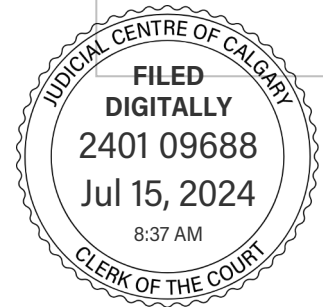


COURT FILE NUMBER 2401-
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

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

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



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 **ORIGINATING APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

MLT AIKINS LLP
Barristers and Solicitors
#2100 – 222 3rd Ave SW
Calgary, AB T2P 0B4
Attention: Ryan Zahara / Kaitlin Ward
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kward@mltaikins.com
File No. 0136555.00034

NOTICE TO RESPONDENTS:

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the applications are heard as shown below:

Initial Order Application:

Date: July 15, 2024
Time: 3:00 p.m.
Where: Edmonton Law Courts via WebEx Virtual Courtroom 86:
<https://albertacourts.webex.com/meet/virtualcourtroom86>
Before: The Honourable Justice D.R. Mah

Go to the end of this document to see what you can do and when you must do it.

Basis for this Claim:

I. REMEDY CLAIMED OR SOUGHT:

1. The Applicants, Delta 9 Cannabis Inc. ("**D9 Parent**"), Delta 9 Logistics Inc. ("**Logistics**"), Delta 9 Bio-Tech Inc. ("**Bio-Tech**"), Delta 9 Lifestyle Cannabis Clinic Inc. ("**Lifestyle**"), and Delta 9 Cannabis Store Inc. ("**Store**", and collectively with Logistics, Bio-Tech, and Lifestyle, the "**Applicants**" or "**Delta 9**") seek an Initial Order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), substantially in the form attached hereto as **Schedule "A"**, granting the following relief:
 - (a) declaring service of this Application and its supporting materials good and sufficient, and if necessary, abridging time for notice of the Application to the time actually given;
 - (b) declaring that the Applicants are companies to which the CCAA applies;
 - (c) granting some or all of the Applicants authority to file with the Court a plan of compromise or arrangement, subject to further order of this Honourable Court;
 - (d) authorizing the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") and to continue to carry on business in a matter consistent with the preservation of their business (the "**Business**") and Property;
 - (e) authorizing the Applicants to continue utilizing their cash management system described in further detail at paragraphs 107-114 of the First Arbuthnot Affidavit (as defined below) (the "**Cash Management System**");
 - (f) authorizing the Applicants to pay their reasonable expenses incurred in carrying out the Business in the ordinary course, including certain expenses incurred prior to the date of the Initial Order for critical suppliers with the oversight and consent of the Proposed Monitor (as defined below);
 - (g) staying, for an initial period of not more than ten (10) days (the "**Stay Period**"), all proceedings, rights and remedies against or in respect of the Applicants or their

Business or Property; the Applicants' directors, to the extent the directors have secured the obligations of the Applicants; or the Proposed Monitor (as defined below), except as otherwise set forth in the Initial Order or otherwise permitted by law;

- (h) restraining any Person (as defined in the Initial Order) from accelerating performance of any rights in respect of the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Honourable Court;
- (i) restraining any Person from interfering with the supply of goods or services to the Applicants;
- (j) appointing Alvarez & Marsal Canada Inc. ("**A&M**") as the monitor (the "**Proposed Monitor**", and if appointed, the "**Monitor**") of the Applicants in these proceedings;
- (k) authorizing the Applicants to pay the reasonable fees and disbursements of the Monitor and its counsel, the Applicants' professional advisors and legal advisors, incurred both before and after the date of the Initial Order;
- (l) directing the Applicants to incur no further expenses in relation to the Securities Filings (as defined in the First Arbutnot Affidavit) and declaring that none of the directors, officers, employees and other representatives of the Applicants, the Monitor and its directors, officers, employees and representatives shall have any personal liability for any failure by the Applicants to make Securities Filings;
- (m) granting an administration charge (the "**Administration Charge**") not exceeding an aggregate amount of \$350,000 as security for the professional fees and disbursements of the Monitor, counsel for the Monitor and counsel for the Applicants, incurred both before and after the approval of the Initial Order;
- (n) approving a directors and officers charge (the "**D&O Charge**") up to the aggregate amount of \$300,000 as security for the liabilities to which the Applicants' directors and officers may be exposed after the commencement of these CCAA proceedings, except to the extent any obligation was incurred as a result of any director or officer's gross negligence or willful misconduct;

