

Court File No: CV-24-00726715-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

BELIEVECO:PARTNERS INC.

Plaintiff

- and -

ARLENE DICKINSON ENTERPRISES, LTD. AND ARLENE DICKINSON

Defendants

- and -

ARLENE DICKINSON AND ARLENE DICKINSON ENTERPRISES, LTD.

Plaintiffs by Counterclaim

- and -

**BELIEVECO:PARTNERS INC., CANADIAN BUSINESS GROWTH FUND, LP,
CANADIAN BUSINESS GROWTH FUND (GP) INC., CBGF INVESTMENT, GP
INC., AND CBGF 2022, LP**

Defendants by Counterclaim

FRESH AS AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM

TO THE DEFENDANTS TO THE COUNTERCLAIM

A LEGAL PROCEEDING has been commenced against you by way of a counterclaim in an action in this court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the Rules of Civil Procedure, serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service, in this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing a defence to counterclaim, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE AMOUNT OF THE COUNTERCLAIM AGAINST YOU, and \$750 for costs, within the time for serving and filing your defence to counterclaim, you may move to have the counterclaim against you dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the counterclaim and \$400 for costs and have the costs assessed by the court.

Date: _____

Issued by: _____

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STATEMENT OF DEFENCE

1. Arlene Dickinson and Arlene Dickinson Enterprises, Ltd. (“Dickinson Enterprises”) (together, the “Dickinson Entities”) admit the allegations contained in paragraphs 2, 3, 13, 17, 24, 70-73, and 78 of the Fresh as Amended Statement of Claim (the “Claim”).

2. The Dickinson Entities have no knowledge in respect of the allegations contained in paragraphs 42 and 76 of the Claim.

3. The Dickinson Entities deny the balance of the allegations contained in the Claim unless expressly admitted below. The Dickinson Entities expressly deny that the plaintiffs are entitled to any of the relief claimed in paragraph 1 of the Claim.

A. Overview

4. believeco:partners inc. (“BCP”) was founded as a result of Ms. Dickinson’s business concept that envisioned multiple, well-established, independent marketing agencies coming together to form a competitive and full-service agency.

5. BCP was the direct result of Ms. Dickinson’s tireless efforts. Ms. Dickinson initially led BCP through the most difficult phase of integrating six previously stand-alone agencies under one cohesive brand.

6. As a director and significant shareholder in BCP, Ms. Dickinson had and continues to have a material interest in the success of the business. At all material times, Ms. Dickinson has acted in the best interests of BCP.

7. BCP’s claims are part of a pattern of oppressive conduct that began when BCP created a toxic and intolerable work environment designed to sideline Ms. Dickinson from

the management of BCP. Simultaneously, BCP's CEO worked in concert with a private equity firm, CBGF (defined below) to dilute Ms. Dickinson's shareholder interests to permit the takeover of BCP by CBGF. BCP's late-breaking claims are a pretext to defeat Ms. Dickinson's legitimate employment and shareholder entitlements, which are particularized below, and as part of a broader strategy to allow CBGF to assume control over BCP.

B. The Defendants

8. The Defendant, Ms. Dickinson, is an individual who resides in Calgary, Alberta.

9. Ms. Dickinson is a well-known business figure in the fields of marketing, communications, and venture capital.

10. Ms. Dickinson has a high profile in the public media as a result of her distinguished reputation as an author and television personality.

11. Ms. Dickinson was employed by BCP as Co-Managing Partner and Head of Mergers and Acquisitions, and as interim Chief Executive Officer, from November 2022 until her dismissal in August 2024. In this capacity, Ms. Dickinson oversaw both Canadian and American operations.

12. The Defendant, Dickinson Enterprises, is a corporation incorporated pursuant to the laws of Canada, which is wholly owned by Ms. Dickinson.

13. Ms. Dickinson joined Venture Communications Marketing Ltd. ("Venture") in or around 1988 as a partner, and became sole owner of Venture approximately 10 years later through her company Dickinson Enterprises.

14. Ms. Dickinson led Venture successfully for 34 years until it was acquired by BCP in November 2022.

15. Under Ms. Dickinson's leadership, Venture emerged as a major and respected force in the marketing and communications industry. In the process, Ms. Dickinson established herself as prominent executive and leading expert in the industry.

C. The Plaintiff

16. The Plaintiff, BCP, is a corporation incorporated pursuant to the laws of Ontario. BCP now operates under the trade name "ChangeMakers".

17. Ms. Dickinson's relationship with BCP was primarily governed by two related agreements, entered into at or around the same time, which are subject to the doctrine of set off:

- (a) the Purchase and Sale Agreement with BCP dated September 19, 2022 (the "Purchase and Sale Agreement"), which provided for BCP's acquisition of Venture, and
- (b) her Executive Employment Agreement (the "Employment Agreement"), which provided for Ms. Dickinson's employment at BCP following its acquisition of Venture.

D. Ms. Dickinson Founds BCP

18. BCP was formed in 2022 as a result of Ms. Dickinson bringing together a group of established marketing and communications agencies with the objective of providing a

new business delivery model. Besides Venture, BCP's other founding agencies were Brightworks, Argyle, Zync, Revolve, and Castlemain.

19. Ms. Dickinson first conceived of a full-service, multi-faceted marketing agency in or about 2021.

20. Although the concept was for all the "founders" to play a role, Ms. Dickinson undertook all the efforts required to establish BCP, including raising capital, developing a business strategy, establishing a brand and marketing strategy, retaining legal and accounting professionals, creating financing relationships, and laying the organizational groundwork necessary for BCP to launch.

21. Moreover, between March 2022 and October 2022, several employees of Venture dedicated significant time, often on a full-time basis, to the establishment of BCP. This was done to the detriment of the business of Venture.

22. Under the planned arrangement, Ms. Dickinson would become the largest minority shareholder in BCP. The representatives of the other founding agencies would also become minority shareholders in BCP.

23. The Canadian Business Growth Fund (or "CBGF") was selected as a private equity backer of the venture. It would also be a minority investor, consistent with its representations to Ms. Dickinson, Venture and BCP.

24. Ms. Dickinson received nominal cash consideration for the sale of Venture to BCP. Almost the entire consideration received by Ms. Dickinson was in the form of equity in

BCP. CBGF pressed Ms. Dickinson to accept this structure to signify her confidence and commitment to the success of BCP.

25. Unlike Ms. Dickinson, the other founders were not asked or pressured to take virtually all of their consideration in cash consideration for the sales of their respective agencies to BCP.

26. Ms. Dickinson incurred significant risk by accepting the vast majority of her consideration in shares of BCP for the sale of Venture. Under this arrangement, Ms. Dickinson's personal interests would only be served by enhancing BCP's value, and thus increasing her own share value, rather than undermining it as alleged in the Claim.

E. Purchase Price Adjustment

27. In furtherance of the sale of Venture to BCP, the Dickinson Entities entered into the Purchase and Sale Agreement (defined above at paragraph 17).

28. The Purchase and Sale Agreement requires the parties to attorn to the exclusive jurisdiction of the courts of Ontario.

29. The acquisition of Venture was structured as a sale by Dickinson Enterprises to BCP of all the shares of Venture.

30. Pursuant to Article 2.3(b) of the Purchase and Sale Agreement, Dickinson Enterprises was required to prepare an "estimated statement detailing Dickinson Enterprises' estimate of the closing date working capital, closing cash, closing indebtedness, closing transaction expenses, and a calculation of the cash consideration"

(the “Estimated Statement”). Dickinson Enterprises was required to provide the Estimated Statement between 5 and 10 days prior to the closing date.

31. The sale of Venture to BCP closed on or about November 3, 2022 (the “Closing Date”). Dickinson Enterprises delivered the Estimated Statement on or about November 3, 2022, in accordance with the Purchase and Sale Agreement.

32. Pursuant to Article 2.6(a) of the Purchase and Sale Agreement, BCP was required to provide draft closing statement “[n]ot later than ninety (90) days after the Closing Date”. The intent of the draft closing statement was to permit any necessary variance to the purchase price, given that Venture continued to operate as a going concern between the date of the Purchase and Sale Agreement and the Closing Date.

33. The Purchase and Sale Agreement contemplated that Dickinson Enterprises could provide a Notice of Objection to the draft closing statement in the 30 days following its delivery. If such a Notice of Objection was delivered, Article 2.6(d) of the Purchase and Sale Agreement referred the dispute to third party accountants for final determination.

34. BCP did not deliver a draft closing statement within the 90-day period as required under the Purchase and Sale Agreement.

35. BCP management and CBGF only purported to deliver a draft closing statement on or about May 26, 2024, some 18 months after the Closing Date, and after BCP and CBGF had excluded Ms. Dickinson from management and engaged in the reprisals and oppressive conduct described below.

36. By failing to deliver the draft closing statement for approximately a year and a half, BCP evinced a clear intention that it would not be relying on the strict terms of the Purchase and Sale Agreement. Ms. Dickinson reasonably relied on this conduct. BCP is now estopped from relying on the delivery of the draft closing statement.

F. The Estimated Statement

37. The Estimated Statement – and all the financial disclosure provided in association with BCP’s acquisition of Venture – was prepared by Allan Lawrence and reviewed by an external accounting firm, KPMG. Mr. Lawrence was formerly the Vice-President of Finance for Venture, as well as Ms. Dickinson’s personal accountant. Mr. Lawrence became Vice-President of Finance for BCP upon the acquisition of Venture by BCP.

38. The Estimated Statement was accurate to the best of Ms. Dickinson’s knowledge at the time that it was prepared and delivered. Ms. Dickinson reasonably expected that Mr. Lawrence and KPMG would prepare the Estimated Statement and disclosure in accordance with accounting principles, and reasonably relied on their professional advice. Mr. Lawrence did not inform Ms. Dickinson of any issues with respect to the valuation of Venture either prior to or at the time of closing.

39. Given the significant time and energy that Ms. Dickinson and her employees had deployed in order to ensure BCP was well-capitalized and well-positioned as a new company, she was unable to focus exclusively on Venture’s business in the lead up to the Closing Date. Any deterioration in the value of Venture prior to the Closing Date was entirely attributable to Ms. Dickinson’s tireless efforts in March through October 2022 to establish and enhance BCP, while leaving the day-to-day management of Venture to

others. BCP's assertion otherwise in the claim is preposterous and directly contrary to BCP's knowledge of the events at the material times. These *ex post facto* allegations are part of BCP's campaign to smear Ms. Dickinson's reputation.

