

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR.	)	WEDNESDAY, THE 26 <sup>TH</sup>
	)	
JUSTICE OSBORNE	)	DAY OF JUNE, 2024

**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 HERITAGE CANNABIS HOLDINGS CORP., 1005477 B.C. LTD., HERITAGE CANNABIS WEST CORPORATION, MAINSTRAIN MARKET LTD., HERITAGE CANNABIS EAST CORPORATION, PUREFARMA SOLUTIONS INC., 333 JARVIS REALTY INC., 5450 REALTY INC., HERITAGE CANNABIS EXCHANGE CORP. and PREMIUM 5 LTD.**

(collectively, the “**Applicants**”)

**ANCILLARY RELIEF ORDER**

**THIS MOTION**, made by the Applicants, pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order, among other things, (i) extending the Stay of Proceedings (as defined in the Amended and Restated Initial Order made in these CCAA proceedings dated April 11, 2024 (the “**ARIO**”)) until and including August 30, 2024; (ii) approving the extension of the term of the debtor-in-possession facility term sheet, dated April 10, 2024, among Heritage Cannabis Holdings Corp. and BJK Holdings Corp. (the “**DIP Term Sheet**”) to August 30, 2024; (iii) granting the Monitor certain enhanced powers to facilitate the wind-down of these CCAA proceedings; (iv) approving the Monitor’s Reports (as hereinafter defined) of KPMG Inc. (“**KPMG**”), in its capacity as Court-appointed monitor of the Applicants (the “**Monitor**”) and the activities described therein; and (v) permitting the Applicants (including 1000921087 Ontario Inc. (“**Residual Co.**”)), or any one of them, to file for bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”) and authorizing

and empowering, but not obligating, KPMG to act as trustee in bankruptcy in respect of any of the Applicants (including Residual Co.), was heard this day via Zoom videoconference.

**ON READING** the Notice of Motion of the Applicants, the affidavit of David Schwede sworn June 18, 2024 and the exhibits thereto (the “**Third Schwede Affidavit**”), the Second Report of the Monitor dated June 21, 2024 (the “**Second Report**”), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and such other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the Affidavit of Service of Lynda Christodoulou, as filed,

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and 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 in this Order and not otherwise defined herein shall have the meanings ascribed to them in the order of the Honourable Justice Cavanagh granted on April 2, 2024 (the “**Initial Order**”), the ARIO, the order of the Honourable Justice Cavanagh granted on April 11, 2024 (the “**SISP Order**”) or the Approval and Reverse Vesting Order dated June 26, 2024 made in these CCAA proceedings (the “**ARVO**”).

3. **THIS COURT ORDERS** that all references to Applicants herein shall be deemed to include reference to Residual Co. for the period from and after the Closing Time (as such term is defined in the ARVO).

### **EXTENSION OF THE STAY PERIOD**

4. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including August 30, 2024.

### **EXTENSION OF TERM OF THE DIP TERM SHEET**

5. **THIS COURT ORDERS** that the extension of the maturity date set out in Section 9(a) of the DIP Term Sheet from August 2, 2024 to August 30, 2024 is hereby approved.

## **ENHANCED POWERS OF THE MONITOR**

6. **THIS COURT ORDERS** that, in addition to the powers and duties of the Monitor set out in the ARIO, any other Order of this Court granted in these CCAA proceedings, the CCAA and applicable law, and without altering in any way the limitations and obligations of the Applicants as a result of these CCAA proceedings, effective upon the Monitor's delivery of the Monitor's Closing Certificate pursuant to the ARVO, the Monitor be and is hereby authorized and empowered, but not required, to:

- (a) cause the Applicants to take any and all actions and steps, and execute all agreements, documents and writings, in the name of or on behalf of, the Applicants, in order to facilitate the performance of any of their obligations, including, without limitation, as contemplated by the Amended and Restated Stalking Horse Agreement (including any post-closing matters relating to same), or any Order of this Court in these CCAA proceedings;
- (b) execute administrative filings as may be required in the name of or on behalf of the Applicants;
- (c) exercise any powers which may be properly exercised by any board of directors or any officers of the Applicants;
- (d) engage, retain, or terminate the services of, or cause the Applicants to engage, retain or terminate the services of, any officer, employee, consultant, agent, representative, advisor, or other persons or entities, all under the supervision and direction of the Monitor, as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of its powers and duties, and on terms as agreed by the Monitor;
- (e) exercise any rights of the Applicants;
- (f) conduct, supervise and direct the continuation or commencement of any process or effort to recover any Property;

