

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

**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 REALTY LTD., ALEAFIA BRANDS INC.,  
2672533 ONTARIO INC., 2676063 ONTARIO INC. and 1000682692 ONTARIO INC.

Applicants

**FACTUM OF THE MONITOR  
(Stay Extension)**

January 22, 2024

**OSLER, HOSKIN & HARCOURT LLP**  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)  
Tel: 416.862.4908  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Martino Calvaruso** (LSO# 57359Q)  
Tel: 416.862.6665  
Email: [mcalvaruso@osler.com](mailto:mcalvaruso@osler.com)

**Ben Muller** (LSO# 80842N)  
Tel: 416.862.5923  
Email: [bmuller@osler.com](mailto:bmuller@osler.com)

Fax: 416.862.6666

Lawyers for the Monitor

TO: **THE SERVICE LIST**

## PART I - NATURE OF THE MOTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on July 25, 2023 (the “**Initial Order**”), Aleafia Health Inc. (“**AHI**” or “**Aleafia Health**”), Emblem Corp. (“**Emblem Corp**”), Emblem Realty Ltd. (“**Emblem Realty**”), Aleafia Brands Inc. (“**ABI**”), 2672533 Ontario Inc. (“**2672 Ont**”), 2676063 Ontario Inc (“**2676 Ont**”), Emblem Cannabis Corporation (“**Emblem Cannabis**”), Growwise Health Limited (“**Growwise**”), Canabo Medical Corporation (“**Canabo**”), Aleafia Inc. (“**Aleafia Sub**”), Aleafia Farms Inc. (“**Aleafia Farms**”) and Aleafia Retail Inc. (“**Aleafia Retail**”) (collectively, the “**Initial Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. (“**KSV**”) was appointed monitor of the Initial Applicants (in such capacity, the “**Monitor**”).

2. On this motion, the Monitor seeks an order (the “**Stay Extension Order**”) extending the period of the CCAA stay of proceedings (the “**Stay Period**”) until and including March 8, 2024.

3. As part of their restructuring, the Initial Applicants conducted a Court-supervised sale and investor solicitation process (“**SISP**”). The SISP included a Stalking Horse Agreement (as defined below) with Red White & Bloom Brands Inc. and RWB (PV) Canada Inc (“**RWB**,” and in such capacity, the “**Purchaser**”). Under the terms of the Stalking Horse Agreement, RWB would acquire, among other things, all of the shares of Emblem Cannabis, Canabo, Aleafia Sub, Aleafia Farms, Growwise and Aleafia Retail (collectively, the “**Purchased Entities**”).

4. Following the completion of the SISP, the Stalking Horse Bid was determined to be the successful bid, and the Initial Applicants agreed to enter into the sale transactions contemplated by the Stalking Horse Agreement (the “**RWB Transactions**”). On October 30, 2023, the Court granted an Approval and Reverse Vesting Order (the “**RWB ARVO**”), approving the RWB

Transactions, and creating 1000682692 Ontario Inc. to hold Excluded Assets and Excluded Liabilities (each as defined in the Stalking Horse Agreement) and to become an Applicant in the CCAA proceedings (“**Residual Co.**”).

5. The RWB Transactions experienced unanticipated delays in obtaining necessary regulatory approvals. Ultimately, the RWB Transactions closed on January 12, 2024, and the Purchased Entities were removed as Applicants of these CCAA proceedings. AHI, Emblem Corp., Emblem Realty, ABI, 2672 Ont, 2676 Ont, and Residual Co. therefore now constitute the “**Remaining Applicants**” of the CCAA proceedings. The Remaining Applicants do not conduct any business or retain any material assets.

6. The Monitor seeks, on behalf of the Remaining Applicants, an order extending the Stay Period until March 8, 2024 in order to permit the Monitor to attempt to negotiate the terms of a CCAA termination order with certain affected stakeholders. The Monitor submits that the Stay Extension Order is fair and reasonable in the circumstances and should be granted.<sup>1</sup>

## **PART II - SUMMARY OF FACTS**

### **A. Background and Update on the CCAA Proceedings**

7. Prior to the RWB Transactions, the Aleafia Group was a federally licensed Canadian cannabis company which operated two primary lines of business, being: (i) cannabis production and resale; and (ii) virtual cannabis clinics. As at the date of the Initial Order, AHI, directly or indirectly, wholly-owned each of the other Initial Applicants and had a 9.9% interest in a non-Applicant affiliate, One Plant (Retail) Corp., which operates a chain of cannabis retail stores.<sup>2</sup>

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<sup>1</sup> Capitalized terms used in this factum but not otherwise defined herein have the meanings accorded to them in the Fifth Report of the Monitor dated January 20, 2024 (the “**Fifth Report**”).

<sup>2</sup> Fifth Report at paras. 2.1-2.2.

