

**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 AYURCANN HOLDINGS CORP. and
AYURCANN INC.**

Applicants

**FACTUM OF THE APPLICANTS
(Returnable April 28, 2026)**

April 24, 2026

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PART I: OVERVIEW

1. On January 30, 2026, Ayurcann Holdings Corp. and Ayurcann Inc. (“**Ayurcann**” and together with Ayurcann Holdings Corp., the “**Applicants**” or the “**Company**”) sought and obtained an order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and these proceedings, the “**CCAA Proceedings**”).
2. On February 13, 2026 the Court granted an order (the “**Sale Process Approval Order**”), which, among other things approved a sale process (the “**Sale Process**”) in respect of the Applicants. The purpose of the Sale Process was to identify one or more value-maximizing transactions that offered a superior recovery for creditors than the offer set out in the Stalking Horse Bid (as defined below).
3. The Sale Process has now been completed and a value-maximizing transaction that is superior to the Stalking Horse Bid has been identified. The Applicants therefore seek an order (the “**Approval and Vesting Order**”), which, in the Applicants’ submission, follows from the Sale Process and represents the logical next step in these CCAA Proceedings.
4. The Approval and Vesting Order would, among other things, approve the agreement of purchase and sale dated March 31, 2026 (the “**Purchase Agreement**”) between the Applicants and Emblem Cannabis Corporation (“**Emblem**” and together with its assignee, if any, under the Purchase Agreement, the “**Purchaser**”), and authorize the Applicants and Monitor to take such steps and actions necessary to complete the transactions contemplated by the Purchase Agreement (the “**Transactions**”).

PART II: FACTS

5. The facts underlying this motion are more fully set out in the affidavit of Igal Sudman, sworn April 21, 2026 (the “**Sudman Affidavit**”).¹

A. Background

6. Through Ayurcann, the Company is a licensed cannabis producer and manufacturer which specializes in the formulation, packaging, distribution, and product development of high-quality cannabis products in the Canadian recreational market (the “**Business**”).² The Company develops its own cannabis brands with a focus on high-growth processed and derivative products such as vapes, pre-rolls and extracts, and operates from a leased, licensed facility in Pickering, Ontario.³

7. Despite historically strong revenues and stable cash flow prior to these CCAA Proceedings, the Company had accumulated material excise tax arrears, which resulted in the unilateral imposition of a payment plan by the Canada Revenue Agency (“**CRA**”). The Applicants lacked sufficient liquidity to comply with the payment plan and, once it came into effect, could no longer fund their operations in the ordinary course.⁴

8. As a result, on January 30, 2026, the Applicants sought and obtained creditor protection under the CCAA pursuant to an Initial Order, which, among other things:

- (a) appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as the Monitor;

¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the Sudman Affidavit and the other affidavits sworn by Mr. Sudman in these CCAA Proceedings.

² Affidavit of Igal Sudman sworn April 21, 2026 at para 5 [Sudman Affidavit], Motion Record of the Applicants dated April 22, 2026 at Tab 2 [Motion Record].

³ *Sudman Affidavit*, *ibid* at para 6, *Motion Record* at Tab 2.

⁴ *Sudman Affidavit*, *ibid* at para 7, *Motion Record* at Tab 2.

(b) granted a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants and the Non-Applicant Stay Parties until and including February 9, 2026 (the “**Stay Period**”); and

(c) granted the Administration Charge and the Directors’ Charge.⁵

9. On February 9, 2026, the Applicants were granted an Amended and Restated Initial Order, which, among other things: (i) extended the Stay Period until and including February 27, 2026; (ii) approved a key employee retention plan and granted a related super-priority charge; and (iii) preserved the *status quo* of the Licences (as defined below).⁶

10. To further their pursuit of a value-maximizing transaction, the Applicants sought and obtained two Orders on February 13, 2026. *First*, the Sale Process Approval Order which, among other things:

(a) approved the Sale Process in which the Stalking Horse Purchase Agreement (as defined below) served as the “**Stalking Horse Bid**”, and authorized the Applicants and the Monitor to implement the Sale Process pursuant to its terms; and

(b) approved certain bid protections (the “**Bid Protections**”)⁷ in favour of Auxly Cannabis Group Inc. (“**Auxly**”, and in such capacity, the “**Stalking Horse Bidder**”) and granted the related Bid Protections Charge.⁸

11. *Second*, the Second ARIO, which, among other things:

⁵ *Sudman Affidavit, ibid* at para 8, *Motion Record* at Tab 2; Third Report of the Monitor Alvarez & Marsal Canada Inc. dated April 24, 2026 at paras 1.1-1.2 [*Third Report*].

⁶ *Sudman Affidavit, ibid* at para 9, *Motion Record* at Tab 2; *Third Report, ibid* at para 1.3.

⁷ The Bid Protections included a break fee and an expense reimbursement and in the aggregate, total a maximum amount of up to \$264,200.

⁸ *Sudman Affidavit, supra* note 2 at para 10, Exhibit E, *Motion Record* at Tab 2; *Third Report, supra* note 5 at para 1.4.

- (a) approved Ayurcann’s ability to borrow up to a principal amount of \$2,000,000 under a debtor-in-possession credit facility (the “**DIP Facility**”) to finance the Company’s critically required working capital requirements and other general corporate purposes, post-filing and professional expenses, and costs;
- (b) granted a related priority charge in favour of Auxly (in such capacity, the “**DIP Lender**”) up to a maximum amount of \$2,000,000, plus accrued and unpaid interest, fees and expenses, ranking subordinate to the Administration Charge but in priority to all other encumbrances; and
- (c) extended the Stay Period to and until April 30, 2026.⁹

B. Results and Outcome of the Sale Process

12. The Sale Process was purposefully designed to provide an efficient, flexible and equitable process for canvassing the market with a view of maximizing opportunities for the sale of all, or part of, the Applicants’ assets and/or business (the “**Opportunity**”). As outlined in further detail in the Sudman Affidavit, the Monitor and the Applicants broadly marketed and solicited interest in the Opportunity in accordance with the timelines contained in the Sale Process.¹⁰

13. Each potential bidder that wished to make a bid in the Sale Process was required to deliver a written copy of its bid to the Monitor and the Applicants by no later than the bid deadline of March 31, 2026 (the “**Bid Deadline**”). To constitute a Qualified Bid, a bid (other than the Stalking Horse Bid) had to satisfy the requirements prescribed under the Sale Process, including that the bid had to provide aggregate consideration, payable in cash on closing, equal to or greater than: (i)

⁹ *Sudman Affidavit*, *ibid* at para 10, Exhibit D, *Motion Record* at Tab 2; *Third Report*, *ibid* at para 1.4.

