

Form 6-4
(Rule 6-4)

FILED IN THE OFFICE OF THE
LOCAL REGISTRAR, THE 22
DAY OF Aug 2016
DEPUTY LOCAL REGISTRAR

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

APPLICANT **GOLDEN OPPORTUNITIES FUND INC.**

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

APPLICATION WITHOUT NOTICE

This application is being made without notice.

Provisions 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 for 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, filed with this Application, to be heard by the Honourable Madam Justice Rothery on August 30, 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 Canada Inc., the court-appointed receiver (the "**Receiver**" or the "**Applicant**"), is seeking to obtain a sale approval and vesting order from this Honourable Court as set out in the NOA.
5. On August 9, 2016 (the "**Booking Date**"), counsel to the Receiver contacted Glen Metivier, the Local Registrar, to book a hearing date (the "**Hearing Date**") for an application seeking a sale approval and vesting order.

6. On August 12, 2016, the Honourable Madam Justice Rothery confirmed her availability to hear this matter in Chambers on August 30, 2016.
7. However, as particularized in the Third Report of the Receiver dated August 22, 2016, the purchase and sale agreement was continuously being negotiated between the Receiver and the Purchaser and was not executed until August 22, 2016.
8. As a result, the Receiver was unable comply with Rule 6-9 and seeks an Order to abridge the service requirements for the NOA and supporting materials.

Respecting opposite parties:

9. The parties on the Service List attached as Schedule "C" to this Application are aware that an application for sale approval has been pending.
10. All parties on the Service List will be served with a copy of this Application upon its filing.

Applicable Rules:

11. 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:

12. 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:

13. None.

DATED at Saskatoon, Saskatchewan, this 22nd day of August, 2016.

KMP LAW NORTH

Per: 

Ryan Pederson

Agent for the solicitors for the Receiver

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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Lawyer in charge of file:	Ryan Zahara
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File number:	79294/11

Schedule "A"

The Notice of Application
(see attached)

Clerk's stamp:

COURT FILE NUMBER **1639 of 2015**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE **SASKATOON**

APPLICANT **GOLDEN OPPORTUNITIES FUND INC.**

RESPONDENTS **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, August 30, 2016

Time: 10:00 a.m.

Remedy claimed or sought:

1. FTI Canada Consulting Inc., in its capacity as court-appointed receiver (the "**Receiver**") of Phenomenome Discoveries Inc. ("**PDI**") and Phenomenome Laboratory Services Inc. ("**PLSI**") and together with PDI, the "**Company**"), seeks Orders substantially in the form attached hereto as Schedules "**B**" and "**C**":
 - (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) approving the sale of the Purchased Assets, as defined in the Purchase and Sale Agreement dated as of August 22, 2016 (the "**Sale Agreement**"), between the Receiver, as vendor for and on behalf of the Company, and Med-Life Discoveries LP, by its general partner Med-Life Discoveries GP Inc. (the "**Purchaser**") on the terms set forth in the Sale Agreement and in accordance with paragraphs 6(l)(ii) and 6(m) of the receivership order granted on February 25, 2016 by the Honourable Mr. Justice B.J. Scherman (the "**Receivership Order**") in these proceedings;
- (c) vesting in the Purchaser all of the Company's right, title and interest, free and clear of all liens and encumbrances (except the Permitted Encumbrances as defined in the Sale Agreement) in and to the Purchased Assets;
- (d) approving the actions, conduct and activities of the Receiver as outlined in the Third Report of the Receiver (the "**Third Report**") dated August 22, 2016;
- (e) approving the Receiver's Statement of Receipts and Disbursements for the period from July 8, 2016 to August 13, 2016 as set out in the Third Report;
- (f) sealing the Confidential Supplement to the Third Report dated August 22, 2016 (the "**Confidential Supplement**"), and the appendices thereto, on the Court file
- (g) increasing the amount the Receiver is permitted to borrow pursuant to paragraph 23 of the Receivership Order from \$3,000,000 to \$3,635,000; and
- (h) 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, the Company became subject to these receivership proceedings pursuant to the Receivership Order;
 - (b) pursuant to the Receivership Order, the Honourable Mr. Justice B.J. Scherman authorized the Receiver to, *inter alia*, market any or all of the Property (as defined in the Receivership Order), sell the Property or any parts thereof, and apply for any vesting

order necessary to convey the Property or any parts thereof, free and clear of any liens or encumbrances;

- (c) as a result of a marketing and sales process conducted by the Receiver, an offer was received from the Purchaser for the Purchased Assets;
- (d) the Receiver and the Purchaser executed the Sale Agreement with respect to the Purchased Assets subject only to Court approval;
- (e) the Receiver's marketing efforts of the Assets were lengthy and thorough; and
- (f) the Purchase Price (as defined in the Sale Agreement) represents the best realizable value that could reasonably be obtained for the Assets in the present circumstances.

Material or evidence to be relied on:

- 3. The Receiver intends to rely upon the following materials:
 - (a) the Receivership Order, filed;
 - (b) the First Report of the Receiver dated April 11, 2016, filed;
 - (c) the Second Report of the Receiver dated July 13, 2016, filed;
 - (d) the Third Report, filed;
 - (e) the Confidential Supplement;
 - (f) the pleadings and proceedings herein; and
 - (g) such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- 4. The Receiver 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:

- 5. The Receiver will rely upon and refer to the following during the making of the Application:
 - (a) the *Bankruptcy & Insolvency Act*, RSC 1985, c B-3, as amended;
 - (b) *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, as amended; and
 - (c) such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

DATED at Saskatoon, Saskatchewan, this 22nd day of August, 2016.

**BLAKE, CASSELS & GRAYDON LLP, COUNSEL
FOR FTI CONSULTING CANADA INC.**

per: _____

Ryan Zahara

Counsel to FTI Consulting Canada Inc.

1.

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File number: 729294/11

Schedule "B"

Form of Short Service Order

(see attached)

COURT FILE NUMBER **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.**

SHORT SERVICE ORDER

Before the Honourable Justice _____ on the ____ of August, 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 August 22, 2016, the Notice of Application dated August 22 2016 (the "**Application**"), and this Order.

The Court orders:

1. The time for service of the Application, and any and all supporting materials, is abridged.
2. The Application is returnable at 10:00 a.m. on the 30th of August, 2016.
3. A copy of this Order shall be served upon the parties on the Service List within one business day of this Order being granted.
4. No costs are awarded.

ISSUED at Saskatoon, Saskatchewan, this ____ day of August, 2016.

(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm: Blake, Cassels & Graydon LLP
Lawyer in charge of file: Ryan Zahara
Address of firm: 3500, 855 – 2nd Street SW, Calgary, Alberta T2P 4J8
Telephone number: 403-260-9628
Facsimile number: 403-260-9700
E-mail address: ryan.zahara@blakes.com
File number: 79294/11

Schedule "C"

Service List
(see attached)

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

BETWEEN:

GOLDEN OPPORTUNITIES FUND INC.

Plaintiff
 (Applicant)

- and -

PHENOMENOME DISCOVERIES INC. and PHENOMENOME LABORATORY SERVICES INC.

Defendant
 (Respondent)

SERVICE LIST

(Updated as of July 6, 2016)

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