

**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 HERITAGE CANNABIS HOLDINGS CORP., 1005477 B.C. LTD., HERITAGE CANNABIS WEST CORPORATION, MAINSTRAIN MARKET LTD., HERITAGE CANNABIS EAST CORPORATION, PUREFARMA SOLUTIONS INC., 333 JARVIS REALTY INC., 5450 REALTY INC., HERITAGE CANNABIS EXCHANGE CORP., AND PREMIUM 5 LTD.

Applicants

**FACTUM OF THE APPLICANTS
(Returnable April 2, 2024)**

April 2, 2024

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TO: THE SERVICE LIST

PART I: OVERVIEW¹

1. Heritage Cannabis Holdings (“**Heritage**”), 1005477 B.C. Ltd. (“**1005**”), Mainstrain Market Ltd. (“**Mainstrain**”), Purefarma Solutions Inc. (“**Purefarma**”), 333 Jarvis Realty Inc. (“**333**”), 5450 Realty Inc. (“**5450**”), Premium 5 Ltd. (“**Premium**”), Heritage Cannabis Exchange Corp. (“**HCEC**”), Heritage Cannabis East Corporation (formerly CannaCure Corporation) (“**Heritage East**”), and Heritage Cannabis West Corporation (formerly Voyage Cannabis Corp.) (“**Heritage West**”) seek creditor protection and other relief pursuant to an order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”).²

2. Heritage is a reporting issuer listed on the Canadian Securities Exchange (the “**CSE**”) and on the OTC Pink,³ operated by OTC Markets Group.⁴ It wholly-owns each of the other Applicants (each a “**Subsidiary**” and together the “**Subsidiaries**”), and wholly-owns several other non-Applicant affiliates.⁵ All Applicants are Canadian companies.⁶

3. Through its Subsidiaries and from facilities located in Ontario and British Columbia, Heritage focuses on extraction and creation of extract and extract-derivative brands for adult use, and cannabis-based medical solutions.⁷

4. The Applicants are in default under certain material operating agreements including their secured loans with BJK Holdings Ltd. (“**BJK**”), and the leases for their two operating facilities.⁸ BJK is no longer willing to continue supporting the Heritage Group in its current financial

¹ Defined terms used herein but not otherwise defined have the meanings ascribed to them in the affidavit of David Schwede sworn on April 2, 2024 (the “**Initial Affidavit**”), Application Record at Tab 2.

² Initial Affidavit at paras 1, 2 and 5.

³ OTCPK means the services provided by the OTD Market Group, including, over-the-counter trading services, to companies listed as “Pink”.

⁴ Initial Affidavit at para 8.

⁵ The non-Applicant affiliates are: (1) Heritage (US) Colorado Corp; (2) Opticann, Inc.; (3) Heritage (US) Cali Corp.; (4) Heritage US Holdings Corp.; and (5) Heritage (US) Oregon Corp.

⁶ Initial Affidavit at paras 20-31.

⁷ Initial Affidavit at paras 45 and 48.

⁸ Initial Affidavit at para 11.

circumstances. BJK has delivered demand letters demanding repayment of the BJK Loan (defined below) along with Notices of Intention to Enforce Security (“**NITES**”) pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*. In addition, the Canada Revenue Agency (“**CRA**”) has delivered requirements to pay notices to a major customer of the Applicants.⁹

5. The Applicants’ liabilities include \$11,770,310 owing to CRA on account of unremitted excise tax arrears. The Subsidiaries which owe excise tax arrears have entered into repayment plans with CRA pursuant to which they must make monthly payments to repay the entire excise tax arrears over a specified period of time.¹⁰

6. The Applicants are facing a liquidity crisis and, absent these proceedings, will not be able to continue carry on their business in the ordinary course or meet their obligations as they become due.¹¹ At a comeback hearing, the Applicants will be seeking additional financing through a debtor-in-possession loan to, among other things, provide the Applicants with immediate access to funding needed to continue to operate and preserve the value of their operations while a sale and investment solicitation process (“**SISP**”) is conducted.¹²

7. A proceeding under the CCAA will, among other things, allow the Applicants to protect their assets for the benefit of their creditors, and obtain the necessary breathing room to implement the SISP that would see the Applicants’ business and assets sold as a going concern.¹³

⁹ Initial Affidavit at para 12.

¹⁰ Initial Affidavit at paras 119 and 121.

¹¹ Initial Affidavit at para 13.

¹² Initial Affidavit at para 16.

¹³ Initial Affidavit at para 17.

PART II: FACTS

8. The facts underlying this application are more fully set out in the affidavit of David Schwede, sworn April 2, 2024 (the “**Initial Affidavit**”).¹⁴ Capitalized terms used but not defined herein have the meanings ascribed to them in the Initial Affidavit.