¹⁰ *Sudman Affidavit*, *ibid* at paras 13-15, *Motion Record* at Tab 2; *Third Report*, *ibid* at para 4.1.

the Stalking Horse Bid's purchase price of \$4,640,000; (ii) the amount of \$264,200 to satisfy the Bid Protections; and (iii) a minimum overbid increment of \$100,000.¹¹

14. The Monitor carried out the Sale Process in accordance with the Sale Process Approval Order and solicited expressions of interest from industry participants and other potentially interested parties. Ten (10) parties executed non-disclosure agreements and conducted various levels of due diligence.¹²

15. Despite preliminary interest from various parties, the Applicants and the Monitor received only one (1) bid (other than the Stalking Horse Bid) by the Bid Deadline. Following the Bid Deadline, the Monitor and the Applicants reviewed the bid submitted by Emblem ("**Emblem's Bid**"), being the only bid received in the Sales Process besides the Stalking Horse Bid, and, after requiring some additional information and minor revisions, determined that it constituted a Qualified Bid.¹³

16. Emblem's Bid provided for a purchase price of \$5,004,200 (the "**Purchase Price**") – generating \$100,000 in additional value for the Applicants' creditors over the Stalking Horse Bid (net of the Bid Protections amount). Apart from the increased Purchase Price, Emblem's Bid was substantially the same as the Stalking Horse Bid.¹⁴

17. The Stalking Horse Bidder advised it would not be participating in the Auction. As Emblem was the only Qualified Bidder willing to participate, the Auction was cancelled and Emblem's Bid was declared the Successful Bid, and the Stalking Horse Bid was declared the Back-Up Bid.¹⁵

¹¹ *Sudman Affidavit, ibid* at para 18, *Motion Record* at Tab 2; *Third Report, ibid* at paras 4.3-4.4.

¹² *Sudman Affidavit, ibid* at paras 14-15, *Motion Record* at Tab 2; *Third Report, ibid* at para 4.3.

¹³ *Sudman Affidavit, ibid* at para 21, *Motion Record* at Tab 2; *Third Report, ibid* at paras 4.5-4.6.

¹⁴ *Sudman Affidavit, ibid* at para 22, *Motion Record* at Tab 2; *Third Report, ibid* at para 4.9.

¹⁵ *Sudman Affidavit, ibid* at para 24-25, *Motion Record* at Tab 2; *Third Report, ibid* at para 4.8.

C. The Purchase Agreement

18. The Purchase Agreement and the Transactions represent the best outcome achieved in the Court-approved Sale Process. In short, the Purchase Agreement contemplates that, following the cancellation of all of Ayurcann's outstanding shares and securities, the Purchaser will acquire 100% of the newly issued shares of Ayurcann (the "**Purchased Shares**"). The Purchaser will acquire the Purchased Shares on an "as is, where is" basis for the Purchase Price – a portion of which will be used to repay the Bid Protections and the outstanding balance of the DIP Indebtedness (as defined below). Since the Purchase Price is greater than the DIP Indebtedness, it is expected that there will be sufficient proceeds to facilitate distributions to unsecured creditors once creditor entitlements have been ascertained.¹⁶

D. Back-Up Transactions

19. The proposed Approval and Vesting Order contemplates approval of the Agreement of Purchase and Sale between the Applicants and Auxly dated February 8, 2026 (the "**Stalking Horse Purchase Agreement**") and the transactions contemplated therein (the "**Back-Up Transactions**") as a Back-Up Bid, in accordance with the Sale Process, with such approval only to become effective to the extent the Purchase Agreement and the Transactions do not close. The Stalking Horse Bid's selection as the Back-Up Bid pursuant to the Sale Process remains subject to the Outside Date established in the Sale Process of May 15, 2026 (following which, the Stalking Horse Bidder may not be obligated to complete the Back-Up Bid).¹⁷

20. As outlined in the materials filed in connection with the Sale Process Approval Order, the Stalking Horse Purchase Agreement has a purchase price of \$4,640,000 (which, for greater

¹⁶ *Sudman Affidavit, ibid* at para 27, *Motion Record* at Tab 2; *Third Report, ibid* at para 5.1.

¹⁷ *Sudman Affidavit, ibid* at paras 46-51, *Motion Record* at Tab 2; *Third Report, ibid* at para 6.4.

certainty, does not include any amounts allocated to the Bid Protections). Otherwise, the Stalking Horse Purchase Agreement is, in material part, the same as the Purchase Agreement. Like the Purchase Agreement, the Stalking Horse Purchase Agreement would allow Ayurcann to continue its business operations as a going concern and would provide for the ongoing employment of the vast majority of the Applicants' employees.¹⁸

E. Partial Distribution of Sale Proceeds

21. The proposed Approval and Vesting Order authorizes and directs the Monitor to make the following distributions to Auxly (the "**Auxly Distributions**"), in its capacities as DIP Lender and the Stalking Horse Bidder, from the Transactions' sale proceeds (the "**Sale Proceeds**"):

- (a) a cash distribution equal to all amounts owing by Ayurcann to Auxly under the DIP Facility up to the closing date, inclusive of principal, interest and fees (the "**DIP Indebtedness**"), in full and final repayment of all obligations owing by the Applicants under the DIP Facility; and
- (b) a cash distribution of up to \$264,200, in full and final satisfaction of the Bid Protections.¹⁹

F. Stay Extension

22. Absent further relief from this Court, the Stay Period will expire on April 30, 2026. The Applicants seek an extension of the Stay Period to June 30, 2026, to, among other things, close the Transactions and determine appropriate next steps in these proceedings, which may include a

¹⁸ *Sudman Affidavit, ibid* at para 47, *Motion Record* at Tab 2; *Third Report, ibid* at para 6.5.

¹⁹ *Sudman Affidavit, ibid* at para 53, *Motion Record* at Tab 2; *Third Report, ibid* at para 6.9.

process for the determination of claims against the Applicants in anticipation of an eventual distribution to unsecured creditors.²⁰

PART III: ISSUES

23. The sole issue to be considered on this motion is whether this Court should approve the Approval and Vesting Order.

PART IV: LAW AND ANALYSIS

A. This Court has Jurisdiction to Approve a Reverse Vesting Transaction

24. The broad discretion afforded under section 11 of the CCAA vests this Court with jurisdiction to approve reverse vesting transactions akin to the proposed Transactions if appropriate in the circumstances.²¹

25. The exercise of this Court’s discretion under section 11 must “further the remedial objectives of the CCAA and be guided by the baseline considerations of appropriateness, good faith, and due diligence.”²² The CCAA’s remedial objectives include “providing for timely, efficient and impartial resolution of a debtor’s insolvency” and “preserving and maximizing the value of a debtor’s assets.”²³ In furtherance of these objectives, Courts have approved reverse vesting transactions where, as here, the proposed transaction maximizes going-concern value and ensures the continued operation of the Applicants highly regulated Licences and permits.²⁴

²⁰ *Sudman Affidavit*, *ibid* at paras 81-85, *Motion Record* at Tab 2; *Third Report*, *ibid* at para 6.28.

