

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
CANNAPIECE GROUP INC., CANNAPIECE CORP., CANADIAN CRAFT GROWERS
CORP., 2666222 ONTARIO LTD., 2580385 ONTARIO INC. AND 2669673 ONTARIO INC.

Applicants

FACTUM OF THE APPLICANTS

(returnable November 10, 2022)

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PART I - INTRODUCTION

1. On November 3, 2022, CannaPiece Group Inc. (“**CPG**”), CannaPiece Corp. (“**CPC**”), Canadian Craft Growers Corp. (“**CCG**”), 2580385 Ontario Inc. (“**258**”), 2666222 Ontario Inc. (“**222**”), and 2669673 Ontario Inc. (“**673**”, and together with CPG, CPC, CCG, 258, 222 and 673, 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 the Applicants protection from their creditors.
2. The primary objective of these CCAA proceedings is to urgently achieve operational stability and employ the proposed Stalking Horse Sales Process to effect 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 ten-day stay of proceedings (“**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 Initial Order to and including February 3, 2023;
- (iii) extending the scope of the stay of proceedings to include claims against directors and officers in respect of their potential liability under personal guarantees of corporate obligations;
- (iv) approving a key employee retention plan (“**KERP**”) and authorizing the Applicants to make payments in accordance with the terms of the KERP;
- (v) 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; and

- (vi) approving an increase to the Administration Charge to the maximum amount of \$500,000.

(b) an order (“**Sale Process Approval Order**”), substantially in the form attached at Tab 4 of the Applicants’ motion record, among other things:

- (i) authorizing and empowering CannaPiece Group Inc. (the “**Vendor**”) and CPC to enter into a stalking horse purchase agreement dated November 8, 2022 (the “**Stalking Horse SPA**”) between the Vendor, CPC and Cardinal Advisory Limited, or its nominee (in such capacity, the “**Stalking Horse Purchaser**”);
- (ii) approving the sale and investment solicitation process (“**Stalking Horse Sales Process**”) 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 contract manufacturing business. In the past year, the Applicants have suffered losses due to, among other things:

- (a) substantial capital investments made by CPG and CPC to meet the capacity requirements of customer contracts that never fully materialized, or materialized and then were recently and unexpectedly withdrawn;
 - (b) intense competition and an over-supply of cannabis products leading to significant price compression; and
 - (c) low market demand for cannabis products at the retail level, partially as a result of the illicit market for cannabis, causing the withdrawal of orders from licensed producers.
6. At this point, the value of the CannaPiece Group is entirely derived from its ability to seamlessly and continuously fulfil major customers' order requirements. Timely order fulfilment is the "life blood" of the business. A cessation of operations, even temporarily, would be wholly and irreversibly destructive of enterprise value.
7. In all of the 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 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 manufacturing operations and employment.
8. To further ensure stability and efficiency in the restructuring and sale process, the Applicants have developed a KERP, which will ensure that a small group of critical employees with essential skills and knowledge remain with the Applicants through the restructuring process.

PART II - THE FACTS

A. Background and Update on CCAA Proceedings

9. The facts underlying this Application are more fully set out in the affidavit of Afshin Souzankar sworn November 2, 2022 (“**First Souzankar Affidavit**”) and the affidavit of Afshin Souzankar sworn November 8, 2022 (“**Second Souzankar Affidavit**”). All terms capitalized but not defined herein are as defined in the First Souzankar Affidavit.
10. Mr. Souzankar is the President and Chief Executive Officer of CPG as well as a member of the board of directors. He is also the CEO and a member of the board of directors of the Company’s wholly-owned subsidiaries.¹
11. CPG, through its wholly-owned subsidiary, CPC, operates a cannabis manufacturing business.² CPC is the Company’s operating entity.³ It holds the necessary cannabis licences and operates the production business out of a licensed facility located at 1725 McPherson Court, Unit 2, Pickering, Ontario (the “**Pickering Facility**”).⁴
12. The Company provides extraction, processing, and packaging services for its customers, who include large and industry-leading licensed processors. The Applicants do not grow any flower, nor do they have any of their own cannabis brands, products, or retail operations. The operations of the Company are strictly business-to-business.⁵ The

¹ Affidavit of Afshin Souzankar Sworn November 2, 2022 (“**First Souzankar Affidavit**”) at para 2.

