

**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.**

**THIRD REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**August 26, 2023**

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*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**")

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

**A. INTRODUCTION**

1. On June 5, 2023, Fire & Flower Holdings Corp. ("**FFHC**" or the "**Company**"), Fire & Flower Inc., 13318184 Canada Inc., 11180703 Canada Inc., 10926671 Canada Ltd. ("**Open Fields**"), Friendly Stranger Holdings Corp., Pineapple Express Delivery Inc. ("**Pineapple Express**"), 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 (“**DIP**”) 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 (the “**DIP Lender’s Charge**”); and
  - (d) granted the Administration Charge and the Directors’ Charge (collectively, with the DIP Lender’s Charge, the “**CCA 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) approved 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 “**SISP Order**”), 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.
5. By Order dated July 24, 2023, the Court authorized the Applicants to sell certain consignment goods as agent of Turning Point Brands (Canada) Inc. pursuant to the

Consignment Agreement dated January 25, 2023 and to pay certain amounts in accordance therewith.

**B. PURPOSE OF THIS REPORT**

6. The purpose of this Third Report of the Monitor (the “**Third Report**”) is to provide the Court with:

(a) information regarding the activities of the Monitor and F&F since the Second Report of the Monitor dated July 5, 2023 (the “**Second Report**”);

(b) the Monitor’s comments and recommendations, regarding F&F’s motion returnable August 29, 2023 (the “**August 29 Motion**”) seeking:

(i) an order (the “**RVO**”), which among other things:

(A) approving the subscription agreement between FFHC and 2759054 Ontario Inc. o/a FIKA Cannabis (“**FIKA**”) dated August 17, 2023 (the “**Subscription Agreement**”) and authorizing and directing FFHC to take such additional steps and execute such additional documents as necessary or desirable for the completion of the transaction authorized therein (the “**Transaction**”);

(B) approving the amended and restated subscription agreement, to be entered into between FFHC and 2707031 Ontario Inc. (“**ACT**”) (the “**Back-Up Subscription Agreement**”) and authorizing and directing FFHC to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Back-Up Transaction, only to the extent that the Subscription Agreement does not close;

(C) granting a release in favour of certain parties to these CCAA proceedings and/or the Subscription Agreement;

(D) approving the activities of the Monitor;

- (E) extending the Stay Period to October 15, 2023 (the “**Stay Extension**”); and
  - (F) sealing the Confidential Appendix to this Third Report;
- (ii) an order approving the proposed claims process pursuant to which claimants may file claims against the Applicants or the officers and directors of the Applicants (the “**Claims Procedure Order**”); and
- (c) a summary of the receipts and disbursements of F&F for the eleven-week period ending August 18, 2023.

### C. **TERMS OF REFERENCE**

- 7. In preparing this Third Report, the Monitor has relied upon audited and unaudited financial information of F&F, 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 Third 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 Third 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 Third 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 Third Report in connection with the August 29 Motion. The Third 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 (“**Mr. Trudel**”), the Chief Executive Officer of Fire & Flower Holdings Corp., sworn on August 23, 2023, filed in support of the August 29 Motion (the “**Trudel Affidavit**”), or the Amended and Restated Initial Order, as applicable.

**D. THE ACTIVITIES OF THE MONITOR AND F&F**

*Activities of the Monitor*

13. Since the date of the First Report, the Monitor has undertaken the following activities:
  - (a) engaged with the Monitor’s legal counsel, Thornton Grout Finnigan LLP (“**TGF**”), regarding matters related to the CCAA Proceedings;
  - (b) posted updated and current service lists for these CCAA Proceedings on the Monitor’s Website;
  - (c) engaged in discussions with F&F, its legal counsel, and its directors and Management regarding issues related to F&F’s operations and borrowings under the DIP Facility, as well as lease terminations (consistent with the DIP terms);
  - (d) participated in discussions with Alimentation Couche-Tard (“**ACT**”), related entities and their advisors, regarding matters related to the DIP Facility;
  - (e) reviewed advances under the DIP Facility and disbursements of F&F;
  - (f) engaged in discussions with F&F and its legal counsel regarding certain issues related to terminated contracts and/or leases;
  - (g) engaged with various provincial regulators regarding the CCAA Proceedings and F&F’s intention to remain in compliance with its licenses under the various provincial statutes and regulations;

- (h) assisted F&F in discussions with suppliers, creditors, employees and shareholders related to the CCAA Proceedings and responded to requests for information from certain of such parties;
- (i) continued to operate and monitor its telephone hotlines and email account for stakeholder inquiries;
- (j) assisted F&F in preparing the proposed Claims Process; and
- (k) supervised and assisted with activities related to the SISF, with FTI Capital Advisors – Canada ULC (“**FTI Capital**”), as described in greater detail below.

#### F&F Employees

- 14. On August 17, 2023, F&F announced that its Chief Financial Officer had resigned, and that a new interim Chief Financial Officer had been appointed. The Monitor continues to work with the new interim Chief Financial Officer and his team to ensure F&F continues to satisfy its reporting requirements in accordance with the DIP and the CCAA Proceedings.
- 15. To date, F&F has terminated 256 employees since the commencement of the CCAA Proceedings, primarily pertaining to the shutdown of certain stores and the cessation of the Pineapple Express business and delivery system.

#### Lease Disclaimers

- 16. Immediately after the commencement of the CCAA proceedings, F&F took steps to disclaim certain real property leases that were “dead” (i.e. never operational) or wholly unprofitable. The disclaimers were intended to preserve liquidity, as the terminated leases had been highly unprofitable.
- 17. To date, F&F has disclaimed a total of 68 real property leases, of which 49 pertained to non-operating “dead” leases, and 19 pertained to non-profitable operating leases. Of the disclaimed operating leases, 17 operated under the trademark banner name of “Fire and Flower” and 2 operated under the trademark banner name of “Friendly Stranger”.

18. To date, F&F has disclaimed a total of six (6) additional contracts, of which two (2) pertain specifically to vehicles leased by Pineapple Express.
19. The Monitor reviewed all of the real property lease disclaimers issued since the commencement of the CCAA Proceedings. All of the proposed real property lease disclaimers were also delivered to the DIP Lender, in accordance with the terms of the DIP Facility. The DIP Lender did not object to any of the real property lease disclaimers.
20. F&F continues to review its remaining leases and to negotiate with certain landlords in an effort to maximize costs savings and preserve value for the ongoing business.

#### **E. SALES AND INVESTMENT SOLICITATION PROCESS**

21. In accordance with the SISP Order, the Monitor, with the assistance of its affiliate, FTI Capital Advisors, and with input from F&F, conducted the SISP.<sup>1</sup>

##### *Conducting the SISP*

22. The Monitor, with the assistance of F&F, conducted an extensive marketing process to solicit interest in an investment in or acquisition of F&F, assembling an expansive list of known potential buyers and investors (the “**Prospective Bidders**”).
23. The Monitor provided Prospective Bidders with a summary regarding the opportunity, outlining the process under the SISP and inviting them to participate (the “**Teaser**”). Interested parties that contacted the Monitor or F&F about the opportunity were also provided with a copy of the Teaser.
24. A deadline of July 13, 2023, at 5:00pm (“**Phase 1 Bid Deadline**”) was set as the date for submission of a non-binding letter of intent (“**LOI**”).
25. The Monitor arranged for the notice of the SISP to be published in Insolvency Insider and New Cannabis Ventures in accordance with paragraph 6 of the SISP Order.

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<sup>1</sup> Capitalized terms used in this section and not otherwise defined have the meaning ascribed to them in the SISP Order.

### Phase 1

26. Interested Prospective Bidders were provided with a confidential information package and access to an electronic data room after executing a non-disclosure agreement (the “**NDA**”).
27. 138 parties were contacted about the opportunity, excluding the Stalking Horse Bidder, 33 parties were provided with a confidential information package and access to a data room after executing the NDA (the “**Phase 1 Qualified Bidders**”).
28. The Monitor received multiple full and partial bids by the Phase 1 Bid Deadline. The Monitor, in consultation with F&F’s advisors and the Special Committee, reviewed the LOIs received from the Phase 1 Qualified Bidders and determined that multiple appropriate parties would proceed to Phase 2 (the “**Phase 2 Qualified Bidders**”). The DIP Lender was advised that there were multiple Phase 2 Qualified Bidders.

### Phase 2

29. In the weeks following the Phase 1 Bid Deadline, Phase 2 Qualified Bidders were provided the opportunity to visit the Manitoba and Saskatchewan warehouses and to meet with F&F management, under the Monitor’s supervision.
30. The Monitor received multiple Full Sale and Partial Sale Proposals by the Phase 2 Bid Deadline of August 11, 2023.
31. The Monitor, in consultation with F&F’s advisors and the Special Committee, reviewed the Phase 2 Bids and entered into discussions with the Phase 2 Qualified Bidders that submitted Phase 2 Bids regarding their potential acquisition proposals in respect of the assets and/or shares of various entities within F&F.
32. Following an extensive review of the Phase 2 Bids and since at least one Phase 2 Qualified Bid was received prior to the Bid Deadline, it was determined that the Auction would proceed pursuant to the terms of the SISF on August 15, 2023. The DIP Lender was advised that the SISF process would be moving forward to an Auction process.

### The Auction

33. On August 14, 2023, the Monitor in consultation with F&F's advisors and the Special Committee, and in accordance with the terms of the SISP, designated multiple parties as Phase 2 Qualified Bids, and advised that they were entitled to participate in the Auction.
34. The Monitor, in consultation with the Applicants, designated the Binding Offer received by FIKA as the Auction's Opening Bid as it was the highest Phase 2 Qualified Bid. FIKA's Bid was provided to the other Phase 2 Qualified Bidders on August 14, 2023.
35. The other parties that submitted Binding Offers who were determined ineligible to participate in the Auction were notified of such by the Monitor on August 15, 2023.
36. The Monitor conducted the Auction virtually on August 15, 2023. At the conclusion of the Auction, the Monitor declared FIKA to be the Successful Bidder and the Bid by ACT Investor to be the Back-Up Bid.
37. The Monitor, in consultation with F&F's advisors and the Special Committee, reviewed the Binding Offers and entered into discussions and negotiations to finalize the subscription agreements with the Successful Bidder and Back-Up Bidder.
38. The Monitor received an increased Deposit from the Successful Bidder to ensure that the Deposit was in an amount not less than 10% of the cash purchase price of their Bid in accordance with the terms of the SISP.

### Return of Deposits

39. In accordance with section 4 of the SISP, the Monitor, in consultation with F&F's advisors and the Special Committee, and the DIP Lender, amended the terms of the SISP to permit the immediate return of the Deposits received from Phase 2 Qualified Bidders who were not declared to be the Successful Bidder or the Back-Up Bidder. As a result, the Monitor returned such Deposits on August 18, 2023.

### Sealing Order

40. A summary of the economic terms of the bids received in the SISP is attached as **Confidential Appendix “A”** (the “**Confidential Appendix**”). The Monitor requests that the Confidential Appendix be sealed as it contains sensitive information that may, if the Transaction fails to close, affect the integrity of any future sale of the assets and/or business of the Applicants.

### **F. APPROVAL OF THE SUBSCRIPTION AGREEMENT AND THE BACKUP SUBSCRIPTION AGREEMENT**

#### The Subscription Agreement

41. The Subscription Agreement is described in detail in the Trudel Affidavit at paragraph 32 and is attached to the Trudel Affidavit at Exhibit “E”. The Monitor has not repeated the information contained in the Trudel Affidavit and would suggest that readers of this Report review the details of the Subscription Agreement set out therein.
42. The Monitor was provided opportunities to review the Subscription Agreement during its negotiation between the Applicants and the Purchaser. The Monitor approved of the final form of the Subscription Agreement executed by the parties.
43. With respect to the proceeds, the purchase price of \$36 million is sufficient to repay all of the Applicants’ secured liabilities and leaves a significant recovery available to the Applicants’ unsecured creditors. The purchase price is \$12.3 million more than the value of the Stalking Horse Bid. The Monitor believes that the Transaction is the result of a robust sales process and represents the best outcome for the Applicants’ business.
44. Further, given the going concern nature of the Transaction, a substantial number of F&F’s trade suppliers will continue to contract with the Applicants in the ordinary course and it is expected that a substantial number of the employees will be provided offers to continue their employment with F&F following the implementation of the Transaction. The Monitor is of the view that the Transaction is far more favourable to the creditors and stakeholders of F&F than a bankruptcy.

