

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

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.

SECOND REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

July 5, 2023

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APPENDIX A – DRAFT FORM OF CONSENT ORDER

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 AND 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.
(collectively, the “**Applicants**”)

SECOND REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR

A. BACKGROUND

1. On June 5, 2023, Fire & Flower Holdings Corp., Fire & Flower Inc. (“**F&F Inc.**”), 13318184 Canada Inc., 11180703 Canada Inc., 10926671 Canada Ltd., Friendly Stranger Holdings Corp., Pineapple Express Delivery Inc. and Hifyre Inc. (collectively “**F&F**” or the “**Applicants**”) sought and obtained an initial order (the “**Initial Order**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced under the CCAA by F&F are referred to herein as the “**CCAA Proceedings**”.
2. The Initial Order, among other things:
 - (a) appointed FTI Consulting Canada Inc. as monitor of F&F (in such capacity, the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted a stay of proceedings against F&F until June 15, 2023 (the “**Stay Period**”);
 - (c) approved a \$9.8 million debtor-in-possession credit facility (the “**DIP Facility**”), of which an initial amount of \$2.7 million was approved to be advanced during the

initial 10-day Stay Period, and granted a corresponding charge in respect thereof; and

(d) granted the Administration Charge and the Directors' Charge (collectively, with the DIP Lender's Charge, the "**CCAA Charges**").

3. The Court granted the Amended and Restated Initial Order (the "**ARIO**") on June 15, 2023 which, *inter alia*:

(a) authorized the Applicants, with the consent of the Monitor, to pay certain pre-filing amounts owed to suppliers which they deem critical to their business;

(b) approves a key employee retention plan ("**KERP**") and granted a charge in respect of the beneficiaries of the KERP;

(c) increased the quantum of certain of the CCAA Charges and elevated the priority ascribed to the CCAA Charges over all Encumbrances (as defined in the ARIO);

(d) approved the advancement of the total amount of the DIP Facility in accordance with its terms; and

(e) extended the Stay Period to and including September 1, 2023.

4. By Order dated June 19, 2023, the Court approved,

(a) the sale and investment solicitation process (the "**SISP**"); and

(b) the Stalking Horse Agreement to be entered into between the Applicants and 2707031 Ontario Inc. solely for the purpose of constituting the "Stalking Horse Bid" under the SISP.

B. PURPOSE OF THIS REPORT

5. The purpose of this Second Report of the Monitor (the "**Second Report**") is to provide the Court with the Monitor's comments and recommendations, regarding the motion (the "**TPB Motion**") filed by Turning Point Brands (Canada) Inc. ("**TPB**") for an Order:

- (a) lifting the stay of proceedings in the ARIO for the limited purpose of permitting TPB to:
 - (i) terminate the Exclusive Distribution Agreement between TPB and F&F Inc. dated January 5, 2023 (the “**Distribution Agreement**”); and
 - (ii) repossess the goods supplied by TPB to the Applicants pursuant to the Distribution Agreement (the “**TPB Goods**”); and
 - (b) directing F&F Inc. to return the TPB Goods to TPB.
6. The Monitor understand that the Applicants and TPB have settled the TPB Motion.

C. TERMS OF REFERENCE

7. In preparing this Second Report, the Monitor has relied upon audited and unaudited financial information of F&F’s books and records, certain financial information and forecasts prepared by F&F, and discussions with various parties, including senior management (“**Management**”) of, and advisors to, F&F (collectively, the “**Information**”).
8. Except as otherwise described in this Second Report:
- (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Second Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
9. Future-oriented financial information reported in, or relied on, in preparing this Second Report is based on Management’s assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

10. The Monitor has prepared this Second Report in connection with the Turning Point Motion. The Second Report should not be relied on for any other purpose.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
12. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavit of Stephane Trudel, the Chief Executive Officer of Fire & Flower Holdings Corp., sworn on June 28, 2023, filed in respect of the Turning Point Motion.

D. TURNING POINT BRANDS

13. The Monitor understands that F&F Inc. entered into the Distribution Agreement with TPB in respect of the exclusive supply of cannabis accessories to the Applicants' retail outlets. TPB seeks to terminate the Distribution Agreement and repossess the TPB Goods in the Applicants' possession that were supplied in accordance with the Distribution Agreement.
14. According to the books and records of the Applicants, F&F Inc. has a pre-filing unsecured obligation to TPB in the amount of \$457,965. Pursuant to the terms of the ARIO, the Applicants are not permitted to pay this amount to TPB. The Monitor also understands that TPB has been paid for amounts owing since the commencement of these CCAA Proceedings and the cash flow forecasts indicate that they will continue to do so throughout the CCAA Proceedings.
15. The cost of the TPB Goods is \$1.8 million with a retail value of \$3.2 million. F&F Inc. is entitled to retain a commission of 28% on the sale of the TPB Goods in accordance with the terms of the Distribution Agreement.

