

COURT FILE NUMBER      **Q.B. No. 1639 OF 2015**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE      **SASKATOON**

APPLICANT      **GOLDEN OPPORTUNITIES FUND INC.**

RESPONDENT      **PHENOMENOME DISCOVERIES INC. and**  
**PHENOMENOME LABORATORY SERVICES INC.**



**IN THE MATTER OF THE RECEIVERSHIP OF PHENOMENOME DISCOVERIES INC. AND  
PHENOMENOME LABORATORY SERVICES INC.**

**APPLICATION WITHOUT NOTICE**

This application is being made without notice.

**Provision authorizing the application to be made without notice:**

1. Rule 6-9 provides that unless the Court gives special leave, without notice, there must be at least 14 days between the service and filing of a notice of application and the day named in the notice of the hearing of the application.

**Remedy claimed or sought**

2. An Order (the "**Order**") allowing the Notice of Application (the "**NOA**") attached as Schedule "**A**" to this Application, to be heard by the Honourable Madam Justice L.M. Schwann on October 25, 2016 at 10:00 a.m.
3. Such other terms as are set out in the Order attached as Schedule "**B**" to this Application, filed herewith.

### **Grounds for Seeking the Order:**

4. FTI Consulting Inc., the court-appointed receiver (the "Receiver") is seeking to obtain an order to increase the Receiver's borrowing charge.
5. On October 19, 2016, counsel to the Receiver contacted Glen Metivier, the Local Registrar, to book a hearing date for the application to increase the Receiver's borrowing charge. The Local Registrar scheduled the matter to be heard before the Honourable Madam Justice L.M. Schwann on October 25, 2016 at 10:00 a.m.
6. As a result, the Receiver was unable to comply with Rule 6-9 and seeks an Order to abridge the service requirements for the NOA and supporting materials.

### **Applicable Rules:**

7. The Applicant will rely upon and refer to the following during the making of the Application:
  - (a) *The Queen's Bench Rules*, as amended; and
  - (b) such further and other Rules as counsel may advise and this Honourable Court may permit.

### **Applicable Acts and Regulations:**

8. The Applicant will rely upon and refer to the following during the making of the Application:
  - (a) *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01; and
  - (b) such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

**Applicable cases relied on:**

9. None.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 21<sup>st</sup> day of October, 2016.

**KMP LAW NORTH**

PER: 

Ryan Pederson

Agent for the solicitors for the Receiver

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

This document was prepared and delivered by:

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**Schedule "A"**

**The NOA**

(see attached)

COURT FILE NUMBER 1639 of 2015  
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
JUDICIAL CENTRE SASKATOON  
PLAINTIFF GOLDEN OPPORTUNITIES FUND INC.  
DEFENDANTS PHENOMENOME DISCOVERIES INC. and  
PHENOMENOME LABORATORY SERVICES INC.

IN THE MATTER OF THE RECEIVERSHIP OF PHENOMENOME DISCOVERIES INC. AND  
PHENOMENOME LABORATORY SERVICES INC.

NOTICE OF APPLICATION

NOTICE TO ALL RESPONDENTS – ALL PERSONS NAMED ON THE SERVICE LIST FOR  
THESE PROCEEDINGS ATTACHED AT SCHEDULE "A" HERETO (THE "SERVICE LIST")

This application is made against you. You are a respondent. You have the right to state your  
side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below

**Where:** Court House, 520 Spadina Crescent  
East, Saskatoon, Saskatchewan  
S7K 3G7  
**Date:** Tuesday, October 25, 2016  
**Time:** 10:00 a.m.

**Remedy claimed or sought:**

1. FTI Consulting Canada Inc., in its capacity as court-appointed receiver and manager (the "**Receiver**") of Phenomenome Discoveries Inc. ("**PDI**") and Phenomenome Laboratory Services Inc. ("**PLSI**") and together with PDI, collectively, "**Phenomenome**"), seeks an order substantially in the form attached hereto as Schedule "**B**":
  - (a) abridging the time for service of this application and declaring that this motion is properly returnable today, if necessary, and further service of this Application, other than to those listed on the Service List is hereby dispensed with;

- (b) increasing the amount the Receiver is permitted to borrow pursuant to paragraph 23 of the Receivership Order granted by the Honourable Mr. Justice B.J. Scherman on February 25, 2016 (the "**Receivership Order**") from \$3,650,000 to \$3,850,000;
- (c) approving the actions, conduct and activities of the Receiver as outlined in the Receiver's Fourth Report dated October 21, 2016 (the "**Fourth Report**"); and
- (d) such further and other relief as counsel may request and this Honourable Court may deem appropriate.

