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CT-2021-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by SECURE Energy Services Inc. of Tervita Corporation;

AND IN THE MATTER OF AN Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

AND IN THE MATTER OF an Application for an Interim Order pursuant to section 104 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondent

RESPONDING RECORD OF SECURE ENERGY SERVICES INC.
(re: Commissioner's Application for an Interim Order)

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Attention: Jonathan Hood
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BETWEEN

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondent

**RESPONSE OF SECURE ENERGY SERVICES INC.
TO THE COMMISSIONER'S APPLICATION FOR AN INTERIM ORDER
(Sec. 104, *Competition Act*)**

1. SECURE Energy Services Inc., (“**SECURE**”) opposes the Commissioner of Competition’s (the “**Commissioner**”) application for an order under section 104 of the *Competition Act* (the “**Act**”) seeking the unwinding of SECURE’s acquisition of Tervita Corporation (“**Tervita**”) , or in the alternative, an order seeking a hold separate of the former Tervita business, or in the further alternative, an order directing SECURE not to proceed with any further integration of Tervita’s operations and to preserve all assets until the Commissioner’s Section 92 Application (defined below) is finally disposed of.

2. SECURE denies each and every one of the allegations in the Commissioner’s amended notice of application (the “**Application**”) unless expressly admitted below.

BACKGROUND

3. SECURE and Tervita entered into an agreement on March 8, 2021 for SECURE to acquire all outstanding shares of Tervita (the “**Transaction**”). The Transaction was a strong strategic fit for both companies. This merger allows SECURE to achieve greater financial stability and scale in order to remain viable and meet increasingly demanding customer needs in the struggling oil and gas industry. In particular, the Transaction:

- (a) combines highly complementary asset bases and environmental service lines to provide for enhanced scale, utilization, efficiencies and enhanced services for customers;
- (b) results in a more cost-effective infrastructure to support a growing and consolidating customer base and shared commitments to environmental, social and governance (“**ESG**”) initiatives, safety, performance, customer service and profitability; and
- (c) has already begun and will continue to generate significant annualized integration cost savings, cognizable under section 96 of the Act, which total a minimum of [REDACTED] annually (run rate), [REDACTED] over 10 years, or [REDACTED] over 10 years on a discounted basis.

4. The Transaction closed effective 12:01am MT (2:01 am ET) on July 2, 2021, two days following the expiry of the statutory waiting period under section 123 of the Act on June 30, 2021.

5. On June 29, 2021, prior to closing, the Commissioner commenced an application under section 92 of the Act seeking, among other things, an order that SECURE and Tervita be directed not to proceed with the Transaction in whole or, in the alternative, directing SECURE not to proceed with the acquisition of certain assets of Tervita (the “**Section 92 Application**”).

6. Also on June 29, 2021, the Commissioner made an eleventh-hour request to the Competition Tribunal (the “**Tribunal**”) to issue an unprecedented “interim interim” order prohibiting the Transaction from closing. At the Commissioner’s insistence, the Tribunal held a case conference to address the Commissioner’s request on June 30, 2021. The following evening, on July 1, 2021, the Commissioner filed a notice of application for judicial review seeking an order

compelling the Tribunal to issue its decision in respect of the Commissioner's request. The Tribunal dismissed the Commissioner's request at 10:49 pm ET July 1, 2021.

7. An "emergency" appeal of the Tribunal's order to the Federal Court of Appeal was also dismissed minutes before 2:00 am ET on July 2, 2021. The Federal Court of Appeal found, among other things, that the Commissioner had not demonstrated that closing would cause irreparable harm or that the balance of convenience favoured delaying closing.

8. Immediately following the closing of the Transaction on July 2, 2021, Secure and its wholly owned subsidiary Tervita were amalgamated pursuant to a short form amalgamation and a Certificate of Amalgamation was issued by the Registrar of Corporations for the Province of Alberta in accordance with the *Business Corporations Act* (Alberta). Upon the amalgamation SECURE and Tervita ceased to exist as separate legal entities and continued as one corporate entity. As a result of the transactions undertaken pursuant to a Plan of Arrangement, all the Tervita shares were transferred to SECURE in consideration for shares of SECURE and on the amalgamation all of the Tervita shares were cancelled. When SECURE acquired 100% of Tervita, Tervita's shares were de-listed from the Toronto Stock Exchange (TSX). As Tervita no longer exists as a separate entity, and has no directors, officers, employees, or property, it is not feasible to reverse any of these actions.

9. The Transaction also facilitated the refinancing of certain indebtedness of the combined company. SECURE undertook a significant bond offering and have irrevocably committed to use a portion of the proceeds of such offering to, on July 16, 2021, redeem USD\$100 million of indebtedness previously issued by Tervita that SECURE became the obligor of as a result of the amalgamation. In connection with closing of the Transaction, SECURE paid off then outstanding credit facilities of SECURE and Tervita, discharged old security, and implemented a new C\$800 million credit facility with new lenders and security registrations. All material subsidiaries of SECURE and Tervita provided security and guarantees of the new credit facilities. In addition, certain of the former SECURE subsidiaries have now guaranteed the obligations of SECURE under the former Tervita bonds. The ability for SECURE to undertake these transactions were, in part, based on the credit-worthiness and structure of the combined SECURE/Tervita entity and was conditional upon completion of the Transaction. These actions are irreversible.

10. Despite the finding of the Federal Court of Appeal that closing would not cause irreparable harm, and even though the majority of the business that SECURE acquired from Tervita is unrelated to the specific markets or service lines described in the Application, the Commissioner seeks a full dissolution of the Transaction. That relief is not available to the Commissioner on an application for interim relief, both as a matter of law and because the Commissioner has not met his evidentiary burden to be granted injunctive relief.

RESPONSE

11. Dissolution of a completed merger is not an interim remedy available under section 104 of the Act as a matter of law. Granting the Commissioner what would amount to final relief on the Section 92 Application in the guise of an interim order would do violence to the scheme of the Act and the principle that courts should not make final determinations in interlocutory proceedings.

12. Further or in the alternative – and with respect to every form of relief sought in the Application – this application should be dismissed because the Commissioner has not satisfied the applicable test for the issuance of injunctive relief.

13. First, the Commissioner cannot satisfy the “merits” component of the test for the granting of interlocutory injunctions. This is because to ultimately succeed on his Section 92 Application, the Commissioner will have to show that the Transaction has or is likely to prevent or lessen competition substantially and he will have to overcome the efficiencies defence SECURE will advance under section 96 of the Act. The Commissioner has not demonstrated that he has any realistic prospect of this, including because:

- (a) contrary to the allegations in the Application, SECURE continues to face significant effective remaining competition from remaining third-party waste disposal companies;
- (b) further, the majority of SECURE’s sales are to large, sophisticated oil and gas companies that have both significant countervailing buyer power and the ability to self-supply the relevant services;
- (c) there are no meaningful barriers to entry or expansion (and thus further competition);
- (d) contrary to the allegations in the Application, the Transaction raises no potential vertical foreclosure concerns with respect to environmental solutions; and

- (e) the Commissioner has entirely ignored the very significant efficiencies created by the Transaction, contrary to the public interest and the primary objectives of the merger provisions of the Act.

14. The Commissioner has not adduced clear and non-speculative evidence that the Transaction is likely to prevent or lessen competition substantially.

15. Second, the Commissioner has not demonstrated that his statutory mandate will suffer any irreparable harm if injunctive relief is not granted until the Section 92 Application is determined.

16. All the properly cognizable harm the Application alleges will occur in the period between closing and determination of the Section 92 Application (the “**Interim Period**”), even if proven, could readily be remedied by an order under section 92 of the Act.

17. The apprehended harm alleged in the Application, being Interim Period price increases, is not irreparable harm to competition as a matter of law. Further or in the alternative, the Commissioner has not adduced clear and non-speculative evidence that such price increases are likely to occur in the Interim Period in any event.

18. No interim order is required to preserve the Tribunal’s ability to order a remedy if the Commissioner succeeds on the Section 92 Application (which SECURE vigorously denies he will). SECURE does not intend to sell or permanently close any facilities or other assets necessary for the operation of the business it acquired from Tervita (or any similar facilities or assets already owned by SECURE). At a minimum, all integrated facilities will be maintained in a suspended state for potential future use and can be brought back online within [REDACTED] at minimal expense, in the event that the Tribunal orders any divestiture on the Section 92 Application. SECURE has offered the Commissioner a formal undertaking to that effect on several occasions, which the Commissioner has refused.

19. Should the Commissioner’s Section 92 Application be successful, SECURE could separate the merged and integrated business into two viable, independent and effective businesses that compete in the relevant market(s) and, if so ordered by the Tribunal, sell either of such businesses (whether itself or through a divestiture trustee) to a purchaser that will operate it as a going concern. There are several buyers that are likely to have an interest in acquiring such a business, including

companies that have previously expressed an interest in purchasing SECURE or Tervita, or parts thereof.

20. Finally, the balance of convenience overwhelmingly favours SECURE, particularly now that the Transaction has closed.

21. Aside from being unavailable as a matter of law, dissolution of the Transaction is impossible from a commercial standpoint. Several aspects of the Transaction are irreversible as described in paragraphs 8 and 9 of this Response. Further or in the alternative, any attempt to “unwind” the Transaction would be extremely impractical and costly to SECURE and the Canadian economy.

22. If any interim order is made other than an order that SECURE preserve its waste disposal facilities (including those of the former Tervita business), as it has already undertaken to do, SECURE and the Canadian economy will suffer irreparable harm, including but not limited to lost efficiencies amounting to between [REDACTED] and [REDACTED] depending on the order and duration of the Interim Period. These lost efficiencies would be an irreparable loss to not only SECURE but to the Canadian economy as a whole.

23. The Commissioner has not given any undertaking to compensate SECURE for the damages it would incur if an interim order were granted.

24. The irreparable harms that SECURE will suffer if an interim order (other than a preservation order) were made significantly outweigh the uncertain, speculative, and entirely reparable harms the Application alleges will occur in the Interim Period.

25. SECURE will rely on the following materials for purposes of responding to the Commissioner’s Application:

- (a) The affidavit of David Engel sworn July 14, 2021; and
- (b) The affidavit of Andrew Harington sworn July 14, 2021.

DATED AT Toronto, Ontario, this 14th day of July, 2021.

TO: For the Commissioner of Competition

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Competition Bureau Legal Services
Place du Portage, Phase I
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Gatineau, QC K1A 0C9

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BETWEEN

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondent

AFFIDAVIT OF DAVID ENGEL
(Affirmed July 14, 2021)

I, David Engel, of the City of Calgary, in the Province of Alberta,

AFFIRM AND SAY:

INTRODUCTION

1. I am the Senior Vice President, Landfill Solutions of SECURE Energy Services Inc. (“SECURE”). As such, I have knowledge of the matters contained in this affidavit. Where I rely on information received from others, I state the source of that information and believe it to be true.
2. I joined SECURE in 2007. Over the years, I have held the following positions at the company: Executive Vice President, New Ventures (May 2020 – June 2021), Executive Vice President, Operations (May 2019 – May 2020), Executive Vice President, Technical Services (September 2017 – May 2019), Executive Vice President, Processing Recovery & Disposal division (January 2017 – September 2017) and VP of Operations & Sales (December 2011 – January 2017). In my current position as Senior Vice President, Landfill Solutions, my responsibilities include all aspects of planning and capital investment, operational management, and technical support for all landfills owned or operated by SECURE. I have held this position since the closing of the Transaction on July 2, 2021. In my previous position as Executive Vice President, New Ventures, my responsibilities included evaluating potential new ventures that create opportunities for growth, reduce costs, streamline operations, and create efficiencies, including the evaluation of the SECURE – Tervita Inc. (“**Tervita**”) transaction.
3. As part of my role in evaluating the SECURE – Tervita merger, I was a member of the “clean team” and had access to certain documents and data from Tervita used for the purposes of evaluating the Transaction. I also participated in a number of meetings with

Tervita employees relating to the Transaction. Certain facts in my affidavit relating to Tervita, the Transaction, and integration are based on these sources.

4. I have reviewed a copy of the affidavit of Mr. Andrew Harington sworn July 14, 2021 (the “**Harington Affidavit**”) – all information provided to Mr. Harington by SECURE and Tervita is correct and complete, and accurately represented in his affidavit to the best of my information and belief.
5. In addition, all information provided by SECURE to the Commissioner of Competition (“**Commissioner**”) in connection with his review of the Transaction, and by Tervita prior to its acquisition by SECURE is correct and complete to the best of my information and belief. This includes information provided in response to detailed information requests issued by the Commissioner on March 18 and April 9, 2021.

BACKGROUND ON SECURE

6. SECURE is a publicly traded company headquartered in Calgary, Alberta and listed on the Toronto Stock Exchange. SECURE provides excellent customer solutions to upstream oil and natural gas companies operating in Western Canada and certain regions in the U.S. Copies of SECURE’s 2020 Annual Information Form (for the fiscal year ended December 31, 2020) and consolidated financial statements for Q1 2021 are attached as Exhibits 1 and 2 to my affidavit.
7. In 2020, SECURE generated consolidated revenues of approximately C\$1.82 billion (approximately C\$460 million excluding pass-through revenue from oil resale). This

represents a decline of approximately C\$154 million (or 25% of non-pass-through revenue) as compared to 2019 and is consistent with the general downturn in the oil and gas sector and reduced drilling and completion activity. In Q1 2021, SECURE generated consolidated revenues of C\$661 million, representing a slight increase of 8 percent from Q1 2020 (which corresponded with the onset of the COVID-19 pandemic). To mitigate the negative impact of the challenging economic and industry environment, SECURE recently implemented a strict cost reduction program with respect to its general and administrative expenses and reduced its monthly dividend. Notwithstanding these efforts, SECURE still reported a net loss of C\$87.2 million in 2020, and [REDACTED] in the first quarter of 2021. These losses are part of a pattern of substantial reported net losses for SECURE totaling C\$151.3 million since 2016. Copies of SECURE's Annual Reports for the fiscal years ended December 31, 2016, 2017 and 2018 and its Annual Information Form for the fiscal year ended December 31, 2019 are attached as Exhibits 3 to 6 to my affidavit.

8. Similarly, in 2020 alone, prior to its acquisition by SECURE, the former Tervita business's general consolidated revenues fell approximately C\$906 million (or 39 percent) from 2019. Although Tervita decreased its structural costs (*e.g.*, employee headcount reductions and location optimization) in 2020 in response to the global slump in oil prices and overall persistent decline in demand for drilling and completion activity inputs, Tervita still reported a net loss of C\$43 million in 2020, and a breakeven Q1 2021. Since 2016, it has reported a total of C\$330 million in net losses, due largely to a reduction in drilling activity in Western Canada. Copies of Tervita's Annual Reports for the fiscal years ended December 31, 2018, 2019 and 2020 are attached as Exhibits 7 to 9 to my affidavit.

Additionally, copies of Tervita's audited financial statements and Management Discussion & Analysis for the fiscal year ended December 31, 2018 (which includes information with respect to the fiscal years ended December 31, 2017 and 2016) are attached as Exhibits 10 and 11 to my affidavit.

9. SECURE's operations are broadly organized into two reportable segments:
 - a) *Midstream Infrastructure.* SECURE owns and operates facilities throughout Western Canada, North Dakota and Oklahoma and assists upstream oil and natural gas companies with the processing, storing, shipping, and marketing of crude oil; processing of waste; and water treatment and disposal. Midstream Infrastructure services include clean oil terminalling and storage, crude oil marketing, pipeline transportation, rail transloading, custom treating of crude oil, produced water and waste water disposal, oilfield waste processing, and oil purchase and resale services.
 - b) *Environmental and Fluid Management.* SECURE owns and operates landfill disposal facilities; on-site abandonment, remediation, and reclamation management; a suite of comprehensive environmental management solutions provided by the Corporation to a diversified customer base; and drilling, completion and production fluid operations management for oil and gas producers in Western Canada. Environmental and Fluid Management services include secure disposal of oilfield and industrial solid wastes into SECURE's owned or managed landfills located

in Western Canada and North Dakota; project assessment and planning; pipeline integrity projects (inspection, excavation, repair, replacement and rehabilitation), demolition and decommissioning; remediation and reclamation of former well sites, facilities, commercial and industrial properties; environmental construction projects (landfills, containment ponds, subsurface containment walls, etc.); remediation and reclamation assessment services; naturally occurring radioactive material management; waste container services; and emergency response services. While SECURE's landfills are currently reported in the Environmental & Fluid Management segment, they are led and operated separately from Environmental Services.

10. SECURE's revenues for FY 2020 are split approximately 44% – 56% between the Midstream Infrastructure and the Environmental and Fluid Management divisions, respectively.¹ Within Midstream Infrastructure (excluding oil purchase and resale), SECURE's revenues for FY 2020 were comprised of approximately █████ from produced and waste water disposal, █████ from oil processing, terminalling and marketing services, █████ from liquid oilfield waste disposal, and █████ from solid oilfield waste disposal.
11. The former business of Tervita prior to the closing of the Transaction consisted of 103 active waste processing, disposal, and industrial facilities, including: 44 TRDs; eight stand-alone disposal wells, three cavern disposal facilities; eight onsite facilities; 22 engineered

¹ Excluding revenues from oil purchase and resale services.

landfills (which included 18 owned sites, one site operated under contract, and three sites that Tervita markets under contract for other landfill operators); three transfer stations; one naturally occurring radioactive material facility; nine bio-remediation facilities; and five metals recycling facilities.

12. The Competition Bureau's investigation and Commissioner's application identifies concerns with respect to (i) landfills; (ii) FST/TRD waste disposal; (iii) produced water disposal; and (iv) environmental services. These service lines together represent only 23 percent of the former Tervita business's revenues for 2020. The majority of SECURE's (and formerly Tervita's) revenues are generated by energy marketing (terminalling, and marketing of oil and oil purchase and resale), which, I am advised by Blake, Cassels & Graydon LLP, is not identified by the Commissioner in his section 104 application as an area of concern.

THE TRANSACTION AND RELATED FINANCING ARRANGEMENTS

13. Pursuant to an Arrangement Agreement in accordance with the *Business Corporations Act (Alberta)* dated March 8, 2021, SECURE acquired Tervita (the "**Transaction**") effective July 2, 2021. Under the Plan of Arrangement, SECURE acquired all of the issued and outstanding shares of Tervita upon completion of the Transaction. Following the Transaction, former SECURE and former Tervita shareholders own approximately 52% and 48%, respectively, of SECURE post-merger. The Plan of Arrangement was approved by the Alberta Court of Queen's Bench on June 18, 2021. A copy of the Court's decision is attached as Exhibit 12 to my affidavit.

14. Immediately subsequent to the closing of the Transaction on July 2, 2021, SECURE and its wholly owned subsidiary Tervita were amalgamated pursuant to a short form amalgamation and a Certificate of Amalgamation was issued by the Registrar of Corporations for the Province of Alberta in accordance with the *Business Corporations Act (Alberta)*. Upon the amalgamation, SECURE and Tervita ceased to exist as separate legal entities and continued as one corporate entity. As a result of the transactions undertaken pursuant to the Plan of Arrangement, all of the Tervita shares were transferred to SECURE in consideration for shares of SECURE and on the amalgamation all of the Tervita shares were cancelled. When SECURE acquired 100% of Tervita, Tervita's shares were de-listed from the Toronto Stock Exchange (TSX). Since Tervita no longer exists as a separate entity, with no directors, officers, employees or property, it is not feasible to reverse or dissolve any of these actions. A copy of the Certificate of Amalgamation is attached as Exhibit 13 to my affidavit.

15. The Transaction also facilitated the refinancing of certain indebtedness of the combined company. SECURE undertook a significant bond offering and has irrevocably committed to use a portion of the proceeds of such offering to, on July 16, 2021, redeem USD\$100 million of indebtedness previously issued by Tervita that SECURE became the obligor of as a result of the amalgamation (the “**Redemption**”). In connection with closing of the Transaction, SECURE paid off then outstanding credit facilities of SECURE and Tervita, discharged old security, and implemented a new C\$800 million credit facility with new lenders and security registrations (the “**Refinancing**”). All material subsidiaries of SECURE and Tervita provided security and guarantees of the new credit facilities. In

addition, certain of the former SECURE subsidiaries have now guaranteed the obligations of SECURE under the former Tervita bonds. The ability for SECURE to undertake these transactions were, in part, based on the credit-worthiness and structure of the combined SECURE/Tervita entity and was conditional upon completion of the Transaction. These actions are irreversible. SECURE's press releases regarding the bond offering and redemption of Tervita notes are attached as Exhibits 14 and 15 to my affidavit.

16. None of the Offering, the Redemption or the Refinancing are reversible or can be dissolved or unwound.

SECURE'S RATIONALE FOR THE TRANSACTION

17. The oil and gas sector, including SECURE, has been struggling since 2014 to navigate a global decline in oil prices and reduced drilling and completion activity, which have resulted in persistent lower demand for oilfield services, including midstream infrastructure solutions such as crude oil storage, custom oil treating and waste management. Many of the facilities of SECURE and formerly Tervita were operating well below capacity. These challenges were exacerbated in 2020 by the COVID-19 pandemic and the Russia/Saudi Arabia price war, and a movement of investment capital away from higher carbon intensity industries, which have led to further cost pressures and an urgent need to quickly and permanently increase the efficiency of our business operations. While the Canadian economy has slowly begun to rebound from the COVID-19 pandemic, the macro shifts in the oil and gas sector remain, as Canada and the world move towards a future with lower carbon emissions, and a focus on renewable energy.

18. The Transaction was necessary for SECURE to obtain cost savings and greater access to capital to create a stronger midstream infrastructure and environmental solutions business.

In particular, the merger:

- a) combined highly complementary asset bases and environmental service lines to provide for enhanced scale, capacity utilization, efficiencies, and enhanced services for customers; and
- b) results in a more cost-effective infrastructure to support a growing and consolidating customer base and shared commitments to environmental, social and governance (“ESG”) goals, safety, performance, customer service and profitability.

19. Moreover, the Transaction is expected to generate significant synergies and efficiencies, the latter of which have been identified and quantified by SECURE’s economic expert, Mr. Andrew Harington, in a report dated June 3, 2021 (the “**Efficiencies Report**”), which is attached as Exhibit “C” to the affidavit of Mr. Harington in this matter (“**Harington Affidavit**”). Mr. Harington has found that the Transaction will generate a minimum of [REDACTED] in efficiencies annually (run rate), representing [REDACTED] in efficiencies over 10 years ([REDACTED] on a 10-year discounted basis), and synergies of [REDACTED] annually (run rate). This is consistent with SECURE’s initial analysis of its expected synergies from the Transaction, which estimated that the combined entity will achieve annual integration cost savings of C\$75 million.

20. The Transaction was and remains widely supported by the customers of SECURE and formerly Tervita, and 29 customers provided letters of support for the Transaction, noting the benefits of working with a supplier with a stable balance sheet who is able to better support customers in attaining their ESG goals and provide better services at lower prices through achieving synergies/efficiencies and more favourable access to capital. These customers operate across multiple geographies in British Columbia, Alberta and Saskatchewan and include large, mid-sized and junior oil and gas companies. Copies of these customer support letters are attached as Exhibit 16 to my affidavit.

INDUSTRY BACKGROUND

A. Midstream Infrastructure & Related Environmental Services

21. Midstream infrastructure providers assist oil and gas producers with the processing, storing, and marketing of oil and gas, and connecting upstream oil and gas producers' drilling and completion sites to downstream oil refineries, petrochemical plants, and retail outlets. Midstream infrastructure providers also support producers with terminalling services, transportation of oil and natural gas, oil treating, waste management (e.g., waste characterization/classification, handling, processing, and disposal), and other related environmental services such as site demolition and decommissioning, site remediation and reclamation, emergency response and spill containment, metals recycling, and waste container services.
22. Midstream infrastructure providers have been fighting to remain afloat since 2014 after global oil prices and drilling and completion activity plummeted. Despite wide-ranging

strategies implemented to manage capital investments and contain and/or reduce costs to minimize the impact of low drilling and completion activity, the industry has consistently reported net losses since 2014. SECURE and the former Tervita business reported an aggregate net loss of more than C\$481 million from 2016 to March 31, 2021.

23. In the past few months alone, various midstream infrastructure providers have taken steps to build up their financial strength to enhance their competitiveness and increase their capacity to withstand the difficult industry environment. For example, in January 2021, Catapult Water Midstream (“**Catapult**”) entered into a strategic alliance with Topaz Energy (“**Topaz**”) to acquire a 99% working interest in certain pipeline-connected oilfield disposal facilities in Alberta from NuVista Energy Ltd. (“**Nuvista**”). In February 2021, Wolverine Energy and Infrastructure Inc. (“**Wolverine**”) announced the closing of a promissory note offering. In June 2021, Pembina Pipeline Corporation (“**Pembina**”) announced that it had entered into an agreement to acquire Inter Pipeline Limited to create one of the largest energy infrastructure companies in Canada. This activity is indicative of the urgent need for midstream infrastructure providers to take action to ensure their continued financial stability. Press releases for the above transactions are attached as Exhibits 17 to 19 to my affidavit.

24. The Canadian midstream infrastructure industry is made up of a variety of competitors including full-service providers, and smaller providers that focus on particular segments and producers with self-supply capabilities. Competitors in the industry typically operate a wide range of facilities and other infrastructure including pipelines, storage terminals, oil

batteries, engineered landfills and integrated full-service terminals (“**FSTs**”, also referred to as “**Treatment, Recovery and Disposal**” facilities or “**TRDs**”).

25. In addition, many upstream oil and gas producers are capable and do self-supply a variety of midstream infrastructure services, including waste water disposal and landfill services, and are capable of expanding such capacity further.