### The Back-up Subscription Agreement

45. As of the date of this Report, the terms of the Back-Up Subscription Agreement has been agreed to in principle between the Applicants and ACT Investor. ACT Investor has agreed to hold the Back-Up Bid open until October 23, 2023. Final documentation is in the process of being finalized. The purchase amount is comprised of a credit bid by ACT Investor of all of their secured indebtedness with the balance of the purchase price being paid in cash.
46. Similar to the Subscription Agreement, the purchase price under the Back-Up Subscription Agreement is sufficient to repay all of the Applicants' secured liabilities and leaves a significant recovery available to the Applicants's unsecured creditors.

### Reverse Vesting Order

47. As outlined in the Trudel Affidavit, both the transactions in the Subscription Agreement and the Back-up Subscription Agreement are contemplated to be completed through a reverse vesting transaction.
48. The Applicants' business is highly regulated pursuant to the *Cannabis Act* (Canada) and other applicable provincial and municipal legislation. By completing the Transaction as a reverse vesting transaction, new licences and permits do not need to be issued to a purchaser, however, certain change of control notifications must be made and approved as part of the Transaction. To complete this type of transaction as an asset sale would require a purchaser to obtain consents to assign leases and newly issued licences and permits to allow it to take possession and control of the cannabis assets of the Applicants. This is not feasible in the circumstances, given the timeline to obtain a licence from regulators of the various provinces in which the Company operates, the availability of funding beyond the proposed closing date and the large number of individual landlords.
49. In examining the effect on stakeholders generally in a reverse vesting order transaction, there are two groups that may typically be adversely effected relative to an asset purchase transaction:

- (a) Trade suppliers - With respect to ongoing trade suppliers who are owed pre-filing amounts, under an asset purchase agreement, if such agreement were required to be assigned to a purchaser, cure costs would be required to be paid to the trade supplier. The same cure cost payment is not required in a reverse vesting transaction as the supply agreements are not being assigned but are retained by the Applicants going forward. In the proposed Transaction, it is anticipated that these trade suppliers will receive meaningful distributions towards their pre-filing indebtedness which would greatly reduce any potential cure costs that may have been outstanding at the time of the transaction. In an asset purchase transaction, the time to closing would be significantly delayed which would greatly reduce the amount available for distribution to unsecured creditors. These potentially affected trade suppliers have been served with the motion materials of the Applicants; and
  - (b) Landlords – Similar to trade suppliers, in a reverse vesting transaction, real property leases are not required to be brought current as the leases are retained by the Applicants. In this case, F&F’s landlords were paid current to May 31, 2023, four days prior to filing and thus, would only be entitled to a very small cure payment in any event. This amount is insignificant in comparison to the benefits of completing a going concern sale of the Applicants.
50. The Monitor has considered the effect on these stakeholders when compared to the overall result of the Transaction provided for in the Subscription Agreement. Any cure costs which may have been payable in an alternate transaction will be significantly offset by the amount available for distribution to unsecured creditors as a result of the Transaction. The Transaction would likely not be obtained without the reverse vesting order. The Monitor is supportive of the approval of the Subscription Agreement.

### Releases

51. The Applicants are seeking the issuance of the Releases in favour of (a) the Released Parties (being the current directors, officers, employees, legal counsel, consultants and advisors to the Applicants and Residual Co.; and the Monitor and its current directors, officers, partners, employees and advisors) from the Released Claims; and (b) the Other

Released Parties (being the Applicants, ACT Investor, in its capacity as the DIP Lender and the Stalking Horse Bidder, and FIKA) from the Other Released Claims.

52. The Releases are limited in scope such that:
- (a) the Releases will only release the Applicants' current directors, officers, employees, legal counsel, consultants and advisors;
  - (b) the Released Claims do not include claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA;
  - (c) the Released Claims do not include pre-filing claims, which are being called for as part of the Claims Process (discussed herein); and
  - (d) with respect to the Other Released Claims, these only cover claims that occur prior to the filing of the Monitor's Closing Certificate and are largely limited in scope to relating to the CCAA proceedings and the Transaction.
53. The Monitor believes that the Releases are appropriate in the circumstances and are an essential component to the Transactions and Back-Up Transactions, as applicable.

*Monitor's Recommendations*

54. The Monitor supports and recommends the approval of the Subscription Agreement and the Back-up Subscription Agreement (collectively, the "**Subscription Agreements**") and the transactions set out therein for the following reasons:
- (a) the process leading to the finalization of the Subscription Agreements, as set out in the Trudel Affidavit and this Third Report, was reasonable in the circumstances, and approved of by the Monitor;
  - (b) the Monitor is of the view that the Transaction is far more beneficial for the Applicants' stakeholders than a bankruptcy;

- (c) while the general body of creditors has not been consulted as part of the SISP, the affected creditors and counterparties have all been served with the motion materials for the approval of the Transaction and the Subscription Agreements;
- (d) overall, the Transaction will be beneficial to the creditors and stakeholders given the going concern nature of the Transaction and the overall consideration paid by the FIKA; and
- (e) the Transaction is the result of the significant efforts of the Applicants and the Special Committee and represents the best outcome for the Applicants' business.

55. With respect to the nature of the Transaction as a reverse vesting transaction, the Monitor supports and recommends the use of the reverse vesting transaction as:

- (a) the Transaction could not be completed prior to the maturity of the DIP Facility without the use of a reverse vesting transaction, as FIKA would not be able to obtain licences and permits to complete the transaction in that expedited time frame;
- (b) the reverse vesting structure produces an economic result that would be at least as favourable as any other viable alternative, and likely leads to a better recovery as FIKA is not required to complete the costly regulatory process to obtain its own licences and permits;
- (c) while some stakeholders may be treated less favourably (being the trade suppliers and terminated employees), overall, the effect on those stakeholders is outweighed

in comparison to the benefits of the reverse vesting transaction and the amounts that will be available to distribute to unsecured creditors; and

- (d) if a reverse vesting transaction is not implemented, recoveries to unsecured creditors may be significantly eroded due to the costs of a protracted CCAA proceedings.

56. With respect to the Releases, the Monitor supports and recommends the Court grant the Releases which it believes are fair and reasonable in the circumstances and appropriate to be granted in this CCAA Proceeding.

**G. REQUEST FOR APPROVAL OF THE PROPOSED CLAIMS PROCEDURE ORDER**

*Monitor's Involvement in the Proposed Claims Process*

57. Given the success of the Auction, the Applicants anticipate that they will be in a position to distribute certain amount of the proceeds from the Transaction to unsecured creditors. F&F is seeking approval of the proposed Claims Procedure Order to undertake a comprehensive Claims Process to solicit, identify, determine and adjudicate Claims against F&F and the Directors and Officers<sup>2</sup>.

58. The Monitor has been consulted in the compilation of the proposed Claims Process Order and is supportive of the terms thereof. The terms of the proposed Claims Process Order, a summary of the key terms of which can be found at paragraph 65 of the Trudel Affidavit, are standard in proceedings of this nature.

59. The proposed Claims Process Order calls for pre-filing claims against the Applicants and the Officers and Directors together with post-filing restructuring claims resulting from, *inter alia*, the termination of contracts and leases during the course of the CCAA Proceedings.

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<sup>2</sup> Capitalized terms used in this section but not defined have the meanings ascribed to them in the proposed Claims Procedure Order.

60. The proposed Claims Process Order provides for the adjudication of disputed claims and appoints a Claims Officer, Niels Ortved, to assist in this process. Mr. Ortved is a retired litigator with a breadth of experience and expertise in the matters that may come before him to be adjudicated. A copy of Mr. Ortved’s curriculum vitae is attached as **Appendix “A”**.

Notice via Electronic Mail

61. There is one (1) unique aspect of the proposed Claims Process that the Monitor wishes to highlight and comment upon relating to notification by email.
62. As a result of the recent COVID-19 pandemic and resulting hybrid work environment, notices provided by email are much more reliable and accessible than those provided by traditional mail or courier. As such, the proposed Claims Process requires that notices be provided by email, and if such is not possible that a Claimant first contact the Monitor’s hotline to advise of an alternate delivery method. By requiring telephonic notification of an alternate notification method is required, the Monitor can ensure proper staffing is in place to receive hard copy deliveries if necessary.

Monitor’s Recommendations

63. In the Monitor’s view, the proposed Claims Process is fair and appropriate in light of the purpose of the process and the nature of the CCAA Proceedings. The Claims Process Order is efficient and will facilitate the identification of Claims against F&F and/or their Directors and Officers in a fair and expeditious manner. The proposed claims bar dates are reasonable. The direct notification and publication of notice to potential Claimants will make the Claims Process widely distributed and publicized.
64. For the reasons set out above the Monitor supports the granting of the Proposed Claims Procedure Order.

**H. RECEIPTS AND DISBURSEMENTS FOR THE ELEVEN-WEEK PERIOD ENDED AUGUST 18, 2023**

65. F&F’s actual negative net cash flow from operations on a consolidated basis for the eleven-week period ending August 18, 2023 was approximately \$1.6 million, compared to a

forecast negative net cash flow of approximately \$7.6 million as noted in the Cash Flow Projection filed as Appendix “A” to the Pre-Filing Report, representing a positive variance of approximately \$6.0 million as summarized below.

(\$CAD in thousands)

Forecast Week Ending	11 Weeks Ending August 18, 2023			
Forecast Week	Actual	Forecast	Variance (\$)	Variance (%)
	8/18/2023	8/18/2023		
<b>Receipts</b>				
Receipts from Operations	\$ 39,721	\$ 35,884	\$ 3,837	11%
Miscellaneous Receipts	60	3,700	(3,640)	-98%
<b>Total Receipts</b>	<b>\$ 39,781</b>	<b>\$ 39,584</b>	<b>\$ 197</b>	<b>0%</b>
<b>Disbursements</b>				
<i>Operating Disbursements</i>				
Inventory Purchases	\$ (28,260)	\$ (26,918)	\$ (1,342)	-5%
Rent	(1,969)	(3,140)	1,171	37%
Payroll	(6,974)	(7,075)	101	1%
Taxes	(803)	(3,785)	2,982	79%
Other Operating Expenses	(3,376)	(6,240)	2,864	46%
<b>Total Operating Disbursements</b>	<b>\$ (41,382)</b>	<b>\$ (47,158)</b>	<b>\$ 5,776</b>	<b>12%</b>
<b>Net Cash from Operations</b>	<b>\$ (1,601)</b>	<b>\$ (7,574)</b>	<b>\$ 5,973</b>	<b>79%</b>
<i>Restructuring Disbursements</i>				
Restructuring Legal and Professional Costs	(3,263)	(2,250)	(1,013)	-45%
<b>Net Cash Flows</b>	<b>\$ (4,864)</b>	<b>\$ (9,824)</b>	<b>\$ 4,960</b>	<b>50%</b>
<b>Cash</b>				
Beginning Balance	\$ 2,722	\$ 2,256	\$ 466	21%
Net Receipts/ (Disbursements)	(4,864)	(9,824)	4,960	-50%
DIP Advances/ (Repayments)	9,800	9,800	-	0%
DIP Fees & Interest Payment	-	-	-	0%
<b>Ending Balance</b>	<b>\$ 7,658</b>	<b>\$ 2,232</b>	<b>\$ 5,426</b>	<b>243%</b>

66. Actual sales taxes collected is reflected in the applicable actual receipt categories above, whereas forecast sales tax are reflected within *Miscellaneous Receipts*. As a result, there will be variances reflected in the individual actual receipt line items compared to forecast numbers. Please refer to *Total Receipts* below for variance explanation on receipts activity. Likewise, actual sales taxes paid will be reflected in the applicable disbursement categories above, whereas forecast sales tax payments are reflected in the separate *Taxes* line item. As a result, there will be variances reflected in the individual line items for *Operating Disbursements, Taxes and Other Operating Disbursements*. Please refer to variance explanations below for the disbursement categories.

67. Explanations for key variances are as follows:

- (a) positive variance in *Total Receipts* of approximately \$0.2 million primarily due to higher than expected receipts from retail sales and Open Fields collections;

- (b) positive variance between actual and forecast *Inventory Purchases* and *Taxes* is primarily driven by overall lower inventory purchases due to proactive inventory management and lower inventory load-in due to an additional three stores being closed, as compared to forecast;
- (c) positive variance in *Rent* of approximately \$1.2 million is primarily driven by the application of security deposits to outstanding rent for the post-filing period for disclaimed leases, as well lower total rent expense due to smaller footprint on a go-forward basis, than originally forecast basis. The actual net impact of offsetting security deposits against post-filing rent was not included in the original forecast and resulted in a positive variance;
- (d) positive total variance between actual and forecast *Other Operating Expenses & Taxes* is primarily due to lower than forecast outflows in the first few weeks post filing, as well as a discretionary payment regarding FAFUS which was not paid. A portion of this variance may be reversed in future weeks as operating disbursements are paid; and
- (e) negative variance in *Restructuring Legal and Professional Costs* of approximately \$1.0 million is permanent in nature as a result of payment of pre-filing professional fees in the post-filing period, as well as higher than forecast activity primarily driven by expedited timing for CCAA preparation, as well as increased activity post-filing compared to forecast.

