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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 THE 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.

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 **BENCH BRIEF OF THE APPLICANTS IN SUPPORT  
OF APPROVAL AND VESTING ORDERS**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

MLT AIKINS LLP  
2100, 222 - 3<sup>rd</sup> Ave SW  
Calgary, AB T2P 0B4  
Telephone: 403.693.5420/780-969-3501  
Attention: Ryan Zahara/Molly McIntosh  
Email: [rzahara@mltaikins.com](mailto:rzahara@mltaikins.com)  
[mmcintosh@mltaikins.com](mailto:mmcintosh@mltaikins.com)  
File: 136555-34

**APPLICATION BEFORE THE HONOURABLE JUSTICE M.A. MARION  
TO BE HELD ON JANUARY 10, 2025 AT 10:00 A.M. ON THE COMMERCIAL LIST**

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## I. OVERVIEW

1. This Brief is submitted on behalf of Delta 9 Cannabis Inc. ("**Delta 9**"), Delta 9 Logistics Inc. ("**Logistics**"), Delta 9 Bio-Tech Inc. ("**Bio-Tech**"), Delta 9 Lifestyle Cannabis Inc. ("**Lifestyle**"), and Delta 9 Cannabis Store Inc. ("**Store**", and together with D9 Parent, Logistics, Bio-Tech, and Lifestyle, the "**Delta 9 Group**" or the "**Applicants**"), in support of their application for:
  - a. approval of the sale transaction (the "**659 Transaction**") contemplated in the Asset Purchase Agreement between Bio-Tech and 65999362 Canada Ltd. ("**659**") dated December 28, 2024 (the "**APA**"), regarding the Land (defined below);
  - b. approval of the sale transaction (the "**Simply Transaction**" and together with the 659 Transaction, the "**Proposed Transactions**") contemplated in the Share Purchase Agreement (the "**SPA**") between Delta 9, Bio-Tech and Simply Solventless Concentrates Ltd. ("**Simply**") dated December 28, 2024, regarding the Bio-Tech Shares (defined below); and
  - c. a temporary sealing order for the Confidential Appendices (the "**Confidential Materials**") to the Sixth Report of the Monitor, dated January 3, 2025 (the "**Sixth Report**").
2. The Proposed Transactions are the result of an extensive marketing and sales process in respect of the subject assets (collectively, the "**Purchased Assets**"), offer the best price for the Purchased Assets, and are supported by the Monitor and 2759054 Ontario Inc. operating as Fika Herbal Goods (the "**Plan Sponsor**").
3. The Simply Transaction involves a sale of Bio-Tech's shares that will result in the Excluded Contracts, Excluded Assets, and Excluded Liabilities (each as defined in the SPA) being transferred to a corporation incorporated or to be incorporated under the laws of Canada or a province thereof ("**ResidualCo**") and Simply acquiring all of the outstanding shares of Bio-Tech, such that at the conclusion of the transaction Simply will be the sole shareholder of Bio-Tech.
4. The Proposed Transactions will not generate sufficient proceeds to satisfy claims with a priority lower than the first secured creditor and the Interim Lender and the Interim Lender's Charge (each as defined in the Amended and Restated Initial Order (the "**ARIO**") granted by this Honourable Court on July 24, 2024). The SISF has shown that there is no

value beyond the Proposed Transactions and no economic basis on which Bio-Tech could present a plan to its creditors. The only other option is liquidation, likely through bankruptcy.

5. The Monitor supports the Proposed Transactions and the reverse vesting order structure for the SPA, which is necessary to preserve the licenses needed to operate the highly-regulated cannabis business of Bio-Tech. Stakeholders are no worse off under the proposed reverse vesting order structure than they would be under a traditional vesting order. There is no viable alternative to the reverse vesting structure to monetize the ongoing business operations of Bio-Tech that would produce a more favourable economic result.
6. The Proposed Transactions, including the sale approval and vesting order for the 659 Transaction and the approval and reverse vesting order for the Simply Transaction, satisfy all applicable legal requirements and are in the best interests of Bio-Tech and its stakeholders and should be granted.
7. The Confidential Materials, which contain confidential information relating to the sales process, should be sealed and kept confidential until the Proposed Transactions have closed to avoid potential prejudice to future efforts to liquidate the Purchased Assets, should the Proposed Transactions not close.

## **II. FACTUAL BACKGROUND**

8. The facts and background for the Application are set out more fully in the First Affidavit of John Arbuthnot IV, sworn on July 12, 2024 (the “**First Affidavit**”), the Seventh Affidavit of John Arbuthnot IV, sworn on December 30, 2024 (the “**Seventh Affidavit**”) and the Sixth Report and are summarized below.
9. Capitalized terms used herein that are not otherwise defined have the meaning ascribed to them in the Application and the Seventh Affidavit.

### **A. Status of the CCAA Proceedings**

10. On July 15, 2024, the Delta 9 Group sought and obtained an order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the

“**CCAA**”). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed Monitor of the Applicants (the “**Monitor**”).<sup>1</sup>

11. On July 24, 2024, the Honourable Associate Chief Justice K.G. Nielsen granted the ARIO which, among other things, extended the initial stay period until September 15, 2024, and approved a sales investment and solicitation process (the “**SISP**”) in respect of the business and/or assets of Bio-Tech (the “**SISP Order**”).<sup>2</sup>
12. On September 11, 2024, the Honourable Justice C. D. Simard granted an Order extending the stay of proceedings pursuant to the ARIO up to and including November 1, 2024.<sup>3</sup>
13. On November 1, 2024, the Honourable Justice M.A. Marion granted an Order further extending the stay of proceedings pursuant to the ARIO up to and including January 31, 2025.<sup>4</sup>

## **B. Bio-Tech and the Land**

14. The Delta 9 Group is a vertically integrated group of companies in the business of cannabis cultivation, processing, extraction, wholesale distribution and retail sales.<sup>5</sup>
15. Delta 9 is a publicly traded company and the parent company of Bio-Tech, Logistics and Store.<sup>6</sup>
16. Bio-Tech is a privately held corporation and a wholly-owned subsidiary of Delta 9.<sup>7</sup>
17. Bio-Tech is a licensed producer of cannabis and holds a license from Health Canada to cultivate, process and sell cannabis and a license from the Canada Revenue Agency pursuant to the *Cannabis Act* and the *Excise Act, 2001*, respectively.<sup>8</sup>
18. Bio-Tech owns and operates a 95,000 square-foot cannabis cultivation and processing facility located at 760 Pandora Avenue E, Winnipeg, Manitoba and legally described as:

Title No. 2977656/1

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<sup>1</sup> [Initial Order, dated July 15, 2024.](#)

<sup>2</sup> [Amended and Restated Initial Order, dated July 24, 2024; Sales and Investment Solicitation Process Order, dated July 24, 2024.](#)

<sup>3</sup> [Stay Extension and Approval Order, dated September 11, 2024.](#)

<sup>4</sup> [Stay Extension and Increase to Interim Financing Order, dated November 1, 2024.](#)

<sup>5</sup> Seventh Affidavit at para 4.

