

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM
CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN
LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC.,
HIGH ROAD HOLDING CORP., AND FINAL BELL CORP.**

Applicants

**FACTUM OF THE APPLICANTS
(CCAA Application)**

February 28, 2024

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FACTUM OF THE APPLICANTS

PART I: INTRODUCTION

1. BZAM Ltd. (“**BZAM**”), BZAM Holdings Inc. (“**BZAM Holdings**”), BZAM Management Inc. (“**BZAM Management**”), BZAM Cannabis Corp. (“**BZAM Cannabis**”), Folium Life Science Inc. (“**Folium Life**”), 102172093 Saskatchewan Ltd. (“**102 Saskatchewan**”), The Green Organic Dutchman Ltd. (“**TGOD**”), Medican Organic Inc. (“**Medican**”), High Road Holding Corp. (“**High Road**”), and Final Bell Corp. d.b.a BZAM Labs (“**BZAM Labs**”) (each individually, an “**Applicant**”, and collectively, the “**Applicants**”) seek urgent relief pursuant to an order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

2. BZAM, the ultimate parent company to several entities in the cannabis industry in Canada (collectively, “**the Company**”), is a reporting issuer listed on the Canadian Securities Exchange.¹ Its shares also trade in the United States on the OTCQX.² The Company engages in the production, cultivation, processing and distribution of cannabis and cannabis-related products.

3. The Applicants are in a dire liquidity crisis and are not able to meet their obligations as they become due. One of their cannabis licences is set to expire imminently. Absent access to debtor-in-possession (“**DIP**”) financing, a stay of proceedings (the “**Stay of Proceedings**”) and related relief, the Applicants will be forced to immediately cease their operations. Together, these CCAA proceedings and the relief sought in the proposed Initial Order will provide the breathing

¹ Affidavit of Milich Affidavit sworn on February 28, 2024 at para 7 [*Milich Affidavit*], Application Record dated February 28, 2024 at Tab 2 [Application Record].

² *Ibid* at para 7, Application Record at Tab 2.

room and stability required to continue going concern operations while the Applicants finalize a Court-supervised sale and investor solicitation process (“**SISP**”).

4. The relief sought in the Initial Order is limited to what is reasonably necessary to allow the Applicants to maintain the *status quo* and continue operations in the ordinary course during the initial 10-day stay of proceedings. The Applicants intend to return to this Court for additional relief necessary to advance the CCAA proceedings at a hearing scheduled for March 8, 2024 (the “**Comeback Hearing**”).

PART II: FACTS

5. The facts underlying this Application are more fully set out in the affidavit of Matthew Milich, sworn February 28, 2024 (the “**Milich Affidavit**”). All capitalized terms used but not defined herein have the meanings ascribed to them in the Milich Affidavit.

A. The Applicants' Corporate Structure

6. Each of the Applicants is incorporated under a Canadian corporate statute: BZAM, TGOD and BZAM Labs are incorporated under the *Canada Business Corporations Act*³; BZAM Holdings, BZAM Management and Folium Life are incorporated under the *Business Corporations Act (British Columbia)*⁴; BZAM Cannabis is incorporated under the *Business Corporations Act (Alberta)*⁵; 102 Saskatchewan is incorporated under *The Business Corporations Act, 2021 (Saskatchewan)*; Medican is incorporated under the *Business Corporations Act (Quebec)* (the “**QBCA**”); and High Road is incorporated under the *Business Corporations Act (Ontario)*⁶.

³ RSC 1985, c C-44.

⁴ SBC 2002, c 57

⁵ RSA 2000, c B-9.

⁶ R.S.O. 1990, c. B.16; *Milich Affidavit*, *supra* note 1 at paras 15, 18-26, Application Record at Tab 2.

7. All of the non-BZAM Applicants are wholly owned, directly or indirectly, by BZAM, except for Folium Life and BZAM Cannabis.⁷ BZAM Holdings is the majority shareholder of Folium Life and BZAM Cannabis, with holdings of 80% and 88.3%, respectively.⁸

B. The Applicants' Business

8. The Company is a Canadian producer of cannabis with core brands such as BZAM™, TGOD™, Highly Dutch Organic™ and TABLE TOP™.⁹ Its business operations include cultivating, processing and marketing a range of cannabis products, including dried cannabis and cannabis extract products.¹⁰

9. Five of the Applicants are licensed with Health Canada and operate cannabis facilities in Ontario, Alberta and British Columbia.¹¹ 102 Saskatchewan leases a retail store in Saskatchewan.¹²

10. BZAM Management's cannabis licence is set to expire on February 29, 2024. BZAM Management has requested an extension to April 15, 2024, from the CRA but have received no response.¹³ Without a renewal, BZAM Management will be unable to legally continue its operations, which would cause a significant loss to the overall value of the Applicants' business.

⁷ *Milich Affidavit, supra* note 1 at para 13, Application Record at Tab 2.

⁸ *Ibid* at para 12, Application Record at Tab 2.

⁹ *Ibid* at para 73, Application Record at Tab 2.

¹⁰ *Ibid* at para 40, Application Record at Tab 2.

¹¹ *Ibid*, Application Record at Tab 2.

¹² *Ibid* at paras 22, Application Record at Tab 2.

¹³ *Ibid* at para 69, Application Record at Tab 2.

C. The Applicants' Connection to Ontario

11. The majority of the Company's business is conducted out of Ontario. The Applicants have two cannabis facilities, including its largest facility, located in Ontario and approximately 256 out of 441 of the Applicants' employees are employed in Ontario.¹⁴ The Company's senior secured creditor, Cortland Credit Lending Corp. ("**Cortland**"), is also headquartered in Toronto.¹⁵

12. The majority of BZAM's directors reside in Ontario, and its Chief Financial Officer and Chief Executive Officer split their time between the Company's offices in Ontario and British Columbia.¹⁶

D. The Non-Applicant Stay Parties

13. BZAM has four directly or indirectly wholly owned subsidiaries that are not applicants in these proceedings: 9430-6347 Québec Inc. ("**943 Québec**"), a company incorporated under the QBCA; (ii) The Green Organic Beverage Corp. ("**Green Organic**"), a company based in Delaware; (iii) TGOD Europe B.V. ("**TGOD Europe**"), a company based in the Netherlands; and (iv) The Green Organic Dutchman Germany GmbH ("**TGOD Germany**"), a company based in Germany.¹⁷

14. 943 Québec is a licensed entity with Health Canada that operates out of a leased facility in Vaudreuil-Dorion, Québec (the "**Québec Facility**").¹⁸ Medican is currently in the process of acquiring 943 Québec and holds all of its issued and outstanding shares in escrow.¹⁹ The only condition precedent of the acquisition that remains outstanding is obtaining municipality

¹⁴ *Ibid* at para 42, Application Record at Tab 2.

