINTON: Okay. Well, did you make
20 that decision with the assistance of any
21 legal advice?

22 MR. MERSKEY: Refused, privileged. I
23 think you can make the arguments that you
24 want to make based on the existence of
25 your claims, Counsel. /R

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1 493. MR. WINTON: Okay.

2
3 BY MR. WINTON:

4 494. Q. In May, at or around the time that
5 the Final Bell constructive trust claim was
6 advanced, there was also...at that time the stalking
7 horse bid was the successful bid in the sales
8 process, correct?

9 A. Sorry, say that again.

10 495. Q. So in May, 2024, so May 9th, 2024,
11 is the delivery of the amended...the further amended
12 notice of motion.

13 A. Yes.

14 496. Q. And at that time, the stalking horse
15 bidder had already been identified as the successful
16 bidder in the sales process, correct?

17 A. I believe so.

18 497. Q. Okay. A sale of BZAM to the
19 stalking horse bidder under the stalking horse bid
20 would terminate Cortland's obligation to fund BZAM's
21 operations under the DIP, correct?

22 MR. MERSKEY: Why...sorry, I won't ask
23 you why, but I don't follow the relevance.
24 So I'm going to object. /R

25 498. MR. WINTON: Okay.

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1 BY MR. WINTON:

2 499. Q. So as part of the consideration...so
3 you were considering your options, and you told me
4 that, "Well, we decided to continue funding, because
5 if we stopped funding, that would affect the value
6 of the collateral or the operations," but another
7 option was to move ahead with the sale, correct,
8 because that would lock in the value of the
9 operations?

10 MR. MERSKEY: I think that's
11 speculative.

12 I'm refusing the question, Mr. Alappatt. /R

13 500. MR. WINTON: Okay, well, I don't think
14 it is. I think that is...but we'll deal
15 with that somewhere else.

16
17 BY MR. WINTON:

18 501. Q. As part of the considerations in
19 May, 2024, did Cortland discuss whether it would
20 withhold its support of the stalking horse bid?

21 MR. MERSKEY: Objection, relevance. /R

22 502. MR. WINTON: He just established the
23 relevance by talking about they were
24 talking about considerations. I want to
25 know if this was one of the considerations.

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1 MR. MERSKEY: I don't agree, but I'm not
2 going to argue with you on your transcript.

3 503. MR. WINTON: Okay. That concludes my
4 cross-examination, Mr. Alappatt. I have no
5 further questions. Thank you very much.

6 THE DEPONENT: Thank you.

7

8 --- upon adjourning at 4:25 p.m.

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REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.



I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the **4th DAY OF SEPTEMBER, 2024** and taken to the best of my skill, ability and understanding.

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Certified Correct:



**Jordan Francis-Cleary
Verbatim Reporter**



TAB 1



Court File No. CV-24-00715773-00CL

BETWEEN:

**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
BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM
CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN
LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH
ROAD HOLDING CORP. AND FINAL BELL CORP.**

Applicants

NOTICE OF EXAMINATION

TO: Deepak Alappatt, a representative of the Respondent, Cortland Credit Lending Corporation

YOU ARE REQUIRED TO ATTEND

- In person
 By telephone conference
 By video conference

at the following location:

Victory Verbatim Reporting Services Inc., Ernst & Young Tower, 222 Bay Street, Suite 900,
Toronto, Ontario, M5K 1H6 (Phone Number: 416 360 6117)

on Thursday, September 5, 2024, at 10:00 a.m. for:

[X] Cross-examination on your Affidavit sworn August 6, 2024

[] Examination for discovery

-2-

- Examination for discovery on behalf of or in place of [identify party]
- Examination in aid of execution
- Examination in aid of execution on behalf of or in place of [identify party]

If you object to the method of attendance, you must notify the other parties or their lawyers. If you and the other parties cannot come to an agreement on the method of attendance, one of the parties must request a case conference for the court to make an order under Rule 1.08(8).

YOU ARE REQUIRED TO PRODUCE prior to your examination, the documents mentioned in subrule 30.04(4) of the *Rules of Civil Procedure*, and the following documents and things:

1. All correspondence between the Applicants and Cortland, between December 5, 2023 and February 28, 2024, relevant to the Applicants' excise tax obligations, including, but not limited to, the Applicants' excise tax arrears and the timing of excise tax payments to Canada Revenue Agency by the Applicants.
2. All documents in Cortland's power, possession, or control, concerning its accounting of the Applicants' excise tax obligations, including, but not limited to, excise tax arrears, for the period spanning December 5, 2023 to February 28, 2024.
3. To the extent not included within the scope of paragraph 2 above, all documents in Cortland's power, possession, or control, relevant to the due diligence it performed on the Applicants in connection with the negotiation and agreement to the SARCA, concerning the Applicants' excise tax obligations, including, but not limited to, excise tax arrears.

4. Financial records disclosing the timing of all funds advanced by Cortland to the Applicants and/or repaid by the Applicants to Cortland referenced in paragraph 14 of your affidavit.
5. All documents in Cortland's power, possession, or control, that Cortland relies on in support of the statement in paragraph 15 of your affidavit that Cortland's advances made between the period between BZAM's acquisition of Final Bell Canada and the Applicants' filing for CCAA protection were made in reliance on its senior security over FBC and Final Bell Corp.
6. All correspondence between Cortland and BZAM exchanged prior to February 28, 2024, concerning the negotiation of the DIP Agreement referenced in paragraph 16 of your affidavit.
7. All documents in Cortland's power, possession, or control, that Cortland relies on in support of the statement in paragraph 32 of your affidavit that Cortland would not have elected to provide the DIP Loan if it had known that Final Bell would or could assert that it is entitled to a constructive trust in priority to its DIP Lender's Charge or if it had known that the DIP Lender's Charge could be primed by Final Bell's constructive trust claim.
8. All documents in Cortland's power, possession, or control, that Cortland relies on in support of the statement in paragraph 33 of your affidavit that in agreeing to advance the DIP Loan, Cortland relied upon the Court's approval of the DIP Agreement and upon the Court granting the DIP Lender's Charge in the ARIO.
9. All documents in Cortland's power, possession or control that Cortland relies on in support of the statement at paragraph 36 of your affidavit that save and except for nominal pre-

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filing expenses of \$709.12, all of the amounts currently owing to Cortland were advanced in reliance upon the DIP Lender's Charge.

10. Financial records disclosing the timing of all payments by the Applicants of Cortland's pre-filing secured debt from post-filing collections.
11. Financial records disclosing the timing and amounts of all funds advanced to the Applicants after February 28, 2024, that Cortland claims are subject to the DIP charge.
12. Financial records disclosing the timing and amounts of all repayments by the Applicants to Cortland after February 28, 2024, of funds Cortland advanced to the Applicants that it claims were subject to the DIP charge at the time they were advanced.
13. Correspondence between Cortland, the Applicants, and the Monitor concerning the funds received from or advanced to the Applicants on or after February 28, 2024.
14. All correspondence in Cortland's power, possession or control between Cortland, the Applicants, the Monitor, and/or 1000816625 Ontario Inc. (the "**Stalking Horse Bidder**") relevant to the extension of the deadline to close on the Stalking Horse Bid.

-5-

August 27, 2024

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Lawyers for Final Bel Holdings International Ltd.

BZAM LTD. et al.
Applicants

-and- CORTLAND CREDIT LENDING CORPORATION et al.
Respondents

Court File No. CV-24-00715773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF EXAMINATION
(DEEPAK ALAPPATT)**

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Lawyers for Final Bel Holdings International Ltd.

TAB 2

The Green Organic Dutchman Advance Tracker

Date	Vendor	Beginning Balance	Advance	Repayment	Ending Balance
01/01/24	The Green Organic Dutchman	26,219,347.66			26,219,347.66
02/01/24	The Green Organic Dutchman	26,219,347.66			26,219,347.66
03/01/24	The Green Organic Dutchman	26,219,347.66	1,054,609.00	33,333.24	27,240,623.42
04/01/24	The Green Organic Dutchman	27,240,623.42		735.08	27,239,888.34
05/01/24	The Green Organic Dutchman	27,239,888.34		447,348.57	26,792,539.77
06/01/24	The Green Organic Dutchman	26,792,539.77			26,792,539.77
07/01/24	The Green Organic Dutchman	26,792,539.77			26,792,539.77
08/01/24	The Green Organic Dutchman	26,792,539.77	809,006.00	78,745.05	27,522,800.72
09/01/24	The Green Organic Dutchman	27,522,800.72			27,522,800.72
10/01/24	The Green Organic Dutchman	27,522,800.72		38,583.81	27,484,216.91
11/01/24	The Green Organic Dutchman	27,484,216.91			27,484,216.91
12/01/24	The Green Organic Dutchman	27,484,216.91		750,722.93	26,733,493.98
13/01/24	The Green Organic Dutchman	26,733,493.98			26,733,493.98
14/01/24	The Green Organic Dutchman	26,733,493.98			26,733,493.98
15/01/24	The Green Organic Dutchman	26,733,493.98	2,405,898.00	428,113.37	28,711,278.61
16/01/24	The Green Organic Dutchman	28,711,278.61			28,711,278.61
17/01/24	The Green Organic Dutchman	28,711,278.61		44,562.21	28,666,716.40
18/01/24	The Green Organic Dutchman	28,666,716.40			28,666,716.40
19/01/24	The Green Organic Dutchman	28,666,716.40		1,330,759.18	27,335,957.22
06/01/24	The Green Organic Dutchman	26,792,539.77			26,792,539.77
07/01/24	The Green Organic Dutchman	26,792,539.77			26,792,539.77
08/01/24	The Green Organic Dutchman	26,792,539.77	809,006.00	78,745.05	27,522,800.72
09/01/24	The Green Organic Dutchman	27,522,800.72			27,522,800.72
10/01/24	The Green Organic Dutchman	27,522,800.72		38,583.81	27,484,216.91
11/01/24	The Green Organic Dutchman	27,484,216.91			27,484,216.91
12/01/24	The Green Organic Dutchman	27,484,216.91		750,722.93	26,733,493.98
13/01/24	The Green Organic Dutchman	26,733,493.98			26,733,493.98
14/01/24	The Green Organic Dutchman	26,733,493.98			26,733,493.98
15/01/24	The Green Organic Dutchman	26,733,493.98	2,405,898.00	428,113.37	28,711,278.61
16/01/24	The Green Organic Dutchman	28,711,278.61			28,711,278.61
17/01/24	The Green Organic Dutchman	28,711,278.61		44,562.21	28,666,716.40
18/01/24	The Green Organic Dutchman	28,666,716.40			28,666,716.40
19/01/24	The Green Organic Dutchman	28,666,716.40		1,330,759.18	27,335,957.22
20/01/24	The Green Organic Dutchman	27,335,957.22			27,335,957.22
21/01/24	The Green Organic Dutchman	27,335,957.22			27,335,957.22
22/01/24	The Green Organic Dutchman	27,335,957.22	2,356,118.00	300,388.04	29,391,687.18
23/01/24	The Green Organic Dutchman	29,391,687.18			29,391,687.18
24/01/24	The Green Organic Dutchman	29,391,687.18		517,184.53	28,874,502.65
25/01/24	The Green Organic Dutchman	28,874,502.65		311,640.01	28,562,862.64
26/01/24	The Green Organic Dutchman	28,562,862.64		730,770.38	27,832,092.26
27/01/24	The Green Organic Dutchman	27,832,092.26			27,832,092.26
28/01/24	The Green Organic Dutchman	27,832,092.26			27,832,092.26
29/01/24	The Green Organic Dutchman	27,832,092.26	3,403,553.00	161,196.57	31,074,448.69
30/01/24	The Green Organic Dutchman	31,074,448.69			31,074,448.69
31/01/24	The Green Organic Dutchman	31,074,448.69		31,386.53	31,043,062.16
01/02/24	The Green Organic Dutchman	31,043,062.16			31,043,062.16
02/02/24	The Green Organic Dutchman	31,043,062.16		1,398,621.04	29,644,441.12

