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COURT OF KING'S BENCH OF ALBERTA  
EDMONTON

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  
FREEDOM CANNABIS INC.

APPLICANT:

FREEDOM CANNABIS INC.

DOCUMENT

**BENCH BRIEF OF THE APPLICANT, FREEDOM  
CANNABIS INC.**

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## I. OVERVIEW

1. This Brief is submitted on behalf of the Applicant Freedom Cannabis Inc. and its non-Applicant subsidiaries 2563138 Alberta Ltd. and 2399751 Alberta Ltd. (the “**Non-Applicant Stay Parties**”), in support of an application for an initial order (the “**Initial Order**”) and related relief under the Companies’ Creditors Arrangement Act, RSC 1985, c C-36, as amended (the “**CCA**”).
2. Freedom Cannabis Inc. is a privately owned licensed producer of cannabis products that carries on a multi-faceted business in the Canadian cannabis industry and internationally. The Applicant has been operating in the Canadian legal cannabis section since 2017.
3. The Applicant faces imminent enforcement on its senior debt obligations and require a broad stay of proceedings (the “**Stay**”) for the permitted initial 10 day period (the “**Initial Stay Period**”) and related relief to prevent enforcement action and preserve the Applicant’s business and stakeholder value. The relief sought in the Initial Order is limited to what is reasonably necessary to allow the Applicant to maintain the *status quo* and continue operations in the ordinary course during the Initial Stay Period. This relief includes the appointment of KPMG Inc. (“**KPMG**”) as monitor in these proceedings (the “**Proposed Monitor**”).

## II. FACTUAL BACKGROUND

4. The facts underlying this Application are more fully set out in the Affidavit of JohnFrank Potestio sworn August 6, 2024 (the “**First Potestio Affidavit**”).
5. All capitalized terms used herein that are not otherwise defined have the meaning ascribed to them in the Originating Application of Freedom Cannabis Inc., to be filed concurrently herewith.

### Freedom Cannabis Inc.

6. Freedom operates a large-scale cannabis business in Acheson, Alberta, with a strong presence in Ontario, British Columbia, and sales and distribution on an international scale.
7. Freedom was initially incorporated Federally pursuant to the laws of Canada, in January of 2017. It was subsequently provincially registered with the Alberta corporate registry on May 17, 2017.
8. Freedom has four directors of Freedom, two of whom, JohnFrank Potestio and Julie Potestio hold the offices of CEO and President respectively.

9. Part of the relief sought in this initial application is a stay as against Freedom and its directors and officers. In addition, due to the relationship between Freedom and two related companies, 2563138 Alberta Ltd. ("**256 Ltd.**") and 2399751 Alberta Ltd. ("**239 Ltd.**"), Freedom is seeking a stay as against those parties (referred to as the "Non-Applicant Stay Parties".)

10. 256 Ltd. was incorporated in Alberta on November 15, 2023. Freedom owns 51% of the shares in 256 Ltd., with the remaining 49% of the shares being owned by 2445254 Alberta Ltd., operating as Alt Cosmetics. 256 Ltd. is engaged in the business of developing, manufacturing, marketing and selling cannabinoid-infused products.

11. Pursuant to a license to occupy, 256 Ltd. operates its physical development and manufacturing business out of Freedom's facilities in Acheson. 256 Ltd.'s operations are governed by Freedom's Health Canada license, without which 256 Ltd. would be unable to produce its products.

12. 239 Ltd., was incorporated in Alberta on January 10, 2022. Prior to incorporation, Freedom and 239 Ltd. agreed, pursuant to a memorandum of understanding dated May 5, 2021 (the "**239 MOU**"), that 239 Ltd. would be incorporated to conduct business primarily in cannabis extraction for the purposes of producing and selling cannabis products through Freedom.

13. Since its incorporation, 239 Ltd. has operated out of the Acheson facilities under the moniker "Cannabis Tolling Services – A division of Freedom Cannabis".

14. Each of 256 Ltd. and 239 Ltd. are required to submit and maintain ongoing quality assurance and control procedures pursuant to Health Canada audit measures. As neither party holds a Health Canada license they are dependent on Freedom

#### Operations and Locations

15. Freedom's cannabis operations have grown exponentially over the years, and encompass a broad range of activities including cultivating cannabis, processing, extracting, distributing, and selling their products nationally and internationally. Freedom has gained brand recognition through its distribution of its products which includes in-house growing, branding, packaging, and supplying.