¹⁵ *Ibid* at para 41, Application Record at Tab 2.

¹⁶ *Ibid* at para 41, Application Record at Tab 2.

¹⁷ *Ibid* at para 27-28, Application Record at Tab 2.

¹⁸ *Ibid* at para 28, Application Record at Tab 2.

¹⁹ *Ibid* at paras 28-29, Application Record at Tab 2.

approval.²⁰ The Applicants anticipate that this acquisition will close in the near future, potentially during the pendency of these proceedings.²¹

15. Each other Non-Applicant Stay Party is a wholly owned direct or indirect subsidiary of BZAM.²² None of the foreign Non-Applicant Stay Parties have active business operations but may have certain tax attributes that could be attractive to a prospective buyer and add value to the proposed sales process.²³

E. Assets and Liabilities

16. As at January 31, 2024, the Company had total consolidated assets with a book value of approximately \$195,711,080 and liabilities with a book value of approximately \$112,873,839.²⁴ The Applicants expect to have only approximately \$1,848,000 cash on hand at the close of business today, and are facing an urgent liquidity crisis.²⁵

1. Secured Obligations

(a) The Cortland Credit Agreement

17. On March 31, 2020, TGOD entered into a credit agreement (the “**Original Credit Agreement**”) among Cortland, in its capacity as the Agent for the Lenders, and TGOD, as borrower.²⁶ The Original Credit Agreement was then amended and restated on September 29, 2021

²⁰ *Ibid* at para 29, Application Record at Tab 2.

²¹ *Ibid* at para 30, Application Record at Tab 2.

²² *Ibid* at para 27, Application Record at Tab 2.

²³ *Ibid* at paras 31, 118, Application Record at Tab 2.

²⁴ *Ibid* at para 77, 79, Application Record at Tab 2.

²⁵ *Ibid* at para 76, Application Record at Tab 2.

²⁶ *Ibid* at para 80, Application Record at Tab 2.

(the “**First ARCA**”), and again on January 8, 2024 (the “**Second ARCA**”, together with the Original Credit Agreement and the First ARCA, the “**Credit Agreement**”).²⁷

18. Pursuant to the terms of the Credit Agreement, Cortland provided TGOD with an interest-bearing term and revolving credit facility totaling \$34,000,000.²⁸ The guarantors under the Credit Agreement are TGOD, BZAM, Medican Organic, BZAM Holdings, BZAM Management, BZAM Cannabis, Folium Life, High Road and BZAM Labs (together, in such capacity, the “**Cortland Obligors**”).²⁹

19. As of February 28, 2024, approximately \$31,919,208.84 of principal is owing under the Credit Agreement and an additional \$362,916.21 of interest has accrued month-to-date for a total amount owing of \$32,282,125.05.³⁰

(b) The Stone Pine Promissory Notes

20. BZAM has entered into six (6) promissory notes (the “**Stone Pine Promissory Notes**”) with Stone Pine Capital Ltd. (“**Stone Pine**”), an entity controlled by BZAM's largest shareholder and current Chairman.³¹ The Stone Pine Promissory Notes were all amended on January 4, 2024, to each be payable upon demand, provided that Stone Pine shall not be permitted to make a demand until the later of either: (i) the maturity date of the Cortland Credit Agreement; and (ii) March 31, 2025.³²

²⁷ *Ibid* at para 82, Application Record at Tab 2.

²⁸ *Ibid* at para 83, Application Record at Tab 2.

²⁹ *Ibid* at para 83, Application Record at Tab 2.

³⁰ *Ibid* at para 86, Application Record at Tab 2.

³¹ *Ibid* at para 87, Application Record at Tab 2.

³² *Ibid* at para 89, Application Record at Tab 2.

21. Contemporaneously with the execution of the Stone Pine Promissory Notes, BZAM and Stone Pine entered into general security agreements (the “**Stone Pine GSAs**”) under which Stone Pine was granted security over all present and after-acquired property, assets and undertakings of BZAM.³³ Additionally, BZAM, Stone Pine and Cortland entered into subordination and postponement agreements to subordinate the amounts loaned under the Stone Pine Promissory Notes to the amounts loaned under the Credit Agreement with Cortland.³⁴

22. As of February 28, 2024, approximately \$8,515,000 of principal is owing to Stone Pine, and approximately an additional \$509,755 of interest accrued month-to-date for a total amount owing of \$9,024,755.67.³⁵ The Stone Pine Promissory Notes each carry an interest rate of 8% or 10% per annum, with interest being calculated monthly and payable on the last day of each month.³⁶ No interest has ever been paid on the Stone Pine Promissory Notes.³⁷

(c) The Edmonton Facility Mortgage

23. BZAM Cannabis entered into a \$5,000,000 loan from four private lenders that is secured against its cannabis facility in Edmonton (the “**Edmonton Facility**”) pursuant to a commitment letter dated May 19, 2021 (the “**Mortgage Loan**”).³⁸

24. The Mortgage Loan is secured through: (i) a first mortgage over the Edmonton Facility; (ii) a general assignment of rents and leases in respect of the Edmonton Facility; (iii) a general

³³ *Ibid* at para 90, Application Record at Tab 2.

³⁴ *Ibid* at para 91-92, Application Record at Tab 2.

³⁵ *Ibid* at paras 93, Application Record at Tab 2.

³⁶ *Ibid* at paras 89, Application Record at Tab 2.

³⁷ *Ibid* at paras 93, Application Record at Tab 2.

