



COURT FILE NUMBER 1639 of 2015

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

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: Friday, March 22, 2019
Time: 9:00 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) approving the actions, conduct and activities of the Receiver as outlined in the Receiver's Fifth Report dated March 11, 2019 (the "**Fifth Report**") and all other reports filed by the Receiver in these receivership proceedings;
- (c) approving the accounts, fees and disbursements of the Receiver and its independent legal counsel in connection with the completion of these receivership proceedings, including the costs of this Application;
- (d) approving the Receiver's statement of receipts and disbursements for the period from February 25, 2016 to March 8, 2019, as set out in the Fifth Report;
- (e) authorizing and directing the Receiver to make interim and final distributions to Med-Life Discoveries LP ("**MLD**"), up to the full amount of the Receiver's Borrowing Charge (defined below), as described in the Fifth Report;
- (f) declaring that the Receiver has duly and properly discharged its duties, responsibilities and obligations as Receiver;
- (g) discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of any act done by the Receiver in these receivership proceedings, and its conduct as Receiver pursuant to its appointment in accordance with the Receivership Order (defined below), or otherwise; and
- (h) such further and other relief as counsel may request and this Honourable Court may deem appropriate.

Grounds for making this application:

2. On February 25, 2016, Phenomenome became subject to these receivership proceedings pursuant to an Order of the Honourable Mr. Justice B.J. Scherman (the "**Receivership Order**").
3. On May 2, 2016, this Honourable Court granted an order which, among other things, approved sales procedures for the Property (as defined in the Receivership Order).

4. The Receiver carried out the sales procedures, which resulted in a transaction between the Receiver and MLD, which transaction was approved by this Court on September 26, 2016.
5. The realization of all assets and property of Phenomenome is complete and there are no further assets to be realized upon or recovered.
6. As set out in the Fifth Report, \$1,250,000 (excluding interest) remains owing to MLD pursuant to the Receiver's borrowings in these proceedings that are secured by a first priority Court ordered charge over all of the Property ("**Receiver's Borrowing Charge**").
7. MLD will suffer a significant shortfall on the amounts owing to it pursuant to the Receiver's borrowings.
8. As set out in the Fifth Report, the Receiver proposes to distribute any funds it holds currently and at the end of these receivership proceedings to MLD, in partial satisfaction of MLD's secured claim.
9. Except for some minor administrative matters, the Receiver has performed its mandate as Receiver under the Receivership Order and it is now appropriate that the Receiver be discharged as Receiver, subject to the completion of any final administrative tasks.

Material or evidence to be relied on:

10. The Receiver intends to rely upon the following materials:
 - (a) the Receivership Order, filed;
 - (b) the Fifth Report, filed;
 - (c) the pleadings and proceedings herein; and
 - (d) such further and other materials as counsel may advise and this Honourable Court may permit.

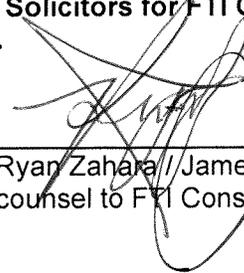
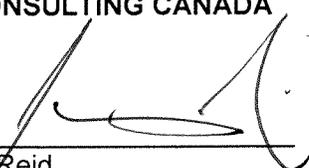
Applicable Acts and Regulations:

11. 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 11th day of March, 2019.

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

per: _____



Ryan Zahara / James Reid,
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.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm: Blake, Cassels & Graydon LLP
Lawyer in charge of file: James Reid
Address of firm: 3500, 855 – 2nd Street SW, Calgary, Alberta T2P 4J8
Telephone number: 403-260-9731
Facsimile number: 403-260-9700
E-mail address: james.reid@blakes.com
File number: 79294/11

Name of firm: Leland Kimpinski LLP
Lawyer in charge of file: Ryan Pederson
Address of firm: 336 6th Avenue North, Saskatoon, Saskatchewan S7K 2S5
Telephone number: 306-244-6686
Facsimile number: 306-653-7008
E-mail address: RPederson@lelandlaw.ca

Schedule A
(Service List)

COURT FILE NUMBER 1639 of 2015

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

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.