17/02/24	The Green Organic Dutchman	29,926,242.35		29,926,242.35
18/02/24	The Green Organic Dutchman	29,926,242.35		29,926,242.35
19/02/24	The Green Organic Dutchman	29,926,242.35		29,926,242.35
20/02/24	The Green Organic Dutchman	29,926,242.35	3,185,430.00	33,111,672.35
21/02/24	The Green Organic Dutchman	33,111,672.35		808,013.32
22/02/24	The Green Organic Dutchman	32,303,659.03		333,756.83
23/02/24	The Green Organic Dutchman	31,969,902.20		840,424.75
24/02/24	The Green Organic Dutchman	31,129,477.45		31,129,477.45
25/02/24	The Green Organic Dutchman	31,129,477.45		31,129,477.45
26/02/24	The Green Organic Dutchman	31,129,477.45	2,859,008.00	1,055,934.33
27/02/24	The Green Organic Dutchman	32,932,551.12		500,000.00
28/02/24	The Green Organic Dutchman	32,432,551.12		591,032.85
29/02/24	The Green Organic Dutchman	31,841,518.27		13,342.28
01/03/24	The Green Organic Dutchman	31,828,175.99		782,619.00
02/03/24	The Green Organic Dutchman	31,045,556.99		31,045,556.99
03/03/24	The Green Organic Dutchman	31,045,556.99		31,045,556.99
04/03/24	The Green Organic Dutchman	31,045,556.99		555,212.14
05/03/24	The Green Organic Dutchman	30,490,344.85		500,000.00
06/03/24	The Green Organic Dutchman	29,990,344.85		530,109.68
07/03/24	The Green Organic Dutchman	29,460,235.17		500,000.00
08/03/24	The Green Organic Dutchman	28,960,235.17		1,682,140.30
09/03/24	The Green Organic Dutchman	27,278,094.87		27,278,094.87
10/03/24	The Green Organic Dutchman	27,278,094.87		27,278,094.87
11/03/24	The Green Organic Dutchman	27,278,094.87		840,717.68
12/03/24	The Green Organic Dutchman	26,437,377.19		236,261.28
13/03/24	The Green Organic Dutchman	26,201,115.91		44,717.23
14/03/24	The Green Organic Dutchman	26,156,398.68		26,156,398.68
15/03/24	The Green Organic Dutchman	26,156,398.68		768,640.08
16/03/24	The Green Organic Dutchman	25,387,758.60		25,387,758.60
17/03/24	The Green Organic Dutchman	25,387,758.60		25,387,758.60
18/03/24	The Green Organic Dutchman	25,387,758.60		194,289.61
19/03/24	The Green Organic Dutchman	25,193,468.99		25,193,468.99
20/03/24	The Green Organic Dutchman	25,193,468.99		35,191.35
21/03/24	The Green Organic Dutchman	25,158,277.64		25,158,277.64
22/03/24	The Green Organic Dutchman	25,158,277.64		637,613.42
23/03/24	The Green Organic Dutchman	24,520,664.22		24,520,664.22
24/03/24	The Green Organic Dutchman	24,520,664.22		24,520,664.22
25/03/24	The Green Organic Dutchman	24,520,664.22		613,850.25
26/03/24	The Green Organic Dutchman	23,906,813.97		23,906,813.97
27/03/24	The Green Organic Dutchman	23,906,813.97		80,526.82
28/03/24	The Green Organic Dutchman	23,826,287.15		333,446.41
29/03/24	The Green Organic Dutchman	23,492,840.74		23,492,840.74
30/03/24	The Green Organic Dutchman	23,492,840.74		23,492,840.74
31/03/24	The Green Organic Dutchman	23,492,840.74		23,492,840.74
01/04/24	The Green Organic Dutchman	23,492,840.74	1,403,693.09	22,089,147.65
02/04/24	The Green Organic Dutchman	22,089,147.65		641.59
03/04/24	The Green Organic Dutchman	22,088,506.06		585,124.73
04/04/24	The Green Organic Dutchman	21,503,381.33		1,034,205.61
05/04/24	The Green Organic Dutchman	20,469,175.72		806,829.75
06/04/24	The Green Organic Dutchman	19,662,345.97		19,662,345.97
07/04/24	The Green Organic Dutchman	19,662,345.97		19,662,345.97

08/04/24	The Green Organic Dutchman	19,662,345.97		318,039.86	19,344,306.11
09/04/24	The Green Organic Dutchman	19,344,306.11		617,404.86	18,726,901.25
10/04/24	The Green Organic Dutchman	18,726,901.25		45,374.23	18,681,527.02
11/04/24	The Green Organic Dutchman	18,681,527.02			18,681,527.02
12/04/24	The Green Organic Dutchman	18,681,527.02		1,264,515.72	17,417,011.30
13/04/24	The Green Organic Dutchman	17,417,011.30			17,417,011.30
14/04/24	The Green Organic Dutchman	17,417,011.30			17,417,011.30
15/04/24	The Green Organic Dutchman	17,417,011.30		454,536.00	16,962,475.30
16/04/24	The Green Organic Dutchman	16,962,475.30			16,962,475.30
17/04/24	The Green Organic Dutchman	16,962,475.30		1,821,962.44	15,140,512.86
18/04/24	The Green Organic Dutchman	15,140,512.86			15,140,512.86
19/04/24	The Green Organic Dutchman	15,140,512.86		307,070.49	14,833,442.37
20/04/24	The Green Organic Dutchman	14,833,442.37			14,833,442.37
21/04/24	The Green Organic Dutchman	14,833,442.37			14,833,442.37
22/04/24	The Green Organic Dutchman	14,833,442.37		1,522,505.74	13,310,936.63
23/04/24	The Green Organic Dutchman	13,310,936.63			13,310,936.63
24/04/24	The Green Organic Dutchman	13,310,936.63		33,252.40	13,277,684.23
25/04/24	The Green Organic Dutchman	13,277,684.23			13,277,684.23
26/04/24	The Green Organic Dutchman	13,277,684.23		998,238.07	12,279,446.16
27/04/24	The Green Organic Dutchman	12,279,446.16			12,279,446.16
28/04/24	The Green Organic Dutchman	12,279,446.16			12,279,446.16
29/04/24	The Green Organic Dutchman	12,279,446.16		453,801.78	11,825,644.38
30/04/24	The Green Organic Dutchman	11,825,644.38		1,424,761.24	10,400,883.14
01/05/24	The Green Organic Dutchman	10,400,883.14		35,396.92	10,365,486.22
02/05/24	The Green Organic Dutchman	10,365,486.22			10,365,486.22
03/05/24	The Green Organic Dutchman	10,365,486.22		518,011.83	9,847,474.39
04/05/24	The Green Organic Dutchman	9,847,474.39			9,847,474.39
05/05/24	The Green Organic Dutchman	9,847,474.39			9,847,474.39
06/05/24	The Green Organic Dutchman	9,847,474.39		129,981.67	9,717,492.72
07/05/24	The Green Organic Dutchman	9,717,492.72			9,717,492.72
08/05/24	The Green Organic Dutchman	9,717,492.72		72,562.36	9,644,930.36
09/05/24	The Green Organic Dutchman	9,644,930.36		929,414.60	8,715,515.76
10/05/24	The Green Organic Dutchman	8,715,515.76		1,180,908.36	7,534,607.40
11/05/24	The Green Organic Dutchman	7,534,607.40			7,534,607.40
12/05/24	The Green Organic Dutchman	7,534,607.40			7,534,607.40
13/05/24	The Green Organic Dutchman	7,534,607.40		36,284.40	7,498,323.00
06/01/24	The Green Organic Dutchman	26,792,539.77			26,792,539.77
07/01/24	The Green Organic Dutchman	26,792,539.77			26,792,539.77
08/01/24	The Green Organic Dutchman	26,792,539.77	809,006.00	78,745.05	27,522,800.72
09/01/24	The Green Organic Dutchman	27,522,800.72			27,522,800.72
10/01/24	The Green Organic Dutchman	27,522,800.72		38,583.81	27,484,216.91
11/01/24	The Green Organic Dutchman	27,484,216.91			27,484,216.91
12/01/24	The Green Organic Dutchman	27,484,216.91		750,722.93	26,733,493.98
13/01/24	The Green Organic Dutchman	26,733,493.98			26,733,493.98
14/01/24	The Green Organic Dutchman	26,733,493.98			26,733,493.98
15/01/24	The Green Organic Dutchman	26,733,493.98	2,405,898.00	428,113.37	28,711,278.61
16/01/24	The Green Organic Dutchman	28,711,278.61			28,711,278.61
17/01/24	The Green Organic Dutchman	28,711,278.61		44,562.21	28,666,716.40
18/01/24	The Green Organic Dutchman	28,666,716.40			28,666,716.40
19/01/24	The Green Organic Dutchman	28,666,716.40		1,330,759.18	27,335,957.22
20/01/24	The Green Organic Dutchman	27,335,957.22			27,335,957.22

29/05/24	The Green Organic Dutchman	761,766.69	27,252.93	734,513.76
30/05/24	The Green Organic Dutchman	734,513.76	894.84	733,618.92
31/05/24	The Green Organic Dutchman	733,618.92	619,868.15	113,750.77
01/06/24	The Green Organic Dutchman	113,750.77		113,750.77
02/06/24	The Green Organic Dutchman	113,750.77		113,750.77
03/06/24	The Green Organic Dutchman	113,750.77	113,750.77	(0.00)
04/06/24	The Green Organic Dutchman -	0.00		(0.00)

