

**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 **CANMART LABS INC.**

Applicant

**FACTUM OF CANMART LABS INC.**

July 14, 2024

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**TO: SERVICE LIST**

## PART I - INTRODUCTION & OVERVIEW

1. The Applicant brings this motion for an order (the “**Approval and Reverse Vesting Order**”) approving the share purchase agreement between the Applicant and 1615527 Canada Inc. (the “**Purchaser**”) dated June 28, 2024 (the “**Share Purchase Agreement**”) and the transaction contemplated therein (the “**Transaction**”). The Transaction is to be effected through a “reverse” vesting structure in order to preserve the cannabis license issued by Health Canada in the Applicant’s name, and maximize value to stakeholders of the Applicant.
2. The proposed Approval and Reverse Vesting Order: (a) grants releases in favour of the Applicant, the Monitor and certain third parties, (b) provides msi Spergel Inc. (in such capacity, the “**Monitor**”) with enhanced powers over ResidualCo, and (c) seals a copy of the unredacted Share Purchase Agreement and the cash flow forecast for the 13-month period ending July 31, 2025 (the “**Cash Flow Forecast**”) until the Transaction is closed or further order of the Court.
3. The Applicant also seeks an order (the “**Stay Extension and Termination Order**”) extending the stay of proceedings up to and including July 31, 2025. This time period coincides with the commercial terms of the Share Purchase Agreement that include a secured promissory note repayable over 12 months following closing. Further, the Stay Extension and Termination Order permits the Monitor to terminate the CCAA proceeding, and approves the Second Report of the Monitor dated July 13, 2024 (the “**Second**”).

**Report**”), the activities of the Monitor and its counsel, and the fees and disbursements of the Monitor and its counsel.

4. This Court should grant the requested relief for the following reasons:

(a) **Reverse Vesting Structure and the Transaction:** The Transaction represents the best path forward for the Applicant in the circumstances. Through the Court-approved sale and investment solicitation process (the “**SISP**”), the Monitor extensively canvassed the market for potential bidders. The SISP culminated in three bids being received by the Monitor, and the selection of the Purchaser as the successful bidder. The reverse vesting structure is necessary in this case because the Applicant operates in the licensed and regulated cannabis industry. Since the Cannabis License cannot be transferred, a traditional asset sale would cause significant delay, expense and uncertainty in closing the Transaction. The Applicant does not have the requisite funds to continue operations while waiting for the Transaction to close. The Transaction under a reverse vesting structure will not result in any material prejudice or impairment to any of the Applicant’s creditors rights than in an asset sale transaction. In this case, it is possible that the DIP Lender may not be repaid in full.

(b) **Third-Party Releases:** The Court should approve the limited third-party releases sought by the Applicant. There is a rational connection between the beneficiaries of the release and the restructuring. The third-party beneficiaries consist of the directors and officers of the Applicant, the Monitor, its counsel, and the Applicant’s

counsel. In this case, each of these parties efficiently advanced the restructuring and facilitated a competitive and successful SISP. Without the involvement of these parties, the SISP may not have yielded three competitive bids.

- (c) **Length of Stay Extension:** The Applicant requests a stay extension greater than one year. This request derives from commercial necessity. Under the Share Purchase Agreement, the Purchaser has 12 months to repay the secured promissory note. In addition, the Purchaser has agreed to sell inventory acquired in the Transaction, and give a percentage of proceeds to ResidualCo as part of the purchase price. The requested stay period coincides with these two commercial terms and prevents the Applicant from returning to Court unnecessarily in an effort to avoid costs.

## **PART II - FACTS**

### **A. *Background***

5. The key facts are briefly summarized below and are more fully set out in the Affidavit of Daniel Stern sworn July 10, 2024 (the “**Stern Affidavit**”).<sup>1</sup>
6. The Applicant is a licenced producer under the Cannabis Act in the business of producing butane hash oil extracts from cannabis biomass (collectively, the “**Cannabis Products**”).<sup>2</sup>

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<sup>1</sup> Capitalized terms not otherwise defined herein have the same meaning ascribed to them in the Stern Affidavit.

<sup>2</sup> Stern Affidavit at para 5.

