

**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 2675970 ONTARIO INC., 2733181
ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA
LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC.,
2826475 ONTARIO INC., 14284585 CANADA INC., 2197130
ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO
CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON
INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC.,
10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND &
LABRADOR INC.

**RESPONDING MOTION RECORD OF
TRIPSETTER INC., 1000032072 ONTARIO INC.,
2810434 ONTARIO INCORPORATED and 2826139 ONTARIO INC.**

(Returnable November 28, 2024 at 12:00pm via video conference)

November 27, 2024

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**ONTARIO
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TAB 1

Court File No.: CV-24-00726584-00CL

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AFFIDAVIT OF SONIA CAVALIERI D'ORO
(sworn November 27, 2024)

I, SONIA CAVALIERI D'ORO of the city of King City, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

OVERVIEW

1. I am a director and principal of 2810434 Ontario Incorporated ("**281Co**"). 281Co is a former franchisee of the within Applicants in these proceedings, as part of the "Tokyo Smoke" retail cannabis franchise system. Our store was located in Hamilton, Ontario. Since our involvement with Tokyo Smoke, we have suffered severe financial losses, which we

are trying to recoup. I am intimately involved with all elements of the 218Co's operations and dealings with the franchise system.

2. Additionally, over the course dealing with the Applicants, I became acquainted and aligned with other "Tokyo Smoke" franchisees, namely: Tripsetter Inc., 1000032072 Ontario Inc., and 2826139 Ontario Inc. (with 281Co, collectively, the "**Franchisees**"), all of whom had issues with one or more of the Applicants herein and were forced to take steps to rescind their respective franchise agreements. As part of my dealings with the other Franchisees, I have become privy to their issues and claims against the Applicants.
3. In view of the foregoing, I have personal knowledge of the matters hereinafter deposed to. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true.
4. I swear this affidavit in response to the Applicants request for an approval and reverse vesting order in these proceedings that includes a broad release of pre-filing claims in favour of the remaining directors of the Applicants. The Franchisees do not take issue with the sale contemplated in these proceedings only the release, which – as drafted – will release claims that the Franchisees have against the directors under franchising laws in Ontario.

RESCISSION OF FRANCHISE AGREEMENTS

5. The Franchisees were each in a contractual relationship with one or more of the Applicants, that granted them the right to operate a "Tokyo Smoke" retail cannabis store. They were early participants franchise system.

6. However, owing to deficient or wholly lacking disclosure as required under law, each the of Franchisees rescinded their respective franchise agreements with the Applicants. True copies of each Franchisee's notice of rescission are attached hereto and collectively marked as Exhibit "A".
7. Such notices were prepared by counsel to the Franchisees. Each notice includes as demand for payment to each Franchisee of funds that I understand the Franchisees are entitled to on account of the rescission of their franchise agreements (a "**Rescission Payment**"), under the *Arthur Wishart Act* ("**Wishart Act**").
8. 281Co's individual claim is a Rescission Payment (a "**Rescission Claim**") for approximately \$700,000. Collectively, the Franchisees have Rescission Claims totalling approximately \$5,000,000.
9. I understand from our franchising law counsel, Sotos LLP, that the Rescission Claims are also direct personal claims against anyone qualifying as a "franchisor's associate" under the Wishart Act. For this reason, all notices of rescission were also delivered to Juergen Schreiber, Justin Farbstein and Josh Davidson – each of whom played key roles in onboarding 281Co into the "Tokyo Smoke" franchise, as well as the other Franchisees (which I understand based on my discussions with them).
10. I understand from Sotos LLP that, in response to the notices of rescission, the Applicants and/or franchisor associates could have resolved the matter by payment of the Rescission Payment. This did not happen, nor did the parties engage in meaningful discussion.

PURSUIT OF LITIGATION AND DISPUTE RESOLUTION

11. In view of the lack of response from the affected Applicants and the franchisor's associates, the Franchisees have been forced to pursue litigation or dispute resolution.
12. In the case of Tripsetter Inc., which I understand was not subject to an arbitration agreement, it commenced an action against various applicants and individuals. A copy of Tripsetter Inc.'s fresh as amended statement of statement of claim is attached hereto as Exhibit "B".
13. In the case of 281Co, 1000032072 Ontario Inc. and 2826139 Ontario Inc, (the "**Arbitration Franchisees**"), between June 2021 and August 2023, the Arbitration Franchisees each submitted a demand to arbitrate pursuant the arbitration clauses in their agreements. True copies of each Arbitration Franchisee's notice of arbitration are attached hereto and collectively marked as Exhibit "C". These did not progress.
14. Between October 2023 and April 2024, the Arbitration Franchisees each submitted a Submission to Mediate pursuant to the arbitration clauses in their agreements. These did not progress.
15. At each step in the Franchisees dealings with the Applicants and franchisor's associates the response was limited, seemingly designed to delay. When we did move forward with anything, the Applicants seem to have "no instructions" or were unwilling to progress matters. I do not believe they acted in good faith.
16. Ultimately, the Arbitration Franchisees were forced to apply to Court to seek and order appointing an Arbitrator. A true copy of 281Co' notice of application is attached hereto as Exhibit "D".

17. 281Co application was heard together with like applications with the other Franchisees. The Franchisees were successful, obtaining an order appointing an arbitrator on August 23, 2024. A copy of such order is attached as Exhibit “E” hereto.
18. The Applicants initiated CCAA proceedings five days later, on August 28, 2024.

THE CCAA PROCEEDINGS

19. The CCAA proceeding effectively stayed the Franchisees claims under the Wishart Act.
20. The primary purpose of the CCAA Proceeding was, as I understand it, to market the sale of the Applicants’ business under “stalking horse” sale process, featuring a default offer from a related party – TS Investments Corp.
21. I understand that sale process was ended by the Applicants and Monitor as not satisfactory alternative offers were received and that the Applicants are seeking approval of a sale to TS Investments Corp. The directors of TS Investments Corp. include Juergen Schreiber, Paul Marcaccio and Andy Williams. A copy of the corporate profile report is attached hereto as Exhibit “F”.
22. Those individuals are also the directors of the Applicants and are subject to the Franchisees’ Rescission Claims. Copies of the relevant corporate profile reports are attached hereto and collectively market as Exhibit “G”
23. One of these individuals – Juergen Schreiber – is a named “franchisor’s associate” in the each of Franchisees’ notices of rescission and the subsequent arbitration, claims and court materials. The Franchisees intend to continue the Rescission Claim against Mr. Schreiber personally, as soon as the CCAA stay is terminated. I understand from Sotos LLP that such claim is a direct, personal liability of anyone who qualifies as “franchisor associate” under

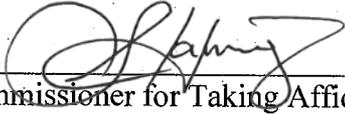
the Wishart Act and that Mr. Schreiber will qualify as such. I am also advised by counsel that this is not a claim for misrepresentation, which is a separate section of the Wishart Act. I am further advised by counsel that this claim has nothing to do with Mr. Schreiber's role as a director of any of the Applicants.

THE PROPOSED RELEASE OF DIRECTORS WILL END OUR CLAIMS

24. I understand that in connection with the proposed related-party sale, the Applicants are also seeking a broad release of claims against the current directors of the Applicants that arose prior to the commencement of these proceedings exempting only (a) contract claims; (b) claims based on misrepresentation or oppression; and, (c) insured claims. The release has also been revised since being served to expressly contemplate the release of claims under the *Arthur Wishart Act*.
25. It is not lost on the Franchisees that Mr. Schreiber is "on both sides" of proposed sale. That said, we do not take issue with the sale.
26. The Franchises do, however, take issues with the scope of the proposed release which will be now a bald attempt to immunize Mr. Schreiber from our Rescission Claims.
27. We are strangers to the CCAA. The rescission of our respective franchise agreements became effective in between 2021-2023. And, our resulting Rescission Claims are unrelated to the Applicants operations, or the sale, through the CCAA. The thought that in such circumstances our claims against Mr. Schreiber will be wiped out, being one of the only possible sources of recovery, is offensive.

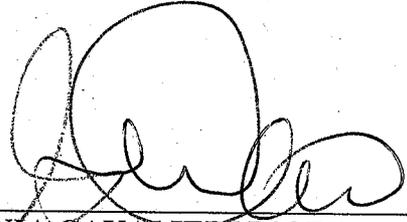
28. I swear this affidavit in response the Applicants' motion in these proceedings, in opposition of the form of release of the directors sought by the Applicants.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 27th day of
November 2024 in accordance with O.
Reg. 431/20 Administering Oath or
Declaration Remotely



Commissioner for Taking Affidavits

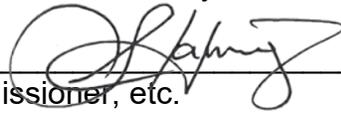
Shahrzad Hamraz
LSO# 85218H



SONIA CAVALIERI D'ORO

TAB A

This is Exhibit "A" referred to in the Affidavit of Sonia Cavalieri D'oro sworn before me this 27th day of November, 2024.

A handwritten signature in black ink, appearing to be "S. Cavalieri", written over a horizontal line.

A Commissioner, etc.

NOTICE OF RESCISSION OF FRANCHISE AGREEMENT

TO: 2733181 Ontario Inc. (the “**Franchisor**”)

AND TO: 2737503 Ontario Inc., 2161907 Alberta Ltd., TS Programs Ltd., Canopy Growth Corporation, Justin Farbstein, Jürgen Schreiber, and Josh Davidson (collectively, “**Franchisor’s Associates**”)

FROM: 2810434 Ontario Incorporated (the “**Franchisee**”)

AND FROM Hamed Faizi (“**Faizi**”) and Sonia Maria Pia Cavalieri D’Oro (“**Cavalieri D’oro**”) and, collectively with Faizi, the “**Guarantor**”)

RE: Notice of Rescission of each and every “franchise agreement” within the meaning of Section 1(1) of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c.3 (the “**Wishart Act**”), and all ancillary agreements thereto, including, but not limited to: a Franchise Agreement between the Franchisor, as franchisor, the Franchisee, as franchisee, and the Guarantor, as guarantor, dated August 27, 2021; a Promotion and Marketing Agreement between the Franchisee, as client, and TS Programs Ltd., as marketer, dated August 27, 2021; a Consulting Agreement between the Franchisee, as client, and the Franchisor, as consultant, dated August 27, 2021, a Professional Services Agreement between the Franchisee, as client, and the Franchisor, as consultant, entered into on or about August 27, 2021; a General Security Agreement between the Franchisee, as debtor, and the Franchisor, as secured party, dated August 27, 2021; a Franchisee Auto-Debit Authorization Agreement between the Franchisee, as franchisee, and the Franchisor, as franchisor, dated August 27, 2021; a Sublease Agreement between the Franchisee, as subtenant, 2737503 Ontario Inc., as sublandlord, dated August 27, 2021; a Share Pledge Agreement between Faizi, as pledgor, and the Franchisor, as franchisor, dated August 27, 2021; and a Share Pledge Agreement between Cavalieri D’Oro, as pledgor, and the Franchisor, as franchisor, dated August 27, 2021 (all of which are, collectively, the “**Franchise Agreement**”), in connection with a “Tokyo Smoke” franchise (the “**Franchised Business**”), located at 967 Fennel Ave, Unit 4B, Hamilton, ON (the “**Premises**”).

The undersigned hereby serves notice upon you of the rescission of the Franchise Agreement pursuant to Section 6(2) of the Wishart Act resulting from the Franchisor’s failure to provide the Franchisee with a disclosure document as required by Section 5 of the Wishart Act and Ontario Regulation 581/00 (the “**Regulation**”) made thereunder.

Contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive a “disclosure document” that complied with the requirements of the Wishart Act and the Regulation prior to entering into the Franchise Agreement and prior to paying any consideration to the Franchisor or a Franchisor’s Associate relating to the Franchise. As a result, the

Franchisee was effectively deprived of the opportunity to make an informed decision about whether or not to invest in the Franchised Business.

In or about January, 2021, Faizi first reached out to the “Tokyo Smoke” franchise system. Josh Davidson (“**Davidson**”), the Franchisor’s “Franchise Development Manager”, responded to his inquiry. On or about January 18, 2021, Faizi and Davidson spoke by telephone for the first time. The duration of the call was approximately 30-45 minutes. On the call, Davidson provided Faizi with extensive financial information relating to the operation of a “Tokyo Smoke” franchise.

Among other things, Davidson provided earnings projections to Faizi. Davidson explained that there were three “tiers” of “Tokyo Smoke” stores. He claimed that “Tier One” stores averaged \$3.2 million in sales per year, “Tier Two” stores averaged \$2.8 million in sales per year, and “Tier Three” stores averaged \$1.8 million in sales per year. He told Faizi that the profit margin on a “Tokyo Smoke” franchise would be between 15%-18%, depending on what “tier” of store was being operated.

Davidson also provided certain information to Faizi about the operating costs of a “Tokyo Smoke” franchise. He claimed that labour costs would be approximately 7% of gross sales, but that this percentage would be lower for a “Tier One” store.

Davidson further claimed that a “Tokyo Smoke” franchise would be a “hands-free” business, meaning that the principals of the corporate franchisee would not need to personally operate the store. Davidson claimed that the brand would take care of “everything” for the franchise owners, for a fee. Davidson represented that “Tokyo Smoke” would be the “LCBO of cannabis.”

Following the call, Davidson sent Faizi additional written information via email, including a specimen copy of a “Tokyo Smoke” franchise agreement, an “Ontario Availabilities Chart”, listing sites that were available to be developed into a “Tokyo Smoke”, and a select list of current “Tokyo Smoke” franchisees and contact information for the franchisees’ principals. Davidson told Faizi he should feel free to contact any individual on the list as “I trust all of them!”

On April 14, 2021, Davidson, on behalf of the Franchisor, sent Cavalieri D’Oro, on behalf of the Franchisee, an email containing an attachment labelled “Sample Business Plan”. The “Sample Business Plan” contained various excel sheets with material financial information concerning the operations of three different “tiers” of Tokyo Smoke stores, including information as to average past and future projected revenue, cost of goods sold, and expenses that had been achieved and could be expected within each “tier”. This document contained information that was similar to the information that Davidson had provided to Faizi during their phone call in January, 2021.

Also on April 14, 2021, Davidson, on behalf of the Franchisor, sent Cavalieri D’Oro, on behalf of the Franchisee, an email containing an attachment labelled “Tokyo Smoke Investor Handbook” (the “**Investor Handbook**”). The Investor Handbook provides that “Tokyo Smoke operates under a stable of brands owned by Canopy Growth Corporation” (“**Canopy**”) and states that the brand has a “Growing Canadian Footprint” with 30 Tokyo Smoke Stores “Coming Soon”. The Investor Handbook also provides a list of “Real Estate Criteria” used by the Franchisor, which include the fact that the Franchisor endeavors “to secure leases offering free rent of up to 6 months, often with exclusivity” and that the leases obtained have “competitively lower rent costs on average”. The Investor Handbook also provides “Estimated Starting Costs”

which include estimates that are missing from or different than those disclosed in the Purported Disclosure Document (defined below), including but not limited to, an estimated \$5,000 for banking fees, specifically at “Alterna or BMO”, and an estimated capital requirement ranging between \$635,000 - \$885,000.

On July 7, 2021, Khizar Javed, a “Field Manager” for “Tokyo Smoke” and Canopy Growth Corporation, on behalf of the Franchisor, sent Cavalieri D’Oro and Faizi, on behalf of the Franchisee, an email containing an attachment labelled “Ontario Partner Onboarding – Tokyo Smoke October 2020” (the “**Onboarding Handbook**”). The Onboarding Handbook provides the following information:

- a detailed history of “Canopy Growth”, including that the company has been “producing high-quality cannabis products for Canadians since 2014”;
- identifying a “Canopy Support Team” who would assist the Franchisee with things such as: advising on SKU assortments to carry in its store, providing weekly CGC inventory updates, communicating brand and SKU pricing updates, working with its store team to highlight and feature SKUs with support of in-store trade assets, planning in-store activations, developing store-specific strategies, weekly calls between Tokyo Smoke partner Store Managers which are to be led by the “Canopy team”, and providing ongoing brand and product education;
- an outline of the Franchisee’s “target guest”;
- an overview of “legal marketing restrictions” including the fact that all marketing, educational or promotional material can only be viewed by persons aged 19 and older and that, in certain provinces, cannabis brands are unable to incentivize purchasing cannabis through giveaways, sales promotions, and discounting;
- information in regard to the Franchisor’s “approach to store design” including the fact there are four “types” of Tokyo Smoke stores (i.e. Express Store, Standard Store, Community Store, Flagship Store”, each of which are different sizes, typically located in different areas, may carry different products, and have different access to the “Community Program” (e.g. a “Standard Store” has a minimum size of 1,200 square feet and is typically located in a strip mall or big box mall location and only has a limited “community program”, whereas a “Flagship Store” has a minimum size of 2,000 square feet and is typically located in prime retail real estate, high traffic, street front preferred areas and has access to the full “Community Program”); and
- a breakdown of the composition of the different categories of products carried by Tokyo Smoke stores.

In addition to the above written materials, the Franchisor’s representatives provided additional information to the Franchisee orally, including:

- Davidson and Justin Farbstein (“**Farbstein**”), a director and officer of the Franchisor, repeatedly provided oral operating costs estimates and earnings projections to

representatives of the Franchisee, on various dates prior to the time the Franchisee entered into the Franchise Agreement; and

- Davidson and Farbstein verbally informed representatives of the Franchisee that the Franchised Business would be a “hands off” business, meaning that the Franchisee could expect to be able to hire a manager to run the business for it such that the principals of the Franchisee would not need to be involved in the day-to-day operations of the Franchised Business.

On or about August 4, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with a version date of December, 2021, entitled “Ontario Franchise Disclosure Document”, which purported to be a “disclosure document” within the meaning of the Wishart Act (the “**Purported Disclosure Document**”).

On August 20, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with an effective date of August 20, 2021 entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” within the meaning of the Wishart Act (the “**Purported SMC**”).

The Purported Disclosure Document and the Purported SMC did not comply with the requirements of the Wishart Act and the Regulation. Accordingly, and contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive a “disclosure document” prior to the time the Franchisee entered into the Franchise Agreement or paid to the Franchisor any consideration relating to the Franchise.

As such, the Purported Disclosure Document and the Purported SMCs failed to comply with the requirements of the Wishart Act and Regulation as they contained a significant number of material deficiencies. These deficiencies include, but are not limited to, the following:

1. Contrary to Section 5(3) of the Wishart Act, the Purported Disclosure Document was not delivered as one document, at one time. Rather, and as described above, material information was delivered to the Franchisee in multiple documents, and orally, on multiple occasions, in a piecemeal fashion. Specifically:
 - a. Davidson provided oral operating costs estimates and earnings projections to representatives of the Franchisee including, but not limited to:
 - i. Disclosing information as to the three “tiers” of “Tokyo Smoke” stores. Davidson orally informed Faizi, on behalf of the Franchisee, that “Tier One” stores averaged \$3.2 million in sales per year, “Tier Two” stores averaged \$2.8 million in sales per year, and “Tier Three” stores averaged \$1.8 million in sales per year. He told Faizi that the profit margin on a “Tokyo Smoke” franchise would be between 15%-18%, depending on what “tier” of store was being operated. This information amounts to an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location

where information is available for inspection that substantiates the projection; and

- ii. Disclosing certain information to the Franchisee about the operating costs of a “Tokyo Smoke” franchise. Davidson verbally informed Faizi, on behalf of the Franchisee, that labour costs would be approximately 7% of gross sales, but that this percentage would be lower for a “Tier One” store. This information amounts to an estimate of annual operating costs. Contrary to Section 6.2 of the Regulation, the Franchisor failed to provide with these estimates a statement specifying the basis for the estimates, the assumptions underlying the estimates, and a location where information is available for inspection that substantiates the estimates.

b. The Sample Business Plan:

- i. Disclosed information regarding the past and potential future total revenue and margins of “Tokyo Smoke” stores depending upon their “tier”. This information amounts to an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location where information is available for inspection that substantiates the projection; and
- ii. Disclosed information regarding the past and potential future cost of goods sold and certain expenses of “Tokyo Smoke” stores depending on their “tier”. This information amounts to an estimate of annual operating costs. Contrary to Section 6.2 of the Regulation, the Franchisor failed to provide with these estimates a statement specifying the basis for the estimates, the assumptions underlying the estimates, and a location where information is available for inspection that substantiates the estimates.

c. The Investor Handbook:

- i. Disclosed that the Tokyo Smoke brand has a “Growing Canadian Footprint” with 30 Tokyo Smoke Stores “Coming Soon”;
- ii. Disclosed a list of “Real Estate Criteria” used by the Franchisor when obtaining locations for Tokyo Smoke stores, which include the fact that the Franchisor endeavors “to secure leases offering free rent of up to 6 months, often with exclusivity” and that the leases it obtains have “competitively lower rent costs on average”; and
- iii. Disclosed a list of “Estimated Starting Costs” which include estimates that are missing from or different than those disclosed in the Purported Disclosure Document, including but not limited to, an estimated \$5,000 for banking fees, specifically at “Alterna or BMO”,

all of which information was material to the establishment and operation of the Franchised Business, and should have been provided to the Franchisee in a disclosure document but was not included in the Purported Disclosure Document or the Purported SMC.

- d. Davidson and Farbstein orally informed Faizi and Cavalieri D'Oro, on behalf of the Franchisee, that a "Tokyo Smoke" franchise would be a "hands-free" business, meaning that the principals of the corporate franchisee would not need to personally operate the store. Davidson claimed that Tokyo Smoke would take care of "everything" for the franchise owners, for a fee. Davidson also further represented that the "Tokyo Smoke" brand would be the "LCBO of cannabis." All of this information was material, and should have been provided to the Franchisee in a disclosure document, but was not.
- e. The Onboarding Handbook:
 - i. Disclosed information in regard to the "Canopy Support Team" who would assist the Franchisee in its operation of the Franchised Business and information as to what the "Canopy Support Team" would assist with (i.e. advising on SKU assortments to carry in its store, providing weekly CGC inventory updates, communicating brand and SKU pricing updates, working with its store team to highlight and feature SKUs with support of in-store trade assets, planning in-store activations, developing store-specific strategies, weekly calls between Tokyo Smoke partner Store Managers which are to be led by the "Canopy team", and providing ongoing brand and product education);
 - ii. Disclosed information as to the Franchisee's "target guest";
 - iii. Contained an overview of "legal marketing restrictions" in regard to the advertising and marketing of Cannabis products in Canada, including the fact that all marketing, educational or promotional material can only be viewed by persons aged 19 and older and that cannabis brands are unable to incentivize purchasing cannabis through giveaways, sales promotions, and discounting (in some provinces);
 - iv. Contained information in regard to the Franchisor's "approach to store design" including the fact there are four "types" of Tokyo Smoke stores (i.e. Express Store, Standard Store, Community Store, Flagship Store", each of which are different sizes, typically located in different areas, may carry different products, and have different access to the "Community Program" (e.g. a "Standard Store" has a minimum size of 1,200 square feet and is typically located in a strip mall or big box mall location and only has a limited "Community Program", whereas a "Flagship Store" has a minimum size of 2,000 square feet and is typically located in prime retail real estate, high traffic, street front preferred areas and has access to the full "Community Program"); and

- v. Contained information in regard to the composition of the different categories of products carried by Tokyo Smoke stores,

all of the above information was material to the establishment and operation of the Franchised Business and should have been provided to the Franchise in a disclosure document, but was not included in the Purported Disclosure Document or the Purported SMC.

2. Contrary to Section 5(4)(a) of the Wishart Act, the Purported Disclosure Document failed to contain all material facts and/or material changes, as applicable, including material facts as prescribed. Specifically:
 - a. The Purported Disclosure Document and the Purported SMC failed to disclose material facts and/or disclosed misleading or incorrect facts in regard to a certain agreement to lease between 2737503 Ontario Inc., as tenant, and Kilbarry Holding Corporation, as landlord dated October 21, 2021 (the “Lease”). The material provisions in Lease that were not disclosed in the Purported Disclosure Document or the Purported SMC include, but are not limited to the fact that, contrary to the information provided in the Purported FDD and the Purported SMC, the fixturing period would be 90 days rather than 120 days from the Possession Date;
 - b. The Purported Disclosure Document and the Purported SMC failed to disclose material facts and/or disclosed misleading or incorrect facts in regard to the Premises. Specifically, the Purported Disclosure Document and the Purported SMC incorrectly stated that the size of the Premises was “approximately 2,000 square feet” when, in fact, the size of the Premises was materially larger, being over 2,400 square feet. This information is material, and has a direct and significant effect the Franchisee’s operating costs and, in turn, its ability to generate an operating profit. Had the Franchisee known that the Premises was over 2,400 square feet in size, it would not have chosen to invest in the Franchised Business;
 - c. The Purported Disclosure Document failed to include material facts that were orally disclosed to representatives of the Franchisee including information in regard to: (i) the existence of three “tiers” of “Tokyo Smoke” stores; (ii) the past and projected future financial performance of each “tier” of “Tokyo Smoke” store; (iii) the past and projected future operating costs of each “tier” of “Tokyo Smoke” store; and (iv) the fact that a “Tokyo Smoke” franchise would be a “hands-free” business, meaning that the principals of the Franchisee would not need to personally operate the store;
 - d. The Purported Disclosure Document failed to include copies of the Sample Business Plan, which contained material facts in regard to the financial performance of existing Tokyo Smoke stores and the expected financial performance of the Franchised Business;
 - e. The Purported Disclosure Document failed to include the material facts contained in the Investors Handbook and the Onboarding Handbook, as identified above;

- f. The Purported Disclosure Document failed to disclose that, unlike almost every other retail business in Canada, retail cannabis businesses are unable to access basic business banking and financial services from Canadian chartered banks. This includes an inability to obtain basic business bank accounts, standard financial products and services, such as bank loans, operating lines of credit, and standard government small business loans, which are typically available to Canadian franchisees operating non-cannabis businesses. In particular:
- i. The Franchisee would not be able to obtain financing for its purchase, construction, and operation of the Franchised Business from a chartered bank or credit union in Canada and/or that such financing would be subject to unusually rigorous application requirements and significant fees. The Franchisor did not disclose that, therefore, the Franchisee would need to fund its Franchised Business without the benefit of standard and widely available credit facilities available to other types of franchised businesses;
 - ii. The Franchisee would not be able to access basic financial services at a chartered bank in Canada, including a basic business bank account, necessary for the purposes of operating the Franchised Business;
 - iii. Without access to basic financial services through a chartered bank, the Franchisee would need to rely on smaller “cannabis-friendly” credit unions for the provision of basic financial services;
 - iv. Financing provided by a credit union would be subject to unusually rigorous application requirements and significant fees, including incurring greater costs to prepare application and other materials required by credit unions when compared to applying for financing from a chartered bank in Canada;
 - v. The Franchisee would not be eligible for funding under the Canada Small Business Financing Program (the “**CSBFP**”) given that loans under the CSBFP must be applied for and processed through participating lenders, the vast majority of which do not provide services to cannabis retailers. The unavailability of the CSBFP is material as its absence as a source of funding dramatically increases the financial risk facing the Franchisee and its investors, given that funds advanced under the CSBFP limit a franchisee’s principal’s personal guarantee on loans to a maximum of 25% of the principal advanced;
 - vi. The number of credit unions willing to work with cannabis retailers is limited, and the financial products and services offered by such credit unions is also limited compared to what is typically available at a chartered bank. For instance, Comtech Fire Credit Union, a credit union recommended to the Franchisee by the Franchisor after the Franchisee had signed the Franchise Agreement, does not provide commercial lending to

retail cannabis businesses, and does not provide certain products (such as credit cards) unless they are fully secured (pre-paid in an amount of 115% of the card maximum);

- vii. Relying on credit unions for financing and basic banking services presents a significant risk to the Franchisee, given that such credit unions are more vulnerable to economic downturns and the protections provided by the Canadian government to credit unions are not as robust as those provided to chartered banks. Unlike chartered banks that cannot be wound up under a conventional bankruptcy and liquidation process should they fail, the Canadian government does not grant such protections to credit unions;

The Franchisor was aware of all of these facts, yet failed to disclose them to the Franchisee until after the Franchisee had entered into the Franchise Agreement;

- g. The Purported Disclosure Document failed to include any information about TS Programs Ltd., an affiliate of the Franchisor, and an entity with which the Franchisee would be required to contract and indemnify pursuant to the Promotion and Marketing Agreement;
 - h. The Purported Disclosure Document failed to disclose that the Franchisee would be required to indemnify TS Programs Ltd. in accordance with the Promotion and Marketing Agreement; and
 - i. The Purported Disclosure Document failed to disclose that, despite the Franchisor's oral representations that the Franchised Business would be a "hands off" business, the Franchisee would be unable to run the Franchised Business in a "hands off" manner unless it obtained and maintained certain margins, which were not possible for the Franchisee to obtain and/or maintain.
3. Contrary to Section 5(5) of the Act, the Franchisor failed to provide the Franchisee and the Guarantor with a Statement of Material Change summarizing the material facts and/or the material changes (as defined by the Wishart Act) contained in and arising from the Lease, including, but not limited to, those material facts set out in Subparagraph 2a. and b. above.
4. Contrary to Section 5(6) of the Wishart Act, the information contained in the Purported Disclosure Document and in the Purported SMCs was not accurately, clearly, and concisely set out. The information contained in the Purported Disclosure Document and the Purported SMC was unclear, inaccurate, and incomplete.
5. Contrary to Section 2.5 of the Regulation, the Purported Disclosure Document did not include an accurate statement, including a description of details, indicating whether the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person. Specifically, the Franchisor failed to disclose

material facts in regard to multiple ongoing civil actions involving allegations of unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, which were pending against the Franchisor's associate, 2161907 Alberta Ltd., namely:

- a. 2161907 ALBERTA LTD. v. 11180673 CANADA INC.; and
 - b. TRIPSETTER INC. v. 2161907 ALBERTA LTD. et al.
6. Contrary to Section 6.1 of the Regulation, the Purported Disclosure Document failed to adequately disclose a list of all of the franchisee's costs associated with the establishment of the franchise, including, but not limited to, failing to disclose that the Franchisee would need at least six (6) months of working capital before it could expect to break even.
7. Contrary to Sections 6.2 and 6.3 of the Regulation, the Franchisor provided estimates of annual operating costs and earnings projections outside of a "disclosure document" and/or any "statement of material change" and without providing the requisite underlying and substantiating information.