TGOD DIP tracker

Date	Vendor	Beginning Balance	Advance	Repayment	Ending Balance
29/02/24	TGOD DIP	-			-
01/03/24	TGOD DIP	-			-
02/03/24	TGOD DIP	-			-
03/03/24	TGOD DIP	-			-
04/03/24	TGOD DIP	-	1,862,525.00		1,862,525.00
05/03/24	TGOD DIP	1,862,525.00			1,862,525.00
06/03/24	TGOD DIP	1,862,525.00			1,862,525.00
07/03/24	TGOD DIP	1,862,525.00			1,862,525.00
08/03/24	TGOD DIP	1,862,525.00			1,862,525.00
09/03/24	TGOD DIP	1,862,525.00			1,862,525.00
10/03/24	TGOD DIP	1,862,525.00			1,862,525.00
11/03/24	TGOD DIP	1,862,525.00			1,862,525.00
12/03/24	TGOD DIP	1,862,525.00	2,639,000.00		4,501,525.00
13/03/24	TGOD DIP	4,501,525.00			4,501,525.00
14/03/24	TGOD DIP	4,501,525.00			4,501,525.00
15/03/24	TGOD DIP	4,501,525.00			4,501,525.00
16/03/24	TGOD DIP	4,501,525.00			4,501,525.00
17/03/24	TGOD DIP	4,501,525.00			4,501,525.00
18/03/24	TGOD DIP	4,501,525.00			4,501,525.00
19/03/24	TGOD DIP	4,501,525.00	2,441,000.00		6,942,525.00
20/03/24	TGOD DIP	6,942,525.00			6,942,525.00
21/03/24	TGOD DIP	6,942,525.00			6,942,525.00
22/03/24	TGOD DIP	6,942,525.00			6,942,525.00
23/03/24	TGOD DIP	6,942,525.00			6,942,525.00
24/03/24	TGOD DIP	6,942,525.00			6,942,525.00
25/03/24	TGOD DIP	6,942,525.00			6,942,525.00
26/03/24	TGOD DIP	6,942,525.00	4,267,000.00		11,209,525.00
27/03/24	TGOD DIP	11,209,525.00			11,209,525.00
28/03/24	TGOD DIP	11,209,525.00			11,209,525.00
29/03/24	TGOD DIP	11,209,525.00			11,209,525.00
30/03/24	TGOD DIP	11,209,525.00			11,209,525.00
31/03/24	TGOD DIP	11,209,525.00			11,209,525.00
01/04/24	TGOD DIP	11,209,525.00			11,209,525.00
02/04/24	TGOD DIP	11,209,525.00	3,072,000.00		14,281,525.00
03/04/24	TGOD DIP	14,281,525.00			14,281,525.00
04/04/24	TGOD DIP	14,281,525.00			14,281,525.00
05/04/24	TGOD DIP	14,281,525.00			14,281,525.00
06/04/24	TGOD DIP	14,281,525.00			14,281,525.00
07/04/24	TGOD DIP	14,281,525.00			14,281,525.00
08/04/24	TGOD DIP	14,281,525.00			14,281,525.00
09/04/24	TGOD DIP	14,281,525.00	1,995,000.00		16,276,525.00
10/04/24	TGOD DIP	16,276,525.00			16,276,525.00
11/04/24	TGOD DIP	16,276,525.00			16,276,525.00

12/04/24	TGOD DIP	16,276,525.00		16,276,525.00
13/04/24	TGOD DIP	16,276,525.00		16,276,525.00
14/04/24	TGOD DIP	16,276,525.00		16,276,525.00
15/04/24	TGOD DIP	16,276,525.00		16,276,525.00
16/04/24	TGOD DIP	16,276,525.00	500,000.00	16,776,525.00
17/04/24	TGOD DIP	16,776,525.00		16,776,525.00
18/04/24	TGOD DIP	16,776,525.00		16,776,525.00
19/04/24	TGOD DIP	16,776,525.00		16,776,525.00
20/04/24	TGOD DIP	16,776,525.00		16,776,525.00
21/04/24	TGOD DIP	16,776,525.00		16,776,525.00
22/04/24	TGOD DIP	16,776,525.00		16,776,525.00
23/04/24	TGOD DIP	16,776,525.00	1,200,000.00	17,976,525.00
24/04/24	TGOD DIP	17,976,525.00		17,976,525.00
25/04/24	TGOD DIP	17,976,525.00		17,976,525.00
26/04/24	TGOD DIP	17,976,525.00		17,976,525.00
27/04/24	TGOD DIP	17,976,525.00		17,976,525.00
28/04/24	TGOD DIP	17,976,525.00		17,976,525.00
29/04/24	TGOD DIP	17,976,525.00		17,976,525.00
30/04/24	TGOD DIP	17,976,525.00	7,136,000.00	25,112,525.00
01/05/24	TGOD DIP	25,112,525.00		25,112,525.00
02/05/24	TGOD DIP	25,112,525.00		25,112,525.00
03/05/24	TGOD DIP	25,112,525.00		25,112,525.00
04/05/24	TGOD DIP	25,112,525.00		25,112,525.00
05/05/24	TGOD DIP	25,112,525.00		25,112,525.00
06/05/24	TGOD DIP	25,112,525.00		25,112,525.00
07/05/24	TGOD DIP	25,112,525.00	2,440,000.00	27,552,525.00
08/05/24	TGOD DIP	27,552,525.00		27,552,525.00
09/05/24	TGOD DIP	27,552,525.00		27,552,525.00
10/05/24	TGOD DIP	27,552,525.00		27,552,525.00
11/05/24	TGOD DIP	27,552,525.00		27,552,525.00
12/05/24	TGOD DIP	27,552,525.00		27,552,525.00
13/05/24	TGOD DIP	27,552,525.00		27,552,525.00
14/05/24	TGOD DIP	27,552,525.00	2,556,000.00	30,108,525.00
15/05/24	TGOD DIP	30,108,525.00		30,108,525.00
16/05/24	TGOD DIP	30,108,525.00		30,108,525.00
17/05/24	TGOD DIP	30,108,525.00		30,108,525.00
18/05/24	TGOD DIP	30,108,525.00		30,108,525.00
19/05/24	TGOD DIP	30,108,525.00		30,108,525.00
20/05/24	TGOD DIP	30,108,525.00		30,108,525.00
21/05/24	TGOD DIP	30,108,525.00	1,548,000.00	31,656,525.00
22/05/24	TGOD DIP	31,656,525.00		31,656,525.00
23/05/24	TGOD DIP	31,656,525.00		31,656,525.00
24/05/24	TGOD DIP	31,656,525.00		31,656,525.00
25/05/24	TGOD DIP	31,656,525.00		31,656,525.00
26/05/24	TGOD DIP	31,656,525.00		31,656,525.00
27/05/24	TGOD DIP	31,656,525.00		31,656,525.00
28/05/24	TGOD DIP	31,656,525.00	6,392,000.00	38,048,525.00

29/05/24	TGOD DIP	38,048,525.00			38,048,525.00
30/05/24	TGOD DIP	38,048,525.00			38,048,525.00
31/05/24	TGOD DIP	38,048,525.00			38,048,525.00
01/06/24	TGOD DIP	38,048,525.00			38,048,525.00
02/06/24	TGOD DIP	38,048,525.00			38,048,525.00
03/06/24	TGOD DIP	38,048,525.00		193,807.32	37,854,717.68
04/06/24	TGOD DIP	37,854,717.68		852,720.57	37,001,997.11
05/06/24	TGOD DIP	37,001,997.11		59,794.67	36,942,202.44
06/06/24	TGOD DIP	36,942,202.44			36,942,202.44
07/06/24	TGOD DIP	36,942,202.44		303,280.99	36,638,921.45
08/06/24	TGOD DIP	36,638,921.45			36,638,921.45
09/06/24	TGOD DIP	36,638,921.45			36,638,921.45
10/06/24	TGOD DIP	36,638,921.45		492,074.38	36,146,847.07
11/06/24	TGOD DIP	36,146,847.07	2,400,000.00	496,468.33	38,050,378.74
12/06/24	TGOD DIP	38,050,378.74		1,019,867.34	37,030,511.40
13/06/24	TGOD DIP	37,030,511.40		8,363.92	37,022,147.48
14/06/24	TGOD DIP	37,022,147.48		474,557.65	36,547,589.83
15/06/24	TGOD DIP	36,547,589.83			36,547,589.83
16/06/24	TGOD DIP	36,547,589.83			36,547,589.83
17/06/24	TGOD DIP	36,547,589.83		1,261,615.37	35,285,974.46
18/06/24	TGOD DIP	35,285,974.46	1,021,750.00	1,000,000.00	35,307,724.46
19/06/24	TGOD DIP	35,307,724.46		545,466.45	34,762,258.01
20/06/24	TGOD DIP	34,762,258.01		349,719.04	34,412,538.97
21/06/24	TGOD DIP	34,412,538.97		755,628.67	33,656,910.30
22/06/24	TGOD DIP	33,656,910.30			33,656,910.30
23/06/24	TGOD DIP	33,656,910.30			33,656,910.30
24/06/24	TGOD DIP	33,656,910.30		1,439,333.72	32,217,576.58
25/06/24	TGOD DIP	32,217,576.58	1,835,000.00	946,927.78	33,105,648.80
26/06/24	TGOD DIP	33,105,648.80		18,454.42	33,087,194.38
27/06/24	TGOD DIP	33,087,194.38			33,087,194.38
28/06/24	TGOD DIP	33,087,194.38		475,272.77	32,611,921.61
29/06/24	TGOD DIP	32,611,921.61			32,611,921.61
30/06/24	TGOD DIP	32,611,921.61			32,611,921.61
01/07/24	TGOD DIP	32,611,921.61			32,611,921.61
02/07/24	TGOD DIP	32,611,921.61	6,200,000.00	82,191.68	38,729,729.93
03/07/24	TGOD DIP	38,729,729.93		1,069,576.17	37,660,153.76
04/07/24	TGOD DIP	37,660,153.76		563,096.30	37,097,057.46
05/07/24	TGOD DIP	37,097,057.46		872,968.16	36,224,089.30
06/07/24	TGOD DIP	36,224,089.30			36,224,089.30
07/07/24	TGOD DIP	36,224,089.30			36,224,089.30
08/07/24	TGOD DIP	36,224,089.30		415,014.01	35,809,075.29
09/07/24	TGOD DIP	35,809,075.29	900,000.00	264,947.06	36,444,128.23
10/07/24	TGOD DIP	36,444,128.23		20,998.14	36,423,130.09
11/07/24	TGOD DIP	36,423,130.09		12,866.62	36,410,263.47
12/07/24	TGOD DIP	36,410,263.47		3,170,530.00	33,239,733.47
13/07/24	TGOD DIP	33,239,733.47			33,239,733.47
14/07/24	TGOD DIP	33,239,733.47			33,239,733.47