40. Contrary to the allegations in the Claim, Venture made all necessary disclosures regarding its liabilities. Ms. Dickinson provided transparent information to BCP's board regarding Venture's business, and both CBGF and BCP had the opportunity to conduct their own due diligence.

G. Ms. Dickinson focuses her efforts on enhancing BCP's value

41. The responsibility for forming and launching BCP fell squarely on Ms. Dickinson. She put the interests of BCP ahead of her personal interests in Venture before the Closing Date.

42. Ms. Dickinson brought considerable value to BCP, both personally and through Venture. In addition to the existing client base that was added to BCP as a result of the acquisition of Venture, Ms. Dickinson brought new clients to BCP, as well as a wealth of relationships and a leading reputation in the market.

43. Ms. Dickinson's public profile and strong reputation were integral to BCP's formation. In fact, both BCP and CBGF relied extensively on Ms. Dickinson's image and presence to secure clients. CBGF even requested that Ms. Dickinson provide a testimonial video for CBGF's website.

44. In light of Ms. Dickinson being a founder of BCP, as well as the primary force behind its creation, it was agreed that Ms. Dickinson would serve in the position of Co-

Managing Partner and Head of Mergers and Acquisitions at BCP, together with two other founders. Dickinson was also part of BCP's Executive Leadership Team ("ELT").

45. In addition to her role as Co-Managing Partner, Ms. Dickinson was appointed to the Board of BCP and served as its Executive Chair.

H. Ms. Dickinson's employment agreement

46. Ms. Dickinson's employment at BCP was governed by the Employment Agreement (defined above at paragraph 17).

47. Ms. Dickinson's duties were defined in Article 2.2 of the Employment Agreement, and included the creation and execution of merger and acquisition strategies and marketing presence, the development and signing of all acquisitions across all agencies of BCP, executive role building, and management of the entire organization (including oversight of the strategies and budgets of all founding agencies).

I. BCP's Early Days

48. Ms. Dickinson assumed her duties prior to November 2022, and carried out her responsibilities with due care and skill and in the best interests of BCP.

49. Ms. Dickinson focused on revenue generation, business support and client stewardship, while overseeing the 300+ employees of BCP in its 10 offices across Canada and the United States.

50. Consistent with Ms. Dickinson's vision for BCP, the organization was run on a co-management model where the founders actively participated in overseeing the daily operations of BCP.

51. However, the merger of several different agencies, each with their own business approach and structure, proved challenging.

52. Initially, many of the previous stand-alone agencies continued to operate in silos. Ms. Dickinson led efforts to address these integration challenges, with the overall objective of facilitating cohesion and growth for BCP.

53. As would be expected in any business that has formed as a result of the merger of multiple organizations, there was significant resistance and difficulties in securing buy-in for a unified brand.

54. Given that Ms. Dickinson was engaged in the overall running of BCP, another Co-Manager, founder and director of BCP, Neil Follett, was made responsible for marketing. In this capacity, Mr. Follett was responsible for the business portfolio that Venture had brought to BCP.

55. Unfortunately, due to no fault of Ms. Dickinson, many of Venture's clients that it had brought into BCP decided not to continue using BCP for their marketing needs. The same was true of other founding companies. It is not unusual for companies to experience client retention issues following a merger.

56. Any purported loss of Venture's clients or business was discoverable by Mr. Follett and thus BCP (including its board) when Mr. Follett assumed responsibility for Venture's former book of business in November 2022.

57. Accordingly, BCP's claims, made for the first time on March 5, 2025, that Ms. Dickinson misrepresented Venture's business or breached the Purchase and Sale

Agreement due to the state of Venture's business are statute-barred by virtue of the *Limitations Act*.

58. Moreover, contrary to the allegation in paragraph 33 of the Claim, "Venture's business" did not exist post acquisition – rather, it belonged to BCP and was under the management of Mr. Follett and the oversight of the Board. Accordingly, any failure to capitalize on Venture's previous book of business lies at the feet of BCP itself, and not Ms. Dickinson.

59. Within six months of the founding of BCP, in early 2023, the other two Co-Managing Partners—Mr. Follett and Dan Tisch—departed their employment at BCP. Attrition of management is also not unusual following a merger. But this meant that Ms. Dickinson was the only remaining founder who was still also a Managing Partner, and the original co-management structure was no longer in place.

60. Following Messrs. Follett and Tisch's departures, BCP's Board determined that BCP's corporate structure should be modified so that BCP would be led by a single Chief Executive Officer ("CEO"). Ms. Dickinson told BCP and CBGF that she was not interested in a permanent CEO position.

J. *Interim CEO*

61. Contrary to the allegations in the Claim, Ms. Dickinson did not "appoint herself Acting Chief Executive Officer". Rather, BCP's Board and CBGF asked Ms. Dickinson to step into the Interim CEO role while a permanent CEO was recruited and hired. Ms. Dickinson was reluctant to assume the additional responsibility, but ultimately agreed to do so in light of her commitment to BCP's continued success.

62. During her time as Interim CEO, Ms. Dickinson was expected to (and did) fulfill all of her normal responsibilities of overseeing the organization and attracting new clients.

63. Ms. Dickinson also took on increased responsibilities as she was expected to lead BCP on her own without the benefit of co-managing partners.

64. Ms. Dickinson continued to advocate for BCP to re-brand and refocus strategically. Ms. Dickinson advocated for increased integration amongst all the founding agencies in order to streamline their offerings and increase efficiencies in delivering service to clients. CBGF and some senior management were resistant to this vision when proposed by Ms. Dickinson.

65. BCP was experiencing difficulties in realizing its market position when Ms. Dickinson assumed responsibilities as Interim CEO. However, Ms. Dickinson diligently took all appropriate steps to return BCP to a profitable position. By September 2023, BCP's position was solidifying and its financial outlook was improving.

66. Among her many other increased responsibilities, Ms. Dickinson also began the recruitment process for a new CEO in June 2023. A new CEO, Mario Simon, was hired and commenced employment with BCP on February 20, 2024. Ms. Dickinson continued as Interim CEO until then.

K. The campaign to exclude Ms. Dickinson begins

67. As detailed further below, upon Mr. Simon becoming CEO in February 2024, Ms. Dickinson was subjected to a concerted campaign to diminish her role as director, officer and shareholder of BCP.

68. As part of that campaign, BCP initiated a frivolous investigation into the credit card charges and the furniture expenses that it now raises in its Claim. An independent, third party investigation concluded that BCP's allegations were unsubstantiated. Moreover, BCP's claim for a purchase price adjustment cannot succeed as it purported to deliver the draft closing statement some 18 months late as part of its campaign to force her out of the business.

1. Venture's affairs

69. Prior to the acquisition of Venture, it was a closely held corporation owned and operated by Ms. Dickinson. As such, personal charges or charges for related corporations would occasionally appear on corporate accounts, and corporate charges would occasionally appear in Ms. Dickinson's personal accounts or in the accounts for related corporations.

70. These cross-charges would then be reconciled by Venture's accountants. If there was an amount owing by Ms. Dickinson to Venture, that would be subtracted from her total compensation from Venture and any necessary intercompany transfers would be made.

71. At the time of the acquisition, Venture maintained and paid rent for an office on Wellington Street in Toronto (the "Wellington Office"). Venture leased that office from Bilah Inc., which is a company wholly-owned by Ms. Dickinson. This was an arrangement entered into in the normal course of business. BCP was aware of this arrangement at the time it acquired Venture.

72. Under the lease agreement, Venture (and subsequently BCP) could cancel the lease on 30 days' notice without liability or penalty of any kind. Accordingly, Venture was permitted to enter into the lease pursuant to the Purchase and Sale Agreement.

73. When BCP launched in November 2022, BCP assumed the month-to-month lease of the premises. BCP began paying rent and began using the Wellington Office regularly for meetings and other business functions. As a result, any claim by BCP with respect to the Wellington Office was discoverable in November 2022 and is now barred by the *Limitations Act*.

2. Wellington Office furniture

74. Venture's Wellington Office was furnished with items that had originally been purchased by Ms. Dickinson personally.

75. In anticipation of the sale of Venture to BCP, Ms. Dickinson was told by her accountants to separate her personal interests from her corporate interests. This included the furnishings at the Wellington Office, which would continue to be used by Venture (and thus BCP upon acquisition).

76. Mr. Lawrence was tasked with accounting for the Wellington Office furnishings and requested information from Ms. Dickinson about these assets.

77. In or about early September 2022, Ms. Dickinson provided Mr. Lawrence with detailed information about the furnishings and their approximately value of \$175,000. To the best of Ms. Dickinson's knowledge, this total represented a discount on the amount that she paid for the furnishings.

78. Ms. Dickinson also directed Mr. Lawrence to ensure that personal charges on Venture's American Express ("Amex") card, which totalled approximately \$165,000, were attributed to her personally. Mr. Lawrence decided that this amount would be set off in partial payment of the amount owing to Ms. Dickinson for the furnishings.

79. In or about October 2022, Ms. Dickinson wrote to Mr. Lawrence to inquire as to the status of the accounting. Mr. Lawrence confirmed to Ms. Dickinson that the \$175,000 had been taken "out of the WIP", Ms. Dickinson had sold the furnishings to Venture prior to closing, the sale would be accounted for in Venture's October financial records, and would be paid prior to the Closing Date.

80. In or about December 2022, just after BCP's acquisition of Venture (when, as noted above, Mr. Lawrence was a BCP employee), Ms. Dickinson sought confirmation that her corporate and personal interests had been properly accounted for in Venture's books and records prior to the sale, including the furnishings and the Amex bill.

81. Mr. Lawrence confirmed that he was using the \$175,000 owing to Ms. Dickinson by Venture arising from the acquisition of the furnishings to offset the \$165,000 that Ms. Dickinson owed to Venture arising from the Amex. The result was \$10,000 owing to Ms. Dickinson, which BCP has not paid.

82. Ms. Dickinson did not engage in any wrongdoing, either with respect to the Wellington Office furnishings or the Amex bill (or otherwise).

83. Unbeknownst to Ms. Dickinson, Mr. Lawrence both failed to record the sale of the furnishings in Venture's records pre-sale when he was instructed to do so, and he failed to pay Venture's Amex bill prior to closing.

84. Ms. Dickinson only learned in the course of the workplace investigation in 2024 that not only had Mr. Lawrence waited until January 9, 2023 to enter the sale of the furniture to Venture in its general ledger, but that Mr. Lawrence had also allowed some \$5,500 in interest to accrue on the Amex to the detriment of the company before finally paying it in February, 2023.

