

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
NANOPAY CORPORATION  
OF THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO**

---

**SECOND REPORT TO COURT OF THE PROPOSAL TRUSTEE**

---

July 31, 2023

**LOOPSTRA NIXON LLP**  
130 Adelaide St. W., Suite 2800  
Toronto, ON M5H 0A1

**R. Graham Phoenix**  
Tel: (416) 748.4776  
Email: [gphoenix@loonix.com](mailto:gphoenix@loonix.com)

**Shahrzad Hamraz**  
Email: [shamraz@loonix.com](mailto:shamraz@loonix.com)

*Lawyers for the Proposal Trustee*

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
NANOPAY CORPORATION  
OF THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO**

**SECOND REPORT TO COURT OF THE PROPOSAL TRUSTEE**

**DATED JULY 31, 2023**

## INTRODUCTION

1. On May 19, 2022 (the “**Filing Date**”), Nanopay Corporation (“**Debtor**” or the “**Company**”) filed with the Official Receiver a Notice of Intention to Make a Proposal (“**NOI**”) to its creditors pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and named Dodick Landau Inc. as Proposal Trustee (the “**Proposal Trustee**”). Attached as **Appendix “A”** is the Certificate of Filing of the NOI.
2. On June 16, 2023, the Debtor sought an order which, among other things:
  - a) approved the extension of the time for the Debtor to file a proposal to August 2, 2023;
  - b) authorized the Debtor to borrow under a credit facility (the “**DIP Loan Facility**”) from Nephesh Partners, LLC (the “**DIP Lender**”) to finance the Debtor’s working capital requirements and professional fees, and a corresponding charge over the property of the Debtor in favour of the DIP Lender; and
  - c) appointed David Kay, in his capacity as CEO of Ao8 Strategic Advisors, as Chief Restructuring Officer of the Company.
3. The relief sought by the Debtor was granted (the “**June 16th Order**”). However, as service of the Debtor’s motion material was short, the Court directed the matter to be returned to Court for a case conference on June 23, 2023, to advise the Court whether any parties served objected to any of the relief sought by the Debtor. In the interim, the Court ordered that the advance under the DIP Loan Facility be limited to \$275,000 in the aggregate. Copies of the June 16<sup>th</sup> Order and Endorsement are attached as **Appendix “B”**.
4. On June 23, 2023, the Court authorized advances under the DIP Loan Facility up to the maximum principal amount of \$2,000,000. A copy of the Court’s June 23, 2023 endorsement is attached as **Appendix “C”**.

5. All capitalized terms used in this second report (the “**Report**”) of the Proposal Trustee but not otherwise defined shall have the meaning ascribed to such terms in the affidavit of Laurence Cooke sworn July 31, 2023, included in the Debtor’s motion material.
6. This Report is made in connection with the motion of the Debtor to extend the time for filing a proposal and extend the stay of proceedings granted upon the filing of the NOI, for a period of 19-days to, and including, August 21, 2023.

## TERMS OF REFERENCE

7. In preparing this Report, the Proposal Trustee has relied upon certain unaudited, draft and/or internal financial information, the Debtor’s books and records, discussions with the management of the Debtor (“**Management**”) and information from other third-party sources (collectively, the “**Information**”).
8. Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“**GAAS**”) pursuant to the Canadian Institute of Chartered Accountants Handbook (the “**CPA Handbook**”) and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
9. Some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the CPA Handbook, has not been performed. Future oriented financial information referred to in this Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations may be material.
10. The Proposal Trustee has prepared this Report in its capacity as a Court appointed officer and has made a copy of this Report available on the Proposal Trustee’s website at [www.dodick.ca](http://www.dodick.ca) for purposes of the Debtor’s motion returnable August 1, 2023. Parties using this Report, other than for the purpose of the motion, are cautioned that it may not be appropriate for their purposes.
11. All references to dollars are in Canadian currency unless otherwise noted.

