

**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
MPX INTERNATIONAL CORPORATION, BIOCANNABIS PRODUCTS LTD.,
CANVEDA INC., THE CING-X CORPORATION, SPARTAN WELLNESS
CORPORATION, MPXI ALBERTA CORPORATION, MCLN INC., AND SALUS
BIOPHARMA CORPORATION**

Applicants

**FACTUM OF THE APPLICANTS
(Amended and Restated Initial Order and SISP Approval Order)**

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FACTUM OF THE APPLICANTS

PART I: OVERVIEW

1. MPX International Corporation (“**MPXI**”), BioCannabis Products Ltd., Canveda Inc., The CinG-X Corporation, Spartan Wellness Corporation, MPXI Alberta Corporation, MCLN Inc., and Salus BioPharma Corporation (each individually, an “**Applicant**”, and collectively, the “**Applicants**”) are seeking the granting of an amended and restated initial order (the “**Amended and Restated Initial Order**”) and an order (the “**SISP Approval Order**”) approving a sale and investment solicitation process (the “**SISP**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

2. On July 25, 2022, the Applicants obtained an initial order (the “**Initial Order**”) under the CCAA, which, among other things, granted an initial ten day stay of proceedings (the “**Stay of Proceedings**”) until and including August 4, 2022 (the “**Stay Period**”), appointed KSV Restructuring Inc. (“**KSV**”) as monitor of the Applicants (in such capacity, the “**Monitor**”), approved interim financing, granted certain limited charges over the property of the Applicants, and relieved MPXI from its obligation to call its annual general meeting of shareholders. The relief sought in the Initial Order was limited to that which was reasonably necessary to maintain the ordinary course business operations of the Applicants during the Stay Period.

3. If granted, the Amended and Restated Initial Order would provide the following relief:

- (a) increase the Directors’ Charge (as defined below) to \$410,000 and the DIP Lenders’ Charge (as defined below) to \$2,670,000 (plus interest, fees and costs);
- (b) extend the Stay of Proceedings to and including October 21, 2022; and
- (c) authorize the Applicants to incur no further expenses in relation to the Securities Filings (as defined below) and provide that none of the directors, officers, employees and other

representatives of the Applicants, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make Securities Filings.

4. The Applicants also seek the SISP Approval Order approving the SISP.

PART II: FACTS

5. The facts underlying this motion are more fully set out in the affidavit of Jeremy Blumer, sworn July 25, 2022 (the “**July 25 Affidavit**”), the affidavit of Jeremy Blumer, sworn July 28, 2022 (the “**July 28 Affidavit**”), the Pre-Filing Report of KSV as proposed monitor dated July 25, 2022, and the First Report of the Monitor dated July 29, 2022 (the “**First Report**”). All capitalized terms used but not defined herein have the meanings ascribed to them in the July 25 Affidavit or the July 28 Affidavit, as applicable.

A. Need for CCAA Protection and the Granting of the Initial Order

6. MPXI is a public company listed on the Canadian Securities Exchange (the “**CSE**”). It is the ultimate parent company to several companies in the cannabis industry in Canada and internationally, including Thailand, South Africa, Switzerland and Malta. MPXI wholly-owns all of the other Applicants, and is the ultimate parent company to several other non-Applicant affiliates.¹ Through its Subsidiaries, its business and operations focus on cannabis production and resale, management consulting for cannabis companies, and cannabis education.

7. Prior to their application for CCAA protection, the Applicants were facing significant liquidity issues, including the inability to meet payroll scheduled to be paid on or around July 29, 2022. As a

¹ The non-Applicant affiliates are: MPX Australia Pty Ltd.; MPXI UK Limited; MPXI Lesotho (Pty) Ltd.; Highland Farms (Pty) Ltd.; MPXI Malta Operations Limited; MPXI Malta Property Limited; Alphafarma Operations Limited; MPXI Malta Holding Limited; MPXI SA Pty Ltd.; First Growth Holding Pty Ltd.; Salus Bioceutical (Thailand) Co., Ltd.; Salus International Management Ltd.; Holyworld SA; and MPXI Labs SA (collectively, the “**Non-Applicant Stay Parties**”). MPXI also has a minority interest in Prime Pharmaceutical Corporation, which in turn controls Primapharm Funding Corporation. MPXI is not involved in the day to day operations of either of these companies, and neither are Applicants or Non-Applicant Stay Parties.

result, the Applicants urgently required the breathing space and stability afforded by the CCAA to run an orderly sale process while maintaining business operations in the ordinary course and in compliance with the cannabis regulatory regime, with a view to maximizing stakeholder value. To that end, the Applicants sought the Initial Order.