16. Pursuant to a lease agreement with Star Prebuilt Homes Ltd. dated November 23, 2017, Freedom leased a large warehouse and dual-office space located at 9827-279 Street, Acheson, Alberta, in which it, 256 Ltd. and 239 Ltd. all operate their cannabis-based businesses (the "**Acheson Facility**").

17. The current leased space at the Acheson Facility consists of 111,600 square feet, including the space utilized by 256 Ltd. and 239 Ltd. In the context of its lease of the Acheson Facility, Freedom has further sub-leased space to Nektar ACS Inc. pursuant to a rental agreement dated October 12, 2021 (the “**Sublease**”). Freedom is paid the sum of \$15,000 plus GST on a month-to-month basis pursuant to the Sublease.

#### Cannabis Production Licensing and Arrears

18. Freedom’s operations (and correspondingly the operations of 256 Ltd. and 239 Ltd. in the Acheson facility) are contingent and dependent on the issuance and currency of several licenses:

- a. A Health Canada “Standard Cultivation Activities, Standard Processing Activities, and Medical Purpose Activities” license, currently set to expire March 22, 2027;
- b. A Health Canada “Research Purpose Activities” license, currently set to expire November 29, 2027;
- c. An Excise Canada “Cannabis License” No. 73115 8929 RD0001, currently set to expire on August 10, 2024 (the “**Excise License**”).

19. The Health Canada licenses are not set to expire for several years. Freedom has been maintaining payment on the Health Canada licenses by way of an agreed-upon payment plan consisting of monthly payments of approximately \$12,000.00 payable to Health Canada. The total arrears owing to Health Canada is approximately \$265,000.

20. The Excise License, however, has variously been in arrears as a result of a prolonged and complicated payment and collection history between Freedom and the CRA.

21. Since the legalization of recreational cannabis use in Canada in October of 2018, the government of Canada has enacted, amended, and repealed legislation dealing with cannabis use to address the changing landscape of cannabis use, production, and sale. Despite legislative reform, the cannabis industry in Canada remains highly regulated and has proven to be very expensive for producers.

22. Freedom has attempted to maintain its excise obligations throughout its operations; however, it is required to commit approximately 40% of its gross revenue to excise obligations, which has resulted in the Excise Tax Arrears and Freedom’s difficulty to get out from under the same.

23. Freedom has a strong operation with a promise of significant growth and revenue. It requires the benefit of the protections provided by the CCAA to realize the same.

#### Assets and Liabilities

24. Per the Affidavit of JohnFrank Potestio, sworn August 6, 2024, the Applicant has total consolidated assets with a book value of approximately \$44,973,494, and total consolidated liabilities with a book value owing of approximately \$47,293,396 as at August 3, 2024.

25. The primary secured lender, JL Legacy Ltd. (“**JLL**”), is supportive of this application, but is in a position to demand immediate repayment of its secured loans. Given Freedom’s inability to access conventional financing, the cooperation of its primary lender has been integral to its ongoing operations. JLL is also the proposed DIP Lender, as set out in our materials in this application.

#### Secured Obligations

26. Freedom’s primary secured lender, JLL, advanced funds by way of, *inter alia*:

- a. An initial loan of \$1,800,000, advanced on or about March 2019;
- b. Assistance by way of assignment and purchase of the debt and security of Chandos Construction Ltd.;
- c. Assistant by way of assignment and purchase of the debt and convertible debentures of Everyday People Cannabis Inc.; and
- d. Various loans advanced and secured by promissory note and general security agreement to maintain the operations of Freedom;

27. As at August 3, 2024, the total secured liability owed by Freedom to JLL is approximately \$17,281,279.

#### Other Obligations

28. In addition to the secured liabilities owed to JLL, and various other PMSI and other lease/financing creditors, Freedom is indebted to the Potestios and various debenture holders as follows:

- a. **Potestio Loans:** by way of loan on or about November, 2019, JohnFrank and Julie Potestio (“**Potestio**”) advanced a loan to Freedom in the sum of \$1,100,000, which

was evidenced by way of promissory note. Subsequently, from time to time, Potestio advanced further funds to Freedom by way of advances, shareholder loans, and salary/wage deferrals. The total amount of the Potestio Loans is approximately \$3,882,452.