A. The Applicants

9. Heritage, 333, HCEC, and Heritage East were incorporated or continued in Ontario under the *Business Corporations Act (Ontario)* (the “**OBCA**”). 1005, Heritage West, Mainstrain, Purefarma, and 5450 are incorporated under the *Business Corporations Act (British Columbia)* (the “**BCBCA**”). Premium is incorporated under the *Business Corporations Act (Alberta)* (the “**ABCA**”).¹⁵

B. The Applicant’s Business

10. Heritage’s business is primarily carried out through Heritage East and Heritage West. Heritage West operates from a facility in Falkland, British Columbia, and Heritage East operates from a facility located in Fort Erie, Ontario (collectively, the “**Licensed Facilities**”). The Licensed Facilities are leased by Heritage East and Heritage West.¹⁶ BJK is the landlord under each of the leases. Both of the leases are currently in default.¹⁷

11. Heritage East and Heritage West hold cannabis licenses issued by Health Canada under the *Cannabis Act* and by CRA under the *Excise Act*. These licenses are critical to the Applicants’ overall operations and going concern value.¹⁸

¹⁴ See Application Record at Tab 2.

¹⁵ Initial Affidavit at paras 20-31.

¹⁶ Initial Affidavit at para 9.

¹⁷ Initial Affidavit at paras 51, 52, 54 and 55.

¹⁸ Initial Affidavit at paras 59-69.

12. The Health Canada licenses permit Heritage East and Heritage West to, among other things, cultivate and process cannabis, produce cannabis for research purposes, sell Industrial Hemp, and sell cannabis for medical purposes.¹⁹

13. The cannabis licenses issued pursuant to the *Excise Act* require Heritage East and Heritage West to apply cannabis stamps to their cannabis products in accordance with the *Excise Act*. These licenses are subject to monthly renewals and several of them expire in April 2024.²⁰

14. The Applicants have 162 employees, of which 155 are full-time employees. Thirty (30) employees are designated responsible persons or possess the security clearance required under the *Cannabis Act*. The employees are not unionized and the Applicants do not maintain a pension plan. The payment of employee source deductions is current.²¹

C. The Non-Applicant Stay Parties

15. Heritage (US) Colorado Corp., Opticann, Inc., Heritage US Holdings Corp., Heritage (US) Cali Corp., and Heritage (US) Oregon Corp. (collectively, the “**Non-Applicant Stay Parties**” and together with the Applicants, the “**Heritage Entities**”) are wholly-owned subsidiaries of Heritage incorporated under the laws of various states in the United States. The Applicants are seeking to extend the Stay of Proceedings to these non-Applicant subsidiaries due to the integration of the business and operations of Heritage Group.²²

D. Debts and Obligations of the Applicants

1. Secured Obligations

16. The Applicants’ primary secured obligations comprise of the BJK Loan (as defined below).

¹⁹ Initial Affidavit at paras 60-64.

²⁰ Initial Affidavit at paras 65-69.

²¹ Initial Affidavit at paras 74-77.

²² Initial Affidavit at paras 32-34.

(a) BJK Loan

17. Heritage, Cannacure Corporation (former name of Heritage East), 333, Voyage Cannabis Corp. (former name of Heritage West), and 5450, are parties to a loan agreement with BJK that was entered into on March 29, 2021 (as amended pursuant to agreements dated October 6, 2021, September 29, 2022, and October 31, 2023, the “**BJK Loan Agreement**”). 1005, Purefarma, (by its predecessor entities, Calyx Life Sciences Corp. and Purefarma Solutions Inc.), HCEC, Premium, and Heritage US Holdings Corp. (together, the “**Guarantors**”) provided a joint and several guarantee to BJK in connection with the BJK Loan.²³

18. The BJK Loan Agreement provides secured credit facilities for a maximum of \$10,256,379, comprising of: (a) a revolving line of credit up to \$5,000,000; and (b) a \$5,256,379 facility.²⁴

19. There are security interests registered in favour of BJK against all of the Applicants, other than Mainstrain, pursuant to the *Personal Property Security Act* in Ontario, British Columbia and Alberta, as applicable.²⁵

2. Unsecured Liabilities

20. As of March 28, 2024, the Applicants’ unsecured trade debt totalled approximately \$2,779,512.²⁶ Given the nature of their business, the Applicants are party to a number of agreements for the provision of certain essential services in connection with operating a business in the cannabis industry.²⁷

²³ Initial Affidavit at paras 97-105.

²⁴ Initial Affidavit at para 104.

²⁵ Initial Affidavit at paras 92-94.

