Court File No. CV-20-00638930-00CL

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

SUPPLEMENTARY RESPONDING MOTION RECORD OF KPMG LLP

April 14, 2021

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TO: **SERVICE LIST**

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Applicants

I N D E X

TAB 1

Court File No. CV-20-00638930-00CL

ONTARIO
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Applicants

AFFIDAVIT OF NATALINA ARVAJ

I, Natalina Arvaj, of the City of Vaughan, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an assistant at Blake, Cassels & Graydon LLP ("Blakes"), counsel to KPMG LLP ("KPMG") in this matter. As such, I have personal knowledge of the matters contained in this Affidavit. Where I rely on information obtained from others, I state the source of such information and in all cases believe it to be true.

2. On April 14, 2021, I delivered a letter from Andrea Laing, a partner at Blakes with carriage of this matter, to counsel for the Applicant, Monitor, and Plaintiffs' Consortium, via email. A copy of this letter is attached to my affidavit as Exhibit "A".

3. This affidavit is sworn in support of KPMG's response to the Applicants' motion for Plan Filing and Meetings Order, and for no other purpose.

SWORN BEFORE ME over video conference on April 14, 2021, administered in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely, under the *Commissioners for Taking Affidavits Act*; the affiant was located at the City of Vaughan, in the Province of Ontario and the commissioner was located at the City of Mississauga, in the Province of Ontario.

Commissioner for Taking Affidavits
(or as may be)

NATALIA JAWORSKA
Licensed Paralegal LSO# P07989

NATALINA ARVAJ

This is **Exhibit "A"** referred to in
the Affidavit of Natalina Arvaj

Sworn remotely before me this 14th day of April 2021
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

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April 14, 2021

VIA EMAIL

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Dear Counsel:

Re: *Re CannTrust Holdings Inc.,* CV-20-00638930-00CL

We refer to the proposed amended draft Plan of Compromise, Arrangement and Reorganization of CannTrust Holdings Inc., CannTrust Inc. and Elmcliffe Investments Inc., which we received on the evening of April 9, 2021 (the "Plan"). The capitalized terms in this letter not otherwise defined have the meanings given to them in the Plan.

KPMG appreciates that the Plan addresses certain of the concerns that it has raised in its factum delivered March 17, 2021. These efforts provide the requisite window to resolves KPMG's outstanding concerns. These outstanding concerns center on the fact that the Plan continues to treat Non-Settlement Parties unfairly, among other things, by denying conventional protections that are typically afforded in the context of partial settlements. The Plan also purports to distort rights and obligations as between non-debtor entities with no apparent justification or connection to the objectives of the CCAA.

Notably, Section 7.3(3) of the Plan continues to enable the Securities Claimants to seek damages from Non-Settlement Parties that are properly attributable to Settlement Parties. For example, the recoverability of damages against CannTrust under its current circumstances is still stated to be a relevant consideration in an allocation of liability between Settlement and Non-Settlement Parties. This unfairness is compounded by the most recent changes to the plan which introduce the concept of "Channelled Claims". These new provisions permit the Securities Claimants to continue litigation against Settlement Parties for the purposes of recovering against anticipated insurance proceeds--proceeds which have not been factored into the analysis supporting the original justifications for the Plan. Why should Non-Settlement Parties continue to be exposed to joint and several liability while, at the same time: i) they are prohibited from pursuing claims over which might be satisfied out of insurance proceeds and ii) the Securities Claimants are afforded exclusive access to the recovery pool represented by the insurance? For this and other reasons, KPMG maintains its opposition to the Plan.

KPMG will withdraw its opposition to the Plan if certain changes are made. Attached as Schedule "A" is a redline showing the required revisions. I also attach a clean version of the revised Plan terms in Word format.

The revisions to Article 7.3(2) meet the requirement that the partial settlement of a multi-party action confines a plaintiffs' recovery against non-settling defendants to the non-settling defendants' proportionate share of liability and are consistent with the precedents set out at paragraphs 47 to 48 and 53 to 54 of KPMG's factum.

CannTrust has attempted to justify the language of 7.3(3) of the Plan in its reply factum but a closer look at the authorities it cites simply confirm that the language is unprecedented. In fact, the two Ontario cases CannTrust cites support KPMG's entitlement to conventional bar order language, which was endorsed by the court in both instances.