## EXTENSION OF STAY OF PROCEEDINGS

12. The Debtor is seeking an extension of the time for the filing of the proposal up to and including August 21, 2023, for a total of 19-days, based on the DIP Lender advising it will make available Subsequent Advances (as defined in the DIP Loan Facility) to fund operations throughout the period of the stay extension.
13. The stay extension is required to provide the Debtor with the necessary time to preserve its business on a going concern basis for the benefit of its stakeholders and to formulate a restructuring plan to present to its creditors. The Proposal Trustee is of the view that the Debtor is acting in good faith and with due diligence in formulating and implementing a restructuring plan that would preserve its business for the benefit of its stakeholders.
14. Without the requested extension of the stay period being granted, the Debtor is not able to make a viable proposal to its creditors and will then become bankrupt to the detriment of its stakeholders.
15. In contrast, no creditor will be materially prejudiced if the extension applied for is granted. If the extension applied for is granted, with the continued support from the DIP lender, the Debtor would likely be able to make a viable proposal to its creditors.

## NANOPAY'S WEEKLY CASH FLOW FORECAST

16. The Debtor, with the assistance of the Proposal Trustee, has prepared a weekly cash flow forecast for the period from July 24, 2023, to August 21, 2023 ("**Cash Flow Forecast**"). A copy of the Cash Flow Forecast is attached hereto as **Appendix "D"** to this Report. The Cash Flow Forecast has been prepared by Management of the Debtor for the purpose of this motion, using probable and hypothetical assumptions set out in notes 1 to 8 attached to the Cash Flow Forecast. The Cash Flow Forecast reflects receipts and disbursements to be received or paid over a four-week forecast period in Canadian dollars.
17. The Cash Flow Variance, also contained in **Appendix "D"**, reflects the forecast cash flow relative to the actual cash flow for the period from June 18, 2023 to July 23, 2023 ("**Period**"), included a positive net cash flow variance in the Period of approximately \$188,000. This positive net cash flow variance is primarily attributable to lower disbursements in the Period than forecast. According to Management, these cost savings

relate primarily to: (i) a permanent difference on account of lower payroll costs in part due to an employee resignation; and (ii) timing differences due to the deferral of certain payroll costs, direct costs and professional fees.

18. The Cash Flow Forecast contemplates that the DIP Lender's initial advance of \$600,000 ("**Initial Advance**") plus accrued interest and fees will be repaid in early August ("**August Repayment**") following receipt of the Company's 2022 SR&ED refund and, thereafter, the DIP Lender will continue to advance additional funds for the Company's working capital requirements.
19. The Cash Flow Forecast projects that the Debtor will have sufficient liquidity, following receipt of such further advances from the DIP Lender, to fund the Company's expenses and the Proposal proceeding throughout the proposed extension of the stay of proceedings.
20. Pursuant to the DIP Term Sheet, all Subsequent Advances under the DIP Loan Facility, following the Initial Advance, are at the sole and absolute discretion of the DIP Lender. The DIP Lender advised it will advance further funds required to fund the working capital needs of the Company throughout the extension period.
21. The Proposal Trustee's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussion related to information supplied to the Proposal Trustee by certain of the Management and employees of the Debtor. Since hypothetical assumptions need not be supported, the Proposal Trustee's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Proposal Trustee has also reviewed the support provided by Management of the Debtor for the probable assumptions, and the preparation and presentation of the Cash Flow Forecast.
22. Based on the Proposal Trustee's review, nothing has come to its attention to cause it to believe that, in all material respects:
  - i) the hypothetical assumptions are not consistent with the purpose of the Cash Flow Forecast;
  - ii) as at the date of this Report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the

Debtor or do not provide a reasonable basis for the Cash Flow Forecast, given the hypothetical assumptions; or

- iii) the Cash Flow Forecast does not reflect the probable and hypothetical Assumptions.

- 23. As described in the Disclaimer above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented, even if the hypothetical assumptions occur, and the variations may be material.
- 24. The Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

#### **CONCLUSION AND RECOMMENDATION**

- 25. The Proposal Trustee is of the view that granting the stay extension will allow the Debtor sufficient time to restructure its business.
- 26. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief being requested by the Debtor pursuant to the BIA.

All of which is respectfully submitted this 31<sup>st</sup> day of July 2023.