²⁶ Initial Affidavit at para 108. As noted at para 108 of the Initial Affidavit, this excludes any amounts owing in respect of the Merida Funding (as defined therein).

²⁷ Initial Affidavit at paras 108-109.

3. Health Canada Liabilities

21. Heritage East and Heritage West are indebted to Health Canada in the approximate amounts of \$60,000 and \$225,000, respectively, and have entered into payment instalment agreements with Health Canada in respect of those debts.²⁸

4. Excise Tax Liabilities

22. As March 25, 2024, the aggregate amount owed to CRA in respect of excise tax arrears was approximately \$11,770,310 (“**Excise Tax Arrears**”), comprising of approximately \$6,541,557 owed by Heritage East and \$5,228,753 owed by Heritage West.²⁹

23. Heritage East and Heritage West have entered into payment arrangements with CRA which require them to (a) make monthly payments towards full payment of Excise Tax Arrears within a specified time frame; and (b) ensure that monthly excise duty payable is paid by the due date.³⁰

24. As of April 1, 2024, the Applicants are expected to make amortized monthly payments of \$322,481 in respect of the Excise Tax Arrears, comprising of approximately \$189,524 per month on account of Heritage East, and \$132,956 per month on account of Heritage West. The amortized monthly payments being made in respect of Excise Tax Arrears to CRA will increase to approximately \$618,000 by October 2024.³¹

5. GST/HST

25. As of March 25, 2024, the outstanding GST/HST obligations to CRA owed by Heritage East was approximately \$98,325, and by Heritage West was approximately \$1,529,622.³²

26. CRA has delivered Requirement to Pay notices to the BC Liquor Distribution Branch in respect of Heritage East and Heritage West requiring the BC Liquor Distribution Branch to send

²⁸ Initial Affidavit at para 115-117.

²⁹ Initial Affidavit at para 119.

³⁰ Initial Affidavit at paras 120 and 122.

³¹ Initial Affidavit at para 123.

³² Initial Affidavit at para 124.

any money that would otherwise be payable to Heritage East and Heritage West at a rate of 40% of all payments directly to CRA.³³

E. Proposed Monitor

27. It is proposed that KPMG Inc. will act as Monitor in these CCAA Proceedings (in such capacity, the “**Proposed Monitor**”).

PART III: ISSUES

28. The issues to be considered on this application is whether to grant the proposed form of Initial Order. The issues addressed in this factum are whether:

- (a) each of the Applicants is a “debtor company” to which the CCAA applies;
- (b) the Stay of Proceedings should be granted in respect of the Applicants;
- (c) the Stay of Proceedings should be extended to the Non-Applicant Stay Parties;
- (d) the Applicants should be authorized to make certain pre-filing payments;
- (e) the Directors’ Charge (as defined below) should be granted;
- (f) the Administration Charge (as defined below) should be granted;
- (g) relief from securities reporting and filing obligations should be granted; and
- (h) a regulatory stay should be imposed over the licenses during the CCAA proceedings.

PART IV: LAW AND ARGUMENT

A. Each of the Applicants is a “debtor company” to which the CCAA applies

29. The CCAA applies in respect of a “debtor company” or “affiliated debtor companies” whose liabilities exceed \$5 million.³⁴ The term “debtor company” is defined as “any company”

³³ Initial Affidavit at para 125-126.

³⁴ *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, s 3(1) [CCAA]; *MPX International Corporation*, 2022 ONSC 4348 at para 46 [MPX]; *Laurentian University of Sudbury*, 2021 ONSC 659 at para 25 [Laurentian]; *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para 24 [McEwan].

that is, among other things, “insolvent” and the term “company” is defined as “any company, corporation or legal person incorporated by or under any Act of Parliament or of the legislature of a province”.³⁵ The CCAA also specifies that companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company.³⁶

30. Each of the Applicants is a “company” within the meaning of the CCAA as each was incorporated under Canadian provincial laws. All of the Applicants other than Heritage are direct or indirect subsidiaries of Heritage. Accordingly, the Applicants are all affiliated companies.³⁷

31. Each of the Applicants is a “debtor company” as defined in the CCAA. Courts have referred to the definition of “insolvent person” in subsection 2(1) of the *BIA*.³⁸

32. CCAA jurisprudence provides that when assessing the insolvency of a corporate group, the Court should focus on the insolvency of the group as a whole rather than the financial health of each corporation within the corporate group.³⁹

33. The *BIA* defines “insolvent person”, as a person: (a) who is for any reason unable to meet his obligations as they generally become due; (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.⁴⁰

34. The test for determining whether a company is an “insolvent person” under the *BIA* is disjunctive – satisfaction of any one of the above criteria is sufficient.⁴¹

³⁵ *CCAA s 2(1)*, “debtor company” and “company”. See also, *Laurentian* at [paras 25 and 26](#).

