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.

(the "**Applicants**")

RELIEF REQUESTED BY KPMG LLP

June 17, 2021

KPMG LLP ("**KPMG**") requests the following relief in connection with the motion brought by the Applicants seeking the issuance of an order sanctioning the Third Amended and Restated Plan of Compromise, Arrangement and Reorganization (the "**Plan**") dated June 16, 2021:

Sanctioning of the Plan be conditional upon the Plan and Sanction Order being amended as follows:

<u>Judgment Reduction Provision</u>

1. The judgment reduction terms at Section 7.3(2) of the Plan be replaced with the following language which is consistent with the language found at paragraph 13 of the directors' settlement approval order dated August 25, 2020, issued in the Sears Canada CCAA Proceedings[1]:

   > The Securities Claimants' recovery from the Non-Settlement Parties and with which any Settlement Party is judicially determined to be jointly and severally liable shall be limited to only that proportion of damages attributable to the liability of the Non-Settlement Parties, as finally determined in the Actions.

[1] Cited by KPMG at paragraph 43 and footnote 51 of its Reply Factum dated June 9, 2021 (Caselines Reference, Master B-6-490)

Bar of contribution, indemnity or other claims over against Non-Settlement Parties

2. The language of Section 7.3 of the Plan reverting to what was included in the First Amended and Restated Plan of Compromise, Arrangement and Reorganization of the Applicants dated May 21, 2021 (the "**May 21 Plan**"[2]) as follows:

> From and after the Effective Time, to the extent provided in the CCAA Sanction Order, all claims for contribution, indemnity or other claims over that relate to the Released Claims or the Channelled Claims, which were or could have been brought by a Settlement Party in the Actions or otherwise (including with respect to an Assigned Claim) against a Co-Defendant that is a Non-Settlement Party, ~~excluding for greater certainty all Assigned Claims~~, will be permanently and forever barred, estopped, stayed and enjoined.

Definition of Assigned Claims to exclude barred claims

3. The definition of "Assigned Claims" in Section 1.1 of the Plan reverting to the definition in the May 21 Plan[3]:[4]

> "Assigned Claims" means ~~(i)~~ if applicable, the claims of CannTrust Holdings and the other Settlement Parties against any Insurer that is a Non-Settlement Party, in each case to the extent such claims are for loss or damage up to the date of the CCAA Sanction Order and arise from or relate to the Securities-Related Matters.~~, and (ii) the claims of CannTrust Holdings and CannTrust Opco in contract and tort arising from the audit and professional services of KPMG LLP as of the Filing Date.~~

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[2] A comparison of the May 21 Plan to the Second Amended and Restated Plan of Compromise, Arrangement and Reorganization dated June 2, 2021 (the "**Second Plan**") is located at Exhibit "P" to the Affidavit of Greg Guyatt sworn June 2, 2021 (Caselines Reference, Master A2929). The germane provision is located at Caselines Reference, Master A2964.

[3] A comparison of the May 21 Plan to the Second Plan is located at Exhibit "P" to the Affidavit of Greg Guyatt sworn June 2, 2021 (Caselines Reference, Master A2929). The germane provision is located at Caselines Reference A2933.

[4] For reference, a comparison of the definition of "Assigned Claim" in the Plan to the definition of "Assigned Claim" in the Second Plan which was originally before the Court on this motion is available at Caselines Reference, Master A3610 and included at Appendix "A" hereto.

APPENDIX "A"

Comparison of June 16 Plan definition of "Assigned Claims" to June 2 Second Plan definition of "Assigned Claims"

"**Assigned Claims**" means (i) ~~the claims of CannTrust Holdings and CannTrust Opco against any Co-Defendant that is a Non-Settlement Party, other than contribution and indemnity claims and,~~ if applicable ~~(ii)~~ the claims of CannTrust Holdings and the other Settlement Parties against any Insurer that is a Non-Settlement Party, in each case to the extent such claims are for loss or damage up to the date of the CCAA Sanction Order and arise from or relate to the Securities-Related Matters, and ~~without limiting the generality of the foregoing (iii)~~ (ii) the claims of CannTrust Holdings and CannTrust Opco in contract and tort ~~against~~ arising from the audit and professional services of KPMG LLP as of the Filing Date.