#### **DODICK LANDAU INC.**

In its capacity as the Proposal Trustee of  
Nanopay Corporation and not  
in its personal or corporate capacity.

Per:



---

Rahn Dodick, CPA, CA, CIRP, LIT  
President

# **APPENDIX “A”**





Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 09 - Toronto  
Court No. 31-2946534  
Estate No. 31-2946534

In the Matter of the Notice of Intention to make a proposal of:

**Nanopay Corporation**

Insolvent Person

**DODICK LANDAU INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention:

May 19, 2023

---

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: May 23, 2023, 08:04

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

**Canada** 

# **APPENDIX “B”**



District of Ontario  
Division No. 9 - Toronto  
Court File No.: BK-23-2946534-0031  
Estate File No.: 31-2946534

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE	)	FRIDAY, THE 16TH
	)	
JUSTICE OSBORNE	)	DAY OF JUNE, 2023

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF NANOPAY CORPORATION**

**ORDER**

**THIS MOTION**, made by Nanopay Corporation (the “**Company**”) pursuant to Sections 50.4(9) and 50.6 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), for an order extending the time for the Company to file a proposal, approving the DIP Term Sheet (as defined herein), granting the DIP Lender’s Charge (as defined herein and pursuant to the terms hereof), and authorizing the Company to engage David Kay as Chief Restructuring Officer of the Company, and granting certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario by video conference.

**ON READING** the Affidavit of Laurence Cooke, sworn June 15, 2023 (the “**Cooke Affidavit**”), the First Report of Dodick Landau Inc., in its capacity as proposal trustee of the Company (the “**Proposal Trustee**”), dated June 15, 2023 (the “**First Report**”), and on hearing the submissions of counsel for the Company, the Proposal Trustee, the DIP Lender (as defined herein)

and such other counsel as were present, no one else appearing for any other person although duly served as appears from the Affidavit of Service of Amanda Campbell sworn June 15, 2023, filed.

### **SERVICE**

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

### **EXTENSION OF TIME TO FILE PROPOSAL**

2. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the Company to file its proposal be and is hereby extended to August 2, 2023.

### **DIP FINANCING**

3. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to obtain and borrow under a credit facility (the “**DIP Loan Facility**”) from Nephesh Partners, LLC and/or its affiliate (the “**DIP Lender**”), provided that borrowings under the DIP Loan Facility shall not exceed \$2,000,000 unless permitted by further Order of this Court.

4. **THIS COURT ORDERS** that the DIP Loan Facility shall be on the terms and subject to the conditions set forth in the term sheet between the Company and the DIP Lender, substantially in the form attached as Exhibit “D” to the Cooke Affidavit (the “**DIP Term Sheet**”). The DIP Term Sheet, subject to such minor amendments as may be acceptable to the Company and the DIP Lender, and approved by the Proposal Trustee, be and is hereby approved.

5. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Company is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, costs, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents (the “**Obligations**”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

#### **PROPOSAL TRUSTEE TO ADMINISTER DIP LOAN ADVANCES**

6. **THE COURTS ORDERS** that, as contemplated by the DIP Term Sheet, the Proposal Trustee be and is hereby authorized to administer the advances under the DIP Loan Facility, for the benefit of the Company and the DIP Lender by: (a) receiving funds advanced under the DIP Loan Facility into a separate account maintained by the Proposal Trustee solely for such purpose; and (b) disbursing such funds in accordance with the directions of the Company, as evidenced by written directions of the CRO (as defined below).

7. **THIS COURT ORDERS** that in carrying out the administrative functions set out in paragraph 6 hereof, the Proposal Trustee shall not have or incur any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person (as defined below) from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the Proposal Trustee.

## **DIP LENDER'S CHARGE**

8. **THIS COURT ORDERS** that, upon execution of the DIP Term Sheet, the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on all of the Company’s current and future, real and personal, tangible and intangible assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, including the Company’s intellectual property, the refund due from the Government of Canada and the Government of Ontario with respect to Scientific Research and Experimental Development for the taxation year ending December 31, 2022, and other tax refunds (the “**Property**”) as security for the Obligations. The DIP Lender’s Charge shall not exceed an aggregate amount of \$2,000,000, plus interest, fees, and costs and shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraph 12 hereof.

9. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, or Section 69 of the BIA:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon 3 Business Days’ (as defined in the DIP Term Sheet) notice to the Company and the Proposal Trustee, may exercise any and all of its rights and remedies against the Company or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender’s

Charge, and any additional rights and remedies available to it, at law or in equity, including without limitation, to cease making advances to the Company and set off and/or consolidate any amounts owing by the DIP Lender to the Company against the obligations of the Company to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Company and for the appointment of a trustee in bankruptcy of the Company; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Company or the Property.

10. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by the Company under the BIA or any plan of arrangement or compromise filed by the Company under the *Companies' Creditors Arrangement Act*, with respect to any advances made under the Definitive Documents or the DIP Term Sheet.

#### **VALIDITY OF CHARGE CREATED BY THIS ORDER**

11. **THIS COURT ORDERS** that the filing, registration or perfection of the DIP Lender's Charge shall not be required, and that, upon execution of the DIP Term Sheet, the DIP Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

12. **THIS COURT ORDERS** that, upon execution of the DIP Term Sheet, the DIP Lender's Charge shall constitute a charge on the Property and the DIP Lender's Charge shall rank in priority to all other security interests, mortgages, deemed trusts (statutory or otherwise), trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any individual, firm, corporation, governmental agency, or any other entities (each and any, a "**Person**").

13. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the DIP Lender's Charge, unless the Company obtains the prior written consent of the Proposal Trustee, the DIP Lender or further Order of this Court.

14. **THIS COURT ORDERS** that the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Company, and notwithstanding any provision to the contrary in any Agreement:



- (a) neither the creation of the DIP Lender's Charge nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) the DIP Lender shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Company entering into the DIP Term Sheet, the creation of the DIP Lender's Charge, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Company pursuant to this Order, the DIP Term Sheet or the Definitive Documents (including any and all fees and interest), and the granting of the DIP Lender's Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

15. **THIS COURT ORDERS** that the DIP Lender's Charge created by this Order, insofar as it is a charge over leases of real property in Canada, shall only be a charge in the Company's interest in such real property leases.

**CHIEF RESTRUCTURING OFFICER**

16. **THIS COURT ORDERS** that the engagement agreement, attached as Exhibit "F" to the Cooke Affidavit (the "**CRO Engagement Agreement**"), providing for the engagement of David Kay, in his capacity as chief executive officer of Ao8 Strategic Advisors, LLC and not in his personal capacity, to act as Chief Restructuring Officer ("**CRO**") of the Company, and the payment

of the fees and expenses contemplated thereby be and is hereby approved. The Company be and is hereby authorized to execute the CRO Engagement Agreement, with such minor amendments as may be agreed to by the Company and the CRO and approved by the Proposal Trustee.

17. **THIS COURT ORDERS** that the CRO shall not be or be deemed to be a director, *de facto* director or employee of the Company.

18. **THIS COURT ORDERS** that, upon the execution of the CRO Engagement Agreement, the CRO is hereby directed and empowered to exercise and perform all of the powers, responsibilities and duties described in the CRO Engagement Agreement, as well as all other ancillary powers, responsibilities or duties as may be necessary or useful in order to give full and proper effect to the terms and conditions of the CRO Engagement Agreement or this Order.

19. **THIS COURT ORDERS** that, upon the execution of the CRO Engagement Agreement, the Company and its shareholders, directors, officers, employees, agents and representatives shall co-operate fully with the CRO in the exercise of his powers and the discharge of his obligations, including providing the CRO with access to the Company's books, records, assets and premises as the CRO requires.

20. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO.

21. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, or otherwise, against or in respect of the CRO, and all rights and

remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Company, the Proposal Trustee and the CRO. Notice of any such motion seeking leave shall be served upon the Company, the Proposal Trustee and the CRO at least seven (7) days prior to the presentation date of any such motion for leave.