85. On May 7, 2024, Mr. Simon asked Ms. Dickinson about "some furniture and art" that BCP had acquired.

86. Ms. Dickinson contacted Mr. Lawrence regarding Mr. Simon's inquiry. Mr. Lawrence again confirmed to Ms. Dickinson that the sale of furniture from the Wellington Office had been booked "just prior to the sale [of Venture] being finalized." Ms. Dickinson re-iterated to Mr. Lawrence her understanding that the furnishings were sold to Venture ahead of the closing.

87. On May 27, 2024, Mr. Simon and representatives of CBGF invited Ms. Dickinson to a meeting under false pretenses, mentioning nothing about the furniture. Once Ms. Dickinson arrived, Mr. Simon and CBGF representatives confronted her about the furniture acquisition in 2022, some 18 months prior. They purported to put her on administrative leave, and, in an attempt to harass and intimidate Ms. Dickinson, they made highly inflammatory, egregious and entirely unfounded allegations of fraud against

her. They refused to show her any underlying documents they said they had in their possession.

88. BCP formally placed Ms. Dickinson on suspension with pay on May 29, 2024.

89. BCP appointed a third-party workplace investigator to investigate BCP's unparticularized allegations of fraud regarding the furniture and the Amex charges. Ms. Dickinson participated candidly and honestly throughout the investigation, and provided all relevant material and information to the investigator.

90. The investigator concluded that BCP's allegations against Ms. Dickinson were not substantiated. The investigator delivered her findings and report to BCP at some point prior to July 10, 2024.

91. BCP failed to advise Ms. Dickinson of the findings exonerating her, or to return her to work for some 6 weeks following its receipt of the investigation report. BCP also refused to provide the investigation report to Ms. Dickinson.

92. BCP knows that its allegations of impropriety against Ms. Dickinson are false.

93. BCP nevertheless continues to assert in the Claim that Ms. Dickinson engaged in wrongdoing for the purpose of attempting to harm her reputation.

94. Regardless, any claim premised on the acquisition of furnishings or the Amex bill is statute-barred. BCP waited until March 5, 2025 to assert this claim, despite it having been discovered or discoverable by February 2023, at the latest.

3. Late delivery of Draft Closing Statement

95. As set out above, BCP had 90 days to provide a draft closing statement following the Closing Date, but it never did.

96. Ms. Dickinson repeatedly pressed BCP and CBGF to prepare the draft closing statement in accordance with the Agreement of Purchase and Sale. No such statement was ever delivered.

97. Contrary to paragraph 8 of the Claim, Ms. Dickinson was not responsible for completing the draft closing statement or pursuing the purchase price adjustment on behalf of BCP.

98. Ms. Dickinson recognized it would be a clear conflict of interest for her to take responsibility over the pursuit of an alleged liability owing from her own company. As a result, the responsibility for BCP pursuing the purchase price adjustment, if any, owing by Dickinson Enterprises fell to other directors and officers of BCP, or BCP's legal counsel. BCP and its counsel failed to take the steps contemplated under the Purchase and Sale Agreement.

99. At certain times, BCP, CBGF, and/or BCP's legal counsel proposed that any amount owing under a draft closing statement (yet to be delivered) could be satisfied through payment in the form of Ms. Dickinson's shares, not cash, at Ms. Dickinson's option. Ms. Dickinson was willing to engage in such discussions in good faith. However, BCP and CBGF never took any steps to finalize the draft closing statement.

100. Contrary to the Claim, the Dickinson Entities never stalled, delayed, or obstructed the delivery of the draft closing statement. Again, BCP and CBGF know that this allegation is false but are asserting it in an attempt to harm Ms. Dickinson's reputation, particularly with the other shareholders.

101. Ms. Dickinson ensured BCP had full access to all work papers, books, records and personnel to verify any matter relating to the preparation of the draft closing statement.

102. Without warning, on or about May 26, 2024, some 18 months after the Closing Date and in the midst of the workplace investigation described above, BCP finally decided to deliver a draft closing statement.

103. BCP's actions were timed to intimidate Ms. Dickinson and harm her reputation, and as part of its campaign to exclude her from management of BCP and further undermine her with other shareholders.

104. BCP did not explain why the draft closing statement was 18 months late, but took the position that Dickinson Enterprises owed BCP approximately \$2.6 million. BCP resiled from its earlier position that any payment could be satisfied by way of re-purchase of Ms. Dickinson's shares, and instead demanded a cash payment.

105. Dickinson Enterprises did not waive its right to contest delivery of a draft closing statement after the deadline provided in the Purchase and Sale Agreement. It acted reasonably and in good faith attempted to resolve the differences with BCP management and CBGF. These actions did not constitute a waiver of rights which is required to be in

writing by Article 11.8(a) of the Purchase and Sale Agreement. No written waiver was ever executed by the parties.

106. On June 21, 2024, Dickinson Enterprises delivered a Notice of Objection without prejudice to its position that there can be no longer be any adjustment to the purchase price pursuant to the Purchase and Sale Agreement.

107. BCP failed to comply with the requirements under the Purchase and Sale Agreement to make any adjustment to the purchase price pursuant to Article 2.6, including by failing to meet the deadline provided in the Purchase and Sale Agreement. There was no longer any basis under the Purchase and Sale Agreement for BCP to deliver a draft closing statement or to seek any adjustment to the purchase price.

108. By failing to deliver its statement in accordance with the requirements of the Purchase and Sale Agreement, BCP did not trigger the further procedures that could have applied to modify the consideration payable pursuant to Dickinson Enterprise's Estimated Statement. It therefore has no entitlement to the relief sought in the Claim.

109. Despite the fact that there is no basis under the Purchase and Sale Agreement to adjust the amount of consideration owing to Dickinson Enterprises, BCP has sought to refer the adjustment of the purchase price pursuant to Article 2.6(d) of the Purchase and Sale Agreement.

110. In particular, BCP took unilateral steps to retain accounting firm Grant Thornton to determine the dispute, even though BCP has no contractual basis for its actions. In fact, BCP unilaterally and without any notice to Ms. Dickinson previously made *ex parte*

contact with other accountants, including BDO Canada LLP, to attempt to retain them for the same purpose, despite the parties' agreement to pause processes relating to the Purchase and Sale Agreement pending resolution discussions.

111. Contrary to BCP's allegations, BCP did not make any good faith effort to resolve the parties' issues. Instead, BCP attempted to coerce and intimidate Ms. Dickinson.

112. The draft closing statement delivered by BCP is wrong in many respects. Without prejudice to its position that BCP is not entitled to any purchase price adjustment due to its breach of the Purchase and Sale Agreement, Dickinson Enterprises put BCP on notice that the draft closing statement delivered by BCP is inaccurate in the following ways:

- (a) \$62,171 must be subtracted for costs incurred by Venture associated with the acquisition of Venture by BCP that were erroneously included in the Estimated Statement but should have been charged to BCP;
- (b) \$51,958 for credit card expenses erroneously included in the Estimated Statement;
- (c) \$521,891 for brand and digital work product performed by Venture employees in advance of Closing for the benefit of BCP, which the founders of BCP agreed would be charged to BCP and should have been reflected as a receivable in Venture's working capital;
- (d) \$350,000 for the time Ms. Dickinson spent as BCP's chief executive officer in advance of closing, which should also have been reflected in Venture's working capital; and,

- (e) \$337,609 for the value of Done Well, a capital asset of Ms. Dickinson which BCP has wrongfully retained.

L. The Dickinson Entities deny the allegations

1. No misrepresentations or breach of contract

113. As set out above, the Dickinson Entities did not misrepresent the value of Venture. The Dickinson Entities relied on the professional advice provided to them by trained accountants (both internal and external), and all information furnished to BCP was accurate to the best of their knowledge at the time it was prepared. CBGF and BCP had ample opportunity to carry out due diligence before the Closing Date, and exercised that right.

114. The April 2023 e-mail from Mr. Lawrence referred to in paragraph 44 of the Claim noted that there was a change in working capital between the Estimated Statement and the Closing Date. The parties explicitly anticipated that there would be variations or errors in the accounting of working capital in the lead up to the acquisition. That was the entire point of the price adjustment process: any such variation or errors could be corrected as part of any adjustment to the purchase price in the draft closing statement (to the extent BCP opted to deliver one in a timely manner). As such, there was no obligation to disclose such variations or errors unless and until there was a purchase price adjustment process in accordance with the Purchase and Sale Agreement. BCP knowingly chose not to pursue that process.

115. Dickinson Enterprises denies any breach of the Purchase and Sale Agreement, including Article 6.

116. All actions taken by Venture were taken in the ordinary course and as part of the acquisition process. Ms. Dickinson did not knowingly or negligently make any misrepresentations about the purported value of Venture. Ms. Dickinson reasonably relied on the advice provided to her by duly qualified financial professionals in her representations, which were true at the time they were made.

117. Regardless, BCP acquired all Venture's financial books, records and other information when it acquired Venture and all of Venture's assets (including its servers and historical data) in November 2022.

118. BCP had the opportunity to discover any claim within 90 days of closing had it pursued the preparation of the draft closing statement with the diligence agreed to in the Purchase and Sale Agreement.

119. BCP's claims are now statute-barred because any alleged breach of contract or misrepresentation could have been or was discovered by February 2023.

2. No enrichment from convertible debentures

120. Ms. Dickinson was not enriched through her purchase of \$1 million in convertible debentures, nor did she contribute additional cash injections to BCP in breach of her fiduciary duty.

121. When BCP was exploring the possibility of issuing convertible debentures in 2023 and 2024, at no time did BCP take the position that the need for financing arose due to BCP's failure to provide the closing statement. In fact, BCP had proposed that the purchase price adjustment be completed as a share acquisition (which would have little

to no effect on BCP's financing), and not the payment of cash consideration. That is entirely an *ex post facto* creation of BCP raised in this litigation in an attempt to harm Ms. Dickinson's reputation.

122. Ms. Dickinson, through Dickinson Enterprises, provided extensive capital to BCP as part of her personal commitment to the success of BCP. She did so on contractual terms known to both parties. Now, the significant sums that she invested in BCP are worth considerably less. Moreover, as particularized further below, her overall shareholding interest has been significantly diluted through BCP and CBGF's wrongdoing.