- (o) directing that the status quo in respect of Bio-Tech's cannabis excise licence (as defined below, the "**Excise Licence**") shall be preserved and maintained during the pendency of the Stay Period, and to the extent the Excise Licence may expire during the Stay Period, directing that the term of the Excise Licence is deemed to be extended by a period equal to the Stay Period (or further extension thereof);
 - (p) providing for a stay of proceedings for the directors of the Applicants in respect of any steps that might be taken against them as a result of obligations of the Applicants;
 - (q) a sealing order in respect of any confidential and commercially sensitive information referred to in the First Arbutnot Affidavit (as defined below);
 - (r) providing for a comeback application on July 24, 2024 in respect of the relief granted under the Initial Order and certain other additional relief (the "**Comeback Application**"); and
 - (s) such further and other relief as this Honourable Court may deem just.
2. On July 24, 2024, at a subsequent hearing, the Applicants will be seeking the following relief (the "**Comeback Application**"):
- (a) an Amended and Restated Initial Order (the "**ARIO**") providing for the following relief:
 - (i) extending the Stay Period to September 15, 2024;
 - (ii) approving a Plan Sponsor Term Sheet between the plan sponsor, 2759054 Ontario Inc., o/a Fika Herbal Goods ("**Fika**" or the "**Plan Sponsor**") and the Applicants;
 - (iii) approving an interim financing loan agreement between the Plan Sponsor (the "**Interim Financing Agreement**") and a charge securing the amounts advanced under the Interim Financing Agreement not exceeding the principal sum of \$16,000,000.00, plus interest, costs and expenses in

favour of the Plan Sponsor, as security for any advances made from the Plan Sponsor pursuant to the Interim Financing Agreement;

- (iv) approving a key employee retention plan (the “**KERP**”) and corresponding charge to secure obligations under the KERP up to the amount of \$655,000 for individuals identified as critical management personnel of the Applicants in order to retain and incentivize those parties to ensure the success of the CCAA proceedings;
 - (v) increasing the Administration Charge to \$750,000 and the D&O Charge to \$900,000; and
 - (vi) appointing Mark Townsend as the chief restructuring officer (in such capacity, the “**CRO**”) of the Applicants;
- (b) an Order approving the Sales and Investment Solicitation Process (“**SISP**”) in respect of a going-concern sale of the assets and/or shares of Bio-Tech (the “**SISP Order**”);
 - (c) an Order approving the Claims Process proposed by the Applicants;
 - (d) a Sealing Order sealing the confidential information in the first or second Affidavit of John Arbuthnot IV; and
 - (e) such further and other relief as this Honourable Court may deem just.
3. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Affidavit of John Arbuthnot IV, sworn on July 12, 2024 (the “**First Arbuthnot Affidavit**”).

II. GROUNDS FOR MAKING THIS APPLICATION:

A. Overview

4. The Applicants bring this application on an urgent basis for protection under the CCAA as a result of recent changes to the makeup of their key stakeholders (as described in further detail below), demand for payment sent on July 10, 2024 by the Applicants’ primary

secured creditor, and in order to preserve the significant value associated with the Applicants' operation on a going-concern basis.

5. Leading up to this application, the Applicants have worked extensively with the Plan Sponsor (as defined below) to develop a detailed restructuring plan for the Applicants' businesses. Most significantly, the Applicants have entered into a Restructuring Term Sheet (as defined and described below) that sets out the key terms of the restructuring plan, including substantial interim financing to be provided by the Plan Sponsor, which financing is required to fund the ongoing operations of the Applicants and which will provide for repayment of all secured obligations owing to the Applicants' current senior secured lender.
6. The Applicants are insolvent on a cash flow and balance sheet basis. They face an unsustainable liquidity crisis and increased pressure from their secured creditors and are in urgent need of relief under the CCAA.

B. Background and Parties

7. The operating entities of Delta 9 are comprised of a group of five corporations that are collectively in the business of cannabis cultivation, processing, extraction, wholesale distribution and retail.
8. D9 Parent is a publicly traded corporation incorporated pursuant to the Province of British Columbia. D9 Parent is a reporting issuer listed on the Toronto Stock Exchange under the ticker of "DN", and regulated by the Manitoba Securities Commission. D9 Parent is the 100% shareholder of all issued and outstanding shares of Logistics, Bio-Tech and Stores.
9. Logistics is a body corporate incorporated and continued pursuant to the laws of the Province of Alberta. Logistics provides distribution and cross-docking services within Delta 9 and to other licensed cannabis sellers in other provinces and territories.
10. Bio-Tech is a body corporate incorporated and continued pursuant to the laws of the Province of Alberta. Bio-Tech is the licensed cannabis producer within Delta 9 and holds a licence from Health Canada pursuant to the *Cannabis Act* (Canada) and a cannabis licence under the *Excise Act, 2001* (Canada). Bio-Tech is licensed to produce, cultivate, process, and sell medicinal and recreational cannabis products.