8. The Initial Order, among other things:

- (a) appointed KSV as Monitor;
- (b) granted the initial 10-day stay of proceedings in favour of the Applicants and the Non-Applicant Stay Parties (together, the “**MPXI Entities**”);
- (c) approved the Applicants’ ability to borrow under a debtor-in-possession credit facility (the “**DIP Loan**”) pursuant to a term sheet dated July 25, 2022 with certain of the holders of the secured debentures issued pursuant to the debenture indenture dated June 30, 2020, as amended from time to time (the “**Debentureholders**”). The term sheet provided that these Debentureholders, who provided the initial funding, could be joined by any of the Debentureholders up to their pro-rata amount (the “**DIP Lenders**”), whereby the DIP Lenders agreed to provide the DIP Loan in the maximum principal amount of \$2,670,000, of which \$1,200,000 was available during the initial Stay Period;
- (d) granted the following charges (collectively, the “**Charges**”) over the Applicants’ property: (i) the Administration Charge up to a maximum amount of \$300,000; (ii) the Directors’ Charge up to a maximum amount of \$145,000; and (iii) the DIP Lenders’ Charge up to a maximum amount of \$1,200,000; and
- (e) relieved MPXI of any obligation to call and hold its annual general meeting of shareholders (the “**AGM**”) until further order of this Court.

B. The Applicants' Activities Since the Granting of the Initial Order

9. Since the granting of the Initial Order, the Applicants, with the assistance of the Monitor, have taken steps to stabilize and continue their ordinary course business operations. In that time, a portion of the DIP Loan was advanced to allow the Applicants to pay their critical expenses, including payroll, and to fund the Company's operations in Thailand through Salus Bioceutical (Thailand) Co., Ltd. ("**Salus Bioceutical**"), a critical asset of the MPXI Entities.

10. With the assistance of the Monitor, the Applicants have continued ordinary course operations, disseminated a press release through The Newswire to inform investors and other interested parties that the Applicants had obtained protection pursuant to the CCAA and intend to run a SISP, hosted virtual town halls with employees and Debentureholders, notified Health Canada of these proceedings, developed the SISP and prepared materials for the hearing of this motion.²

C. The SISP

11. The SISP was developed by the Applicants and the Monitor, in consultation with the DIP Lenders. Pursuant to the proposed SISP, the Monitor, with the assistance of the Applicants, will solicit interest in, and opportunities for a sale or investment in the MPXI Entities' assets and business, in whole or in part. The SISP was designed to be broad and flexible and contemplates one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of the MPXI Entities as a going concern or a sale of all, substantially all or one or more components of the property of the MPXI Entities (the "**Property**") and the MPXI Entities' business operations (the "**Business**") (each an "**Opportunity**").³

12. The SISP provides for three milestones, which consist of: (i) the solicitation of interest from parties, which will be commenced by the Monitor on August 5, 2022, (ii) a binding offer deadline of

² Affidavit of Jeremy Blumer sworn July 28, 2022 at para 19 [July 28 Affidavit].

³ July 28 Affidavit at para 25.