²¹ *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 s 11 [CCAA]; *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354 at paras 29-31 [*Just Energy*]; *Re Harte Gold Corp*, 2022 ONSC 653 at paras 18, 37 [*Harte Gold*]. See also, *Re Quest University Canada*, 2020 BCSC 1883 at paras 150, 153-155 [*Quest*], *aff’d* 2020 BCCA 364; *Tacora Resources Inc. (Re)*, 2024 ONSC 4436 at paras 6-7 [*Tacora*].

²² *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 70 [*Callidus*]; *Harte Gold*, *ibid* at para 32.

²³ *Callidus*, *ibid* at para 40; *Harte Gold*, *ibid*.

²⁴ *Just Energy*, *supra* note 21 at paras 33, 34; *Harte Gold*, *supra* note 21 at para 71; See also: *In the Matter of a Plan of Compromise or Arrangement of Indiva et al.* (October 21, 2024), Toronto, CV-24-722044-00CL ([Endorsement of the Honourable Justice Penny](#)) (ONSC) (Commercial List) at para 5; *In the Matter of a Plan of Compromise or Arrangement of Heritage Cannabis Holdings Corp.* (June 26, 2024), Toronto, CV-24- 00717664-00CL ([Endorsement of the Honourable Justice Osborne](#)) (ONSC) (Commercial List) at para 7 [*Heritage Cannabis*];

B. The Purchase Agreement is Appropriate in the Circumstances

26. Although once an extraordinary remedy, reverse vesting transactions “are now a common way for insolvency and restructuring matters to be resolved.”²⁵ That said, this Court has made it clear that reverse vesting transactions should be reserved for appropriate circumstances.²⁶

27. As held by Justice Penny in *Re Harte Gold Corp.*, appropriateness of a proposed reverse vesting transaction may be informed by the following inquiries: (i) why is the reverse vesting order necessary; (ii) does the reverse vesting structure produce an economic result at least as favourable as any other viable alternative; (iii) is any stakeholder worse off under the reverse vesting structure than they would have been under any other viable alternative; and (iv) does the consideration being paid for the debtors’ business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the reverse vesting structure.²⁷

28. When exercising its jurisdiction to approve a reverse vesting transaction, this Court has also concurrently considered the non-exhaustive factors enumerated under subsection 36(3) of the CCAA and those articulated in *Royal Bank v Soundair*.²⁸ Together, these factors include:

- (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;

In the Matter of a Plan of Compromise or Arrangement of Mera Cannabis Corp. et al., (April 8, 2026), Toronto, CL-25-00753544-0000 (Endorsement of the Honourable Justice Cavanagh) (ONSC) (Commercial List) at paras 13-16 [*Mera Cannabis*].

²⁵ *Cleo Energy Corp (Re)*, 2025 ABKB 621 at para 10.

²⁶ *Harte Gold*, *supra* note 21 at para 38; *Just Energy*, *supra* note 21 at para 33.

²⁷ *Harte Gold*, *ibid*; *Tacora*, *supra* note 21 at para 11.

²⁸ *Harte Gold*, *ibid* at paras 20-21, 23, 39; *Just Energy*, *supra* note 21 at paras 31-32; *Heritage Cannabis*, *supra* note 24 at para 9; *Mera Cannabis*, *supra* note 24 at para 15.

- (c) whether the monitor filed a report stating that in its opinion the sale or disposition would be more beneficial to creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effect of the proposed sale or disposition on the creditors and other stakeholders;
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value;
- (g) whether sufficient effort has been made to obtain the best price and that the debtors have not acted improvidently;
- (h) the efficacy and integrity of the process by which offers have been obtained;
- (i) whether the interests of all parties have been considered; and
- (j) whether there has been unfairness in the working out of the process.²⁹

29. The foregoing inquiries and factors support approval of the Purchase Agreement and the Transactions, and the granting of the proposed Approval and Vesting Order. Namely:

- (a) ***The Process Leading to the Purchase Agreement was Reasonable and Good Faith Efforts were Made to Solicit Broad Interest in the Businesses*** – The Purchase Agreement is the culmination of: (i) the Sale Process which provided a flexible and equitable process for canvassing the market for interest in the Business; (ii) the Monitor and the Applicant's efforts to solicit interest in the Business, including through the preparation of marketing materials which were disseminated broadly to eighty-two (82) potential bidders and the publishing of notices on the

²⁹ CCAA, *supra* note 21 s 36(3); *Royal Bank of Canada v Soundair Corp.*, [1991] 7 CBR (3d) 1 at para 16. See also, *Harte Gold*, *ibid* at paras 20-21; *Just Energy*, *ibid* at paras 31-32; *Tacora*, *supra* note 21 at para 13.

Monitor's website and Insolvency Insider; and (iii) extensive negotiation between the Purchaser (and the Stalking Horse Bidder), the Applicants and the Monitor.³⁰

- (b) ***The Monitor Approved the Process Leading up to the Transactions*** – The Sale Process was developed and implemented by the Monitor and the Applicants. The Monitor led many of the solicitation and marketing efforts. The Sale Process was conducted at all times in accordance with the Sale Process Approval Order. The Transactions are supported by the Monitor.³¹
- (c) ***The Transactions Produce an Economic Result at Least as Favourable as any Other Viable Alternative*** – The consideration contemplated under the Purchase Agreement was the highest price achieved through the Court-approved Sale Process. The Transactions represent fair value for the Business. Notably, the Applicants did not receive any traditional asset purchase bids during the Sale Process. Both the Applicants and the Monitor believe there is no better alternative to the Transactions.³²
- (d) ***The Transactions Effect a Superior Result to a Bankruptcy*** – The Transactions provide for the continuation of the Business as a going concern, which will result in the preservation of: (i) the employment of approximately forty (40) employees; (ii) valuable customer and supplier relationships; (iii) Ayurcann's proprietary brands; and (iv) Ayurcann's cannabis Licences and governmental contracts. In a bankruptcy or liquidation scenario, these benefits would be greatly diminished or

³⁰ *Sudman Affidavit, supra* note 2 at para 14, *Motion Record* at Tab 2; *Third Report, supra* note 5 at para 4.2.