7. The Applicant's financial difficulties arose from the intense regulatory nature of the Canadian cannabis industry and the high tax regime. Approximately half of the Applicant's revenue was used towards its tax obligations.<sup>3</sup> Historically, the Applicant received funding from its parent company, Lifeist Wellness Inc. ("**Lifeist**"). Continued funding jeopardized Lifeist's financial stability and Lifeist could no longer afford to fund the Applicant.<sup>4</sup>
8. On April 3, 2024, the Applicant filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.<sup>5</sup> On May 2, 2024, the NOI proceeding was continued under the CCAA pursuant to the Initial Order dated May 2, 2024 (the "**Initial Order**").<sup>6</sup> Among other things, the Initial Order approved the DIP Term Sheet between the Applicant and Lifeist in the principal amount of \$400,000 to fund the Applicant's restructuring costs.<sup>7</sup>
9. On May 2, 2024, the Court also granted an order (the "**SISP Order**") approving the SISP. The purpose of the SISP was to identify one or more purchasers for all or substantially all of the assets of the Applicant.<sup>8</sup>

**B. The SISP**

10. Pursuant to the SISP, the Monitor canvassed the market and solicited interested parties. By May 21, 2024, the Monitor contacted a total of forty-nine interested parties and provided

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<sup>3</sup> Stern Affidavit at para 6.

<sup>4</sup> Stern Affidavit at para 7.

<sup>5</sup> Stern Affidavit at para 9.

<sup>6</sup> Stern Affidavit at para 11.

<sup>7</sup> Stern Affidavit at para 10.

<sup>8</sup> Stern Affidavit at para 15.

each with a Teaser Letter. Six interested parties executed non-disclosure agreements and received access to the virtual data room.<sup>9</sup>

11. On June 13, 2024, two interested parties requested an extension to the bid deadline of June 17, 2024. To encourage the maximum number of interested parties submitting bids and with approval from the Applicant, the Monitor agreed to extend the bid deadline under the SISP to June 24, 2024.<sup>10</sup>
12. Three bids were received. The Applicant, in consultation with the Monitor, completed a detailed review of the bids and determined the Purchaser's bid was the best bid received.<sup>11</sup>
13. The two other bids received contained inferior terms. One unsuccessful bid was not feasible because it required the assignment of the Cannabis License and the excise tax license that are not assignable. In addition, this bid included financial uncertainty as a portion of the purchase price was to be paid after closing without any accompanying security. The other bid included inferior financial terms.<sup>12</sup>
14. The Applicant, in consultation with the Monitor, selected the Purchaser as the successful bidder and negotiated the terms of the transaction, culminating in the Share Purchase

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<sup>9</sup> Second Report of the Monitor at para 27; Stern Affidavit at para 20.

<sup>10</sup> Second Report of the Monitor at para 27; Stern Affidavit at para 20.

<sup>11</sup> Second Report of the Monitor at para 28; Stern Affidavit at para 28.

<sup>12</sup> Second Report of the Monitor at para. 28; Stern Affidavit at paras 26 and 27.

Agreement.<sup>13</sup> The Share Purchase Agreement reflects the result of a robust SISP that successfully resulted in three independent and competitive bids.<sup>14</sup>

**C. *Summary of the Transaction***

15. The salient terms of the Share Purchase Agreement include:

- (a) the Purchaser will acquire 100% of the shares of the Applicant;
- (b) the Purchase Price shall be satisfied by way of cash deposit, a secured promissory note, and proceeds from the sale of the Applicant's inventory post-closing;
- (c) all Excluded Contracts, Excluded Assets and Excluded Liabilities will be channelled to and vest in ResidualCo; and
- (d) closing is subject to customary conditions precedent, subject to a review of the Applicant's inventory to determine saleable inventory, and the approval of the change in control of the Applicant to facilitate the transfer of the Cannabis Licence.<sup>15</sup>

16. The Applicant and the Purchaser are working toward closing the Transaction on or before July 31, 2024.

**D. *Approval of Monitor's Activities and Fees***

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<sup>13</sup> Second Report of the Monitor at para. 30; Stern Affidavit at para 28.

<sup>14</sup> Second Report of the Monitor at para. 31.

<sup>15</sup> Second Report of the Monitor at para 32; Stern Affidavit at para 31.

17. The Applicant seeks approval of the Second Report of the Monitor and the fees and disbursements of the Monitor and its legal counsel, each as set out in the Second Report.
18. The total fees of the Monitor during the period up to and including July 11, 2024, are \$83,692.96 (inclusive of taxes and disbursements). The total fees incurred by the Monitor's counsel during the period from April 22, 2024, up to and including July 11, 2024, are \$42,678.97 (inclusive of taxes and disbursements).<sup>16</sup>

### **PART III - LAW & ANALYSIS**

19. The issues to be considered are whether the Court should grant the (a) Approval and Reverse Vesting Order and (b) Stay Extension and Termination Order.