- b. Convertible Debenture Holders:** Freedom issued convertible debentures in respect of its shares to 11 parties, most of whom converted their debentures by December, 2021. As at the date of this application, there are 5 debenture-holders who retain unconverted debentures in Freedom, totalling approximately \$1,500,000.

### Unsecured Obligations

29. The bulk of Freedom's unsecured liabilities relate to trade and other operational debts and expenses. The total approximate amount owing to unsecured trade creditors, including debts relating to inventory, production, lease payments, and the general operations of the Acheson Facility are \$4,329,363. This figure takes into account those creditors listed on the balance sheet, attached as Exhibits "C" and "D" to the Affidavit of JohnFrank Potestio.

### Liquidity Issues and Necessity of CCAA Relief

30. In recent years, the Applicant has suffered losses due to a number of factors, including excise tax issues, but also having regard to the fact that:

- a. the cannabis industry is highly regulated and is experiencing rapid change amid a heavily saturated market;
- b. there is a complex and administrative-heavy regulatory and licensing regime, alongside competition from the illicit market, which has caused significant uncertainty in the industry space;
- c. an increased taxation burden from excise taxes, as well as the need for remitting same in advance of collected of related receivables, has detrimentally impacted growth potential within the sector; and
- d. the challenging conditions in the cannabis industry have negatively affected the ability of cannabis companies to obtain investment or financing for operations and capital expenditures.

31. Despite numerous and ongoing attempts to resolve the Excise Tax Arrears and other debt obligations, including attempts at securing new or additional financing, Freedom has been unable to consolidate and manage its liabilities in the short-term, and requires a stay of enforcement and assistance by way of Order from this Honourable Court to facilitate the same.

32. As a result of all of the above-stated challenges Freedom faces a situation in which it will be unable to meet its obligations going forward. Freedom is an ideal candidate for the relief and protections afforded under the CCAA.

### III. ISSUES

33. The issues to be determined by the Court are whether:

- a. the Applicant is entitled to seek protection under the CCAA;
- b. the Initial Stay of Proceedings should be granted in favour of the Applicant;
- c. the Stay of Proceedings should be extended to the Non-Applicant Stay Parties;
- d. the Stay of Proceedings should apply to the directors and officers
- e. the DIP Facility should be approved and the DIP Financing Charge should be granted;
- f. the Applicant should be authorized to make certain pre-filing payments;
- g. the Administration Charge should be granted;
- h. the Directors' Charge should be granted;
- i. the Applicant should be authorized to continue utilizing the Cash Management System;  
and
- j. a regulatory stay should be imposed over the licenses during the CCAA proceedings.

### IV. LAW AND ARGUMENT

#### A. The Applicant is Entitled to Seek Protection under the CCAA

34. The CCAA applies in respect of a “debtor company” or “affiliated debtor companies” whose liabilities exceed \$5 million”.<sup>1</sup>

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<sup>1</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [CCAA], s 3(1) [TAB 1].



35. The term “debtor company” is defined as any company that is, among other things, “insolvent” and the term “company” is defined as “any company, corporation or legal person incorporated by or under any Act of Parliament or of the legislature of a province.”<sup>2</sup>

36. The Applicant is a “company” within the meaning of the CCAA as the Applicant was incorporated under Canadian provincial laws.

37. The Applicant is a “debtor company” as defined in the CCAA. Whether a company is insolvent for the purposes of this definition is evaluated by reference to the definition of “insolvent person” in the Bankruptcy and Insolvency Act (the “BIA”) and the expanded concept of insolvency adopted by the Court in *Stelco*.<sup>3</sup>

38. The BIA defines “insolvent person”, as a person: (a) who is for any reason unable to meet his obligations as they generally become due; (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.<sup>4</sup>

39. The test for determining whether a company is an “insolvent person” under the BIA is disjunctive – satisfaction of any one of the above criteria is sufficient.<sup>5</sup>

40. A company is also insolvent for the purposes of the CCAA if “there is a reasonably foreseeable (at the time of filing) expectation that there is a looming liquidity condition or crisis which will result in the applicant running out of ‘cash’ to pay its debts as they generally become due in the future without the benefit of the [stay] and ancillary protection”.<sup>6</sup>

41. The Applicant’s aggregate outstanding liabilities are well in excess of \$5 million.

42. As such, the Applicant’s debt exceeds the \$5 million threshold for protection under the CCAA.

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<sup>2</sup> CCAA s 2(1), “debtor company” and “company” [TAB 2];

See also, *Laurentian University of Sudbury*, 2021 ONSC 659 at [paras 25 and 26](#) [“*Laurentian*”] [TAB 3].

