Court File No. CV-19-00632052-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE	)	MONDAY, THE 9TH
	)	
JUSTICE MCEWEN	)	DAY OF MARCH, 2020

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 **AGMEDICA BIOSCIENCE INC., 2472602 ONTARIO INC., 2642466 ONTARIO INC., 8895309 CANADA INC., WELLWORTH HEALTH CORP., 8050678 CANADA INC., 8326851 CANADA INC., TAVIVAT NATURALS INC., WORLDWIDE BEVERAGE INNOVATIONS INC., UNIQUE BEVERAGES (USA) INC., and ESEELA INC.**

(each an "**Applicant**" and, collectively, the "**Applicants**")

KEY EMPLOYEE RETENTION PROGRAM AND STAY EXTENSION ORDER

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (i) approving the key employee retention program (the "**KERP**") and the KERP Charge as described in the sixth report of Ernst & Young Inc., in its capacity as the Court-appointed monitor (the "**Monitor**") of the Applicants dated March 5, 2020, and appendices thereto (the "**Sixth Report**"), (ii) extending the stay of proceedings and (iii) approving the fees and disbursements of the Monitor and its counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Trevor Henry sworn March 4, 2020 (the "**Henry Affidavit**"), and the Sixth Report, and on hearing the submissions of counsel for the Applicants, the Monitor and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Adam Driedger sworn March 4, 2020, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period as ordered and defined in paragraph 17 of the Amended and Restated Initial Order dated December 12, 2019 (the "**Initial Order**"), is hereby extended until and including June 30, 2020.

KEY EMPLOYEE RETENTION PROGRAM

3. **THIS COURT ORDERS** that the KERP attached hereto as Schedule "A" is hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms thereof to the maximum aggregate amount of $200,000.

4. **THIS COURT ORDERS** that the unredacted version of the KERP, a copy of which is attached as Confidential Exhibit "E" to the Henry Affidavit, shall be and is hereby sealed, kept confidential, and shall not form part of the public record unless otherwise ordered by the Court.

5. **THIS COURT ORDERS** that prior to any extension of the Retention Period (as defined in the KERP) being granted by this Court, if any amounts are still owing to the DIP Lender, as such term is defined in the Initial Order, the DIP Lender shall provide written consent to the extension.

6. **THIS COURT ORDERS** that the KERP Participants (as defined in the KERP) shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"), which charge shall not exceed an aggregate amount of $200,000, to secure amounts payable to the KERP Participants pursuant to paragraph 3 of this Order.

7. **THIS COURT ORDERS** that the KERP Charge shall rank behind the Charges (as defined in the Initial Order) and immediately behind the prior registered security interests of SF V Bridge III, LP, Stone Quest Capital Corp., and Kathleen Glynn Philipp, and the KERP Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person.

8. **THIS COURT ORDERS** that the filing, registration or perfection of the KERP Charge shall not be required, and that the KERP Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the KERP Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

9. **THIS COURT ORDERS** that the KERP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the KERP Participants entitled to the benefit of the

KERP Charge thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made therein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the KERP Charge shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party; and

(b) none of the KERP Participants shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the KERP Charge.

10. **THIS COURT ORDERS** that the KERP Charge created by this Order over leases of real property in Canada shall only be a charge in the Applicants' interest in such real property leases.

11. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

FEE APPROVAL

12. **THIS COURT ORDERS** that the fees and disbursements of the Monitor in the amount of $508,616 for the period from November 30, 2019 to January 31, 2020 inclusive, as set out in the Sixth Report, are hereby approved.

13. **THIS COURT ORDERS** that the fees and disbursements of McCarthy Tétrault LLP, in its capacity as counsel to the Monitor, in the amount of $55,442.50 for the period from November 1, 2019 to January 31, 2020 inclusive, as set out in the Sixth Report, are hereby approved.

MISCELLANEOUS

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 0 9 2020

PER / PAR:

Schedule "A"

KEY EMPLOYEE RETENTION PLAN

This Key Employee Retention Program ("**KERP**"), sets out the retention plan proposed by AgMedica Bioscience Inc. ("**AgMedica**" or the "**Company**") on behalf of employees currently employed by Agmedica.

All capitalized terms not herein defined shall have the meaning ascribed to such terms in the Initial Order granted in the *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings with respect to AgMedica and its affiliates.

KERP

The primary objective of the proposed KERP is to motivate key employees who are vital to the ongoing operations of the Company to continue in their current roles during these challenging times, and to aid in the preservation of enterprise value. The proposed KERP recipients are instrumental to servicing current client commitments, and helping to acquire and deliver on future contracts, ultimately allowing the business to continue as a going concern.

