

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NOYA HOLDINGS INC. AND NOYA CANNABIS INC.

Applicants

FACTUM OF THE APPLICANTS
(RETURNABLE NOVEMBER 15, 2024)

November 12, 2024

FOGLER, RUBINOFF LLP

Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Vern W. DaRe (LSO# 32591E)

Tel: 416.941.8842
Fax: 416.941.8852
vdare@foglers.com

Lawyers for the Applicants

TO: **SERVICE LIST**

SERVICE LIST

TO:	<p>BDO CANADA LIMITED 51 Breithaupt Street, Suite 300 Kitchener, ON N2H 5G5</p> <p>Robyn Duwyn Email: rduwyn@bdo.ca Tel: (519) 578-6910</p> <p>Monitor</p>
AND TO:	<p>LOOPSTRA NIXON LLP 130 Adelaide Street West, Suite 2800 Toronto, ON M5H 3P5</p> <p>R. Graham Phoenix Tel: (416) 748-4776 / (416) 558-4492 Email: gphoenix@LN.Law</p> <p>Shahrzad Hamraz Tel: (416) 748-5116 Email: shamraz@LN.Law</p> <p>Counsel for the Monitor</p>
AND TO:	<p>DICKINSON WRIGHT LLP Commerce Court West 2200-199 Bay Street PO Box 447 Toronto, ON M5L 1G4</p> <p>John Leslie Tel: (416) 646-3801 / (519) 562-3209 Email: jleslie@dickinsonwright.com</p> <p>David Seifer Email: dseifer@dickinson-wright.com</p> <p>Counsel for Lending Stream Inc.</p>

AND TO:	1955185 ONTARIO INC. also known as 1000593616 ONTARIO INC. 19 Thoroughbred Boulevard Hamilton, ON L9K 1L2 Attention: Mohamed Reda Email: mikereda@hotmail.com
AND TO:	TERRASCEND CORP. 77 City Centre Dr., Suite 501 East Tower Mississauga, ON L5B 1M5
AND TO:	ALTERNA SAVINGS AND CREDIT UNION LIMITED 319 McRae Avenue Ottawa, ON K1Z 0B9
AND TO:	FARRIS LLP Barristers & Solicitors 2500 – 700 West Georgia St. Vancouver, BC V7Y 1B3 Nicholas T. Hooge Tel: (604) 684-9151 Fax: (604) 661-9349 Email: nhooge@farris.com Lawyers for Pure Sunfarms Corp.
AND TO:	TYR LLP 488 Wellington Street West, Suite 300-302 Toronto, ON M5V 1E3 Fax: 416-987-2370 James Bunting Tel: (647)519-6607 Email: jbunting@tyrllp.com Maria Naimark Tel: (437)225-5831 Email: mnaimark@tyrllp.com Lawyers for Ignite International Brands (Canada) Ltd.

AND TO:	BRAZEAU SELLER LLP 100 Queen Street, Suite 700 Ottawa, ON K1P 1J9 Eric Dwyer Tel: (613)237-4000 Email: edwyer@brazeauseller.com Lawyers for 10805696 Canada Inc. o/a Mauve & Herbes
AND TO:	DEPARTMENT OF JUSTICE (CANADA) Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1 Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca Lawyers for Canada Revenue Agency
AND TO:	HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Insolvency Unit 6 th Floor, 33 King Street West Oshawa, Ontario L1H 8H5 Insolvency Unit Email: insolvency.unit@ontario.ca Tel: (905) 433-5657 Fax: (905) 436-4510
AND TO:	CRA – TAX – ONTARIO Shawinigan-Sud National Verification and Collection Centre 4695 Shawinigan-Sud Blvd. Shawinigan-Sud, QC G9P 5H9
AND TO:	2138825 ONTARIO INC 2129 Barber Drive Port Colborne, ON L3K 5X7

AND TO:	OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY 25 St. Clair Avenue – East (6th Floor) Toronto, ON M4T 1M2 Tel: (416) 973-6441 Fax: (416) 973-7440 Email: osbservice-bsfservice@ised-isde.gc.ca
AND TO:	HEALTH CANADA Controlled Substances and Cannabis Branch 150 Tunney's Pasture Driveway Ottawa, ON K1A 0K9 Email: Info@hc-sc.gc.ca
AND TO:	CHOKEY REAL ESTATE LIMITED 1818 Burlington St. East Hamilton, ON L8H 3L4
AND TO:	DENTONS CANADA LLP 77 King Street West Suite 400 Toronto, ON M5K 0A1 John Salmas Tel: (416) 864-4737 Email: john.salmas@dentons.com Lawyers for Kronos Capital Partners Inc.

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NOYA HOLDINGS INC. AND NOYA CANNABIS INC.

Applicants

TABLE OF CONTENTS

PART I – INTRODUCTION	1
PART II – THE FACTS	5
A. Background and Update on CCAA Proceedings	5
B. Stalking Horse SPA	7
C. Stalking Horse Sales Process	8
D. Critical Suppliers	9
E. DIP Loan and DIP Lender's Charge	9
PART III – ISSUES	10
PART IV – LAW AND ARGUMENT.....	10
A. Stalking Horse SPA and Break Fee should be Approved.....	10
B. Stalking Horse Sales Process should be Approved.....	14
C. Approving Critical Supplier Payments	20
D. DIP Loan should be Approved and DIP Lender's Charge should be Granted.....	20
E. Initial Stay Period should be Extended	23
F. Administration Charge should be Increased	25

G. Directors' Charge should be Increased.....	27
PART V – RELIEF REQUESTED.....	30
SCHEDULE "A" LIST OF AUTHORITIES	A
SCHEDULE "B" RELEVANT STATUTES.....	B

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NOYA HOLDINGS INC. AND NOYA CANNABIS INC.