**Grounds for making this application:**

2. The grounds upon which the Receiver relies in making the within Application are as follows:

- (a) on February 25, 2016, Phenomenome became subject to these receivership proceedings pursuant to the Receivership Order and the Receiver was appointed over all of the assets, undertakings and properties of Phenomenome (the "**Property**");
- (b) the Receiver has acted diligently since its appointment, and has undertaken those activities described in the Fourth Report;
- (c) paragraph 23 of the Receivership Order permitted the Receiver to borrow an outstanding principal amount not exceeding \$400,000;
- (d) pursuant to an Order by the this Honourable Court dated April 15, 2016, the amount the Receiver was permitted to borrow was increased from \$400,000 to \$800,000;
- (e) pursuant to an Order by the this Honourable Court dated May 2, 2016, the amount the Receiver was permitted to borrow was increased from \$800,000 to \$3,000,000;
- (f) pursuant to an Order by the this Honourable Court dated August 30, 2016, the amount the Receiver was permitted to borrow was increased from \$3,000,000 to \$3,650,000;

- (g) an increase in the amount the Receiver is permitted to borrow from \$3,650,000 to \$3,850,000 is necessary in order to permit the Receiver to:
- (i) continue its administration of the estate in an efficient and uninterrupted manner;
  - (ii) make payments to those key employees who are subject to the key employee retention plan ("KERP") approved by this Court on April 15, 2016;
  - (iii) complete the closing of the transaction contemplated by the Purchase and Sale Agreement executed August 22, 2016 made between the Receiver as vendor for and on behalf of Phenomenome and Med-Life Discoveries LP as purchaser, by its general partner Med-Life Discoveries GP Inc.; and
  - (iv) take any steps necessary or actions necessary to conclude the administration of Phenomenome's estate, including the matters outlined in greater detail in the Fourth Report,  
  
all of which activities are being undertaken for the benefit of the estate;
- (h) as indicated in the cash flow forecast attached to the Fourth Report, the Receiver will require additional funding to carry out the activities described in the above sub-paragraphs; and
- (i) such further and other grounds as counsel for the Receiver may advise.

**Material or evidence to be relied on:**

3. The Receiver intends to rely upon the following materials:
- (a) the Receivership Order, filed;
  - (b) the Fourth Report, filed;
  - (c) the Order of the Honourable Justice B.J. Scherman granted on April 15, 2016;
  - (d) the pleadings and proceedings herein; and

- (e) such further and other materials as counsel may advise and this Honourable Court may permit.


**Applicable Acts and Regulations:**

4. The Receiver will rely upon and refer to the following during the making of the Application:
- (a) the provisions of the *Bankruptcy & Insolvency Act*, RSC 1985, c B-3, as amended.

DATED at Calgary, Alberta, this 21 day of October, 2016.

**BLAKE, CASSELS & GRAYDON LLP, Agents  
and Solicitors for FTI CONSULTING CANADA  
INC.**

per:

  
Kelly J. Bourassa,  
counsel to FTI Consulting Canada Inc.

**NOTICE**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

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File number:	81518/111

Name of firm: KMP Law North



Lawyer in charge of file:  
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**SCHEDULE "A"**

Q.B. No. 1639 of 2016

**IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN  
JUDICIAL CENTRE OF SASKATOON**

BETWEEN:

**FTI CONSULTING CANADA INC., solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PHENOMENOME DISCOVERIES INC. and PHENOMENOME LABORATORY SERVICES INC. and not in its personal or corporate capacity**

Applicant

- and -

**PHENOMENOME DISCOVERIES INC. and  
PHENOMENOME LABORATORY SERVICES INC.**

Respondents

**SERVICE LIST**

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**SCHEDULE "B"**

COURT FILE NUMBER                   **1639 of 2015**  
**COURT OF QUEEN'S BENCH FOR SASKATCHEWAN**

JUDICIAL CENTRE           **SASKATOON**

PLAINTIFF                   **GOLDEN OPPORTUNITIES FUND INC.**

DEFENDANTS               **PHENOMENOME DISCOVERIES INC. and  
PHENOMENOME LABORATORY SERVICES INC.**

**IN THE MATTER OF THE RECEIVERSHIP OF PHENOMENOME DISCOVERIES INC. AND  
PHENOMENOME LABORATORY SERVICES INC.**

**ORDER**  
**(Approval of Increased Receiver's Borrowing Charge)**

Before the Honourable Madam Justice L.M. Schwann in Chambers the 25th day of October, 2016.