B. Relationship with the Upstream Oil and Gas Sector

26. Canadian midstream infrastructure providers are dependent upon the upstream oil and gas sector, which is comprised of exploration, drilling, and production activities. Upstream oil and gas activity is driven directly by crude oil prices, which are broadly set at a global level and are dictated by a combination of geopolitical, resource and other pricing factors largely beyond the control of Canadian oil producers. Given Canada’s relatively small position in respect of global crude oil production – approximately 6% of total worldwide production in 2019 – producers in Canada typically respond to, rather than set, commodity prices.
27. Since 2014, the Canadian oil and gas sector has been marked by significant volatility caused by a global slump in prices. Limited pipeline infrastructure restricting the delivery of oil and gas from Canada to other markets, combined with a less favourable tax and regulatory environment has resulted in Canadian producers being more severely impacted than their U.S. counterparts and a corresponding flight of capital from the Canadian oil and gas sector. Together, these circumstances have spurred a wave of consolidations in the oil and gas sector. For example, in April 2021, ARC Resources Limited (“**ARC Resources**”) announced the closing of a combination with Seven Generations Energy Ltd. (“**Seven**

Generations”), and in June 2021 (i) Tourmaline Oil Corp. (“**Tourmaline**”) announced that it had entered into an agreement to acquire Black Swan Energy Ltd., and; (ii) Strathcona Resources Ltd. announced an amalgamation with Osum Oil Sands Corp. Attached as Exhibit 20 to my affidavit is a list of examples of transactions in the upstream oil and gas sector that have been announced/completed since 2018.

28. The challenges already facing the upstream oil and gas sector were exacerbated in 2020 when Saudi Arabia launched a price war against Russia and, days later, the World Health Organization declared COVID-19 as a pandemic. These events led to an all-time low for Alberta oil prices in April 2020. In response, Canadian producers cut capital expenditures and production and experts anticipated that 2020 would be the lowest year on record for drilling activity in Canada. An exhibit showing declining oil well completions in Alberta from 2014 to the present is attached as Exhibit 21 to my affidavit.
29. While the Canadian economy has begun to recover from the COVID-19 pandemic, macro trends in Canada and globally towards reduced carbon emissions continue to put downward pressure on new drilling activity. For example, in November 2019, Parliament introduced the proposed *Canadian Net-Zero Emissions Accountability Act*, which will formalize Canada’s target to achieve net-zero emissions by the year 2050 and establish interim emissions reduction targets at 5-year milestones. A copy of the Government of Canada’s statement on this policy is attached as Exhibit 22 to my affidavit.
30. Against the backdrop of an already weak economic and industry climate in Alberta, government policies and global trends towards net-zero emissions, the international price

war combined with the pandemic have jeopardized the future of many companies, such as SECURE operating in the oil and gas sector. If oil and gas companies are to survive the transition to sustainable energy (let alone thrive), particularly in a challenging and contracting environment with tremendous pressures to control costs and improve balance sheet strength, they require access to sufficient capital to invest in innovative initiatives and to realize efficiencies within their businesses and throughout their supply chains.

BUSINESS OF SECURE

31. Approximately ██████████ of SECURE's total revenues from its midstream infrastructure businesses (pre-closing) are attributable to water and oil volumes, with produced water and waste water in particular representing more than ██████ of total midstream revenues.
32. Producers use water for hydraulic fracturing (or fracking), drilling and completion of wells, washing rigs, hydrotesting pipelines, coolant and other cleaning and sanitary uses. The produced water and waste water resulting from these activities, if not recycled back into operations, must be either injected back into the subsurface for enhanced recovery or disposed of through a disposal well.
33. Produced water and waste water disposal may be performed through an FST or a standalone water disposal well. Competition among midstream infrastructure providers (e.g., Aqua Terra, Keyera, Catapult and Voda) and from producers themselves is intense. There are over 3800 produced water and waste water disposal wells that are currently active in Alberta alone, many of which are operated by oil producers including Canadian Natural Resources ("CNRL"), Cenovus/Husky and Ovintiv (Attached as Exhibit 23 to my affidavit

a list of examples of competitors offering produced water and waste water disposal). By comparison, SECURE post-Transaction now owns and operates only 80 facilities (2 percent) with produced water and waste water disposal capabilities.

34. Many producers already supply water and waste water disposal services internally. Producers that already have existing internal capabilities can easily expand their internal capacity to meet their needs. SECURE (including the former Tervita business) has lost at least [REDACTED] in revenues since 2016 due to customers switching to internal supply.
35. SECURE competes with other companies for waste disposal services. Depending on the product, SECURE competes with integrated oil and gas producers, pipeline companies, energy marketing companies, other large companies, and small regional companies with a more targeted service offering. For example, Ridgeline Canada Inc. (“**Ridgeline**”) operates seven landfills across the Western Canadian Sedimentary Basin (“**WCSB**”). Voda Inc. (“**Voda**”) operates a landfill in Saskatchewan and five FSTs/TRDs in Alberta and Saskatchewan, offering treating, solid waste, water, and terminalling services. Pure Environmental LP (“**Pure Environmental**”) recently opened a facility near Bonnyville, AB, which, includes a cavern for disposal, and they are also actively working on a proposed landfill site north of Fort Kent, AB. White Swan Environmental Ltd. (“**White Swan**”) operates a complete waste processing and custom treating facility that is designed for high volume daily deliveries of all production, turn around, hydro-vac, drilling and completion waste in Alberta. Albright Flush Systems Ltd. operates a waste disposal facility in the Fort St. John area. Several third parties treat water in multiple facilities, including AQT Water Management Inc. (“**Aqua Terra**”), Catapult and Fleet Energy Ltd. (“**Fleet Energy**”).

A. Oil Processing and Handling

36. Midstream infrastructure providers typically offer two oil-related services: emulsion treating and crude oil terminalling. Emulsion treating consists of processing crude oil produced from a reservoir to remove the water, salts, and other suspended solids to meet industrial specifications for transport, storage, and sale of crude oil to downstream oil refineries. Service providers use a variety of treatment methods such as heating/thermal techniques, chemical demulsifiers, knockout drums, desalters, settling tanks and electrical methods to separate the various components.
37. Terminalling facilities transfer crude oil from upstream producers to downstream users such as refineries by receiving and storing crude oil pending distribution by barge, rail, truck, or pipeline. Terminal operators also typically purchase and resell crude oil to pipeline operators, refineries, etc. Crude oil quality may also be optimized to improve the price received through resale of the final unrefined product.
38. Emulsion treating may be performed at an FST or a traditional oil battery site, leading to fierce competition with producers' internal capabilities. Similarly, terminals can form part of an FST or be built as standalone sites and are operated by companies spanning the entire oil and gas sector including, traditional midstream infrastructure providers, upstream producers, and downstream refineries.
39. Petrinex reports more than 7,000 licensed facilities and oil battery sites that perform oil handling services (emulsion treating and/or terminalling). Attached as Exhibit 24 to my affidavit is a list of examples of competitors offering oil handling services. The vast

majority of operators are producers themselves, including Canadian Natural Resources Limited (“**CNRL**”), Suncor Energy (“**Suncor**”), Imperial Oil Limited (“**Imperial Oil**”), Enbridge Inc. (“**Enbridge**”), Cenovus Energy Inc. (“**Cenovus**”)/Husky Energy Inc. (“**Husky**”), Seven Generations/ARC Resources, and Baytex Energy Corp (“**Baytex**”), in addition to a wide range of mid-sized and smaller oil and gas companies. By contrast, SECURE post-merger will operate only 63 facilities (1 percent) that provide oil handling services to customers.

B. Liquid Oilfield Waste Processing

40. Liquid waste generated from drilling, completion, and production-related activities may require treatment to change the physical, chemical, or biological character of the waste to reduce its dangerous components to permit safe disposal and/or alter it into usable material. In particular, midstream infrastructure providers typically use a variety and/or combination of methods including heating, settling, chemical applications, mechanical mixing, centrifuging, and water washing to separate the mixture into three components: recoverable oil, waste water, and residual solids.
41. Generally, liquid oilfield waste is processed at an FST that also manages other oilfield by-products (i.e., oil and produced water and waste water) as the underlying infrastructure for the various by-products is interconnected. For example, the separated waste water resulting from liquid waste processing must be disposed of at a disposal well, the residual solids need to be transported to a landfill, and the recoverable oil must be stored before it is

subsequently sold. Producers are also able to blend waste streams into their product streams to eliminate the need for additional handling.

42. Remaining competitors such as Fleet Energy, Pure Environmental, Ridgeline, White Swan, Wolverine (Voda) and others will continue to exist post Transaction. Attached as Exhibit 25 to my affidavit is a list of examples of competitors offering liquid oilfield waste processing. More particularly, customers are able to switch between various competitors as regulatory waste tracking and categorization requirements effectively require oil producers to contact FST operators ahead of time to categorize (and price) waste volumes on that basis.
43. In addition, SECURE's customers post-merger will still have significant countervailing buyer power. Oil producers themselves have been consolidating substantially in response to the continued volatility of the oil and gas sector while also imposing tremendous pricing pressures on suppliers (including midstream infrastructure providers such as SECURE). This trend is expected to continue for the foreseeable future and may become permanent.
44. Finally, oil and gas producers can also enter and expand into liquid oilfield waste processing in approximately 12 months and with relative ease by building out existing facilities that handle produced water and waste water to accommodate liquid oilfield waste. I believe that if SECURE ever tried to materially increase prices, oil and gas producers would take this course of action.

C. Solid Oilfield Waste Disposal

45. SECURE owns and operate landfills in Alberta that dispose of non-dangerous/non-hazardous solid oilfield waste. An oilfield landfill provides for the permanent disposal of solid waste from oilfield operations, including impacted or contaminated soils, sludges, drilling mud, drill cuttings, liners, cement, or other debris from oilfield construction and demolition. Typically, oilfield landfills are operated by either oil and gas producers that dispose of oilfield waste generated from their own operations, or third-party midstream infrastructure providers that dispose of waste generated by producers.
46. SECURE accepts naturally occurring radioactive material waste (“**NORM Waste**”) at its Pembina and Silverberry landfills. [REDACTED]
[REDACTED].
47. SECURE post-merger will continue to face competition from other traditional oilfield landfill operators such as RemedX Remediation Services (“**RemedX**”), which is currently developing a proposed landfill site in Southeast Alberta, Claystone Waste Ltd. (“**Claystone**”), Clean Harbors, Inc. (“**Clean Harbors**”) Waste Connections of Canada (“**Waste Connections**”) and Waste Management, Inc. (“**Waste Management**”). Attached as Exhibit 26 to my affidavit is a list of examples of competitors offering solid oilfield waste disposal. Similar to liquid oilfield waste, customers can readily switch between competitors when looking to drop off their solid oilfield waste volumes.
48. SECURE post-merger will also continue to compete against municipal and regional landfills. Municipal and regional landfills that accept non-hazardous residential waste

compete for oilfield waste volumes to use as daily top-cover. In many cases, non-oilfield landfills prefer to use oilfield waste for this purpose to ensure sufficient on-site soil for final closure material at the end of the municipal/regional landfill's life cycle.

49. Many customers/producers perform waste disposal functions internally. For example, producers such as CNRL, Cenovus/Husky, Shell Energy (“**Shell**”) and ConocoPhillips operate landfills for their own exclusive use and have become less reliant on third-party midstream infrastructure providers, including SECURE, to fulfill their solid waste disposal needs. SECURE has (including the former Tervita business) lost over than [REDACTED] in revenues since 2016 as a result of producers switching to self-supply, including significant volumes lost to [REDACTED] internal landfill from the [REDACTED] landfill from 2016-2019.

D. Wonowon Landfill Project is Highly Uncertain

50. SECURE is engaged in the process of considering a potential landfill site in Wonowon, British Columbia. SECURE is continuing to evaluate the Wonowon landfill project following the closing of the Transaction. The Wonowon landfill project is currently undergoing the preliminary, pre-application phases of various regulatory reviews and approval processes, the outcomes of which are uncertain. As part of these regulatory approval processes, consultations with stakeholders including First Nations communities remain ongoing, but these groups may oppose the landfill project. SECURE has not yet obtained any of the regulatory approvals required to begin construction on the proposed landfill and it remains unclear whether any or all of these approvals will be obtained.

Additionally, delays associated with the regulatory reviews and approval processes call into question the broader business case for the proposed landfill and SECURE's continued interest in pursuing the project.

51. Significantly, the Wonowon landfill project cannot proceed without receipt of an Environmental Assessment Certificate (an "EA Certificate") from the British Columbia Environmental Assessment Office (the "EAO"). SECURE initiated an EAO process for a Wonowon landfill in January 2019. However, over two years later its application was declined on March 17, 2021. The EAO indicated that it would not proceed further with a detailed review at that time. [REDACTED]

[REDACTED]

The March 17, 2021 letter from the EAO is attached as Exhibit 27 to my affidavit.

52. Notably, on June 30, 2021, the Supreme Court of British Columbia issued a decision in favour of the Blueberry River First Nations, which recognizes that industrial developments authorized by the province of British Columbia have significantly and unjustifiably diminished the ability of Blueberry members to exercise their rights to hunt, fish and trap in their territory as part of their way of life and therefore constitute an infringement of their treaty rights, and states that the Province may not continue to authorize activities that breach the promises under Treaty 8. [REDACTED]

[REDACTED]

[REDACTED]

53. In addition to EAO approval, several other steps and regulatory approvals remain outstanding before SECURE could proceed with the Wonowon landfill project:

a) *First Nations Support*: Adequate consultation with seven First Nations communities is required as part of the EAO review, [REDACTED]

[REDACTED] Opposition from indigenous communities can prove to be a significant hurdle to any project related to the oil and gas sector

[REDACTED]

[REDACTED]

b) *Crown Land Tenure*: The proposed Wonowon landfill site is located on Crown land. SECURE would need to reach an agreement with the British Columbia Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the “**Ministry**”) to acquire an interest in the land where the landfill site is located. [REDACTED]

c) *Peace River Regional District Bylaw Amendment*: SECURE would require a zoning bylaw amendment for the landfill site from the Peace River Regional District. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The outcome of the requisite bylaw amendment process

remains uncertain and subject to a number of factors beyond SECURE’s control.

d) [REDACTED]

e) *Ministry of the Environment Waste Discharge Permit:* SECURE would need a Waste Discharge Permit issued by the British Columbia Ministry of the Environment and Climate Change (“MOE”) in order to operate the proposed Wonowon landfill. [REDACTED]

54. Finally, the Wonowon landfill project is only at SECURE’s internal “Development Phase 1” approvals stage, which represents an early stage of development. The key elements of this phase are completion of the EAO and MOE processes, which are both uncertain. Although SECURE has made some smaller scale investments in this project to reach this phase (i.e., expenditures of [REDACTED] and [REDACTED] for ideation and evaluation), the vast majority of capital expenditures for the Wonowon landfill project (over [REDACTED])

Exhibits 31-38 of my affidavit are internal SECURE (and formerly Tervita) communications and documents that demonstrate the extent to which third-party competitors – including Medicine River Oil Recyclers (“**MROR**”), Aqua Terra, Catapult, Clean Harbors, RemedX and municipal landfills – are a competitive constraint.

57. Second, many of SECURE’s customers are large, sophisticated oil and gas producers with significant buyer power, which is derived from the volume of business that they provide to SECURE, their ability to self-supply and their ability to punish any attempted price increases across multiple product lines and geographies by diverting volumes either to third-party competitors or through self-supply.
58. Nearly all of SECURE’s revenue comes from servicing producers that utilize multiple facilities and multiple waste disposal services. SECURE faces high fixed costs to operate facilities; ensuring a steady volume of waste to process is critical to their profitability. The volume of waste that these customers provide to the facilities, the incremental volume they could provide, and the risk of losing volume across products and facilities provides customers with significant bargaining leverage.
59. In addition, due to contraction in the oil and gas sector, SECURE’s waste and landfill facilities are highly underutilized, with average utilization of less than (with some facilities below) in 2020. Maintaining waste volumes from customers is critical to SECURE’s business.
60. Produced water and waste water represent more than of SECURE’s midstream infrastructure revenues (pre-closing) and [REDACTED]

██████████ Waste water disposal is also the service that is characterized by the largest number of competing third-party suppliers, as well as the highest prevalence of customer self-supply. As outlined above, now that the Transaction has closed, SECURE operates only 2 percent of facilities with produced water and waste water disposal capabilities, and as set out above, SECURE (including the former Tervita business) has lost at least ██████████ in revenues since 2016 due to customers switching to internal supply. The intensity of competition and ease and prevalence of self-supply in water disposal in particular is a powerful constraint on any price increases in other waste disposal streams.

61. Customers also can and do self-supply landfill and liquid waste disposal services. For example, CNRL, ConocoPhillips Canada, Cenovus/Husky, Imperial Oil Limited, Shell, and Suncor Energy have approved landfills in Alberta. Similarly, Baytex Energy and Cenovus/Husky have approved waste processing facilities in Alberta. Customers have also sponsored third-party entry in the past by guaranteeing waste volumes to third-party suppliers to construct facilities in new regions. ██████████

██████████ Attached as Exhibits 39 to 56 to my affidavit are internal SECURE (and formerly Tervita) communications and documents that demonstrate the extent to which self-supply is a competitive constraint.²

² Please also see Exhibits 31, 33, 34, 35, 37 and 38 for other examples of self-supply as a competitive constraint.

62. The chart below summarizes waste volumes lost to competitors to self-supply over the past five years. These losses cut across product lines, geographies and customers:



63. In their financial reporting, producers discuss how insourcing can reduce their operating costs. For example, in its Q2 2019 financial and operational results, ARC Resources notes that it “completed construction of an ARC owned-and-operated produced water recycling facility in Parkland [...] ARC expects robust economic returns on this investment and anticipates that it will reduce water access costs and risks as ARC continues to develop its

core operating areas.” Attached as Exhibit 57 to my affidavit is ARC Resources’s Q2 2019 financial and operational results.

64. Similarly, Seven Generations (which completed its combination with ARC Resources on April 6, 2021) noted at an energy conference in September 2020: “[m]ajor opex cost improvements attributed to: i) water handling infrastructure investments from prior years.”³ Paramount Resources Ltd. (“**Paramount**”) reported in its Q1 2020 results that “[t]wo new water disposal wells were brought into service towards the end of the first quarter of 2020 at Karr. These wells will reduce operating costs associated with water trucking and disposal and are expected to meet Karr area development needs for the foreseeable future.”⁴ Attached as Exhibit 58 to my affidavit is an email from National Bank of Canada Financial Markets summarizing the “fireside chats” from the 8th Annual September Energy Conference. Attached as Exhibit 59 to my affidavit are Paramount’s Q1 2020 financial and operational results.

65. Customers are also capable of self-supply with respect to energy marketing services. Many oil and gas producers are vertically integrated, and have the capabilities and infrastructure required to treat, terminal and market and their own oil and gas. Many producers build their own batteries and tie-ins to transmission pipelines, eliminating the need for third-party energy marketing services.

³ Exhibit 58.

⁴ Exhibit 59.

66. For example, Tourmaline connects directly to the Pembina Peace Pipeline System at its Spirit River location, as do Paramount at its Gold Creek location, CNRL at its Grande Prairie and La Glace locations, and Seven Generations (now ARC Resources) at its Kakwa facility. Attached as Exhibit 60 to my affidavit is a petroleum toll schedule issued by Pembina for its Peace Pipeline System which lists all receipt points to the pipeline, including many major customers of SECURE. Customers frequently leverage this self-supply capacity in energy marketing in negotiating pricing with SECURE, both for energy marketing and across product lines.
67. The majority of SECURE's customers provide volumes across water disposal, FST facilities, and landfills, and across multiple geographic regions. As a result, even in regions where there are fewer competing facilities (either landfills, FSTs, or water-disposal facilities), SECURE does not charge higher prices, as such an increase would threaten customer volumes across other geographies or service streams where there is a higher level of third-party competition or ability to self-supply. This cross-geography and cross-service countervailing buyer power is a strong constraint on SECURE's pricing. Attached to my affidavit as Exhibits 61 to 66 are internal SECURE (and formerly Tervita) communications and documents that demonstrate the extent to which countervailing buyer power or punishment across geographies and product lines is a competitive constraint.

F. Environmental Solutions

68. SECURE provides services that can be categorized as "environmental solutions" in Canada. These include:

- a) waste container services, which facilitate on-site, temporary storage of certain oilfield waste. Third-party providers deliver waste containers and related equipment to project sites and haul away filled containers to disposal facilities.
- b) demolition and decommissioning, which consists of the removal of equipment and/or structures including hazardous materials removal, asset recovery, recycling and end-to-end demolition and decommissioning solutions. The demolition and decommissioning process precedes remediation and reclamation.
- c) environmental remediation and reclamation, which involves (i) the restoration of land by removing, reducing, and neutralizing substances/wastes to prevent and minimize any adverse effects on the surrounding environment, and (ii) the process of reconverting disturbed land back to its former or other productive uses.
- d) emergency response services, which assist companies operating in the oil and gas sector with the development of corporate-level and site-specific emergency response plans for, and initial responses to, spills and leaks, fires, floods, rail incidents, transportation accidents and pipeline breaks.

69. SECURE post-merger will continue to compete vigorously with a wide range of small and large competitors active in the environmental solutions segment across Western Canada, including RBW Waste Management, GFL Environmental Inc. (“GFL”), Clean Harbors,

Waste Collective, Seven Lakes Oilfield Service, Vertex, SNC Lavalin, AECOM, Tetra Tech and Backwoods. A list of key competitors in the environmental solutions segment is attached as Exhibit 67 to my affidavit.

70. Furthermore, barriers to entry and/or expansion with respect to environmental solutions are very low. The services provided by environmental solutions providers are not unique, and entry and expansion can readily be carried out by either new players or firms providing adjacent products or services. In particular, there are no unique attributes or licensing requirements for most waste containers, and the equipment is easily transferrable from non-oil and gas sector uses and across regions. For example, in 2015, Waste Management entered into Western Canada by moving excess bins from its U.S. operations. More recently, at the beginning of 2021, Kanaskiy Waste entered the segment and has since been vigorously competing against the SECURE for contracts with oil producers.
71. Other environmental services (e.g., demolition and decommissioning, environmental remediation and reclamation, and emergency response services) are also characterized by very low barriers to entry and/or expansion. Given that these services are often advisory in nature, there are generally no significant facility/infrastructure or equipment requirements, and the only fundamental requirement to entry or expansion is technical know-how (which can be easily achieved by hiring or training individuals).
72. SECURE has no ability or incentive to foreclose other environmental services providers from accessing downstream waste disposal services for several reasons, including: (i) the

importance of ongoing relationships with producer customers across business lines; and
(ii) the volume-based nature of SECURE's waste disposal business.

73. The customers for competing environmental service providers are the same oil and gas producer customers that purchase waste disposal and energy marketing services from SECURE. It is not in SECURE's interests to turn away its own customers' waste when it is brought to its facilities by other environmental service providers, as such conduct would threaten a significantly larger volume of business from such customers across other business lines due to damage to the customer relationship, trust, and SECURE's reputation.
74. Customers remain legally responsible for their waste even if it is handled by a third-party environmental service provider. All waste brought to SECURE facilities is identifiable as waste of the original producer, even if it is brought by third-party service providers. SECURE does not maintain transaction data that identifies waste as being brought to disposal sites by environmental service providers – it is tracked as originating at the customer site.
75. Further, SECURE's midstream waste disposal business is a "volume based" business, meaning that SECURE's landfill and FST facilities are characterized by high initial fixed construction costs, and lower variable operating costs. This means that capturing waste volumes in SECURE's midstream infrastructure facilities (FSTs and landfills) is necessary for the profitability of the facilities. As a result, SECURE has no incentive to turn away waste volumes provided by other environmental service providers. The loss of these volumes via trucking to competing facilities or self-supply by producers (as outlined

above), which would be likely in the event of any attempted foreclosure, would be a serious detriment to SECURE's business.

EFFICIENCIES

76. I have reviewed the Efficiencies Report of Mr. Andrew Harington of The Brattle Group. The Efficiencies Report accurately reflects SECURE's integration plans, and all information provided to Mr. Harington to support the preparation of his report is correct and accurately represented in the Efficiencies Report.⁵

A. Efficiencies and Costs

77. The Transaction will generate significant synergies and efficiencies to the combined business. These efficiencies have been identified and quantified by SECURE's economic expert, Mr. Andy Harington, in the Efficiencies Report. Mr. Harington has found that the Transaction will generate a minimum of [REDACTED] in efficiencies annually (run rate), representing [REDACTED] in efficiencies over 10 years, or [REDACTED] on a discounted basis, and [REDACTED] annually in synergies to the combined entity (run rate). This is consistent with SECURE's analysis of its expected synergies from the Transaction.

⁵ [REDACTED]
[REDACTED]
[REDACTED]

This saving is in addition to the amount set out in the Efficiencies Report.

78. In order to identify the fixed operating costs at the closing facilities, SECURE identified on a cost category-by-category basis whether the cost category is fixed, variable, or a combination (and if so, which proportion is fixed or variable). Labour costs are categorized as fixed costs in this context. Specifically, regarding leachate costs for landfill closures, as these costs continue for a few years after closure of a landfill, these costs are considered variable. However, leachate costs can be considered fixed in that they generally do not vary with volume, but rather vary on the age of the cell (developed airspace that is sitting open to rainfall) and the amount of rainfall. These costs occur at closed facilities – no additional leachate costs are anticipated at continuing facilities. In addition, per unit variable costs (most significantly leachate costs) can vary significantly year-over-year based on factors such as weather patterns, which impact disposal fees, and activities relating to new cell development.
79. SECURE management is not aware of any factors that would, given similar geographic locations, make any one landfill more operationally “efficient” than another. For TRDs/FSTs, no group of closing and absorbing facilities provided the same set of services and/or the facilities have different focuses, and facility operating costs are only available on a facility-wide basis. Therefore, it is not possible to determine whether differences exist in variable costs across facilities for any individual service.

B. Delayed or Saved Capital Expenditures

80. Several TRDs/FSTs that SECURE intends to suspend now that the Transaction has closed had planned capital expenditures, including tubing replacements, well replacement and maintenance, and pipeline costs, which are not necessary post-closing.

81. At certain of its FSTs that are closing, SECURE identified the expected dollar value of specific upcoming capital expenditures that would have been required in the next 12 months. With the Transaction, these expenditures, which total [REDACTED], have been put on hold and will not be undertaken. The details of these expenditures that have been put on hold and will not be undertaken are set out in Schedule 3.2 of the Efficiencies Report.

