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COURT FILE NUMBER 2403-15089

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE OF 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 FREEDOM CANNABIS INC.**

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**BENCH BRIEF OF FREEDOM CANNABIS INC.
WITH RESPECT TO THE APPLICATION TO BE HEARD BY
THE HONOURABLE JUSTICE MICHAEL J. LEMA ON AUGUST 15, 2024**

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I. INTRODUCTION

1. Freedom Cannabis Inc. ("**Freedom**" or the "**Applicant**") obtained an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") on August 8, 2024. Pursuant to the Initial Order, among other things:

- a. KPMG Inc. was appointed Monitor of the Applicant (the "**Monitor**");
- b. a stay of proceedings (the "**Stay of Proceedings**") in respect of the Applicant was granted up to and until August 18, 2024 (the "**Stay Period**");
- c. the benefit of the Stay of Proceedings was extended to 2563138 Alberta Ltd. and 2399751 Alberta Ltd. (the "**Non-Applicant Stay Parties**" and together with Freedom, the "**Freedom Group**");
- d. the Applicant was authorized to borrow under the DIP Facility (defined below) in the maximum principal amount of \$3,000,000, from its senior secured lender, JL Legacy Ltd. (in such capacity, the "**DIP Lender**"), provided that borrowings under such DIP Facility would not exceed \$1,000,000 unless permitted by further Order of the Court;
- e. Court-ordered charges (collectively, the "**Charges**") were approved in the following amounts and priority:
 - i. First – Administration Charge (to the maximum amount of \$250,000);
 - ii. Second – Directors' Charge (to the maximum amount of \$450,000); and
 - iii. Third – DIP Lender's Charge (to the maximum principal amount of \$1,000,000).

2. This bench brief is in support of the Application (the "**Comeback Application**") seeking an amended and restated initial Order (the "**ARIO**");

- a. extending the Stay Period up to and including September 18, 2024;
- b. authorizing Freedom to borrow up to a maximum principal amount of \$1,500,000 under the DIP Facility;
- c. increasing the quantum of the Charges as follows:
 - i. Administration Charge, to the maximum amount of \$500,000;
 - ii. Directors' Charge, to the maximum amount of \$1,500,000; and

- iii. DIP Lender's Charge, to the maximum principal amount of \$1,500,000 plus interest, fees and expenses.

3. All references to monetary amounts herein are in Canadian dollars. Capitalized terms used in this bench brief and not otherwise defined have the same meaning as is ascribed to such terms in the Affidavit of JohnFrank Potestio sworn August 6, 2024 (the "**Initial Affidavit**").

II. FACTS

4. The facts underlying this Application are more fully set out in Initial Affidavit and the Second Affidavit of Johnfrank Potestio sworn August 12, 2024 (the "**Second Potestio Affidavit**" and together with the Initial Affidavit, the "**Potestio Affidavits**"). A summary of the key facts for the relief sought at the Comeback Hearing is provided below.

5. Freedom is a privately owned licensed producer of cannabis products in the business of cannabis cultivation, processing, extraction, wholesale distribution, and business to business sales. It grows, produces and sells cannabis products to provincial governments, sells cannabis to cannabis licensed producers, and packages products for other cannabis companies.¹

6. Freedom holds cannabis licenses under the *Cannabis Act*, S.C. 2018, c. 16 and is regulated by Health Canada. It also holds a cannabis excise license issued by the Canada Revenue Agency ("**CRA**") under the *Excise Act*, 2001, SC 2002, c 22 ("**Excise Act**"). Freedom has approximately 97 employees and operates out of a licensed facility in Acheson, Alberta.² It owns the majority of the issued and outstanding shares of the Non-Applicant Stay Parties.³

7. Freedom is required to remit monthly payments in respect of excise duties to maintain its excise license. As of August 3, 2024, Freedom's liabilities included a balance of approximately \$9,488,016 owing to CRA on account of unremitted excise duties (the "**Excise Tax Arrears**").⁴ Freedom had made attempts to negotiate a resolution with CRA that would allow for the reasonable repayment of the Excise Tax Arrears while maintaining its ability to operate in the ordinary course.⁵ As at the time of its application for the Initial Order, due to Freedom's liquidity challenges, it was facing an immediate risk of CRA not renewing Freedom's excise license under

¹ Affidavit of JohnFrank Potestio sworn August 6, 2024 (the "**Initial Affidavit**") at paras 1 and 37.