5pm Eastern Time on September 8, 2022 (the “**Binding Offer Deadline**”), and (iii) the deadline to notify Qualified Bidders of the selection of a Successful Bid(s) (each as defined below), which is September 12, 2022.⁴

13. The SISP requires the Monitor, with the assistance of the Applicants, to prepare a list of known potential bidders (“**Known Potential Bidders**”). The Monitor will also apprise the market of the SISP by arranging for notice of the SISP to be published in the Globe and Mail (National Edition) and such international publications and/or journals as the Monitor determines appropriate.⁵

14. The Monitor, with the assistance of the Applicants, will prepare a process summary (the “**Teaser Letter**”), describing the Opportunity and the SISP and inviting recipients of the Teaser Letter to express their interest. The Applicants will prepare a non-disclosure agreement (the “**NDA**”) in form and substance satisfactory to the Monitor. If the SISP Order is granted, the Monitor will then send the Teaser Letter and the NDA to each Known Potential Bidder by no later than August 5, 2022.⁶

15. Any party who wishes to participate in the SISP (a “**Potential Bidder**”) must provide the Monitor and the Applicants with an NDA executed by it, and a letter setting forth the identity of, and contact information for, such Potential Bidder. Parties who do so will be deemed to be “**Qualified Bidders**” if the Monitor, in consultation with the Applicants, determines such person is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP.⁷

16. Qualified Bidders that wish to make a formal offer to purchase or make an investment in the MPXI Entities or their Property or Business shall submit a binding offer (a “**Binding Offer**”, which

⁴ July 28 Affidavit at para 26.

⁵ July 28 Affidavit at para 30.

⁶ July 28 Affidavit at para 32.

⁷ July 28 Affidavit at paras 34-35.

includes a Binding Sale Offer and Binding Investment Offer, each as defined below) that complies with all of the following requirements to the Monitor and the Applicants so as to be received by them no later than the Binding Offer Deadline. A Binding Offer must be made by way of binding, definitive transaction document(s) that is/are executed by the Qualified Bidder, and must indicate whether the Qualified Bidder is making a Binding Sale Offer, or a Binding Investment Offer.⁸

17. A “**Binding Sale Offer**” is an offer to acquire all, substantially all or a portion of the Property and/or Business. Among other things, a Binding Sale Offer must contain: (i) the purchase price, including details of any liabilities to be assumed by the Qualified Bidder and key assumptions supporting the valuation; (ii) a description of the Property subject to the transaction and any of the Property to be excluded; (iii) the proposed treatment of employees; (iv) the key terms and provisions to be included in any order approving the Binding Sale Offer, including whether such order would be a “reverse vesting order”; (v) evidence of the financial capability of the Qualified Bidder to consummate the transaction and the expected structure and financing of the transaction; (vi) any anticipated approvals required to close the transaction; and (vii) any other information as reasonably requested by the Applicants or the Monitor.⁹

18. A “**Binding Investment Offer**” is an offer to make an investment in, restructure, reorganize or refinance the Business and/or one or more of the MPXI Entities. Among other things, a Binding Investment Offer must contain: (i) the aggregate amount of the equity and/or debt investment to be made in the Business/the Applicants in Canadian dollars; (ii) key assumptions supporting the valuation; (iii) the key terms and provisions to be included in any order approving the Binding Investment Offer, including whether such order would be a “reverse vesting order”; (iv) the underlying assumptions regarding the pro forma capital structure; (v) a specific indication of the sources of capital for the

⁸ July 28 Affidavit at para 37.

⁹ July 28 Affidavit at para 39.

Qualified Bidder and the structure and financing of the transaction; (vi) any anticipated approvals required to close the transaction; and (vii) any other information as reasonably requested by the Applicants or the Monitor.¹⁰

19. The Applicants and the Monitor, in consultation with and with the approval of the DIP Lenders (subject to restrictions around the disclosure of information to the DIP Lenders discussed below) will: (i) review and evaluate each Binding Offer, provided that each Binding Offer may be negotiated among the Applicants, in consultation with the Monitor, and the applicable Qualified Bidder, and may be amended, modified or varied to improve such Binding Offer as a result of such negotiations; and (ii) identify the highest or otherwise best Binding Offer(s) (the “**Successful Bid(s)**”, and a Qualified Bidder making such Successful Bid, a “**Successful Bidder**”) for any particular Property or the Business of the MPXI Entities in whole or part.