² First Souzankar Affidavit at para 10.

³ First Souzankar Affidavit at para 20.

⁴ First Souzankar Affidavit at para 20.

⁵ First Souzankar Affidavit at para 27.

Company currently employs 155 employees, 146 with CPC (including 10 temporary workers) and 9 with CPG.⁶

13. The Applicants applied for and were granted urgent relief under the CCAA on November 3, 2022 because they were insolvent and had insufficient liquidity to fund operations for more than a few days. Pursuant to the Initial Order, the Court:
 - (a) granted a stay of proceedings in favour of the Applicants up to and including November 10, 2022;
 - (b) appointed BDO Canada Limited as monitor of the Applicants in these CCAA proceedings (in such capacity, the “**Monitor**”); and
 - (c) approved a debtor-in-possession (“**DIP**”) term sheet (“**DIP Term Sheet**”) approving a DIP loan of \$500,000 and a corresponding charge in favour of the DIP Lender.

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:⁷
 - (a) worked to stabilize operations, negotiate the Stalking Horse SPA, and develop the Stalking Horse Sales Process;

⁶ First Souzankar Affidavit at para 44.

⁷ Affidavit of Afshin Souzankar sworn November 8, 2022 (“**Second Souzankar Affidavit**”), Tab 2 to the Motion Record of the Applicants dated November 8, 2022 (“**Motion Record**”).

- (b) created and implemented a communication plan to advise key stakeholders of the CCAA proceeding;
- (c) reviewed cash flow requirements and identified and realized a number of cash flow efficiencies;
- (d) communicated extensively with various stakeholders including, among others: key creditors, customers, suppliers, and employees, which are critical to the Company's ongoing operations; and
- (e) worked with the Monitor to develop the KERP.

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 8, 2022, the Vendor, CPC, and the Stalking Horse Purchaser finalized negotiations and entered into the Stalking Horse SPA.⁸ The Stalking Horse SPA is structured as a purchase of the assets of the Company by way of a share sale and “reverse” vesting approval order.⁹
- 17. The purchase price under the Stalking Horse SPA is \$3,500,000, plus Assumed Liabilities, subject to adjustments as provided in the agreement.¹⁰ The Assumed

⁸ Second Souzankar Affidavit at para 20.

⁹ Second Souzankar Affidavit at para 22.

¹⁰ Second Souzankar Affidavit at para 23.

Liabilities include the Marzilli Debt (estimated: \$6,800,000) and the 212 Debt (estimated: \$4,000,000), provided that such assumptions are on terms satisfactory to the purchaser.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 Purchaser shall be entitled to the repayment of professional fees (to a maximum amount of \$25,000), as well as repayment in full of all amounts advanced under the DIP Term Sheet and the Deposit Facility, and such payment shall be in priority to any and all Claims against the Company (the **“Deposit Repayment”**).
19. It is expected the Stalking Horse SPA will maintain the employment of substantially all of the employees of the Company.¹²
20. The proposed Stalking Horse SPA provides for minimal conditions to close. The only substantive conditions are that the Company must have its cannabis licences in good standing, and that the lease for the Pickering 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. The immediacy of the closing is necessary for the Stalking Horse or any other purchaser because the Company is forecasted to run out of cash as of February 1, 2023.¹³
21. Critically, the Stalking Horse Purchase Agreement and Stalking Horse Sales Process addresses the Company’s urgent interim funding and working capital needs such that

¹¹ Second Souzankar Affidavit at para 23.

¹² Second Souzankar Affidavit at para 28.

¹³ Second Souzankar Affidavit at para 26.

manufacturing operations can be sustained, customer orders fulfilled, and going concern value preserved.

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 do 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**”).¹⁴

C. Stalking Horse Sales Process

23. The Stalking Horse was developed in consultation with the Monitor and takes into account the current financial circumstances of the Applicants.¹⁵ Subject to the approval of the Court, the Stalking Horse Sales Process will be administered by the Monitor and its Sales Agent in consultation with the Applicants.¹⁶ Under the proposed Stalking Horse Process, the Monitor will also retain certain rights in connection with material decisions (for example, extending timelines, dispensing with bid requirements, and terminating the Stalking Horse Sales Process).