<sup>6</sup> Seventh Affidavit at para 5.

<sup>7</sup> Seventh Affidavit at para 6.

<sup>8</sup> Seventh Affidavit at para 7.

PARCELS A, B, C, D, E AND F PLAN 51110 WLTO EXC FIRSTLY: OUT OF SAID PARCELS A AND C ALL MINES AND MINERALS MINERAL OILS PETROLEUM GAS COAL GRAVEL AND VALUABLE STONE OF EVERY DESCRIPTION THAT MAY BE FOUND IN UPON OR UNDER SAID PARCELS A AND C TOGETHER WITH THE RIGHT TO ENTER AND REMOVE THE SAME SECONDLY: OUT OF SAID PARCELS B AND E, ALL MINES AND MINERALS AS RESERVED IN DEED 2374744 WLTO AND THIRDLY: OUT OF SAID PARCEL F, ALL MINES AND MINERALS AS SET FORTH IN TRANSFER 2374748 WLTO IN SW 1/4 3 AND SE 1/4 4-11-4 EPM AND IN GOVERNMENT ROAD ALLOWANCE (CLOSED) BETWEEN SAID SECTIONS

(the "**Land**").<sup>9</sup>

19. Bio-Tech owed the following amounts in unremitted taxes to the Canada Revenue Agency (the "**CRA**"):
- a. as of June 21, 2024, approximately \$18,000 in respect unremitted source deduction arrears (the "**Source Deduction Arrears**");
  - b. as of the date of the First Affidavit, Goods and Services Tax ("**GST**") in the amount of \$657,056 (the "**GST Arrears**"); and
  - c. as of the date of the First Affidavit, Excise Tax in the amount of \$7,831,515 (the "**Excise Tax Arrears**"; together with the Source Deduction Arrears and the GST Arrears, the "**Unpaid Tax Arrears**")<sup>10</sup>.

### **C. The SISP**

20. As outlined in further detail in the Fourth Report of the Monitor, dated November 13, 2024 (the "**Fourth Report**") and the Sixth Report, the Monitor, with the assistance of Delta 9, the Sales Advisor and the CRO implemented the SISP contemplated in the SISP Order in respect of Bio-Tech's assets and business (the "**Sales Process**").
21. In summary, the Monitor, the Sales Advisor and Bio-Tech:
- a. created a broad but focused list of prospective bidders;
  - b. distributed teaser letters and non-disclosure agreements to potential bidders and published notice of the SISP in the Insolvency Insider, the National Post, New Cannabis Ventures, StratCann and Newswire;
  - c. prepared and made available comprehensive marketing materials;

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<sup>9</sup> Seventh Affidavit at para 8.

<sup>10</sup> First Affidavit at paragraphs 141 and 142.

- d. retained Capital Commercial Real Estate Services Inc. (the “**Sales Advisor**”) to assist with the marketing of the Land;
  - e. made key staff of Bio-Tech, as well as the Monitor, the CRO, and the Sales Agent available to answer questions and provide information to prospective bidders who executed a non-disclosure agreement; and
  - f. reviewed and considered offers received by the bid deadline in respect of the property subject to the SISP.<sup>11</sup>
22. Bio-Tech, the Sales Advisor, and the Monitor canvassed the market and made best efforts to obtain potential bids for all or part of Bio-Tech’s business and property.<sup>12</sup>
23. Since the close of the bid deadline on October 28, 2024, Delta 9 has worked with the Monitor and the CRO to review and assess bids, and has been engaged in extensive negotiations with the successful bidders to finalize their respective purchase agreements and advance Delta 9’s goals of ensuring all of Bio-Tech’s assets and/or business are transferred to bidders and the proceeds obtained therefrom are maximized for the benefit of all stakeholders.<sup>13</sup>

#### **D. The APA in Respect of the 659 Property**

24. Bio-Tech, with the assistance of the Monitor, selected a bid tendered within the SISP by 659 for the purchase of the Land, the buildings and structures located on the Land, and certain enumerated property, as more fully particularized in the APA (collectively, the “**659 Property**”).<sup>14</sup>
25. Bio-Tech and the Monitor identified 659’s offer as the best offer for the 659 Property, as it represented the highest and best offer for those assets and provided the greatest recovery available for Delta 9’s stakeholders.<sup>15</sup>
26. Accordingly, the parties proceeded to prepare the APA, which was subsequently executed by Bio-Tech and 659 on December 28, 2024.

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<sup>11</sup> Fourth Report of the Monitor, dated November 13, 2024 (“**Fourth Report**”) at paras 20 to 22; Seventh Affidavit at paras 16 to 21.

<sup>12</sup> Seventh Affidavit at para 18.

<sup>13</sup> Seventh Affidavit at para 21.

<sup>14</sup> Seventh Affidavit at para 22.

<sup>15</sup> Seventh Affidavit at paras 26 and 27; Sixth Report at para 34.

27. The key terms of the APA are as follows:
- a. the 659 Property is being purchased on an “as is, where is” basis and 659 will assume Bio-Tech’s right, title and interest to the 659 Property;
  - b. 659 has made payment of a deposit;
  - c. 659 will be responsible for the payment of any applicable GST;
  - d. it is conditional upon the Court’s approval and the Lease Agreement, but does not otherwise contain any material conditions;
  - e. on Closing, 659 shall: (i) withdraw its Proof of Claim for approximately \$1.4 million submitted in the Claims Procedure; (ii) consent to the release of the deposit of \$350,000 (plus all accrued interest) held in the accounts of MLT Aikins LLP to Bio-Tech; and (iii) consent to the release of the \$174,208.34 held in the Monitor’s bank account pertaining to the disputed Overholding Rent to Bio-Tech;<sup>16</sup> and
  - f. closing of the 659 Transaction shall occur 45 days after approval of the 659 Transaction is granted by the Court (the “**SAVO**”) or 45 days following the resolution, dismissal or withdrawal of an appeal in respect of the Sale Approval Order, or on such other date as the parties may agree in writing.<sup>17</sup>
28. As Bio-Tech currently understands it, the priority of claims against the 659 Property are currently as follows:
- a. the first mortgage (the “**First Mortgage**”) under registration number 5008308/1, originally in favor of Connect First Credit Union Ltd., but which has been assigned to SNDL, registered on March 31, 2022 in the amount of \$28,000,000;
  - b. the second mortgage (the “**Second Mortgage**”) under registration number 5411014/1, in favor of Sundial Growers Inc. (now SNDL), registered on March 31, 2022 in the amount of \$14,000,000;
  - c. the Interim Lender’s Charge in the current amount of \$18,500,000, in favour of the Plan Sponsor;

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<sup>16</sup> Sixth Report at para 38(d).