11. Store is a federal body corporate incorporated pursuant to the laws of Canada and extra-provincially registered in Alberta. Store operates 21 cannabis retail stores across Alberta and one cannabis retail store in Lloydminster, Saskatchewan.
12. Lifestyle is a body corporate incorporated pursuant to the laws of the Province of Manitoba and will be continued into the Province of Alberta following the Initial Order Application. Lifestyle operates 19 cannabis retail stores across Manitoba. Bio-Tech is a 68.8% shareholder of the issued and outstanding shares of Lifestyle. Fika holds the remaining 31.2% shares of Lifestyle.

C. Operations and Locations

13. Bio-Tech, Logistics, Lifestyle, and Store operate out of the following locations:
 - (a) Bio-Tech owns and operates a 95,000 square-foot cannabis cultivation and processing facility in Winnipeg, Manitoba (the “**Cultivation Facility**”);
 - (b) Logistics provides distribution services and operates an approximately 15,000 square-foot cross-docking facility adjacent to the Cultivation Facility (the “**Distribution Facility**”); and
 - (c) Lifestyle and Store collectively operate 41 cannabis retail stores with store fronts across Alberta, Saskatchewan, and Manitoba (collectively, the “**Cannabis Retail Stores**”).
14. Bio-Tech’s Cultivation Facility contains 297 modular “grow pods”, which are 320 square-foot shipping containers that have been retrofitted to contain specific, micro-cultivation processes for growing certain types of cannabis plants (the “**Grow Pods**”). The Cultivation Facility also includes automated bottling and rolling equipment to process cannabis products into consumable products for customers.
15. Logistics operates the Distribution Facility, which directly adjoins the Cultivation Facility. Logistics was incorporated for the purpose of facilitating the distribution of recreational cannabis products and holds a distribution licence issued by the Manitoba Liquor, Gaming and Cannabis Authority (“**LGCA**”). The Government of Manitoba has now granted

Logistics with authorization to distribute cannabis products from other provinces and territories into Manitoba pursuant to a distribution agreement dated April 14, 2022.

16. Bio-Tech employs 141 full-time employees, six of whom provide services to Logistics.
17. Store owns and operates 21 Cannabis Retail Stores in Alberta and one Cannabis Retail Store in Saskatchewan. Store is licensed by Alberta's Alcohol, Gaming, Lottery and Cannabis Authority and Saskatchewan's Liquor and Gaming Authority for the retail sale of recreational cannabis in those respective provinces.
18. Collectively, Store employs 104 full-time and part-time employees.
19. Lifestyle owns and operates 19 Cannabis Retail Stores in Manitoba. Lifestyle is licensed by the Liquor, Gaming and Cannabis Authority in Manitoba for the retail sale of recreational cannabis.
20. Collectively, Lifestyle employs 166 full-time and part-time employees.
21. The Cannabis Retail Stores sell a variety of cannabis products, including cannabis flowers, oils, pre-rolls, derivative products and accessories to adult recreational cannabis users.
22. In total, the Applicants currently employ a total of 388 employees across Alberta, Saskatchewan, and Manitoba.

D. Liquidity Crisis and Challenges

23. Recently, Delta 9 has suffered significant financial loss as a result of a variety of factors. In general, Delta 9 faces the following pressures affecting the cannabis industry:
 - (a) significant competition within the industry, an over-supply of cannabis products measured against demand resulting in high price compression, low margins of profit and selling inventory at a loss;
 - (b) the continued impact of illicit supply and sale of cannabis products within Canada, including illegal or unlicensed dispensaries and black-market suppliers;
 - (c) large operating costs associated with the regulatory regime in the industry;

- (d) the requirements of obtaining significant amounts of capital to successfully develop and generate revenue from new products;
 - (e) capital market investors' shifting hesitancy towards the cannabis industry, lowering investors' confidence and resulting in the Applicants needing to seek more expensive forms of financing; and
 - (f) increases in interest rates leading to investors demanding increased rates of return beyond the rates that the Applicants are able to provide.
24. Due to the high cost of regulations and the general challenges to the cannabis industry outlined above, Bio-Tech's operations have proven to be the most costly for Delta 9. Business to business sales of the Grow Pods have continued to decline due to market saturation.
25. Delta 9 has significant debt obligations that it struggles to meet on an ongoing basis. Prior and ongoing attempts to obtain equity from at-the-market equity programs have been successful, but still fail to generate sufficient capital to meet all of Delta 9's ongoing obligations. Although the Cannabis Retail Stores and the Distribution Facility continue to operate on a cash flow positive basis, the margins are insufficient on Delta 9's other operations, in particular for Bio-Tech, for Delta 9 to post any returns.
26. More particularly, Bio-Tech owes Canada Revenue Agency (the "**CRA**") over \$7,800,000 in outstanding excise tax. Since December 2023, the CRA has moved to renew Bio-Tech's excise tax on a 30-day basis on the condition that Bio-Tech continues to make payments under a payment plan plus all go-forward excise tax duties. Any failure to meet either of these payments will result in the CRA refusing to renew the excise licence and demanding immediate payment of the arrears.

