

**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 THE COMPROMISE OR ARRANGEMENT OF **ALEAFIA
HEALTH INC., EMBLEM CORP., EMBLEM CANNABIS CORPORATION, EMBLEM
REALTY LTD., GROWWISE HEALTH LIMITED, CANABO MEDICAL
CORPORATION, ALEAFIA INC., ALEAFIA FARMS INC., ALEAFIA BRANDS INC.,
ALEAFIA RETAIL INC., 2672533 ONTARIO INC., and 2676063 ONTARIO INC.**

Applicants

**FACTUM OF THE APPLICANTS
(RETURNABLE OCTOBER 27, 2023)**

October 25, 2023

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PART I: INTRODUCTION

1. Emblem Corp. (“**Emblem**”), Emblem Cannabis Corporation (“**Emblem Cannabis**”), Emblem Realty Ltd. (“**Emblem Realty**”), Growwise Health Limited (“**Growwise**”), Canabo Medical Corporation (“**Canabo**”), Aleafia Inc. (“**Aleafia Sub**”), Aleafia Farms Inc. (“**Aleafia Farms**”), Aleafia Brands Inc. (“**Aleafia Brands**”), Aleafia Retail Inc. (“**Aleafia Retail**”), 2672533 Ontario Inc. (“**2672**”) and 2676063 Ontario Inc. (“**2676**”) are various subsidiaries (individually, a “**Subsidiary**” and collectively, the “**Subsidiaries**”) of Aleafia Health Inc. (“**Aleafia Parent**” and with the Subsidiaries, the “**Applicants**” or the “**Aleafia Group**”). Aleafia Parent also has an interest in a certain other non-Applicant affiliate.¹

2. The Applicants file this factum in support of a motion for relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) to approve:

- (a) an Order (the “**Approval and Reverse Vesting Order**”) to, *inter alia*:
 - (i) approve the sale transactions (the “**Sale Transactions**”) contemplated by the amended and restated stalking horse asset purchase and subscription agreement (the “**Amended and Restated Stalking Horse Agreement**”) dated October 24, 2023;
 - (ii) approve the addition of 1000682692 Ontario Inc. (“**Residual Co.**”) as an Applicant in these CCAA proceedings to which the protections afforded by the CCAA extend, and amending the style of cause of these proceedings to reflect such addition; and
 - (iii) approve the Releases (as defined herein);
- (b) an Order (the “**Grimsby Approval and Vesting Order**”) to, *inter alia*:

¹ The non-Applicant party is One Plant (Retail) Corp.

- (i) approve the sale of the Grimsby Property (as defined in the SISP) contemplated by the agreement of purchase and sale dated September 15, 2023; and
 - (ii) approve the distribution of the Net Proceeds Distribution Amount (as defined in the Grimsby Approval and Vesting Order) to the DIP Lender;
- (c) an Order (the “**Ancillary Order**”) to, *inter alia*:
- (i) approve the key employee retention plan for certain senior management personnel (the “**KERP**”);
 - (ii) extend the stay period to November 30, 2023 (the “**Stay Period**”);
 - (iii) approve the Monitor’s Reports² of KSV Restructuring Inc. (“**KSV**”) as monitor (in such capacity, the “**Monitor**”) and the activities set out therein;
 - (iv) approve certain enhanced powers of the Monitor;
 - (v) approve the amended DIP Term Sheet dated October 24, 2023 (the “**Amended DIP Term Sheet**”) and a corresponding increase in the DIP Lender’s Charge (as defined in the ARIIO); and
 - (vi) approve the sealing of the confidential appendices to the Third Report of the Monitor dated October 24, 2023 (the “**Third Report**”);
- (d) such further and other relief as may be requested by the Applicants and that this Honourable Court considers just.

PART II: FACTS

3. The facts underlying this application are more fully set out in the affidavit of Patricia Symmes-Rizakos, sworn October 20, 2023.³ The Aleafia Group is a federally licenced Canadian cannabis company providing cannabis products to five of Canada’s largest provinces (namely,

² Pre-Filing Report of the Proposed Monitor dated July 24, 2023, the First Report of the Monitor dated August 1, 2023, the Second Report of the Monitor dated August 17, 2023, and the Third Report.

³ Affidavit of Patricia Symmes-Rizakos sworn on October 20, 2023 [[“Fourth Affidavit”](#)].

Ontario, Alberta, British Columbia, Saskatchewan and Manitoba) and destined for select international medical cannabis markets.⁴ Prior to entering these CCAA proceedings, the Applicants were in a dire liquidity crisis and were not able to meet their obligations as they came due.⁵ Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the affidavits of Patricia Symmes-Rizakos sworn July 24, 2023, July 26, 2023 and August 11, 2023.

4. On July 25, 2023, the Honourable Justice Conway granted an urgent order on short notice to the Applicants' senior secured lenders (the "**Initial Order**") under the CCAA which, *inter alia*, granted creditor protection to the Applicants and appointed KSV as the Monitor.

5. On August 4, 2023, the Honourable Justice Penny granted an amended and restated initial order (the "**ARIO**") which, *inter alia*, extended the Stay Period to September 1, 2023.

6. On August 22, 2023, the Honourable Justice Conway granted a sales and investment procedure order (the "**SISP Order**") which, *inter alia*, granted:

- (a) an extension of the Stay Period to October 31, 2023;
- (b) preservation of the "status quo" in respect of the Applicants' Health Canada and cannabis excise licences during the pendency of the Stay of Proceedings;
- (c) approval of the sale and investment solicitation process (the "**SISP**") in a form substantially similar to the form attached as Schedule "A" to the SISP Order;
- (d) authority for the Applicants and the Monitor to immediately commence the SISP;
- (e) authority and direction to the Monitor, the Applicants, and their respective affiliates, partners, employees, advisors and agents to take any and all actions as may be necessary or desirable to implement and carry out the SISP; and

⁴ Fourth Affidavit at [para 4](#).