Applicants

**FACTUM OF THE APPLICANTS
(RETURNABLE NOVEMBER 15, 2024)**

PART I – INTRODUCTION

1. On November 6, 2024, Noya Holdings Inc. (formerly, Radicle Cannabis Holdings Inc.) (“**NHI**”) and Noya Cannabis Inc. (formerly, Radicle Medical Marijuana Inc. and Radicle Remedy Inc.) (“**NCI**”, together the “**Applicants**” or the “**Company**”), obtained an initial order (“**Initial Order**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”), granting, among other things, the Applicants and 2675383 Ontario Limited (the “**Non-Applicant Stay Party**” or “**267**”) protection from their creditors, an administration charge and director's charge, and appointing BDO Canada Limited as monitor (the “**Monitor**”) of the Company.

2. The primary objective of these CCAA proceedings is to achieve operational stability and employ the proposed Stalking Horse Sales Process to complete a going concern and value maximizing transaction for the benefit of stakeholders.
3. In accordance with the CCAA, the relief granted in the Initial Order was limited to that which was reasonably necessary for continued operations during the initial approximate ten-day stay of proceedings to November 15, 2024 (“**Initial Stay Period**”).
4. This factum is filed in support of a motion by the Company (“**Comeback Hearing**”) requesting:
 - (a) an amended and restated initial order (“**Amended and Restated Initial Order**”) substantially in the form attached at Tab 3 of the Applicants' motion record, among other things:
 - i) abridging the time for and validating service of this notice of motion and the motion record and dispensing with service on any person other than those served;
 - ii) extending the stay of proceedings granted pursuant to the Initial Order to and including March 7, 2025;
 - iii) approving a DIP Term Sheet dated November 11, 2024 between the Applicants and Lending Stream Inc. or its nominee (the “**DIP Lender**” or “**Lending Stream**”) for committed terms for DIP financing (the “**DIP Loan**”), authorizing borrowings under the DIP Loan in an amount up to \$400,000 (plus

interest, fees and expenses), and granting a charge in favour of the DIP Lender (the “**DIP Lender's Charge**”);

iv) authorizing the Company to make payments to certain third-party suppliers for pre-filing expenses or to honour cheques issued to providers of goods and services prior to the Initial Order, with the consent of the Monitor, which are necessary to facilitate the Applicants' ongoing operations and preserve value during the CCAA proceedings;

v) approving an increase to the Administration Charge to the maximum amount of \$400,000; and

vi) approving an increase to the Directors' Charge to the maximum amount of \$200,000.

(b) an order (“**Sale Process Approval Order**”), substantially in the form attached at Tab 6 of the Applicants' motion record, among other things:

i) authorizing and empowering the Company (the “**Vendor**”) to enter into a stalking horse purchase agreement dated November 11, 2024 (the “**Stalking Horse SPA**”) between the Vendor and Lending Stream, or its nominee (in such capacity, the “**Stalking Horse Purchaser**”);

ii) approving the sale process (“**Stalking Horse Sales Process**”), including retaining or engaging Kronos Capital Partners Inc. as the sales agent (the “**SISP Agent**”) to assist with the implementation of the Stalking Horse Sales Process

pursuant to the sales agent agreement dated November 11, 2024 (the “**SISP Agent Agreement**”), and the Stalking Horse SPA;

iii) approving the payment and the priority of payment of the Break Fee, the Professional Fee, and the Deposit Repayment, provided for in the Stalking Horse SPA; and

iv) confirming that the Stalking Horse SPA represents the “Stalking Horse Bid” as defined in and for purposes of the Sale Process Approval Order.

5. The Company operates a cannabis production business. In the past year, the Applicants have suffered losses due to, among other things:

(a) intense competition and an over-supply of cannabis products leading to significant price reduction; and

(b) low market demand for cannabis products, partially as a result of the illicit market for cannabis, causing the withdrawal of orders.

6. At this point, the value of the Company is derived largely from its ability to seamlessly and continuously fulfil some major key customers' order requirements. Timely order fulfilment is key to the business. A cessation of operations, even temporarily, would reduce enterprise value.

7. In these circumstances, a going concern sale of the Company represents the best and indeed only viable option to maximize value for the Applicants' stakeholders. The Applicants have worked diligently in consultation with the Monitor and SISP

Agent to develop a structured and efficient Stalking Horse Sales Process that is acceptable to the DIP Lender and the Monitor. The Stalking Horse Sales Process will get the parties to a sale, maximize value, and preserve production operations and employment.

PART II – THE FACTS

A. Background and Update on CCAA Proceedings

8. The facts underlying this motion are more fully set out in the affidavit of Ziad Reda sworn October 28, 2024 (“**First Reda Affidavit**”) and the affidavit of Ziad Reda sworn November 12, 2024 (“**Second Reda Affidavit**”). All terms capitalized but not defined herein are as defined in the First Reda Affidavit and/or the Second Reda Affidavit.
9. Mr. Reda is the Chief Executive Officer of the Company as well as a member of the board of directors.¹
10. The grow and sales cannabis licence is held by NCI and the micro-cultivation cannabis licence is held by 267. Each of these companies is directly or indirectly owned by NHI.²
11. NHI, through its wholly-owned subsidiary, NCI, operates a cannabis production business.³ NCI is the Company's operating entity.⁴ It holds the necessary cannabis

¹ 1 Affidavit of Ziad Reda Sworn October 28, 2024 (“First Reda Affidavit”) at para 1.