82. One such capital expense is the capping of landfills. Landfill cells deplete over time as they are filled with waste. In anticipation of such depletion, particularly as existing cells approach full capacity, a landfill operator must incur capital expenditures to build new cells to accommodate further waste. When a cell is full it must be capped, which requires a capital expenditure.

83. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[Redacted]

[Redacted]

[Redacted] Landfill

cells are optimally constructed in October.

C. Pipeline Access Savings for Landfills

84.

[Redacted]

85.

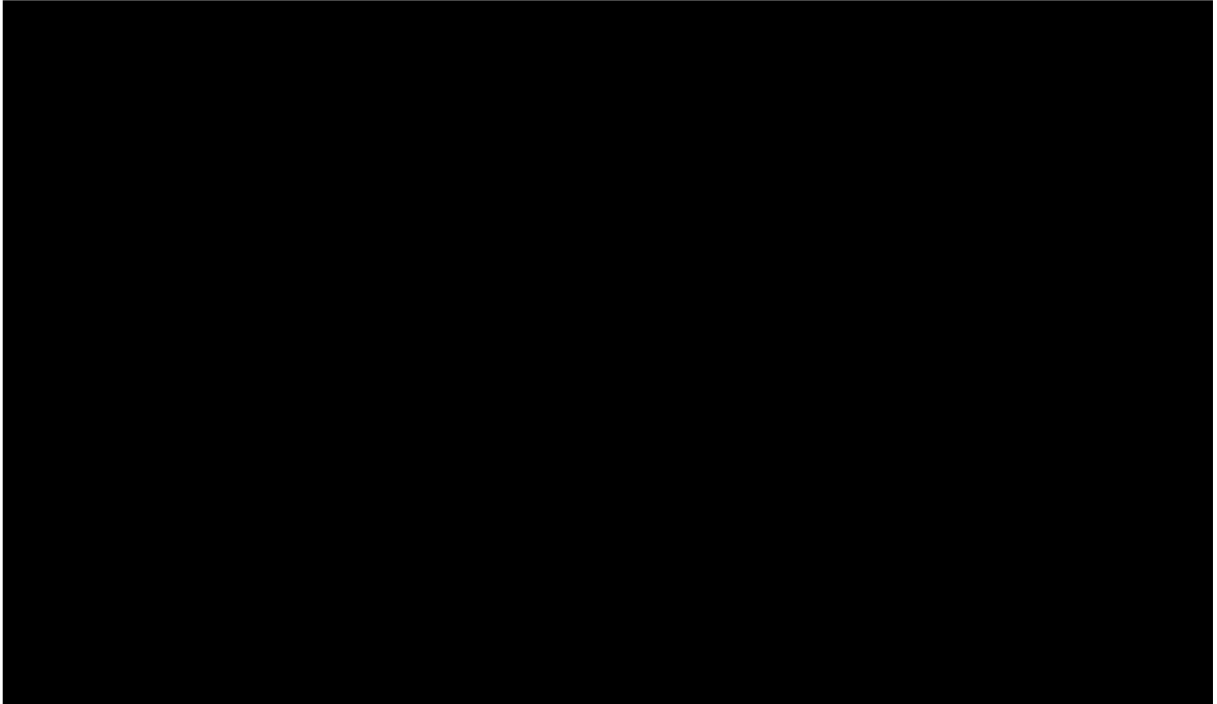
86.

87.

88.

D. Field Office Savings

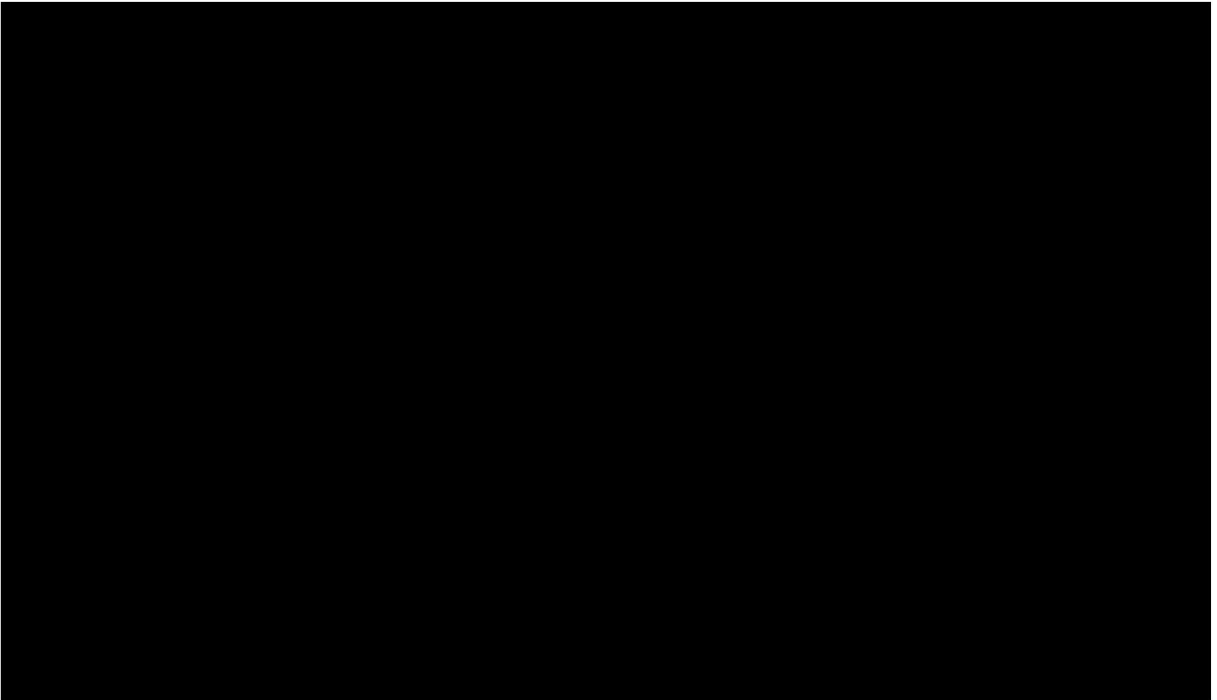
89.



90.

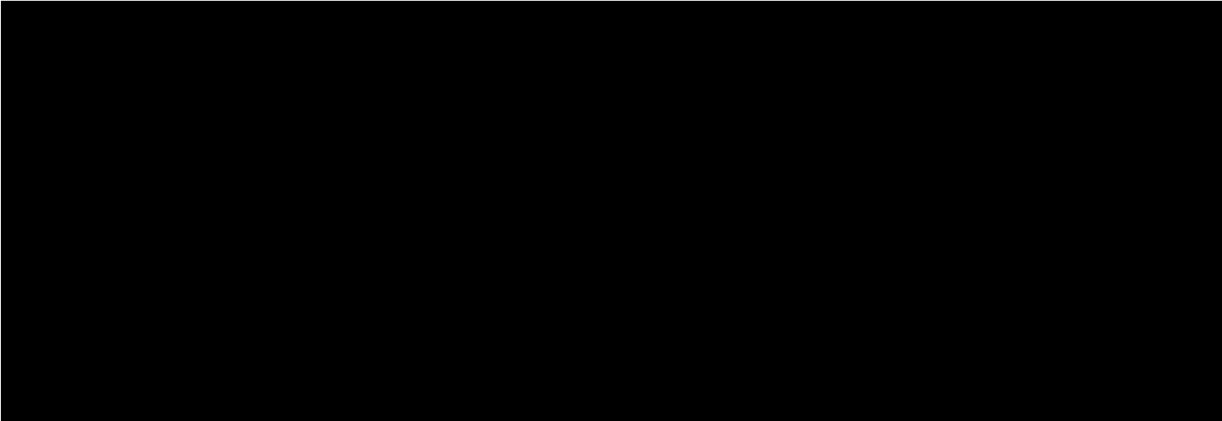
E. Delayed or Saved Capital Expenditures

91.




92.

93.



F. Intercompany Transport Savings

94. SECURE and the former Tervita business both trucked volume across various product categories within their respective facility networks. Within the integrated facility network of the two parties, accounting for planned facility closures, SECURE will achieve transport savings by using former Tervita facilities that were not previously within its network when it is efficient to do so and vice versa.

95. SECURE has analyzed its trucking costs by considering the volume of product that can be carried on a truck. In this regard, SECURE has grouped its product shipments into six segments in which transport costs occur between facilities, which may differ from product categorizations used for other purposes. For each segment, based on the locations of its own and former Tervita facilities after the Proposed Transaction, SECURE has calculated the total transport distance savings should the product instead be transported to the closest facility of the merged firm now that former Tervita facilities are available. 



[REDACTED]

[REDACTED]

96. These integration activities began taking place immediately following closing and are currently in progress.

G. Other Customer Benefits

97. [REDACTED]

98. [REDACTED]

H. Contract Rebalancing

99. [REDACTED]

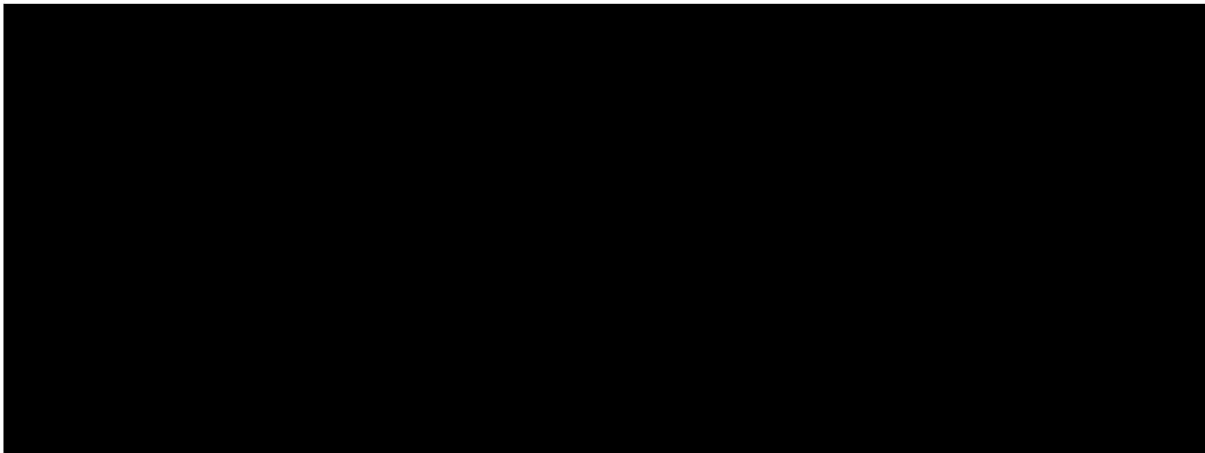
100.

101.

102.

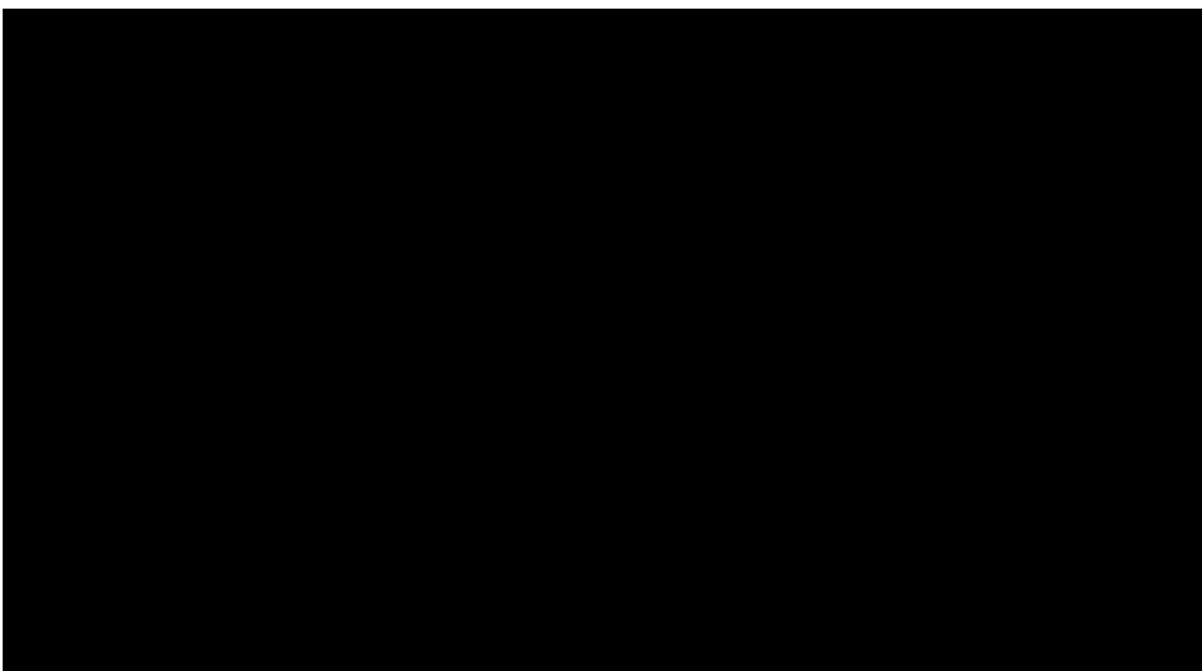
I. Metal Recycling

103.



J. Environmental Solutions: Trucking Savings

104.



K. Butane Transport Savings

105. I am informed through the integration planning process that the former Tervita business purchased butane at a landed price at consumption locations and incurs fees for handling, logistics and administration of approximately [REDACTED] SECURE handles all of its own logistics and manages transport, and it intends to internalize these logistics for former

Tervita volumes after the Transaction. Bringing these logistics services in-house will result in an annual saving of [REDACTED] based on an estimated saving of [REDACTED] for Tervita's 2020 volume, which I am informed through the integration process to be [REDACTED] annually.

L. Chemical Cost Savings

106. SECURE estimates that, as a result of the Proposed Transaction, it will be able to obtain chemicals at a lower cost by internalizing, resulting in an annual synergy of [REDACTED]

M. Corporate Cost Savings

107. SECURE and the former Tervita business both had costs associated with being publicly traded companies and corporate costs that relate to overall business operations. Reductions in duplicated cost types will likely be achieved due to the Transaction. These costs include:

- a) *Corporate Labour Savings:* [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

b) *Head Office Lease Savings:* SECURE and the former Tervita business both have corporate offices in Calgary, Alberta. Following the Transaction, SECURE will reduce the amount of square footage required for its head office and save costs by sub-leasing excess space. [REDACTED]

[REDACTED]

c) *IT Cost Savings*: SECURE will reduce the total current expenditure on certain IT application services. For each applicable application or service, SECURE has identified the current SECURE and former Tervita costs and estimated the costs the merged firm will incur after the Transaction. SECURE estimates the total annual savings from integration will be [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

d) *Regulatory Fees*: SECURE and formerly Tervita both incurred various regulatory fees associated with their operations, the vast majority of which are fees paid to Alberta's energy regulator. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e) *Insurance and consulting*: SECURE and formerly Tervita both incurred various consulting/brokerage fees and insurance fees. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE IMPORTANCE OF INTEGRATION AND HARM TO SECURE

108. SECURE was motivated to close the Transaction as soon as possible, given the significant efficiencies and synergies that will be generated through the integration of Tervita into SECURE, including the financing benefits discussed above. As indicated in the Efficiencies Report of Andrew Harington, the Transaction will generate operating synergies of ██████████ per year (run rate), and efficiencies of ██████████ per year (run rate) for a total of ██████████ in efficiencies generated over the next 10 years. Given that SECURE and the former Tervita business are experiencing very significant financial challenges, the achievement of these efficiencies and synergies is urgent. As set out above, SECURE and Tervita reported an aggregate net loss of more than \$481 million from 2016 to March 31, 2021.
109. If the Tribunal orders that the Transaction be dissolved, to the best of my knowledge, information, and belief, there is no realistic path to “recreating” the Transaction following the Tribunal’s decision in the Commissioner’s section 92 application. The Arrangement Agreement between SECURE and Tervita has been completed and no longer exists. Further, to the best of my knowledge, information, and belief, there is no mechanism for unwinding the Transaction or doing so on an “interim” basis and re-creating the Transaction following the disposition of the section 92 application. As outlined above, there have been significant, positive and irreversible financing events in the form of the Offering, the Redemption, and the Refinancing. The Transaction was a public markets transaction – there is no feasible way to return the shares of SECURE to their former owners.

110. As a result, if the Tribunal were to order an “unwinding” of the Transaction, SECURE has no certainty or even understanding of how the Transaction could be recreated. Moreover, all of the estimated [REDACTED] in efficiencies from the Transaction would be lost. In the event that SECURE is required to conduct some kind of divestiture of the Tervita business, SECURE estimates that the costs associated with such a process would be over [REDACTED], including approximately [REDACTED] to bondholders for early redemption, and over [REDACTED] in credit facility, legal, and advisor fees.
111. Should the Commissioner’s alternative prayer for relief be granted, and the Parties be required to hold separate the entire business formerly comprising Tervita, or in the further alternative, preserve all former Tervita assets and cease any further integration, SECURE and the economy would be irreparably harmed through the loss of the substantial synergies and efficiencies that would have been generated by the Transaction.
112. The Commissioner has not undertaken to compensate SECURE for the losses it will suffer as a result of the granting of the any interim order in the event that the section 92 application is dismissed.

A. Customer Harms

113. Granting any of the Commissioner’s requested orders will also prejudice the combined entity’s ability to support its customers and enter into new projects to improve efficiency and environmental impacts. As an example, [REDACTED]
- [REDACTED]
- [REDACTED]

116. The Parties also provided multiple submissions to the Bureau regarding, among other things: (i) the urgency of closing the Transaction as quickly as possible given the economic pressures on the Parties and the need to realize efficiencies (March 24, 2021); (ii) the estimated [REDACTED] in efficiencies which the Transaction would generate, along with an expert report from Andrew Harington of The Brattle Group calculating such efficiencies (June 3, 2021); and (iii) the strong customer support for the Transaction, including 29 letters of support (June 25, 2021). Copies of the parties' submissions to the Bureau are attached as Exhibits 69-78 to my affidavit.
117. The Parties also engaged in multiple virtual meetings and telephone calls with the Bureau regarding its investigation and competitive concerns, including a without prejudice meeting between the Commissioner and key businesspeople from each of the Parties on June 28.
118. In addition to the above, the Parties and Bureau engaged in numerous without prejudice exchanges and meetings in an attempt to resolve the Bureau's concerns with respect to the Transaction.
119. On June 24, 2021, the Commissioner's counsel wrote to ask if SECURE would delay closing past the end of the waiting period and provide him with 72 hours' notice of closing. SECURE agreed to this delay on June 25, 2021 considering SECURE's desire for the upcoming meeting with the Commissioner scheduled for June 28, 2021 to be productive. At the end of that meeting the Commissioner indicated we would receive a response that evening from the Bureau.

120. After waiting but not hearing from the Bureau late into the evening, counsel for SECURE provided the requested notice of our intention to close the Transaction at 11:15pm on June 28, 2021. On June 29, 2021, the Commissioner filed applications under sections 92 and 104 of the Competition Act and served the Commissioner's application record for this application under section 104 of the Act, which totaled 2,795 pages. The Commissioner's record included an affidavit from a Bureau officer with voluminous exhibits, and an affidavit and expert report from the Commissioner's economic expert.
121. Also on June 29, 2021, the Commissioner requested an emergency case conference before the Competition Tribunal where he requested an "interim interim" order preventing the Parties from closing the Transaction until the section 104 application was disposed of. Counsel for the Parties attended the emergency case conference on June 30, 2021 before Chief Justice Crampton.
122. On July 1, 2021 at 10:36 pm, the Commissioner filed an application for judicial review and ancillary relief with the Federal Court of Appeal, seeking an order compelling Chief Justice Crampton to issue his decision on the Commissioner's "interim interim" application, and preventing the Parties from closing the Transaction until both the judicial review application and Tribunal decision and any appeals therefrom were disposed of. Attached as Exhibit 79 to my affidavit is a copy of the Commissioner's application for judicial review. The Tribunal issued its decision denying the Commissioner's "interim interim" application at 10:49 pm that evening. Attached to my affidavit as Exhibit 80 is a copy of the Tribunal's decision.

123. At 11:00pm on July 1, the Commissioner changed his application for judicial review before the Federal Court of Appeal to an emergency appeal and moved for an interim order preventing the Parties from closing the Transaction. The Commissioner's motion was heard at 12:15 am on July 2 by Justice Stratas via videoconference. Justice Stratas issued an order shortly before 2:00 am on July 2 denying the Commissioner's motion and directing the Commissioner to discontinue his appeal if the practical effect of the order was to render the appeal moot. Attached as Exhibit 81 to my affidavit is a copy of the order of Justice Stratas.

TERVITA/NEWALTA TRANSACTION

124. On March 1, 2018, Tervita and Newalta entered into an arrangement agreement to amalgamate the businesses of Tervita and Newalta (the "**2018 Newalta Transaction**").

125. Similar to Tervita, Newalta was a midstream oil and gas services provider focusing on waste disposal and related services in Western Canada. As the price of oil fell after 2014 and drilling activity slowed, Newalta's financial position deteriorated rapidly. It suffered significant financial losses in the years leading up to the 2018 Newalta Transaction.

126. Similar to the Tervita-SECURE Transaction, Tervita's amalgamation with Newalta sought to achieve significant efficiencies by eliminating redundancies in the parties' combined networks. These redundancies included suspending operations at some nearby sites where operations could be consolidated owing to significant excess capacity.

127. I am informed by counsel and former Tervita employees that Tervita and Newalta notified the Competition Bureau of the 2018 Newalta Transaction on March 1, 2018. Following several months of engagement with the Bureau, Tervita and Newalta closed the 2018 Newalta Transaction on July 19, 2018. Attached as Exhibit 82 to my affidavit is a July 19, 2018 press release announcing the completion of the amalgamation. Prior to closing, the Bureau notified Tervita and Newalta on July 5, 2018 that it would not be seeking injunctive relief to prevent closing.
128. Following closing, the Bureau continued to review the 2018 Newalta Transaction, including by requesting large volumes of data and information from Tervita, as well as requesting regular updates on planned site suspensions, which the former Tervita business provided. A press release from the Competition Bureau indicating that it would continue its review of the 2018 Newalta Transaction is attached as Exhibit 83 to my affidavit.
129. On March 7, 2019, the Bureau informed Tervita's counsel that it would not be issuing a no action letter, but it no longer required updates on site suspensions or closures. The Bureau ultimately did not file an application pursuant to section 92 of the *Competition Act*.
130. The following sites acquired through the 2018 Newalta Transaction have been fully or partially suspended:
- a) *Fully Suspended*: Bonnyville, Drayton Valley (TCC, TRD and WD), Gold Creek (landfill and TRD), Hays, Hoey WD, Kitscoty, Red Earth, Seal, Sierra, Spirit River bio pad, Unity landfill, West Stoddard, Willow Creek landfill, and Zama TRD.

b) *Partially Suspended*: Brooks West, Fort St. John, Gull Lake landfill, Kindersley East, Kindersley landfill, Rainbow Lake landfill, and Valleyview West.

131. All fully and partially suspended sites remain fully permitted and can resume operations with modest capital expenditure and within six weeks.

132. I am informed that these suspensions and the other synergies achieved through the 2018 Newalta Transaction have saved the combined entity approximately C\$45 million annually.⁶

BABKIRK LITIGATION

133. I am informed by former Tervita employees and Blake, Cassels & Graydon LLP, that on January 7, 2011, the Commissioner applied for an order under section 92 of the *Competition Act* to dissolve a transaction in which CCS Corporation (Tervita's predecessor entity) had acquired the shares of Complete Environmental Inc. and ownership of its wholly-owned subsidiary Babkirk Land Services Inc. (the "**Babkirk Litigation**").

134. The Babkirk Litigation concerned CCS' acquisition, via Complete, of control over a proposed secure landfill at Babkirk located on the Highway 97 corridor in Northeast British Columbia approximately 20 kilometers north of Tervita's current Mile 103 water disposal facility.

⁶ See Exhibit 8, above.

135. No injunctive relief under section 104 of the *Competition Act* was sought in the Babkirk Litigation. Instead, CCS committed to maintain all authorizations necessary for the operation of a hazardous waste disposal facility located on the Babkirk landfill site.
136. In 2012, the Competition Tribunal held that the transaction would substantially prevent competition in the relevant market and allowed the Commissioner's application for a divestiture order.
137. In 2015, the Supreme Court of Canada set aside the Competition Tribunal's divestiture order and dismissed Commissioner's section 92 application. The Babkirk site has been preserved to the present day.