E. Demands from Senior Secured Creditor

27. As of March 31, 2024, D9 Parent was in breach of its Debt Service Coverage Ratio and Current Ratio covenants for its credit facilities with its former primary secured creditor, Connect First Credit Union Ltd. ("**CFCU**").

28. On May 21, 2024, D9 Parent received a demand and notice of intention to enforce security from SNDL Inc. (formerly Sundial Growers Inc.; “**SNDL**”), demanding payment in the amount of \$12,512,876.71 (the “**First SNDL Demand**”). The amount set out in the First SNDL Demand does not match the amounts on the records of the Applicants and will have to be confirmed through a claims process. The First SNDL Demand expired on June 22, 2024.
29. Up until July 5, 2024, SNDL was subordinated to CFCU’s senior position and prevented from enforcing the First SNDL Demand under a separate priority agreement with CFCU.
30. On July 5, 2024, without notice to Delta 9 and after extensive engagement by both the Plan Sponsor and Delta 9 with CFCU, CFCU sold all of the CFCU Outstanding Indebtedness (as defined below) to SNDL and SNDL assumed all of CFCU’s right, title, interest and obligations under the CFCU Loan, the CFCU Security and the Priority Agreement (each as defined below) (the “**SNDL Assignment**”).
31. SNDL is now Delta 9’s primary secured creditor and is owed the estimated collective amount of \$38,701,617.27.
32. SNDL issued a second set of demands and notices of intention to enforce security dated July 10, 2024 to D9 Parent, Bio-Tech, Lifestyle and Store demanding payment of the amount of the CFCU Outstanding Indebtedness that SNDL assumed under the SNDL Assignment, which as of July 5, 2024, amounted to \$27,868,283.94 (the “**Second SNDL Demand**”). The Second SNDL Demand expires within 22 business days of the date of issue, being August 12, 2024.
33. There no longer remains any restrictions to SNDL immediately pursuing any and all remedies available to it under its security pursuant to the First SNDL Demand and Delta 9 lacks the financial resources to respond to the Second SNDL Demand before its expiry date.
34. As a result of the general and specific financial challenges faced by the Applicants, the Applicants find themselves without sufficient capital to meet their financial obligations and urgently require protection under the CCAA in order to effectively restructure.

F. Loan and Security Agreements

Secured Creditors

35. On March 11, 2022, D9 Parent, as borrower, CFCU, as lender, and Bio-Tech, Lifestyle, and Store, as guarantors (collectively, in such capacity, the “**Guarantors**”), entered into a commitment letter dated February 1, 2022 and a series of loan agreements dated March 11, 2022 (collectively, the “**CFCU Loan**”) providing for the total advancement of \$32,000,000.00 from CFCU to D9 Parent.
36. Also on March 11, 2022, D9 Parent and the Guarantors granted general security agreements and guarantees as security for the CFCU Loan to CFCU. Bio-Tech further granted a collateral mortgage respecting the Cultivation Facility and mortgages in its leases for the Distribution Facility as security for the CFCU Loan.
37. Since March 31, 2024, D9 Parent has been in breach of its financial covenants to maintain certain debt service ratios.
38. As of July 5, 2024, the outstanding indebtedness owing from D9 Parent and the Guarantors to CFCU amounted to \$27,868,283.94, inclusive of interest but excluding all other costs, expenses and legal costs on a solicitor and own-client (full indemnity) basis (the “**CFCU Outstanding Indebtedness**”).
39. On March 30, 2022, D9 Parent, as issuer, and SNDL, as holder, entered into a second-lien convertible debenture agreement (the “**SNDL Convertible Debenture**”) providing for a \$10,000,000.00 second-lien convertible debenture to be used for general corporate purposes and for growth capital to fund D9 Parent’s operations and future acquisitions.
40. D9 Parent and the Guarantors further granted general security agreements and guarantees as security for the SNDL Convertible Debenture to SNDL. Bio-Tech further granted a collateral mortgage respecting the Cultivation Facility.
41. As of May 31, 2024, the estimated outstanding indebtedness owing from D9 Parent and the Guarantors to SNDL amounted to \$10,833,333.33, inclusive of interest but excluding all other costs, expenses and legal costs on a solicitor and own-client (full indemnity) basis (the “**SNDL Outstanding Indebtedness**”).

