

**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 FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184
CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER
HOLDINGS CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

**NOTICE OF MOTION
(Returnable June 15, 2023)
(Re: Amended and Restated Initial Order and SISP Approval Order)**

Fire & Flower Holdings Corp. ("**FFHC**" or the "**Company**"), Fire & Flower Inc. ("**FFI**"),
13318184 Canada Inc., ("**133 Canada**"), 11180703 Canada Inc. ("**Hi-Line Ventures**"), 10926671
Canada Ltd. ("**Open Fields Distribution**"), Friendly Stranger Holdings Corp. ("**Friendly
Stranger**"), Pineapple Express Delivery Inc. ("**Pineapple Express Delivery**"), Hifyre Inc.
("**Hifyre**", and collectively, the "**Applicants**") will make a motion before Justice Steele of the
Ontario Superior Court of Justice (Commercial List) on **Thursday, June 15, 2023 at 11:00 a.m.**,
or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

- In writing under subrule 37.12.1(1);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location: Courtroom 8-5, 330 University Avenue, Toronto, Ontario M5G

THE MOTION IS FOR

1. An amended and restated initial order (the “**Initial Order**”) of the Honourable Justice Steele dated June 5, 2023 (the “**ARIO**”) granting, among other things:

- (a) if necessary, abridging the time for service of this Notice of Motion and Motion Record and dispensing with service on any person other than those served;
- (b) an extension of the period in which any proceedings and remedies that might be taken against or in respect of the Applicants any of their assets, property, and undertakings (“**Property**”) or business, or their directors and officers (the “**D&Os**”) from June 15, 2023 (the “**Initial Stay Period**”) to and including September 1, 2023 (the “**Stay Period**”);
- (c) approval of the key employee retention plan (the “**KERP**”) and granting a Court-ordered priority charge against the Property for security for payments under the KERP (the “**KERP Charge**”);
- (d) a sealing order in respect of the unredacted KERP;
- (e) authority for the Applicants to draw the remainder of the aggregate principal amount of \$9.8 million under the interim facility loan agreement (the “**DIP Facility Agreement**”) entered into on June 5, 2023 with 2707031 Ontario Inc. (“**ACT Investor**”, and in its capacity as lender under the DIP Facility Agreement, the “**DIP Lender**”);
- (f) authority for the Applicants to pay pre-filing amounts owing to certain suppliers that provide the Applicants with essential services and/or products (the “**Critical Suppliers**”) to the maximum amount of \$250,000;
- (g) authority for the Applicants 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 (collectively, the “**Securities Provisions**”) and declare that none of the D&Os, employees, and other

representatives of the Applicants or FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the monitor of the Applicants (“the **Monitor**”) in these *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make the Securities Filings;

- (h) an extension of the time limit to hold the annual general meeting of shareholders of FFHC (the “**AGM**”) scheduled for June 22, 2023 until after the conclusion of the CCAA proceedings, subject to further order of this Court; and
- (i) the following priority charges against the Property and increasing certain of the charges granted in the Initial Order (ordered in priority):
 - (i) First – an “**Administration Charge**” against the Property in the amount of \$600,000 as security for the payment of the professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, and counsel to the Applicants, in connection with these CCAA proceedings both before and after the making of the ARIO;
 - (ii) Second – an increase to the “**DIP Lender’s Charge**” against the Property to \$9.8 million as security for the Applicants’ obligations under the DIP Facility Agreement;
 - (iii) Third – a “**D&O Charge**” against the Property in the amount of \$2.8 million as security for the Applicants’ obligation to indemnify such D&Os for obligations and liabilities they may incur in such capacities after the commencement of the CCAA Proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which may become due and payable after the commencement of these proceedings, except to the extent that such obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct; and
 - (iv) Fourth – a new “**KERP Charge**” against the Property in an amount to be disclosed prior to the hearing of the Motion, as security for the Applicants’ obligations under the KERP to pay the key employees.

(collectively, the “**Charges**”).

2. An order (the “**SISP Order**”) granting, among other things:
 - (a) approval of the sale and investment solicitation process (the “**SISP**”) in a form substantially similar to the form attached as Schedule “A” to the SISP Order;
 - (b) authority for the Applicants and the Monitor to immediately commence the SISP; and
 - (c) authority and direction to the Monitor, the Applicants, and their respective affiliates, partners, employees, advisors and agents (collectively, the “**Assistants**”) to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and the SISP Order.
3. Such further and other relief as may be requested by the Applicants and as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

Background

4. The Applicants are an independent cannabis retail chain with 91 retail stores open across Canada. Certain of the Applicants also carry on business as a wholesale cannabis distributor, a logistics provider, and operate digital platforms which provide various services and software products relating to cannabis products.