⁵ Affidavit of Patricia Symmes-Rizakos sworn on July 24, 2023 at [para 8](#).

- (f) approving the original stalking horse agreement (the “**Original Stalking Horse Agreement**”) to be entered into between Aleafia Health, Emblem Cannabis, Canabo, Aleafia Farms, Aleafia Retail, Red White & Bloom Brands Inc. (“**RWB**”) and RWB (PV) Canada Inc., a wholly-owned subsidiary of RWB solely for the purpose of constituting the “Stalking Horse Bid” under the SISP.

*Stalking Horse Sale Process*⁶

7. Since the granting of the SISP Order, the SISP was carried out according to its terms, subject to slight amendments to timelines as further described in the Fourth Affidavit.

8. Under the terms of the SISP, the Monitor arranged for a Teaser Letter to be sent to Known Potential Bidders. No Binding Offers were received by the Aleafia Group that met the minimum threshold and were superior to the Stalking Horse Bid, either individually or in the aggregate.⁷ As such, the Stalking Horse Bid was selected as the Successful Bid pursuant to the terms of the SISP.

9. Pursuant to the terms of the Amended and Restated Stalking Horse Agreement, the Purchaser has agreed to, *inter alia*:

- (a) Purchase the Purchased IP from Aleafia Parent; and
- (b) Subscribe for shares in each of the Companies, which would, on Closing represent 100% of the outstanding Equity Interests of each of the Companies.⁸

10. The parties to the Original Stalking Horse Agreement mutually agreed upon certain amendments thereto since the granting of the SISP Order, which have been formally documented in the Amended and Restated Stalking Horse Agreement. These amendments include, among other things, the addition of Aleafia Sub as a Purchased Entity (and the corresponding removal of provisions related to the subscription for the Aleafia Farms shares), an extension of the timeline

⁶ Capitalized terms defined in this section are as defined in the Amended DIP Term Sheet.

⁷ Fourth Affidavit at [para 20](#).

⁸ Fourth Affidavit at [para 22](#).

for the parties to finalize the Implementation Steps with respect to the Sale Transactions, and an increase to the number of days prior to Closing required for the Purchaser to deliver offers of employment to employees of the Purchased Entities.⁹

Approval of the Releases

11. The Approval and Reverse Vesting Order provides for release for several parties, including, *inter alia*, the current directors and officers of the Applicants and Residual Co., counsel to the Applicants, and the Monitor and counsel to the Monitor (collectively, the “**Releasees**”).¹⁰

12. The Releases sought are purposely limited to releasing the Releasees only from claims arising in connection with or relating to (a) the CCAA proceedings, (b) any matters relating to the Purchased Entities’ cannabis excise licenses for the period prior to the commencement of the CCAA proceedings, (c) the Amended and Restated Stalking Horse Agreement, (d) the consummation of the proposed sale transactions, and/or (e) any closing document, agreement, document, instrument, matter or transaction involving the Purchased Entities or Aleafia Parent arising in connection with or pursuant to any of the foregoing.¹¹

*Grimsby Sale Process*¹²

13. Pursuant to the SISP Order, the sale of the Grimsby Property was marketed separately from the other Property (as defined in the Initial Order) (the “**Grimsby Sale Process**”).¹³ In accordance with the Grimsby Sale Process, the Monitor engaged in a pre-marketing process which included,

⁹ Fourth Affidavit at [para 23](#).

¹⁰ Fourth Affidavit at [para 26](#).

¹¹ Fourth Affidavit at [para 28](#).

¹² Capitalized terms defined in this section are as defined in the ARIO or Amended and Restated Stalking Horse Agreement.

¹³ Fourth Affidavit at [para 30](#).

among other things, preparing a virtual data room, a teaser letter, and a marketing process to solicit interest in the Grimsby Property.¹⁴

14. Following the Monitor's advertisement in the Globe and Mail, and after review of the received letters of interest, the Monitor has recommended the sale agreement dated September 15, 2023 as between Aleafia Farms and Siva Selvan, for a company to be later incorporated (the "**Grimsby Sale Agreement**") as it represents the highest and best offer received.¹⁵ The key terms of the Grimsby Sale Agreement are provided in the Third Report (the "**Grimsby Transaction**").

15. Additionally, to the extent any DIP obligations remain owing by the Applicants under the DIP Term Sheet, the Monitor is to distribute to the DIP Lender, on behalf of the Applicants, as soon as practicable following the day the Monitor's Certificate is delivered, the net proceeds distribution amount (the "**Net Proceeds Distribution Amount**") equaling the net proceeds of the Grimsby Sale Transaction less fees, adjustments, applicable taxes and a holdback amount in partial repayment of the DIP obligations owing by the Applicants under the DIP Term Sheet. The credit bid component of the Purchase Price set out in the Amended and Restated Stalking Horse Agreement shall be reduced by an amount corresponding to the Net Proceeds Distribution Amount.¹⁶

*KERP*¹⁷

16. The Applicants, with the assistance of the Monitor, have developed the KERP to facilitate and encourage the continued participation of members of senior management (the "**Key**

¹⁴ Third Report of the Monitor dated October 25, 2023 at s 6.1 ["**Third Report**"].

¹⁵ Fourth Affidavit at [para 31](#).

¹⁶ Fourth Affidavit at [para 32](#).

¹⁷ Capitalized terms in this section are as defined in the KERP.