**UPON THE APPLICATION** of Kelly J. Bourassa, counsel on behalf of the receiver and manager, FTI Consulting Canada Inc. (the "**Receiver**"), **AND UPON** hearing from counsel for the Receiver, and counsel for Med-Life Discoveries LP, **AND UPON** reading the Notice of Application dated October 21, 2016, the Fourth Report of the Receiver (the "**Fourth Report**") dated October 21, 2016 and the pleadings and proceedings herein;

Capitalized terms used but not defined herein have the meaning ascribed to them in the Fourth Report.

The Court Orders:

**INCREASE TO THE RECEIVER'S BORROWING CHARGE**

1. All amounts borrowed by the Receiver pursuant to paragraph 23 of the Receivership Order, as of the date of this Order, are approved.
2. The amount the Receiver is permitted to borrow pursuant to paragraph 23 of the Receivership Order shall be hereby increased from \$3,650,000 to \$3,850,000 (the "**Funds**").
3. The Receiver is authorized to drawn down and hold the full amount of the Funds prior to the closing of the Transaction (as defined in the Fourth Report).

**MISCELLANEOUS**

4. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

5. Service of this Order on any party not attending this application is hereby dispensed with.

**ISSUED** at the City of Saskatoon, in the Province of Saskatchewan, this \_\_\_ day of October, 2016.

---

Deputy Local Registrar

This Order was delivered by:

**Blake, Cassels & Graydon LLP**  
Barristers & Solicitors  
Unit 3500, 855 2 Street SW  
Calgary, AB T2P 4J8

Address for Service: As above  
Lawyer: Kelly J. Bourassa  
Telephone: 403-260-9697  
Facsimile: 403-260-9700

**TO:** Local Registrar, Judicial Centre of Saskatoon

**AND TO:** Those parties listed on the Service List attached to the Application as Schedule "A"

**Schedule "B"**

**Form of Order**

(see attached)

COURT FILE NUMBER **Q.B. No. 1639 OF 2015**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE **SASKATOON**

APPLICANT **GOLDEN OPPORTUNITIES FUND INC.**

RESPONDENTS **PHENOMENOME DISCOVERIES INC. and  
PHENOMENOME LABORATORY SERVICES INC.**

Clerk's Stamp

**IN THE MATTER OF THE RECEIVERSHIP OF PHENOMENOME DISCOVERIES INC. AND  
PHENOMENOME LABORATORY SERVICES INC.**

=====  
**DRAFT SHORT SERVICE ORDER**  
=====

BEFORE the Honourable Justice \_\_\_\_\_, on the \_\_\_\_\_ day of October,  
2016.

**UPON THE APPLICATION** of Ryan Pederson, agent for the counsel to the court-appointed receiver, FTI Consulting Canada Inc. (The "**Receiver**"), **AND UPON** having read the Application Without Notice dated October 21<sup>st</sup>, 2016 (the "**Application**"), including the Notice of Application attached as Schedule "A" to the Application, and this draft Order.

The Court Orders that:

1. The time for service of the Application, and any supporting materials, is abridged.
2. The Notice of Application is returnable at 10:00 a.m. 25<sup>th</sup> day of October, 2016.
3. A copy of this Order shall be served upon the parties on the Service List attached as Schedule "C" to the Application within one business day of this Order being granted.

4. No costs are awarded.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this \_\_\_\_ day of October, 2016.

(Seal)

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**LOCAL REGISTRAR**

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

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**Schedule "C"**

**Service List**

(see attached)

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN  
 JUDICIAL CENTRE OF SASKATOON

BETWEEN:

**FTI CONSULTING CANADA INC., solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PHENOMENOME DISCOVERIES INC. and PHENOMENOME LABORATORY SERVICES INC. and not in its personal or corporate capacity**

Applicant

- and -

**PHENOMENOME DISCOVERIES INC. and  
 PHENOMENOME LABORATORY SERVICES INC.**

Respondents

**SERVICE LIST**

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