

**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 GREEN GROWTH BRANDS INC.,  
GGB CANADA INC., GREEN GROWTH BRANDS REALTY LTD.  
AND XANTHIC BIOPHARMA LIMITED**

Applicants

**SUPPLEMENTARY RESPONDING AND CROSS-MOTION RECORD  
OF MICHAEL D. HORVITZ  
(Application Returnable May 29, 2020)**

May 29, 2020

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
Suite 1500 - 2 Queen Street East  
Toronto, ON M5C 3G5

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Lawyers for Michael D. Horvitz as Grantor  
and Trustee for and on behalf of the  
Revocable Trust

**TO: THE SERVICE LIST**

**AND GREEN GROWTH FLORIDA LLC**

**TO:** 4300 East Fifth Avenue  
Columbus, OH 43219  
USA

By counsel to its parent corporation, Green  
Grown Brands Inc.

**AND JEAN SCHOTTENSTEIN**

**TO:** By legal counsel for All Js Holdings LLC

**AND JAY SCHOTTENSTEIN**

**TO:** By legal counsel for All Js Holdings LLC

**AND JOSEPH SCHOTTENSTEIN a.k.a. JOEY**  
**TO: SCHOTTENSTEIN**

By legal counsel for All Js Holdings LLC

**AND WAYNE BOICH**

**TO:** By legal counsel for WMB Resources, LLC

# INDEX

A

**ONTARIO  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS'*  
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Applicants

**AFFIDAVIT OF JANIS BALVERS**

I, **JANIS BALVERS**, residing in the Town of Ajax, in the Province of Ontario, **MAKE  
OATH AND SAY AS FOLLOWS:**

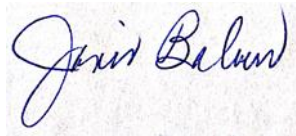
1. I am the legal assistant to Lou Brzezinski counsel for, Michael D. Horvitz Revocable Trust, a May Debenture holder of the Applicant company, and as such, I have knowledge of the matters to which I hereinafter depose.
2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief, and do verily believe it to be true.
3. To the extent that any of the information set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true.

4. On May 28, 2020, at 12:25PM, Mr. Wael Rostom, counsel for All Js Greenspace LLC, sent the attached letter to Mr. Brzezinski. Attached to this affidavit and marked as **Exhibit “1”** is a copy of Mr. Rostom’s letter along with cover email.

5. On May 28, 2020, at 2:30PM, Mr. Brzezinski sent the attached email to Mr. Rostom in response to his letter. Attached to this affidavit and marked as **Exhibit “2”** is a copy of Mr. Brzezinski’s email dated May 28, 2020.

6. On May 28, 2020, at 6:18PM, Mr. Rostom sent the attached email to Mr. Brzezinski. Attached to this affidavit and marked as **Exhibit “3”** is a copy of Mr. Rostom’s email dated May 28, 2020.

**I CONFIRM THAT** while connected via video conference, Janis Balvers displayed his government issued photo identification in the form of a Driver’s Licence and that I am reasonably satisfied that it is valid and current and that the person pictured is the same person as Janis Balvers. I confirm that I reviewed each page of this affidavit with Janis Balvisand can confirm that that each of the pages produced here are identical. )  
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**JANIS BALVERS**

**SWORN BEFORE ME** by video conference from the Town of Ajax, Ontario, to the City of Toronto in the Province of Ontario on May 28, 2020



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A Commissioner for Taking Affidavits

1

**THIS IS EXHIBIT “1” REFERRED  
TO IN THE AFFIDAVIT OF JANIS BALVERS, SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF MAY, 2020.**

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is fluid and cursive, with a long horizontal stroke at the end.