Employees”) deemed critical in both carrying on day-to-day operations and assisting the Monitor with the SISP during these CCAA Proceedings.¹⁸

17. Pursuant to its terms, the KERP allows for payment to the Key Employees in two scenarios:

- (a) Under the Sale Transactions, fifty percent (50%) of the Retention Fee shall be earned and payable on the closing date of such transaction and the balance of the Retention Fee shall be earned and payable on December 31, 2023; or
- (b) Under an Other Transaction, the full amount of the Retention Fee shall be earned and payable on the closing date of such transaction.¹⁹

18. The KERP was designed to incentivize the Key Employees to continue their employment with the Applicants and to maximize value for all stakeholders through the SISP. The presence of the Key Employees, as incentivized by the Retention Fee, will contribute to the overall success of Aleafia Parent during the SISP.²⁰ The Amended and Restated Stalking Horse Agreement provides that the KERP is a liability to be assumed by the Purchaser. As such, the Purchaser will be responsible for making the second KERP payment, totaling fifty percent (50%) of the Retention Fee, due December 31, 2023.²¹

Extension of the Stay of Proceedings and Enhanced Powers of the Monitor

19. The extension of the Stay of Proceedings to November 30, 2023 is necessary to provide the Applicants continued breathing space while they attempt to maximize value for the benefit of their stakeholders through concluding the Sale Transactions and the Grimsby Transaction.

¹⁸ Fourth Affidavit at [para 34](#).

¹⁹ Fourth Affidavit at [para 36](#).

²⁰ Third Report at s 8.0.4.

²¹ Fourth Affidavit at [para 38](#).

20. Further, to deal with various administrative matters and the conclusion of these CCAA proceedings, the Monitor seeks enhanced powers to, among other things, exercise power over the board of directors of Aleafia Parent and perform functions deemed necessary by the Monitor.

The Amended DIP Term Sheet and Increase to the DIP Lender's Charge

21. The Applicants have worked with RWB to mutually increase the DIP Facility (as defined in the Original Stalking Horse Agreement) by way of the Amended DIP Term Sheet. The Amended DIP Term Sheet will provide the Applicants the additional capital needed to close the Sale Transactions and the Grimsby Transaction while allowing the Applicants to terminate these CCAA proceedings in conjunction with the Monitor. The Amended DIP Term Sheet will also require a corresponding increase to the DIP Lender's Charge.

Sealing of Confidential Appendices

22. The Applicants seek to seal the confidential appendices of the Third Report which include certain personal information of the Key Employees and offer summaries prepared to reflect the offers received during the SISP.

PART III: ISSUES AND THE LAW

23. The substantive issues to be adjudicated by the Court upon this motion are as follows:

- (a) Should the Sale Transactions contemplated by the Amended and Restated Stalking Horse Agreement be approved pursuant to the Approval and Reverse Vesting Order, including the addition of Residual Co. to the proceedings?
- (b) Should the Releases be approved?
- (c) Should the sale of the Grimsby Property and the Net Proceeds Distribution Amount be approved pursuant to the Grimsby Approval and Vesting Order?
- (d) Should the KERP be approved?

- (e) Should the Amended DIP Term Sheet and corresponding increase in the DIP Lender's Charge be approved?
- (f) Should the Monitor receive enhanced powers?
- (g) Should the extension to the Stay Period and the Monitor's Reports be approved?

A. THE APPROVAL AND REVERSE VESTING ORDER

The Stalking Horse Sale Transactions

24. The jurisdiction to approve a transaction by reverse vesting order is found in section 11 of the CCAA. This section provides the Court with broad powers to make Orders as it sees fit.²² With respect to reverse vesting orders specifically, Justice McEwen recently confirmed in *Just Energy Group* that "it is settled law that courts have jurisdiction to approve a transaction involving a reverse vesting order."²³

25. In considering whether to approve a sale transaction structured as a reverse vesting order, it is appropriate to consider the following, as noted by Justice Penny in *Harte Gold Corp. (Re)*:

- (a) The statutory basis for a reverse vesting order and whether a reverse vesting order is appropriate in the circumstances; and
- (b) The factors outlined in s. 36(3) of the CCAA, making provision or adjustment, as appropriate, for the unique aspects of a reverse vesting transaction.²⁴

26. In *Harte Gold Corp. (Re)*, the Court addressed a similar factual matrix to that at hand. There, a stalking horse bid was structured as a share subscription agreement with a reverse vesting order whereby the purchaser would become the sole shareholder of the debtor company which divested certain excluded assets and liabilities to a residual corporation.

²² *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s 11 ["CCAA"].

²³ *Just Energy Group Inc. et. Al. v Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354 at [para 31](#) ["*Just Energy Group*"].

²⁴ *Harte Gold Corp. (Re)*, 2022 ONSC 653 at [para 23](#) ["*Harte Gold*"].

27. In considering whether to approve the reverse vesting order structure, Justice Penny described the following non-exhaustive factors to provide guidance in terms of when such a transaction structure can be appropriate:

- (a) why the reverse vesting order is necessary in the case at bar;
- (b) whether the reverse vesting structure produces an economic result at least as favourable as any other viable alternative;
- (c) whether any stakeholder would be worse off under the reverse vesting order structure than they would have been under any other viable alternative; and
- (d) whether the consideration being paid for the debtor's business reflects the importance and value of the licences and permits (or other intangible assets) being preserved under the reverse vesting order structure.²⁵

28. Further, this Court has recently approved the use of a reverse vesting order structure to facilitate transactions involving cannabis companies.²⁶

29. The Applicants submit that the Sale Transactions as contemplated are appropriate in the circumstances because (i) the Sale Transactions allow for the efficient transfer of the cannabis licenses issued by Health Canada and Canada Revenue Agency to the Purchaser; (ii) the Sales Transaction represents the best offer for the Property of the Aleafia Group; and (iii) no other stakeholder would be worse off under the reverse vesting order structure.