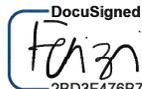
The Purported Disclosure Document and the Purported SMC failed to comply with the provisions of the Wishart Act and the Regulation and accordingly, the undersigned is entitled to rescind the Franchise Agreement. This notice also constitutes notice of rescission at common law and in equity.

Attached as Schedule "A" is a detailed listing of the funds, totaling **\$701,991.93**, which the undersigned has currently determined is to be returned to it pursuant to Section 6(6) of the Wishart Act. The amount requested is the current or anticipated amount owing to the Franchisee. Any adjustments to that amount will be provided by the Franchisee, or its counsel, as they become known. The Franchisee reserves its right to claim a higher amount if subsequent calculations substantiate a higher amount. In any event, the aforesaid entitlements are known to the Franchisor and all Franchisor's Associates.

The Wishart Act requires you to refund these monies within 60 days of your receipt of this Notice of Rescission. Accordingly, please deliver a certified cheque or bank draft to the lawyers of the undersigned made payable to "Sotos LLP, In Trust" in the amount of **\$701,991.93** representing payment of the rescission payment owing to the undersigned, **on or before Tuesday, March 21, 2023.**

DATED at Toronto, Ontario this 20th day of January, 2023.

2810434 ONTARIO INCORPORATED

DocuSigned by:
Per: 
28D3E476B7B84AF _____ c/s
Hamed Faizi, A.S.O.

I have authority to bind the corporation.

Schedule "A"

A.	Money paid to the franchisor or a franchisor's associate	
i.	Franchise fee paid to acquire the franchise	\$56,500.00
ii.	Royalties	<u>\$31,871.42</u>
iii.	Advertisement Fund Contributions	<u>\$9,631.52</u>
iv.	Any other amounts paid directly to the franchisor (not including supplies, equipment or inventory)	<u>\$5,312.00</u>
v.	Rent paid to the franchisor or to an affiliate or on its behalf to a landlord	<u>\$99,194.77</u>
	Subtotal 6(6)(a):	\$202,509.71
B.	Inventory remaining at the date of rescission	
i.	Current Inventory	<u>\$18,895.71</u>
	Subtotal 6(6)(b):	\$18,895.71
C.	Supplies and equipment purchased pursuant to the franchise agreement	
i.	Store Buildout (Leasehold improvements, security, networking, audio, site coordination) (VMN Renovations)	\$306,555.16
ii.	TS Project Management Services (CMG)	<u>\$5,226.25</u>
iii.	Building Permit Drawings- (Fred Jewett Engineer)	<u>\$2,542.50</u>
iv.	Outdoor Sign - (Legacy Signs)	<u>\$9,768.85</u>
v.	Millwork (Archmill)	<u>\$73,312.76</u>
vi.	Window Graphics (ARC Documentation)	<u>\$2,876.13</u>
vii.	Lighting (CS Illumination)	<u>\$20,214.36</u>
viii.	Indoor Graphics (ARC Documentation)	<u>\$6,965.89</u>
ix.	Building Permit Fees (Fred Jewett Engineer)	<u>\$1,054.00</u>
x.	Architect (Great Room Architect)	<u>\$2,825.00</u>
xi.	Beverage Fridge (Trimen Food Services)	<u>\$5,514.97</u>

xii. Vault Shelving (Proforma Inc.)	\$4,993.47
xiii. Vault Equipment (Uline)	\$2,278.98
xiv. Employee Lockers (Uline)	\$803.43
xv. Furniture	\$4,016.96
xvi. Bathroom fixtures (non-Capitalised)	\$311.85
xvii. Microwave	\$176.27
xviii. Safe	\$219.81
xix. Lunch Room Mini Fridge	\$192.09
xx. IT server and equipment	\$19,319.31
xxi. Store set-up and merchandising expenses (non-capitalised)	\$10,090.72
xxii. Security Sytem Install (non-capitalised)	\$1,327.75
	Subtotal 6(6)(c): \$480,586.51

D. Operating losses

Total Revenues/Sales	\$545,758.70
	LESS
i. Rent (if paid under a direct lease. Please include all property taxes and utilities paid in the rent figure)	-
ii. Leasehold improvements which are not equipment identified above	-
iii. Insurance	\$13,656.07
iv. Licensing	\$19,000.94
v. Staff wages and benefits (including management)	\$127,495.77
vi. Advertising and promotion (not paid to the franchisor)	\$2,164.72
vii. Alarm and Security	\$1,802.35
viii. Bank charges	\$11,408.84
ix. Courier / Postage Expense	\$275.25
x. Equipment Rental (e.g. POS, computers, sound system etc.)	\$5,766.39
xi. Office supplies previously used up	\$2,061.24

xii. Telephone/Internet	\$825.83
xiii. Interest on loans	-
xiv. Website/Software	\$325.44
xv. Business travel	-
xvi. Vehicle Expenses (lease, gas, maintenance, parking, taxis etc.)	-
xvii. Other operating costs (including all other costs for the everyday running and upkeep of the business including premises cleaning services, uniform/linen services, waste management maintenance etc.)	\$8,391.80
xviii. Legal and accounting fees (costs to incorporate, professional services)	\$662.60
xix. Deferred management salary	\$30,000.00
xx. Foregone salary (salary/wages you would have earned but for acquiring the franchise minus salary/wages received plus deferred salary.)	-
xxi. Amounts due to landlord under direct lease for the landlord's loss of the benefit of the lease	-
xxii. Amounts due to any other suppliers under financing agreements for period post-rescission (itemize)	-
xxiii. HST paid or owing	-
xxiv. Government remittances not included in wages (source deductions, WSIB, EHT)	-
xxv. Cost of goods sold	\$317,476.96
Subtotal 6(6)(d):	\$4,444.50
Total Claim 6(6)(a) + 6(6)(b) + 6(6)(c):	\$701,991.93

NOTICE OF RESCISSION OF FRANCHISE AGREEMENT

TO: 2733181 Ontario Inc. (the “**Franchisor**”)

AND TO: 2737503 Ontario Inc., 2161907 Alberta Ltd., Josh Davidson, Justin Farbstein, and Jürgen Schreiber (collectively, “**Franchisor’s Associates**”)

FROM: 2826139 Ontario Inc. (the “**Franchisee**”)

AND FROM 2826559 Ontario Inc., 2826704 Ontario Inc., The Verreault Family Trust, The Gilson Family Trust, Ashely Leone Verreault, Nicolas Daniel Verreault, Angela Karen Gale, and Gregory Keith Gilson (collectively, the “**Guarantors**”)

RE: Notice of Rescission of each and every “franchise agreement” within the meaning of Section 1(1) of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c.3 (the “**Wishart Act**”), and all ancillary agreements thereto, including, but not limited to: a franchise agreement amongst the Franchisor, as franchisor, the Franchisee, as franchisee, and the Guarantors, as guarantors, executed by the Franchisee on May 6, 2021 and dated as of May 5, 2021; a consulting agreement between the Franchisee, as client, and the Franchisor, as consultant, dated May 5, 2021; a general security agreement between the Franchisee, as debtor, and the Franchisor and any subsidiary or affiliate thereof, collectively as secured party, dated May 5, 2021; a sublease agreement between the Franchisee, as subtenant, 2737503 Ontario Inc., as sublandlord, dated August 16, 2021; a share pledge agreement between 2826559 Ontario Inc., as pledgor, and the Franchisor, as franchisor, dated May 5, 2021; a share pledge agreement between 2826704 Ontario Inc., as pledgor, and the Franchisor, as franchisor, dated May 5, 2021; a share pledge agreement between The Gilson Family Trust, as pledgor, and the Franchisor, as franchisor, dated May 5, 2021; and a share pledge agreement between The Verreault Family Trust, as pledgor, and the Franchisor, as franchisor, dated May 5, 2021; (all of which are, collectively referred to as the “**Franchise Agreement**”), in connection with a “Tokyo Smoke” franchise (the “**Franchised Business**”), located at 297-303 Richmond Road, Unit A, Ottawa, Ontario (the “**Premises**”).

The Franchisee hereby serves notice upon you of the rescission of the Franchise Agreement pursuant to Section 6(2) of the Wishart Act resulting from the Franchisor’s failure to provide the Franchisee with a disclosure document as required by Section 5 of the Wishart Act and Ontario Regulation 581/00 (the “**Regulation**”) made thereunder.

Contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive a “disclosure document” that complied with the requirements of the Wishart Act and the Regulation prior to entering into the Franchise Agreement and prior to paying any consideration to the Franchisor or a Franchisor’s Associate relating to the Franchise. As a result, the Franchisee

was effectively deprived of the opportunity to make an informed decision about whether or not to invest in the Franchised Business.

On or about March 16, 2021, Josh Davidson (“**Davidson**”) the Franchisor’s “Franchise Development Manager”, on behalf of the Franchisor, sent the Franchisee a copy of a document entitled “Tokyo Smoke Investor Handbook” (the “**Investor Handbook**”). The Investor Handbook provides that “Tokyo Smoke operates under a stable of brands owned by Canopy Growth Corporation” (“**Canopy**”) and states that the brand has a “Growing Canadian Footprint” with 30 Tokyo Smoke Stores “Coming Soon”. The Investor Handbook also provides a list of “Real Estate Criteria” used by the Franchisor, which include the fact that the Franchisor endeavors to secure “leases offering free rent of up to 6 months, often with exclusivity” and that the leases obtained have “competitively lower rent costs”. The Investor Handbook also provides “Estimated Starting Costs” which include estimates that are missing from or different than those disclosed in the Purported Disclosure Document (defined below), including but not limited to, an estimated \$5,000 for banking fees, specifically at “Alterna or BMO”, and an estimated capital requirement ranging between \$635,000 - \$885,000. All of this information was material to the establishment and operation of the Franchised Business, and should have been provided to the Franchisee in a disclosure document.

On or about March 17, 2021, Ashely Leone Verreault and Nicolas Daniel Verreault, on behalf of the Franchisee, had a phone call with Davidson. During this phone call, Davidson provided the Franchisee with material facts and information in regard to the Franchised Business. For example, and without limitation, Davidson provided the Franchisee with material financial information concerning the operations of three different “tiers” of Tokyo Smoke stores, including information as to average past and future projected revenue, sales volume, gross margin, and estimated start-up costs and operating expenses that had been achieved and could be expected within each “tier” and by the Franchisee in its operation of the Franchised Business. Specifically, Davidson informed the Franchisee that the three stores with the lowest “volume” (i.e. those stores in tier 3) achieve 3.4 million in sales, stores in tier 2 achieve between 4.5 to 7.5 million in sales, and stores in tier 1 achieve 7.5 million and above, with one current store achieving 15 million in sales and another achieving 21 million in sales. Davidson further informed the Franchisee that: (i) it could expect average transactions of \$80.00; (ii) gross margin for all three “tiers” of stores ranged from 38% - 41%; (iii) during COVID, 80% of sales were completed online; (iv) it could expect operating expenses to equal 12% of revenue, rent to equal 5% of revenue, labour to equal 8% of revenue; (v) the net profit margin ranged from 14 – 16% at the lowest tier and 18 – 20% at the highest tier; and (vi) leasehold and construction costs would be approximately \$450,000 and working capital requirements would range from \$125,000 - \$175,000 (all of the above information provided by Davidson is hereinafter collectively referred to as, the “**Financial Performance Information**”). The Financial Performance Information constitutes material financial information about the Franchised Business, including annual operating costs estimates and earnings projections, and should have been provided to the Franchisee in a disclosure document, but was not.

On or about March 31, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with a version date of “March 2021” entitled “Ontario Franchise Disclosure Document”, which purported to be a “disclosure document” within the meaning of the Wishart Act (the “**Purported Disclosure Document**”).

On April 20, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with an effective date of April 20, 2021 entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” in accordance with the meaning of the Wishart Act (the “**First Purported SMC**”).

On April 30, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with an effective date of April 30, 2021 entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” in accordance with the meaning of the Wishart Act (the “**Second Purported SMC**”).

The First Purported SMC and the Second Purported SMC are hereinafter collectively referred to herein as the “**Purported SMCs**”.

The Purported Disclosure Document and the Purported SMCs did not comply with the requirements of the Wishart Act and the Regulation. Accordingly, and contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive a “disclosure document” prior to the time the Franchisee entered into the Franchise Agreement or paid to the Franchisor any consideration relating to the Franchise.

The Purported Disclosure Document and the Purported SMCs failed to comply with the requirements of the Wishart Act and Regulation as they contained a significant number of material deficiencies. These deficiencies include, but are not limited to, the following:

1. Contrary to Section 5(3) of the Wishart Act, the Purported Disclosure Document was not delivered as one document, at one time. Rather, and as described above, material information was delivered to the Franchisee in multiple documents, on multiple occasions, in a piecemeal fashion. Specifically:
 - a. The Investor Handbook, which discloses the following information:
 - i. that the Tokyo Smoke brand has a “Growing Canadian Footprint” with 30 Tokyo Smoke Stores “Coming Soon”;
 - ii. a list of “Real Estate Criteria” used by the Franchisor when obtaining locations for Tokyo Smoke stores, which include the fact that the Franchisor endeavors to secure “leases offering free rent of up to 6 months, often with exclusivity” and that the leases it obtains have “competitively lower rent costs on average”; and
 - iii. a list of “Estimated Starting Costs” which include estimates that are missing from or different than those disclosed in the Purported Disclosure Document, including but not limited to, an estimated \$5,000 for banking fees, specifically at “Alterna or BMO”,

the Purported Disclosure Document failed to include this information; and

- b. Davidson orally disclosed the Financial Performance Information to the Franchisee, which included:
 - i. information regarding the total revenue and margins of existing “Tokyo Smoke” stores depending on their tier and expected revenue and margins for the Franchised Business. This information amounts to an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location where information is available for inspection that substantiates the projection; and
 - ii. information regarding the past and potential future cost of goods sold and certain expenses of “Tokyo Smoke” stores depending on their “tier”. This information amounts to an estimate of annual operating costs. Contrary to Section 6.2 of the Regulation, the Franchisor failed to provide with these estimates a statement specifying the basis for the estimates, the assumptions underlying the estimates, and a location where information is available for inspection that substantiates the estimates,

the Purported Disclosure Document failed to include this information.

2. Contrary to Section 5(4)(a) of the Wishart Act, the Purported Disclosure Document and the Purported SMCs failed to contain all material facts and/or material changes, as applicable, relating to the Franchised Business. Specifically:
 - a. The Purported Disclosure Document and the Purported SMCs failed to disclose material facts contained in a certain offer to lease between 2737503 Ontario Inc., as tenant, and Athlone Investments Limited (the “**Landlord**”), as landlord dated July 5, 2021 (the “**Lease**”). The material provisions in Lease that were not disclosed in the Purported Disclosure Document or the Purported SMCs include, but are not limited to:
 - i. The correct amounts that the Franchisee would be required to pay in respect of Basic Rent and Additional Rent for the Premises;
 - ii. The amount that the Franchisee would be required to pay in respect of the Rent Deposit and the Security Deposit required under the Lease; and
 - iii. Pursuant to section 7 of the Lease, if at any time following the 7th year of the term of the Lease, the Landlord intends to demolish, substantially renovate, or materially alter the Development to such extent that the Landlord requires possession of the Premises, then the Landlord may terminate the Lease, without compensation of any kind to the Tenant, by giving 365 days written notice to the Tenant;
 - b. The Purported Disclosure Document failed to disclose that, unlike almost every other retail business in Canada, retail cannabis businesses are unable to access basic business banking and financial services from Canadian chartered banks. This

includes an inability to obtain basic business bank accounts, standard financial products and services, such as bank loans, operating lines of credit, and standard government small business loans, which are typically available to Canadian franchisees operating non-cannabis businesses. In particular:

- i. The Franchisee would not be able to obtain financing for its purchase, construction, and operation of the Franchised Business from a chartered bank or credit union in Canada and/or that such financing would be subject to unusually rigorous application requirements and significant fees. The Franchisor did not disclose that, therefore, the Franchisee would need to fund its Franchised Business without the benefit of standard and widely available credit facilities available to other types of franchised businesses;
- ii. The Franchisee would not be able to access basic financial services at a chartered bank in Canada, including a basic business bank account, necessary for the purposes of operating the Franchised Business;
- iii. Without access to basic financial services through a chartered bank, the Franchisee would need to rely on smaller “cannabis-friendly” credit unions for the provision of basic financial services;
- iv. Financing provided by a credit union would be subject to unusually rigorous application requirements and significant fees, including incurring greater costs to prepare application and other materials required by credit unions when compared to applying for financing from a chartered bank in Canada;
- v. The Franchisee would not be eligible for funding under the Canada Small Business Financing Program (the “CSBFP”) given that loans under the CSBFP must be applied for and processed through participating lenders, the vast majority of which do not provide services to cannabis retailers. The unavailability of the CSBFP is material as its absence as a source of funding dramatically increases the financial risk facing the Franchisee and its investors, given that funds advanced under the CSBFP limit a franchisee’s principal’s personal guarantee on loans to a maximum of 25% of the principal advanced;
- vi. The number of credit unions willing to work with cannabis retailers is limited, and the financial products and services offered by such credit unions is also limited compared to what is typically available at a chartered bank. The comparatively far fewer physical locations of such credit unions also adversely affects and materially increases transaction costs of the Franchised Business; and
- vii. Relying on credit unions for financing and basic banking services presents a significant risk to the Franchisee, given that such credit unions are more vulnerable to economic downturns and the protections provided by the Canadian government to credit unions are not as robust as those provided to chartered banks. Unlike chartered banks that cannot be wound up under

a conventional bankruptcy and liquidation process should they fail, the Canadian government does not grant such protections to credit unions.

The Franchisor was aware of all of these facts, yet failed to disclose them to the Franchisee in a franchise “disclosure document”;

- c. The Purported Disclosure Document failed to include the Financial Performance Information, which contained material facts in regard to the financial performance of existing Tokyo Smoke stores and the expected financial performance of the Franchised Business;
 - d. The Purported Disclosure Document failed to disclose any material facts, including a summary of the action and the status thereof, in regard to ongoing civil actions which were pending against the Franchisor’s affiliates and/or parent, namely 2161907 ALBERTA LTD. v. 11180673 CANADA INC.; and
 - e. The Purported Disclosure Document failed to include all information contained in the Investors Handbook, including the information relating to the growth of the “Tokyo Smoke” franchise system, the “Real Estate Criteria” and that the leases the Franchisor secures for franchisees have “competitively lower rent costs on average”, and the statements suggesting that the Franchisee would be able to obtain financial services from a Canadian chartered bank, specifically, Bank of Montreal.
3. Contrary to Section 5(4)(b) of the Wishart Act and Section 3(1) of the Regulation, the Purported Disclosure Document failed to contain the required financial statements. Specifically, given that the Franchisor’s fiscal year-end is June 30, the Franchisor was required to have disclosed audited or review engagement financial statements prepared in accordance with the Regulation, for the fiscal-year ended June 30, 2020. The Purported Disclosure Document and the Purported SMCs failed to contain such financial statements.
 4. Contrary to Section 5(6) of the Wishart Act, the information contained in the Purported Disclosure Document was not accurately, clearly, and concisely set out. The information contained in the Purported Disclosure Document was unclear, inaccurate, and incomplete.
 5. Contrary to Section 2.5 of the Regulation, the Purported Disclosure Document did not include an accurate statement, including a description of details, indicating whether the franchisor, the franchisor’s associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person. Specifically, the Franchisor failed to disclose material facts in regard to multiple ongoing civil actions which were pending against the Franchisor’s associates, namely 2161907 ALBERTA LTD. v. 11180673 CANADA INC.
 6. Contrary to Section 7 of the Regulation, the Purported Disclosure Document failed to include a certificate, signed and dated by the directors and/or officers of the Franchisor, certifying that the document contains no untrue information, representations or statements, and includes every material fact, financial statement, statement and other information.

The Purported Disclosure Document failed to comply with the provisions of the Wishart Act and the Regulation and accordingly, the undersigned is entitled to rescind the Franchise Agreement. This notice also constitutes notice of rescission at common law and in equity.

The Franchisee seeks statutory compensation pursuant to Section 6(6) of the Wishart Act. The Franchisee estimates that the quantum of such compensation is \$1,500,000. Any adjustments to that amount will be provided by the Franchisee, or its counsel, as they become known. The Franchisee reserves its right to claim a higher amount if subsequent calculations substantiate a higher amount. In any event, the aforesaid entitlements are known to the Franchisor and all Franchisor's Associates.

The Wishart Act requires you to refund these monies within 60 days of your receipt of this Notice of Rescission. Accordingly, please deliver a certified cheque or bank draft to the lawyers of the undersigned made payable to "Sotos LLP, In Trust" in the amount of \$1,500,000, representing payment of the Section 6(6) statutory compensation owing to the undersigned, **on or before Friday, June 30, 2023.**

DATED at the Federal Democratic Republic of Nepal, this 29th day of April, 2023.

2826139 ONTARIO INC.

Per: *Ashley Verreault* c/s

Ashley Leone Verreault, President
I have authority to bind the corporation.

NOTICE OF RESCISSION OF FRANCHISE AGREEMENT

TO: 2733181 Ontario Inc. (the “**Franchisor**”)

AND TO: 2737503 Ontario Inc., 2161907 Alberta Ltd., TS Programs Ltd., Justin Farbstein, Jürgen Schreiber, and Josh Davidson (collectively, “**Franchisor’s Associates**”)

FROM: 1000032072 Ontario Inc. (the “**Franchisee**”)

AND FROM Michelle Paris (the “**Guarantor**”)

RE: Notice of Rescission of each and every “franchise agreement” within the meaning of Section 1(1) of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c.3 (the “**Wishart Act**”), and all ancillary agreements thereto, including, but not limited to: a Franchise Agreement between the Franchisor, as franchisor, the Franchisee, as franchisee, and the Guarantor, as guarantor, dated January 17, 2022; a Promotion and Marketing Agreement between the Franchisee, as client, and TS Programs Ltd., as marketer, dated January 17, 2022; a Consulting Agreement between the Franchisee, as client, and the Franchisor, as consultant, dated January 17, 2022; a Professional Services Agreement between the Franchisee, as client, and the Franchisor, as consultant, entered into on or about January 17, 2022; a General Security Agreement between the Franchisee, as debtor, and the Franchisor, as secured party, dated January 17, 2022; a Franchisee Auto-Debit Authorization Agreement between the Franchisee, as franchisee, and the Franchisor, as franchisor, dated January 17, 2022; a Sublease Agreement between the Franchisee, as subtenant, 2737503 Ontario Inc., as sublandlord, dated January 17, 2022; and a Share Pledge Agreement between Michelle Paris, as pledgor, and the Franchisor, as franchisor, dated January 17, 2022; (all of which are, collectively, the “**Franchise Agreement**”), in connection with a “Tokyo Smoke” franchise (the “**Franchised Business**”), located at 35 Harvard Road, Unit #7A, Guelph, Ontario (the “**Premises**”).

The undersigned hereby serves notice upon you of the rescission of the Franchise Agreement pursuant to Section 6(2) of the Wishart Act resulting from the Franchisor’s failure to provide the Franchisee with a disclosure document as required by Section 5 of the Wishart Act and Ontario Regulation 581/00 (the “**Regulation**”) made thereunder.

Contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive a “disclosure document” that complied with the requirements of the Wishart Act and the Regulation prior to entering into the Franchise Agreement and prior to paying any consideration to the Franchisor or a Franchisor’s Associate relating to the Franchise. As a result, the Franchisee was effectively deprived of the opportunity to make an informed decision about whether or not to invest in the Franchised Business.

On or about December 15, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with a version date of December, 2021 entitled “Ontario Franchise Disclosure Document”, which purported to be a “disclosure document” within the meaning of the Wishart Act. (collectively, the “**Purported Disclosure Document**”).

On December 23, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with an effective date of December 23, 2021 entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” in accordance with the meaning of the Wishart Act (the “**First SMC**”). On December 24, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with an effective date of December 24, 2021 entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” in accordance with the meaning of the Wishart Act (the “**Second SMC**”). The First SMC and the Second SMC are hereinafter collectively referred to as the “**Purported SMCs**”.

The Purported Disclosure Document and the Purported SMCs did not comply with the requirements of the Wishart Act and the Regulation. Accordingly, and contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive a “disclosure document” prior to the time the Franchisee entered into the Franchise Agreement or paid to the Franchisor any consideration relating to the Franchise.

On February 23, 2021, Josh Davidson (“**Davidson**”), the Franchisor’s “Franchise Development Manager”, on behalf of the Franchisor, sent Pierre Paris (“**Pierre**”), on behalf of the Franchisee, an email containing an attachment labelled “Sample Business Plan”. In his email Davidson requested that Pierre not distribute the “Sample Business Plan” and that he didn’t “typically send [the Sample Business Plan] out at this stage” but that the prospective franchisee’s “level of interest” merited it. The “Sample Business Plan” contained various excel sheets with material financial information concerning the operations of three different “tiers” of Tokyo Smoke stores, including information as to average past and future projected revenue, cost of goods sold, and expenses that had been achieved and could be expected within each “tier”. As such, the “Sample Budget Plan” contained material financial information about the Franchised Business, including annual operating costs estimates and earnings projections, and should have been provided to the Franchisee in a disclosure document, but was not.

On November 8, 2021, Davidson, on behalf of the Franchisor, sent Pierre, on behalf of the Franchisee, an email which contained operating costs and/or earnings projections relating to the Franchised Business. The email contained multiple spreadsheets containing information as to the financial performance of all current Tokyo Smoke stores (collectively, the “**Financial Performance Information**”). The Financial Performance Information included, but was not limited to, revenue information, gross profit information, and information as to the number of transactions, all for each existing Tokyo Smoke store and all for the periods from October 24, 2021 to October 30, 2021; October 31, 2021 to November 6, 2021; YTD (“year to date”), and “Since Opening”. This information was material, and should have been provided to the Franchisee in a disclosure document, but was not.

