

COURT FILE NUMBER

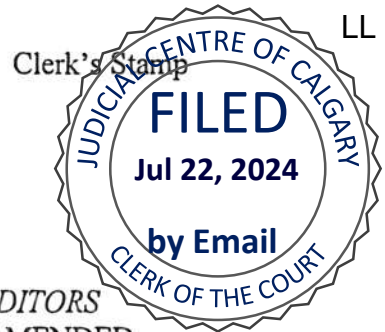
2401-09688

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY



IN THE MATTER OF THE *COMPANIES' CREDITORS' ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DELTA 9 CANNABIS INC., DELTA 9 LOGISTICS INC., DELTA 9 BIO-TECH INC., DELTA 9 LIFESTYLE CANNABIS CLINIC INC. and DELTA 9 CANNABIS STORE INC.

C71095
Jul 24, 2024
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APPLICANTS

DELTA 9 CANNABIS INC., DELTA 9 LOGISTICS INC., DELTA 9 BIO-TECH INC., DELTA 9 LIFESTYLE CANNABIS CLINIC INC. and DELTA 9 CANNABIS STORE INC.

DOCUMENT

AFFIDAVIT OF MARK TOWNSEND

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Miller Thomson LLP

Toronto

Suite 5800, 40 King Street West
Toronto, ON M5H 3S1

Calgary

43rd Floor, 525 – 8th Avenue SW
Calgary, AB T2P 1G1

FIAT: Let the Clerk of the Court of King's Bench of Alberta file this Affidavit after noon on the day after the filing deadline.

Dated this 22nd day of July, 2024

J.C.K.B.A.

D. TUGNACI

Attention: Larry Ellis / James Reid / Matthew Cressatti
/ Monica Faheim

Telephone: (416) 597-4311

Email: lellis@millerthomson.com /
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mfaheim@millerthomson.com

mc

78486363.4

AFFIDAVIT OF MARK TOWNSEND
Sworn July 19, 2024

I, Mark Townsend, of the City of Vancouver, in the Province of British Columbia, SWEAR AND SAY THAT:

1. I am the Managing Partner of Broderick Capital Corp. ("**Broderick Capital**"), a mergers & acquisitions and capital raising advisory firm, and advisor to 2759054 Ontario Inc. o/a Fika Herbal Goods ("**Fika**"). I, through my personal corporation 1198184 B.C. Ltd., am also the proposed Chief Restructuring Officer (in such capacity, the "**CRO**"). As such, I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief, in which case, I verily believe the same to be true.
2. I swear this affidavit in support of an application by Delta 9 Cannabis Inc. ("**D9 Parent**"), Delta 9 Logistics Inc. ("**Logistics**"), Delta 9 Bio-Tech Inc. ("**Bio-Tech**"), Delta 9 Lifestyle Cannabis Clinic Inc. ("**Lifestyle**") and Delta 9 Cannabis Store Inc. ("**Store**"; collectively, the "**Applicants**" or "**Delta 9**") for the relief sought in its Application returnable on July 24, 2024 (the "**Comeback Hearing**"), including an amended and restated initial order ("**ARIO**").
3. I have reviewed the affidavit of John Arbuthnot sworn July 12, 2024 (the "**First Arbuthnot Affidavit**") and the affidavit of John Arbuthnot sworn July 18, 2024 (the "**Second Arbuthnot Affidavit**") in advance of swearing this Affidavit.
4. Unless otherwise indicated, monetary references in this Affidavit are references to Canadian dollars.
- A. **Fika's Background and Expertise**
5. Fika is a cannabis retailer with 144 Canadian retail locations in five provinces and one territory, operated through various subsidiaries. Fika has been in the cannabis retail industry since July 2021.
6. Fika has experience acquiring cannabis retailers through insolvency proceedings. In particular, in September 2023, Fika acquired Fire & Flower Inc. ("**Fire & Flower**")



through a proceeding pursuant to the *Companies' Creditors Arrangement Act* (Canada) ("CCAA") in Ontario. Fire & Flower was a major Canadian cannabis retailer, with approximately 91 retail locations across Canada when it sought creditor protection.

7. Fika successfully acquired Fire & Flower in a going-concern CCAA transaction following an auction at the conclusion of a court-ordered sales and investment solicitation process. Fika successfully outbid Alimentation Couche-Tard Inc., a major international retailer, at the Fire & Flower auction. Fika paid approximately \$36 million in cash to acquire Fire & Flower. The Fire & Flower transaction closed in September 2023.
8. Fika has continued to operate Fire & Flower since September 2023, with retail operations in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and the Yukon.
9. Since September 2023, Fika has successfully closed three acquisitions, totalling over 45 cannabis retail locations, with an aggregate transaction value of over \$27 million.
10. Fika has a proven track record of closing transactions of cannabis companies and successfully restructuring and operating cannabis retailers as a going concern.
11. As discussed in the First Arbuthnot Affidavit at paragraphs 30 and 217-219, Fika and Delta 9 have entered into a restructuring term sheet (the "**Restructuring Term Sheet**") pursuant to which Fika has agreed to acquire Delta 9 and all of its assets via a Court-approved plan of compromise or arrangement (the "**Proposed Plan**") in exchange for approximately \$50 million of consideration, including an interim financing facility of approximately \$16 million (the "**Interim Financing**").
12. As discussed at paragraph 219 (g) of the First Arbuthnot Affidavit, in respect of the Interim Financing, should the relief sought at the Comeback Hearing be granted, Fika has committed to providing up to \$13 million to Delta 9's senior secured lender following the ARIO, and \$3 million to Delta 9 to fund its operations in this proceeding in accordance with a cash-flow forecast (the "**Cash Flow Forecast**").
13. Fika is ready, willing, and able to provide the Interim Financing on the terms set out in the Interim Financing Term Sheet should this Court grant the ARIO.