SERVICE LIST

NAME, ADDRESS EMAIL ADDRESS AND FAX NUMBER	COUNSEL FOR (OR ON BEHALF OF)	TELEPHONE NUMBER
SERVICE BY EMAIL		
MacPherson Leslie & Tyerman LLP 1500, 410 22 nd Street East Saskatoon SK S7K 5T6 Fax: 306.975.7145 Jeffrey M. Lee, Q.C. jmlee@mlt.com Paul Olfert polfert@mlt.com	Golden Opportunities Fund Inc.	306.975.7136 306.956.6970
Golden Opportunities Fund Inc. 830, 401 – 22 nd Street East Saskatoon, SK S7K 5T6 Fax: 306.652.8186 Doug Banzet d.banzet@westcapmgt.ca Gavin Preston g.preston@westcapmgt.ca		306.652.5557

NAME, ADDRESS EMAIL ADDRESS AND FAX NUMBER	COUNSEL FOR (OR ON BEHALF OF)	TELEPHONE NUMBER
FTI Consulting Canada Inc. Ernst & Young Tower 720, 440 – 2 nd Avenue SW Calgary, AB T2P 5E9 Fax: 403.232.6116 Deryck Helkaa Deryck.helkaa@fticonsulting.com Brett Wilson Brett.wilson@fticonsulting.com		 403.454.6031 403.454.6033
Blake, Cassels & Graydon LLP 3500, 855 – 2 nd Street S.W. Calgary, AB T2P 4J8 Fax: 403.260.9700 Ryan Zahara Ryan.zahara@blakes.com James Reid James.reid@blakes.com	FTI Consulting Canada Inc.	 403.260.9628 403.260.9731
Leland Kimpinski LLP 336 6 th Avenue North Saskatoon, SK S7K 2S5 Fax: 306.653.7008 Ryan Pederson RPederson@lelandlaw.ca	FTI Consulting Canada Inc.	 306.244.6686
Electric Umbrella Images Inc. 302, 220 – 3 rd Avenue South Saskatoon, SK S7K 1M1 Derek Mortensen derek@electricumbrella.ca		306.230.2300
Katan Associates PO Box 2140 Manhattan Beach, CA 90267 USA Fax: 310.374.0803 Seth Yakatan seth@katanassociates.com		310.374.0808 323.356.6321

NAME, ADDRESS EMAIL ADDRESS AND FAX NUMBER	COUNSEL FOR (OR ON BEHALF OF)	TELEPHONE NUMBER
<p>McKercher LLP 374 – 3rd Avenue South Saskatoon, SK S7K 1M5 Fax: 306.653.2669</p> <p>Ryan R. P. Shebelski r.shebelski@mckercher.ca</p>	<p>Innovation Place Saskatchewan Opportunities Corporation 114 – 15 Innovation Boulevard Saskatoon, SK S7N 2X8 Phone: 306.933.6295</p> <p>Van Isman visman@innovationplace.com</p>	<p>306.664.1364</p>
<p>Gowling Lafleur Henderson LLP 2600, 160 Elgin Street Ottawa, ON K1P 1C3 Fax: 613.788.3497</p> <p>Greg Coulthard Greg.coulthard@gowlings.com</p> <p>Lorne Segal Lorne.Segal@gowlingwlg.com</p>		<p>613.233.1781</p> <p>613.786.0141</p>
<p>Graycon Group a Division of Ricoh Canada Inc. 325 – 10th Avenue SW Calgary, AB T2R 0A5</p> <p>T. Mason tmason@graycon.com</p>		<p>403.508.2255</p>
<p>University of Saskatchewan E287 – 105 Administration Place Saskatoon, SK S7N 5A2</p> <p>Nicole Rozon-Couture Nicole.rozon-couture@usask.ca</p> <p>fsd_nsar@usask.ca</p>		<p>306.966.2460</p>
<p>McDougall Gauley LLP 500 – 616 Main Street Saskatoon, SK S7H 0J6</p> <p>David J. McKeague, Q.C. dmckeague@mcdougallgauley.com</p> <p>Ryan Grieve rgrieve@mcdougallgauley.com</p>		<p>306.665.5423</p>
<p>Chromatographic Specialties Inc. P.O. Bag 1150, 300 Laurier Blvd. Brockville, ON K6V 5W1</p> <p>sales@chromspec.com</p>		<p>613.342.4678</p>

NAME, ADDRESS EMAIL ADDRESS AND FAX NUMBER	COUNSEL FOR (OR ON BEHALF OF)	TELEPHONE NUMBER
KPMG LLP 500 – 475 2 nd Avenue South Saskatoon, SK S7K 1P4 Attention: Tom Zurowski Sangeeta Wu sangeetawu@kpmg.ca		306.934.6261
Percy H. Davis Limited Box 90 North Portal, SK S0C 1W0 Brandon Smith Brandon@percydavis.com angie@percydavis.com		306.927.2165 306.244.4748
Neoteryx LLC 421 Amapola Avenue Torrance, CA 90501 USA Salina Cano salinac@neoteryx.com		310.787.8747
AK Scientific, Inc. 30023 Ahern Avenue Union City, CA 94587 USA Simon.si@aksci.com		510.429.8835
Novilytic, LLC PO Box 372 North Webster IN 46555 USA Edward Woenker ewoenker@novilytic.com		574.834.4080
Bennett Jones LLP 3400 One First Canadian Place, PO Box 130 Toronto, Ontario MSX 1A4 Raj S. Sahnir sahnir@bennettjones.com Alan Gardner gardnera@bennettjones.com Trent Horne hornet@bennettjones.com	Yolbolsum Canada Inc.	416. 863.1200 416.777.4804 416.777.6231 416.777.5774

