



This is the 8th Affidavit of Anthony F. Holler in this proceeding and was made on February 8th, 2021.

No. S-2010103
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C., 1985, c. C-44
AND THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, Ch. 57

AND

IN THE MATTER OF SUNNIVA INC., SUNNIVA MEDICAL INC., 11111035 CANADA INC.
AND 1167025 B.C. LTD

PETITIONERS

AFFIDAVIT #8 OF ANTHONY F. HOLLER

I, ANTHONY F. HOLLER, c/o 1200 Waterfront Centre, 200 Burrard Street, Vancouver, British Columbia, V7X 1T2, HEREBY SWEAR THAT:

1. I am the Chairman, Chief Executive Officer, and founder of one of the Petitioners, Sunniva Inc. ("Sunniva") and the sole director of the other Petitioners. Accordingly, I have personal knowledge of the facts deposed to in this Affidavit except where stated to be based on information and belief, in which case I verily believe the information and resulting statements to be true. In preparing this Affidavit, I have also consulted with the other members of Senior Management.
2. I am authorized to make this Affidavit on behalf of the Petitioners.
3. I swear this Affidavit in support of the Petitioners' application for an Order: (a) confirming and extending the relief granted under the Amended and Restated Initial Order (the "ARIO") made October 19, 2020 to July 30, 2021; and (b) sanctioning the Amended Consolidated Plan of Compromise and Arrangement of the Petitioners dated January 14, 2021 (the "Plan") pursuant to the *Companies Creditors' Arrangement Act*, R.S.C., 1985, c. C-36 (the "CCAA").

4. Capitalized terms used in this Affidavit and not defined have the meaning set out in the Plan.

BACKGROUND TO PROCEEDINGS

5. On October 9, 2020, the Honourable Madam Justice Fitzpatrick granted the Initial Order pursuant to the CCAA that, among other things, granted a stay of proceedings in favour of the Petitioners until the initial return date of October 19, 2020. On October 19, 2020, the Honourable Madam Justice Fitzpatrick granted, among other things, the ARIO amending and restating the Initial Order and extending the relief under that Order to November 27, 2020.

6. Pursuant to orders of the Court granted on November 27, 2020, December 11, 2020 and January 15, 2021 the relief under the ARIO, including the stay of proceedings, has since been extended to February 12, 2021.

7. On January 15, 2021, the Court granted an order (the “**Meeting Order**”) that, among other things: (a) accepted the Plan for filing; (b) authorized the Petitioners to present the Plan to Affected Creditors at a Meeting of Affected Creditors to be held on or about February 5, 2021, to seek approval of the Plan by the Affected Creditors; (c) authorizing the Monitor to convene, hold and conduct the Meeting, and confirming various protocols for how the Meeting would be constituted and convened; and (d) subject to approval of the Plan by Affected Creditors, setting Friday February 12, 2021 at 9:00 am for the Petitioners to make an application to the Court to sanction the Plan.

PREPARATION FOR CREDITORS’ MEETING

8. Since the granting of the Meeting Order, the Petitioners (in consultation with the Monitor) have worked diligently and taken various steps to advance the restructuring in these proceedings as set out in the Plan. These steps included, among other things:

- (a) communicating with creditors and stakeholders in respect of the Plan;
- (b) beginning to prepare an application for partial revocation of the cease trade order in place with respect to the shares of Sunniva (the “**Partial Revocation Application**”), to

be submitted to the British Columbia Securities Commission and British Columbia Securities Commission in connection with the implementation of the Plan (assuming the Plan is sanctioned by the Court); and

- (c) preparing for and holding the Meeting in accordance with the Meeting Order.

CREDITORS' MEETING AND RESULTS

9. The Meeting was held virtually via MS Teams, commencing promptly at 3:00 pm on Friday, February 5, 2021 in accordance with the Meeting Order and the Electronic Meeting Protocol approved in the Meeting Order.

10. The Meeting was attended by (among others) me, the Petitioner's Interim Chief Financial Officer David Weinmann, the Petitioners' legal counsel, representatives of the Monitor, the Monitor's legal counsel and representatives of various creditors, including Matrix Venture Capital Management, Inc. and Canada Revenue Agency. The Monitor convened the Meeting by first providing a brief summary of the Plan and liquidation analysis of the Petitioners, followed by an opportunity for Affected Creditors in attendance to pose questions to me, David Weinmann, the Monitor, and counsel. After responding to the questions posed by certain Affected Creditors, the Monitor held the vote, and began tabulating the results. In total, 185 Affected Creditors had submitted completed proxies in advance of the Meeting.