² First Reda Affidavit at paras. 8, 34-39.

³ First Reda Affidavit at paras 20, 25.

⁴ First Reda Affidavit at para 23.

licences and operates the production business out of a licensed facility located at 90 Beach Road, Hamilton, Ontario (the “**Hamilton Facility**”).⁵

12. The Company has transitioned from retail to wholesale business-to-business sales. It has a limited number of key large customers.⁶ The Company currently employs 18 employees, 18 with NCI (none of which are temporary workers) and zero with NHI.⁷
13. The Applicants applied for and were granted urgent relief under the CCAA on November 6, 2024 because they were insolvent and faced other challenges. Pursuant to the Initial Order, the Court, among other things:
 - (a) granted a stay of proceedings in favour of the Applicants and Non-Applicant Stay Party up to and including November 15, 2024;
 - (b) appointed BDO Canada Limited as Monitor of the Applicants in these CCAA proceedings; and
 - (c) granted an Administration Charge and a Directors' Charge.
14. The Applicants have continued to operate in the ordinary course during the Initial Stay Period. Among other things, since the granting of the Initial Order, the Applicants have, with the assistance of the Monitor and their advisors:⁸

⁵ First Reda Affidavit at para 23.

⁶ First Reda Affidavit at para 26.

⁷ First Reda Affidavit at para 40.

⁸ Affidavit of Ziad Reda sworn November 12, 2024 (“Second Reda Affidavit”) at para 9, Tab 2 to the Motion Record of the Applicants dated November 12, 2024 (“Motion Record”).

worked to stabilize operations; negotiate the Stalking Horse SPA and SISP Agent Agreement; and develop the Stalking Horse Sales Process.

B. Stalking Horse SPA

15. All terms capitalized but not defined in this section are as defined in the Stalking Horse SPA.
16. On November 11, 2024, the Applicants/Vendor, and the Stalking Horse Purchaser finalized negotiations and entered into the Stalking Horse SPA.⁹ The Stalking Horse SPA is structured as a purchase of the retained assets of the Company by way of a share sale and “reverse” vesting approval order.¹⁰
17. The purchase price under the Stalking Horse SPA is approximately \$3.8 million, subject to adjustments as provided in the agreement, and will generally be satisfied by way of a credit bid.¹¹
18. The Stalking Horse SPA contemplates that, in the event that the Stalking Horse Bid is not the Successful Bid, in addition to the Break Fee, the Stalking Horse Purchaser shall be entitled to the repayment of professional fees (to a maximum amount of \$100,000) (the “**Professional Fees**”), as well as repayment in full of all amounts advanced under the DIP Term Sheet, and such payment shall be in priority to any and all Claims against the Company (the “**Deposit Repayment**”).¹²

⁹ Second Reda Affidavit at para 21.

¹⁰ Second Reda Affidavit at para 23.

¹¹ Second Reda Affidavit at para 24.

¹² Second Reda Affidavit at para 26.

19. It is expected that the Stalking Horse Purchaser will maintain the employment of substantially all of the employees of the Company.¹³
20. The proposed Stalking Horse SPA provides for minimal conditions to close. The only real substantive conditions are that the Company or NCI must have its cannabis licences in good standing, and that the lease for the Hamilton Facility must be in good standing. If those conditions are satisfied, then the Stalking Horse Purchaser will close immediately upon the issuance of an approval and vesting order.¹⁴
21. Critically, the Stalking Horse SPA, DIP Loan and Stalking Horse Sales Process address the Company's interim funding and working capital needs such that production operations can be sustained, customer orders fulfilled, and the going concern value of the business preserved.¹⁵
22. In consideration for the Stalking Horse Purchaser (i) expending time and money negotiating the Stalking Horse SPA, (ii) undertaking the necessary due diligence to negotiate the Stalking Horse SPA, and (iii) agreeing to act as the stalking horse bidder in the Stalking Horse Sales Process, the Stalking Horse SPA contemplates that, subject to approval of the Court, the Stalking Horse Purchaser shall be entitled to a break fee in the amount of \$175,000 (the “**Break Fee**”).¹⁶

C. Stalking Horse Sales Process

¹³ Second Reda Affidavit at para 28.

¹⁴ Second Reda Affidavit at para 27.

¹⁵ Second Reda Affidavit at para 29.

¹⁶ Second Reda Affidavit at para 30.

23. The Stalking Horse Sales Process was developed in consultation with the Monitor and SISP Agent, and takes into account the current financial circumstances of the Applicants.¹⁷ Subject to the approval of the Court, the Stalking Horse Sales Process will be administered by the Monitor and the SISP Agent in consultation with the Applicants.¹⁸ Under the proposed Stalking Horse Sales Process, the Monitor will also retain certain rights in connection with material decisions (for example, extending timelines).¹⁹

D. Critical Suppliers

24. The Applicants have a few suppliers who are critical to the continued operations of the Applicants. To preserve their business and maintain these essential relationships, the Applicants are seeking the Court's approval to pay certain pre-filing expenses or to honour certain payments issued to these critical suppliers prior to the date of filing that the Applicants, with the consent of the Monitor, believe are essential to continued operations and preservation of value.²⁰ The payments for which approval is sought are estimated to be no more than \$110,000 and are budgeted in the Company cash flow statement.²¹

E. DIP Loan and DIP Lender's Charge

25. The Applicants are seeking approval of the DIP Loan and the third-ranking DIP Lender's Charge over the Applicant's Property (as defined in the Initial Order) in

¹⁷ Second Reda Affidavit at para 36.