³⁸ *Ibid* at paras 94, Application Record at Tab 2.

security agreement over all BZAM Cannabis' present and after acquired personal property; and (iv) a corporate guarantee of BZAM Management.³⁹

2. Unsecured Obligations and Claims

25. The Applicants have a number of unsecured obligations, including the following:

- (a) *Indebtedness to Final Bell* – As part of the consideration paid for High Road, BZAM issued a promissory note to Final Bell Holdings International Inc. dated January 5, 2024, in the amount of \$8,000,000 (the “**Final Bell Promissory Note**”).⁴⁰
- (b) *Employee Liabilities* – The Applicants' monthly aggregate payroll obligations are approximately \$2,344,764 for their salaried and hourly employees.⁴¹ They also owe several employees, in the aggregate: (i) \$1,103,860 in accrued and unpaid vacation pay and \$702,000 in unpaid bonuses.⁴²
- (c) *Accounts Payable* – As at January 31, 2024, the Applicants' accounts payable and accrued liabilities totalled approximately \$28,211,004.⁴³
- (d) *CRA Liabilities* – As at February 15, 2024, the Applicants collectively had approximately: \$4,440,000 in excise tax arrears (net of surety bonds and a cash deposit), \$2,650,000 in sales tax arrears, and \$1,050 outstanding in unremitted

³⁹ *Ibid* at paras 95, Application Record at Tab 2.

⁴⁰ *Ibid* at paras 97, Application Record at Tab 2.

⁴¹ *Ibid* at para 44, Application Record at Tab 2.

⁴² *Ibid* at paras 103, Application Record at Tab 2.

⁴³ *Ibid* at paras 79, Application Record at Tab 2.

payroll deductions.⁴⁴ BZAM Management and TGOD have entered into payment plans with the CRA in respect of their excise and/or sales tax arrears.⁴⁵

F. Issues Leading to the CCAA Filing

26. The Applicants current cash position is not sufficient to meet their obligations as they come due. The urgency of this application stems from the need for the Applicants to access financing to meet their ongoing and future payroll obligations and maintain business operations in order to preserve and maximize value while preventing the expiry of valuable and required cannabis licences and enforcement action by certain contractual counterparties.

G. Proposed DIP Financing

27. Pursuant to a DIP facility agreement dated February 28, 2024 (the “**DIP Agreement**”), Cortland, as lender (the “**DIP Lender**”) has agreed to provide TGOD, as borrower, with a super-priority, non-revolving credit facility up to a maximum principal amount that shall not exceed the lesser of: (i) 41,000,000, and (ii) the Revolving Facility Limit (as defined in the Second ARCA) plus \$7,000,000, subject to certain conditions (the “**DIP Loan**”).⁴⁶ Each of the Applicants are guarantors under the DIP Agreement.⁴⁷

28. The DIP Loan has a commitment fee equal to \$98,000 and will bear interest at the greater of: (i) Toronto-Dominion Bank's floating annual rate of interest plus 8.05% per annum; and (ii)

⁴⁴ *Ibid* at paras 61-63, Application Record at Tab 2.

⁴⁵ *Ibid* at paras 62, 64, Application Record at Tab 2.

⁴⁶ *Ibid* at paras 107, Application Record at Tab 2.

⁴⁷ *Ibid* at paras 105, Application Record at Tab 2.

12% per annum, which will be due and payable in cash on the first business day of each month.⁴⁸ Notably, this is the same interest rate as set out in the Second ARCA.

29. The DIP Loan is conditional, among other things, upon the granting of a priority charge for all Post-Filing Obligations (as defined in the DIP Agreement) over all of the property of the Applicants, in favour of the DIP Lenders to secure the amounts borrowed under the DIP Loan (the “DIP Charge”).⁴⁹

30. In accordance with the DIP Agreement, the DIP Loan is to be used to fund the Applicants’ working capital needs during these CCAA proceedings. The amount of the DIP Loan to be funded during the Stay of Proceedings (up to \$2,400,000) is only that portion that is necessary to ensure the continued operation of the Applicants’ business in the ordinary course for the next 10 days.⁵⁰ Proceeds of \$2,400,000 are necessary for the Applicants to meet their immediate payroll obligations and to pay certain ordinary course operating disbursements including inventory purchases, insurance, rent and utilities.

31. The facility made available pursuant to the DIP Agreement contemplates a “creeping-roll up” structure, pursuant to which all post-filing receipts by the Applicants will be applied to repay pre-filing obligations owing to Cortland.⁵¹ For greater certainty, the DIP Charge does not secure any obligation that existed prior to the granting of the Initial Order.

H. Proposed Monitor

⁴⁸ *Ibid* at paras 108, Application Record at Tab 2.

⁴⁹ *Ibid* at para 110, Application Record at Tab 2.

⁵⁰ *Ibid* at paras 114, Application Record at Tab 2.

⁵¹ *Ibid* at para 112, Application Record at Tab 2.

32. It is proposed that FTI Consulting Inc. will act as Monitor in these CCAA Proceedings (in such capacity, the “**Proposed Monitor**”).⁵²

PART III: ISSUES

33. The issues to be considered on this application is whether to grant the proposed form of the Initial Order. The issues addressed in this factum are whether:

- (a) each of the Applicants is a “debtor company” to which the CCAA applies;
- (b) Ontario is the Applicants’ chief place of business;
- (c) the Stay of Proceedings should be granted in favour of the Applicants;
- (d) the Stay of Proceedings should be extended to the Non-Applicant Stay Parties;
- (e) the Court should approve the proposed DIP Loan and grant the DIP Charge;
- (f) the Administration Charge (as defined below) should be granted;
- (g) the Directors’ Charge (as defined below) should be granted;
- (h) the Applicants should be entitled to make certain pre-filing payments with the consent of the Monitor and the DIP Lenders;
- (i) BZAM should be relieved from its securities reporting and filing obligations; and
- (j) a regulatory stay should be imposed over the licences during the course of the CCAA proceedings.