#### **ISSUE 1: The Court Should Grant the Approval and Reverse Vesting Order**

##### ***Sub-Issue A. The Court has the jurisdiction to approve the Transaction***

20. When exercising its jurisdiction under section 11 to approve a reverse vesting transaction, this Court has considered the non-exhaustive factors enumerated under subsection 36(3) of the CCAA and those articulated in *Royal Bank v Soundair*. Together, these factors include:
  - (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - (b) whether the monitor approved the process leading to the proposed sale or disposition;

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<sup>16</sup> Second Report of the Monitor at para. 55 and 56.



- (c) whether the monitor filed with the Court a report stating that in its opinion the sale or disposition would be more beneficial to creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties;
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value; and
- (g) whether sufficient effort has been made to obtain the best price and that the debtors have not acted improvidently.<sup>17</sup>

21. These factors support the approval of the Share Purchase Agreement and the Transaction for the following reasons:

- (a) **The SISP was reasonable:** During the CCAA proceeding, the Monitor broadly canvassed the market under the SISP by sending a Teaser Letter to forty-nine potential bidders. The SISP was developed in consultation with the Monitor, and the Monitor administered the SISP in accordance with the SISP Order;<sup>18</sup>
- (b) **Second Report opines the Transaction is more favourable than liquidation:**  
The Second Report concludes that a liquidation of the Applicant's assets would

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<sup>17</sup> CCAA, *supra* s. 36(3); *Harte Gold (Re)*, 2022 ONSC 653 at [paras 20-21](#) [*Harte Gold*]; [Royal Bank v Soundair Corp.](#), 1991 CanLII 2727, 4 OR (3d) 1(ONCA).

<sup>18</sup> Second Report of the Monitor at para 27(d); Stern Affidavit at para 20.

produce a worse result, or no more favourable result, than the reverse vesting structure for all stakeholders;<sup>19</sup>

- (c) **Stakeholders were consulted:** Lifeist is the Applicant's secured creditor and the DIP Lender in the CCAA proceeding. Lifeist has been kept apprised of the results of the SISP and the selection of the Transaction as the successful bid. As the fulcrum creditor in this CCAA proceeding, Lifeist is the key stakeholder and has been consulted through the proceeding;<sup>20</sup>
- (d) **The Share Purchase Agreement and the Transaction allows stakeholders to maintain their rights:** As described below, the Applicant's stakeholders are no worse off than they would have been under any other viable alternative;<sup>21</sup>
- (e) **Sufficient effort has been made to obtain the best price and the Applicant has not acted improvidently:** The Monitor and the Applicant undertook extensive solicitation efforts during the SISP, and it resulted in a competitive process for the Applicant's business. The SISP culminated in the submission of three competitive bids and the negotiation of final terms of the Share Purchase Agreement with the Purchaser.<sup>22</sup>

22. The Monitor supports the approval of the Share Purchase Agreement and the Transaction.<sup>23</sup>

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<sup>19</sup> Second Report of the Monitor at para. 39.

<sup>20</sup> Second Report of the Monitor at para 46; Stern Affidavit at para 10.

<sup>21</sup> Second Report of the Monitor at para 34(1); Stern Affidavit at para 42.

<sup>22</sup> Second Report of the Monitor at para 31; Stern Affidavit at para 28.

<sup>23</sup> Second Report of the Monitor at para 33.

***Sub-Issue B. The Court should approve the reverse vesting structure***

23. While reverse vesting transactions have been described as a relatively new structure to achieve the remedial objectives of the CCAA and are not considered the norm, reverse vesting transactions have been recognized on several occasions as an appropriate way for a debtor to sell its business as a going-concern where the circumstances justify such a structure.<sup>24</sup>
24. The jurisdiction to approve a transaction that is to be implemented through a reverse vesting order is found in section 11 of the CCAA, which gives the Court broad powers to make any order it sees fit.<sup>25</sup> In this case, compelling circumstances exist to justify a reverse vesting structure. The reverse vesting structure is necessary to give effect to the best possible outcome.
25. In *Harte Gold* and *Acerus*, Justice Penny held that the following factors should inform the Court's consideration of a proposed reverse vesting transaction:
- (a) whether the reverse vesting order is necessary;
  - (b) whether the reverse vesting transaction structures produces an economic result at least as favourable as any other viable alternative;
  - (c) whether any stakeholder is worse off under the reverse vesting transaction structure than they would have been under any other viable alternative; and

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<sup>24</sup> *Harte Gold* at [para 38](#).