42. Each of the CFCU Loan and SNDL Convertible Debenture were entered into as part of a larger transaction to finance D9 Parent's purchase of 16 "Uncle Sam's Cannabis" stores across Alberta and Saskatchewan (the "**Uncle Sam's Transaction**").
43. Each of CFCU and SNDL registered their security interests against the Applicants in various provincial personal property and land title registries. SNDL has now amended several of CFCU's PPR registrations to be in SNDL's name.
44. Only two other creditors, Canadian Western Bank ("**CWB**") and Linde Canada Inc. ("**Linde**") have any other registrations against the Applicants. CWB's registration is against Bio-Tech in Manitoba and relates to a purchase-money security interest. Linde's registration is also against Bio-Tech in Manitoba and relates to a general security interest in equipment.
45. As of July 5, 2024, SNDL has now assumed all of the CFCU Outstanding Indebtedness, along with all of CFCU's right, title, interest and obligations pursuant to the CFCU Loan, CFCU Security and the Priority Agreement.
46. The First SNDL Demand has now expired and there is nothing preventing SNDL from enforcing the amount of the SNDL Outstanding Indebtedness. SNDL has further issued the Second SNDL Demand with respect to the CFCU Outstanding Indebtedness, which expires on August 12, 2024.

Unsecured Creditors

47. As part of the Uncle Sam's Transaction, in addition to the financing advanced under the CFCU Loan and SNDL Convertible Debenture Agreement, Store granted a Uncle Sam's Cannabis Ltd. ("**Uncle Sam's**") a promissory notice in the amount of \$4,990,264.37, as guaranteed by D9 Parent up to \$5,000,000.
48. Under the Asset Purchase Agreement governing the Uncle Sam's Transaction, Store also agreed to pay Uncle Sam's an additional \$600,928.50 for an inventory adjustment.
49. The amount currently outstanding to Uncle Sam's is \$4,191,193.

50. From September 2018 to June 2021, Lifestyle entered into a number of shareholder loans pursuant to various promissory notes and convertible debenture instruments with its shareholders, which at the time, were 7217804 Manitoba Ltd. ("**721 Manitoba**") and Bio-Tech.
51. Collectively, 721 Manitoba and Bio-Tech advanced Lifestyle over \$10,000,000 in unsecured shareholder loans. Bio-Tech has since converted all of its debt into equity. As of June 21, 2024, 721 Manitoba was owed \$2,887,917.57.

G. Other Liabilities

52. As at May 31, 2024, the estimated total value of Delta 9's consolidated assets is \$65,230,722.38, consisting of cash, accounts receivable, work in progress, inventory, fair market value of equipment, leasehold improvements, buildings, intangible assets, goodwill, investments and notes receivable, among other things.
53. As at May 31, 2024, the estimated value of Delta 9's consolidated liabilities is approximately \$80,974,426.69, consisting of the CFCU Outstanding Indebtedness, the SNDL Outstanding Indebtedness, unsecured loans, accounts payable, accrued liabilities and tax arrears, among other things.
54. As of May 31, 2024, Bio-Tech owed \$7,831,515 to the CRA in outstanding excise tax and the Applicants collectively owe the CRA \$1,164,617 in outstanding federal GST.
55. All of the Applicants are current on their commercial lease payments and employee payroll.

H. Prior Dealings with SNDL

56. Prior to the SNDL Assignment on July 5, 2024, SNDL was a subordinated secured creditor of Delta 9 since March 2022. In addition to its status as a subordinated creditor, SNDL is also a competitor of Delta 9's that attempted to bid on Delta 9's retail operations around the spring of 2024.
57. In and around the spring of 2024, Delta 9 and Fika jointly approached SNDL to propose a potential partnership into Fika's acquisition of Delta 9's retail and logistics assets.

- 58. On May 15, 2024, SNDL sent Delta 9 an unsigned, non-binding term sheet that contemplated SNDL providing certain cash and credit bid amounts to acquire all of Delta 9's retail operations on a free and clear basis. Delta 9 ultimately rejected this proposal on the basis that Delta 9 was exclusively negotiating with Fika under a non-binding Letter of Intent and SNDL's proposal failed to provide adequate value for Delta 9's stakeholders.
- 59. As of July 5, 2024, SNDL is now in a position to enforce against the SNDL Outstanding Indebtedness and by August 12, 2024, SNDL will be in a position to enforce against the CFCU Outstanding Indebtedness.