² Initial Affidavit at para 8 and 58.

³ Initial Affidavit at para 20; 2563138 Alberta Ltd is in the business of developing, manufacturing, marketing and selling cosmetics and other products, including cannabis-related and cannabinoid-infused products. 2399751 Alberta Ltd. provides cannabis extraction services, and it produces and sells certain cannabis-related products under the license granted to Freedom by Health Canada. Each of the Non-Applicant Stay Parties operates from Freedom's licensed facility in Acheson, Alberta.

⁴ Initial Affidavit at para 90.

⁵ Initial Affidavit at para 91.

the *Excise Act* (which was set to expire on August 10, 2024) and/or CRA taking enforcement steps which could result in the cessation of the operations of the Freedom Group.⁶ Freedom was also in default under certain material operating agreements, including its secured loans with JL Legacy Ltd. (“**JLL**”), and the lease agreement in respect of the Applicant’s licensed operating facility located in Acheson, Alberta.⁷

8. Freedom was facing a severe liquidity crisis, and absent the relief granted in the Initial Order, including approval of the DIP Facility (defined below), Freedom would have been unable to continue to carry on its business in the ordinary course or meet its obligations as they become due.⁸ Under the Initial Order, the Court also granted an order that the status quo in respect of the Applicant’s Health Canada licenses and its cannabis excise license shall be preserved and maintained during the pendency of the Stay Period.⁹

9. The Non-Applicant Stay Parties are not applicants in these CCAA Proceedings. However, the Stay of Proceedings was extended to the Non-Applicant Stay Parties due to their integration into the business of the Freedom Group and to prevent uncoordinated realization and enforcement attempts in respect of such Non-Applicant Stay Parties which would adversely affect the Applicant’s restructuring efforts.¹⁰

10. Freedom entered into a debtor-in-possession facility term sheet (the “**DIP Term Sheet**”) with JL Legacy Ltd. (“**JLL**”), in such capacity the DIP Lender, pursuant to which the DIP Lender agreed to provide a super-priority loan (the “**DIP Facility**”) of up to a maximum principal amount of \$3,000,000.¹¹ The initial 13-week cash flow forecast indicated that Freedom required a draw on the DIP Facility immediately upon issuance of the Initial Order to ensure sufficient liquidity to continue its business operations and meet its obligations as they come due during the initial ten-day Stay Period.¹² The Initial Order authorized Freedom to borrow under the DIP Facility, subject to the terms and conditions set forth in the DIP Term Sheet, provided that borrowings under the DIP Facility would not exceed \$1,000,000, unless permitted by further order the Court.¹³

11. Pursuant to the Initial Order, the Court also granted Charges over the Applicant’s Property (as defined in the Initial Affidavit) in favour of: (i) the Monitor, counsel to the Monitor, and

⁶ Initial Affidavit at para 11 and 97.

⁷ Initial Affidavit at para 10.

⁸ Initial Affidavit at para 12 and 114.

⁹ Initial Order granted on August 8, 2024 (the “**Initial Order**”) at para 43.

¹⁰ Initial Affidavit at para 9.

¹¹ Initial Affidavit at para 16 and 102.

¹² Initial Affidavit at para 98.