Monitor's Comments and Recommendation

16. The Applicants and TPB worked to resolve the issues set out in the TPB Motion. The parties have agreed to a consent order to settle the motion (the "**Consent Order**"), the draft form is attached as Appendix "A" to this Second Report.

17. Given that the TPB Goods were delivered on consignment and remain the property of TPB, this arrangement is different from a typical supplier relationship. As a result of the uniqueness of the arrangement, the Monitor supports the Consent Order as a resolution of the TPB Motion.

E. CONCLUSION

18. For the reasons stated in this Second Report, the Monitor recommends that the Consent Order be granted by this Honourable Court.


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All of which is respectfully submitted this 5th day of July, 2023.

FTI Consulting Canada Inc.
In its capacity as Monitor 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.



Jeffrey Rosenberg
Senior Managing Director



Jodi Porepa
Senior Managing Director

Appendix “A”

Draft Form of Consent Order

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 6th

JUSTICE OSBORNE

)

DAY OF JULY, 2023

)

**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

ORDER

THIS MOTION, made by Turning Point Brands (Canada) Inc. (“**TPB**”) for an Order, among other things, declaring that Goods and the Balance, each as defined in the Exclusive Distribution Agreement between TPB and Fire & Flower, Inc. (“**F&F**”) dated January 5, 2023 (the “**Consignment Agreement**”), do not form part of the property of the Applicants, and related relief.

ON READING the affidavit of Mikail Fancy sworn June 17, 2023 and the exhibits thereto, the affidavit of Stephane Trudel sworn June 28, 2023 and the exhibits thereto, the Second Report of the FTI Consulting Inc., in its capacity as court-appointed monitor (the “**Monitor**”) to the court dated [DATE], and hearing the submissions from counsel to TPB, counsel to the Applicants, counsel to the Monitor and counsel to 2707031 Ontario Inc., and being informed that the order sought is unopposed, no one appearing for any other party, although duly served as appears from the affidavit of service of Haddon Murray sworn June 17, 2023,

CONSIGNMENT TERMS

1. **THIS COURT ORDERS** F&F shall continue to have the right to sell the Goods as agent of TPB pursuant to the Consignment Agreement unless and until F&F validly disclaims the Consignment Agreement.

2. **THIS COURT ORDERS AND DIRECTS** that, notwithstanding any co-mingling of funds, any Balance (as defined in the Consignment Agreement) obtained on or after June 5, 2023 up to a maximum amount of \$500,000 and not paid by the Applicants does not form a part of the property of the Applicants and is held by the Applicants for the benefit of TPB.

3. **THIS COURT ORDERS AND DIRECTS** that the Applicants shall pay the Balance obtained on or after June 5, 2023 to TPB in accordance with the provisions of the Consignment Agreement, but, in the event of any order being granted:

- a. ending the stay of proceedings;
- b. assigning one or more of the Applicants into bankruptcy;
- c. appointing a receiver over the assets of one or more of the Applicants; or
- d. permitting enforcement under the terms of the DIP Facility Agreement entered into on June 5, 2023 with no alternative debtor-in-possession financing obtained by the Applicants,

provided that the order has not been appealed within three (3) days of it being granted and, if it has, that the appeal has not been dismissed, TPB shall be entitled to demand the payment of, and, upon such demand, the Applicants shall pay, the full amount of any Balance accrued and not paid by the Applicants on or after June 5, 2023 (the “**Arrears**”). For greater certainty, upon demand in accordance with this provision, the Applicants are authorized and directed to make the above payment prior to making any other payments or distributions to creditors.

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

- a. the pendency of these proceedings;

- b. any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- c. any assignment in bankruptcy made in respect of the Applicants;

TPB's right to, and interest, in the Goods and to the Arrears or payment of funds equivalent in value to the Arrears pursuant to this Order shall be binding on any receiver or 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 it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

5. **THIS COURT ORDERS** that the balance of the relief sought on the motion made by TPB is dismissed, with prejudice.

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

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

PROCEEDING COMMENCED AT TORONTO

ORDER

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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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

SECOND REPORT OF THE MONITOR

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