11. After counting and tabulating the votes, the Monitor announced the result of the Meeting: the Plan was approved by 98.9% in number of the Affected Creditors, who voted in person or by proxy in accordance with the provisions of the Meeting Order, representing 98.7% of the total value of Affected Claims of Affected Creditors who voted. Including the Affected Claims of Affected Creditors who did not vote or otherwise participate in the Meeting, the Plan was approved by 67% in number of the total Affected Claims, representing 88% of the total value of Affected Claims.

12. For illustrative purposes, I note that the figures above omit my Affected Claims as well as those of Murray Syrnyk and Margaret Holler, and Weinmann LLC (a holding company for David Weinmann, Chief Financial Officer of the Sunniva Group), each such Affected Creditor being either

members of Sunniva's senior management or related to such persons. The total value of these omitted Affected Claims is \$2,563,924.23, representing 3.98% of the total value of all Affected Claims.

IMPLEMENTATION OF THE PLAN AND STAY EXTENSION

13. If the Plan is sanctioned by the Court, the Petitioners will need to quickly take various steps and actions to implement the Plan and ultimately emerge from these CCAA Proceedings (collectively, the **"Implementation Steps"**). Among other things, the Petitioners will need to:

- (a) complete the Partial Revocation Application and submit it to the B.C. Securities Commission and Ontario Securities Commission, to enable the issuance of the Conversion Shares in accordance with the Plan;
- (b) take various corporate actions to authorize and document the issuance of the Conversion Shares, distribute the Conversion Shares to the Affected Creditors, and otherwise satisfy the terms and covenants set out in the Plan;
- (c) begin preparing an application for full revocation of the cease trade order in place with respect to the shares of Sunniva (the **"Full Revocation Application"**), to enable the shares of Sunniva (including the Conversion Shares to be issued to Affected Creditors in accordance with the Plan) to be freely-tradable under Canadian securities laws;
- (d) engage MNP Ltd. to begin conducting an financial audit of the Petitioners and eventually prepare audited financial statements for the fiscal years ending December 31, 2019 and December 31, 2020, in support of the Full Revocation Application; and
- (e) begin preparing various continuous disclosure documents for eventual filing, as required under applicable securities laws in support of the Full Revocation Application.

14. While the completion of items (a) and (b) above is required to implement the Plan, the Petitioners will ultimately need to complete items (c) through (e) shortly thereafter to ensure that Affected Creditors can freely-trade their Conversion Shares, and to enable Sunniva to raise additional financing through the capital markets. While there is some uncertainty regarding when exactly the Petitioners will

be able to complete the Implementation Steps, the Petitioners will seek to do so as quickly as possible and I believe that the Petitioners will be able to complete items (a) and (b) above on or before July 30, 2021 (which is the outside date set out under the Plan). As such, the Petitioners request that the court extend the relief granted under the ARIIO to July 30, 2021, to enable the Petitioners to successfully implement the Plan without the need to expend limited financial resources to make additional court applications in the interim.

RELEASE PROVISIONS IN THE PLAN

15. The Plan contains a release in favour of the Petitioners, their employees, legal advisors and other representatives, the Directors and Officers and the Monitor and its counsel (collectively, the **“Released Parties”**).

16. Each of the Released Parties have made critical contributions to the development and implementation of the Petitioners’ restructuring and the Plan. These efforts have allowed the Petitioners to avoid liquidation and bankruptcy and I believe will facilitate a better outcome for the Petitioners’ stakeholders than the alternatives. In particular, the Plan will allow the Petitioners to advance, preserve and protect the value of the California Greenhouse Facility and other US assets. As noted in my earlier affidavits in these proceedings, I believe that the California Greenhouse Facility and other US assets have significant potential value for the Petitioners and their stakeholders.

17. The Released Parties have contributed their professional expertise to assist with the structuring and negotiation the Plan, in addition to providing general services and advice to the Petitioners throughout these proceedings. I believe that the services and expertise of the Released Parties are necessary for the ultimate success of the Plan and the Petitioners’ emergence from these CCAA proceedings.

18. Insofar as the releases relate to the Monitor, I believe that the Monitor has carried out its mandate professionally, has been integral to the development of the Plan, and will be administering certain distributions contemplated under the Plan.

19. The release provisions have been fully disclosed to the Affected Creditors in the Plan and the materials filed in respect of the January 15 application, and no party has advised me of any concerns regarding the proposed releases.