B. Qualifications to Act as CRO

14. In my capacity as Managing Partner of Broderick Capital, and in my previous roles in the finance industry, I have over 14 years of experience in investment banking, private equity, capital markets, corporate development, and corporate strategy.
15. I have been directly involved in over \$2 billion of corporate acquisitions and financing transactions, and have experience advising both public and private companies.
16. I have worked as an advisor to Fika over the last six months. Over this time I have evaluated several potential retail cannabis opportunities for Fika, including Delta 9.
17. I have been involved in Fika's efforts to partner with Delta 9 since January 2024. This has involved extensive discussions with Delta 9's management, conducting reviews of Delta 9's financial metrics, conducting site visits at Delta 9's retail locations and other facilities, and preparing a valuation of the Delta 9 business.
18. Since spring 2024 I have worked with Delta 9's management on a regular basis to develop a financial model of the Delta 9 business. Fika is not able to acquire Bio-Tech's Health Canada cannabis cultivation license because Ontario law prohibits a cannabis retailer from also being a cultivator. I have therefore also assisted Delta 9 in preparing a financial model and marketing materials to solicit interest in Bio-Tech from other potential buyers.
19. I have worked with Delta 9 in preparing initial analyses of the Delta 9 debt and developing a comparison case for liquidating Delta 9 versus conducting a restructuring transaction. I have also assisted with the preparation of the Cash Flow Forecast.
20. In my time working with Delta 9 and its management I have acquired an in-depth knowledge and understanding of Delta 9's finances and operations, such that I am well positioned to act as CRO.

C. The Break Fee

21. As discussed at paragraph 219 (q) of the First Arbutnot Affidavit, the Restructuring Term Sheet requires that Delta 9 pay a \$1,500,000 "break fee" (the "**Break Fee**") to Fika in the

event that this Court approves any plan of compromise, arrangement, or other transaction that would preclude Fika from completing its transaction with Delta 9. or if Delta 9 otherwise enters into any agreement that would preclude the Proposed Plan from being sanctioned.

22. The purpose of the Break Fee is to protect Fika for the extensive costs and time that it has invested since January 2024 to help restructure Delta 9 for the benefit of Delta 9's stakeholders in the event that anyone other than Fika acquires Delta 9.
23. Since December 2023 Fika has been working with Delta 9 to review its financial performance and prepare a valuation. Fika has had an exclusive acquisition relationship with Delta 9 since March 2024, when at that time the intention was for Fika to acquire Delta 9 through a plan of arrangement pursuant to the *Business Corporations Act* (British Columbia).
24. Fika has, since January 2024, invested a significant amount of employee time and capital towards Delta 9's restructuring effort through an acquisition by Fika. Fika and its advisors, including me, have made numerous trips across Canada to conduct meetings with Delta 9 executives, to undertake due diligence, to speak with potential investors and to meet with Delta 9's stakeholders in order to find the best path forward for the business, including working to assist with marketing Bio-Tech as a going-concern business.
25. Fika has introduced approximately 15 potential buyers of Bio-Tech to Delta 9 management in an effort to maximize the value of Bio-Tech and maximize returns for stakeholders through a going-concern transaction.

D. Conclusion

26. I swear this Affidavit in support the relief sought by Delta 9 at the Comeback Hearing and for no other or improper purpose.
27. I did not swear this Affidavit in the physical presence of the Notary Public, but rather via videoconferencing in accordance with the process for remote commissioning of affidavits set out in the Notice to the Profession & Public: Remote Commissioning of Affidavits for



Use in Civil and Family Proceedings During the COVID-19 Pandemic, dated March 25,
2020.

SWORN BEFORE ME via videoconference)
with the affiant at Vancouver, British Columbia)
and the Notary Public at Toronto, Ontario this)
19th day of July, 2024)



MATTHEW CRESSATTI
Notary Public in and for the Province of
Ontario

MARK TOWNSEND

COURT FILE NUMBER 2401-09688

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED

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APPLICANTS DELTA 9 CANNABIS INC., DELTA 9 LOGISTICS INC.,
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/ Monica Faheim

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mccressatti@millerthomson.com /
mfaheim@millerthomson.com

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2020.

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with the affiant at Vancouver, British Columbia)
and the Notary Public at Toronto, Ontario this)
19th day of July, 2024)
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MARK TOWNSEND

MATTHEW CRESSATTI
Notary Public in and for the Province of
Ontario