In *Endean v. St. Joseph's General Hospital*, 2019 ONCA 181, Justice Zarnett used the language of "recoverability" to explain the inappropriateness of apportioning liability to insolvent parties who were *not* defendants in the underlying litigation. As between the defendants to the action, Justice Zarnett did not take issue with the standard proportionate liability language in the *Pierringe*r order, attached as a schedule to the decision, and expressly stated that the defendants in the action had the "right to recover from the other for the latter's *proportionate share of any fault*" (para. 50) [emphasis added].

The passage from *Hollinger Inc., Re*, 2012 ONSC 5107 cited at paragraph 25 of CannTrust's reply factum is the Court's articulation of the applicant's position. It is not a decision of the Court as to the appropriateness of the standard proportionate liability language contained in the bar order at issue, which was not a contested issue before the Court. To the contrary, the Court endorsed the settling parties' agreement "to limit their recovery from a Non-Settling Defendant to his/her or its several liability only, provided that such Non-Settling Defendant's liability is demonstrably shared with a Settling Party against whom the Non-Settling Defendant successfully proves a claim for contribution and indemnity (para. 33). The Court described *Pierringer* agreements in general as "leaving the remaining defendants responsible *only for the loss that they may be found to have actually caused, with no joint liability*" with the "remaining Non-Settling Defendants … responsible only for their *proportionate share of any loss* (para. 54) [emphasis added]. In outlining the governing law on this issue, the Court made no mention of recoverability as an applicable consideration even though the CCAA applicants were themselves settling parties in the action.

Arrangement relatif à 9323-7055 Quebec inc. (Aquadis International Inc.), 2018 QCCS 2945, does not apply due to the specific Quebec product liability laws at issue in that case. The provisions of article 1531 of the *Civil Code of Québec* place full responsibility for a defective product on each party in the chain of distribution and sale, as well as the manufacturer (solidary liability), meaning no "several" liability can be stipulated in a release in the manner typical in common law provinces.

It is KPMG's position that, if liability is appropriately severed, there *are no claims against it* which may be assigned to the Securities Claimant Trust. That being said, and for the avoidance of any doubt, KPMG requires certain procedural protections in connection with the assignment to or pursuit of claims by the Securities Claimant Trust which are reflected in the changes shown in Schedule "A".

At this juncture we do not have any insight into the process the US plaintiffs propose to follow in the US courts or if and how they intend to pursue the claims of US shareholders in Canada. To the extent that US law is relevant, KPMG reserves its right to insist that bar order terms that are equally protective of KPMG and in keeping with US precedents be implemented. We ask that you confirm at this time that any claims governed by US law, as opposed to Canadian law, will be subject to bar order terms substantially similar to those attached as Schedule "B".

In view of the hearing scheduled for April 16, 2021, please confirm no later than noon on April 15, 2021 that the proposed changes to the Plan in Schedule "A" will be made. KPMG believes that its remaining concerns have broad precedential value for both the CCAA and class action bar and trust that you are amenable to resolving them. We would be pleased to discuss the proposed changes with the recipients of this letter individually or collectively. This letter is sent with prejudice and KPMG may provide a copy of this letter to the Court for its consideration at Friday's hearing.

Yours truly,

Andrea Laing

Encl.

c: Ryan Morris
Linc Rogers

SCHEDULE "A"

7.3 **Injunctions**

(1) From and after the Effective Time, to the extent provided in the CCAA Sanction Order, all Persons will be permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand, or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Released Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property with respect to any and all Released Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of cross-claim, third party claim or claim over for contribution or indemnity or other relief, against one or more of the Released Parties~~, unless such claim of such other Person is itself a Released Claim~~; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties or their property with respect to any and all Released Claims; and (v) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims. For greater certainty, the Actions against the Non-Settlement Parties are not barred, estopped stayed or enjoined and may continue after the Effective Date subject to any restrictions imposed by sections 7.3 (2) and 7.3(3) hereof or the CCAA Sanction Order.

(2) From and after the Effective Time, to the extent provided in the CCAA Sanction Order, any ~~judgment or other award obtained by a Securities Claimant or the Securities Claimant Trust in respect of any~~ Securities-Related Claim asserted against a Non-Settlement Party or any other Person that is not a Released Party shall be ~~reduced by the amount, if any, that the court or other tribunal adjudicating the Securities-Related Claim determines would have been recovered by such~~restricted to a several claim such that any recovery from the Non-Settlement Party or other Person ~~pursuant to a~~shall be limited to the Non-Settlement Party's or other Person's proportionate share or degree of liability, as established at a trial or other disposition in respect of the asserted Securities-Related ~~Indemnity~~ Claim ~~held by it against a Released Party in respect of such Securities-Related Claim but for the release of such Securities-Related Indemnity Claim pursuant to the CCAA Plan of the CCAA Sanction Order, determined as of the moment before the Effective Time and, for greater certainty, taking into account (i) the Cash Contribution to be made by CannTrust Holdings to the Securities Claimant Trust and (ii) all other Securities-Related Indemnity Claims of other Non-Settlement Parties or other Persons participating in any recovery on a *pro rata* basis~~or in a subsequent proceeding for the purposes of allocating liability between or amongst Settlement Parties and Non-Settlement Parties, subject to the exhaustion of any rights of appeal. To the extent that a Securities-Related Claim against a Non-Settlement Party or any other Person that is not a Released Party is not restricted to a several