A. The Applicants are “Debtor Companies” to which the CCAA Applies

34. The CCAA applies in respect of a “debtor company or affiliated debtor companies” whose liabilities exceed \$5 million.⁵³ The term “debtor company” is defined as “any company that: (a) is bankrupt or insolvent [...]”, and the term “company” is defined as “any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province

⁵² *Ibid* at para 120, Application Record at Tab 2.

⁵³ [Companies’ Creditors Arrangement Act](#), RSC 1985, c. C-36, s 3(1) [CCAA].

[...].⁵⁴ The CCAA also specifies companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company.⁵⁵ Each of the Applicants is a “company” within the meaning of the CCAA as each was incorporated under Canadian provincial or federal laws.⁵⁶ All of the Applicants other than BZAM are direct or indirect subsidiaries of BZAM.⁵⁷ Accordingly, the Applicants are all affiliated companies.

35. Each of the Applicants is a “debtor company” as defined in the CCAA. The insolvency of a debtor company is assessed as of the time of filing the CCAA application.⁵⁸ Courts have taken guidance from the definition of “insolvent person” in subsection 2(1) of the *Bankruptcy and Insolvency Act*, which, in relevant part, provides that an “insolvent person” is a person:

- (a) who is for any reason unable to meet his obligations as they generally become due;
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.⁵⁹

36. A company is also insolvent for the purposes of the CCAA “if it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring”.⁶⁰

37. The Applicants collectively have over \$53,500,000 in debt and only approximately \$1,848,000 of cash on hand.⁶¹ Absent the Stay of Proceedings and the approval of the DIP Loan,

⁵⁴ [CCAA](#), *supra* note 53 at s 2(1).

⁵⁵ [CCAA](#), *supra* note 53 at s 3(2)(a).

⁵⁶ *Milich Affidavit*, *supra* note 1 at paras 15, 18-26, Application Record at Tab 2.

⁵⁷ *Ibid* at para 13, Application Record at Tab 2.

⁵⁸ [Re Stelco Inc \(2004\)](#), 48 C.B.R. (4th) 299 (Ont. Sup. Ct. J.) [[Commercial List](#)] at para 4 [*Stelco*].

⁵⁹ *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, s 2.

⁶⁰ *Stelco*, *supra* note 58 at paras 26, 40.

⁶¹ *Milich Affidavit*, *supra* note 1 at paras 76,79, Application Record at Tab 2.

the Applicants will be unable to meet their obligations as they come due. As such, the Applicants are affiliated debtor companies to which the CCAA applies.

B. Ontario is the Applicants' Chief Place of Business

38. Subsection 9(1) of the CCAA provides that an application for a stay of proceedings under the CCAA may be made to the court that has jurisdiction in the province in which the head office or chief place of business of the company in Canada is situated.

39. In *Nordstrom Canada Retail, Inc.*⁶², this Court found that the company's "chief place of business" was Ontario despite the fact that Nordstrom Canada Retail ("**Nordstrom**") was incorporated and had significant business operations in British Columbia.⁶³ In determining whether the court had jurisdiction over the proceedings, this Court considered multiple factors, including the location of the company's assets, employees and sales. This Court found that there was sufficient evidence establishing Ontario as the proper jurisdiction based on the following:

8 of the 13 Nordstrom Canada retail stores are located in Ontario, while approximately 1,450 out of Nordstrom Canada's 2,500 full and part-time employees work in Ontario. Further, during fiscal year 2022, store sales in Ontario totalled \$220 million, compared to \$148 million in British Columbia and \$77 million in Alberta.⁶⁴

40. The same determination should also be made in this case. Almost identical to the facts in *Nordstrom*, approximately 58% of the Applicants' employees are situated in Ontario.⁶⁵ Furthermore, while the Applicants have two (2) cannabis facilities in each of Ontario and British Columbia, the Company's largest facility is in Hamilton, Ontario.⁶⁶ Additionally, the Company

⁶² [2023 ONSC 1422](#) at para [*Nordstrom*].

⁶³ *Nordstrom*, *supra* note 62 at paras 11, 27.

⁶⁴ *Nordstrom*, *supra* note 62 at para at 27; See also [Cash Store Financial Services, Re, 2014 ONSC 2372](#) at paras 10-11, 27.

⁶⁵ *Milich Affidavit*, *supra* note 1 at paras 42, Application Record at Tab 2.

⁶⁶ *Ibid* at paras 41, Application Record at Tab 2.

has corporate offices in both Ontario and British Columbia and a majority of the BZAM directors reside in Ontario, as does its senior secured creditor - Cortland.⁶⁷

41. Accordingly, the Applicants' chief place of business is Ontario.

C. The Stay of Proceedings Should be Granted

1. The Stay of Proceedings should be Granted in Favour of the Applicants

42. Section 11.02 of the CCAA provides the Court with the power to impose a stay of proceedings if it is satisfied that circumstances exist that make the order appropriate.⁶⁸ A stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.⁶⁹ Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period.⁷⁰ This 10-day period "allows for a stabilization of operations and a negotiating window".⁷¹ The Initial Order is in accordance with the above requirement.

43. The Applicants require the Stay of Proceedings to prevent potential enforcement action by certain contractual counterparties. It would be significantly detrimental to the Applicants' business and ongoing operations if proceedings were commenced or continued, or rights and remedies were executed against them; therefore, without the Stay of Proceedings, the Applicants are unable to continue operations in the ordinary course of business.⁷² The Stay of Proceedings will stabilize

⁶⁷ *Ibid.*

⁶⁸ [CCAA](#), supra note 53 at s 11.02.

⁶⁹ [Century Services Inc v Attorney General \(Canada\)](#), 2010 SCC 60 at para 14; [Target Canada Co, 2015 ONSC 303](#) at para 8 [*Target*].

⁷⁰ [CCAA](#), supra note 53 s 11.001; [Lydian International Limited \(Re\)](#), 2019 ONSC 7473 at para 26 [*Lydian*].

⁷¹ [Lydian](#), supra note 70 at para 30.

⁷² *Milich Affidavit*, supra note 1 at para 52, Application Record at Tab 2.

and preserve the value of the Applicants' business and provide the Applicants with breathing space to develop and oversee an orderly sale and investor solicitation process, while maintaining business operations in the ordinary course and in compliance with the cannabis regulatory regime.