---

*Stephen Gaudreau*  
A Commissioner of Oaths

**From:** Stephen Brown-Okruhlik [mailto:Stephen.Brown-Okruhlik@mcmillan.ca]

**Sent:** Thursday, May 28, 2020 12:35 PM

**To:** Lou Brzezinski

**Cc:** Wael Rostom ; ATAYLOR@stikeman.com; MBurkett@stikeman.com; Sanja Sopic ; 'sharon.s.hamilton@ca.ey.com' ; 'david.saldanha@ca.ey.com' ; mwasserman@osler.com; MPaterson@osler.com; RWhitaker@greengrowthbrands.com; KKiffner@greengrowthbrands.com

**Subject:** Letter to L. Brzezinski (May 28, 2020)

Mr. Brzezinski,

Please see the attached correspondence.

Kind regards,  
Stephen



**Stephen Brown-Okruhlik**

Partner

d 416.865.7043 | f 416.865.7048

[stephen.brown-okruhlik@mcmillan.ca](mailto:stephen.brown-okruhlik@mcmillan.ca)

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Assistant: Daisy Leslie | 416.865.7123 | [daisy.leslie@mcmillan.ca](mailto:daisy.leslie@mcmillan.ca)

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Reply to the Attention of: Wael Rostom  
Direct Line: 416.865.7790  
Direct Fax: 416.865.7048  
Email Address: wael.rostom@mcmillan.ca  
Our File No.: 272835  
Date: May 28, 2020

## EMAIL

Lou Brzezinski  
Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto, Ontario  
M5C 2G5

Dear Mr. Brzezinski

**Re: In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of Green Growth Brands Inc. ("GGB"), GGB Canada Inc., Green Growth Brands Realty Ltd. and Xanthic Biopharma Limited (collectively, the Applicants) Court File No. CV-20-00641220-00CL**

We are counsel to All Js Greenspace LLC ("All Js") in the above captioned proceeding. We are writing in response to your letter dated May 26, 2020 addressed to Mr. Ashley Taylor and the undersigned. We will only address the allegations made in connection with our client. We leave it to Mr. Taylor and Mr. Phoenix to reply on behalf of their respective clients if they see fit.

Your letter contains several factual inaccuracies and demonstrates a flawed understanding of significant aspects of the matters discussed therein. We hope this letter will help clarify these matters.

### **All Js Greenspace LLC**

While we only represent All Js, your client is well aware that All Js and various Schottenstein trusts have provided direct financial support to GGB in amounts that are multiple times greater than any other stakeholder. Some important examples include:

- significant equity investments
- providing \$30 million of the total \$45.5 million issuance of May Debentures;
- providing in excess of US\$18 million of working capital to GGB pursuant to the Backstop Commitment;
- providing an additional \$3.1 million in working capital under the All Js Bridge Note and the two recent secured bridge notes issued to All Js;
- agreeing to defer interest payments due under the May Debentures while your client and the other May debentureholders received interest on their Debentures; and
- providing the DIP loan to fund GGB's restructuring efforts.

Any suggestion that All Js' involvement with GGB has amounted to self-dealing is manifestly wrong.

### **The SISP and Stalking Horse Agreement**

Contrary to your assertions, the proposed SISP is designed to maximize value for all creditors of GGB. In addition, the Stalking Horse Bid provides a clear path to exit for secured creditors if no superior offer is selected and closed.

Your letter suggests that following consummation of the transaction contemplated in the Stalking Horse APA, Acquire Co "will assume and presumably thereafter pay the May Debentures and the Backstop Debentures". This is incorrect. The debt owing under the DIP Charge, and the May and Backstop Debentures would be credit bid for GGB's assets. Those debts would be extinguished as a result. That is the nature of credit bidding.

The Stalking Horse Bid has been approved pursuant to Extraordinary Resolutions signed by holders of more than 66 2/3% of each of, respectively, the May Debentures and Backstop Debentures. These resolutions were made by written instrument as expressly permitted in the debenture indentures.