¹³ Initial Order at para 31.

insolvency and litigation counsel to the Applicant (the “**Administration Charge**”) in the maximum amount of \$250,000; (ii) the Applicant’s directors and officers (the “**Directors’ Charge**”) in the maximum amount of \$450,000; and (iii) the DIP Lender (the “**DIP Lender’s Charge**”) for the maximum principal amount of \$1,000,000.¹⁴

12. In the Initial Affidavit, the Applicant disclosed that, at the Comeback Application, Freedom intended to seek, among other things, an extension of the Stay Period, an increase to the quantum of the Charges and primacy of the Charges over all other Encumbrances (as defined in the Initial Order).¹⁵

III. ISSUES

13. The issues this Bench Brief addresses are whether:

- a. the Stay of Proceedings should be extended;
- b. the DIP Lender’s Charge should be increased; and
- c. the Administration Charge and Directors’ Charge should be increased.

IV. LAW AND ARGUMENT

The Stay Period Should be Extended

14. The Stay Period is currently set to expire on August 19, 2024. The Applicant seeks an extension of the Stay Period up to and including September 18, 2024.

15. A stay of proceedings helps achieve the purposes of the CCAA by preserving the *status quo* for the debtor company, facilitating the ongoing operations of the debtor company’s business, preserving the value of the business, and providing the debtor company with the necessary time, flexibility, and “breathing room” to carry out a supervised restructuring or organized sale process.¹⁶

16. Subsection 11.02(2) of the CCAA provides that a court may, on application in respect of a debtor company other than an initial application, make an order, extending the Stay Period for any period that the court considers necessary.¹⁷

¹⁴ Initial Order at paras 21, 30 and 37.

¹⁵ Second Affidavit at paras 160-162.

¹⁶ *Re Lehndorff General Partners Ltd (1993)*, 17 CBR (3d) 24 (Ont Gen Div) at paras 5-7 [TAB 1]; *Target Canada Co. (Re)*, 2015 ONSC 303 at para 8 [TAB 2].

¹⁷ *Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36* at s. 11.02(2) [CCAA] [TAB 3].

17. The Court may grant an extension of the stay of proceedings where the court is satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the debtor has acted, and is continuing to act, in good faith and with due diligence.¹⁸

18. In this case, the evidence supports that the Applicant is acting in good faith and due diligence. Since the granting of the Initial Order, the Applicant, in consultation with and with the assistance of the Monitor, has, among other things:

- a. communicated with, provide information to, and answered the questions of creditors, employees, and other stakeholders regarding these CCAA Proceedings;
- b. managed key relationships with customers and suppliers, and operated the business in accordance with the terms of the Initial Order;
- c. worked and corresponded regularly with representatives of the Monitor regarding numerous matters in the CCAA proceedings, including the management of the Applicant's cash flow; and
- d. engaged in discussions with the DIP Lender about the business and next steps in the CCAA proceedings.¹⁹

19. The extension of the Stay Period is necessary and appropriate in the circumstances to provide Freedom with the breathing space required to stabilize its operations and restructure as a going concern. Among other things, an extension of the Stay Period is needed to give Freedom the necessary time to develop a sale and investment solicitation process with a view to maximizing value for the benefit of its stakeholders.²⁰

20. The length of the requested Stay Period is reasonable. As indicated by the cash flow forecast (the "**Cash Flow Forecast**") appended to the Pre-Filing Report of KPMG Inc., the Applicant will, subject to the Court authorizing the Applicant to borrow under the DIP Facility in excess of current borrowing limit of \$1,000,000 imposed by the Initial Order, have sufficient liquidity to satisfy its post-filing obligations during the proposed Stay Period.

¹⁸ [CCAA](#), ss. 11.02(2) and (3).

¹⁹ Second Second Affidavit of John Frank Potestio sworn August 12, 2024 (the "**Second Affidavit**") at para 10.

²⁰ Second Affidavit, at para 11.