5. The Applicants, together with Hifyre US, Inc. and PGED Corp. (collectively, the “**Companies**”) have been operating at a loss since they began operating in 2018. Most recently, the Companies have suffered significant operating losses of approximately \$45.4 million and \$83.4 million, in the fiscal years ended January 29, 2022 and December 31, 2022, respectively. From December 31, 2022 to March 31, 2023, the Companies suffered operating losses of approximately \$8.7 million, with losses continuing to accrue.

6. As a result of these severe liquidity issues and an inability to meet their obligations as they became due, the Applicants determined that it was in their best interest and the best interests of their stakeholders to commence these CCAA Proceedings. Accordingly, on June 5, 2023, the Applicants sought and obtained relief under the CCAA pursuant to the Initial Order.

7. Pursuant to the Initial Order, among other things:
 - (a) FTI was appointed Monitor of the Applicants in the CCAA Proceedings;
 - (b) an initial 10-day Stay of Proceedings was granted in favour of the Applicants and their respective D&Os up to and including June 15, 2023;
 - (c) the DIP Facility Agreement was approved, pursuant to which the Applicants were permitted to borrow the Initial Advance of \$2.7 million from the DIP Lender; and
 - (d) the Administration Charge was granted in the amount of \$600,000, the DIP Lender's Charge was granted in the amount of \$2.7 million, and the D&O Charge was granted in the amount of \$2.8 million, in each case covering amounts only necessary for the Initial Stay Period.

8. The Applicants commenced these CCAA Proceedings to, among other things, implement an orderly court-approved SISP to obtain a going concern solution to maximize value for their stakeholders.

Extension of the Stay Period

9. The Applicants request an extension of the Stay Period up to and including September 1, 2023 to allow the Applicants and the Monitor to conduct the SISP and take certain steps to streamline their operations and restructure unprofitable segments.

10. The requested extension will provide the Applicants with continued breathing space while they attempt to maximize value for the benefit of their stakeholders through the CCAA Proceedings and the SISP.

11. The Applicants have acted, and continue to act, in good faith and with due diligence during the course of the CCAA Proceedings.

12. Since the granting of the Initial Order, among other things, the Applicants have reached out to various suppliers, the regulatory entities in each province for which the Applicants have ongoing operations, their employees, and developed the SISP.

13. The Applicants have also engaged with the DIP Lender regarding disclaimer notices for all of the non-operating leases for which one or more of the Applicants are a party to, in an effort to preserve liquidity.

14. Accordingly, the Applicants' activities since the granting of the Initial Order have all been made with a view to maximizing the value of the Applicants' business, for the benefit of their stakeholders.

15. The cash flow statement prepared by the Applicants and reviewed by the Monitor (the "**Cash Flow Statement**") demonstrates that the Applicants have sufficient liquidity to operate through the proposed Stay Period (subject to obtaining the necessary advances under the DIP Facility).

16. The Monitor and the DIP Lender are both supportive of the proposed extension of the Stay Period.

KERP and KERP Charge

17. The Applicants seek approval of the KERP and related KERP Charge. The KERP was developed by the Applicants, with input from its legal counsel and the Monitor, to facilitate and encourage the continued participation of senior management and other key employees of the Applicants who are required to guide the business through the restructuring and preserve value for the Applicants' stakeholders.

18. The beneficiaries of the KERP are employees with significant experience and specialized expertise that cannot be easily replicated or replaced. Further, these key employees will also be faced with a significantly increased workload during the restructuring process.

19. The proposed KERP Charge will act as a priority charge on the Property in an amount to be disclosed prior to the hearing of the Motion.

20. The Applicants also seek to have the unredacted KERP sealed, as it reveals individually identifiable information, including, among other things, compensation information. Disclosure of such sensitive personal and compensation information may cause harm to the key employees in the KERP and to the Applicants, and the protection of such information is an important commercial and privacy interest that should be protected.

21. The Monitor is supportive of the proposed KERP, corresponding KERP Charge, and the sealing of the unredacted KERP.

Increased Amounts to DIP Facility and DIP Lender's Charge

22. The Applicants seek to increase the maximum amount permitted to be drawn on the DIP Facility from \$2.7 million to \$9.8 million and correspondingly, an increase in the DIP Lender's Charge in the same amount.