NAME, ADDRESS EMAIL ADDRESS AND FAX NUMBER	COUNSEL FOR (OR ON BEHALF OF)	TELEPHONE NUMBER
LifeLabs LP 100 International Blvd. Toronto, ON M9W 6J6 Ashley Dent <u>Ashley.Dent@LifeLabs.com</u> Michael McTeague <u>michael.mcteague@lifelabs.com</u>		 416.675.4530 Ext. 2329 416.213-4688
Crown Investments Corporation 116 Research Dr, Saskatoon, SK S7N 3R3 Cindy Ogilvie <u>cogilvie@bicorp.sk.ca</u>		1.306.787.6246
PIC Investment Group Inc. Craig Bell <u>cbell@picgroup.ca</u>		306.664.3955
Concorde Group Corp. David Dube <u>ddube@concordegroup.com</u>		306.668.3000
Scotia Wealth Management 410 – 22 nd Street East, Suite 700 Saskatoon, SK S7K 5T6 Trevor Broker <u>Trevor.broker@soctiawealth.com</u>	Shareholder	 306.666.5316
John Hyshka 941 University Drive Saskatoon, SK S7N 0K2 Joel Hesje (Counsel) E-mail: <u>j_hesje@mckercher.ca</u>		
Saskatchewan Employment Standards Adam Farion <u>adam.farion@gov.sk.ca</u>		
Michelle Gursky 1451 Paton Crescent Saskatoon, SK S7W 0C3 <u>mheiser@sasktel.net</u> **EMAIL PDF AND MAIL HARD COPY		

Schedule B

(Form of Distribution and Discharge Order)

COURT FILE NUMBER **1639 of 2015**

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

JUDICIAL CENTRE **SASKATOON**

PLAINTIFF **GOLDEN OPPORTUNITIES FUND INC.**

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

EFFECTIVE AS OF MARCH 22, 2019

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

ORDER

(Distribution and Discharge of Receiver, among other Relief)

Before the Honourable Madam Justice A.R. Rothery in Chambers the 22nd day of March, 2019.

UPON THE APPLICATION of Ryan Zahara and James Reid, counsel on behalf of FTI Consulting Canada Inc. (the "**Receiver**"), the receiver and manager of the assets, undertakings and properties (collectively, the "**Property**") of Phenomenome Discoveries Inc. ("**PDI**") and Phenomenome Laboratory Services Inc. ("**PLSI**" and together with PDI, collectively, "**Phenomenome**");

AND UPON reading the Notice of Application dated March 11, 2019, the Fifth Report of the Receiver (the "**Fifth Report**") dated March 11, 2019, and the proposed draft Order, filed; and the pleadings and proceedings herein;

AND UPON hearing from counsel for the Receiver and any other counsel in attendance at the Application;

The Court Orders:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good, timely and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that time actually given.

ACCOUNTS & ACTIVITIES OF RECEIVER

2. The professional fees and disbursements of the Receiver, as set out in the Fifth Report (including the fees and disbursements necessary to finalize the receivership), are hereby approved without the necessity of a formal passing of its accounts.

3. The professional fees and disbursements of the Receiver's legal counsel, Blake, Cassels & Graydon LLP, and the Receiver's filing agent, as set out in the Fifth Report (including the fees and disbursements necessary to finalize the receivership), are hereby approved without the necessity of a formal assessment of its accounts.

4. All activities, actions and proposed courses of action of the Receiver (collectively, the "**Actions of the Receiver**") to date in relation to the discharge of its duties and mandate as receiver of the Property pursuant to the Orders of this Honourable Court in these proceedings (collectively, the "**Receiver's Mandate**"), as such Actions of the Receiver are more particularly described in the Fifth Report and all of the Receiver's other reports filed in these proceedings, shall be and are hereby approved, ratified and confirmed.

5. The Receiver's statement of receipts and disbursements from February 26, 2016 to March 8, 2019, as set out in the Fifth Report, are hereby approved, ratified and confirmed.

INTERIM & FINAL DISTRIBUTIONS

6. The Receiver is authorized to maintain a holdback of \$15,000 on account of further fees and disbursements of the Receiver and its legal counsel, and to apply from time to time the amounts so held back against such further fees and disbursements (without the requirement of taxation or passing of accounts), and the Receiver is authorized and directed to make interim and final distributions to Med-Life Discoveries LP, as described in the Fifth Report.

