Court File No.: CV-22-00688966-00C

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 THE FLOWR CORPORATION, THE FLOWR CANADA HOLDINGS ULC, TERRACE GLOBAL INC. AND 14588495 CANADA INC. (collectively, the "**Applicants**")

MOTION RECORD

July 14, 2023

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Court File No.: CV-22-00688966-00C

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 THE FLOWR CORPORATION, THE FLOWR CANADA HOLDINGS ULC, TERRACE GLOBAL INC. AND 14588495 CANADA INC. (collectively, the "**Applicants**")

INDEX

TAB 1

Court File No. CV-22-00688966-00CL

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 THE FLOWR CORPORATION, THE FLOWR CANADA HOLDINGS ULC, TERRACE GLOBAL INC. AND 14588495 CANADA INC. (collectively, the "**Applicants**")

NOTICE OF MOTION
(Re: Distribution, Stay Extension, Approval of Conduct)

The Flowr Corporation ("**Flowr**"), The Flowr Canada Holdings ULC ("**Flowr Holdings**" or the "**Vendor**"), Terrace Global Inc. and 14588495 Canada Inc. ("**ResidualCo**" and collectively, the "**Flowr Group**" or the "**Applicants**") will make a motion to Justice Steele on Friday, July 21, 2023 at 9:45 a.m. Eastern Standard Time or as soon after that time as the motion can be heard via Zoom videoconference.

PROPOSED METHOD OF HEARING: The motion is to be heard by video conference at the following location:

Zoom link to be uploaded on Caselines.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at **Tab 3** of the Applicants' Motion Record herein (the "**Proposed Order**") *inter alia*:

(a) if necessary, abridging the time for service of this Notice of Motion and the corresponding Motion Record and dispensing with service on any person other than those served;

(b) authorizing certain distributions from (i) the Avant Brands Inc. common shares (the "**Avant Shares**") held by Flowr Holdings and (ii) funds held by the Monitor;

(c) terminating the Subordinated Convertible Debenture Indenture dated April 27, 2020 (the "**Debenture Indenture**") between Flowr and Computershare Trust Company of Canada ("**Computershare**") and releasing and discharging all liabilities of Computershare thereunder;

(d) extending the stay of proceedings ("**Stay Period**") from July 31, 2023 to and including January 31, 2024;

(e) approving the activities and conduct of Ernst & Young Inc., in its capacity as the Monitor of the Applicants ("**Monitor**") as set out in its Sixth Report to the Court (the "**Sixth Report**"); and

(f) such further and other relief that the Monitor may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Capitalized terms used herein and not defined shall have the meanings ascribed to them under the Amended and Restated Initial Order dated October 28, 2022 (the "**ARIO**") and the affidavits of Darren Karasiuk sworn on December 9, 2022 (the "**December 9th Affidavit**") and January 23, 2022 (the "**January 23rd Affidavit**").

2. The Flowr Group was a licenced producer and distributor of cannabis with its head office being located in Toronto, Ontario and its operations being located in Kelowna, British Columbia.

3. The Applicants brought an application returnable on October 20, 2022 before the Ontario Superior Court of Justice (Commercial List) for an initial Order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c, C-36 (the "**CCAA**"), as amended by the ARIO granted on October 28, 2022.

4. On October 28, 2022, the Court also granted an order (the "**SISP Order**"), authorizing the Monitor to conduct a sale and investment solicitation process (the "**SISP**") in respect of the Applicants.

5. On November 3, 2022, the Court granted an order that, among other things, authorized Flowr Holdings, as vendor (the "**Vendor**"), and Flowr Okanagan (then the Flowr Group's main operating entity) to enter into a stalking horse purchase agreement dated October 31, 2022 (the "**Stalking Horse Purchase Agreement**") with 1000343100 Ontario Inc. (in such capacity, the "**Stalking Horse Bidder**").

6. The Monitor's third report dated December 13, 2022, described in detail the conduct and results of the SISP, which concluded with an amended and restated Stalking Horse Purchase Agreement dated December 1, 2022 (the "**Sale Agreement**") between the Vendor, Flowr Okanagan and Avant Brands K1 Inc. (formerly, the Stalking Horse Bidder) (the "**Purchaser**"). The Sale Agreement contemplated a sale of all of the issued and outstanding common shares of Flowr Okanagan following the implementation of a Pre-Closing Reorganization (*i.e.*, a reverse vesting structure as described in detail in Exhibit "A" to the Sale Agreement), achieving a transfer

of substantially all of the then Applicants' assets and operations to the Purchaser (the "**Transaction**").

