

**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
15315441 CANADA INC.**

Applicant

**NOTICE OF MOTION
(returnable TBD)**

The Claimant/Moving Party, Chris Bolivar (“**Mr. Bolivar**”), will make a motion to a judge, on a date to be set by the Court, at 10:00am, 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) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- in person;
- by telephone conference;
- by video conference

AT THE FOLLOWING LOCATION:

A videoconference link to be provided by the Court

THE MOTION IS FOR:

- (a) an order granting Mr. Bolivar's appeal of the Claims Officer's Decision (defined term, below) in connection with Mr. Bolivar's Proof of Claim in this proceeding;
- (b) an order granting Mr. Bolivar an amount equal to his entitlements to both the Severance Claim and Change of Control Claim (defined terms, below);
- (c) an order of costs in favour of Mr. Bolivar; and
- (d) such other and further relief as counsel may advise and this Honourable Court may permit;

THE GROUNDS FOR THE MOTION ARE:

- (a) Mr. Bolivar was a former employee of Fire & Flower Holdings Corporation ("**FFHC**"), serving as its Executive Vice President, Commercial Growth;
- (b) In June 2023, FFHC, as well as a series of related corporations, applied for and obtained protection from creditors under the Companies' Creditors Arrangement Act ("**CCAA**");
- (c) Within the above-referenced CCAA proceeding, this Honourable Court made two related orders on August 29, 2023:
 - (i) approving of a subscription agreement dated August 17, 2023 (the "**Approval and Reverse Vesting Order**"); and
 - (ii) approving a process to identify and determine all outstanding claims against FFHC and the other applicants, and their respective Directors and Officers (the "**Claims Procedure Order**");
- (d) the Claims Procedure Order contemplated the appointment of a Claims Officer for the purposes of assessing the value of any Pre-Filing Claim, Directors &

Officers' Liability Claim or Restructuring Claim (as those terms are defined in the Claims Procedure Order);

- (e) Mr. Bolivar filed a Proof of Claim on or about October 4, 2023, claiming various unpaid entitlements pursuant to his employment agreement with FFHC, as well as other damages and legal fees in connection with the termination of his employment;
- (f) in his Proof of Claim, Mr. Bolivar claimed an entitlement to fixed payments (as outlined in his employment agreement) with respect to both termination of his employment (the "**Severance Claim**") and the change of control resulting from the transaction approved by the Approval and Reverse Vesting Order (the "**Change of Control Claim**");
- (g) W. Niels Ortved was appointed the Claims Officer, and received submissions regarding Mr. Bolivar's Proof of Claim – heard at the same time as other FFHC executives;
- (h) on August 2, 2024, Mr. Ortved released his decision regarding Mr. Bolivar's Proof of Claim (the "**Claims Officer's Decision**"):
 - (i) granting the Severance Claim, but with a lesser calculation of "Base Salary" – as that term is defined in Mr. Bolivar's employment agreement – than Mr. Bolivar requested;
 - (ii) disallowing the Change of Control Claim; and
 - (iii) disallowing Mr. Bolivar's claim for associated damages and legal expenses;
- (i) paragraph 35 of the Claims Procedure Order provides for a right of appeal of the Claims Officer's Decision, to this Honourable Court;
- (j) through this Notice of Motion, Mr. Bolivar is effecting his right to appeal. Mr. Bolivar's grounds of appeal are that the Claims Officer's Decision:

- (i) wrongly interpreted that Mr. Bolivar's employment agreement did not permit the payment of both the Severance Claim and the Change of Control Claim;
- (ii) in the alternative to sub-paragraph (i) above, wrongly decided that:
 - (A) the Change of Control Claim was not owing; and
 - (B) the Severance Claim should have paid instead of the Change of Control Claim; and
- (iii) in the circumstances of both sub-paragraphs (i) and (ii) above, wrongly calculated the "Base Salary" described in the applicable provisions of Mr. Bolivar's employment agreement – relevant to calculating the Severance Claim and the Change of Control Claim;
- (k) pursuant to paragraph 35 of the Claims Procedure Order, the applicant is being served with this Notice, with a copy being provided to counsel for the Monitor, FTI Consulting Canada Inc.;
- (l) Rules 1.04, 2.01 and 37 of the Rules of Civil Procedure; and
- (m) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the affidavit of Chris Bolivar, sworn, including:
 - (i) Mr. Bolivar's Proof of Claim;
 - (ii) the written submissions of Mr. Bolivar, the Monitor and the Applicant to W. Niels Ortved in connection with Mr. Bolivar's Proof of Claim; and

- (iii) the Claims Officer's Decision;
- (b) the Claims Procedure Order in the herein proceeding, dated August 29, 2023;
and
- (c) such other and further evidence as counsel may advise and this Honourable Court shall permit.

August 12, 2024

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

Court File No: CV-23-00700581-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 15315441
CANADA INC.

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

NOTICE OF MOTION
(Appeal of Claims Officer's Decision)

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