<sup>17</sup> Seventh Affidavit at para 24.



- d. a Certificate of Judgement under registration number 5588205/1, in favor of H.M. the King (Canada) registered on October 27, 2023 in the amount of \$6,513,716.64 for unpaid excise tax; and then
- e. a Certificate of Judgement under registration number 5610517/1 in favor of H.M. King (Canada) registered on January 19, 2024 in the amount of \$771,393.95 for unpaid excise tax.<sup>18</sup>

#### **E. The SPA in Respect of Bio-Tech**

- 29. The SPA arose out of pre-filing sales and marketing efforts undertaken by Bio-Tech and then continued under the SISP by the Monitor, Bio-Tech and the CRO. Accordingly, the SPA is the product of extensive discussion and negotiation among Delta 9, Bio-Tech and Simply, in consultation with the Monitor, the CRO and the Plan Sponsor.<sup>19</sup>
- 30. The Simply Transaction has been structured as a share sale in the form of a “reverse vesting” transaction, whereby Simply will acquire all of the issued and outstanding shares of Bio-Tech, which includes the business and remaining assets on a “free and clear” basis and all Excluded Assets, Excluded Contracts, and Excluded Liabilities (each as defined in the SPA) will be transferred to ResidualCo.<sup>20</sup> Delta 9 is the Vendor under the SPA as the parent company of Bio-Tech and any proceeds from the SPA paid to the Monitor would be for its benefit.
- 31. Bio-Tech’s business is subject to onerous cannabis-related regulations and requires certain licenses to operate. Bio-Tech holds: (i) a license from Health Canada under the *Cannabis Act*; and (ii) a cannabis excise license from the Canada Revenue Agency under the *Excise Act, 2001* (collectively, the “**Licenses**”).<sup>21</sup> Both Licenses are required for Bio-Tech to cultivate, process and sell cannabis in Canada.
- 32. The primary purpose of the reverse vesting structure in these circumstances is to preserve the business and operations of Bio-Tech following the closing of the Simply Transaction as the Licenses are not transferrable to a purchaser in a traditional asset sale transaction structure.<sup>22</sup>

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<sup>18</sup> First Affidavit, Exhibit 13,

<sup>19</sup> Seventh Affidavit at para 31.

<sup>20</sup> Seventh Affidavit at para 32 and 36.

<sup>21</sup> Seventh Affidavit at para 40.

<sup>22</sup> Seventh Affidavit at paras 41 and 42.

33. The Approval and Reverse Vesting Order (the “**ARVO**”) in respect of the Simply Transaction, if granted, also provides for the releases in favour of the current directors and officers of Bio-Tech, Bio-Tech’s legal counsel and advisors, the Monitor and its legal counsel, directors and officers of ResidualCo, and Bio-Tech (collectively, the “**Released Parties**”) in respect of the Released Claims (defined below).<sup>23</sup>
34. The Releases sought are limited to releasing the Released Parties from claims arising in connection with any act or omission, transaction, dealing or other occurrence existing or taking place prior to the Closing Time (as defined in the SPA) or arising in connection with or relating in any manner whatsoever to the SPA, the Simply Transaction, or the conduct of the CCAA proceedings (collectively, the “**Released Claims**”).<sup>24</sup>
35. The proposed ARVO also provides for the release of the current directors and officers of Bio-Tech and ResidualCo (collectively, the “**Released D&Os**”).<sup>25</sup> The Releases of the Released D&Os are limited to any claims, including but not limited to, claims for unpaid source deductions, GST liability, and excise taxes, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to commencement of the CCAA proceedings in respect of Bio-Tech, the business, operations, assets, property, and affairs of Bio-Tech and/or the CCAA proceedings (collectively, the “**D&O Released Claims**”).<sup>26</sup>
36. The Releases of the Released D&Os do not waive or bar any claim or liability arising out of any gross negligence or willful misconduct on the part of the applicable Released D&O and that is an Insured Claim (as defined in the ARVO). The Releases also carve out claims that are barred from release pursuant to section 5.1(2) of the CCAA.<sup>27</sup>
37. The purchase price under the SPA is also subject to the priority claim of the Interim Lender under the terms of the Interim Financing Charge.
38. The Proposed Transactions combined purchase price is insufficient to satisfy amounts due and owing to the Interim Lender and SNDL as the first secured creditor. Any amounts outstanding and owed behind the Interim Lenders Charge, and that is not a Retained Liability under the terms of the SPA, will be vested out pursuant to the terms of the ARVO.

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<sup>23</sup> Seventh Affidavit at para 48.

<sup>24</sup> Seventh Affidavit at para 49.

<sup>25</sup> Seventh Affidavit at para 50.

<sup>26</sup> *ibid.*

<sup>27</sup> Seventh Affidavit at para 51.

### **III. ISSUES**

39. The issues to be determined by the Court are whether:
- a. the APA and the 659 Transaction contemplated therein should be approved;
  - b. the SPA and the Simply Transaction contemplated therein should be approved;
  - c. the Releases in favour of the Released Parties should be approved;
  - d. ResidualCo should be added as an Applicant to these proceedings;
  - e. the Monitor's powers should be expanded over ResidualCo; and
  - f. temporary sealing relief should be granted in respect of the Confidential Materials.

### **IV. LAW AND ARGUMENT**

#### **A. The Court Should Approve the 659 Transaction**

40. Pursuant to section 36 of the CCAA, the Court has the jurisdiction to approve a sale transaction within the context of CCAA proceedings. Section 36(3) of the CCAA sets out the relevant factors for consideration as follows:
- 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 effect 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.<sup>28</sup>
41. The above factors, however, are not intended to be exhaustive nor to be considered a checklist that must be followed in every transaction.<sup>29</sup>
42. Canadian Courts have also continued to consider the *Soundair* criteria as relevant to whether or not a sale approval should be approved in a CCAA proceeding. Those factors are similar to those in section 36(3) of the CCAA, and are as follows:
- a. whether the Court-appointed officer has made sufficient effort to get the best price and has not acted improvidently;
  - b. the interest of all parties;
  - c. the efficacy and integrity of the process by which the offers are obtained; and
  - d. whether there has been unfairness in the working out of the process.<sup>30</sup>
43. The APA and the 659 Transaction contemplated therein satisfies the above test, given that:
- a. the process undertaken by the Monitor, with the assistance of Bio-Tech, to market the 659 Property was commercially reasonable and consistent with the terms of the SISP Order;
  - b. the APA is the highest and best offer obtained for the 659 Property following a wide canvassing of the market, and therefore, maximizes value to stakeholders in the circumstances;
  - c. the 659 Transaction is unconditional, except for Court approval and execution of the Lease Agreement;
  - d. the deposit paid by 659 is non-refundable unless the Court does not approve the 659 Transaction;

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<sup>28</sup> [Companies' Creditors Arrangement Act](#), RSC 1985, c C-36 [CCAA], s. 36(3).

