

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 2nd
)
JUSTICE MCEWEN) DAY OF FEBRUARY, 2022

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 FIGR
BRANDS, INC., FIGR NORFOLK INC. AND 1307849 B.C. LTD.

(collectively, the "**Applicants**")

**ORDER
(Stay Extension, Distribution, WEPPA and Fee Approval)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*: (i) approving an extension of the Stay Period; (ii) declaring that WEPPA (as defined below) applies to the former employees of FIGR Norfolk and FIGR Brands; (iii) approving the Proposed Distribution Methodology; (iv) authorizing, directing and empowering the Applicants, or the Monitor on behalf of the Applicants, to make one or more cash distributions; (v) approving the Administrative Reserve (as defined below); and (vi) approving the Eighth Report (as defined below) and the Monitor's activities and fees described therein, and certain related relief, was heard this day by Zoom videoconference as a result of the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicants, the affidavit of Michael Devon sworn January 26, 2022 (the "**January 26 Devon Affidavit**"), the Eighth Report of FTI Consulting

Canada Inc. dated January 27, 2022 (the "**Eighth Report**"), in its capacity as Monitor of the Applicants (in such capacity, the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Alliance One Tobacco Canada Inc., and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms sworn and filed;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated January 29, 2021 (as amended, the "**Initial Order**"), the January 26 Devon Affidavit or the Eighth Report, as applicable.

EXTENSION OF THE STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including April 29, 2022.

WAGE EARNER PROTECTION PROGRAM ACT

4. **THIS COURT ORDERS AND DECLARES** that pursuant to section 5(5) of the *Wage Earner Protection Program Act (Canada)*, SC 2005, c 47, s 1 ("**WEPPA**"), FIGR Norfolk, FIGR Brands and their collective former employees meet the criteria prescribed by section 3.2 of the

Wage Earner Protection Program Regulations, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order.

DISTRIBUTION METHODOLOGY, ALLOCATION OF COSTS AND PROPOSED DISTRIBUTIONS

5. **THIS COURT ORDERS** that the Proposed Distribution Methodology (including the allocation of costs among the Applicants as set out in the Eighth Report) for the distributions to be made under this Order and for any subsequent distributions of the Property of the Applicants as set out in the Eighth Report, is hereby approved.

6. **THIS COURT ORDERS** that the Applicants are hereby authorized, directed and empowered to make one or more cash distributions to each Claimant holding a Proven Claim for their applicable *pro rata* amount, all in accordance with the Proposed Distribution Methodology.

7. **THIS COURT ORDERS** that all distributions shall be made in Canadian dollars, regardless of the currency indicated in the Proof of Claim, calculated by the Applicants, with the assistance of the Monitor, in accordance with paragraph 8 of the Claims Procedure Order.¹

8. **THIS COURT ORDERS** that the Applicants or any other person facilitating distributions pursuant to this Order shall be entitled to deduct and withhold from any such distribution to any Claimant such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law, including Employee Claims for which a withholding will be calculated by the Applicants' payroll provider.

¹ January 21, 2021 – USD 1:CAD 1.2627.

9. **THIS COURT ORDERS** that the Applicants are each hereby authorized, directed and empowered to take any further steps that they deem necessary or desirable to complete the distributions described in this Order.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings or the termination of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985 c. B-3, as amended (the "BIA") in respect of any of the Applicants and any bankruptcy order issued pursuant to any such application; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants,

any distributions made pursuant to this Order are final and irreversible and shall be binding upon any trustee in bankruptcy that may be appointed in respect of the Applicants, and shall not be void or voidable by creditors of the Applicants, nor shall any such distributions constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers-at-undervalue or other reviewable transactions under the BIA or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the Applicants.

ESTABLISHMENT OF RESERVES

11. **THIS COURT ORDERS AND DIRECTS** the Applicants, with the assistance of the Monitor, to establish, hold and maintain a reserve from the funds remaining in the respective accounts of the Applicants in the amount of approximately \$2.1 million (the "**Administrative Reserve**") to secure, among other things:

- (a) the Applicants' and the Monitor's obligations to continue to administer these CCAA Proceedings; and
- (b) the indemnity provided in paragraph 20 of the Initial Order.

