Court File No. CL-26-00000122-0000

**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 THE CANNABIST COMPANY HOLDINGS INC., THE CANNABIST COMPANY HOLDINGS (CANADA) INC., AND COLUMBIA CARE DELAWARE LLC**

(Applicants)

# FACTUM OF THE APPLICANTS
**(Re: Remaining States Sale Approval Order and Maryland Sale Approval Order)**

August 13, 2026


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TO: THE SERVICE LIST

## PART I – OVERVIEW[1]

1. The Applicants, through the direct and indirect ownership of their Subsidiaries, operated a fully integrated cannabis business across nine U.S. markets where medical or adult-use cannabis is permitted.

2. Before commencing these CCAA Proceedings, the Company conducted a refreshed Strategic Review to identify and evaluate the available alternatives for its business and assets. That process ultimately resulted in the Company entering into separate sale transactions in respect of its businesses in the Virginia, Ohio, and Delaware markets. The Applicants subsequently commenced these CCAA Proceedings on March 24, 2026, to obtain the Court's approval of certain of those sale transactions and to facilitate the orderly wind-down of the Company's operations in markets not subject to a sale transaction.

3. The Applicants now seek approval of the Remaining States Transaction and the Maryland Transaction (collectively, the "**Transactions**"). The Transactions are the culmination of a robust and competitive Sales Process conducted by Moelis and the Company, in consultation with the Company's legal and financial advisors and subject to the independent oversight of the Special Committee.

4. The Transactions represent the best available outcomes for the Company and its stakeholders in the circumstances. Among other benefits, the Transactions preserve the going-concern value of the businesses in the applicable markets and maintain important relationships with regulators, patients and customers, suppliers, landlords, employees, and local communities.

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[1] Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the Affidavit of Curt Kroll sworn March 23, 2026 (the **"First Kroll Affidavit**"), the Affidavit of Grant Kassel sworn March 23, 2026 (the **"Kassel Affidavit**"), the Affidavit of Grant Kassel sworn July 31, 2026 (the **"Second Kassel Affidavit**"), the Affidavit of Grant Kassel sworn August 13, 2026 (the **"Third Kassel Affidavit"**), the Affidavit of Thomas Lynch sworn April 9, 2026 (the **"Lynch Affidavit**"), as applicable.

5. The Applicants also seek limited releases in favour of the Released Parties. The proposed relief is intended to provide appropriate certainty and finality to those parties whose contributions were material to the Strategic Review, the Sales Process, the negotiation and implementation of the Transactions, and these CCAA Proceedings. The scope of the requested releases is consistent with the relief previously granted by this Court in connection with the Delaware and Ohio Transactions.

## PART II – THE FACTS

6. The facts underlying this motion are more fully set out in the Second Kassel Affidavit, the Third Kassel Affidavit, and the Lynch Affidavit.

### A. Background

7. The Applicants operated a fully integrated cannabis business across U.S. markets where medical or adult-use cannabis is permitted by law. The Subsidiaries own or manage interests in several state-licensed medical and/or adult-use cannabis businesses. [2]

8. Due to financial difficulties arising from the unique U.S. cannabis regulatory landscape, the Applicants sought and obtained CCAA relief pursuant to the Initial Order dated March 24, 2026 (amended and restated on April 2, 2026), to complete certain Sale Transactions and facilitate a Court-supervised orderly wind-down of the Company’s operations in certain markets not subject to the sale transactions.[3]

### B. Refreshed Strategic Review and Sales Process

9. In June 2025, the Company continued a Strategic Review by conducting a dual-track

[2] First Kroll Affidavit at para. 6.
[3] First Kroll Affidavit at para. 15.

process consisting of: (a) the Sales Process, conducted with the assistance of Moelis, to explore the sale of the Company either as a whole or through strategic market divestitures; and (b) a review of a stand-alone restructuring of the Company's business and capital structure.[4]

10. During the Sales Process, Moelis initially targeted seventeen (17) potential strategic purchasers. Fifteen (15) potential bidders executed NDAs and conducted due diligence prior to the Phase 1 Bid Deadline, and twelve (12) submitted letters of intent. By the Phase 2 Bid Deadline, Moelis had received multiple letters of intent and additional bids contemplating acquisitions across several states.[5]

11. In addition to the market-specific bids received for Ohio, Delaware, and Virginia, Vireo had submitted a bid expressing interest in acquiring the Company's business across multiple states, including Illinois, New Jersey, West Virginia, Colorado, Maryland, and Massachusetts (collectively, the "**Remaining States**"), in addition to other markets during Phase 1 of the Sales Process.[6]

12. The Company ultimately determined that separate sales of certain markets would maximize value and executed purchase agreements for transactions involving the Company's Virginia, Ohio, and Delaware markets. Moelis subsequently canvassed Vireo's interest in submitting a revised bid to acquire the Remaining States. In January 2026, Moelis requested updated best-and-final bids from prior bidders for the Remaining States assets, given their prior interest in those markets. Revised bids were received from three bidders, which bids generally offered less total or cash consideration than the original bids submitted by the same parties.[7]

13. Following receipt of a revised LOI from Vireo and revised bids in response to Moelis' "market check," the Special Committee determined, in its good faith business judgment, that

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[4] Second Kassel Affidavit at para. 6.
[5] Second Kassel Affidavit at para. 7.
[6] Second Kassel Affidavit at para. 10.
[7] Second Kassel Affidavit at para. 11.

pursuing a revised transaction with Vireo for the Remaining States represented the best available path to maximize recoveries for the Company's stakeholders in respect of those markets.[8]

## C. Execution and Terms of the Vireo Purchase Agreement

14. Throughout the latter part of 2025 and early January 2026, the Company and its advisors continued diligence and negotiations to improve Vireo's bid terms.[9]

15. On January 30, 2026, the Company and Vireo entered into a non-binding MOU for the Remaining States. The parties continued negotiating a definitive purchase agreement.[10] During negotiations, the parties identified potential regulatory complexities in the Maryland market. To address those issues, the Company, Vireo, and their respective advisors discussed a potential stand-alone sale of the Maryland business with a third party, on the basis that aggregate consideration for the Remaining States, including Maryland, would remain consistent with the aggregate consideration set out in the MOU between the Company and Vireo.[11]

16. These negotiations with respect to the Maryland market recently reached an impasse when the initial third party was unable to finalize the necessary financing and subsequently advised it was no longer willing to proceed. As a result, Maryland was excluded from the Remaining States Transaction. In consideration for the time and expense spent on the Maryland transaction, and for the Company to continue with the Remaining States Transaction, Vireo agreed to increase the aggregate purchase price under the Vireo Purchase Agreement by $2,500,000.[12]

17. After resolving this issue, the Special Committee, with the support of the Supporting

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[8] Second Kassel Affidavit at para. 11.
[9] Second Kassel Affidavit at para. 14.
[10] Second Kassel Affidavit at para. 15.
[11] Second Kassel Affidavit at para. 16.
[12] Second Kassel Affidavit at para. 17.

Noteholders, exercised its good faith business judgment and determined that the Company should execute the Vireo Purchase Agreement.[13]

18. The key terms of the Vireo Purchase Agreement are summarized in the Second Kassel Affidavit.[14] A shortened summary of the Vireo Purchase Agreement is immediately below:

| Key Terms | Vireo Purchase Agreement |
|---|---|
| Parties | **Buyer:** Vireo Health of Arcadia, LLC (Vireo affiliate)<br><br>**Member:** Columbia Care LLC<br><br>**Transferred Entities:** Curative Health LLC (IL); Prolific Brands of New Jersey, LLC (NJ); Columbia Care WV LLC (WV); MJ Brain Bank, LLC (CO)<br><br>**Seller Entities (Asset Sales):** The Green Solution, LLC (CO); Columbia Care CO Inc. (CO); Patriot Care Corp. (MA)<br><br>**Parent:** The Cannabist Company Holdings Inc. |
| Transaction and Structure | Hybrid equity and asset sales, with staggered Closings for each market. |
| Transferred and Excluded Assets | The Transferred Assets include all assets reasonably necessary for, used or held for use in, the applicable Seller Entity's business as at closing, other than Excluded Assets. |
| Assumed and Excluded Liabilities | Buyer assumes all Liabilities related to Transferred Assets, other than Excluded Liabilities.<br><br>The Excluded Liabilities include:<br>• any liability arising out of an Excluded Asset;<br>• all Taxes imposed on or with respect to the Seller Entities or the Transferred Assets for any Pre-Closing Tax Period;<br>• certain pre-filing accounts payable associated with Excluded Contracts that the Buyer will not assume in connection with the transaction;<br>• mortgage debt; and<br>• any Liabilities with respect to Transferred Employees arising out of or related to a pre-Closing period, including without limitation any Liabilities or obligations with respect to any Company Employee Benefit Plan. |

[13] Second Kassel Affidavit at para. 18.
[14] Second Kassel Affidavit at para. 22.

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|---|---|
| Consideration | The aggregate consideration for all markets is $35,000,000, allocated as follows:<br>• Colorado – $19,385,358<br>• Illinois – $1,615,714<br>• Massachusetts – $3,230,357<br>• New Jersey – $7,538,214<br>• West Virginia - $3,230,357 |
| Outside Date | July 19, 2027. |
| Employees | Buyer may, but is not obligated to, offer employment at least five (5) Business Days prior to the Closing Date for each Market. Offers must provide base pay no less favourable than pre-closing, substantially comparable target short-term cash incentives, and aggregate benefits comparable to Buyer’s similarly situated employees. |

### D. Execution and Terms of the Maryland APA and Maryland RPA

19. As discussed above, the Remaining States Transaction developed such that Vireo would not purchase the Maryland market. Following the impasse reached with the initial proposed purchaser, Vireo introduced the Company to a new potential purchaser interested in the Maryland market that would preserve the aggregate consideration under the MOU, being Free State Botanicals, financed by Chicago Atlantic.[15]

20. Free State Botanicals subsequently submitted a bid substantially equivalent to those offered by the initial third party. The Company also received an unsolicited expression of interest from another potential purchaser for the Maryland market, which was shared with the Supporting Noteholders pursuant to the Support Agreement. After negotiations, Free State Botanicals submitted an improved offer that (a) provided all cash consideration and removed a contemplated seller note; and (b) provided a non-refundable deposit.[16]

21. After careful consideration, in consultation with the Supporting Noteholders, the Company

[15] Third Kassel Affidavit at para. 8.
[16] Third Kassel Affidavit at para. 8.

determined that Free State Botanicals was better positioned to complete a transaction on an expedited basis with competitive terms. The Company concluded that the continued operating costs associated with conducting a separate sale process for the Maryland market would likely exceed any incremental value realized. [17]

22. On August 7, 2026, the Company entered into: (a) the Maryland APA with Free State Botanicals for the purchase of substantially all Maryland business assets; and (b) the Maryland RPA with 6797 Bowman Frederick LLC for purchase of real property used in Maryland cultivation operations.[18]

23. The key terms of the Maryland APA and RPA are summarized in the Third Kassel Affidavit.[19] A shortened summary of the Maryland APA and Maryland RPA is immediately below:

| Key Terms | Maryland APA |
| --- | --- |
| Parties | Buyer:<br>• Free State Botanicals Holdings LLC<br><br>Cultivation Buyer:<br>• Free State Botanicals Cultivation LLC<br><br>Dispensary Buyer:<br>• Free State Botanicals LLC<br><br>Seller Entities:<br>• Columbia Care MD, LLC;<br>• Green Leaf Extracts, LLC;<br>• Wellness Institute of Maryland, LLC;<br>• Green Leaf Management LLC;<br>• Green Leaf Medical, LLC<br><br>Member:<br>• Columbia Care LLC<br><br>Entity beneficially owning Equity of the Member:<br>• The Cannabist Company Holdings Inc. |

[17] Third Kassel Affidavit at para. 9.
[18] Third Kassel Affidavit at para. 4.
[19] Third Kassel Affidavit at paras. 25 and 26.

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|---|---|
| Transaction and Structure | Asset purchase of substantially all assets of the Seller Entities used in the cannabis cultivation, production, manufacturing, distribution, and retail business in Maryland.<br><br>Cultivation Buyer acquires cultivation assets of Green Leaf Medical, LLC;<br><br>Dispensary Buyer acquires all remaining Transferred Assets. |
| Transferred Assets | All assets reasonably necessary for business operations, including Transferred Contracts and the Member's rights in the Sugarloaf MSA and Sugarloaf Purchase Option Agreement, other than Excluded Assets (pre-closing Tax assets and Excluded Contracts). |
| Assumed and Excluded Liabilities | Buyer assumes all Liabilities related to Transferred Assets, including Final Working Capital, Final Indebtedness, Transfer Taxes, and Assumed Prepetition Payables. Excluded Liabilities include Excluded Asset liabilities, pre-closing Taxes, Excluded Prepetition Payables, Cultivation Property liabilities, and pre-closing employee benefit obligations. |
| Consideration | Market Base Payment of $13,750,000, |
| Outside Date | August 9, 2027 |
| Employees | Buyer may offer employment at least 5 business days before Closing. Offers must provide base pay no less favourable than pre-closing, comparable incentives and benefits. Sellers responsible for pre-closing WARN Act compliance; Buyer for post-closing. |

| Key Terms | Maryland RPA |
|---|---|
| Parties | **Buyer:** 6797 Bowman Frederick LLC (Vireo affiliate)<br>**Seller:** Columbia Care MD Realty LLC<br>**Guarantor:** The Cannabist Company Holdings Inc. |
| Property | Cultivation facility at 6797 Bowman Crossing, City of Frederick, Frederick County, Maryland. |
| Consideration | Buyer's assumption (or payoff) of Existing Indebtedness (East West Bank loan, original principal of $6,250,000, dated August 9, 2023). |
| Closing Date | Closing Date under Maryland APA (or earlier date agreed by Seller and Buyer). |

## PART III – ISSUES

24. The issues to be determined on this motion with respect to the Vireo Purchase Agreement, the Maryland APA, the Maryland RPA, and the Ancillary Order are whether this Court should:

(a) approve the Vireo Purchase Agreement and the Remaining States Transaction,

(b) approve the Maryland APA, the Maryland RPA, and the Maryland Transaction;

(c) add certain Subsidiaries as Applicants to these CCAA Proceedings; and

(d) grant the Releases in favour of the Released Parties.