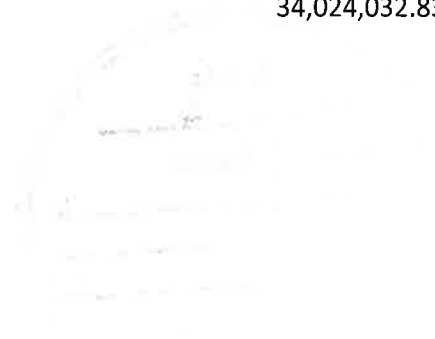
15/07/24	TGOD DIP	33,239,733.47		637,790.17	32,601,943.30
16/07/24	TGOD DIP	32,601,943.30	900,000.00	848,085.32	32,653,857.98
17/07/24	TGOD DIP	32,653,857.98		52,676.46	32,601,181.52
18/07/24	TGOD DIP	32,601,181.52			32,601,181.52
19/07/24	TGOD DIP	32,601,181.52		410,247.02	32,190,934.50
20/07/24	TGOD DIP	32,190,934.50			32,190,934.50
21/07/24	TGOD DIP	32,190,934.50			32,190,934.50
22/07/24	TGOD DIP	32,190,934.50		892,570.59	31,298,363.91
23/07/24	TGOD DIP	31,298,363.91	1,000,000.00		32,298,363.91
24/07/24	TGOD DIP	32,298,363.91		490,709.36	31,807,654.55
25/07/24	TGOD DIP	31,807,654.55		282,617.02	31,525,037.53
26/07/24	TGOD DIP	31,525,037.53		1,717,976.75	29,807,060.78
27/07/24	TGOD DIP	29,807,060.78			29,807,060.78
28/07/24	TGOD DIP	29,807,060.78			29,807,060.78
29/07/24	TGOD DIP	29,807,060.78		983,582.58	28,823,478.20
30/07/24	TGOD DIP	28,823,478.20	5,500,000.00	500,000.00	33,823,478.20
31/07/24	TGOD DIP	33,823,478.20		532,035.60	33,291,442.60
01/08/24	TGOD DIP	33,291,442.60		276,330.64	33,015,111.96
02/08/24	TGOD DIP	33,015,111.96		628,490.91	32,386,621.05
03/08/24	TGOD DIP	32,386,621.05			32,386,621.05
04/08/24	TGOD DIP	32,386,621.05			32,386,621.05
05/08/24	TGOD DIP	32,386,621.05			32,386,621.05
06/08/24	TGOD DIP	32,386,621.05	1,200,000.00	148,066.38	33,438,554.67
07/08/24	TGOD DIP	33,438,554.67		23,704.35	33,414,850.32
08/08/24	TGOD DIP	33,414,850.32			33,414,850.32
09/08/24	TGOD DIP	33,414,850.32		397,370.28	33,017,480.04
10/08/24	TGOD DIP	33,017,480.04			33,017,480.04
11/08/24	TGOD DIP	33,017,480.04			33,017,480.04
12/08/24	TGOD DIP	33,017,480.04			33,017,480.04
13/08/24	TGOD DIP	33,017,480.04	2,000,000.00	11,329.14	35,006,150.90
14/08/24	TGOD DIP	35,006,150.90		1,449,464.88	33,556,686.02
15/08/24	TGOD DIP	33,556,686.02		387,304.49	33,169,381.53
16/08/24	TGOD DIP	33,169,381.53		921,794.73	32,247,586.80
17/08/24	TGOD DIP	32,247,586.80			32,247,586.80
18/08/24	TGOD DIP	32,247,586.80			32,247,586.80
19/08/24	TGOD DIP	32,247,586.80		598,665.26	31,648,921.54
20/08/24	TGOD DIP	31,648,921.54	1,400,000.00	1,021,594.53	32,027,327.01
21/08/24	TGOD DIP	32,027,327.01		216,599.04	31,810,727.97
22/08/24	TGOD DIP	31,810,727.97			31,810,727.97
23/08/24	TGOD DIP	31,810,727.97		2,008,014.34	29,802,713.63
24/08/24	TGOD DIP	29,802,713.63			29,802,713.63
25/08/24	TGOD DIP	29,802,713.63			29,802,713.63
26/08/24	TGOD DIP	29,802,713.63		178,680.80	29,624,032.83
27/08/24	TGOD DIP	29,624,032.83	4,400,000.00		34,024,032.83
28/08/24	TGOD DIP	34,024,032.83			34,024,032.83
29/08/24	TGOD DIP	34,024,032.83			34,024,032.83
30/08/24	TGOD DIP	34,024,032.83			34,024,032.83

31/08/24

TGOD DIP

34,024,032.83

34,024,032.83



This is
Exhibit No. 2
on the examination of:
Deepak Alappattin
v
held on September 4, 2024
VICTORY VERBATIM
Reporting Services
Toronto, Ont.

TAB 3

FIRST AMENDMENT
dated as of July 12, 2024
to
DIP FACILITY AGREEMENT

THIS FIRST AMENDMENT dated as of July 12, 2024 (this “**Amendment**”) is entered into among The Green Organic Dutchman Ltd. (the “**Borrower**”), each of the other signatories party hereto (collectively, the “**Guarantors**” and together with the Borrower, collectively, the “**Credit Parties**”), and Cortland Credit Lending Corporation, in its capacity as administrative agent for and on behalf of certain lenders (the “**DIP Lender**”).

WHEREAS the Credit Parties and the DIP Lender are parties to a DIP facility agreement dated February 28, 2024, made effective pursuant to the Initial Order (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**DIP Facility Agreement**”).

AND WHEREAS capitalized terms used herein but not otherwise defined shall have the meanings given to such terms in the DIP Facility Agreement.

AND WHEREAS the ongoing litigation brought by Final Bell Holdings International Ltd. against the Credit Parties before the Court (the “**FBC Litigation**”) constitutes an Event of Default under the DIP Facility Agreement.

AND WHEREAS the Credit Parties and the DIP Lender have agreed to amend the DIP Facility Agreement, from and after the Amendment Effective Date (as hereinafter defined), on the terms and conditions more particularly described herein.

NOW THEREFORE, in consideration of the premises and mutual agreements contained herein and in the DIP Facility Agreement, the parties hereto agree as follows:

ARTICLE 1 – AMENDMENTS

- 1.1 As of the Amendment Effective Date, Section 3.18 of the DIP Facility Agreement is hereby amended by replacing the date “July 15, 2024” with the date “August 28, 2024”.
- 1.2 As of the Amendment Effective Date, the following actions, suits and/or proceedings are hereby added to Schedule “E” of the DIP Facility Agreement:
 - “8. In the Matter of BZAM LTD. et al, Final Bell Holdings International Ltd. served a further amended notice of motion (Order Re Share Exchange Agreement) on May 6, 2024, Ontario Superior Court of Justice (Commercial List), File No. CV-24-00715773-00CL.
 9. Jacquelyn Simpson v. BZAM LTD, a former BZAM Ltd. employee filed a notice of application on May 24 with the Human Rights Tribunal of Ontario in respect to her termination, File No. 2024-56823-I.
 10. In the Matter of BZAM LTD. et al, France Boisvert and Daniel Fontaine served a notice of motion on June 25, 2024, objecting to a Notice by Debtor Company to Disclaim or Resiliate an Agreement sent by Medican Biologique Inc./ Medican Organic Inc. on May 29, 2024, Ontario Superior Court of Justice (Commercial List), File No. CV-24-00715773-00CL.”

ARTICLE 2 – REPRESENTATIONS AND WARRANTIES

- 2.1 Each Credit Party hereby represents and warrants that:
- (a) the representations and warranties made by it in the DIP Facility Agreement and any other Transaction Document to which it is a party, other than those expressly stated to be made as of a specific date, are true and correct in all material respects as of the date hereof with the same effect as if such representations and warranties had been made on and as of the date hereof; and
 - (b) no Event of Default has occurred which is continuing (other than the FBC Litigation and the other actions, suits and/or proceedings identified in item numbers 9 and 10 of Schedule “E” of the DIP Facility Agreement (as amended hereby)) on the date hereof or will occur as a result of entering into this Amendment or the observance or performance of its obligations hereunder.

ARTICLE 3 – MISCELLANEOUS

- 3.1 Effectiveness. Article 1 of this Amendment shall become effective as of the date upon which the Court shall have approved of this Amendment (the “**Amendment Effective Date**”).
- 3.2 References to DIP Facility Agreement. Upon the effectiveness of this Amendment, each reference in the DIP Facility Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import shall mean and be a reference to the DIP Facility Agreement as amended by this Amendment, and each reference to the DIP Facility Agreement in any other document, instrument or agreement executed and/or delivered in connection with the DIP Facility Agreement shall mean and be a reference to the DIP Facility Agreement as amended by this Amendment.
- 3.3 Effect on DIP Facility Agreement. The DIP Facility Agreement, as amended and modified hereby, and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed.
- 3.4 No Waiver. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the DIP Lender under the DIP Facility Agreement or any other document, instrument or agreement executed in connection therewith, nor constitute a waiver of any provision contained therein, except as specifically set forth herein. Without limiting the foregoing, the Credit Parties acknowledge and agree that the DIP Lender has not waived any Event of Default that may exist under the DIP Facility Agreement, including any Event of Default arising from or relating to the FBC Litigation or the other actions, suits and/or proceedings identified in item numbers 9 and 10 of Schedule “E” of the DIP Facility Agreement (as amended hereby).
- 3.5 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 3.6 Successors and Assigns. This Amendment shall enure to the benefit of the parties hereto and their respective successors and assigns and be binding upon the parties hereto and their respective successors and assigns in accordance with the DIP Facility Agreement.
- 3.7 Headings. The section headings in this Amendment are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Amendment or any provision hereof.
- 3.8 Counterparts. This Amendment may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the

same agreement. Delivery by email of an executed signature page of this Amendment shall be as effective as delivery of an original executed counterpart thereof.

[SIGNATURE PAGE FOLLOWS]

DIP LENDER:

**CORTLAND CREDIT LENDING
CORPORATION**

By: Sean Rogister
Name: Sean Rogister
Title: Chief Executive Officer

This is
Exhibit No. 3
on the examination of:
Deepak Alappatt in
v
held on September 4, 2024
VICTORY VERBATIM
Reporting Services
Toronto, Ont.

TAB 4



This is
Exhibit No. A

on the examination of:
Deepak Alappatt in

V

held on September 4, 2024

VICTORY VERBATIM
Reporting Services
Toronto, Ont.

From: [Scalia, Anthony](#)
To: [Jamie Ernst](#); [Levine, Natalie](#)
Cc: [Bellissimo, Joseph](#); [Bozzelli, Alessandro](#); [Mike Shakra](#)
Subject: RE: BZAM [IWOV-LEGAL.FID4772116]
Date: July-12-24 12:25:41 PM
Attachments: [Cortland_BZAM - Amendment No. 1 to DIP Facility Agreement \[Executed\].pdf](#)
[image002.png](#)
[image001.png](#)

Thanks Jamie. Fully executed copy attached.

Best,

Anthony



ANTHONY SCALIA

Associate

t: +1 416 869 5450

e: ascalial@cassels.com

Cassels Brock & Blackwell LLP | [cassels.com](https://www.cassels.com)

Suite 3200, Bay Adelaide Centre – North Tower

40 Temperance St.

Toronto, Ontario M5H 0B4 Canada

From: Jamie Ernst <ernstj@bennettjones.com>

Sent: Friday, July 12, 2024 12:12 PM

To: Levine, Natalie <nlevine@cassels.com>; Scalia, Anthony <ascalial@cassels.com>

Cc: Bellissimo, Joseph <jbello@cassels.com>; Bozzelli, Alessandro <abozzelli@cassels.com>;
Mike Shakra <ShakraM@bennettjones.com>

Subject: RE: BZAM

CAUTION: External Email

Hi Natalie and Anthony,

Just following up to see if you have any updates in respect of the agreement. The Monitor is waiting for the final version, as it intends to serve its report with the agreement appended to it.