22. **THIS COURT ORDERS** that the obligations of the Company to the CRO pursuant to the CRO Engagement Agreement, the DIP Term Sheet, and this Order, including, without limitation, the CRO Fee (as defined in the DIP Term Sheet), shall be treated as unaffected and may not be compromised in any plan of arrangement or proposal under the BIA, or any other restructuring and no such plan or arrangement, proposal or restructuring shall be approved that does not provide for the payment in full of all amounts due to the CRO pursuant to the terms of the CRO Engagement Agreement, the DIP Term Sheet, and this Order.

## **SERVICE**

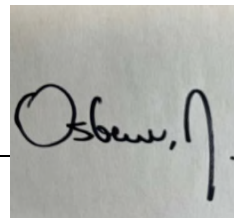
23. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a

Case Website shall be established in accordance with the Protocol with the following URL  
['https://dodick.ca/public\\_documents/nanopay-corporation/'](https://dodick.ca/public_documents/nanopay-corporation/).

## GENERAL

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

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



2023.06.1  
6 14:44:53  
-04'00'

<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b> <b>(IN BANKRUPTCY AND INSOLVENCY)</b>	
PROCEEDING COMMENCED AT TORONTO	
<b>ORDER</b>	
<b>DENTONS CANADA LLP</b> 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 <b>Kenneth Kraft</b> (LSO #31919P) Tel: 416-863-4374 <a href="mailto:kenneth.kraft@dentons.com">kenneth.kraft@dentons.com</a> <b>Sara-Ann Wilson</b> (LSO #56016C) Tel: 416-863-4402 <a href="mailto:sara.wilson@dentons.com">sara.wilson@dentons.com</a> <i>Lawyers for Nanopay Corporation</i>	



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: BK-23-02946534-0031 DATE: 16 June 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: *Intention to Make a Proposal of Nanopay Corporation*

BEFORE JUSTICE: **P. Osborne**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Kenneth Kraft	Counsel for the Debtor, Nanopay Corporation	<a href="mailto:Kenneth.kraft@dentons.com">Kenneth.kraft@dentons.com</a>
Sara-Ann Wilson	Counsel for the Debtor, Nanopay Corporation	

**For Defendant, Respondent, Responding Party, Defence:**

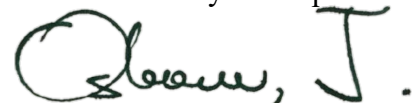
Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Rahn Dodick	The Proposal Trustee (Dodick Landau Inc.)	<a href="mailto:Rahn.dodick@dodick.ca">Rahn.dodick@dodick.ca</a>
Shahrazad Hamraz	Counsel for the Proposal Trustee (Dodick Landau Inc.)	<a href="mailto:shamraz@loonix.com">shamraz@loonix.com</a>
Danish Afroz	DIP Lender	<a href="mailto:dafroz@chaitons.com">dafroz@chaitons.com</a>