³¹ *Sudman Affidavit, ibid* at paras 13-14, *Motion Record* at Tab 2; *Third Report, ibid* at paras 4.1-4.9.

³² *Sudman Affidavit, ibid* at paras 22-23, 36, 44, *Motion Record* at Tab 2; *Third Report, ibid* at paras 6.3(i) and (x).

unattainable. The Monitor is also of the view the Transactions are more favourable to the Applicants' stakeholders than a bankruptcy.³³

- (e) ***Creditors Were Appropriately Consulted*** – The party with the primary economic interest in these CCAA Proceedings, Auxly (in its capacities as DIP Lender and Stalking Horse Bidder), supports approval of the Transactions. The Sale Process and selection of the Transactions as the Successful Bid was widely publicized by the Applicants and the Monitor. The proposed Approval and Vesting Order also reflects feedback from certain stakeholders including CRA and Auxly.³⁴
- (f) ***The Proposed Reverse Vesting Structure is Necessary in the Circumstances*** – As further detailed in the Sudman Affidavit, Ayurcann holds several regulatory licences (collectively, the “Licences”) which are essential for the Businesses to operate in Canada’s highly-regulated cannabis industry. Transferring the Licences through a traditional asset sale would likely cause significant delays, resulting in closing risks and additional expenses. The reverse vesting structure has been frequently utilized in the context of cannabis and other highly regulated companies in order to preserve licences while promoting an efficient and successful transfer of the business, all with a view to promoting successful going-concern outcomes, consistent with the purposes of the CCAA.³⁵ For these reasons, this Court has approved a number of reverse vesting transactions in the context of Canada’s highly regulated cannabis industry.³⁶ The preservation of existing Licences and the

³³ *Sudman Affidavit*, *ibid* at para 34, *Motion Record* at Tab 2; *Third Report*, *ibid* at paras 6.3 (ii) and (iii).

³⁴ *Sudman Affidavit*, *ibid* at paras 14, 36, 45 *Motion Record* at Tab 2; *Third Report*, *ibid* at para 4.2.

³⁵ *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 70 [Century Services].

³⁶ *In the Matter of a Plan of Compromise or Arrangement of Indiva et al.*, (October 21, 2024), Toronto, CV-24-00722044-00CL ([Approval and Vesting Order of the Honourable Justice Penny](#)) (ONSC) (Commercial List) [*Indiva*]; *In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., FIGR Norfolk Inc. and Canada’s Island Garden Inc.* (June 10, 2021), Toronto, CV-21-00655373-00CL ([Approval and Vesting Order of the Honourable Justice McEwan](#)) (ONSC) (Commercial List) [*FIGR*]; *In the Matter of a Plan of*

seamless continuation of key Retained Contracts are essential components of the Transactions and the Back-Up Transactions. The reverse vesting structure has the added benefit of allowing the Purchaser to keep material contracts in place, including valuable supply and distribution agreements with governmental entities, which are critical to the ongoing operations of the Business.³⁷

(g) ***The Proposed Reverse Vesting Structure does not Disadvantage any Stakeholder***

– The Applicants are not aware of any creditor or other stakeholder that would be materially disadvantaged by the proposed Purchase Agreement, including through its implementation through a reverse vesting structure. The Purchase Agreement provides for payment of cure costs in respect of applicable Retained Contracts (although the Monitor has confirmed no such cure costs are payable).³⁸ Accordingly, the reverse vesting structure does not prejudice contract counterparties that would be entitled to cure costs in a traditional asset sale, and the consideration achieved pursuant to the Transactions is expected to provide funding for distributions to unsecured creditors. Additionally, as the Transactions resulted in the highest purchase price under the Sale Process, the funds available for distribution to unsecured creditors have been maximized. The Transactions also contemplate the payment of the DIP Indebtedness and the Bid Protections in full.³⁹

Compromise or Arrangement of Superette Inc. et al. (December 20, 2022), Toronto, CV-22-00686245-00CL ([Approval and Vesting Order of the Honourable Justice Osborne](#)) (ONSC) (Commercial List) [*Superette*]; *In the Matter of a Plan of Compromise or Arrangement of MPX International Corporation et al.* (December 15, 2022), Toronto, CV-22-00684542-00CL ([Approval and Vesting Order of the Honourable Justice Penny](#)) (ONSC) (Commercial List) [MPX]; *In the Matter of a Plan of Compromise or Arrangement of Mera Cannabis Corp. et al.*, (April 8, 2026), Toronto, CL-25-00753544-0000 ([Approval and Vesting Order of the Honourable Justice Cavanagh](#)) (ONSC) (Commercial List) [*Mera RVO*]; *In the Matter of a Plan of Compromise or Arrangement of Fire & Flower Holdings Corp. et al.*, (August 29, 2023), Toronto, CV-23-00700581-00CL ([Approval and Reverse Vesting Order of the Honourable Justice Osborne](#)) (ONSC) (Commercial List) [*Fire & Flower*]; *In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et al.*, (October 30, 2023), Toronto, CV-23-00703350-00CL ([Approval and Reverse Vesting Order of the Honourable Justice Conway](#)).

³⁷ *Sudman Affidavit*, *ibid* at paras 38-42, *Motion Record* at Tab 2; *Third Report*, *supra* note 5 at paras 6.3 (i) and (ii).

³⁸ Counterparties to all Retained Contracts have been served with notice of the within motion.

³⁹ *Sudman Affidavit*, *supra* note 2 at para 42, *Motion Record* at Tab 2; *Third Report*, *supra* note 5 at para 6.9.

- (h) ***The Consideration is Reasonable and Fair and Adequately Reflects the Value of the Proposed Reverse Vesting Transaction*** – The Purchase Price constitutes the highest value achieved under the Court-approved Sale Process, represents fair value for the Business, and is therefore the best possible outcome in the circumstances. As discussed above, the residual net Sale Proceeds are expected to provide a recovery to unsecured creditors at a later date.⁴⁰

30. Finally, in accordance with the Court’s authority under subsection 36(1) and section 11 of the CCAA, and consistent with reverse vesting orders granted by this Court,⁴¹ the proposed Approval and Vesting Order will terminate and cancel all existing Equity Interests of Ayurcann.

31. For the foregoing reasons the Applicants respectfully submit that the Purchase Agreement and the Transactions contemplated therein should be approved.