30. Additionally, section 36(3) of the CCAA enumerates a list of factors that ought to be considered by the court when determining whether to approve a sale of assets outside the ordinary course of business. The non-exhaustive factors of this provision read as follows:

²⁵ *Harte Gold* at [para 38](#).

²⁶ See [Approval and Vesting Order](#), in the Matter of *Eve & Co Incorporated et. al*, dated October 7, 2022, Toronto, Court File No. CV-22-00678884-00CL; see also [Approval and Vesting Order](#), in the Matter of *Beleave Inc. et. al*, dated September 18, 2020, Toronto, Court File No. CV-20-00642097-00CL.

- (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.²⁷

31. The Applicants submit that the factors articulated in section 36(3) of the CCAA further support the Sale Transactions generally because:

- (a) The Sale Transactions were reasonable in that they resulted from the court-approved SISF, contacting various Known Potential Bidders, public notices being sent with respect to the Opportunity (as defined in the SISF), among other reasonable processes;
- (b) The Monitor was involved at all stages leading up to the proposed sale, the design of the SISF and the marketing of the Opportunity;
- (c) The Sale Transactions represent the best option available to the Applicants' going-concern exit from these CCAA proceedings; and
- (d) The Purchase Price pursuant to the Sale Transactions is fair and reasonable.

32. Given the foregoing, the Sale Transactions contemplated by the Amended and Restated Stalking Horse Agreement should be approved by this Honourable Court.

Adding Residual Co. as an Applicant

33. To consummate the Sale Transactions, Residual Co. must become an Applicant in these CCAA proceedings. The CCAA applies to any debtor company so long as the total claims against

²⁷ CCAA, [s 36\(3\)](#).

the debtor company amount to more than \$5,000,000.²⁸ The CCAA defines a debtor company as a company that is bankrupt or insolvent, has committed an act of bankruptcy under the *Bankruptcy and Insolvency Act*²⁹ (the “BIA”), has made an assignment or a bankruptcy order has been made under the BIA or is being wound up under the *Winding-up and Restructuring Act*.³⁰

34. Though the term ‘insolvent’ is not defined in the CCAA, courts often look to the BIA to define the term in a CCAA context. In *Stelco Inc., Re*, Justice Farley found that it is fairly common practice for applicants, when referring to “insolvency” within the CCAA, to refer to the definition in the BIA.³¹ As such, insolvent means a person whose liabilities exceed its assets.³²

35. Based upon the foregoing definition, upon the transfer of the Excluded Assets and Liabilities to Residual Co., Residual Co. will be a debtor company to whom the CCAA applies. Residual Co. should therefore be added as an Applicant in these CCAA proceedings and the style of cause should be amended to reflect same.

The Releases

36. As mentioned above, the Approval and Reverse Vesting Order contains typical Releases in favour of the Releasees. The broad discretion inherent in section 11 of the CCAA to make any order considered "appropriate in the circumstances" vests this Court with jurisdiction to approve releases in favour of certain parties.³³

²⁸ CCAA, [s 3\(1\)](#).

²⁹ [R.S.C. 1985, c B-3](#) [“BIA”].

³⁰ [R.S.C. 1985, c W-11](#).

³¹ *Stelco Inc., Re*, 48 C.B.R. (4th) 299 at [para 22](#).

³² *BIA*, [s 2\(1\)](#).

³³ CCAA, [s 11](#).

37. Releases are commonly granted in CCAA proceedings.³⁴ Indeed, the court in *Blackrock Metals*³⁵ recently stated that it is “now commonplace for third-party releases, in favour of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction.”³⁶ Additionally, such releases have been granted by this Court in reverse vesting order transactions.³⁷

38. Though not necessary for each of the factors to apply in order for the release to be granted, a court ought to consider the following factors, which have been looked to in prior cases:

- (a) Whether the parties to be released were necessary to the restructuring of the debtor;
- (b) Whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it;
- (c) Whether the restructuring could succeed without the releases;
- (d) Whether the parties being released contributed to the restructuring; and
- (e) Whether the releases benefit the debtors as well as the creditors more generally.³⁸

39. Here, the Releases should be granted for the following reasons:

- (a) The Releases are fair, reasonable, and critical to the restructuring of the Aleafia Group and necessary to ensure the Sale Transactions and the Grimsby Transaction close.³⁹
- (b) The Releases are beneficial for the creditors generally as they allow for the Releasees to focus on closing the Sale Transactions and the Grimsby Transaction while avoiding the costs of unnecessary litigation.⁴⁰

³⁴ See, for example, the recent [CCAA Termination Order, in the Matter of Trichome Financial Corp., et. al](#), dated September 14, 2023, Toronto, Court File No. CV-22-00689857-00CL.

³⁵ *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 [“*Blackrock Metals*”].

³⁶ *Blackrock Metals* at [para 128](#).

³⁷ *Blackrock Metals* at [para 128](#). See [Approval and Vesting Order, in the Matter of CannaPiece Group Inc. et. al](#), dated February 10, 2023, Toronto, Court File No. CV-22-00689631-00CL.

³⁸ *Re Green Relief Inc.*, 2020 ONSC 6837 at [para 27](#); see also *Re Lydian International Limited*, 2020 ONSC 4006 at [para 54](#); see also *CannaPiece Group Inc v Marzilli*, 2023 ONSC 3291 at [para 22](#); see also *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354 at [para 67](#).

³⁹ Fourth Affidavit at [para 26](#).

⁴⁰ Fourth Affidavit at [para 27](#).