## **I. STAY EXTENSION**

- 68. The Stay Period currently expires on September 1, 2023. Additional time is required for F&F to complete the Transaction and conduct the proposed Claims Process. The continuation of the stay of proceedings is necessary to provide the stability needed during that time. Accordingly, F&F is seeking a further extension of the Stay Period to October 15, 2023.
- 69. As is demonstrated in the Cash Flow Projection attached to this Third Report as **Appendix “B”** (the **“Revised and Extended Cash Flow Projections”**), F&F is forecast to have

sufficient liquidity to fund their obligations and the costs of the CCAA Proceedings through the end of the extended Stay Period<sup>3</sup>. The Revised and Extended Cash Flow Projection is summarized below:

(\$CAD in thousands)

Forecast Week Ending	Total 9 Weeks
Forecast Week	Total
Receipts	
Receipts from Operations	\$ 31,215
Miscellaneous Receipts	672
<b>Total Receipts</b>	<b>\$ 31,887</b>
Disbursements	
<i>Operating Disbursements</i>	
Inventory Purchases	\$ (23,975)
Rent	(1,300)
Payroll	(4,500)
Taxes	(1,451)
Other Operating Expenses	(4,027)
<b>Total Operating Disbursements</b>	<b>\$ (35,253)</b>
<b>Net Cash from Operations</b>	<b>\$ (3,366)</b>
<i>Restructuring Disbursements</i>	
Restructuring Legal and Professional Costs	(1,800)
<b>Net Cash Flows</b>	<b>\$ (5,166)</b>
Cash	
Beginning Balance	\$ 7,658
Net Receipts/ (Disbursements)	(5,166)
DIP Advances/ (Repayments)	-
DIP Fees & Interest Payment	-
<b>Ending Balance</b>	<b>\$ 2,492</b>

70. Based on the information presently available, the Monitor believes that creditors will not be materially prejudiced by the proposed Stay Extension. The Monitor believes that the Applicants have acted, and are continuing to act, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.

## **J. APPROVAL OF MONITOR’S ACTIVITIES**

71. The Applicants have sought the approval of the pre-filing report of the Monitor dated June 5, 2023 (the “**Pre-filing Report**”), the first report of the Monitor dated June 14, 2023 (the “**First Report**”), the Second Report, and this Third Report (collectively, the “**Monitor’s**

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<sup>3</sup> The Revised and Extended Cash Flow Projections do not currently forecast payment of the Court-approved KERP of \$1.16 million before October 20, 2023. The Revised and Extended Cash Flow Projections demonstrates that F&F has sufficient funds as at October 20, 2023 to fund the KERP from its cash on hand.

**Reports**”) and the activities of the Monitor described in the Monitor’s Reports. Copies of the Pre-filing Report, the First Report and the Second Report without appendices are attached as **Appendices “C”, “D” and “E”** respectively.

**K. CONCLUSION**

72. For the reasons stated in this Third Report, the Monitor supports the relief sought by F&F in connection with the August 29 Motion.

The Monitor respectfully submits to the Court this, its Third Report.

Dated this 26<sup>th</sup> day of August, 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

**CONFIDENTIAL APPENDIX "A"**

**[TO BE SEALED]**

**APPENDIX "A"**

**[ATTACHED]**

## **CURRICULUM VITAE**

### **W. NIELS ORTVED**

#### **SUMMARY**

Prior to commencing his practice focused on mediation and arbitration, Mr. Ortved was engaged exclusively in the practice of litigation for more than four decades, including as a senior partner in the litigation group at McCarthy Tetrault LLP for over 35 years. He has been engaged in a wide range of litigation matters, including corporate/commercial, administrative, intellectual property, medical negligence, criminal defence and professional regulation matters. He appeared as counsel at all levels of the Courts, including the Supreme Court of Canada, and in many administrative tribunals, Commissions of Inquiry and arbitrations. He lectured and has written extensively in the areas of advocacy, civil litigation and criminal law. He is a Fellow of the American College of Trial Lawyers (former Chair of the Ontario Province Committee). From 1997 to 2002 he served as McCarthy Tetrault's Managing Partner. He was elected is a Bencher (Director) of the Law Society of Upper Canada for the period 1997 to 2003. He was formerly an adjunct faculty member and head of the Trial Advocacy course at the University of Toronto, Faculty of Law. For many years before commencing his practice restricted to arbitration and mediation he was consistently recognized as a leading litigation counsel in *The Canadian Legal Lexpert Directory*, in *Chambers Canada* as a leading practitioner in the field of dispute resolution, and in *The Best Lawyers in Canada*.

#### **EDUCATION**

1968 - University of Toronto, Bachelor of Arts (B.A.)

1971 - University of Toronto, Faculty of Law, Doctor of Jurisprudence (J.D.)

#### **PROFESSIONAL QUALIFICATIONS**

1973 - Called to the Bar, Province of Ontario

2021 - Qualified Arbitrator, ADR Institute of Canada

## **PROFESSIONAL AFFILIATIONS AND NATURE OF LEGAL PRACTICE**

**1973-1974 Torys LLP – formerly Tory, Tory, Deslauriers & Binnington**

Practiced as an associate in the area of civil litigation.

**1974-1981 Private Practice – Law Office of W. Niels Ortved**

Practiced in the areas of administrative and criminal law. Member of the panel of prosecutors for the Discipline Committee of the College of Physicians and Surgeons of Ontario. Routinely engaged in the defence of criminal charges, including numerous murder trials and appeals to the Ontario Court of Appeal. In the case of a physician convicted of murder, succeeded in obtaining a Reference to the Court of Appeal by the Minister of Justice and having a new trial ordered. Counsel to the Metropolitan Toronto Review of Citizen Police Complaint Procedure in 1975. Subsequently appointed by the provincial government to act as one of a panel of rotating Chairmen for Boards of Inquiry to adjudicate such complaints. Special Counsel to the Office of the Ombudsman in Ontario. Responsible for the Report to the Government of Ontario on the Organization of the Ombudsman's Office in 1979.

**1981-2019 McCarthy Tetrault LLP**

Acted as counsel to the Toronto Stock Exchange in a number of receiverships resulting from bankruptcies of brokerage firms. Successfully resisted a constitutional challenge brought concerning the areas of practice reserved for Chartered Accountants in the Province of Ontario and served as counsel to the Appeal Tribunal for the Institute of Chartered Accountants of Ontario. Represented the University of Western Ontario in an action concerning its ownership of copyright in a suite of software programs developed at the university. Successfully defended The Toronto Dominion Bank in a shareholder's rights case from first instance and through appeals up to the Supreme Court of Canada. Appeared as counsel on behalf of physicians in numerous trials, appeals and other proceedings concerning alleged medical negligence as well as at multiple regulatory proceedings. In 1982 through 1984, acted as counsel on behalf of the physicians before the Grange Commission of Inquiry concerning unexplained deaths in the cardiac ward of the Hospital for Sick Children. In the period 2007 to 2008, appeared as counsel before the capital Goudge Inquiry into Pediatric Forensic Pathology in Ontario. In 2014 named the recipient of the Medico-Legal Society Award.

## **MANAGEMENT EXPERIENCE**

- 1992-1994 Professional Development Partner - McCarthy Tetrault LLP (Toronto)  
Member of the National Management Committee
- 1997-2002 Managing Partner - McCarthy Tetrault LLP (Toronto)  
Member of the National Management Committee

## **LAW SOCIETY OF UPPER CANADA APPOINTMENTS**

- 1998-2001 Vice-Chair - Professional Regulation Committee  
Vice-Chair - Proceedings Authorization Committee
- 1999-2001 Co-Chair - Litigation Committee  
Member - Multi-Disciplinary Task Force
- 2001-2003 Co-Chair - Emerging Issues Committee  
Member - Inter-Jurisdictional Mobility Committee  
Member - Task Force on the Continuum of Legal Education

## **EDUCATIONAL APPOINTMENTS**

- 1976-1980 Lecturer and Instructor in the Bar Admission Course on Criminal Law
- 1979-1980 Lecturer in the Federation of Law Societies Criminal Law Programme
- 1980-1987 Adjunct faculty member, University of Toronto, Faculty of Law

## **CONTINUING LEGAL EDUCATION**

Speaker and panelist at various programs conducted by the Canadian Bar Association, the Law Society of Upper Canada, the Criminal Lawyers Association, The Advocates' Society, the Medico-Legal Society, the Ontario Medical Association and Ontario law faculties.

**APPENDIX “B”**

**[ATTACHED]**

## Fire & Flower Holdings Corp.

### Consolidated Cash Flow Forecast

(\$CAD in thousands)

Forecast Week Ending		25-Aug-23	01-Sep-23	08-Sep-23	15-Sep-23	22-Sep-23	29-Sep-23	06-Oct-23	13-Oct-23	20-Oct-23	9 Weeks
Forecast Week	[1]	1	2	3	4	5	6	7	8	9	Total
<b>Receipts</b>											
Receipts from Operations	[2]	\$ 3,359	\$ 3,381	\$ 3,550	\$ 3,475	\$ 3,475	\$ 3,475	\$ 3,550	\$ 3,475	\$ 3,475	\$ 31,215
Miscellaneous Receipts	[3]	\$ 335	\$ 337	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	672
<b>Total Receipts</b>		\$ 3,694	\$ 3,718	\$ 3,550	\$ 3,475	\$ 3,475	\$ 3,475	\$ 3,550	\$ 3,475	\$ 3,475	\$ 31,887
<b>Disbursements</b>											
<i>Operating Disbursements</i>											
Inventory Purchases	[4]	\$ (2,564)	\$ (2,862)	\$ (2,650)	\$ (2,650)	\$ (2,650)	\$ (2,650)	\$ (2,650)	\$ (2,650)	\$ (2,650)	\$ (23,975)
Rent	[5]	\$ -	\$ (650)	\$ -	\$ -	\$ -	\$ -	\$ (650)	\$ -	\$ -	(1,300)
Payroll	[6]	\$ -	\$ (1,100)	\$ -	\$ (1,100)	\$ -	\$ (1,100)	\$ -	\$ (1,200)	\$ -	(4,500)
Taxes	[7]	\$ (683)	\$ (368)	\$ -	\$ -	\$ -	\$ (400)	\$ -	\$ -	\$ -	(1,451)
Other Operating Expenses	[8]	\$ (566)	\$ (481)	\$ (380)	\$ (380)	\$ (515)	\$ (380)	\$ (430)	\$ (380)	\$ (515)	(4,027)
<b>Total Operating Disbursements</b>		\$ (3,813)	\$ (5,460)	\$ (3,030)	\$ (4,130)	\$ (3,165)	\$ (4,530)	\$ (3,730)	\$ (4,230)	\$ (3,165)	\$ (35,253)
<b>Net Cash from Operations</b>		\$ (119)	\$ (1,742)	\$ 520	\$ (655)	\$ 310	\$ (1,055)	\$ (180)	\$ (755)	\$ 310	\$ (3,366)
<i>Restructuring Disbursements</i>											
Restructuring Legal and Professional Costs	[9]	\$ (200)	\$ (200)	\$ (200)	\$ (200)	\$ (200)	\$ (200)	\$ (200)	\$ (200)	\$ (200)	(1,800)
<b>Net Cash Flows</b>		\$ (319)	\$ (1,942)	\$ 320	\$ (855)	\$ 110	\$ (1,255)	\$ (380)	\$ (955)	\$ 110	\$ (5,166)
<b>Cash</b>											
Beginning Balance		\$ 7,658	\$ 7,339	\$ 5,397	\$ 5,717	\$ 4,862	\$ 4,972	\$ 3,717	\$ 3,337	\$ 2,382	\$ 7,658
Net Receipts/ (Disbursements)		(319)	(1,942)	320	(855)	110	(1,255)	(380)	(955)	110	(5,166)
DIP Advances/ (Repayments)	[10]	-	-	-	-	-	-	-	-	-	-
DIP Fees & Interest Payment	[10]	-	-	-	-	-	-	-	-	-	-
<b>Ending Balance</b>		\$ 7,339	\$ 5,397	\$ 5,717	\$ 4,862	\$ 4,972	\$ 3,717	\$ 3,337	\$ 2,382	\$ 2,492	\$ 2,492

#### Notes to the Consolidated Cash Flow Forecast:

[1] The purpose of the Cash Flow Forecast is to estimate the liquidity requirements of Fire & Flower Holdings Corp., Fire & Flower Inc., 13318184 Canada Inc., 11180703 Canada Inc., 10926671 Canada Ltd., Friendly Strangers Holdings Corp., Pineapple Express Delivery Inc., and Hifyre Inc. ("F&F", or the "Company") during the forecast period. The forecast above is presented in Canadian Dollars. The forecast 9-week Cash Flow Forecast is on a cash-basis only and does not include timing differences for cash in transit.