C. The Back-Up Transactions Should be Approved

32. For the same reasons set out above regarding why the Purchase Agreement and the Transactions should be approved, this Court should approve the Stalking Horse Purchase Agreement and the Back-Up Transactions, but only to the extent the Transactions do not close by the Outside Date. The Stalking Horse Purchase Agreement is, in material part, the same as the Purchase Agreement – containing substantially identical schedules, transaction structure and closing conditions. The Stalking Horse Purchase Agreement represents the next best offer (and only other offer) received in the Sale Process and, as confirmed by the Monitor, would generate greater value for the Applicants’ stakeholders than a bankruptcy or liquidation.⁴²

⁴⁰ *Sudman Affidavit*, *ibid* at paras 22-23, 36, *Motion Record* at Tab 2; *Third Report*, *ibid* at para 6.3(x).

⁴¹ *Indiva*, *supra* note 36 at paras 6, 8(f); *FIGR*, *supra* note 36 at paras 4, 5(e); *Superette*, *supra* note 36 at paras 4, 5(g); *MPX*, *supra* note 36 at paras 4, 5(g); *Mera RVO*, *supra* note 36 at para 7.

⁴² *Sudman Affidavit*, *supra* note 2 at paras 42, 50, *Motion Record* at Tab 2; *Third Report*, *supra* note 5 at para 6.6.

33. Similar to the Transactions, the Back-Up Transactions result in the Applicants continuing operations as a going concern and the preservation of the employment of the majority of the Applicants' employees. This Court has granted similar relief noting the approach of approving a back-up transaction "reduces the required Court appearances and attendant costs, thereby preserving additional value for stakeholders."⁴³ Additionally, approval of the Back-Up Bid will provide greater certainty to the Applicants' stakeholders that a going-concern transaction will be consummated in the near term.

34. Accordingly, the Applicants submit that approval of the Stalking Horse Purchase Agreement and the Back-Up Transactions is appropriate in the circumstances.

D. The Releases are Appropriate

35. The proposed Approval and Vesting Order also contemplates releases (the "**Releases**") in favour of the "Released Parties" which include, among others, the Applicants' current and former directors and officers, legal counsel of the Applicants and Residual Co., the Monitor and its legal counsel, the Purchaser and its legal counsel, and the DIP Lender and its legal counsel.

36. Releases are frequently approved in the context of transaction approvals in Court-supervised CCAA sale processes, including in reverse vesting transactions, however they are not granted as of right.⁴⁴ In assessing whether to grant a proposed release, Courts may take guidance from the discretionary factors set out in *Lydian*,⁴⁵ a decision that considered releases in the context of a plan of arrangement:

⁴³ *In the Matter of a Plan of Compromise or Arrangement of Fire and Flower Holdings Corp. et al.*, (August 30, 2023), Toronto, CV- 23-00700581-00CL ([Endorsement of the Honourable Justice Osborne](#)) (ONSC) (Commercial List) at para 23.

⁴⁴ [Fresh City Farms and Mama Earth Organics, 2024 ONSC 2016](#) at para 42 [*Fresh City*]; [Re B+H Architects Corp, 2026 ONSC 26](#) at para 33 [*B+H*]; [Harte](#), *supra* note 21 at para 78-86; [Freedom Cannabis Inc \(Re\), 2025 ABKB 272](#) at para 43 [*Freedom Cannabis*].

⁴⁵ [Fresh City](#), *ibid* at para 42; [B+H](#), *ibid* at para 31; [Harte](#), *ibid* at para 80; [Freedom Cannabis](#), *ibid* at para 27.

- (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.⁴⁶

37. Courts have also considered creditors' knowledge of the proposed releases.⁴⁷ Given the discretionary nature of this relief, it is not necessary for each of the factors to apply, and some factors may assume greater weight in one case than another.⁴⁸ Courts have also considered creditors' knowledge of the proposed releases.⁴⁹

38. For the reasons set out below, the Applicants are of the view the *Lydian* factors are satisfied and the Releases are appropriate in the circumstances.

1. The Released Parties Made Significant Contributions to the Restructuring

39. The Released Parties contributed to the Transactions and the successful restructuring of the Applicants in a meaningful way.

⁴⁶ *Lydian International Limited (Re)*, 2020 ONSC 4006 at para 54; see also *Metcalf & Mansfield Alternative Investments II Corp., (Re)*, 2008 ONCA 587 at paras 70-71 setting out nearly identical factors which are also frequently applied.

⁴⁷ *Harte*, *supra* note 21 at para 86.

⁴⁸ *Harte*, *ibid* at para 80.

⁴⁹ *Harte*, *ibid* at para 86.

40. The Directors and Officers of the Applicants provided important direction leading up to and throughout the filing and administration of the CCAA Proceedings, including by:

- (a) identifying a small group of parties interested in providing interim financing and acting as a Stalking Horse Bid in the Sale Process, which group included Auxly, and assisting the Monitor in negotiating with these parties to optimize the terms of the DIP Facility and Stalking Horse Bid;
- (b) facilitating the Stalking Horse Bidder's conduct of due diligence, which both assisted the Monitor in populating the virtual data room for the benefit of the Sale Process, and resulted in the finalization of the schedules to the Stalking Horse Bid, which are substantively identical to those in the Purchase Agreement;
- (c) assisting with the Sale Process, including using their personal connections to solicit interest in the Opportunity and making themselves available to meet with interested parties to support their due diligence efforts;
- (d) with the assistance of the Monitor, preparing cash flow forecasts and variance reporting in accordance with the requirements under the DIP Facility;
- (e) assisting with the preparation of the initial CCAA application and each of the subsequent motions; and
- (f) maintaining key supplier, employee and customer relationships and managing day-to-day operations of the Company throughout the CCAA Proceedings, including overseeing the maintenance of the Licences, thereby preserving the value of the Business during the Sale Process.⁵⁰

⁵⁰ *Sudman Affidavit*, *supra* note 2 at para 62, *Motion Record* at Tab 2; *Third Report*, *supra* note 5 at para 6.21.