Best,

Jamie

Jamie Ernst, Associate, Bennett Jones LLP

T. [416 777 7867](tel:4167777867) | F. [416 863 1716](tel:4168631716)

From: Jamie Ernst

Sent: Friday, July 12, 2024 9:49 AM

To: Levine, Natalie <nlevine@cassels.com>
Cc: Bellissimo, Joseph <jbello@bellissimo.com>; Bozzelli, Alessandro <abozzelli@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Mike Shakra <ShakraM@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>; Scalia, Anthony <ascalialia@cassels.com>
Subject: RE: BZAM

Thank you, Natalie. Please find attached a signed copy of the agreement.

Best,

Jamie

Jamie Ernst, Associate, Bennett Jones LLP

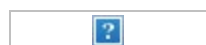
T. [416 777 7867](tel:4167777867) | F. [416 863 1716](tel:4168631716)

From: Levine, Natalie <nlevine@cassels.com>
Sent: Friday, July 12, 2024 9:29 AM
To: Jamie Ernst <ernstj@bennettjones.com>
Cc: Bellissimo, Joseph <jbello@bellissimo.com>; Bozzelli, Alessandro <abozzelli@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Mike Shakra <ShakraM@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>; Scalia, Anthony <ascalialia@cassels.com>
Subject: RE: BZAM

Hi Jamie- Please see attached. Copying Anthony who is coordinating signatures from our side.

Thanks

Natalie



NATALIE E. LEVINE *(she/her/hers)*

Partner

t: +1 416 860 6568

m: +1 416 786 1552

e: nlevine@cassels.com

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40 Temperance St.
Toronto, ON Canada M5H 0B4 Canada
Services provided through a professional corporation

From: Jamie Ernst <ernstj@bennettjones.com>
Sent: Thursday, July 11, 2024 6:55 PM
To: Levine, Natalie <nlevine@cassels.com>
Cc: Bellissimo, Joseph <jbello@bellissimo.com>; Bozzelli, Alessandro <abozzelli@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Mike Shakra <ShakraM@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>
Subject: RE: BZAM

CAUTION: External Email

Thank you, Natalie. We have no further comments. Do you mind sending us an execution copy of the agreement?

Best,

Jamie

Jamie Ernst, Associate, Bennett Jones LLP

T. [416 777 7867](tel:4167777867) | F. [416 863 1716](tel:4168631716)

From: Levine, Natalie <nlevine@cassels.com>

Sent: Thursday, July 11, 2024 4:13 PM

To: Jamie Ernst <ernstj@bennettjones.com>

Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Bozzelli, Alessandro <abozzelli@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Mike Shakra <ShakraM@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>

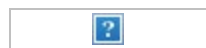
Subject: RE: BZAM

Hi Jamie-

Please see the attached further revised draft and a blackline to your version. Please note this remains subject to review and revision by our client.

Thanks

Natalie



NATALIE E. LEVINE *(she/her/hers)*

Partner

t: +1 416 860 6568

m: +1 416 786 1552

e: nlevine@cassels.com

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40 Temperance St.

Toronto, ON Canada M5H 0B4 Canada

Services provided through a professional corporation

From: Jamie Ernst <ernstj@bennettjones.com>

Sent: Thursday, July 11, 2024 12:33 PM

To: Levine, Natalie <nlevine@cassels.com>

Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Bozzelli, Alessandro <abozzelli@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Mike Shakra <ShakraM@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>

Subject: RE: BZAM

CAUTION: External Email

Hi Natalie,

Just following up on the email below. Please let us know if you have any further comments on the revised agreement.

Best,

Jamie

Jamie Ernst, Associate, Bennett Jones LLP

T. [416 777 7867](tel:4167777867) | F. [416 863 1716](tel:4168631716)

From: Jamie Ernst

Sent: Wednesday, July 10, 2024 6:37 PM

To: Levine, Natalie <nlevine@cassels.com>; Bozzelli, Alessandro <abozzelli@cassels.com>

Cc: Bellissimo, Joseph <jbelleissimo@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Mike Shakra <ShakraM@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>

Subject: RE: BZAM

Hi Natalie and Alessandro,

Please find attached a revised copy of the draft DIP Amendment Agreement, together with an accompanying redline.

With respect to the Human Rights Tribunal claim, we note that the claim was filed by a disgruntled employee who is claiming that she was targeted for post-filing termination because of her age. The claim is frivolous and without merit, and the employee was one of several dozen employees who were terminated as part of restructuring steps to optimize operational efficiencies. The company intends to reach out to the Tribunal this week and advise that the proceedings are stayed as a result of the CCAA proceedings and that in any event, the claim is without merit. Please give Mike a call if you have any questions.

Best,

Jamie

Jamie Ernst, Associate, Bennett Jones LLP

T. [416 777 7867](tel:4167777867) | F. [416 863 1716](tel:4168631716)

From: Levine, Natalie <nlevine@cassels.com>
Sent: Tuesday, July 9, 2024 9:53 AM
To: Mike Shakra <ShakraM@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>
Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Jamie Ernst <ernstj@bennettjones.com>; Bozzelli, Alessandro <abozzelli@cassels.com>
Subject: RE: BZAM

Attached is a draft DIP Amendment. I've copied our lending partner Alessandro Bozzelli on this email so everyone can see any discussion points/comments in real time.

Thanks
Natalie



NATALIE E. LEVINE *(she/her/hers)*

Partner

t: +1 416 860 6568

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e: nlevine@cassels.com

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Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON Canada M5H 0B4 Canada
Services provided through a professional corporation

From: Mike Shakra <ShakraM@bennettjones.com>
Sent: Monday, July 08, 2024 12:17 PM
To: Levine, Natalie <nlevine@cassels.com>; Joseph Blinick <BlinickJ@bennettjones.com>
Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Pendrith, Colin <cpendrith@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Jamie Ernst <ernstj@bennettjones.com>
Subject: RE: BZAM

CAUTION: External Email

Hey Natalie:

Will you be sending us a DIP extension agreement today?

Given that we need to serve motion materials today, if it won't be ready today, we can serve a supplemental affidavit later this week or just append the extension to the Monitor's report.

Best,

Mike

Mike Shakra

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6236](tel:4167776236) | F. [416 863 1716](tel:4168631716) | M. [647 262 7741](tel:6472627741)

[BennettJones.com](https://www.bennettjones.com)



From: Mike Shakra

Sent: Monday, July 8, 2024 9:50 AM

To: Levine, Natalie <nlevine@cassels.com>; Joseph Blinick <BlinickJ@bennettjones.com>

Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Pendrith, Colin <cpendrith@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Jamie Ernst <ernstj@bennettjones.com>

Subject: RE: BZAM

Thanks, Natalie. Appreciate the update.

Either the company on the Monitor will reach out to the Court for a case conference on the timeline outlined below.

Mike Shakra

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6236](tel:4167776236) | F. [416 863 1716](tel:4168631716) | M. [647 262 7741](tel:6472627741)

[BennettJones.com](https://www.bennettjones.com)



From: Levine, Natalie <nlevine@cassels.com>

Sent: Monday, July 8, 2024 9:40 AM

To: Mike Shakra <ShakraM@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>

Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Pendrith, Colin <cpendrith@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Jamie Ernst <ernstj@bennettjones.com>

Subject: RE: BZAM

Hi Mike-

Cortland will agree to a stay extension/DIP extension through August 28 on the basis the company will ask for a case conference as soon as possible after July 17th (ie July 18 or 19 if possible) to address next steps. Noah is looking at the cash flow with the client now and will connect with FTI.

Thanks
Natalie

**NATALIE E. LEVINE** *(she/her/hers)*

Partner

t: +1 416 860 6568

m: +1 416 786 1552

e: nlevine@cassels.com

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Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON Canada M5H 0B4 Canada
Services provided through a professional corporation

From: Mike Shakra <ShakraM@bennettjones.com>

Sent: Sunday, July 07, 2024 9:54 AM

To: Levine, Natalie <nlevine@cassels.com>; Joseph Blinick <BlinickJ@bennettjones.com>

Cc: Bellissimo, Joseph <jbello@cassels.com>; Pendrith, Colin <cpendrith@cassels.com>; Sean Zweig <ZweigS@bennettjones.com>; Jamie Ernst <ernstj@bennettjones.com>

Subject: RE: BZAM

CAUTION: External Email

Cassels team:

Thanks for the call Friday afternoon.

We've had an opportunity to connect with BZAM management and FTI on the proposed length of the stay extension.

The company and the Monitor are of the view that a 7-10 day stay extension is going to be viewed by the Court as overly tactical. We also have significant concerns with what a 7-10 day extension might signal to other stakeholders, including employees, the provincial purchasing entities and the CRA. We believe a 30 day stay extension is more appropriate in the circumstances and will provide the company with time to pivot strategy to the extent that is required once we have clarity on Final Bell's next move. We're supportive of asking Osborne to schedule the threshold motion as soon as possible if Final Bell posts security or seeks leave to appeal the costs decision.

We would propose that the DIP be extended to the length of the stay extension.

I've attached a draft of the cash flow forecast FTI has prepared.

We're available to discuss again tomorrow to the extent required.

Best,

Mike

Mike Shakra

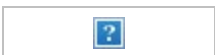
*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6236](tel:4167776236) | F. [416 863 1716](tel:4168631716) | M. [647 262 7741](tel:6472627741)

[BennettJones.com](https://www.bennettjones.com)



From: Mike Shakra

Sent: Friday, July 5, 2024 3:08 PM

To: Levine, Natalie <nlevine@cassels.com>; Joseph Blinick <BlinickJ@bennettjones.com>

Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Pendrith, Colin <cpendrith@cassels.com>

Subject: RE: BZAM

I could do 4pm (or later today) or any time tomorrow.

Mike Shakra

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6236](tel:4167776236) | F. [416 863 1716](tel:4168631716) | M. [647 262 7741](tel:6472627741)

[BennettJones.com](https://www.bennettjones.com)



From: Levine, Natalie <nlevine@cassels.com>

Sent: Friday, July 5, 2024 3:06 PM

To: Mike Shakra <ShakraM@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>

Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Pendrith, Colin <cpendrith@cassels.com>

Subject: BZAM

Do you guys have 15 minutes to discuss the stay extension this afternoon or this weekend?



NATALIE E. LEVINE *(she/her/hers)*

Partner

t: +1 416 860 6568

m: +1 416 786 1552

e: nlevine@cassels.com

Cassels Brock & Blackwell LLP | [cassels.com](https://www.cassels.com)

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40 Temperance St.
Toronto, ON Canada M5H 0B4 Canada
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TAB 5

SECOND AMENDMENT
dated as of August 21, 2024
to
DIP FACILITY AGREEMENT

THIS SECOND AMENDMENT dated as of August 21, 2024 (this “**Amendment**”) is entered into among The Green Organic Dutchman Ltd. (the “**Borrower**”), each of the other signatories party hereto (collectively, the “**Guarantors**” and together with the Borrower, collectively, the “**Credit Parties**”), and Cortland Credit Lending Corporation, in its capacity as administrative agent for and on behalf of certain lenders (the “**DIP Lender**”).