³⁶ *CCAA s 3(2)*.

³⁷ Initial Affidavit at paras 20-31.

³⁸ *Laurentian* at [para 30](#); *McEwan* at [para 25](#); *Re Target Canada Co.*, 2015 ONSC 303 at [para 26](#) [*Target*].

³⁹ *First Leaside Wealth Management Inc., Re.*, 2012 ONSC 1299 at paras 29-30; *San Francisco Gifts Ltd., Re.*, 2004 ABQB 705 at para 4.

⁴⁰ *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, s 2, “insolvent person”.

⁴¹ *McEwan* at [para 26](#); *Laurentian* at [para 31](#).

35. A company is also insolvent for the purposes of the CCAA if “there is a reasonably foreseeable (at the time of filing) expectation that there is a looming liquidity condition or crisis which will result in the applicant running out of ‘cash’ to pay its debts as they generally become due in the future without the benefit of the [stay] and ancillary protection”.⁴²

36. The Applicants’ aggregate outstanding liabilities are well in excess of \$5 million.⁴³ As such, the Applicants’ debt exceeds the \$5 million threshold for protection under the CCAA.

37. The Heritage Group is unable to meet its obligations under the BJK Loan, the BJK Loan is currently in default, and BJK has delivered demand letters and NITES.⁴⁴ The Heritage Group also has significant debts owing to CRA, Health Canada and other unsecured debt obligations.⁴⁵

38. As indicated in the Cash Flow Forecast, the Applicants are facing a liquidity crisis which will result in them running out of cash during the pendency of the CCAA Proceedings, and they have no foreseeable sources of liquidity to satisfy their obligations as they become due.⁴⁶ As such, the Applicants satisfy the *BIA*’s definition of “insolvent person” as they are unable to meet their obligations as they come due.

B. It is appropriate to grant the Stay of Proceedings in respect of the Applicants

39. Section 11.02 of the CCAA provides this Court with the jurisdiction to impose a stay of proceedings for a period of not more than 10 days if it is satisfied that circumstances exist that make the order appropriate.⁴⁷

40. A stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore solvency and emerge from the CCAA as a going concern.⁴⁸ Absent exceptional

⁴² *Re Stelco Inc.*, (2004) 48 CBR (4th) 299 (Ont Sup Ct) at paras 26 and 40; *McEwan* at para 27; *Laurentian* at para 32.

⁴³ Initial Affidavit at para 91.

⁴⁴ Initial Affidavit at para 12.

⁴⁵ Initial Affidavit at paras 108-113, 115-117 and 119.

⁴⁶ Initial Affidavit at paras 141.

⁴⁷ CCAA s 11.02. See also, *Re Boreal Capital Partners Ltd et al*, 2021 ONSC 7802 at para 15 [*Boreal*]; *Laurentian* at para 35.

⁴⁸ *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 14; *Target* at para 8.

circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period.⁴⁹ This 10-day period “allows for a stabilization of operations and a negotiating window”.⁵⁰ The Initial Order is in accordance with the above requirement.

41. It is just and appropriate for this Court to grant a stay of proceedings in respect of the Applicants, who have acted with due diligence and in good faith. The Applicants require a stay of proceedings to preserve the value of the Applicants’ business and provide them with “breathing room” to pursue the SISP, while maintaining business operations in the ordinary course and in compliance with the cannabis regulatory regime. In the absence of a stay of proceedings, the Applicants may face enforcement actions by, among others, BJK, CRA and certain contractual counterparties. It would be detrimental to the Applicants’ business and stakeholders if proceedings were commenced or continued or rights and remedies were executed against them.⁵¹

C. The Stay of Proceedings should be extended to the Non-Applicant Stay Parties

42. This Court has authority to extend the Stay of Proceedings to the Non-Applicant Stay Parties pursuant to s. 11 and 11.02(1) of the CCAA, which allows it to make an initial order on any terms that the court may impose. In doing so, courts have looked at factors including whether the subsidiaries of the CCAA applicants had guaranteed the applicants’ secured loans; whether the non-applicants were deeply integrated into the applicants’ business operations; and whether the claims against the non-applicants are derivative of the primary liability of the applicants.⁵²

⁴⁹ [CCAA, s 11.001](#); [Lydian International Limited \(Re\)](#), 2019 ONSC 7473 at para 26 [Lydian].

⁵⁰ [Lydian](#) at para 30.

⁵¹ Initial Affidavit at paras 155.