23. The Cash Flow Statement indicates that the Applicants anticipate the need for interim financing to fund these CCAA proceedings. While the Applicants reasonably required \$2.7 million of financing through the DIP Facility during the initial Stay Period, the Cash Flow Statement indicates that the Applicants anticipate the need for interim financing of up to \$9.8 million to continue operating up to and including September 1, 2023.

24. The Monitor is supportive of the proposed authority for the Applicants to borrow up to \$9.8 million under the DIP Facility and the corresponding increase to the DIP Lender's Charge.

Relief from Reporting Obligations and Extension of Time to Hold the AGM

25. The Applicants seek (a) to incur no further expenses in relation to the Securities Filings; (b) a declaration that none of the directors, officers, employees and other representatives of the Applicants or the Monitor shall have any personal liability for failure by the Applicants to make any Securities Filings that may be required by the Securities Provisions; and (c) to extend the time limit to hold the AGM.

26. On June 6, 2023, the Toronto Stock Exchange suspended trading in the securities of FFHC. The securities of FFHC will also likely be delisted as a result of the commencement of these CCAA proceedings.

27. In the circumstances, it is in the best interest of the Applicants and their stakeholders to incur no further expenses to maintain the currency of its securities reporting going forward and to extend the time limit to hold the AGM until after the conclusion of the CCAA Proceedings, subject to further order of this Court.

28. The Applicants' resources and time are better directed towards its restructuring efforts.

Pre-Filing Payments to Critical Suppliers

29. The Applicants are seeking authorization to make payments for pre-filing arrears to the Critical Suppliers that provide the Applicants with essential services and/or products to the maximum amount of \$250,000.

30. The cooperation of the Critical Suppliers is necessary for the Applicants to maintain their operations, and in certain circumstances, for the Applicants to be compliant with the applicable provincial and/or municipal legislation relating to cannabis.

31. The Applicants do not have any readily available means to replace the Critical Suppliers.

32. Payments to Critical Suppliers will only be made with the express authorization of the Monitor, and only to Critical Suppliers that the Monitor agrees are essential to the Applicants' business and operations.

33. The Monitor is supportive of the Applicants' request to make payments for pre-filing arrears to Critical Suppliers.

Priority of Charges

34. The proposed ARIO provides that the Charges, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$600,000);

Second – DIP Lender's Charge (to the maximum amount of \$9.8 million);

Third – D&O Charge (to the maximum amount of \$2.8 million); and

Fourth – KERP Charge (in an amount to be disclosed prior to the hearing of the Motion).

35. While the Charges in the Initial Order only primed ACT Investor's position as secured lender, the proposed Charges in the ARIO rank ahead of all Encumbrances. The proposed ranking of the Charges is reasonable and appropriate in the circumstances. The Applicants will serve all secured parties who may be affected by the Charges.

SISP

36. The Applicants propose to conduct a SISIP that is intended to maximize the value of the Applicants' business assets, on a going concern basis.

37. The SISP is intended to solicit interest in, and opportunities for (a) sales or partial sales in respect of the Applicants' Business and/or Property; and/or (b) an investment, restructuring, recapitalization, refinancing, or other form of reorganization transaction, in respect of the Applicants or their Business.

38. If approved, the SISP will commence as soon as reasonably practicable following the date on which the SISP Order is granted with a two-phase bidding process, which includes the following key deadlines (which can be modified pursuant to the terms of the SISP):

- (a) Phase I Bid Deadline of July 13, 2023;
- (b) Phase II Bid Deadline of August 11, 2023;
- (c) Auction (if applicable) on August 15, 2023; and
- (d) Outside Date for closing of September 15, 2023.

39. Further details on the proposed SISP will be provided prior to the hearing of the motion.

40. The Monitor is supportive of the Applicants commencing a SISP as soon as practicably possible.

OTHER GROUNDS:

41. Sections 11 and 36 of the CCAA and the inherent and equitable jurisdiction of this Court.

42. Rules 1.04, 2.03, 3.02, 16, 37, and 39 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

43. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

44. The affidavits of Stephane Trudel sworn June 5, 2023 and to be sworn prior to the hearing of the Motion, and the Exhibits thereto.

45. The Factum of the Applicants, to be filed.

46. The Pre-Filing Report of the Proposed Monitor dated June 5, 2023 and the First Report of the Monitor, to be filed.

47. Such further and other evidence as counsel may advise and this Court may permit.

June 9, 2023

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**ONTARIO
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CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

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(as at June 10, 2023)**

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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(Re: AMENDED AND RESTATED INITIAL
ORDER AND SISP ORDER)**

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