WHEREAS the Credit Parties and the DIP Lender are parties to a DIP facility agreement dated February 28, 2024, made effective pursuant to the Initial Order, as amended pursuant to the first amendment dated July 12, 2024 (the “**First Amendment**”) (as it may be further amended, restated, supplemented or otherwise modified from time to time, the “**DIP Facility Agreement**”).

AND WHEREAS capitalized terms used herein but not otherwise defined shall have the meanings given to such terms in the DIP Facility Agreement.

AND WHEREAS the ongoing litigation brought by Final Bell Holdings International Ltd. against the Credit Parties before the Court (the “**FBC Litigation**”) constitutes an Event of Default under the DIP Facility Agreement.

AND WHEREAS the Credit Parties and the DIP Lender have agreed to amend the First Amendment and the DIP Facility Agreement, from and after the Amendment Effective Date (as hereinafter defined), on the terms and conditions more particularly described herein.

NOW THEREFORE, in consideration of the premises and mutual agreements contained herein and in the DIP Facility Agreement, the parties hereto agree as follows:

ARTICLE 1 – AMENDMENTS

- 1.1 As of the Amendment Effective Date, Section 3.1 of the First Amendment is hereby deleted in its entirety and replaced with the following:

“Effectiveness. Article 1 of this Amendment shall become effective on the date this Amendment is executed by all parties to the Amendment (the “**Amendment Effective Date**”).”

- 1.2 As of the Amendment Effective Date, Section 3.18 of the DIP Facility Agreement is hereby amended by replacing the date “August 28, 2024” with the date “October 15, 2024”.

ARTICLE 2 – REPRESENTATIONS AND WARRANTIES

- 2.1 Each Credit Party hereby represents and warrants that:
- (a) the representations and warranties made by it in the DIP Facility Agreement and any other Transaction Document to which it is a party, other than those expressly stated to be made as of a specific date, are true and correct in all material respects as of the date hereof with the same effect as if such representations and warranties had been made on and as of the date hereof; and

- (b) no Event of Default has occurred which is continuing (other than the FBC Litigation and the other actions, suits and/or proceedings identified in item numbers 9 and 10 of Schedule “E” of the DIP Facility Agreement) on the date hereof or will occur as a result of entering into this Amendment or the observance or performance of its obligations hereunder.

ARTICLE 3 – MISCELLANEOUS

- 3.1 Effectiveness. Article 1 of this Amendment shall become effective on the date this Amendment is executed by all parties to the Amendment (the “**Amendment Effective Date**”).
- 3.2 References to DIP Facility Agreement. Upon the effectiveness of this Amendment, each reference in the DIP Facility Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import shall mean and be a reference to the DIP Facility Agreement as amended by this Amendment, and each reference to the DIP Facility Agreement in any other document, instrument or agreement executed and/or delivered in connection with the DIP Facility Agreement shall mean and be a reference to the DIP Facility Agreement as amended by this Amendment.
- 3.3 Effect on DIP Facility Agreement. The DIP Facility Agreement, as amended and modified hereby, and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed.
- 3.4 No Waiver. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the DIP Lender under the DIP Facility Agreement or any other document, instrument or agreement executed in connection therewith, nor constitute a waiver of any provision contained therein, except as specifically set forth herein. Without limiting the foregoing, the Credit Parties acknowledge and agree that the DIP Lender has not waived any Event of Default that may exist under the DIP Facility Agreement, including any Event of Default arising from or relating to the FBC Litigation or the other actions, suits and/or proceedings identified in item numbers 9 and 10 of Schedule “E” of the DIP Facility Agreement.
- 3.5 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 3.6 Successors and Assigns. This Amendment shall enure to the benefit of the parties hereto and their respective successors and assigns and be binding upon the parties hereto and their respective successors and assigns in accordance with the DIP Facility Agreement.
- 3.7 Headings. The section headings in this Amendment are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Amendment or any provision hereof.
- 3.8 Counterparts. This Amendment may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. Delivery by email of an executed signature page of this Amendment shall be as effective as delivery of an original executed counterpart thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties hereto have executed this Amendment.

BORROWER:

THE GREEN ORGANIC DUTCHMAN LTD.

By: 
Name: Matt Milich
Title: Director

GUARANTORS:

BZAM LTD.

By: 
Name: Matt Milich
Title: Director

BZAM HOLDINGS INC.

By: 
Name: Matt Milich
Title: Director

BZAM MANAGEMENT INC.

By: 
Name: Matt Milich
Title: Director

BZAM CANNABIS CORP.

By: 
Name: Matt Milich
Title: Director

FOLIUM LIFE SCIENCE INC.

By: 
Name: Matt Milich
Title: Director

102172093 SASKATCHEWAN LTD.

By: 
Name: Matt Milich
Title: Director

MEDICAN ORGANIC INC.

By: 
Name: Matt Milich
Title: Director

HIGH ROAD HOLDING CORP.

By: 
Name: Matt Milich
Title: Director

FINAL BELL CORP.

By: 
Name: Matt Milich
Title: Director

DIP LENDER:

**CORTLAND CREDIT LENDING
CORPORATION**

By: 
Name: Sean Register
Title: Chief Executive Officer

This is
Exhibit No. 4
on the examination of:
Deepak Alappatt in
_____ v _____
held on September 4, 2024
VICTORY VERBATIM
Reporting Services
Toronto, Ont.

TAB 6

Located in the Attachments Tab

TAB 7



From: [Preet Parmar](#)
To: [Cloris Yang](#)
Cc: [Deepak Alappatt](#); [Kristine Armada](#); [Sean Bovingdon](#); [Keith Merker](#); [Bruce Sherk](#)
Subject: Advance request - March 22, 2024
Date: March-25-24 2:00:56 PM
Attachments: [bzam_39434bcc-7873-4e07-a88a-62774a4ece1e.png](#)
[Advance Request 2024_03_22 signed.pdf](#)

Hi all,

Please see the Advance Request for this week attached.

Thank you,

Preet Parmar

CORPORATE CONTROLLER

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518/519 - 19100 Airport Way, Pitt Meadows, British Columbia V6C 3L6



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ADVANCE REQUEST CERTIFICATE

Pursuant to the provisions of the amended and restated credit agreement dated September 30, 2021 (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) (terms defined therein being used herein as so defined), between, *inter alia*, The Green Organic Dutchman Ltd. (the “**Borrower**”) and Cortland Credit Lending Corporation, as administrative agent (the “**Agent**”), the undersigned, being an officer or director of the Borrower hereby represents, warrants and certifies in such capacity, and not in her or his personal capacity, as follows:

1. **Representations and Warranties.** The representations and warranties of the Borrower and the other Obligor set forth in the Credit Agreement, or which are contained in any certificate, document or financial or other written statement furnished pursuant to or in connection with the Credit Agreement, including the other Transaction Documents are accurate and complete in all material respects on and as of the date hereof with the same effect as if made on the date hereof, except to the extent specified in the Credit Agreement or Transaction Documents to be made as of a specific date.
2. **No Material Adverse Change.** Since the date of the latest financial statements of the Borrower provided to the Agent in connection with the Transaction Documents, no Material Adverse Change has occurred.
3. **No Default.** No Default or Event of Default has occurred or is continuing, other than the breach of Section 8(ii) of the Credit Agreement, which has been disclosed to but not waived by the Agent and is the subject of ongoing discussion.
4. **Conditions Precedent.** The conditions precedent to this Loan Advance in accordance with the Credit Agreement have been satisfied.
5. **Loan Advance.** The Borrower hereby requests, authorizes, and instructs the Agent to drawdown and advance under the Revolving Facility the amount of CDN \$4,267,000 to the Borrower on March 26, 2024.

DATED March 25, 2024

BZAM LTD

DocuSigned by:



ED78A780251C4ED...

Per:

Name: Matthew Milich

Title: CEO

BZAM LTD**Borrowing Base Calculation****March 22, 2024**

	TGOD CAD	BZAM CAD	Final Bell CAD	Total CAD
ACCOUNTS RECEIVABLE				
Gross Accounts Receivable	3,760,925	3,921,373	6,993,869	14,676,167
Less: Amounts received already included in AR				-
Less: Amounts collected not yet flushed into Acc.849	-	-	-	-
Add: Delivered but unbilled AR	-	-	-	-
Net Accounts Receivable	3,760,925	3,921,373	6,993,869	14,676,167
Less:				
Accounts specifically excluded by Cortland	1,712,776	1,038,977	2,233,734	4,985,487
> 90 days past invoice date	(17,934)	(1,451)	32,559	13,174
> 90 days past invoice date - collected but included in AR	-	-	-	-
Past Due Credits	19,561	1,451	-	21,012
Crossaging Rule @ 50%	-	-	-	-
Contra Accounts	-	7,829	1,250	9,079
Customer Deposits	-	-	-	-
Volume Rebates	-	-	-	-
Total Ineligible	1,714,403	1,046,805	2,267,543	5,028,751
	<i>46%</i>	<i>27%</i>	<i>32%</i>	<i>34%</i>
Total Eligible Accounts Receivable	2,046,523	2,874,568	4,726,325	9,647,416
Rate of Advance	85.00%	85.00%	85.00%	
Total Accounts Receivable Available	1,739,544	2,443,383	4,017,377	8,200,304
INVENTORIES				
Total Finished Goods Inventory	3,576,124	-	-	3,576,124
Total Ineligible Finished Goods Inventory	257,184	-	-	257,184
Total Eligible Finished Goods Inventory	3,318,940	-	-	3,318,940
Rate of Advance	25.00%	25.00%	25.00%	75.00%
Total Finished Goods Inventory Available	829,735	-	-	829,735
Less:				
WEPPA	502,000	228,000	80,000	810,000
Sales taxes	-	-	-	-
Additional excise estimate	-	-	-	-
Additional payroll estimate	-	-	-	-
Total Priority Payables	502,000	228,000	80,000	810,000
Net Available Collateral (before items below)	2,067,279	2,215,383	3,937,377	8,220,039
Less: DIP Balance	\$ -			\$ -
Net Available Collateral (before over-advance)	2,067,279	2,215,383	3,937,377	8,220,039
Net Available Collateral (before over-advance)			[a] 8,220,039	
Over-advance (\$3M + pre-filing term loan balance)			23,611,427	
Net Available Collateral			(i) 31,831,466	
Available DIP			(ii) 9,831,274	
Cash Flow Need			(iii) 4,267,000	
Maximum Draw from DIP		<i>Lower of (i),(ii)</i>	4,267,000	

TAB 8



From: [Preet Parmar](#)
To: [Cloris Yang](#)
Cc: [Deepak Alappatt](#); [Kristine Armada](#); [Sean Bovingdon](#); [Keith Merker](#); [Bruce Sherk](#); [Matthew Milich](#); [Vithyanathan, Adsaran](#); kamran.hamidi@fticonsulting.com
Subject: Advance Request - week of March 29, 2024
Date: April-01-24 12:44:58 PM
Attachments: [bzam_39434bcc-7873-4e07-a88a-62774a4ece1e.png](#)
[Advance request 2024 02 29 signed.pdf](#)

Hi Cloris,

Please see the signed Advance Request for this week attached.