<sup>29</sup> [Target Canada Co \(Re\)](#), 2015 ONSC 1487 [Target] at para 16.

<sup>30</sup> [Royal Bank of Canada v Soundair Corp.](#), 1991 CanLII 2727 (ONCA) [Soundair] at para 16; see also *Target* at paras 14 to 17.

- e. the Monitor is supportive of the 659 Transaction and believes that the approval of the APA and the 659 Transaction contemplated therein is in the best interests of Delta 9's stakeholders, as outlined in its Sixth Report; and
  - f. Fika, who is both the fulcrum creditor and Plan Sponsor, supports the 659 Transaction.<sup>31</sup>
44. Based on the foregoing, the Applicants respectfully submit that the marketing process conducted under the SISP and the APA are commercially reasonable in the circumstances and the APA should be approved in the form of Sale Approval and Vesting Order sought.

#### **B. The Court Should Approve the Simply Transaction**

45. The Applicants seek approval of the SPA and the Simply Transaction contained therein, which would result in Simply acquiring 100% of the shares in the capital of Bio-Tech.
46. A reverse vesting order generally involves a series of steps that result: (a) in the purchaser becoming the sole shareholder of the debtor company; (b) the debtor company retaining its assets, including contracts, licenses and other attributes; and (c) the liabilities not assumed by the purchaser being vested out and transferred, together with any excluded assets, into a newly incorporated entity or an existing shell entity, referred to as "ResidualCo".<sup>32</sup>
47. Pursuant to sections 11 and 36 of the CCAA, the Court has jurisdiction to approve a transaction through an ARVO.<sup>33</sup> Section 11 of the CCAA gives the Court the authority to make any order it considers appropriate in the circumstances.
48. On an application to approve a reverse vesting order transaction, it is appropriate to consider the following:
- 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 section 36(3) of the CCAA, making provision or adjustment, as appropriate, for the unique aspects of a reverse vesting transaction.<sup>34</sup>

<sup>31</sup> Seventh Affidavit at para 47; Sixth Report at para 45(e) and 46.

<sup>32</sup> *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354 [*Just Energy*] at [para 27](#).

<sup>33</sup> CCAA, [ss 11](#) and [36](#); *Harte Gold Corp (Re)*, 2022 ONSC 653 at [para 24 – 37](#) [*Harte Gold*]; *Quest University Canada (Re)*, 2020 BCSC 1883 at [paras 40](#) and [157](#) [*Quest*]; *Just Energy* at [para 29](#).

<sup>34</sup> *Harte Gold* at [para 23](#); *Just Energy* at [paras 29 to 31](#).

49. In *Harte Gold*, the Honourable Justice Penny of the Ontario Superior Court of Justice outlined the following non-exhaustive factors to consider in respect of a proposed reverse vesting transaction:
- a. why is the reverse vesting order necessary in this case;
  - b. whether the reverse vesting structure produce an economic result at least as favourable as any other viable alternative;
  - c. whether any stakeholders is worse off under the reverse vesting structure than they would have been under any other viable alternative; and
  - d. whether the consideration being paid for the debtor's business reflect the importance and value of assets being preserved under the reverse vesting structure.<sup>35</sup>
50. Reverse vesting transactions have been recognized in at least three types of circumstances:
- a. where the debtor operates in a highly-regulated environment in which its existing permits, licenses or other rights are difficult or impossible to assign to a purchaser;
  - b. where the debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and
  - c. where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.<sup>36</sup>
51. Canadian Courts have regularly approved the use of reverse vesting structures to facilitate transactions involving cannabis companies.<sup>37</sup> The Court in *Atlas Global Brands Inc.* made

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<sup>35</sup> *Harte Gold* at [para 38](#).

<sup>36</sup> *Just Energy* at [para 34](#); *Arrangement relative a Blackrock Metals Inc.*, 2022 QCCS 2828 [**Blackrock**] at paras [114 to 116](#).

<sup>37</sup> *Atlas Global Brands Inc. et al.*, [Approval and Reverse Vesting Order granted on October 29, 2024](#), Court File No. CV-24-00722386-00CL (ONSC) [**Atlas ARVO (Oct 29, 2024)**]; *Indiva Limited, et al.*, [Approval and Reverse Vesting Order granted October 21, 2024](#), Court File No. CV-24-00722044-00CL (ONSC) [**Indiva ARVO**]; *BZAM Ltd., et al.*, [Approval and Vesting Order, granted October 15, 2024](#), Court File No. CV-24-00715773-00CL (ONSC); *Phoena Holdings Inc., et al.*, [Reverse Vesting Order granted March 21, 2024](#), Court File No.: CV-23-0069728500CL (ONSC); *Fire & Flower*, [Reverse Vesting Order granted August 29, 2023](#), Court File No.: CV-23-0070058100CL (ONSC); *Aleafia Health Inc.,* [Reverse Vesting Order granted October 30, 2023](#), Court File No.: CV-2300703350-00CL (ONSC) [**Aleafia ARVO**]; *Trees Corporation*, [Reverse Vesting Order granted April 5, 2024](#), Court File No.: CV-2300711935-00CL (ONSC); *Eve & Co et al.*, [Reverse Vesting Order granted October 7, 2022](#), Court File No.: CV-2200678884-00CL (ONSC).

the following comments regarding the use of reverse vesting structures in restructuring cannabis companies:

It is fair to observe that the setbacks besetting the cannabis industry have in fact in large measure provided the impetus for the recently increased use of the reverse vesting structure. That is because in a highly regulated industry, like the cannabis industry, there are significant implications, for the transfer of a business, if a purchaser would have to start “from scratch” to obtain regulatory approval to operate the business in question rather than assuming the relevant licenses as part of the transaction.<sup>38</sup>

**(1) Section 36(3) of the CCAA and the Soundair Principles are Satisfied**

52. The SPA and the Simply Transaction contemplated therein satisfies both section 36(3) of the CCAA and the *Soundair* test, and is in the best interests of the Applicants’ stakeholders, given that:

- a. the process leading to the SPA was fair, transparent and reasonable in the circumstances. The SISP was developed by the Applicants in consultation with the Monitor, approved by the Court, and was conducted by the Applicants, the Sales Advisor and the Monitor, with the assistance of the CRO, in accordance with its terms and the SISP Order;
- b. the market was thoroughly canvassed and all interested parties were provided a reasonable opportunity to submit a bid;
- c. the Simply Transaction represents the best option available to Bio-Tech’s going-concern exit from these CCAA proceedings and benefits many of its stakeholders, including employees, customers, and suppliers;
- d. the Purchase Price pursuant to the Simply Transaction is fair and reasonable;
- e. the Monitor is supportive of the Simply Transaction and believes that the approval of the SPA and the Simply Transaction contemplated therein is in the best interests of Delta 9’s stakeholders, as outlined in its Sixth Report; and
- f. the fulcrum creditor and Plan Sponsor supports the Simply Transaction.