## PART IV – LAW AND ARGUMENT

### A. The Vireo Purchase Agreement, the Maryland APA, the Maryland RPA, and the Transactions Should be Approved

#### i. This Court has the Jurisdiction to Approve the Remaining States Transaction and the Maryland Transaction

25. This Court has jurisdiction to approve a sale of all or substantially all of a debtor company's assets in a CCAA proceeding where such sale is in the best interests of stakeholders generally. The sale of a business as a going concern during a CCAA proceeding is consistent with the purposes of the CCAA.[20]

26. Section 36 of the CCAA provides that a debtor company may sell assets outside of the ordinary course of business if authorized to do so by the Court. Section 36(3) sets out factors for the Court to consider when determining whether to authorize such a sale:

(a) Whether the process leading to the proposed sale or disposition was reasonable

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[20] *Re Nortel Networks Corp.* (2009), 2009 CanLII 39492 (Ont. Sup. Ct. J.) at paras. 35-40 and 48 ("***Nortel***"); *Re Brainhunter Inc.* [2009] O.J. No. 5207 (Ont. Sup. Ct. J.) at para. 12; *Re Canwest Publishing Inc./Publications Canwest Inc.*, 2010 ONSC 2870 at para. 13 ("***Canwest***").

in the circumstances;

(b) Whether the Monitor approved the process leading to the proposed sale or disposition;

(c) Whether the monitor filed with the court a report stating that in their opinion, the sale or disposition would be more beneficial to the creditors than the sale or disposition under a bankruptcy;

(d) The extent to which the creditors were consulted;

(e) The effect of the proposed sale or disposition on the creditors and other interested parties; and

(f) Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.[21]

27. In *Canwest*, Justice Pepall held that the criteria enumerated in section 36(3) of the CCAA largely overlapped with the traditional common law criteria established in *Royal Bank v Soundair Corp.* for approval of a sale of assets in an insolvency scenario and remain relevant when considering the statutory test.[22]

28. A court should also give effect to the business judgment rule, which affords deference to the debtor company's exercise of commercial and business judgment in an asset sale where the marketing and sale process was fair, reasonable, transparent, and efficient.[23]

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[21] CCAA, s. 36(3); *Re Nelson Education Limited*, 2015 ONSC 5557 at para. 38 ("***Nelson***"); *Re Bloom Lake*, 2015 QCCS 1920 ("***Bloom Lake***") at paras. 25-26.
[22] CCAA, s. 36(3); *Canwest*, *supra* at para. 13; *Royal Bank v Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para. 16; *Nelson*, *supra* at paras. 37-38.
[23] *Bloom Lake*, *supra* at para. 28.

### ii. The Pre-Filing Sales Process Test is the Same as the Test to Approve a Transaction Resulting from a Post-Filing Sales Process

29. Courts have, on many occasions, approved sale transactions where the debtor company conducted a sales process before making an insolvency filing.[24] In approving transactions of this nature, courts have held that the same principles that apply to the approval of a sale transaction resulting from a post-filing sales process apply to the approval of a sale transaction resulting from a pre-filing sales process.[25]

30. In *SRTX*, the Superior Court of Quebec held that "prepack" transactions should be encouraged given the important purposes they serve – shielding businesses from the stigma of formal insolvency proceedings, reducing operational disruption, preserving going-concern value, and minimizing professional costs. The Court held that "[i]n theory, these transactions represent the most efficient form of corporate restructuring, its best version."[26]

31. Where a debtor seeks approval of a pre-filing sale transaction, the court will still consider the *Soundair* principles but with specific consideration of the economic realities of the business and the proposed transaction. Sale approval is warranted where the sale represents the best available commercial alternative, particularly where delay could jeopardize continued operations.[27] The Court should also consider whether stakeholders' positions would realistically differ if an additional process was undertaken — which is unlikely where the process followed is consistent with what a court would have approved post-filing.[28]

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[24] *Nelson*, *supra*; *Bloom Lake*, *supra*; *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586; *Re PT Holdco, Inc. et al.*, Approval and Vesting Order granted February 25, 2016 (Court File No. CV-16-11257-00CL); *Re Golf Town Canada et al.*, Approval and Vesting Order granted September 30, 2016 Court File No. CV-16-11527-00CL); *Karrys Bros, Ltd. (Re)*, 2014 ONSC 7465 at paras. 15-16. ("***Karrys***"). This decision is attached as Schedule "C"; *Re MAV Beauty Brands Inc. et al.*, Approval, Vesting and Distribution Order granted November 24, 2023 (Court File No. CV-23-00709610-00CL)

[25] *Nelson*, *supra* at paras. 31-33 and 35-59; *Bloom Lake*, *supra* at paras. 25-27 and 29; *MAV Beauty Brands Inc. et al.*, Endorsement of Justice Cavanagh dated November 24, 2023, at para. 7 (Court File No. CV-23-00709610-00CL).

[26] *Proposition de SRTX Inc.*, 2026 QCCS 570 at para. 6 ("***SRTX***")

[27] *Elleway Acquisitions Limited v 4358376 Canada Inc.*, 2013 ONSC 7009 at paras. 27 and 31-32; *Karrys, supra* at paras. 15-16.

[28] *Re Tool-Plas Systems Inc.*, 2008 CanLII 54791 (Ont. Sup. Ct. J.) at paras. 15-19.

32. The Court in *Karrys* determined that a pre-filing marketing process undertaken by the debtors in advance of proposal proceedings under the *Bankruptcy and Insolvency Act* had met the principles in *Soundair*. In *Karrys*, the Court approved a pre-filing marketing process under the *Soundair* principles where: (a) financial advisors conducted a broad and comprehensive marketing process; (b) the proposed sale was the best available option; (c) further delay would erode value; and (d) the process was indistinguishable from what the court would reasonably have approved had prior authorization been sought.[29]

33. The Court in *SRTX* outlined considerations for assessing whether a "prepack" is appropriate, many of which overlap with the section 36(3) CCAA factors and *Soundair* principles: (a) good faith and absence of improper purpose; (b) heightened advance disclosure; (c) robust assessment by the Court-appointed monitor; (d) broad stakeholder support; and (e) absence of objective reason to delay approval.[30]

34. For the reasons set out below, the Applicants submit that the *Karrys* factors, the section 36(3) CCAA factors, the *Soundair* principles, and the *SRTX* prepack considerations are all satisfied in this case in respect of both the Remaining States Transaction and the Maryland Transaction.