INTEGRATION PROCESS AND PLANNING

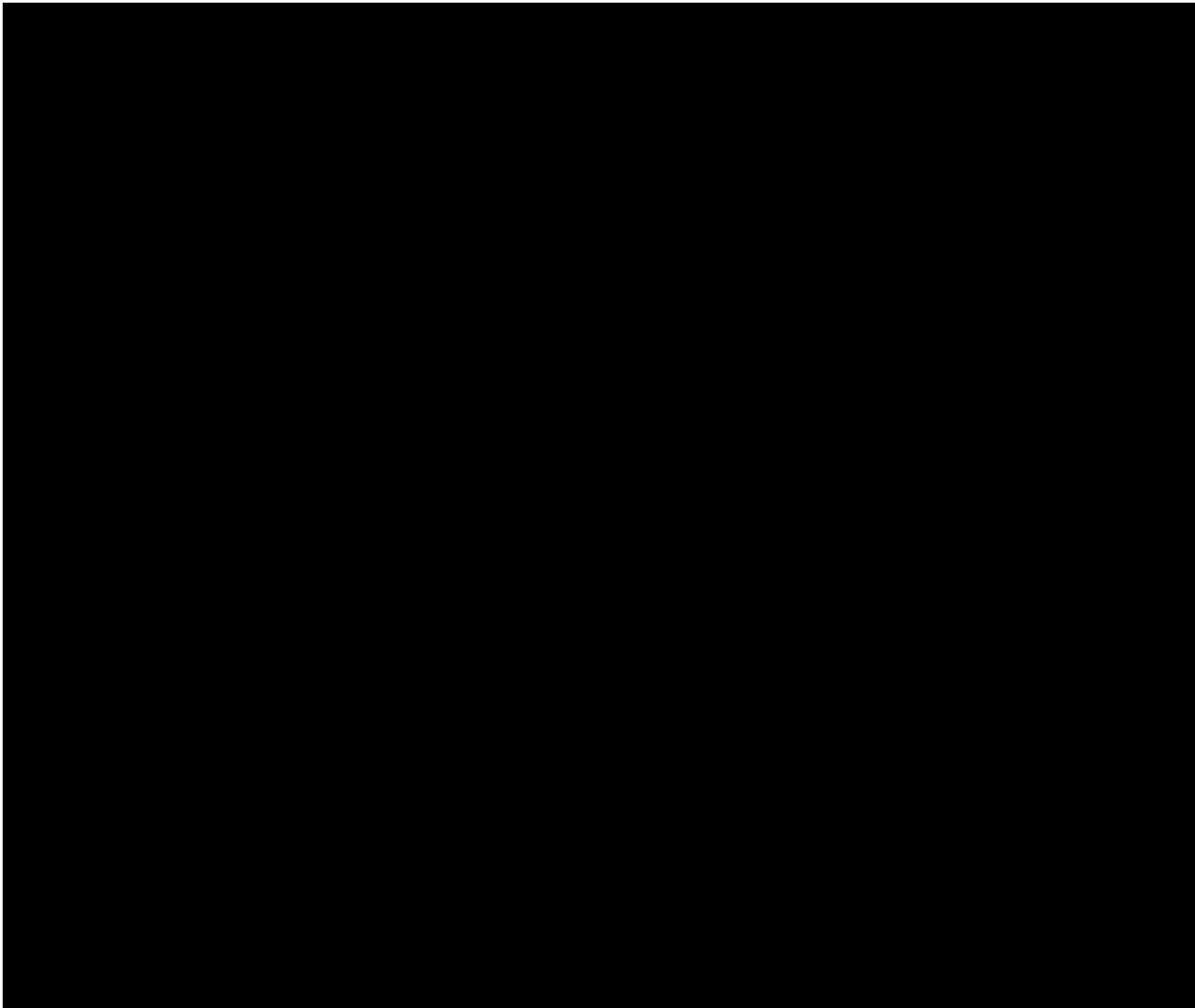
138. SECURE has engaged in significant planning with respect to the integration of the SECURE and Tervita businesses following the completion of the transaction. SECURE contemplates a [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] (“Integration Plan”) [REDACTED]
- [REDACTED]

139. Following the closing of the Transaction, SECURE management sent an internal communication to its management outlining its plans for (i) facility integration; (ii) pricing and (iii) employees going forward post-closing. (“**Integration Guidance**”). Rene Amirault also communicated aspects of these plans in a letter to the Commissioner dated July 13, 2021, [REDACTED] [REDACTED] Mr. Amirault’s letter is attached as Exhibit 84 to my affidavit, and the Integration Guidance document is attached to that letter.

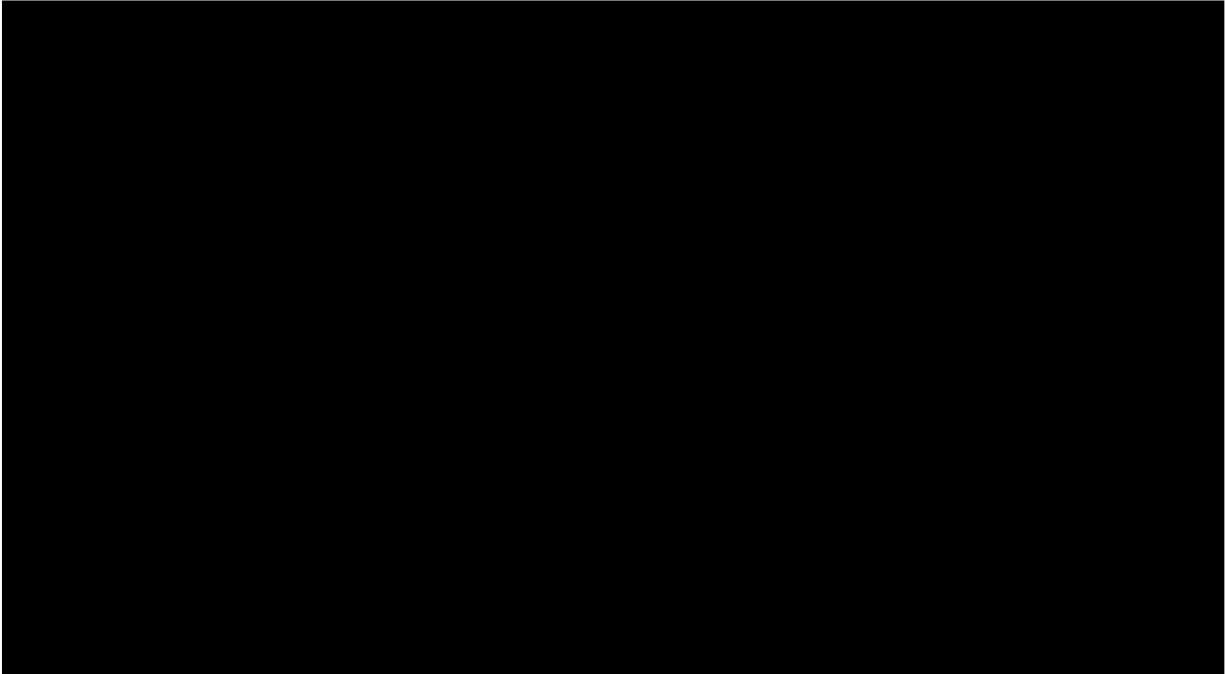
A. Facility Integration

140.

141.



142.



143. In the midstream waste disposal industry, capacity of facilities is used up over time, such that SECURE will eventually need to expand or open new facilities. As the existing SECURE and former Tervita facilities are already constructed and properly licensed, it makes business sense to preserve these sites in a suspended state for future use.

144. The majority of costs associated with a facility are associated with its ongoing operations. Apart from one-time shutdown costs, there are minimal ongoing costs associated with retaining a facility in a suspended state. There is very little capital or time required to bring a facility that is suspended back online. Under a suspension or facility closure an operator still owns all required permits and has all capital assets required to operate the facility (or a specific service line within a facility). Furthermore, permanently closing or decommissioning a facility involves incurring substantial abandonment, reclamation, and remediation costs (“**ARO costs**”), which SECURE would not wish to incur when compared to the low-cost option of maintaining facilities for future use.

145. FST and water disposal facilities can be suspended in either a “warm” or “cold” shut-in state, while landfills can be suspended via the application of a temporary cap.
146. A warm shut-in involves the flushing or purging of lines, or the draining, consolidation, or disposal of tank product and or tank bottoms, depending on the commodity. Some critical equipment will remain operating and circulating, such as a treater or boiler, while other equipment will be purged, filled with inhibitor, and isolated. Remote monitoring of the facility is still required as well as periodic site visits.
147. A warm shut-in allows for a facility to be brought back online quickly, within [REDACTED] depending on the exact processes involved, the size & scale of the plant, how long it has been idle, and the time of year. Moving a facility to a warm shut-in status has the primary benefit of reducing variable operating costs and minimizes diminishment of plant & equipment. There is reduced consumption of power and fuel gas, as well as little to no chemical and filter consumption, among other savings. Fixed facility costs, such as insurance, taxes, and minimum power, will remain unchanged.
148. A cold shut-in provides the highest reduction in operating costs, specifically around power and fuel gas consumption, as no plant equipment or processes continue to operate. The scope of a cold shut-in would include draining and cleaning of all storage tanks, containments, and sumps, including hauling out and disposal of all liquids and solids. Additionally, flushing and cleaning of piping and equipment, such as treaters, heat exchangers, large pumps and boilers would be performed. Critical piping and major equipment would have inhibited fluid added or nitrogen blanket applied to further mitigate

corrosion. Fuel gas would be turned off and all buildings will be winterized. Electrical power would likely remain on, but with minimal use.

149. Restarting a facility from a cold shut-in state would take [REDACTED], depending on the type and quantity of processes at the facility, time of year and the duration of the cold shut in. Restarting from a cold shut-in would likely require re-inspection or certification of registered equipment by a third-party inspector before they can be put back into service, and re-hiring and training of labour. A restart may also require rotating equipment inspections, gasket and seal replacements, de-winterizing of buildings, flushing and or draining of lines and equipment, among other steps.
150. Landfill facilities can be temporarily capped to preserve the facility in a suspended state. Capping involves placing a cover over contaminated material once a landfill cell is full of material. Caps do not destroy or remove contaminants. Instead, they isolate them, prevent water from getting into the landfill and generating leachate. A company may temporarily or permanently cap a landfill cell without any implication for the rest of the facility, both are designed to control surface runoff. Capping is a part of normal operations.
151. A temporary cap is essentially a large artificial cover and promotes no uptake of precipitation as no vegetation can grow. A permanent cap does promote precipitation by means of vegetation and control runoff, must meet certain permeability requirements, and allows the operator to reduce closure liability as permanent capping is typically the first step to complete closure. Once an active landfill cell is full, capital must be invested to cap the full cell and to build a new cell to continue accepting solid waste material. If all existing

cells are capped, a facility can be suspended – facility infrastructure and licenses remain in place. Bringing a temporarily capped landfill cell back to operationality is a simple process involving the peeling off of the temporary cap [REDACTED].

152. Landfill cells are typically constructed during the year before they are required and capped in the year that they are full. Subject to certain minimum constraints, SECURE’s preference is to construct cells that are three times the annual volumes (i.e., requiring a new cell every three years), as while larger cells are cheaper to construct on a per tonne basis, they cost more in leachate management and require a larger upfront cost. Cell capping costs vary with geography (i.e., they are not the same for facilities in different areas), but are generally similar, with variances arising from soil and disposed product quality, quality of clay and potential cell size.

B. Pricing

153. As set out in the Integration Guidance, SECURE has no planned price increases. We do not believe the Transaction gives us the ability to do so. As to integrating pricing, [REDACTED].
[REDACTED].
SECURE will also continue to push to find new ways to reduce its customers total cost of service.

C. Employees

154. As set out in the Integration Guidelines, SECURE intends to maintain all key personnel to allow for the potential timely restart of suspended facilities to meet increased customer needs. The reduction in management and employee headcounts that are necessary to obtain efficiencies will not interrupt or lessen the capability to meet customer needs.

SALEABILITY

155. In the event that the Tribunal requires that SECURE divest part or all of the former Tervita business after a section 92 hearing, I believe that any such facilities will be saleable assets, and can be sold either as standalone facilities, or as part of a broader package of facilities.
156. SECURE could, at any stage of its planned integration of former Tervita assets and facilities, if required by the Tribunal, subsequently separate some or all of such assets into an independent, viable and effective competitor, including allocating or rehiring any labour or management required. [REDACTED]
157. Any facility will have an established customer base that it services and will continue to be able to service such customers on a going forward basis. SECURE would also be able to transfer existing customer contracts for a divisionalized facility as part of any divestiture.
158. Furthermore, most SECURE and former Tervita facilities are profitable on a standalone operational basis and have low operating costs on a go-forward basis, with most costs being incurred to initially establish the facilities.

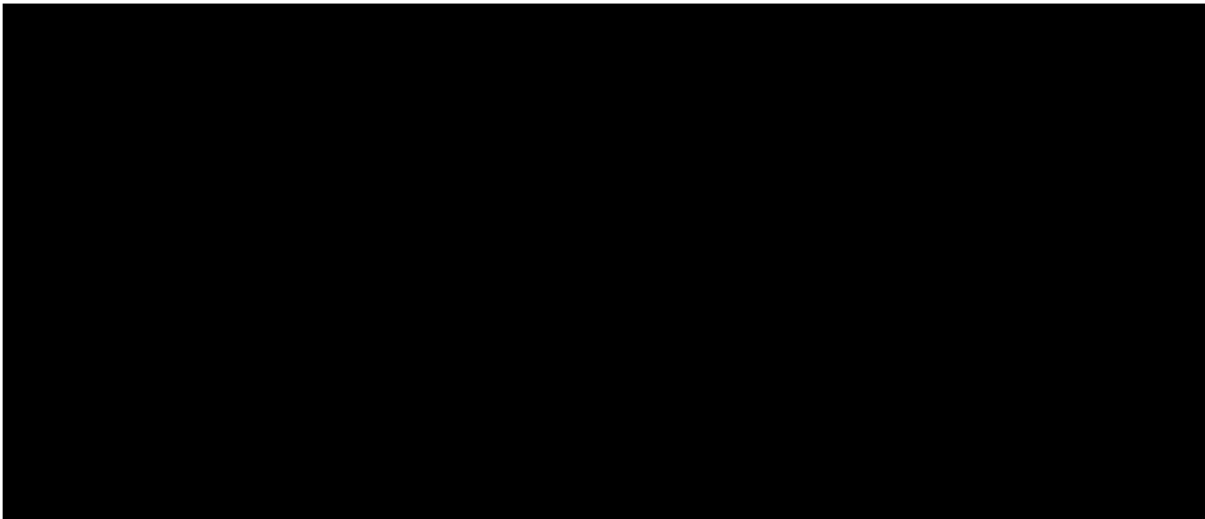
159. SECURE is able and willing to bear any costs of facilitating a divisionalization as described above.

160. All relevant IT and back-office systems required to operate any potentially divisionalized facilities will be maintained or can be recreated within [REDACTED]

161. SECURE will preserve the Tervita brand, and all intellectual property used in the operation of the Tervita business following closing of the Transaction.

162. It is my opinion that there would be many potential purchasers for any assets or facilities which the Tribunal could order SECURE to divest. Attached as Exhibit 85 to my affidavit is a list of 18 likely strategic buyers prepared by Peters & Co., who would be suitable and interested candidates to purchase any divestiture assets or facilities.

163.



164. [REDACTED] I believe there are a number of financial buyers who would be interested in purchasing any potential divestiture assets or facilities. Attached as Exhibit 86 to my affidavit is [REDACTED]

[REDACTED]

[REDACTED] I understand that these investors are actively considering opportunities in the midstream oil and gas industry.

165. I believe that oil and gas producers would also be interested in purchasing any divestiture assets. For example, CNRL has acquired multiple landfills in recent years, including from Tervita in Wabasca, AB, and a landfill north of Fort St. John at Peejay, BC. Notably, CNRL's acquisition of Tervita's Wabasca landfill followed CNRL's construction of its own landfill to service its operations in the same region. Attached as Exhibit 87 to my affidavit is a copy of the amendment to the Environmental Assessment Certificate #WD08-02 showing the transfer of the Peejay landfill approval to CNRL. Similarly, attached as Exhibit 88 to my affidavit is a copy of the AER's Approved Oilfield Waste Management Facilities dated June 18, 2015 showing CNRL as the "WM Approval Holder" for the Wabasca landfill.

RECENT TRANSACTIONS IN THE WASTE DISPOSAL SECTOR

166. Wolverine, a public company listed on the Toronto Stock Exchange, is a diversified energy, midstream environmental and infrastructure services provider headquartered in Nisku, Alberta. Wolverine has an operating history of over 70 years. Wolverine reported total revenues of over \$237 million in its audited financial statements for fiscal year 2020. Attached as Exhibit 89 to my affidavit is a copy of Wolverine's audited financial statements for the fiscal year ended March 31, 2020.

167. In February 2019, Wolverine acquired the assets of Gibson Energy's midstream environmental services division for a purchase price of C\$50 million (the “**Wolverine Acquisition**”). Attached as Exhibit 90 to my affidavit is the press release announcing the Wolverine Acquisition.
168. The Wolverine Acquisition resulted in the creation of VODA Inc., a new business division for Wolverine. VODA Inc. provides water treatment services, as well as solids management solutions, landfill disposal, and recovery and disposal services.
169. Following the Wolverine Acquisition, in 2019, Wolverine sold a set of assets located in Southeastern Saskatoon and acquired through the Wolverine Acquisition to another waste services provider, Fleet Energy, (the “**Fleet Disposition**”).
170. Fleet Energy is a privately held oilfield management waste service provider. Its waste processing facilities are located throughout Southeast Saskatchewan. Fleet Energy operates six facilities, which offer a combination of waste water and solids disposal and storage services.
171. The Fleet Disposition involved the sale of three environmental services facilities in Saskatchewan for total cash proceeds for C\$15.4 million. Through the Fleet Disposition, Fleet Energy doubled in size and significantly increased its geographic footprint. Attached as Exhibit 91 to my affidavit is an article describing the Fleet Disposition.

172. As a result of the Wolverine Acquisition and the Fleet Disposition, Wolverine, through VODA, operates eight environmental services facilities across Alberta and Saskatchewan, including waste management, waste disposal, and crude oil handling facilities.
173. In January 2021, Topaz entered a strategic alliance with Catapult to acquire water disposal infrastructure from NuVista, pursuant to a long-term fixed take-or-pay water disposal agreement (“**Topaz/Catapult Transaction**”).
174. Topaz is a public company listed on the Toronto Stock Exchange. Topaz was established through Tourmaline Oil Corp. in November 2019, from whom Topaz acquired its formative royalty and energy infrastructure assets. Topaz reported revenues of over \$97 million in its audited financial statements for fiscal year 2020, and total shareholders' equity of over C\$1 billion. Topaz operates royalty and infrastructure assets across the Montney, the Alberta Deep Basin, the Peace River High area of Northeastern British Columbia, and the Alberta Clearwater. Attached as Exhibit 92 to my affidavit is a copy of Topaz's 2020 Annual Information Form.
175. Catapult is a provider of full cycle water management solutions, offering the disposal of fluids generated through oil and gas activities. Catapult's water management facilities are located in Fox Creek, Alberta; Berland Field, Alberta; South Taylor, British Columbia; and Pipestone Field, Alberta.
176. NuVista is a publicly held oil and gas producer. It reported over \$437 million in revenues in fiscal year 2020. NuVista is operational in the Wapiti Montney area. Attached as Exhibit 93 to my affidavit is a copy of NuVista's 2020 Annual Information Form.

177. As part of the Topaz/Catapult Transaction, NuVista retains operatorship of the assets and obtains committed access to water disposal, sourcing and storage. Topaz acquired a 99% non-operated working interest in pipeline connected disposal facilities, along with water storage reservoirs, for total cash consideration of \$24 million. Topaz and Catapult also entered into an option agreement, which provides an option to invest an additional \$20 million in future expansions in exchange for a pre-determined economic return through an incremental long-term fixed take-or-pay commitment. Topaz is expected to generate \$27.8 million total gross processing revenue over the 15-year term of the investment, and Topaz will not be responsible for operating expenses of the assets. Attached as Exhibit 94 to my affidavit is an article describing the Topaz/Catapult Transaction.

CONCLUSION

178. I swear this affidavit for the purposes of the application brought by the Commissioner under section 104 of the *Competition Act* and for no other purpose.

File No.

COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Commissioner of Competition for an Interim Order pursuant to section s. 104 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, into the acquisition by SECURE Energy Services Inc. of all of the outstanding shares of Tervita Corporation.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondents

**AFFIDAVIT OF ANDREW C. HARINGTON
(Affirmed July 14, 2021)**

I, **ANDREW HARINGTON**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

PROFESSIONAL QUALIFICATIONS AND EXPERTISE

1. I, Andrew Harington, am a Chartered Professional Accountant (formerly referred to as a Chartered Accountant), Chartered Financial Analyst

charterholder, and Chartered Business Valuator. I am a Principal in the Toronto office of The Brattle Group. Prior to joining The Brattle Group in 2016, I was a Managing Director at Duff & Phelps and a partner at its predecessor firm, Cole & Partners. Before this, I had over seven years of experience in mergers and acquisitions, advisory, corporate restructuring and financial advisory services.

2. I have extensive experience in competition-related matters including, but not limited to, on behalf of (i) the Commissioner of Competition in respect of the proposed acquisition of Complete Environmental Inc. by CCS Corporation and the proposed acquisition of the grain elevators and related assets of Louis Dreyfus Company Canada ULC by Parrish & Heimbecker Limited and (ii) on behalf of Agrium Inc., American Iron & Metal Company Inc., BCE Inc., Cintas Corporation, Labatt Brewing Company Limited, Rogers Wireless Communications Inc., Suncor Energy Inc., Superior Plus Corp, West Fraser Timber Co. Ltd., WestJet Airlines Ltd., and Yellow Pages Group Inc. in respect of corporate transactions in which each of them was involved. I have been qualified by the Competition Tribunal as an expert in the quantification of efficiencies.
3. I assisted in the preparation of the Affidavit of Stephen Cole in connection with the Application by the Commissioner of Competition for an interim order pursuant to section s. 100 of the *Competition Act* (the “Act”) relating to the

proposed acquisition of Lakeport Brewing by Labatt Brewing; which Affidavit was referenced in the Competition Tribunal's decision in that matter.

4. I have prepared numerous affidavits for matters before the Federal Court, and testified thereto in connection with allegations of irreparable harm in matters unrelated to competition law.
5. I have extensive experience in providing strategic advice to businesses in connection with sale or exit opportunities, and in executing sale transactions. In the course of my work, I have developed an expertise in assessing the strength and reasonability of strategic integration plans.
6. Through my involvement in the above, I have developed an in-depth understanding of the relevant issues for my mandate in this matter, as set out below.
7. A copy of my *curriculum vitae* is attached hereto as Exhibit "A".
8. I have prepared this affidavit with the assistance of other professionals under my direction and supervision.
9. I am being compensated on an hourly basis for the time taken to prepare my affidavit and to testify. I have no interest, financial or otherwise, in the outcome of the litigation or the subject of my opinion. I understand that I have an obligation to be independent as an expert witness and I confirm that I have read

and understood the Expert Code of Conduct attached as Exhibit “B” to my affidavit.

MANDATE

10. I understand that, pursuant to an Arrangement Agreement in accordance with the *Business Corporations Act (Alberta)* dated March 8, 2021, SECURE Energy Services Inc. (“SECURE”) acquired Tervita Corporation (“Tervita”) for approximately \$478 million effective July 2, 2021 (the “Transaction”). Under the Plan of Arrangement, SECURE acquired all of the issued and outstanding shares of Tervita upon completion of the Transaction. The Plan of Arrangement was approved by the Alberta Court of Queen’s Bench on June 18, 2021. Immediately subsequent to the closing of the Transaction on July 2, 2021, SECURE and its wholly owned subsidiary Tervita were amalgamated pursuant to a short form amalgamation and a Certification of Amalgamation was issued by the Registrar of Corporations for the Province of Alberta in accordance with the *Business Corporations Act (Alberta)*. Upon the amalgamation SECURE and Tervita ceased to exist as separate legal entities and continued as one corporate entity. As a result of the transactions undertaken pursuant to the Plan of Arrangement, all of the Tervita shares were transferred to SECURE in consideration for shares of SECURE and on the amalgamation all of the Tervita shares were cancelled. When SECURE acquired 100% of Tervita, Tervita’s shares were de-listed from the Toronto Stock Exchange (TSX).

11. I understand that the Commissioner of Competition (the “**Commissioner**”) has applied for an interim order under section 104 of the Competition Act (the “**Act**”) in relation to this matter (the “**Section 104 Application**”). Specifically, the Commissioner is seeking, until such time as the Competition Tribunal’s (“**Tribunal**”) decision in respect of the Commissioner’s application pursuant to section 92 of the Act (the “**Section 92 Application**”) is finally disposed of:

- a) An unwinding of SECURE’s acquisition of Tervita (hereinafter referred to as the “**Commissioner Unwinding Alternative**”);
- b) In the alternative, holding the former business of Tervita separate, apart, and independent (hereinafter referred to as the “**Commissioner Hold Separate Alternative**”); or
- c) In the further alternative, directing SECURE not to proceed with any further integration of Tervita’s former operations and to preserve all assets (hereinafter referred to as the “**Commissioner Non-Integration Alternative**”).

12. I have been asked to assume for purposes of this affidavit that the Tribunal’s decision in respect of the Commissioner’s Section 92 Application would occur either 6, 12 or 18 months from the date of the Section 92 Application; i.e., June 29, 2021 (the “**Interim Period**”).

13. I understand the Commissioner's allegations relating to his Section 104 Application are that, in the absence of the interim order, the Transaction:
- a) Is likely to substantially lessen competition in the provision of Waste Services in the Western Canadian Sedimentary Basin;
 - b) Is likely to substantially prevent competition in Northeastern British Columbia where SECURE had planned to build a landfill in Wonowon, British Columbia, that would have competed with Tervita's Silverberry and Northern Rockies landfills for Waste Services; and
 - c) Is likely to substantially lessen competition for the provision of Environmental Services.
14. I have been retained by Blake, Cassels and Graydon LLP ("**Blakes**"), counsel to SECURE, to opine on whether any of the alternative interim orders sought by the Commissioner pursuant to his Section 104 Application is required to preserve the ability of the Tribunal to remedy the effect of the Transaction on competition should the Tribunal determine in due course, pursuant to the Commissioner's Section 92 Application that a remedy is required, as well as the impact of any of these alternatives on the efficiencies and synergies arising from the Transaction. Specifically, you have asked me to opine on:
- a) Whether it would be possible, if so ordered by the Tribunal at the end of the Interim Period, for SECURE to separate the merged business into two independent, viable and effective competitors, including all

required facilities, equipment and personnel (hereinafter “**divisionalization**”);

- b) Whether, if so ordered by the Tribunal, SECURE would be able to sell one of the divisionalized businesses referenced in (a) above, either by itself or through a divestiture trustee, to a buyer or buyers that would operate the acquired business as an independent, viable and effective competitor following divestiture;
- c) The dollar value of the efficiencies, as defined in section 96 of the Act, that are likely to be realized as a result of the Transaction;¹ and
- d) The dollar values of the efficiencies, as defined in section 96 of the Act, and operating cost synergies as well as, where applicable, the costs required to be incurred to facilitate that order, that are likely to be lost

¹ As a result of the restrictions imposed by the Act on pre-closing integration and integration planning, SECURE had not had unfettered access to the information of Tervita until after closing on July 2, 2021. Based on the information evaluated by SECURE at the current date, I am of the opinion that the dollar value of efficiencies set out herein and included in my report appended to this affidavit will be achieved. However, I note that, during the ongoing integration planning process, SECURE may further refine and quantify the productive, innovative and value-enhancing efficiency benefits likely from the merger.

during the Interim Period² in the event that the Tribunal concludes that SECURE must undertake:

- i. The Commissioner Non-Integration Alternative;
 - ii. The Commissioner Hold Separate Alternative; and
 - iii. The Commissioner Unwinding Alternative.
15. For purposes of my affidavit I have relied upon my efficiencies report dated June 3, 2021, attached as Exhibit “C” (the “**June Efficiencies Report**”). The June Efficiencies Report is incorporated as part of my affidavit for purposes of fulfilling the above-described mandate, notably items d) and e) above, and this affidavit is to be read in conjunction with the June Efficiencies Report. For purposes of my June Efficiencies Report and this affidavit, I and professionals working at my direction spent in excess of 783 hours analyzing the SECURE and Tervita businesses, the efficiencies likely to arise from the Transaction, the steps required to be taken to realize said efficiencies (including the costs and timing associated with said realization), and respond to the questions put to me herein. I, personally, spent in excess of 211 hours on these issues, including holding numerous meetings with management personnel of SECURE and Tervita.