**ENDORSEMENT OF JUSTICE P. OSBORNE:**

1. The Company moves pursuant to section 50.4(9) of the BIA for an extension of the time to file a proposal to August 2, 2023, authority to borrow under a credit facility as described in the DIP Term Sheet, authority to engage a Chief Restructuring Officer and the granting of a DIP Lender's Charge up to the maximum amount of \$2 million plus interest, fees and costs pursuant to section 50.6 of the BIA.
2. A Notice of Intention to Make a Proposal was filed on May 19, 2023. The Company is a CBCA company involved in that provision of embedded payments solutions for businesses and banks. It is a startup and cash from operations is insufficient to fund liabilities as they come due, with the result that it relies on regular equity injections and loans from investors to fund the cash flow needs. The And OI was prompted by changes in market conditions resulting in a longer timeline being wired for the Company to reach profitability. The purpose of the Proceedings is the creation of a stabilized environment for the Company to consider and pursue restructuring options.
3. The Company relies upon the affidavit of Laurence Cooke sworn June 15, 2023 and exhibits thereto.
4. Motion materials have been served, although service was short. In particular, motion materials were delivered to the Government of Canada Department of Justice (Canada Revenue Agency in respect of HST remittances primarily) and the Province of Ontario Department of Finance (in respect of the HT obligations primarily), as well as the lender on a prior loan in respect of a facility of approximately \$37,500.
5. The DIP Loan Facility provided for in the DIP Term Sheet provides for a non-revolving demand credit facility up to an aggregate principal amount of \$2 million. Initial advances up to the aggregate amount of \$600,000 will be available to the Company upon satisfaction of the Conditions Precedent to the Initial Advances. Subsequent advances are in the Lender's discretion.
6. The cash flow forecast shows that the Company urgently requires the DIP Loan Facility to provide liquidity required to pay its employees, professional fees and continue operations during the Proceedings.
7. I am satisfied that the DIP Term Sheet should be, and is approved. It is fully supported and recommended by the Proposal Trustee.
8. However, I am directing that this matter be returnable before me next week on **Friday, June 23, 2023 at 10 AM via Zoom**. In the interim period until the return of this matter, advances under the DIP Loan Facility cannot exceed \$275,000 in the aggregate, which is the amount necessary to sustain operations in this interim period in satisfy obligations for payroll and source deductions.
9. I note the assurance of counsel for the Applicant that the lender in respect of the \$37,500 post filing loan facility referred to above is aware of, and does not oppose, any of the relief sought today.
10. I am also satisfied that Mr. David Kay should be appointed as Chief Restructuring Officer pursuant to the terms of the CRO Engagement Agreement. His involvement will enure to the benefit of the relevant economically affected stakeholders and maximize the efficiency of the operations of the Company during this restructuring period.
11. Finally, it is appropriate to extend to August 2, 2023 the time for the Company to file its proposal pursuant to section 50.4(9) of the BIA. The Company has acted, and is acting, in good faith and with due diligence, would likely be able to make a viable proposal if the extension were granted, and no creditor would be materially prejudiced.
12. Order to go in the form signed by me today, which is effective immediately and without the necessity of issuing and entering. This endorsement and the order should be served immediately on all parties.

 Osbourne, J.





# **APPENDIX “C”**



SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**ENDORSEMENT**

COURT FILE NO.: BK-23-02946534-0031 DATE: June 23, 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: **Proposal of Nanopay Corporation**

BEFORE: **Mr Justice OSBORNE**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Kenneth Kraft / Sara-Ann Wilson	Nanopay Corporation	<a href="mailto:kenneth.kraft@dentons.com">kenneth.kraft@dentons.com</a> / <a href="mailto:sara.wilson@dentons.com">sara.wilson@dentons.com</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Rahn Dodick	Dodick Landau Inc., the Proposal Trustee (Self)	<a href="mailto:rahn.dodick@dodick.ca">rahn.dodick@dodick.ca</a>
R. Graham Phoenix / Shahrzad Hamraz	Dodick Landau Inc., the Proposal Trustee	<a href="mailto:gphoenix@loonix.com">gphoenix@loonix.com</a> / <a href="mailto:shamraz@loonix.com">shamraz@loonix.com</a>

Danish Afroz / Harvey Chaiton	DIP Lender	<a href="mailto:DAfroz@chaitons.com">DAfroz@chaitons.com</a> / <a href="mailto:harvey@chaitons.com">harvey@chaitons.com</a>
David Kay	Ao8 Strategic Advisors, Chief Restructuring Officer	<a href="mailto:dkay@Ao8Advisors.com">dkay@Ao8Advisors.com</a>

## **ENDORSEMENT**

[1] On June 16, I granted certain relief in this matter including the granting of a DIP Lender's Charge up to the maximum amount of \$2 million plus interest, fees and costs pursuant to section 50.6 of the BIA. That relief was granted for the reasons set out in my Endorsement of that date.

[2] However, given the short service of the motion materials, particularly with respect to the secured creditor being the Government of Ontario, I directed both that in the interim period until the return of the matter today, advances under the DIP Loan Facility could not exceed \$275,000 in the aggregate, being the amount necessary to sustain operations in the interim. And to satisfy obligations for payroll and source deductions, and I directed that the motion materials be served immediately on all parties, and made returnable today.