In addition to the above written materials, the Franchisor verbally provided the Franchisee with material facts and information in regard to the Franchised Business, for example:

- Davidson repeatedly provided oral operating costs estimates and earnings projections to representatives of the Franchisee, on various dates prior to the time the Franchisee entered into the Franchise Agreement;
- Matt Calabretta, the Franchisor's regional manager, verbally informed Pierre, on behalf of the Franchisee, that the Franchisee should not expect to break-even for at least 6 months to 1 year after the Franchisee opened the Franchised Business; and
- Davidson and Jim Jenkins, both "Franchise Development Managers" of the Franchisor, verbally informed Pierre, on behalf of the Franchisee, that the Franchised Business would be a "hands off" business, and that the Franchisee could expect to be able to hire a manager to run the business for it such that the principals of the Franchisee would not need to be involved in the day-to-day operations of the Franchised Business.

All of this information was material and should have been provided to the Franchisee in a disclosure document, but was not.

As such, the Purported Disclosure Document and the Purported SMCs failed to comply with the requirements of the Wishart Act and Regulation as they contained a significant number of material deficiencies. These deficiencies include, but are not limited to, the following:

1. Contrary to Section 5(3) of the Wishart Act, the Purported Disclosure Document was not delivered as one document, at one time. Rather, and as described above, material information was delivered to the Franchisee in multiple documents, and orally, on multiple occasions, in a piecemeal fashion. Specifically:
 - a. The Sample Business Plan:
 - i. Disclosed information regarding the past and potential future total revenue and margins of "Tokyo Smoke" stores depending upon their "tier". This information amounts to an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location where information is available for inspection that substantiates the projection; and
 - ii. Disclosed information regarding the past and potential future cost of goods sold and certain expenses of "Tokyo Smoke" stores depending on their "tier". This information amounts to an estimate of annual operating costs. Contrary to Section 6.2 of the Regulation, the Franchisor failed to provide with these estimates a statement specifying the basis for the estimates, the assumptions underlying the estimates, and a location where information is available for inspection that substantiates the estimates.
 - b. The Financial Performance Information disclosed information regarding the total revenue and margins of existing "Tokyo Smoke" stores. This information amounts to an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the

projection, the assumptions underlying the projection, and a location where information is available for inspection that substantiates the projection.

- c. Matt Calabretta, the Franchisor's regional manager, verbally informed Pierre, on behalf of the Franchisee, that the Franchisee should not expect to break-even for at least 6 months to 1 year after the Franchisee opened the Franchised Business. The Purported Disclosure Document and the Purported SMCs failed to disclose this information.
 - d. Davidson and Jim Jenkins, both "Franchise Development Managers" of the Franchisor, verbally informed Pierre, on behalf of the Franchisee, that the Franchised Business would be a "hands off" business, and that the Franchisee could expect to be able to hire a manager to run the business for it such that the principals of the Franchisee would not need to be involved in the day-to-day operations of the Franchised Business. The Purported Disclosure Document and the Purported SMCs failed to disclose this information.
2. Contrary to Section 5(4)(a) of the Wishart Act, the Purported Disclosure Document failed to contain all material facts and/or material changes, as applicable, including material facts as prescribed. Specifically:
- a. The Purported Disclosure Document failed to disclose material facts contained in a certain agreement to lease between 2737503 Ontario Inc., as tenant, and Fiera Real Estate Core Fund LP (the "**Landlord**"), as landlord dated October 1, 2021 (the "**Lease**"). The material provisions in Lease that were not disclosed in the Purported Disclosure Document or the Purported SMCs include, but are not limited to:
 - i. The amounts that the Franchisee would be required to pay in respect of additional rent for the Premises;
 - ii. The Fixturing Period (as defined in the Lease) was to begin on approximately November 1, 2021 (the "Possession Date") and end on the earlier of 120 days following the Possession Date and the date that the tenant opens for business. The Purported Disclosure Document and Purported SMC failed to include a warning that the Fixturing Period had already begun and that, as a result, the Franchisee would have less time to complete the build-out of the Franchised Business within the Fixturing Period.
 - iii. Pursuant to Section 7.11 of the Lease, the Landlord could, at any time after the 5th anniversary of the Commencement Date (as defined in the Lease), terminate the Lease by giving the tenant at least 6 months' notice and, if the Landlord required vacant possession to "demolish, reconfigure, reconstruct and/or redevelop all or a substantial part of the Shopping Centre", the Tenant must deliver up vacant possession upon expiry of notice period.

In addition, and pursuant to Section 7.11 of the Lease, the tenant agreed that it would have no claim against the Landlord as a result of the exercise by the Landlord of this right under the Lease and, upon such termination, all Rent (as defined in the Lease) shall be apportioned to the effective date of such termination and upon compliance by each of the parties with their respective obligations under the Lease up to and including the effective date of such termination, each of the parties shall thereafter be released from all future obligations arising under the Lease; and

- iv. Pursuant to Section 9.1 of the Lease, if the Premises, in the opinion of the Architect (as defined in the Lease), shall be incapable of being rebuilt and/or repaired or restored with reasonable diligence within 180 days of the happening of such destruction or damage, then the Landlord may, at its option, terminate the Lease by notice in writing to the tenant given within 30 days of the date of the Landlord's receipt of the Architect's opinion and, in the event of such notice being so given, the Lease would cease and become null and void from the date of such destruction or damage and the tenant would be required to immediately surrender the Premises and all interest therein to the Landlord and the Rent shall be apportioned and shall be payable by the tenant only to the date of such destruction or damage and the Landlord may re-enter and repossess the Premises discharged of the Lease;
- b. The Purported Disclosure Document failed to include copies of the Sample Business Plan and the Financial Performance Information, which contained material facts in regard to the financial performance of existing Tokyo Smoke stores and the expected financial performance of the Franchised Business.
- c. The Purported Disclosure Document failed to include any information about TS Programs Ltd., an affiliate of the Franchisor, and an entity with which the Franchisee would be required to contract and indemnify pursuant to the Promotion and Marketing Agreement;
- d. The Purported Disclosure Document failed to disclose that the Franchisee would be required to indemnify TS Programs Ltd. in accordance with the Promotion and Marketing Agreement;
- e. The Purported Disclosure Document failed to disclose that the Franchisee would be unable to obtain financing or access basic financial services for the Franchised Business from one of the "big banks" in Canada; and
- f. The Purported Disclosure Document failed to disclose that, despite the Franchisor's oral representations that the Franchised Business would be a "hands off" business, the Franchisee would be unable to run the Franchised Business in a "hands off" manner unless it obtained and maintained certain margins, which were not possible for the Franchisee to obtain and/or maintain.

3. Contrary to Section 5(5) of the Act, the Franchisor failed to provide the Franchisee and the Guarantor with a Statement of Material Change summarizing the material facts and/or the material changes (as defined by the Act) contained in and arising from the Lease, including, but not limited to, those material facts set out in Subparagraph 2a. above;
4. Contrary to Section 5(6) of the Wishart Act, the information contained in the Purported Disclosure Document and in the Purported SMCs was not accurately, clearly, and concisely set out. The information contained in the Purported Disclosure Document and the Purported SMCs was unclear, inaccurate, and incomplete.
5. Contrary to Section 2.5 of the Regulation, the Purported Disclosure Document did not include an accurate statement, including a description of details, indicating whether the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person. Specifically, the Franchisor failed to disclose material facts in regard to multiple ongoing civil actions involving allegations of unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, which were pending against the Franchisor's associate, 216190 Alberta Ltd., namely:
 - a. 2161907 ALBERTA LTD. v. 11180673 CANADA INC.;
 - b. TRIPSETTER INC. v. 2161907 ALBERTA LTD. et al;
 - c. 2161907 ALBERTA LTD v. TRIPSETTER INC.; and
 - d. FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION v. 2161907 ALBERTA LTD. O/A TOKYO SMOKE;
6. Contrary to Section 6.1 of the Regulation, the Purported Disclosure Document failed to adequately disclose a list of all of the franchisee's costs associated with the establishment of the franchise, including, but not limited to, failing to disclose that the Franchisee would need at least six (6) months of working capital before it could expect to break even.
7. Contrary to Sections 6.2 and 6.3 of the Regulation, the Franchisor provided estimates of annual operating costs and earnings projections outside of the "disclosure document" and/or any "statement of material change" and without providing the requisite underlying and substantiating information.

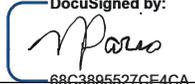
The Purported Disclosure Document and the Purported SMCs failed to comply with the provisions of the Wishart Act and the Regulation and accordingly, the undersigned is entitled to rescind the Franchise Agreement. This notice also constitutes notice of rescission at common law and in equity.

Attached as Schedule "A" is a detailed listing of the funds, totaling **\$772,076.88**, which the undersigned has currently determined is to be returned to it pursuant to Section 6(6) of the Wishart Act. The amount requested is the current or anticipated amount owing to the Franchisee. Any adjustments to that amount will be provided by the Franchisee, or its counsel, as they become known. The Franchisee reserves its right to claim a higher amount if subsequent calculations substantiate a higher amount. In any event, the aforesaid entitlements are known to the Franchisor and all Franchisor's Associates.

The Wishart Act requires you to refund these monies within 60 days of your receipt of this Notice of Rescission. Accordingly, please deliver a certified cheque or bank draft to the lawyers of the undersigned made payable to "Sotos LLP, In Trust" in the amount of **\$772,076.88** representing payment of the rescission payment owing to the undersigned, **on or before February 28, 2023.**

DATED at Toronto, Ontario this 30th day of December, 2022.

100032072 ONTARIO INC.

Per:  c/s
Michelle Paris, A.S.O.

I have authority to bind the corporation.

Schedule "A"**A. Money paid to the franchisor or a franchisor's associate**

i. Franchise fee paid to acquire the franchise	\$56,500.00
ii. Royalties	\$18,199.54
iii. Advertisement Fund Contributions	\$3,033.26
iv. Any other amounts paid directly to the franchisor (do not include supplies, equipment or inventory)	\$6,875.26
v. Rent paid to the franchisor or to an affiliate or on its behalf to a landlord	\$77,882.90
Subtotal 6(6)(a):	\$162,490.96

B. Inventory remaining at the date of rescission

i. Current Inventory	\$43,026.97
Subtotal: 6(6)(b):	\$43,026.97

C. Supplies and equipment purchased pursuant to the franchise agreement

i. Table and Chairs (Structube)	\$694.95
ii. Store Lights (CS Illumination)	\$13,711.95
iii. Trimen - True Fridge	\$5,585.59
iv. Italic Press	\$4,728.14
v. Fixturing and Millwork (Archmill House)	\$75,460.81
vi. Proforma Shelving	\$3,425.04
vii. Desk and Chairs (Costco)	\$926.57
viii. Security Cameras, Monitors, POS System, etc. (Base8 Services Corp)	\$27,503.97

ix. Leasehold Improvements (SDC Contracting)	\$221,804.96
x. Legacy Signs, Pylon Sign, and exterior sign	\$10,904.50
xi. Print Signage (Blast Media)	\$6,903.40
xii. Mops, Product Containers, etc. (Uline)	\$6,663.80
xiii. Amazon Supplies	\$397.53
xiv. Angolas Farm Plants	\$1,722.10
xv. Sundries	\$3,476.33
xvi. Canon Photocopier (downpayment)	\$10,000.00
xvii. Flags, Discount Cards, Posters	\$14,646.86
Subtotal:6(6)(c):	\$408,556.50

D. Operating losses

Total Revenues/Sales	\$337,397.10
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LESS

i. Garbage Disposal	\$592.40
ii. Leasehold improvements which are not equipment identified above	\$3,056.04
iii. Insurance	\$6,093.44
iv. Licensing	\$11,646.88
v. Staff wages and benefits (including management)	\$60,750.02
vi. Advertising and promotion (not paid to the franchisor)	\$640.00
vii. Alarm and Security	\$442.96
viii. Bank charges	\$706.16
ix. Camera Monitoring	\$1,762.80

x. Equipment Rental (e.g. POS, computers, sound system etc.)	\$1,770.48
xi. Office supplies previously used up	\$298.60
xii. Telephone/Internet	\$1,304.20
xiii. Payfactor/Merrco/Cova	\$5,951.09
xiv. Brinks	\$3,611.30
xv. Business travel	\$1,525.63
xvi. Construction Management and Architect Fees	\$53,703.26
xvii. Other operating costs (including all other costs for the everyday running and upkeep of the business including premises cleaning services, uniform/linen services, waste management maintenance etc.)	
xviii. Legal and accounting fees (costs to incorporate, advice on the franchise agreement, other legal advice, all accounting fees, and other professional fees paid)	\$6,069.00
xix. Deferred management salary	
xx. Foregone salary (salary/wages you would have earned but for acquiring the franchise minus salary/wages received plus deferred salary.)	\$60,000.00
xxi. Amounts due to landlord under direct lease for the landlord's loss of the benefit of the lease	
xxii. Amounts due to any other suppliers under financing agreements for period post-rescission (itemize)	
xxiii. HST paid or owing	
xxiv. Government remittances not included in wages (source deductions, WSIB, EHT)	
xxv. Cost of goods sold	\$275,475.29
Preliminary tally	\$495,399.55
Subtotal 6(6)(d):	-\$158,002.45
Total Claim	\$772,076.88



SOTOS LLP | LAWYERS & TRADE-MARK AGENTS

June 1, 2021

Adrienne Boudreau
T 416-572-7321

VIA PERSONAL DELIVERY:

aboudreau@sotosllp.com

2161907 Alberta Ltd.
Attn: Justin Farbstein and Shawna Vogel
Suite 2700 Edmonton Tower
10111—104 Avenue NW
Edmonton, AB T5J 0J4

Assistant: Emily Clarke
T 416-977-5333 ext. 342
eclarke@sotosllp.com

Our File No. 28198

VIA EMAIL TO: jfarbstein@katzgroup.ca

VIA EMAIL TO: SVogel@katzgroup.ca

VIA PERSONAL DELIVERY:

2161907 Alberta Ltd.
c/o Dentons Canada LLP
2500-10220 103 Ave NW
Edmonton, AB T5J 0K4

Re: Notice of Rescission of each and every “franchise agreement” within the meaning of Section 1(1) of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c.3 (the “Wishart Act”), and all ancillary agreements thereto, including, but not limited to: a license agreement as between 2161907 Alberta Ltd. (the “Franchisor”), as licensor, and Tripsetter Inc. (the “Franchisee”), as licensee, entered into on or about June 7, 2019, and a license amending agreement as between the Franchisor, as licensor, and the Franchisee, as licensee, entered into on or about December 20, 2019 (collectively, the “Franchise Agreement”), in connection with a “TOKYO SMOKE” franchise (the “Franchise Business”) located at 575 Laval Dr Unit #400, Oshawa, ON L1J 6X2.

We are the lawyers for the Franchisee.

Attached is the Franchisee’s Notice of Rescission of each and every “franchise agreement” within the meaning of the Wishart Act resulting from the Franchisor’s failure to provide the Franchisee with a “disclosure document” within the meaning of the Wishart Act.

Forming part of the Franchisee’s notice is a detailed listing of amounts totaling **\$2,115,737.02**, which the Franchisee has currently determined is to be returned to it pursuant to Subsection 6(6) of the Wishart Act. The Wishart Act requires you to pay these monies to our client, without offset or deduction of any kind, within 60 days of your receipt of the attached notice.

Please deliver a certified cheque or bank draft made payable to “Sotos LLP, In Trust” in the amount of **\$2,115,737.02**, representing payment of the rescission amount currently determined to be owing to our client, **on or before Tuesday, August 3, 2021**. We will provide you with details of any further monies that may be owing by you to our client in connection with its rescission as soon as practically possible and reserve our right to do so.

In addition, we direct you to Sections 15 and 30 of the June 7, 2019 license agreement, which confirm that the Franchisee is the owner of all sales data and customer information collected through the operation of the Franchise Business, and that prohibit the Franchisor from using such data and information. Following rescission, the Franchisee continues to possess exclusive ownership over such data and information, including through its Dutchie and “Google My Business” accounts. Be advised that the Franchisee will be closely monitoring its data, information, and accounts. Any attempt by the Franchisor to use information stored in or collected through these or other platforms, or to in any way interfere with these or other accounts belonging to the Franchisee, will be vigorously opposed.

Finally, note that this letter, along with our client’s notice, is copied to those who are “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act.

The franchisor’s associates Canopy Growth Corporation and Justin Farbstein are jointly and severally responsible with the Franchisor for repayment of all amounts outlined in the Notice of Rescission.

Please direct your counsel to contact our office as soon as possible.

Yours very truly,

SOTOS LLP



Adrienne Boudreau
AB/ec

Enclosure (1)

Cc: Canopy Growth Corporation (VIA REGULAR MAIL)
1 Hershey Drive
Smiths Falls, ON K7A 0A8

Cc: Dentons Canada LLP (VIA REGULAR MAIL AND EMAIL)
Attention: Eric Foster
77 King Street W., Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

eric.foster@dentons.com

NOTICE OF RESCISSION OF FRANCHISE AGREEMENT

TO: 2161907 Alberta Ltd. (the “Franchisor”)

AND TO: Justin Farbstein; and Canopy Growth Corporation (collectively, the “Franchisor’s Associates”)

FROM: Tripsetter Inc. (the “Franchisee”)

RE: Notice of Rescission of each and every “franchise agreement” within the meaning of Section 1(1) of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c.3 (the “Wishart Act”), and all ancillary agreements thereto, including, but not limited to: a license agreement as between the Franchisor, as licensor, and the Franchisee, as licensee, entered into on or about June 7, 2019, and a license amending agreement as between the Franchisor, as licensor, and the Franchisee, as licensee, entered into on or about December 20, 2019 (collectively, the “Franchise Agreement”), in connection with a “TOKYO SMOKE” franchise (the “Franchise Business”) located at 575 Laval Dr Unit #400, Oshawa, ON L1J 6X2.

The undersigned hereby serves notice upon you of the rescission of the Franchise Agreement pursuant to Section 6(2) of the Wishart Act resulting from the Franchisor’s failure to provide the Franchisee with a disclosure document as required by Section 5 of the Wishart Act and Ontario Regulation 581/00 (the “Regulation”) made thereunder.

Contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive any “disclosure document” within the meaning of the Wishart Act prior to entering into the Franchise Agreement. As a result, the Franchisee was effectively deprived of the opportunity to make a properly informed decision about whether or not to operate the Franchise Business.

This notice also constitutes notice of rescission at common law and in equity.

Attached as Schedule “A” is a detailed listing of the funds, totaling **\$2,115,737.02**, which the undersigned has currently determined is to be returned to it pursuant to Section 6(6) of the Wishart Act. This amount is the current or anticipated amount owing to the Franchisee. Any adjustments to that amount will be provided by the Franchisee, or its counsel, as they become known. The Franchisee reserves its right to claim a higher amount if subsequent calculations substantiate a higher amount. In any event, the aforesaid entitlements are known to the Franchisor and all Franchisor’s Associates.

The Wishart Act requires you to refund these monies within 60 days of your receipt of this Notice of Rescission. Accordingly, please deliver a certified cheque or bank draft to the lawyers of the undersigned made payable to "Sotos LLP, In Trust" in the amount of **\$2,115,737.02**, representing payment of the statutory compensation owing to the undersigned, **on or before Tuesday, August 3, 2021.**

DATED at Toronto, Ontario this 31st day of May, 2021.

TRIPSETTER INC.

Per: 

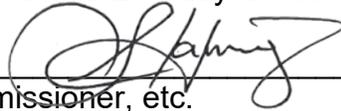
c/s

Jordan Jacob Stevens, Director

I/we have authority to bind the corporation.

TAB B

This is Exhibit "B" referred to in the Affidavit of Sonia Cavalieri D'oro sworn before me this 27th day of November, 2024.

A handwritten signature in black ink, appearing to be "S. J. King", written over a horizontal line.

A Commissioner, etc.

AMENDED THIS JAN 3/2024 PURSUANT TO
 MODIFIÉ CE _____ CONFORMÉMENT À _____

RULE/LA RÉGLE 26.02 (_____)

THE ORDER OF JALLEY, A.J.
 L'ORDONNANCE DU _____

DATED / FAIT LE SEP 14/23

W. CAMARHO R.

REGISTRAR GREFFIER
 SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE OF JUSTICE

Court File No. CV-21-00665331-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

TRIPSETTER INC.

Plaintiff

and

2161907 ALBERTA LTD., CANOPY GROWTH CORPORATION,
JUSTIN FARBSTEIN, TWEED INC., and JURGEN SCHREIBER**Defendants**

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
 The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date July 9/2021 Issued by E-FILED
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: 2161907 Alberta Ltd.
2500-10220 103 Ave NW
Edmonton, AB T5J 0K4

AND TO: Canopy Growth Corporation
1 Hershey Drive
Smiths Falls, ON K7A 0A8

AND TO: Justin Farbstein
4540-161 Bay Street
Toronto, ON M5J 2S1

AND TO: Tweed Inc.
1 Hershey Drive
Smiths Falls, ON K7A 0A8

AND TO: Jurgen Schreiber
4540-161 Bay Street
Toronto, ON M7J 2S1

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CLAIM

1. The Plaintiff, Tripsetter Inc. (“**Tripsetter**”), claims:
 - (a) A declaration that the defendant, 2161907 Alberta Ltd. (the “**Franchisor**” or “**216 Alberta**”), is a “franchisor” within the meaning of Section 1(1) of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000 c.3 (the “**Wishart Act**”) for the purposes of the claims herein;
 - (b) A declaration that the Franchise Agreement, defined below, is a “franchise agreement” within the meaning of Section 1(1) of the Wishart Act, for the purposes of the claims herein;
 - (c) A declaration that the Franchise Business, defined below, is a “franchise” within the meaning of Section 1(1) of the Wishart Act, for the purposes of the claims herein;
 - (d) A declaration that all “franchise agreements” within the meaning of Section 1(1) of the Wishart Act were validly rescinded by Tripsetter pursuant to Section 6(2) of the Wishart Act, by delivery to the Franchisor of a notice of rescission dated May 31, 2021 (the “**Notice of Rescission**”) in accordance with Section 6(3) of the Wishart Act. Such franchise agreements include, but are not limited, to an agreement entitled “license agreement” as between the Franchisor, as Licensor, and Tripsetter, as Licensee, made as of June 7, 2019 (the “**Franchise Agreement**”);

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- (e) The sum of \$2,115,737.02, or such other amount as the Plaintiff may prove or this Court may determine, pursuant to Section 6(6) of the *Wishart Act*;
- (f) A declaration that the defendants, Canopy Growth Corporation (“**Canopy**”), Justin Farbstein, Tweed Inc. (“**TS Brandco**”), and Jurgen Schreiber, or any of them, are “franchisor’s associates” within the meaning of Section 1(1) of the *Wishart Act*, for the purposes of the claims made herein;
- (g) In addition or in the alternative to 1(e), damages pursuant to Section 7 of the *Wishart Act*;
- (h) From 216 Alberta, damages in the amount of \$500,000.00 for breach of the duty of fair dealing pursuant to Section 3 of the *Wishart Act*;
- (i) A declaration that the defendants, or any of them, are jointly and severally liable for all amounts found to be owing to the Plaintiff, but for any amounts awarded under 1(h), above, which amounts shall be payable by 216 Alberta, only;
- (j) Prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (k) Postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (l) The costs of this proceeding, plus all applicable taxes; and
- (m) Such further and other relief as this Honourable Court may deem just.

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A. PARTIES

2. Tripsetter is a corporation incorporated pursuant to the laws of Canada. Its registered office is located in Thornhill, Ontario. Tripsetter formerly operated a “Tokyo Smoke” branded retail cannabis shop in Oshawa, Ontario.

3. 216 Alberta is a corporation incorporated pursuant to the laws of the Province of Alberta. Its registered office is located in Edmonton, Alberta. At all material times, 216 Alberta held the rights to use and sublicense certain marks in connection with the “Tokyo Smoke” brand.

4. Canopy is a corporation incorporated pursuant to the laws of Canada. Its registered head office is located in Smith Falls, Ontario. It is engaged in the growth, sale, and distribution of cannabis and cannabinoid-based consumer products through the “Tokyo Smoke” banner, among others.

5. Justin Farbstein is a person ordinarily resident in the Province of Ontario. He is a director of 216 Alberta.

6. TS Brandco is an Ontario corporation, formed by amalgamation on April 1, 2021. TS Brandco Inc. was incorporated pursuant to the laws of the Province of Ontario on October 1, 2018. TS Brandco Inc. subsequently amalgamated with Tweed Inc. on April 1, 2021 to continue as Tweed Inc. Tweed Inc. then amalgamated with AV Cannabis Inc., also on April 1, 2021, to continue as Tweed Inc. Among other things, TS Brandco entered into an agreement with 216 Alberta to use and sublicense the use of certain “Tokyo Smoke” trademarks.

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7. Jurgen Schreiber is a person ordinarily resident in the Province of Ontario. He is a director of 216 Alberta.

B. THE WISHART ACT

8. Pursuant to Section 5 of the Wishart Act, a franchisor is required to provide a prospective franchisee with a franchise “disclosure document” at least 14 days before the franchisor can take any money from the franchisee relating to the franchise or before the franchisee can enter into any agreement relating to the franchise with the franchisor. The “disclosure document” must comply with the requirements of the Wishart Act and the regulation thereto, being O. Reg. 581/00, in order for it to be deemed a “disclosure document” within the meaning of Section 1(1) of the Wishart Act.

9. The directors and officers of a franchisor corporation are obliged to certify the truth of the contents of the disclosure document and are liable, personally, for any misrepresentations or omissions contained in a disclosure document.

10. When a franchisee enters into a franchise agreement with a franchisor in circumstances where a franchisor fails to provide a franchisee with a “disclosure document” within the meaning of Section 1(1) of the Wishart Act, the franchisee has two years from the date it signed the franchise agreement to rescind the franchise agreement pursuant to Section 6 of the Wishart Act.

11. Rescission in such instance is effected by the delivery of a notice of rescission pursuant to Section 6(2) of the Wishart Act, in accordance with Section 6(3) of the Wishart Act.

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12. Following delivery of a notice of rescission and pursuant to Section 6(6) of the Wishart Act, the franchisor has up to 60 days to pay to the franchisee the amounts identified in the notice of rescission.

13. Such amounts are described in Section 6(6) of the Wishart Act as follows:

- (a) Any money received from or on behalf of the franchisee, other than money for inventory, supplies or equipment;
- (b) Amounts necessary to purchase from the franchisee any inventory the franchisee had purchased pursuant to the franchise agreement and remaining at the effective date of rescission, at a price equal to the purchase price paid by the franchisee;
- (c) The amount necessary to purchase from the franchisee any supplies and equipment that the franchisee had purchased pursuant to the franchise agreement, at a price equal to the purchase price paid by the franchisee; and
- (d) Amounts necessary to compensate the franchisee for any losses that the franchisee incurred in acquiring, setting up and operating the franchise, less the amounts set out in a. – c. above.

14. Both the “franchisor” and any “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act are jointly and severally liable to pay a franchisee’s claims made pursuant to Sections 6 of the Wishart Act.

15. A “franchisor” is defined by Section 1(1) of the Wishart Act to mean one or more persons who grant or offer to grant a franchise.

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16. A “franchisor’s associate” is defined by Section 1(1) of the Wishart Act to include a person who controls the franchisor or is controlled by the franchisor, who was directly involved in the grant of the franchise to the franchisee, and/or who exercises operational control over the franchisee in the course of operating the franchise business.

C. THE FRANCHISE AGREEMENT

17. As set out above, Tripsetter entered into the Franchise Agreement for the right to operate a “Tokyo Smoke” franchise (the “**Franchise Business**”) located at 575 Laval Drive, Unit 400, Oshawa, Ontario (the “**Premises**”).

18. Tripsetter never received a franchise “disclosure document” prior to entering into the Franchise Agreement.

19. Tripsetter commenced operating the Franchise Business at the Premises on or about July 23, 2019.

D. THE “FRANCHISE BUSINESS” IS A “FRANCHISE”

20. The Franchise Business is a “franchise” within the meaning of Section 1(1) of the Wishart Act.

21. Pursuant to the Franchise Agreement:

- (a) 216 Alberta granted to Tripsetter the right to sell, offer for sale or distribute goods and services substantially associated with the “Tokyo Smoke” trademarks, trade name, logo or advertising or other commercial symbol that were licensed to 216 Alberta;

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- (b) Tripsetter was required to make a payment, ongoing payments, or a commitment to make payments to 216 Alberta while operating the Franchise Business; and
- (c) 216 Alberta had the right to exercise or did exercise significant control over, or had the right to provide or provided significant assistance in, Tripsetter's method of operation.