<sup>3</sup> *Re Stelco Inc.*, (2004) 48 CBR (4th) 299 (Ont Sup Ct) [“*Stelco*”] [TAB 4].

<sup>4</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, s 2, “insolvent person” [TAB 5].

<sup>5</sup> *McEwan Enterprises Inc.*, 2021 ONSC 6453 at [para 26](#) [TAB 6].;

[Laurentian](#) at [para 31](#).

<sup>6</sup> *Stelco* at paras [26](#) and [40](#);

[McEwan](#) at [para 27](#);

[Laurentian](#) at [para 32](#)

43. The following factors support the conclusion that the Court of King's Bench of Alberta has jurisdiction over these proceedings:

- a. The Applicant's head office is located in Acheson, Alberta
- b. The Applicant's licensed manufacturing facility is in Acheson, Alberta;
- c. The Non-Applicant Stay Parties are companies incorporated pursuant to the *Business Corporations Act (Alberta)*, RSA 2000, c B-9.

**B. The Stay of Proceedings Should be Granted**

44. Section 11.02 of the CCAA provides this Court with the jurisdiction to impose a stay of proceedings for a period of not more than 10 days if it is satisfied that circumstances exist that make the order appropriate.<sup>7</sup>

45. A stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore solvency and emerge from the CCAA as a going concern.<sup>8</sup> Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course continued operations and, whenever possible, the status quo should be maintained during the initial 10-day period.<sup>9</sup> This 10-day period, per the evidence of John Frank Potestio, allows for a stabilization of operations and a negotiating window.

46. A stay of proceedings is appropriate to provide the debtor with the breathing room it requires while it seeks to restore solvency and emerge from the CCAA proceedings as a going-concern. Whenever possible, the status quo should be maintained during the initial 10-day period.

47. The 10-day period "allows for stabilization of operations and a negotiating window."<sup>10</sup>

48. The relief requested by the Applicant in this Application meets the required criteria.

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<sup>7</sup>[CCAA s 11.02](#) [TAB 7].

See also, [Re Boreal Capital Partners Ltd et al, 2021 ONSC 7802](#) at [para 15](#) [TAB 8]; [Laurentian](#) at [para 35](#).

<sup>8</sup> [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#) at [para 14](#) [TAB 9].; [Target Canada Co \(Re\)](#), 2015 ONSC 303 at [para 8](#) [Target] [TAB 10].

<sup>9</sup> [CCAA, s 11.001](#) [TAB 11].;

[Lydian International Limited \(Re\), 2019 ONSC 7473](#) at [para 26](#) [Lydian] [TAB 12].

49. The Applicant requires a stay of proceedings to preserve the value of the Applicant's business and provide them with breathing room to maintain business operations in the ordinary course and in compliance with the cannabis regulatory regime while they restructure and explore their options under the CCAA, including a SISF process.

50. In the absence of a stay of proceedings, the Applicant will likely face enforcement actions by the Canada Revenue Agency, among others, and certain counterparties that would be detrimental to the Applicant's business and stakeholders and could significantly impair the value of the Applicant's business.

51. The granting of the Stay of Proceedings is in the best interests of the Applicant's and their stakeholders, meets the statutory requirements under the CCAA, and is appropriate in the circumstances.

#### C. The Stay of Proceedings Should be Extended to Non-Applicant Stay Parties

52. This Court has authority to extend the Stay of Proceedings to the Non-Applicant Stay Parties pursuant to s. 11 and 11.02(1) of the CCAA, which allows it to make an initial order on any terms that the court may impose.<sup>11</sup>

53. The Court may consider the following non-exhaustive factors in determining whether to extend a stay of proceedings to non-applicant third parties:

- a. The business and operations of the third party was significantly intertwined and integrated with those of the debtor company;
- b. Extending the stay to the third party would help maintain stability and value during the CCAA process;
- c. Not extending the stay to the third party would have a negative impact on the debtor company's ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company;

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<sup>11</sup> [MPX International Corporation](#), 2022 ONSC 4348 at [para 52](#) [TAB 13].  
[Lydian](#) at [para 39](#);  
[Sino-Forest Corporation \(Re\)](#), 2012 ONSC 2063 at paras [5](#), [18](#), and [31](#)[TAB 14].;  
[Canwest Global Communications Corp. \(Re\)](#), 2009 CanLII 55114 (ON SC), [2009] OJ No 4286 (Ont. Sup. Ct. J.)  
[*Canwest Global*] at paras [28-29](#) [TAB 15];  
[Target](#) at paras [49-50](#).