12. **THIS COURT ORDERS** that following the completion of the distributions in the manner set forth in paragraphs 5-9 of this Order (other than the Pyxus Claims) the Administration Charge shall attach solely to the Administrative Reserve.

13. **THIS COURT ORDERS** that following the completion of the distributions in the manner set forth in paragraphs 5-9 of this Order (other than the Pyxus Claims) the Directors' Charge shall attach solely to the Administrative Reserve.

14. **THIS COURT ORDERS** that following the completion of the distributions in the manner set forth in paragraphs 5-9 of this Order (other than the Pyxus Claims), and notwithstanding paragraphs 12 and 13 of this Order, the Administration Charge and the Directors' Charge shall continue to have the same priorities as set out in the Initial Order.

15. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order or the Initial Order, all distributions shall be free and clear of the Administration Charge, the Directors' Charge and each Intercompany Charge.

TERMINATION OF CHARGES

16. **THIS COURT ORDERS** that the DIP Lender's Charge shall be and is hereby terminated, released and discharged.

17. **THIS COURT ORDERS** that following the completion of the distributions in the manner set forth in paragraphs 5-9 of this Order, each Intercompany Charge shall be immediately terminated, released and discharged without any other act or formality.

THE MONITOR

18. **THIS COURT ORDERS** that the Monitor shall not incur any liability in connection with assisting the Applicants with respect to the distributions contemplated herein, whether in its personal capacity or in its capacity as the Monitor.

19. **THIS COURT ORDERS** that in carrying out the terms of this Order, the Monitor whether in its personal capacity or in its capacity as the Monitor:

- (a) shall have all the protections provided to it as an officer of the Court, including the protections granted pursuant to the CCAA and other orders granted in these CCAA proceedings, including the stay of proceedings; and

- (b) shall incur no liability or obligation as a result of carrying out any duties or work in connection with this Order, save and except for any gross negligence or willful misconduct on its part.

20. **THIS COURT ORDERS** that:

- (a) by causing the Applicants to distribute any funds or in making any payments hereunder; and
- (b) any payments or deliveries made in accordance with this Order that are assisted by the Monitor,

shall not constitute a "distribution" and the Monitor shall not constitute a "legal representative" or "representative" of the Applicants or "other person" for the purposes of Section 159 of the *Income Tax Act* (Canada), Section 270 of the *Excise Tax Act* (Canada), Section 46 of the *Employment Insurance Act* (Canada), Section 22 of the *Retail Sales Tax Act* (Ontario), Section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation in the Provinces or Territories that the Applicants conducted business in (collectively, the "**Statutes**"), and the Monitor in making any such payment or deliveries of funds in accordance with this Order is not "distributing", nor shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitor shall not incur any liability under the Statutes for making any payments or deliveries in accordance with this Order or failing to withhold amounts, ordered or permitted hereunder, and the Monitor shall not have any liability for any of the Applicants' tax liabilities regardless of how or when such liabilities may have arisen, and is hereby forever released, remised and discharged from any claims against either the Monitor under

or pursuant to the Statutes or otherwise at law, arising as a result of the distributions and deliveries in accordance with this Order, and any claims of such nature are hereby forever barred.

APPROVAL OF THE EIGHTH REPORT AND THE MONITOR'S ACTIVITIES AND FEES

21. **THIS COURT ORDERS** that the Eighth Report, and the activities of the Monitor and its counsel referred to therein be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

22. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as set out in the Eighth Report, be and are hereby approved.

GENERAL

23. **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 Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

24. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty and are each hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative

body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

25. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

A handwritten signature in black ink, appearing to read 'McE T.', is positioned above a solid horizontal line.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF FIGR BRANDS, INC., FIGR NORFOLK INC. AND 1307849 B.C. LTD.**

Court File No.: CV-21-00655373-00CL

2 Feb 22

Order to go as per the draft filed and signed.
It is unopposed and supported by the Monitor.
Reasons will follow.



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

Proceedings Commenced in Toronto

**ORDER
(Stay Extension, Distribution, WEPPA and Fee
Approval)**

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