claim, the portion of the Securities-Related Claim that seeks to make a Non-Settlement Party or other Person responsible for liability or damages other than that Non-Settlement Party's or other Person's proportionate share or degree of liability is permanently barred, prohibited and enjoined.

(3) From and after the Effective Time, to the extent provided in the CCAA Sanction Order, all crossclaims, third party claims, claims for contribution, indemnity or other relief, or other claims over relating to the Released Claims or Channelled Claims, which were or could have been brought by a Settlement Party (including with respect to an Assigned Claim) against a Non-Settlement Party in the Actions or otherwise will be permanently and forever barred, estopped, stayed and enjoined.

(4) From and after the Effective Time, to the extent provided in the CCAA Sanction Order, all Persons will be permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand, or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Channelled Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property with respect to any and all Channelled Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Channelled Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties~~, unless such claim of such other Person is itself a Released Claim or Channelled Claim~~; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against any of the Released Parties with respect to any and all Channelled Claims; and (v) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Channelled Claims, provided that nothing in this Section 7.3(4) will prevent a Person with an Insured Securities Claim or Insured Securities-Related Claim from making a claim against a Settlement Party to establish liability (but without recovery from it or its property) solely to the extent necessary to enable the Securities Claimant Trust to enforce Assigned Claims against Insurers who are not Settlement Parties. For greater certainty, the Actions against the Non-Settlement Parties are not barred, estopped stayed or enjoined and may continue after the Effective Date subject to any restrictions imposed by sections 7.3(2) and 7.3(3) hereof or the CCAA Sanction Order.

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8.2 **CCAA Sanction Order**

The CannTrust Plan Companies will apply for a CCAA Sanction Order that will, among other things:

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(j) order that, from and after the Effective Time, all Persons are permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand, or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Released Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property with respect to any and all Released Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of cross-claim, third party claim or claim over for contribution or indemnity or other relief, against one or more of the Released Parties~~, unless such claim of such other Person is itself a Released Claim;~~ (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties or their property with respect to any and all Released Claims; and (v) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims.

(k) order that, from and after the Effective Time, any ~~judgment or other award obtained by a Securities Claimant or the Securities Claimant Trust in respect of any~~ Securities-Related Claim asserted against a Non-Settlement Party or any other Person that is not a Released Party shall be ~~reduced by the amount, if any, that the court or other tribunal adjudicating the Securities-Related Claim determines would have been recovered by such~~restricted to a several claim such that any recovery from the Non-Settlement Party or other Person ~~pursuant to a~~shall be limited to the Non-Settlement Party's or other Person's proportionate share or degree of liability, as established at a trial or other disposition in respect of the asserted Securities-Related ~~Indemnity~~ Claim ~~held by it against a Released Party in respect of such Securities-Related Claim but for the release of such Securities-Related Indemnity Claim pursuant to the CCAA Plan of the CCAA Sanction Order, determined as of the moment before the Effective Time and, for greater certainty, taking into account (i) the Cash Contribution to be made by CannTrust Holdings to the Securities Claimant Trust and (ii) all other Securities-Related Indemnity Claims of other Non-Settlement Parties or other Persons participating in any recovery on a *pro rata* basis.~~or in a subsequent proceeding for the purposes of allocating liability between or amongst Settlement Parties and Non-Settlement Parties, subject to the exhaustion of any rights of appeal. To the extent that a Securities-Related Claim against a Non-Settlement Party or any other Person that is not a Released Party is not restricted to a several claim, the portion of the Securities-Related Claim that seeks to make a Non-Settlement Party or other Person responsible for liability or damages other than that Non-Settlement Party's or other Person's proportionate share or degree of liability is permanently barred, prohibited and enjoined.

(l) order that, from and after the Effective Time, ~~to the extent provided in the CCAA Sanction Order,~~ all crossclaims, third party claims or claims for contribution, indemnity or other relief or other claims over relating to the Released Claims or Channelled Claims, which were or could have been brought by a Settlement Party (including with respect to an Assigned Claim) against a Non-Settlement Party in the Actions or otherwise are permanently and forever barred, estopped, stayed and enjoined.

(m) order that a Co-Defendant ~~may~~, ~~no~~on motion to the applicable court ~~in an Action to which a Settlement Party is a defendant~~, and on at least thirty (30~~(~~) days’ notice to counsel for the Settlement Party, and not to be brought unless and until the Action against the Co-Defendant has been certified and all appeals or times to appeal have been exhausted if such Action is a class proceeding, seek orders for the following, determined as if the Settlement Party remained a party to the Action:

(i) documentary discovery and an affidavit of documents from the Settlement Party in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg. 1994;

(ii) oral discovery of the Settlement Party or a representative of the Settlement Party, as applicable, the transcript of which may be read in at trial;

(iii) leave to serve a request to admit on the Settlement Party in respect of factual matters; and

(iv) the attendance of the Settlement Party, or the production of a representative of the Settlement Party, as applicable, to testify at trial, with such witness to be subject to cross-examination by counsel for the Co-Defendant;

(n) order the each Person having a Channelled Claim will be limited to recovering from the Securities Claimant Trust in respect of such Channelled Claim in accordance with the CCAA Plan and Definitive Documents and, if applicable, from any person who is not a Released Party, and such Person with a Channelled Claim will have no right to and shall not make any claim against or seek any recovery from ~~ant~~any Released Party in respect of such Channelled Claim, provided that ~~noting~~nothing in this Section 8.2(n) will prevent a Person ~~wit~~with an Insured Securities Claim or Insured Securities-Related Claim from making a claim against a Settlement Party to establish liability (but without recovering from it or its property) solely to the extent necessary to enable the Securities Claimant Trust to enforce Assigned Claims against Insurers who are not Settlement Parties. Channelled Claims shall be subject to the prohibitions in sections 8.2 (j) and (l) on the pursuit of cross-claims third party claims or claims over against Non-Settlement Parties.

(o) order that, from and after the Effective Time, all Persons are permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand, or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Channelled Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property with respect to any and all Channelled Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Channelled Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties~~, unless such claim of such other Person is itself a Released Claim or Channelled Claim~~; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against any of the Released Parties with respect to any and all Channelled Claims; and (v) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Channelled Claims, provided that nothing in this Section 8.2(o) will prevent a Person with an Insured Securities Claim or Insured Securities-Related Claim from making a claim against a Settlement Party to establish liability (but without recovery from it or its property) solely to the extent necessary to enable the Securities Claimant Trust to enforce Assigned Claims against Insurers who are not Settlement Parties.

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(t) order that, as of the Effective Time, (i) all of the rights and obligations of CannTrust Holdings and each Settlement Party to and in respect of the Assigned Claims shall be assigned to and assumed by the Securities Claimant Trust~~ and such assignment is valid and binding upon the applicable Non-Settlement Parties in respect of such~~, (ii) the parties to the Assigned Claims ~~notwithstanding any restriction or prohibition contained in~~are prohibited from exercising any rights or remedies under any insurance policy, underwriting agreement, audit engagement letter or other agreement relating to the assignment thereof (an "**Assigned Claims Related Agreement**")~~, including any provision requiring the consent of any party to an assignment, (ii) the counterparties to the Assigned Claims Related Agreements are prohibited from exercising any rights or remedies under the Assigned Claims Related Agreements and shall be forever barred, estopped, stayed and enjoined from taking such action,~~ by reason of:

(A~~) any restriction, condition or prohibition contained in any such Assigned Claim Related Agreement relating to the assignment thereof;~~

~~(B) any event that occurred on or prior to the Effective Time and is not continuing that would have entitled such counterparty to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any member of the CannTrust Group);~~

~~(C~~) the insolvency of any member of the CannTrust Group or the fact that any member of the CannTrust Group sought or obtained relief under the CCAA~~;~~

~~(D) any compromises or arrangements effected pursuant to the CCAA Plan or any action taken or transaction effected pursuant to the CCAA Plan (including the compromise or release of any Affected Claim or Released Claim arising under such Assigned Claim Related Agreement)~~;

(~~E~~B) any change in the control of the CannTrust Group arising from the implementation of the CCAA Plan;

and (iii) such counterparties are hereby deemed to waive any defaults relating thereto.