¹⁸ Second Reda Affidavit at para 38.

¹⁹ Second Reda Affidavit at para 38.

²⁰ Second Reda Affidavit at para 41.

²¹ Second Reda Affidavit at para 41.

favour of the DIP Lender, to secure amounts borrowed or to be borrowed by the Applicants under the terms of the DIP Term Sheet.

PART III – ISSUES

26. The issues to be addressed before this Honourable Court are whether:
- (a) the Stalking Horse SPA, including the Break Fee, should be approved;
 - (b) the Stalking Horse Sales Process should be approved;
 - (c) payments to critical suppliers should be approved;
 - (d) the DIP Loan and DIP Lender's Charge should be approved or granted;
 - (e) the Initial Stay Period should be extended;
 - (f) the Administration Charge should be increased; and
 - (g) the Directors' Charge should be increased.

PART IV – LAW AND ARGUMENT

A. Stalking Horse SPA and Break Fee should be Approved

27. Stalking horse agreements or bids, including credit bid stalking horses, have been recognized by Canadian courts as a reasonable and useful component of a sales process.²² They have been approved and utilized in many insolvency proceedings

²² [*CCM Master Qualified Fund v blutip Power Technologies*](#), 2012 ONSC 1750 at para 7.

to establish a baseline price and transactional structure for superior bids from interested parties.²³

28. The CCAA is given a broad and liberal interpretation by the courts to achieve its objectives.²⁴ As such, a Court may approve a sale within the CCAA proceedings prior to or in the absence of a plan of compromise or arrangement.²⁵
29. The objective of the Stalking Horse Sales Process is to implement a fair sale process to obtain the highest and best bids, thereby maximizing value for the benefit of the Applicants' stakeholders. The Court may approve the Stalking Horse SPA and the Stalking Horse Sales Process concurrently.²⁶
30. The Stalking Horse SPA provides some certainty that the Applicants' business will continue as a going concern. If the Stalking Horse SPA is not approved, in conjunction with the DIP Loan, the Applicants will not have sufficient funds to continue operating to the detriment of their stakeholders.
31. The baseline price in the Stalking Horse SPA will assist in maximizing the value of the Applicants' business by fairly canvassing the market to obtain the best bids for the Applicants' business.
32. No better or other alternative has been identified.²⁷

²³ [Danier Leather Inc. Re](#), 2016 ONSC 1044 at para 20 [Danier]; [Nortel Networks Corp. Re](#), 2009 CanLII 39492 (ONSC) at para 56 [Nortel].

²⁴ [Nortel](#) at para 47.

²⁵ [Nortel](#) at para 48.

²⁶ [Nortel](#) at para 56; [Freshlocal Solutions Inc. \(Re\)](#), 2022 BCSC 1616 at para 30.

²⁷ [Brainhunter Inc. \(Re\)](#), 2009 CanLII 72333 (ONSC) at para 19 [Brainhunter]; First Reda Affidavit at paras 90, 91.

33. The Applicants seek approval of the Break Fee and Professional Fees (i.e., expense reimbursements).²⁸ They generally will become payable to the Stalking Horse Purchaser if the Stalking Horse Bid is not the Successful Bid or upon certain events of termination of the Stalking Horse SPA.
34. Given their benefits, stalking horse agreements, including those involving a related party, with break fees and expense reimbursements, such as the Break Fee and Professional Fees in this case, have been approved by Courts concurrently with a sales process in numerous CCAA proceedings. When assessing bid protections such as break fees and expense reimbursements, which are often approved in insolvency proceedings, Courts have recognized that (a) in addition to compensating a stalking horse bidder for the time and resources expended and the risks taken in developing a stalking horse agreement, bid protections also reflect the price of stability; and (b) bid protections are subject to the debtors' business judgement, provided that they lie within a range of reasonable alternatives – often between 1.8% to 5% of the value of the stalking horse bid.²⁹ The Break Fee alone in this Stalking Horse SPA is approximately 4.5% of the purchase price or value of the stalking horse bid. The Professional Fees alone, as expense reimbursements, represent approximately 2.6% of the purchase price or value of the stalking horse bid. Each of the fees are within a range of reasonableness.

²⁸ Second Reda Affidavit at paras 24-26.

²⁹ [Danier](#) at paras 41-43.

35. As noted above, the Applicants' consideration of the reasonableness of the Break Fee and Professional Fees are subject to the exercise of the Applicants' business judgment so long as they each lie within the above range of reasonable alternatives. Given the negotiations leading up to the Stalking Horse SPA and the support of the Monitor, the Applicants submit that it would not be appropriate or necessary for the Court to substitute its judgment for that of the Applicants.³⁰
36. The Monitor is of the view that the Break Fee and Professional Fees are reasonable in the circumstances.³¹

Among other things:³²

- (a) the Applicants are insolvent and do not have sufficient cash to continue to the end of the Extended Stay Period, if granted, without the DIP Loan that is being provided by the Stalking Horse Purchaser;
- (b) the Applicants made efforts to improve their financial situation prior to commencing the CCAA proceedings;³³
- (c) the Stalking Horse Purchaser required the Break Fee and Professional Fees to compensate them for their efforts; and
- (d) the Stalking Horse Purchaser was the only party at this time showing any interest in acquiring the Applicants' business and funding the Stalking Horse Sales Process and these CCAA proceedings.