[3] Today, the Proposal Trustee seeks authority for advances under the DIP Loan Facility up to the maximum principal amount of \$2 million.

[4] All parties, including for greater certainty the Province of Ontario, the only secured creditor, have been served. There is no opposition today. The prior lender in respect of the loan in the amount of \$37,500 does not oppose the relief sought.

[5] In the circumstances, and for the reasons set out in the motion materials from June 16 as well as the materials filed today, the authorization is appropriate and is granted.

[6] This matter is adjourned to be continued at a one-hour appointment **via Zoom on July 28, 2023 commencing at 12 PM noon**, in order that the court can consider a motion for an expected stay extension with possible other relief.




---

**Mr Justice OSBORNE**

Date: June 23 23



# **APPENDIX “D”**

**Nanopay Corporation**  
**Cash Flow Forecast**  
**For the period from July 24, 2023 to August 21, 2023**  
**\$Cdn**

<b>Weeks Ending</b>	<b>Notes</b>	<b>1 30-Jul-23</b>	<b>2 06-Aug-23</b>	<b>3 13-Aug-23</b>	<b>4 21-Aug-23</b>	<b>Total</b>
<b>Receipts</b>						
Customer Receipts	<b>2</b>	4,729	5,054	5,399	5,895	21,076
Other	<b>3</b>	-	820,426	-	-	820,426
<b>Total Receipts</b>		<b>4,729</b>	<b>825,480</b>	<b>5,399</b>	<b>5,895</b>	<b>841,502</b>
<b>Disbursements</b>						
Payroll	<b>4</b>	(96,349)	(48,751)	(84,349)	(48,751)	(278,200)
Direct Costs	<b>5</b>	(13,000)	-	(24,000)	(35,913)	(72,913)
<b>Total Disbursements</b>		<b>(109,349)</b>	<b>(48,751)</b>	<b>(108,349)</b>	<b>(84,665)</b>	<b>(351,113)</b>
<b>Cash Flow from Operations</b>		<b>(104,620)</b>	<b>776,728</b>	<b>(102,949)</b>	<b>(78,770)</b>	<b>490,389</b>
Deduct: Professional Fees and Expenses	<b>6</b>	(62,679)	-	-	(40,000)	(102,679)
Deduct: CRO Fees and Expenses	<b>7</b>	-	(81,000)	-	-	(81,000)
Add/(Deduct): DIP Loan Advances/(Repayments)	<b>8</b>	-	(709,254)	250,000	-	(459,254)
<b>Net Cash Flow</b>		<b>(167,299)</b>	<b>(13,526)</b>	<b>147,051</b>	<b>(118,770)</b>	<b>(152,543)</b>
Opening Bank Balance		236,778	69,480	55,954	203,005	236,778
Add: Net Cash Flow		(167,299)	(13,526)	147,051	(118,770)	(152,543)
<b>Closing Bank Balance</b>		<b>69,480</b>	<b>55,954</b>	<b>203,005</b>	<b>84,235</b>	<b>84,235</b>

**Nanopay Corporation (“nanopay” or the “Company”)**  
Major Assumptions  
Cash Flow Forecast  
For the Period July 24, 2023, to August 21, 2023 (the “**Period**”)

1. Nanopay’s financial projections have been prepared for the purpose of meeting the requirements of the Bankruptcy and Insolvency Act. The Projection is based on the hypotheses that nanopay will continue operations in the normal course, will generate cash flow to meet its ongoing operational needs and where there is a cash flow deficiency such deficiency will be funded by way of external financing.

**Receipts:**

2. Customer receipts are projected based on existing customers as well as certain new customers that are anticipated to begin doing business with nanopay in the period.
3. Other receipts are in respect of SR&ED credits relating to the 2022 fiscal year which application is in the process of being prepared by the Company’s advisors. The 2022 SR&ED credits are estimated to total approximately \$820,000.

