

**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 JAMES E. WAGNER CULTIVATION
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND
GROWTHSTORM INC.



(each an "Applicant" and collectively, the "Applicants")

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on April 1, 2020 at the Court House, 330 University Avenue, in Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: April 1, 2020

Issued by: Ray Williams **Ray Williams, Registrar**
Local Registrar

Address of 330 University Avenue, 10th Floor
court office: Toronto, ON M5G 1R7 9

TO: **SERVICE LIST**

APPLICATION

1. The Applicants make this application for an Order substantially in the form attached as Schedule "A" hereto (the "**Initial Order**"), *inter alia*:

- (a) abridging the time for service of this notice of application and dispensing with service on any person other than those served;
- (b) declaring that the Applicants are parties to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies;
- (c) appointing KSV Kofman Inc. ("**KSV**" or the "**Proposed Monitor**", and if appointed, the "**Monitor**") as an officer of this Court to monitor the assets, business and financial affairs of the Applicants;
- (d) approving a debtor-in-possession facility in the maximum amount of \$4,000,000.00 (the "**DIP Loan**");
- (e) staying all proceedings taken or that might be taken in respect of the Applicants, their directors and officers, or the Monitor until April 10, 2020, subject to further Order of the Court (the "**Stay of Proceedings**"); and
- (f) granting the following charges over the Applicants' property (collectively, the "**Priority Charges**"):
 - (i) an Administration Charge (as defined in the Initial Order) to a maximum amount of \$500,000.00;
 - (ii) a Directors' Charge (as defined in the Initial Order) to a maximum amount of \$450,000.00; and
 - (iii) a DIP Lender's Charge (as defined in the Initial Order) to a maximum amount of \$800,000.00;

2. Prior to the expiry of the Stay of Proceedings, the Applicants intend to schedule a comeback hearing (the "**Comeback Hearing**") to seek an amended and restated Initial Order (the "**Amended**

and Restated Initial Order"). Among other things, the Amended and Restated Initial Order will seek the following additional relief:

- (a) an extension of the Stay of Proceedings;
- (b) the appointment of a chief restructuring officer;
- (c) approval of the SISP (as defined below);
- (d) approval of the Stalking Horse APA (as defined below);
- (e) an increase to the amount of the Directors' Charge; and
- (f) such further and other relief as this Honourable Court deems just.

3. The grounds for the application are:

GENERAL

- (a) the Applicants are insolvent and are companies to which the CCAA applies;
- (b) the current and contingent claims against the Applicants exceed CAD\$5 million;
- (c) the Applicants are a vertically integrated premium cannabis brand focused on the production of clean and consistent cannabis using their proprietary aeroponic platform;
- (d) the Applicant, James E. Wagner Cultivation Corporation ("**JWC**") is a publicly-traded company governed by the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, and is headquartered in Kitchener, Ontario;
- (e) JWC has been cash flow negative since its inception and has relied on equity and debt financing for funding. To try to achieve profitability, JWC has expended significant resources to expand its cannabis production and processing capacity and now requires additional funding;

- (f) JWC is the ultimate parent company of the Applicants. JWC's principal operating subsidiary is James E. Wagner Cultivation Ltd. ("**JWC Ltd.**") which holds licenses issued by Health Canada authorizing JWC Ltd. to cultivate and sell cannabis and plant seeds for certain regulated uses. JWC Ltd. employs approximately 160 people;
- (g) as a result of severe liquidity issues, the Applicants are generally unable to meet their obligations as they come due and have determined that it is in their best interest and the best interests of their stakeholders to commence CCAA proceedings to ultimately effect a going concern sale of their business;
- (h) the boards of directors of the Applicants resolved to commence these CCAA proceedings (the "**CCAA Proceedings**");
- (i) the Applicants are seeking the Initial Order at this time in order to be able to continue business operations in the ordinary course, and to stabilize and protect their business with a view to ensuring that it emerges from the CCAA Proceedings as a going concern;
- (j) in connection with the commencement of the CCAA Proceedings, the Applicants have entered into an asset purchase agreement with Trichome Financial Corp. ("**Trichome**" or the "**DIP Lender**") for the sale of substantially all of the Applicants' assets (the "**Stalking Horse APA**"). At the Comeback Hearing, the Applicants will be seeking approval to solicit higher and better bids pursuant to bidding procedures and a court-approved sales process (the "**SISP**"). No relief is being sought in connection with the Stalking Horse APA or the SISP in the Initial Order;
- (k) KSV has consented to act as the Monitor in the CCAA Proceedings;