<sup>25</sup> *Harte Gold* at [paras 36-37](#).

- (d) whether the consideration being paid for the debtors' business reflects the importance and value of the licences and permits (or other intangible assets) being preserved under the reverse vesting transaction structure.<sup>26</sup>
26. Courts have held that reverse vesting orders are generally appropriate in at least three circumstances:
- (a) where the debtor operates in a highly-regulated environment in which its existing permits, licences or other rights are difficult or impossible to assign to a purchaser;
  - (b) where the debtor is party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and
  - (c) where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.<sup>27</sup>
27. The foregoing considerations and factors support the granting of the reverse vesting structure:
- (a) **The reverse vesting structure is necessary in the circumstances:** The operates in the highly regulated cannabis industry and the Cannabis License is impossible to transfer. If the Transaction was structured as a traditional asset sale, the Cannabis License could not be transferred, either eroding value or extending the time required to close the Transaction and increase closing risk. The Applicant does not have the

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<sup>26</sup> *Harte Gold* at [para 38](#); *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314, at para [12](#) [*Acerus*].

<sup>27</sup> *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 at [paras. 114-116](#); *Harte Gold* at [para. 71](#); *Quest University Canada (Re)*, 2020 BCSC 1883 at [para. 136](#), referring to the RVO granted in *Re Comark Holdings Inc et al.*, (July 13, 2020), Toronto CV-20-00642013-00CL (Ont. SCJ [Commercial List]) proceeding to preserve tax attributes, and [para. 142](#), referring to the RVO granted in *JMB Crushing Systems Inc. (Re)*, 2020 ABQB 763 to preserve both licenses and tax attributes.

requisite cash to wait for the Transaction to close and value is maximized because the Purchaser is immediately permitted to use the Cannabis License.<sup>28</sup>

- (b) **The Transaction produces an economic result more favourable than any other alternative:** The Transaction represents the best possible outcome for the Applicant and its stakeholders in the circumstances. The Transaction yielded the highest value from the three competitive bids submitted in the SISP. In light of the general decline in the cannabis industry in Canada, there is no indication that further canvassing the market will yield a better result.<sup>29</sup>
- (c) **Stakeholders are not worse off under the reverse vesting structure:** Completing the Transaction under a reverse vesting structure will not result in any material prejudice of any of the Applicant's creditors' rights that they would otherwise have in an asset transaction.<sup>30</sup> The Share Purchase Agreement maintains the rights the creditors would otherwise have in an asset sale transaction. As discussed above, the fulcrum creditor in this proceeding is Lifeist, in its capacity as secured creditor of the Applicant and DIP Lender. Lifeist is not prejudiced by the Transaction being structured as a reverse vesting structure.<sup>31</sup>
- (d) **The consideration paid is fair, reasonable and reflects the importance of the assets being preserved under the reverse vesting structure:** The Transaction is

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<sup>28</sup> Second Report of the Monitor at para 34(d); Stern Affidavit at para 41.

<sup>29</sup> Stern Affidavit at para 38.

<sup>30</sup> Second Report of the Monitor at para 34(1); Stern Affidavit at para 42.

<sup>31</sup> Stern Affidavit at para 42.

commercially reasonable, as confirmed by the Monitor.<sup>32</sup> Additionally, the Purchaser will provide some of the proceeds from the inventory sales to ResidualCo.<sup>33</sup> As the highest bid in the SISP, the consideration being paid by the Purchaser is attributable to the importance of preserving the Cannabis License.<sup>34</sup>

***Sub-Issue C. The Court should Grant the Releases***

28. The Applicant requests this Court grant releases in favour of the Applicant and certain third parties such as the directors and officers of the Applicant, the Applicant's legal counsel, the Monitor and its legal counsel (collectively, the "**Releasees**").<sup>35</sup>
29. Releases for directors, officers or other advisors are a common feature of CCAA plans. The absence of a CCAA plan, however, does not deprive the court of the jurisdiction to approve releases for these parties. It does not limit the jurisdiction of the Court under section 11 of the CCAA to make any order that it considers appropriate in the circumstances.<sup>36</sup>
30. The CCAA Court has approved releases in the absence of a CCAA plan, including when granting a vesting order. These releases have been in favour of, among other parties, directors, officers, counsel, employees, shareholders, and advisors.<sup>37</sup>

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<sup>32</sup> Second Report of the Monitor at para 33; Stern Affidavit at para 32.