³⁰ Brainhunter Inc., Re, 2009 CanLII 72333 (ONSC) at para 20; [BCE Inc. v. 1976 Debentureholders](#), 2008 SCC 69 (CanLII) at para 40.

³¹ Monitor's First Report, to be filed; Second Reda Affidavit at para 15.

³² Monitor's First Report, to be filed; Second Reda Affidavit at paras 6, 7, 11, 14, 30; and Exhibit "A".

³³ First Reda Affidavit at paras 89, 90, 91.

37. The Applicants submit that the Stalking Horse SPA together with the Break Fee and Professional Fees are fair and reasonable and should be approved.
38. Besides break fees and expense reimbursements, another development related to stalking horse procedures is the advent of credit bidding. In *White Birch Paper Holding Co. (Proposition de) (Re)*³⁴, the Court recognized the use of credit bidding as part of the sale process under the CCAA and confirmed that a credit bid has the same value as a cash bid.

B. Stalking Horse Sales Process should be Approved

39. The timeline established for the Stalking Horse Sales Process is structured to adequately expose the Applicants' business to the market. The Monitor is supportive of the length and structure of the Stalking Horse Sales Process.³⁵
40. To facilitate the Stalking Horse Sales Process, the Applicants have engaged the SISP Agent pursuant to the SISP Agent Agreement. There is generally a fixed Work Fee (\$60,000 plus HST) and Success Fee (\$150,000 plus HST, that does not apply if the Stalking Horse Bid is the Successful Bid), as well as provision for legal and non-legal expenses (\$12,500), provided for under the SISP Agent Agreement. The SISP Agent has significant experience implementing sales processes regarding cannabis companies.³⁶
41. Section 11 of the CCAA vests this Court with broad discretion to make "any order that it considers appropriate in the circumstances." In this case, it is respectfully

³⁴ [*White Birch Paper Holding Co. \(Arrangement relatif a\)*](#) 2010 QCCS 4915 at paras. 34, 35.

³⁵ Monitor's First Report, to be filed; Second Reda Affidavit at para. 36.

³⁶ Second Reda Affidavit at para. 36 and Exhibit "D".

submitted that it is appropriate for this Court to exercise its discretion to approve the SISP Agent Agreement.

42. Relying on section 11 of the CCAA, Courts have previously approved the engagement of sales agents or advisors where such engagements facilitated the debtors' restructuring, including the debtors' court-approved sale process.³⁷
43. It is respectfully submitted that it is appropriate for this Court to exercise its discretion to approve the SISP Agent Agreement and authorize the Applicants, *nunc pro tunc*, to pay all amounts due pursuant to the SISP Agent Agreement for the following reasons: (a) the SISP Agent is expected to enhance the prospect of value maximizing transactions, perhaps beyond the Stalking Horse Bid, and thus, in the best interests of the Applicants and their stakeholders; (b) the SISP Agent has significant experience in the cannabis sector; (c) the SISP Agent is familiar with, and well-positioned to solicit interest in the business; (d) the Applicants, exercising their business judgement, are of the view that the SISP Agent's compensation or remuneration is appropriate given the SISP Agent's experience, services to be provided and the benefits expected to accrue to the Applicants and their stakeholders by virtue of the SISP Agent's involvement in the sales process; (e) the Monitor is supportive of the SISP Agent's engagement and the approval of the SISP Agent Agreement and believes that the SISP Agent's compensation is

³⁷ [Danier](#) at paras 47-48; [Target Canada Co. \(Re\)](#), 2015 ONSC 303 at para 72.

reasonable in the circumstances; and (f) the DIP Lender is supportive of the SISP Agent's engagement and the approval of the SISP Agent Agreement.³⁸

44. It is well established that the CCAA confers jurisdiction on Courts to approve a sale process, including a "stalking horse" sale process, in respect of the business or assets of debtor companies prior to or in the absence of a plan of compromise and arrangement.³⁹
45. In exercising the broad powers to facilitate restructurings conferred by the remedial nature of the CCAA, the Court considers a number of factors in connection with the approval of a sales process:⁴⁰
- (a) is a sale transaction warranted at this time?
 - (b) will the sale benefit the whole "economic community"?
 - (c) will the creditors have a *bona fide* reason to object to the sale of the business?;
and
 - (d) is there a better viable alternative?
46. In this context, Courts have also considered the factors in section 36(3) of the CCAA⁴¹, namely:

³⁸ Second Reda Affidavit at paras 10, 36.

³⁹ [Brainhunter Inc. \(Re\)](#), 2009 CanLII 72333 (ONSC) at para 13.

⁴⁰ [Nortel](#) at para 49; [Brainhunter Inc. \(Re\)](#), 2009 CanLII 72333 (ONSC) at para 13; [Danier](#) at para 23.

⁴¹ Companies' Creditors Arrangement Act, RSC 1985, c C-36, s 36(3) [CCAA].