41. The Monitor was instrumental in conducting the Sale Process, negotiating the Purchase Agreement and overseeing the Applicants' operations during these CCAA Proceedings, ensuring that value was being maximized for the benefit of the Applicants' stakeholders.⁵¹

42. The DIP Lender advanced interim financing which provided the Applicants the breathing room necessary to conduct the Sale Process and operate the Business in the ordinary course. Auxly also acted as the Stalking Horse Bidder, providing considerable value to the Sale Process both by ensuring that the Sale Process was competitive and maximized value, and by undertaking extensive due diligence that directly benefitted the completion of Emblem's Purchase Agreement.⁵²

43. The professionals benefiting from the Releases provided advice and direction in connection with each of the above and were critical to achieving a going-concern outcome.⁵³

2. The Other *Lydian* Factors Support Granting the Releases

44. All of the other *Lydian* factors also support granting the Releases. Specifically:

- (a) ***The Claims to be Released are Rationally Connected to the Purpose of the Restructuring and Necessary for the Transactions to Close:*** The Releases are critical to the restructuring, as they allow the Released Parties to focus on closing the Transactions and facilitating a successful transition of the Business, completing the restructuring and working towards effectuating distributions to unsecured creditors, while avoiding the costs and distraction of unnecessary litigation. In particular, the ongoing involvement of the Directors and Officers will be essential to obtaining the requisite regulatory approvals within the short timeframe prior to

⁵¹ *Sudman Affidavit, ibid* at para 65, *Motion Record* at Tab 2; *Third Report, ibid* at paras 6.22 and 9.1.

⁵² *Sudman Affidavit, ibid* at para 65, *Motion Record* at Tab 2; *Third Report, ibid* at para 6.22.

⁵³ *Sudman Affidavit, ibid* at para 66, *Motion Record* at Tab 2; *Third Report, ibid* at para 6.22.

the Outside Date. Further, the granting of the proposed Releases is a condition precedent of the Purchaser under the Purchase Agreement.⁵⁴

- (b) ***The Releases are not Overly Broad:*** The Releases explicitly do not release or discharge any claim for fraud or wilful misconduct or any claim that is not permitted to be released pursuant to subsections 5.1(2) or 19(2) of the CCAA. Furthermore, any claims against the Applicants' directors and officers that lie against any applicable directors' and officers' insurance policy are carved out from the Releases.⁵⁵
- (c) ***The Releases Benefit the Applicants and their Creditors Generally:*** By allowing the Released Parties to avoid incurring costs related to unnecessary litigation, and to focus on closing the Transactions and in turn facilitate future distributions to unsecured creditors, the Releases benefit the Applicants and their creditors generally.⁵⁶
- (d) ***Stakeholders have Knowledge of the Nature and Effect of the Releases:*** The intention to seek releases for Directors and Officers was previewed in the First Sudman Affidavit and again in the Stalking Horse Purchase Agreement. The Motion Record was served on the service list in the ordinary course, and no opposition has been expressed as of the date hereof.⁵⁷

⁵⁴ *Sudman Affidavit, ibid* at paras 63, 67, *Motion Record* at Tab 2; *Third Report, ibid* at para 6.3.

⁵⁵ *Sudman Affidavit, ibid* at para 60, *Motion Record* at Tab 2; *Third Report, ibid* at paras and 6.18 and 6.21(vi).

⁵⁶ *Sudman Affidavit, ibid* at para 67, *Motion Record* at Tab 2; *Third Report, ibid* at para 6.21(v).

⁵⁷ *Sudman Affidavit, ibid* at para 67, *Motion Record* at Tab 2; *Third Report, ibid* at para 6.21(vi).

45. The Monitor is supportive of the Releases, and given their limited scope, does not believe that they will prejudice creditors generally.⁵⁸ Accordingly, the Releases are appropriate in the circumstances.

E. The Auxly Distributions Should be Approved

46. If the Purchase Agreement is approved and the Transactions close, the proposed Approval and Vesting Order authorizes and directs the Monitor to make the Auxly Distributions.⁵⁹

47. It is well established that the broad discretion conferred under section 11 of the CCAA permits courts to approve interim or final distributions to secured or unsecured creditors absent a plan of compromise or arrangement.⁶⁰

48. The Applicants submit that it is appropriate, and consistent with the CCAA's remedial objectives, for this Court to authorize the proposed Auxly Distributions given that:

- (a) the DIP Indebtedness and the Bid Protections are both secured by super-priority charges, which will attach to the Sale Proceeds as part of the Transactions;
- (b) the Monitor has confirmed the Applicants will have sufficient liquidity following the closing of the Transactions to satisfy all anticipated obligations secured by the other CCAA Charges that may become due (including amounts secured by the Administration Charge);
- (c) the repayment of the DIP Indebtedness will prevent the accrual of additional interest under the DIP Facility, preserving value for future distributions to creditors;

⁵⁸ *Sudman Affidavit*, *ibid* at para 68, *Motion Record* at Tab 2; *Third Report*, *ibid* at paras 6.23-6.24.

⁵⁹ *Sudman Affidavit*, *ibid* at para 53, *Motion Record* at Tab 2; *Third Report*, *ibid* at para 6.12.

⁶⁰ *CCAA*, *supra* note 21 s 11; *Re Nortel Networks Corporation et al*, 2014 ONSC 4777, at paras 54-58; *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 at para 71.

- (d) the Bid Protections were approved pursuant to the Sale Process Approval Order and were a material condition and a key factor in securing the execution of the Stalking Horse Purchase Agreement and are payable in the circumstances; and
- (e) the Monitor supports the Auxly Distributions and does not believe that any stakeholder will be materially prejudiced by the Auxly Distributions.⁶¹

49. As such, this Court has jurisdiction to approve the Auxly Distributions and the Applicants respectfully submit that it is appropriate and in the best interests of the Applicants and their stakeholders to do so in the circumstances.

F. Schedule “I” to the Purchase Agreement Should be Sealed

50. Subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, provides that a court may order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.⁶² In *Sherman Estate v Donovan*, the Supreme Court of Canada recast the test for a sealing order, which requires the moving party to establish:

- (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.⁶³

⁶¹ *Sudman Affidavit*, *ibid* at paras 54-57, *Motion Record* at Tab 2; *Third Report*, *supra* note 5 at paras 6.11-6.15.

⁶² *Courts of Justice Act*, R.S.O. 1990 c. C.43, s 137(2).

⁶³ *Sherman Estate v Donovan*, 2021 SCC 25 at para 38 [*Sherman Estate*].

51. The Applicants are requesting that Schedule “I” to the Purchase Agreement be sealed until further order of the Court. Schedule “I” includes a list of the Retained Employees (the “**Retained Employee List**”) and therefore contains information that is both commercially sensitive and personal to the Retained Employees.⁶⁴

52. Any disclosure of the Retained Employee List prior to Closing would likely cause discord among the Applicants’ employees given the relatively modest size of the Company and the limited number of employees not included as Retained Employees. Further, any disruption caused by the disclosure of the Retained Employee List would be an unnecessary and inefficient distraction while the Applicants and the Purchaser focus on closing the Transactions (if approved).⁶⁵

53. Courts have recognized the important public interests CCAA proceedings serve,⁶⁶ and that maximization of recoveries in insolvency proceedings is an important public interest.⁶⁷ Courts have also found that no reasonable alternative to a sealing order exists where declining to grant the sealing order would materially impair the maximization of value for the benefit of stakeholders.⁶⁸

54. Accordingly, the Applicants are of the view that the sealing request is necessary and appropriate in the circumstances, and does not prejudice any stakeholders. Further the Monitor supports the sealing request and agrees it is proportionate and reasonable in the circumstances.⁶⁹

G. Monitor’s Enhanced Powers

55. The Court has the jurisdiction to grant a monitor expanded powers pursuant to sections 11 and subsection 23(1)(k) of the CCAA. Section 11 provides the Court with broad discretion to make

⁶⁴ *Sudman Affidavit*, *supra* note 2 at para 69, *Motion Record* at Tab 2; *Third Report*, *supra* note 5 at paras 6.30-6.31.