I. Prior Restructuring Efforts

- 60. Delta 9 has taken steps to reduce its operating costs since January 2023, which resulted in an approximately \$3,200,000 reduction in operation costs.
- 61. Delta 9 is further on pace to generate \$3,000,000 to \$5,000,000 in subscription proceeds under its new at-the-market program in 2024. However, this amount of equity financing is still insufficient to fund all obligations and is not a sustainable ongoing source of funding and has now been ceased by D9 Parent.
- 62. Delta 9 has further engaged in a strategic alternatives process (the "**SAP**") for the past 18 months, approximately. During that time, in addition to engaging with Fika and SNDL, Delta 9 engaged with other significant retail and cannabis producing entities on potential mergers, acquisitions or other strategic alternatives to maximize value for Delta 9's stakeholders.
- 63. The result of the SAP was that the most feasible proposal (that also generated the most value for all of the Applicants stakeholders) received for the restructuring and investment in Delta 9's business was received from Fika, the Plan Sponsor.
- 64. However, outside of generating the Restructuring Term Sheet, these efforts to source other opportunities were ultimately unsuccessful and were unable to produce any other viable proposal on the same level of value as the one contained in the Restructuring Term Sheet.

J. Prior Efforts to Negotiate with CFCU in Good Faith

65. Since April 15, 2024, Delta 9 and Fika have been engaged with CFCU in a good faith effort to obtain CFCU's approval of a restructuring plan within the CCAA.
66. Throughout June 2024, Delta 9 and Fika responded to a detailed due diligence request from CFCU at their own time and expense and made repeated attempts to discuss CFCU's position on the proposed restructuring plan. Delta 9 further moved its initial court dates from July 12 to July 15 for the Initial Order Application and from July 17 to July 24 for the Comeback Application to provide additional time for CFCU to review the due diligence materials and provide its position on the proposed restructuring.
67. However, despite verbal representations to the contrary, on July 5, 2024, CFCU provided notice to Delta 9 that CFCU had effected the SNDL Assignment.
68. As a result of the SNDL Assignment, Delta 9's prior good faith efforts to engage with CFCU have proven to be an unnecessary and costly exercise. Delta 9's ability to file for CCAA relief was further delayed in an attempt to accommodate CFCU and Delta 9's cash position has continued to deteriorate during this time.

K. Eviction Action Against Distribution Facility

69. On June 17, 2024, the landlord of the Distribution Facility, 6599362 Canada Ltd. filed a Notice of Application against Bio-Tech seeking a writ of possession for the Distribution Facility (the "**Eviction Action**"). The Eviction Action has been adjourned into July for procedural reasons.
70. Bio-Tech requires a stay of proceedings to stabilize its tenancy position and stay the Eviction Action until it can be determined if those premises will be required going forward once a restructuring has been completed.

III. NECESSITY OF CCAA RELIEF

71. The Applicants are currently in the midst of a liquidity crisis, primarily due to the dramatic reduction in revenues, intense industry competition, significant operating costs, high regulatory costs, reduced capital investments and high interest rates. The Applicants need

to restructure their affairs, including by compromising their mounting debt and chronically underfunded secured debt in order to continue their operations as a going concern.

72. Now that SNDL is Delta 9's primary secured creditor following the July 5, 2024 SNDL Assignment, there is significantly more urgency for Delta 9 to obtain relief under the CCAA. SNDL is not a conventional lender and Delta 9 believes that SNDL may want to acquire Delta 9's retail business as a competitor in that segment of the cannabis industry.
73. As set out above, there are no longer any restrictions in place on SNDL immediately pursuing any and all remedies available to it to enforce the SNDL Outstanding Indebtedness pursuant to the First SNDL Demand. Delta 9 lacks the liquidity to respond to the Second SNDL Demand by August 12, 2024.
74. The Applicants require the stability of the stay of proceedings and access to interim financing in order to maximize value for their stakeholders and/or obtain additional investment in a restructured entity.
75. Notwithstanding the SNDL Assignment, SNDL is not the fulcrum creditor in these proceedings. There remains significant value to be generated to the other stakeholders of Delta 9 if Delta 9 is able to implement a restructuring in a stable and controlled environment provided for under the CCAA, all with the oversight and input from the Monitor.
76. The Applicants anticipate completing the following during the pendency of the CCAA proceedings, among other things: (i) accessing interim financing from the Plan Sponsor in order to fund Delta 9's continued operations in the normal course; (ii) implementing a SISP with respect to a going-concern sale of Bio-Tech's assets and/or shares; (iii) conducting a claims process to determine the validity of creditor claims; and (iv) completing a plan of arrangement with respect to certain of the Applicants, which, if denied approval, will automatically revert to a sales and investment solicitation process to market the assets and/or shares of the applicable entity.
77. The Applicants further rely on:
 - (a) the grounds set out in the First Affidavit of John Arbuthnot IV, sworn on July 12, 2024;

- (b) the provisions of the CCAA and the equitable jurisdiction of this Court; and
- (c) such further and other grounds as counsel for the Applicants may advise and this Honourable Court may permit.