[2] Receipts from Operations are based on management's current expectations regarding retail revenue sales and collections, Hifyre services, and wholesale revenue and collections. Receipts from operations have been forecast based on current payment terms, historical trends in collections, and expected demand.

[3] Forecast Miscellaneous Receipts include other receipts from operations.

[4] Forecast Inventory Purchases relate to costs pertaining to retail stores across Canada and wholesale costs in the provinces of Saskatchewan and Manitoba.

[5] Forecast Rent includes payments to landlords across Canada for retail stores, warehouses, and office space.

[6] Forecast Payroll is based on recent payroll amounts and future forecast amounts and does not currently include any estimates for the Court-approved KERP of (\$1.16m). The Cash Flow Forecast above shows F&F has sufficient funds as at October 20, 2023 to fund the KERP.

[7] Forecast Taxes include payments related to sales and other tax.

[8] Forecast Other Operating Expenses include selling, general, and administrative payments.

[9] Forecast Restructuring Legal and Professional Costs include legal and professional fees associated with the CCAA proceedings and are based on estimates provided by the advisors.

[10] Repayment to ACT of the outstanding DIP prior to expiration of the stay on October 15, 2023 (approx \$11.1m) is assumed to be paid from proceeds of sale, and has not been included in the Cash Flow Forecast due to the uncertainty of timing for repayment.

**APPENDIX “C”**

**[ATTACHED]**

**Court File No.** \_\_\_\_\_

**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.**

**PRE-FILING REPORT OF FTI CONSULTING CANADA INC., AS PROPOSED MONITOR**

**June 5, 2023**

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**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**”)

**PRE-FILING REPORT TO THE COURT**  
**SUBMITTED BY FTI CONSULTING CANADA INC.,**  
**IN ITS CAPACITY AS PROPOSED MONITOR**

**A. INTRODUCTION**

1. FTI Consulting Canada Inc. (“**FTI**” or the “**Proposed Monitor**”) understands that Fire & Flower Holdings Corp. (“**FFHC**”), 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**”) and Hifyre Inc. (“**Hifyre**” and collectively “**F&F**” or the “**Applicants**”) intend to make an application (the “**Initial Application**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an initial order (the “**Proposed Initial Order**”) granting certain relief, including, *inter alia*, a stay of proceedings (the “**Stay of Proceedings**”) against the Applicants until June 15, 2023, and appointing FTI as the monitor (in such capacity, the “**Monitor**”). The proceedings to be commenced by the Applicants will be referred to herein as the “**CCAA Proceedings**”.

2. The purpose of this pre-filing report of the Proposed Monitor (the “**Pre-Filing Report**”) is to inform the Court of the following:
- (a) FTI’s qualifications to act as Monitor, if appointed;
  - (b) the activities of FTI and its counsel, Thornton Grout Finnigan LLP (“**TGF**”) to date;
  - (c) FTI’s comments regarding F&F’s cash management system;
  - (d) FTI’s comments regarding F&F’s proposed stakeholder communication plan (the “**Communication Plan**”);
  - (e) F&F’s proposed treatment of certain pre-filing payables in the Proposed Initial Order;
  - (f) F&F’s consolidated cash flow projections of its receipts and disbursements to September 1, 2023 (the “**Cash Flow Projection**”) and the reasonableness thereof, in accordance with section 23(1)(b) of the CCAA;
  - (g) F&F’s request for the approval of a \$9.8 million debtor-in-possession (“**DIP**”) credit facility (the “**DIP Facility**”), of which an initial amount of \$2.7 million will be advanced during the initial 10-day Stay of Proceedings, and a corresponding charge in respect thereof (the “**DIP Lender’s Charge**”);
  - (h) F&F Group’s proposed administration charge (the “**Administration Charge**”) and proposed directors’ and officers’ charge (the “**Directors’ Charge**”) and together with the Administration Charge, the “**Proposed CCAA Charges**”);
  - (i) a discussion of F&F’s intended next steps in the CCAA Proceedings, including relief that the Proposed Monitor understands F&F intends to seek at a proposed comeback hearing (the “**Comeback Hearing**”) if the requested Proposed Initial Order is granted, including:
    - (i) a sale and investment solicitation process (the “**Proposed SISF**”);

- (ii) an increase in the amounts that may be borrowed by the Applicants under the DIP Facility to \$9.8 million and a corresponding increase to the DIP Lender's Charge;
  - (iii) a proposed key employee retention plan (the "**Proposed KERP**");
  - (iv) an increase to certain of the Proposed CCAA Charges;
  - (v) an extension of the Stay of Proceedings to September 1, 2023; and
- (j) FTI's views with respect to the proposed CCAA Proceedings and certain of the relief sought in the Proposed Initial Order.

**B. TERMS OF REFERENCE**

3. In preparing this Pre-Filing Report, the Proposed 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**").
4. Except as otherwise described in this Pre-Filing Report:
- (a) the Proposed 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 Proposed Monitor has not examined or reviewed the financial forecasts or projections referred to in this Pre-Filing Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
5. Future-oriented financial information reported in, or relied on, in preparing this Pre-Filing Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

6. The Proposed Monitor has prepared this Pre-Filing Report in connection with the Initial Application. The Pre-Filing Report should not be relied on for any other purpose.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
8. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavit of Stéphane Trudel, the Chief Executive Officer of F&F, filed in support of the Initial Application (the “**Trudel Affidavit**”).

**C. FTI’S QUALIFICATIONS TO ACT AS MONITOR**

9. On May 26, 2023, F&F engaged FTI to assist it in understanding its strategic options and to prepare, on a contingency basis, for the possibility of commencing insolvency proceedings in which FTI would act as Monitor (subject to Court approval). Jeffrey Rosenberg, a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, leads the FTI team with carriage of this matter.
10. Since becoming engaged by F&F, FTI has acquired knowledge of the business and operations of F&F, including its personnel, stakeholders and the key issues in the proposed CCAA Proceedings. As a result, FTI is in a position to immediately act as Monitor in the CCAA Proceedings if appointed by this Court.
11. Neither FTI, nor any of its representatives or affiliates, have been at any time in the past two years:
  - (a) a director, officer or employee of any member of F&F;
  - (b) related to any member of F&F, or to any director or officer of any member of F&F;  
or
  - (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of any member of F&F.

12. At no time has FTI had any involvement with any member of F&F other than in its current role as Proposed Monitor. An aggregate retainer of \$100,000 has been received by the Proposed Monitor and the Proposed Monitor's counsel.
13. FTI has consented to act as Monitor should this Court grant the Proposed Initial Order. A copy of FTI's consent to act as Monitor is attached as Exhibit "M" to the Trudel Affidavit.

**D. FTI'S INVOLVEMENT TO DATE**

*Proposed Monitor's Activities*

14. The Proposed Monitor has been involved in a number of activities leading up to the commencement of the CCAA Proceedings, including:
  - (a) participating in discussions with Management, counsel to F&F and certain of the Directors and Officers (as defined below). These discussions have been carried out in connection with the business and affairs of F&F, as well as the Initial Application;
  - (b) participating in discussions with 2707031 Ontario Inc., a wholly-owned indirect subsidiary of Alimentation Couche-Tard Inc. ("ACT"), F&F's secured lender and its financial advisers, National Bank of Canada, as proposed DIP lender ("NBC" or the "DIP Lender") to F&F;
  - (c) reviewing and commenting on the Cash Flow Projection;
  - (d) reviewing and considering various documentation and information in connection with F&F's business, operations and the CCAA Proceedings including, but not limited to:
    - (i) F&F's cash management system;
    - (ii) the DIP Facility;
    - (iii) the Applicants' Communication Plan in respect of these CCAA Proceedings;

- (iv) the Proposed KERP; and
- (v) the quantum and nature of the Proposed CCAA Charges.
- (e) engaging with TGF as its legal counsel to consider issues with respect to the foregoing; and
- (f) preparing this Pre-Filing Report.

**E. OVERVIEW OF F&F'S BUSINESS AND AFFAIRS**

15. The Trudel Affidavit sets out detailed information with respect to F&F's business and operations, as well as the causes of its ongoing financial distress. The information contained in this Pre-Filing Report is intended to provide context for, and to facilitate an understanding of, the issues addressed in this Pre-Filing Report and is not intended to be an exhaustive summary of all matters relating to the business of F&F. The Proposed Monitor recommends that readers carefully review all of the materials filed by F&F in connection with the Initial Application, including the Trudel Affidavit.
16. F&F is a cannabis retail chain with four distinct segments which sells cannabis products and accessories through ninety-one (91) leased retail locations across the country. F&F also operates a wholesale cannabis business, a national delivery division, and a digital analytical platform.
17. F&F operates its retail locations under the "Fire and Flower" and "Friendly Stranger" banners and maintains an online retail presence.
18. F&F employs approximately 645 employees in its retail operations which accounts for approximately seventy-five percent (75%) of F&F's gross revenue for the quarter ended March 31, 2023.
19. The *Cannabis Act* (Canada) and applicable provincial and municipal legislation regulates the operations of F&F. Across the country, F&F holds the applicable licenses allowing it to operate its cannabis retail stores and distribution services. The Proposed Monitor has

been advised that F&F is compliant with the applicable licensing requirements allowing it to operate.

The Applicants

**Fire & Flower Holdings Corp.**

20. FFHC is a non-operating holding company incorporated under the *Business Corporations Act* (Ontario) (the “OBCA”) and having its registered and head office is located in Toronto, Ontario. Each of the other Applicants are wholly owned, directly or indirectly, by FFHC.
21. FFHC is a publicly traded company whose common shares are traded on the Toronto Stock Exchange under the symbol “FAF” and over-the-counter on the OTCQX Exchange under the symbol “FFLWF”. ACT holds, directly or indirectly, more than 35% of the common shares of FFHC and holds purchase warrants which, if fully exercised, would result in ACT holding 50.1% of the issued and outstanding common shares of FFHC, on a fully-diluted basis.

**Fire & Flower Inc.**

22. FFI is the main operating entity with 80 licensed cannabis retail stores under the trademark banner name of “Fire and Flower” throughout Canada.

**Friendly Stranger Holdings Corp.**

23. Friendly Stranger is the other operating retailer of the Applicants and owns and operates 11 licensed cannabis retail stores under the trademark banner names of “Friendly Stranger” throughout Ontario.

**10926671 Canada Ltd. (o/a Open Fields Distribution)**

24. Open Fields Distribution operates a wholesale distribution business which purchases cannabis products directly from licensed producers and distributes such products to the retail stores, as well as third-party independent retailers in Saskatchewan. Open Fields Distribution also operates a licensed cross-docking and logistics business in Manitoba.

### **Pineapple Express Delivery Inc.**

25. Pineapple Express Delivery operated the cannabis e-commerce and delivery services for their retail stores which, as a result of changes in government regulations relating to delivery of cannabis products, was shifted to other entities within the F&F group.

### **Hifyre Inc.**

26. Hifyre maintains an omni-channel digital platform that drives F&F's retail operations and provides insight into consumer behaviours. The digital platform is also licensed to third parties and operates a virtual marketplace and last-mile delivery service to support the retail operations of the Applicants.

### **13318184 Canada Inc.**

27. 133 Canada is a non-operating subsidiary of FFI which is a signatory for certain licensing agreements but otherwise does not have any employees or operations.

### **11180703 Canada Inc.**

28. Hi-Line Ventures is a non-operating subsidiary of FFI which licenses the majority of the Applicants' intellectual property and sub-licenses same to an unrelated US entity which owns and operates cannabis retail stores in Colorado and California. Hi-Line Ventures otherwise does not have any employees or operations.

### **The Non-Applicants**

#### **PGED Corp.**

29. PGED Corp. is a US subsidiary of Hifyre and operates two websites and content platforms, "Potguide.com" and "Wikileaf.com" which function as a directory and referral service for cannabis retailers and delivery services.

**Hifyre US, Inc.**

- 30. Hifyre US, Inc. is non-operating US subsidiary of Hifyre which has no employees or operations and holds all the issued and outstanding shares of PGED Corp.