### iii. The Vireo Purchase Agreement, the Maryland APA, the Maryland RPA, and the Transactions Satisfy the Requirements in Section 36(3) of the CCAA, the Soundair Principles, and the SRTX Considerations

#### (A) *The process leading to the execution of the Vireo Purchase Agreement, the Maryland APA, and the Maryland RPA was reasonable in the circumstances*

35. The execution of the Vireo Purchase Agreement, the Maryland APA, and the Maryland RPA represents the culmination of extensive solicitation efforts pursuant to the Company's prior strategic review processes beginning in or around June 2024 and the Company's refreshed

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[29] *Karrys*, *supra* at paras. 12-16.
[30] *SRTX* at para. 27.

Strategic Review and Sales Process.[31]

36. The Transactions are products of a robust dual-track Strategic Review: the Sales Process and a stand-alone restructuring review. The process, conducted with Moelis's assistance, was broad and flexible and provided the Company with the latitude to pursue a range of transactions.[32]

37. The Sales Process was robust, competitive, and constituted a broad canvassing of the market over approximately eight months.[33] The Sales Process was also informed by prior processes including discussions with an ad hoc group of former senior noteholders, debt capital providers, and other national multi-state cannabis operators.[34]

38. The Sales Process was reasonable in the circumstances for the following reasons:

(a) Moelis has significant experience providing investment banking and financial restructuring services. Mr. Kassel, the lead member of the Moelis team for this mandate, has nearly 16 years of investment banking experience specializing in the cannabis sector, having completed 16 transactions in the cannabis sector since 2019, including notable cannabis and restructuring mandates;[35]

(b) the Sales Process was split into two phases;

(c) bidders were provided with access to a VDR that included, among other things, information regarding the Company's financials, state-by-state market overviews, contracts, floor plans, licenses, and various other corporate documents;

(d) Moelis and the Company's management team facilitated site visits;

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[31] Second Kassel Affidavit at para. 24. See also Third Kassel Affidavit at para. 29.
[32] First Kroll Affidavit at para. 124. See also Second Kassel Affidavit at para. 6 and 24.
[33] Second Kassel Affidavit at para. 26. See also Third Kassel Affidavit at para. 30.
[34] First Kroll Affidavit at para. 117.
[35] Second Kassel Affidavit at para. 2.

(e) participants in the Sales Process were provided with reasonable timelines to conduct due diligence and submit bids – the Phase 1 Bid Deadline was July 18, 2025, and the Phase 2 Bid Deadline was September 3, 2025; and

(f) Moelis conducted a "market check" in January 2026 for best-and-final bids from previous bidders with prior interest in certain markets.[36]

39. Further, the Company formed the Special Committee comprised of independent members of the Board to oversee the ongoing Strategic Review and make recommendations to the Board regarding the ultimate path forward for the Company. The Special Committee was tasked with evaluating the bids received and determining the optimal path forward in light of the available options, with the assistance of Moelis and the Company's other advisors.[37]

40. Throughout the Sales Process, Moelis worked with the Special Committee and the Company's other advisors to assess the financial terms, conditionality, execution risk, timing, and stakeholder impacts associated with each bid. This work involved extensive negotiations and continuous engagement with bidders and other stakeholders. Moelis and the Company remained flexible and responsive to evolving circumstances, market feedback, and diligence findings, and adapted the Sales Process as necessary to preserve competitive tension and achieve the best available value for the Company's assets. The Company undertook extensive efforts to secure the best available price for both Transactions. [38] There is no evidence of bad faith or improvident conduct.

### (B) *The Monitor has prepared a fulsome report setting out its views on the conduct of the Sales Process and has indicated its support of the Strategic Review and the Sales Process.*

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[36] Kassel Affidavit at paras. 9 and 12-13. See also Second Kassel Affidavit at paras. 6-8.
[37] Kassel Affidavit at para. 18.
[38] Second Kassel Affidavit at para 25.

41. In *Nelson*, the Court indicated that the monitor's "blessing" of a sale process undertaken prior to a CCAA filing is an important factor to consider.[39]

42. The Monitor noted that the multi-phase Sales Process shares many of the hallmarks of a sales process that would be conducted under the CCAA by a debtor company and/or a monitor.[40]

43. The Monitor supports approval of the proposed Remaining States Transaction and the Maryland Transaction, given its views that, among other things: (a) the pre-filing marketing and sales process in respect of the Company's business was extensive; (b) Moelis and the Company conducted a broad and thorough marketing process such that the market for potential purchasers of the Remaining States and Maryland were thoroughly canvassed; (c) potential bidders had sufficient time and access to detailed information to perform due diligence to adequately assess the Company's business; (d) the Sales Process was carried out fairly with appropriate governance and decision making; and (e) the Remaining States Transaction and the Maryland Transaction are the best available options in the circumstances for the Company and its stakeholders.[41]

### (C) *The Monitor believes that the Transaction is more beneficial to creditors than a sale or disposition under bankruptcy.*

44. As stated in the Fifth Report, the Monitor is of the view that the proposed Remaining States Transaction and the Maryland Transaction, which provide for the continuation of the Company's business as a going concern in the Remaining States and Maryland, are better for stakeholders than any result that would be achieved in a liquidation proceeding.[42]

[39] *Nelson*, *supra* at para. 38.
[40] Fifth Report of the Monitor, FTI Consulting Canada Inc. dated August 13, 2026, ("**Fifth Report**") at paras. 29(a) and 38(a).
[41] Fifth Report at paras. 29 and 38.
[42] Fifth Report at para. 42(e).

### (D) *Creditors were adequately consulted, the interests of all parties have been considered, and there has been no unfairness in the conduct of the Sales Process.*

45. The Company engaged with the Senior Noteholders, its fulcrum creditor group, throughout the Sales Process negotiations of the Remaining States Transaction and Maryland Transaction, and they have consented to the Transactions. The Ad Hoc Group was represented by counsel and by Ducera, a sophisticated investment bank with cannabis sector experience.

46. The Special Committee evaluated all bids and restructuring scenarios. The determination to pursue sale transactions took into account feedback from Senior Noteholders who unanimously did not support a restructuring solution.[43]

### (E) *The Remaining States Transaction and the Maryland Transaction represent the best possible outcome for the Company and its stakeholders in the circumstances*

47. The Transactions are the best available options for the Company and its stakeholders:

(a) the hybrid equity and asset sale structures provide flexibility to accommodate the varying regulatory requirements across multiple state markets;

(b) most of the Senior Noteholders (approximately 70% for the Remaining States Transaction and approximately 59% for the Maryland Transaction[44]) support the Transactions pursuant to the Support Agreement;

(c) the Remaining States Transaction and the Maryland Transaction preserve the going-concern value of the Subsidiaries operating in these markets as integrated, operating businesses;

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[43] First Kroll Affidavit at para. 127; Kassel Affidavit at paras. 20 and 22.
[44] The difference reflects that one Supporting Noteholder was excluded from deliberations due to a conflict.