² Being either a 6 month, 12 month or 18 month period (as noted above).

SUMMARY OF CONCLUSIONS

16. Based on my review and analysis, including my discussions with individuals listed below, my review of the SECURE Affidavit, and my independent research, in my opinion:

a) It is feasible if so ordered by the Tribunal after a section 92 hearing (i.e., at the end of the Interim Period), for SECURE to create two viable, independent and effective competitors out of the merged firm that would operate separately at the end of the Interim Period. My analysis in this regard is set out commencing at paragraph 22;

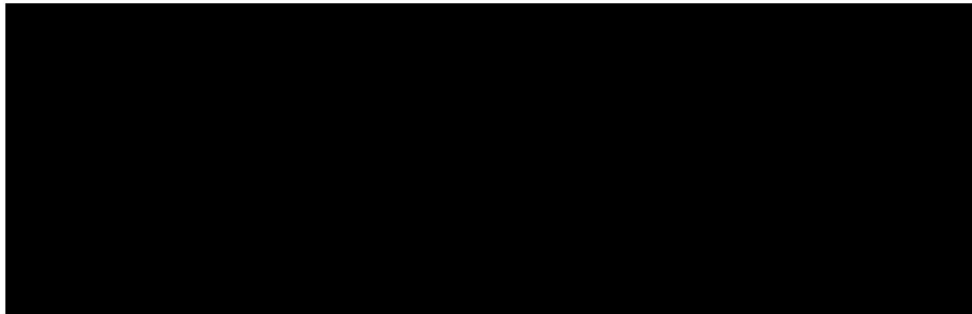
b) If required by the Tribunal, SECURE would be able to sell one of the divisionalized businesses referenced in (a) above, either by itself or through a divestiture trustee, to a buyer or buyers that would operate the acquired business as an independent, viable and effective competitor;

My analysis in this regard is set out commencing at paragraph 38;

c) The dollar value of the efficiencies, as defined in Section 96 of the Act and as set out in my June Efficiencies Report, that are likely to be realized as a result of the Transaction are ██████████ per year (run rate), ██████████ over a 10 year period on an undiscounted basis and

██████████ over a 10 year period on a discounted basis.³ My analysis in this regard is set out commencing at paragraph 52 below and in my June Efficiencies Report; and

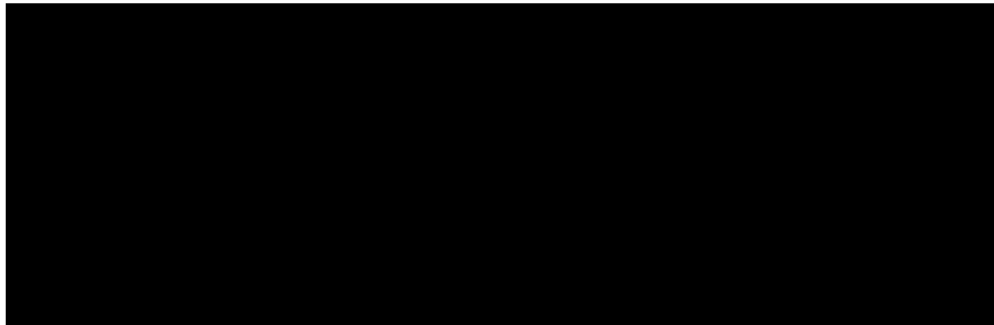
- d) The dollar value of the efficiencies, as defined in Section 96 of the Act, that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in his Section 104 Application, are as follows (and my analysis in this regard is set out commencing at paragraph 54):



In the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application the dollar value of the operating cost synergies that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, as well as

³ To assist the reader, all conclusions set out in this affidavit are expressed as point estimates. However, such precision in respect of hypothetical scenarios such as those addressed herein is not realistic. Accordingly, my point estimates should be considered as a range around the point estimate. Based on the information I have reviewed and the assumptions I have adopted, I believe that the conclusions presented herein are appropriate in the circumstances.

the costs required to be incurred to facilitate that order, are as follows
(and my analysis in this regard is set out commencing at paragraph 97):



SCOPE OF WORK UNDERTAKEN

17. In order to prepare this affidavit, I have reviewed and relied upon the following materials:

- (a) The application materials filed with the Tribunal by the Commissioner for his Section 92 Application and his Section 104 Application;
- (b) The Affidavit of David Engel, dated July 14, 2021 (the “**SECURE Affidavit**”);
- (c) The Competition Act, Sections 96 and 104;
- (d) Merger Enforcement Guidelines, Competition Bureau Canada, issued October 2011;
- (e) The Consent for the order dismissing in the matter of the *Director of Investigation and Research v. Superior Propane Inc. et. al.* dated December 11, 1998;⁴
- (f) The Competition Tribunal Reasons for the order dismissing the motion for a stay and continuing of the above Consent Interim Order in *Canada*

⁴ The Director of Investigation and Research v. Superior Propane Inc. et al., CT-1998/002 – Doc #013 (C.T. Dec. 11, 1998).

(Commissioner of Competition) v. Superior Propane Inc. and ICG Propane Inc. (C.A.) dated September 19, 2000;⁵

- (g) The Competition Tribunal Reasons for the order dismissing the application of the Commissioner for an Interim (under s. 100 Competition Act) prohibiting the respondents, in that matter, from closing the acquisition of units of Lakeport Brewing Income Fund in the matter of *Canada (Commissioner of Competition) v. Labatt Brewing Co.* dated March 30, 2007;⁶
- (h) The Competition Tribunal Reasons for order and order (public version) in *the Commissioner of Competition v. CCS Corporation et al.*, dated May 29, 2012;⁷
- (i) Public reasons for judgement in *Tervita Corporation v. Commissioner of Competition*, dated February 11, 2013;⁸
- (j) The Supreme Court judgement on appeal from the Federal Court of Appeal in *Tervita Corp. v. Canada (Commissioner of Competition)*, dated January 22, 2015;⁹
- (k) The Reasons for Order and Order (Public Version) in *The Commissioner of Competition v. Parkland Industries Ltd*, 2015 Comp. Trib. 4 (CT-2015-003), dated May 12, 2015;¹⁰

⁵ *Canada (Commissioner of Competition) v. Superior Propane Inc.*, No. A-539-00, [2000] F.C.J. No. 1518 (F.C.J. Sep. 19, 2000).

⁶ *The Commissioner of Competition v. Labatt Brewing Company Limited et al.*, CT-2007-003 – Doc #0032, 2007 Comp. Trib. 9 (C.T. Mar. 30, 2007).

⁷ *The Commissioner of Competition v. CCS Corporation et al.*, CT-2011-002 – Doc #189, 2012 Comp. Trib. 14 (C.T. May 29, 2012).

⁸ *Tervita Corp. v. Canada (Commissioner of Competition)*, 2013 FCA 28 (F.C.A. Feb. 11, 2013).

⁹ *Tervita Corp. v. Canada (Commissioner of Competition)*, 2015 SCC 3, (S.C.R. Jan. 22, 2015).

¹⁰ *The Commissioner of Competition v. Parkland Industries Ltd*, CT-2015-003 – Doc # 046, 2015 Comp. Trib. 4 (C.T. May 12, 2015).

- (l) IT Savings for Competition Bureau Close Delayed Scenario (Jul-09).xlsx, a copy of which is attached at Exhibit “D”;
 - (m) Synergy Roll Up.xlsx, a copy of which is attached at Exhibit “E”;
 - (n) 2021.06.29 - Secure Landfill volumes.xlsx, a copy of which is attached at Exhibit “F”; and
 - (o) 2021.06.29 - Tervita Landfill volumes.xlsx, a copy of which is attached at Exhibit “G”.
18. In addition, I and/or others working at my direction have conducted interviews, in person and/or by teleconference, with executives and management of SECURE and Tervita, including:
- (a) Rene Amirault, President and Chief Executive Officer
 - (b) Corey Higham, Executive Vice President, Midstream Infrastructure Operations
 - (c) Dave Engel, Executive Vice President, New Ventures
 - (d) Bevan Howell, Vice President, Mergers & Acquisitions
 - (e) Aly Sudermann, Manager, Mergers & Acquisitions
 - (f) Neil Widish, Director, Commercial Development & Transport
 - (g) Keith Blundell, Corporate Development
 - (h) Rob Dawson, Executive Vice President, Strategy & Corporate Development, Tervita
 - (i) Mike Husband, Director, Corporate Development & Strategy, Tervita; and

(j) Taki Tsougrianis, Director, Business Development, Tervita.

The facts that I obtained from the above conversations that are reflected in my June Efficiencies Report or this affidavit are contained in the SECURE Affidavit.

DESCRIPTION OF THE PARTIES

THE CANADIAN MIDSTREAM INFRASTRUCTURE INDUSTRY

19. To avoid repetition, see paragraphs 27 to 29 of June Efficiencies Report.

SECURE ENERGY SERVICES INC.

20. To avoid repetition, see paragraphs 30 to 38 of June Efficiencies Report.

TERVITA

21. To avoid repetition, see paragraphs 39 to 47 of June Efficiencies Report.

THE FEASIBILITY OF SECURE SEPARATING THE MERGED BUSINESS INTO TWO INDEPENDENT, VIABLE AND EFFECTIVE COMPETITORS AT THE END OF THE INTERIM PERIOD

22. Based on my review and analysis, including my discussions with individuals listed above, my review of the SECURE Affidavit, and my independent research, in my opinion, it is feasible for SECURE to continue with the implementation of its planned integration of Tervita and subsequently separate some or all of the acquired Tervita business into an independent, viable, and effective competitor (“**divisionalization**” as previously defined) in the event of such an order by the Tribunal at the end of the Interim Period.

23. Further, based on my review and analysis, it is my opinion that divisionalization could occur within three months from the time of issuance of a Tribunal order to this effect given that, even with full integration of Tervita, SECURE has every intention of keeping all required regulatory approvals and licenses and that any remaining assets and staff are readily available and easily replaceable within three months.
24. In arriving at my conclusions, I considered the following principal factors which, among others, strongly support my conclusions:
- a) The integration of the businesses of SECURE and Tervita will not be complete by the end of the Interim Period, irrespective of whether that period is 6, 12 or 18 months; and
 - b) The Tribunal will have the ability, if required, to order a separation and divestiture of assets and customers such that: (1) each of the divested business and ongoing business retained by SECURE (collectively referred to herein as the “**Successor Businesses**”) will have a sufficient and established customer base and strong corporate systems (such as those related to information technology); (2) neither of the Successor Businesses will be a ‘start-up’ operation; and (3) each of the Successor Businesses will be financially strong.
25. Each of these is discussed in more detail below.

a) The integration of the businesses of SECURE and Tervita will not be fully complete by the end of the Interim Period, irrespective of whether that period is 6, 12 or 18 months

26. It is unclear when the Tribunal will render a decision in respect of the Section 92 Application. Accordingly, I have been asked to assume that any delay in integration will last for 6, 12 or 18 months from the date of the Section 92 Application, which occurred at substantially the same time as the closing of the Transaction (the “**Interim Period**” as previously defined).

27. The SECURE Affidavit confirms that my June Efficiencies Report remains consistent with, in all material respects, the integration plan that SECURE intends to follow, and that there are no matters which have come to SECURE’s attention that would require material departures therefrom.¹¹

28. The SECURE Affidavit sets out the anticipated timing of the integration of each of the full service facilities, and my June Efficiencies Report sets out the anticipated timing of the capping of each of the landfill locations. Collectively, these indicate that only a few locations (as described in detail below) will be integrated within 6 months and full integration will take up to 6 years to complete.¹² Consequently, the full integration of the business of Tervita will

¹¹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This saving is in addition to the amounts set out in my June Efficiencies Report. For further discussion see paragraph 74 below.

¹² [REDACTED]
[REDACTED]

not have occurred by the end of the Interim Period. For those locations not yet integrated, all physical assets, site employees, trucks and equipment will continue to exist. Accordingly, no divisionalization will be required for the locations that have not yet been integrated during the Interim Period.

29. If the Tribunal requires that SECURE be capable of divisionalizing the businesses within three months, SECURE intends to preserve the Tervita brand, physical locations and regulatory licenses for any operations that have been integrated (as set out in the SECURE Affidavit).

b) The Tribunal will have the ability to order a separation and divestiture of assets and customers such that: (1) each of the divested business and ongoing business retained by SECURE (collectively referred to herein as the “**Successor Businesses**”) will have a sufficient and established customer base and strong corporate systems (such as those related to information technology), (2) neither of the Successor Businesses will be a ‘start-up’ operation, and (3) each of the Successor Businesses will be financially strong

30. Neither of the Successor Businesses will be a start-up operation. Each will begin with an established business and an allocation of all the requisite assets, tangible and intangible, physical and human capital, proprietary and other know-how and goodwill from SECURE (stemming from the integration of

Tervita), each will have experienced people, assets, training, and an established customer base. In particular, in this regard:¹³

- a) All intangible assets of SECURE and Tervita are being preserved;
- b) All tangible assets of SECURE and Tervita are either being preserved or the divisionalized businesses will be capable of purchasing new assets in a short time period;
- c) All people, and associated training, will either be preserved or the divisionalized businesses will be capable of hiring and training the required people in a short time period; and
- d) The Tribunal will have the ability to ensure that the customer base of SECURE will be distributed between the Successor Businesses as required to ensure that both are viable, established businesses.

31. Further, based on my discussions with management of SECURE and as indicated in the Secure Affidavit, reconstitution of the Tervita business could be done within three months.¹⁴

32. As to customers, the Tribunal will have the ability to ensure that each of the Successor Businesses will have a sufficient complement of customers. There is very high likelihood that, given the historical use of various facilities by

¹³ SECURE Affidavit, paragraphs 138 to 161.

¹⁴ SECURE Affidavit, paragraphs 156.

customers and certain customer contracts and pricing, there will be good customer retention and, at the end of the divisionalization period, there is very likely to be a strong and stable customer base in both Successor Businesses. In particular, the Commissioner, and if necessary the Tribunal, is in a position to ensure that each of the Successor Businesses will start out with what it considers to be the appropriate customer base and, further, is in a position to monitor, through the divisionalization, the effectiveness of customer transition and to make such modifications as are appropriate.

33. Based upon the time it takes to integrate the two businesses (as set out in my June Efficiencies Report and confirmed through recent discussions with SECURE management and the SECURE Affidavit), I expect that it would take three months to divide the merged entity into two viable and effective competitors since SECURE intends on preserving both the relevant physical locations and operating licenses.

34. The ability to divisionalize the merged business is consistent with the order sought in the Section 92 Application which requested (prior to the closing of the Transaction), in the alternative, an order directing SECURE not to proceed with the acquisition of such assets as are required for an effective remedy. The implication in this request is the Commissioner's acceptance that, if the Tribunal were to issue an order to this effect, the locations that SECURE would be allowed to acquire would be capable of extraction from Tervita, notwithstanding that those locations are established parts of the Tervita

organization, integrated into its accounting and back office systems, and that Tervita management would have full knowledge of the names of customers, and pricing arrangements with them.

35. Further, the example of the acquisition of Newalta Corporation by Tervita in 2018 demonstrates the Commissioner's recognition that the closing of a transaction in this industry would not impede the Tribunal's ability to remedy the transaction in the event of a subsequent successful challenge by the Competition Bureau.
36. In this regard, on July 30, 2018 the Competition Bureau issued a press release stating "The Competition Bureau continues to actively review competition concerns related to Tervita Corporation's merger with Newalta Corporation despite the parties' announcement that the transaction closed today. The Bureau's review is focused on the parties' oilfield waste disposal services within the Western Canadian Sedimentary Basin. The Competition Act allows for a one-year period following the completion of a transaction during which the Commissioner may bring an application to the Competition Tribunal challenging the transaction."¹⁵
37. I understand that the Competition Bureau continued its review for the subsequent year but ultimately did not challenge that transaction as evidenced by the press release issued by Tervita on July 22, 2019 which stated "Tervita

¹⁵ <https://www.canada.ca/en/competition-bureau/news/2018/07/competition-bureau-continues-tervita-and-newalta-merger-review.html>

Corporation ...announced today that the deadline has passed for the Canadian Competition Bureau ("CCB") to challenge Tervita's acquisition of Newalta Corporation ("the transaction") completed on July 19, 2018. As such, the transaction is clear from any further CCB review. 'We are pleased that after a thorough review the CCB decided not to challenge the transaction. Since closing the transaction one year ago, the combined business has significantly enhanced value for our customers and shareholders, and we look forward to continuing to execute our growth plans,' said John Cooper, President and CEO of Tervita."¹⁶

THE ABILITY OF SECURE, OR A DIVESTITURE TRUSTEE, TO SELL ONE OF THE DIVISIONALIZED BUSINESSES

38. Based on my review and analysis, including my discussions with individuals listed above and my review of the SECURE Affidavit, in my opinion, if required by the Tribunal, SECURE would be able to sell one of the divisionalized businesses, either by itself or through a divestiture trustee, to a buyer or buyers that would operate the acquired business as an independent, viable and effective competitor.

¹⁶ <https://tervita.com/news/article/tervita-corporation-announces-end-of-competition-bureau-review-p/>

39. In reaching this conclusion I have considered, amongst others, the following factors set out in the SECURE Affidavit:

- a) In respect of a divisionalization, the divisionalized businesses would incorporate all requisite property, employees and operating assets necessary to allow a strategic purchaser to operate a competing business and, if ordered by the Tribunal, incorporate the necessary customer contracts necessary to operate on a standalone basis allowing for a financial purchaser;
- b) The historic profitability, and expected future profitability, of the former Tervita business;
- c) A number of strategic (also referred to as “in market participant”) buyers may be interested in acquiring the assets of the former Tervita business; and
- d) The appeal of the former business of Tervita to a financial (also referred to as “non-market participant”) buyer.

40. Each of the above factors is discussed in more detail below.

a) In respect of a divisionalization, the divisionalized businesses would incorporate all requisite property, employees and operating assets necessary to allow a strategic

purchaser to operate a competing business and, if ordered by the Tribunal, incorporate the necessary customer contracts necessary to operate on a standalone basis

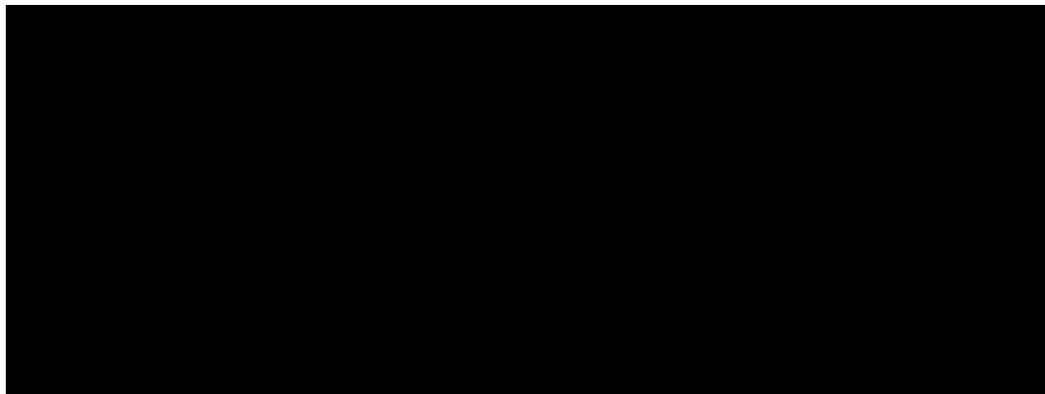
41. Following divisionalization, neither of the Successor Businesses will be a start-up operation. Each will begin with an established business and an allocation of all the requisite assets, tangible and intangible, physical and human capital, proprietary and other know-how and goodwill from SECURE (stemming from the integration of Tervita), each will have experienced people, assets, training, and an established customer base.
42. As to customers, each of the Successor Businesses will have a sufficient complement of customers in each of the relevant markets. There is very high likelihood that, given the historical use of various facilities by customers and certain customer contracts and pricing, there will be good customer retention and, at the end of the three month divisionalization period, there is very likely to be a strong and stable customer base in both successor companies.
43. The Commissioner, and if necessary the Tribunal, is in a position to ensure that each of the Successor Businesses will start out with what it considers to be the appropriate customer base and, further, is in a position to monitor, through the divisionalization period, the effectiveness of customer transition and to make such modifications as are appropriate.

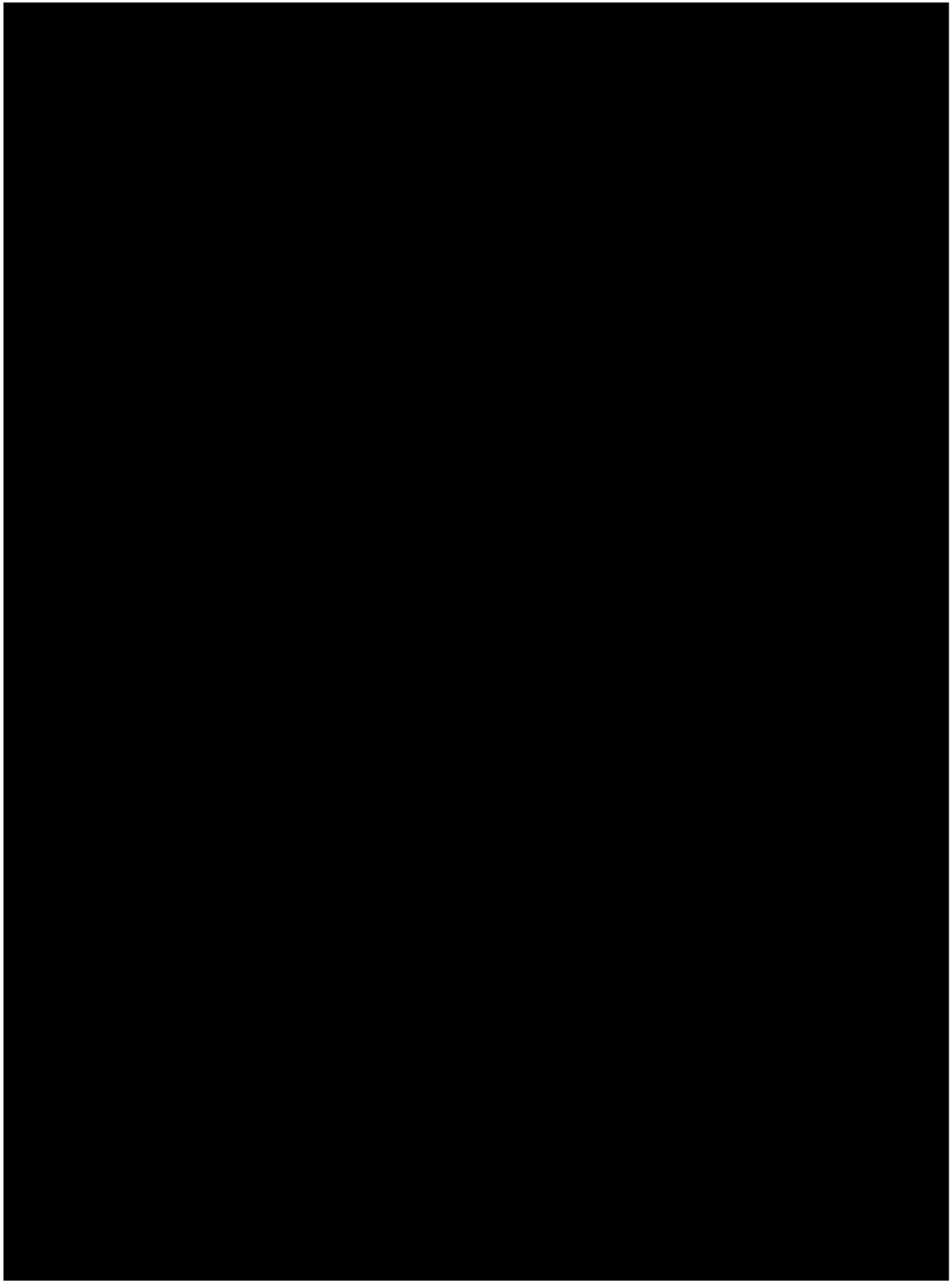
b) The historic profitability, and expected future profitability, of the former Tervita business

44. The historical income statements of the former Tervita business are attached to the SECURE Affidavit.
45. As this Exhibit demonstrates, Tervita has positive cash flow and operating profits, and will constitute a viable and saleable business.
46. As indicated in the SECURE Affidavit, management of SECURE have no reason to believe the historic profitability of the Tervita businesses will be adversely affected as a result of the Transaction.