8. The principal purpose of these CCAA proceedings was to create a stabilized environment to enable the Initial Applicants to: (a) secure urgently required debtor-in-possession financing pursuant to the terms of the DIP Facility; and (b) pursue a restructuring of their business and/or a sale of their business and assets by conducting a Court-supervised sale and investor solicitation process (as defined above, the “SISP”).<sup>3</sup>

9. On July 25, 2023, the Initial Applicants obtained the Initial Order, pursuant to which, among other things, the Monitor was appointed. In addition, the Initial Order approved the terms of a debtor-in-possession credit facility (the “DIP Facility”) in the maximum principal amount of \$2.27 million to be made available to the Initial Applicants pursuant to a DIP term sheet dated July 24, 2023 (as amended and amended and restated, the “DIP Term Sheet”) between certain of the Initial Applicants, as borrowers and guarantors, and RWB, as lender (in such capacity, the “DIP Lender”).<sup>4</sup>

10. On August 4, 2023, the Court issued an Amended and Restated Initial Order, which, among other things, extended the Stay Period in favour of each of the Initial Applicants up to and including September 1, 2023, and granted the Initial Applicants the authority to borrow up to \$6.6 million under the DIP Facility.<sup>5</sup>

11. On August 22, 2023, the Initial Applicants sought and obtained an order approving the SISP (the “SISP Order”) and a Stalking Horse Asset Purchase and Subscription Agreement (as amended and restated on October 24, 2023, and amended on November 21, 2023 and December 15, 2023, the “Stalking Horse Agreement”) between AHI, Emblem Cannabis, Canabo and Aleafia Retail, as sellers, and RWB and RWB (PV) Canada Inc., a wholly-owned subsidiary of

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<sup>3</sup> Fifth Report at para. 1.5.

<sup>4</sup> Fifth Report at para. 1.3.

<sup>5</sup> Fifth Report at para. 1.4.

RWB, as purchaser, solely for the purpose of constituting the “Stalking Horse Bid” under the SISP. The Stalking Horse Agreement contemplated a reverse vesting transaction pursuant to which RWB, through the Purchaser, would acquire, directly or indirectly, all of the shares of the Purchased Entities and certain intellectual property assets of AHI as part of the transaction, and all Excluded Assets and Excluded Liabilities (each as defined in the Stalking Horse Agreement) would be transferred to one or more newly incorporated corporations. The primary reason for using the reverse vesting structure was to preserve the Health Canada and cannabis excise licenses held by each of Aleafia Farms and Emblem Cannabis, respectively.<sup>6</sup>

**(a) Completion of the SISP**

12. Following the completion of the SISP, the Stalking Horse Bid was determined to be the successful bid. Further, a bid from Siva Selven (for a company to be later incorporated) was identified as the successful bid for the Aleafia Farms facility located at 378 South Service Rd., Grimsby, Ontario (the “**Grimsby Facility**”), which was marketed in a standalone marketing process pursuant to the SISP Order.<sup>7</sup>

13. Accordingly, on October 27, 2023, the Initial Applicants brought a motion to this Court seeking, among other things:<sup>8</sup>

- (a) an Approval and Vesting Order (the “**Grimsby AVO**”), among other things:
  - (i) approving a sale transaction (the “**Grimsby Transaction**”) for the Grimsby Facility; and

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<sup>6</sup> Fifth Report at paras. 1.6-1.7.

<sup>7</sup> Fifth Report at para. 1.8.

<sup>8</sup> Fifth Report at para. 1.9.

- (ii) authorizing a distribution to the DIP Lender from the Net Proceeds (as defined in the Grimsby AVO) of the Grimsby Transaction;
- (b) an Approval and Reverse Vesting Order (as defined above, the “**RWB ARVO**”), among other things:
  - (i) approving the sale transactions contemplated by the Stalking Horse Agreement (as defined above, the “**RWB Transactions**”); and
  - (ii) adding a newly incorporated entity, being 1000682692 Ontario Inc. (as defined above, “**Residual Co.**”), as an Applicant in these CCAA proceedings, and upon completion of the RWB Transactions, removing the Purchased Entities as Applicants in these CCAA proceedings; and
- (c) an Order (the “**Ancillary Relief Order**”), among other things:
  - (i) authorizing and empowering the Monitor to exercise certain enhanced powers following delivery of the Monitor’s Closing Certificate (as defined in the RWB ARVO);
  - (ii) approving a key employee retention plan for certain senior management personnel;
  - (iii) approving an amendment to the DIP Term Sheet pursuant to which the maximum principal amount of the DIP Facility would be increased from \$6.6 million to \$8 million and granting a corresponding increase in the DIP Lender’s Charge; and
  - (iv) extending the Stay Period to and including November 30, 2023.

14. The Court granted the Grimsby AVO on October 27, 2023, and granted the RWB ARVO and the Ancillary Relief Order on October 30, 2023. On November 1, 2023, the Grimsby Transaction closed.<sup>9</sup>

**(b) Update on the RWB Transactions**

15. On November 23, 2023, the Monitor advised the Court that the RWB Transactions would require additional time to close, primarily as a result of certain conditions which remained unsatisfied.<sup>10</sup> The Monitor indicated that the parties were optimistic that the necessary regulatory approvals would be received by December 15, 2023, and, accordingly, had agreed to extend the outside date under the Stalking Horse Agreement from November 22, 2023 to December 15, 2023.<sup>11</sup> Accordingly, on November 27, 2023, the Court issued an order extending the Stay Period up to and including January 26, 2024.<sup>12</sup>

16. Due to unanticipated delays in receiving the necessary regulatory approvals, which were outside the control of the Initial Applicants, on December 15, 2023, the parties entered into a second amendment to the Stalking Horse Agreement, which further amended the outside date under the Stalking Horse Agreement from December 15, 2023 to January 19, 2024, and a third amendment to the DIP Term Sheet, which solely extended the maturity date under the DIP Term Sheet to January 19, 2024.<sup>13</sup>

17. On or around January 12, 2024, the parties received the required regulatory approvals in order to satisfy the remaining conditions under the Stalking Horse Agreement. Accordingly, the

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<sup>9</sup> Fifth Report at para. 1.9.