7. On December 16, 2022, the Court granted an order, which was subsequently amended and restated on January 30, 2023 (as amended, the "**Approval and Vesting Order**"). The Approval and Vesting Order, among other things:

(a) approved the Sale Agreement, including certain steps with respect to the Pre-Closing Reorganization;

(b) extended the Stay Period to February 26, 2023;

(c) approved the addition of ResidualCo as an Applicant upon the closing of the Transaction;

(d) approved the termination of the CCAA proceedings in respect of Flowr Okanagan upon closing of the Transaction; and

(e) authorized an expansion of the Monitor's powers following the completion of the Transaction.

8. Further background evidence regarding the Applicants and the SISP can be found in the December 9th Affidavit and the January 23rd Affidavit.

9. The Transaction closed on February 2, 2023 in accordance with the terms of the Sale Agreement, after the Applicants finished implementing the Pre-Closing Reorganization steps. The purchase price of the Transaction (the "**Purchase Price**") was the sum of $5,115,000, plus the amount of the Closing DIP Loan and the Assumed Liabilities (both as defined in the Sale Agreement).

10. The Purchase Price was satisfied as follows:

(a) the DIP Facility was repaid in full by a portion of the Purchase Price allocated to the credit bid upon the Closing;

(a) the Sale Agreement provided for the payment of a portion of the Purchase Price in the cash equivalent amount of $1.1 million in the form of free trading Avant Shares. As a result, the Applicants received 6,337,117 Avant Shares that were calculated at a 15% discount to the volume weighted average price per Avant Share on the Toronto Stock Exchange for the 10 consecutive trading days preceding the Closing. The Avant Shares are currently held by Flowr Holdings;

(b) in addition, certain KERP participants elected to receive their payments in the form of Avant Shares, resulting in the direct issuance of Avant Shares with a cash equivalent value of $165,000 to these individuals;

(c) in accordance with the Sale Agreement, the Purchaser transferred the remaining balance of the Purchase Price in cash, which was $1,651,514, to the Monitor's trust account; and

(d) the Sale Agreement provides that the amount borrowed from a further DIP facility (the "**Closing DIP Loan**") provided by the Purchaser will also form part of the Purchase Price. In the lead-up to the Closing, the Applicants drew a total of $500,000 from the Closing DIP Loan to fund operations prior to the Closing and to fund post-Closing wind-down activities.

11. Following the closing of the Transaction, the Applicants have no further operations and have one retained employee to assist with accounting and tax matters. The Monitor's powers were expanded upon the closing of the Transaction to wind-down the Applicants and complete the administration of these CCAA Proceedings.

12. On February 24, 2023, the Court granted an order that, *inter alia*, (i) extended the Stay Period until July 31, 2023, and (ii) approved the fees of the Monitor and its legal counsel.

13. From February 24, 2023, to date, the Applicants have, with the assistance of the Monitor and Mr. Karasiuk (the former CEO of Flowr, acting as a consultant), continued to wind-down their operations. Such wind-down activities include, among other things:

(a) working with the Canada Revenue Agency ("**CRA**") to address audit requests (as of the date of writing, the CRA has closed all of the audit requests);

(b) working with an external accountant to complete corporate tax returns for the fiscal year ending December 31, 2022, and the stub period ending February 1, 2023;

(c) engaged in discussions with Purchaser's advisors to address remaining matters under the Sale Agreement; and

(d) communicated with Computershare as agent for the principal secured Debenture Holders, to discuss the distribution of the Avant Shares and available cash.

14. As described in the Sixth Report, following post-Closing disbursements on account of (i) post-filing liabilities not assumed by the Purchaser; and (ii) the Applicants' payroll, restructuring costs, and general overhead expenses, as of July 2, 2023, the Monitor held $880,000 in trust on behalf of the Applicants, and $721,000 as escrow agent pending the resolution of a tax matter related to the Transaction.

The Debenture Holders

15. On April 27, 2020, Flowr and Computershare entered into the Debenture Indenture, which provided for the issuance of secured debentures (the "**Debentures**"). Currently, 26 Debentures remain outstanding with a combined principal amount owing of $4.966 million. These Debentures

are held by 26 separate debenture holders (collectively, the "**Debenture Holders**") whose holdings range from $3,000 to $1.5 million.

16. The Debenture Holders are the Applicants' principal secured creditors. The Monitor has obtained legal opinions that confirm the validity and enforceability of the Debenture Holders' security.

17. Based on the Updated Cash Flow Forecast (defined below), the proposed Distributions (defined below) will not be sufficient to repay the Debenture Holders in full and they will suffer a shortfall. Other secured lenders are therefore anticipated to have nil recoveries.