Contrary to the suggestion made in your letter, there is no obligation for the requisite majority holders to convene a meeting of debentureholders or to consult with other debentureholders pursuant to the May Indenture prior to passing an Extraordinary Resolution by an instrument in writing. We refer you to Section 7.14 of the May Indenture, which expressly provides that all actions which may be taken and all the powers that may be exercised by the registered debentureholders at a meeting held as provided for in Article 7 may also be taken and exercised by the registered debentureholders holding at least 66 2/3% of the Debentures then outstanding by an instrument in writing, including an Extraordinary Resolution.

I understand that your client is a sophisticated business person. I expect that he had the benefit of legal advice in connection with his investment in the May Debentures. He accordingly understood, or should have understood, that as a minority debentureholder, he would be subject to the powers exercisable by a two-thirds majority under the relevant credit documents, which includes the power to credit bid the May Debenture debt in cooperation with other classes of creditors.

In your letter, you refer to the "WMB Agreement". All Js is not party to an agreement with GGB and WMB. We believe you are referring to an agreement concerning the anticipated capitalization of Acquire Co after closing of the Stalking Horse Bid. We planned to disclose this agreement to your client at the appropriate time. To this end, we would be pleased to provide you with a copy if you and your client are prepared to provide an acceptable confidentiality undertaking.

### **Consultations with Your Client**

Your letter alleges that "the proposed DIP, Stalking Horse acquisition agreement, sale and solicitation procedures and related agreements have been orchestrated in a closed process among non-arms' length parties". This is incorrect. As you reference in your letter, your client has been in contact and had several conversations with a key stakeholder in this proceeding, Wayne Boich. We assume that the information received by your client and discussed in your letter was received from Mr. Boich. Your letter leaves the reader with the impression that the discussions you describe occurred very recently. I understand that, in fact, these discussions began weeks ago and that your client has possessed the relevant information (to the extent it is correct) for some time.

Your letter also ignores the fact that your client was involved in discussions regarding the financial conditions of the company and possible restructuring options. Specifically, I understand that GGB's creditors, including your client, had significant discussions in January and February about the company's financial situation and high leverage levels as well as options to restructure its existing debt.

Any suggestion by your client that he has been excluded from "a closed process among non-arms' length parties" is disingenuous and wrong.

### **Jay Schottenstein Guarantee**

We do not represent Mr. Jay Schottenstein and we have no instructions or authority to respond on his behalf. Having said that, we clearly dispute your allegations in respect of the treatment of his guarantee.

First, the GAOC Note was put in place prior to the issuance of the May Debentures. We note that Mr. Schottenstein gave the guarantee to the holder of the GAOC Note well after the issuance of the May Debentures. Accordingly, the May Debentureholders did not have any

reasonable expectation at the time of making the investment that any guarantee would be available at the maturity of the GAOC Note.

Second, you appear to ignore the law of guarantee and a guarantor's right of subrogation. A guarantee is only available to protect the beneficiary of a guarantee, not the debtor company or its junior creditors. Also, upon payment on a guarantee, the guarantor is subrogated into the position of the creditor. Accordingly, the guarantor would then hold the entire claim and related security against the debtor company. There is no advantage to junior creditors from a payment on the guarantee of a senior secured claim.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Wael Rostom', is written over a light blue horizontal line.

For Wael Rostom

**THIS IS EXHIBIT “2” REFERRED  
TO IN THE AFFIDAVIT OF JANIS BALVERS, SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF MAY, 2020.**

A handwritten signature in black ink, appearing to read "Stephen Gaudreau". The signature is fluid and cursive, with a long horizontal stroke at the end.

---

*Stephen Gaudreau*  
A Commissioner of Oaths

2

**From:** Lou Brzezinski

**Date:** May 28, 2020 at 2:30:00 PM EDT

**To:** Stephen Brown-Okruhlik

**Cc:** Wael Rostom , "ATAYLOR@stikeman.com" , "MBurkett@stikeman.com" , Sanja Sopic , "sharon.s.hamilton@ca.ey.com" , "david.saldanha@ca.ey.com" , "mwasserman@osler.com" , "MPaterson@osler.com" , "RWhitaker@greengrowthbrands.com" , "KKiffner@greengrowthbrands.com"

**Subject:** RE: Letter to L. Brzezinski (May 28, 2020)

Hi Wael;

Could you kindly provide the confidentiality undertaking referenced in your letter in respect of the WMB Agreement.