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

¹⁴ Second Souzankar Affidavit at para 32.

¹⁵ Second Souzankar Affidavit at para 38.

¹⁶ Second Souzankar Affidavit at para 40.

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.¹⁷ The payments for which approval is sought are estimated to be no more than \$150,000 and are budgeted in the Company cash flow.

E. KERP

25. The Applicants have developed a KERP, with input from the Monitor, to facilitate and encourage the continued participation of certain key management employees in the business and restructuring for the pendency of these CCAA proceedings. The KERP is very important for the stability of the business.
26. The KERP contemplates payments aggregating \$160,000 to eleven key employees holding senior level positions that support the Company's finances, operation, human resources and legal and compliance functions. These employees all have experience and knowledge of CannaPiece Group and its day-to-day operations that was gained over many years, and is unique and not easily replaceable.

PART III - ISSUES

27. 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;

¹⁷ Second Souzankar Affidavit at para 43.

- (d) the KERP should be approved;
- (e) the Initial Stay Period should be extended;
- (f) the scope of the stay of proceedings should be extended; and
- (g) the Administration Charge should be increased.

PART IV - LAW AND ARGUMENT

A. Stalking Horse SPA and Break Fee should be Approved

28. Stalking horse agreements have been recognized by Canadian courts as a reasonable and useful component of a sales process.¹⁸ They have been approved and utilized in many insolvency proceedings to establish a baseline price and transactional structure for superior bids from interested parties.¹⁹
29. The CCAA is flexible and is given a broad and liberal interpretation to achieve its objectives.²⁰ 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.²¹
30. 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

¹⁸ *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#) at para 7.

¹⁹ *Danier Leather Inc, Re*, [2016 ONSC 1044](#) at para 20 [*Danier*]; *Nortel Networks Corp, Re*, [\[2009\] OJ No. 3169](#) at para 56 [*Nortel*].

²⁰ *Nortel* at para 47.

²¹ *Nortel* at para 48.

Applicants' stakeholders. The Court may approve the Stalking Horse SPA and the Stalking Horse Process concurrently.²²

31. 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, the Applicants will not have sufficient funds to continue operating to the detriment of their stakeholders.
32. 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.
33. No better or other alternative has been identified. Despite efforts, the Company was unable to source other rescue financing or purchaser proposal, either inside or outside of the filing.²³
34. The Applicants seek approval of the Break Fee.²⁴ Break fees have been approved by the Court in connection with stalking horse purchase agreements. Bid protections and break fees are meant to compensate the stalking horse purchaser for the time, resources and risk involved in developing the Stalking Horse SPA.²⁵
35. The Applicants' consideration of the reasonableness of the Break Fee is subject to the exercise of the Applicants' business judgment so long as it lies within a range of reasonable alternatives. Given the negotiations leading up to the Stalking Horse SPA and

²² *Nortel* at para 56; *Freshlocal Solutions Inc (Re)*, [2022 BCSC 1616](#) at para 30.

²³ *Brainhunter Inc, Re*, [\(2009\), 183 ACWS \(3d\) 905](#) at para 19 [*Brainhunter*].

²⁴ Second Souzankar Affidavit at para 32.

²⁵ *Danier* at paras 41-42.

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.²⁶

36. The Monitor is of the view that the Break Fee is reasonable in the circumstances.²⁷

Among other things:²⁸

(a) the Applicants were deeply insolvent and did not have sufficient cash to continue beyond the week of the Initial Order without the DIP Loan that was provided by the Stalking Horse Purchaser;

(b) the Applicants made significant efforts to improve their financial situation prior to commencing the CCAA proceedings;²⁹

(c) the Stalking Horse Purchaser required the Break Fee to compensate them for their efforts; and

(d) the Stalking Horse Purchaser was the only party showing any interest in acquiring the Applicants' business and funding the Stalking Horse Sales Process and these CCAA proceedings.

37. The Applicants submit that the Stalking Horse SPA together with the Break Fee are fair and reasonable and should be approved.

²⁶ *Brainhunter Inc, Re*, (2009), 183 ACWS (3d) 905 at para 20; *BCE Inc v 1976 Debentureholders*, [2008 SCC 69](#) at para 40.

²⁷ Monitor's First Report, to be filed.

²⁸ Monitor's First Report, to be filed.