3. No breach of fiduciary duty

123. Ms. Dickinson owed fiduciary duties to BCP in her capacity as director and officer. Because Ms. Dickinson was conflicted from any decision taken by BCP with respect to its acquisition of Venture from Dickinson Enterprises, she could not have breached any fiduciary duty owing to BCP in that regard.

124. Ms. Dickinson did not owe fiduciary duties to BCP in her capacity as the principal of Venture. She was an arm's length counterparty in that transaction. Venture was an asset acquired by BCP from Dickinson Enterprises. Accordingly, Ms. Dickinson did not owe a fiduciary duty (nor did she breach any such duty to the extent it existed) as alleged in paragraphs 39, 46, 92, 95 and 97 of the Claim.

125. Contrary to the allegations in paragraph 97(d) of the Claim, Ms. Dickinson was contractually entitled pursuant to Article 2.1(b) of the Employment Agreement to have one or more employees provide personal branding services to Ms. Dickinson. This was in

recognition of the importance of Ms. Dickinson's "personal brand to the business and acquisitions of the Company."

4. No "mass deletion" of e-mails

126. Contrary to the allegations in the Claim, Ms. Dickinson did not commit any "mass deletion" of e-mails.

127. When BCP acquired Venture, it similarly acquired all of Venture's e-mail servers. Moreover, Ms. Dickinson continued to use her BCP e-mail address as her primary e-mail for both corporate and personal purposes, just as she had at Venture prior to the acquisition.

128. When it became apparent that BCP no longer intended to be bound by Ms. Dickinson's Employment Agreement, as described further below, Ms. Dickinson deleted some targeted e-mails that were privileged, confidential, and personal to her. For example, Ms. Dickinson deleted e-mails concerning her family, her other unrelated businesses (including Dickinson Enterprises), and her personal taxes and assets.

129. BCP had no commercial or other interest in these e-mails. All e-mails arising from BCP's business operations were preserved. In short, Ms. Dickinson did not breach any identifiable duty with respect to the preservation of e-mails.

130. Moreover, BCP has failed to forward or otherwise notify individuals who email Ms. Dickinson at her e-mail address that she no longer has access to that account. As a result, Ms. Dickinson continues to suffer damages by not receiving e-mails.

M. BCP Must Indemnify Ms. Dickinson

131. BCP is obliged to indemnify Ms. Dickinson in respect of the Claim.

132. BCP and Ms. Dickinson entered into an indemnity agreement, dated November 3, 2022 (the “Indemnity Agreement”).

133. Article 1.1 of the Indemnity Agreement provides that BCP shall indemnify Ms. Dickinson (as the “Indemnified Party”) “from and against all liabilities, damages, costs, charges and expenses reasonably incurred by the Indemnified Party in respect of any civil, criminal or administrative action or proceeding to which the Indemnified Party is made a party by reason of being or having been a Director or Officer”.

134. Indemnification is also a key provision of Ms. Dickinson’s employment contract.

135. Article 4.7 of the Employment Agreement confirms that BCP “shall” indemnify Ms. Dickinson against liabilities in connection with Ms. Dickinson having been an officer or director of BCP.

136. Further, BCP’s By-Law No. 2 requires that BCP indemnify Ms. Dickinson in her capacity as director and officer of BCP.

137. BCP’s action against Ms. Dickinson is premised, at least in part, on her role as director and/or officer of BCP. As stated above, Ms. Dickinson acted at all times honestly and in good faith with a view to the best interests of BCP. Accordingly, BCP is obliged to indemnify Ms. Dickinson for the defence of this proceeding.

138. Despite this, BCP has not indemnified Ms. Dickinson for any of her costs incurred for defending the Claim to date.

139. BCP must indemnify Ms. Dickinson for costs (including legal fees) incurred in responding to the Claim to date and must indemnify Ms. Dickinson in advance and on an ongoing basis as the Claim proceeds.

N. Claims are statute barred

140. Although Ms. Dickinson denies making any misrepresentations or committing breach of contract arising from the sale of Venture to BCP, BCP was in a position to discover its claims arising from the purported misrepresentations or breach of contract when it acquired Venture in November 2022, and certainly by no later than February 2023. At that time, BCP had full access to documentation relating to Venture's financial position, including assets and liabilities, working capital, and client files.

141. Moreover, BCP's current Vice-President of Finance is Venture's former Vice-President of Finance, who is the same person who prepared the Estimated Statement and other disclosures that BCP now impugns. He had actual knowledge of the Estimated Statement and other disclosures, and thus would have been aware of any purported claim in November 2022. His knowledge is imputed to BCP.

142. As set out above, BCP's claims arising from any of the following are statute-barred:

- (a) Any claim arising due to the purported diminution of Venture's business or clients prior to BCP's acquisition of Venture, which was discoverable by BCP immediately following BCP's acquisition of Venture in November, 2022;

- (b) Any claim arising from BCP's acquisition of the Wellington Office lease from Venture, which was discoverable immediately following BCP's acquisition of Venture in November 2022 at the latest;
- (c) Any claim arising from Venture's acquisition of furniture at the Wellington Office and/or Venture's Amex bill, which was discoverable by BCP by February 2023 at the latest; and,
- (d) Any purported breach of the Purchase and Sale Agreement, which was discoverable by BCP by February 2023 at the latest.

O. Conclusion

143. The Defendants plead that the Claim should be dismissed, with costs on a substantial indemnity scale.

COUNTERCLAIM

144. The Plaintiffs by Counterclaim, Arlene Dickinson and Dickinson Enterprises,¹ seek the following relief:

- (a) Damages against BCP for breach of its contract of employment with Ms. Dickinson, including:
 - (i) An amount equivalent to 18 months' pay (including bonus) owing as severance arising from the termination of Ms. Dickinson's Employment Agreement and/or damages in lieu of reasonable notice on the basis of constructive dismissal;
 - (ii) Damages in respect of unpaid vacation pay, car allowance and benefits, in an amount to be quantified;
 - (iii) \$500,000 in aggravated damages, punitive damages, and/or damages for bad faith in the manner of BCP's termination of Ms. Dickinson's employment;
 - (iv) Damages in the amount of \$166,667 for the failure of BCP to pay an additional bonus to which Ms. Dickinson became entitled from and after assuming the position of Interim CEO of BCP in 2023 (the "Pay Equity Bonus");

¹ This Counterclaim adopts the definitions stated in the Statement of Defence above.

- (v) The return of all intellectual property and digital assets related to Ms. Dickinson's e-newsletter, Done Well;
 - (vi) Damages for BCP's unlawful failure to return and subsequent destruction of the value of the Done Well assets to Ms. Dickinson in response to her multiple demands (and despite BCP's agreement to return the assets), in an amount to be quantified based on the lost value of such assets;
 - (vii) Damages as a result of BCP failing to grant options equivalent to 0.75% of fully diluted shares outstanding which were exercisable on exit, in an amount to be quantified; and,
- (b) Damages against BCP for its breach of the *Human Rights Code*, R.S.O. 1990, c. H. 19, on grounds of sex and gender, in an amount to be quantified;
 - (c) Damages against BCP and CBGF for reputational harm and breach of confidence in an amount to be quantified;
 - (d) A declaration that BCP is not entitled to any adjustment to the purchase price for the sale of Venture pursuant to the Purchase and Sale Agreement;
 - (e) Further or in the alternative to (d), a declaration that BCP may not rely on Article 2.6 due to its bad faith performance of the Purchase and Sale Agreement;

- (f) Alternatively to (d) and (e), a declaration that any monies BCP recovers on the basis of adjustments to the purchase price pursuant to the Purchase and Sale Agreement are subject to the doctrine of equitable set-off and/or set-off pursuant to s. 111 of the *Courts of Justice Act* for BCP's liability for Dickinson's damages arising from BCP's breach of Dickinson's Employment Agreement;
- (g) A declaration that BCP and/or the CBGF entities, as described further below, have engaged in conduct that is oppressive, unfairly prejudicial to, and/or unfairly disregards the interests of the Dickinson Entities, contrary to the *Business Corporations Act*, R.S.O. 1990, c. B.16;
- (h) Further or in the alternative to (d) and (e), a declaration that, as a result of their oppressive conduct, BCP and/or CBGF are not entitled to rely on Art. 2.6 of the Purchase and Sale Agreement;
- (i) A declaration that CBGF's further equity investment in BCP, described below at paragraphs 254-283 , was invalid and CBGF does not hold such further equity or other interest in BCP;
- (j) In addition and/or in the alternative to (i), compensation arising from BCP and/or CBGF's oppressive conduct in an amount to be quantified;
- (k) A declaration that BCP is required to indemnify Ms. Dickinson pursuant to the Indemnity Agreement for the defence of its Claim, and an order requiring BCP to pay Ms. Dickinson advance legal fees and full indemnity for already

incurred and ongoing legal fees, including but not limited to \$40,000 for expenses incurred by Ms. Dickinson to respond to unsubstantiated allegations made against her in a workplace investigation (described below);

- (l) Pre- and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O 1990, c. C.43, as amended;
- (m) The costs of this proceeding, plus all applicable taxes; and,
- (n) Such further and other relief as this Court may consider just.

145. The Plaintiffs by Counterclaim repeat and rely upon the facts pleaded in the Statement of Defence in support of this Counterclaim, in addition to the following facts.

A. *Defendants by Counterclaim*

146. CBGF (comprised of Canadian Business Growth Fund, LP and Canadian Business Growth Fund (GP) Inc.) is a Toronto-based private equity firm which was established by Canada's major banks and insurance companies as a result of recommendations from the Government of Canada's Advisory Council on Economic Growth. Its mandate is to provide minority capital to encourage growth and expansion strategies of Canadian businesses.

147. The Defendant by Counterclaim, CBGF Investment, GP Inc. ("CBGF Investment"), is a corporation incorporated pursuant to the laws of Canada, in furtherance of CBGF's business dealings.

148. CBGF 2022, LP (“CBGF 2022”) is a limited partnership based in Toronto, Ontario. CBGF Investment is the general partner in CBGF 2022. CBGF 2022 is a shareholder in BCP and the vehicle through which CBGF has participated in BCP.

149. Unless otherwise specified, all entities associated with CBGF are referred to as “CBGF”.

B. Overview of Ms. Dickinson’s claims

150. At or around the time that Ms. Dickinson initiated the creation of BCP, she realized that private equity backing would be necessary in order to ensure that the new agency would attain a competitive position, make further acquisitions, and finance the typical period of integration following a merger.