44. The Applicants submit that granting the Stay of Proceedings is in the best interests of the Applicants and their stakeholders, meets the statutory requirements, and is appropriate.

2. The Stay of Proceedings Should be Extended to the Non-Applicant Stay Parties

45. This Court has authority to extend the Stay of Proceedings to the Non-Applicant Stay Parties pursuant to s. 11 and 11.02(1) of the CCAA, which allows it to make an initial order on any terms that the court may impose. In doing so, courts have looked at various factors, including whether the subsidiaries of the debtor's applicants had guaranteed the applicants' secured loans, whether the non-applicants were deeply integrated into the applicants' business operations and whether the claims against the non-applicants are derivative of the primary liability of the applicants.⁷³

46. All non-Applicant Stay Parties are highly integrated into the business as wholly owned, direct or indirect, subsidiaries of BZAM, or in the case of 943 Québec, as a soon to be acquired company.⁷⁴ As such, an extension of the stay to the Non-Applicant Stay Parties is required to prevent uncoordinated realization and enforcement attempts from being made in different jurisdictions and to protect value for the Applicants' stakeholders.

⁷³ [MPX International Corporation, 2022 ONSC 4348](#) at para 52 [MPX], [Lydian](#), *supra* note 70 at para 39; [Sino-Forest Corporation \(Re\), 2012 ONSC 2063](#) at paras 5, 18, and 31; [Canwest Global Communications Corp. \(Re\)](#), [2009] OJ No 4286 (Ont. Sup. Ct. J.) [Commercial List] [[Canwest Global](#)] at paras 28-29; and [Target](#), *supra* note 69 at paras 49-50.

⁷⁴ [Milich Affidavit](#), *supra* note 1 at paras 27, 29, Application Record at Tab 2.

47. The Applicants intend to seek approval of a the SISP during these CCAA proceedings, which will include the Non-Applicant Stay Parties.⁷⁵ The extension of the Stay of Proceedings to the Non-Applicant Stay Parties is required in order to give comfort to potential bidders in the SISP that enforcement actions against the Non-Applicant Stay Parties will be stayed during the period in which the SISP is conducted.⁷⁶ Without the benefit of the Stay of Proceedings, the Applicants' ability to market and sell their interests in the Non-Applicant Stay Parties and their respective assets would be compromised given the lack of stability that would exist.

D. The Proposed DIP Financing Should be Approved

1. The Proposed DIP Financing Satisfies Subsection 11.2(5) of the CCAA

48. Subsection 11.2(5) requires that this Court be satisfied, after considering all of the facts and circumstances in the case before it, that the interim financing sought to be approved is “reasonably necessary” for continued operations in such circumstances. What is “reasonably necessary” in each case is a question of fact based on the circumstances before the court.⁷⁷

49. In line with the prior case law holding that DIP financing should be restricted to what is “reasonably necessary” to meet the debtor’s needs, courts have approved DIP financing where it would provide stability to the debtor’s business, ensure liquidity, prevent customers from going elsewhere, and ensure the day-to-day operations of the debtor’s business.⁷⁸ The British Columbia Supreme Court has found that subsection 11.2(5) was satisfied as the interim financing was necessary to permit the applicants to maintain the value of the enterprise while they restructured.⁷⁹

⁷⁵ *Ibid* at para 143, Application Record at Tab 2.

⁷⁶ *MPX*, *supra* note 73 at para 54.

⁷⁷ *Re: Mobilicity Group*, 2013 ONSC 6167 at para 30 [*Mobilicity*]; see also *Re Just Energy Corp.*, 2021 ONSC 1793 [*Just Energy*].

⁷⁸ *Mobilicity*, *supra* note 77 at paras 30-31; *Bondfield Construction Company, Re*, 2019 ONSC 2310 at para 20.

⁷⁹ *Miniso International Hong Kong Limited v. Migu Investments Inc.*, 2019 BCSC 1234 at paras 86, 88.

50. In *MJardin Group Inc. (Re)*, this Court granted DIP financing as part of the initial order on the basis that the debtor had urgent liquidity needs and without the DIP financing, the debtor company would have been unable to continue its business and make payroll in the near term.⁸⁰

51. Absent the proposed DIP Loan, the Applicants would be unable to maintain continued business operations in the ordinary course for the next 10 days.⁸¹ As discussed above, the DIP Loan is urgently needed to pay ordinary course operating disbursements.⁸²

52. The DIP Loan is limited to what is strictly necessary for the continued operations of the Applicants until the Comeback Hearing as required in subsection 11.2(5) is satisfied. The amounts to be funded during the 10 days prior to the Comeback Hearing have been carefully scrutinized by the Proposed Monitor and the DIP Lenders, each of which agree that these amounts are required to be paid in order to preserve the status quo and the going concern operations of the Applicants.⁸³

2. The Proposed DIP Financing Satisfies the Criteria in Subsections 11.2(1), (4)

53. Subsection 11.2(1) expressly provides the Court with the statutory jurisdiction to grant a DIP financing charge. In the Initial Order, the Applicants are seeking a DIP Charge up to a maximum of \$2,400,000 that will rank subordinate to the Administration Charge and prior to the Directors' Charge.⁸⁴

54. The proposed DIP financing falls within the jurisdiction of the Court pursuant to subsection 11.2(1). Previous cases have found that DIP financing that uses receipts from operations post-filing to repay pre-filing amounts (often referred to as a “creeping roll-up”) is in accordance with

⁸⁰ *MJardin Group, Inc (Re)*, 2022 ONSC 3338 at para 31.

⁸¹ *Milich Affidavit*, *supra* note 1 at para 155, Application Record at Tab 2.

⁸² *Ibid* at note 1 at para 52, Application Record at Tab 2.

⁸³ *Milich Affidavit*, *supra* note 1 at para 138, 147, Application Record at Tab 2.

