

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY, THE 11th

)

JUSTICE KOEHNEN

)

DAY OF MARCH, 2021



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 PHARMHOUSE INC. (the "**Applicant**")

**ANCILLARY ORDER
(Distributions, DIP Amendment, KERP, Settlement Approval
Fee Approval and Stay Extension)**

THIS MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by Zoom videoconference as a result of the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicant, the affidavit of Peter Kampian sworn March 4, 2021 (the "**Kampian Affidavit**"), the Fifth Report of Ernst & Young Inc. (the "**Fifth Report**"), in its capacity as monitor of the Applicant (the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for RIV Capital Corporation (f/k/a Canopy Rivers Corporation) (the "**DIP Lender**"), counsel for Bank of Montreal as Agent, counsel for Sensei Ag Holdings, Inc. and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Joshua Foster sworn March 4, 2021;

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in: (i) the Second Amended and Restated Initial Order dated October 30, 2020 (the "**Second Amended and Restated Initial Order**"); (ii) the Stay Period and DIP Amendment Order dated February 25, 2021 (the "**Stay Period and DIP Amendment Order**"); or (iii) the Kampian Affidavit, as applicable.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that the distributions authorized and approved by this Order shall at all times be subject to the completion of the Transaction and the receipt of the Sale Proceeds by the Monitor.

4. **THIS COURT ORDERS** that the Monitor is authorized and directed to pay from the Sale Proceeds all amounts due to the SISP Advisor pursuant to the SISP Advisor Engagement Letter (the "**SISP Advisor Distribution**").

5. **THIS COURT ORDERS** that, subject to the creation and retention of the Reserve to be agreed upon by the Applicant, the Monitor, the DIP Lender the Agent and Canopy Growth (as defined below) or on further order of the Court and the payment of the SISP Advisor Distribution, the Monitor is authorized and directed to distribute the remainder of the Net Sale Proceeds to the Agent in partial satisfaction of the Applicant's obligations owing to the lenders under the Pre-Filing Senior Lenders' Credit Agreement (the "**Agent Distribution**" and together with the SISP Advisor Distribution, the "**Distributions**").

DIP AMENDMENT

6. **THIS COURT ORDERS** that the execution by the Applicant of Amendment No. 6 dated March 11, 2021 to the Commitment Letter (the "**Sixth DIP Amendment**"), a substantially final copy of which is attached as Appendix "H" to the Fifth Report, is hereby authorized and

approved, pursuant to which the maximum principal amount of the DIP Loan under the Commitment Letter was increased by an additional \$340,000 (to \$10,740,000 in the aggregate).

7. **THIS COURT ORDERS** that:

- (a) paragraphs 43 to 49 of the Second Amended and Restated Initial Order shall apply to the Commitment Letter as amended by the Sixth DIP Amendment and all references to the Commitment Letter contained in the Second Amended and Restated Initial Order shall be deemed to be references to the Commitment Letter as amended by the Sixth DIP Amendment;
- (b) the DIP Lender's Charge shall secure all amounts owing by the Applicant to the DIP Lender under the Commitment Letter and Definitive Documents as amended by the Sixth DIP Amendment; and
- (c) for greater certainty, paragraphs 46 and 52 of the Second Amended and Restated Initial Order are hereby amended to replace the references to "\$10,400,000" with "\$10,740,000".

KEY EMPLOYEE RETENTION PLAN

8. **THIS COURT ORDERS** that the key employee retention plan (the "**Second KERP**") described in the Kampian Affidavit and the Fifth Report, the details of which are contained in Confidential Appendix "D" to the Fifth Report (the "**Confidential KERP Appendix**"), is hereby approved and the Applicant is authorized and directed to make payments in accordance with the terms thereof.

9. **THIS COURT ORDERS** that payments made by the Applicant pursuant to this Order in respect of the Second KERP and the Distributions do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

REPLENISHMENT OF CASH COLLATERAL AND PRINCIPAL REPAYMENT

10. **THIS COURT ORDERS** that, notwithstanding anything contained in the Second Amended and Restated Initial Order or the Stay Period and DIP Amendment Order, upon the occurrence of an event of default under the Pre-Filing Senior Lenders' Credit Agreement, save and except in respect of:

- (a) the Applicant's proceedings under the CCAA;
- (b) the failure to pay the September Principal Amount;
- (c) the failure to pay the December Principal Payment; and
- (d) the failure to pay the principal payment due March 31, 2021 under the Pre-Filing Senior Lenders' Credit Agreement (the "**March Principal Payment**"),

the Agent, upon 7 days notice to the Applicant, the DIP Lender and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Pre-Filing Senior Lenders' Credit Agreement or the Pre-Filing Senior Lenders' Security.

11. **THIS COURT ORDERS** that, notwithstanding anything else contained in this Order or the Second Amended and Restated Initial Order, the Agent is permitted to withdraw the:

- (a) September Principal Amount;
- (b) the December Principal Payment,
- (c) the March Principal Payment; and/or
- (d) interest payments due under the Pre-Filing Senior Lenders' Credit Agreement on or around March 1, 2021, April 1, 2021, May 1, 2010 and June 1, 2021;

from the Cash Collateral provided, however, that the Applicant shall have no obligation to replenish any such amount(s) withdrawn from the Cash Collateral prior to June 30, 2021.

SETTLEMENT APPROVAL

12. **THIS COURT ORDERS** that the settlement agreement dated March 8, 2021 between TerrAscend Canada Inc., TerrAscend Corp. and the Applicant (the "**Settlement Agreement**") attached as Confidential Appendix "B" to the Fifth Report (the "**Confidential Settlement Appendix**") is hereby approved.

13. **THIS COURT ORDERS** that the Applicant is hereby authorized to do all things as are reasonably necessary to implement and give effect to the Settlement Agreement and carry out its obligations thereunder.

APPROVAL OF THE MONITOR'S REPORT, ACTIVITIES AND FEES

14. **THIS COURT ORDERS** that the Fifth Report, and the activities of the Monitor and its counsel referred to therein be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

15. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as set out in the Fifth Report, be and are hereby approved.

SEALING

16. **THIS COURT ORDERS** that the Confidential KERP Appendix and the Confidential Settlement Appendix are hereby sealed and shall not form part of the public record until further order of the Court.

EXTENSION OF THE STAY PERIOD

17. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including June 30, 2021.

DISPOSITION OF OTHER ASSETS

18. **THIS COURT ORDERS** that, notwithstanding anything in the Second Amended and Restated Initial Order or the CCAA, the Applicant shall, subject to the consent of the Monitor,

the Agent and the DIP Lender, have the right to sell or dispose of all assets that are not Purchased Assets under the Sale Agreement (the "**Remaining Assets**") without any further Order of this Court, but the proceeds of the Remaining Assets (exclusive of any proceeds from the sale or disposition of the Applicant's cannabis inventory, the Purchase Price and the Settlement Funds (each as defined in the Settlement Agreement)) shall be immediately paid to and held by the Monitor and not distributed, applied or otherwise disposed of without further Order of the Court. The Applicant and the Monitor, as the case may be, shall maintain complete accounting and other records of any disposition of the Remaining Assets and their proceeds.

CANOPY GROWTH CLAIMS ADJUDICATION

19. **THIS COURT ORDERS** that, notwithstanding anything in this Order or the Claims Identification Order dated October 29, 2020:

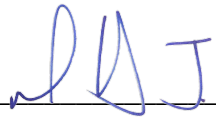
- (a) the Court shall, on motion brought by Canopy Growth Corporation ("**Canopy Growth**"), on May 4, 2021, determine whether any of the claims asserted by Canopy Growth Corporation rank in priority to the Pre-Filing Senior Lenders' Security, and if so, the quantum of such claims. The Court shall further determine whether, as a result of such adjudication, any portion of the Reserve may be distributed, and to which parties (the "**Canopy Growth Priority Motion**");
- (b) Canopy Growth, the Applicant, the Monitor and any other interested parties shall attempt to agree on the proper procedure, including on the scope of any documentary productions by any party on the Canopy Growth Priority Motion. Any disagreements about the proper procedure shall be resolved by a judge at a 9:30 case conference in advance of the hearing of the Canopy Growth Priority Motion; and
- (c) the Monitor shall not distribute any portion of the Reserve in accordance with any Order made in respect of the Canopy Growth Priority Motion, until ten (10) days after any such order is granted, but subject to any further Order of the Court, or an Order of any court of appeal.

GENERAL

20. **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, to give effect to this Order and to assist the Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and is 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.

22. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.


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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN
THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PHARMHOUSE INC.**

Court File No.: CV-20-00647704-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

ANCILLARY ORDER
(Distributions, DIP Amendment, KERP,
Settlement Approval, Fee Approval
and Stay Extension)

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