⁵² [MPX](#) at para 52, [Lydian](#) at para 39; [Sino-Forest Corporation \(Re\)](#), 2012 ONSC 2063 at paras 5, 18, and 31; [Canwest Global Communications Corp. \(Re\)](#), 2009 CanLII 55114 (ON SC), [2009] OJ No 4286 (Ont. Sup. Ct. J.) [Commercial List] [[Canwest Global](#)] at paras 28-29; and [Target](#) at paras 49-50.

43. The Non-Applicant Stay Parties are integrated into the Applicants' business. Heritage US Holdings, a Non-Applicant Stay Party, is also Guarantor under the BJK Loan. An extension of the stay to the Non-Applicant Stay Parties is required to prevent uncoordinated realization and enforcement attempts from being made in different jurisdictions and to protect value for the Applicants' stakeholders.⁵³

44. The Applicants intend to seek approval of a SISF during these CCAA Proceedings, which may include the Non-Applicant Stay Parties. Without the benefit of the Stay of Proceedings, the Applicants' ability to market and sell their interests in the Non-Applicant Stay Parties and their respective assets may be compromised.⁵⁴

D. The Court should allow the Applicants to make certain Pre-Filing Payments

45. The Applicants are proposing in the Initial Order that they be authorized, but not required, and in all cases with the consent of the Monitor and BJK, and in accordance with the Cash Flow, to make payments for goods or services actually supplied to the Applicants prior to the date of the Initial Order if, in the opinion of the Applicants and the Monitor, the supplier or service provider is critical to preserve, protect, or enhance the value of the business.⁵⁵

46. Section 11.4 of the CCAA gives the Court the specific authority to declare a person to be a critical supplier and to grant a charge on the debtor's property to secure amounts owing for services provided after the filing. However, section 11.4 of the CCAA does not oust the court's inherent jurisdiction to make provision for the payment of pre-filing amounts to suppliers whose services are viewed as critical to the post-filing operations of the debtor, even where the debtor does not propose to secure payment of post-filing supplies with a critical supplier charge.⁵⁶

⁵³ Initial Affidavit at paras 32-40 and 156-159.

⁵⁴ [MPX](#) at para 54.

⁵⁵ Initial Affidavit at paras 160-162.

⁵⁶ [CCAA](#) at s. 11.4; [Cline Mining Corp. Re.](#), 2014 ONSC 6998 at para 38; [MPX](#) at para 70.

47. Case law demonstrates that this Court may include such a provision in the Initial Order.⁵⁷

E. The Directors' Charge Should be Granted

48. The Applicants are seeking a charge over the Property in the amount of \$900,000 to secure the indemnity of their respective directors and officers for liabilities they may incur during these CCAA proceedings (the “**Directors' Charge**”). The Directors' Charge is proposed to rank subordinate to the Administration Charge.⁵⁸

49. Section 11.51 of the CCAA affords the Court the jurisdiction to grant the Directors' Charge.⁵⁹ This Court has held that the purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred during the restructuring.⁶⁰ A court may not make the order if “the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost”, and the court shall make an order declaring that the charge does not apply in respect of a specific obligation or liability incurred by a director or officer “if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct”.⁶¹

50. The Applicants submit that it is appropriate in these circumstances for this Court to exercise its jurisdiction to grant the proposed Directors' Charge, given that:⁶²

- (a) the Applicants require the active and committed involvement of the directors and officers in order to continue business operations in the ordinary course and to effectively execute the SISP;

⁵⁷ [Target](#) at paras. 64-65.

⁵⁸ Initial Affidavit at paras 170-171.

⁵⁹ [CCAA s. 11.51\(1\)-\(4\)](#); [Canwest Global](#) at para 45; [US Steel Canada Inc. Re.](#) 2014 ONSC 6145 at para 20 [[US Steel](#)]; [Lydian](#) at para 52.

⁶⁰ [Canwest Global](#) at paras 46-48.

⁶¹ [CCAA at s 11.51\(3\)-\(4\)](#).

⁶² Initial Affidavit at paras 172-177.

- (b) the directors and officers have indicated that their continued service and involvement in these CCAA Proceedings is conditional upon the granting of the Directors' Charge;
- (c) the Directors' Charge applies only to the extent that the directors and officers do not have coverage under another directors' and officers' insurance policy;
- (d) the Directors' Charge would only cover obligations and liabilities that the directors and officers may incur after the commencement of the CCAA Proceedings and does not cover wilful misconduct or gross negligence;
- (e) the amount of the Directors' Charge is reasonable in the circumstances and is limited to the potential exposure during the initial 10-day period; and
- (f) the Proposed Monitor is supportive of the Directors' Charge.