Key Employees

A list of key employees can be found in Appendix "A" of this KERP along with the proposed pay-out (the '**Retention Pay**") to each employee. Appendix "A" may be supplemented by the Company as it deems necessary in the circumstances, which supplement shall be approved by the Monitor and the DIP Lender.

The employees selected for this retention program have the skills, knowledge and capabilities to serve project development needs, engage and direct specific work teams, and keep the business running to preserve the maximum value. Most of the selected employees have other employment options available to them. They are not replaceable in the near term due to their specialized skills and role at the Company, relationships with clients and the stringent deadlines the Company must comply with under the CCAA proceedings. Further, any replacements for the key employees would face a steep learning curve of this nascent industry, may require additional security clearance screening by Health Canada and would be challenged to develop a thorough understanding of the AgMedica business within the time required to successfully move the restructuring forward.

The KERP recipients perform the following functions collectively:

- Paramount to the supply chain and client services;
- Are technical leads and are the architects of the Company's products;
- Lead operational restructuring efforts and execution;
- Manage the internal processes that allow the Company to manage employees and pay suppliers and employees; and
- Have operational and legacy knowledge required for product quality, product support, and internal business management processes.

Attention to both client service and technical expertise is especially important to the ongoing success of AgMedica and is critical to the Company maintaining market strength, business viability, and enterprise value.

The proposed KERP provides Retention Pay based on the individual's position and relative impact and value to the business. The Company believes that the proposed KERP properly incentivizes the key employees as it demonstrates the Company's ability to reward employees financially and the commitment to the future success of AgMedica.

Retention Period and Terms of Payment:

The retention period covers the period from the date of filing to the Retention Payment Date (the "**Retention Period**"). The Retention Payment Date shall be the date upon which AgMedica completes one or more Transactions (as defined below) with respect to all or substantially all of the Applicants' property.

Payment will be made in one lump sum in the first payroll following the end of the Retention Period. The lump sum will be subject to the required tax withholdings and source deductions. The KERP and the Retention Pay is subject to the following terms and conditions:

1. The KERP is conditional upon AgMedica completing any Transaction or Transactions;
2. The employee must remain employed in their current position, or as otherwise assigned by the Company, through to the end of the Retention Period, to be eligible to receive the Retention Pay;
3. The employee must fulfil their performance expectations, and work their regular schedule throughout the Retention Period;
4. Unscheduled absences for any reason, for more than five cumulative days, in any month, throughout the Retention Period will result in a pro-rata reduction of the Retention Pay for the days that exceed the allowable five ;
5. If, during the Retention Period, employees do not meet performance expectations, voluntarily resign or retire, or involuntarily separate for any reason, other than total disability, death or termination without cause, they will not receive any Retention Pay, prorated or otherwise;
6. If at any point during the Retention Period the Company decides to extend the Retention Period, it will be presented to employees by way of a revised Retention Letter which is required to be signed by the employee. The financial terms of any revised Retention Letter will be consistent with the original Retention Letter. The employee may choose to agree to the new terms by signing the revised letter or they may decide, without penalty, to continue under the terms of the original Retention Letter. If an employee continues under the terms of the original Retention Letter and there is no Transaction in the original Retention Period, the KERP will expire and the employee will not be entitled to any payment under any revised Retention Letter; and
7. Should the office in which the key employee resides be closed, prior to the end of the retention period, a pro-rated amount will be paid to the employee as part of the KERP.

For the purposes this KERP, "Transaction" means a resulting transaction or series of transactions consummated through the sale and investment solicitation process currently being undertaken by the Company under an order granted under the CCAA by the Ontario Superior Court of Justice and includes any joint venture, partnership, spin-off, split-off, business combination, recapitalization, acquisition, sale, distribution, transfer or other disposition of assets or equity interests, or other transaction, involving the business, assets or equity interests of the Company and/or any of its subsidiaries or affiliates.

KERP Charge

The Retention Pay contemplated herein shall be secured by a court ordered charge against all of the Property (as defined in the Initial Order granted in the CCAA Proceedings) of AgMedica and its affiliates, which charge will rank immediately behind all of the other secured creditors. The Charge will be in an aggregate amount of $200,000.

Appendix A
[CONFIDENTIAL]

Employee Name	Position	Retention Pay
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
TOTAL		**199,998.40**

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Proceedings commenced at Toronto

KERP AND STAY EXTENSION ORDER

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