20. Based on the significant contributions of the Released Parties, I believe that the proposed releases are fair and reasonable in the circumstances, and that the contributions made by the Released Parties were and are critical to the Plan.

RELEASE OF FINANCIAL RESTRICTIONS AND COMPLETION OF PROPOSED FINANCING

21. In order to pay for the professional costs and expenses associated with completing the Implementation Steps, the Petitioners will require access to adequate funding. The Plan contemplates the Petitioners accessing the funds which are currently held by the Monitor, and borrowing additional funds through one of its US subsidiaries, each of which is described further below.

22. Pursuant to the Stay Extension Order of this Honourable Court granted on November 27, 2020, the Petitioners were ordered to pay to the Monitor the amount of CA \$1,300,000 (the “**Corporate Funds**”), to be held in trust by the Monitor pending further direction from the Court.

23. Further, pursuant to the Stay Extension Order granted by this Honourable Court on December 11, 2020, subject to further direction or Order by this Honourable Court:

- (a) Maynards Industries Canada Ltd. (“**Maynards**”) was ordered to pay all proceeds of sale from the surplus equipment pursuant to the Auction and Liquidation Services Agreement approved by the Court in the sale approval and vesting order granted on December 11, 2020 (the “**Maynards Funds**”, and together with the Corporate Funds, the “**Protected Funds**”) to the Monitor, to be held by the Monitor in trust for the Petitioners; and
- (b) the Petitioners, together with their officers and directors, were prohibited from taking any steps to advance the Petitioners’ interests or assets in the United States, including without limitation, permitting any US subsidiary to grant security.

24. If the Plan is sanctioned by the Court, the Petitioners will require the Protected Funds to pay for the completion of the Implementation Steps, and ultimately emerge from these CCAA proceedings. As such, the Petitioners seek an order from this Honourable Court:

- (a) authorizing and directing the Monitor to pay to Sunniva Inc. all Protected Funds received, other than such funds held by the Monitor in respect of the Restricted Distribution Reserve or Priority Claims (which shall be retained and distributed by the Monitor in accordance with the terms and conditions of the Plan); and
- (b) authorizing and directing Maynards to pay to Sunniva Inc. or Sunniva Medical Inc. all sale proceeds received from the surplus equipment pursuant to the Auction and Liquidation Services Agreement.

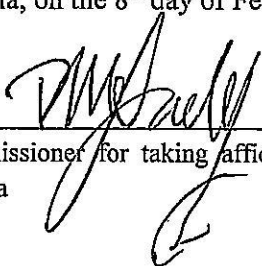
25. As set out in my Affidavit #5 sworn on January 12, 2021 (“**Affidavit #1**”), the Petitioners’ US subsidiary, CP Logistics LLC (“**CPL**”), has secured the Proposed Financing from various secured creditors in the amount of US \$1,320,000 for the purposes of protecting the value of the Petitioners’ US assets (in particular, the California Greenhouse Facility). CPL intends to use the proceeds of the Proposed Financing to, among other things, advance the Petitioners’ interests in the Arbitration.

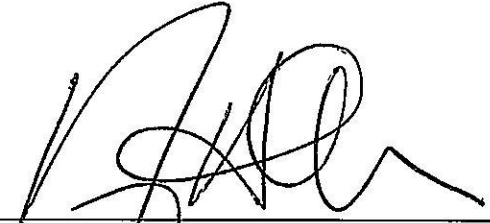
26. As noted above, the Plan contemplates the Petitioners having access to and use of the Protected Funds to finance the implementation of the Plan and related matters, and CPL concluding the Proposed Financing to finance the Arbitration and advance and protect their interests and assets in the US. I believe that it is in the best interests of the Petitioners, the Affected Creditors and the other stakeholders for the Petitioners to be released of the restrictions from the November 27 and December 11 Court Orders so that the Petitioners can implement the Plan and advance and protect their interests and assets in the US, as contemplated by the Plan. Since the Plan has been approved by a majority of the Affected Creditors, I believe that the Petitioners’ creditors are overwhelmingly in support of the Petitioners accessing and using these funds, as contemplated by the Plan.

CASH FLOW STATEMENT

27. In consultation with the Monitor, the Petitioners have prepared the Cash Flow Statement attached to this Affidavit and marked as **Exhibit "A"**. The Cash Flow Statement shows that, upon the Court releasing the Protected Funds currently held by the Monitor, the Petitioners will have sufficient liquidity and will be able to meet their financial obligations through to July 30, 2021. I have read the Cash Flow Statement, and believe that it is accurate.