F. The Administration Charge Should be Granted

51. The Applicants are seeking a Court-ordered charge over the Property in the amount of \$250,000 to secure the professional fees and disbursements of the Proposed Monitor and its counsel, and the Applicants' insolvency counsel (Chaitons LLP) and corporate counsel (Owens Wright LLP), at their standard rates and charges, incurred prior to, on, or subsequent to the granting of the Initial Order (the "**Administration Charge**").⁶³

52. Section 11.52 of the CCAA expressly provides the Court with the jurisdiction to grant an administration charge. The list of non-exhaustive factors to be considered when granting an administration charge includes: the size and complexity of the business being restructured; the proposed role of the beneficiaries of the charge; whether there is unwarranted duplication of roles;

⁶³ Initial Affidavit at paras 163-164.

whether the quantum of the proposed charge appears to be fair and reasonable; the position of the secured creditors likely to be affected by the charge; and the position of the monitor.⁶⁴

53. The Applicants submit that it is appropriate for this Court to exercise its jurisdiction and grant the proposed Administration Charge, given that:⁶⁵

- (a) the Applicants' business is highly regulated and subject to numerous statutory and regulatory restrictions and requirements;
- (b) the beneficiaries of the Administration Charge have the requisite knowledge with respect to those regulations and have, and will continue to, contribute to these CCAA Proceedings and assist the Applicants with their business;
- (c) each proposed beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles;
- (d) the quantum of the proposed Administration Charge is fair and reasonable; and
- (e) the Proposed Monitor is supportive of the Administration Charge.

G. The Applicants should be authorized to incur no further costs in connection with their securities filing obligations

54. Pursuant to the Initial Order, the Applicants are seeking relief to dispense with certain securities filing requirements. Specifically, the Applicants seek authorization to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and

⁶⁴ *CCA* at s. 11.52; *Canwest Publishing Inc.*, 2010 ONSC 222 at para 54.

⁶⁵ Initial Affidavit at paras 165-169.

comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the CSE and OTCQB®.⁶⁶ The Initial Order also provides that none of the Directors and Officers, employees and other representatives of the Applicants, and the Monitor (and its directors, officers, employees and representatives), shall have any personal liability for any failure by the Applicants to make Securities Filings. Similar relief has been granted for reporting issuers under the CCAA.⁶⁷

55. The Applicants believe that incurring the time and costs associated with the Securities Filings would detract from their successful restructuring. Further, stakeholders will not be prejudiced given that detailed financial and other information on the Applicants will continue to be publicly available through materials filed in these CCAA Proceedings.⁶⁸

56. Finally, the language in the proposed Initial Order is limited to what is necessary for the Applicants to focus on their restructuring and does not overreach by purporting to prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have as described in section 11.1(2) of the CCAA. Accordingly, the Applicants believe that this relief is necessary and appropriate in the circumstances.

H. The regulatory stay of the licenses should be granted

57. CCAA courts have granted regulatory stays over licences where, without regulatory stays, the applicable regulators were likely to suspend or cancel licences due to the relevant parties having commenced CCAA proceedings.⁶⁹ Courts have commented that to “permit the immediate

⁶⁶ Initial Affidavit at para 179.

⁶⁷ [Aleafia Health Inc., amended and restated initial order issued August 4, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\)](#) paras 45-46; [MPX International Corporation, amended and restated initial order issued July 25, 2022 \[CV-22-00684542-00CL\] \(ONSC CL\)](#) at para 46-47; [CanniTrust Holdings Inc., initial order issued March 31, 2021 \[CV-20-00638930-00CL\] \(ONSC CL\)](#) at paras 46-47; [Pure Global Cannabis, Inc., Re, initial order issued March 19, 2020 \[CV-20-00638503-00CL\] \(ONSC CL\)](#) at para. 49; [BZAM Ltd., initial order issued March 5, 2024 \[CV-24-00715773-00CL\] \(ONSC CL\)](#) at paras 42-43.

⁶⁸ Initial Affidavit at para 180.

⁶⁹ [Re Just Energy Corp., 2021 ONSC 1793](#) at para 87 [*Just Energy*]; [Abbey Resources Corp., \(29 July 2021\) Saskatoon Q.B. No. 733 of 2021 \(SKQB\)](#) (Abbey Resources Corp.’s Supplemental Brief of Law); [Original Traders Energy Ltd., initial order issued January 31, 2023 \[CV-23-00693758-00CL\] \(ONSC CL\)](#) at para 19.

termination of [a debtor company’s] licences would not avoid social and economic losses but amplify them”.⁷⁰

58. Similarly, in *Just Energy Corp*, the Honourable J. McLeod stated:

More plainly put, the CCAA automatically stays enforcement of any payments of money ordered by the regulator. It does not, however, automatically stay other steps that a regulator may take against a regulated entity. The court may nevertheless stay such other steps if it is of the view that the failure to stay those other steps means that a viable compromise or arrangement could not be made, provided that the additional stay is not contrary to the public interest.⁷¹