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion, the sale or disposition would be more beneficial to creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into consideration their market value.
47. The factors listed in section 36(3) of the CCAA are not intended to be exhaustive or a formulaic check-list that must be followed in every sale transaction. Also, the factors overlap somewhat with the *Soundair* factors. When the sale or proposed sale is between related parties, section 36(4) of the CCAA requires that the courts be satisfied that sufficient safeguards were adopted to ensure that the related party transaction is in the best interests of the stakeholders and that the risk to the estate has been mitigated.

48. In light of the foregoing factors, the Stalking Horse Sales Process should be approved for the following reasons:
- (a) The sale transaction is warranted at this time: The Applicants are insolvent and unable to continue operations without restructuring the Company's debt through a sale of the business.
 - (b) The sale transaction will benefit the whole economic community: The Stalking Horse SPA sets a minimum price and the bidding procedure in the Stalking Horse Sales Process is designed to test the market by soliciting the best bids, thereby maximizing value for the Applicants' stakeholders. Importantly, it is anticipated under the Stalking Horse SPA that, if the Stalking Horse Purchaser is the ultimate purchaser in the process, the Stalking Horse Purchaser will maintain the employment of the vast majority of employees.
 - (c) Senior Secured Creditor Support: The senior secured creditors of the Applicants, Lending Stream and 195, while ultimately owned by the brother or parent(s) of the owners of the Company, they are supportive of the Stalking Horse Sales Process and no other creditor has indicated to date that they object.⁴²
 - (d) There is no other, better, or viable alternative: The Applicants, in consultation with their advisors, pursued a number of strategic initiatives to improve their operations and financial position. Despite their attempts, no other alternative to the Stalking Horse Sales Process has materialized. The Stalking Horse Purchaser

⁴² Second Reda Affidavit at para 40.

was the only party who showed any interest in acquiring the Applicants' business.⁴³

- (e) While the Stalking Horse Purchaser may be a related party to the Company, the Monitor was consulted and will administer or oversee the Stalking Horse Sales Process in consultation with the SISP Agent and the Applicants. Also, the Stalking Horse Sales Process was developed in consultation with the Monitor and the SISP Agent, and the Monitor is supportive of the Stalking Horse SPA acting as the minimum bid. The process will be administered by the Monitor and SISP Agent in consultation with the Applicants, and the Monitor will have certain consent rights in connection with material decisions, including extending timelines. The Monitor is not aware of any stakeholders who will be prejudiced by the Stalking Horse Sales Process.⁴⁴

- 49. The Stalking Horse Sales Process, with its attendant interim funding and bridge to a sale mechanism, is the best option now available to the Company in order to maximize value for its stakeholders. It avoids the value destruction of a cessation of manufacturing operations and customer order fulfilment. The process provides interested parties with sufficient time to evaluate the opportunity and to submit a bid before the deadline.

⁴³ First Reda Affidavit at paras 89, 90, 91.

⁴⁴ Monitor's First Report, to be filed.

50. The Monitor is of the view that the Stalking Horse Sales Process is fair and reasonable in the circumstances.⁴⁵

C. Approving Critical Supplier Payments

51. Courts have granted requests approving payments to critical suppliers in recognition that one of the purposes of the CCAA is to permit an insolvent corporation to remain in business and that the Court has broad and inherent jurisdiction to make such orders that will facilitate a restructuring of a business as a going concern.⁴⁶

52. The Applicants submit that an order granting approval to make payments to certain critical suppliers, with the consent of the Monitor advances the goal of the Applicants to continue operating in the ordinary course of business throughout the Stalking Horse Sales Process, to the benefit of the Applicants' stakeholders.

D. DIP Loan should be Approved and DIP Lender's Charge should be Granted

53. Section 11.2 of the CCAA allows this Honourable Court to grant the DIP Loan and the DIP Lender's Charge that ranks in priority to the Applicants' secured creditors, on notice to those secured creditors that would be affected and in an amount that the Court considers appropriate having regard to the Applicants' Cash Flow Statement.⁴⁷

⁴⁵ Monitor's First Report, to be filed; Second Reda Affidavit at paras 10, 36.

⁴⁶ [*Northstar Aerospace, Inc. \(Re\)*](#), 2012 ONSC 4546 at para 11.

⁴⁷ s. 11.2(1), CCAA.

54. The security or charge may not secure an obligation that exists before the order is made.⁴⁸
55. In determining whether the DIP Lender's Charge is appropriate, a court is required to consider the following factors under section 11.2(4) of the CCAA:⁴⁹
- (4) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

⁴⁸ s. 11.2(1), CCAA.

⁴⁹ s. 11.2(4), CCAA.

56. In accordance with the DIP Term Sheet, the Company is seeking \$400,000 to be made available upon the issuance of the proposed Amended and Restated Initial Order. Interest on the advance or advances will be at a rate of 12% *per annum*. The DIP Term Sheet includes a commitment fee in the amount of \$25,000, representing 6.25% of the total amount available under the DIP facility. As indicated in the Cash Flow Forecast, with the DIP Loan, the Company will have sufficient liquidity to meet payroll and finance its operations during the Extended Stay Period.⁵⁰
57. It is submitted that the Court should approve the DIP Term Sheet and grant the DIP Lender's Charge. The DIP Loan is essential to the Company because it provides the Applicants with the interim financing needed to preserve enterprise value pending determination of a Sale Process. The benefits of such new financing to all stakeholders outweigh the potential prejudice to any particular creditors. It is also respectfully submitted that the interest rate and commitment fee under the DIP Term Sheet are within the range of acceptability or reasonableness in the circumstances based on other similar CCAA proceedings involving cannabis companies.
58. The following additional factors support the approval of the DIP Term Sheet and the granting of the DIP Lender's Charge:

⁵⁰ Second Reda Affidavit at paras 11, 14.