Proposed Distributions

18. The Proposed Order contemplates the following distributions (the "**Distributions**"):

(a) from the Avant Shares held by Flowr Holdings, a distribution of all such shares to the Debenture Holders on a *pro rata* basis up to the amount of their indebtedness; and

(b) from the funds held by the Monitor in trust for the Applicants, subject to any reserve established by the Monitor in its sole discretion to ensure sufficient funds are available to address any property claims including, without limitation, the Charges granted under the Initial Order (the "**Reserve**"), a cash distribution to the Debenture Holders on a *pro rata* basis, based upon their registered Debenture holdings as of the Filing Date as received from Computershare, up to the amount of their indebtedness.

19. The Avant Shares are intended to be distributed immediately.

20. The cash held by the Monitor in trust for the Applicants will be distributed subject to the determination of the Reserve by the Monitor. The Reserve shall be established and maintained by the Monitor and is intended to cover the Applicants' post-filing obligations and the costs of completing the wind-down of the Applicants (including related professional fees). The Reserve shall be held by the Monitor in a segregated interest-bearing account. Any unused portion of the Reserve will be distributed to the Debenture Holders. The quantum of the Reserve remains to be determined by the Monitor.

21. The Monitor supports the proposed Distributions.

22. The Monitor believes that the reserve structure is reasonable and necessary to ensure (i) all stakeholder interests are addressed and (ii) these CCAA Proceedings continue to progress to an orderly conclusion.

Debenture Indenture and Computershare

23. Computershare acts as the Trustee under the Debenture Indenture.

24. Pursuant to the Reverse Vesting Order, upon closing of the Transaction, the Applicants' obligations under the Debentures were transferred to and vested in ResidualCo. Any recoveries to the Debenture Holders will be governed by the Proposed Order.

25. Computershare has therefore requested that the Applicants and the Monitor seek an Order from the Court terminating the Debenture Indenture in order to permanently release Computershare from any duties and liabilities in acting in its capacity as Trustee thereunder.

26. The Monitor supports the termination of the Debenture Indenture.

Stay Extension and Approval of Activities

27. The Stay Period is currently set to expire on July 31, 2023. The Proposed Order extends the Stay Period to and including January 31, 2024.

28. The proposed stay extension is reasonable and necessary. It will:

(a) allow the Applicants to address post-Closing matters and continue their orderly wind-down;

(b) allow time for the completion of outstanding tax matters; and

(c) minimize professional fees expenses (by avoiding motions brought purely for stay extension purposes).

29. The Monitor has prepared a further updated the cash flow forecast for the period from July 3, 2023 to February 4, 2024 (the "**Updated Cash Flow Forecast**"), which will be filed with the Monitor's Sixth Report, and which projects that the Applicants will have sufficient money to fund the wind down activities during the proposed extension of the Stay Period.

30. The Applicants have acted and will continue to act in good faith and with due diligence.

31. The Sixth Report sets out in detail the activities of the Monitor.

32. The provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Honourable Court.

33. The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, including Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 59.06.

34. Section 97 and 100 of the *Courts of Justice Act*, R.S.O., c. C. 43, as amended.

35. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) the Sixth Report, to be filed; and

(b) such further and other evidence as counsel may advise and this Honourable Court may permit.

July 14, 2023

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Lawyers for the Applicants

TO: THE SERVICE LIST ATTACHED HERETO AS **SCHEDULE "A "**

SCHEDULE "A"

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AND TO:	**ATTORNEY GENERAL OF CANADA** Per: Diane Winters, General Counsel Department of Justice 120 Adelaide Street West Suite 400 Toronto, Ontario M5H 1T1 **Edward Park** edward.park@justice.gc.ca Tel : 647.292.9368 Fax: 416.973.0810 Counsel to the Canada Revenue Agency
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

Court File No. CV-22-00688966-00CL

THE FLOWR CORPORATION, THE FLOWR CANADA HOLDINGS ULC, TERRACE GLOBAL INC., AND 14588495 CANADA INC. (the "**Applicants**")

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

NOTICE OF MOTION
(Returnable July 21, 2023)

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Lawyers for the Applicants

TAB 2

Court File No. CV-22-00688966-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 21ST
	)	
JUSTICE STEELE	)	DAY OF JULY, 2023

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 THE FLOWR CORPORATION, THE FLOWR CANADA HOLDINGS ULC, TERRACE GLOBAL INC. AND 14588495 CANADA INC. (collectively, the "**Applicants**")

APPLICANTS

ORDER
(Re: Distribution Order, Stay Extension and Other Relief)