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<sup>38</sup>[\*Atlas Global Brands Inc.\*](#), 2024 ONSC 5570 [*Atlas Global*] at [para 36](#).

## **(2) The Reverse Vesting Structure Should be Approved**

53. The Applicants submit that the reverse vesting structure as contemplated is appropriate in the circumstances and satisfies the *Harte Gold* factors:

- a. The RVO is Necessary: The proposed RVO is necessary due to the highly regulated nature of Bio-Tech's business, the value of which is dependent on maintaining essential Licenses.<sup>39</sup> The reverse vesting structure is the best (and only) viable way to preserve the Licenses, by ensuring that Bio-Tech continues operating its business, while allowing the Excluded Assets, Excluded Contracts, and Excluded Liabilities, to be transferred to ResidualCo.
- b. There is No More Favourable Economic Alternative: The Monitor believes that no stakeholders should be prejudiced by the reverse vesting structure, which in the Monitor's view: (i) provides an economic result at least as favourable as any other viable alternative; and (ii) does not leave any stakeholder worse off than they would be under any other viable alternative.<sup>40</sup>

The Simply Transaction is the only viable option to preserve Bio-Tech as a going concern and despite the considerable efforts made during the SISP to broadly canvass the market, Bio-Tech did not receive a higher bid than Simply's offer. Bio-Tech's subordinate creditors are not prejudiced or worse off by the Simply Transaction proceeding through an reverse vesting order as compared to an alternative transaction structure.<sup>41</sup>

- c. The Consideration Being Paid Reflects the Value of Bio-Tech's Assets and Business: The consideration for the Simply Transaction reflects the value of Bio-Tech's assets and business, including its Licenses, which were extensively marketed by the Applicants and the Monitor in accordance with the Court-approved SISP. The bid received reflects the highest and best price that could be achieved for Bio-Tech's business and assets, particularly when considering the amount payable under the SPA and the significant process undertaken before the CCAA proceedings and the SISP.

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<sup>39</sup> Sixth Report at para 49.

<sup>40</sup> Sixth Report at para 51.

<sup>41</sup> Sixth Report at paras 49 to 52.



54. For the reasons outlined above, the Applicants submit that section 36(3), the *Soundair* test, and the *Harte Gold* factors have all been met in the circumstances and the requested ARVO ought to be granted.

**C. The Releases in the ARVO Should be Approved**

55. The Applicants seek the issuance of releases in favour of the Released Parties (including the Released D&Os) in respect of the Released Claims (including the Released D&O Claims).
56. It is well established that CCAA courts have jurisdiction to sanction plans containing third-party releases.<sup>42</sup>
57. The relevant factors for the Court to consider in determining whether to approve releases in CCAA proceedings include:
- a. whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
  - b. whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
  - c. whether the plan could succeed without the releases;
  - d. whether the parties being released were contributing to the plan; and
  - e. whether the release benefitted the debtors as well as the creditors generally.<sup>43</sup>
58. It is not necessary for each of these factors to apply in order for the proposed releases to be granted.<sup>44</sup>
59. The same test governs third-party releases within court-sanctioned restructuring transactions, including reverse vesting orders. The Court in *Blackrock Metals* stated that it is “now commonplace for third-party releases, in favour of parties to a restructuring, their

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<sup>42</sup> *Metcalfe & Mansfield Alternative Investments II Corp. Re*, 2008 ONCA 587 [*Metcalfe & Mansfield*] at [para 78](#).

<sup>43</sup> *Lydian International Limited (Re)*, 2020 ONSC 4006 at [para 54](#); *Metcalfe & Mansfield* at [paras 70 to 71](#); *Green Relief Inc.*, 2020 ONSC 6837 [*Green Relief*] at [para 27](#); *Just Energy* at [para 67](#).

<sup>44</sup> *Green Relief* at

professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction.”<sup>45</sup>

60. As outlined above, the ARVO (if granted) provides for releases involving these CCAA proceedings and the Simply Transaction for various third parties, including the current director and officers of Bio-Tech, Bio-Tech’s legal counsel and advisors, the Monitor and its legal counsel and Bio-Tech. The D&O Released Claims include claims against the Released D&Os for unpaid source deductions, goods and services tax, and excise taxes relating to the pre-filing period.
61. For the reasons that follow, the Applicants submit that the Releases in the ARVO should be granted.

***(1) The Released Parties were Necessary and Essential to the Restructuring***

62. The Released Parties, including the Released D&Os, have made significant contributions to the CCAA proceedings. Prior to and since the initiation of the CCAA proceedings, the Released Parties and, in particular, the Released D&Os have worked diligently and in good faith towards the sale of Bio-Tech’s business, resulting in the Proposed Transactions and the maximization of the value of Bio-Tech’s business.
63. The Released D&Os were involved in facilitating and overseeing the marketing of the Bio-Tech assets and business, which pre-dated the commencement of the CCAA proceedings and maintained and supported the operations of the Applicants throughout the proceedings so that the business could be sold as a going concern.
64. Moreover, the continued involvement of the Released Parties is critical to the successful implementation of the Simply Transaction.

***(2) The Claims to be Released are Rationally Connected to the Simply Transaction and Necessary for the Transaction***

65. All of the Released Parties are integrally connected to the Simply Transaction. They were all heavily involved in the negotiation and performance of the Simply Transaction and closing of the Simply Transaction is conditional upon the granting of the ARVO, the form

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<sup>45</sup> *Blackrock* at [para 128](#); see also *Green Relief* at [paras 23 to 25](#); [8640025 Canada Inc. Re.](#), 2021 BCSC 1826 at [para 43](#).

of which includes the releases of the Released Claims, and the granting of which is a condition precedent to the SPA being closed.

**(3) The Releases Benefit Creditors**

66. The Releases will benefit the Delta 9 Group's creditors and other stakeholders by protecting Bio-Tech and ResidualCo against potential contribution and indemnity claims, minimizing potential claims, and thus maximizing the proceeds of the Simply Transaction.<sup>46</sup>

**(4) The Released D&O Claims are Appropriate and Necessary**

67. None of the Released D&O Claims waive or bar any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released D&Os, that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or that is an Insured Claim.
68. As outlined above, the directors and officers of Bio-Tech risk personal liability for excise tax unpaid during their tenure, along with the source deduction liability. However, their continued involvement in Bio-Tech and extensive efforts to maximize the realization for the Delta 9 Group's stakeholders have been instrumental in the CCAA proceedings.
69. Although the Released D&Os will be released from personal liability for the Unpaid Tax Arrears attributed to their tenure, the Releases are subject to a key limitation. Any person, including the CRA, is permitted to pursue an action in respect of an Insured Claim under any insurance policy maintained by Bio-Tech and, to the extent liability is established, is entitled to recover solely from those proceeds, if any. There remains a potential avenue for some recovery in respect of certain claims against the current directors and officers through any available insurance.
70. A release of claims in connection with matters relating to cannabis excise tax for the period prior to the commencement of CCAA proceedings has been granted by Canadian Courts in several recent CCAA proceedings, including:

- a. in *Atlas Global Brands Inc., et al.*<sup>47</sup>

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<sup>46</sup> See *Harte Gold* at [para 82](#) and *Tacora Resources Inc. (Re)*, 2024 ONSC 4436 at [para 25](#).