DISCHARGE

7. Upon payment of the amounts set out in paragraph 5 of this Order, and upon the Receiver filing a certificate, in substantially the form attached to this Order as **Appendix A**, certifying that it has completed all remaining outstanding activities specifically identified in paragraph 6 of this Order and any other administrative tasks set out in the Fifth Report, which activities shall be deemed included in the Receiver's Mandate, the Receiver shall be discharged as Receiver of the Property, provided that notwithstanding its discharge herein:

- (a) the Receiver shall remain Receiver for the performance of such routine administrative tasks as may be required to complete the administration of the receivership herein; and
- (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of FTI Consulting Canada Inc. in its capacity as Receiver.

8. It is hereby adjudged and declared that, based upon the evidence that is currently before this Honourable Court in regard to the Actions of the Receiver:

- (a) the Receiver has acted honestly and in good faith, and has dealt with the Property and carried out the Receiver's Mandate in a commercially reasonable manner;
- (b) the Receiver has satisfied all of its duties and obligations pursuant to the Receiver's Mandate;
- (c) the Receiver shall not be liable for any act or omission, including, without limitation, any act or omission arising from, relating to or in connection with its discharge of the Receiver's Mandate, save and except for any liability arising out of fraud, gross negligence or willful misconduct on the part of the Receiver;
- (d) the Receiver has never had and shall not in the future have any liability in regard to any act or omission of the Debtor, including, without limitation, in relation to the business of the Debtor, payment of and/or accounting for any taxes (including, without limitation, goods and services tax) on revenues earned or any indebtedness or obligations whatsoever or howsoever incurred by the Debtor; and
- (e) no person shall commence an action or proceeding asserting a claim against the Receiver arising from, relating to or in connection with its discharge of the Receiver's Mandate without first obtaining an Order of this Honourable Court (on notice to the Receiver) granting such person leave to commence such action or proceeding, and any such action or proceeding commenced without such leave being obtained is a nullity.

9. Subject to the foregoing, any claims against the Receiver in connection with the Receiver's Mandate are hereby stayed, extinguished and forever barred.

GENERAL

10. Notwithstanding the discharge of the Receiver, the Receiver is hereby granted leave to apply to this Court for such further advice, direction or assistance as may be necessary to give effect to the terms of this Order.

11. This Order shall have full force and effect in all Provinces and Territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

12. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.

13. Service of this Order on any party not attending this application is hereby dispensed with. Parties attending this application shall be served in accordance with the Electronic Case Information and Service Protocol adopted in the Receivership Order.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this ____ day of _____, 2019.

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: Ryan Zahara / James Reid
Telephone: 403-260-9628 / 403-260-9731
Facsimile: 403-260-9700

TO: Local Registrar, Judicial Centre of Saskatoon

AND TO: The plaintiff, Golden Opportunities Fund Inc.

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

Appendix "A"

Form of Receiver's Discharge Certificate

COURT FILE NUMBER **1639 of 2015**

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

JUDICIAL CENTRE **SASKATOON**

PLAINTIFF **GOLDEN OPPORTUNITIES FUND INC.**

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

EFFECTIVE AS OF [DATE]

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

Receiver's Discharge Certificate

This Receiver's Certificate is the Receiver's Certificate referred to in paragraph 7 of the Order of the Honourable Madam Justice A.R. Rothery dated March 22, 2019 (the "**Discharge Order**"), in these proceedings. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Discharge Order.

Pursuant to an Order of the Honourable Mr. Justice B.J. Scherman (the "**Receivership Order**"), FTI Consulting Canada Inc. was appointed as receiver and manager (the "**Receiver**") of the property, assets and undertaking of Phenomenome Discoveries Inc. and Phenomenome Laboratory Services Inc. (collectively, the "**Debtors**").

Pursuant to the Discharge Order the Receiver was discharged as the Receiver of the Debtors, to be effective upon the filing by the Receiver with the Court of a Receiver's Discharge Certificate confirming that the Receiver's Mandate has been completed to the satisfaction of the Receiver.

THE RECEIVER HEREBY CERTIFIES THAT:

- (a) the Receiver's Mandate has been completed to the satisfaction of the Receiver;
- (b) all funds in the receivership were received and distributed as described in the Statement of Receipts and Disbursements described in the Fifth Report, with the exception of any minor discrepancies as compared to the estimated future amounts;

- (c) all documents, accounting records and other papers, records and information related to the business or affairs of Phenomenome have been provided to the purchaser of the assets of the Debtors by the Receiver; and
- (c) all remaining administrative tasks, as described in the Fifth Report, have been completed by the Receiver.

FTI CONSULTING CANADA INC., in its capacity as the Court-appointed receiver and manager of the undertaking, property and assets of **PHENOMENOME DISCOVERIES INC.** and **PHENOMENOME LABORATORY SERVICES INC.** and not in its personal or corporate capacity

Per: _____

Name:

Title: