

COURT FILE NUMBER B-151129  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF PANDORA'S BOX HOSPITALITY INC.**

**FIRST REPORT OF THE PROPOSAL TRUSTEE**

**DECEMBER 31, 2015**

## INTRODUCTION

1. This report (“**First Report**”) has been prepared by FTI Consulting Canada Inc. (“**FTI**”) in its capacity as the Trustee (the “**Proposal Trustee**”) under a Notice of Intention to File a Proposal (“**NOI**”) filed by Pandora’s Box Hospitality Inc. (“**Pandora**” or the “**Company**”) dated December 7, 2015 pursuant to Part III, Division I of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).
2. Pandora was incorporated on July 12, 2009 with the intention of operating a Milestone’s Grill and Bar (“**Milestones**”) through a license agreement with the Milestones franchisor, Cara Operations Limited (“**Cara**”).
3. Cara operates a number of Canadian restaurant brands including Harvey’s, Swiss Chalet, Montana’s Cookhouse, and East Side Mario’s.
4. In September 2009 Pandora entered into a license agreement with Cara (the “**License Agreement**”) to operate a Milestone’s restaurant to be located at 2425 Cambie Street in Vancouver (the “**Restaurant**”). At the same time, Cara entered into a lease agreement with the landlord for the Restaurant and subleased the premises to Pandora.
5. The Restaurant was scheduled to open in December, 2009 but due to construction delays and issues with the previous tenant it did not open until January 2010.
6. According to the Company, the decision to enter into the License Agreement was originally based on sales forecasts provided from Cara that indicated the Company would be cash flow positive even if the lowest range of estimated sales were used in the forecast (the “**Low Sales Forecast**”).
7. However since the Restaurant opened in 2010, the best that Pandora has been able to achieve is sales approximating 65% of the Low Sales Forecast.

8. As a result of the Company's inability to achieve the sales level in the Low Sales Forecast, in 2011 Pandora commenced discussions with Cara's then President of Milestones, Jeff Stipek regarding selling the business back to Cara. These discussions ceased when Mr. Stipek's employment with Cara was terminated.
9. During the first 5 years of the License Agreement, Cara agreed to a rent abatement for the Restaurant premises sublease (the "**Rent Abatement Period**"). The Rent Abatement Period expired in January 2015. During the Rent Abatement Period, Pandora operated at a loss accumulating a deficit of \$310,500 by the end of December 2014.
10. In January 2014 Pandora re-engaged Cara in discussions relating to selling the business back to Cara or alternatively, extending the Rent Abatement Period as Pandora was unable to sustain the continued operating losses.
11. According to the Company, Cara was not receptive to buying the franchise back from Pandora or extending the rent abatements beyond January 2015. However, Cara did offer some relief to the Company by agreeing to reducing the monthly royalty and marketing fee from 7% of sales to 2% of sales (the "**Royalty Relief**").
12. Despite the Royalty Relief, the Company continued to incur operating losses which were funded by Pandora's shareholders.
13. In early December 2015 Pandora's shareholders determined that they were not able to continue funding the cash deficiency resulting from Pandora's monthly operating losses. Accordingly on December 7, 2015, Pandora filed its NOI with the hope of being able to renegotiate a further rent abatement with Cara which would allow the Company to operate with a positive cash flow or alternatively find a buyer for the business.
14. The reports of the Proposal Trustee and other information in respect of these proceedings are posted on the Proposal Trustee's website at <http://cfcanada.fticonsulting.com/Pandorasbox/>.

## **PURPOSE**

15. The purpose of this First Report is to provide this Honourable Court with an update on the following:
  - (a) The activities of the Company since the filing of its NOI;
  - (b) An analysis of the Company's actual cash receipts and disbursements to December 27, 2015, compared to the cash flow statement filed on December 16, 2015;
  - (c) The Company's cash flow projection for the period from December 28, 2015 to February 19, 2016 (the "**Cash Flow Statement**"); and
  - (d) The Company's request for an extension of the current stay of proceedings under the NOI from January 6, 2016 to February 19, 2016.