22. During the time Tripsetter operated the Franchise Business, 216 Alberta, Canopy and/or TS Brandco exercised significant control over substantially every aspect of the Franchise Business' method of operation, or had the right to provide or provided significant assistance in Tripsetter's method of operation, such that virtually every element of the Franchise Business had to conform to certain standards and specifications as prescribed by 216 Alberta, Canopy, and/or TS Brandco, including relating to the following:

- (a) The appearance, construction, design, specifications, and furnishings of the Premises;
- (b) The standard operating procedures and day-to-day business operations of the Franchise Business, including, without limitation, the requirement to use 216 Alberta's, Canopy's, or TS Brandco's back of house and order fulfillment procedures;
- (c) Requiring adherence to "brand standards" as prescribed and amended from time to time by 216 Alberta, Canopy, and/or TS Brandco;
- (d) Training, including relating to the standard operating procedures;

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- (e) Administrative functions, including not limited to billing, invoicing, accounts payable, establishing and managing the Franchise Business' POS system, using a system and software that tracked all the transactions of the Franchise Business from sale to deposit into Tripsetter's bank account, requiring regular financial reporting, and overseeing yearly audits;
- (f) The nature, type, and content of the Franchise Business' marketing, advertising and promotion including, without limitation, complete control over the Franchise Business' website and online business listings, and management of and access to online customer information and reviews;
- (g) The frequency with which the Franchise Business may market to customers that purchased its products through certain online dispensary platforms on which Tripsetter maintained an account;
- (h) Managing Tripsetter's accounts operated through third party dispensary/delivery services; and
- (i) Accessing Tripsetter's store security camera.

23. In addition to the above, 216 Alberta also had the ability to direct customers to and away from the Franchise Business through various online ordering platforms, and at times, made communications and representations on Tripsetter's behalf to the Alcohol and Gaming Commission of Ontario.

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24. Particularly during the first few months of operations, but also on a continuing basis throughout the term of the Franchise Agreement, 216 Alberta provided extensive direction to Tripsetter relating to the goods that the Franchise Business carried, the products it was permitted to sell, the suppliers from whom the Franchise Business was required to obtain goods, the prices at which the Franchise Business' products were to be sold, and the product inventory level that the Franchise Business was required to maintain. Such direction was provided by 216 Alberta for the express purpose of ensuring that Tripsetter operated the Franchise Business in conformity with the "Tokyo Smoke" brand standards.

25. At times, 216 Alberta completed all of Tripsetter's ordering for the Franchise Business, and therefore exercised complete control over the goods being sold by the Franchise Business.

26. In addition to the above, Tripsetter and 216 Alberta were parties to a "consulting agreement" between from on or about June 7, 2019 to January 2020. It was mandatory for Tripsetter to become a party to the consulting agreement, which was presented to Tripsetter together with the Franchise Agreement. Tripsetter was required to execute the consulting agreement at the same time as the Franchise Agreement.

27. During the time the consulting agreement was in effect, 216 Alberta provided even greater control over and assistance to the Franchise Business, including in the areas of human resources, financial management, analysis and reporting, operational advice and direction, compliance services, and IT functions. For instance, 216 Alberta refused to let Tripsetter hire the store manager of its choice for the Franchise Business, and insisted that Tripsetter hire 216 Alberta's preferred candidate to perform this role.

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G. CLAIMS UNDER SECTION 7 OF THE WISHART ACT

34. As a result of the defendants' breaches of Section 5 of the Wishart Act in failing to deliver a disclosure document, Tripsetter has suffered losses and damages including, but not limited to, the amounts set out above.

35. Had Tripsetter received a disclosure document in accordance with the Wishart Act, it would not have purchased the Franchise Business or entered into the Franchise Agreement.

36. The defendants, or any of them, are liable to Tripsetter for losses and damages pursuant to Section 7 of the Wishart Act.

H. FRANCHISOR'S ASSOCIATES

37. Canopy, TS Brandco, Farbstein, and Schreiber, or any of them, are "franchisor's associates" within the meaning of Section 1(1) of the Wishart Act and are jointly and severally liable with 216 Alberta for all amounts claimed by Tripsetter pursuant to Section 8 of the Wishart Act.

38. At all material times, the defendants controlled or were controlled by the Franchisor, or were controlled by another person who also controlled, directly or indirectly, the Franchisor.

39. The defendants, or any of them, were directly involved in the grant of the franchise to Tripsetter by reviewing and approving the grant of the franchise and/or by making representations to Tripsetter on behalf of the Franchisor for the purpose of granting the franchise, marketing the franchise, or otherwise offering to grant the franchise.

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40. The defendants, or any of them, exercised significant operational control over Tripsetter and were persons to whom Tripsetter had a continuing financial obligation in respect of the franchise.

41. In particular but without limitation, the grant of franchise to Tripsetter was contingent upon the approval of Canopy, TS Brandco, Farbstein, and Schreiber, or some combination thereof.

42. In particular but without limitation, Canopy and/or TS Brandco exercised significant and ongoing operational control over Tripsetter, or provided significant assistance in Tripsetter's method of operation, including over marketing the Franchise Business, in-store visual merchandising, weekly online store owner/manager operational meetings, weekly store employee operational newsletters, the approval of marketing and educational activities in which Tripsetter wished to engage, Tripsetter's online business listings, compliance with the "Tokyo Smoke" brand standards, and Tripsetter's confidential data stored on third party service platforms.

43. In addition or in the alternative, the corporate defendants Canopy and/or TS Brandco are franchisor's associates on the basis that they are "de facto franchisors". These defendants, together with 216 Alberta, approached the Franchise Business as a common enterprise, and acted in concert or as one entity vis-à-vis Tripsetter with respect to all or virtually all aspects of the Franchise Business. The particulars of the corporate defendants' common or cooperative approach to the Franchise Business include, but are not limited, to determining the terms of the grant of franchise to Tripsetter, effecting the grant of franchise rights to Tripsetter, determining the contractual terms pursuant to which Tripsetter would operate as a "Tokyo Smoke", providing initial funding to Tripsetter, exercising significant control over Tripsetter's operations and/or providing significant

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assistance to Tripsetter in its operations as a “Tokyo Smoke” franchise, and providing significant assistance and/or direction to Tripsetter to ensure its ongoing operations complied with the “Tokyo Smoke” brand standards.

44. In the alternative to paragraph 43, above, Canopy and/or TS Brandco directly or indirectly controlled the activities 216 Alberta vis-à-vis Tripsetter, and 216 Alberta in turn executed upon Canopy or TS Brandco’s instructions.

I. BREACHES OF THE DUTY OF FAIR DEALING

45. 216 Alberta, as franchisor, failed to perform and enforce its rights and obligations under the Franchise Agreement in accordance with the duty of fair dealing pursuant to Section 3 of the Wishart Act, and otherwise in accordance with reasonable commercial standards.

46. For example but without limitation, 216 Alberta selectively withheld or threatened to withhold adequate or any assistance to Tripsetter with respect to certain system-wide promotions and other marketing events in the “Tokyo Smoke” system. This course of conduct was commercially unreasonable in that it adversely affected the uniformity and reputation of the “Tokyo Smoke” system, and amounted to a failure of 216 Alberta to protect and maintain the “Tokyo Smoke” brand. Tripsetter’s different treatment within the “Tokyo Smoke” system adversely affected Tripsetter’s Franchise Business.

47. 216 Alberta would also improperly use its powers under the Franchise Agreement in an attempt to influence the activities of Tripsetter. This included conducting “inspections” of the Premises, or causing such inspections to be conducted, that were not performed in accordance with the Franchise Agreement, including with respect to advance notice and to scope. Such inspections

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would be followed by 216 Alberta or others making demands to Tripsetter to make changes to its Premises as a result of “violations” of “brand standards” allegedly uncovered during such inspections, notwithstanding Tripsetter was under no contractual or other obligations to make such changes.

48. In addition, as a result of Tripsetter refusing to sell the Franchise Business to 216 Alberta, 216 Alberta set up a competing “Tokyo Smoke” location, less than 3 kilometres from the Premises.

49. The establishment of this competing location put Tripsetter in breach of the radius provision of its lease, which specified that a business connected to the Franchise Business could not be operated within 3 km of the Premises.

50. 216 Alberta was aware that the establishment of the competing business would cause Tripsetter to be in violation of the radius provision, putting the lease in danger of being terminated.

51. The establishment of the competing store was therefore an attempt to force Tripsetter out of business or to otherwise cease operations, which would in turn provide a pretext for 216 Alberta to terminate the Franchise Agreement, to the benefit of the competing, corporate location.

52. In addition or in the alternative, the competing business was established for the purpose of adversely affecting Tripsetter’s sales, and to divert business away from the Franchise Business, in an attempt to force Tripsetter to sell the Franchise Business to 216 Alberta, or for the benefit of the competing, corporate location.

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J. SERVICE OUTSIDE ONTARIO

53. This Statement of Claim may be served outside Ontario without a court order based on subrules 17.02(c), (f), (n) and (p) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as the claim:

- (a) Is for the setting aside of a contract in respect of real or personal property in Ontario;
- (b) Is in respect of a contract made in Ontario, and which provides for it to be governed and interpreted in accordance with the laws of Ontario, and where the courts of Ontario have jurisdiction over its subject matter;
- (c) Is required by the Wishart Act to be brought against a franchisor's associate by a proceeding commenced in Ontario; and
- (d) Is against 216 Alberta, which carried on business in Ontario.

(Date of issue)

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Lawyers for the Plaintiff

TRIPSETTER INC.
Plaintiff

-and-

2161907 ALBERTA LTD. et al.
Defendants

Court File No.:CV-21-00665331-00

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

FRESH AS AMENDED
STATEMENT OF CLAIM

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TAB C

This is Exhibit "C" referred to in the Affidavit of Sonia Cavalieri D'oro sworn before me this 27th day of November, 2024.



A Commissioner, etc.

**IN THE MATTER OF AN ARBITRATION UNDER THE
ARBITRATION ACT, 1991, S.O. 1991, C. 17**

B E T W E E N:

2810434 ONTARIO INCORPORATED

Claimant

and

2733181 ONTARIO INC., 2737503 ONTARIO INC., 2161907 ALBERTA LTD.,
TS PROGRAMS LTD., JUSTIN FARBSTEIN, JÜRGEN SCHREIBER and
JOSH DAVIDSON

Respondents

DEMAND FOR ARBITRATION

1. This is a franchise rescission case. The matters described herein pertain to a dispute between the Claimant, 2810434 Ontario Incorporated (the “**Franchisee**”), and the Respondents (the franchisor and related parties). The Franchisee seeks statutory rescission under section 6(2) of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c.3 (the “**Wishart Act**”), together with statutory compensation and related relief.

2. The parties are subject to an arbitration agreement pursuant to Section 21 (Dispute Resolution) of a franchise agreement dated August 27, 2021. The relevant provisions of the arbitration agreement are as follows:

21.2 Arbitration

Any Dispute between or involving the Franchisee, the Guarantor, the Franchisor and/or the Licensor (and/or any affiliates of the Franchisee, the Guarantor, the Franchisor or the Licensor and/or any of their respective shareholders, directors, partners, officers, employees, agents, attorneys, accountants, associates or guarantors, and/or any of their successors or assigns) not resolved by way of mediation in accordance with this Agreement shall be submitted to arbitration pursuant to the rules of an arbitration body selected by the

Franchisor or the Licensor. To the extent that there is any difference between the rules of the arbitration body selected and this Agreement, this Agreement shall prevail. The arbitration shall be commenced by way of written notice given to the parties to the Dispute. All parties shall bear their own costs for participation in the arbitration, except for any external costs of conducting the arbitration, including the arbitrator's costs, which shall be borne equally between them. The Franchisee, the Guarantor and the Franchisor agree that all aspects of the arbitration including statements made and documents produced within the arbitration will be confidential in nature and will not be admissible in any subsequent legal proceeding, subject to any disclosures required by Applicable Law.

21.5 Awards and Decisions

The arbitration will be heard by one (1) arbitrator who shall be appointed pursuant to the rules of the designated arbitration body selected by the Franchisor. The arbitrator will have the right to award any relief deemed proper in the circumstances, including, without limitation, monetary damages (with interest on unpaid amounts from their due date(s)), specific performance, injunctive relief, and reimbursement of legal fees and related costs and disbursements to the prevailing party. The arbitrator will not have the authority to award punitive or aggravated damages (except as otherwise permitted by this Agreement), nor the right to declare any trademark generic or otherwise invalid. The parties to the arbitration are bound by the provisions of any limitation period or the time by which claims must be brought under Applicable Law, or under this Agreement, whichever expires earlier. The award and decision of the arbitrator will be final and binding and judgment on the award may be entered in any court of competent jurisdiction. The parties acknowledge and agree that any arbitration award may be enforced against any party to the arbitration in a court of competent jurisdiction and no such party shall have any right to contest the validity or enforceability of such award.

21.7 Third Parties

The arbitration provisions of this Agreement are intended to bind any third party non-signatory related or otherwise connected to any Dispute, including such parties provided for in Section 21.1.

21.8 Survival

The Agreement to arbitrate provided for in this Section 21 shall continue in full force and effect subsequent to and notwithstanding the expiration, termination, non-renewal or purported rescission of this Agreement, for any reason.

(1) NATURE OF THE DISPUTE AND MATERIAL FACTS RELIED UPON

A. THE PARTIES

3. The Claimant, the Franchisee, is a corporation incorporated pursuant to the laws of the province of Ontario, with its registered office located in Kleinburg, Ontario. Sonia Cavalieri D'Oro (“**Cavalieri D'Oro**”) and Hamed Faizi (“**Faizi**”) are the principals of the Franchisee. The Franchisee is a former franchisee of the “Tokyo Smoke” franchise system.

4. The Respondent, 2733181 Ontario Inc. (the “**Franchisor**”), is a corporation incorporated pursuant to the laws of the province of Ontario, with its registered office located in Toronto, Ontario. Among other things, the Franchisor sublicences the right to use certain trade names, trademarks, logos, and emblems for the operation of retail outlets that sell recreational cannabis products, accessories, and related items, in association with the “Tokyo Smoke” brand.

5. The Respondent, 2737503 Ontario Inc. (the “**TS Leasing**”), is a corporation incorporated pursuant to the laws of Ontario, with its registered office located in Toronto, Ontario. TS Leasing is an affiliate of the Franchisor and carries on business as the Franchisor’s lease holding company. Among other things, TS Leasing negotiates and enters into leases in respect of real property. It then sublets the premises that are the subject of these leases to franchisees of the “Tokyo Smoke” system.

6. The Respondent, TS Programs Ltd. (“**TS Programs**”), is a corporation incorporated pursuant to the laws of Alberta, with its registered office located in Edmonton, Alberta. TS Programs is an affiliate of the Franchisor and oversees certain marketing and promotional programs for the “Tokyo Smoke” franchise system.

7. The Respondent, 2161907 Alberta Ltd. (the “**Indemnifier**”), is a corporation incorporated pursuant to the laws of Alberta, with its registered office located in Edmonton, Alberta. The Indemnifier is an affiliate of the Franchisor. Among other things, the Indemnifier is the indemnifier of a head lease agreement dated October 21, 2021, between TS Leasing, as tenant, and Kilbarry Holding Corporation (the “**Landlord**”) as landlord (the “**Lease**”).

8. The Respondent, Justin Farbstein (“**Farbstein**”), is an individual that resides in Oakville, Ontario. Farbstein is a director and officer of the Franchisor and TS Leasing.

9. The Respondent, Jürgen Schreiber (“**Schreiber**”), is an individual ordinarily resident in Ontario. Schreiber is a director and officer of the Franchisor, a director of TS Programs, and a director of the Indemnifier.

10. The Respondent, Josh Davidson (“**Davidson**”), is a person ordinarily resident in Ontario. At all material times, Davidson was the “Franchise Development Manager” for the Franchisor.

B. THE WISHART ACT

11. Pursuant to Section 5 of the Wishart Act, a franchisor is required to provide a prospective franchisee with a franchise “disclosure document” at least 14 days before the franchisor can take any money from the franchisee relating to the franchise or before the franchisee can enter into any agreement relating to the franchise with the franchisor. The “disclosure document” must comply with the requirements of the Wishart Act and the regulation thereto, being O. Reg. 581/00, in order for it to be deemed a “disclosure document” within the meaning of Section 1(1) of the Wishart Act.

12. The directors and officers of a franchisor corporation are obliged to certify the truth of the contents of the disclosure document and are liable, personally, for any misrepresentations or omissions contained in a disclosure document.
13. When a franchisee enters into a franchise agreement with a franchisor in circumstances where a franchisor fails to provide a franchisee with a “disclosure document” within the meaning of Section 1(1) of the Wishart Act, the franchisee has two years from the date it signed the franchise agreement to rescind the franchise agreement pursuant to Section 6 of the Wishart Act.
14. Rescission in such instance is effected by the delivery of a notice of rescission pursuant to Section 6(2) of the Wishart Act, in accordance with Section 6(3) of the Wishart Act.
15. Following delivery of a notice of rescission and pursuant to Section 6(6) of the Wishart Act, the franchisor has up to 60 days to pay to the franchisee the amounts identified in the notice of rescission.
16. Such amounts are described in Section 6(6) of the Wishart Act as follows:
 - (a) Any money received from or on behalf of the franchisee, other than money for inventory, supplies or equipment;
 - (b) Amounts necessary to purchase from the franchisee any inventory the franchisee had purchased pursuant to the franchise agreement and remaining at the effective date of rescission, at a price equal to the purchase price paid by the franchisee;

- (c) The amount necessary to purchase from the franchisee any supplies and equipment that the franchisee had purchased pursuant to the franchise agreement, at a price equal to the purchase price paid by the franchisee; and
- (d) Amounts necessary to compensate the franchisee for any losses that the franchisee incurred in acquiring, setting up and operating the franchise, less the amounts set out in a. – c. above.

17. Both the “franchisor” and any “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act are jointly and severally liable to pay a franchisee’s claims made pursuant to Sections 6 of the Wishart Act.

18. A “franchisor” is defined by Section 1(1) of the Wishart Act to mean one or more persons who grant or offer to grant a franchise.

19. A “franchisor’s associate” is defined by Section 1(1) of the Wishart Act to include a person who controls the franchisor or is controlled by the franchisor, who was directly involved in the grant of the franchise to the franchisee, and/or who exercises operational control over the franchisee in the course of operating the franchise business.

C. THE FRANCHISE AGREEMENT

20. On or about August 27, 2021, the Franchisor, as franchisor, the Franchisee, as franchisee, Cavalieri D'Oro, as guarantor, and Faizi, also as guarantor, entered into the following agreements:

- (a) A franchise agreement as between the Franchisor, as franchisor, the Franchisee, as franchisee, Faizi, as guarantor, and Cavalieri D'Oro, as guarantor, dated August 27, 2021;
- (b) A sublease agreement as between TS Leasing, as sublandlord, and the Franchisee, as subtenant, dated August 27, 2021;
- (c) A promotion and marketing agreement as between TS Programs, as marketer, and the Franchisee, as client, dated August 27, 2021;
- (d) A consulting agreement as between the Franchisor, as consultant, and the Franchisee, as client, dated August 27, 2021;
- (e) A professional services agreement as between the Franchisor, as consultant, and the Franchisee, as franchisee, dated August 27, 2021;
- (f) A general security agreement as between the Franchisor, as the secured party, and the Franchisee, as the debtor, dated August 27, 2021;
- (g) A franchisee auto-debit authorization agreement as between the Franchisor, as franchisor, and the Franchisee, as franchisee, dated August 27, 2021; and
- (h) A share pledge agreement as between the Franchisor, as franchisor, and Faizi, as pledgor, dated August 27, 2021; and

- (i) A share pledge agreement as between the Franchisor, as franchisor, and Cavaliere D'Oro, as pledgor, dated August 27, 2021 (all agreements being, collectively, the “**Franchise Agreement**”).

21. The Franchise Agreement granted the Franchisee the right to operate a “Tokyo Smoke” franchise (the “**Franchised Business**”) at 967 Fennel Avenue, Unit 4B, Hamilton, Ontario (the “**Premises**”).

D. EVENTS PRECEDING EXECUTION OF THE FRANCHISE AGREEMENT

22. Faizi first reached out to the “Tokyo Smoke” franchise system in or about January, 2021. Davidson responded to his initial inquiry.

23. As particularized below, prior to the time the Franchisee entered into the Franchise Agreement, Davidson and Farbstein, on behalf of the Franchisor, orally provided material facts and information in respect of the Franchised Business to the Franchisee (collectively, the “**Oral Representations**”).

24. On or about January 18, 2021, Faizi and Davidson spoke by telephone for between 30 – 45 minutes. During the call, Davidson provided Faizi with extensive financial information relating to the operation of a “Tokyo Smoke” franchise. This information included, but is not limited to:

- (a) *Earnings projections*: Davidson explained that there were three “tiers” of “Tokyo Smoke” stores and provided estimates of annual sales and profit margins for each tier;
- (b) *Operating costs*: Davidson stated that labour costs would be 7% of gross sales for most stores, and less than 7% for “Tier One” stores; and

- (c) *Operational requirements*: Davidson described the business as “hands-free”, meaning that Cavalieri D’Oro and Faizi would not need to personally operate the store. Davidson promised that the brand would take care of “everything”, and that “Tokyo Smoke” was destined to be the “LCBO of cannabis”.

25. Following the call, Davidson provided further material information to Faizi via email, including a specimen copy of a “Tokyo Smoke” franchise agreement, an “Ontario Availabilities Chart”, listing sites that were available to be developed into a “Tokyo Smoke” retail store, and a select list of current “Tokyo Smoke” franchisees and contact information for the franchisees’ principals.

26. In or about March 2021, Hamed discussed with Cavalieri D’Oro the possibility of co-owning a “Tokyo Smoke” retail cannabis store. Cavalieri D’Oro was interested in the opportunity and became involved in subsequent discussions with the Franchisor thereafter.

27. On or about April 14, 2021, Davidson, on behalf of the Franchisor, sent Cavalieri D’Oro, on behalf of the Franchisee, an email containing an attachment entitled “Sample Business Plan” (the “**Sample Business Plan**”). The Sample Business Plan was comprised of various excel sheets containing material financial information relating to the operation of the three different “tiers” of “Tokyo Smoke” stores, including information as to average past and future projected revenue, cost of goods sold, and expenses that could be expected within each “tier” of store. It also contained information that was similar to the information that Davidson had provided to Faizi during their phone call on January 18, 2021.

28. Also, on or about April 14, 2021, Davidson, on behalf of the Franchisor, sent Cavalieri D’Oro, on behalf of the Franchisee, an email containing an attachment entitled “Tokyo Smoke

Investor Handbook” (the “**Investor Handbook**”). The information included in the Investor Handbook includes, but is not limited to, the following:

- (a) “Tokyo Smoke” operates under a stable of brands owned by Canopy;
- (b) The “Tokyo Smoke” brand has a “Growing Canadian Footprint” with 30 “Tokyo Smoke” Stores “Coming Soon”;
- (c) A list of “Real Estate Criteria” used by the Franchisor, including a commitment by the Franchisor to endeavour “to secure leases offering free rent of up to 6 months, often with exclusivity” and that the leases obtained by the Franchisor have “competitively lower rent costs on average”; and
- (d) “Estimated Starting Costs”, which include estimates that are omitted from or materially different than those disclosed in the Purported Disclosure Document (defined below.) Such estimates include, but are not limited to, \$5,000 for banking fees at “Alterna or BMO” and a capital requirement of \$635,000 - \$885,000.

29. On or about April 28, 2021, Davidson introduced Cavalieri D’Oro to Farbstein via email. On or about the following day, Davidson, Farbstein and Cavalieri D’Oro had a telephone call, during which Farbstein provided information about the costs of operating a “Tokyo Smoke” store, among other information. This was one of several telephone calls between representatives of the Franchisor and the principals of the Franchisee that occurred prior to the time the Franchisee entered into the Franchise Agreement.

30. On or about July 7, 2021, Khizar Javed, a “Field Manager” for “Tokyo Smoke” and Canopy, on behalf of the Franchisor, sent Cavalieri D’Oro and Faizi, on behalf of the Franchisee,

an email containing an attachment labelled “Ontario Partner Onboarding – Tokyo Smoke October 2020” (the “**Onboarding Handbook**”). The Onboarding Handbook provides the following information:

- (a) A detailed history of “Canopy Growth”, including that the company has been “producing high-quality cannabis products for Canadians since 2014”;
- (b) Identification of a “Canopy Support Team” who would assist the Franchisee with things such as: advising on SKU assortments to carry in its store, providing weekly CGC inventory updates, communicating brand and SKU pricing updates, working with its store team to highlight and feature SKUs with support of in-store trade assets, planning in-store activations, developing store-specific strategies, weekly calls between “Tokyo Smoke” partner Store Managers which are to be led by the “Canopy team”, and providing ongoing brand and product education;
- (c) An overview of the Franchisee’s “target guest”;
- (d) An overview of “legal marketing restrictions” including the fact that all marketing, educational or promotional material can only be viewed by persons aged 19 and older and that, in certain provinces, cannabis brands are unable to incentivize purchasing cannabis through giveaways, sales promotions, and discounting;
- (e) Information in regard to the Franchisor’s “approach to store design” including the fact there are four “types” of “Tokyo Smoke” stores; and
- (f) A breakdown of the composition of the different categories of products carried by “Tokyo Smoke” stores.

31. On or about August 4, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with a version date of December 2021, entitled “Ontario Franchise Disclosure Document”, which purported to be a “disclosure document” within the meaning of the Wishart Act (the “**Purported Disclosure Document**”).

32. On August 20, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with an effective date of August 20, 2021, entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” within the meaning of the Wishart Act (the “**Purported SMC**”).

E. THE FRANCHISOR’S BREACHES OF THE WISHART ACT

33. The Purported Disclosure Document and the Purported SMC did not comply with the requirements of the Wishart Act and the Regulation. Accordingly, and contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive a “disclosure document” prior to the time the Franchisee entered into the Franchise Agreement or paid to the Franchisor any consideration relating to the Franchised Business.

34. Neither the Purported Disclosure Document nor the Purported SMC contained the information disclosed in the Sample Business Plan, the Investor Handbook, the Onboarding Handbook or the Oral Representations.

35. In addition, the Purported Disclosure Document and the Purported SMC failed to comply with the requirements of the Wishart Act and Regulation as they contained several material deficiencies, as particularized below.

36. Contrary to Section 5(3) of the Wishart Act, the Purported Disclosure Document was not delivered as one document, at one time. Rather, and as described above, material information was delivered to the Franchisee in multiple documents, and orally, on multiple occasions, in a piecemeal fashion. Specifically:

- (a) Davidson provided oral operating costs estimates and earnings projections to representatives of the Franchisee including, but not limited to:
 - (i) Disclosing information as to the three “tiers” of “Tokyo Smoke” stores. Davidson orally informed Faizi, on behalf of the Franchisee, that “Tier One” stores averaged \$3.2 million in sales per year, “Tier Two” stores averaged \$2.8 million in sales per year, and “Tier Three” stores averaged \$1.8 million in sales per year. Davidson told Faizi that the profit margin on a “Tokyo Smoke” franchise would be between 15%-18%, depending on what “tier” of store was being operated. This information amounts to an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location where information is available for inspection that substantiates the projection; and
 - (ii) Disclosing certain information to the Franchisee about the operating costs of a “Tokyo Smoke” franchise. Davidson verbally informed Faizi, on behalf of the Franchisee, that labour costs would be approximately 7% of gross sales, but that this percentage would be lower for a “Tier One” store. Farbstein provided various information about the cost to operate a “Tokyo

Smoke” store, including with respect to professional fees, software, cash management fees, IT fees, utilities, and staffing. This information amounts to an estimate of annual operating costs. Contrary to Section 6.2 of the Regulation, the Franchisor failed to provide with these estimates a statement specifying the basis for the estimates, the assumptions underlying the estimates, and a location where information is available for inspection that substantiates the estimates.