- d. If the debtor company is prevented from concluding a successful restructuring with its creditors, the economic harm would be far-reaching and significant;
- e. Failure of the restructuring would be even more harmful to customers, suppliers, landlords, and other counterparties whose parties would otherwise be stayed under the third party stay;
- f. If the restructuring proceedings are successful, the debtor company will continue to operate for the benefit of all of its stakeholders, and its stakeholders will retain all of its remedies in the event of future breaches by the debtor company or breaches that are not related to the released claims; and
- g. The balance of convenience favours extending the stay to the third party.

54. The Non-Applicant Stay Parties are integrated into the Applicant's business. An extension of the stay to the Non-Applicant Stay Parties is required to prevent uncoordinated realization and enforcement attempts from being made in different jurisdictions and to protect value for the Applicant's stakeholders.

D. The Stay of Proceedings Should Apply to the Directors and Officers

55. The Applicant is seeking to extend the Stay of Proceedings to include a stay of action against the directors and officers of Freedom in respect of their personal obligations of any amounts owed by the Applicant during the pendency of the Stay Period.

56. As mentioned above, CCAA Courts have the authority under the broad jurisdiction granted under sections 11 and 11.02 of the CCAA and the Court's inherent jurisdiction to grant a stay of proceedings in favour of third parties that are not themselves applicants in a CCAA proceeding.

57. It is appropriate to extend the Stay of Proceedings to include the personal obligations of the directors and officers of Freedom in respect of amounts owed by the Applicant, given that the directors and officers have worked in good faith and with due diligence to keep Freedom operational.

58. The extension of the Stay of Proceedings in favour of the directors and officers of Freedom for any personal obligations in respect of amounts owed by the Applicant is appropriate in these circumstances while the Applicant implements a restructuring of the business for the benefit of their stakeholders. There is no evidence of or any reason to suggest the directors or officers should not be indemnified for further and ongoing acts taken in good faith in the best interests of the Applicant.

E. The DIP Facility Should be Approved and the DIP Lender's Charge Granted

59. The Applicant seeks approval of the DIP Facility in the amount of up to \$3,000,000 to be secured by the DIP Lender's Charge in the amount of, initially, \$1,000,000, and subsequently in an additional amount of up to \$2,000,000, over the Property, ranking subordinate to the Administration Charge and the Directors' Charge.

60. Pursuant to section 11.2 of the CCAA, the Court has the authority to approve interim financing and grant a priority charge respecting the interim financing.<sup>12</sup>

61. Subsection 11.2(4) sets out the factors to be considered by the Court in deciding whether to grant an interim financing charge pursuant to section 11.2.<sup>13</sup>

62. In the present matter, the following factors support approving the DIP Facility and granting the DIP Lender's Charge:

- a. the proposed DIP Lender is the primary secured creditor of Freedom, and is the first-in-time registered creditor with the Alberta Personal Property Registry in respect of debts totalling approximately \$17,000,000;
- b. the proposed DIP Lender has been cooperating and working with Freedom in its efforts to manage its liabilities and restructure;
- c. there is imminent need for financing in order for Freedom to continue its operations through the initial 10 day stay period; and
- d. there is need for further financing, particularly in respect Freedom's ongoing inventory purchasing, which is essential to its supply and sale operations.

F. Authority to Make Pre-Filing Payments to Critical Suppliers

63. To preserve normal course business operations, the Applicant is seeking authorization in the Initial Order to make certain payments for, among other things:

- a. All outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the date of the Initial Order, in each

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<sup>12</sup> CCAA s. 11.2 [TAB 16].

<sup>13</sup> CCAA s. 11.2(4) [TAB 17].

case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

- b. Amounts owing for goods or services actually supplied to the Applicant prior to the date of the Initial Order for those suppliers or service providers who are critical to preserve, protect, or enhance the value of the business; and
- c. The fees and disbursements of any Assistants (as defined in the Initial Order) retained or employed by the Applicant in respect of the CCAA Proceedings, at their standard rates and charges.