21. The Applicant does not believe any creditor or stakeholder will suffer material prejudice as a result of this Court extending the Stay Period.²¹

B. The DIP Lender's Charge Should be Increased

22. The Applicant seeks to increase the DIP Lender's Charge to the maximum principal amount of \$1,500,000 plus interest, fees and expenses under the ARIO.

23. The quantum of the DIP Lender's Charge granted pursuant to the Initial Order was informed by section 11.001 and subsection 11.2(5) of the CCAA, such that it was limited to what was reasonably necessary for the Applicant's continued operations in the ordinary course of business during the initial ten-day Stay Period.²²

24. Under the ARIO, the Applicant seeks to increase the maximum amount it can borrow under the DIP Facility to \$1,500,000. This relief is appropriate given that the Cash Flow Forecast shows that Applicant will need to borrow in excess of the current borrowing limit (of \$1,000,000) to pay amounts that are known to be due during the extended Stay Period. Under the DIP Term Sheet, the availability of advances in excess of \$1,000,000 is contingent upon an increased DIP Lender's Charge being granted by the Court.²³ The Monitor believes that, subject to the Court authorizing the Applicant to borrow amounts in excess of \$1,000,000 under the DIP Facility, the Applicant will have sufficient liquidity to operate in the ordinary course during the extended Stay Period.²⁴

25. The DIP Lender's Charge is intended to secure draws under the DIP Facility. The DIP Facility is being provided by JLL, who already benefits from a security interest over all of the Applicant's Property, which security interest is registered first-in-time based on the Personal Property Registry search results against Freedom.²⁵ Further, the DIP Lender's Charge does not secure obligations incurred prior to the CCAA Proceedings.²⁶ As a result, the Applicant believes there is no prejudice to any other creditors.

26. The benefits of authorizing the Applicant to borrow amounts in excess of the current borrowing limit of 1,000,000 imposed by the Initial Order are evident: (i) the Applicant cannot meet its obligations as they become due during the proposed extended Stay Period without the increased draws under the DIP Facility; and (ii) it will preserve the value and going concern

²¹ Second Affidavit at para 17.

²² [CCAA, ss. 11.001](#) and [11.2\(5\)](#).

²³ Initial Affidavit at section 10(c) of Exhibit "M".

²⁴ The First Report of the Monitor, KPMG Inc., August 13, 2024 (the "**First Report of the Monitor**") at para 18.

²⁵ Initial Affidavit at paras 69 and 136.

²⁶ Initial Affidavit at para 137.

operations of the Applicant's business, which is in the best interest of the Applicant and its stakeholders.

27. The Monitor supports the requested increase in the borrowings under the DIP Facility and the increase in the quantum of the DIP Lender's Charge.²⁷

28. Based on the foregoing, and in taking into account the factors under section 11.2(4) of the CCAA, there should be a corresponding increase in the DIP Lender's Charge.²⁸

B. The Administration Charge and the Directors' Charge Should be Increased

29. The Initial Order granted an Administration Charge in the maximum amount of \$250,000 and a Directors' Charge in the maximum amount of \$450,000. These amounts were deemed reasonably necessary for the continued operations of the Applicant in the ordinary course of business for the initial ten-day Stay Period.

(i) Increasing the Administration Charge

30. Under the ARIO, the Applicant seeks to increase the quantum of the Administration Charge from \$250,000 to \$500,000. The jurisdiction to grant a charge for professional fees is found at section 11.52 of the CCAA.²⁹

31. An Administration Charge has been recognized as necessary to ensure the involvement of such professionals and achieve the best possible outcome for stakeholders.³⁰ In *Canwest Publishing Inc.*, Justice Pepall (as she then was) set out a non-exhaustive list of factors to be considered including:

- a. the size and complexity of the businesses being restructured;
- b. the proposed role of the beneficiaries of the charge;
- c. whether there is an unwarranted duplication of roles;
- d. whether the quantum of the proposed charge appears to be fair and reasonable;
- e. the position of the secured creditors likely to be affected by the charge; and

²⁷ First Report of the Monitor at paras 31 and 32.