(b) The Sample Business Plan:

- (i) Disclosed information regarding the past and potential future total revenue and margins of “Tokyo Smoke” stores depending upon their “tier”. This information amounts to an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location where information is available for inspection that substantiates the projection; and
- (ii) Disclosed information regarding the past and potential future cost of goods sold and certain expenses of “Tokyo Smoke” stores depending on their “tier”. This information amounts to an estimate of annual operating costs. Contrary to Section 6.2 of the Regulation, the Franchisor failed to provide with these estimates a statement specifying the basis for the estimates, the assumptions underlying the estimates, and a location where information is available for inspection that substantiates the estimates.

- (c) The Investor Handbook:
- (i) Disclosed that the Tokyo Smoke brand has a “Growing Canadian Footprint” with 30 Tokyo Smoke Stores “Coming Soon”;
 - (ii) Disclosed a list of “Real Estate Criteria” used by the Franchisor when obtaining locations for Tokyo Smoke stores, which include the fact that the Franchisor endeavors “to secure leases offering free rent of up to 6 months, often with exclusivity” and that the leases it obtains have “competitively lower rent costs on average”; and
 - (iii) Disclosed a list of “Estimated Starting Costs” which include estimates that are missing from or different than those disclosed in the Purported Disclosure Document, including but not limited to, an estimated \$5,000 for banking fees, specifically at “Alterna or BMO”,
- all of which information was material and should have been included in a disclosure document provided to the Franchisee, but was not contained in the Purported Disclosure Document or the Purported SMC.
- (d) Davidson and Farbstein, on behalf of the Franchisor, orally informed Faizi and Cavalieri D’Oro, on behalf of the Franchisee, that a “Tokyo Smoke” franchise would be a “hands-free” business, meaning that the principals of the corporate franchisee would not need to personally operate the store. Davidson claimed that Tokyo Smoke would take care of “everything” for the franchise owners, for a fee. Davidson also further represented that the “Tokyo Smoke” brand would be the

“LCBO of cannabis.” All of this information was material and should have been provided to the Franchisee in a disclosure document, but was not.

(e) The Onboarding Handbook:

- (i) Disclosed information in regard to the “Canopy Support Team” who would assist the Franchisee in its operation of the Franchised Business and information as to what the “Canopy Support Team” would assist with (i.e. advising on SKU assortments to carry in its store, providing weekly CGC inventory updates, communicating brand and SKU pricing updates, working with its store team to highlight and feature SKUs with support of in-store trade assets, planning in-store activations, developing store-specific strategies, weekly calls between Tokyo Smoke partner Store Managers which are to be led by the “Canopy team”, and providing ongoing brand and product education);
- (ii) Disclosed information as to the Franchisee’s “target guest”;
- (iii) Contained an overview of “legal marketing restrictions” in regard to the advertising and marketing of Cannabis products in Canada, including the fact that all marketing, educational or promotional material can only be viewed by persons aged 19 and older and that cannabis brands are unable to incentivize purchasing cannabis through giveaways, sales promotions, and discounting (in some provinces);

- (iv) Contained information in regard to the Franchisor's "approach to store design" including the fact there are four "types" of Tokyo Smoke stores (i.e. Express Store, Standard Store, Community Store, Flagship Store", each of which are different sizes, typically located in different areas, may carry different products, and have different access to the "Community Program" (e.g. a "Standard Store" has a minimum size of 1,200 square feet and is typically located in a strip mall or big box mall location and only has a limited "Community Program", whereas a "Flagship Store" has a minimum size of 2,000 square feet and is typically located in prime retail real estate, high traffic, street front preferred areas and has access to the full "Community Program"); and
- (v) Contained information in regard to the composition of the different categories of products carried by Tokyo Smoke stores,

all of which information was material and should have been included in a disclosure document provided to the Franchisee, but was not contained in the Purported Disclosure Document nor the Purported SMC.

37. Contrary to Section 5(4)(a) of the Wishart Act, the Purported Disclosure Document failed to contain all material facts and/or material changes, as applicable, including material facts as prescribed. Specifically:

- (a) The Purported Disclosure Document and the Purported SMC failed to disclose material facts and/or disclosed misleading or incorrect facts in regard to the Lease. The material provisions in Lease that were not disclosed in the Purported

Disclosure Document or the Purported SMC include, but are not limited to the fact that, contrary to the information provided in the Purported FDD and the Purported SMC, the fixturing period would be 90 days rather than 120 days from the Possession Date;

- (b) The Purported Disclosure Document and the Purported SMC failed to disclose material facts and/or disclosed misleading or incorrect facts in regard to the Premises. Specifically, the Purported Disclosure Document and the Purported SMC incorrectly stated that the size of the Premises was “approximately 2,000 square feet” when, in fact, the size of the Premises was materially larger, being over 2,400 square feet. This information is a “material fact”, within the meaning of Section 1(1) of the Wishart Act, as it has a direct and significant effect the Franchisee’s operating costs and, in turn, its ability to generate an operating profit. Had the Franchisee known that the Premises was 25% larger than stated, it would not have chosen to invest in the Franchised Business;
- (c) The Purported Disclosure Document failed to include material facts that were orally disclosed to representatives of the Franchisee including information in regard to:
 - (i) the existence of three “tiers” of “Tokyo Smoke” stores; (ii) the past and projected future financial performance of each “tier” of “Tokyo Smoke” store; (iii) the past and projected future operating costs of each “tier” of “Tokyo Smoke” store; and (iv) the fact that a “Tokyo Smoke” franchise would be a “hands-free” business, meaning that the principals of the Franchisee would not need to personally operate the store;

- (d) The Purported Disclosure Document failed to include copies of the Sample Business Plan, which contained material facts in regard to the financial performance of existing Tokyo Smoke stores and the expected financial performance of the Franchised Business;
- (e) The Purported Disclosure Document failed to include the material facts contained in the Investors Handbook and the Onboarding Handbook, as identified above;
- (f) The Purported Disclosure Document failed to disclose that, unlike almost every other retail business in Canada, retail cannabis businesses are unable to access basic business banking and financial services from Canadian chartered banks. This includes an inability to obtain basic business bank accounts, standard financial products and services, such as bank loans, operating lines of credit, and standard government small business loans, which are typically available to Canadian franchisees operating non-cannabis businesses. In particular:
 - (i) The Franchisee would not be able to obtain financing for its purchase, construction, and operation of the Franchised Business from a chartered bank or credit union in Canada and/or that such financing would be subject to unusually rigorous application requirements and significant fees. The Franchisor did not disclose that, therefore, the Franchisee would need to fund its Franchised Business without the benefit of standard credit facilities widely available to other types of franchised businesses;

- (ii) The Franchisee would not be able to access basic financial services at a chartered bank in Canada, including a basic business bank account, necessary for the purposes of operating the Franchised Business;
- (iii) Without access to basic financial services through a chartered bank, the Franchisee would need to rely on smaller “cannabis-friendly” credit unions for the provision of basic financial services;
- (iv) Financing provided by a credit union would be subject to unusually rigorous application requirements and significant fees, including incurring greater costs to prepare application and other materials required by credit unions when compared to applying for financing from a chartered bank in Canada;
- (v) The Franchisee would not be eligible for funding under the Canada Small Business Financing Program (the “CSBFP”) given that loans under the CSBFP must be applied for and processed through participating lenders, the vast majority of which do not provide services to cannabis retailers. The unavailability of the CSBFP is a “material fact” within the meaning of Section 1(1) of the Wishart Act, as its absence as a source of funding dramatically increases the financial risk facing the Franchisee and its investors, given that funds advanced under the CSBFP limit a franchisee’s principal’s personal guarantee on loans to a maximum of 25% of the principal advanced;
- (vi) The number of credit unions willing to work with cannabis retailers is limited, and the financial products and services offered by such credit

unions is also limited compared to what is typically available at a chartered bank. For instance, Comtech Fire Credit Union, a credit union recommended to the Franchisee by the Franchisor after the Franchisee had entered into the Franchise Agreement, does not provide commercial lending to retail cannabis businesses, and does not provide certain products (such as credit cards) unless they are fully secured (pre-paid in an amount of 115% of the card maximum); and

- (vii) Relying on credit unions for financing and basic banking services presents a significant risk to the Franchisee, given that such credit unions are more vulnerable to economic downturns and the protections provided by the Canadian government to credit unions are not as robust as those provided to chartered banks. Unlike chartered banks that cannot be wound up under a conventional bankruptcy and liquidation process should they fail, the Canadian government does not grant such protections to credit unions,

the Franchisor was aware of all of these facts yet failed to disclose them to the Franchisee until after the Franchisee entered into the Franchise Agreement;

- (g) The Purported Disclosure Document failed to include any information about TS Programs Ltd., an affiliate of the Franchisor, and an entity with which the Franchisee would be required to contract and indemnify pursuant to the Promotion and Marketing Agreement; and
- (h) The Purported Disclosure Document failed to disclose that, despite the Franchisor's oral representations that the Franchised Business would be a "hands off" business,

the Franchisee would be unable to run the Franchised Business in a “hands off” manner unless it obtained and maintained certain margins, which were not possible for the Franchisee to obtain and/or maintain.

38. Contrary to Section 5(5) of the Act, the Franchisor failed to provide the Franchisee and the Guarantor with a Statement of Material Change summarizing the material facts and/or the material changes (as defined by the Wishart Act) contained in and arising from the Lease, including, but not limited to, those material facts set out above.

39. Contrary to Section 5(6) of the Wishart Act, the information contained in the Purported Disclosure Document and in the Purported SMCs was not accurately, clearly, and concisely set out. The information contained in the Purported Disclosure Document and the Purported SMC was unclear, inaccurate, and incomplete.

40. Contrary to Section 2.5 of the Regulation, the Purported Disclosure Document did not include an accurate statement, including a description of details, indicating whether the franchisor, the franchisor’s associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending. The Franchisor incorrectly stated that there were no matters pending against any of its associates, including claims for failing to provide proper to disclosure to a franchisee. In fact, at the time the Franchisor provided the Purported Disclosure Document to the Franchisee, there was a claim pending against the Indemnifier for, among other things, failing to provide proper disclosure to a franchisee, for misrepresentation pursuant to Section 7 of the Wishart Act, and for breach of the duty of fair

dealing pursuant to Section 3 of the Wishart Act, namely: TRIPSETTER INC. v. 2161907 ALBERTA LTD. et al., Court File No.: CV-21-665331 (Toronto Registry).

41. Contrary to Section 6.1 of the Regulation, the Purported Disclosure Document failed to adequately disclose a list of all of the franchisee's costs associated with the establishment of the franchise, including, but not limited to, failing to disclose that the Franchisee would need at least six (6) months of working capital before it could expect to break even.

42. Contrary to Sections 6.2 and 6.3 of the Regulation, the Franchisor provided estimates of annual operating costs and earnings projections outside of a "disclosure document" and/or any "statement of material change" and without providing the requisite underlying and substantiating information.

43. The Franchisor's breaches of the Wishart Act deprived the franchisee of the opportunity to make an informed investment decision about whether to invest in the Franchised Business.

F. RESCISSION OF THE FRANCHISE AGREEMENT

44. By virtue of the Franchisor failing to deliver the required franchise disclosure document, the Franchisee was entitled to exercise its statutory right of rescission under the Wishart Act.

45. On or about January 20, 2023, the Franchisee delivered a Notice of Rescission dated January 20, 2023 (the "**Notice of Rescission**") to the Franchisor pursuant to Section 6(2) of the Wishart Act in accordance with Section 6(3) of the Wishart Act.

46. The particulars of the amounts owing to the Franchisee for which the Franchisor and all franchisor's associates are jointly and severally obligated to pay were outlined in the Notice of Rescission.

G. FOLLOWING DELIVERY OF THE NOTICE OF RECISSION

47. Pursuant to Section 6(6) of the Wishart Act, a franchisor and any franchisor's associates have up to sixty days from the delivery of a notice of rescission to pay statutory compensation to a franchisee in accordance with this Section.

48. As of the date this Demand for Arbitration, none of the Respondents have paid any amounts claimed by the Franchisee in the Notice of Rescission.

H. CLAIMS UNDER SECTION 7 OF THE WISHART ACT

49. As a result of the Respondents' breaches of Section 5 of the Wishart Act in failing to deliver a disclosure document, the Franchisee has suffered losses and damages including, but not limited to, the amounts set out above.

50. If the Franchisee had received a disclosure document in accordance with the Wishart Act, it would not have purchased the Franchised Business or entered into the Franchise Agreement.

51. In addition to the misrepresentations Purported Disclosure Document and Purported SMCs described above, the:

- (a) Sample Business Plan materially overstated the profitability of the Franchised Business;
- (b) Investor Handbook materially overstated the profitability of the Franchised Business;
- (c) Onboarding Handbook materially overstated the profitability of the Franchised Business;

- (d) The Oral Representations:
- (i) promised that the franchise would be a “hands-off” business when, in fact, that could only be accomplished if the Franchisee achieved certain a certain revenue, which was neither realistic nor achievable; and
 - (ii) materially overstated the profitability of the Franchised Business.

52. The Franchisee suffered losses because of these misrepresentations.

53. The Respondents, or any of them, are liable to the Franchisee for losses and damages pursuant to Section 7 of the Wishart Act.

I. FRANCHISOR’S ASSOCIATES

54. TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, are “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act, and, pursuant to Section 8 of the Wishart Act, are jointly and severally liable with the Franchisor for all amounts claimed by the Franchisee.

55. At all material times, TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, were controlled by the Franchisor, or were controlled by another person who also controlled, directly or indirectly, the Franchisor.

56. TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, were directly involved in the grant of the franchise to the Franchisee by reviewing and approving the grant of the franchise and/or making representations to the Franchisee on behalf of the Franchisor for the purpose of granting the franchise, marketing the franchise, or otherwise offering to grant the franchise.

57. TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, exercised significant operational control over the Franchisee and were persons to whom the Franchisee had a continuing financial obligation in respect of the franchise.

(2) ISSUES TO BE DETERMINED AT ARBITRATION

58. Did the Franchisee validly rescind the Franchise Agreement pursuant to Section 6(2) of the Wishart Act? If so, what quantum of statutory compensation/damages is owed to the Franchisee?

59. Did the Franchisee establish a claim for misrepresentation pursuant to Section 7 of the Wishart Act? If so, what quantum of statutory compensation/damages is owed to the Franchisee?

60. Do the Respondents, TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, meet the definition of “franchisor’s associate” under Section 1(1) of the Wishart Act, for the purposes of the claims made herein?

(3) RELIEF CLAIMED

61. The Franchisee claims:

- (a) A declaration that the Respondent, the Franchisor, is a “franchisor” within the meaning of Section 1(1) of the Wishart Act for the purposes of the claims herein;
- (b) A declaration that all “franchise agreements” within the meaning of Section 1(1) of the Wishart Act were validly rescinded by the Franchisee pursuant to Section 6(2) of the Wishart Act by delivery of the Notice of Rescission in accordance with Section 6(3) of the Wishart Act;

- (c) Statutory compensation pursuant to Section 6(6) of the Wishart Act, currently determined to be in the amount of \$731,000, or such other amount of statutory compensation as the Franchisee may prove or the Tribunal may determine;
- (d) A declaration that the Respondents, 2737503 Ontario Inc., TS Programs Ltd., 21619073 Alberta Ltd., Justin Farbstein, Jürgen Schreiber, and Josh Davidson, or any of them, are “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act, for the purposes of the claims herein;
- (e) In addition, or in the alternative to paragraph 1(c), above, damages in the sum of \$731,000, pursuant to Section 7 of the Wishart Act for misrepresentation and/or for the Franchisor’s failure to comply with Section 5 of the Wishart Act;
- (f) Prejudgment interest in accordance with Section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) Postjudgment interest in accordance with Section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) The costs of the arbitration, including legal fees and related costs and disbursements, plus all applicable taxes; and
- (i) Such further and other relief as counsel may request, and the Tribunal deems just.

(4) PROPOSED APPOINTMENT OF ARBITRAL BODY

62. The Franchisee proposes that the Franchisor appoint the following arbitration body:

ADR Chambers
180 Duncan Mill Road, 4th Floor
Toronto, Ontario
M3B 1Z6 Canada.

July 13 , 2023

SOTOS LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Adrienne Boudreau (LSO # 57348D)

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Lawyers for the Claimant

**IN THE MATTER OF AN ARBITRATION UNDER THE
ARBITRATION ACT, 1991, S.O. 1991. C.17**

B E T W E E N:

2826139 ONTARIO INC.

Claimant

and

2733181 ONTARIO INC., 2737503 ONTARIO INC., 2161907 ALBERTA LTD.,
JUSTIN FARBSTEIN, JÜRGEN SCHREIBER and JOSH DAVIDSON

Respondents

DEMAND FOR ARBITRATION

1. This is a franchise rescission case. The matters described herein pertain to a dispute between the Claimant, 2826139 Ontario Inc. (the “**Richmond Road Franchisee**”), and the Respondents (the franchisor and related parties). The Richmond Road Franchisee seeks statutory rescission under section 6(2) of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c.3 (the “**Wishart Act**”), together with statutory compensation in the amount of \$848,000.00 and related relief.

2. The parties are subject to an arbitration agreement pursuant to Section 21 (Dispute Resolution) of a franchise agreement dated May 5, 2021. The relevant provisions of the arbitration agreement are as follows:

21.2 Arbitration

Any Dispute between or involving the Franchisee, the Guarantor, the Franchisor and/or the Licensor (and/or any affiliates of the Franchisee, the Guarantor, the Franchisor or the Licensor and/or any of their respective shareholders, directors, partners, officers, employees, agents, attorneys, accountants, associates or guarantors, and/or any of their successors or assigns) not resolved by way of mediation in accordance with this Agreement shall be submitted to arbitration pursuant to the rules of an arbitration body selected by the Franchisor or the Licensor. To the extent that there is any difference between the rules of the arbitration body selected and this Agreement, this Agreement shall prevail. The

arbitration shall be commenced by way of written notice given to the parties to the Dispute. All parties shall bear their own costs for participation in the arbitration, except for any external costs of conducting the arbitration, including the arbitrator's costs, which shall be borne equally between them. The Franchisee, the Guarantor and the Franchisor agree that all aspects of the arbitration including statements made and documents produced within the arbitration will be confidential in nature and will not be admissible in any subsequent legal proceeding, subject to any disclosures required by Applicable Law.

21.5 Awards and Decisions

The arbitration will be heard by one (1) arbitrator who shall be appointed pursuant to the rules of the designated arbitration body selected by the Franchisor. The arbitrator will have the right to award any relief deemed proper in the circumstances, including, without limitation, monetary damages (with interest on unpaid amounts from their due date(s)), specific performance, injunctive relief, and reimbursement of legal fees and related costs and disbursements to the prevailing party. The arbitrator will not have the authority to award punitive or aggravated damages (except as otherwise permitted by this Agreement), nor the right to declare any trademark generic or otherwise invalid. The parties to the arbitration are bound by the provisions of any limitation period or the time by which claims must be brought under Applicable Law, or under this Agreement, whichever expires earlier. The award and decision of the arbitrator will be final and binding and judgment on the award may be entered in any court of competent jurisdiction. The parties acknowledge and agree that any arbitration award may be enforced against any party to the arbitration in a court of competent jurisdiction and no such party shall have any right to contest the validity or enforceability of such award.

21.7 Third Parties

The arbitration provisions of this Agreement are intended to bind any third party non-signatory related or otherwise connected to any Dispute, including such parties provided for in Section 21.1.

21.8 Survival

The Agreement to arbitrate provided for in this Section 21 shall continue in full force and effect subsequent to and notwithstanding the expiration, termination, non-renewal or purported rescission of this Agreement, for any reason.

(1) NATURE OF THE DISPUTE AND MATERIAL FACTS RELIED UPON

A. THE PARTIES

3. The Claimant, the Richmond Road Franchisee, is a corporation incorporated pursuant to the laws of the province of Ontario, with its registered office located in Manotick, Ontario. The Franchisee is a former franchisee of the "Tokyo Smoke" franchise system.

4. The Respondent, 2733181 Ontario Inc. (the “**Franchisor**”), is a corporation incorporated pursuant to the laws of the province of Ontario, with its registered office located in Toronto, Ontario. Among other things, the Franchisor sublicences the right to use certain trade names, trademarks, logos, and emblems for the operation of retail outlets that sell recreational cannabis products, accessories, and related items, in association with the “Tokyo Smoke” brand.

5. The Respondent, 2737503 Ontario Inc. (“**TS Leasing**”), is a corporation incorporated pursuant to the laws of Ontario, with its registered office located in Toronto, Ontario. TS Leasing is an affiliate of the Franchisor and carries on business as the Franchisor’s lease holding company. Among other things, TS Leasing negotiates and enters into leases in respect of real property. It then sublets the premises that are the subject of these leases to franchisees of the “Tokyo Smoke” system. On July 5, 2021, TS Leasing, as tenant, entered into a lease with Althone Investments Limited (the “**Landlord**”), as landlord (the “**Head Lease**”), in respect of the premises located at 297 Richmond Road, Ottawa, Ontario (the “**Premises**”). On August 16, 2021, TS Leasing, as sublandlord, and the Richmond Road Franchisee, as subtenant, entered into a sublease (the “**Sublease**”) in respect of the Premises.

6. The Respondent, 2161907 Alberta Ltd. (the “**Indemnifier**”), is a corporation incorporated pursuant to the laws of Alberta, with its registered office located in Edmonton, Alberta. The Indemnifier is an affiliate of the Franchisor. Among other things, the Indemnifier is the indemnifier for the Head Lease.

7. The Respondent, Jürgen Schreiber (“**Schreiber**”), is a person ordinarily resident in Ontario. Schreiber is a director and officer of the Franchisor, and a director of the Indemnifier. Among other things, Schreiber signed the Franchisor’s Certificate of Disclosure certifying that the

Franchisor's franchise disclosure document, with a version date of March 2021 (the "**Purported FDD**"), contained no untrue information and contained every material fact required under the Wishart Act.

8. The Respondent, Justin Farbstein ("**Farbstein**"), is a personal ordinarily resident in Ontario. Farbstein is a director and officer of the Franchisor and TS Leasing. Among other things, Farbstein signed the Franchisor's Certificate of Disclosure certifying that the Purported FDD contained no untrue information and contained every material fact required under the Wishart Act.

9. The Respondent, Josh Davidson ("**Davidson**"), is a person ordinarily resident in Ontario. At all materials times, Davidson was the "franchise development manager" for the Franchisor.

B. THE WISHART ACT

10. Pursuant to Section 5 of the Wishart Act, a franchisor is required to provide a prospective franchisee with a franchise "disclosure document" at least 14 days before the franchisor can take any money from the franchisee relating to the franchise or before the franchisee can enter into any agreement relating to the franchise with the franchisor. The "disclosure document" must comply with the requirements of the Wishart Act and the regulation thereto, being O. Reg. 581/00, in order for it to be deemed a "disclosure document" within the meaning of Section 1(1) of the Wishart Act.

11. The directors and officers of a franchisor corporation are obliged to certify the truth of the contents of the disclosure document and are liable, personally, for any misrepresentations or omissions contained in a disclosure document.

12. When a franchisee enters into a franchise agreement with a franchisor in circumstances where a franchisor fails to provide a franchisee with a “disclosure document” within the meaning of Section 1(1) of the Wishart Act, the franchisee has two years from the date it signed the franchise agreement to rescind the franchise agreement pursuant to Section 6 of the Wishart Act.
13. Rescission in such instance is effected by the delivery of a notice of rescission pursuant to Section 6(2) of the Wishart Act, in accordance with Section 6(3) of the Wishart Act.
14. Following delivery of a notice of rescission and pursuant to Section 6(6) of the Wishart Act, the franchisor has up to 60 days to pay to the franchisee the amounts identified in the notice of rescission.
15. Such amounts are described in Section 6(6) of the Wishart Act as follows:
 - (a) Any money received from or on behalf of the franchisee, other than money for inventory, supplies or equipment;
 - (b) Amounts necessary to purchase from the franchisee any inventory the franchisee had purchased pursuant to the franchise agreement and remaining at the effective date of rescission, at a price equal to the purchase price paid by the franchisee;
 - (c) The amount necessary to purchase from the franchisee any supplies and equipment that the franchisee had purchased pursuant to the franchise agreement, at a price equal to the purchase price paid by the franchisee; and

- (d) Amounts necessary to compensate the franchisee for any losses that the franchisee incurred in acquiring, setting up and operating the franchise, less the amounts set out in a. – c. above.

16. Both the “franchisor” and any “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act are jointly and severally liable to pay a franchisee’s claims made pursuant to Sections 6 of the Wishart Act.

17. A “franchisor” is defined by Section 1(1) of the Wishart Act to mean one or more persons who grant or offer to grant a franchise.

18. A “franchisor’s associate” is defined by Section 1(1) of the Wishart Act to include a person who controls the franchisor or is controlled by the franchisor, who was directly involved in the grant of the franchise to the franchisee, and/or who exercises operational control over the franchisee in the course of operating the franchise business.

C. THE FRANCHISE AGREEMENT

19. On or about May 6, 2021, the Franchisor, as franchisor, the Richmond Road Franchisee, as franchisee, and 2826559 Ontario Inc., 2826704 Ontario Inc., The Verreault Family Trust, The Gilson Family Trust, Ashley Leone Verreault (“**Ashley**”), Nicolas Daniel Verreault (“**Nicolas**”), Angela Karen Gale, and Gregory Keith Gilson (collectively, hereinafter the “**Guarantors**”), as guarantors, entered into the following agreements:

- (a) a franchise agreement as between the Franchisor, as franchisor, the Franchisee, as franchisee, and the Guarantors, as guarantors, dated as of May 5, 2021;

- (b) a consulting agreement between the Franchisor, as consultant, and the Richmond Road Franchisee, as client, dated May 5, 2021;
- (c) a professional services agreement between the Franchisor, as consultant, and the Richmond Road Franchisee, as customer, dated May 5, 2021;
- (d) a general security agreement between the Franchisor, as the secured party, and the Richmond Road Franchisee, as the debtor, dated May 5, 2021;
- (e) a share pledge agreement between the Franchisor, as franchisor, and 2826559 Ontario Inc., as pledgor, dated May 5, 2021;
- (f) a share pledge agreement between the Franchisor, as franchisor, and 2826704 Ontario Inc., as pledgor, dated May 5, 2021;
- (g) a share pledge agreement between the Franchisor, as franchisor, and The Gilson Family Trust, as pledgor, dated May 5, 2021; and
- (h) a share pledge agreement between the Franchisor, as franchisor, and The Verreault Family Trust, as pledgor, dated May 5, 2021 (all foregoing agreements, together with the Sublease, being the “**Franchise Agreement**”).

20. The Franchise Agreement granted the Richmond Road Franchisee the right to operate a “Tokyo Smoke” franchise (the “**Franchised Business**”) located at the Premises.

D. EVENTS PRECEDING EXECUTION OF THE FRANCHISE AGREEMENT

21. Prior to the execution of the Franchise Agreement, representatives of the Franchisor repeatedly made representations to representatives of the Franchisee about the potential

profitability of establishing a retail cannabis store under the “Tokyo Smoke” banner, and other representations about the nature of the Franchised Business. These are detailed in the Franchisee’s notice of rescission dated April 29, 2023 (the “**Notice of Rescission**”), which is hereto attached as Schedule “**A**”.

22. On March 16, 2021, Davidson, on behalf of the Franchisor, delivered via email a document entitled “Tokyo Smoke Investor Handbook” (the “**Investor Handbook**”). The Investor Handbook contained several material facts relating to the Franchised Business, including, but not limited to the following:

- (a) “Tokyo Smoke” operates under a stable of brands owned by Canopy Growth Corporation (“**Canopy**”);
- (b) The “Tokyo Smoke” brand has a “Growing Canadian Footprint” with 30 Tokyo Smoke stores “Coming Soon”;
- (c) Representations as to the criteria the Franchisor uses to secure commercial leases with the intention of securing up to 6 months of free rent and at competitively lower costs; and
- (d) Estimated starting costs which differed from those disclosed in the Purported FDD.