THIS MOTION, made by the Applicants and Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Applicants (the "**Monitor**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order, *inter alia*, (i) authorizing and directing the Monitor, for and on behalf of the Applicants to make certain Distributions (as defined and specified below), (ii) terminating the Subordinated Convertible Debenture Indenture dated April 27, 2020 (the "**Debenture Indenture**") between The Flowr Corporation and Computershare Trust Company of Canada ("**Computershare**") and releasing and discharging all liabilities of Computershare thereunder; (iii) approving the activities and conduct of the Monitor described in the Sixth Report of the Monitor dated July 14, 2023 (the

"**Sixth Report**"), and (iv) extending the Stay Period to and including January 31, 2024, was heard this day by judicial video-conference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Sixth Report, and on hearing the submissions of counsel for the Applicants, the Monitor, and such other counsel as were present and wished to be heard, no one else appearing for any party although duly served as appears from the affidavit of service of Alina Stoica dated July ●, 2023, filed:

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** that capitalized terms used herein and not otherwise defined have the meanings given to them in the Sixth Report.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that the Monitor, for and on behalf of the Applicants, be and is hereby authorized and directed, without any personal and corporate liability whatsoever to any Person, and without further Order of the Court to make the following distributions (collectively, the "**Distributions**"):

   a. from the Avant Brands Inc. common shares (the "**Avant Shares**") held by the Applicants, a distribution to the Debenture Holders based upon their registered Debenture holdings as of the Filing Date received from Computershare of all Avant Shares on a *pro rata* basis up to the amount of their indebtedness on the Filing Date;

b. from the funds held by the Monitor, in trust for the Applicants, subject to any reserve established by the Monitor in its sole discretion to ensure sufficient funds are available to address any priority claims including without limitation the Charges granted under the Initial Order (the "**Reserve**"), a cash distribution to the Debenture Holders on a *pro rata* basis based upon their registered Debenture holdings as of the Filing Date as received from Computershare to the Debenture Holders up to the amount of their indebtedness.

4. **THIS COURT ORDERS** that the Monitor is hereby authorized to take all necessary steps and actions to effect the Distributions in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distributions.

5. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these CCAA proceedings;

(b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") or other applicable legislation in respect of the Applicants and any bankruptcy or receivership order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of the Applicants; and

(d) any provisions of any federal or provincial legislation,

the Distributions shall be made free and clear of all Encumbrances (as defined in the Approval and Vesting Order) and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicants and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT ORDERS AND DECLARES** that the Distributions shall not constitute a "distribution" for the purposes of section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act*, 2007 (Ontario), section 159 of the Tax Act, section 270 of the *Excise Tax Act* (Canada), section 86 of the *Employment Insurance Act* (Canada), or any other similar applicable federal, provincial or territorial tax legislation (collectively, the "**Tax Statutes**"), and the Monitor, in making the Distributions, is merely a disbursing agent and is not exercising any discretion in making the Distributions, and no Person is "distributing" such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of the Distributions and the Monitor is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of the Distributions made by it in accordance with this Order and any claims of this nature are hereby forever barred.

MONITOR PROTECTIONS

7. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor pursuant to the previous Orders granted by the Court in these proceedings, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties under this Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate

from the protections afforded to the Monitor by the CCAA, any other applicable law or any previous Orders granted by the Court in these proceedings.

8. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order and without in any way limiting the protections for the Monitor set forth in this Order or any previous Orders granted by the Court in these proceedings, the Monitor shall have no obligation to make any distribution, except with respect to the distribution of all of the Avant Shares, unless the Monitor is satisfied after establishing any Reserves it determines is necessary.

DEBENTURE INDENTURE AND COMPUTERSHARE

9. **THIS COURT ORDERS** that Debenture Indenture be and is hereby terminated and Computershare be and is hereby permanently released and discharged from any duties and liabilities in acting in its capacity as trustee under the Debenture Indenture arising after the date of this Order.

APPROVAL OF THE MONITOR'S REPORT AND ACTIVITIES

10. **THIS COURT ORDERS** that the Sixth Report is hereby approved, and the activities and conduct of the Monitor set out therein is hereby ratified and 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 approvals.

STAY EXTENSION

11. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including January 31, 2024.

GENERAL

9. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

Court File No.: CV-22-00688966-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE FLOWR CORPORATION, THE FLOWR CANADA HOLDINGS ULC, TERRACE GLOBAL INC. AND 14588495 CANADA INC. (collectively, the "**Applicants**")

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

ORDER
(RE: DISTRIBUTION ORDER, STAY EXTENSION AND OTHER RELIEF)

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE FLOWR CORPORATION, THE FLOWR CANADA HOLDINGS ULC, TERRACE GLOBAL INC. AND 14588495 CANADA INC. (collectively, the "**Applicants**")

Court File No.: CV-22-00688966-00C

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD

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