IMMEDIATE NEED FOR A STAY OF PROCEEDINGS

- (l) the Applicants require the Stay of Proceedings to prevent enforcement action by Trichome and other creditors and to respond to an imminent liquidity crisis. The

Stay of Proceedings will provide necessary breathing room to the Applicants who have exhausted their cash on hand and require urgent funding in order to continue operating in the ordinary course of business;

- (m) the Stay of Proceedings will also provide the Applicants with the stability required to develop and implement the SISP with minimal disruption to ongoing business operations. This will allow the Applicants to preserve and maximize the value of their business for the benefit of their stakeholders;
- (n) it is necessary and in the best interest of the Applicants and their stakeholders that the Applicants be afforded the breathing space provided by the CCAA as they attempt to restructure their business while continuing operations in the ordinary course;

URGENT NEED FOR THE DIP LOAN

- (o) the Applicants require the DIP Loan to, among other things, satisfy their immediate payroll obligations, fund the cost of their day-to-day operations, and implement a restructuring strategy pursuant to the SISP;
- (p) absent the DIP Loan, the Applicants will be forced to cease their going concern operations and will not meet their payroll obligations;
- (q) Trichome has agreed to provide the DIP Loan in the maximum principal amount of \$4,000,000.00;
- (r) the proposed DIP Loan is conditional upon the provision of an order of this Court approving the DIP Loan and granting the DIP Lender's Charge up to a maximum amount of \$800,000.00 over all of the Applicants' assets, including all of the Applicants' real property;
- (s) the amount to be funded prior to the Comeback Hearing under the DIP Loan is only that portion that is necessary for the Applicants' continued operations in the ordinary course of business during the Stay of Proceedings;

PRIORITY CHARGES

- (t) the Applicants are seeking the Priority Charges as part of the relief granted by the Initial Order in the following priority:

First – Administration Charge (up the maximum amount of \$500,000.00);

Second – Directors' Charge (up to the maximum amount of \$450,000.00); and

Third – DIP Lender's Charge (up to the maximum amount of \$800,000.00);

- (u) the relief sought in the Initial Order in respect of the Priority Charges is limited to what is reasonably necessary for the Applicants' continued operations in the ordinary course of business during the Stay of Proceedings;

OTHER GROUNDS

- (v) the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (w) Rules 1.04, 2.03, 3.02, 14.05(2) and 16 of the Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended and section 106 of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
- (x) such further and other grounds as counsel may advise and this Honourable Court may permit;

4. The following documentary evidence will be used at the hearing of the application for the Initial Order:

- (a) the Affidavit of Nathan Woodworth, sworn on March 31, 2020, and the exhibits attached thereto;
- (b) the Affidavit of Aiden Nelms, sworn on March 31, 2020, and the exhibits attached thereto;
- (c) the consent of the Proposed Monitor;

- (d) the Pre-Filing Report of the Proposed Monitor dated March 31, 2020; and
- (e) such further and other evidence as counsel may advise and this Court may permit;

5. In addition, it is contemplated that the following documentary evidence will be used at the hearing for the Amended and Restated Initial Order:

- (a) the First Report of the Proposed Monitor to be filed;
- (b) an additional Affidavit to be sworn on behalf of the Applicants in support of the additional relief to be sought; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

April 1, 2020

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Court File No. *CV 20-00639000-0006*

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Proceedings commenced in Toronto

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