New Provisions:

The following provisions are to be added to the Order and (with appropriate references in the Plan terms):

[x] declare that, subject to section 8.2(t), nothing in this Order is intended or deemed to have nor shall it be interpreted as having:

(a) assigned a right or obligation under contract or otherwise to the Securities Claimant Trust that is not otherwise assignable;

(b) absolved or relieved the Securities Claimant Trust or its Trustees of any conflict of interest or any actual or potential breach of fiduciary, ethical or professional obligations or any duty of care under statute or regulation, contract or common law;

(c) determined that any Claim that might be brought by the Securities Claimant Trust is or is not a crossclaim, third party claim, claim for contribution, indemnity or other relief, or another claim over relating to a Released Claim or Channelled Claim within the meaning of section 8.2(l) of this Order or is or is not assignable pursuant to section 8.2(t) or on any other basis; or

(d) except as is expressly provided for in this Order, sanctioned any proceeding or representation or form of proceeding or representation that may interfere with a Non-Settlement Party's rights to confidentiality, the protection of the deemed undertaking rule, or any other substantive or procedural protection.

[Y] declare that any Non-Settlement Party or other party against whom the Securities Claimant Trust commences a Claim may apply to a court or other adjudicative body with jurisdiction over the matter for a determination as to whether:

(a) a right or obligation purportedly assigned to the Securities Claimant Trust was assigned or is or was assignable pursuant to section 8.2(l) of this Order or on any other basis; or

(b) an Assigned Claim or purported Assigned Claim, or the procedure or proposed procedure for pursuing an Assigned Claim or purported Assigned Claim, including the role of the Securities Claimant Trust or the Trustees in prosecuting the Assigned Claim or purported Assigned Claim, constitutes a conflict of interest or an infringement of the Non-Settlement Party's substantive or procedural rights, in which case it shall be open to the Non-Settlement Party to argue that a neutral court officer shall be appointed to pursue the claim or impose such other remedy or solution as the court or adjudicative body determines to be appropriate.

[Z] declare that this Order is without prejudice to the right of any Non-Settlement Party or any other party against whom the Securities Claimant Trust commences a Claim to defend a purported Assigned Claim on the basis that the claim or any underlying right or remedy on which it is premised, was not assigned or was not assignable to the Securities Claimant Trust, on any other basis articulated in section [X] of this Order or on any other basis.

SCHEDULE "B"—US BAR ORDER LANGUAGE

IT IS HEREBY ORDERED THAT:

1. All claims that have or could have been brought by the Plaintiffs against the Settling Defendants are permanently BARRED, PROHIBITED, and ENJOINED.

2. CannTrust Holdings Inc., KPMG LLP, Peter Aceto, Greg Guyatt, Ian Abramowitz, Brad Rogers, Eric Paul, Mark E. Dawber, Mitchell J. Sanders, John T. Kaden, Mark I. Litwin, Shawna Page, and Robert F. Marcovitch, Merrill Lynch, Pierce, Fennder & Smith Inc., Citigroup Global Markets Inc., Credit Suisse Securities LLC, Jefferies LLC, RBC Dominion Securities Inc., Canaccord Genuity LLC, Cannamed Financial Corp., Cajun Capital Corp., **[Insert any additional Settlement Parties]** and any other persons or entities later named as defendants in the action, are hereby permanently BARRED, ENJOINED, and RESTRAINED from commencing, prosecuting, or asserting any claim for indemnity or contribution, however styled, against any of the Settling Defendants and any of their affiliated persons and entities, with respect to, relating to, or arising from, the claims, liabilities, or injuries alleged, or the claims, liabilities, or injuries relating to CannTrust Holdings Inc. securities, that have or could have been alleged by the Plaintiffs in their June 26, 2020 Consolidated Class Action Complaint.

3. All claims that have or could have been brought by the Settling Defendants against the Non-Settling Defendants are permanently BARRED, PROHIBITED, and ENJOINED.

4. Any judgment against the Non-Settling Defendants shall be reduced by the greater of (1) an amount that corresponds to the percentage of responsibility of the Settling Defendants, or (2) the total amount paid to the Plaintiffs by the Settling Defendants.

5. Notwithstanding the foregoing, this Order does not bar, extinguish, or otherwise affect or apply to any direct claim of KPMG against any of the Released Parties for reimbursement of the reasonable costs of its defense of these actions in the event it is judicially determined that KPMG is not liable to Plaintiffs.

IT IS SO ORDERED.

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

AFFIDAVIT OF NATALINA ARVAJ
SWORN APRIL 14, 2021

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Lawyers for KPMG LLP

Court File No. CV-20-00638930-00CL

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

SUPPLEMENTARY RESPONDING MOTION RECORD OF KPMG LLP

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