(d) by transferring the businesses in the markets contemplated by the Remaining States Transaction and the Maryland Transaction on a going-concern basis, critical relationships with regulators, patients and customers, suppliers, landlords, and local communities in each of these markets are preserved;

(e) the Transactions contemplate preservation of employment opportunities for many of the Company's employees;

(f) the aggregate consideration to be received represents the best outcome under the circumstances, which resulted from a robust canvassing of the market of potentially interested parties pursuant to reasonable timelines;

(g) the Remaining States Transaction provides for staggered closings on a market-by-market basis, allowing for flexibility in obtaining the requisite cannabis transaction approvals from each applicable state regulatory authority while ensuring that proceeds from earlier closings can be applied to benefit the Company's stakeholders; and

(h) the Monitor supports the Remaining States Transaction and the Maryland Transaction.[45]

48. Supporting Noteholders holding a majority of the Senior Notes support the Remaining States Transaction and the Maryland Transaction pursuant to the Support Agreement.[46]

### (F) *There is no objective reason to delay approval of the Transactions.*

49. As outlined by the Court in *SRTX*, debtors seeking approval of a prepack must demonstrate, on a balance of probabilities, that there is an absence of an objective reason to

[45] Second Kassel Affidavit at para. 23; Third Kassel Affidavit at para. 27. See also Fifth Report at paras 29 and 38.
[46] Second Kassel Affidavit at para. 23(b). Third Kassel Affidavit at para. 27(b).

delay approval of a transaction.[47]

50. The Sales Process constituted a robust and comprehensive canvassing of the market. There is no reasonable basis for further marketing or solicitation efforts. The market has already been extensively tested, and the refreshed Strategic Review reaffirmed the results.[48]

51. Further canvassing of the market would be unlikely to generate better outcomes. It would instead introduce material delay, increase administrative and professional costs, and risk value erosion to the detriment of stakeholders. Prolonging the process would create ongoing operational uncertainty, potentially disrupt relationships with key customers, suppliers, and employees, and diminish the stability of the Company's business as a going concern. These factors would reduce the attractiveness of the Company's business to potential purchasers and may ultimately result in lower recoveries.

**E. Certain Subsidiaries Should be Added as an Applicant**

52. The proposed Remaining States Sale Approval Order being sought by the Applicants provides that Columbia Care LLC will be deemed to have become an applicant in the CCAA Proceedings for all purposes, entitling it to all of the benefits and protections of the CCAA and any orders made in these CCAA Proceedings.

53. The proposed Remaining States Sale Approval Order also provides that certain Subsidiaries shall be deemed to become Applicants in these CCAA proceedings upon the occurrence of the following events:

(a) upon the closing of the Ohio Transaction (as defined in the First Kassel Affidavit and the Sale Approval Order granted by Justice J. Dietrich dated April 15, 2026),

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[47] *SRTX* at para. 27.
[48] Second Kassel Affidavit at para. 26.

Green Leaf Medical of Ohio III, LLC shall become an Applicant in these proceedings;

(b) upon the delivery of a Monitor's certificate (the "**Monitor's Certificate**") to Vireo confirming the closing of the Transaction with respect to the Transferred Entity and the Seller Entities in the Colorado Market, each of (i) Columbia Care CO Inc., (ii) Futurevision Ltd., and (iii) The Green Solution, LLC shall become Applicants in these proceedings;

(c) upon the delivery of the Monitor's Certificate confirming the closing of the Transaction with respect to the Transferred Entity in the Illinois Market, each of (i) Columbia Care Illinois LLC, and (ii) Curative Health Cultivation LLC shall become Applicants in these proceedings; and

(d) upon the delivery of the Monitor's Certificate confirming the closing of the Transaction with respect to the Seller Entity in the Massachusetts Market, Patriot Care Corp. shall become an Applicant in these proceedings.[49]

54. A party may be added as an applicant in an ongoing CCAA proceeding where it satisfies the statutory requirements for protection at the time the motion is brought. Courts will also consider whether the entity sought to be added is closely integrated with existing Applicants.[50]

55. The Applicants adopt and rely on their submissions in the Initial Factum with respect to the statutory requirements to be a CCAA applicant. Each Subsidiary entity satisfies the statutory requirements to be a CCAA applicant: (a) it is an affiliated debtor company with claims exceeding $5 million[51]; (b) it is insolvent; and (c) it is a Seller Entity or Transferred Entity under the Vireo

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[49] Proposed Remaining States Sale Approval Order.
[50] *Pride Group Holdings Inc. et al.*, 2025 ONSC 3915 at para. 12 ("***Pride***"), citing *Cadillac Fairview Inc., Re*, 1995 CanLII 7363 (ONSC) at paras. 6-7 and *Guestlogix Inc., Re*, 2016 ONSC 1348 at paras. 5-9.
[51] See para. 44 of the Pre-Filing Report of the Monitor.

Purchase Agreement. Each of the Subsidiaries to be added as Applicants has also entered into a retainer agreement with Stikeman Elliott LLP, who holds funds in trust from these proposed Applicants in a Canadian bank account.[52] A number of courts have held that funds deposited in bank accounts or held on retainer are sufficient to satisfy the CCAA jurisdiction requirements and have cautioned that the court must not engage in detailed analysis of the Canadian assets.[53]

56. The Court in *Pride* observed that a prior "non-applicant" stay party was included in recognition of its connection to the other CCAA applicants and the estate generally.[54] Similarly, each entity is currently a Subsidiary with the benefit of the Stay extended to it, and the Court previously held that the Stay should be extended given the close integration between the Applicants and the Subsidiaries.

57. Following the closing of the transactions contemplated by the Vireo Purchase Agreement, certain of these Subsidiaries will cease active operations. The addition of these Subsidiaries as Applicants will facilitate an orderly wind-down of these proceedings and the distribution of proceeds following the closing of the Vireo Purchase Agreement.

## F. The Releases Should be Granted

58. The Ancillary Orders include the Releases in favour of the Released Parties from the Released Claims. The Releases in favour of the Released Parties are being sought to achieve certainty and finality for the Released Parties in the most efficient and appropriate manner given the circumstances. The scope of the requested Releases is consistent with the relief previously granted by this Court in connection with the Delaware and Ohio Transactions.

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[52] Second Kassel Affidavit at para 39.
[53] *Global Light Telecommunications Inc.*, (Re), 2004 BCSC 745 at para. 17; see also *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC) at para. 30. In reference to funds held on retainer by counsel, see *Syncreon Group B.V. (Re)*, 2019 ONSC 5774 at para. 27; *LTL Management LLC (Re)*, 2021 ONSC 8357 at para. 13
[54] *Pride* at para. 13.

