

No. S1912098
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

AND

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED AND SECTION 39
OF THE *LAW AND EQUITY ACT*, RSBC 1996 c. 253, AS AMENDED

AND

IN THE MATTER OF THE RECEIVERSHIP OF DIONYMED BRANDS INC.

BETWEEN:

GLAS Americas LLC

PETITIONER

AND:

DionyMed Brands Inc.

RESPONDENT

ORDER MADE AFTER APPLICATION

(APPROVAL AND DISTRIBUTION ORDER)

BEFORE THE HONOURABLE)
Mr. JUSTICE SEWELL) **January 16, 2020**
)

THE APPLICATION of FTI Consulting Canada Inc., in its capacity as Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and property of DionyMed Brands Inc. (the "**Debtor**"), coming on for hearing at Vancouver, British Columbia, on the 16th day of January, 2020; AND ON HEARING Sean Zweig, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto, and no one else appearing although duly served; AND UPON READING the material filed, including the Receiver's Second Report to the Court dated January 7, 2020 (the "**Second Report**"), the Confidential Supplement to Second Report

made January 14, 2020 filed under seal, and Affidavit #1 of Victor Fong made January and filed under seal (the "**Confidential Fong Affidavit**"); AND PURSUANT TO the British Columbia Supreme Court Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

Service

1. The time for service of the Notice of Application for this Order and supporting materials be and are hereby abridged and deemed good and sufficient such that the Notice of Application is properly returnable today, and service upon any interested party other than those parties on the service list maintained by the Receiver in this proceeding is hereby dispensed with.

Approval of Transaction

2. The sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement dated January 3, 2020 (the "**Sale Agreement**") between the Receiver, Herban Industries, Inc., Herban Industries CA LLC, Herban Industries OR LLC, Herban Industries NJ LLC, Herban Industries NV LLC, Herban Industries CO LLC, Herban Industries MI LLC, on the one side, and Eaze Technologies, Inc., (the "**Purchaser**") and DYME US Acquisition SUB, LLC (the "**Purchaser Designee**"), on the other, a copy of which is attached as Exhibit A to the Confidential Fong Affidavit is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved *nunc pro tunc*, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents (the "**Additional Documents**") as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser Designee of the assets described in the Sale Agreement (the "**Purchased Assets**"). Without limiting the foregoing, the Receiver, as receiver of all of the shares in the capital of Herban Industries, Inc. ("**Herban Delaware**"), is hereby authorized to cause Herban Delaware (i) to execute, deliver and perform its obligations under the Sale Agreement and the Additional Documents, and (ii) in its capacity as sole manager and/or member, as applicable, of Herban Industries CA LLC, Herban Industries OR LLC, Herban Industries NJ LLC, Herban Industries NV LLC, Herban Industries CO LLC and Herban Industries MI LLC (collectively, the "**Herban Subsidiaries**"), to authorize and direct and otherwise cause each such Herban Subsidiary to execute, deliver and perform its obligations under the Sale Agreement and the Additional Documents. The Receiver, as receiver of all of the shares in the capital of Herban Delaware, is hereby authorized to authorize and direct the board of directors of Herban to take the actions that are necessary or desirable to cause the execution, delivery and performance of the Sale Agreement and the Additional Documents by Herban Delaware and the Herban Subsidiaries.

Vesting of Property

3. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), all of the Receiver's and

the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser Designee in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated October 29, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"); and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. (a) The Receiver is hereby authorized and directed to distribute, assign, transfer or pay, as may be applicable, to SP1 Credit Fund ~~or to another entity or person as directed by SP1 Credit Fund, ("SP1")~~ all of the consideration to be received by the Receiver from the sale of the Purchased Assets pursuant to the Sale Agreement.

(b) Any distribution of the consideration received by the Receiver from the sale of the Purchased Assets pursuant to the Sale Agreement is without prejudice to the priority claim of Buckley LLP in respect of that consideration.

(c) Subject to any applicable securities laws, SP1 may dispose of or otherwise deal with any of the consideration received in connection with the sale of the Purchased Assets pursuant to the Sale Agreement (the "Securities") without restriction as absolute owner. SP1 agrees not to distribute any net cash proceeds received from the disposition of the Securities (or the net cash proceeds of any securities issued in replacement of the Securities) pending consent of SP1 and Buckley LLP or further order of the Court dealing with the asserted priority claim of Buckley LLP in respect of that consideration, subject to the following timetable:

(i) the hearing of an application by Buckley LLP to determine the priority of its claim is scheduled for February 10, 2020;

(ii) Buckley LLP shall deliver its Notice of Application, together with all supporting affidavits, to counsel for the Receiver and counsel for SP1 by January 24, 2020;

(iii) any response, together with all supporting affidavits, to the application of Buckley LLP to be delivered to Buckley LLP by January 31, 2020;

(d) SP1 and Buckley LLP reserve their rights to seek costs and damages.

(e) Nothing in this Order derogates from or otherwise affects the rights and restrictions attached to the Securities or the obligations of SPI under the IRA or the Voting Agreement (each as defined in the Sale Agreement).

5. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof to the Purchaser (or its nominee).
6. Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser Designee all human resources and payroll information in the company's records pertaining to the Debtor's past and current employees. The Purchaser Designee shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
7. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court, providing that the Closing Date occurs on or before February 28, 2020.

Miscellaneous Matters

8. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser Designee pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
9. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

10. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
11. Service of this Order shall be deemed good and sufficient by:

- (a) serving the same in accordance with the Receivership Order on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order;and
- (b) posting a copy of this Order on the Receiver's website at <http://cfcanada.fticonsulting.com/DionyMed/>

and service on any other person is hereby dispensed with.

12. Endorsement of this Order by counsel appearing on this application, except for counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Sean Zweig
Lawyer for the Receiver

BY THE COURT

REGISTRAR

Schedule A – List of Counsel

<u>Counsel Name</u>	<u>Party Represented</u>
Carina Chiu	Collateral Agent, GLAS Americas LLC
Bryan Hicks	Buckley LLP
Jonathan Ross	Eaze Technologies, Inc.
Maria Konyukhova	SP1 Credit Fund

Schedule B – Form of Receiver's Certificate

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BETWEEN:

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PETITIONER

AND:

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RESPONDENT

RECEIVER'S CERTIFICATE

RECITALS:

A. By Order dated October 29, 2019, FTI Consulting Canada Inc. was appointed receiver, without security, of all of the assets, undertakings and property of DionyMed Brands Inc. (the "**Debtor**"), including all proceeds thereof (in such capacity, the "**Receiver**");

B. Pursuant to an order of the Court dated January 16, 2020 (the "**Approval and Vesting Order**"), the Court approved the sale of the Purchased Assets to Eaze Technologies, Inc. (the "**Purchaser**") and DYME US Acquisition SUB, LLC (the "**Purchaser Designee**"), providing for the vesting in the Purchaser Designee of all of the Receiver's and the Debtor's, right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meaning set out in the Approval and Vesting Order.

THE RECEIVER CERTIFIES THE FOLLOWING:

1. The Purchaser has paid and satisfied, and the Receiver has received, the Purchase Price for the Purchased Assets in accordance with the Sale Agreement; and
2. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver to the Purchaser on [DATE], 2020.

FTI Consulting Canada Inc.,
solely in its capacity as receiver and
manager of the assets, undertakings
and property of DionyMed Brands
Inc., and not in its personal capacity

Per: Jeffrey Rosenberg
Senior Managing Director