23. On or about March 17, Ashley and Nicolas, on behalf of the Richmond Road Franchisee, had a phone call with Davidson. During that call, Davidson provided the Richmond Road Franchisee with material facts and information in regard to the Franchised Business, including average past and future projected revenue, sales volume, gross margin, and estimated start-up costs for each of the three “tiers” of stores in the “Tokyo Smoke” franchise system (the “**Financial**

Performance Representations”). Specifically, the Financial Performance Information included the following estimates and projections:

- (a) Tier 3 stores (those with the lowest “volume”) achieve \$3.4 million in sales, Tier 2 stores achieve between \$4.5 million to \$7.5 million in sales, and Tier 1 stores achieve at least \$7.5 million in sales, with one currently operating store generating \$15 million and another \$21 million;
- (b) The average value of a retail sales transaction was \$80;
- (c) Gross margin for all three “tiers” ranges from 38% - 41%;
- (d) During the COVID-19 pandemic, 80% of the system’s sales were completed online;
- (e) Operating expenses for a retail unit comprise approximately 12% of revenue, rent comprises approximately 5% of revenue, and labour comprises approximately 8% of revenue;
- (f) Net profit margin for retail stores ranged from 14% - 16% at the lowest tier and 18% - 20% at the highest tier;
- (g) Leasehold and construction costs would be roughly \$450,000; and
- (h) Working capital needed for the store launch would range from \$125,000 to \$175,000.

24. On March 31, 2021, the Franchisor provided the Richmond Road Franchisee with the Purported FDD. The Purported FDD did not include the material facts disclosed in the Investor Handbook or the Financial Performance Representations.

25. On April 20, 2021, the Franchisor provided an electronic copy of a document with an effective date of April 20, 2021, entitled “Statement of Material Changes for 2733181 Ontario Inc.” (the “**First SMC**”). On April 30, 2021, the Franchisor provided an electronic copy of a document with an effective date of April 30, 2021, entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” in accordance with the meaning of the Wishart Act (the “**Second SMC**”). The First SMC and the Second SMC are hereinafter collectively referred to as the “**Purported SMCs**”. The Purported SMCs did not contain the information in the Investor Handbook or the Financial Performance Representations.

E. THE FRANCHISOR’S BREACHES OF THE WISHART ACT

26. The Purported Disclosure Document and the Purported SMCs did not comply with the requirements of the Wishart Act and the Regulation. Accordingly, and contrary to Section 5(1) of the Wishart Act, the Richmond Road Franchisee did not receive a “disclosure document” prior to the time the Richmond Road Franchisee entered into the Franchise Agreement or paid to the Franchisor any consideration relating to the Franchised Business.

27. In addition, the Purported Disclosure Document nor the Purported SMCs contained the information disclosed in the Sample Business Plan, or the Financial Performance Representations.

28. The Purported Disclosure Document and the Purported SMCs failed to comply with the requirements of the Wishart Act and Regulation as they contained several material deficiencies, as particularized below.

29. Contrary to Section 5(3) of the Wishart Act, the Purported Disclosure Document was not delivered as one document, at one time. Rather, and as described above, material information was

delivered to the Franchisee in multiple documents, on multiple occasions, in a piecemeal fashion.

Specifically:

- (a) The Investor Handbook, which discloses the material facts and information summarized at paragraph 22, above; and
- (b) Davidson orally disclosed the Financial Performance Information to the Richmond Road Franchisee, which included the material facts and information described at paragraph 23, above.

30. Contrary to Section 5(4)(a) of the Wishart Act, the Purported Disclosure Document and the Purported SMCs failed to contain all material facts and/or material changes, as applicable, relating to the Franchised Business. Specifically:

- (a) The Purported Disclosure Document and the Purported SMCs failed to disclose material facts contained in a certain offer to lease between 2737503 Ontario Inc., as tenant, and the Landlord, as landlord, dated July 5, 2021 (the “**Offer to Lease**”). The material provisions in Offer to Lease that were not disclosed in the Purported Disclosure Document or the Purported SMCs include, but are not limited to:
 - (i) The correct amounts that the Franchisee would be required to pay in respect of Basic Rent and Additional Rent for the Premises;
 - (ii) The amount that the Franchisee would be required to pay in respect of the Rent Deposit and the Security Deposit required under the Sublease; and

- (iii) Pursuant to section 7 of the Offer to Lease, if at any time following the 7th year of the term of the Head Lease, the Landlord intends to demolish, substantially renovate, or materially alter the Development to such extent that the Landlord requires possession of the Premises, then the Landlord may terminate the Head Lease, without compensation of any kind to the Tenant, by giving 365 days written notice to the Tenant;

- (b) The Purported Disclosure Document failed to disclose that, unlike almost every other retail business in Canada, retail cannabis businesses are unable to access basic business banking and financial services from Canadian chartered banks. This includes an inability to obtain basic business bank accounts, standard financial products and services, such as bank loans, operating lines of credit, and standard government small business loans, which are typically available to Canadian franchisees operating non-cannabis businesses. In particular:
 - (i) The Franchisee would not be able to obtain financing for its purchase, construction, and operation of the Franchised Business from a chartered bank or credit union in Canada and/or that such financing would be subject to unusually rigorous application requirements and significant fees. The Franchisor did not disclose that, therefore, the Franchisee would need to fund its Franchised Business without the benefit of standard and widely available credit facilities available to other types of franchised businesses;

- (ii) The Franchisee would not be able to access basic financial services at a chartered bank in Canada, including a basic business bank account, necessary for the purposes of operating the Franchised Business;
- (iii) Without access to basic financial services through a chartered bank, the Franchisee would need to rely on smaller “cannabis-friendly” credit unions for the provision of basic financial services;
- (iv) Financing provided by a credit union would be subject to unusually rigorous application requirements and significant fees, including incurring greater costs to prepare application and other materials required by credit unions when compared to applying for financing from a chartered bank in Canada;
- (v) The Franchisee would not be eligible for funding under the Canada Small Business Financing Program (the “CSBFP”) given that loans under the CSBFP must be applied for and processed through participating lenders, the vast majority of which do not provide services to cannabis retailers. The unavailability of the CSBFP is material as its absence as a source of funding dramatically increases the financial risk facing the Franchisee and its investors, given that funds advanced under the CSBFP limit a franchisee’s principal’s personal guarantee on loans to a maximum of 25% of the principal advanced;
- (vi) The number of credit unions willing to work with cannabis retailers is limited, and the financial products and services offered by such credit unions is also limited compared to what is typically available at a chartered

bank. The comparatively far fewer physical locations of such credit unions also adversely affects and materially increases transaction costs of the Franchised Business; and

- (vii) Relying on credit unions for financing and basic banking services presents a significant risk to the Franchisee, given that such credit unions are more vulnerable to economic downturns and the protections provided by the Canadian government to credit unions are not as robust as those provided to chartered banks. Unlike chartered banks that cannot be wound up under a conventional bankruptcy and liquidation process should they fail, the Canadian government does not grant such protections to credit unions;
- (c) The Purported Disclosure Document failed to include the Financial Performance Representations, which contained material facts in regard to the financial performance of existing Tokyo Smoke stores and the expected financial performance of the Franchised Business;
- (d) The Purported Disclosure Document failed to disclose any material facts, including a summary of the action and the status thereof, in regard to ongoing civil actions which were pending against the Franchisor's affiliates and/or parent, namely 2161907 ALBERTA LTD. v. 11180673 CANADA INC.; and
- (e) The Purported Disclosure Document failed to include all information contained in the Investors Handbook, including the information relating to the growth of the "Tokyo Smoke" franchise system, the "Real Estate Criteria" and that the leases the Franchisor secures for franchisees have "competitively lower rent costs on

average”, and the statements suggesting that the Franchisee would be able to obtain financial services from a Canadian chartered bank, specifically, Bank of Montreal.

31. Contrary to Section 5(4)(b) of the Wishart Act and Section 3(1) of the Regulation, the Purported Disclosure Document failed to contain the required financial statements. Specifically, given that the Franchisor’s fiscal year-end is June 30, the Franchisor was required to have disclosed audited or review engagement financial statements prepared in accordance with the Regulation, for the fiscal-year ended June 30, 2020. The Purported Disclosure Document and the Purported SMCs failed to contain such financial statements.

32. Contrary to Section 5(6) of the Wishart Act, the information contained in the Purported Disclosure Document was not accurately, clearly, and concisely set out. The information contained in the Purported Disclosure Document was unclear, inaccurate, and incomplete.

33. Contrary to Section 2.5 of the Regulation, the Purported Disclosure Document did not include an accurate statement, including a description of details, indicating whether the franchisor, the franchisor’s associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person. Specifically, the Franchisor failed to disclose material facts in regard to multiple ongoing civil actions which were pending against the Franchisor’s associate, namely 2161907 ALBERTA LTD. v. 11180673 CANADA INC.

34. Contrary to Section 7 of the Regulation, the Purported Disclosure Document failed to include a certificate, signed and dated by the directors and/or officers of the Franchisor, certifying

that the document contains no untrue information, representations or statements, and includes every material fact, financial statement, statement and other information.

F. RESCISSION OF THE FRANCHISE AGREEMENT

35. By virtue of the Franchisor failing to deliver the required franchise disclosure document, the Richmond Road Franchisee was entitled to exercise its statutory right of rescission under the Wishart Act.

36. On or about April 29, 2023, the Richmond Road Franchisee delivered the Notice of Rescission pursuant to Section 6(2) of the Wishart Act in accordance with Section 6(3) of the Wishart Act.

37. The particulars of the amounts owing to the Richmond Road Franchisee for which the Franchisor and all franchisor's associates are jointly and severally obligated to pay were outlined, on a preliminary basis, in the Notice of Rescission.

G. FOLLOWING DELIVERY OF THE NOTICE OF RESCISSION

38. Pursuant to Section 6(6) of the Wishart Act, a franchisor and any franchisor's associates have up to sixty days from the delivery of a notice of rescission to pay statutory compensation to a franchisee in accordance with this Section.

39. As of the date this Demand for Arbitration, none of the Respondents have paid any amounts claimed by the Richmond Road Franchisee in the Notice of Rescission.

H. CLAIMS UNDER SECTION 7 OF THE WISHART ACT

40. As a result of the Respondents' breaches of Section 5 of the Wishart Act in failing to deliver a disclosure document, the Richmond Road Franchisee has suffered losses and damages including, but not limited to, the amounts set out above.

41. If the Richmond Road Franchisee had received a disclosure document in accordance with the Wishart Act, it would not have purchased the Franchised Business nor entered into the Franchise Agreement.

42. In particular:

(a) the Investor Handbook embellished:

- (i) the promise and future of the "Tokyo Smoke" franchise system;
- (ii) the degree of support and involvement that would be provided by Canopy;
- (iii) the advantageousness of the terms of the commercial leases the Franchisor would secure on behalf of its franchisees; and
- (iv) overstated the profitability of the Franchised Business;

(b) the Financial Performance Representations materially overstated the profitability of the Franchised Business.

43. The Richmond Road Franchisee suffered losses because of these misrepresentations.

44. The Respondents, or any of them, are liable to the Richmond Road Franchisee for losses and damages pursuant to Section 7 of the Wishart Act.

I. FRANCHISOR'S ASSOCIATES

45. TS Leasing, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, are “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act, and, pursuant to Section 8 of the Wishart Act, are jointly and severally liable with the Franchisor for all amounts claimed by the Richmond Road Franchisee.

46. At all material times, TS Leasing, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, were controlled by the Franchisor, or were controlled by another person who also controlled, directly or indirectly, the Franchisor.

47. TS Leasing, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, were directly involved in the grant of the franchise to the Richmond Road Franchisee by reviewing and approving the grant of the franchise and/or making representations to the Richmond Road Franchisee on behalf of the Franchisor for the purpose of granting the franchise, marketing the franchise, or otherwise offering to grant the franchise.

48. TS Leasing, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, exercised significant operational control over the Richmond Road Franchisee and were persons to whom the Richmond Road Franchisee had a continuing financial obligation in respect of the franchise.

(2) ISSUES TO BE DETERMINED AT ARBITRATION

49. Did the Richmond Road Franchisee validly rescind the Franchise Agreement pursuant to Section 6(2) of the Wishart Act? If so, what quantum of statutory compensation/damages is owed to the Richmond Road Franchisee?

50. Did the Richmond Road Franchisee establish a claim for misrepresentation pursuant to Section 7 of the Wishart Act? If so, what quantum of damages is owed to the Richmond Road Franchisee?

51. Do the Respondents, TS Leasing, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, meet the definition of “franchisor’s associate” under Section 1(1) of the Wishart Act, for the purposes of the claims made herein?

(3) RELIEF CLAIMED

52. The Richmond Road Franchisee claims:

- (a) A declaration that the Respondent, the Franchisor, is a “franchisor” within the meaning of Section 1(1) of the Wishart Act for the purposes of the claims herein;
- (b) A declaration that all “franchise agreements” within the meaning of Section 1(1) of the Wishart Act, between the Franchisee and the Respondents were validly rescinded by the Franchisee, by delivery of the Notice of Rescission in accordance with Section 6(3) of the Wishart Act;
- (c) Statutory compensation pursuant to Section 6(6) of the Wishart Act, currently determined to be in the amount of \$848,000.00, or such other amount of statutory compensation as the Franchisee may prove or the Tribunal may determine;
- (d) A declaration that the Respondents, TS Leasing, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, are “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act, for the purposes of the claims herein;

- (e) In addition, or in the alternative to paragraph 1(d), damages pursuant to Section 7 of the *Wishart Act* for misrepresentation and/or for the Franchisor's failure to comply with Section 5 of the *Wishart Act*;
- (f) Prejudgment interest in accordance with Section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) Postjudgment interest in accordance with Section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) The costs of the arbitration, including legal fees and related costs and disbursements, plus all applicable taxes; and
- (i) Such further and other relief as counsel may request, and the Tribunal deems just.

(4) PROPOSED APPOINTMENT OF ARBITRAL BODY

53. The Richmond Road Franchisee proposes that the Franchisor appoint the following arbitrator/arbitration body:

Adam Ship
ADR Chambers
180 Duncan Mill Road, 4th
Floor Toronto, Ontario
M3B 1Z6 Canada.

March 18, 2024

SOTOS LLP

180 Dundas Street West

Suite 1200

Toronto ON M5G 1Z8

Adrienne Boudreau (LSO # 57348D)

aboudreau@sotos.ca

Denna Pourmonazah Jalili (LSO # 84976N)

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Tel: 416-977-0007

Fax: 416-977-0717

Lawyers for the Claimant

NOTICE OF RESCISSION OF FRANCHISE AGREEMENT

TO: 2733181 Ontario Inc. (the “**Franchisor**”)

AND TO: 2737503 Ontario Inc., 2161907 Alberta Ltd., Josh Davidson, Justin Farbstein, and Jürgen Schreiber (collectively, “**Franchisor’s Associates**”)

FROM: 2826139 Ontario Inc. (the “**Franchisee**”)

AND FROM 2826559 Ontario Inc., 2826704 Ontario Inc., The Verreault Family Trust, The Gilson Family Trust, Ashely Leone Verreault, Nicolas Daniel Verreault, Angela Karen Gale, and Gregory Keith Gilson (collectively, the “**Guarantors**”)

RE: Notice of Rescission of each and every “franchise agreement” within the meaning of Section 1(1) of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c.3 (the “**Wishart Act**”), and all ancillary agreements thereto, including, but not limited to: a franchise agreement amongst the Franchisor, as franchisor, the Franchisee, as franchisee, and the Guarantors, as guarantors, executed by the Franchisee on May 6, 2021 and dated as of May 5, 2021; a consulting agreement between the Franchisee, as client, and the Franchisor, as consultant, dated May 5, 2021; a general security agreement between the Franchisee, as debtor, and the Franchisor and any subsidiary or affiliate thereof, collectively as secured party, dated May 5, 2021; a sublease agreement between the Franchisee, as subtenant, 2737503 Ontario Inc., as sublandlord, dated August 16, 2021; a share pledge agreement between 2826559 Ontario Inc., as pledgor, and the Franchisor, as franchisor, dated May 5, 2021; a share pledge agreement between 2826704 Ontario Inc., as pledgor, and the Franchisor, as franchisor, dated May 5, 2021; a share pledge agreement between The Gilson Family Trust, as pledgor, and the Franchisor, as franchisor, dated May 5, 2021; and a share pledge agreement between The Verreault Family Trust, as pledgor, and the Franchisor, as franchisor, dated May 5, 2021; (all of which are, collectively referred to as the “**Franchise Agreement**”), in connection with a “Tokyo Smoke” franchise (the “**Franchised Business**”), located at 297-303 Richmond Road, Unit A, Ottawa, Ontario (the “**Premises**”).

The Franchisee hereby serves notice upon you of the rescission of the Franchise Agreement pursuant to Section 6(2) of the Wishart Act resulting from the Franchisor’s failure to provide the Franchisee with a disclosure document as required by Section 5 of the Wishart Act and Ontario Regulation 581/00 (the “**Regulation**”) made thereunder.

Contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive a “disclosure document” that complied with the requirements of the Wishart Act and the Regulation prior to entering into the Franchise Agreement and prior to paying any consideration to the Franchisor or a Franchisor’s Associate relating to the Franchise. As a result, the Franchisee

was effectively deprived of the opportunity to make an informed decision about whether or not to invest in the Franchised Business.

On or about March 16, 2021, Josh Davidson (“**Davidson**”) the Franchisor’s “Franchise Development Manager”, on behalf of the Franchisor, sent the Franchisee a copy of a document entitled “Tokyo Smoke Investor Handbook” (the “**Investor Handbook**”). The Investor Handbook provides that “Tokyo Smoke operates under a stable of brands owned by Canopy Growth Corporation” (“**Canopy**”) and states that the brand has a “Growing Canadian Footprint” with 30 Tokyo Smoke Stores “Coming Soon”. The Investor Handbook also provides a list of “Real Estate Criteria” used by the Franchisor, which include the fact that the Franchisor endeavors to secure “leases offering free rent of up to 6 months, often with exclusivity” and that the leases obtained have “competitively lower rent costs”. The Investor Handbook also provides “Estimated Starting Costs” which include estimates that are missing from or different than those disclosed in the Purported Disclosure Document (defined below), including but not limited to, an estimated \$5,000 for banking fees, specifically at “Alterna or BMO”, and an estimated capital requirement ranging between \$635,000 - \$885,000. All of this information was material to the establishment and operation of the Franchised Business, and should have been provided to the Franchisee in a disclosure document.

On or about March 17, 2021, Ashely Leone Verreault and Nicolas Daniel Verreault, on behalf of the Franchisee, had a phone call with Davidson. During this phone call, Davidson provided the Franchisee with material facts and information in regard to the Franchised Business. For example, and without limitation, Davidson provided the Franchisee with material financial information concerning the operations of three different “tiers” of Tokyo Smoke stores, including information as to average past and future projected revenue, sales volume, gross margin, and estimated start-up costs and operating expenses that had been achieved and could be expected within each “tier” and by the Franchisee in its operation of the Franchised Business. Specifically, Davidson informed the Franchisee that the three stores with the lowest “volume” (i.e. those stores in tier 3) achieve 3.4 million in sales, stores in tier 2 achieve between 4.5 to 7.5 million in sales, and stores in tier 1 achieve 7.5 million and above, with one current store achieving 15 million in sales and another achieving 21 million in sales. Davidson further informed the Franchisee that: (i) it could expect average transactions of \$80.00; (ii) gross margin for all three “tiers” of stores ranged from 38% - 41%; (iii) during COVID, 80% of sales were completed online; (iv) it could expect operating expenses to equal 12% of revenue, rent to equal 5% of revenue, labour to equal 8% of revenue; (v) the net profit margin ranged from 14 – 16% at the lowest tier and 18 – 20% at the highest tier; and (vi) leasehold and construction costs would be approximately \$450,000 and working capital requirements would range from \$125,000 - \$175,000 (all of the above information provided by Davidson is hereinafter collectively referred to as, the “**Financial Performance Information**”). The Financial Performance Information constitutes material financial information about the Franchised Business, including annual operating costs estimates and earnings projections, and should have been provided to the Franchisee in a disclosure document, but was not.

On or about March 31, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with a version date of “March 2021” entitled “Ontario Franchise Disclosure Document”, which purported to be a “disclosure document” within the meaning of the Wishart Act (the “**Purported Disclosure Document**”).

On April 20, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with an effective date of April 20, 2021 entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” in accordance with the meaning of the Wishart Act (the “**First Purported SMC**”).

On April 30, 2021, the Franchisor provided to the Franchisee an electronic copy of a document with an effective date of April 30, 2021 entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” in accordance with the meaning of the Wishart Act (the “**Second Purported SMC**”).

The First Purported SMC and the Second Purported SMC are hereinafter collectively referred to herein as the “**Purported SMCs**”.

The Purported Disclosure Document and the Purported SMCs did not comply with the requirements of the Wishart Act and the Regulation. Accordingly, and contrary to Section 5(1) of the Wishart Act, the Franchisee did not receive a “disclosure document” prior to the time the Franchisee entered into the Franchise Agreement or paid to the Franchisor any consideration relating to the Franchise.

The Purported Disclosure Document and the Purported SMCs failed to comply with the requirements of the Wishart Act and Regulation as they contained a significant number of material deficiencies. These deficiencies include, but are not limited to, the following:

1. Contrary to Section 5(3) of the Wishart Act, the Purported Disclosure Document was not delivered as one document, at one time. Rather, and as described above, material information was delivered to the Franchisee in multiple documents, on multiple occasions, in a piecemeal fashion. Specifically:
 - a. The Investor Handbook, which discloses the following information:
 - i. that the Tokyo Smoke brand has a “Growing Canadian Footprint” with 30 Tokyo Smoke Stores “Coming Soon”;
 - ii. a list of “Real Estate Criteria” used by the Franchisor when obtaining locations for Tokyo Smoke stores, which include the fact that the Franchisor endeavors to secure “leases offering free rent of up to 6 months, often with exclusivity” and that the leases it obtains have “competitively lower rent costs on average”; and
 - iii. a list of “Estimated Starting Costs” which include estimates that are missing from or different than those disclosed in the Purported Disclosure Document, including but not limited to, an estimated \$5,000 for banking fees, specifically at “Alterna or BMO”,

the Purported Disclosure Document failed to include this information; and

- b. Davidson orally disclosed the Financial Performance Information to the Franchisee, which included:
 - i. information regarding the total revenue and margins of existing “Tokyo Smoke” stores depending on their tier and expected revenue and margins for the Franchised Business. This information amounts to an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location where information is available for inspection that substantiates the projection; and
 - ii. information regarding the past and potential future cost of goods sold and certain expenses of “Tokyo Smoke” stores depending on their “tier”. This information amounts to an estimate of annual operating costs. Contrary to Section 6.2 of the Regulation, the Franchisor failed to provide with these estimates a statement specifying the basis for the estimates, the assumptions underlying the estimates, and a location where information is available for inspection that substantiates the estimates,

the Purported Disclosure Document failed to include this information.

2. Contrary to Section 5(4)(a) of the Wishart Act, the Purported Disclosure Document and the Purported SMCs failed to contain all material facts and/or material changes, as applicable, relating to the Franchised Business. Specifically:
 - a. The Purported Disclosure Document and the Purported SMCs failed to disclose material facts contained in a certain offer to lease between 2737503 Ontario Inc., as tenant, and Athlone Investments Limited (the “**Landlord**”), as landlord dated July 5, 2021 (the “**Lease**”). The material provisions in Lease that were not disclosed in the Purported Disclosure Document or the Purported SMCs include, but are not limited to:
 - i. The correct amounts that the Franchisee would be required to pay in respect of Basic Rent and Additional Rent for the Premises;
 - ii. The amount that the Franchisee would be required to pay in respect of the Rent Deposit and the Security Deposit required under the Lease; and
 - iii. Pursuant to section 7 of the Lease, if at any time following the 7th year of the term of the Lease, the Landlord intends to demolish, substantially renovate, or materially alter the Development to such extent that the Landlord requires possession of the Premises, then the Landlord may terminate the Lease, without compensation of any kind to the Tenant, by giving 365 days written notice to the Tenant;
 - b. The Purported Disclosure Document failed to disclose that, unlike almost every other retail business in Canada, retail cannabis businesses are unable to access basic business banking and financial services from Canadian chartered banks. This

includes an inability to obtain basic business bank accounts, standard financial products and services, such as bank loans, operating lines of credit, and standard government small business loans, which are typically available to Canadian franchisees operating non-cannabis businesses. In particular:

- i. The Franchisee would not be able to obtain financing for its purchase, construction, and operation of the Franchised Business from a chartered bank or credit union in Canada and/or that such financing would be subject to unusually rigorous application requirements and significant fees. The Franchisor did not disclose that, therefore, the Franchisee would need to fund its Franchised Business without the benefit of standard and widely available credit facilities available to other types of franchised businesses;
- ii. The Franchisee would not be able to access basic financial services at a chartered bank in Canada, including a basic business bank account, necessary for the purposes of operating the Franchised Business;
- iii. Without access to basic financial services through a chartered bank, the Franchisee would need to rely on smaller “cannabis-friendly” credit unions for the provision of basic financial services;
- iv. Financing provided by a credit union would be subject to unusually rigorous application requirements and significant fees, including incurring greater costs to prepare application and other materials required by credit unions when compared to applying for financing from a chartered bank in Canada;
- v. The Franchisee would not be eligible for funding under the Canada Small Business Financing Program (the “CSBFP”) given that loans under the CSBFP must be applied for and processed through participating lenders, the vast majority of which do not provide services to cannabis retailers. The unavailability of the CSBFP is material as its absence as a source of funding dramatically increases the financial risk facing the Franchisee and its investors, given that funds advanced under the CSBFP limit a franchisee’s principal’s personal guarantee on loans to a maximum of 25% of the principal advanced;
- vi. The number of credit unions willing to work with cannabis retailers is limited, and the financial products and services offered by such credit unions is also limited compared to what is typically available at a chartered bank. The comparatively far fewer physical locations of such credit unions also adversely affects and materially increases transaction costs of the Franchised Business; and
- vii. Relying on credit unions for financing and basic banking services presents a significant risk to the Franchisee, given that such credit unions are more vulnerable to economic downturns and the protections provided by the Canadian government to credit unions are not as robust as those provided to chartered banks. Unlike chartered banks that cannot be wound up under

a conventional bankruptcy and liquidation process should they fail, the Canadian government does not grant such protections to credit unions.

The Franchisor was aware of all of these facts, yet failed to disclose them to the Franchisee in a franchise “disclosure document”;

- c. The Purported Disclosure Document failed to include the Financial Performance Information, which contained material facts in regard to the financial performance of existing Tokyo Smoke stores and the expected financial performance of the Franchised Business;
 - d. The Purported Disclosure Document failed to disclose any material facts, including a summary of the action and the status thereof, in regard to ongoing civil actions which were pending against the Franchisor’s affiliates and/or parent, namely 2161907 ALBERTA LTD. v. 11180673 CANADA INC.; and
 - e. The Purported Disclosure Document failed to include all information contained in the Investors Handbook, including the information relating to the growth of the “Tokyo Smoke” franchise system, the “Real Estate Criteria” and that the leases the Franchisor secures for franchisees have “competitively lower rent costs on average”, and the statements suggesting that the Franchisee would be able to obtain financial services from a Canadian chartered bank, specifically, Bank of Montreal.
3. Contrary to Section 5(4)(b) of the Wishart Act and Section 3(1) of the Regulation, the Purported Disclosure Document failed to contain the required financial statements. Specifically, given that the Franchisor’s fiscal year-end is June 30, the Franchisor was required to have disclosed audited or review engagement financial statements prepared in accordance with the Regulation, for the fiscal-year ended June 30, 2020. The Purported Disclosure Document and the Purported SMCs failed to contain such financial statements.
 4. Contrary to Section 5(6) of the Wishart Act, the information contained in the Purported Disclosure Document was not accurately, clearly, and concisely set out. The information contained in the Purported Disclosure Document was unclear, inaccurate, and incomplete.
 5. Contrary to Section 2.5 of the Regulation, the Purported Disclosure Document did not include an accurate statement, including a description of details, indicating whether the franchisor, the franchisor’s associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person. Specifically, the Franchisor failed to disclose material facts in regard to multiple ongoing civil actions which were pending against the Franchisor’s associates, namely 2161907 ALBERTA LTD. v. 11180673 CANADA INC.
 6. Contrary to Section 7 of the Regulation, the Purported Disclosure Document failed to include a certificate, signed and dated by the directors and/or officers of the Franchisor, certifying that the document contains no untrue information, representations or statements, and includes every material fact, financial statement, statement and other information.