- (a) the availability of the DIP Loan is contingent on an order of this Court approving the DIP Term Sheet and the DIP Lender's Charge being granted to secure any advances made thereunder;⁵¹
- (b) the necessity of the DIP Loan is demonstrated and supported by the Cash Flow Forecast;⁵²
- (c) the Applicants' business will be managed by its directors and senior management, in consultation with the Monitor;
- (d) in the absence of the DIP Loan, the Applicants will be unable to continue to carry on business or carry out the Sale Process and will be forced to shut down its operations to the detriment of their stakeholders;⁵³
- (e) no creditor should be materially prejudiced as a result of the DIP Loan and the DIP Lender's Charge; and
- (f) the Monitor is supportive of the DIP Loan, the DIP Term Sheet, and the DIP Lender's Charge.⁵⁴

E. Initial Stay Period should be Extended

59. The Initial Order granted an initial 10-day stay of proceedings ending on November 15, 2024. The Applicants seek an order extending the stay of proceedings to and including March 7, 2025 ("**Extended Stay Period**").

⁵¹ Second Reda Affidavit at para 16.

⁵² Second Reda Affidavit at para 15.

⁵³ Second Reda Affidavit at paras 13, 14.

⁵⁴ First Report of the Monitor, to be filed; Second Reda Affidavit at para 10.

60. The Court may grant an extension of the stay of proceedings where the Court is satisfied that (a) circumstances exist that make the order appropriate; and (b) the Applicants have acted, and are acting, in good faith and with due diligence.⁵⁵ A stay of proceedings is appropriate to provide a debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.⁵⁶
61. It is respectfully submitted that the following factors weigh in favour of granting the extension of the stay for the Extended Stay Period:
- (a) since the granting of the Initial Order, the Applicants have acted and continue to act in good faith and with due diligence to communicate with stakeholders and to develop the Stalking Horse Sales Process, while continuing to operate in the ordinary course of business to preserve the value of their business;⁵⁷
 - (b) the Cash Flow Forecast appended to the Monitor's First Report, to be filed, shows sufficient liquidity during the Extended Stay Period to fund obligations and the costs of the CCAA proceedings;⁵⁸
 - (c) the extension of the stay in favour of the Applicants and Non-Applicant Stay Party is required to complete the Stalking Horse Sales Process without having to

⁵⁵ CCAA, s 11.02(2)-(3).

⁵⁶ [Target Canada Co. \(Re\)](#), 2015 ONSC 303 at para 8.

⁵⁷ Second Reda Affidavit at paras 9, 36, 42, 48.

⁵⁸ Second Reda Affidavit at para 44.

incur additional costs during that process to return to Court to seek a further extension;⁵⁹

(d) the Monitor supports the requested extension of the stay of proceedings⁶⁰; and

(e) the Applicants believe that no creditor will suffer material prejudice as a result of the extension of the stay for the Extended Stay Period.⁶¹

F. Administration Charge should be Increased

62. The amount of the Administration Charge in the Initial Order was limited to the estimated professional fees and disbursements of the Monitor, counsel to the Monitor and counsel to the Applicants ("**Professional Group**") during the Initial Stay Period.⁶² The Applicants seek to increase the Administration Charge from \$200,000 to \$400,000 in order to remain consistent with the projected fees and disbursements of the Professional Group during the Extended Stay Period and to secure the SISP Agent's outstanding Work Fee and Expenses under the SISP Agent Agreement.⁶³ As noted above, the SISP Agent has significant expertise and experience with implementing sales processes in relation to cannabis companies.⁶⁴

63. Pursuant to section 11.52 of the CCAA, the Court may grant an administration charge. In deciding whether to grant an administration charge, Courts have

⁵⁹ Second Reda Affidavit at para 42, 48.

⁶⁰ Second Reda Affidavit at para 45.

⁶¹ Second Reda Affidavit at para 46.

⁶² Second Reda Affidavit at para 8.

⁶³ Second Reda Affidavit at para 49.

⁶⁴ Second Reda Affidavit at para 36.

considered a number of factors, including: (a) the size and complexity of the businesses being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the Monitor.

64. The Applicants submit that it is appropriate for this Court to exercise its discretion to grant the Administration Charge for the following reasons:
- (a) The cannabis industry is complex, highly regulated and subject to many statutory and regulatory restrictions and requirements, and successful restructuring will require the extensive input of the Professional Group including the SISP Agent regarding implementing the Stalking Horse Sales Process;
 - (b) the beneficiaries of the Administration Charge have and will continue to contribute to these CCAA proceedings, including the Stalking Horse Sales Process, and assist the Applicants with achieving their objectives in connection with the Stalking Horse SPA and the Stalking Horse Sales Process, among other things;
 - (c) Each of the proposed beneficiaries of the Administration Charge is performing unique functions without duplication of roles;

- (d) The quantum of the proposed increase to the Administration Charge is fair and reasonable, and is in line with the nature and size of the Applicants' business and the involvement required by the Professional Group and SISP Agent;
- (e) The Monitor, the DIP Lender and the Applicants' senior secured lender, Lending Stream, are supportive of the increase in the Administration Charge.⁶⁵