<sup>33</sup> Second Report of the Monitor at para 32(b); Stern Affidavit at para 56.

<sup>34</sup> Second Report of the Monitor at para 33.

<sup>35</sup> Stern Affidavit at para 44.

<sup>36</sup> *Re: Green Relief*, 2020 ONSC 6837 at paras [23 and 25](#). [*Green Relief*].

<sup>37</sup> *Green Relief* at [para 76](#); *Re: Fire and Flower Holdings corp. et al.*, Endorsement of Justice Osborne issued on August 30, 2023 regarding the Approval and Reverse Vesting Order and Claims Procedure Order at [paras 24-26](#).

31. Chief Justice Morawetz's decision in *Lydian* sets out a list of non-exhaustive factors that the Court should consider when considering if a release is appropriate in the circumstances:
- (a) whether the claims to be released are rationally connected to the purpose of the plan;
  - (b) whether the plan can succeed without the releases;
  - (c) whether the parties being released contributed to the plan;
  - (d) whether the releases benefit the debtors as well as the creditors generally;
  - (e) whether the creditors voting on the plan have knowledge of the nature and effect of the releases; and
  - (f) whether the releases are fair, reasonable and not overly-broad.<sup>38</sup>
32. The releases are fair, reasonable and not overly broad. The Court should grant the releases for the following reasons:
- (a) **The releases are rationally connected to the purpose of the restructuring:** The releases provide protection, finality and certainty to those persons who facilitated the restructuring by assisting the Monitor with the SISP.<sup>39</sup> Finality and certainty are fundamental cornerstones of a restructuring under the CCAA;
  - (b) **The Releasees contributed to the restructuring:** The Releasees have made significant contributions to the Applicant's restructuring and were integral to achieving the best possible outcome for the Applicant and its stakeholders. In

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<sup>38</sup> *Lydian International Limited (Re)*, 2020 ONSC 4006 at [para 54](#). [*Lydian*].

<sup>39</sup> Stern Affidavit at para 49.

addition, certain directors have the requisite security clearance required by Health Canada to preserve the Cannabis License. The releases are required to ensure that the directors do not resign until the Transaction is closed. If the Cannabis License is withdrawn before the closing due to resignations of key personnel, significant value for the stakeholders will be lost;<sup>40</sup>

- (c) **Creditors have knowledge of the nature and effect of the releases:** Stakeholders on the Service List were served with materials relating to this motion.

***Sub-Issue D. The Court Should Grant the Monitor with Additional Powers***

33. The Applicant seeks to obtain enhanced powers of the Monitor over ResidualCo as part of the Approval and Reverse Vesting Order.
34. The minimum powers of a court-appointed monitor under the CCAA may be augmented by the Court.<sup>41</sup> Section 23(1)(k) of the CCAA provides that a monitor shall carry out “any other functions in relation to the company that the court may direct”. There are many examples of Courts granting additional powers to the Monitor.<sup>42</sup>
35. The Applicant seeks the expansion of the Monitor’s powers over ResidualCo because ResidualCo will not have any directors or officers after the Transaction closes. This will

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<sup>40</sup> Second Report of the Monitor at para 38(a) and 38(b); Stern Affidavit at para 46 and 47.

<sup>41</sup> *Ernst & Young v. Essar Global Fund Limited*, 2017 ONCA 1014, at [para 106](#).

<sup>42</sup> [Order \(Stay Extension and Enhanced Monitor’s Powers\)](#) in the Matter of *Carillion Holdings Canada Inc. et al.*, dated October 18, 2019, Toronto, Court File No. CO-18-590813-00CL (ONSC) [*Carillion Order*]; [Wind-Down and Liquidation Order](#) in the Matter of *Wayland Group Corp. et al.*, dated April 17, 2020, Toronto, Court File No. CV-19-006632079-00CL (ONSC) [*Wayland Liquidation Order*].



permit the Monitor to efficiently administer the estate of ResidualCo to complete the CCAA proceeding and any wind-down activities associated with ResidualCo.