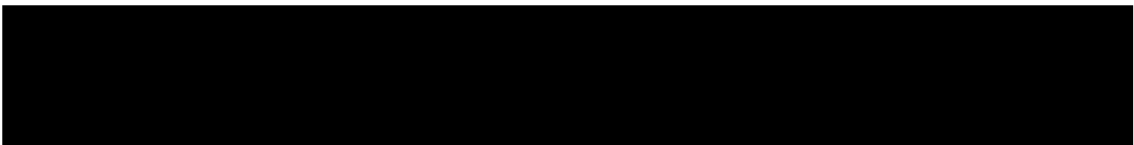
c) A number of strategic (also known as “in market participant”) buyers may be interested in acquiring the assets of the former Tervita Business

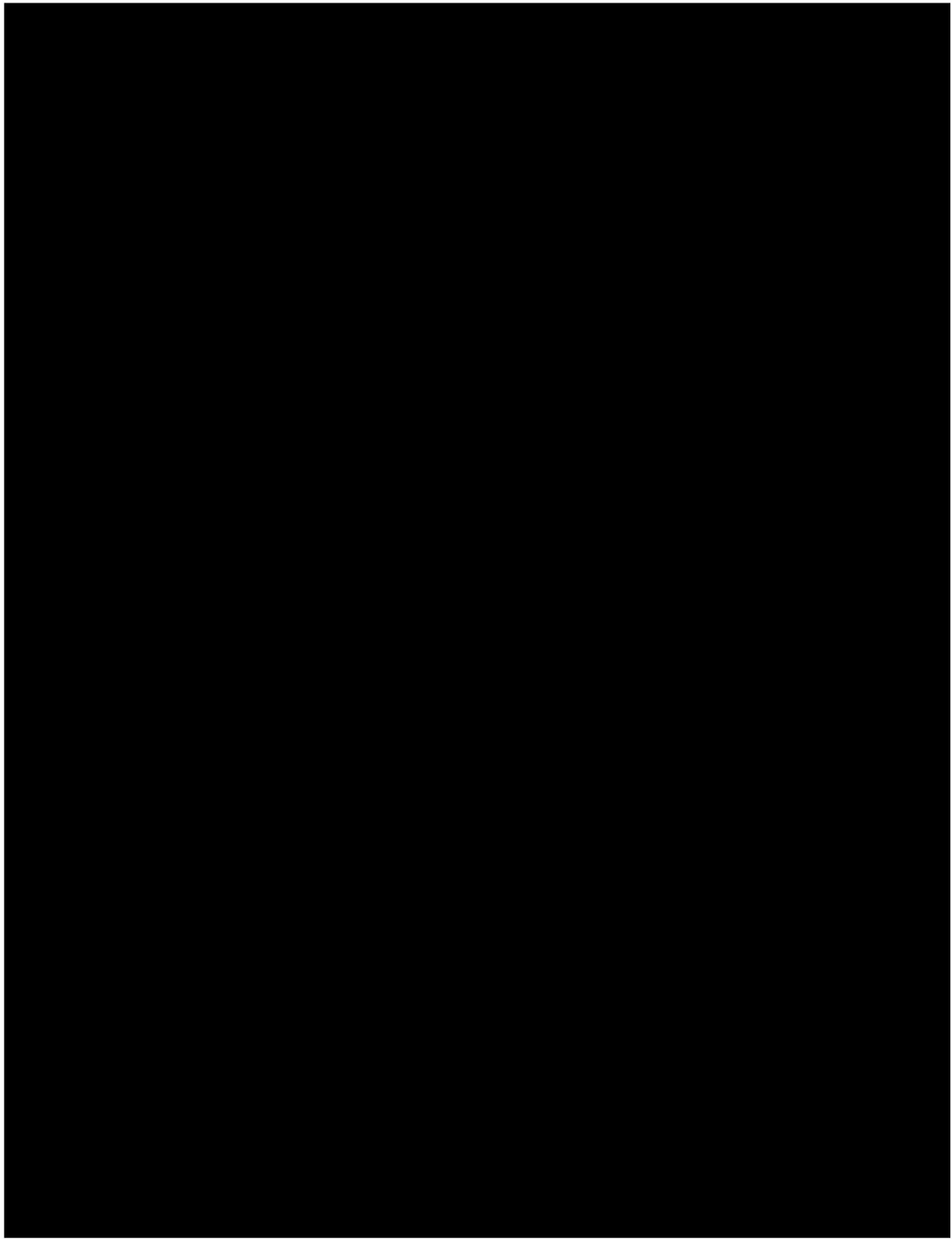
47. I understand that SECURE has received inquiries from the following parties with stated interest in acquiring assets if any are required to be sold. These include:



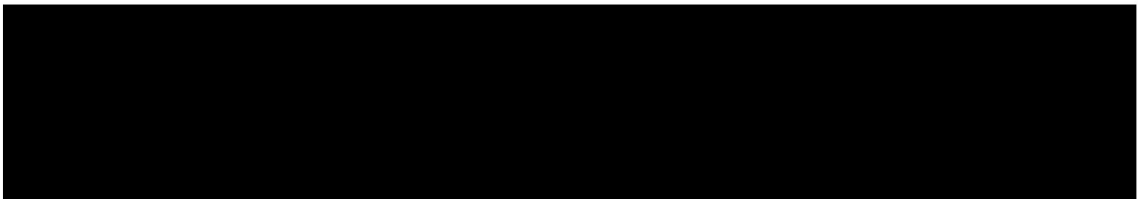


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48. In preparing the above list of strategic buyers I have not attempted to exclude prospective buyers that may be precluded from acquiring certain assets because the assets are separable and can be sold “piecemeal” such that buyers which are precluded from acquiring certain assets would be able to acquire other assets.

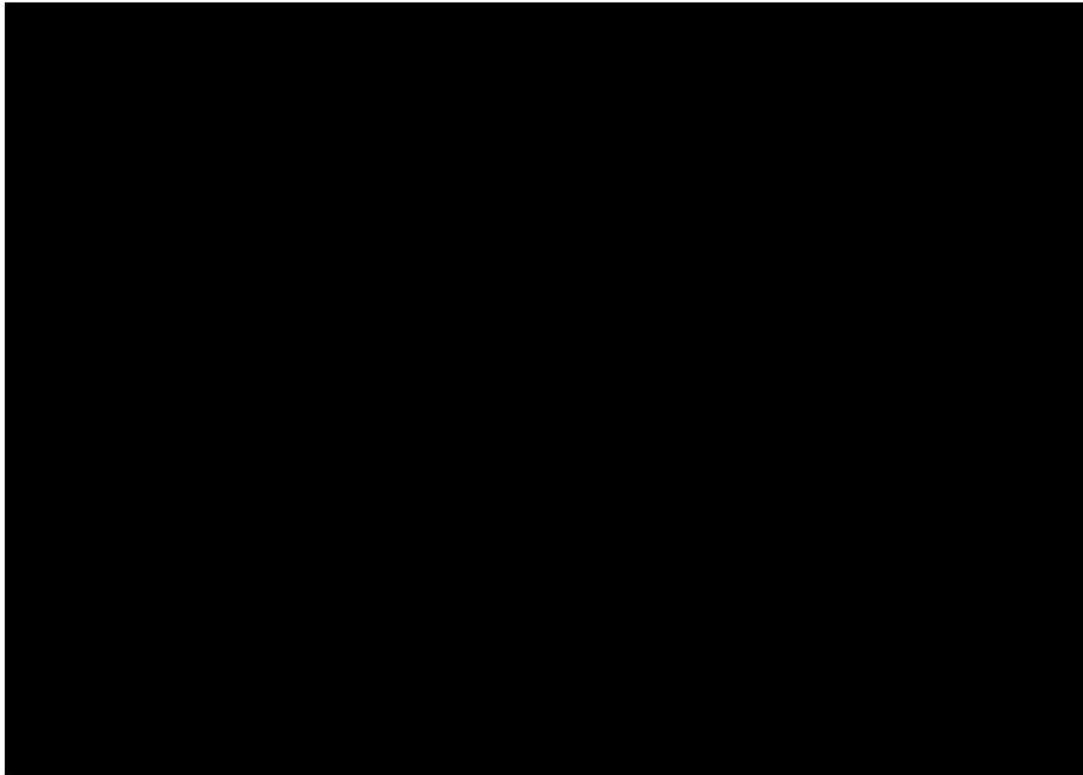
d) The appeal of the former business of Tervita to a financial (also referred to as “non-market participant”) buyer

49. In addition to, or in conjunction with, the above market participant buyers, the operations of Tervita could be an ideal auction candidate for acquisition by a non-market participant, either from within Canada or internationally, subject to regulatory requirements. As demonstrated by the list of interested parties above, several are owned by financial investors and it is likely that these, and others, would continue to be interested bidders for one of the Successor Businesses.

50. A non-market participant buyer may, or may not, partner with a market participant buyer as contemplated above, or with management by participating in a management buy-out.

51. I understand from SECURE that the following non-market participant buyers have expressed interest to management of SECURE in acquiring assets from SECURE, and thus they may be interested in acquiring one or more assets from

SECURE in the event that SECURE is required by the Tribunal to sell either one of the divisionalized business or any assets specified by the Tribunal:



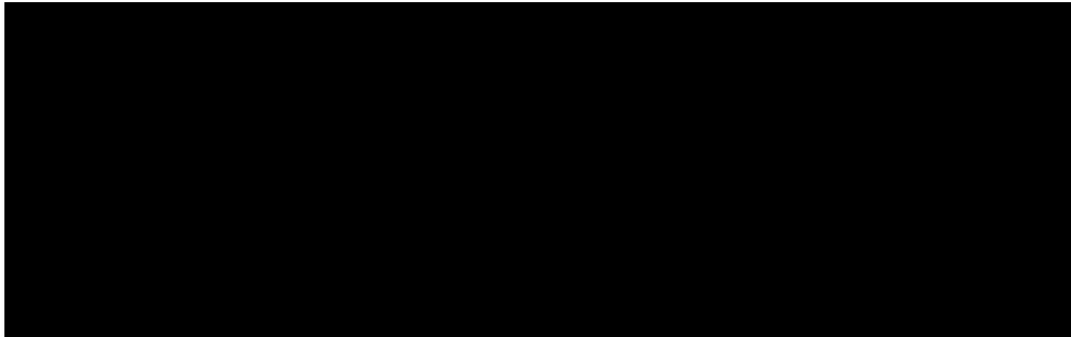
THE DOLLAR VALUE OF THE EFFICIENCIES, AS DEFINED IN SECTION 96 OF THE ACT AND AS SET OUT IN MY JUNE EFFICIENCIES REPORT, THAT ARE LIKELY TO BE REALIZED AS A RESULT OF THE TRANSACTION

52. The dollar value of the efficiencies, as defined in Section 96 of the Act and as set out in my June Efficiencies Report, that are likely to be realized as a result of the Transaction are [REDACTED] per year (run rate), [REDACTED] over a 10 year period on an undiscounted basis and [REDACTED] over a 10 year period on a discounted basis.

53. For details in this regard, see the June Efficiencies Report, attached as Exhibit "C."

THE DOLLAR VALUE OF THE EFFICIENCIES, AS DEFINED IN SECTION 96 OF THE ACT, THAT ARE LIKELY TO BE LOST IN THE EVENT THAT THE TRIBUNAL ISSUES AN ORDER THAT PREVENTS SECURE FROM INTEGRATING THE FORMER TERVITA BUSINESS

54. The dollar value of the efficiencies, as defined in Section 96 of the Act, that are likely to be lost in the Interim Period in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, are as follows:

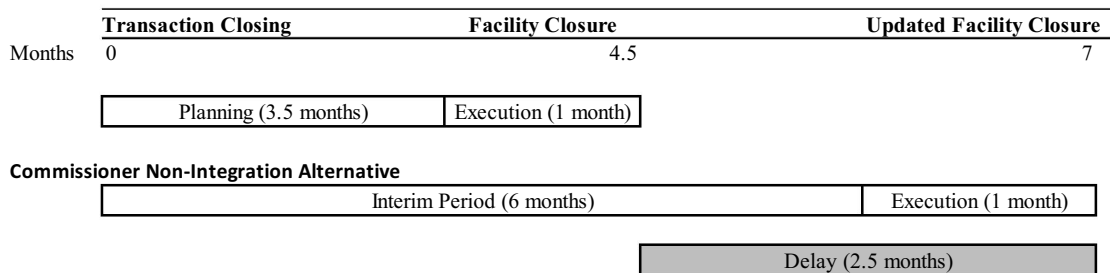


55. Delay in implementing the integration plan will cause irreparable harm to the Canadian economy in the form of lost efficiencies as explained below. The nature of the harm is that:

- a) Under the Commissioner Non-Integration Alternative, the Commissioner is seeking an order which directs SECURE not to proceed with any further integration. Under this alternative I have assumed that SECURE will be capable, with the benefit of access to the operations of Tervita which they did not have prior to closing of the Transaction, of proceeding to plan the integration but stop short of executing it. Accordingly, to the extent that the execution of the

integration activities would have occurred prior to the end of the Interim Period, SECURE is delayed in achieving the efficiencies.

This is illustrated in the following example where an integration activity required 3.5 months of planning and 1 month of execution such that the efficiencies would be realized commencing after 4.5 months. With an Interim Period of 6 months, assuming SECURE is able to undertake the planning, the execution of the plan is still delayed such that it can only commence after 6 months, rather than after 3.5 months, resulting in a delay of 2.5 months until the integration is complete.



The efficiencies lost as a result of this delayed integration will never be recovered by SECURE or the Canadian economy and represent a permanent loss in the efficiencies that would have otherwise accrued to the benefit of the Canadian economy.

- b) Under both the Commissioner Hold Separate Alternative and Commissioner Unwinding Alternative, the Commissioner is seeking an order which will have the effect that SECURE no longer has access to the operations of Tervita (akin to the period prior to closing of the Transaction) and will therefore be incapable of either planning the integration or executing it. Accordingly SECURE is delayed in

achieving substantially all of the efficiencies for a time period equating to the length of the Interim Period.

This is illustrated in the following example using the same integration example above. With an Interim Period of 6 months, assuming SECURE is unable to undertake the planning or the execution of the integration, this results in a delay of 6 months – what I refer to as a “month for month” delay, i.e. a delay in the integration equal to the number of months of the Interim Period.

	Transaction Closing	Facility Closure	Updated Facility Closure
Months	0	4.5	10.5

	Planning (3.5 months)	Execution (1 month)
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Commissioner Hold Separate Alternative and Commissioner Unwinding Alternative

	Interim Period (6 months)	Planning (3.5 months)	Execution (1 month)
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	Delay (6 months)
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The efficiencies lost as a result of this delayed integration period will never be recovered by SECURE or the Canadian economy and represent a permanent loss in the efficiencies that would have otherwise accrued to the benefit of the Canadian economy.

56. Further, as indicated in the June Efficiencies Report,²⁵ it is likely that additional customer benefits exist. Including these amounts will have the effect of increasing the lost efficiencies from an interim order. These benefits have not been quantified to date.

²⁵ See, for example, paragraphs 180 to 182 and 187 of June Efficiencies Report.

57. The methodology that I have used to determine the lost efficiencies is described below for each of the following Alternatives:

- a) Commissioner Non-Integration Alternative;
- b) Commissioner Hold Separate Alternative; and
- c) Commissioner Unwinding Alternative.

58. Under each of these alternative orders, I describe my approach for the following groups of assets and functions:

- a) Landfills;
- b) FSTs;
- c) Intercompany transport savings;
- d) Other geographic based operating cost savings;
- e) Corporate labour costs of employees terminated prior to August 20, 2021;
- f) Other corporate labour cost savings;
- g) Public company cost savings;
- h) Other corporate cost savings;
- i) IT costs;

- j) [REDACTED]
- k) [REDACTED] avoided capital expenditures;
- l) Costs of a monitor (Commissioner Hold Separate Alternative only); and
- m) Cost to sell the former Tervita business (Commissioner Unwinding Alternative only).

Commissioner Non-Integration Alternative

59. I understand that the Commissioner has described this alternative as one in which the Tribunal directs SECURE not to proceed with any further integration of Tervita's operations and to preserve all assets. The specifics of what is captured by "further integration" are not perfectly clear to me, but for purposes of my affidavit, I have assumed this to mean that, in this alternative:

- a) SECURE will continue to own the former business of Tervita;
- b) SECURE management and employees will have access to the former operations of Tervita during the Interim Period for purposes of planning (but not executing) all integration activities; and
- c) SECURE management and employees will be able to implement cost saving opportunities that do not involve any integration activities during the Interim Period. These include, for example, inter-company transport savings whereby waste is transported between facilities for

further processing and, where a destination facility that was previously a facility of the other entity²⁶ is now closer, resulting in transport cost savings.

Landfills

60. As described in the June Efficiencies Report at paragraphs 66 to 76, I computed the estimated timing of each of the landfill closures as a result of the Transaction. The efficiencies in the June Efficiencies Report were calculated on an annual basis. For purposes of this affidavit, in order to be able to estimate the lost efficiencies in question, I have updated those calculations to be on a monthly basis.
61. Due to seasonality, inbound waste volumes have been determined on a monthly basis for each location based on a review of historical monthly volumes for the period January 2017 to date.²⁷ Based on my review of that information, the impact of Covid 19 commencing in April 2020 appeared significant for some facilities. Therefore, to be consistent, I used the average seasonal impact for the period January 2017 to December 2019 for all locations. These seasonal allocation factors (the proportion of annual volume that occurs in each month) are calculated in schedules 8 to 17, attached.

²⁶ E.g., where shipments from a former SECURE facility will now be sent to a former Tervita facility.

²⁷ For SECURE locations, I used information to April 2021 and, for Tervita locations, I used information to May 2021.

62. Using these seasonal allocation factors, I then determined the month that each closing facility would close based on the same methodology described in the June Efficiencies Report.²⁸ In this regard, I concluded that, in the Commissioner Non-Integration Alternative:

- a) [REDACTED] [REDACTED]
[REDACTED] Accordingly, if the Interim Period were 6 or 12 months there would be no impact on the integration plan (which includes diversion of volumes from the continuing facility) or the resultant date at which the existing cell will become full. Therefore, there is no impact on the efficiencies realized from the Transaction in these scenarios. However, if the Interim Period is 18 months then [REDACTED]

28

29 Schedule 3A, column F.

[REDACTED]

b) [REDACTED] Accordingly, if the Interim Period were 6 months there would be no impact on the integration plan and the efficiencies realized from the Transaction. However, if the Interim Period is 12 months then [REDACTED]

[REDACTED]

³⁰ For purposes of this calculation, I have been instructed to assume that the length of the Interim Period will be known shortly after August 20, 2021 when the Tribunal issues a schedule for the hearing of the Section 92 Application. Accordingly, management of SECURE will operate the facility, specifically the rate of diversion of waste volumes from the continuing facility, so as to ensure that, if the Interim Period is known to be 18 months, there will be sufficient cell capacity at that date.

[REDACTED]

³¹ Schedule 3A, column H.
³² See Schedule 18 which summarizes the net run rate savings at each facility. These comprise the fixed costs that are avoided [REDACTED] as per the June Efficiencies Report.
³³ Schedule 4A, column F.
³⁴ Schedule 4A, column H.
³⁵ Schedule 4A, column J.

[REDACTED]

c) [REDACTED] [REDACTED]
[REDACTED] Accordingly, regardless of whether the Interim Period is 6, 12 or 18 months there would be no impact on the integration plan and the efficiencies realized from the Transaction. This is reflected at Schedule 2A, row [3].

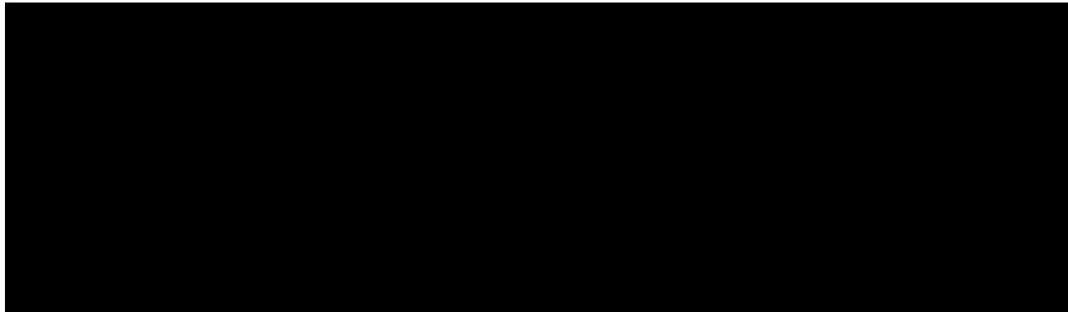
d) [REDACTED] [REDACTED]
[REDACTED] Accordingly, regardless of whether the Interim Period is 6, 12 or 18 months it is necessary for SECURE to [REDACTED]
[REDACTED]
Accordingly, if the Interim Period is 6, 12 or 18 months then [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

e) [REDACTED] [REDACTED]
[REDACTED] Accordingly, regardless of whether the

³⁶ Schedule 5ABC, column F.
³⁷ Schedule 6A, column F.
³⁸ Schedule 6A, column H.
³⁹ Schedule 7ABC, column F.


Interim Period is 6, 12 or 18 months there would be no impact on the integration plan and the efficiencies realized from the Transaction. This is reflected at Schedule 2A, row [5].

63. The dates at which each facility would be closed in the Commissioner Non-Integration Alternative is summarized in the following table:




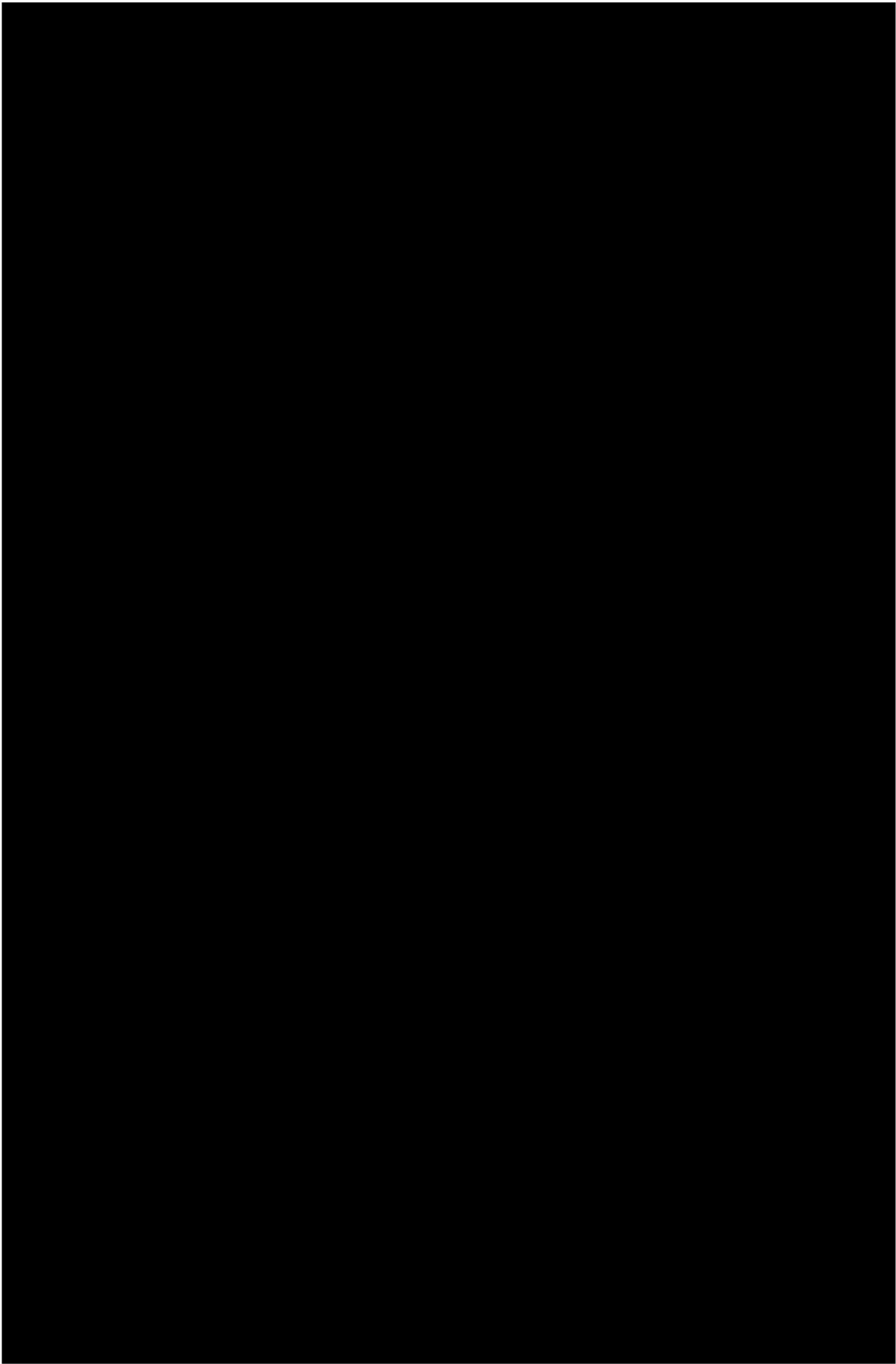
FSTs and TRDs

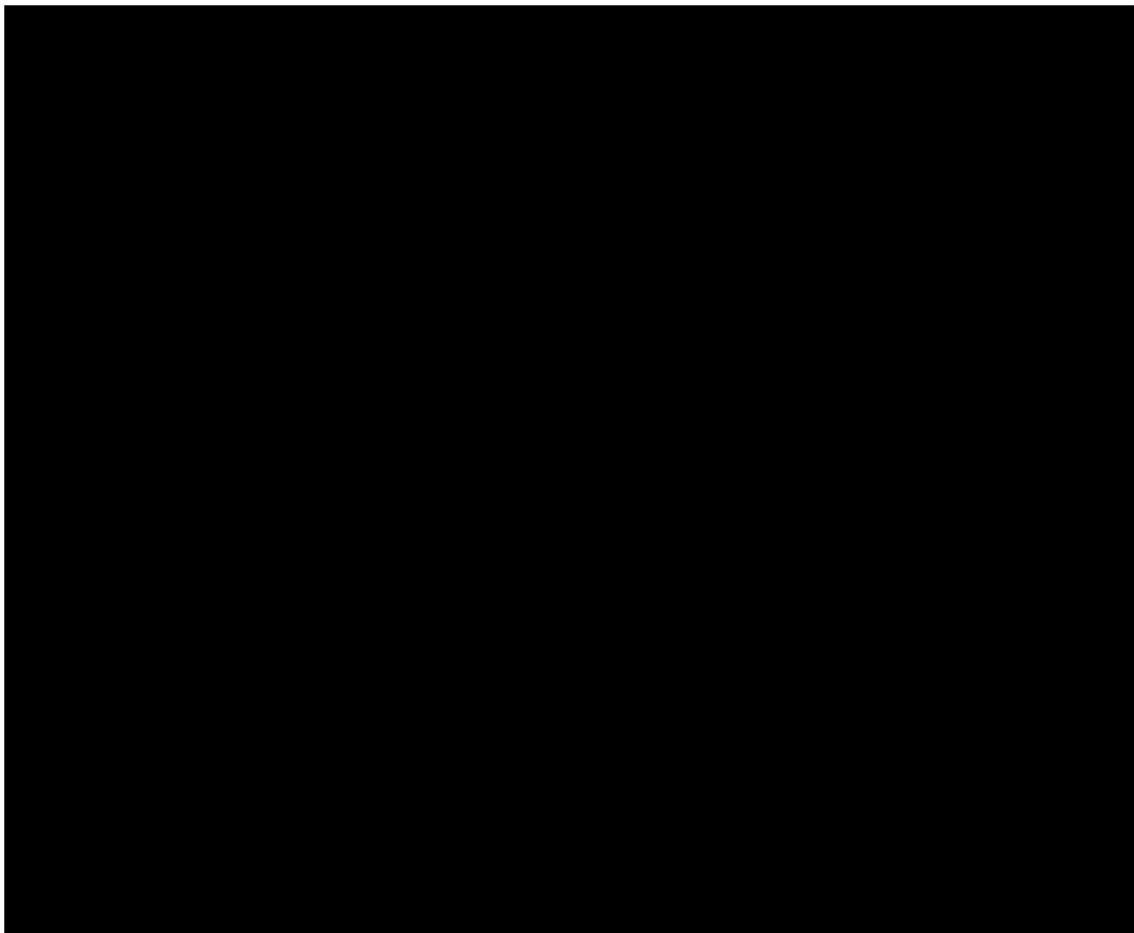
64. The June Efficiencies Report incorporated management of SECURE's intention to close the FSTs and TRDs in the first year with the savings being fully achieved by year 2.⁴⁰ Management of SECURE have updated their intentions to close the facilities in the following order, consistent with the above:

- a)  For this facility, in the Commissioner Non-Integration Alternative, there is no lost efficiencies regardless of the length of the Interim Period.⁴¹

⁴⁰ June Efficiencies Report, paragraph 90.