²⁸ CCAA, ss. 11.2(4).

²⁹ CCAA at section 11.52.

³⁰ *Walter Energy (Re)*, 2016 BCSC 107 at para 41 [TAB 4]; *U.S. Steel Canada Inc.*, 2014 ONSC 6145 at para 22 [TAB 5].

f. the position of the Monitor.³¹

32. The Applicant operates in a highly regulated and complex industry, that is subject to many statutory and regulatory restructuring and requirements, and a successful restructuring will require the extensive input from the beneficiaries of the Administration Charges. Each of beneficiaries of the Administration Charge is performing unique functions and there is no unwarranted duplication of roles.³² All secured creditors affected by the Administration Charge have been provided notice.³³

33. In these circumstances, the quantum of the Administration Charge is appropriate given the length of the extension of the Stay Period being sought by Freedom and the anticipated obligations to be incurred with respect to the fees and disbursements of the Monitor, the Monitor's counsel and the Applicant's counsel.³⁴

34. The Monitor is also supportive of the increase to the Administration Charge.³⁵

(ii) Increasing the Directors' Charge

35. Under the ARIO, the Applicant seeks to increase the Directors' Charge to \$1,500,000 to secure the indemnity of the Directors and Officers for liabilities they may incur after the commencement of these CCAA proceedings.

36. Pursuant to section 11.51 of the CCAA, the Court has specific authority to grant a charge in favour of directors and officers to indemnify the directors or officers against obligations and liabilities that they may incur as a director or officer after the commencement of the CCAA proceedings.³⁶

37. The criteria which satisfied the granting of the Directors' Charge as part of the Initial Order remain the same. The Applicant is merely requesting an increase to quantum of the Directors' Charge such that it reflects an estimation of the maximum potential liability that the Directors and Officers could have during these CCAA proceedings.

38. Directors of Canadian companies can be held liable for certain obligations of a company owing to employees and government entities. In the case of Freedom, these liabilities and obligations include, among other things, excise duties (which are approximately \$1 million per

³¹ [Canwest Publishing Inc, 2010 ONSC 222](#) at para 54 [TAB 6]

³² Initial Affidavit at para 146.

³³ Second Affidavit at para 30.

³⁴ Second Affidavit at para 26.

³⁵ First Report of the Monitor at para 23.

³⁶ [CCAA](#), s. [11.51\(1\)](#) [TAB 7].

month on average), sales taxes, employee payroll and related expenses (including source deductions), as well as other employment related liabilities. Freedom's Directors and Officers are unlikely to stay on to guide and manage Freedom through the CCAA Proceedings if they are not provided with adequate protection for their potential liabilities.³⁷

39. The Monitor supports the increase of the Directors' Charge.³⁸

V. CONCLUSION

40. Based on the foregoing, the Applicant requests that this Honourable Court grant the ARIO substantially in the form attached to the Amended Comeback Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13TH DAY OF AUGUST, 2024.

"Chaitons LLP"
Harvey Chaiton / Danish Afroz / Laura Culleton
Co-counsel to the Applicant,
Freedom Cannabis Inc.

³⁷ Second Affidavit at para 27.

³⁸ First Report of the Monitor at paras 31 and 32.

LIST OF AUTHORITIES

A. Legislation and Regulations

1. *Companies' Creditors Arrangements Act*, RSC 1985, c C-36

B. Case Law

1. *Re Lehndorff General Partners Ltd (1993)*, 17 CBR (3d) 24 (Ont Gen Div)
2. *Target Canada Co, Re*, 2015 ONSC 303
3. *Walter Energy Canada Holdings, Inc (Re)*, 2016 BCSC 107
4. *US Steel Canada Inc, Re*, 2014 ONSC 6145
5. *Canwest Publishing Inc*, 2010 ONSC 222