36. The Approval and Reverse Vesting Order authorizes and empowers the Monitor to, among other things: (a) exercise powers that may be exercised by a board of directors, (b) open bank accounts on behalf of ResidualCo, (c) distribute proceeds on behalf of ResidualCo, (d) engage with stakeholders of ResidualCo, and (e) assign ResidualCo into bankruptcy.<sup>43</sup>
37. After the Transaction closes, ResidualCo will not have any operations and no directors. The only task remaining is collecting the balance of the purchase price from the Purchaser and making distributions to, among others, the DIP Lender. Granting the Monitor additional powers is an efficient way to give effect to these remaining administrative tasks and bring an efficient conclusion to this CCAA proceeding. For these reasons, it is appropriate in the circumstances to grant the Monitor with additional powers.

***Sub-Issue E. The Court should seal the unredacted Share Purchase Agreement and the Cash Flow Forecast***

38. The Court should seal the unredacted Share Purchase Agreement and the Cash Flow Forecast because they include commercially sensitive information that, if disclosed, could seriously jeopardize any subsequent sale process should the Transaction not close. In this case, the sensitive information being protected is the purchase price payable in the Share Purchase Agreement.<sup>44</sup>

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<sup>43</sup> Approval and Reverse Vesting Order at para 19.

<sup>44</sup> Stern Affidavit at para 57.

39. The Court has the jurisdiction to grant a sealing order,<sup>45</sup> and may do so when the *Sherman Estate* test is met:<sup>46</sup>
- (a) there is a serious risk to an important public interest;
  - (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
  - (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.
40. In this case, the public interest being protected is the maximization of value for the Applicant's creditors and stakeholders. The unredacted Share Purchase Agreement includes the purchase price agreed to between the Purchaser and the Applicant. The Cash Flow Forecast includes the expected proceeds to be received from the Purchaser, including as it relates to the sale of the Applicant's inventory.<sup>47</sup>
41. If the Transaction does not close, the Applicant will be forced to re-market itself, including approaching the other bidders who submitted bids in the SISP. If the purchase price is public knowledge, this would compromise the Applicant's negotiating leverage by placing a ceiling on the purchase price. By temporarily sealing the unredacted Share Purchase Agreement and the Cash Flow Forecast, this is avoided.

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<sup>45</sup> *Courts of Justice Act*, RSO 1990, c C43, [s.137\(2\)](#).

<sup>46</sup> *Sherman Estate v Donovan*, 2021 SCC 25 at [paras 38, 41](#) [*Sherman Estate*]. See also *Sierra Club of Canada v Canada (Minister of Finance)*, [2002] 2 SCR 522 at [para 53](#).

<sup>47</sup> Stern Affidavit at para 57.

42. The proposed sealing provision allows the documents to be unsealed once the Transaction is closed or further order of the Court. As a matter of proportionality, the benefits outweigh the negative effects of the information being sealed from the public record. The sensitive information will only be sealed for a limited period of time, and the only information sealed is in respect of the purchase price. Maintaining the integrity of the sale procedures is an important public interest that has been protected by this Court in previous occasions.<sup>48</sup>
43. For all of the foregoing reasons, the Applicant submits it is appropriate for the unredacted Share Purchase Agreement and the Cash Flow Forecast be sealed pursuant to the Approval and Reverse Vesting Order.

**ISSUE 2: The Court Should Grant the Stay Extension and Termination Order**

***Sub-Issue A. The stay of proceedings should be extended until July 31, 2025***

44. The test for extending a stay of proceedings in the CCAA is well-established. Section 11.02(2) of the CCAA provides that the Court may make an order staying proceedings for any period that the court considers necessary if the applicant satisfies the Court (a) the circumstances exist that make the order appropriate, and (b) that the applicant has acted, and is acting, in good faith and with due diligence.<sup>49</sup>

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<sup>48</sup> See, for example: *Elleway Acquisitions Ltd v 4358376 Canada Inc*, 2013 ONSC 7009 at [paras 47, 48](#); *GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc*, 2014 ONSC 1173 at [para 32](#); and *Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 2 at [para 39](#); and *Re Comstock Canada Ltd.*, 2014 ONSC 493 at [para 16](#); Endorsement of Justice Osborne ([Sealing Order](#)) *Re Balboa Inc. et al*, Court File No. CV-24-00713245-00CL dated June 24, 2024; Endorsement of Justice Black ([Sealing Order](#)) *Re Centurion Mortgage Capital Corporation*, Court File No. CV-23- 694646-00CL dated May 15, 2024; Endorsement of Justice Kimmel ([Sealing Order](#)) *Re Chalice Brands Ltd.*, Court File No. CV-23-00696017-00CL dated September 28, 2023.

<sup>49</sup> CCAA, [s. 11.02\(2\)](#). See also [s. 11.02\(3\)](#).