<sup>47</sup> *Atlas ARVO* at para 31 and *Atlas Global Brands Inc. et al*, [Approval and Reverse Vesting Order granted on October 4, 2024](#), Court File No. CV-24-00722386-00CL (ONSC) at para 32

- b. in *Indiva Limited, et al.*<sup>48</sup>
  - c. in *Heritage Cannabis Holdings Corp, et al.*<sup>49</sup> and
  - d. in *Aleafia Health Inc.*<sup>50</sup>
71. The completion of the Proposed Transactions and granting of the ARVO will allow Bio-Tech to carry on business as a going-concern, maximize value for the stakeholders of Bio-Tech and will benefit retained employees, vendors, suppliers and customers.
72. The Applicants submit that the ARVO mechanism does not harm the CRA and the CRA would be in the same position in both a traditional asset sale scenario and in a bankruptcy. The Court in *Atlas Global* agreed with this position as well in substantially similar circumstances.<sup>51</sup>
73. The releases sought in this case, with respect to matters relating to the Unpaid Tax Arrears, tracks the language used in the foregoing Orders and similar relief should be granted in the present case.

**(5) Effect of the Proposed Transactions on the CRA**

74. The Applicants acknowledge that the Proposed Transactions do not provide sufficient proceeds to satisfy the claims of the CRA for the Unpaid Tax Arrears against Bio-Tech for the pre-filing period. However, as detailed above, this result is a function of the value of the Bio-Tech's business, as fully tested under the SISP, and the priority of the CRA claims relative to Bio-Tech's senior secured creditors and the Interim Lender. In light of both factors, the CRA would be no better off under a bankruptcy or a traditional asset sale scenario.
75. In similar circumstances, the court in *Atlas Global* found that those priorities were "clear and carry the day" vis-à-vis the CRA claims.<sup>52</sup>
76. In relation to the Excise Tax Arrears, the amounts owing by Bio-Tech are secured against the Lands, but are subsequent in priority to the First Mortgage, the Second Mortgage and the Interim Lender's Charge. The SISP fully canvassed the market and did not generate

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<sup>48</sup> Indiva ARVO at para 21.

<sup>49</sup> Heritage Cannabis Holdings Corp., et al, [Approval and Reverse Vesting Order granted on June 26, 2024](#), Court File No. CV-24-00717664-00CL (ONSC) at para 25.

<sup>50</sup> Aleafia ARVO at para 26.

<sup>51</sup> *Atlas Global* at paras [93 and 94](#).

<sup>52</sup> *Atlas Global* at [para 97](#).

any transaction with enough value to satisfy claims subsequent in priority to the Interim Lender's Charge. Accordingly, the CRA would be in exactly the same position in a bankruptcy in relation to the Unpaid Tax Arrears as it would be under the Proposed Transactions, including the ARVO.

77. In relation to the Source Deductions Arrears and the GST Arrears, the CRA's claim ranks behind the first-ranking claims of the Interim Lender and the claims under the First Mortgage and the Second Mortgage.
78. There are limited circumstances in which the deemed trust for source deductions and unpaid GST will cede priority to higher-ranking creditors<sup>53</sup>. Here the statutory deemed trusts for the unremitted source deductions and the unpaid GST are subordinate to the First Mortgage, the Second Mortgage and Interim Lenders Charge.
79. With respect to the First Mortgage and the Second Mortgage:
- a. regarding the unpaid source deductions, section 227(4.2) of the *Income Tax Act* provides that for "purposes of subsections 227(4) and 227(4.1), a security interest does not include a prescribed security interest".<sup>54</sup> A "prescribed security interest" is in turn defined by the *Income Tax Regulations* as follows:

220(1) For the purpose of subsection 227(4.2) of the Act, prescribed security interest...means that part of a mortgage securing the performance of an obligation of the person, that encumbers land or a building, where the mortgage is registered pursuant to the appropriate land registration system before the time the amount is deemed to be held in trust by the person.<sup>55</sup>

- b. regarding the unpaid GST, section 222(4) of the *Excise Tax Act* provides that for "purposes of subsections (1) and (3), a security interest does not include a prescribed security interest."<sup>56</sup> A "prescribed security interest" is in turn defined by the *Security Interest (GST/HST) Regulations* as follows:

2(1) For the purpose of subsection 222(4) of the Act, a prescribed security interest, in relation to an amount deemed under subsection 222(1) of the Act to be held in trust by a person, is that part of a mortgage or hypothec securing the performance of an obligation of the person that encumbers land or a building, but only if the

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<sup>53</sup> [Canada v. Canada North Group Inc.](#), 2021 SCC 30 [**Canada North**] at [para 54](#)

<sup>54</sup> [Income Tax Act](#), RSC 1985, c 1 (5<sup>th</sup> Supp), s 227.

<sup>55</sup> [Income Tax Regulations](#), C.R.C., c. 945, [s. 2201\(1\)](#).

<sup>56</sup> [Excise Tax Act](#), RSC 1985, c E-15, [s 222](#).

mortgage or hypothec is registered pursuant to the appropriate land registration system before the time the amount is deemed under subsection 222(1) of the Act to be held in trust by the person.<sup>57</sup>

80. The First Mortgage and Second Mortgage charges the Lands in an amount totaling approximately \$42,000,000, the entirety of which was in place as of March 31, 2022, before Bio-Tech failed to remit the source deductions and the unpaid GST. As such it was registered “before the time the amount is deemed to be held in trust by the person”.<sup>58</sup>
81. The First Mortgage and Second Mortgage would enjoy this priority status whether Bio-Tech was in a CCAA proceeding or a bankruptcy.
82. With respect to the Interim Lender’s Charge, it is by the terms of the ARIO, a first-ranking claim over the assets of Bio-Tech after the SNDL claim. The Supreme Court of Canada in *Canada North*, which included an interim financing charge in favour of an interim lender, utilized language that substantially matches the terms of the ARIO with respect to the Interim Lender’s Charge over Bio-Tech’s Land and property. As such, the Interim Lender’s claim has priority over the CRA claim for Unpaid Tax Arrears.
83. The CRA’s consent is not required before Bio-Tech can transfer the Unpaid Tax Arrears to ResidualCo as an Excluded Liability. This step is equivalent to what occurs in a traditional asset sale – namely, the transfer to the purchaser of the assets and liabilities that a purchaser wishes to assume, leaving behind the liabilities that it does not. In this case, the CRA’s claims are being left behind because there is no value in excess of the higher-ranking claims to satisfy its claims; the transfer to ResidualCo is merely the mechanism by which this occurs in the reverse vesting order structure. Whether the transaction is structured as a sale approval and vesting order and reverse vesting order, there are no additional proceeds that can be generated from the Proposed Transactions to satisfy the CRA’s lower ranking claims.
84. In considering whether there is any prejudice to the CRA the proper benchmark is whether the CRA would receive better treatment under a bankruptcy, not whether CRA would receive more favourable terms under some other hypothetical scenario that does not exist and would not be feasible given the results of the SISP. The Section 36 and *Harte Gold*

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<sup>57</sup> [Security Interest \(GST/HST\) Regulations](#), SOR/2011-55, [s 2](#).