IV. MATERIAL OR EVIDENCE TO BE RELIED ON:

- 78. The First Affidavit of John Arbuthnot IV, sworn on July 12, 2024, to be filed;
- 79. The Brief of Law and Book of Authorities of the Applicants, to be filed;
- 80. The Pre-filing Report of the Proposed Monitor, Alvarez & Marsal Canada Inc., to be filed;
- 81. The consent of Alvarez & Marsal Canada Inc. to act as Monitor of the Applicants; and
- 82. Such further and other materials as counsel for the Proposed Monitor or the Applicants may advise and this Honourable Court may permit.

V. APPLICABLE RULES:

- 83. Part 6, Division 1 of the Alberta *Rules of Court*, Alta Reg 124/2010.

VI. APPLICABLE ACTS AND REGULATIONS:

- 84. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36; and
- 85. Such further and other Acts or regulations as counsel may advise and this Honourable Court may permit.

VII. ANY IRREGULARITY COMPLAINED OF OR OBJECTION RELIED ON:

- 86. None.

VIII. HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:

- 87. By WebEx videoconference before the Honourable Justice D.R. Mah pursuant to the WebEx details enclosed hereto at **Appendix "A"**.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant a reasonable time before the application is to be heard or considered.

Appendix “A” – WebEx Details

File #(s) : JUL152024

Style of Cause: ITMO v. 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.

Date/Duration:

Jul 15, 2024 03:00 PM

Total: 90 Minute(s)

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link: <https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit: <https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

SCHEDULE "A"
Form of Initial Order

COURT FILE NUMBER 2401-
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's stamp

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

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

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 **CCAA INITIAL ORDER**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

MLT AIKINS LLP
Barristers and Solicitors
#2100 – 222 3rd Ave SW
Calgary, AB T2P 0B4
Attention: Ryan Zahara / Kaitlin Ward
Telephone: (403) 693-5420 / 4311
Email: rzahara@mltaikins.com /
kward@mltaikins.com
File No. 0136555.00034

DATE ON WHICH ORDER WAS PRONOUNCED: JULY 15, 2024
LOCATION WHERE ORDER WAS PRONOUNCED: EDMONTON, ALBERTA
NAME OF JUSTICE WHO MADE THIS ORDER: THE HONOURABLE JUSTICE D.R.
MAH

UPON the application of Delta 9 Cannabis Inc. ("**D9 Parent**"), Delta 9 Logistics Inc. ("**Logistics**"), Delta 9 Bio-Tech Inc. ("**Bio-Tech**"), Delta 9 Lifestyle Cannabis Clinic Inc. ("**Lifestyle**"), and Delta 9 Cannabis Store Inc. ("**Store**", and collectively with D9 Parent, Logistics, Bio-Tech and Lifestyle, the "**Applicants**" or "**Delta 9**"); **AND UPON** having read the Originating Application, the First Affidavit of John Arbuthnot IV, sworn on July 12, 2024 (the "**First Arbuthnot Affidavit**"), and the Affidavit of Service of Regie Agcaoli, sworn July 15, 2024; **AND UPON**

reading the consent of Alvarez & Marsal Canada Inc. (“**A&M**”) to act as court-appointed monitor (the “**Monitor**”); **AND UPON** reading the Pre-Filing Report of the Monitor dated July [15], 2024; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application and either do not oppose or take no position; **AND UPON** hearing counsel for the Applicants, counsel for the Plan Sponsor and counsel for any other parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicants are companies to which the *Companies’ Creditors Arrangement Act* RSC, c C-36, as amended (the “**CCAA**”) applies.

PLAN OF ARRANGEMENT

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:
 - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);
 - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property;
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and

- (d) be entitled to continue to utilize the central cash management system currently in place as described in the First Arbuthnot Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
- 5. To the extent permitted by law, the Applicants shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:
 - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order; and
 - (c) with the consent of the Monitor and in accordance with the Cash Flow Forecast, for goods and services supplied to the Applicants, including for periods prior to the date of this Order if, in the opinion of the Applicants following consultation with the Monitor, the supplier or vendor of such goods or services is necessary for the operation or preservation of the Business or the Property.

6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
 - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.
7. The Applicants shall remit, in accordance with legal requirements, or pay:
 - (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan,
 - (iii) Quebec Pension Plan, and
 - (iv) income taxes,but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;
 - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.