- (c) The Releases are not overly broad and are limited to releasing the Releasees only from claims arising in connection with or relating to the CCAA proceedings or any matters relating to the Purchased Entities' cannabis excise licenses for the period prior to the commencement thereof, the Amended and Restated Stalking Horse Agreement, the consummation of the proposed sale transactions, and/or any closing document, agreement, document, instrument, matter or transaction involving the Purchased Entities or Aleafia Parent arising in connection with the foregoing.⁴¹
- (d) The Monitor supports the Releases sought.⁴²
- (e) The Releases will not prejudice any stakeholder and the service list was provided with notice of this motion and the relief sought herein.⁴³

B. THE GRIMSBY APPROVAL AND VESTING ORDER

40. Under section 100 of the *Courts of Justice Act* (Ontario) (the “CJA”), the court has the power to vest in any person an interest in real or personal property that the Court has authority to order be conveyed.⁴⁴ Further, and pursuant to section 36(1) of the CCAA, a debtor company is able to sell or otherwise dispose of assets outside the ordinary course of business if authorized by a Court.⁴⁵

41. The factors contained in section 36(3) of the CCAA, as listed above, are also relevant and applicable to the Grimsby Transaction. In these circumstances, the process leading to the proposed sale was reasonable and carried out by the Monitor in accordance with the SISP (subject to minor updates to the timeline). The Grimsby Transaction is recommended by the Monitor, as it was developed in consultation with certain creditors and will provide stakeholders with the greatest recovery available in the circumstances.⁴⁶

⁴¹ Fourth Affidavit at [para 28](#).

⁴² Fourth Affidavit at [para 29](#).

⁴³ Fourth Affidavit at [para 29](#).

⁴⁴ *Courts of Justice Act*, R.S.O. 1990, c. C-43, [s 100](#).

⁴⁵ CCAA, [s 36\(1\)](#).

⁴⁶ Third Report at s 7.1.1.

42. This Court's authority under the CCAA, however, must be exercised in furtherance of the CCAA's remedial objectives. This exercise involves having regard to whether the order sought is appropriate in the circumstances, the debtor company is acting in good faith and the debtor company is acting with due diligence.⁴⁷

43. Where a Court is asked to approve a sales process and transaction within the context of a receivership, the Court is also to consider the following principles (collectively, the "**Soundair Principles**"): ⁴⁸

- (a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.

44. The factors in section 36(3) described above generally overlap with the Soundair Principles and the Court often considers a combination of the two when determining whether to approve a sale transaction under the CCAA.⁴⁹ This Court has commented that the same duties of a court under the Soundair Principles "are implicit in a marketing and sale process pursuant to Court Order under the CCAA".⁵⁰

45. This Court has held that, absent a violation of the Soundair principles, the Court should place weight on the Court-appointed officer's recommendation with respect to a proposed transaction, as was made clear by the court in *Eddie Bauer of Canada, Inc. (Re)*.⁵¹ Indeed, absent

⁴⁷ *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at [paras 59](#) and [70](#) ["*Century Services*"].

⁴⁸ *Royal Bank of Canada v Soundair Corp.*, (1991), 4 O.R. (3d) 1 (C.A.) at [para 16](#) ["*Soundair*"].

⁴⁹ *Canwest Global Communications Corp.*, 2010 ONSC 2870 at [para 13](#).

⁵⁰ *Tiger Brand Knitting Co. (Re)*, 9 C.B.R. (5th) 315 at [para 35](#).

⁵¹ (2009), 57 C.B.R. (5th) 241 at [para 22](#).

clear, compelling, exceptional factors, a Court is to grant deference to the recommendation of its officer to sell a debtor's assets.⁵² This is true for both receivers selling assets on behalf of debtors⁵³ and sales processes approved by monitors under the CCAA.⁵⁴ The recommendation of a monitor, “carries great weight with the Court in any approval process”.⁵⁵

46. Further, under a CCAA section 36 sale, a Court should give further consideration to two elements: (a) the business judgment rule; and (b) the recommendation of the Monitor.⁵⁶ Generally speaking, a Court will not lightly interfere with the exercise of the business judgment of parties where the process was fair and reasonable.⁵⁷ Where a debtor company group has received advance authorization by a Court to conduct a sales process, it reduces the likelihood of any successful subsequent challenges to an eventual sale.⁵⁸

47. At hand, the Grimsby Sale Agreement provides the best possible outcome for all parties with an economic interest in these proceedings. This is evident from the following considerations:

- (a) The Grimsby Transaction provides for the greatest possible recovery;⁵⁹
- (b) The Monitor does not believe that further time spent marketing the assets will result in a superior transaction;⁶⁰ and
- (c) RWB, the Applicants’ primary economic stakeholder, supports approval of the Grimsby Transaction and the sale of the Grimsby Property pursuant to such.⁶¹

⁵² (2004), *Ivaco Inc. (Re)*, 3 C.B.R. (5th) 33 at [para 21](#)

⁵³ *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, [2021 ONCA 375](#).

⁵⁴ *Winnipeg Motor Express Inc., Re*, 2008 MBQB 297 at [para 24](#).

⁵⁵ *Bloom Lake, g.p.l. (Arrangement relative à)*, 2015 QCCS 1920 at [para 28](#) [*“Bloom Lake”*].

⁵⁶ *Bloom Lake* at [para 28](#).

⁵⁷ *Bloom Lake* at [para 28](#).

⁵⁸ *Bloom Lake* at [para 29](#).

⁵⁹ Fourth Affidavit at [para 31](#).

⁶⁰ Third Report at s 7.1.1.

⁶¹ Third Report at s 7.1.1.

48. In addition, the Monitor followed the SISP approved by this Court. The Grimsby Sale Agreement was negotiated in good faith, represents the best consideration possible under the circumstances and was specifically contemplated by the SISP Order.