**F. F&F’S CASH MANAGEMENT SYSTEM**

- 31. The Proposed Monitor has reviewed the description of the cash management system for the members of F&F set out in the Trudel Affidavit and believes those descriptions to be accurate.
- 32. F&F maintains twelve (12) accounts in total, ten (10) of the accounts are with Bank of Montreal (“**BMO**”) and two (2) of the accounts are with ATB Financial (“**ATB**”). The majority of F&F’s bank accounts act as operating accounts and both receive collections, as well as process disbursements. In addition, F&F holds nominal cash to ensure sufficient cash float at the stores. Excess cash is deposited into F&F bank accounts on a regular basis by Brinks, which is typically weekly. Chase Paymentech Solutions Inc., provides point of sales services (“**POS**”) across all retail locations, and People’s Trust Company provides online sale processing services. The chart below provides a summary of F&F’s banking facilities across the different banking institutions:

	<b>BMO</b>	<b>ATB</b>
Fire & Flower Holdings Corp.	R&D	
Fire & Flower Inc.	R&D	R&D
13318184 Canada Inc.	R&D	
10926671 Canada Ltd.	R&D	
Friendly Stranger Holdings Corp.	R&D	
Pineapple Express Delivery Inc.	R&D	
Hifyre Inc.	R&D	

*\*R = Receipts; D = Disbursements*

- 33. F&F has 3 corporate Canadian Amex credit cards that are paid through its ATB accounts, only two of these credit cards are currently active. Credit cards are primarily used for travel, IT subscriptions and other miscellaneous expenses. F&F estimates that, on average, approximately \$50,000 is charged weekly to the Canadian credit cards.

34. F&F's cash management system is primarily managed out of Toronto, Ontario. The cash management system allows for separate tracking of receipts and disbursements of F&F.
35. F&F currently tracks all intercompany transactions and will continue to monitor and record all intercompany transactions in their accounting system post-filing. As a post-filing matter, prior intercompany transactions of F&F may need to be appropriately reconciled.
36. This cash management system is critical to the ongoing management of F&F's business and affairs. Replacement of the cash management system would be costly and time consuming. Accordingly, the Proposed Monitor supports F&F's request to continue to operate its existing cash management system throughout the CCAA Proceedings.

**G. COMMUNICATION PLAN**

37. F&F and the Proposed Monitor, with input from their respective counsel and management, have prepared a detailed Communication Plan to inform stakeholder groups of the CCAA Proceedings following their commencement to ensure seamless continuation of the operations of the Applicants.
38. Individual, targeted communications are proposed to be sent to employees, suppliers, landlords and customers, which communications include frequently asked questions (the "FAQs") explaining the general nature of the Initial Application and the CCAA Proceedings, the role of the Court and the Monitor, as well as the immediate implications of the Proposed Initial Order for each particular stakeholder group.
39. The Communication Plan is comprehensive and is consistent with the scope of other communication plans employed at the outset of similar scale CCAA proceedings.
40. The Communication Plan and Proposed Initial Order contemplate that the Monitor is to post materials in connection with the proposed CCAA Proceedings on the Monitor's website at <http://cfcanada.fticonsulting.com/fireandflower> (the "Monitor's Website"). If appointed, FTI as Monitor will also post the FAQs on the Monitor's Website.
41. If appointed, FTI as Monitor will also make available a dedicated email address (fireandflower@fticonsulting.com) and hotline telephone numbers (1-833-981-8009 or

416-649-8129) to stakeholders who may have additional questions in respect of the CCAA Proceedings.

#### **H. PAYMENT OF PRE-FILING AMOUNTS**

42. The Proposed Initial Order provides F&F with the authority (but not the obligation) to pay certain expenses whether incurred prior to or following commencement of the CCAA Proceedings. Specifically, F&F would retain the authority to pay, among other things, outstanding and future wages, salaries and certain employee related payments.

#### **I. DISCLAIMER OF LEASES**

43. The Proposed Monitor has been advised by F&F that, immediately after the commencement of these proceedings, F&F intends to disclaim certain leases it considers to be “dead” or wholly unprofitable, as set out in the Trudel Affidavit. F&F also intends to disclaim subleased leases, as well as leases used in Pineapple Express’s delivery business. The disclaimers are intended to preserve liquidity. The Proposed Monitor understands that approximately \$429,000 of F&F’s total monthly lease obligations relate to non-operating leases and that the Pineapple Express delivery business has been highly unprofitable. The Proposed Monitor is supportive of F&F’s immediate cost cutting measures aimed at streamlining and preserving value for the remaining business.

#### **J. TERMINATION OF EMPLOYEES**

44. The Proposed Monitor has also been advised by F&F that it intends to immediately reduce its employee headcount in respect of certain unprofitable aspects of the business operations. The Proposed Monitor is supportive of these cost-cutting measures in an effort to streamline its operations.

#### **K. CASH FLOW PROJECTION**

45. The Cash Flow Projection, together with Management’s report on the cash-flow statement as required by section 10(2)(b) of the CCAA, is attached as Appendix “A” to this Pre-Filing Report. The Cash Flow Projection covers the 13-week period ending September 1, 2023.

46. The Cash Flow Projection shows an operational cash outflow of approximately \$8.5 million, a net cash outflow of \$11 million, and professional fees of \$2.5 million for that period. The Cash Flow Projection is summarized below:

*(\$CAD in thousands)*

Forecast Week Ending (Friday)	Total 13 Weeks
Receipts	
Receipts from Operations	\$ 43,273
Miscellaneous Receipts	4,456
<i>Total Receipts</i>	\$ 47,729
Disbursements	
<i>Operating Disbursements</i>	
Inventory Purchases	\$ (32,344)
Rent	(3,140)
Payroll	(9,330)
Taxes	(4,380)
Other Operating Expenses	(7,022)
<i>Total Operating Disbursements</i>	\$ (56,216)
<b>Net Cash from Operations</b>	<b>\$ (8,487)</b>
<i>Restructuring Disbursements</i>	
Restructuring Legal and Professional Costs	(2,500)
<b>Net Cash Flows</b>	<b>\$ (10,987)</b>
Cash	
Beginning Balance	\$ 2,256
Net Receipts/ (Disbursements)	(10,987)
DIP Advances/ (Repayments)	9,800
DIP Fees & Interest Payment	-
<b>Ending Cash Balance</b>	<b>\$ 1,069</b>

47. As shown in the Cash Flow Projection, F&F will require additional funding totalling approximately \$9.8 million during the 13-week period ending September 1, 2023. The ending cash balance at September 1, 2023 is expected to be approximately \$1.1 million. The DIP Facility is described in greater detail below.
48. Pursuant to section 23(1)(b) of the CCAA and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports to the Court as follows:
- (a) the Proposed Monitor has reviewed the Cash Flow Projection, which was prepared by Management for the purpose described in notes to the Cash Flow Projection (the “**Projection Notes**”), using the Probable Assumptions and Hypothetical Assumptions set out therein;

- (b) the review consisted of inquiries, analytical procedures and discussion related to information provided by certain members of Management and employees of F&F. Since Hypothetical Assumptions need not be supported, the Proposed Monitor's procedures with respect to the Hypothetical Assumptions were limited to evaluating whether the Hypothetical Assumptions were consistent with the purpose of the Cash Flow Projection. The Proposed Monitor has also reviewed the support provided by Management for the Probable Assumptions and the preparation and presentation of the Cash Flow Projection;
- (c) based on that review, and as at the date of this Pre-Filing Report, nothing has come to the attention of the Proposed Monitor that causes it to believe that:
  - (i) the Hypothetical Assumptions are inconsistent with the purpose of the Cash Flow Projection;
  - (ii) the Probable Assumptions are not suitably supported or consistent with the plans of F&F or do not provide a reasonable basis for the Cash Flow Projection, given the Hypothetical Assumptions; or
  - (iii) the Cash Flow Projection does not reflect the Probable and Hypothetical Assumptions.
- (d) since the Cash Flow Projection is based on assumptions regarding future events, actual results will vary from the projection even if the Hypothetical Assumptions occur. Those variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Projection will be achieved. The Proposed Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Pre-Filing Report, or relied upon by the Proposed Monitor in preparing this Pre-Filing Report; and
- (e) the Cash Flow Projection has been prepared solely for the purpose described in the Projection Notes. The Cash Flow Projection should not be relied upon for any other purpose.

**L. DIP FINANCING**

49. Pursuant to the Proposed Initial Order, F&F is seeking authorization from this Court to enter into the DIP Facility on the terms set form in the term sheet attached hereto as **Appendix “B”** (the **“DIP Term Sheet”**).
50. The terms of the DIP Facility are summarized in the table below. Unless otherwise defined herein, terms capitalized in the table have the meaning ascribed in the DIP Term Sheet.
51. The Proposed Monitor and TGF have reviewed the terms of the DIP Term Sheet and participated in a number of discussions with the DIP Lender and its counsel. The DIP Term Sheet is the result of negotiations between the DIP Lender, F&F and their respective counsel, with input from the Proposed Monitor.
52. The Proposed Monitor makes the following observations in respect of certain terms of the DIP Term Sheet:
- (a) **DIP Facility:** non-revolving loan up to the maximum amount of \$9.8 million;
  - (b) **Initial Advance:** an initial advance of \$2.7 million will be made available to the Applicants during the initial 10-day Stay of Proceedings;
  - (c) **Subsequent Advances:** two additional tranches of the DIP Facility will be made available to the Applicants no earlier than every four (4) weeks from the date of the initial advance, in the expected amounts of \$3.0 million and \$4.1 million, respectively;
  - (d) **Interest Rates and Fees:**
    - (i) interest is to accrue at the rate of 12% per annum, compounded and calculated weekly;
    - (ii) an exit fee of \$400,000 (the **“Exit Fee”**) is payable by the Applicants on the earlier of the maturity date and the date that the DIP Facility is repaid in full.

- (e) **Maturity Date:** the earlier of (a) the date on which the Stay of Proceedings is lifted or terminated; (b) September 15, 2023 (or such other date as may be agreed to in writing by the DIP Lender, in its sole discretion); and (c) the date on which the DIP Lender elects to terminate the DIP Facility as a result of an event of default under the DIP Term Sheet;
- (f) **Conditions to Initial Advance:** the Proposed Initial Order shall have been obtained authorizing and approving the initial advance and granting the DIP Lender's Charge;
- (g) **Conditions to Subsequent Advances:** prior to any subsequent advance, the certain conditions must be met, including,
  - (i) The DIP Lender's Charge shall have been granted super-priority status over the assets of the Applicants, subject in priority only to the Administrative Charge (as defined below);
  - (ii) an order amending and restating the Proposed Initial Order (the "**ARIO**"), in form and substance acceptable to the DIP Lender, shall have been obtained authorizing and approving the DIP Facility and granting the increased DIP Lender's Charge;
  - (iii) the ARIO shall contain a mutually acceptable sale and investment solicitation process (the "**SISP**");
  - (iv) FFHC and the DIP Lender shall have agreed on new cash flow projections ("**Amended Cash Flow Projections**") for the length of the stay period provided for in the ARIO; and
  - (v) no Default or Event of Default (as defined in the DIP Term Sheet) shall have occurred and be continuing.
- (h) **Use of Proceeds:** the initial advance under the DIP Facility shall be used in accordance with the cash flow projections attached to the DIP Term Sheet. Any

subsequent advance under the DIP Facility shall be used in accordance with the Amended Cash Flow Projections;

- (i) **Cash Flow Covenant:** a negative variance of the net cash flows calculated in accordance with the DIP Term Sheet of more than 10% compared to the Amended Cash Flow Projections on a cumulative basis since the beginning of the coverage period, which commences in week five, shall constitute and event of default; and
- (j) **Remedies of DIP Lender:** upon the occurrence and continuation of an event of default, the DIP Lender shall be entitled to, among other things, terminate the DIP Facility and apply to the Court for the appointment of an interim receiver or a receiver and manager of the undertaking, property and assets of FFHC.

53. Attached as **Appendix “C”** is a chart of the observed interest rates of DIP loans ranging in size from approximately \$2.5 million to \$20 million, for the period between January 2022 and May 2023 (“**DIP Comparison Period**”), which are summarized in the table below:

	Interest	DIP Fees as a % of DIP Loan
Maximum	27%	6.0%
Average	13%	2.3%
Minimum	8%	0.4%

54. The Proposed Monitor notes that the proposed DIP Facility has an interest rate of 12% and contains an exit fee of \$400,000 (or 4.1% as a percentage of the DIP loan), which equates to a total annualized rate of interest of 28%.

55. Based on the experience of the Proposed Monitor and on the information available to it, the Proposed Monitor is of the view that the interest rate provided in the DIP Term Sheet is near the average rate of DIPs during the DIP Comparison Period. The proposed Exit Fee as a percentage of the DIP Facility is higher than average during the DIP Comparison Period. However, the Monitor notes that the exit fee is not payable until the earlier of the Maturity Date or the repayment of the DIP Facility.