The Purported Disclosure Document failed to comply with the provisions of the Wishart Act and the Regulation and accordingly, the undersigned is entitled to rescind the Franchise Agreement. This notice also constitutes notice of rescission at common law and in equity.

The Franchisee seeks statutory compensation pursuant to Section 6(6) of the Wishart Act. The Franchisee estimates that the quantum of such compensation is \$1,500,000. Any adjustments to that amount will be provided by the Franchisee, or its counsel, as they become known. The Franchisee reserves its right to claim a higher amount if subsequent calculations substantiate a higher amount. In any event, the aforesaid entitlements are known to the Franchisor and all Franchisor's Associates.

The Wishart Act requires you to refund these monies within 60 days of your receipt of this Notice of Rescission. Accordingly, please deliver a certified cheque or bank draft to the lawyers of the undersigned made payable to "Sotos LLP, In Trust" in the amount of \$1,500,000, representing payment of the Section 6(6) statutory compensation owing to the undersigned, **on or before Friday, June 30, 2023.**

DATED at the Federal Democratic Republic of Nepal, this 29th day of April, 2023.

2826139 ONTARIO INC.

Per: *Ashley Verreault* c/s

Ashley Leone Verreault, President
I have authority to bind the corporation.

**IN THE MATTER OF AN ARBITRATION UNDER THE
ARBITRATION ACT, 1991, S.O. 1991. C.17**

B E T W E E N:

1000032072 ONTARIO INC.

Claimant

and

2733181 ONTARIO INC., 2737503 ONTARIO INC., TS PROGRAMS LTD.,
2161907 ALBERTA LTD., JUSTIN FARBSTEIN, JÜRGEN SCHREIBER and
JOSH DAVIDSON

Respondents

DEMAND FOR ARBITRATION

1. This is a franchise rescission case. The matters described herein pertain to a dispute between the Claimant, 1000032072 Ontario Inc. (the “**Guelph Franchisee**”), and the Respondents (the franchisor and related parties). The Guelph Franchisee seeks statutory rescission under section 6(2) of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c.3 (the “**Wishart Act**”), together with statutory compensation and related relief.

2. The parties are subject to an arbitration agreement pursuant to Section 21 (Dispute Resolution) of a franchise agreement dated January 17, 2022. The relevant provisions of the arbitration agreement are as follows:

21.2 Arbitration

Any Dispute between or involving the Franchisee, the Guarantor, the Franchisor and/or the Licensor (and/or any affiliates of the Franchisee, the Guarantor, the Franchisor or the Licensor and/or any of their respective shareholders, directors, partners, officers, employees, agents, attorneys, accountants, associates or guarantors, and/or any of their successors or assigns) not resolved by way of mediation in accordance with this Agreement shall be submitted to arbitration pursuant to the rules of an arbitration body selected by the Franchisor or the Licensor. To the extent that there is any difference between the rules of the arbitration body selected and this Agreement, this Agreement shall prevail. The arbitration shall be commenced by way of written notice given to the parties to the Dispute.

All parties shall bear their own costs for participation in the arbitration, except for any external costs of conducting the arbitration, including the arbitrator's costs, which shall be borne equally between them. The Franchisee, the Guarantor and the Franchisor agree that all aspects of the arbitration including statements made and documents produced within the arbitration will be confidential in nature and will not be admissible in any subsequent legal proceeding, subject to any disclosures required by Applicable Law.

21.5 Awards and Decisions

The arbitration will be heard by one (1) arbitrator who shall be appointed pursuant to the rules of the designated arbitration body selected by the Franchisor. The arbitrator will have the right to award any relief deemed proper in the circumstances, including, without limitation, monetary damages (with interest on unpaid amounts from their due date(s)), specific performance, injunctive relief, and reimbursement of legal fees and related costs and disbursements to the prevailing party. The arbitrator will not have the authority to award punitive or aggravated damages (except as otherwise permitted by this Agreement), nor the right to declare any trademark generic or otherwise invalid. The parties to the arbitration are bound by the provisions of any limitation period or the time by which claims must be brought under Applicable Law, or under this Agreement, whichever expires earlier. The award and decision of the arbitrator will be final and binding and judgment on the award may be entered in any court of competent jurisdiction. The parties acknowledge and agree that any arbitration award may be enforced against any party to the arbitration in a court of competent jurisdiction and no such party shall have any right to contest the validity or enforceability of such award.

21.7 Third Parties

The arbitration provisions of this Agreement are intended to bind any third party non-signatory related or otherwise connected to any Dispute, including such parties provided for in Section 21.1.

21.8 Survival

The Agreement to arbitrate provided for in this Section 21 shall continue in full force and effect subsequent to and notwithstanding the expiration, termination, non-renewal or purported rescission of this Agreement, for any reason.

(1) NATURE OF THE DISPUTE AND MATERIAL FACTS RELIED UPON

A. THE PARTIES

3. The Claimant, the Guelph Franchisee, is a corporation incorporated pursuant to the laws of the province of Ontario, with its registered office located in Oshawa, Ontario. The Franchisee is a former franchisee of the "Tokyo Smoke" franchise system.

4. The Respondent, 2733181 Ontario Inc. (the “**Franchisor**”), is a corporation incorporated pursuant to the laws of the province of Ontario, with its registered office located in Toronto, Ontario. Among other things, the Franchisor sublicences the right to use certain trade names, trademarks, logos, and emblems for the operation of retail outlets that sell recreational cannabis products, accessories, and related items, in association with the “Tokyo Smoke” brand.

5. The Respondent, 2737503 Ontario Inc. (“**TS Leasing**”), is a corporation incorporated pursuant to the laws of Ontario, with its registered office located in Toronto, Ontario. TS Leasing is an affiliate of the Franchisor and carries on business as the Franchisor’s lease holding company. Among other things, TS Leasing negotiates and enters into leases in respect of real property. It then sublets the premises that are the subject of these leases to franchisees of the “Tokyo Smoke” system.

6. The Respondent, TS Programs Ltd. (“**TS Programs**”), is a corporation incorporated pursuant to the laws of Alberta, with its registered office located in Edmonton, Alberta. TS Programs is an affiliate of the Franchisor and oversees certain marketing and promotional programs for the “Tokyo Smoke” franchise system.

7. The Respondent, 2161907 Alberta Ltd. (the “**Indemnifier**”), is a corporation incorporated pursuant to the laws of Alberta, with its registered office located in Edmonton, Alberta. The Indemnifier is an affiliate of the Franchisor. Among other things, the Indemnifier is the indemnifier for the headlease agreement dated October 1, 2021, between TS Leasing, as tenant, and Fiera Real Estate Core Fund LP (the “**Landlord**”) as landlord (the “**Headlease**”).

8. The Respondent, Jürgen Schreiber (“**Schreiber**”), is a personal ordinarily resident in Ontario. Schreiber is a director and officer of the Franchisor, a director of TS Programs and a director of the Indemnifier.

9. The Respondent, Justin Farbstein (“**Farbstein**”), is a personal ordinarily resident in Ontario. Farbstein is a director and officer of the Franchisor and TS Leasing.

10. The Respondent, Josh Davidson (“**Davidson**”), is a personal ordinarily resident in Ontario. At all material times, Davidson was the “franchise development manager” for the Franchisor.

B. THE WISHART ACT

11. Pursuant to Section 5 of the Wishart Act, a franchisor is required to provide a prospective franchisee with a franchise “disclosure document” at least 14 days before the franchisor can take any money from the franchisee relating to the franchise or before the franchisee can enter into any agreement relating to the franchise with the franchisor. The “disclosure document” must comply with the requirements of the Wishart Act and the regulation thereto, being O. Reg. 581/00, in order for it to be deemed a “disclosure document” within the meaning of Section 1(1) of the Wishart Act.

12. The directors and officers of a franchisor corporation are obliged to certify the truth of the contents of the disclosure document and are liable, personally, for any misrepresentations or omissions contained in a disclosure document.

13. When a franchisee enters into a franchise agreement with a franchisor in circumstances where a franchisor fails to provide a franchisee with a “disclosure document” within the meaning

of Section 1(1) of the Wishart Act, the franchisee has two years from the date it signed the franchise agreement to rescind the franchise agreement pursuant to Section 6 of the Wishart Act.

14. Rescission in such instance is effected by the delivery of a notice of rescission pursuant to Section 6(2) of the Wishart Act, in accordance with Section 6(3) of the Wishart Act.

15. Following delivery of a notice of rescission and pursuant to Section 6(6) of the Wishart Act, the franchisor has up to 60 days to pay to the franchisee the amounts identified in the notice of rescission.

16. Such amounts are described in Section 6(6) of the Wishart Act as follows:

- (a) Any money received from or on behalf of the franchisee, other than money for inventory, supplies or equipment;
- (b) Amounts necessary to purchase from the franchisee any inventory the franchisee had purchased pursuant to the franchise agreement and remaining at the effective date of rescission, at a price equal to the purchase price paid by the franchisee;
- (c) The amount necessary to purchase from the franchisee any supplies and equipment that the franchisee had purchased pursuant to the franchise agreement, at a price equal to the purchase price paid by the franchisee; and
- (d) Amounts necessary to compensate the franchisee for any losses that the franchisee incurred in acquiring, setting up and operating the franchise, less the amounts set out in a. – c. above.

17. Both the “franchisor” and any “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act are jointly and severally liable to pay a franchisee’s claims made pursuant to Sections 6 of the Wishart Act.

18. A “franchisor” is defined by Section 1(1) of the Wishart Act to mean one or more persons who grant or offer to grant a franchise.

19. A “franchisor’s associate” is defined by Section 1(1) of the Wishart Act to include a person who controls the franchisor or is controlled by the franchisor, who was directly involved in the grant of the franchise to the franchisee, and/or who exercises operational control over the franchisee in the course of operating the franchise business.

C. THE FRANCHISE AGREEMENT

20. On or about January 17, 2022, the Franchisor, as franchisor, the Guelph Franchisee, as franchisee, and Michelle Paris (“**Michelle**”), as guarantor, entered into the following agreements:

- (a) a franchise agreement as between the Franchisor, as franchisor, the Franchisee, as franchisee, and Michelle, as guarantor, dated January 17, 2022;
- (b) a sublease agreement between TS Leasing, as sublandlord, and the Guelph Franchisee, as subtenant, dated January 17, 2022;
- (c) a promotion and marketing agreement between TS Programs, as marketer, and the Guelph Franchisee, as client, dated January 17, 2022 (the “**Marketing Agreement**”);

- (d) a consulting agreement between the Franchisor, as consultant, and the Guelph Franchisee, as client, dated January 17, 2022;
- (e) a professional services agreement between the Franchisor, as consultant, and the Guelph Franchisee, as customer, dated January 17, 2022;
- (f) a general security agreement between the Franchisor, as the secured party, and the Guelph Franchisee, as the debtor, dated January 17, 2022;
- (g) a franchisee auto-debit authorization agreement between the Franchisor, as franchisor, and the Guelph Franchisee, as franchisee, entered into on or about January 17, 2022; and
- (h) a share pledge agreement between the Franchisor, as franchisor, and Michelle, as pledgor, dated January 17, 2022 (all agreements being, collectively, the “**Franchise Agreement**”).

21. The Franchise Agreement granted the Guelph Franchisee the right to operate a “Tokyo Smoke” franchise (the “**Franchised Business**”) located at 35 Harvard Road, Unit #7A, Guelph, Ontario (the “**Premises**”).

D. EVENTS PRECEDING EXECUTION OF THE FRANCHISE AGREEMENT

22. Prior to the execution of the Franchise Agreement, representatives of the Franchisor repeatedly made representations to representatives of the Franchisee about the potential profitability of establishing a retail cannabis store under the “Tokyo Smoke” banner, and other representations about the nature of the Franchised Business. These are outlined in detail in the

Franchisee's notice of rescission dated December 30, 2022 (the "**Notice of Rescission**"), which is attached to this Demand for Arbitration as Schedule "A".

23. On February 23, 2021, Davidson, on behalf of the Franchisor, delivered via email a document entitled "Sample Business Plan" (the "**Sample Business Plan**"). In the body of the email, Davidson stated that the "Sample Business Plan" must not be distributed and that he didn't "typically send [the Sample Business Plan] out at this stage", but that the prospective franchisee's "level of interest" merited an exception. The Sample Business Plan contained various excel sheets with material financial information concerning the operations of three different "tiers" of Tokyo Smoke stores, including information as to average past and future projected revenue, cost of goods sold, and expenses that had been achieved and could be expected within each "tier".

24. On November 8, 2021, Davidson, on behalf of the Franchisor, delivered via email multiple spreadsheets pertaining to the financial performance of all then-current Tokyo Smoke stores (the "**Financial Performance Information**"). The Financial Performance Information included, but was not limited to, revenue information, gross profit information, and information as to the number of transactions for each existing Tokyo Smoke store in respect of the following periods:

- (a) January 2021 to August 2021;
- (b) October 24, 2021, to October 30, 2021;
- (c) October 31, 2021, to November 6, 2021; and
- (d) "Since Opening" .

25. On or about December 15, 2021, the Franchisor provided an electronic copy of a document with a version date of December 2021 entitled “Ontario Franchise Disclosure Document”, which purported to be a “disclosure document” within the meaning of the Wishart Act (the “**Purported Disclosure Document**”). The Purported Disclosure Document did not contain the Sample Business Plan nor the Financial Performance Information.

26. On December 23, 2021, the Franchisor provided an electronic copy of a document with an effective date of December 23, 2021, entitled “Statement of Material Changes for 2733181 Ontario Inc.” (the “**First SMC**”). On December 24, 2021, the Franchisor provided an electronic copy of a document with an effective date of December 24, 2021, entitled “Statement of Material Changes for 2733181 Ontario Inc.”, which purported to be a “statement of material change” in accordance with the meaning of the Wishart Act (the “**Second SMC**”). The First SMC and the Second SMC are hereinafter collectively referred to as the “**Purported SMCs**”. The Purported SMCs did not contain the Sample Business Plan nor the Financial Performance Information.

27. On January 10, 2022, the Franchisor delivered an execution copy of the Franchise Agreement to the Franchisee.

28. In addition, throughout this period, representatives of the Franchisor orally provided material facts and information in respect of the Franchised Business to representatives of the Franchisee. These communications include, but are not limited to:

- (a) Davidson’s repeated estimates of the operating costs and earning projections of the Franchised Business;

- (b) the statement by Matt Calabretta (“**Calabretta**”), the Franchisor’s regional manager, that the “break-even” point for the Franchised Business would be no earlier than 6-12 months after opening; and
- (c) the characterization of the Franchised Business by Davidson and Jim Jenkins (“**Jenkins**”), both “franchise development managers” for the Franchisor, as “hands-off” and operational without requiring the day-to-day involvement of the Guelph Franchisee’s principals (collectively, the “**Oral Representations**”).

E. THE FRANCHISOR’S BREACHES OF THE WISHART ACT

29. The Purported Disclosure Document and the Purported SMCs did not comply with the requirements of the Wishart Act and the Regulation. Accordingly, and contrary to Section 5(1) of the Wishart Act, the Guelph Franchisee did not receive a “disclosure document” prior to the time the Guelph Franchisee entered into the Franchise Agreement or paid to the Franchisor any consideration relating to the Franchised Business.

30. In addition, the Purported Disclosure Document nor the Purported SMCs contained the information disclosed in the Sample Business Plan, the Financial Performance Information or the Oral Representations.

31. The Purported Disclosure Document and the Purported SMCs failed to comply with the requirements of the Wishart Act and Regulation as they contained several material deficiencies, as particularized below.

32. Contrary to Section 5(3) of the Wishart Act, the Franchisor’s “disclosure document” was not delivered as one document, at one time. Rather, and as described above, material information

was delivered to the Guelph Franchisee in multiple documents, and orally, on multiple occasions, in piecemeal fashion. Specifically:

- (a) The Sample Business Plan:
 - (i) disclosed information regarding the past and potential future total revenue and margins of “Tokyo Smoke” stores depending upon their “tier”. This information constitutes an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location where information substantiating the projection is available for inspection; and
 - (ii) disclosed information regarding the past and potential future cost of goods sold and certain expenses of Tokyo Smoke stores depending on their “tier”. This information amounts to an estimate of annual operating costs. Contrary to Section 6.2 of the Regulation, the Franchisor failed to include a statement specifying the basis for the estimates, the assumptions underlying the estimates, and a location where information is available for inspection that substantiates the estimates.
- (b) The Financial Performance Information disclosed information regarding the total revenue and margins of existing Tokyo Smoke stores. This information amounts to an earnings projection. In violation of Section 6.3 of the Regulation, the Franchisor did not provide a statement specifying the reasonable basis for the projection, the assumptions underlying the projection, and a location where information is

available for inspection that substantiates the projection. Neither the Purported Disclosure Document nor the Purported SMCs contained the information disclosed in the Sample Business Plan.

- (c) Calabretta advised that the Guelph Franchisee should not expect to break-even for at least 6-12 months after the Guelph Franchisee opened the Franchised Business. The Purported Disclosure Document and the Purported SMCs failed to disclose this information.
- (d) Davidson and Jenkins advised that the Franchised Business would be a “hands-off” business, and that the Guelph Franchisee could expect to be able to hire a manager to run the business for it such that the principals of the Guelph Franchisee would not need to be involved in the day-to-day operations of the Franchised Business. The Purported Disclosure Document and the Purported SMCs failed to disclose this information.

33. Contrary to Section 5(4)(a) of the Wishart Act, the Purported Disclosure Document and the Purported SMCs failed to contain all material facts and/or material changes, as applicable, including material facts as prescribed. Specifically:

- (a) The Purported Disclosure Document and the Purported SMCs failed to disclose material facts contained in the Headlease. The material provisions in Headlease that were not disclosed in the Purported Disclosure Document, nor the Purported SMCs include, but are not limited to:

- (i) the amounts that the Guelph Franchisee would be required to pay in respect of additional rent for the Premises;
- (ii) the Fixturing Period (as defined in the Headlease) was to begin on approximately November 1, 2021 (the “**Possession Date**”) and end on the earlier of 120 days following the Possession Date and the date that the tenant opens for business. The Purported Disclosure Document and Purported SMC failed to include a warning that the Fixturing Period had already begun and that, as a result, the Guelph Franchisee would have less time to complete the build-out of the Franchised Business within the Fixturing Period;
- (iii) pursuant to Section 7.11 of the Headlease, the Landlord could, at any time after the 5th anniversary of the Commencement Date (as defined in the Headlease), terminate the Headlease by giving the tenant at least 6 months’ notice and, if the Landlord required vacant possession to “demolish, reconfigure, reconstruct and/or redevelop all or a substantial part of the Shopping Centre”, the tenant must deliver up vacant possession upon expiry of notice period. In addition, and pursuant to Section 7.11 of the Headlease, the tenant agreed that it would have no claim against the Landlord as a result of the exercise by the Landlord of this right under the Headlease and, upon such termination, all Rent (as defined in the Headlease) shall be apportioned to the effective date of such termination and upon compliance by each of the parties with their respective obligations under the Headlease up to and including the effective date of such termination, each of the parties shall

thereafter be released from all future obligations arising under the Headlease; and

- (iv) pursuant to Section 9.1 of the Headlease, if the Premises, in the opinion of the Architect (as defined in the Headlease), shall be incapable of being rebuilt and/or repaired or restored with reasonable diligence within 180 days of the happening of such destruction or damage, then the Landlord may, at its option, terminate the Headlease by notice in writing to the tenant given within 30 days of the date of the Landlord's receipt of the Architect's opinion and, in the event of such notice being so given, the Headlease would cease and become null and void from the date of such destruction or damage and the tenant would be required to immediately surrender the Premises and all interest therein to the Landlord and the Rent shall be apportioned and shall be payable by the tenant only to the date of such destruction or damage and the Landlord may re-enter and repossess the Premises discharged of the Headlease;

- (b) The Purported Disclosure Document failed to include copies of the Sample Business Plan and the Financial Performance Information, which contained material facts in regard to the financial performance of existing Tokyo Smoke stores and the expected financial performance of the Franchised Business;

- (c) The Purported Disclosure Document failed to include any information about TS Programs, an affiliate of the Franchisor, and an entity with which the Guelph

Franchisee would be required to contract and indemnify pursuant to the Marketing Agreement;

- (d) The Purported Disclosure Document failed to disclose that the Guelph Franchisee would be required to indemnify TS Programs in accordance with the Marketing Agreement;
- (e) The Purported Disclosure Document failed to disclose that the Guelph Franchisee would be unable to obtain financing or access basic financial services for the Franchised Business from any of the major banks in Canada; and
- (f) The Purported Disclosure Document failed to disclose that, despite the Franchisor's oral representations that the Franchised Business would be a "hands-off" business, the Guelph Franchisee would be unable to run the Franchised Business in a "hands-off" manner unless it obtained and maintained certain margins, which were not possible for the Guelph Franchisee to obtain and/or maintain.

34. Contrary to Section 5(5) of the Act, the Franchisor failed to provide the Guelph Franchisee and Michelle with a "statement of material change" summarizing the material facts and/or the material changes (as defined by the Wishart Act) contained in and arising from the Headlease, including, but not limited to, those material facts set out in paragraph 34(a).

35. Contrary to Section 5(6) of the Wishart Act, the information contained in the Purported Disclosure Document and in the Purported SMCs was not accurately, clearly, and concisely set out. The information contained in the Purported Disclosure Document and the Purported SMCs was unclear, inaccurate, and incomplete.

36. Contrary to Section 2.5 of the Regulation, the Purported Disclosure Document did not include an accurate statement, including a description of details, indicating whether the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person. Specifically, the Franchisor failed to disclose material facts in regard to multiple ongoing civil actions involving allegations of unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, which were pending against the franchisor's associate, the Indemnifier, namely:

- (a) 2161907 ALBERTA LTD. v. 11180673 CANADA INC.
- (b) TRIPSETTER INC. v. 2161907 ALBERTA LTD. et al; and
- (c) FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION v. 2161907 ALBERTA LTD. O/A TOKYO SMOKE.

37. Contrary to Section 6.1 of the Regulation, the Purported Disclosure Document failed to adequately disclose a list of all of the franchisee's costs associated with the establishment of the franchise, including, but not limited to, failing to disclose the amount of working capital that the Guelph Franchisee would need before it could expect to generate a profit.

38. Contrary to Sections 6.2 and 6.3 of the Regulation, the Franchisor provided estimates of annual operating costs and earnings projections outside of a "disclosure document" and/or any

“statement of material change” and without providing the requisite underlying and substantiating information.

39. The Franchisor’s breaches of the Wishart Act deprived the Guelph Franchisee of the opportunity to make an informed investment decision about whether to invest in the Franchised Business.

F. RESCISSION OF THE FRANCHISE AGREEMENT

40. By virtue of the Franchisor failing to deliver the required franchise disclosure document, the Guelph Franchisee was entitled to exercise its statutory right of rescission under the Wishart Act.

41. On December 30, 2022, the Guelph Franchisee delivered the Notice of Rescission pursuant to Section 6(2) of the Wishart Act in accordance with Section 6(3) of the Wishart Act.

42. The particulars of the amounts owing to the Guelph Franchisee for which the Franchisor and all franchisor’s associates are jointly and severally obligated to pay were outlined, on a preliminary basis, in the Notice of Rescission.

G. FOLLOWING DELIVERY OF THE NOTICE OF RESCISSION

43. Pursuant to Section 6(6) of the Wishart Act, a franchisor and any franchisor’s associates have up to sixty days from the delivery of a notice of rescission to pay statutory compensation to a franchisee in accordance with this Section.

44. As of the date this Demand for Arbitration, none of the Respondents have paid any amounts claimed by the Guelph Franchisee in the Notice of Rescission.

H. CLAIMS UNDER SECTION 7 OF THE WISHART ACT

45. As a result of the Respondents' breaches of Section 5 of the Wishart Act in failing to deliver a disclosure document, the Guelph Franchisee has suffered losses and damages including, but not limited to, the amounts set out above.

46. If the Guelph Franchisee had received a disclosure document in accordance with the Wishart Act, it would not have purchased the Franchised Business nor entered into the Franchise Agreement.

47. In particular:

- (a) the Sample Business Plan materially overstated the profitability of the Franchised Business;
- (b) the Financial Performance Information materially overstated the profitability of the Franchised Business;
- (c) the Oral Representations:
 - (i) promised that the franchise would be a "hands-off" business when that could only be accomplished if the franchisee achieved certain unrealistic revenue levels; and
 - (ii) materially overstated the profitability of the Franchised Business.

48. The Guelph Franchisee suffered losses because of these misrepresentations.

49. The Respondents, or any of them, are liable to the Guelph Franchisee for losses and damages pursuant to Section 7 of the Wishart Act.

I. FRANCHISOR'S ASSOCIATES

50. TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, are “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act, and, pursuant to Section 8 of the Wishart Act, are jointly and severally liable with the Franchisor for all amounts claimed by the Guelph Franchisee.

51. At all material times, TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, were controlled by the Franchisor, or were controlled by another person who also controlled, directly or indirectly, the Franchisor.

52. TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, were directly involved in the grant of the franchise to the Guelph Franchisee by reviewing and approving the grant of the franchise and/or making representations to the Guelph Franchisee on behalf of the Franchisor for the purpose of granting the franchise, marketing the franchise, or otherwise offering to grant the franchise.

53. TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, exercised significant operational control over the Guelph Franchisee and were persons to whom the Guelph Franchisee had a continuing financial obligation in respect of the franchise.

(2) ISSUES TO BE DETERMINED AT ARBITRATION

54. Did the Guelph Franchisee validly rescind the Franchise Agreement pursuant to Section 6(2) of the Wishart Act? If so, what quantum of statutory compensation/damages is owed to the Guelph Franchisee?
55. Did the Guelph Franchisee establish a claim for misrepresentation pursuant to Section 7 of the Wishart Act? If so, what quantum of damages is owed to the Guelph Franchisee?
56. Do the Respondents, TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, meet the definition of “franchisor’s associate” under Section 1(1) of the Wishart Act, for the purposes of the claims made herein?

(3) RELIEF CLAIMED

57. The Guelph Franchisee claims:
- (a) A declaration that the Respondent, the Franchisor, is a “franchisor” within the meaning of Section 1(1) of the Wishart Act for the purposes of the claims herein;
 - (b) A declaration that all “franchise agreements” within the meaning of Section 1(1) of the Wishart Act, between the Franchisee and the Respondents were validly rescinded by the Franchisee, by delivery of the Notice of Rescission in accordance with Section 6(3) of the Wishart Act;
 - (c) Statutory compensation pursuant to Section 6(6) of the Wishart Act, currently determined to be in the amount of \$630,000, or such other amount of statutory compensation as the Franchisee may prove or the Tribunal may determine;

- (d) A declaration that the Respondents, TS Leasing, TS Programs, the Indemnifier, Farbstein, Schreiber and Davidson, or any of them, are “franchisor’s associates” within the meaning of Section 1(1) of the Wishart Act, for the purposes of the claims herein;
- (e) In addition, or in the alternative to paragraph 1(d), damages in the sum of \$630,000 pursuant to Section 7 of the Wishart Act for misrepresentation and/or for the Franchisor’s failure to comply with Section 5 of the Wishart Act;
- (f) Prejudgment interest in accordance with Section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) Postjudgment interest in accordance with Section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) The costs of the arbitration, including legal fees and related costs and disbursements, plus all applicable taxes; and
- (i) Such further and other relief as counsel may request, and the Tribunal deems just.

(4) PROPOSED APPOINTMENT OF ARBITRAL BODY

58. The Guelph Franchisee proposes that the Franchisor appoint the following arbitration body:

ADR Chambers
180 Duncan Mill Road, 4th Floor
Toronto, Ontario
M3B 1Z6 Canada.

August 10, 2023

SOTOS LLP

180 Dundas Street West

Suite 1200

Toronto ON M5G 1Z8

Adrienne Boudreau (LSO # 57348D)

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Tel: 416-977-0007

Fax: 416-977-0717

Lawyers for the Claimant

TAB D

This is Exhibit "D" referred to in the Affidavit of Sonia Cavalieri D'oro sworn before me this 27th day of November, 2024.

A handwritten signature in black ink, appearing to be "S. D'oro", written over a horizontal line.