20. The determination of any Successful Bid by the Applicants, in consultation with the Monitor and the DIP Lenders, shall be subject to approval by the Court. The Monitor must notify each Qualified Bidder as to whether its Binding Offer has been selected as a Successful Bid by no later than September 12, 2022 at 5pm Eastern Time or at such later time as the Monitor, in consultation with and with the approval of the Applicants and the DIP Lenders, deems appropriate.¹¹

21. The SISP has been structured to ensure that the Applicants have the latitude and flexibility to explore all possible restructuring options. At any time, the Applicants may, with the consent of the Monitor and in consultation with the DIP Lenders, bring a motion to the Court to seek approval of:

- (a) a sale of, or investment in, all or part of the Property or the Business whether or not such sale or investment is in accordance with the terms or timelines set out in the SISP; and/or

¹⁰ July 28 Affidavit at para 40.

¹¹ July 28 Affidavit at para 43.

- (b) a stalking horse agreement in respect of some or all of the Property or Business and related bid procedures in respect of such Property or Business.¹²

22. This SISP also contemplates that after the Binding Offer Deadline, if none of the Binding Offers are acceptable to the DIP Lenders, the Applicants, with the consent of the Monitor and the DIP Lenders, may terminate the SISP and accept a credit bid (or such other bid) from the Debenture Trustee on behalf of the Debentureholders, the Debentureholders or the DIP Lenders for the Business and the Property.¹³

23. To ensure fairness, neither the Applicants nor the Monitor shall provide the Debenture Trustee (on behalf of the Debentureholders) or any Debentureholder (including in its capacity as a DIP Lender) with information relating to the Binding Offers, other than Subject Information (as defined in the SISP), unless and until the Debenture Trustee and/or such Debentureholder(s) confirm to the Applicants and the Monitor in writing that if they submit a credit bid in the SISP, such bid shall not be for an amount greater than the amount owing under the Debentures, plus all amounts ranking in priority to the Debentures.¹⁴

PART III: ISSUES

24. The issues to be considered on this motion are whether:

- (a) this Court should extend the Stay Period as granted in the Initial Order;
- (b) this Court should increase the amount of the Directors' Charge and the DIP Lenders' Charge;
- (c) this Court should grant MPXI relief from securities reporting and filing obligations; and
- (d) the SISP should be approved.

¹² July 28 Affidavit at para 43.

¹³ July 28 Affidavit at para 47.

¹⁴ July 28 Affidavit at para 48.

A. The Stay Period should be Extended

25. As discussed above, the Initial Order granted the Applicants and the Non-Applicant Stay Parties the Stay of Proceedings. The Stay Period is set to expire on August 4, 2022. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period it “considers necessary”.¹⁵ To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.¹⁶

26. A stay of proceedings is appropriate where it provides the debtors with breathing room while they seek to restore their solvency and emerge from their restructuring on a going concern basis.¹⁷ Further, a stay of proceedings will be appropriate where it advances the purposes of the CCAA – including “avoiding the social and economic losses resulting from the liquidation of an insolvent company”.¹⁸

27. As detailed in the July 25 Affidavit, the Applicants and the Non-Applicant Stay Parties require the Stay of Proceedings to prevent potential enforcement action from creditors, preserve the value of their business, and maintain their ordinary course operations without disruption.¹⁹ The Applicants now seek an extension of the Stay Period until October 21, 2022. The Stay of Proceedings continues to be necessary for reasons set out above, and will also be required to allow the Monitor and the Applicants to complete the SISF, which will preserve and maximize the value of the MPXI Entities’ business for their stakeholders.²⁰

28. Without the Stay of Proceedings, the MPXI Entities would risk enforcement action that could result in an immediate cessation of their business. This would likely result in a liquidation or bankruptcy of the Applicants, the antithesis of the CCAA.

¹⁵ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 s 11.02(2) [CCAA].

¹⁶ *Ibid* at s 11.02(3).

¹⁷ *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 14 [*Century Services*]; *Target Canada Co*, 2015 ONSC 303 at para 8.

¹⁸ *Century Services*, *ibid* at para 70.

¹⁹ Affidavit of Jeremy Blumer sworn July 25, 2022 at para 105 [July 25 Affidavit].

²⁰ July 28 Affidavit at para 20.