45. Whether the order is “appropriate” must be viewed in light of the objectives of the CCAA and the circumstances of the restructuring. In *Century Services*, the Supreme Court of Canada held that appropriateness is assessed by inquiring whether the order sought advances the policy objectives of the CCAA, including furthering the remedial purpose of the CCAA.<sup>50</sup>
46. Regarding the first branch of the test, the proposed stay period will provide time to close the Transaction. The stay period also reflects the commercial terms of the Transaction. Namely, the one-year term of the secured promissory note and the agreement by the Purchaser to sell inventory of the Applicant and give a percentage of those proceeds to ResidualCo.<sup>51</sup> The Applicant does not anticipate a need to return to the Court prior to the eventual termination of the CCAA proceeding, and the proposed stay period will necessarily limit the professional fees associated with this CCAA proceeding.
47. The Applicant has acted in good faith and with due diligence to, among other things, stabilize the business, prepare and implement the SISP, and negotiate and consummate the Transaction.<sup>52</sup>
48. The proposed extension of the Stay of Proceedings will not materially prejudice any of the Applicants’ stakeholders, and the Monitor is supportive of the proposed extension.<sup>53</sup>

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<sup>50</sup> [\*Century Services Inc. v. Canada \(Attorney General\)\*, 2010 SCC 60 at para 70.](#)

<sup>51</sup> Second Report of the Monitor at para 50; Stern Affidavit at para 31.

<sup>52</sup> Second Report of the Monitor at para 51.

<sup>53</sup> Second Report of the Monitor at para 51.

***Sub-Issue B. The Monitor should be permitted to make distributions to the DIP Lender***

49. As set out in the Initial Order, the DIP Lender is the beneficiary of the DIP Lender's Charge up to the maximum amount of \$400,000. The DIP Lender's Charge is a super-priority charge that ranks ahead of all other charges and encumbrances, save and except for the Administration Charge.<sup>54</sup>
50. The Applicant seeks authorization for the Monitor (on behalf of ResidualCo) to make one or more distributions to the DIP Lender following repayment of all fees that are secured by the Administration Charge.
51. In these circumstances, it is unclear if the DIP Lender will be repaid in full. That is contingent on ResidualCo receiving the balance of the purchase price under the secured promissory note, the Purchaser's sale of inventory, and the professional fees associated with completing the CCAA proceeding.<sup>55</sup>
52. For these reasons, the Applicant only requests this Court's authorization to make one or more distributions to the DIP Lender. The Court should grant this relief because it is compliant with the relative priority of the charges encumbering the proceeds received from the Transaction, as set out in the Initial Order.<sup>56</sup>

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<sup>54</sup> Initial Order at para 43.

<sup>55</sup> Second Report of the Monitor at para 32(b); Stern Affidavit at para 34

<sup>56</sup> Initial Order at para 43.

***Sub-Issue C. The CCAA proceeding should be terminated upon the filing of the Termination Certificate***

53. The proposed Stay Extension and CCAA Termination Order provides for the termination of the CCAA proceeding and the Monitor's discharge upon the filing of the Termination Certificate. The Court has the jurisdiction to terminate the CCAA Proceedings pursuant to its broad jurisdiction under section 11 of the CCAA.<sup>57</sup>
54. Following the closing of the Transaction, the only remaining activities left will be to collect the balance of the proceeds from the Transaction, pay the outstanding professional fees, and make one or more distributions to the DIP Lender. At this juncture, it is appropriate for the Court to authorize the termination of the CCAA proceeding upon filing of the Termination Certificate and its service on the Service List.
55. The Court has granted similar orders when there are no material steps left in the CCAA proceeding and allowed for termination of a CCAA proceeding upon the filing of the Termination Certificate at a future date.<sup>58</sup> In this case, the CCAA proceeding has served its purpose by providing the Applicant with the funding and stability required to complete the SISF. The Stay Extension and Termination Order will permit the Monitor to bring a conclusion to this proceeding.

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<sup>57</sup> CCAA, *supra* at s.11.

<sup>58</sup> *Peraso, supra; Re Chalice Brands Ltd.* (28 September 2023), Toronto CV-23-00699872-00CL (Ont. Sup. Ct. Comm. List] CCAA Termination Order).

56. The Monitor supports the termination of these CCAA Proceedings on the terms set forth in the Stay Extension and Termination Order.<sup>59</sup>

**PART IV – RELIEF REQUESTED**

57. For all of the above reasons, the Applicant requests that the Court grant the relief requested in accordance with the terms of the proposed Approval and Reverse Vesting Order and proposed Stay Extension and Termination Order located at Tabs 3 and 4, respectively.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of July, 2024.