⁶⁵ *Sudman Affidavit*, *ibid* at para 70, *Motion Record* at Tab 2; *Third Report*, *ibid* at para 6.32.

⁶⁶ [Nortel Networks Corporation \(Re\)](#), [2009] 55 CBR (5th) 229 at para 29.

⁶⁷ [Danier Leather Inc. \(Re\)](#), 2016 ONSC 1044 at para 84.

⁶⁸ [In the Matter of the Companies’ Creditors Arrangement Act and In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.](#), 2023 ONSC 753 at para 62; [Equitable Bank v Ashcroft Homes – Capital Hall Inc.](#), 2025 ONSC 6047 at para 25 .

⁶⁹ *Sudman Affidavit*, *supra* note 2 at para 71, *Motion Record* at Tab 2; *Third Report*, *supra* note 5 at para 6.32.

“any order that is appropriate in the circumstances.”⁷⁰ Subsection 23(1) prescribes the duties and functions of the monitor – subsection 23(1)(k) provides that the Court has the discretion to require a monitor to carry out any other functions in relation to the debtor company that the Court may direct.⁷¹

56. The Ontario Court of Appeal has held that courts should avoid a “rigid definition of a monitor’s role” and instead adopt a more flexible approach, tailored to the circumstances.⁷² It is well established that the Court has the jurisdiction to grant a monitor enhanced powers, and should exercise its discretion to do so when appropriate in the circumstances in light of the objectives of the CCAA.⁷³

57. Here, the Applicants seek to expand the current powers of the Monitor to, among other things, exercise any powers which may be properly exercised by the board of directors of Residual Co. and to take all actions, and execute all agreements and documents, as necessary to facilitate Residual Co.’s performance of its obligations under the Purchase Agreement and the Transactions.⁷⁴

58. Such relief is necessary and appropriate given that: (i) following the completion of the Transactions, Residual Co. will have no employees to assist with post-closing obligations, including the assessment of creditors’ claims in contemplation of a potential future distribution; (ii) A&M has the necessary knowledge and expertise to assist the Applicants with their post-closing obligations; and (iii) to date, the Monitor has exercised its powers fairly and impartially under the Court’s supervision and will continue to do so.⁷⁵

⁷⁰ CCAA, *supra* note 21 s 11.

⁷¹ CCAA, *ibid* s 23(1).

⁷² *Ernst & Young Inc. v Essar Global Fund Limited*, 2017 ONCA 1014 at para 126.

⁷³ *Inca One*, *ibid* at para 36.

⁷⁴ *Sudman Affidavit*, *supra* note 2 at para 73-75, *Motion Record* at Tab 2; *Third Report*, *supra* note 5 at para 6.25.

⁷⁵ *Sudman Affidavit*, *ibid* at para *Motion Record* at Tab 2; *Third Report*, *ibid* at para 6.26.

H. The Stay Extension

59. The Stay of Proceedings is currently set to expire on April 30, 2026.⁷⁶ Subsection 11.02(2) of the CCAA expressly authorizes the Court to grant an extension of the Stay of Proceedings for “any period the court considers necessary”.⁷⁷ To grant such an extension, 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.⁷⁸ The jurisdiction vested in Courts to stay proceedings under section 11.02 “should be construed broadly to accomplish the legislative purposes of the CCAA”.⁷⁹

60. The proposed Stay Extension will enable the Applicants to close the Transactions (or Back-Up Transactions) and determine appropriate next steps in these proceedings, which may include a process for the determination of claims against the Applicants in anticipation of an eventual distribution to unsecured creditors.⁸⁰

61. The Applicants have acted in good faith and with due diligence to, among other things, stabilize their Business, fulfill their obligations under the Sale Process, including responding to diligence requests made by prospective bidders, negotiate the Purchase Agreement, prepare materials for the within motion for the Approval and Vesting Order, and engage with the Purchaser to prepare for closing, should the Approval and Vesting Order be granted.⁸¹

62. Further, the Monitor and the DIP Lender each support the proposed Stay Extension, and the Monitor does not believe that any stakeholder will be materially prejudiced by the extension

⁷⁶ *Sudman Affidavit*, *ibid* at paras 78-79, *Motion Record* at Tab 2; *Third Report*, *ibid* at para 6.28.

⁷⁷ *CCAA*, *supra* note 21, s 11.02(2); *Laurentian University of Sudbury, 2021 ONSC 1098* at para 56.

⁷⁸ *CCAA*, *ibid*, s 11.02(2) and s 11.02(3).

⁷⁹ *Canwest Global Communications Corp, 2011 ONSC 2215* at para 24.

⁸⁰ *Sudman Affidavit*, *ibid* at para 81, *Motion Record* at Tab 2; *Third Report*, *supra* note 5 at para 6.29.

⁸¹ *Sudman Affidavit*, *supra* note 2 at para 82, *Motion Record* at Tab 2; *Third Report*, *ibid* at para 6.29.

of the Stay Period. The Updated Cash Flow Forecast (as defined in the Third Report) also demonstrates that the Applicants, subject to the closing of the Transactions, are forecasted to have sufficient liquidity to fund their obligations and the costs of these CCAA Proceedings through the end of the proposed Stay Extension.⁸²

63. Accordingly, the Applicants submit that the proposed Stay Extension, is in the best interests of the Applicants and their stakeholders, consistent with the purposes of the CCAA, and appropriate in the circumstances.

PART V: RELIEF REQUESTED

64. The Applicants submit that the relief sought on the within motion is appropriate in the circumstances, consistent with relief previously granted by the Court⁸³, and respectfully request that the proposed form of Approval and Vesting Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24TH DAY OF APRIL 2026

Bennett Jones LLP

Bennett Jones LLP

⁸² *Sudman Affidavit*, *supra* note 2 at paras 84-85, *Motion Record* at Tab 2; *Third Report*, *ibid* at para 6.11.