29. Since the granting of the Initial Order, the Applicants have acted and continue to act in good faith and with due diligence to advance their restructuring under the CCAA, while maintaining their ordinary course operations. The Monitor supports the requested extension of the Stay Period, and the Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of the CCAA Proceedings through the end of the proposed extension.²¹

B. Increases to the Amount of the Directors' Charge and the DIP Lenders' Charge

30. Pursuant to the Initial Order, the Applicants obtained an Administration Charge, Directors' Charge, and DIP Lenders' Charge in the amounts of \$300,000, \$145,000 and \$1,200,000 respectively. The quantum of each of the Charges sought in the Initial Order was informed by section 11.001 and subsection 11.2(5) of the CCAA, and the priority charges were limited to that which was reasonably necessary for the Applicants' continued operations in the ordinary course of business during the Stay Period. The Applicants are now seeking to increase the Directors' Charge and the DIP Lenders' Charge to the maximum amounts of \$410,000 and \$2,670,000 (plus interest, fees and costs), respectively. No increase is sought in respect of the Administration Charge.

1. The Amount of the Directors' Charge Should be Increased

31. The Initial Order granted a charge over the Property in favour of each of the Applicants' directors and officers (collectively, the "**Directors and Officers**") in respect of obligations and liabilities that they may incur after the commencement of the CCAA Proceedings up to a maximum amount of \$145,000.

32. The amount of the Directors' Charge at the time of the Initial Order was based on the Directors' and Officers' estimated potential exposure during the initial Stay of Proceedings. Pursuant to the Amended and Restated Initial Order, the Applicants seek to increase the Directors' Charge to \$410,000, the estimated maximum liability of the Directors and Officers during the CCAA Proceedings.²²

²¹ July 28 Affidavit at para 21, First Report of the Monitor dated July 29 at section 7.0 [Monitor's Report].

²² July 28 Affidavit at para 11, Monitor's Report at section 8.3.

33. In granting the Initial Order, this Court was satisfied that the requirements of section 11.51 of the CCAA were met, including that adequate insurance coverage could not be obtained at a reasonable cost.²³

34. The requirements of section 11.51 of the CCAA continue to be satisfied, given that:

- (a) the secured creditors likely to be affected by the Directors' Charge (who were originally notified of the hearing for the Initial Order) will be provided with notice thereof;
- (b) the Directors' Charge is necessary to ensure the continued involvement of the Directors and Officers;
- (c) the Directors' Charge only covers obligations and liabilities incurred after the Initial Order and does not cover wilful misconduct or gross negligence;
- (d) the Applicants require the active involvement of the Directors and Officers in order to continue their business operations; and
- (e) the Monitor and the DIP Lenders are supportive of the Directors' Charge and believes that its quantum is reasonable in the circumstances.²⁴

2. The Amount of the DIP Lenders' Charge Should be Increased

35. Pursuant to the Initial Order, the DIP Lenders were granted a charge on the Property up to a maximum amount of \$1,200,000 (the "**DIP Lenders' Charge**"). The quantum of the DIP Lenders' Charge sought in the Initial Order was commensurate with the amount of the DIP Loan reasonably necessary to fund the operations of the Applicants during the Stay Period, as well as to provide urgently-needed funding to Salus Bioceutical so that it could continue its operations during the Stay Period.²⁵

²³ CCAA, *supra* note 15 at s 11.51(3).

²⁴ July 28 Affidavit at paras 10-11, 17; July 25 Affidavit at paras 123-125; Monitor's Report at section 8.3.

²⁵ July 25 Affidavit at para 120.

36. The criteria supporting the granting of the DIP Loan and the corresponding DIP Lenders' Charge in the Initial Order continue to apply – the Applicants are simply seeking to increase the quantum of the DIP Lenders' Charge up to a maximum amount of \$2,670,000 (plus interest, fees and costs), which is the maximum amount of the DIP Loan.

37. As required by subsection 11.2(1) of the CCAA, notice of the increase being sought has been provided to the secured creditors likely to be affected by it.²⁶ Further, the DIP Lenders' Charge does not secure obligations incurred prior to the Initial Order. Additionally, the non-exhaustive factors enumerated in subsection 11.2(4) of the CCAA considered by courts when granting a charge in respect of interim financing support the proposed increase to the DIP Lenders' Charge. These factors include:

- (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.²⁷

²⁶ July 28 Affidavit at para 17.