Thank you,

Preet Parmar

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ADVANCE REQUEST CERTIFICATE

Pursuant to the provisions of the amended and restated credit agreement dated September 30, 2021 (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) (terms defined therein being used herein as so defined), between, *inter alia*, The Green Organic Dutchman Ltd. (the “**Borrower**”) and Cortland Credit Lending Corporation, as administrative agent (the “**Agent**”), the undersigned, being an officer or director of the Borrower hereby represents, warrants and certifies in such capacity, and not in her or his personal capacity, as follows:

1. **Representations and Warranties.** The representations and warranties of the Borrower and the other Obligors set forth in the Credit Agreement, or which are contained in any certificate, document or financial or other written statement furnished pursuant to or in connection with the Credit Agreement, including the other Transaction Documents are accurate and complete in all material respects on and as of the date hereof with the same effect as if made on the date hereof, except to the extent specified in the Credit Agreement or Transaction Documents to be made as of a specific date.
2. **No Material Adverse Change.** Since the date of the latest financial statements of the Borrower provided to the Agent in connection with the Transaction Documents, no Material Adverse Change has occurred.
3. **No Default.** No Default or Event of Default has occurred or is continuing, other than the breach of Section 8(ii) of the Credit Agreement, which has been disclosed to but not waived by the Agent and is the subject of ongoing discussion.
4. **Conditions Precedent.** The conditions precedent to this Loan Advance in accordance with the Credit Agreement have been satisfied.
5. **Loan Advance.** The Borrower hereby requests, authorizes, and instructs the Agent to drawdown and advance under the Revolving Facility the amount of CDN \$3,072,000 to the Borrower on April 2, 2024.

DATED April 1, 2024

BZAM LTD

DocuSigned by:



ED78A780251C4ED...

Per:

Name: Matthew Milich

Title: CEO

BZAM LTD**Borrowing Base Calculation****March 29, 2024**

	TGOD CAD	BZAM CAD	Final Bell CAD	Total CAD
ACCOUNTS RECEIVABLE				
Gross Accounts Receivable	3,712,874	3,667,576	7,924,133	15,304,584
Less: Amounts received already included in AR				-
Less: Amounts collected not yet flushed into Acc.849	-	-	-	-
Add: Delivered but unbilled AR	-	-	-	-
Net Accounts Receivable	3,712,874	3,667,576	7,924,133	15,304,584
Less:				
Accounts specifically excluded by Cortland	1,727,272	934,385	3,007,685	5,669,342
> 90 days past invoice date	(11,773)	(1,451)	-	(13,224)
> 90 days past invoice date - collected but included in AR	-	-	-	-
Past Due Credits	15,565	1,451	-	17,016
Crossaging Rule @ 50%	-	-	-	-
Contra Accounts	-	-	-	-
Customer Deposits	-	-	-	-
Volume Rebates	-	-	-	-
Total Ineligible	1,731,064	934,385	3,007,685	5,673,134
	47%	25%	38%	37%
Total Eligible Accounts Receivable	1,981,810	2,733,192	4,916,448	9,631,450
Rate of Advance	85.00%	85.00%	85.00%	
Total Accounts Receivable Available	1,684,539	2,323,213	4,178,981	8,186,733
INVENTORIES				
Total Finished Goods Inventory	3,439,569	-	-	3,439,569
Total Ineligible Finished Goods Inventory	283,675	-	-	283,675
Total Eligible Finished Goods Inventory	3,155,893	-	-	3,155,893
Rate of Advance	25.00%	25.00%	25.00%	75.00%
Total Finished Goods Inventory Available	788,973	-	-	788,973
Less:				
WEPPA	502,000	228,000	80,000	810,000
Sales taxes	-	-	-	-
Additional excise estimate	-	-	-	-
Additional payroll estimate	-	-	-	-
Total Priority Payables	502,000	228,000	80,000	810,000
Net Available Collateral (before items below)	1,971,512	2,095,213	4,098,981	8,165,706
Less: DIP Balance	\$ -			\$ -
Net Available Collateral (before over-advance)	1,971,512	2,095,213	4,098,981	8,165,706
Net Available Collateral (before over-advance)			[a] 8,165,706	
Over-advance (\$3M + pre-filing term loan balance)			23,611,427	
Net Available Collateral			(i) 31,777,133	
Available DIP			(ii) 5,681,277	
Cash Flow Need			(iii) 3,072,000	
Maximum Draw from DIP		Lower of (i),(ii)	3,072,000	

TAB 9

From: [Preet Parmar](#)
To: [Cloris Yang](#)
Cc: [Deepak Alappatt](#); [Kristine Armada](#); [Sean Bovingdon](#); [Keith Merker](#); [Bruce Sherk](#); [Matthew Milich](#); [Vithiyananthan, Adsaran](#); kamran.hamidi@fticonsulting.com; [Rosenberg, Jeffrey](#)
Subject: Advance Request - week of May 10, 2024
Date: May-10-24 6:36:01 PM
Attachments: [bzam_39434bcc-7873-4e07-a88a-62774a4ece1e.png](#)
[Advance request 2024_05_10 - signed.pdf](#)

Hi Cloris,

Please see the signed Advance Request attached.

Thank you,

Preet Parmar

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ADVANCE REQUEST CERTIFICATE

Pursuant to the provisions of the amended and restated credit agreement dated September 30, 2021 (as it may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") (terms defined therein being used herein as so defined), between, *inter alia*, The Green Organic Dutchman Ltd. (the "**Borrower**") and Cortland Credit Lending Corporation, as administrative agent (the "**Agent**"), the undersigned, being an officer or director of the Borrower hereby represents, warrants and certifies in such capacity, and not in her or his personal capacity, as follows:

1. **Representations and Warranties.** The representations and warranties of the Borrower and the other Obligor set forth in the Credit Agreement, or which are contained in any certificate, document or financial or other written statement furnished pursuant to or in connection with the Credit Agreement, including the other Transaction Documents are accurate and complete in all material respects on and as of the date hereof with the same effect as if made on the date hereof, except to the extent specified in the Credit Agreement or Transaction Documents to be made as of a specific date.
2. **No Material Adverse Change.** Since the date of the latest financial statements of the Borrower provided to the Agent in connection with the Transaction Documents, no Material Adverse Change has occurred.
3. **No Default.** No Default or Event of Default has occurred or is continuing, other than the breach of Section 8(ii) of the Credit Agreement, which has been disclosed to but not waived by the Agent and is the subject of ongoing discussion.
4. **Conditions Precedent.** The conditions precedent to this Loan Advance in accordance with the Credit Agreement have been satisfied.
5. **Loan Advance.** The Borrower hereby requests, authorizes, and instructs the Agent to drawdown and advance under the Revolving Facility the amount of CDN \$2,556,000 to the Borrower on May 14, 2024.

DATED May 13, 2024

BZAM LTD

Keith Merker
Keith Merker (May 10, 2024 17:25 EDT)

Per:

Name: Keith Merker

Title: CFO

BZAM LTD**Borrowing Base Calculation**

May 10, 2024

	TGOD CAD	BZAM CAD	Final Bell CAD	Total CAD
ACCOUNTS RECEIVABLE				
Gross Accounts Receivable	3,651,634	2,591,224	10,761,212	17,004,071
Less: Amounts received already included in AR	-	-	-	-
Less: Amounts collected not yet flushed into Acc.849	-	-	-	-
Add: Delivered but unbilled AR	-	-	-	-
Net Accounts Receivable	3,651,634	2,591,224	10,761,212	17,004,071
Less:				-
Accounts specifically excluded by Cortland	1,197,506	1,343,729	1,134,659	3,675,895
> 90 days past invoice date	(108,551)	-	-	(108,551)
> 90 days past invoice date - collected but included in AR	-	-	-	-
Past Due Credits	108,551	-	-	108,551
Crossaging Rule @ 50%	-	-	-	-
Contra Accounts	-	-	-	-
Customer Deposits	-	-	-	-
Volume Rebates	-	-	-	-
Total Ineligible	1,197,506	1,343,729	1,134,659	3,675,895
	33%	52%	11%	0
Total Eligible Accounts Receivable	2,454,128	1,247,494	9,626,553	13,328,176
Rate of Advance	85.00%	85.00%	85.00%	
Total Accounts Receivable Available	2,086,009	1,060,370	8,182,570	11,328,950
INVENTORIES				
Total Finished Goods Inventory	2,128,728	-	-	2,128,728
Total Ineligible Finished Goods Inventory	234,308	-	-	234,308
Total Eligible Finished Goods Inventory	1,894,420	-	-	1,894,420
Rate of Advance	25.00%	25.00%	25.00%	75.00%
Total Finished Goods Inventory Available	473,605	-	-	473,605
Less:				
WEPPA	472,000	206,000	78,000	756,000
Sales taxes	-	-	-	-
Additional excise estimate	-	-	-	-
Additional payroll estimate	-	-	-	-
Total Priority Payables	472,000	206,000	78,000	756,000
Net Available Collateral (before items below)	2,087,614	854,370	8,104,570	11,046,554
Less: DIP Balance	\$ -			\$ -
Net Available Collateral (before over-advance)	2,087,614	854,370	8,104,570	11,046,554
Net Available Collateral (before over-advance)			[a]	11,046,554
Over-advance (\$3M + pre-filing term loan balance)				23,611,427
Net Available Collateral			(i)	34,657,981
Available DIP			(ii)	7,425,133
Cash Flow Need			(iii)	2,556,000
Maximum Draw from DIP			<i>Lower of (i),(ii)</i>	2,556,000

TAB 10



From: [Preet Parmar](#)
To: [Cloris Yang](#)
Cc: [Deepak Alappatt](#); [Kristine Armada](#); [Sean Bovingdon](#); [Keith Merker](#); [Bruce Sherk](#); [Matthew Milich](#); [Vithyanathan, Adsaran](#); kamran.hamidi@fticonsulting.com; [Rosenberg, Jeffrey](#)
Subject: Advance Request - week of May 17, 2024
Date: May-17-24 4:00:32 PM
Attachments: [bzam_39434bcc-7873-4e07-a88a-62774a4ece1e.png](#)
[Advance request 2024_05_17 - signed.pdf](#)

Hi Cloris,

Please see the signed Advance Request attached.

Thank you,

Preet Parmar

CORPORATE CONTROLLER

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3. **No Default.** No Default or Event of Default has occurred or is continuing, other than the breach of Section 8(ii) of the Credit Agreement, which has been disclosed to but not waived by the Agent and is the subject of ongoing discussion.
4. **Conditions Precedent.** The conditions precedent to this Loan Advance in accordance with the Credit Agreement have been satisfied.
5. **Loan Advance.** The Borrower hereby requests, authorizes, and instructs the Agent to drawdown and advance under the Revolving Facility the amount of CDN \$1,548,000 to the Borrower on May 21, 2024.