56. The Proposed Monitor was retained on May 26, 2023 and immediately began to canvass the market for a third party DIP facility. Unfortunately, due to the required timing of the commencement of these proceedings, F&F's liquidity situation, and the difficult financing conditions in the cannabis market, there were limited options within the time permitted. To date, the Monitor has not received a letter of intent due to the short time they have canvassed the market. The DIP Term Sheet was heavily negotiated by the Applicants in an effort to obtain the best possible terms in the circumstances. The Proposed DIP represents the only current available alternative to F&F which will allow the Applicants the ability to continue ongoing operations.

*DIP Lender's Charge*

57. The Proposed Initial Order seeks the granting of the DIP Lender's Charge with respect to the obligations under the DIP Facility.
58. The Proposed Initial Order contemplates that the DIP Lender's Charge will not have priority over the valid interests and liens of existing secured creditors before the Comeback Hearing. However, the Proposed Monitor understands that it is the intention of F&F and the DIP Lender that after the Comeback Hearing the DIP Lender's Charge (and all the Proposed CCAA Charges) be granted priority over all existing security interests, charges and claims, including deemed trusts, in the assets of F&F but not in priority to the Administration Charge.
59. The Proposed Monitor understands that counsel to F&F will be providing notice of the Comeback Hearing, upon issuance of the Proposed Initial Order (if issued), to those parties with lien filings against the assets of F&F with a view to giving those parties as much notice as reasonably possible of the Comeback Hearing.
60. The Proposed Monitor supports F&F's request for authority to enter into the DIP Term Sheet and the granting of the DIP Lender's Charge. The DIP Facility will provide F&F with access to financing within the necessary timeframe. The Proposed Monitor is of the view that there is likely no other viable alternative source of financing available to F&F at this time due to the immediate nature of the financing required.

61. F&F's financial forecasts have identified a need for continued financing to maintain minimum cash balances and preserve ongoing business operations within F&F. The DIP Facility will, subject to the terms thereof, provide sufficient liquidity to F&F. The provision of the DIP financing will provide assurance to F&F employees, suppliers and customers that there is sufficient liquidity to maintain ordinary course business operations while the Applicants pursue restructuring alternatives.
62. The Proposed Monitor has also considered the facts and circumstances giving rise to the CCAA Proceedings and section 11.2(4) of the CCAA. In particular:
- (a) the term of the DIP Facility is sufficient to be available for the duration of F&F's intended restructuring process at this time;
  - (b) the financing to be provided is consistent with the forecast liquidity needs of F&F during that period;
  - (c) the proposed restructuring process cannot move forward without the DIP Facility and, as a result, the DIP Facility enhances the prospects of a viable restructuring in the Proposed Monitor's view; and
  - (d) any creditor of the F&F that believes it may be prejudiced by the DIP Facility will have an opportunity to raise any objections at the Comeback Hearing to be scheduled by the Court.

**M. ADMINISTRATION CHARGE**

63. The Proposed Initial Order provides for an Administration Charge in the amount of \$600,000 on F&F's assets to secure the fees and disbursements incurred in connection with services provided to F&F both before and after the commencement of the CCAA Proceedings. The Administration Charge will secure services provided to F&F by:
- (a) Counsel to F&F; and
  - (b) the Monitor and its counsel.

64. The Applicants are not requesting this Court to prime the Applicants' existing secured creditors at this time. The Proposed Monitor understands the Applicants' intend to ask this Court for an Order granting the Administration Charge (and certain other charges) super-priority at the Comeback Hearing.
65. The Proposed Monitor has worked with these groups to estimate their fees and costs, and the quantum of the proposed Administration Charge.
66. Given the anticipated amount of time it will take to complete the CCAA Proceedings, the Proposed Monitor is of the view that the size and scope of the Administration Charge is reasonable in the circumstances. The Proposed Monitor therefore supports F&F's request that the Court approve the Administration Charge.

**N. DIRECTORS' CHARGE**

67. As described in the Trudel Affidavit, F&F maintains directors and officers liability insurance policies (the "**D&O Insurance Policies**") for the benefit of F&F's directors and officers (the "**Directors and Officers**"). The renewal date of the D&O Insurance Policies is June 19, 2023.
68. The Proposed Monitor has worked with F&F to estimate the potential liabilities that the Directors and Officers may be exposed to in their capacities as directors and officers during the CCAA Proceedings.
69. The Proposed Initial Order provides for a Directors' Charge in the amount of \$2.8 million over the assets of F&F to secure the indemnity provided to the Directors and Officers in respect of liabilities that may be incurred after the filing date with respect to any failure to pay wages and source deductions, vacation pay, other employee-related obligations and Sales Taxes (as defined in the Proposed Initial Order). The Directors' Charge is proposed to rank in priority to the DIP Lender's Charge but subordinate to the Administration Charge.

70. The continued support and service of the Directors and Officers will be critical during the CCAA Proceedings and will enable F&F to preserve value and maximize recoveries for stakeholders.
71. In arriving at the quantum for the Directors' Charge, the Proposed Monitor, F&F and counsel to F&F, has taken into account (i) the scope and quantum of coverage provided by the D&O Insurance Policies (ii) the Directors and Officers' potential statutory liabilities for wages, vacation pay, unremitted source deductions, and, in light of the jurisdictions in which F&F carries on business and the number of its employees in each jurisdiction; and (iii) the terms of the DIP Facility.
72. The Proposed Monitor understands that the Directors and Officers will not continue to serve unless the Directors' Charge is granted. Accordingly, the Proposed Monitor is of the view that the granting of the Directors' Charge is necessary in the circumstances and that the quantum and scope of the charge is both fair and reasonable. The Proposed Monitor is also of the view that the Directors' Charge is consistent with this Court's practice and the potential foreseeable scope of director and officer liabilities for unremitted or unpaid employee and tax amounts in this case.

**O. ANTICIPATED NEXT STEPS IN THE CCAA PROCEEDINGS**

- i) Comeback Hearing*
73. The Proposed Monitor understands that F&F will be requesting the Comeback Hearing to be scheduled on June 15, 2023 which the Proposed Monitor understands is the latest date this Court has available before the expiration of the initial 10-day Stay of Proceedings. At the Comeback Hearing, it is expected that F&F will request:
- (a) amendments to the amounts and rankings of the Proposed CCAA Charges (although F&F will not seek to increase the Administrative Charge or the Director's Charge);
  - (b) authority for the Applicants to increase the amounts which may be borrowed by FFHC under the DIP Facility Agreement to \$9.8 million;

- (c) approval of the Proposed SISP;
  - (d) approval of the Proposed KERP;
  - (e) authority for the Applicants to incur no further expenses in relation to the Securities Filings (as defined in the Trudel Affidavit) and declare that there shall be no personal liability for any failure to do so;
  - (f) an extension of the time limit to hold the annual shareholders' meeting of FFHC;
  - (g) an extension of the Stay of Proceedings.
74. The Proposed Monitor understands that, if the Initial Order is granted, F&F intends to immediately engage with its key stakeholders, including ACT, F&F's employees and customers, to discuss and obtain their input on the restructuring steps the Applicants need to undertake to maximize value for all stakeholders.
75. If appointed, FTI as Monitor intends to file a further report prior to the Comeback Hearing providing recommendations in respect of such relief.

*The Proposed SISP*

76. The Proposed Monitor understands that F&F intends at the Comeback Hearing to seek this Court's approval of a SISP to be conducted by the Proposed Monitor (if appointed).
77. In order to provide as much time as possible for interested parties to evaluate F&F's business, the Proposed Monitor (if appointed) intends, prior to the Comeback Hearing, to assist the Applicants in commencing solicitation of interest in preparation for the approval of a SISP. The Proposed Monitor anticipates this will include preparation of a non-disclosure agreement, teaser letter, confidential information package, data room, and a list of potential bidders, sending the teaser letter to potential bidders and facilitating access to confidential information for interested parties.

The Proposed KERP

78. The Proposed Monitor understands that F&F intends to seek this Court's approval of a Proposed KERP at the Comeback Hearing. The Applicants are developing the Proposed KERP, with input from the Board and the Proposed Monitor in order to retain certain key management members that are considered essential to the stability of the operations throughout these proceedings and to facilitate a successful restructuring or sale of the Applicants.
79. The Applicants will be seeking, among other things at the Comeback Hearing, the Court's approval of the KERP Charge.

**P. RECOMMENDATIONS**

80. The Proposed Monitor is of the view that the Applicants are insolvent and believes it is appropriate for the Applicants to be granted protection under the CCAA and respectfully requests that this Court grant the proposed Initial Order.

All of which is respectfully submitted this 5<sup>th</sup> day of June, 2023.

FTI Consulting Canada Inc.

In its capacity as Proposed 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.

A handwritten signature in black ink, appearing to read 'Jeffrey Rosenberg', written in a cursive style.

Jeffrey Rosenberg  
Senior Managing Director

A handwritten signature in black ink, appearing to read 'J. Porepa', written in a cursive style.

Jodi Porepa  
Senior Managing Director

**APPENDIX “D”**

**[ATTACHED]**

**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.**

**FIRST REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**June 14, 2023**

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*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**")

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

**A. INTRODUCTION**

1. On June 5, 2023, Fire & Flower Holdings Corp. ("**F&F Holdings**"), Fire & Flower 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 ("**DIP**") 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 (the “**DIP Lender’s Charge**”); and

- (d) granted the Administration Charge and the Directors’ Charge (collectively, with the DIP Lender’s Charge, the “**CCAA Charges**”).
3. A comeback hearing was scheduled for June 15, 2023 (the “**Comeback Hearing**”).
4. The purpose of this First Report of the Monitor (the “**First Report**”) is to provide the Court with the Monitor’s comments and recommendations, regarding the following:
- (a) the activities of the Monitor since the issuance of the Initial Order; and
  - (b) F&F’s motion returnable at the Comeback Hearing (the “**Comeback Motion**”) seeking to, *inter alia*:
    - (i) authorize the Applicants, with the consent of the Monitor, to pay certain pre-filing amounts owed to suppliers which they deem critical to their business;
    - (ii) approve the Proposed SISF (as defined below);
    - (iii) approve the Stalking Horse Agreement to be entered into between the Applicants and ACT (in such capacity, the “**Stalking Horse Bidder**”) solely for the purpose of constituting the “Stalking Horse Bid” under the Proposed SISF;
    - (iv) approve the Proposed KERP (as defined below) and grant a charge in respect of the beneficiaries of the Proposed KERP (the “**KERP Charge**”) and sealing the unredacted KERP provided to the Court as **Confidential Appendix “1”**;
    - (v) approve the amended and restated Initial Order (the “**ARIO**”), which, *inter alia*, seeks to increase the quantum of certain of the CCAA Charges and elevate the priority ascribed to the CCAA Charges over all Encumbrances

(as defined in the Initial Order), authorize the Applicants to incur no further expenses in relation to the Security Filings and offering relief from certain Securities Provisions and extend the time to call and hold the annual general meeting (“**AGM**”) of shareholders of F&F Holdings; and

(vi) extend the Stay Period to and including September 1, 2023.

**B. TERMS OF REFERENCE**

5. In preparing this First 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**”).
6. Except as otherwise described in this First 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 First Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
7. Future-oriented financial information reported in, or relied on, in preparing this First Report is based on Management’s assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
8. The Monitor has prepared this First Report in connection with the Comeback Hearing. The First Report should not be relied on for any other purpose.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

10. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavit of Stephane Trudel (“**Mr. Trudel**”), the Chief Executive Officer of Fire & Flower Holdings Corp. sworn on June 5, 2023, the second affidavit of Mr. Trudel sworn on June 14, 2023 (the “**Second Trudel Affidavit**”), filed in support of the Comeback Motion, the ARIO or the pre-filing report of the Monitor dated June 5, 2023, as applicable.

## C. ACTIVITIES OF THE MONITOR

### Notices and Communications

11. The Monitor has established a website at <http://cfcanada.fticonsulting.com/fireandflower/> (the “**Monitor’s Website**”) on which updates on the CCAA Proceedings will be posted periodically, together with all the Court materials filed in the CCAA Proceedings. In addition, the Monitor has established a dedicated email address ([fireandflower@fticonsulting.com](mailto:fireandflower@fticonsulting.com)) and hotlines (416-649-8129 or 1-833-981-8009) to allow stakeholders to communicate directly with the Monitor in order to address any questions or concerns in respect of the CCAA Proceedings.
12. Pursuant to paragraph 45 of the Initial Order, the Monitor:
- (a) has arranged for publication of the initial notice containing the information prescribed under the CCAA in the Globe and Mail (National Edition) on June 9, 2023;
  - (b) made a copy of the Initial Order and the application materials publicly available by posting them on the Monitor’s Website on June 5, 2023;
  - (c) sent, in the prescribed manner, a notice to every known creditor with a claim against F&F of more than \$1,000; and
  - (d) prepared a list of those creditors and the estimated amounts of those claims, and made such list publicly available on the Monitor’s Website.