²⁷ [CCAA](#), *supra* note 15 at s 11.2(4).

38. The considerations that satisfied these criteria at the Initial Order remain applicable, the most salient of which include that:

- (a) absent the DIP Loan, the Applicants and their stakeholders would suffer material prejudice, as the Applicants would be unable to meet their obligations and would face the immediate cessation of their business;
- (b) the DIP Loan is being funded by a significant portion of the major secured creditors of the Applicants, and therefore has their support;
- (c) the Monitor is supportive of the proposed increase to the DIP Lenders' Charge and does not believe that creditors will be materially prejudiced as a result of its approval;
- (d) the DIP Loan and corresponding DIP Lenders' Charge will preserve the value and going concern operations of the Applicants' business, which is in the best interests of the Applicants and their stakeholders;
- (e) it is a condition of the DIP Loan that all funds advanced thereunder be secured by the DIP Lenders' Charge;
- (f) the quantum of the DIP Loan and the DIP Lenders' Charge are appropriate having regard to the Applicants' cash-flow statement.²⁸

C. MPXI Should be Authorized to Incur No Further Costs in Connection with its Securities Filing Obligations

39. Pursuant to the Amended and Restated Initial Order, the Applicants are seeking relief to dispense with certain securities filing requirements. Specifically, the Applicants seek authorization for MPXI to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law

²⁸ July 28 Affidavit at paras 12-17; Monitor's Report at section 8.2.

respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the CSE.²⁹ The Amended and Restated Initial Order also provides that none of the Directors and Officers, employees and other representatives of the Applicants, and the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by MPXI to make Securities Filings.³⁰ Similar relief has been granted for reporting issuers commencing proceedings under the CCAA.³¹

40. The Applicants believe that incurring the time and costs associated with the Securities Filings would detract from their successful restructuring. Further, stakeholders will not be prejudiced given that detailed financial and other information on the Applicants will continue to be publicly available through materials filed in these CCAA Proceedings. For the same reasons, this Court previously relieved MPXI from its obligation to call its AGM.

41. Finally, the language in the proposed Amended and Restated Initial Order is limited to what is necessary for the Applicants to focus on their restructuring, and does not overreach by purporting to prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the relevant securities provisions.

42. For the reasons above, the Applicants believe that this relief is necessary and appropriate in the circumstances.

²⁹ July 28 Affidavit at para 22.

³⁰ July 28 Affidavit at para 22.

³¹ [CannTrust Holdings Inc., Re, initial order issued March 31, 2020 \[Court File No. CV-20-00638930\]](#) at paras 46-47; [Pure Global Cannabis, Inc., Re, initial order issued March 19, 2020 \[CV-20-00638503-00CL\]](#) at para. 49; [Old PSG Wind-down Ltd., Re, order issued December 20, 2017 \[Court File No. CV-16-11582-00CL\]](#) at para. 12.

D. The SISP Should be Approved

43. The remedial nature of the CCAA confers broad powers to facilitate restructurings, including the power to approve a sale process in relation to a CCAA debtor's business and assets, prior to or in the absence of a plan of compromise and arrangement.³²

44. In *Nortel Networks Corporation (Re)*, the Court identified several factors to be considered in determining whether to approve a sale process:

- (a) Is a sale warranted at this time?
- (b) Will the sale be of benefit to the whole "economic community"?
- (c) Do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?
- (d) Is there a better viable alternative?³³

45. While not technically applicable at the sale process stage, the factors set out in subsection 36(3) of the CCAA have also been considered when deciding whether to approve a sale process:

- (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 its opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

³² [2009] O.J. No 3169 (Ont. Sup. Ct.) [Commercial List] at para 48 [*Nortel*]; *CCAA*, supra note 15 at s 11, s 36.

³³ *Nortel*, *ibid* at para 49; *Brainhunter Inc. (Re)*, 2009 CanLII 7233 (Ont. Sup. Ct.) [Commercial List] at para 13; *Danier Leather Inc. (Re)*, 2016 ONSC 1044 at para 23.