Lou Brzezinski

Partner

[lbrzezinski@blaney.com](mailto:lbrzezinski@blaney.com)

☎416-593-2952 | ☎416-594-5084

---

**From:** Stephen Brown-Okruhlik [mailto:Stephen.Brown-Okruhlik@mcmillan.ca]

**Sent:** Thursday, May 28, 2020 12:35 PM

**To:** Lou Brzezinski

**Cc:** Wael Rostom ; ATAYLOR@stikeman.com; MBurkett@stikeman.com; Sanja Sopic ; 'sharon.s.hamilton@ca.ey.com' ; 'david.saldanha@ca.ey.com' ; mwasserman@osler.com; MPaterson@osler.com; RWhitaker@greengrowthbrands.com; KKiffner@greengrowthbrands.com

**Subject:** Letter to L. Brzezinski (May 28, 2020)

Mr. Brzezinski,

Please see the attached correspondence.

Kind regards,

Stephen



**Stephen Brown-Okruhlik**

Partner

d 416.865.7043 | f 416.865.7048  
[stephen.brown-okruhlik@mcmillan.ca](mailto:stephen.brown-okruhlik@mcmillan.ca)

Assistant: Margie Napolitano | 416.865.7150 | [margie.napolitano@mcmillan.ca](mailto:margie.napolitano@mcmillan.ca)  
Assistant: Daisy Leslie | 416.865.7123 | [daisy.leslie@mcmillan.ca](mailto:daisy.leslie@mcmillan.ca)

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**THIS IS EXHIBIT “3” REFERRED  
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---

*Stephen Gaudreau*  
A Commissioner of Oaths

## Stephen Gaudreau

---

**From:** Wael Rostom <Wael.Rostom@mcmillan.ca>  
**Sent:** May 28, 2020 6:18 PM  
**To:** Lou Brzezinski  
**Cc:** Stephen Gaudreau; Stephen Brown-Okruhlik; Ashley Taylor; Marc S. Wasserman (mwasserman@osler.com); Wael Rostom  
**Subject:** Green Growth Brands Inc.

Lou,

Your responding record purports to serve individuals personally through McMillan LLP as counsel for All Js Holdings LLC. Given that we have put you on notice in writing 3 times prior to serving your record that we do not represent Mr. Jay Schottenstein, I am frankly shocked that you still attempted to serve your record to Mr. Jay Schottenstein through my office. You now also purport serve Jean Schottenstein and Joey Schottenstein personally through our office as counsel to All Js Holdings LLC. You must know that your service on all three of these individuals is ineffective. I have no authority to accept service on behalf of Jay Schottenstein, Jean Schottenstein or Joey Schottenstein. I will certainly raise this issue with His Honour tomorrow morning.

Regards

Wael



**Wael Rostom**

Co-Chair, Financial Services and Restructuring  
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c +1.416.276.8743  
wael.rostom@mcmillan.ca

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**ONTARIO  
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Proceeding commenced at Toronto

**SUPPLEMENTARY RESPONDING AND CROSS-MOTION RECORD OF  
MICHAEL D. HORVITZ (MOTION RETURNABLE MAY 29, 2020)**

**BLANEY McMURTRY LLP**

Barristers and Solicitors  
Suite 1500 - 2 Queen Street East  
Toronto, ON M5C 3G5

**Lou Brzezinski** LSUC #19794M

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**Varoujan Arman** LSO #60025K

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**Stephen Gaudreau** LSO #65895M

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Lawyers for Michael D. Horvitz Revocable Trust