<sup>10</sup> Fifth Report at para. 1.10.

<sup>11</sup> Fifth Report at para. 3.2.

<sup>12</sup> Fifth Report at para. 1.11.

<sup>13</sup> Fifth Report at para. 3.3.

RWB Transactions closed on January 12, 2024, upon the delivery of the Monitor's Closing Certificate to the Sellers and the Purchasers.<sup>14</sup>

18. As part of the of the closing of the RWB Transactions, AHI has conveyed the business of the Initial Applicants to the Purchaser; as a result, the Remaining Applicants do not conduct any business operations and have no remaining material assets.<sup>15</sup>

### **PART III -THE ISSUES AND THE LAW**

19. The issue now before this Court is whether the Stay of Proceedings should be extended until March 8, 2024.

#### **A. The Stay Period Should be Extended**

20. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

21. The Stay Period currently expires on January 26, 2024. The Monitor asks that the Stay Period be extended until March 8, 2024. The Monitor submits that extending the Stay Period is warranted for the following reasons:

- (a) the stay of proceedings will provide the necessary time for the Monitor to negotiate the terms of a CCAA termination order, including the releases to be sought therein, to the extent possible, with certain affected stakeholders in these CCAA proceedings. If agreement among such parties on the terms of such CCAA

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<sup>14</sup> Fifth Report at para. 3.4.

<sup>15</sup> Fifth Report at paras. 2.2, 5.2.



termination order cannot be reached, the Monitor intends to make a recommendation on the matter to the Court;<sup>16</sup>

- (b) the Remaining Applicants, with the assistance and oversight of the Monitor, have been acting, and continue to act, in good faith and with due diligence;<sup>17</sup>
- (c) no creditor is expected to suffer material prejudice if the extension is granted;<sup>18</sup>
- (d) as of the date of the Fifth Report, the Monitor was not aware of any party opposed to an extension of the Stay Period;<sup>19</sup> and
- (e) the Updated Cash Flow Forecast reflects that the Remaining Applicants are projected to have sufficient liquidity to fund their expenses in these CCAA proceedings up to and including March 8, 2024.<sup>20</sup>

#### **PART IV - NATURE OF THE ORDER SOUGHT**

22. For the reasons set out above, the Monitor requests that this Court grant the proposed Stay Extension Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of January, 2024.



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**OSLER, HOSKIN & HARCOURT LLP**  
per **Marleigh Dick**

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<sup>16</sup> Fifth Report at para. 5.3.  
<sup>17</sup> Fifth Report at para. 5.4.  
<sup>18</sup> Fifth Report at para. 5.4.  
<sup>19</sup> Fifth Report at para. 5.4.  
<sup>20</sup> Fifth Report at paras. 4.1-4.3, 5.4.

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)

Tel: 416.862.4908

Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Martino Calvaruso** (LSO# 57359Q)

Tel: 416.862.6665

Email: [mcalvaruso@osler.com](mailto:mcalvaruso@osler.com)

**Ben Muller** (LSO# 80842N)

Tel: 416.862.5923

Email: [bmuller@osler.com](mailto:bmuller@osler.com)

Fax: 416.862.6666

Lawyers for the Monitor

## SCHEDULE “A”: LIST OF AUTHORITIES

1. *In the matter of a plan of compromise or arrangement of Aleafia Health Inc., Emblem Corp., Emblem Realty Ltd., Aleafia Brands Inc., 2672533 Ontario Inc., 2676063 Ontario Inc. and 1000682692 Ontario Inc*, Court File No. CV-23-00703350-00CL (Ont SCJ [Commercial List]), Fifth Report of the Monitor KSV Restructuring Inc, Jan 20, 2024 (the “Fifth Report”)

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

*Companies’ Creditors Arrangement Act, RSC 1985, c C-36*

**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.

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  
REALTY LTD., ALEAFIA BRANDS INC., 2672533 ONTARIO INC., 2676063 ONTARIO INC. and 1000682692 ONTARIO INC.

Applicants

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PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE MONITOR**

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)

Tel: 416.862.4908

Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Martino Calvaruso** (LSO# 57359Q)

Tel: 416.862.6665

Email: [mcavarusos@osler.com](mailto:mcavarusos@osler.com)

**Ben Muller**(LSO# 80842N)

Tel: 416.862.5923

Email: [bmuller@osler.com](mailto:bmuller@osler.com)

Fax: 416.862.6666

Lawyers for the Monitor