64. Section 11.4 of the CCAA empowers the Court to declare a person to be a critical supplier and to provide for the payment of pre-filing amounts to such suppliers, even where a charge on the debtor's property to secure amounts owing for services provided after the filing is not sought.<sup>14</sup>

65. The Court in *Index Energy Mills Road Corporation*<sup>15</sup> outlined the factors to consider in determining whether to grant such authorization, including: a) whether the goods and services are integral to the business of the applicants; b) the applicants' dependency on the uninterrupted supply of the goods or services; c) the fact that no payments will be made without the consent of the Monitor (which is a requirement under the proposed Initial Order); and d) the effect of the debtors' operations and ability to restructure if it could not make such payments.

66. A supplier is viewed as critical to a debtor company's post-filing operations where the particular goods or services are sufficiently integrated into the debtor company's operations that it would be materially disruptive to the debtor's operations and restructuring for the particular supplier to cease providing such services and/or it would be difficult or impossible to secure an alternate supplier.

67. In consideration of the above, the Applicant requires the continued supply of integral goods and services from their key vendors and service providers during the CCAA proceedings to maintain ordinary course operations. The Applicant's ability to operate its business in the normal course is dependent on their ability to maintain an uninterrupted supply of goods and services.

68. The authority to make payment for pre-filing obligations is appropriate and reasonable in the circumstances. In particular, the flexibility to pay pre-filing obligations is important in a regulated industry, such as the cannabis industry, where continued access to critical supplies and services must

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<sup>14</sup> CCAA s. 11.4 [TAB 18].

<sup>15</sup> [\*Index Energy Mills Road Corporation\*](#) (RE), 2017 ONSC 4944 [TAB 19].

be maintained. This authority sought by the Applicant is also counter-balanced by requiring that the Monitor review and approve of any such payments for pre-filing obligations in order to ensure that those payments are in fact critical to the Applicant's operations.

G. The Administration Charge Should be Granted

69. The Applicant is seeking a Court-ordered charge over the Property in the amount of \$250,000 to secure the professional fees and disbursements of the Proposed Monitor and its counsel, and the Applicant's insolvency, at their standard rates and charges, incurred before or after the date of the Initial Order (the "**Administration Charge**").

70. Section 11.52 of the CCAA expressly provides the Court with the jurisdiction to grant an administration charge. The list of non-exhaustive factors to be considered when granting an administration charge include: i) the size and complexity of the business being restructured; ii) the proposed role of the beneficiaries of the charge; iii) whether there is an unwarranted duplication of roles; iv) whether the quantum of the proposed charge appears to be fair and reasonable; v) the position of the secured creditors like to be affected by the charge; and vi) the position of the monitor.<sup>16</sup>

71. It is appropriate in the circumstances for the Court to approve the Administration Charge, given that:

- a. the Applicant's business is highly regulated and subject to numerous statutory and regulatory restrictions and requirements;
- b. the beneficiaries of the Administration Charge have the requisite knowledge with respect to those regulations and have, and will continue to, contribute to these CCAA proceedings and assist the Applicants with the business;
- c. each proposed beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles;
- d. the quantum of the proposed Administration Charge is fair and reasonable; and
- e. the Proposed Monitor is supportive of the Administrative Charge.

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<sup>16</sup> [CCAA at s. 11.52 \[TAB 20\]](#); [Canwest Publishing Inc, 2010 ONSC 222](#) at para [54 \[TAB 21\]](#).

#### H. The Directors' Charge Should be Granted

72. The Applicant is seeking a charge over the Property up to the aggregate amount of \$450,000 to secure the indemnity of their respective directors and officers for liabilities they may incur in these CCAA proceedings (the "**Directors Charge**").

73. The Directors' Charge is proposed to rank in subordination to the Administration Charge but in priority to the DIP Charge.