A Commissioner, etc.



CV-24-00716687-0000
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court Seal)

2810434 ONTARIO INCORPORATED

Applicant

and

2733181 ONTARIO INC., 2737503 ONTARIO INC., 2161907 ALBERTA LTD.,
TS PROGRAMS LTD., JUSTIN FARBSTEIN, JÜRGEN SCHREIBER and
JOSH DAVIDSON

Respondents

APPLICATION UNDER Section 10(1) of the *Arbitration Act, 1991*, S.O. 1991, c. 17.

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In writing
- In person
- By telephone conference
- By video conference

at a link to be provided by the court on a date to be determined.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer,

-2-

serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 20th, 2024 Issued by 
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 8th Floor
Toronto ON M5G 1R7

TO: 2733181 Ontario Inc.
c/o Katz Group
Box 310 Edmonton Main
Edmonton AB T5J 2J6

AND TO: 2737503 Ontario Inc.
77 King Street West, TD Centre 400
Toronto ON M5K 0A1

AND TO: 2161907 Alberta Ltd.
Suite 2700, Edmonton Tower
10111 - 104 Avenue NW
Edmonton AB T5J 0J4

AND TO: TS Programs Ltd.
161 Bay Street, Suite 4540
Toronto ON M5J 2S1

AND TO: Justin Farbstein
161 Bay Street, Suite 4540
Toronto ON M5J 2S1

-3-

AND TO: Jürgen Schreiber
161 Bay Street, Suite 4540
Toronto ON M5J 2S1

AND TO: Josh Davidson
106 Riverview Beach Road
Pefferlaw ON L0E 1N0

-4-

APPLICATION

1. The Applicant, 2810434 Ontario Incorporated (the “**Hamilton Franchisee**”), makes an application for:

- (a) An order appointing Adam Ship (ADR Chambers) to arbitrate the Dispute (defined below);
- (b) In the event Mr. Ship is unable or unwilling to be appointed, an order appointing L. Leslie Dizgun (ADR Chambers) to arbitrate the Dispute;
- (c) In the event that both Mr. Ship and Mr. Dizgun are unable or unwilling to be appointed, an order permitting the Hamilton Franchisee to appoint the arbitral tribunal and to submit the Dispute to the arbitral tribunal;
- (d) In the alternative to (c), above, an order appointing the arbitration body and/or the arbitral tribunal pursuant to a process specified by this Honourable Court;
- (e) The costs of this application from the Franchisor, or, alternatively, jointly from all of the Respondents, on a complete indemnity basis, plus all applicable taxes; and
- (f) Such further and other relief as this Honourable Court may deem just.

2. The grounds for the application are:

- (a) The Hamilton Franchisee is a former franchisee of the “Tokyo Smoke” franchise system, pursuant to a franchise agreement it entered into with the Franchisor, dated August 27, 2021 (the “**Franchise Agreement**”);

-5-

- (b) On January 20, 2023, the Hamilton Franchisee rescinded the Franchise Agreement, together with all related and ancillary agreements, by delivering a notice of rescission to the Franchisor pursuant to section 6(2) of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c. 3 (the “**Wishart Act**”) in accordance with section 6(3) of the Wishart Act (the “**Notice of Rescission**”);
- (c) The Notice of Rescission sought rescission of each and every “franchise agreement” within the meaning of Section 1(1) of the Wishart Act, together with statutory compensation in accordance with Section 6(6) of the Wishart Act;
- (d) To date, the Franchisor has failed to pay any compensation to the Hamilton Franchisee in respect of the Notice of Rescission;
- (e) Section 21 of the Franchise Agreement contains the following arbitration agreement:

21.2 Arbitration

Any Dispute between or involving the Franchisee, the Guarantor, the Franchisor and/or the Licensor (and/or any affiliates of the Franchisee, the Guarantor, the Franchisor or the Licensor and/or any of their respective shareholders, directors, partners, officers, employees, agents, attorneys, accountants, associates or guarantors, and/or any of their successors or assigns) not resolved by way of mediation in accordance with this Agreement shall be submitted to arbitration pursuant to the rules of an arbitration body selected by the Franchisor or the Licensor. To the extent that there is any difference between the rules of the arbitration body selected and this Agreement, this Agreement shall prevail. The arbitration shall be commenced by way of written notice given to the parties to the Dispute. All parties shall bear their own costs for participation in the arbitration, except for any external costs of conducting the arbitration, including the arbitrator’s costs, which shall be borne equally between them. The Franchisee, the Guarantor and the Franchisor agree that all aspects of the arbitration including statements made and documents produced within the arbitration will be confidential in nature and will not be admissible in any subsequent legal proceeding, subject to any disclosures required by Applicable Law.

-6-

21.5 Awards and Decisions

The arbitration will be heard by one (1) arbitrator who shall be appointed pursuant to the rules of the designated arbitration body selected by the Franchisor. The arbitrator will have the right to award any relief deemed proper in the circumstances, including, without limitation, monetary damages (with interest on unpaid amounts from their due date(s)), specific performance, injunctive relief, and reimbursement of legal fees and related costs and disbursements to the prevailing party. The arbitrator will not have the authority to award punitive or aggravated damages (except as otherwise permitted by this Agreement), nor the right to declare any trademark generic or otherwise invalid. The parties to the arbitration are bound by the provisions of any limitation period or the time by which claims must be brought under Applicable Law, or under this Agreement, whichever expires earlier. The award and decision of the arbitrator will be final and binding and judgment on the award may be entered in any court of competent jurisdiction. The parties acknowledge and agree that any arbitration award may be enforced against any party to the arbitration in a court of competent jurisdiction and no such party shall have any right to contest the validity or enforceability of such award.

21.7 Third Parties

The arbitration provisions of this Agreement are intended to bind any third party non-signatory related or otherwise connected to any Dispute, including such parties provided for in Section 21.1.

21.8 Survival

The Agreement to arbitrate provided for in this Section 21 shall continue in full force and effect subsequent to and notwithstanding the expiration, termination, non-renewal or purported rescission of this Agreement, for any reason.

- (f) Pursuant to section 21.2 of the Franchise Agreement, all disputes “shall be submitted to arbitration pursuant to the rules of an arbitration body selected by the Franchisor”;
- (g) On July 13, 2023, the Hamilton Franchisee served a demand for arbitration dated July 13, 2023 (the “**Demand for Arbitration**”) upon the Franchisor, and several related parties it alleged to be “franchisor’s associates” as defined by the Wishart Act, seeking certain relief as outlined in the Demand for Arbitration, together with statutory compensation pursuant to Section 6(6) of the Wishart Act (the “**Dispute**”);

-7-

- (h) Contrary to its obligations under the section 21.2 of the Franchise Agreement, the Franchisor refused to take any steps to appoint the arbitrator on the basis that mediation was a prerequisite for arbitration;
- (i) The Hamilton Franchisee disagreed with the Franchisor's position that mediation was a prerequisite for arbitration under the Franchise Agreement, but nonetheless agreed to attend at a mediation, strictly under protest and without prejudice to its rights to later take the position that mediation was not a precondition for arbitration and to recover the costs incurred in respect of the unnecessary mediation;
- (j) On November 17, 2023, counsel for the parties attended a conference with Mr. Silver, the Franchisor's preferred mediator;
- (k) During this conference, the parties established a timetable for the mediation, on consent, and scheduled the mediation hearing for January 30, 2024;
- (l) The mediation was held and completed on January 30, 2024;
- (m) No aspect of the Dispute was resolved at the mediation;
- (n) Pursuant to section 21.1 of the Franchise Agreement, any dispute that "cannot be resolved within thirty (30) days of the appointment of the mediator" must be submitted to arbitration;
- (o) Following the completion of the mediation, the Franchisor did not take any steps to appoint the arbitrator;

-8-

- (p) On February 15, 2024, the Hamilton Franchisee served upon the Franchisor and the alleged “franchisor’s associates” a revised and updated demand for arbitration (the “**Revised and Updated Demand for Arbitration**”) with an accompanying cover letter again requesting that the Franchisor appoint the arbitrator in accordance with its obligations under the Franchise Agreement;
- (q) The Franchisor failed to take any steps to appoint the arbitrator;
- (r) Following delivery of the Revised and Updated Demand for Arbitration, counsel for the Hamilton Franchisee made several requests to counsel for the Franchisor requesting that the Franchisor appoint the arbitrator;
- (s) Still, the Franchisor failed to take any steps to appoint the arbitrator;
- (t) It is now more than eight months since the Hamilton Franchisee served the original Demand for Arbitration, and to date the Franchisor has failed to appoint the arbitrator to decide the Dispute, despite repeated requests from the Hamilton Franchisee that it do so;
- (u) Section 10(1) of the *Arbitration Act, 1991*, SO 1991, c 17;
- (v) Rules 14.05 and 38 of the *Rules of Civil Procedure*. RRO 1990, Reg. 194;
- (w) This Notice of Application may be served outside of Ontario pursuant to Rules 17.02(f)(i), 17.02(f)(ii), and 17.02(f)(iii) of the *Rules of Civil Procedure*, RRO 1990, Reg 194, specifically:

-9-

- (i) The Franchise Agreement, a contract, was made in Ontario;
 - (ii) Section 20.11 of the Franchise Agreement states that it shall be construed in accordance with and governed by the laws of Ontario, and that the venue of any court proceedings relating to the subject of the Franchise Agreement shall be the City of Toronto, Ontario;
3. The following documentary evidence will be used at the hearing of the application:
- (a) The affidavit of Karen Whibley, to be affirmed; and
 - (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March ^{20th} ~~19~~, 2024

SOTOS LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Adrienne Boudreau (LSO # 57348D)
aboudreau@sotos.ca
Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Applicant

2810434 ONTARIO INCORPORATED
Applicant

-and-

2733181 ONTARIO INC. et al.
Respondents

CV-24-00716687-0000
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

SOTOS LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Adrienne Boudreau (LSO # 57348D)
aboudreau@sotos.ca
Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

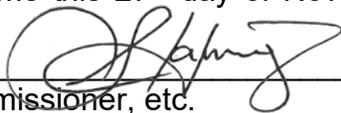
Tel: 416-977-0007

Lawyers for the Applicant

Email for parties served:
Jonathan Mesiano-Crookston:
j.mcrookston@goldmanhinc.com
Neil Kotnala: neil@nklitigation.com

TAB E

This is Exhibit "E" referred to in the Affidavit of Sonia Cavalieri D'oro sworn before me this 27th day of November, 2024.

A handwritten signature in black ink, appearing to be "S. P. ...", written over a horizontal line.

A Commissioner, etc.

CITATION:

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)
CIVIL ENDORSEMENT FORM
(Rule 59.02(2)(c)(i))

BEFORE	Judge AKAZAKI J.	Court File Number: CV-24-00716872-0000 (TS Guelph) CV-24-0071687-0000 (TS Hamilton) CV-24-00718529-0000 (TS Stratford)
---------------	----------------------------	--

Title of Proceeding:		
100032072 ONTARIO INC. et al	Plaintiff(s)	
-v-		
2733181 ONTARIO INC. et al	Defendants(s)	

Case Management: <input type="checkbox"/> Yes If so, by whom:	No
---	-----------

Participants and Non-Participants: *(Rule 59.02(2)(vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Applicant 100032072 ONTARIO INC.	BOUDREAU, ADRIENNE	aboudreau@sotos.ca		Y
2) Applicant 2733181 ONTARIO INC.				
3) Applicant 2737503 ONTARIO INC.				
4) Respondent DAVIDSON, JOSH	KOTNALA, NEIL	neil@nklitigation.com	647-802-8190	Y
5) Respondent 2161907 ALBERTA LTD.	MESIAN-CROOKSTON, JONATHAN	j.mcrookston@goldmanhine.com AND y.yuan@goldmanhine.com		Y
6) Respondent TS PROGRAMS LTD.				
7) Respondent FARBSTEIN, JUSTIN				
8) Respondent SCHREIBER, JÜRGEN				

Date Heard: <i>(Rule 59.02(2)(c)(iii))</i> August 23, 2024

Nature of Hearing (mark with an "X"): <i>(Rule 59.02(2)(c)(iv))</i>				
<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Appeal	<input type="checkbox"/> Case Conference	<input type="checkbox"/> Pre-Trial Conference	<input type="checkbox"/> Application

Format of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))

In Writing Telephone Videoconference In Person

If in person, indicate courthouse address:

Relief Requested: (Rule 59.02(2)(c)(v))

Applications to appoint common arbitrator in three franchise law disputes.

Disposition made at hearing or conference (operative terms ordered): (Rule 59.02(2)(c)(vi))

1. Adam Ship is hereby appointed as the arbitrator to resolve these three franchise disputes.
2. The franchisor respondents, apart from Josh Davidson, shall pay the applicants their costs of the three applications, in the combined amount of \$14,000.
3. A formal order is not required to give effect to the above orders, but either party may take out a formal order if required.

Costs: On a _____ indemnity basis, fixed at \$ _____ are payable
by _____ to _____ [when]

Brief Reasons, if any: (Rule 59.02(2)(b))

- [1] These three applications for appointment of an arbitrator under s. 10(1)(b) of the *Arbitration Act, 1991*, were returnable before me in writing, further to my direction of June 17, 2024. It is not clear whether the issue of the defence of Josh Davidson has been resolved, but it was not an issue presented by the parties in the most recent materials. The applicants have indicated no costs are sought as against Mr. Davidson.
- [2] Through process of exchange of materials, the parties agree that arbitrator Adam Ship is both qualified as a legal expert in franchise law. The applicants have put him forward, and the respondent has included him in a lottery of equally acceptable candidates. By process of elimination, Mr. Ship is to be the one. He has agreed to accept the appointment and there are no conflicts. All remaining candidates had one issue or another to give pause to their potential appointment.
- [3] Although this matter was eventually resolved on consent or based on the respondent's agreement to Mr. Ship in a lottery involving several acceptable candidates, the agreement did not come together until the exchange of materials. The applicants did bear the burden of having their lawyers prepare anticipated arguments for objection to the remaining candidate arbitrators. All the candidates of the parties were reputable and highly qualified. However, the applicants' insistence on an arbitrator with expertise in the niche area of franchise law was justified. Thus, although a consent did materialize in the end, the applicant group was put to the cost and effort of justifying their positions regarding the respondent's candidates.

[4] The applicants' costs demand was for \$24,085 on a full indemnity basis. The respondents' costs outline set a figure of \$3,872 for partial indemnity costs.

[5] The issue regarding the applicants' costs is somewhat similar, even in quantum, to Kimmel J.'s decision in *1802655 Ontario Inc. v. Jenabieh*, 2019 ONSC 2796 (CanLII), at para. 10. The court in that case awarded costs to the moving parties on a partial indemnity basis, although the respondents appear to have been responsible for the delay in appointment of the arbitrator. That said, every case has its distinct features and events, including the efforts of counsel outside the formal court setting to negotiate a desirable outcome.

[6] Even on a partial indemnity basis, the applicants' costs demand is more than three times that of the respondents. I do appreciate that, with three franchisee clients, their counsel must necessarily duplicate some of the work in advising and representing their interests. The costs associated with this application should be known by the respondent as a potential expense in the arbitral process contemplated in its agreements. I therefore award the applicants their costs on a partial indemnity scale, in the all-inclusive amount of \$14,000.

Additional pages attached: Yes No

August 23

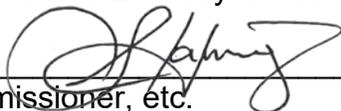
, 20 **24**

Date of Endorsement (*Rule 59.02(2)(c)(ii)*)

Signature of Judge/Associate Judge (*Rule 59.02(2)(c)(i)*)

TAB F

This is Exhibit "F" referred to in the Affidavit of Sonia Cavalieri D'oro sworn before me this 27th day of November, 2024.

A handwritten signature in black ink, appearing to be "S. Cavalieri", written over a horizontal line.

A Commissioner, etc.

Ministry of Public and
Business Service Delivery

Profile Report

TS INVESTMENTS CORP. as of November 25, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	TS INVESTMENTS CORP.
Ontario Corporation Number (OCN)	2838900
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	May 10, 2021
Registered or Head Office Address	77 King Street West, Suite 400, Toronto, Ontario, M5K 0A1, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

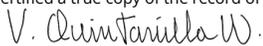
Minimum Number of Directors 1
Maximum Number of Directors 10

Name BRAD GILEWICH
Address for Service 10111 104 Avenue Nw, Suite 2700, Edmonton, Alberta, T5J
0J4, Canada
Resident Canadian Yes
Date Began July 13, 2021

Name PAUL T. MARCACCIO
Address for Service 590 King Street W - 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Resident Canadian Yes
Date Began February 01, 2022

Name JURGEN SCHREIBER
Address for Service 590 King Street W - 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Resident Canadian No
Date Began May 10, 2021

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Director/Registrar

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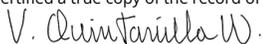
Active Officer(s)

Name PAUL T. MARCACCIO
Position Chief Financial Officer
Address for Service 590 King Street W - 4th Floor, Toronto, Ontario, M5V 1M3, Canada
Date Began February 01, 2022

Name JURGEN SCHREIBER
Position Chief Executive Officer
Address for Service 161 Bay Street, Suite 4540, Toronto, Ontario, M5J 2S1, Canada
Date Began May 10, 2021

Name ANDY WILLIAMS
Position President
Address for Service 590 King Street W- 4th Floor, Toronto, Ontario, M5V 1M3, Canada
Date Began October 13, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.



Director/Registrar

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Corporate Name History

Name	TS INVESTMENTS CORP.
Effective Date	August 02, 2024
Previous Name	OEG RETAIL CANNABIS INC.
Effective Date	July 09, 2021
Previous Name	2838900 ONTARIO INC.
Effective Date	May 10, 2021

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

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V. Quintanilla W.

Director/Registrar

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Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Document List

Filing Name	Effective Date
Annual Return - 2024 PAF: JURGEN SCHREIBER	November 19, 2024
Annual Return - 2023 PAF: JURGEN SCHREIBER	November 19, 2024
CIA - Notice of Change PAF: COLLEEN CEBULIAK	October 08, 2024
BCA - Articles of Amendment	August 02, 2024
Annual Return - 2022 PAF: JURGEN SCHREIBER	May 13, 2024
CIA - Notice of Change PAF: Colleen CEBULIAK	October 28, 2022
BCA - Articles of Amendment	August 08, 2022
Annual Return - 2021 PAF: Leah TOLTON	May 06, 2022
CIA - Notice of Change PAF: Leah TOLTON	February 17, 2022
CIA - Notice of Change PAF: LEAH TOLTON - OTHER	September 01, 2021
CIA - Notice of Change PAF: LEAH TOLTON - OTHER	August 31, 2021
CIA - Initial Return PAF: JUSTIN FARBSTAIN - DIRECTOR	July 28, 2021
BCA - Articles of Amendment	July 09, 2021
BCA - Articles of Incorporation	May 10, 2021

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

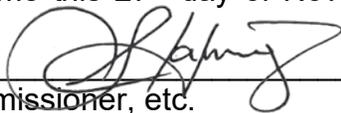
V. Quintanilla W.

Director/Registrar

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TAB G

This is Exhibit "G" referred to in the Affidavit of Sonia Cavalieri D'oro sworn before me this 27th day of November, 2024.

A handwritten signature in black ink, appearing to be "S. P. ...", written over a horizontal line.

A Commissioner, etc.

Ministry of Public and
Business Service Delivery

Profile Report

2733181 ONTARIO INC. as of November 25, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	2733181 ONTARIO INC.
Ontario Corporation Number (OCN)	2733181
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	December 19, 2019
Registered or Head Office Address	77 King Street West, Suite 400, Toronto, Ontario, M5K 0A1, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

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Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name PAUL T. MARCACCIO
Address for Service 590 King Street W - 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Resident Canadian Yes
Date Began October 13, 2022

Name JURGEN SCHREIBER
Address for Service 590 King Street West, 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Resident Canadian No
Date Began March 31, 2021

Name ANDY WILLIAMS
Address for Service 590 King Street West, Toronto, Ontario, M5V 1M3, Canada
Resident Canadian Yes
Date Began July 01, 2023

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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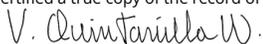
Active Officer(s)

Name GREG BEDFORD
Position Treasurer
Address for Service 590 King Street W- 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Date Began October 13, 2022

Name JURGEN SCHREIBER
Position Chief Executive Officer
Address for Service 590 King Street W - 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Date Began October 13, 2022

Name ANDY WILLIAMS
Position President
Address for Service 590 King Street W- 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Date Began October 13, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.



Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Corporate Name History

Name

2733181 ONTARIO INC.

Effective Date

December 19, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Additional historical information may exist in paper or microfiche format.

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

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Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

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V. Quintanilla W.

Director/Registrar

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Document List

Filing Name	Effective Date
Annual Return - 2024 PAF: JURGEN SCHREIBER	November 19, 2024
Annual Return - 2023 PAF: JURGEN SCHREIBER	November 19, 2024
CIA - Notice of Change PAF: COLLEEN CEBULIAK	June 26, 2024
Annual Return - 2022 PAF: JURGEN SCHREIBER	May 13, 2024
CIA - Notice of Change PAF: Colleen CEBULIAK	October 28, 2022
Annual Return - 2021 PAF: Leah TOLTON	May 06, 2022
CIA - Notice of Change PAF: JUSTIN FARBSTEIN - DIRECTOR	May 11, 2021
Annual Return - 2020 PAF: BRAD GILEWICH - OTHER	December 27, 2020
Annual Return - 2020 PAF: LEAH TOLTON - OTHER	April 23, 2020
CIA - Initial Return PAF: JUSTIN FARBSTEIN - DIRECTOR	December 20, 2019
BCA - Articles of Incorporation	December 19, 2019

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

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Ministry of Public and
Business Service Delivery

Profile Report

2737503 ONTARIO INC. as of November 25, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	2737503 ONTARIO INC.
Ontario Corporation Number (OCN)	2737503
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	January 17, 2020
Registered or Head Office Address	77 King Street West Street West, Suite 400, Toronto, Ontario, M5K 0A1, Canada

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Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name PAUL T. MARCACCIO
Address for Service 590 King Street W - 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Resident Canadian Yes
Date Began October 13, 2022

Name JURGEN SCHREIBER
Address for Service 590 King Street West, 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Resident Canadian No
Date Began March 31, 2021

Name ANDY WILLIAMS
Address for Service 590 King Street West, 4th Floor, Toronto, Ontario, M5V 1M3,
Canada
Resident Canadian Yes
Date Began July 01, 2023

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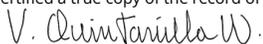
Active Officer(s)

Name GREG BEDFORD
Position Treasurer
Address for Service 590 King Street West, 4th Floor, Toronto, Ontario, M5V 1M3, Canada
Date Began June 14, 2024

Name JURGEN SCHREIBER
Position Chief Executive Officer
Address for Service 590 King Street West, 4th Floor, Toronto, Ontario, M5V 1M3, Canada
Date Began March 31, 2021

Name ANDY WILLIAMS
Position President
Address for Service 590 King Street W - 4th Floor, Toronto, Ontario, M5V 1M3, Canada
Date Began October 13, 2022

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Corporate Name History

Name

2737503 ONTARIO INC.

Effective Date

January 17, 2020

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Active Business Names

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Expired or Cancelled Business Names

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Annual Return - 2023 PAF: JURGEN SCHREIBER	November 19, 2024
CIA - Notice of Change PAF: COLLEEN CEBULIAK	June 26, 2024
Annual Return - 2022 PAF: JURGEN SCHREIBER	May 13, 2024
CIA - Notice of Change PAF: ANDY WILLIAMS	March 07, 2024
CIA - Notice of Change PAF: LEAH TOLTON	January 31, 2023
CIA - Notice of Change PAF: Colleen CEBULIAK	October 19, 2022
Annual Return - 2021 PAF: Leah TOLTON	May 06, 2022
CIA - Notice of Change PAF: JUSTIN FARBSTEIN - DIRECTOR	May 11, 2021
Annual Return - 2020 PAF: BRAD GILEWICH - OTHER	December 27, 2020
Annual Return - 2020 PAF: LEAH TOLTON - OTHER	April 27, 2020
CIA - Initial Return PAF: JUSTIN FARBSTEIN - DIRECTOR	February 06, 2020
BCA - Articles of Incorporation	January 17, 2020

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Director/Registrar

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Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2024/11/25
Time of Search: 08:26 AM
Service Request Number: 43401604
Customer Reference Number: 05943614-EDD3_5_4835181

Corporate Access Number: 2021619073
Business Number: 704434885
Legal Entity Name: 2161907 ALBERTA LTD.

Legal Entity Status: Con Out
Alberta Corporation Type: Numbered Alberta Corporation
Registration Date: 2018/12/18 YYYY/MM/DD

Registered Office:

Street: 2500-10220 103 AVE NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5J0K4

Records Address:

Street: 2500-10220 103 AVE NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5J0K4

Email Address: CORPORATE.EDMONTON@DENTONS.COM

Directors:

Last Name: MARCACCIO
First Name: PAUL
Middle Name: T.
Street/Box Number: 590 KING STREET W - 4TH FLOOR
City: TORONTO

Province: ONTARIO
Postal Code: M5V1M3

Last Name: SCHREIBER
First Name: JURGEN
Street/Box Number: 590 KING STREET W - 4TH FLOOR
City: TORONTO
Province: ONTARIO
Postal Code: M5V1M3

Last Name: WILLIAMS
First Name: ANDY
Street/Box Number: 590 KING STREET WEST - 4TH FLOOR
City: TORONTO
Province: ONTARIO
Postal Code: M5V1M3

Voting Shareholders:

Last Name: 2675970 ONTARIO INC.
Street: 2500-10220 103 AVE NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5J0K4
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE ELECTRONIC ATTACHMENT
Share Transfers Restrictions: SEE ELECTRONIC ATTACHMENT
Min Number Of Directors: 1
Max Number Of Directors: 9
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE ELECTRONIC ATTACHMENT

Other Information:**Continuance Out**

Jurisdiction Name: ONTARIO
Corporate Access Number in New Jurisdiction: 5011492
Name in New Jurisdiction: 5011492 ONTARIO LTD.
Continuance Out Date: 2024/11/20 YYYY/MM/DD

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2024	2024/11/12

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2018/12/18	Incorporate Alberta Corporation
2019/06/22	Change Address
2020/02/23	Update BN
2023/02/24	Change Agent for Service
2024/09/10	Change Director / Shareholder
2024/11/12	Enter Annual Returns for Alberta and Extra-Provincial Corp.
2024/11/19	Request Continuance to Another Jurisdiction
2024/11/20	Complete Continuance to Another Jurisdiction

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2018/12/18
Restrictions on Share Transfers	ELECTRONIC	2018/12/18
Other Rules or Provisions	ELECTRONIC	2018/12/18
Statutory Declaration Notice Error	10000907121761828	2019/01/17
Letter - Spelling Error	10000107121762186	2021/10/30

Articles of Continuance	10000707148261828	2024/11/20
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The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



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
2675970 ONTARIO INC. et al.

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceeding commenced at Toronto

AFFIDAVIT OF SONIA CAVALIERI D'ORO
(SWORN NOVEMBER 27, 2024)

LOOPSTRA NIXON LLP
130 Adelaide St. West, Suite 2800
Toronto, ON Canada M5H 3P5

Graham Phoenix LSO#: 52650N
gphoenix@LN.law
Tel: 416.748.4776

Shahrzad Hamraz LSO #: 85218H
shamraz@LN.law
Tel: 416.748.5116

Lawyers for Certain Franchisees

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
2675970 ONTARIO INC. et al.

Court File No.: CV-24-00726584-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceeding commenced at Toronto

**RESPONDING MOTION RECORD OF
TRIPSETTER INC., 100032072 ONTARIO INC.,
2810434 ONTARIO INCORPORATED and 2826139
ONTARIO INC.
(Returnable November 28, 2024 at 12:00pm via
video conference)**

LOOPSTRA NIXON LLP

130 Adelaide St. West, Suite 2800
Toronto, ON Canada M5H 3P5

Graham Phoenix LSO#: 52650N

gphoenix@LN.law

Tel: 416.748.4776

Shahrzad Hamraz LSO #: 85218H

shamraz@LN.law

Tel: 416.748.5116

Lawyers for Certain Franchisees