## **TERMS OF REFERENCE**

16. In preparing this report, the Proposal Trustee has relied upon unaudited financial information, other information available to the Proposal Trustee and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
17. Except as described in this First Report:
  - (a) The Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

- (b) The Proposal Trustee has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 18. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
- 19. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

#### **UPDATE ON THE COMPANY'S ACTIVITIES**

- 20. Since the date of filing the NOI the Company has continued to operate the restaurant in the normal course.
- 21. The Company's major supplier of food requested that orders placed subsequent to the date of the NOI be paid in advance of delivery. This was anticipated and incorporated in the Company's cash flow statement filed with the Superintendent of Bankruptcy on December 16, 2015.
- 22. The Company has been working on a number of financial models to determine what concessions would need to be requested from Cara in order for Pandora to continue to operate on a cash-flow neutral basis. The company is preparing the financial models in preparation for negotiations with Cara which the Company hopes to commence in early January 2016.
- 23. The Proposal Trustee has monitored the Company's activities since the date of the NOI and is not aware of any post-filing obligations that have not been paid in accordance with agreed upon terms.

## COMPARISON OF FORECAST TO ACTUAL

25. The following table indicates the actual cash receipts and disbursements for the period from December 7, 2015 to December 27, 2015 as compared to the cash flow statement filed by the Company on December 16, 2015 with the Office of the Superintendent of Bankruptcy (the “December 16 Cash Flow” attached as Appendix A).

	Period covering December 7, 2015 to December 27, 2015		Variance
	Forecast Week 1 - Week 3	Actual Week 1 - Week 3	
Opening Cash (Canadian Dollar)	-	-	-
Cash Receipts			
Sales	217,031	243,783	26,752
Interim Financing	29,999	67,871	37,872
Total - Operating Receipts	247,030	311,654	64,624
Cash Disbursements			
Professional Fees	21,625	37,511	(15,886)
Food and Beverage	60,157	77,146	(16,989)
Payroll	45,574	41,215	4,359
G&A	18,965	16,833	2,132
Royalty Expense	-	-	-
Scotia Payments	100,709	138,948	(38,239)
Total - Operating Disbursements	247,030	311,654	(64,624)
Net Change in Cash from Operations	-	-	-
Total Net Cash Flow	-	-	-
Ending cash (Canadian Dollar)	-	-	-

26. Explanations for the significant variances in actual receipts and disbursements as compared to the December 16 Cash Flow are as follows:

- (a) The positive variance of approximately \$27,000 is due to the inclusion of sales taxes and tips which were not included in the December 16 Cash Flow. The December 16 Cash Flow was prepared on a gross sales basis which did not include the collection of these amounts or the corresponding disbursements;
  - (b) The increase in interim financing and repayments of the interim financing were higher than forecast due to timing of cash receipts and expenses. The net impact on the balance of the overdraft facility is marginal;
  - (c) The negative variance of approximately \$16,000 in the Professional Fees relate to consulting services from Cushman Wakefield for \$2,500 and \$13,500 for accounting services. This is a permanent negative variance; and
  - (d) The negative variance of approximately \$17,000 in Food & Beverage is a timing difference which relates to moving to COD with the main food supplier Sysco which had more of an impact on timing of expenses than anticipated in the December 16 Cash Flow.
27. The Company manages its cash with an overdraft facility set up with its banker, the Bank of Nova Scotia (“**BNS**”). The approved overdraft limit is \$90,000.
28. The Proposal Trustee was contacted by a representative of BNS who had some questions regarding the proceedings and during the conversation BNS confirmed that they would maintain the overdraft facility during these proceedings, however BNS reserved its right to revise its decision at a later date.
29. As at December 27, 2015, the Company’s overdraft facility with BNS was approximately \$29,000.

## **CASH FLOW STATEMENT**

30. The Company prepared the Cash Flow Statement for the period from December 28, 2015 to February 19, 2016 (attached as Appendix B).
31. The Cash Flow Statement assumes a reduced rent and a reduced royalty and marketing fee rate which is consistent with the amount the Company has proposed to pay to Cara on a go forward basis. The viability of the Cash Flow Statement is contingent on Cara agreeing to accept the proposed payments through the period covered by the Cash Flow Statement.
32. On the basis noted above, the Cash Flow Statement indicates that the Company should have sufficient resources to meet its obligations during the period covered by the Cash Flow Statement.

## **COMPANY REQUEST FOR AN EXTENSION**

33. The Company is seeking an extension of the stay of proceedings to February 19, 2016. Absent an extension, the stay of proceedings would expire on January 6, 2016. The Company is seeking an extension for the following reasons:
  - (a) To provide the Company with the time required to negotiate franchise terms with Cara which would allow Pandora to continue to operate on a cash flow neutral basis; and
  - (b) To formulate a viable proposal to its creditors.
34. The Proposal Trustee supports the Company's request for an extension of its stay of proceedings based on the following:
  - (a) The Trustee has observed that the Company has acted in good faith and with due diligence;



- (b) As noted previously, subject to Cara's agreement to accept a reduced royalty rate and weekly rent amount, the Company appears to have sufficient resources to allow it to keep its creditors current during the extension period and accordingly does not appear to be prejudicial to any of the creditors; and
- (c) An extension of the stay would allow the Company the time to formulate a proposal to its unsecured creditors which would likely result in a better outcome than a bankruptcy.