### i. This Court has Jurisdiction to Approve the Releases

59. Third-party releases in favour of the parties to a restructuring, their professional advisors, their directors and officers, and the Monitor have become common in CCAA sale transactions.[55] Chief Justice Morawetz in *Lydian*, applied the following criteria ordinarily considered with respect to third-party releases provided for under a plan: (a) whether the claims to be released are rationally connected to the purpose of the restructuring; (b) whether the release contributed to the restructuring; (c) whether the release is fair, reasonable and not overly broad; (d) whether the restructuring could succeed without the release; (e) whether the release benefits the debtor as well as the creditors generally; and (f) creditors' knowledge of the nature and the effect of the releases.[56]

60. It is not necessary for each of the above factors to apply for a release to be approved.[57] In *Lion Electric*, the Court held that in order for parties to be beneficiaries of a third-party release in connection with a CCAA sale, it should be demonstrated that such parties made a meaningful contribution to the restructuring, with probative evidence identifying each party who is intended to be a beneficiary of the proposed release.[58]

### ii. The Releases are Appropriate in the Circumstances

61. The Releases comply with the *Lydian* factors, are consistent with releases previously approved by this Court, are reasonable and appropriate in the circumstances, and should be granted.

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[55] *Arrangement relatif à Blackrock Metals Inc.,* 2022 QCCS 2828, at para. 128; *Harte Gold Corp. (Re),* 2022 ONSC 653, at para. 79 ("***Harte Gold***"); *Green Relief Inc (Re)*, 2020 ONSC 6837 at para. 76; *Re Nelson Education Limited*, 2015 ONSC 5557 at para. 49; *Golf Town Canada Holdings Inc (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL (CCAA Termination Order) (ON SC); *Green Growth Brands Inc et al (Re)* (May 19, 2021), Toronto, Court File No. CV-20-00641220-00CL (Order Terminating CCAA Proceedings) (ON SC); *Fire & Flower Holdings Corp (Re)*, (August 29, 2023), Toronto, Court File No. CV-23-00700581-00CL (Approval and Reverse Vesting Order) (ON SC); *Arrangement relatif à Lion Electric Company*, 2025 QCCS 4192 at para. 60 ("***Lion Electric***").

[56] *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54; see also *Green Relief*, *supra*, at para. 27, where Justice Koehnen also cited Chief Justice Morawetz's decision in *Lydian*.

[57] *Harte Gold*, *supra* at para. 80.

[58] *Lion Electric* at para. 144.

**(A)** ***The Releases are rationally connected to the purpose of the restructuring*.**

62. The Releases will have the effect of diminishing claims against the Released Parties, which in turn will diminish indemnification claims by the Released Parties against the Administration Charge and the D&O Charge. Given that a purpose of CCAA proceedings is to maximize creditor recovery, a release that helps achieve this goal is rationally connected to the purpose of the Company's restructuring.

**(B)** ***The Released Parties made significant and meaningful contributions to the restructuring*.**

63. The Released Parties each played, or continue to play, a meaningful role in connection with the entering into the Vireo Purchase Agreement, the Maryland APA, the Maryland RPA and the Strategic Review.

64. The Company maintains a complex corporate structure, the reasons for which are set forth in the First Kroll Affidavit. The Lynch Affidavit identifies each D&O and their role.[59]

65. Management of the Company contributed towards the success of the Strategic Review by, among other things: (a) preparing restructuring and sale analyses; (b) facilitating bidder diligence; (c) negotiating the Transactions; (d) managing liquidity during divestitures; (e) serving as authorized representatives on cannabis licenses; and (f) maintaining key business relationships to preserve going-concern value.[60]

66. The Special Committee contributed towards the success of the Strategic Review by, among other things: (a) meeting weekly with management and advisors; (b) overseeing liquidity management; (c) engaging with Senior Noteholders; (d) overseeing Transaction negotiations and the Support Agreement; (e) supervising financial and legal advisors; (f) approving milestones and

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[59] Lynch Affidavit at para. 5.
[60] Lynch Affidavit at para. 9.

recommending to the Board; and (g) ensuring a fair, transparent process.[61]

67. The directors of the Parent Company's board also contributed meaningfully to the Strategic Review by, among other things: (a) overseeing the Strategic Review prior to the Special Committee's establishment; (b) establishing the Special Committee; (c) supervising Sale Transaction implementation; (d) designing the key employee retention program; and (e) authorizing the CCAA Proceedings.[62]

68. The Monitor Releasees made significant contributions to the CCAA Proceedings, without which the Transactions would likely not have been achieved.

69. Vireo and Free State Botanicals similarly made significant contributions, resulting in a going-concern solution for the Company's Remaining States and Maryland businesses.

70. The Monitor is of the view that the Transactions' successful outcome would not be possible without the D&Os' and other Released Parties' contributions.

### (C) *The Releases are fair, reasonable and not overly broad*.

71. The only claims which have been commenced against the D&Os as of the commencement of the CCAA Proceedings were certain employment related claims where certain members of management were named in addition to certain entities of the CC Group.[63] The proposed Releases do not affect these claims.

72. The Releases are significantly tailored both in terms of the Released Parties and the scope of liability being impacted. The Releases cover: (a) the <u>current</u> directors, officers, managers, members, employees, consultants, legal counsel and advisors of the Company, (b) the Monitor

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[61] Lynch Affidavit at para. 10.
[62] Lynch Affidavit at para. 11.
[63] Lynch Affidavit at para. 12.

and its representatives, (c) Vireo and its representatives, and (d) Free State Botanicals and 6797 Bowman Frederick LLC and their representatives, from any and all liabilities arising in connection with or relating to entering into the Vireo Purchase Agreement, the Maryland APA, the Maryland RPA, consummation of the Remaining States Transaction, consummation of the Maryland Transaction, the refreshed Strategic Review, the restructuring and sale efforts of the Applicants and the Subsidiaries, including the use of the proceeds related thereto, the CCAA Proceedings, or the Chapter 15 Proceedings.

73. The Releases do not cover former D&Os of the Company and also do not cover general liabilities that may arise from the Company's operations.

74. The scope of the Releases is consistent with or more narrow than recognized precedents outlined above. Further, the Releases explicitly carve out: (a) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is finally determined by a court of competent jurisdiction hearing the claim to have constituted fraud, willful misconduct, or gross negligence; or (b) any obligations under the Purchase Agreements, Transaction Agreements, or the Sale Approval Orders.[64]

***(D) The Applicants' restructuring could be jeopardized without the Releases.***

75. The Releases will achieve certainty and finality for the Released Parties efficiently and appropriately. The Releases are therefore an essential component of the Transactions.

**(E) *All creditors and contractual counterparties have knowledge of the nature and effect of the Releases*.**

76. The Company issued a press release announcing that it has filed for CCAA protection and entered into the Vireo and Maryland Purchase Agreements and broadly provided notice of the CCAA Proceedings.

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[64] Fifth Report at para. 40(b).

## PART VII – ORDER SOUGHT

77. For the foregoing reasons, the Applicants respectfully submit that this Court should grant the Remaining States Sale Approval Order, the Maryland Sale Approval Order, and the Ancillary Order in the forms requested.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 13th day of August, 2026.