Other Activities of the Monitor

13. In addition to the activities listed above, the Monitor has also undertaken the following activities since the commencement of the CCAA Proceedings:
- (a) posted an updated and current service list for these CCAA Proceedings on the Monitor's Website;
  - (b) engaged in discussions with F&F, its legal counsel, and its directors and Management regarding issues related to F&F's operations and borrowings under the DIP Facility, as well as lease terminations (consistent with the DIP terms);
  - (c) participated in discussions with Alimentation Couche-Tard ("ACT"), related entities and their advisors, regarding matters related to the DIP Facility;
  - (d) reviewed advances under the DIP Facility and disbursements of F&F;
  - (e) participated in discussions with and assisted F&F in discussions with landlords, suppliers, other creditors and employees related to the CCAA Proceedings and responded to requests for information from certain such parties;
  - (f) engaged in discussions with F&F and its legal counsel regarding certain issues related to recently terminated employees;
  - (g) participated in discussions with certain provincial cannabis boards, which discussions are ongoing;
  - (h) engaged in discussions with F&F, its legal counsel and ACT's legal counsel, Davies Ward Phillips & Vineberg LLP, and financial advisors, National Bank of Canada regarding the Proposed SISP and ACT's participation in same as the Stalking Horse Bidder;
  - (i) engaged with the Monitor's legal counsel, Thornton Grout Finnigan LLP, regarding matters related to the CCAA Proceedings;

- (j) continued, with FTI Capital Advisors – Canada ULC (“**FTI Capital Advisors**”), preparation of materials required to conduct the Proposed SISP and a list of potential bidders; and
- (k) engaged with certain interested parties by sending them the Teaser Letter and facilitating access to confidential information for those parties who signed an NDA (as such terms are defined in the Proposed SISP).

**D. AUTHORIZATION TO PAY PRE-FILING AMOUNTS TO CRITICAL SUPPLIERS**

- 14. The Monitor understands that F&F relies on certain vendors to provide ongoing services and access to information in order to ensure operations continue as a going concern.
- 15. The Monitor also understands that certain of these suppliers are critical to F&F’s business and are either small and medium enterprises, which are dependent on continuous payment from F&F, or are located outside of Canada such that it may be difficult to require them to comply with the terms of the Initial Order. Any interruption of service from these third parties, either because they are unable to continue to provide their services to F&F or refuse to do so on account of unpaid pre-filing amounts owed to them by F&F, may prevent the Applicants from operating in the ordinary course and continuing to provide uninterrupted services to its customers.
- 16. In order to ensure the continuous supply of products and services and to avoid disruption to the business, F&F is requesting authority (but not the obligation) to pay, partially or entirely, with the consent of the Monitor, any pre-filing unpaid claim of suppliers it deems critical to its business and ongoing operations of F&F if such third party would sustain material prejudice if such payment is not made, up to an aggregate amount of \$250,000.
- 17. The Monitor intends to work closely with the Applicants to ensure only the most critical suppliers receive any payments in respect of their pre-filing amounts.

**E. REQUEST FOR APPROVAL OF THE PROPOSED SALE AND INVESTMENT SOLICITATION PROCESS AND STALKING HORSE AGREEMENT**

18. At the commencement of the CCAA Proceedings, F&F advised that it intended to seek approval of a comprehensive and flexible sale and investment solicitation process (the “**Proposed SISP**”). A draft of the Proposed SISP is attached as **Appendix “A”** hereto. Capitalized terms in this section not otherwise defined herein have the meanings ascribed to them in the Proposed SISP.
19. At the Comeback Hearing, F&F will seek an Order approving the Proposed SISP, and the actions of F&F, the Monitor and FTI Capital Advisors that may be necessary or desirable to carry out the Proposed SISP. The Proposed SISP will be carried out by the Monitor in consultation with F&F.
20. A summary of the Proposed SISP is set out below. If there are any discrepancies between the terms of the Proposed SISP and the description of same herein, the terms of the Proposed SISP shall govern.
21. The timing of key milestones relating to the Proposed SISP are as follows:

<b>Milestone</b>	<b>Deadline</b>
Phase 1 Bid Deadline	July 13, 2023, at 5:00 p.m. (Eastern)
Phase 2 Bid Deadline	August 11, 2023
Auction, if any	August 15, 2023
Selection of Successful Bid and Back-Up Bidder	August 17, 2023, at 5:00 p.m. (Eastern)
Outside Closing Date	September 15, 2023

Pursuant to the Proposed SISP, the Monitor, in consultation with F&F and with the authorization of the DIP Lender, acting reasonably, may extend the timelines and Milestones set out above.

Overview of the Proposed SISP

22. F&F has proposed a flexible SISP, designed to maximize opportunities for the sale of, or investment in, all or part of F&F's assets and business (the "**Opportunity**"). A potential transaction may include one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of F&F as a going concern, or a sale of all, of substantially all or one or more components of the Property and the Business as a going concern or otherwise.
23. The Monitor, with the assistance of F&F has developed a list of potential bidders. This list includes parties that have approached the Monitor and advised that they have an interest in the Opportunity, local and international strategic and financial parties who the Monitor believes may be interested in the Opportunity, and any other parties suggested by F&F or a stakeholder as a potential bidder.
24. The Monitor, with the assistance of F&F, has prepared a Teaser Letter describing the Opportunity and inviting recipients of the Teaser Letter to express their interest pursuant to the Proposed SISP. The Monitor has provided the Teaser Letter to certain parties expressing an interest in the Opportunity.
25. F&F prepared a NDA that is in form and substance satisfactory to the Monitor and has been sent to parties interested in the process.
26. The Monitor will post the Notice, the Teaser Letter and the form of NDA on the Monitor's Website.
27. The Monitor, in consultation with F&F, will prepare and send to each Prospective Bidder which has executed a NDA, a Confidential Information Memorandum providing additional information considered relevant to the Opportunity. These prospective bidders will also be given access to a confidential virtual data room that will contain further confidential information relating to the Opportunity.

28. Following their own due diligence, a Phase 1 Qualified Bidder who wishes to submit a bid as part of the Proposed SISP must deliver a non-binding letter of intent to the Monitor via email by no later than 5:00 p.m. on July 13, 2023.
29. For an LOI to be considered a Phase 1 Qualified Bid, it must comply with certain conditions, including:
  - (a) it is received by the Phase 1 Bid Deadline;
  - (b) it provides that the offer is for the whole or part of the business as allowed under the Proposed SISP;
  - (c) it provides written evidence of the ability to consummate the transaction within the timeframe contemplated by the Proposed SISP;
  - (d) it identifies all proposed material terms and conditions to closing;
  - (e) it identifies the Qualified Phase 1 Bidder and representatives thereof, and fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction;
  - (f) it identifies any additional due diligence required to be completed;
  - (g) it clearly indicates that the net cash proceeds provided on closing are not less than the aggregate total of: (i) the amount of cash payable under the Stalking Horse Agreement together with the amount of all secured indebtedness, liabilities and obligations owing by F&F to ACT, plus (ii) an amount equivalent to the Break Fee and (iii) a minimum overbid amount of \$250,000; and
  - (h) it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder (other than the Stalking Horse Bidder) will be entitled to any such bid protections.
30. F&F, in consultation with the Monitor and ACT, may aggregate bids received to meet or exceed the Minimum Purchase Price.

31. The Monitor, in consultation with F&F and ACT, may waive compliance with any one or more of the requirements to qualify a Phase 1 Qualified Bid.
32. It is important to note that if no Phase 1 Qualified Bids are received, or no Phase 1 Satisfactory Bid is selected other than the Stalking Horse Bid, then F&F will seek court approval of the Stalking Horse Bid and Phase 2 of the Proposed SISP will not be conducted. This allows the Applicants to conserve cash and close the Stalking Horse Transaction in accordance with the timeline in the Proposed SISP to effect a going concern transaction for the benefit of stakeholders.
33. If Phase 1 Satisfactory Bids are received by the Monitor, the Proposed SISP will continue to Phase 2, with Binding Offers being required by August 11, 2023. A Binding Offer will be considered a Phase 2 Qualified Bid if it complies with certain conditions, including:
  - (a) it has been received by the Phase 2 Bid Deadline;
  - (b) it adequately identifies the assets being purchased and all executory contracts of F&F that it will assume and all monetary defaults and non-monetary defaults will be remedied, as applicable;
  - (c) it is unconditional and not subject to any financing condition;
  - (d) includes appropriate representations and warranties in respect of all due diligence, including those regulating in the cannabis sector;
  - (e) it provides for net cash proceeds that are not less than the Minimum Purchase Price; unless it is a part of a bid that qualifies as an Aggregated Bid, in which case the total net cash proceeds of the Aggregated Bids will be not less than the Minimum Purchase Price;
  - (f) it is irrevocable and capable of acceptance until the earlier of (i) two business days after the date of closing of the Successful Bid; and (ii) the Outside Date;
  - (g) it does not provide for any break or termination fee, expense reimbursement or similar type of payment;

- (h) it includes a description of any non-cash consideration and details of any liabilities to be assumed or the method proposed for a financial restructuring;
  - (i) it is accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be; and
  - (j) it reasonably demonstrates a capacity to consummate the transaction.
34. F&F and the Monitor will review and evaluate each Phase 2 Qualified Bid that is received and will determine the Successful Bid and the Back-Up Bid. As part of this evaluation, the Monitor may conduct an auction in accordance with the Bidding Procedures set forth in the Proposed SISP.
35. Upon the selection of the Successful Bidder and the finalization of the definitive documents, F&F will apply to the Court for the approval of the Successful Bid.

Overview of the Stalking Horse Agreement<sup>1</sup>

36. In an effort to provide certainty during the process, the Proposed SISP includes a Stalking Horse Agreement the material terms of which are as follows:
- (a) a company incorporated by ACT (the “**Stalking Horse Purchaser**”) will subscribe for an aggregate of 1,000,000,000 common shares of F&F Holdings, the parent company of the remaining Applicants, through a reverse vesting transaction, pursuant to which all equity interest of F&F Holdings will be cancelled without consideration, and the Stalking Horse Purchaser will be the sole parent of F&F Holdings;

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<sup>1</sup> All of the terms used in this section and not otherwise defined shall have the meaning ascribed thereto in the form of Stalking Horse Agreement to be entered into.

- (b) prior to the acquisition of the shares, Residual Co. will be incorporated and all of the Excluded Assets and Excluded Liabilities of the Applicants will be transferred to Residual Co.;
- (c) the Purchase Price is the total secured amount outstanding to ACT (including the DIP Facility) which shall be satisfied through the cancellation of the indebtedness;
- (d) the Stalking Horse Purchaser, by nature of its ownership of F&F Holdings, will retain certain liabilities of the Applicants, including:
  - (i) all Post-Filing Claims;
  - (ii) all post-closing liabilities of the Applicants;
  - (iii) certain Tax Liabilities;
  - (iv) Intercompany Claims;
  - (v) indemnification obligations to current and former directors and officers of the Applicants, subject to certain conditions;
  - (vi) all unpaid amounts owing under the Directors' Charge and KERP Charge;
  - (vii) outstanding Priority Payments; and
  - (viii) Administration Expense Costs not to exceed \$100,000.
- (e) the Stalking Horse Purchaser is entitled to a Break Fee in the amount of \$750,000<sup>2</sup>;
- (f) the Stalking Horse Purchaser will determine which employees of the Applicants it intends to assume. For any assumed employee, the Stalking Horse Purchaser is required to recognize their prior years of service with F&F except as would result in duplication of benefits and subject to any required consents of any applicable third-party insurer or plan administrator. Any employee that is not offered

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<sup>2</sup> Total Break Fee of \$750,000 includes a break fee of \$650,000 plus an expense reimbursement of \$100,000.

employment by the applicable Applicant, on behalf of the Stalking Horse Purchaser, shall be terminated by the applicable Applicant and any obligations of the Applicants to such Terminated Employee shall be an Excluded Liability; and

- (g) the Outside Date to consummate the transaction is September 15, 2023.

Monitor's Involvement in the Proposed SISP and Stalking Horse Agreement

37. As noted above, the Monitor was consulted in designing the Proposed SISP and was party to discussions with ACT as a potential stalking horse. The Monitor will not only be involved in, but will conduct the Proposed SISP in consultation with F&F, and in some cases, ACT.
38. The Monitor, together with its affiliate, FTI Capital Advisors, will carry out the Proposed SISP in the manner approved by the Court. The Monitor is entitled to receive all information in relation to the Proposed SISP and will have certain approval rights in respect of key steps taken therein.
39. The Proposed ARIO provides that the Monitor will have no liability with respect to any claims in connection the conducting of the Proposed SISP, including any steps taken by the Monitor prior to the approval of the Proposed SISP, except to the extent such claims result from the gross negligence or wilful misconduct of the Monitor.

Monitor's Comments and Recommendation

40. As described in the Second Trudel Affidavit, the Applicants engaged in discussions with ACT to act as a potential stalking horse bidder in these CCAA Proceedings.
41. The Proposed SISP procedures contemplate a marketing process to provide any additional parties with the ability to submit a bid with respect to the Opportunity.
42. The Monitor has already begun marketing the Opportunity and speaking with prospective bidders. To the extent that any potential bidder has signed an NDA, the Monitor has begun to provide them with the information necessary to begin their due diligence process. Given that (i) F&F Holdings is a public company wherein financial information is publicly

available, (ii) several parties in the industry have held previous discussions and performed due diligence, (iii) the sale process is already underway and, (iv) the existence of the Stalking Horse Agreement, it is the Monitor's opinion that the timeline set out in the Proposed SISP is reasonable in the circumstances. The Monitor will continue to contact potential bidders as same are identified and provide them with the due diligence materials in accordance with the Proposed SISP.

43. The benefits of having a stalking horse bid are well recognized by the CCAA courts, including:
  - (a) setting a "floor price" for the business and assets, enabling interested parties to understand from the start of a SISP, the value that they may be able to beat in order to become a successful bidder;
  - (b) providing certainty of a going-concern solution for the operations through a transaction that can be closed if there are no superior offers, thereby helping maintain stability and operations during the proceedings; and
  - (c) streamlining the bidding process as the stalking horse agreement provides a template for competing bidders to use for the submission of competing offers.
  
44. The Monitor and its counsel have reviewed all stalking horse processes valued at over \$5 million and approved in CCAA and *Bankruptcy and Insolvency Act* proceedings between January 2019 to April 2023 (the "**Stalking Horse Comparison Period**") in order to assess the reasonableness of the break fees approved by the Courts. The Monitor and its counsel have also reviewed all credit bids approved by the Courts during the Stalking Horse Comparison Period. Attached as **Appendix "B"** is a chart of the observed fees ranging in size from approximately 0.9% to 3.4% for the seven bids reviewed during the Stalking Horse Comparison Period, and break fees ranging in size from approximately 2.8% to 3.4% for the two credit bids reviewed during the same period. The results are also summarized in the tables below:

All Stalking Horse Bids	Transaction Value ("TV") <sup>1</sup>	Total Fees <sup>2</sup>	Total Fees % of TV
Maximum	569,448,880	19,077,058	3.4%
Average	139,354,507	4,724,814	3.4%
Minimum	11,700,000	100,000	0.9%

Credit Bids	Transaction Value ("TV") <sup>1</sup>	Total Fees <sup>2</sup>	Total Fees % of TV
Maximum	569,448,880	19,077,058	3.4%
Average	330,103,940	10,788,529	3.3%
Minimum	90,759,000	2,500,000	2.8%

*Notes*

1. Transaction Value is the stalking horse bid value.

2. Total Fees include Break Fees and Expense Reimbursements.

45. The Monitor notes that the proposed Stalking Horse Agreement has fees totalling approximately 3.4%. Based on the experience of the Monitor and its review of stalking horse processes in excess of \$5 million during the Stalking Horse Comparison Period, the Monitor is of the view that the break fee provided in the Stalking Horse Agreement is consistent with the average rate during the Stalking Horse Comparison Period and is reasonable in the circumstances.
46. The Monitor, therefore, is of the view that, in the circumstances:
- (a) the Proposed SISP provides for a broad, open, fair and transparent process with an appropriate level of independent oversight and flexibility necessary for F&F to consider the broad range of potential transactions that may be available to generate value from the Business;
  - (b) the Proposed SISP should encourage and facilitate bidding by interested parties and that no aspect of the Proposed SISP should discourage parties from submitting bids;
  - (c) the Proposed SISP provides a reasonable opportunity for other bidders to submit a bid;
  - (d) if necessary, the Auction process will provide the opportunity for all Phase 2 Qualified Bidders, including the Stalking Horse Bidder, to further increase their bids, thereby ensuring that realizations are maximized for all stakeholders of the Applicants;

- (e) given the efforts described in the Second Trudel Affidavit regarding its discussions with ACT, the fact that ACT is the DIP Lender and the liquidity issues faced by the Applicants, the timelines of the Proposed SISP are reasonable;
- (f) the provisions of the Proposed SISP, including the potential Auction, are reasonable, appropriate and reasonably consistent with both market practices and with SISP processes approved by the Court in other CCAA cases;
- (g) the fees set out in the Stalking Horse Agreement are within the range of rates identified as part of the Stalking Horse Comparison Period, and therefore are reasonable in the circumstances; and
- (h) the Proposed SISP provides appropriate and reasonable oversight by the Monitor and will best enable the Applicants to maximize recoveries for its stakeholders.

47. Accordingly, the Monitor respectfully recommends that the Applicants' request for approval of the Proposed SISP and authorization to use the Stalking Horse Agreement as the Stalking Horse Bid in the Proposed SISP be granted.

#### **F. REQUEST FOR APPROVAL OF THE PROPOSED KEY EMPLOYEE RETENTION PLAN**

##### *Monitor's Involvement in the Proposed KERP*

- 48. As described in the Second Trudel Affidavit, F&F have certain Key Employees who perform roles critical to advancing the Applicants' restructuring, including certain institutional knowledge related to the Applicants' business and operations.
- 49. The Monitor has participated with the Applicants in the development of the Proposed KERP that will facilitate and encourage the continued participation of Key Employees during these CCAA Proceedings. The Monitor understands that the retention of employees is of vital importance to the Applicants during these CCAA Proceedings.
- 50. The Key Employees are comprised of up to a total of 30 executives, operational, regulatory and subject matter specialists, who were assessed and selected by the Applicants, as reviewed and approved by the Board and the Proposed Monitor. The maximum amount of

the Proposed KERP is \$1,160,000 which is widely dispersed and not concentrated in a select few individuals.

51. Pursuant to the terms of the Proposed KERP, certain Key Employees will receive a bonus payment on the earlier of (a) the completion of the CCAA Proceedings; or (b) October 31, 2023. Certain other Key Employees will be eligible to receive an additional incentive payment if the Applicants successfully complete a transaction under the Stalking Horse Agreement. Certain Key Employees will receive an incentive payment if the Applicants successfully complete a transaction that generates gross proceeds that exceed a certain amount. Lastly, a Key Employee will only receive an incentive payment if the Applicants successfully complete a transaction that generates gross proceeds that exceed a certain amount.
52. The Proposed KERP was designed to incentivize Key Employees to assist with the Proposed SISP and to ensure that the Applicants continue to operate in the ordinary course. The proposed milestones were designed to incentivize the Key Employees in an effort to maximize the potential value to be obtained in the Proposed SISP.
53. An unredacted version of the Proposed KERP will be separately provided to this Court as **Confidential Exhibit “1”**.

*Monitor’s Comments and Recommendation*

54. The Monitor is satisfied with the basis on which the Proposed KERP was formulated and how the amounts payable to Key Employees were determined. The Monitor is also of the view that, on balance, the structure of the Proposed KERP and the quantum of the amounts payable to Key Employees, respectively, are reasonable in the circumstances. The Monitor is of the view the Proposed KERP will incentivize management and function as a retention tool, aligned with preserving value in the business and maximizing proceeds in the sales process. Accordingly, the Monitor recommends that the Court approve the Proposed KERP Charge as discussed above.

55. The Applicants have sought to seal the unredacted Appendix containing the Proposed KERP details. This Appendix contains personal and sensitive information which may cause harm to the applicable employees should such information be made available to the public.
56. The Monitor is supportive of the proposed KERP, KERP Charge and of having the unredacted KERP sealed and not form part of the public record.

**G. AMENDED AND RESTATED INITIAL ORDER**

*Amendments to the CCAA Charges*

57. F&F proposes no change with respect to the Directors' Charge or the Administration Charge.
58. With respect to the Directors' Charge, the amount requested and approved in the Initial Order was relative to the potential exposure of the directors and officers of F&F during the initial Stay Period to and including June 15, 2023. The amount of the charge reflects the continued potential exposure of the directors and officers of F&F over the proposed extension of the Stay Period.
59. F&F proposes no change to the maximum amount of the Administration Charge of \$600,000. The amount requested and approved in the Initial Order was relative to the potential exposure of fees and disbursements incurred in connection with the services provided and is based on two weeks of estimated fees and costs for the professionals listed above, together with post-filing accruals. A proposed change to the exposure is not expected for the remainder of the 13- week period.
60. Certain Court-ordered charges were granted pursuant to the Initial Order. The proposed ARIO amends certain of those charges and incorporates certain new charges (collectively, the "**Charges**"). The proposed ARIO provides that the Charges granted thereunder shall have the following priorities:
  - (a) First– The Administration Charge (to the maximum of \$600,000);

- (b) Second – The DIP Lender’s Charge in the amount of funds actually advanced under the DIP Facility (to a maximum of \$9,800,000);
- (c) Third – the Directors’ Charge (to the maximum of \$2,800,000); and
- (d) Fourth – The Proposed KERP Charge (to the maximum aggregate amount of \$1,160,000).

Ranking of Encumbrances

- 61. The Charges are proposed to rank ahead of all Encumbrances against the Property of the Applicants. Since the granting of the Initial Order, all of the required notices have been sent to creditors with known claims. The secured creditors who are likely to be affected by the Charges have been served with the materials for the Comeback Hearing.
- 62. Further, ACT is the largest economic stakeholder of the Applicants. It has been duly served and is consenting to the granting of the Charges. Based on the foregoing, it is the Monitor’s view that the Charges and their priority are fair and reasonable in the circumstances.

Securities Filings and other Securities Relief

- 63. F&F seek an Order relieving them from incurring further expenses in relation to the Securities Filings and declaring that the directors, officers, employees and other representatives of the Applicants or the Monitor shall not have any personal liability for failure to make any Securities Filings required pursuant to the Securities Provisions.
- 64. Further, F&F seek to extend the time to call and hold the AGM. The deadline to call an AGM will expire at the end of June, 2023. The Applicants’ resources are better expended focusing on its restructuring and the Proposed SISP.
- 65. In the circumstances, the Monitor is of the view that the relief with respect to the Securities Filings, the Securities Provisions and the AGM is reasonable in the circumstances and ought to be granted by the Court.

## **H. REQUEST FOR AN EXTENSION OF THE STAY PERIOD**

66. The Stay Period currently expires on June 15, 2023. F&F is requesting an extension of the Stay Period to September 1, 2023. F&F requires additional time to implement the Proposed SISP and select a Successful Bid.
67. As outlined in the Pre-Filing Report of the Monitor, the Cash Flow Projection demonstrates that, subject to the approval of the requested additional interim financing under the DIP, the CCAA Parties expect to have sufficient liquidity to fund the CCAA Proceedings during the requested extension of the Stay Period, including amounts up to the Proposed KERP and potential payments to critical suppliers, if any.
68. The Cash Flow Projection is based on certain assumptions, including:
  - (a) the Applicants continue to take steps to restructure operations during the CCAA Proceedings, including the lease repudiation discussed in the Second Trudel Affidavit and other cash conservation measures intended to be implemented by the Applicants; and
  - (b) the Proposed SISP process is approved on June 15, 2023, without delay.
69. The Monitor believes that F&F has acted and continues to act in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
70. Based on the information currently available, the Monitor also believes that creditors of the Applicants would not be materially prejudiced by an extension of the Stay Period to September 1, 2023.
71. The Monitor supports the Applicants' request for an extension of the Stay Period to September 1, 2023.

**I. CONCLUSION**

72. For the reasons stated in this First Report, the Monitor supports the relief sought by F&F in connection with the Comeback Motion. The Monitor respectfully submits to the Court this, its First Report.

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Dated this 14<sup>th</sup> day of June, 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.

A handwritten signature in black ink, appearing to read 'Jeffrey Rosenberg', written in a cursive style.

Jeffrey Rosenberg  
Senior Managing Director

A handwritten signature in black ink, appearing to read 'J. Porepa', written in a cursive style.

Jodi Porepa  
Senior Managing Director

**APPENDIX “E”**

**[ATTACHED]**

**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 ARIIO, 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 5<sup>th</sup> 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

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

Court File No.:

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

**THIRD REPORT OF THE MONITOR**

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