All of which is respectfully submitted this 31<sup>th</sup> day of December, 2015.

FTI Consulting Canada Inc.,  
in its capacity as Proposal Trustee under a NOI  
filed by Pandora's Box Hospitality Group Inc.



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Name: Craig Munro  
Title: Managing Director,  
FTI Consulting Canada Inc.

# **APPENDIX A**

**Pandora's Box Hospitality Group Inc.**  
**5 Week Cash-flow Forecast**

	Week Beginning					Total	Notes
	Week 1 7-Dec	Week 2 14-Dec	Week 3 21-Dec	Week 4 28-Dec	Week 5 4-Jan		
<b>Opening Cash</b>	-	-	-	-	-	-	1
<b>CASH INFLOW</b>							
Sales	82,490	72,556	61,985	64,387	54,777	336,195	2
Financing	-	29,999	-	29,006	-	59,005	3
<b>TOTAL INFLOW</b>	<b>82,490</b>	<b>102,555</b>	<b>61,985</b>	<b>93,393</b>	<b>54,777</b>	<b>395,200</b>	
<b>CASH OUTFLOW</b>							
Operating Costs							
Professional Fees	6,625	15,000	-	10,000	-	31,625	4
Food and Beverage	18,045	22,710	19,402	20,154	17,146	97,457	5
Payroll	-	45,574	-	41,949	-	87,523	5
G&A	11,905	3,530	3,530	3,530	11,322	33,817	5
Royalty Expense	-	-	-	17,760	-	17,760	6
	<b>36,575</b>	<b>86,814</b>	<b>22,932</b>	<b>93,393</b>	<b>28,468</b>	<b>268,182</b>	
Financing Costs							
Scotia	45,915	15,741	39,053	-	26,309	127,018	7
	45,915	15,741	39,053	-	26,309	127,018	
<b>TOTAL OUTFLOW</b>	<b>82,490</b>	<b>102,555</b>	<b>61,985</b>	<b>93,393</b>	<b>54,777</b>	<b>395,200</b>	
<b>TOTAL NET CASHFLOW</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>ENDING CASH</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	

Notes:

Pandora's Box Hospitality Group Inc. ("Pandora") has prepared this Cash Flow Forecast solely for the purposes of determining the liquidity requirements of Pandora for the 5 week period from December 7, 2015 to January 10, 2015. The Cash Flow Forecast is based on the probable and hypothetical assumptions detailed in Notes 1 - 8. Consequently, actual results will likely vary from performance projected and such variations may be material.

- 1 - Opening bank balance December 7, 2015
- 2 - The cash receipts from sales are based on management's projections and historical sales levels.
- 3 - Pandora will utilize its overdraft facility with Scotia Bank to fund temporary cash deficiencies. The overdraft facility has a limit of \$90K and as of December 14, 2015 had a balance of \$38K outstanding.
- 4 - Professional fees represent retainers paid to the Proposal Trustee in the amount of \$15K and the balance is based on estimates on fees provided by the Proposal Trustee.
- 5 - The COGS, G&A expenses are based on management's projections and historical levels of expenses.
- 6 - The Payroll expense relate to management and staff salaries based on management's projections and historical staffing levels. Pandora currently employs 79 full and part time employees.
- 7 - The Royalty expense represents franchise royalty and marketing fees paid to Cara, the Milestones franchisor. The current agreement with Cara provides for rent in the amount of \$45K in addition to a royalty of 2% of revenue, however for the first 5 years of the agreement there was a rent concession where the company paid a royalty and marketing fee of 7% of sales revenue. The rent concession concluded in January 2015. The company has attempted to meet their obligation under the current agreement but the increased rent expense has left it in an operating loss position. The cash flow reflects a payment of royalty and marketing fee of 7% of sales revenue which is consistent with the original terms of the agreement with Cara during the rent concession period.
- 8 - This represents monthly payment of principal and interest for a term loan with Scotia Bank in addition to repayment on the Scotia Bank overdraft facility. Repayments to the overdraft facility during the cash-flow period are expected to be \$108K.