Stikeman Elliott LLP

**STIKEMAN ELLIOTT LLP**
Counsel for the Applicants

**SCHEDULE "A"**
**LIST OF AUTHORITIES**

1. *Acerus Pharmaceuticals Corporation (Re),* 2023 ONSC 3314

2. *Arrangement relatif à Blackrock Metals Inc.,* 2022 QCCS 2828

3. *Arrangement relatif à Lion Electric Company*, 2025 QCCS 4192

4. *Cadillac Fairview Inc., Re*, 1995 CanLII 7363 (ONSC)

5. *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC)

6. *Elleway Acquisitions Limited v 4358376 Canada Inc.*, 2013 ONSC 7009

7. *Fire & Flower Holdings Corp (Re)*, (August 29, 2023), Toronto, Court File No. CV-23-00700581-00CL (Approval and Reverse Vesting Order) (ON SC)

8. *Global Light Telecommunications Inc.*, (Re), 2004 BCSC 745

9. *Golf Town Canada Holdings Inc (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL (CCAA Termination Order) (ON SC)

10. *Green Growth Brands Inc et al (Re)* (May 19, 2021), Toronto, Court File No. CV-20-00641220-00CL (Order Terminating CCAA Proceedings) (ON SC)

11. *Green Relief Inc (Re)*, 2020 ONSC 6837

12. *Guestlogix Inc., Re*, 2016 ONSC 1348

13. *Harte Gold Corp. (Re)*, 2022 ONSC 65

14. *Karrys Bros, Ltd. (Re)*, 2014 ONSC 7465

15. *LTL Management LLC (Re)*, 2021 ONSC 8357

16. *Lydian International Limited (Re)*, 2020 ONSC 4006

17. *MAV Beauty Brands Inc. et al.*, Endorsement of Justice Cavanagh dated November 24, 2023, at para. 7 (Court File No. CV-23-00709610-00CL)

18. *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586

19. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347

20. *Ontario Securities Commission v Bridging Finance Inc.*, 2022 ONSC 1857

21. *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934

22. *Pride Group Holdings Inc. et al.*, 2025 ONSC 3915

23. *Proposition de SRTX Inc.*, 2026 QCCS 570

24. *Re Bloom Lake*, 2015 QCCS 1920

25. *Re Brainhunter Inc.* [2009] O.J. No. 5207 (Ont. Sup. Ct. J.)

26. *Re Canwest Publishing Inc./Publications Canwest Inc.*, 2010 ONSC 2870

27. *Re Danier Leather Inc.*, 2016 ONSC 1044

28. *Re Doman Industries*, 2003 BCSC 376

29. *Re Golf Town Canada et al.*, Approval and Vesting Order granted September 30, 2016 Court File No. CV-16-11527-00CL)

30. *Re MAV Beauty Brands Inc. et al.*, Approval, Vesting and Distribution Order granted November 24, 2023 (Court File No. CV-23-00709610-00CL)

31. *Re Nelson Education Limited*, 2015 ONSC 5557

32. *Re Nortel Networks Corp.* (2009), 2009 CanLII 39492 (Ont. Sup. Ct. J.)

33. *Re PT Holdco, Inc. et al.*, Approval and Vesting Order granted February 25, 2016 (Court File No. CV-16-11257-00CL)

34. *Re Tool-Plas Systems Inc.*, 2008 CanLII 54791 (Ont. Sup. Ct. J.)

35. *Royal Bank v Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.)

36. *Sherman Estate v. Donovan*, 2021 SCC 25

37. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41

38. *Syncreon Group B.V. (Re)*, 2019 ONSC 5774

I certify that I am satisfied as to the authenticity of every authority.

August 13, 2026
Date

B.Ketwaroo
Brittney Ketwaroo

## SCHEDULE “B”
## TEXT OF STATUTES AND REGULATIONS

***COMPANIES’ CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c C-36**

**Restriction on disposition of business assets**

**36 (3)** In deciding whether to grant the authorization, the court is to consider, among other things,

**(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

**(b)** whether the monitor approved the process leading to the proposed sale or disposition;

**(c)** whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

**(d)** the extent to which the creditors were consulted;

**(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and

**(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

**SCHEDULE "C"**

***Karrys Bros Ltd. (Re),* 2014 ONSC 7465**

**CITATION:** Karrys Bros. Ltd. (Re), 2014 ONSC7465
**COURT FILE NO.:** 32-1942339/1942340/1942341
**DATE:** 20141224

**SUPERIOR COURT OF JUSTICE - ONTARIO**

IN THE MATTER OF AN INTENTION TO MAKE A PROPOSAL OF KARRYS BROS., LIMITED, KARRYS SOFTWARE LIMITED AND KARBRO TRANSPORT INC.,

**COUNSEL:** *E. Pillon and K. Esaw* for the Applicants

*L. Rogers* for PWC

*S. Graft* for BMO

*C. Armstrong* for Core-Mark

**HEARD:** December 23, 2014

**ENDORSEMENT**

**Overview**

[1] On December 23, 2014 I granted orders approving a sale of substantially all of the applicants' assets together with various related administrative orders, with reasons to follow. These are those reasons.

[2] This motion seeks approval of a sale of the applicants' assets out of the ordinary course, authorization to distribute funds to the senior secured lender, a sealing order of certain confidential information and various administrative orders, including:

(i) extending the time for filing a proposal;

(ii) approving a key employee retention agreement;

(iii) approving an administrative charge;

(iv) approving the consolidation of the applicants' proposal proceedings; and

(v) approving the report of the proposal trustee.

**Background**

[3] Karrys is a wholesale distributor of tobacco, confectionery, snacks, beverages, automotive supplies and other products to retail, gas and convenience stores across Canada. As of November 1, 2014, Karrys' assets were exceeded by its liabilities by over $1 million. Karrys experienced net losses of over $3 million in each of the last two years.

[4] As a result of its financial difficulties, Karrys committed defaults under its loan agreement with the Bank of Montréal in 2013. BMO is Karrys' senior secured lender. BMO agreed to a number of forbearance agreements to enable the sales process which is at the heart of this motion.

[5] Karrys commenced a sales process in December 2013. It retained a financial advisor, Capitalink. Karrys had initial, exclusive negotiations with Core-Mark, itself a wholesale distributor of similar goods, in May through July 2014. Those negotiations did not result in an agreement.

[6] Karrys retained Price Waterhouse Coopers to assist Karrys and Capitalink in undertaking a more expansive sale process. In the fall of 2014, Karrys developed a process in which Core-Mark agreed to make a stalking horse bid for substantially all of Karrys' assets.

[7] Over 53 potential strategic and financial buyers were also invited to bid on the assets. Thirteen of these potential buyers entered into confidentiality agreements and received a confidential information memorandum and access to Karrys' data room. PWC and Capitalink responded to all reasonable requests for information.

[8] By the bidding deadline of noon on December 10, 2014, however, no other bids were received. Core-Mark was, accordingly, declared the successful bidder.

[9] Karrys now asks for the court's approval of the asset purchase agreement with Core-Mark and for a vesting order, together with approval of distribution, from the proceeds, of the amount owed to BMO and other related relief.