⁸⁴ *Ibid* note 1 at para 4(g), 114, Application Record at Tab 2.

the Court's jurisdiction in subsection 11.2(1). Those cases have given subsection 11.2(1) a narrow interpretation, focusing on whether the DIP facility is consistent with the pre-filing *status quo*, such that it upholds the relative pre-stay priority position of each secured creditor.⁸⁵

55. In addition, in accordance with subsection 11.2(1), notice has been provided to the secured creditors proposed to be primed by the proposed DIP financing, and the Initial Order expressly states that the proposed DIP Charge does not secure any pre-filing obligations of the Applicants.⁸⁶ The DIP Lenders' Charge sought on this application is only for the amount to be accrued in the 10-day period preceding the Comeback Hearing. The Applicants therefore submit that this Court has the jurisdiction under subsection 11.2(1) to approve the proposed DIP financing and associated DIP Charge.

56. The non-exhaustive factors for a Court to consider in deciding whether to create a DIP financing charge are set out in subsection 11.2(4) of the CCAA. These factors include: the period during which the company is expected to be subject to CCAA proceedings; how the company's affairs are to be managed during the proceedings; whether the company's management has the confidence of its major creditors; whether the loan would enhance the prospects of a viable compromise or arrangement; the nature and value of the company's property; whether any creditor would be materially prejudiced; and the monitor's report.

57. The following factors support approval of the DIP Loan and the DIP Lenders' Charge:

- (a) the Applicants are facing an urgent liquidity crisis and will be unable to fund its next payroll or meet its commitments to its suppliers without the proposed DIP

⁸⁵ *Comark Inc. (Re)*, 2015 ONSC 2010 at paras 40-41, Schedule "C" of this Initial Order; *Performance Sports Group Ltd.*, 2016 ONSC 6800 at para 22 [*Performance Sports*].

⁸⁶ *CCAA*, *supra* note 53, s 11.2(1); *Performance Sports*, *supra* note 85 at para 22; *Toys "R" Us (Canada) Ltd.*, 2017 ONSC 5571 at para 10.

Loan. Any loss of important contracts or employees would be devastating to the Applicants' business;

- (b) the proposed DIP Loan will preserve the value and going concern operations of the Company's business by ensuring the continued operations of the key business segments, which is in the best interests of the Applicants and their stakeholders;
- (c) the DIP lenders are the existing senior secured lenders so are familiar with the business and operations, reducing administrative costs that would otherwise arise with a new third-party DIP facility;
- (d) as described above, protections have been included in the Initial Order to significantly minimize any prejudice to the Applicants and their stakeholders;
- (e) the DIP Lenders require the DIP Charge to provide the DIP Loan;
- (f) the amount of the proposed DIP Loan is appropriate having regard to the Applicants' cash-flow statement and the amount that is proposed to be funded prior to the Comeback Hearing is only the portion necessary to keep the Applicants operating in the ordinary course of business during that time;
- (g) creditors of the Applicants will not be prejudiced as a result of its approval;
- (h) the cash flow projections demonstrate that debtor-in-possession financing is urgently required to provide the Applicants with the required liquidity for continued business operations in the ordinary course; and
- (i) the Proposed Monitor believes the economic terms of the DIP Loan are consistent with comparable CCAA proceedings and is supportive of the proposed DIP Loan.⁸⁷

58. The Applicants submit that approval of the proposed DIP Loan and the DIP Lenders' Charge is appropriate in the circumstances, consistent with the terms of the CCAA, reasonably necessary in order to enable the continued operation of the Applicants' business in the ordinary

⁸⁷ *Milich Affidavit*, *supra* note 1 at paras 10, 114, Application Record at Tab 2; The Pre-Filing Report of the Proposed Monitor at para 77 and 84.

course, and in the best interests of the Applicants and their stakeholders – including the employees of the Applicants who are intended to be paid in the ordinary course from the proposed DIP Loan.

E. The Administration Charge Should be Granted

59. The Applicants are seeking an Administration Charge in the amount of \$500,000 (the “**Administration Charge**”) to secure the professional fees and disbursements of the Proposed Monitor, along with its counsel and the Applicants’ counsel, incurred prior to, on, or subsequent to the date of the Initial Order, incurred at their standard rates and charges.⁸⁸

60. Section 11.52 of the CCAA expressly provides the Court with the jurisdiction to grant an administration charge. The list of non-exhaustive factors to be considered when granting an administration charge includes: the size and complexity of the business being restructured; the proposed role of the beneficiaries of the charge; whether there is unwarranted duplication of roles; whether the quantum of the proposed charge appears to be fair and reasonable; the position of the secured creditors likely to be affected by the charge; and the position of the monitor.⁸⁹

61. The Applicants submit that it is appropriate for this Court to exercise its jurisdiction and grant the Administration Charge, given that:

- (a) the Applicants’ business is highly regulated and subject to numerous statutory and regulatory restrictions and requirements;
- (b) the beneficiaries of the Administration Charge have the requisite knowledge with respect to those regulations and have, and will continue to, contribute to these CCAA Proceedings and assist the Applicants with their business;

⁸⁸ *Ibid* at paras 124, Application Record at Tab 2.

⁸⁹ [Canwest Publishing Inc, 2010 ONSC 222](#) at para 54.

- (c) each proposed beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles;
- (d) no amounts from the initial advance under the DIP Loan will be used to pay the proposed beneficiaries of the Administration Charge;
- (e) the quantum of the proposed Administration Charge is fair and reasonable; and
- (f) the proposed DIP Lenders and the Proposed Monitor support the Administration Charge.⁹⁰

F. The Directors' Charge Should be Granted

62. The Applicants are seeking a Directors' Charge in the amount of \$5,300,000 (the "Directors' Charge") to secure the indemnity of their directors and officers for liabilities they may incur during the CCAA Proceedings.⁹¹

63. Section 11.51 of the CCAA affords the Court the jurisdiction to grant the Directors' Charge. This Court has held that the purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred during the restructuring.⁹² A court may not make the order if "the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost", and the court shall make an order declaring that the charge does not apply in respect of a specific obligation or liability incurred by a director or officer "if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct".⁹³

⁹⁰ *Milich Affidavit*, *supra* note 1 at paras 124-126, Application Record at Tab 2.

⁹¹ *Ibid*, *supra* note 1 at para 133, Application Record at Tab 2.