# **APPENDIX B**

**Pandora's Box Hospitality Group Inc.**  
Cash-flow Forecast

	Week Beginning								Total	Notes
	Week 4 28-Dec	Week 5 4-Jan	Week 6 11-Jan	Week 7 18-Jan	Week 8 25-Jan	Week 9 1-Feb	Week 10 8-Feb	Week 11 15-Feb		
Opening Overdraft Balance	(28,954)	(65,317)	(63,853)	(74,671)	(66,480)	(72,866)	(63,777)	(84,824)	(28,954)	1
<b>CASH INFLOW</b>										
Sales	74,176	57,693	61,299	59,753	64,389	65,935	75,207	63,874	522,326	2
<b>TOTAL INFLOW</b>	<b>74,176</b>	<b>57,693</b>	<b>61,299</b>	<b>59,753</b>	<b>64,389</b>	<b>65,935</b>	<b>75,207</b>	<b>63,874</b>	<b>522,326</b>	
<b>CASH OUTFLOW</b>										
Operating Costs										
Professional Fees	-	15,000	-	-	-	-	20,000	-	35,000	3
Food and Beverage	21,658	16,845	17,898	17,446	18,800	19,251	21,958	18,650	152,506	4
Payroll	44,831	-	40,951	-	38,604	-	40,616	-	165,002	5
G&A	3,530	11,322	3,530	3,530	3,530	11,322	3,530	3,530	43,824	4
Tax Remittance	-	-	-	-	-	16,200	-	-	16,200	6
Rent Expense	34,472	6,854	6,854	6,854	6,854	6,854	6,854	6,854	82,447	7
Insurance	-	-	-	1,456	-	-	-	-	1,456	
Dues and Licensing	-	2,500	-	-	-	-	-	-	2,500	
Royalty Expense	6,048	3,709	2,885	3,065	2,988	3,219	3,297	3,760	28,970	8
	<b>110,539</b>	<b>56,229</b>	<b>72,117</b>	<b>32,350</b>	<b>70,775</b>	<b>56,846</b>	<b>96,254</b>	<b>32,794</b>	<b>527,905</b>	
Financing Costs										
Scotia Scheduled	-	-	-	19,211	-	-	-	19,211	38,422	9
<b>TOTAL OUTFLOW</b>	<b>110,539</b>	<b>56,229</b>	<b>72,117</b>	<b>51,561</b>	<b>70,775</b>	<b>56,846</b>	<b>96,254</b>	<b>52,005</b>	<b>566,327</b>	
<b>NET CASH FOR WEEK</b>	<b>(36,363)</b>	<b>1,464</b>	<b>(10,818)</b>	<b>8,192</b>	<b>(6,386)</b>	<b>9,089</b>	<b>(21,047)</b>	<b>11,869</b>	<b>(44,001)</b>	
Closing overdraft balance	<b>(65,317)</b>	<b>(63,853)</b>	<b>(74,671)</b>	<b>(66,480)</b>	<b>(72,866)</b>	<b>(63,777)</b>	<b>(84,824)</b>	<b>(72,955)</b>	<b>(72,955)</b>	

Notes:

Pandora's Box Hospitality Group Inc. ("Pandora") has prepared this Cash Flow Forecast solely for the purposes of determining the liquidity requirements of Pandora for the period from December 28, 2015 to February 19, 2015. The Cash Flow Forecast is based on the probable and hypothetical assumptions detailed in Notes 1 - 9. Consequently, actual results will likely vary from performance projected and such variations may be material.

- 1 - Opening overdraft balance with the Bank of Nova Scotia as at December 28, 2015. The Company has an approved limit of \$90,000.
- 2 - The cash receipts from sales are based on management's projections and historical sales levels. The balance also includes estimated GST collections.
- 3 - Professional fees are based on estimates of fees provided by the Proposal Trustee and the Company's legal counsel..
- 4 - The Food and beverage expense and G&A expenses are based on management's projections and historical levels of expenses.
- 5 - The Payroll expense relate to management and staff salaries based on management's projections and historical staffing levels. Pandora currently employs 79 full and part time employees.
- 6 - This amount represents remittances of post filing GST and PST collections.
- 7 - The rent expense relates to payments to Cara for the Restaurant sub-lease. The cash flow reflects a payment of monthly rent in the amount \$27,414 broken down to weekly payments. The amount reflects the offer made by Pandora to Cara in order to allow the Company to be cash flow positive.
- 8 - The Royalty expense represents franchise royalty and marketing fees paid to Cara. The cash flow reflects a royalty and marketing fee of 5% of sales revenue which is the percentage Pandora is proposing to pay to Cara on a go forward basis.
- 9 - This represents monthly payment of principal and interest for a term loan with Scotia Bank.