151. To that end, Ms. Dickinson met with multiple private equity firms, and ultimately selected CBGF on the basis of its representations that the new agency would adopt the model of a partnership between the various “founders” of the legacy agencies.

152. CBGF represented that its mandate would be to act as a “minority investor” with the objective of growing the business. Ms. Dickinson relied on that representation.

153. CBGF was supposed to be a minority shareholder in BCP and to support its growth. However, when BCP encountered financial difficulty, CBGF quickly came to exert significant pressure over management, shareholders, and BCP’s Board by leveraging its ability to inject capital and dilute the founding shareholders.

154. Matters came to a head after a new CEO, Mario Simon, was hired to lead BCP. Not only was Mr. Simon paid approximately 2.5 times the salary that Ms. Dickinson had

earned for the same role, but Ms. Dickinson was quickly sidelined from her executive role within BCP, and her legitimate expectations and interests as a shareholder were unfairly disregarded.

155. BCP, Mr. Simon and CBGF engaged in a campaign to squeeze Ms. Dickinson out and to discredit her with other shareholders and team members. This campaign included (among other things):

- (a) initiating an unfounded and procedurally unfair workplace investigation that was used as a basis to exclude Ms. Dickinson from the workplace, even after the allegations were determined to be unsubstantiated;
- (b) at the same time, and in response to Ms. Dickinson's legitimate employment demands, claiming several million dollars from Dickinson Enterprises by purporting to claim the purchase price adjustment 18 months later than the contract contemplated;
- (c) refusing to discuss or clarify Ms. Dickinson's role in the organization;
- (d) excluding Ms. Dickinson from ELT meetings, despite Ms. Dickinson requesting to attend such meetings; and,
- (e) improperly diluting Ms. Dickinson's equity interests in BCP.

156. The material facts supporting each of these claims are set out below.

C. Ms. Dickinson is entitled to remedies for breach of her Employment Agreement

1. Terms of the Employment Agreement

(a) Compensation Terms

157. Pursuant to the Employment Agreement, Ms. Dickinson's base salary was set at \$400,000. Moreover, Ms. Dickinson was eligible to receive an annual bonus of up to twenty percent (20%) of her base salary ("Annual Bonus"), and a car allowance, along with certain other perquisites and benefits.

158. The other founders of BCP who served on the ELT, as well as the chief operating officer (a subordinate of Ms. Dickinson)—all of whom were men—received a greater salary than Ms. Dickinson.

159. At the time that Ms. Dickinson was made Interim CEO of BCP, Ms. Dickinson was promised two additional compensation components, which became terms of her employment agreement:

- (a) First, Ms. Dickinson was promised a grant of options equivalent to 0.75% of the fully diluted shares outstanding, exercisable on exit (the "ESOP").
- (b) Second, Ms. Dickinson was promised a further \$100,000 annual bonus, which would offset the compensation gap between Ms. Dickinson and her male subordinates (the "Pay Equity Bonus").

160. Ms. Dickinson had raised the fact that she was paid less than her male counterparts and subordinates at a meeting with CBGF in 2022. At the time, neither BCP nor its Board acted to address this matter. Instead, they promised, and Ms. Dickinson

reasonably understood and expected, that the ESOP and the Pay Equity Bonus would respond to her concerns that she was being paid less than male employees who reported to her. They asked her not to raise this matter with Mr. Tisch to avoid creating conflicts.

(b) Termination Terms

161. The Employment Agreement permitted BCP to terminate Ms. Dickinson's employment without cause, at which point Ms. Dickinson would be entitled to severance, as described below.

162. The Employment Agreement permitted Ms. Dickinson to terminate her employment with "Good Reason". The Employment Agreement defined "Good Reason" as:

- (a) a material breach of the Employment Agreement by BCP;
- (b) a reduction of Ms. Dickinson's base salary or bonus;
- (c) a material change in Ms. Dickinson's position, authority or duties under the Employment Agreement without her consent; or
- (d) a requirement that Ms. Dickinson relocate to another province or country.

163. Under Article 5.4 of the Employment Agreement, if Ms. Dickinson provided notice to terminate her employment with Good Reason, BCP would have 30 days from the date of the notice to cure the circumstances providing grounds for termination with Good Reason. If BCP failed to cure the circumstances providing grounds for termination with Good Reason, Ms. Dickinson's effective termination date would be the 30th day following the expiration of the BCP's right to cure.

164. In the event that Ms. Dickinson terminated her employment with Good Reason, or if BCP terminated Ms. Dickinson's employment without cause, the Employment Agreement required BCP to make payments to her. Among other things, Ms. Dickinson was entitled to be paid her base salary during the severance period, being 18 months from the date on which Ms. Dickinson ceased employment with BCP, and her Annual Bonus accrued to the date of termination.

165. Nothing in the Employment Agreement restricts Ms. Dickinson's right to claim constructive dismissal at common law.

2. BCP pays Mario Simon materially more than Ms. Dickinson for performing the same role

166. As detailed above in the Statement of Defence at paragraphs 61-66, Ms. Dickinson acted as the CEO of BCP until in or around February 2024, when Mario Simon was hired as CEO.

167. Under the Employment Agreement, BCP was required to continue Ms. Dickinson's employment as an essential executive and member of the ELT after Mr. Simon was hired.

168. Ms. Dickinson did not consent to a material change in her position, authority or duties under the Employment Agreement. The only change she accepted was the loss of the CEO title, and reversion to her contractual title of Co-Managing Partner and Head of Mergers and Acquisitions.

169. Ms. Dickinson's continuing role as an essential executive and ELT member formed part of her reasonable expectations as a shareholder.

170. However, despite that agreement, from the time that Mr. Simon started as CEO, Ms. Dickinson was subject to a systematic campaign to exclude her from the management of BCP and reduce her influence as an executive, as a Board member, and as a shareholder.

171. Once Mr. Simon was hired as CEO, he was paid a salary approximately 2.5 times greater what Ms. Dickinson had been making in the same role. He also received a 5% equity interest in BCP without having to provide any capital. Mr. Simon's compensation vastly exceeded Ms. Dickinson's compensation for having performed the same role, and despite BCP experiencing significant cash flow problems.

172. Moreover, unlike Ms. Dickinson, Mr. Simon was provided a dedicated team of 6 individuals from CBGF (and paid for by CBGF) solely tasked with assisting him and BCP's CFO. Ms. Dickinson had worked without such a team or such an offer from CBGF, enormously increasing the personal demands on Ms. Dickinson in the CEO role beyond what was expected of Mr. Simon.

3. BCP unlawfully demotes Ms. Dickinson

173. Following the hiring of Mr. Simon in February 2024, Ms. Dickinson repeatedly sought clarification from Mr. Simon and CBGF as to her ongoing role in a manner consistent with her reasonable expectations and her Employment Agreement. Ms. Dickinson repeatedly attempted to reach a formal understanding or agreement with BCP respecting her role, but BCP failed to engage in meaningful discussions. As such, the terms of her Employment Agreement continued to govern.

174. For example, on March 22, 2024, Dale Tingley of CBGF wrote “With respect to your contract, our current thinking is that the company would leave it in place for now, and we can determine (with Mario) what an appropriate scope would be for a non-executive Chair as soon as time permits in the coming weeks and then determine if this is a role you can and would want to fill.”

175. Ms. Dickinson replied that she would consider any good faith proposal. However, she never received any proposal, and in fact received a negative reaction from some BCP Board members for raising her longstanding pay equity concerns.

176. As part of BCP and CBGF’s campaign to sideline her, Ms. Dickinson’s visibility into BCP’s operations was materially restricted, contrary to her status as a founder, director and member of BCP’s ELT.

177. Ms. Dickinson was completely excluded from weekly ELT meetings, and from strategic planning sessions. Decisions regarding BCP’s strategy, budgets, and operations were made without her knowledge or consultation, despite such decisions being an express part of Ms. Dickinson’s contractual responsibilities.

178. Moreover, CBGF asked Ms. Dickinson to step down from her position as Executive Chair of BCP’s Board. CBGF’s own representative on the Board, Mr. Tingley, assumed the Executive Chair position.

179. Ms. Dickinson was demoted, and her duties were significantly diminished, but she was never provided notice of such a change, nor did she consent to it in writing or otherwise.

180. Ms. Dickinson was left to continue to fulfill her role and responsibilities to the best of her abilities, in spite of Mr. Simon and CBGF's attempts to marginalize her. Ms. Dickinson made many good faith attempts to revitalize her relationship with Mr. Simon and CBGF in furtherance of the shared enterprise, which were repeatedly rebuffed.

4. Ms. Dickinson provides notice of Good Reason

181. In or around March 2024, Ms. Dickinson once again raised the fact that she was paid less than her male subordinates at a discussion with CBGF. Ms. Dickinson pointed out that she had not been paid the additional Pay Equity Bonus BCP and CBGF had promised to her on assuming the Interim CEO role that was meant to redress that significant pay disparity.

182. As representatives of BCP's Board, the CBGF members reacted negatively, and in an act of reprisal, told Ms. Dickinson that she was improperly raising discrimination. Contrary to these assertions, Ms. Dickinson was appropriately pointing out the promises that had been made to her and the significant pay disparity between her and her male subordinates.

183. Ms. Dickinson determined that she had no choice but to give notice of Good Reason in accordance with Article 5.4 of the Employment Agreement.

184. On the very date she had planned to give notice of Good Reason, May 27, 2024, Mr. Simon invited Ms. Dickinson to a meeting with the CEO and two members of CBGF to discuss "Arlene employment agreement next steps". Ms. Dickinson was hopeful that this meeting would resolve the outstanding issues regarding her exclusion from

management and outline the role that BCP was proposing for her. She held off on her notice and attended the meeting.

185. In fact, when she attended the meeting on the afternoon of May 27, 2024, she was confronted with an interrogation concerning BCP's investigation of the furniture purchase transaction in 2022, set out in paragraph 87 above.

186. Ms. Dickinson was not provided with any notice that she was under investigation, nor was she given any meaningful information concerning the nature of the allegations.

187. George Rossolatos, CBGF's CEO, was also in attendance at the meeting on May 27. Mr. Rossolatos was neither an officer nor director of BCP and had no right to be involved in employment matters, let alone confidential workplace investigations. His knowledge of and involvement in this highly confidential meeting with Ms. Dickinson as an employee of BCP was in breach of the BCP's duty of confidence owed to Ms. Dickinson.