**Disbursements:**

4. Payroll includes amounts for approximately twenty-one salaried employees and one independent contractor. Other payroll costs include source deduction remittances and employee benefits payable in the Period.
5. Direct costs include infrastructure costs such as network, data center, VPN and security, as well as subscription expenses for Amazon Web Services, Google, certain developer tools, marketing costs and bank fees. A portion of these expenses are paid through a corporate American Express credit card.
6. Professional fees include fees for the Proposal Trustee, the Company’s legal counsel and counsel to the Proposal Trustee for the Period.
7. Chief Restructuring Officer (“**CRO**”) fees and expenses include \$27,000 per month. The CRO is a requirement of the Debtor in Possession (“**DIP**”) lender. According to the DIP loan agreement, the CRO fees and expenses for the first three months (June to August 2023) are accrued and are required to be paid when the SR&ED credits are received.
8. The DIP loan agreement provides for an initial advance of \$600,000 (“**Initial Advance**”) which was reduced by the DIP lender’s legal fees estimated to be approximately \$25,000 resulting in a net advance of approximately \$575,000 which was advanced in June 2023 following approval of the DIP loan charge by the Court.

According to the DIP loan agreement, the Initial Advance, including accrued interest, DIP lender facility fee and CRO accrued fees for three months, must be repaid when the 2022 SR&ED credits are forecast to be received in the week-ending August 6, 2023. The

repayment is estimated to be approximately \$790,000 and will deplete almost all of the SR&ED credits received. As a result, the Company will require a further DIP loan advance to be made immediately in the following week-ending August 13, 2023.

During the four-week cash flow forecast period, it is estimated that the Company will receive DIP loan advances, and make repayments, totaling approximately \$250,000 and \$710,000, respectively. The DIP Lender advised it will fund the Company's working capital needs through the proposed extension period.



**Nanopay Corporation****Variance analysis for the period from June 18, 2023 to July 23, 2023****(Unaudited; \$C)**

	<b>Note</b>	<b>Projected</b>	<b>Actual</b>	<b>Variance</b>
<b>Receipts</b>				
Customer Receipts		12,916	9,460	(3,456)
<b>Total Receipts</b>		<b>12,916</b>	<b>9,460</b>	<b>(3,456)</b>
<b>Disbursements</b>				
Payroll	1	(315,700)	(248,447)	67,253
Direct Costs	2	(108,827)	(77,874)	30,953
<b>Total Disbursements</b>		<b>(424,527)</b>	<b>(326,321)</b>	<b>98,206</b>
<b>Cash Flow from Operations</b>		<b>(411,611)</b>	<b>(316,861)</b>	<b>94,750</b>
Deduct: Professional Fees and Expenses	3	(120,000)	(23,676)	96,324
Deduct: CRO Fees and Expenses		-	-	-
Add/(Deduct): DIP Loan Advances/(Repayments)		575,000	572,019	(2,981)
<b>Net Cash Flow</b>		<b>43,389</b>	<b>231,483</b>	<b>188,094</b>
Opening Bank Balance		5,295	5,295	-
Add: Net Cash Flow		43,389	231,483	188,094
<b>Closing Bank Balance</b>		<b>48,684</b>	<b>236,778</b>	<b>188,094</b>

**Notes**

1. The Payroll variance is in part a timing difference and in part a permanent difference due to a lower head count than forecast.
2. Direct costs are lower than forecast due to the deferral of certain expenses to conserve cash.
3. Professional fees are lower than forecast due to a timing difference as such fees will be paid later than forecast.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
NANOPAY CORPORATION OF THE CITY OF TORONTO IN THE PROVINCE OF  
ONTARIO**

Court File No.: 31-2946534  
Estate File No.: 31-2946534

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

Proceeding commenced at **TORONTO**

**SECOND REPORT TO COURT OF THE PROPOSAL  
TRUSTEE**

**LOOPSTRA NIXON LLP**

130 Adelaide St. W., Suite 2800  
Toronto, ON M5H 0A1

**R. Graham Phoenix (LSUC No. 52650N)  
&  
Shahrazad Hamraz (LSUC No. 85218H)**

Tel: (416) 746-4710  
Email: gphoenix@loonix.com /  
shamraz@loonix.com

*Lawyers for the Proposal Trustee*