²⁹ First Souzankar Affidavit at para 142.

B. Stalking Horse Sales Process should be Approved

38. 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.³⁰
39. 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:³¹
- (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?
40. In this context, Courts have also considered the factors in section 36(3) of the CCAA³², namely:
- (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;

³⁰ Monitor's First Report, to be filed.

³¹ *Nortel* at para 49; *Brainhunter Inc, Re*, (2009), 183 ACWS (3d) 905 at para 13; *Danier* at para 23.

³² *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s 36(3) [CCAA].

(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.

41. 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 procedures 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 creditor of the Applicants, Carmela Marzilli, are supportive of the Stalking Horse Sales Process and no other creditor has indicated that they object.³³

(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 was the only party who showed any interest in acquiring the Applicants' business.³⁴

(e) *The Monitor was consulted and will administer the Stalking Horse Sales Process in consultation with its Sales Agent and the Applicants:* The Stalking Horse Sales Process was developed in consultation with the Monitor and the Monitor is supportive of the Stalking Horse SPA acting as the minimum bid. The process will be administered by the Monitor in consultation with the Applicants and the Monitor will have certain consent rights in connection with material decisions, including extending timelines, dispensing with bid requirements, and terminating the Stalking Horse Sales Process. The Monitor is not aware of any stakeholders who will be prejudiced by the Stalking Horse Sales Process.³⁵

(f) *The Applicants have communicated with stakeholders and received their support:* During the Initial Stay Period, the Applicants have communicated with various stakeholders, including secured and unsecured creditors, to provide information and

³³ Second Souzankar Affidavit at para 42.

³⁴ Monitor's First Report, to be filed.

³⁵ Monitor's First Report, to be filed.

answer questions.³⁶ There is key customer and critical supplier support for a stalking horse sales process.

42. The Stalking Horse Sales Process, with its attendant interim funding and bridge to a sale mechanics, is the best and only value maximizing option now available to the Company. 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. The Monitor is of the view that the Stalking Horse Sales Process is fair and reasonable in the circumstances.³⁷

C. Approving Critical Supplier Payments

44. 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.³⁸
45. 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.

³⁶ Second Souzankar Affidavit at para 10.

³⁷ Monitor's First Report, to be filed.

³⁸ *Northstar Aerospace Inc, Re*, [2012 ONSC 4546](#) at para 11.

D. KERP should be Approved

46. The purpose of a KERP is to retain employees that are important to the management or operations of the debtor company in order to keep their skills within the company at a time when they are likely to look for other employment because of the company's financial distress.³⁹ KERPs have been approved in numerous insolvency proceedings, particularly where the retention of certain employees was deemed critical to a successful restructuring.⁴⁰

47. This Court has jurisdiction to approve a KERP pursuant to its general power under section 11 of the CCAA to make any order it considers appropriate.⁴¹

48. The CCAA does not list specific factors to be considered by the court in determining whether to approve a KERP. Courts have held that the factors to be considered by the court in approving a KERP will vary from case to case, but some factors will generally be present, including:⁴²

(a) *Is this employee important to the restructuring process?* The eleven key employees have senior level roles and responsibilities that are essential to ensure the stability of the business, enhance effectiveness of the sale process, and facilitate an effective restructuring.

(b) *Does the employee have specialized knowledge that cannot easily be replaced?*

The key employees have specialized experience and unique knowledge about the

³⁹ *Re Grant Forest Products Inc.* [57 CBR \(5th\) 128](#), at para 8.

⁴⁰ *Walter Energy Canada Holdings, Inc, Re*, [2016 BCSC 107](#) at para 57.

⁴¹ CCAA, s. 11; *Re Cinram International*, [2012 ONSC 3767](#) at para 91.

⁴² *Walter Energy Canada Holdings, Inc, Re*, [2016 BCSC 107](#) at para 58.

operations of the Company. Their involvement in the sale process will be critical to the success of the Applicants' restructuring.

(c) *Will the employee consider other employment options if the KERP is not approved?* The potential KERP beneficiaries may seek other employment if the KERP is not authorized.