74. Section 11.51 of the CCAA empowers the Court to grant the Directors' Charge. The purpose of such a charge is to keep the directors and officers in a place during the restructuring by providing them with protections against liabilities that could be incurred during the restructuring.<sup>17</sup>

75. A Court may not make the order if "the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost", and the Court shall make an order declaring that the charge does not apply in respect of a specific obligation or liability incurred by a director or officer "if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct."<sup>18</sup>

76. It is appropriate in the circumstances for the Court to approve the Directors' Charge, given that:

- a. the Applicant requires the active and committed involvement of the directors and officers in order to continue business operations in the ordinary course and to effectively execute the proposed restructuring;
- b. the directors and officers have indicated that their continued service and involvement in these CCAA proceedings is conditional upon the granting of the Directors' Charge;
- c. the Directors' Charge will apply only to the extent that the directors and officers do not have coverage under the D&O Policy;

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<sup>17</sup> [CCAA s. 11.51\(1\)-\(4\)](#) [TAB 22].; [Canwest Global](#) at [para 45](#); [US Steel Canada Inc, Re, 2014 ONSC 6145](#) at [para 20](#) [*US Steel*] [TAB 23].; [Lydian](#) at [para 52](#).

<sup>18</sup> [CCAA at s 11.51\(3\)-\(4\)](#).



- d. the Directors' Charge would only cover obligations and liabilities that the directors and officers may incur after the commencement of the CCAA proceedings and does not cover wilful misconduct or gross negligence;
- e. the amount of the Directors' Charge is reasonable in the circumstances; and
- f. the Proposed Monitor is supportive of the Directors' Charge.

I. The Court Should Authorize the Continued Use of the Cash Management System

77. In the ordinary course of business, Freedom uses a centralized banking and cash management system (the "**Cash Management System**") to collect funds and pay expenses associated with its operations. The Cash Management System contains a number of operating accounts with ATB Financial and Servus Credit Union.

78. This Court has the jurisdiction to approve the continued utilization of the Cash Management System pursuant to the Court's broad discretionary authority in section 11 of the CCAA to make any order it considers appropriate in the circumstances.

79. The approval of the Cash Management System is reasonable and necessary in the circumstances. Both the Applicant and the Proposed Monitor are of the view that the continued use of the Cash Management System is required and appropriate.

J. The Regulatory Stay of the Licenses Should be Granted

80. CCAA courts have granted regulatory stays over licences where, without regulatory stays, the applicable regulators were likely to suspend or cancel licences due to the relevant parties having commenced CCAA proceedings.<sup>19</sup> Courts have commented that to "permit the immediate termination of [a debtor company's] licences would not avoid social and economic losses but amplify them".<sup>20</sup>

81. Similarly, in *Just Energy Corp*, the Honourable J. McLeod stated:<sup>21</sup>

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<sup>19</sup> [Re Just Energy Corp., 2021 ONSC 1793](#) at para 87 [Just Energy] [TAB 24].; [Abbey Resources Corp., \(29 July 2021\) Saskatoon Q.B. No. 733 of 2021 \(SKQB\)](#) (Abbey Resources Corp.'s Supplemental Brief of Law) [TAB "A" - Extracts].; [Original Traders Energy Ltd., initial order issued January 31, 2023](#) [CV-23-00693758-00CL] (ONSC CL) at para 19 [TAB "B"].

<sup>20</sup> [Just Energy](#) at para 87.

<sup>21</sup> [Just Energy](#) at para 79

More plainly put, the CCAA automatically stays enforcement of any payments of money ordered by the regulator. It does not, however, automatically stay other steps that a regulator may take against a regulated entity. The court may nevertheless stay such other steps if it is of the view that the failure to stay those other steps means that a viable compromise or arrangement could not be made, provided that the additional stay is not contrary to the public interest.

82. Canadian courts have previously stayed the CRA from seeking to enforce its rights through regulatory actions and estopped the CRA from rescinding or destroying products related to an excise licence for the duration of a cannabis company's protection under an insolvency regime.<sup>22</sup>

83. As part of a BIA proposal, *Tantalus Labs Ltd.* sought an order from the Supreme Court of British Columbia that its excise cannabis licence, which was set to expire during the pendency of the proposal, be extended over the course of its BIA proceedings. CRA opposed, arguing that a ministerial decision to not renew a licence could not be "stayed" under the BIA.<sup>23</sup> The Honourable Madam Justice Fitzpatrick rejected CRA's argument and granted an order maintaining the status quo over the cannabis excise licence during the course of the proposal proceedings.<sup>24</sup> This Court has similarly granted regulatory stays of cannabis licences in CCAA proceedings.<sup>25</sup>