⁹² *Canwest Global*, *supra* note 73 at paras 46-48.

⁹³ *CCAA*, *supra* note 45 at s 11.51(3)-(4).

64. The Applicants submit it is appropriate in these circumstances for this Court to exercise its jurisdiction and grant the Directors' Charge, given that:

- (a) the directors and officers have indicated their continued service and involvement in these CCAA Proceedings is conditional upon the granting of the Directors' Charge;
- (b) the Directors' Charge applies only to the extent that the directors and officers do not have coverage under another directors and officers' insurance policy;
- (c) the Applicants require the active and committed involvement of certain directors and officers in order to continue business operations in the ordinary course;
- (d) the Directors' Charge would only cover obligations and liabilities that the Directors and Officers may incur after the commencement of the CCAA Proceedings and does not cover wilful misconduct or gross negligence;
- (e) the amount of the Directors' Charge is reasonable in the circumstances and is limited to the potential exposure during the initial 10-day period; and
- (f) the Proposed Monitor is supportive of the Directors' Charge.⁹⁴

G. The Court Should Allow the Applicants to Make Certain Pre-Filing Payments

65. The Applicants are proposing in the Initial Order that they be authorized, but not required, and in all cases with the consent of the Monitor and the DIP Lenders, to make payments for goods or services actually supplied to the Applicants prior to the date of the Initial Order if, in the opinion of the Applicants and the Monitor, the supplier or service provider is critical to preserve, protect, or enhance the value of the business.

66. Section 11.4 of the CCAA gives the Court the specific authority to declare a person to be a critical supplier and to grant a charge on the debtor's property to secure amounts owing for

⁹⁴ *Milich Affidavit*, supra note 1 at paras 132-135, Application Record at Tab 2.

services provided after the filing. However, section 11.4 of the CCAA does not oust the court's inherent jurisdiction to make provision for the payment of pre-filing amounts to suppliers whose services are viewed as critical to the post-filing operations of the debtor, even where the debtor does not propose to secure payment of post-filing supplies with a critical supplier charge.⁹⁵

67. Case law demonstrates that this Court may include such a provision in the Initial Order.⁹⁶

H. BZAM Should be Authorized to Incur No Further Costs in Connection with its Securities Filing Obligations

68. Pursuant to the Initial Order, the Applicants are seeking relief to dispense with certain securities filing requirements. Specifically, the Applicants seek authorization for BZAM to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the “**Securities Filings**”) that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the CSE. The Initial Order also provides that none of the Directors and Officers, employees and other representatives of the Applicants, and the Monitor (and its directors, officers, employees and representatives), shall have any personal liability for any failure by BZAM to make Securities Filings. Similar relief has been granted for reporting issuers under the CCAA.⁹⁷

⁹⁵ [Cline Mining Corp. Re](#), 2014 ONSC 6998 at para 38; [MPX](#), *supra* note 73 at para 70.

⁹⁶ [Target](#), *supra* 69 at paras. 64-65.

⁹⁷ [Aleafia Health Inc., amended and restated initial order issued August 4, 2023 \[CV-23-00703350-00CL\]](#) paras 45-46; [MPX International Corporation, amended and restated initial order issued July 25, 2022 \[CV-22-00684542-00CL\]](#) at para 46-47; [CannTrust Holdings Inc., Re, initial order issued March 31, 2021 \[Court File No. CV-20-00638930\]](#) at paras 46-47; [Pure Global Cannabis, Inc., Re, initial order issued March 19, 2020 \[CV-20-00638503-00CL\]](#) at para. 49.

69. The Applicants believe that incurring the time and costs associated with the Securities Filings would detract from their successful restructuring. Further, stakeholders will not be prejudiced given that detailed financial and other information on the Applicants will continue to be publicly available through materials filed in these CCAA Proceedings.

70. Finally, the language in the proposed Initial Order is limited to what is necessary for the Applicants to focus on their restructuring and does not overreach by purporting to prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have as described in section 11.1(2) of the CCAA. Accordingly, the Applicants believe that this relief is necessary and appropriate in the circumstances.

I. THE REGULATORY STAY OF THE LICENCES SHOULD BE GRANTED

71. CCAA courts have granted regulatory stays over licences where, without regulatory stays, the applicable regulators were likely to suspend or cancel licences due to the relevant parties having commenced CCAA proceedings.⁹⁸ Courts have commented that to “permit the immediate termination of [a debtor company’s] licences would not avoid social and economic losses but amplify them”.⁹⁹

72. Similarly, in *Just Energy Corp*, the Honourable J. McLeod stated:

More plainly put, the CCAA automatically stays enforcement of any payments of money ordered by the regulator. It does not, however, automatically stay other steps that a regulator may take against a regulated entity. The court may nevertheless stay such other steps if it is of the view that the failure to stay those other steps means that a viable compromise or arrangement could not be made, provided that the additional stay is not contrary to the public interest.¹⁰⁰

⁹⁸ *Just Energy*, supra note 77 at para 87; *Abbey Resources Corp., Re. (29 July 2021) Saskatoon Q.B. No. 733 of 2021 (SKQB)* (Abbey Resources Corp.’s Supplemental Brief of Law); *Original Traders Energy Ltd. et al., (30 January 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00693758-00CL* (Initial Order) at para 19.

⁹⁹ *Just Energy*, supra note 77 at para 87.

¹⁰⁰ *Just Energy*, supra note 77 at para 79.