188. Without any formal correspondence, BCP then purported to put Ms. Dickinson on a leave of absence (without indicating whether it would be paid or unpaid). Mr. Simon also baselessly restricted Ms. Dickinson's duties to working on a limited number of projects and limited her exposure to clients, while prohibiting her to speak with other BCP employees. Despite this, BCP (and CBGF) continued relying on Ms. Dickinson's efforts, image, and reputation in order to attract and retain clients.

189. There was no basis to bar Ms. Dickinson from the workplace, nor was there any reason to bar Ms. Dickinson from speaking with non-executive staff. None of the

allegations (even if true, which they were not) justified keeping Ms. Dickinson away from the workplace for any amount of time, or to restrict her from speaking to her colleagues. These actions were designed solely to intimidate Ms. Dickinson, undermine her role and authority at BCP, and harm her reputation. It was part of the orchestrated campaign to squeeze Ms. Dickinson out of management of BCP.

190. Later on May 27, 2024, Ms. Dickinson gave notice of Good Reason in accordance with Article 5.4 of the Employment Agreement, including setting out her concerns about BCP's unfair investigation. Ms. Dickinson provided as grounds BCP's failure to pay her promised compensation and the material diminution in her position, authority, reports and duties. Both of these grounds were defined as "Good Reasons" within the meaning of the Employment Agreement.

191. Through its actions, BCP evinced that it no longer intended to be bound by the terms and conditions of the Employment Agreement in light of, amongst other things, the concerted actions to restrict Ms. Dickinson's role in the organization, the baseless restriction on Ms. Dickinson's ability to attend work or communicate with her colleagues, and the delivery of BCP's draft closing statement. BCP's actions amounted not only to Good Reason, but also to constructive dismissal of Ms. Dickinson's employment.

5. BCP's unsubstantiated allegations

192. BCP eventually appointed Monica Jeffrey as an investigator. BCP did not provide Ms. Dickinson with any details of the investigation, including its nature, scope, origin, or purpose. No written information regarding the allegations against Ms. Dickinson was provided to her until Ms. Jeffrey sent allegations on or about June 5, 2024.

193. As set out above, Ms. Dickinson co-operated completely and honestly in the investigation.

194. On July 10, 2024, Ms. Jeffrey notified Ms. Dickinson, in response to an inquiry, that she had completed and submitted her investigation report to BCP.

195. Ms. Dickinson repeatedly requested a copy of the investigation report, but BCP has never provided it. She also requested a summary of its findings.

196. Eventually, on or about August 13, 2024, almost six weeks after Ms. Jeffrey's investigation report had been submitted, counsel to BCP advised that the investigation concluded that the allegations of fraud underlying the investigation were found not be substantiated.

197. Despite knowing the result of the investigation for several weeks, BCP never notified Ms. Dickinson of the outcome of the investigation, and did not allow Ms. Dickinson to resume her normal duties or return to the BCP offices.

198. BCP's failure to inform Ms. Dickinson of the results of the investigation and return her to the workplace constitutes further Good Reason for which Ms. Dickinson was entitled to resign under the Employment Agreement, and a further basis on which Ms. Dickinson was constructively dismissed.

199. BCP's unilateral actions were taken in utmost bad faith without any legitimate workplace purpose other than to intimidate Ms. Dickinson and to harm her reputation. These actions amounted to an attack on Ms. Dickinson's public reputation, for which there was no basis, and she has suffered damages as a result.

200. Ms. Dickinson incurred approximately \$40,000 in legal fees in order to respond to the baseless allegations in the investigation. There was no reason for Ms. Dickinson to have incurred these expenses but for the improper actions of Mr. Simon, BCP, and CBGF in initiating a meritless workplace investigation.

6. BCP terminates Ms. Dickinson's employment

201. The delivery of Ms. Dickinson's notice of Good Reason to terminate her employment on May 27, 2024 triggered a period of 30 days for BCP to cure the grounds providing such Good Reason under the Employment Agreement.

202. On July 5, 2024, BCP notified Ms. Dickinson that it refused to recognize the grounds set out in her notice.

203. On July 19, 2024, the parties jointly agreed to implement a standstill of their disputes about Good Reason and the purchase price adjustment issue. In essence, the parties consented to a deferral of the departure date under Article 5.4, without prejudice to either party's claims or defences.

204. During this time, Ms. Dickinson continued fulfilling all duties and terms of employment – to the extent she was permitted to do so – and continued acting professionally and in the best interests of BCP.

205. On August 13, 2024, BCP raised for the first time that the investigation was “only one part of a broader evaluation of Ms. Dickinson's conduct”. BCP further asserted – without evidence, without notice, without particulars, and without any opportunity for Ms. Dickinson to respond – that Ms. Dickinson had engaged in unspecified wrongdoing.

206. These new, unsubstantiated, and uninvestigated allegations further demonstrated that BCP did not intend to be bound by the Employment Agreement and amounted to a bullying tactic. BCP's baseless allegations against Ms. Dickinson constitute additional and/or standalone grounds for constructive dismissal.

207. Moreover, BCP made two employees of CBGF, Karoline Elkind (CBGF's CFO) and George Rossolatos (CBGF's CEO), aware of confidential information related to Ms. Dickinson's employment.

208. Despite neither Mr. Rossolatos nor Ms. Elkind being employed by BCP or on the Board of BCP, they were fully briefed on the details of the confidential workplace investigation. In disclosing the details of the workplace investigation, Mr. Simon and/or Mr. Tingley and/or others acting on behalf of BCP and/or CBGF (respectively), committed breach of confidence through the inappropriate disclosure of confidential information regarding the workplace investigations to persons who were not directors or officers of BCP.

209. On August 14, 2024, Ms. Dickinson provided further notice to BCP that keeping the results of the investigation from her, and the continued exclusion of Ms. Dickinson from the workplace, constituted further grounds for termination for Good Reason under the Employment Agreement. However, at this point, the 30-day cure period was subject to the parties' standstill agreement; Ms. Dickinson had not yet declared a constructive dismissal or resigned for Good Reason.

210. On August 21, 2024, BCP provided notice that it was unilaterally terminating the standstill and that it would not be taking steps to cure the grounds that gave rise to

Ms. Dickinson's assertions of Good Reason. It declared her last day of employment would be August 27, 2024.

211. BCP purported to accept Ms. Dickinson's resignation "without Good Reason", even though she had only given notice of her right to resign with "Good Reason". At no time did Ms. Dickinson resign without Good Reason, nor had the period for her termination with "Good Reason" under Article 5.4 of the Employment Agreement lapsed. As such, BCP unilaterally terminated her employment.

212. BCP also asserted that it had acquired cause to terminate Ms. Dickinson's employment in light of the outcome of the workplace investigation. Contrary to BCP's bald statement, none of the findings of the workplace investigation could possibly amount to cause for terminating Ms. Dickinson's employment and, as set out above, the allegations were not substantiated.

213. On August 22, 2024, Ms. Dickinson notified BCP that she was owed her statutory and contractual payments for termination of her employment, among her other claims. On August 30, 2024, BCP paid a portion of her outstanding vacation pay. Otherwise, BCP has since failed to provide even the minimum statutory requirements to Ms. Dickinson.

214. Moreover, BCP refused to return the intellectual property and digital assets (including website, social media channels, subscriber lists, archives, and content) belonging to Ms. Dickinson in connection with her e-newsletter, Done Well, despite repeated requests. BCP has no ownership rights to Done Well, has acknowledged that it has no ownership rights, and yet continues to retain the assets. There is no basis for BCP

to retain these assets, and its retention of the assets has caused their value to diminish materially.

215. Furthermore, even though BCP wrongfully terminated Ms. Dickinson's employment and made the unsubstantiated allegations against her described herein, it continued using her likeness, name and reputation on its website in order to promote itself and in furtherance of its own interests.

7. Remedies sought for breach of Employment Agreement and Purchase and Sale Agreement

(a) Remedies for termination of employment

216. Ms. Dickinson validly provided notice to terminate her employment for Good Reason on May 27, 2024.

217. Moreover, Ms. Dickinson had additional Good Reason to terminate her employment on or about August 12, 2024, when (i) she learned that the allegations made in the workplace investigation were found to be unsubstantiated, but BCP had not informed her nor returned her to work, and (ii) BCP made further unsubstantiated and vague allegations against her.

218. BCP failed to cure its conduct, and terminated Ms. Dickinson's employment without cause on August 21, 2024 before Ms. Dickinson's contractual departure date for Good Reason was reached. Ms. Dickinson never resigned, with or without Good Reason. Despite this, BCP has refused to pay any severance to Ms. Dickinson, in violation of its statutory and contractual duties.

219. Ms. Dickinson is entitled to the amount of severance owing under the Employment Agreement, including (but not limited to):

- (a) 18 months of base salary, amounting to \$600,000;
- (b) unused vacation pay, in an amount to be quantified prior to trial;
- (c) Annual Bonus pro-rated to August 27, 2024, amounting to \$52,603; and,
- (d) an amount equal to BCP's required contributions to a group benefit plans on behalf of Ms. Dickinson for 18 months.

220. Alternatively, BCP constructively dismissed Ms. Dickinson through unilateral changes to Ms. Dickinson's Employment Agreement that evinced BCP's intention that it did not intend to be bound by the terms and conditions of the Employment Agreement, including:

- (a) BCP engaged in a course of constructive dismissal between February and May 2024 by unilaterally and substantially changing her duties and responsibilities;
- (b) BCP constructively dismissed Ms. Dickinson in July 2024 by refusing to allow Ms. Dickinson to return to her regular duties once the workplace investigation concluded that the allegations of fraud were unsubstantiated; and/or
- (c) BCP constructively dismissed Ms. Dickinson in August 2024 by making spurious allegations against her without appropriate (or any) notice.

221. Ms. Dickinson is entitled to damages in lieu of reasonable notice for her constructive dismissal, including the salary, bonus, benefits, and all other forms of compensation as set out above.

222. BCP did not have cause to terminate Ms. Dickinson's employment on the basis of the investigation described above or otherwise. Ms. Dickinson has not committed any wrongdoing, whether in respect of the furniture issues (as confirmed by the workplace investigation) or otherwise.