G. Directors' Charge should be Increased

- 65. The amount of the Directors' Charge in the Initial Order was limited to the estimated insurance protection from potential risk or liability for the remaining officer(s) and director(s) of the Company during the Initial Stay Period.⁶⁶ The Applicants seek to increase the Directors' Charge from \$100,000 to \$200,000 in order to provide adequate insurance protection for the remaining officer(s) and director(s) of the Company during the Extended Stay Period.
- 66. Pursuant to section 11.51 of the CCAA, a court may grant a Directors' Charge on a super-priority basis.⁶⁷
- 67. The purpose of a Directors' Charge was described in *Canwest Global Communications Corp. (Re)*:⁶⁸

The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they incur during the restructuring...Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed

⁶⁵ Second Reda Affidavit at paras 10, 50.

⁶⁶ Second Reda Affidavit at para 8.

⁶⁷ S. 11.51, CCAA.

⁶⁸ [*Canwest Global Communications Corp. \(Re\)*](#), 2009 CanLII 55114 (ONSC) at para. 48.

charge would enable the applicants to keep the experienced board of directors supported by the experienced senior management.

68. In *Jaguar Mining Inc. (Re)*, the court set out the following factors to be considered with respect to the approval of a directors' charge:⁶⁹
- (a) Whether notice has been given to the secured creditors likely to be affected by the charge;
 - (b) Whether the amount is appropriate;
 - (c) Whether the applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and
 - (d) Whether the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.
69. To ensure the ongoing stability of the Company's business during the CCAA proceedings, the continued participation of its officers and directors is necessary. The officers and directors have skills, knowledge and expertise, as well as established relationships with various stakeholders that will contribute to a successful restructuring. Also critical, Health Canada requires that at least one director of a licenced cannabis company is to have security clearance at all times in order to maintain its license, which the CEO of the Company presently has.⁷⁰

⁶⁹ *Jaguar Mining Inc. (Re)*, 2014 ONSC 494 at para. 45.

⁷⁰ First Reda Affidavit at paras 104, 105, 106.

70. While the Company's directors and officers have the benefit of a D&O insurance policy that provides them with coverage for certain claims and liabilities that may arise, these policies contain exclusions and exceptions to such coverage.⁷¹
71. The Company's ordinary course operations during the CCAA proceedings will give rise to potential director or officer liability, including for employee source deductions and sales tax. To address legitimate concerns expressed with respect to their potential exposure if they continue to act (rather than resign), the directors and officers have requested reasonable protection against personal liability that might arise during the post-filing period. The Directors' Charge is intended to address potential claims that may be brought against directors and officers.⁷²
72. The Applicants and the Monitor are supportive of the increase in the quantum of the Directors' Charge and are of the view that the proposed increase is reasonably necessary at this time to address circumstances that could lead to potential directors' liability during the Extended Stay Period.⁷³

⁷¹ First Reda Affidavit at paras 104, 105, 106.

⁷² First Reda Affidavit at paras 104, 105, 106.

⁷³ Second Reda Affidavit at paras 51, 52.

PART V – RELIEF REQUESTED

73. The Applicants respectfully request that this Honourable Court grant the relief provided for in the Sale Process Approval Order and the Amended and Restated Initial Order in accordance with the terms of the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of November, 2024.



Per: _____

Name: Vern W. DaRe

FOGLER, RUBINOFF LLP

Lawyer for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. [CCM Master Qualified Fund v blutip Power Technologies](#), 2012 ONSC 1750
2. [Danier Leather Inc. Re](#), 2016 ONSC 1044
3. [Nortel Networks Corp. Re](#), 2009 CanLII 39492 (ONSC)
4. [Freshlocal Solutions Inc. \(Re\)](#), 2022 BCSC 1616
5. [Brainhunter Inc. \(Re\)](#), 2009 CanLII 72333 (ONSC)
6. [BCE Inc. v. 1976 Debentureholders](#), 2008 SCC 69 (CanLII)
7. [Northstar Aerospace, Inc. \(Re\)](#), 2012 ONSC 4546
8. [Target Canada Co. \(Re\)](#), 2015 ONSC 303
9. [White Birch Paper Holding Co.](#) (Arrangement relatif a) 2010 QCCS 4915
10. [Canwest Global Communications Corp. \(Re\)](#), 2009 CanLII 55114 (ONSC)
11. [Jaguar Mining Inc. \(Re\)](#), 2014 ONSC 494

SCHEDULE "B"
RELEVANT STATUTES

COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
("CCAA")

Section 11

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Section 11.02

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 11.03

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

Section 11.2

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.4

11.4 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods or services to the company and that the goods or services that are supplied are critical to the company's continued operation.

(2) If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

(3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied under the terms of the order.

(4) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Section 11.52

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Section 36

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NOYA HOLDINGS INC. AND NOYA CANNABIS INC.

Applicants

Court File No. CV-24-00730120-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE APPLICANTS
(RETURNABLE NOVEMBER 15, 2024)**

FOGLER, RUBINOFF LLP

Lawyers

77 King Street West

Suite 3000, P.O. Box 95

TD Centre North Tower

Toronto, ON M5K 1G8

Vern W. DaRe (LSO# 32591E)

Tel: 416.941.8842

Fax: 416.941.8852

vdare@foglers.com

Lawyers for the Applicants