- (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.³⁴

46. In consideration of the above criteria and factors, the SISP should be approved as:

- (a) a sale of the Business or Property will maximize value for stakeholders;
- (b) to date, no creditor has objected to the SISP (notwithstanding that the Applicants' previewed their intention to seek approval of the SISP in the July 25 Affidavit and in the press release disseminated through The Newswire) and in the circumstances the Applicants do not believe any creditor has a reasonable basis to object to the SISP;
- (c) the SISP will benefit the whole economic community as the SISP is designed and intended to solicit the highest and best bid, and provide a market test for the benefit of all stakeholders;
- (d) the DIP Lenders have been consulted and involved throughout and are supportive of the SISP; and
- (e) the Monitor is supportive of the approval of the SISP.

47. As discussed above, the SISP allows for credit bidding with certain requirements in place to ensure fairness for all stakeholders. The Applicants may accept a bid (including a credit bid) from the

³⁴ [U.S. Steel Canada Inc. \(Re\), 2015 ONSC 2523](#) at para 8.

Debenture Trustee on behalf of the Debentureholders, the Debentureholders or the DIP Lenders for the Business and the Property if none of the Binding Offers are acceptable to the DIP Lenders. The SISP ensures fairness in this process by limiting the information that may be shared with the potential credit bidders. Pursuant to the SISP, other than the Subject Information (as defined in the SISP), the Applicants and the Monitor are prohibited from providing key information relating to the Binding Offers to the Debenture Trustee or Debentureholders unless the Debenture Trustee and/or such Debentureholder confirms in writing that any credit bid will not be for an amount greater than the amount owing under the Debentures plus all amounts ranking in priority to the Debentures.

48. The Applicants submit that the SISP provides an appropriate framework that will fairly canvass the market to obtain the best offer for the Business or Property which will maximize value for the Applicants' stakeholders.

49. For the above reasons, the Applicants submit that the SISP should be approved.

PART IV: RELIEF REQUESTED

50. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and requests that this Court grant the proposed form of Amended and Restated Initial Order and SISP Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



August 2, 2022

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [Brainhunter Inc. \(Re\)](#), 2009 CanLII 7233 (Ont. Sup. Ct.) [Commercial List]
2. [Danier Leather Inc. \(Re\)](#), 2016 ONSC 1044
3. [CannTrust Holdings Inc., Re](#), initial order issued March 31, 2020 [Court File No. CV-20-00638930]
4. [Century Services Inc v Attorney General \(Canada\)](#), 2010 SCC 60
5. [Nortel Networks Corporation \(Re\)](#), [2009] O.J. No 3169 (Ont. Sup. Ct.) [Commercial List]
6. [Old PSG Wind-down Ltd., Re](#), order issued December 20, 2017 [Court File No. CV-16-11582-00CL]
7. [Pure Global Cannabis, Inc., Re](#), initial order issued March 19, 2020 [CV-20-00638503-00CL]
8. [Target Canada Co](#), 2015 ONSC 303
9. [U.S. Steel Canada Inc, \(Re\)](#), 2015 ONSC 2523

SCHEDULE B – STATUTES RELIED ON

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.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

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.

Meaning of regulatory body

11.1 (1) In this section, regulatory body means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

Section 11.2

Interim financing

(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.

Section 11.51

Security or charge relating to director's indemnification

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

Priority

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

Restriction — indemnification insurance

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

Negligence, misconduct or fault

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

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.

**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 MPX INTERNATIONAL CORPORATION,
BIOCANNABIS PRODUCTS LTD., CANVEDA INC., THE CING-X CORPORATION, SPARTAN WELLNESS
CORPORATION, MPXI ALBERTA CORPORATION, MCLN INC., AND SALUS BIOPHARMA CORPORATION**

Court File No.: CV-22-00684542-00CL

ONTARIO
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(COMMERCIAL LIST)

Proceedings Commenced in Toronto

FACTUM OF THE APPLICANTS
(Amended and Restated Initial Order and
SISP Approval Order)

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