49. The Monitor took appropriate steps to (i) solicit prospective purchasers through advertising in *The Globe and Mail*, (ii) diligently prepare marketing materials to provide to buyers, and (iii) negotiate the best terms for the sale of the Grimsby Property with the eventual purchaser, all in accordance with the court-approved SISP. The Monitor conducted good faith, arm's length negotiations for the sale of the Grimsby Property and the Monitor further believes it is fair and reasonable under the current circumstances.⁶²

50. Based on the foregoing, it is clear that the proposed Grimsby Transaction satisfies the Soundair Principles in conjunction with the applicable factors in section 36 of the CCAA discussed above.

C. THE ANCILLARY ORDER

The KERP

51. The Applicants, with the assistance of the Monitor, have developed the KERP to encourage the continued participation of Key Employees during these CCAA proceedings.⁶³

52. The overall objective of a KERP is to retain key employees that are crucial to the business of the debtor company. As this Honourable Court reiterated in *Grant Forest Products Inc. (Re)*: “[s]uch plans are aimed at retaining employees that are important to the management or operations

⁶² Third Report at s 7.1.1.

⁶³ Fourth Affidavit at [para 34](#).

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.”⁶⁴

53. Though the CCAA does not enumerate specific factors to be considered in determining whether to approve a KERP, courts may consider, *inter alia*: (a) whether the Monitor supports the KERP; (b) whether the continued employment of the employees to which the KERP applies is important for the stability of the business and the effectiveness of the marketing process; (c) the difficulty in finding a replacement to fulfill the responsibilities of the employees to which the KERP applies; (d) whether the KERP is approved by the board of directors; (e) whether the KERP is supported or consented to by secured creditors of the debtor; and (f) whether the payments under the KERP are payable upon the completion of the restructuring process.⁶⁵

54. Recently, this Court has approved a KERP in the cannabis insolvency of *Fire & Flower*, which operated in a similar industry to the Aleafia Group.⁶⁶

55. To provide a framework for courts to consider the objective business judgment underlining a proposed KERP, the Court in *Aralez* describes three criteria:

- (a) The arm's length input, including from the Monitor, into the design, scope and implementation of the KERP;
- (b) The necessity of the retention program; and
- (c) Whether the design relates to goals pursued, which must benefit the restructuring.⁶⁷

⁶⁴ *Grant Forest Products Inc. (Re)*, 57 CBR (5th) 128 at [para 8](#).

⁶⁵ *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980, at [para 29](#) [*“Aralez”*].

⁶⁶ See [Amended and Restated Initial Order](#), in the Matter of *Fire & Flower Holdings Corp. et. al*, dated June 15, 2023, Toronto, Court File No. CV-23-00700581-00CL.

⁶⁷ *Aralez* at [para 30](#).

56. The Applicants submit that the KERP complies with the factors set out above and is consistent with KERP arrangements that have been approved by CCAA courts. In particular:

- (a) The KERP was developed by the Applicants with the assistance of the Monitor;⁶⁸
- (b) The KERP was approved by the board of directors;
- (c) To avoid any disruptions to the Applicants' business operations that could ultimately impact the SISF and any transactions therefrom, the Applicants require the continued participation of the Key Employees. It would be difficult to find qualified individuals to replace the Key Employees and any replacement would be disruptive given the Key Employees' institutional knowledge related to the Applicants' business;
- (d) The quantum of the KERP is appropriate in the circumstances, and 50% of the KERP payments are payable on December 31, 2023;⁶⁹ and
- (e) The Monitor is supportive of the KERP.⁷⁰

Extension of the Stay

57. The Stay Period currently expires on October 31, 2023. The Applicants seek an order extending the stay of proceedings to November 30, 2023.

58. By way of section 11.02(2) of the CCAA, a court is empowered to extend the stay of proceedings granted to a debtor company. The Court must consider the following in determining whether to extend a stay of proceedings: (i) whether the order sought is appropriate in the circumstances; and (ii) whether the applicant has been acting in good faith and with due diligence.

59. The following factors support extending the stay of proceedings:

⁶⁸ Fourth Affidavit at [para 35](#).

⁶⁹ Fourth Affidavit at [para 36](#).

⁷⁰ Fourth Affidavit at [para 37](#).

- (a) Throughout these proceedings, the Applicants have acted and continue to act in good faith and with due diligence to communicate with stakeholders and to run successful sale processes;⁷¹
- (b) The extension of the Stay Period is necessary and appropriate to provide the Applicants with breathing space while they attempt to maximize value for the benefit of their stakeholders;⁷²
- (c) The extension of the Stay Period is required to implement the Sale Transactions and Grimsby Transaction;
- (d) The Monitor supports the extension of the Stay Period;⁷³ and
- (e) The Applicants believe that no creditor will be materially prejudiced as a result of the extension.⁷⁴

60. This Honourable Court has routinely approved stay extensions of similar or longer time periods than the proposed stay extension, and the Applicants submit that the test to extend a stay of proceedings under section 11.02(2) and 11.02(3) of the CCAA, as requested, is met.

Approval of the Monitor's Reports and Corresponding Activities

61. The approval of reports of a monitor and corresponding activities as set out therein is a standard, ordinary course request in insolvency proceedings. Indeed, and as was noted in *Target Canada Co. (Re)*, this Honourable Court held that there are good policy and practical reasons to grant the approval of a monitor's reports and activities, including:

- (a) allowing the monitor to move forward with next steps in the CCAA proceeding;
- (b) allowing a monitor to bring its activities before the Court;
- (c) allowing an opportunity for stakeholders' concerns to be addressed;

⁷¹ Fourth Affidavit at [para 43](#).

⁷² Fourth Affidavit at [para 43](#).

⁷³ Third Report at s 13.0.2.

⁷⁴ Fourth Affidavit at [para 46](#).

- (d) enabling the Court to satisfy itself that a monitor's activities have been conducted in prudent and diligent manners;
- (e) providing protection for a monitor not otherwise provided by the CCAA; and
- (f) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by a monitor.⁷⁵

62. The principles set out above in *Target Canada* were recently reaffirmed by Morawetz CJ in *Laurentian University of Sudbury*, as well as in an endorsement by the Court.⁷⁶ If a monitor has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, this Honourable Court should approve its past activities and reports.