SWORN BEFORE ME at Vancouver, British
Columbia, on the 8th day of February, 2021.


A commissioner for taking affidavits for British
Columbia


ANTHONY F. HOLLER

RYAN M. LAITY
Barrister & Solicitor
BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600, Vancouver, Canada V7X 1T2
604-632-3544

This is **Exhibit "A"** referred to in Affidavit #8 of Anthony F. Holler made before me on February 8, 2021

A handwritten signature in black ink, appearing to read 'M. H. Kelly', is written over a horizontal line.

Commissioner for taking Affidavits
for British Columbia

12/31/2017

FX Rate

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Sunniva Inc., Sunniva Medical Inc., 11111035 Canada Inc. and 1167025 B.C. Ltd (collectively, the “Company”)
Fifth CCAA Cash Flow Forecast
Notes and Assumptions

1. The cash flow statement (the “Cash Flow Forecast”) has been prepared by management of Sunniva Inc., Sunniva Medical Inc., 11111035 Canada Inc. and 1167025 B.C. Ltd to set out the liquidity requirements of the Company during the Companies’ Creditors Arrangement Act proceedings (the “CCAA Proceedings”) for the period February 5 to July 30, 2021 (the “Period”).

The Cash Flow Forecast has been prepared by Management based on unaudited financial information, and Management’s estimates of its projected receipts and disbursements. Readers are cautioned that since the estimates are based on future events and conditions that are not ascertainable, the actual results achieved will vary, even if the assumptions materialize, and such variations may be material. There are no representations, warranties or other assurances that any of the estimates, forecasts, or projections will be realized. The projections are based upon certain estimates and assumptions discussed below and may be amended from time to time during the CCAA Proceedings. Upon such amendments, Management will update its cash flow forecast accordingly as included herein.

As at the filing date, there are no operations in the Canadian entities. Sunniva Inc. also owns certain US subsidiaries, which are excluded from the CCAA Proceedings (the “US Subsidiaries”).

2. The cash position as presented in the Fifth CCAA Cash Flow Forecast includes the Company’s cash held in deposit accounts.
3. The Company expects to receive \$1.39 million from the Monitor’s trust accounts, representing the \$1.3 million previously deposited with the Monitor pursuant to the Order granted December 11, 2020, proceeds of \$97,000 from the sale of assets via Maynards Industries Canada Ltd., less the amounts to be withheld by the Monitor for the implementation of the Amended Plan of Arrangement and Compromise (the “Plan”) of approximately \$8,800.
4. Assuming all the professional fees are paid in the normal course of business, the Company expects the return of the retainers held by the Company’s counsel, the Monitor and the Monitor’s counsel upon the completion of the CCAA Proceedings.
5. Minimal vendor and supplier payments, insurance and other general and administrative expenses are expected during the CCAA Proceedings.

6. Payroll, benefits and payroll taxes represents quarterly directors' fees payable to Sunniva Inc.'s two independent directors.
7. Pursuant to the Plan, Sunniva Inc. will need to apply for a revocation of the cease trade orders (the "CTO") issued by the British Columbia and Ontario Securities Commissions (the "Commissions") in order for it to be able to issue equity to creditors. While Sunniva Inc. will request for a partial revocation to issue equity, it is currently unknown if a partial revocation will be granted. To receive a full revocation of the CTO, Sunniva will need to be compliant to the audit requirements imposed by the Commissions.

Therefore, it is the Company's intention to commence the necessary year-end audit and tax filings required during the Period in order to ensure it can obtain a full revocation of the CTO and reinstate its listing position with the Canadian Securities Exchange ("CSE"), in case a partial revocation is not available. Accordingly, the related audit and tax fees are included in the Cash Flow Forecast.

8. Restructuring professional fees have been forecast based on projected costs of professional service firms relating to the CCAA Proceedings and include the Company's legal counsel as well as the Monitor and its legal counsel. The professional fees are forecast based on the assumption that the Plan is sanctioned by the Court and implemented during the Period.
9. The Company estimates the cost of re-listing Sunniva Inc. and the associated legal fees, apart from the audit and tax fees, to be approximately \$84,000.
10. A contingency of \$10,000/month is included in the Cash Flow Forecast to account for payment of any incidental expenses.

No. S2010103
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C.
1985, c. C-44 AND THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57**

AND

**IN THE MATTER OF SUNNIVA INC., SUNNIVA MEDICAL INC., 1111035
CANADA INC. AND 1167025 B.C. LTD**

PETITIONERS

AFFIDAVIT #8 OF ANTHONY F. HOLLER

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