(d) *Was the KERP developed through a consultative process involving the monitor and other professionals?* The Applicants developed the KERP with input from the Monitor.⁴³

(e) *Does the monitor support the KERP and a charge?* The Monitor supports the KERP.⁴⁴ This Court has held that the views of the Monitor on the appropriateness of KERP provisions "deserve great weight".⁴⁵

E. Initial Stay Period should be Extended

49. The Initial Order granted an initial 10-day stay of proceedings ending on November 10, 2022. The Applicants seek an order extending the stay of proceedings to and including February 3, 2023 ("**Extended Stay Period**").

50. 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.⁴⁶ A stay of proceedings is

⁴³ Second Souzankar Affidavit at para 10.

⁴⁴ Monitor's First Report, to be filed.

⁴⁵ *Re Grant Forest Products Inc*, [2009] OJ No 3344, at para 19.

⁴⁶ *CCAA*, s 11.02(2)-(3).

appropriate to provide a debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.⁴⁷

51. It is respectfully submitted that the following factors weigh in favor 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;⁴⁸

(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;⁴⁹

(c) the extension of the stay is required to complete the Stalking Horse Sales Process without having to incur additional costs during that process to return to Court to seek a further extension;⁵⁰

(d) the Monitor supports the requested extension of the stay of proceedings; 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.

⁴⁷ *Target Canada Co, Re*, [2015 ONSC 303](#) at para 8.

⁴⁸ Second Souzankar Affidavit at para 10.

⁴⁹ Second Souzankar Affidavit at para 51.

⁵⁰ Second Souzankar Affidavit at para 49.

F. Scope of Stay of Proceedings Should be Extended

52. Courts have the authority under the broad jurisdiction granted under sections 11 and 11.02 of the CCAA and the Court's inherent jurisdiction to grant a stay of proceedings in favour of third parties that are not themselves applicants in a CCAA proceeding.⁵¹
53. During the currency of these restructuring efforts, the Applicants seek to expand the scope of the stay of proceedings to prevent the directors and officers of the Company from being pursued on certain personal guarantees of the Company's obligations.
54. An extension of the stay in this manner will best preserve the status quo and permit the directors and officers to invest their full time and attention, without distraction, on creating value for stakeholders. It is consistent the CCAA's objective of furthering a debtor's restructuring, and can be supported on a balance of convenience analysis.
55. The Monitor supports, and no creditor will be prejudiced by, the extension of the stay in this manner to the directors and officers.

G. Administration Charge should be Increased

56. 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.⁵² The Applicants seek to increase the Administration Charge from \$250,000 to \$500,000 in

⁵¹ *McEwan Enterprises Inc*, [2021 ONSC 6453](#) at para 42.

⁵² Second Souzankar Affidavit at para 60.

order to remain consistent with the projected fees and disbursements of the Professional Group during the Extended Stay Period.

57. 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 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.
58. 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;
 - (b) the beneficiaries of the Administration Charge have and will continue to contribute to these CCAA proceedings and assist with 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;

(e) The Monitor, the DIP Lender and the Applicants' senior secured lender, Carmela Marzilli, are supportive of the increase in the Administration Charge.

PART V - RELIEF REQUESTED

59. 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 9th day of November, 2022.



David S. Ward
MILLER THOMSON 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*, [\[2009\] OJ No. 3169](#)
4. *Brainhunter Inc, Re*, [\(2009\), 183 ACWS \(3d\) 905](#)
5. *BCE Inc v 1976 Debentureholders*, [2008 SCC 69](#)
6. *Northstar Aerospace Inc, Re*, [2012 ONSC 4546](#)
7. *Grant Forest Products Inc (Re)*, [57 CBR \(5th\) 128](#)
8. *Walter Energy Canada Holdings, Inc, Re*, [2016 BCSC 107](#)
9. *Cinram International*, [2012 ONSC 3767](#)
10. *Target Canada Co, Re*, [2015 ONSC 303](#)
11. *McEwan Enterprises Inc*, [2021 ONSC 6453](#)
12. *Freshlocal Solutions Inc (Re)*, [2022 BCSC 1616](#)

**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

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 CANNAPIECE GROUP INC.,
CANNAPIECE CORP., CANADIAN CRAFT GROWERS CORP., 2666222 ONTARIO LTD., 2580385 ONTARIO
INC. AND 2669673 ONTARIO INC.

Court File No.: CV-22-00689631-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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(returnable November 10, 2022)**

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