63. The Applicants continue to work with the Monitor during these CCAA proceedings and understand that the Monitor's activities were carried out in accordance with the orders appointing it, were consistent with its respective mandates, and were done in furtherance of the objective of developing appropriate strategies for the Applicants. The Applicants submit that an order approving the activities of the Monitor to date should be granted.

Enhanced Powers of the Monitor

64. The Monitor seeks enhanced powers over the Applicants which will deal with, amongst other things, administrative matters and the conclusion of these CCAA proceedings, the exercise of any powers of the Aleafia Parent board of directors and the ability to cause the Applicants to perform such functions as the Monitor deems necessary to the winding-down and ultimate liquidation of the Applicants, as applicable.⁷⁷

⁷⁵ *Target Canada Co. (Re)*, 2015 ONSC 7574 at [para 12](#) [*"Target Canada"*].

⁷⁶ *Laurentian University of Sudbury*, 2022 ONSC 5850 at [para 17](#); see also *Laurentian University of Sudbury* (May 18, 2022) CV-21-656040-00CL ([Endorsement](#)) at paras 13-14.

⁷⁷ Fourth Affidavit at [para 45](#).

65. Section 23 of the CCAA enumerates a non-exhaustive list of the minimum duties and functions of a court-appointed monitor. Section 23(k), in particular, provides that a monitor shall carry out any other functions in relation to the company that the court may direct.⁷⁸

66. The Ontario Court of Appeal has clearly stated that these minimum powers may be “augmented through the exercise of discretion by the court, typically the CCAA supervising judge”.⁷⁹ Courts have granted such expanded powers to a monitor in CCAA proceedings, especially to effect transactions pursuant to reverse vesting orders and to conclude a CCAA proceeding by effecting a winding-down of the debtor’s remaining operations.⁸⁰

67. The Monitor has been involved in this proceeding from its inception, has the requisite experience and is willing to assume the additional duties and obligations set out more fully in the Ancillary Order.⁸¹ No stakeholder or creditor will suffer material prejudice as a result of the granting of the enhanced powers sought by the Monitor. Indeed, the Applicants’ stakeholders will benefit from the granting of such relief.⁸²

DIP Amendment

68. The Applicants require additional interim financing and have worked with RWB to mutually increase the DIP Facility (as defined in the DIP Term Sheet) and the DIP Lender’s Charge by way of the Amended DIP Term Sheet.

⁷⁸ CCAA, [s 23\(k\)](#).

⁷⁹ *Ernst & Young Inc. v Essar Global Fund Limited*, 2017 ONCA 1014 at [para 106](#).

⁸⁰ See [Monitor’s Enhanced Powers Order](#), in the Matter of Harte Gold Corp., dated January 28, 2022, Toronto, Court File No. CV-21-00673304-00CL.

⁸¹ Third Report at s 10.0.

⁸² Fourth Affidavit at [para 46](#).

69. The Amended DIP Term Sheet provides the additional interim financing needed to close the Sale Transactions and the Grimsby Transaction, and allows the Applicants to complete the termination of these CCAA proceedings with the assistance of the Monitor.

70. The jurisdiction to approve the Amended DIP Term Sheet and corresponding increase to the DIP Lender's Charge stems from section 11.2(1) of the CCAA. Moreover, section 11.2(4) lays out the following non-exhaustive factors to be considered by a court in deciding whether to grant such a charge:

- (a) The period during which the company is expected to be subject to proceedings under the CCAA;
- (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 recommendations.⁸³

71. The Applicants submit that the following factors support the approval of the Amended DIP Term Sheet and the corresponding increase to the DIP Lender's Charge:

- (a) The Applicants will not be able to operate their businesses, which may also jeopardize the closing of the Sale Transactions and/or the Grimsby Transaction without additional funding;⁸⁴

⁸³ CCAA, [s 11.2\(4\)](#).

⁸⁴ Third Report at s 12.0.4.

- (b) The terms of the DIP Facility are reasonable and no stakeholder should be prejudiced by the proposed amendments;⁸⁵
- (c) The Monitor recommends the proposed amendments.⁸⁶

Sealing of the Confidential Appendices to the Third Report

72. Pursuant to section 137(2) of the CJA, the Court has discretion and jurisdiction to order that any document filed in a civil proceeding be sealed from the public record.⁸⁷

73. The test for determining whether a sealing request ought to be granted in a commercial context was set out by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, namely:

- (a) When such a request is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) When the salutary effects of the confidentiality request, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which, in this context, includes the public interest in open and accessible court proceedings.⁸⁸

74. In *Sherman Estate v Donovan*, the Supreme Court of Canada held that a person asking a court to exercise discretion in limiting the ‘open court’ presumption must establish that: (i) openness poses a risk to an important public interest; (ii) the request sought is necessary to prevent the risk to the identified interest as reasonable alternative measures will not prevent said risk; and (iii) the benefits of the request outweigh the negatives as a matter of proportionality.⁸⁹

⁸⁵ Third Report at s 12.0.4.

⁸⁶ Third Report at s 12.0.4.

⁸⁷ R.S.O. 1990, c. C.43, [s 137\(2\)](#).

⁸⁸ [2002] 2 S.C.R. 522 at [para 53](#).

⁸⁹ 2021 SCC 25 at [para 38](#).

75. The Applicants respectfully submit that the foregoing test has been satisfied. The Confidential Appendices contain individual salary information and the KERP payments for each Key Employee, and the offer amounts received by the Monitor during the SISP.