<sup>58</sup> *Canada North* at [para 101](#), [footnote 1](#), per Karakatsanis, J., concurring, citing [Regulatory Impact Analysis Statement](#), SOR/99-322, *Canada Gazette*, Part II, vol. 133, No. 17, August 18, 1999, at pp. 2041-42

factors evaluate potential reverse vesting order transactions against a bankruptcy or other viable alternatives. There are no other viable alternatives in the present case. Here, the Monitor is satisfied that the transfer of Bio-Tech's Unpaid Tax Arrears to ResidualCo is not a worse outcome for the CRA than would be expected in a bankruptcy.<sup>59</sup>

85. In addition, the proposed ARVO contains certain protections to ensure that:
- a. pre-filing arrears and refunds are vested in ResidualCo and post-filing arrears (if any) and refunds stay with Bio-Tech;
  - b. preserves the rights of set-off of the CRA in respect of amounts held for security; and
  - c. any claims against the director and officers in respect to unpaid taxes are channeled to insurance and the stay of proceedings is lifted on a limited basis to permit the CRA to complete the technical requirements that the CRA must meet to assert such claims.
86. The ARVO mechanism does not impact or harm the position of the CRA: the CRA would be in the same position in a traditional asset sale scenario and in a bankruptcy.
87. The Releases will achieve certainty and finality in the most efficient and appropriate manner given the circumstances. The Releases are critical to the Applicants' restructuring and are necessary to ensure that the Proposed Transactions close. The Monitor observed that each Released Party has meaningfully contributed to the Proposed Transactions, and more generally, the Applicants' successful restructuring.<sup>60</sup>
88. The Released D&Os are the current director and officers of Bio-Tech who have made significant and material significant contributions to enable Bio-Tech to emerge from these CCAA proceedings as a going concern. None of them are receiving any benefit from the KERP associated with Bio-Tech.
89. Although the Released D&Os will be released from personal liability for the unpaid excise tax, goods and services tax, and unremitted source deductions attributed to their tenure, this release is subject to a key limitation. The CRA is permitted to pursue an action in respect of any Insured Claim under any insurance policy maintained by Bio-Tech or

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<sup>59</sup> Sixth Report at paras 51 to 54.

<sup>60</sup> Sixth Report at para 62.

ResidualCo, and to the extent liability is established, is entitled to recover solely from those proceeds, if any. There remains a potential avenue for some recovery in respect of certain claims against the directors and officers by “channeling” to any available insurance, a mechanism that has been employed in other CCAA proceedings involving ARVOs and SAVOs.<sup>61</sup>

#### **D. ResidualCo Should be Added as an Applicant**

90. The CCAA applies in respect of “debtor company” or “affiliated debtor companies” whose liabilities amount to more than \$5,000,000.<sup>62</sup>
91. The term “debtor company” is defined as “any company” that is, among other things, “insolvent” and the term “company” is defined as “any company, corporation or legal persons incorporated by or under any Act of Parliament or of the legislature of a province.”<sup>63</sup>
92. Whether a company is insolvent for the purposes of this definition is evaluated by reference to the definition of “insolvent person” in the *Bankruptcy and Insolvency Act* (the “BIA”) and the expanded concept of insolvency adopted by Canadian Courts and articulated in *Stelco Inc, Re*.<sup>64</sup>
93. The BIA defines “insolvent person” as a person:
  - a. who is for any reason unable to meet its obligations as they generally become due;
  - b. who has ceased paying its 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, insufficient to enable payment of all of its obligations, due and accruing due.<sup>65</sup>

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<sup>61</sup> See e.g. Aleafia Health Inc, [CCAA Termination Order, granted on March 1, 2024](#), Court File No. CV-23-00703350-00CL (ONSC); *Green Relief* at [paras 58-73, 76](#); MPX International Corporation, [CCAA Termination Order, granted on December 15, 2022](#), Court File No. CV-23-00684542-00CL (ONSC); Nexii Building Solutions Inc, [Ancillary Order granted on June 28, 2024](#), Court File No. S240195 (BCSC) at para 14.

<sup>62</sup> CCAA, [s 3\(1\)](#).

<sup>63</sup> CCAA, s 2(1), “[debtor company](#)” and “[company](#)”.

<sup>64</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “BIA”), s 2(1), “[insolvent person](#)”, *Stelco Inc., Re*, [2004] OJ No. 1257 (ONSC) at [para 26](#).

<sup>65</sup> *ibid*.



94. A company is also insolvent for the purposes of the CCAA if “there is a reasonably foreseeable (at the time of filing) expectation that there is a looming liquidity condition or crisis which will result in the applicant running out of ‘cash’ to pay its debts as they generally become due in the future without the benefit of the [stay] and ancillary protection.”<sup>66</sup>
95. In order to complete the Simply Transaction, all Excluded Contracts, Excluded Assets, and Excluded Liabilities with respect to Bio-Tech will be transferred and vested out into ResidualCo to allow Simply to indirectly acquire Bio-Tech’s business and assets on a free and clear basis.
96. Upon the transfer of all of the Excluded Contracts, Excluded Assets, and Excluded Liabilities to ResidualCo, the realizable value of ResidualCo’s assets will be insufficient to satisfy all of its obligations and it will be unable to meet its obligations as they generally become due (once the stay of proceedings is lifted). As a result, ResidualCo will be insolvent and face an imminent liquidity crisis, making it a debtor company to which the CCAA applies.
97. ResidualCo should, therefore, be added as an Applicant in these CCAA proceedings and the style of cause should be amended accordingly.

**E. The Monitor’s Powers Should be Enhanced with Respect to ResidualCo**

98. Section 23 of the CCAA sets out a non-exhaustive list of duties and functions of a court-appointed monitor pursuant to the CCAA, which may be augmented through the Court’s discretion under section 23(1)(k).<sup>67</sup>
99. The Applicants seek enhanced powers for the Monitor to allow the Monitor to: (i) assign Residual Co, or cause ResidualCo to be assigned, into bankruptcy; and (ii) apply to the Court for advice and direction or any orders necessary to carry out its powers and obligations under the ARVO or any other Order granted by the Court in these proceedings.<sup>68</sup>

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<sup>66</sup> *Stelco* at [paras 26](#) and [40](#); *McEwan Enterprises Inc.*, 2021 ONSC 6453 at [para 27](#); *Laurentian University of Sudbury*, 2021 ONSC 659 at [para 25](#).