84. The Applicant's cannabis licences (the "**Licences**") are among the Applicant's most valuable assets and are required to permit the Applicant to operate its underlying business. If the Licences lapse or are cancelled, the Applicant's operation and delivery of products will need to be halted or suspended. Accordingly, the lapsing or cancellation of the Licences would terminate their ability to restructure or continue as a going-concern business. Without the stability of customer contracts that the Applicant has developed, they would lose vital revenue streams, threatening their viability and frustrating the fundamental purpose of these insolvency proceedings.<sup>26</sup>

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<sup>22</sup> [Tantalus Labs Ltd. \(Re\), 2023 BCSC 1450 \[TAB 25\]](#);

[Aleafia Health Inc., SISP approval order issued August 22, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\) \[TAB "C"\]](#);

<sup>23</sup> [Tantalus Labs Ltd. \(9 July 2023\) Vancouver B-230269 \(BCSC\)](#) (Application Response) at Part 5, para 7 [TAB "D"];

<sup>24</sup> [Tantalus Labs Ltd. \(10 July 2023\) Vancouver B-230269 \(BCSC\)](#) (Order Made After Application) [TAB "E"];

<sup>25</sup> [Aleafia Health Inc., SISP approval order issued August 22, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\)](#) para 13 [TAB "F"];


[Aleafia Health Inc., Endorsement of the Honourable Justice Conway issued August 22, 2023 \[CV-23-00703350-00CL\] \(ONSC CL\)](#) at para 5 [TAB "G"];

[BZAM Ltd., initial order issued March 5, 2024 \[CV-24-00715773-00CL\] \(ONSC CL\)](#) at para 44 [TAB "H"];

**V. RELIEF SOUGHT**

85. The Applicants submit that they have met all of the qualifications required to obtain the requested relief and respectfully request that this Court grant the proposed form of Initial Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 6th day of August, 2024.



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Lawyers for the Applicant

## LIST OF AUTHORITIES

### A. Legislation and Regulations

1. Companies' Creditors Arrangements Act, RSC 1985, c C-36
2. Bankruptcy and Insolvency Act, RSC 1985, c B-3
3. Rules of Court, AR 124/2020, Part 6, Division 4

### B. Case Law

1. *Laurentian University of Sudbury*, 2021 ONSC 659
2. *Stelco Inc., Re*, [2004] OJ No 1257 (ONSC)
3. *McEwan Enterprises Inc.*, 2021 ONSC 6453
4. *Re Boreal Capital Partners Ltd et al*, 2021 ONSC 7802
5. *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60
6. *Target Canada Co (Re)*, 2015 ONSC 303
7. *Lydian International Limited (Re)*, 2019 ONSC 7473
8. *MPX International Corporation*, 2022 ONSC 4348
9. *Sino-Forest Corporation (Re)*, 2012 ONSC 2063
10. *Canwest Global Communications, Re*, [2009] OJ No. 4286 (ONSC)
11. *Index Energy Mills Road Corporation (Re)*, 2017 ONSC 4944
12. *Canwest Publishing Inc*, 2010 ONSC 222
13. *US Steel Canada Inc, Re*, 2014 ONSC 6145
14. *Just Energy Corp, Re*, 2021 ONSC 1793
15. *Tantalus Labs Ltd, Re*, 2023 BCSC 1450

## C. Extracts

1. [Abbey Resources Corp., \(29 July 2021\) Saskatoon Q.B. No. 733 of 2021 \(SKQB\)](#) (Abbey Resources Corp.'s Supplemental Brief of Law)
2. [Original Traders Energy Ltd., initial order issued January 31, 2023 \[CV-23-00693758-00CL\]](#) (ONSC CL)
3. [Aleafia Health Inc., SISP approval order issued August 22, 2023 \[CV-23-00703350-00CL\]](#) (ONSC CL)
4. [Tantalus Labs Ltd. \(9 July 2023\) Vancouver B-230269 \(BCSC\)](#) (Application Response)
5. [Tantalus Labs Ltd. \(10 July 2023\) Vancouver B-230269 \(BCSC\)](#) (Order Made After Application)
6. [Aleafia Health Inc., SISP approval order issued August 22, 2023 \[CV-23-00703350-00CL\]](#) (ONSC CL)
7. [Aleafia Health Inc., Endorsement of the Honourable Justice Conway issued August 22, 2023 \[CV-23-00703350-00CL\]](#) (ONSC CL)
8. [BZAM Ltd., initial order issued March 5, 2024 \[CV-24-00715773-00CL\]](#) (ONSC CL)