**<u>The Sale and Vesting Order</u>**

[10] Jurisdiction to make orders approving the sale derives from s. 65.13 of the BIA. Factors for the court to consider when asked to approve a sale out of the ordinary course are also listed in s. 65.13.

[11] It is not necessary for the debtor to present its proposal under the BIA before an order approving a sale, *Re Komtech*, 2011 ONSC 3230.

[12] In this case, the sale was the result of a broad and comprehensive marketing process. Two financial advisors were engaged. When initial negotiations with Core-Mark did not produce an amount the applicants originally thought acceptable, another process was initiated with the assistance of PWC. Efforts to lever the Core-Mark offer were, however, although widely promoted, ultimately unsuccessful. The "market" has, in that sense, spoken.

[13] The proposal trustee, PWC, has reviewed the sale process and is supportive of the process and the result. The proposal trustee has, as well, conducted a detailed analysis of the Core-Mark bid measured against a "liquidation in bankruptcy" scenario. Even under a "best case" liquidation scenario, the unsecured creditors would be expected to recover significantly less than under the Core-Mark sale transaction. Under the proposed sale, there is the possibility of surplus for distribution to unsecured creditors. There would be no such possibility under a liquidation scenario. BMO, the senior secured lender, is also supportive of the process and the result.

[14] Because the purchase price represents, through an extensive sales process, the highest price realizable and an amount which is greater than what could be realized under a liquidation, the consideration to be received for the assets is reasonable and fair. Further, the sale will enable Karrys to make the payments contemplated under s. 65.13(8) of the BIA.

[15] The fact that the sales process was not pre-approved by the court is not a bar to the court's approval in this case. Is clear on the evidence that the Core-Mark transaction is the best available option in the circumstances. No one has come forward to argue otherwise. The test is the same whether approval is sought before or after the process – the principles in *Soundair* govern. The *Soundair* test has been met. A judgment call had to be made whether to further extend the process in hopes of perhaps finding a better bid. Further delay would just as likely have resulted in a greater erosion of value. An immediate sale was, on the evidence, the only way to maximize recovery.

[16] In addition, the process actually followed is indistinguishable from what the court might reasonably have approved had prior authorization been sought. There is no evidence, or likelihood, that Karrys or its creditors would be in a better position if some further, or other, sales process had been followed.

[17] The sale is approved and the vesting order shall issue.

**<u>The Key Supplier Issue</u>**

[18] On the very day Karrys filed its notice of intention to make a proposal, Karrys' principal tobacco supplier delivered a substantial quantity of tobacco. A dispute arose over payment. The supplier took the position it was under no legal obligation to continue to supply and that it would not supply unless payment was received. Karrys' supply agreement had expired and the parties were operating on the basis of an informal supply arrangement.

[19] Ensuring ongoing tobacco supply from this supplier was critical to Karrys in terms of the ongoing operations of the business pending the closing of the sale to Core-Mark, the satisfaction of conditions precedent to the closing with Core-Mark, including the loss of potential customers should their tobacco requirements not be satisfied, and the resulting risk that the Core-Mark transaction would be lost as a result.

[20] Karrys and its legal advisers considered there was significant litigation risk relating to the ability to enforce a stay of proceedings against the supplier in any event and, accordingly, entered into negotiations with the tobacco supplier.

[21] These negotiations resulted in a substantial payment to the supplier which, arguably, involved post-filing payment for a pre-filing obligation. Given the importance of this supplier to ongoing operations and to the success of the Core-Mark sale, however, Karrys, along with its advisors, had little option but to reach a settlement.

[22] Unlike the CCAA, the concept of "critical suppliers" is not found in the proposal provisions of the BIA. Nevertheless, in my view, similar considerations can and should be taken into account in appropriate circumstances. In this case, Karrys and its advisors reasonably believed that the ongoing viability of the business and the Core-Mark sale (which, as found

above, represents the highest realizable price for Karrys' assets available in the circumstances) required the ongoing availability of this critical source of supply. There is also a significant net benefit to Karrys arising from sales of the product supplied. The supply contract negotiated, in the context of both the importance of the supply and significant litigation risk, was, I find, reasonable in the circumstances.

**BMO Distribution**

[23] BMO delivered notices of intention to enforce its security. The unchallenged evidence before the court is that BMO holds a valid, perfected security interest over each of the applicants' assets. BMO is entitled to a distribution of proceeds from the sale in satisfaction of its claim.

**Sealing Order**

[24] I am satisfied that the confidential appendices should be sealed until the deal is closed. There is an important public interest in maximizing returns in proceedings of this kind. It is important, therefore, that until the deal is concluded, commercially sensitive information about the deal not be publicly disclosed. Failure to grant the order would impair the integrity of any subsequent process. In addition, in the context of the key employee retention agreement, there is sensitive personal information which ought not to be disclosed.

[25] The *Sierra Club* test has been met on the facts of this case, *Elleway Acquisitions Ltd.*, 2013 ONSC 7009. The salutary effects of granting the sealing order outweigh the limited deleterious effect of restricting access to these limited pieces of evidence.

**Extension**

[26] Section 50.4(9) of the BIA grants the jurisdiction to grant the extension. The initial proposal period expires on January 12, 2015. The Core-Mark transaction will not close until February 2015.

[27] The applicants are acting in good faith. There is some prospect of surplus funds for distribution to unsecured creditors, given time to close the Core-Mark sale and assess the remaining priorities and claims. The cash flow statements indicate that Karrys has sufficient cash to fund operations through to the end of February 2015. There is no evidence any creditor will be prejudiced by the extension.

[28] Accordingly, the time for filing a proposal is extended to February 23, 2015.

**Key Employee**

[29] It is often recognized in restructuring proceedings that retention of key employees is vital. Securing payment is, in turn, a vital incentive for the employee to remain.

[30] In this case, there is one employee whose assistance has been, and will remain, key to ongoing operations to the date of sale. The retention bonus in issue is relatively modest. It is supported by the proposal trustee and BMO. Without securing the retention payment, there is a

significant risk the employee would leave. In addition, given the abbreviated timeframe for closing the Core-Mark sale, it would be almost impossible to find a timely replacement.

[31] For these reasons, the retention agreement and charge, as requested, is approved.

**Administrative Charge**

[32] Section 64.2 of the BIA provides for a super-priority to secure the fees for needed professional services during the restructuring. Secured creditors have received notice of this request. The proposal trustee supports the granting of the charge. The amount sought is, in my view, appropriate. The administrative charge requested is approved.

**Consolidation**

[33] It is clear that the operations of the three applicants are closely intertwined such that it would be difficult to disentangle their affairs. In order to secure the just, most expeditious and least expensive resolution, it is necessary to consolidate these closely related bankruptcy proceedings. This will avoid duplication and reduce cost. The requested order is therefore granted.

**Proposal Trustee Report**

[34] Given my approval of the elements above, it follows that the first report and activities of the proposal trustee should also be approved.

Penny J.

**Date:** December 24, 2014

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

Court File No. CL-26-00000122-0000

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CANNABIST COMPANY HOLDINGS INC. ET AL.**

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

Proceeding commenced at Toronto

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