59. Canadian courts have previously stayed the CRA from seeking to enforce its rights through regulatory actions and estopped the CRA from rescinding or destroying products related to an excise licence for the duration of a cannabis company’s protection under an insolvency regime.⁷²

60. As part of a BIA proposal, *Tantalus Labs Ltd.* sought an order from the Supreme Court of British Columbia that its excise cannabis licence, which was set to expire during the pendency of the proposal, be extended over the course of its BIA proceedings. CRA opposed, arguing that a ministerial decision to not renew a licence could not be “stayed” under the BIA.⁷³ The Honourable Madam Justice Fitzpatrick rejected CRA’s argument and granted an order maintaining the status quo over the cannabis excise licence during the course of the proposal proceedings.⁷⁴ This Court has similarly granted regulatory stays of cannabis licences in CCAA proceedings.⁷⁵

61. The Applicants’ cannabis licences (the “**Licences**”) are among the Applicants’ most valuable assets and are required to permit the Applicants to operate their underlying business. If the Licences lapse or are cancelled, the Applicants’ operation and delivery of products will need

⁷⁰ [Just Energy](#) at para 87.

⁷¹ [Just Energy](#) at para 79.

⁷² [Tantalus Labs Ltd. \(Re\)](#), 2023 BCSC 1450; [Aleafia Health Inc., SISP approval order issued August 22, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\)](#).

⁷³ [Tantalus Labs Ltd. \(9 July 2023\) Vancouver B-230269 \(BCSC\)](#) (Application Response) at Part 5, para 7.

⁷⁴ [Tantalus Labs Ltd. \(10 July 2023\) Vancouver B-230269 \(BCSC\)](#) (Order Made After Application).

⁷⁵ [Aleafia Health Inc., SISP approval order issued August 22, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\)](#) para 13; [Aleafia Health Inc., Endorsement of the Honourable Justice Conway issued August 22, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\)](#) at para 5; [BZAM Ltd., initial order issued March 5, 2024 \[CV-24-00715773-00CL\] \(ONSC CL\)](#) at para 44.

to be halted or suspended. Accordingly, the lapsing or cancellation of the Licences would terminate their ability to restructure or continue as a going-concern business. Without the stability of customer contracts that the Applicants have developed, they would lose vital revenue streams, threatening their viability and frustrating the fundamental purpose of these insolvency proceedings.⁷⁶

PART V: RELIEF REQUESTED

62. The Applicants submit that the relief sought on the within application is appropriate in the circumstances and consistent with prior orders of this Court,⁷⁷ and respectfully request that the proposed form of Initial Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of the date first written above.



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Lawyers for the Applicants

⁷⁶ Initial Affidavit at para 181.

⁷⁷ [FIGR Brands, Inc., initial order issued January 21, 2021](#) [Court File No. CV-21-00655373-00CL] (ONSC CL); [Superette Inc., initial order issued August 30, 2022](#) [CV-22-00686245-00CL] (ONSC CL); [MPX International Corporation, initial order issued July 25, 2022](#), [CV-22-00684542-00CL] (ONSC CL); [BZAM Ltd., initial order issued March 5, 2024](#) [CV-24-00715773-00CL] (ONSC CL).