<sup>67</sup> CCAA at [s 23](#).

<sup>68</sup> Sixth Report at para 55.

100. Courts have granted similar expanded powers to a monitor in CCAA proceedings where an RVO was granted.<sup>69</sup>
101. The Monitor has the requisite experience to oversee ResidualCo while achieving an expeditious path forward to the conclusion of the CCAA proceedings. It is appropriate to expand the powers of the Monitor to facilitate the efficient administration and wind-down of these CCAA proceedings.

**F. The Confidential Materials Should be Sealed**

102. The Applicants request to seal the Confidential Materials.
103. Pursuant to Part 6, Division 4 of the Alberta *Rules of Court*, AR 124/2010, the Court has the discretionary authority to order that a document filed in a civil proceeding is confidential, may be sealed, and not form part of the public record of the proceedings.<sup>70</sup>
104. A sealing order may be granted where the applicant demonstrates that: (a) Court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>71</sup>
105. The disclosure of the information contained in the Confidential Materials could have a detrimental impact on any future sale efforts of the Applicants and the Monitor, should either of the Proposed Transactions not close.<sup>72</sup>
106. The proposed form of Sealing Order contemplates that the Order will remain in place for a period of only 6 months, at the latest. For that reason, the salutary effects of a sealing order outweigh any negative effects to the principles of Court openness.
107. The proposed Sealing Order is the least restrictive and prejudicial alternative to prevent the dissemination of commercially sensitive information.

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<sup>69</sup> *Just Energy* at [para 69](#); *Harte Gold* at [paras 91-93](#).

<sup>70</sup> *Rules of Court*, AR 124/2010, [Part 6, Division 4](#).

<sup>71</sup> *Sherman Estate v Donovan*, 2021 SCC 25 at [para 38](#).

<sup>72</sup> Sixth Report at paras 70 to 71.

**V. RELIEF SOUGHT**

108. The Applicants submit that they have met all of the qualifications required to obtain the requested relief and respectfully request that this Court grant the proposed forms of Sale Approval and Vesting Orders and the Sealing Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6<sup>th</sup> DAY OF JANUARY, 2025.

**MLT AIKINS LLP**

A handwritten signature in blue ink, appearing to read "m. mcintosh", is written over a horizontal line.

Ryan Zahara/Molly McIntosh  
Counsel for the Delta 9 Group

## LIST OF AUTHORITIES

### A. Legislation

1. [\*Companies' Creditors Arrangement Act\*](#), RSC 1985, c C-36
2. [\*Income Tax Act\*](#), RSC 1985, c 1 (5<sup>th</sup> Supp), s 227
3. [\*Income Tax Regulations\*](#), C.R.C., c. 945
4. [\*Excise Tax Act\*](#), RSC 1985, c E-15
5. [\*Security Interest \(GST/HST\) Regulations\*](#), SOR/2011-55
6. [\*Bankruptcy and Insolvency Act\*](#), RSC 1985, c B-3
7. [\*Rules of Court\*](#), AR 124/2010

### B. Case Law

8. [\*Target Canada Co \(Re\)\*](#), 2015 ONSC 1487
9. [\*Royal Bank of Canada v Soundair Corp.\*](#), 1991 CanLII 2727 (ONCA)
10. [\*Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al.\*](#), 2022 ONSC 6354
11. *Harte Gold Corp (Re)*, [2022 ONSC 653](#)
12. [\*Quest University Canada \(Re\)\*](#), 2020 BCSC 1883
13. [\*Arrangement relative a Blackrock Metals Inc.\*](#), 2022 QCCS 2828
14. [\*Atlas Global Brands Inc.\*](#), 2024 ONSC 5570
15. [\*Metcalfe & Mansfield Alternative Investments II Corp. Re.\*](#), 2008 ONCA 587
16. [\*Lydian International Limited \(Re\)\*](#), 2020 ONSC 4006
17. [\*Green Relief Inc.\*](#), 2020 ONSC 6837
18. [\*8640025 Canada Inc. Re.\*](#), 2021 BCSC 1826
19. [\*Tacora Resources Inc. \(Re\)\*](#), 2024 ONSC 4436
20. [\*Canada v. Canada North Group Inc.\*](#), 2021 SCC 30
21. [\*Stelco Inc., Re.\*](#) [2004] OJ No. 1257 (ONSC)
22. [\*McEwan Enterprises Inc.\*](#), 2021 ONSC 6453
23. *Laurentian University of Sudbury*, [2021 ONSC 659](#)

24. [\*Sherman Estate v Donovan\*](#), 2021 SCC 25

**C. Court Orders**

25. Atlas Global Brands Inc. et al, [Approval and Reverse Vesting Order granted on October 29, 2024](#), Court File No. CV-24-00722386-00CL (ONSC)

26. Indiva Limited, et al, [Approval and Reverse Vesting Order granted October 21, 2024](#), Court File No. CV-24-00722044-00CL (ONSC)

27. BZAM Ltd., et al, [Approval and Vesting Order, granted October 15, 2024](#), Court File No. CV-24-00715773-00CL (ONSC)

28. Phoena Holdings Inc., et al, [Reverse Vesting Order granted March 21, 2024](#), Court File No.: CV-23-0069728500CL (ONSC)

29. Fire & Flower, [Reverse Vesting Order granted August 29, 2023](#), Court File No.: CV-23-0070058100CL (ONSC)

30. Aleafia Health Inc., [Reverse Vesting Order granted October 30, 2023](#), Court File No.: CV-2300703350-00CL (ONSC)

31. Trees Corporation, [Reverse Vesting Order granted April 5, 2024](#), Court File No.: CV-2300711935-00CL (ONSC)

32. Eve & Co et al, [Reverse Vesting Order granted October 7, 2022](#), Court File No.: CV-2200678884-00CL (ONSC)

33. Atlas Global Brands Inc. et al, [Approval and Reverse Vesting Order granted on October 4, 2024](#), Court File No. CV-24-00722386-00CL (ONSC)

34. Heritage Cannabis Holdings Corp., et al, [Approval and Reverse Vesting Order granted on June 26, 2024](#), Court File No. CV-24-00717664-00CL (ONSC)

35. Aleafia Health Inc., [CCAA Termination Order granted on March 1, 2024](#), Court File No. CV-23-00703350-00CL (ONSC)

36. MPX International Corporation, [CCAA Termination Order granted December 15, 2022](#), CV-22-00684542-00CL (ONSC)

37. Nexii Building Solutions Inc., [Ancillary Order granted June 28, 2024](#), No. S240195 (BCSC)