223. BCP's bad-faith conduct warrants an award of punitive and/or aggravated damages. In particular, BCP acted in bad faith in its termination of Ms. Dickinson's contract of employment by, amongst other things:

- (a) Failing to provide the investigation report (or a summary), even though it exonerated Ms. Dickinson;
- (b) Making of spurious allegations against Ms. Dickinson without appropriate (or any) notice or opportunity to respond;
- (c) Making of false and defamatory allegations against her, including that she was complicit in fraud;
- (d) Failing to maintain the confidentiality of the investigation(s) into her conduct contrary to BCP's workplace policies;
- (e) Terminating Ms. Dickinson's employment on the false pretence of "accepting" a notice of resignation that Ms. Dickinson had never given;

- (f) Failing to pay statutory minimum termination pay, severance pay and vacation pay;
- (g) Asserting cause against Ms. Dickinson for her termination when it knew or ought to have known that no such cause for termination existed;
- (h) Refusing to allow Ms. Dickinson to say goodbye to her immediate team or the wider organization;
- (i) Failing to communicate Ms. Dickinson's departure to her clients, many of whom had previously been clients of Venture, suggesting that her employment had been terminated;
- (j) Failing to return the intellectual property and digital assets underlying Ms. Dickinson's Done Well e-newsletter; and,
- (k) Continuing to trade on Ms. Dickinson's image and reputation well after BCP had terminated her employment.

224. Other founders who have left pursuant to a "Good Reason" resignation have received significantly more benefit than envisioned by their contracts which were substantially similar to the Employment Agreement.

225. For example, Dan Tisch, one of the other founders, left under the same termination provisions as Ms. Dickinson having threatened constructive dismissal. Not only did BCP pay Mr. Tisch the full 18-month contractual severance, but also BCP provided him with 4 months' working notice prior to his resignation date, and added a further 6 month

“consulting contract” following his resignation, which was predominantly negotiated by George Rossolatos of CBGF.

226. The fact that Ms. Dickinson has been denied her contractual entitlements, while her departing male colleague has received his full contractual entitlements plus further benefits, is indicative of the high-handed and discriminatory approach of BCP and CBGF towards Ms. Dickinson, and is deserving of the Court’s condemnation.

227. Moreover, BCP is liable for its failure to pay Ms. Dickinson additional compensation and benefits that it contracted to pay her, including:

(a) BCP has not paid the \$100,000 Pay Equity Bonus to Ms. Dickinson, despite Ms. Dickinson fulfilling her duties as Interim CEO for over a year. Ms. Dickinson accepted the Interim CEO role and shouldered the additional responsibility on the basis that those efforts would be compensated. BCP is liable to Ms. Dickinson for this amount.

(b) BCP has not provided Ms. Dickinson the ESOP that it promised, despite the options being exercisable on exit.

(b) Damages for breach of the Code

228. BCP is liable for damages arising from its harassment, sexism and discrimination.

229. Ms. Dickinson has a right to equal treatment with respect to employment, without discrimination, pursuant to s. 5(1) of Ontario’s *Human Rights Code* (the “Code”).

230. Contrary to the *Code*, BCP failed to provide Ms. Dickinson with equal treatment with respect to her compensation, at least in part because of her sex and/or gender.

231. Ms. Dickinson's overall compensation has been significantly less than many of her subordinates who are men. Ms. Dickinson raised this with members of BCP's Board on several occasions, but they reacted negatively to Ms. Dickinson seeking redress for these longstanding pay equity concerns.

232. BCP's discriminatory treatment is also evidenced by the fact that at least one other founder, Mr. Tisch, who left their employment at BCP under the same termination provision as Ms. Dickinson, received additional benefits over and above the severance contemplated by their employment agreements, while Ms. Dickinson was denied even her minimum contractual entitlements.

233. Moreover, Ms. Dickinson's ideas and concerns were given less weight, in whole or in part, because she was a woman. For example, early in her time as co-Managing Partner and as Interim CEO, Ms. Dickinson championed the further integration of the six original agencies under a unified brand. This idea was rejected by some BCP management and CBGF on the basis that it required further research and consultation with clients. However, once Ms. Dickinson was forced out, new management took steps to implement the same initiatives with full support from CBGF and many of the senior management team.

234. Ms. Dickinson's initiatives were not implemented during her time as Interim CEO because the male-dominated shareholders and other senior management placed less value on her insight and business judgment because she is a woman.

235. After Ms. Dickinson raised issues of discrimination in the workplace, BCP engaged in a pattern of conduct of reprisal by further sidelining her participation as an employee and director, contrary to s. 8 of the *Code*.

236. Ms. Dickinson is entitled to monetary compensation in an amount to be determined for BCP's infringement of her rights under s. 5(1) of the *Code* and the injury to her dignity, feelings and self-respect that she has suffered, and continues to suffer, as a consequence of that infringement.

237. Ms. Dickinson further pleads and relies on subsection 46.1(1) of the *Code*.

(c) Remedies regarding breach of confidence

238. Mr. Simon and/or Mr. Tingley and/or others, on behalf of BCP and/or CBGF, obtained confidential information regarding the BCP workplace investigation into Ms. Dickinson by virtue of their position(s) with BCP. The facts underlying the investigation, the fact of the investigation, and the outcome of the investigation were all confidential.

239. Despite the confidential nature of this information, Mr. Simon and/or Mr. Tingley and/or others, on behalf of BCP and/or CBGF, conveyed this information to Mr. Rossalatos and Ms. Elkind, who were not affiliated with BCP, either as employees or as directors.

240. In a further breach of BCP's duty of confidence, Mr. Simon copied Mr. Rossalatos and Ms. Elkind on his email terminating Ms. Dickinson's employment dated August 21, 2024.

241. Ms. Dickinson is entitled to damages for reputational harm and breach of confidence in an amount to be quantified prior to trial.

D. BCP may not initiate the purchase price adjustment mechanism under the Purchase and Sale Agreement

242. As described above in the Statement of Defence, BCP has sought to refer the dispute concerning the purchase price under the Purchase and Sale Agreement to accountants, despite having failed to comply with the prerequisites under the Purchase and Sale Agreement to do so.

243. In order to engage further procedures under Article 2.6, BCP was required to deliver a closing statement in response to the Estimated Statement. It did not do so in accordance with the Purchase and Sale Agreement. BCP cannot invoke or rely upon Article 2.6(d).

244. In light of BCP's failures to invoke the contractual procedures contemplated by the parties, the Cash Consideration resulting from Venture's Estimated Statement stands.

245. The Court should declare that, given the 90-day window pursuant to Article 2.6 has elapsed, BCP may not deliver a draft closing statement, nor may it refer the matter to determination an accountant.

246. Further or in the alternative, for the reasons set out in this Counterclaim and the Statement of Defence, the Court should declare that BCP may not rely on Article 2.6 due to its bad faith performance of the Purchase and Sale Agreement.

247. Ms. Dickinson and BCP entered into the Employment Agreement as a consequence of, and in furtherance of, the Purchase and Sale Agreement.

248. The Employment Agreement and Purchase and Sale Agreement are closely related to each other.

249. The Employment Agreement was only “effective and conditional upon” the closing of the Purchase and Sale Agreement.

250. Any amounts owing under either the Employment Agreement or the Purchase and Sale Agreement are subject to set off as against any amounts owing under the other agreement.

251. The Court should declare that any monies BCP recovers on the basis of adjustments to the purchase price for the sale of Venture pursuant to the Purchase and Sale Agreement between Dickinson Enterprises and BCP (all of which are denied) are subject to the doctrine of equitable set-off for BCP’s liability for Ms. Dickinson’s damages arising from BCP’s breach of Dickinson’s Employment Agreement.

E. BCP and CBGF have oppressed the Dickinson Entities

252. Despite her wrongful termination, Ms. Dickinson has continued to act in BCP’s best interests as a Board member.

253. Ms. Dickinson has also remained a significant, albeit minority, shareholder. However, at the same time that Ms. Dickinson was being sidelined as a Director and employee (as described above), BCP, CBGF, and their executives have acted to dilute

the Dickinson Entities' interests in BCP. All of this conduct oppressed the Dickinson Entities.

1. BCP and CBGF oppressively dilute the Dickinson Entities' interest in BCP in 2024

254. Due to financial stressors, BCP has twice determined to put in place convertible debenture instruments to raise funds to cover BCP's operating costs: once in 2023 (the "2023 Convertible Debenture") and once in 2024 (the "2024 Convertible Debenture").

255. Ms. Dickinson provided approximately \$1.056 million of her own money to purchase convertible debentures in BCP. This included:

- (a) Approximately \$656,353.49 in or about August and September, 2023 as part of the 2023 Convertible Debenture; and,
- (b) Approximately \$400,000 in or about April 30, 2024 as part of the 2024 Convertible Debenture.

256. CBGF also participated in the 2023 Convertible Debenture by investing the same amount contributed by Ms. Dickinson (\$656,353.48).

257. Following Mr. Simon's assumption of the role of CEO, BCP struck a special committee, which included Ms. Dickinson, to negotiate the terms of what would become the 2024 Convertible Debenture instrument.

258. An overriding objective of the Special Committee was to ensure that no party, and CBGF in particular, gained an undue advantage. The Special Committee's work proved contentious, as CBGF exerted significant pressure to obtain favourable terms that would

permit it to obtain a majority shareholding position, in contravention of the shareholders' original expectations upon which BCP was founded.

259. CBGF offered to invest \$4,000,000 through a convertible debenture. Given the significant potential for dilutive impact of CBGF's investment on the other shareholders, the Special Committee's objective throughout the negotiation of the 2024 Convertible Debenture was to ensure that any investments would be made on a *pro rata* basis. This would ensure that shareholder dilution did not occur. In addition, the Special Committee sought to ensure that there was a \$4,000,000 cap on CBGF's investment.

260. Among other things, the limits on potential dilution included:

- (a) The Debenture Purchase Agreement entered into by CBGF and BCP (the "CBGF Debenture Purchase Agreement") specifically contemplated that CBGF would not be entitled to exercise its right to subscribe for additional new securities.
- (b) In April 2024, there were multiple board resolutions and shareholder approvals that specifically referenced CBGF's convertible debenture in the principal amount of "\$4,000,000".
- (c) BCP's Articles were also amended to reflect this amount of CBGF's investment (i.e., \$4,000,000).
- (d) Discussions at the Board to allow the other shareholders to contribute on a *pro rata* basis.

- (e) The Special Committee obtained written legal advice that CBGF could not invest more than \$4,000,000, and instructed company legal counsel at Torkin Manes to ensure that CBGF could not invest more than \$4,000,000.

261. The Dickinson Entities has a reasonable expectation that CBGF would not be permitted to dilute other shareholders' interests in BCP and CBGF's further investment would be capped at \$4,000,000.