⁸³ *Indiva*, *supra* note 36; *FIGR*, *supra* note 36; *Superette*, *supra* note 36; *MPX*, *supra* note 36; *Mera RVO*, *supra* note 36; *Fire & Flower*, *supra* note 36; *Aleafia*, *supra* note 36.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [*Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354](#)
2. [*Re Harte Gold Corp*, 2022 ONSC 653](#)
3. [*Re Quest University Canada*, 2020 BCSC 1883](#)
4. [*Re Quest University Canada*, 2020 BCCA 364](#)
5. [*Tacora Resources Inc. \(Re\)*, 2024 ONSC 4436](#)
6. [*9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10](#)
7. [*Cleo Energy Corp \(Re\)*, 2025 ABKB 621](#)
8. [*Royal Bank of Canada v Soundair Corp*, \[1991\] 7 CBR \(3d\) 1](#)
9. [*Century Services Inc v Attorney General \(Canada\)*, 2010 SCC 60](#)
10. [*Fresh City Farms and Mama Earth Organics*, 2024 ONSC 2016](#)
11. [*Re B+H Architects Corp*, 2026 ONSC 26](#)
12. [*Freedom Cannabis Inc \(Re\)*, 2025 ABKB 272](#)
13. [*Lydian International Limited \(Re\)*, 2020 ONSC 4006](#)
14. [*Metcalfe & Mansfield Alternative Investments II Corp., \(Re\)*, 2008 ONCA 587](#)
15. [*Re Nortel Networks Corporation et al*, 2014 ONSC 4777](#)
16. [*AbitibiBowater inc. \(Arrangement relatif à\)*, 2009 QCCS 6461](#)
17. [*Sherman Estate v Donovan*, 2021 SCC 25](#)
18. [*Nortel Networks Corporation \(Re\)*, \[2009\] 55 CBR \(5th\) 229](#)
19. [*Danier Leather Inc. \(Re\)*, 2016 ONSC 1044](#)
20. [*In the Matter of the Companies' Creditors Arrangement Act and In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.*, 2023 ONSC 753](#)
21. [*Equitable Bank v Ashcroft Homes – Capital Hall Inc.*, 2025 ONSC 6047](#)
22. [*Ernst & Young Inc. v Essar Global Fund Limited*, 2017 ONCA 1014](#)

23. [Laurentian University of Sudbury, 2021 ONSC 1098](#)
24. [Canwest Global Communications Corp, 2011 ONSC 2215](#)

Endorsements and Orders

1. *In the Matter of a Plan of Compromise or Arrangement of Indiva et al.*(October 21, 2024), Toronto, CV-24-722044-00CL ([Endorsement of the Honourable Justice Penny](#)) (ONSC) (Commercial List)
2. *In the Matter of a Plan of Compromise or Arrangement of Heritage Cannabis Holdings Corp.*(June 26, 2024), Toronto, CV-24- 00717664-00CL ([Endorsement of the Honourable Justice Osborne](#)) (ONSC) (Commercial List)
3. *In the Matter of a Plan of Compromise or Arrangement of Mera Cannabis Corp. et al.*, (April 8, 2026), Toronto, CL-25-00753544-0000 ([Endorsement of the Honourable Justice Cavanagh](#)) (ONSC) (Commercial List)
4. *In the Matter of a Plan of Compromise or Arrangement of Indiva et al.*, (October 21, 2024), Toronto, CV-24-00722044-00CL ([Approval and Vesting Order of the Honourable Justice Penny](#)) (ONSC) (Commercial List)
5. *In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., FIGR Norfolk Inc. and Canada's Island Garden Inc.* (June 10, 2021), Toronto, CV-21-00655373-00CL ([Approval and Vesting Order of the Honourable Justice McEwan](#)) (ONSC) (Commercial List)
6. *In the Matter of a Plan of Compromise or Arrangement of Superette Inc. et al.* (December 20, 2022), Toronto, CV-22-00686245-00CL ([Approval and Vesting Order of the Honourable Justice Osborne](#)) (ONSC) (Commercial List)
7. *In the Matter of a Plan of Compromise or Arrangement of MPX International Corporation et al.* (December 15, 2022), Toronto, CV-22-00684542-00CL ([Approval and Vesting Order of the Honourable Justice Penny](#)) (ONSC) (Commercial List)
8. *In the Matter of a Plan of Compromise or Arrangement of Mera Cannabis Corp. et al.*, (April 8, 2026), Toronto, CL-25-00753544-0000 ([Approval and Vesting Order of the Honourable Justice Cavanagh](#)) (ONSC) (Commercial List)
9. *In the Matter of a Plan of Compromise or Arrangement of Fire & Flower Holdings Corp. et al.*, (August 29, 2023), Toronto, CV-23-00700581-00CL ([Approval and Reverse Vesting Order of the Honourable Justice Osborne](#)) (ONSC) (Commercial List)
10. *In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et al.*, (October 30, 2023), Toronto, CV-23-00703350-00CL ([Approval and Reverse Vesting Order of the Honourable Justice Conway](#)).

11. *In the Matter of a Plan of Compromise or Arrangement of Fire and Flower Holdings Corp. et al.*, (August 30, 2023), Toronto, CV- 23-00700581-00CL ([Endorsement of the Honourable Justice Osborne](#)) (ONSC) (Commercial List)

I certify that I am satisfied as to the authenticity of every authority.



Shawn Kirkman LSO # 92214U - April 24, 2026

SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

Section 5.1

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Powers of court

(3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

Resignation or removal of directors

(4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the debtor company shall be deemed to be a director for the purposes of this section.

1997, c. 12, s. 122

Section 11

General power of court

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.

Section 11.02

Stays, etc. – initial application

(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.

Section 19

Claims that may be dealt with by a compromise or arrangement

19 (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

(i) the day on which proceedings commenced under this Act, and

(ii) if the company filed a notice of intention under section 50.4 of the Bankruptcy and Insolvency Act or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the Bankruptcy and Insolvency Act, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

Exception

(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(b) any award of damages by a court in civil proceedings in respect of

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

R.S., 1985, c. C-36, s. 191996, c. 6, s. 1672005, c. 47, s. 1312007, c. 36, s. 69

Section 23

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

Monitor not liable

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

2005, c. 47, s. 1312007, c. 36, s. 72

Section 36

Restriction on disposition of business assets

(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.

Courts of Justice Act, R.S.O. 1990, c. C. 43

Section 137

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

R.S.O. 1990, c. C.43, s. 137.

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 AYURCANN HOLDINGS CORP. and AYURCANN INC.

Court File No.: CL-26-00000039-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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