8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order ("**Rent**"), but shall not pay any rent in arrears.
9. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:
 - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of its creditors as of the date of this Order;
 - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
 - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject to such requirements as are imposed by the CCAA have the right to:
 - (a) permanently or temporarily cease, downsize or shut down any portion of its business or operations and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$500,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
 - (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon

between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

- (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deems appropriate, in accordance with section 32 of the CCAA; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicantss, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaims or resiliates the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and

- (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

- 13. Until and including July 25, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

- 14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
 - (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;
 - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;

- (d) prevent the registration of a claim for lien; or
 - (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment.
15. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed

upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person, other than the Plan Sponsor where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court. Further, no Proceeding may be commenced or continued against John Arbuthnot IV in respect of his personal obligations in respect of amounts owed by the Applicants during the pendency of the Stay Period.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. The Applicants shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
21. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000, as security for the indemnity provided in

paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 31 and 33 herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:
- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;
 - (c) assist the Applicants, to the extent required by the Applicants, in its dissemination to the Plan Sponsor and its counsel on a weekly basis of financial and other

information as agreed to between the Applicants and the Plan Sponsor which may be used in these proceedings, including reporting on a basis as reasonably required by the Plan Sponsor;

- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the Plan Sponsor, which information shall be reviewed with the Monitor and delivered to the Plan Sponsor and its counsel on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the Plan Sponsor;
 - (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
 - (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform its duties arising under this Order;
 - (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
 - (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
 - (j) perform such other duties as are required by this Order or by this Court from time to time.
25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any

federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicants and the Plan Sponsor with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.
27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the respective amounts of \$50,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
29. The Monitor and its legal counsel shall pass their accounts from time to time.
30. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this

Order, shall be entitled to the benefits of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$350,000.00, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 31 and 33 hereof.

VALIDITY AND PRIORITY OF CHARGES

31. The priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$350,000); and

Second – Directors' Charge (to the maximum amount of \$300,000).
32. The filing, registration or perfection of the Administration Charge and the Directors' Charge (collectively, the “**Charges**”) shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
33. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA, such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.
34. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the Plan Sponsor, and the beneficiaries of the Directors' Charge and the Administration Charge, or further order of this Court.
35. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the Plan Sponsor thereunder shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
- (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which it is a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
 - (iii) the payments made by the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

36. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge and the Directors’ Charge amongst the various assets comprising the Property.

CORPORATE MATTERS

37. The Applicants are hereby relieved of any obligation to call and hold an annual meeting of their shareholders until further Order of this Court.

RELIEF FROM SECURITIES REPORTING AND FILING OBLIGATIONS

38. D9 Parent is hereby directed to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the **"Securities Filings"**) that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, *The Securities Act* (Manitoba), CCSM c S50 and comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the Canadian Securities Exchange and the Toronto Stock Exchange (collectively, the **"Securities Provisions"**), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of D9 Parent failing to make any Securities Filings required by the Securities Provisions
39. None of the directors, officers, employees, and other representatives of D9 Parent, nor the Monitor, shall have any personal liability for any failure by D9 Parent to make any Securities Filings required by the Securities Provisions.

STATUS QUO OF APPLICANTS' LICENCES

40. The status quo in respect of the Applicants' Health Canada and cannabis excise licences (collectively, the **"Licences"**) shall be preserved and maintained during the pendency of the Stay Period (and any further extensions thereof), including the Applicants' ability to sell cannabis inventory in the ordinary course under the Licences.
41. To the extent any Licence may expire during the Stay Period, the term of such Licence shall be deemed to be extended by a period equal to the Stay Period.

SERVICE AND NOTICE

42. The Monitor shall (i) without delay, publish in *Insolvency Insider*, *The Globe and Mail*, the *Calgary Herald*, and *Winnipeg Free Press* a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000 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, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
43. The Monitor shall establish a case website in respect of the within proceedings at: www.alvarezandmarsal.com/delta9.
44. The Applicants and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forward true copies thereof by prepaid ordinary mail, recorded mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail or recorded mail, on the seventh day after mailing. Any person that wishes to be served with any application and other materials in these proceedings must deliver to the Applicants or the Monitor by way of ordinary mail, courier, or electronic transmission, a request to be added to the service list (the "Service List") to be maintained by the Monitor.
45. Any party to these proceedings may serve any court materials in these proceeding by emailing a PDF or other electronic copy of such materials to counsel's email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor's website.
46. The Applicant and, where applicable, the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by sending true copies thereof by prepaid ordinary mail, record mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties

at their respective addresses last shown on the records of the Appilcant, or as otherwise updated on the Service List.

COMEBACK APPLICATION

47. The Applicants are hereby authorized and directed to bring an application on July 24, 2024 for approval of, among other things, an Amended and Restated Initial Order.

GENERAL

48. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
49. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
50. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicants, the Business or the Property.
51. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
52. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in

respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

53. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
54. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of King's Bench of Alberta