⁴¹ See further below for capital costs in respect of 





65. My calculations of the effect of the above delays are set out in Schedule 2A, rows [6] to [25].

Intercompany transport savings

66. In the Commissioner Non-Integration Alternative this activity is continuing as planned as there is no integration required and, accordingly, there is no impact on the efficiencies. This is indicated in Schedule 2A, row [26].

Other geographic based operating cost savings

67. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for

month” impact on the efficiencies; e.g., a 6 month Interim Period will delay the implementation of these efficiency opportunities by 6 months. This is indicated in Schedule 2A, row [27].

Corporate labour costs of employees terminated prior to August 20, 2021

68. The dollar value of annual savings of corporate employees that have left, been terminated or will be terminated prior to August 20, 2021 is [REDACTED] as summarized at Schedule 19. Accordingly, in the Commissioner Non-Integration Alternative there is no impact on the efficiencies. This is indicated in Schedule 2A, row [28].

Other corporate labour cost savings

69. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2A, row [29].

Public company cost savings

70. The dollar value of these savings, which were achieved as of closing of the Transaction, is [REDACTED] as summarized at the June Efficiencies Report, schedule 5.3, row [7]. Accordingly, in the Commissioner Non-Integration Alternative there is no impact on the efficiencies. This is indicated in Schedule 2A, row [30].

Other corporate cost savings

71. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2A, row [31].

IT costs

72. None of these integration activities will have taken place by August 20, 2021. Management of SECURE has indicated the renewal dates of all of the IT licenses that would have been cancelled and, if these need to be renewed during the Interim Period, the period for which renewal is required. A detailed list of these is set out at Schedule 20 and the effect of the delay in the implementation of these contract cancellations is the summarized in Schedule 2A, row [32].

[REDACTED]

73. [REDACTED]
[REDACTED], which was an avoided capital cost as a result of the Transaction, will be required in the event that the Interim Period is 12 or 18 months. Accordingly, this efficiency of [REDACTED]⁴³ will be lost in those instances. This is indicated in Schedule 2A, row [33].

⁴³ Included in the June Efficiencies Report at schedule 3.2, row [2] and attached thereto as Exhibit A in the supporting document [REDACTED]

Commissioner Hold Separate Alternative

76. I understand that the Commissioner has described this alternative as one in which the Tribunal directs SECURE to hold the business of Tervita separate, apart, and independent. For purposes of my affidavit, I have assumed this to mean that, in this alternative:

- a) SECURE will continue to own the former business of Tervita; and
- b) A management team separate, apart and independent from SECURE will be responsible for all strategy, leadership and other management responsibilities but SECURE management will not have any access to the former operations of Tervita during the Interim Period for any purposes (i.e., akin to the situation that existed prior to closing of the Transaction).

Landfills

77. I applied the same approach and assumptions to my calculations of the timing of when each of the landfills would be closed with only one change to reflect the fact that, under the Commissioner Hold Separate Alternative, SECURE will be unable to divert inbound volumes from the continuing facilities to the closing facilities during the Interim Period. I have, however, incorporated the diverted volumes commencing immediately after the end of the Interim Period.

Reflecting these calculations of the month in which the cell will be full and the facility closed:

a) [REDACTED] [REDACTED]
[REDACTED] after closing of the Transaction in the absence of any restrictions. With a 6 month Interim Period this is delayed until [REDACTED] [REDACTED], a delay of [REDACTED]. With a 12 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With an 18 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. My calculations in this regard are set out in Schedule 3BC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [1].

b) [REDACTED] [REDACTED]
[REDACTED] after closing of the Transaction in the absence of any restrictions. With a 6 month Interim Period this is delayed until [REDACTED] [REDACTED] a delay of [REDACTED]. With a 12 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With an 18 month Interim Period this is delayed until [REDACTED] a delay of [REDACTED]. My calculations in this regard are set out in Schedule 4BC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [2].

⁴⁶ Schedule 3BC, column F.

⁴⁷ Schedule 4BC, column F.

c) [REDACTED] [REDACTED]
[REDACTED] after closing of the Transaction in the absence of any restrictions. With a 6 month Interim Period there is no delay. With a 12 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With an 18 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. My calculations in this regard are set out in Schedule 5ABC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [3].

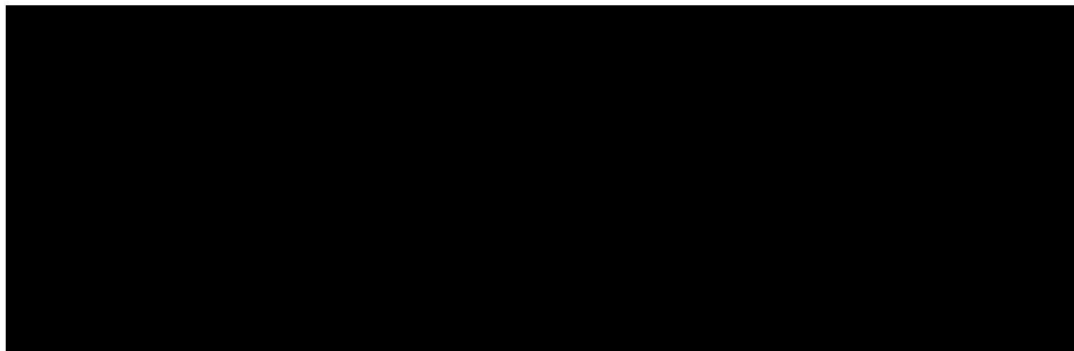
d) [REDACTED] [REDACTED]
[REDACTED] after closing of the Transaction in the absence of any restrictions. As described in paragraph 62(d) above, regardless of whether the Interim Period is 6, 12 or 18 months it is necessary for SECURE to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴⁸ Schedule 5ABC, column F.
⁴⁹ Schedule 6BC, column F.

months. My calculations in this regard are set out in Schedule 6BC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [4].

e) [REDACTED] after closing of the Transaction in the absence of any restrictions. With a 6 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With a 12 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. With an 18 month Interim Period this is delayed until [REDACTED], a delay of [REDACTED]. My calculations in this regard are set out in Schedule 7ABC and the effect of this delay in closure of the facility is set out at Schedule 2B, row [5].

78. The dates at which each facility would be closed in the Commissioner Hold Separate Alternative is summarized in the following table:



⁵⁰ Schedule 7ABC, column F.

FSTs

79. In the Commissioner Hold Separate Alternative, the planning activities for the closure of these facilities cannot be undertaken. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, rows [6] to [25].

Intercompany transport savings

80. In the Commissioner Hold Separate Alternative, SECURE will be unable to coordinate the intercompany transport savings. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, rows [26].

Other geographic based operating cost savings

81. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, row [27].

Corporate labour costs of employees terminated prior to August 20, 2021

82. All corporate employees that have left, been terminated or will be terminated prior to August 20, 2021 will need to be rehired or replaced under the Commissioner Hold Separate Alternative. Thereafter, a delay in the ability to restore this integration activity is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2C, row [28].

Other corporate labour cost savings

83. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, row [29].

Public company cost savings

84. The dollar value of these savings, which were achieved as of closing of the Transaction, is _____ as summarized at the June Efficiencies Report, schedule 5.3, row [7]. Accordingly, in the Commissioner Hold Separate Alternative there is no impact on the efficiencies. This is indicated in Schedule 2B, row [30].

Other corporate cost savings

85. None of these integration activities will have taken place by August 20, 2021. Accordingly, a delay in the ability to integrate is expected to have a “month for month” impact on the efficiencies. This is indicated in Schedule 2B, row [31].

IT costs

86. The impact on IT costs in the Commissioner Hold Separate Alternative is identical to that previously described in paragraph 72.

[REDACTED]

87. [REDACTED] avoided capital cost in the Commissioner Hold Separate Alternative is identical to that previously described in paragraph 74.

avoided capital expenditures

88. As discussed above at paragraph 74, if management of SECURE does not have access to the Tervita assets, which is assumed in the Commissioner Hold Separate Alternative, and the Interim Period is 18 months, management will proceed with [REDACTED] - [REDACTED]

[REDACTED] I have therefore included this as an avoided capital expenditure that arises as a result of the Transaction that will be lost in this regard. This is indicated in Schedule 2B, row [34].

Costs of a monitor

89. I understand that, in the Commissioner Hold Separate Alternative, costs will be required for a monitor. As these costs are not known at this point, I have indicated this cost as “TBD” and, accordingly, my conclusions in this alternative are understated and conservative.

Summary

90. Reflecting the above, the efficiencies that will be lost under the Commissioner Hold Separate Alternative will be [REDACTED] and [REDACTED] for Interim Periods of 6, 12 and 18 months respectively as indicated in Schedule 2B, row [36].

Commissioner Unwinding Alternative

91. I understand that the Commissioner has described the Commissioner Unwinding Alternative as one in which the Tribunal orders an unwinding of SECURE's acquisition of Tervita. It is not clear to me what is intended by the Commissioner in referring to "unwinding" the Transaction. As the target was a public company, the shareholders are numerous, including potentially thousands of private individuals. In my experience as an advisor in mergers and acquisitions and my experience in securities litigation involving public companies, the individual shareholders are frequently not readily knowable. Reconstructing, publicly listing, identifying each of the individual shareholders, and informing them that they are required to repurchase the shares they previously owned is not practical and, likely, not possible. This is even further exacerbated where the shareholders are told that they will only be holding the shares for a period of 6, 12 or 18 months at which point the Transaction may be re-instituted and they would be required to sell them at that date.

92. However, for purposes of quantifying the efficiencies that would be lost under this alternative, if it were possible, Blakes has instructed me to assume that the Commissioner Unwinding Alternative should be interpreted as akin to the Commissioner Hold Separate Alternative except that the former Tervita business is to be sold (rather than held separate). Accordingly, for purposes of my affidavit, I have assumed this to mean that, in this alternative:

- a) SECURE will sell the former business of Tervita; and
- b) As in the Commissioner Hold Separate Alternative, SECURE management will not have any access to the former operations of Tervita during the Interim Period for any purposes.

Landfills, FSTs, Intercompany transport savings; Other geographic based operating cost savings; Corporate labour costs of employees terminated prior to August 20, 2021; Other corporate labour cost savings; Other corporate cost savings; IT costs; [REDACTED] and [REDACTED] avoided capital expenditures

93. The impact of each of these items in the Commissioner Unwinding Alternative is identical to that in the Commissioner Hold Separate Alternative previously described in paragraphs 77 to 87 and these are set out in Schedule 2C at rows [1] to [29] and [31] to [34].

Public company cost savings

94. Under the Commissioner Unwinding Alternative, I have assumed that a separate legal entity will need to be created that will require audited financial statements and a separate board of directors. I have assumed that the costs that will be required in this regard are the costs for the audit previously incurred by Tervita [REDACTED] and 50% of the costs of the board of directors previously incurred by Tervita [REDACTED]. The total of these additional costs of [REDACTED] per year, is set out on Schedule 2C at row [30].

Cost to sell the former Tervita business

95. Consistent with Blakes instruction that the Commissioner Unwinding Alternative, if possible, would require costs equivalent to a sale of the former business of Tervita, management of SECURE has indicated that it estimate the out of pocket costs to facilitate such a transaction. From these costs, I have identified that those costs which represent negative efficiencies would be [REDACTED]. These costs, which are costs for either SECURE or the acquirer, comprise [REDACTED] of advisor fees⁵² and [REDACTED] of legal fees.⁵³ This is indicated on Schedule 2C at row [35] and is the same, irrespective of whether the Interim Period is for 6, 12 or 18 months.

⁵² [REDACTED] by SECURE and [REDACTED] by the acquirer.

⁵³ [REDACTED] for each of SECURE and the acquirer.

Summary

96. Reflecting the above, the efficiencies that will be lost under the Commissioner Unwinding Alternative will be [REDACTED] and [REDACTED] for Interim Periods of 6, 12 and 18 months respectively as indicated in Schedule 2C, row [36].

THE DOLLAR VALUE OF THE OPERATING COST SYNERGIES THAT ARE LIKELY TO BE LOST IN THE EVENT THAT THE TRIBUNAL ISSUES AN ORDER THAT PREVENTS SECURE FROM INTEGRATING THE FORMER ASSETS OF TERVITA, AS WELL AS THE COSTS REQUIRED TO BE INCURRED TO FACILITATE THAT ORDER

97. In addition to the lost efficiencies there are certain categories of synergies for which SECURE will lose the benefit in the event that the Tribunal issues one of the orders sought by the Commissioner in his Section 104 Application.⁵⁴

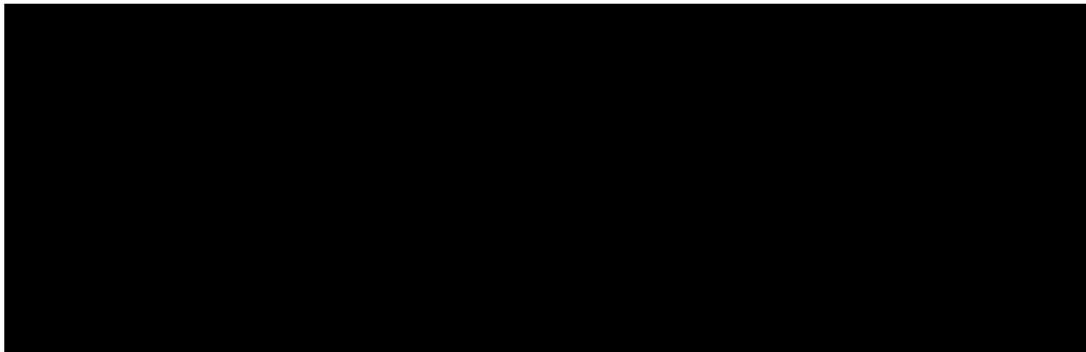
98. These additional items are described in the June Efficiencies Report, at paragraphs 183 to 190 and my calculations in respect of the lost operating cost savings are described and summarized in Schedule 21.

99. In addition, I understand from the SECURE Affidavit, that SECURE will incur out-of-pocket costs in connection with undertaking the divestiture of [REDACTED] [REDACTED] comprising: [REDACTED] of advisor fees, [REDACTED] of legal fees,

⁵⁴ As indicated in the June Efficiencies Report, at Table 9 and Schedule 4, these operating cost synergy items were not included as efficiencies under section 96 and the loss of these operating cost synergies as a result of the delay in integration during the Interim Period are additive or incremental to the efficiency items set out above.

██████████ of credit facility fees and ██████████ of bond pre-payment penalties.

100. The aggregate of the lost efficiencies (which also represent synergies)⁵⁵ and the incremental lost operating cost synergies that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, as well as the costs required to be incurred by SECURE to facilitate that order, are as follows:



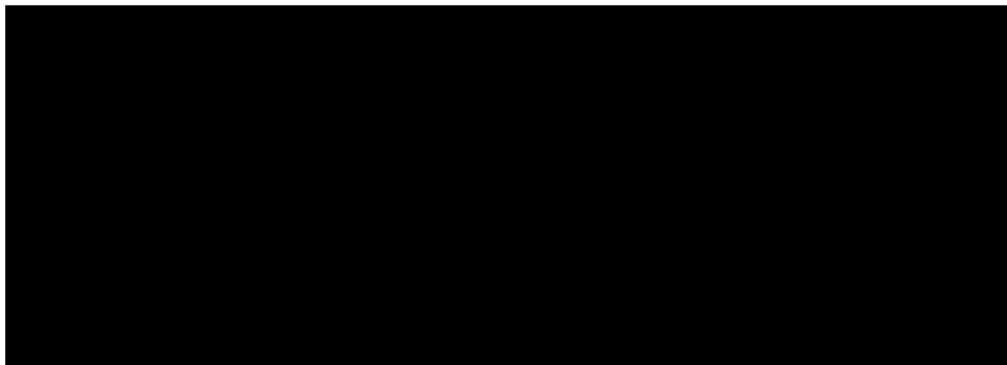
CONCLUSIONS

101. For the reasons set out above, my conclusions (as set out previously) are as follows:

- a) It is feasible if so ordered by the Tribunal at the end of the Interim Period, for SECURE to create two viable, independent and effective competitors out of the merged firm that would operate separately at the end of the Interim Period;

⁵⁵ For ease of reference I have included the negative customer trucking cost savings as if they were negative synergies and, accordingly, my conclusions with respect to the synergies lost as a result of the delayed integration are slightly understated and conservative.

- b) If required by the Tribunal, SECURE would be able to sell one of the divisionalized businesses referenced in (a) above, either by itself or through a divestiture trustee, to a buyer or buyers that would operate the acquired business as an independent, viable and effective competitor;
- c) The dollar value of the efficiencies, as defined in Section 96 of the Act and as set out in my June Efficiencies Report, that are likely to be realized as a result of the Transaction are _____ per year (run rate), _____ over a 10 year period on an undiscounted basis and _____ over a 10 year period on a discounted basis⁵⁶ and
- d) The dollar value of the efficiencies, as defined in Section 96 of the Act, that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, are as follows:



⁵⁶ To assist the reader, all conclusions set out in this affidavit are expressed as point estimates. However, such precision in respect of hypothetical scenarios such as those addressed herein is not realistic. Accordingly, my point estimates should be considered as a range around the point estimate. Based on the information I have reviewed and the assumptions I have adopted, I believe that the conclusions presented herein are appropriate in the circumstances.

In the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application the dollar value of the operating cost synergies that are likely to be lost as a result of the delayed integration in the event that the Tribunal issues one of the orders sought by the Commissioner in its Section 104 Application, as well as the costs required to be incurred to facilitate that order, are as follows:



SWORN before me at the City of Toronto,
in the Province of Ontario on July 14, 2021



A Commissioner for taking affidavits
Name: Alysha Li (LSO#: 80055G)

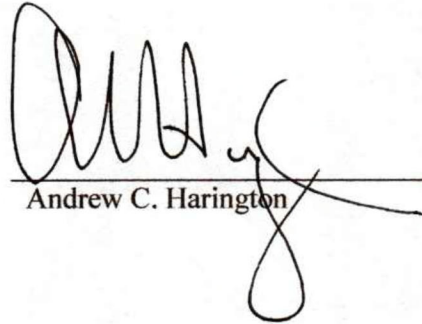
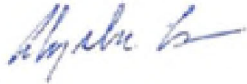

Andrew C. Harington

EXHIBIT "A"

Curriculum Vitae of Andrew Harington

Sworn before me on July 14, 2021



A Commissioner for taking affidavits

Name: Alyscha Li (LSO#: 80055G)

ANDREW C. HARINGTON CPA, CA, CFA, CBV
Principal

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Andy.Harington@brattle.com

I am a Principal in the Toronto office of The Brattle Group, a financial and economic consulting firm headquartered in Boston that answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world. I have provided business and intellectual property valuation and mergers and acquisition advisory services for over 25 years and specialize in:

- Financial aspects of Canadian competition law
- The quantification of loss in commercial litigation and international arbitration disputes
- The quantification of loss and accounting of profits in intellectual property disputes
- The valuation of intellectual property and commercial businesses

I have been qualified as an expert in the valuation of intellectual property and commercial businesses and the quantification of loss and accounting of profits in intellectual property and commercial litigation damages in both the Federal Court of Canada and the Ontario Superior Court of Justice and as an expert in the quantification of efficiencies by the Competition Tribunal of Canada. I have also given evidence before the International Court of Arbitration of the ICC as well as in domestic arbitrations and mediations. I have been recognized in Who's Who Legal as a Global Leader - Experts in Financial Advisory and Valuation – Quantum of Damages since 2020.

BUSINESS EXPERIENCE

2016 to date	Principal, The Brattle Group
2010 – 2016	Managing Director, Duff & Phelps
2000 – 2010	Partner, Cole & Partners, Toronto
1993 – 2000	Manager, Transaction Advisory Services, Audit and Consulting, Andersen

PROFESSIONAL MEMBERSHIPS

I am a member of the Canadian Institute of Chartered Accountants, CFA Institute, Toronto CFA Society, the Licensing Executives Society, the Intellectual Property Institute of Canada, the Toronto Intellectual Property Group and the Canadian Institute of Chartered Business Valuators

EDUCATIONAL QUALIFICATIONS

2005	Chartered Business Valuator
2002	Chartered Financial Analyst
1998	Chartered Accountant (Canada)
1995	Chartered Accountant (South Africa)
1992	Post Graduate Diploma in Accounting (University of Cape Town)
1992	Bachelor of Commerce (Honours) Financial Accounting (University of Cape Town)
1991	Bachelor of Commerce (University of Cape Town)

SELECTED EXPERIENCE

For over 25 years, I have been providing financial litigation consulting, financial advisory and business and intellectual property valuation services in numerous industries. Selected experience includes¹:

In connection with the Canadian Competition Act:

1. Authored an expert report on behalf of the Competition Bureau and provided expert testimony in front of the Competition Tribunal as to the section 96 efficiencies that would be lost in the event of an sought by the Commissioner following the acquisition by Parrish & Heimbecker, Limited of certain grain elevators and related assets from Louis Dreyfus Company Canada ULC
2. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the waste management industry
3. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the insurance industry
4. Authored an expert report on the quantum of section 96 efficiencies likely to arise from the acquisition of Morton Salt and Windsor Salt by Kissner Group Holdings LP from K+S AG
5. Authored an expert report on the quantum of section 96 efficiencies likely to arise from the acquisition of McInnis Cement by St Mary's Cement Inc., a subsidiary of Votorantim Cimentos SA
6. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the funeral home industry
7. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the trustee services industry
8. Authored an expert report as to whether, absent the acquisition of Total Metal Recovery (TMR) Inc. by American Iron & Metal Company Inc., the business of TMR was likely to fail (<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04528.html>)

¹ Note that the listed experience does not include active or past engagements where my involvement was not in the public domain or is not known by other parties involved and/or for which authorization to disclose my involvement has not been provided by clients

9. Authored an expert report as to whether the closing of the acquisition of Total Metal Recovery (TMR) Inc. by American Iron & Metal Company Inc. under the terms of the proposed preservation order would preserve the ability of the Competition Tribunal to, if necessary, issue a remedial order
10. Retained by counsel to assist them in providing legal advice to the acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the oil and gas sector
11. Authored an expert report in response to allegations of predatory pricing on behalf of Swoop Inc. and WestJet Airlines Ltd. in connection with a review by the Commissioner of Competition
12. Retained by counsel to assist them in providing legal advice to both merging parties as to the quantum of section 96 efficiencies likely to arise from the acquisition by Enterprise Holdings, Inc. of Discount Car and Truck Rentals Ltd
13. Retained by Commissioner of Competition to review the submissions of the parties and advise as to the quantum of Efficiencies likely to arise as a result of acquisition by Canadian National Railway Company of H&R Transport Ltd. (<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04527.html>)
14. Authored an expert report on behalf of the merging parties as to the quantum of section 96 efficiencies arising from the acquisition by Parmalat Canada Inc. of the natural cheese business of Kraft Heinz Canada ULC
15. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to be lost in the event of a remedial order being proposed by the Commissioner in connection with the acquisition by La Coop fédérée's acquisition of the retail crop inputs business of Cargill in Ontario
16. Retained by counsel to assist them in providing legal advice to both merging parties as to the quantum of section 96 efficiencies likely to arise from a transaction in the chemicals industry
17. Retained by counsel to assist them in providing legal advice to both merging parties as to the quantum of section 96 efficiencies likely to arise from a transaction in the transportation industry

18. Retained by counsel to assist them in providing legal advice to a potential target as to the quantum of section 96 efficiencies likely to arise from a transaction in the airline industry
19. Retained by counsel to assist them in responding to a SIR on behalf of a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the forestry industry
20. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an agreement in the airline industry
21. Retained by counsel to assist them in providing legal advice to a potential acquirer as to whether a proposed transaction exceeds the transaction notification thresholds
22. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the heavy equipment industry
23. Retained by counsel to assist them in providing legal advice to a potential target as to the quantum of section 96 efficiencies likely to arise from an acquisition in the food products industry
24. Retained by Commissioner of Competition to advise in connection with a transaction in the newspaper industry in which failing firm and efficiencies were alleged by the parties
25. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from an acquisition in the forestry sector
26. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the transportation services industry
27. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from an acquisition in the waste management industry
28. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from an acquisition in the media industry

29. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the propane industry
30. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the fisheries sector
31. Retained by counsel to assist them in providing legal advice to a foreign investor as to the interpretation of operating liabilities so as to assess whether the transaction exceeded Investment Canada thresholds
32. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the public exchange industry
33. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from an acquisition in the oil and gas pipeline industry
34. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the acquisition by Superior Plus, LP. of the Retail Propane operations of Gibsons Energy ULC (Canwest) (See <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04307.html>)
35. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the aircraft services industry
36. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the transport industry
37. Retained by Commissioner of Competition to advise them in connection with an investigation in which predatory pricing was alleged to have occurred
38. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the outdoor recreation retail industry
39. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from the home services industry

40. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the acquisition of G&K Services by Cintas Corporation
41. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the proposed merger of Agrium Inc. and Potash Corporation of Saskatchewan Inc. (See <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04305.html>)
42. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the acquisition of Manitoba Telecom Services Inc. (MTS Inc.) by BCE
43. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the proposed acquisition by Superior Plus Corp. of Canexus Corporation (See <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04111.html>)
44. Retained by Commissioner of Competition to advise in connection with a proposed agreement in which efficiencies were alleged by the parties
45. Retained by Commissioner of Competition to advise in connection with a proposed merger in the airline sector in which failing firm and efficiencies were alleged by the merging parties
46. Retained by counsel to assist them in providing legal advice to a potential acquirer as to the quantum of section 96 efficiencies likely to arise from an acquisition in the construction industry
47. Retained by Commissioner of Competition to advise in connection with the acquisition by Sobeys of the food and gas retail and wholesale operations of Co-op in which failing firm was alleged by the parties
48. Retained by Commissioner of Competition to advise in connection with a proposed merger in the newspaper industry in which failing firm was alleged by the merging parties
49. Retained by counsel to assist them in providing legal advice to a potential acquirer in connection with efficiencies that would likely arise from an acquisition in the newspaper industry

50. Retained by Commissioner of Competition to advise in connection with a proposed merger in the lumber industry in which efficiencies were alleged by the merging parties
51. Retained by Commissioner of Competition to advise in connection with a proposed merger in the sporting goods industry in which efficiencies were alleged by the merging parties
52. Retained by Commissioner of Competition to advise in connection with a proposed merger in the home services industry in which efficiencies were alleged by the merging parties
53. Authored a preliminary expert report as to the quantum of section 96 efficiencies likely to arise from a proposed merger in the television and radio industry and a preliminary expert affidavit in connection with alleged irreparable harm arising from a proposed hold-separate agreement
54. Consulted on financial aspects of assessing the quantitative appropriateness of administrative monetary penalties in the context of alleged unlawful multi-party agreements
55. Retained by parties to prepare a preliminary analysis as to the quantum of section 96 efficiencies likely to arise from a proposed agreement between two competitors in the airline sector
56. Retained by Commissioner of Competition to advise in connection with alleged misleading advertising in the car rental industry
57. Retained by parties to prepare a preliminary analysis as to likelihood of entry in connection with an allegation of a significant prevention of competition likely to arise from a proposed merger in the entertainment industry
58. Authored an expert report on behalf of the Competition Bureau and testified at the Competition Tribunal as an expert in the quantification of section 96 efficiencies that would be lost in the event of an order in connection with the proposed acquisition of Complete Environmental Inc. by Tervita Corporation (formerly CCS Corporation) (CT-2011-002) (2013 FCA 28) (2015 SCC 3)
59. Authored a preliminary expert report as to the quantum of section 96 efficiencies likely to arise from a merger in the paint and coatings industry and a preliminary expert affidavit in connection with alleged irreparable harm

60. Retained by parties to prepare preliminary analysis of section 96 efficiencies arising from a proposed merger in the pharmaceutical information sector
61. Consulted on financial aspects of assessing business incentives in response to allegations of unlawful multi-party agreements
62. Authored an expert report and presented to the Competition Bureau as to the quantum of section 96 efficiencies likely to arise from the merger of Suncor Energy Inc. and Petro-Canada
63. Retained by counsel to assist them in providing legal advice to a potential acquirer in connection with efficiencies that would likely arise from the acquisition of a target company in the telecommunications industry
64. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from the proposed acquisition by American Iron & Metal Company Inc.'s of SNF Inc.
65. Co-authored, with Stephen Cole, a preliminary expert report in connection with the acquisition of Canadian Phone Directories Holdings Inc (Canpages) by Yellow Pages Group Inc.
66. Authored an expert report as to the quantum of section 96 efficiencies likely to arise from a merger in the forestry sector
67. Co-authored, with Suzanne Loomer, a preliminary expert report as to the quantum of section 96 efficiencies likely to arise from the acquisition by West Fraser Timber Co. Ltd of Weldwood of Canada Limited
68. Assisted with the preparation of a preliminary expert report and an expert affidavit in connection with alleged irreparable harm arising from a proposed hold-separate agreement in the acquisition by Labatt Brewing Company Limited of Lakeport Brewing Income Fund
69. Assisted with the preparation of a preliminary expert report and an expert affidavit in connection with alleged irreparable harm arising from a proposed injunction in the coatings industry
70. Assisted with the preparation of an expert report for the Commissioner of Competition responding to a plan proposed by merging parties after findings of an anti-competitive merger in *The Commissioner of Competition v. United Grain Growers Limited*

71. Assisted with forensic investigations in connection with allegations of price fixing under the Competition Act on behalf of an intervenor in the hospital sector
72. Assisted with the analysis of allegations of predatory pricing in the airline sector under the Competition Act on behalf of an intervenor
73. Assisted merging or acquiring parties on financial aspects, including as applicable: efficiencies; failing firm; likelihood of entry; and/or affidavits in connection with section 100/104 applications in response to actual or anticipated competition challenges in mergers, proposed mergers or agreements

Commercial and securities litigation and international arbitration:

74. Authored responding expert report on behalf of Blaney McMurtry LLP in connection with commercial damages alleged by Flip Face, Inc.
75. Authored an expert report and testified as to the flows of funds and regulatory disclosures of GFA World and various relevant charities associated with Believers Eastern Church in connection with the proposed class action filed against GFA World
76. Authored expert report in connection with various valuation matters in connection with convertible debenture financing undertaken by Newterra Group Ltd.
77. Authored expert report in connection with damages for alleged breach of fiduciary duty and passing off
78. Authored affidavit on behalf of Horizon Pharma in connection with a review of the pricing of PROCYSBI® by the Patented Medicine Prices Review Board
79. Assisted counsel on financial matters on behalf of Vice-Admiral Mark Norman in connection with litigation against Her Majesty the Queen in Right of Canada
80. Assisted in the preparation of an expert report on the fair market value of the intellectual property assets of J. Crew Group in connection with litigation between Eaton Vance Management, holders of secured debt of J. Crew Group and J. Crew arising from the restructuring of the ownership of IP assets of the company for purposes of raising new debt

81. Authored responding expert affidavit on behalf of MDG Newmarket Inc, d/b/a Ontario Energy Group in connection with a proceeding under the Class Proceedings Act – 1850/16CP.
82. Provided testimony before the International Court of Arbitration of the International Chamber of Commerce on behalf of Origin & Co., Ltd (Republic of Korea) as to damages being sought by JFI Global Purchasing, Ltd (Barbados) for an alleged breach of contract (ICC Case No: 21763/CYK)
83. Co-authored an expert report on behalf of Atomic Energy of Canada Ltd quantifying financial loss relating to a construction insurance claim in the nuclear reactor sector
84. Authored a limited critique report in the quantification of alleged damages suffered by plaintiffs in the context of a claim by a property developer against a prospective tenant for wrongful inducement.
85. Provided valuation consulting services in the context of litigation between a master and sub-franchisor in the leisure products sector.
86. Assisted in the preparation of an expert report prepared for arbitration on behalf of Ontario Lottery and Gaming Corp. in connection with litigation by the Ontario First Nations Limited Partnership
87. Authored a responding expert report in the quantification of alleged damages suffered by plaintiffs in the context of a class action against investment advisors.
88. Co-authored expert reports on behalf of Atomic Energy of Canada Ltd in response to a claim by Nordion Inc. for alleged commercial damages for termination of a contract to construct two isotope production reactors, including alleged commercial damages alleged suffered as well as quantifying other financial aspects of the parties' positions (<https://ipolitics.ca/2012/09/10/nordion-shares-plummet-after-arbitrators-side-with-aecl/>; <http://www.world-nuclear-news.org/Articles/Settlement-deal-over-MAPLE-cancellation>)
89. Authored expert report on behalf of the plaintiff quantifying alleged damages suffered in connection with litigation relating to alleged wrongful dismissal in the investment management sector
90. Authored expert report on behalf of plaintiff on the economic benefits created by a hydro generation plant in connection with litigation in the power generation sector

91. Authored expert report on behalf of the defendant quantifying alleged damages suffered as a result of the termination of a commercial contract in the forestry sector
92. Authored expert reports quantifying alleged damages suffered by two plaintiffs in connection with litigation relating to alleged wrongful dismissal in the investment management sector
93. Authored expert report on behalf of the plaintiff quantifying alleged damages suffered as a result of the termination of a commercial contract in the music and software wholesaling sector
94. Co-authored an expert report on behalf of the defendant on alleged damages suffered as a result of a construction delay claim in the power generation sector
95. Co-authored expert report with Andrew Freedman on behalf of the municipal defendant on alleged damages suffered as a result of alleged unlawful acts inducing contract in the financial sector
96. Co-authored expert report with Andrew Freedman on behalf of the municipal plaintiff on alleged damages suffered as a result of alleged unlawful acts inducing contract in the financial sector

Intellectual property litigation:

97. Authored expert reports and testified on behalf of Rovi Guides, Inc. in the liability phase as to the ability to quantify BCE and Telus' profits in connection with its claims against BCE Inc. et al and Telus Communications Company et al arising from alleged patent infringement.
98. Authored expert reports and testified on behalf of Rovi Guides, Inc. as to the quantum of Videotron's profits in connection with its claim against Videotron Ltd for an accounting of profits arising from alleged patent infringement (under each of the incremental profits principle and the full costs methodology).
99. Authored an expert report for mediation on behalf of Robert Teti and ITET Corporation in connection with its claim against Mueller Water Products Inc.
100. Authored expert reports on behalf of Spin Master Ltd. in connection with its claim against Mattel Canada Inc. for an accounting of Mattel's profits for alleged patent infringement (2019 FC 385).
101. Authored and cross examined on an expert affidavit on behalf of Evolution Technologies Inc. as to the financial impact on the appellant's business arising from the trial judgment in connection with

its application for a stay of the Federal Courts finding that Evolution infringed the patent of Human Care Canada Inc. (2019 FCA 11).

102. Authored expert reports on behalf of Apotex Inc. in connection with its claim against Pfizer Canada Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations (T-1064-13).
103. Authored expert reports on behalf of Mylan Pharmaceuticals ULC in connection with its claim against Takeda Canada Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations (T-85-16).
104. Retained as an expert by defendant in connection with damages and an accounting of profits for alleged patent infringement in the oil & gas sector.
105. Authored expert reports on behalf of Apotex Inc. in connection with its claim against Abbott Laboratories, Limited, Takeda Pharmaceuticals Company Limited and Takeda Pharmaceuticals Americas, Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations and responding reports in connection with counterclaims by Abbott Laboratories Limited et al for an accounting of profits and reasonable royalty damages (CV-09-391938).
106. Retained as an expert by defendant in connection with damages and an accounting of profits for alleged trademark infringement in the telecommunications sector.
107. Retained as an expert by a branded pharmaceutical company in connection with an alleged patent infringement in the pharmaceutical sector.
108. Retained as an expert by defendant in connection with alleged patent infringement in connection with the oil and gas fracking sector.
109. Authored expert affidavit on behalf of a plaintiff in the medical marijuana industry in connection with alleged irreparable harm arising from alleged trade-mark infringement and breach of fiduciary duty in the context of an injunction application.

110. Authored and cross-examined on two expert affidavits responding to allegations of irreparable harm in an injunction application by Sleep Country Canada Inc. in context of alleged trademark infringement by Sears Canada Ltd. in the retail sector (2017 FC 148).
111. Authored expert reports and testified before the Federal Court of Canada on behalf of AFD Petroleum Ltd as to damages, an accounting of profits, and reasonable royalty being sought by Frac Shack Inc for alleged patent infringement in the oil and gas sector (2017 FC 104).
112. Authored an expert affidavit on behalf of the defendants, Aird & McBurney LP et al, in connection with alleged irreparable harm in the context of an injunction application being sought by Sim & McBurney.
113. Authored and cross examined on a responding expert affidavit on behalf of Apotex Inc. in the context of a motion for a bifurcation order being sought by Alcon Canada Inc. in an intellectual property case alleging patent infringement (2016 FC 898).
114. Authored a responding expert affidavit in the context of a motion for further production of documents in an intellectual property case alleging patent infringement.
115. Authored an expert report on behalf of Apotex Inc. in connection with its claim against Pfizer Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations and authored an expert report on behalf of Apotex responding to the quantification of alleged patent infringement damages suffered by Pfizer Inc. (T-1736-10)
116. Authored and cross-examined on affidavit on behalf of Apotex Inc. in connection with a motion sought by Pfizer Canada Inc. for proposed pleading amendments. (T-1736-10)
117. Authored expert reports and testified before the Federal Court of Canada on behalf of Arctic Cat, Inc. as to damages being sought by Bombardier Recreational Products Inc. for alleged patent infringement (2017 FC 207)
118. Authored expert reports and testified before the Ontario Superior Court of Justice on behalf of Exact Furniture Limited as to damages and profits being sought by Video Furniture International Inc. for alleged wrongful use of confidential information (2015 ONSC 3399)

119. Retained as an expert to quantify damages in connection with allegations of patent infringement in the pipeline infrastructure sector
120. Authored expert reports and testified before the Federal Court on behalf of Apotex Inc. as to damages being sought by Eli Lilly and Company for patent infringement (2014 FC 1254)
121. Assisted with the preparation of primary and responding expert reports, depositions and trial testimony in the Delaware Court in connection with valuation of intellectual property rights and allocation of sales proceeds following the bankruptcy of Nortel
122. Authored an expert report on behalf of Apotex Inc. in connection with its claim against Glaxosmithkline Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations. (T-714-08)
123. Authored expert reports and testified on behalf of Apotex Inc. in connection with its claim against Takeda Canada Inc. for commercial damages pursuant to section 8 of the Patent Medicine (Notice of Compliance) Regulations. (2013 FC 1237)
124. Authored and cross-examined on an expert affidavit responding to allegations of irreparable harm in an injunction application by AstraZeneca Canada Inc. in the context of alleged patent infringement by Apotex Inc in the pharmaceutical sector (T-1668-10)
125. Authored expert report on behalf of the plaintiff quantifying alleged damages pursuant to Section 8 of the Patent Medicine (Notice of Compliance) Regulations
126. Authored and cross-examined on expert affidavit responding to allegations of irreparable harm in an injunction application by Target Corp. in context of alleged trademark infringement by Fairweather Ltd. in the retail sector (T-1902-10)
127. Retained to provide financial litigation assistance on behalf of a large multinational aerospace manufacturer in response to alleged misuse of confidential information
128. Co-authored draft expert report on behalf of branded pharmaceutical company in connection with alleged patent infringement by another branded pharmaceutical company

129. Authored, and in some cases cross-examined on, affidavits in connection with motions for proposed pleading amendments , bifurcation, further production of information, motion to strike and other matters in the context of litigation where my involvement is not in the public domain.

Bankruptcy and restructuring related litigation:

130. Authored expert report analyzing flows of funds and regulatory disclosures of GFA World and various relevant charities associated with Believers Eastern Church in connection with the proposed class action filed against GFA World while under creditor protection
131. Assisted in the preparation of an expert report on the fair market value of the intellectual property assets of J. Crew Group in connection with litigation between Eaton Vance Management, holders of secured debt of J. Crew Group and J. Crew arising from the restructuring of the ownership of IP assets of the company for purposes of raising new debt
132. Assisted with the preparation of primary and responding expert reports, depositions and trial testimony in the Delaware Court in connection with valuation of intellectual property rights and allocation of sales proceeds following the bankruptcy of Nortel
133. Assisted in advising a stakeholder in connection with the restructuring of the specialty television channels of Canwest Media in connection with a dispute with Goldman Sachs
134. Authored expert report and testified at arbitration on the quantum of cost savings obtained in the bankruptcy and subsequent restructuring of Air Canada
135. Operational assessment and restructuring of Venator Group (now Footlocker)

Intellectual property valuation and transfer pricing:

136. Authored valuation reports in connection with the cross-border transfer of businesses and all forms of intellectual property in the context of global business restructuring of multi-national businesses in various sectors, including:
 - commercial financing
 - consumer staples manufacturing
 - electrical distribution technology
 - locomotive engine manufacturing
 - military technology
137. Authored report on behalf of a company in the oil sector in connection with an anticipated valuation challenge by Canada Revenue Agency.
138. Provided consulting services to a company in the oil and gas sector as to reasonable royalty rates for cross licensing intellectual property
139. Provided assistance with the preparation of an expert report in connection with litigation between Canada Revenue Agency and R. Daren Baxter relating to a valuation of software and algorithms underlying S&P commodity future trading structure.
140. Provided assistance with the preparation of an expert report in connection with litigation between Canada Revenue Agency and GE Capital Canada Inc. relating to the valuation of an inter-corporate guarantee.
141. Authored reports as to royalty rates for cross border licensing of intellectual property between non-arms length parties within multi-national enterprises for purposes of section 247 of the *Income Tax Act* and compliance with OECD.
142. Authored transfer pricing studies for income tax purposes in connection with cross border pricing of transactions between non-arms length parties within multi-national enterprises in the high tech sector for purposes of section 247 of the *Income Tax Act* and compliance with OECD.
143. Authored in excess of 100 reports valuing various forms of intellectual property, including patents, brands, trade-marks, know-how, customer relationships and goodwill for companies in a variety of

sectors including: actuarial services, directory publishing , employer services, financial planning software , food products , mining , oil and gas, real estate services, residential and commercial door manufacturing, software services, spa manufacturing and technology manufacturing.

Valuation of commercial interests:

144. Authored numerous reports in connection with of the valuation of companies operating in various sectors, including:
 - analytical laboratory services
 - directory publishing
 - portfolio valuation of private equity portfolio, primarily hotels
 - portfolio valuation of private equity technology portfolio
 - portfolio valuation of private equity diversified portfolio (five years)
 - energy marketing services

145. Authored or co-authored fairness opinions in connection with transactions in various sectors, including (note that these items are also included in Transaction Advisory):
 - internalization of management contracts in the real estate sector
 - directory services
 - oil and gas management services
 - financial services
 - investment management
 - real estate software

146. Authored or co-authored reports responding to fairness opinions in connection with transaction in various sectors, including (note that these items are also included in Transaction Advisory):
 - paper and pulp manufacturing
 - retail department stores

Business consulting engagements:

147. Preparation of a report to the Board of Directors in the brewing industry opining as to whether the terms of a commercial contract had been complied with
148. Business consulting projects (incorporating business viability analyses) in connection with, amongst others:
 - operational efficiency review and restructuring of a retail department store chain
 - operational assessment and restructuring of Venator Group (now Footlocker)
 - restructuring of an airline
 - start-up of mid-stream gas refinery
149. Business viability analysis:
 - the feasibility of a start-up charter airline
 - feasibility and restructuring of a plastics manufacturer
 - the feasibility of an apparel manufacturer
 - optician practice
 - operational efficiency review and restructuring of a retail department store chain
 - wholesale distributor
150. Advisory services to the Ontario Ministry of Health and Long-Term Care in connection with the design and implementation of a reporting / monitoring system to achieve the objectives of Bill 102 - An Act to amend the Drug Interchangeability and Dispensing Fee Act and the Ontario Drug Benefit Act

Transaction advisory:

151. Provision of M&A acquisition advisory services, due diligence and post-merger integration in a variety of business sectors, including:
 - apparel manufacturer
 - apparel retailing
 - animated television and feature film
 - collectibles retailing
 - commercial and educational video
 - construction equipment
 - construction supplies
 - equipment financing

- health services
 - hospitality – hotel
 - hospitality – restaurant
 - jewelry manufacturing and retailing
 - laser measurement services
 - oil and gas midstream and downstream
 - printing services
 - real estate appraisal and related services
 - windshield manufacturing
152. Preparation of post-transaction root cause analysis of failure to achieve synergy targets in the context of a valuation
153. Authored or co-authored fairness opinions in connection with transactions in various sectors, including (note that these items are also included in Valuation of Commercial Interests):
- internalization of management contracts in the real estate sector
 - directory services
 - oil and gas management services
 - financial services
 - investment management
 - real estate software
154. Authored or co-authored reports responding to fairness opinions in connection with transaction in various sectors, including (note that these items are also included in Valuation of Commercial Interests):
- paper and pulp manufacturing
 - retail department stores

ARTICLES, PRESENTATIONS AND OTHER PUBLICATIONS

I have authored numerous publications as well as articles for professional journals and have spoken at professional and academic conferences. Publications and representative presentations include:

Publications

1. Contributing author of *Brand Value Special Task Force Report – February 2020* published by INTA, International Trademark Association
2. Lead author of *Calculating Monetary Remedies in Intellectual Property Cases in Canada – a Reference Book of Principles and Case Law – 2018 Edition*
3. Co-author of chapter on Monetary Relief – Quantum in the looseleaf publication *Intellectual Property Disputes: Resolutions and Remedies* edited by Ronald E. Dimock and published by Carswell in 2012, addressing both damages and accounting of profits
4. Co-author of two monographs “Damages Calculations in Intellectual Property Cases in Canada” and “Accounting of Profits Calculations in Intellectual Property Cases in Canada” published in 2012
5. Author of article entitled “Enhancing Synergy Realisation” published by *Financier Worldwide* in 2006
6. Co-author of monograph “Sharing Synergies” published in 2003

Lectures and presentations

7. March 2021 Canadian Bar Association Panel Discussion on the Section 96 Efficiencies Defense with John MacGregor and Nadia Soboleva, moderated by David Dueck
8. November 2020 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
9. November 2020 Ryerson University guest lecturer on business and litigation aspects of intellectual property

10. October 2020 York University Osgoode Hall Law School guest lecturer with Dr. Renée Duplantis on sections 92, 93 and 96 of the *Competition Act*
11. November 2019 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
12. March 2019 Ryerson University guest lecturer on business and litigation aspects of intellectual property
13. November 2018 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
14. November 2017 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
15. March 2017 Ryerson University guest lecturer on business and litigation aspects of intellectual property
16. February 2017 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
17. November 2016 Canadian Bar Association International Committee Panel Discussion on Dis-Synergies? Analyzing Efficiencies in Cross-Border Mergers with Trevor McKay, Andrew Lacy and Margaret Sanderson, moderated by Navin Joneja
18. June 2016 IPIC Webinar on Patent Case Law Review - Remedies with Trent Horne
19. March 2016 Ryerson University guest lecturer on business and litigation aspects of intellectual property
20. February 2016 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
21. January 2016 Canadian Bar Association Panel Discussion on the Section 96 Efficiencies Defense with Neil Campbell and Margaret Sanderson, moderated by Richard Annan

22. December 2015 Ontario Bar Association Panel Discussion on Intellectual Property Remedies – What Do You Need to Know? with Andrew Shaughnessy and Sangeetha Punniyamoorthy, moderated by Cameron Weir
23. October 2015 International Trademark Association (INTA) guest roundtable speaker on the valuation of brands
24. February 2015 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
25. November 2014 and January 2015 Competition Bureau guest lecturer on financial analysis in the context of competition reviews
26. June 2014 Licensing Executives Society, Toronto Chapter, titled Crossing the Border: The Intersection of Taxation and IP with Brandon Siegal, McCarthy Tetrault on business, valuation, income tax and litigation aspects of intellectual property
27. March 2014 Osgoode Hall Law School, York University guest lecturer on Administration of Civil Justice: Issues in Assessment of Litigation and Regulatory Risk
28. February 2014 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
29. May 2013 Acumen Financial Conference (on valuation of intellectual property)
30. March 2013 Federated Press 3rd Advanced Valuation Course (on valuation of intellectual property)
31. February 2013 University of Toronto Faculty of Law Global Professional Master of Laws guest lecturer on business, valuation, income tax and litigation aspects of intellectual property
32. October 2012 Intellectual Property Institute of Canada's 86th Annual Meeting in Vancouver (panel on The Basic Principles for Calculating Patent Damages)
33. May 2012 Tax Executive Institute's 46th Annual Canadian Tax Conference in Gatineau (panel on Tax and Valuation Issues in Restructuring Global Business Operations)

EXHIBIT "B"

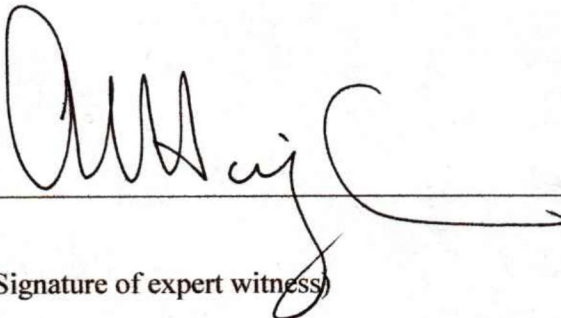
Acknowledgement of Expert Witness

I, Andrew Harington, acknowledge that I will comply with the Competition Tribunal's code of conduct for expert witnesses which is described below:

1. An expert witness who provides a report for use as evidence has a duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.
2. This duty overrides any duty to a party to the proceeding, including the person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

July 14, 2021

(Date)



(Signature of expert witness)

Sworn before me on July 14, 2021



A Commissioner for taking affidavits

Name: Alysha Li (LSO#: 80055G)

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by SECURE Energy Services Inc. of Tervita Corporation;

AND IN THE MATTER OF AN Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

AND IN THE MATTER OF an Application for an Interim Order pursuant to section 104 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondent

**RESPONDING RECORD OF
SECURE ENERGY SERVICES INC.**

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Counsel to Secure Energy Services Inc.