73. Canadian courts have previously stayed CRA from seeking to enforce its rights through regulatory actions and estopped CRA from rescinding or destroying products related to an excise licence for the duration of a cannabis company's protection under an insolvency regime.¹⁰¹

74. As part of a BIA proposal, *Tantalus Labs Ltd.* sought an order from the Supreme Court of British Columbia that its excise cannabis licence, which was set to expire during the pendency of the proposal, be extended over the course of its BIA proceedings. CRA opposed, arguing that a ministerial decision to not renew a licence could not be "stayed" under the BIA.¹⁰² The Honourable Madam Justice Fitzpatrick rejected CRA's argument and granted an order maintaining the status quo over the cannabis excise licence during the course of the proposal proceedings.¹⁰³ This Court has similarly granted regulatory stays of cannabis licences in CCAA proceedings.¹⁰⁴

75. The Applicants' cannabis licences (the "**Licences**") are among the Applicants' most valuable assets and are required to permit the Applicants to operate their underlying business. If the Licences lapse or are cancelled, the Applicants' operation and delivery of products will need to be halted or suspended. Accordingly, the lapsing or cancellation of the Licences would terminate their ability to restructure or continue as a going-concern business.¹⁰⁵ Without the stability of customer contracts that the Applicants have developed, they would lose vital revenue streams, threatening their viability and frustrating the fundamental purpose of these insolvency proceedings.¹⁰⁶

¹⁰¹ [Tantalus Labs Ltd. \(Re\)](#), 2023 BCSC 1450; [Aleafia Health Inc.](#), SISP approval order issued August 22, 2023 [CV-23-00703350-00CL].

¹⁰² [Tantalus Labs Ltd. \(9 July 2023\) Vancouver B-230269 \(BCSC\)](#) (Application Response) at Part 5, para 7.

¹⁰³ [Tantalus Labs Ltd. \(10 July 2023\) Vancouver B-230269 \(BCSC\)](#) (Order Made After Application).

¹⁰⁴ [Aleafia Health Inc.](#), SISP approval order issued August 22, 2023 [CV-23-00703350-00CL] para 13; [Aleafia Health Inc.](#), Endorsement of the Honourable Justice Conway issued August 22, 2023 [CV-23-00703350-00CL] at para 5.

¹⁰⁵ *Milich Affidavit*, supra note 1 at paras 142, Application Record at Tab 2.

¹⁰⁶ *Milich Affidavit*, supra note 1 at paras 142, Application Record at Tab 2.

76. There is no factor which reflects a public policy rationale for refusing to grant a regulatory stay. The status quo relief, if granted, will mitigate the material, pressing and significant risk that the lapsing or cancelation of the Licences would destroy the business of the Applicants and significantly curtail the value to be generated from a potential sales process.

PART IV: RELIEF REQUESTED

77. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and request that this Court grant the proposed form of Initial Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [Abbey Resources Corp., Re, \(29 July 2021\) Saskatoon Q.B. No. 733 of 2021 \(SKQB\)](#)
2. [Bondfield Construction Company, Re, 2019 ONSC 2310](#)
3. [Canwest Global Communications Corp. \(Re\), \[2009\] OJ No 4286 \(Ont. Sup. Ct. J.\) \[Commercial List\]](#)
4. [Canwest Publishing Inc, Re, 2010 ONSC 222](#)
5. [Cash Store Financial Services, Re, 2014 ONSC 2372](#)
6. [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#)
7. [Cline Mining Corporation \(Re\), 2014 ONSC 6998](#)
8. [Comark Inc, \(Re\), 2015 ONSC 2010](#)
9. [Lydian International Limited \(Re\), 2019 ONSC 7473](#)
10. [Miniso International Hong Kong Limited v Migu Investments Inc, 2019 BCSC 1234](#)
11. [MJardin Group, Inc \(Re\), 2022 ONSC 3338](#)
12. [MPX International Corporation, 2022 ONSC 4348](#)
13. [Nordstrom Canada Retail, Inc., 2023 ONSC 1422](#)
14. [Original Traders Energy Ltd. et al., \(30 January 2023\) Toronto, Ont Sup Ct \[Commercial List\] CV-23-00693758-00CL](#)
15. [Performance Sports Group Ltd, 2016 ONSC 6800](#)
16. [Re Just Energy Corp, 2021 ONSC 1793](#)
17. [Re: Mobilicity Group, 2013 ONSC 6167](#)
18. [Re Stelco Inc, \(2004\) 48 CBR \(4th\) 299 \(Ont. Sup. Ct. J.\) \[Commercial List\]](#)
19. [Sino-Forest Corporation \(Re\), 2012 ONSC 2063](#)
20. [Tantalus Labs Ltd. \(Re\),](#)
21. [Target Canada Co, 2015 ONSC 303](#)
22. [Toys "R" Us \(Canada\) Ltd, 2017 ONSC 5571](#)

Endorsements and Orders

1. [Aleafia Health Inc., amended and restated initial order issued August 4, 2023 \[CV-23-00703350-00CL\]](#)
2. [Aleafia Health Inc., Endorsement of the Honourable Justice Conway issued August 22, 2023 \[CV-23-00703350-00CL\]](#)
3. [Aleafia Health Inc., SISP approval order issued August 22, 2023 \[CV-23-00703350-00CL\]](#)
4. [CannTrust Holdings Inc., Re, initial order issued March 31, 2021 \[Court File No. CV-20-00638930\]](#)
5. [Pure Global Cannabis, Inc., Re, initial order issued March 19, 2020 \[CV-20-00638503-00CL\]](#)
6. [Tantalus Labs Ltd. \(9 July 2023\) Vancouver B-230269 \(BCSC\)](#)
7. [Tantalus Labs Ltd. \(10 July 2023\) Vancouver B-230269 \(BCSC\)](#)

SCHEDULE B – STATUTES RELIED ON

Bankruptcy and Insolvency Act, RSC 1985, c. B-3

Section 2, “Insolvent Person”

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

Section 2(1), “Company”

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies

Section 2(1), “Debtor Company”

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
- (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent;

Section 3

Application

(1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

(a) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a company that is a subsidiary of that other company.

Section 11

General power of court

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any

other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Section 11.001

Relief reasonably necessary

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 11.2

Interim financing

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.4

Critical supplier

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods or services to the company and that the goods or services that are supplied are critical to the company's continued operation.

Obligation to supply

(2) If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

Security or charge in favour of critical supplier

(3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied under the terms of the order.

Priority

(4) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Section 11.51

Security or charge relating to director's indemnification

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Section 11.52

Court may order security or charge to cover certain costs

(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

SCHEDULE C – *Comark Inc, (Re)*, 2015 ONSC 2010

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD HOLDING CORP., AND FINAL BELL CORP.

Court File No.: [●]

**ONTARIO
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(COMMERCIAL LIST)**

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