76. With respect to the salary information in the KERP, the protection of the sensitive personal and compensation information of the employees is an important public interest that should be protected. Employees also have a reasonable expectation that their names and salary information will be kept confidential. With respect to the offer amounts, if such commercially-sensitive information is disclosed prior to the closing of the Sale Transactions or the Grimsby Transaction, it would likely have a detrimental impact on the sale efforts of the Monitor and the Applicants. Additionally, the benefits of sealing the requested information outweigh its negative effects, and the Applicants submit that no stakeholder would be materially prejudiced by the sealing relief sought herein. The requested sealing relief is the least restrictive means available, in that it only calls for the redaction of individual names and the positions of the Key Employees.

PART IV: RELIEF REQUESTED

77. For the reasons set forth herein and the Monitor's Reports, the Aleafia Group respectfully requests the granting of the Orders in the form contained in the Aleafia Group's motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of the date first written above.

S. Hans on behalf of K. Plunkett

K. Plunkett / M. Spence / S. Hans / C. Delfino

SCHEDULE A – LIST OF AUTHORITIES

1.	<i>Just Energy Group Inc. et. Al. v Morgan Stanley Capital Group Inc. et. al.</i> , 2022 ONSC 6354
2.	<i>Harte Gold Corp. (Re)</i> , 2022 ONSC 653
3.	Approval and Vesting Order , in the Matter of <i>Eve & Co Incorporated et. al</i> , dated October 7, 2022, Toronto, Court File No. CV-22-00678884-00CL
4.	Approval and Vesting Order , in the Matter of <i>Beleave Inc. et. al</i> , dated September 18, 2020, Toronto, Court File No. CV-20-00642097-00CL
5.	<i>Stelco Inc., Re</i> , 48 C.B.R. (4th) 299
6.	CCAA Termination Order, in the Matter of Trichome Financial Corp., et. al , dated September 14, 2023, Toronto, Court File No. CV-22-00689857-00CL
7.	<i>Arrangement relatif à Blackrock Metals Inc.</i> , 2022 QCCS 2828
8.	Approval and Vesting Order, in the Matter of Cannapiece Group Inc. et. al , dated February 10, 2023, Toronto, Court File No. CV-22-00689631-00CL
9.	<i>Re Green Relief Inc.</i> , 2020 ONSC 6837
10.	<i>Century Services Inc. v Canada (Attorney General)</i> , 2010 SCC 60
11.	<i>Royal Bank of Canada v Soundair Corp.</i> , (1991), 4 O.R. (3d) 1 (C.A.)
12.	<i>Canwest Global Communications Corp.</i> , 2010 ONSC 2870
13.	<i>Tiger Brand Knitting Co. (Re)</i> , 9 C.B.R. (5th) 315
14.	<i>Eddie Bauer of Canada, Inc. (Re)</i> , 57 C.B.R. (5th) 241
15.	<i>Ivaco Inc. (Re)</i> , 3 C.B.R. (5th) 33
16.	<i>Marchant Realty Partners Inc. v. 2407553 Ontario Inc.</i> , 2021 ONCA 375
17.	<i>Winnipeg Motor Express Inc., Re</i> , 2008 MBQB 297
18.	<i>Bloom Lake, g.p.l. (Arrangement relative à)</i> , 2015 QCCS 1920
19.	<i>Grant Forest Products Inc. (Re)</i> , 57 CBR (5th) 128
20.	<i>Aralez Pharmaceuticals Inc. (Re)</i> , 2018 ONSC 6980

21.	Amended and Restated Initial Order , in the Matter of <i>Fire & Flower Holdings Corp. et. al.</i> , dated June 15, 2023, Toronto, Court File No. CV-23-00700581-00CL
22.	<i>Target Canada Co. (Re)</i> , 2015 ONSC 7574
23.	<i>Laurentian University of Sudbury</i> , 2022 ONSC 5850
24.	<i>Laurentian University of Sudbury</i> (May 18, 2022) CV-21-656040-00CL (Endorsement)
25.	<i>Ernst & Young Inc. v Essar Global Fund Limited</i> , 2017 ONCA 1014
26.	Monitor's Enhanced Powers Order , in the Matter of Harte Gold Corp., dated January 28, 2022, Toronto, Court File No. CV-21-00673304-00CL
27.	<i>Sierra Club of Canada v. Canada (Minister of Finance)</i> , [2002] 2 S.C.R. 522
28.	<i>Sherman Estate v Donovan</i> , 2021 SCC 25

SCHEDULE B – STATUTES

Companies' Creditors Arrangement Act, ss. 3(1), 11, 11.02, 11.2, 23, and 36

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

General power of court

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.

Stays, etc. — initial application

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.

Stays, etc. — other than initial application

(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.

Burden of proof on application

(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.

Restriction

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

Interim financing

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.

Priority — secured creditors

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

Priority — other orders

(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.

Factors to be considered

(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.

Additional factor — initial application

(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.

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the *Bankruptcy and Insolvency Act*, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

Monitor not liable

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

Restriction on disposition of business assets

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.

Notice to creditors

(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.

Factors to be considered

(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.

Additional factors — related persons

(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.

Related persons

(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).

Assets may be disposed of free and clear

(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.

Restriction — employers

(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.

Restriction — intellectual property

(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.

Bankruptcy and Insolvency Act, s. 2(1)

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

Courts of Justice Act (Ontario), ss. 100 and 137

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ALEAFIA HEALTH INC., EMBLEM CORP., EMBLEM CANNABIS CORPORATION, EMBLEM REALTY LTD., GROWWISE HEALTH LIMITED, CANABO MEDICAL CORPORATION, ALEAFIA INC., ALEAFIA FARMS INC., ALEAFIA BRANDS INC., ALEAFIA RETAIL INC., 2672533 ONTARIO INC., and 2676063 ONTARIO INC.

Court File No.: CV-23-00703350-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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