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<sup>59</sup> Second Report of the Monitor at para 64.

## SCHEDULE “A” – LIST OF AUTHORITIES

### JURISPRUDENCE

1. [\*AbitibiBowater Inc.\*](#), 2009 QCCS 6461 (Que. S.C.)
2. [\*Acerus Pharmaceuticals Corporation \(Re\)\*](#), 2023 ONSC 3314.
3. [\*Arrangement relatif à Blackrock Metals Inc.\*](#), 2022 QCCS 2828.
4. [\*Century Services Inc. v. Canada \(Attorney General\)\*](#), 2010 SCC 60.
5. [\*Elleway Acquisitions Ltd v 4358376 Canada Inc.\*](#), 2013 ONSC 7009.
6. [\*Ernst & Young v. Essar Global Fund Limited\*](#), 2017 ONCA 1014.
7. [\*GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.\*](#), 2014 ONSC 1173.
8. [\*Harte Gold Corp.\*](#), 2022 ONSC 653.
9. [\*Lydian International Limited \(Re\)\*](#), 2020 ONSC 4006.
10. [\*Montréal \(City\) v Deloitte Restructuring Inc.\*](#), 2021 SCC 53.
11. [\*Nortel Networks Corp., Re\*](#), 2014 ONSC 4777
12. [\*Order \(Stay Extension and Enhanced Monitor’s Powers\) in the Matter of Carillion Holdings Canada Inc. et al.\*](#), dated October 18, 2019, Toronto, Court File No. CO-18-590813-00CL (ONSC).
13. [\*Quest University Canada \(Re\)\*](#), 2020 BCSC 1883.
14. [\*Re Balboa Inc. et al.\*](#), (24 June 2024) Court File No. CV-24-00713245-00CL, [Ont. Sup. Ct. Comm. List] (CCAA Endorsement of Justice Osborne, [Sealing Order](#)).
15. [\*Re Chalice Brands Ltd.\*](#) (28 September 2023), Court File No. CV-23-00699872-00CL [Ont. Sup. Ct. Comm. List] (CCAA Endorsement of Justice Kimmel, [Termination Order & Sealing Order](#)).
16. [\*Re Centurion Mortgage Capital Corporation\*](#), (15 May 2024) Court File No. CV-23-694646-00CL [Ont. Sup. Ct. Comm. List] (CCAA Endorsement of Justice Black, [Sealing Order](#)).
17. [\*Re Comstock Canada Ltd.\*](#), 2014 ONSC 493.
18. [\*Re: Fire and Flower Holdings corp. et el.\*](#), (30 August 2023) Court File No. CV-23-00700581-00CL [Ont. Sup. Ct. Comm. List] (CCAA Endorsement of Justice Osborne [Approval and Reverse Vesting Order and Claims Procedure Order](#))



19. [Re: Green Relief](#), 2020 ONSC 6837.
20. [Royal Bank v Soundair Corp.](#), 1991 CanLII 2727, 4 OR (3d) 1(ONCA).
21. [Sherman Estate v Donovan](#), 2021 SCC 25.
22. [Sierra Club of Canada v Canada \(Minister of Finance\)](#), [2002] 2 SCR 522.
23. [U.S. Steel Canada Inc. \(Re\)](#), 2016 ONCA 662.
24. [Wind-Down and Liquidation Order](#) in the Matter of *Wayland Group Corp. et al.*, dated April 17, 2020, Toronto, Court File No. CV-19-006632079-00CL (ONSC).
25. [Yukon \(Government of\) v Yukon Zinc Corporation](#), 2022 YKSC 2.

## SCHEDULE “B” – RELEVANT STATUTES

### [Companies’ Creditors Arrangement Act, R.S.C., 1985 c. C-36](#)

#### **General power of court**

**11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

#### **Stays, etc. — other than initial application**

**11.01 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

#### **Burden of Proof on Application**

**3** The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

#### **Duties and Functions of the Monitor**

**23.1** [...]

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

#### **Restrictions on Disposition of Business Assets – Factors to be Considered**

**36 (3)** In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[Courts of Justice Act, RSO 1990, c C43, section 137\(2\)](#)

**Documents public**

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

**Sealing documents**

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

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 **CANMART LABS INC.**

Court File No. CV-24-00719639-00CL

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

Proceedings commenced at Toronto

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