DATED May 17, 2024

BZAM LTD

Keith Merker
Keith Merker (May 17, 2024 15:58 EDT)

Per:

Name: Keith Merker

Title: CFO

BZAM LTD

Borrowing Base Calculation

May 17, 2024

	TGOD CAD	BZAM CAD	Final Bell CAD	Total CAD
ACCOUNTS RECEIVABLE				
Gross Accounts Receivable	3,686,031	2,431,602	10,729,846	16,847,479
Less: Amounts received already included in AR				-
Less: Amounts collected not yet flushed into Acc.849	-	-	-	-
Add: Delivered but unbilled AR	-	-	-	-
Net Accounts Receivable	3,686,031	2,431,602	10,729,846	16,847,479
Less:				
Accounts specifically excluded by Cortland	1,168,789	1,409,469	1,343,495	3,921,754
> 90 days past invoice date	(108,551)	(58)	-	(108,609)
> 90 days past invoice date - collected but included in AR	-	-	-	-
Past Due Credits	108,551	58	-	108,609
Crossaging Rule @ 50%	-	-	-	-
Contra Accounts	-	-	-	-
Customer Deposits	-	-	-	-
Volume Rebates	-	-	-	-
Total Ineligible	1,168,789	1,409,469	1,343,495	3,921,754
	32%	58%	13%	0
Total Eligible Accounts Receivable	2,517,242	1,022,133	9,386,351	12,925,726
Rate of Advance	85.00%	85.00%	85.00%	
Total Accounts Receivable Available	2,139,655	868,813	7,978,398	10,986,867
INVENTORIES				
Total Finished Goods Inventory	1,436,549	-	-	1,436,549
Total Ineligible Finished Goods Inventory	278,601	-	-	278,601
Total Eligible Finished Goods Inventory	1,157,948	-	-	1,157,948
Rate of Advance	25.00%	25.00%	25.00%	75.00%
Total Finished Goods Inventory Available	289,487	-	-	289,487
Less:				
WEPPA	472,000	206,000	78,000	756,000
Sales taxes	-	-	-	-
Additional excise estimate	-	-	-	-
Additional payroll estimate	-	-	-	-
Total Priority Payables	472,000	206,000	78,000	756,000
Net Available Collateral (before items below)	1,957,142	662,813	7,900,398	10,520,354
Less: DIP Balance	\$ -			\$ -
Net Available Collateral (before over-advance)	1,957,142	662,813	7,900,398	10,520,354
Net Available Collateral (before over-advance)			[a]	10,520,354
Over-advance (\$3M + pre-filing term loan balance)				23,611,427
Net Available Collateral			(i)	34,131,781
Available DIP			(ii)	7,606,486
Cash Flow Need			(iii)	1,548,000
Maximum Draw from DIP			<i>Lower of (i),(ii)</i>	1,548,000

TAB B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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
BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM CANNABIS CORP., FOLIUM LIFE SCIENCE
INC., 102172093 SASKATCHEWAN LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC.,
HIGH ROAD HOLDING CORP. AND FINAL BELL CORP.**

Applicants

**UNDERTAKINGS, UNDER ADVISEMENTS AND REFUSALS GIVEN AT THE CROSS-EXAMINATION OF
DEEPAK ALAPPATT, HELD SEPTEMBER 4, 2024**

UNDERTAKINGS				
No.	Page	Ques.	Question	Answer
1.	8	26	To provide the last name for James, who is a minority shareholder at Cortland.	

UNDERTAKINGS				
No.	Page	Ques.	Question	Answer
2.	66-67	282	To advise of the best available date as to when the Final Bell Canada assets had been incorporated into the collateral consideration for the borrowing base certificate (Exhibit 2 to the examination).	

UNDER ADVISEMENTS				
No.	Page	Ques.	Question	Answer
1.	43	181	To advise if Mr. Alappatt is aware that BZAM did not segregate excise taxes in a separate account, separate and apart from the collection account (Exhibit D to the Alappatt August 6 th Affidavit).	
2.	50-51	211	To advise if the expectation within Cortland was if BZAM became aware of facts or a situation that would be an event of default, its expectations were that BZAM would notify Cortland of that event (s. 8(c), Exhibit D to the Alappatt August 6 th Affidavit).	
3.	64-65	273-274	To advise how long it takes before the assets are incorporated into BZAM's borrowing base (Exhibit 2 to the examination).	
4.	67-68	290	To review the record and provide the weekly borrowing base report that is either immediately before or on Friday, January 5, or provide the amount of the maximum credit that was available to BZAM under the credit agreement as of January 5, 2024 (Exhibit 2 to the examination).	

UNDER ADVISEMENTS				
No.	Page	Ques.	Question	Answer
5.	83-84	356-357	To advise if there is written communication from BZAM to Cortland informing Cortland that Final Bell's claim was or could be a material adverse change under the DIP agreement, and to produce same (s. 3.10, Exhibit I to the Alappatt August 6th Affidavit).	
6.	89	374	To produce any notes from the status calls whereby the event of default issue or a material adverse change issue is discussed.	
7.	89-90	375	Further to UA # 5, to produce any communication from BZAM that the Final Bell claim could be an event of default.	
8.	90	377	Further to UA #7, to advise of the date of the document, if Cortland won't produce the document.	
9.	97	404	To produce the borrowing base certificate delivered to support the request for the advance on January 8, 2024 (Exhibit 2 to the examination).	
10.	97	405	To produce the borrowing base certificate delivered to support the request for the advance on January 15, 2024 (Exhibit 2 to the examination).	
11.	98	406	To produce the borrowing base certificate delivered to support the request for the advance on March 19, 2024 (Exhibit 2 to the examination).	
12.	98	407	To produce the borrowing base certificate delivered to support the request for the advance on March 26, 2024 (Exhibit 2 to the examination).	
13.	98	408	To produce the borrowing base certificate delivered to support the request for the advance on May 14, 2024 (Exhibit 2 to the examination).	

REFUSALS				
No.	Page	Ques.	Question	Answer
1.	37-38	159	To produce the written correspondence or communications setting out the advice that Cortland received from its counsel concerning the terms of the Initial Order and the Amended Restated Initial Order as it affects the DIP agreement (para. 16 of the Alappatt August 6 th Affidavit).	
2.	46	194	To advise if Mr. Alappatt has any understanding whether or not the representation and warranty at s. 6(q), Exhibit D to the Alappatt August 6 th Affidavit (the First ARCA), also applies to excise taxes.	
3.	47	200	To advise if the accounts payable summary included a line item for excise taxes (s. 7(a)(vi), Exhibit D to the Alappatt August 6 th Affidavit).	
4.	48	202	To advise if the accounts payable summary included a line item for excise tax items due and payable (s. 7(a)(vi), Exhibit D to the Alappatt August 6 th Affidavit).	
5.	50	207	To advise if Mr. Alappatt understands that Cortland required BZAM to pay excise taxes when they became due and payable (s. 8(d), Exhibit D to the Alappatt August 6 th Affidavit).	
6.	52	217	To advise at the time that Cortland agreed to the sixth agreement to the First Amended and Restated Credit Agreement (" ARCA "), to Mr. Alappatt's knowledge, was anyone else at Cortland aware that BZAM had entered into an excise tax arrears payment plan with the CRA in July 2023 (pg. 338 of Cortland's motion record, Exhibit D to the Alappatt August 6 th Affidavit).	

REFUSALS				
No.	Page	Ques.	Question	Answer
7.	53	220	To advise if the fact of the arrears was disclosed to Cortland before BZAM entered into its payment plan with the CRA (pg. 338 of Cortland's motion record, Exhibit D to the Alappatt August 6 th Affidavit).	
8.	53	221	To advise if Cortland's authorization or approval was required before BZAM entered into the payment plan with the CRA in July 2023 (pg. 338 of Cortland's motion record, Exhibit D to the Alappatt August 6 th Affidavit).	
9.	53	222	To advise when Cortland became aware of the payment plan, if Cortland wasn't aware prior to the entering into of the sixth amendment (pg. 338 of Cortland's motion record, Exhibit D to the Alappatt August 6 th Affidavit).	
10.	53	223	To advise what Cortland did about the excise tax arrears payment plan, if Cortland wasn't aware of the payment plan prior to the entering into of the sixth amendment (pg. 338 of Cortland's motion record, Exhibit D to the Alappatt August 6 th Affidavit).	
11.	57	243	To advise whether the weekly accounts payable summary required under s. 7(a)(vi) of the second ARCA included a line item for excise taxes (Exhibit E to the Alappatt August 6 th Affidavit).	
12.	57-58	244	To produce the weekly reports under the first and second ARCAs that were delivered by BZAM to Cortland for the periods spanning November and December 2023 and January 2024 (Exhibit E to the Alappatt August 6 th Affidavit).	

REFUSALS				
No.	Page	Ques.	Question	Answer
13.	58	246	To advise if, at some point in time, whether it is in November or December 2023, January 2024, or some time afterwards, Mr. Alappatt became aware that BZAM had not paid its October and November 2023 excise taxes when those taxes were due (Exhibit E to the Alappatt August 6th Affidavit).	
14.	62	259	To advise if it would be Cortland's understanding or Mr. Alappatt's understanding that the failure of BZAM to pay excise taxes when those taxes are due and payable, that the failure would be an event of default under the first or second ARCA.	
15.	76	322	To advise if Mr. Alappatt understood at the time the DIP agreement was negotiated and/or entered into, that Cortland was in agreement that funds advanced under the DIP could be used to pay any payables owed by BZAM that would rank ahead of Cortland (s. 3.1, Exhibit I to the Alappatt August 6th Affidavit).	
16.	80	343	To advise if Cortland keeps notes or minutes of the status calls with BZAM (s. 3.10, Exhibit I to the Alappatt August 6th Affidavit).	
17.	81-82	350	To search for and produce any notes of any of Cortland's status calls with BZAM concerning its discussions with BZAM of the Final Bell claim (s. 3.10, Exhibit I to the Alappatt August 6th Affidavit).	
18.	82-83	352	To advise if, to Mr. Alappatt's knowledge, BZAM provided a draft or drafts of its March 18 motion record to Cortland before it was served on the parties to this proceeding (s. 3.11, Exhibit I to the Alappatt August 6th Affidavit).	

REFUSALS				
No.	Page	Ques.	Question	Answer
19.	91	382	To confirm that during the discussion between Cortland and BZAM that Cortland's initial position was it only wanted to extend the DIP agreement for 7-10 days when it expired on July 15, 2024 (Exhibit 3 to the examination).	
20.	91-93	383	To confirm that it was Cortland's position prior to the delivery of the July 7 th email from Mr. Shakra, at Exhibit A to the examination, that it only wanted to extend the DIP facility by 7-10 days.	
21.	118	491	To advise if Mr. Alappatt was given a legal opinion that said there was no chance that Final Bell would be able to prime Cortland.	
22.	118	492	To advise if Mr. Alappatt made the decision that Final Bell wouldn't be able to prime Cortland based on the assistance of any legal advice.	
23.	119	497	To agree that a sale of BZAM to the stalking horse bidder under the stalking horse bid would terminate Cortland's obligation to fund BZAM's operations under the DIP.	
24.	120	501	To advised, as part of the considerations in May 2024, if Cortland discussed whether it would withhold its support of the stalking horse bid.	

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102172093 SASKATCHEWAN LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD
HOLDING CORP. AND FINAL BELL CORP.**

Applicants

Court File No. CV-24-00715773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTARY TRANSCRIPT BRIEF OF
FINAL BELL HOLDINGS INTERNATIONAL LTD.**

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