262. Based on these reasonable expectations, the Dickinson Entities decided to invest a further \$400,000 in BCP. This investment was completed through a Debenture Purchase Agreement, dated April 30, 2024 (the "2024 DPA") between Dickinson Entities and BCP.

263. At the same time as the Dickinson Entities entered into the 2024 DBP, BCP and its shareholders entered into other agreements to confirm the limits on CBGF's interest pursuant to the 2024 Convertible Debenture, including:

- (a) A Third Amended and Restated Voting Agreement, dated April 30, 2024 (the "Third Voting Agreement");
- (b) A Second Amended and Restated Investors' Rights Agreement, dated April 30, 2024 (the "Second Investors' Rights Agreement"); and,
- (c) A Second Amended and Restated Rights of First Refusal and Co-Sale Agreement, dated April 30, 2024 (the "Second ROFR Agreement").

264. These agreements further established the reasonable expectations of the Dickinson Entities that CBGF would not be entitled to dilute the interests of the other shareholders of BCP.

265. Contrary to those reasonable expectations, CBGF secretly over-subscribed the 2024 Convertible Debenture without the Dickinson Entities (or any other shareholder) having an opportunity to match CBGF's investment and thus avoid dilution of their interests:

- (a) On or about June 14, 2024, Mr. Simon—acting unilaterally and without Board approval—entered into an agreement with CBGF for the issuance of an additional \$450,000 of convertible debentures to CBGF.
- (b) The Board was only informed after the fact in a late e-mail by Darren Keats, BCP's Chief Financial Officer, on June 14, 2024. Mr. Keats simply noted that “[f]ollowing the meeting this morning [BCP] reached out to CBGF to formally request \$450,000 of funding to complete today to address immediate liquidity needs.”
- (c) The Board was given no advance notice of this decision, and neither the Board nor the shareholders approved this additional issuance of debentures.
- (d) Mr. Keats' email did not explain the basis for CBGF's additional investment, stating only that “[f]ollowing completion of the initial pre-emption rights period in April, any participation on a pro rata basis by CBGF on the

remaining funding commitments was essentially brought forward to today and completed this afternoon.”

- (e) Despite his failure to obtain Board or shareholder approval the first time, Mr. Simon then once again acted unilaterally on or about July 2, 2024, by issuing an additional \$550,000 of convertible debentures to CBGF.
- (f) Once again, no Board or shareholder approval was sought. Mr. Simon simply noted that BCP was “asking CGBF to fund a short-term need of 550K”, and excerpted a piece of legal advice from BCP’s corporate counsel which did not explain the basis or authorization for the issuance of additional debentures.

266. In July 2024, after learning of CBGF’s significant over-subscription, Ms. Dickinson raised questions at the Board about the basis and authority for the additional issuance of convertible debentures in the absence of Board approval. Ms. Dickinson also questioned how and why these issuances were made without any transparency to the Board.

267. Despite these requests, neither BCP nor CBGF (nor their representatives) have provided any meaningful explanation, including the June and July debenture purchase agreements or receipts.

268. Instead, BCP’s corporate counsel at Torkin Manes offered to “re-characterize” the amounts BCP received from CBGF in order “to avoid any assertion that [BCP] somehow ‘breached’ obligations under the financing documents or the assertion of other, related, legal claims”. It did so acting on Mr. Simon’s request, which Torkin Manes knew was

made without the authority or instructions of the Board and in an attempt to undermine the Board's governance role and its duties owed to the shareholders.

269. Despite repeated inquiries by Ms. Dickinson, she has not been provided with material information regarding the dilution. For example:

- (a) Mr. Simon purported to rely on legal advice provided by Torkin Manes. However, when Ms. Dickinson (as a Board member) requested disclosure of such advice, BCP refused to provide it to her.
- (b) BCP did not provide Ms. Dickinson (as Director) with any record or explanation of any formal decision-making process authorizing this transaction until February 2025 and such explanations were incomplete.
- (c) BCP has not furnished any explanation as to why CBGF was permitted to invest additional amounts pursuant to the 2024 Convertible Debenture when, as described above, the 2024 Convertible Debenture was structured precisely to prevent this scenario.
- (d) BCP has not indicated whether CBGF's investments were ever "re-characterized" or how such "re-characterization" could lawfully occur.

2. BCP and CBGF oppressively dilute the Dickinson Entities' interest in BCP in 2025

270. On February 3, 2025, BCP's Board passed a resolution (in Ms. Dickinson's absence) approving the issuance of \$1.35 million of additional financing through the 2024 Convertible Debenture.

271. At 8:41 pm on February 10, 2025, Ms. Dickinson received an additional financing notice pursuant to the 2024 Convertible Debenture. She was only provided until February 14, 2025, to provide a response as to whether she would commit more of her personal funds to BCP.

272. Ms. Dickinson renewed her information requests described above.

273. Ms. Dickinson explained that she could not make an informed decision with respect to additional investments until she understood what had occurred with CBGF's over-subscription in 2024.

274. BCP furnished some, but not all, of the information requested. Amongst other things, BCP failed to provide board resolutions or minutes, and the minutes that were provided had not been approved by the Board.

275. On February 14, 2025, Ms. Dickinson confirmed that she could not invest additional capital until she understood what had happened to her previous capital and the dilution of her shares.

276. In response, BCP extended the deadline to invest to February 16, 2025 and then, in further response to some of Ms. Dickinson's inquiries, on February 18, 2025, BCP provided minutes from the August 2024 Board meeting, as well as the original April 30, 2024 resolution of the board of directors authorizing the initial financing.

277. BCP claimed privilege over other information requests, despite Ms. Dickinson's right to access BCP's privileged information as a Director.

278. Subsequently, BCP then extended the timeline for participation to February 21, 2025.

279. Mr. Simon told Ms. Dickinson that he made the unilateral decisions to extend the deadline twice, although he did not explain the basis for that authority, nor did he explain how BCP could repeatedly extend the deadline for further investments even though BCP was purportedly in desperate need of financing.

280. In response, Ms. Dickinson reiterated a number of information requests. Those requests went unanswered, and the February 21, 2025 deadline for the Dickinson Entities to invest further in BCP lapsed.

281. BCP withheld material information from Ms. Dickinson, despite her status as a Director and shareholder. Its failures to provide information – and only providing certain information after extensive requests from Ms. Dickinson – constitute further oppressive acts.

282. Ms. Dickinson was denied the opportunity to participate in the February 2025 additional financing because BCP refused to provide information necessary for the Dickinson Entities to invest.

283. In the result, CBGF increased its further stake in BCP pursuant to the 2024 Convertible Debenture. If and when CBGF exercises its interests under the 2024 Convertible Debenture, CBGF will further unlawfully dilute the interest of the Dickinson Entities in BCP.

3. BCP and CBGF oppressed the Dickinson Entities

284. CBGF has aggressively leveraged greater control of BCP, such that it is no longer controlled by the original founders. For example, and in addition to the acts detailed above:

- (a) CBGF leveraged its position during the Special Committee negotiation to assume the position of Chair of the Board, which previously had been held by Ms. Dickinson. Moreover, while Ms. Dickinson was supposed to have always had a seat on the Board, CBGF made the 2024 Convertible Debenture conditional on Ms. Dickinson accepting a term that she would only have a seat on the Board if she held 5% of BCP's shares;
- (b) CBGF refused to consider and/or explore other available options for financing (particularly when suggested by Ms. Dickinson), instead preferring to assert further control through the purchase of convertible debentures; and,
- (c) CBGF would manufacture time pressures where none existed in order to rush through decisions that were favourable to it, despite dismissing solutions Ms. Dickinson proposed to address the ongoing funding issues.

285. BCP's CEO Mr. Simon acquiesced and assisted CBGF in diluting the founders' shares, and kept his and CBGF's conduct in doing so secret from the founders on the Board and the shareholders.

286. BCP management and CBGF have taken these steps to enrich CBGF at the expense of minority shareholders as part of CBGF's efforts to centralize control away from the founders of BCP.

287. In addition to the unfair dilution of shareholder interests set out above:

- (a) BCP and/or CBGF have repeatedly taken steps to exclude minority shareholders, including the Dickinson Entities, from obtaining information about the operations and capital of BCP. As a Board member, Ms. Dickinson repeatedly reminded GBGF's representatives on the Board that they were required to disclose information regarding CBGF's investments to the other shareholders. Neither BCP nor CBGF provided such information to the other shareholders.
- (b) The exclusion of Ms. Dickinson from the management and oversight of BCP as described above has been oppressive, unfairly prejudicial to, and unfairly disregards the Dickinson Enterprises reasonable expectations.
- (c) BCP failed to exercise appropriate diligence in determining whether alternative funding models were available that would not result in shareholder dilution.

288. Through the oppressive acts described above, CBGF has put itself in the position to become a majority shareholder and controlling presence in BCP, contrary to the reasonable expectations of the Dickinson Entities. CBGF acted in concert with BCP to oppress the Dickinson Entities.

4. Remedies for oppressive conduct

289. The Plaintiffs by Counterclaim seek a declaration that CBGF and/or BCP have engaged in conduct that is oppressive, unfairly prejudicial to, and/or unfairly disregards the interests of the Dickinson Entities, contrary to the *Business Corporations Act*, R.S.O. 1990, c. B.16.

290. The Plaintiffs by Counterclaim further seek a declaration that BCP is not entitled to rely on Art. 2.6 of the Purchase and Sale Agreement between Dickinson Enterprises and BCP as a result of their oppressive conduct.

291. The Plaintiffs by Counterclaim further seek a declaration that CBGF's further equity investments in BCP, described above at paragraphs 254-283, were invalid as a result of the oppressive acts of BCP and/or CBGF, and CBGF does not hold such further equity interest (or potential further equity interest) in BCP.

292. The Plaintiffs by Counterclaim further seek compensation arising from BCP and/or CBGF's oppressive conduct in an amount to be quantified prior to trial.

F. BCP Must Indemnify Ms. Dickinson

293. As set out above in paragraphs 131-139, BCP is required to indemnify Ms. Dickinson for the defence of the Claim pursuant to the Indemnity Agreement, the Employment Agreement, and BCP's By-Law No. 2.

294. To date, BCP has failed to indemnify Ms. Dickinson for her costs incurred defending the Claim and failed to pay advanced costs to her.

295. BCP must indemnify Ms. Dickinson for costs incurred to date and in advance for future costs in respect of the Claim.

May 7, 2025

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Defendant
-and- **BELIEVECO:PARTNERS INC. et al.**
Defendants by Counterclaim

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

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