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [MPX International Corporation, 2022 ONSC 4348](#)
2. [Laurentian University of Sudbury, 2021 ONSC 659.](#)
3. [McEwan Enterprises Inc, 2021 ONSC 6453.](#)
4. [Target Canada Co, 2015 ONSC 303.](#)
5. [First Leaside Wealth Management Inc., Re, 2012 ONSC 1299.](#)
6. [San Francisco Gifts Ltd, Re, 2004 ABQB 705.](#)
7. [Re Stelco Inc, \(2004\) 48 CBR \(4th\) 299 \(Ont Sup Ct\).](#)
8. [Re Boreal Capital Partners Ltd et al, 2021 ONSC 7802.](#)
9. [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60.](#)
10. [Re Lydian International Limited, 2019 ONSC 7473.](#)
11. [Sino-Forest Corporation \(Re\), 2012 ONSC 2063.](#)
12. [Re Canwest Global Communications Corp, \[2009\] OJ No 4286 \(Ont Sup Ct\).](#)
13. [Re Just Energy Corp, 2021 ONSC 1793.](#)
14. [Cline Mining Corp, Re, 2014 ONSC 6998](#)
15. [US Steel Canada Inc, Re, 2014 ONSC 6145.](#)
16. [Canwest Publishing Inc, 2010 ONSC 222.](#)
17. [In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc., et al., amended and restated initial order issued August 4, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\)](#)
18. [In the Matter of a Plan of Compromise or Arrangement of MPX International Corporation et al., amended and restated initial order issued August 5, 2022 \[CV-22-00684542-00CL\] \(ONSC CL\)](#)
19. [In the Matter of a Plan of Compromise or Arrangement of CannTrust Holdings Inc. et al., initial order issued March 31, 2021 \[Court File No. CV-20-00638930\] \(ONSC CL\)](#)
20. [In the Matter of a Plan of Compromise of Arrangement of Pure Global Cannabis, Inc. et al., initial order issued March 19, 2020 \[CV-20-00638503-00CL\] \(ONSC CL\)](#)
21. [In the Matter of a Plan of Compromise or Arrangement of BZAM Ltd. et al., initial order issued March 5, 2024 \[Court File No. CV-24-00715773-00CL\] \(ONSC CL\).](#)
22. [Abbey Resources Corp., Re, \(29 July 2021\) Saskatoon Q.B. No. 733 of 2021 \(SKQB\) \(Abbey Resources Corp.’s Supplemental Brief of Law\)](#)
23. [In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. et al., initial order issued January 31, 2023 \[Court File No. CV-23-00693758-00CL\] \(ONSC CL\).](#)
24. [Tantalus Labs Ltd. \(Re\), 2023 BCSC 1450.](#)
25. [In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et al., SISP approval order issued August 22, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\).](#)
26. [In the Matter of the Notice of Intention to Make a Proposal of Tantalus Labs Ltd. \(9 July 2023\) Vancouver B-230269 \(BCSC\) \(Application Response\) at Part 5, para 7.](#)
27. [In the Matter of the Notice of Intention to Make a Proposal of Tantalus Labs Ltd. \(10 July 2023\) Vancouver B-230269 \(BCSC\) \(Order Made After Application\).](#)

28. [*In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et al.*, Endorsement of the Honourable Justice Conway issued August 22, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\)](#)
29. [*In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc. et al.*, initial order issued January 21, 2021, \[CV-21-00655373-00CL\] \(ONSC CL\)](#).
30. [*In the Matter of a Plan of Compromise or Arrangement of Superette Inc. et al.*, initial order issued August 30, 2022 \[CV-22-00686245-00CL\] \(ONSC CL\)](#).
31. [*In the Matter of a Plan of Compromise or Arrangement of MPX International Corporation et al.*, initial order issued July 25, 2022 \[CV-22-00684542-00CL\] \(ONSC CL\)](#).

SCHEDULE B – STATUTES AND REGULATIONS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Section 2, "Insolvent Person"

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

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

Section 2(1), "Company"

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies; (*compagnie*)

Section 2(1), "Company"

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
- (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (*compagnie débitrice*)

Section 3

Application

(1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

(a) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a company that is a subsidiary of that other company.

R.S., 1985, c. C-36, s. 31997, c. 12, s. 1212005, c. 47, s. 125.

Section 11

General Power of Court

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances. R.S., 1985, c. C-36, s. 111992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1242005, c. 47, s. 128.

Section 11.001

Relief reasonably necessary

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

2019, c. 29, s. 136

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

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

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

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

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

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F)2019, c. 29, s. 137.

Section 11.2

Interim financing

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

1997, c. 12, s. 1242005, c. 47, s. 1282007, c. 36, s. 652019, c. 29, s. 138.

Section 11.4

Critical supplier

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods or services to the company and that the goods or services that are supplied are critical to the company's continued operation.

Obligation to supply

(2) If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

Security or charge in favour of critical supplier

(3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied under the terms of the order.

Priority

(4) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

1997, c. 12, s. 124 2000, c. 30, s. 156 2001, c. 34, s. 33(E) 2005, c. 47, s. 128 2007, c. 36, s. 65

Section 11.51

Security or charge relating to director's indemnification

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations

and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

2005, c. 47, s. 1282007, c. 36, s. 66.

Section 11.52

Court may order security or charge to cover certain costs

(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

2005, c. 47, s. 1282007, c. 36, s. 66

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

Court File No.: CV-24-00717664-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HERITAGE CANNABIS HOLDINGS CORP., 1005477 B.C. LTD., HERITAGE CANNABIS WEST CORPORATION, MAINSTRAIN MARKET LTD., HERITAGE CANNABIS EAST CORPORATION, PUREFARMA SOLUTIONS INC., 333 JARVIS REALTY INC., 5450 REALTY INC., HERITAGE CANNABIS EXCHANGE CORP., AND PREMIUM 5 LTD.

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

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS
(Returnable April 2, 2024)**

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