- (g) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Applicants (including any governmental authority), in the name of or on behalf of the Applicants;
- (h) claim, or cause the Applicants to claim, any and all insurance refunds or tax refunds to which the Applicants are entitled, in the name of or on behalf of the Applicants;
- (i) exercise any shareholder, partnership, joint venture or other rights of any of the Applicants;
- (j) access all books and records that are the property of the Applicants in the Applicants' possession or control;
- (k) file, or take such actions necessary for the preparation and filing of, in the name of or on behalf of the Applicants, (i) any tax returns, (ii) the Applicants' employee-related remittances, T4 statements and records of employment for the Applicants' former employees, in either case, based solely upon the information in the Applicants' books and records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documents;
- (l) act as an authorized representative of the Applicants in respect of dealings with the Canada Revenue Agency (the "CRA") or any other taxing authority, and the Monitor shall be hereby entitled to execute any appointment or authorization form on behalf of the Applicants that the CRA or any other taxing authority may require in order to confirm the Monitor's appointment as an authorized representative for such purposes;
- (m) assign any of the Applicants, or cause any of the Applicants to be assigned, into bankruptcy, and KMPG shall be hereby entitled but not obligated to act as trustee in bankruptcy of any Applicant, or engage a third party to act as trustee in bankruptcy of any Applicant;

- (n) pay from the “**Priority Payment Amount**” (as defined in the Amended and Restated Stalking Horse Agreement), in the name of or on behalf of the Applicant or in its own name, as applicable, the amounts, fees, costs and expenses payable from the Priority Payment Amount and the CCAA Process Expense Amount (as defined in the Amended and Restated Stalking Horse Agreement), pursuant to the Amended and Restated Stalking Horse Agreement;
- (o) apply to this Court for advice and directions or any further orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court, including for advice and directions with respect to any matter; and
- (p) take any steps reasonably incidental to the exercise by the Monitor of these powers or the performance of any statutory obligations.

## **PROTECTIONS OF THE MONITOR**

7. **THIS COURT ORDERS** that, without limiting and subject to the provisions of the ARIO and the ARVO, the Applicants shall remain in possession and control of the Property, and the Monitor shall not take, or be deemed to have taken, possession or control of the Property, or any parts thereof.

8. **THIS COURT ORDERS** that nothing in this Order, and nothing done by the Monitor in carrying out its duties hereunder, shall result in, or be deemed to result in, the Monitor being an employer, successor employer, responsible person, operator, officer, director, employee, receiver, trustee (unless assignments in bankruptcy are filed as contemplated in Paragraph 6(m) hereof), assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Applicants or the Property, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever, and that any distributions or payments by the Applicants made with the approval, assistance or by the Monitor on behalf of the Applicants will be deemed to have been made by the Applicants.

9. **THIS COURT ORDERS** that without limiting Paragraph 6 hereof, the Monitor shall not, as a result of this Order, or anything done pursuant to its powers under this Order, be deemed to

occupy or to take control, care, charge, possession or management of any of the Property (a) pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the Cannabis Legislation, and (b) that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Environmental Legislation; provided however, if the Monitor is nevertheless found to be in possession of any Property, then the Monitor shall be deemed to be a person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the BIA, and shall be entitled to the benefits and protections in relation to the Applicants and such Property as provided by section 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property.

10. **THIS COURT ORDERS** that the Monitor shall not be liable for any employee-related liabilities of the Applicants, including any successor employer liabilities as provided for in Section 11.8(1) of the CCAA; and nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Applicants, including wages, severance pay, termination pay, vacation pay, and pension, retirement or benefit obligations, or amount, in each case whether arising under statute, contract, collective bargaining agreement, common law or otherwise.

11. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA, as an officer of this Court or otherwise at law, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the ARIO and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in the fulfillment of its duties, carrying out the provisions of this Order and exercising any powers granted to it hereunder. Nothing in this Order shall derogate from the powers of the Monitor as provided in the CCAA, the ARIO and the other Orders of this Court in the CCAA proceedings. Without limiting the generality of the foregoing, in exercising any powers granted to it hereunder: (a) the Monitor shall be entitled

to rely on the Applicants' books and records without independent investigation; and (b) the Monitor shall incur no liability or obligation as a result of exercising any powers granted to it hereunder, save and except for any gross negligence or wilful misconduct on its part, and the Monitor shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of this Order, save and except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct on its part.

12. **THIS COURT ORDERS** that the powers and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Applicants with respect to such matters and, in the event of a conflict between the terms of this Order and those of the ARIO or any other Order of this Court, the provisions of this Order shall govern.

#### **COOPERATION WITH THE MONITOR**

13. **THIS COURT ORDERS** that the Applicants and their respective advisors and their current and former officers, directors, employees, agents and representatives shall co-operate with the Monitor in the exercise of its powers pursuant to this Order or any other Order of this Court in these CCAA proceedings, and shall provide the Monitor and the Applicants with such assistance as the Monitor or the Applicants may request from time to time to enable the Monitor to carry out and discharge its powers as set out in this Order or any other Order of this Court in these CCAA proceedings; provided, however, that in the case of the Applicants' former employees that are, at the time of any such requests for assistance or information by the Applicants or the Monitor, current employees of the Purchaser, subject to further order of the Court, such co-operation and requests will be limited to reasonable requests for information or assistance that will not reasonably be expected to materially interfere with the day-to-day duties or activities of such employee for the Purchaser, shall not cause or potentially cause liability to the Purchaser (including in respect of any indemnification of or responsibility for the employees in question) and shall be at the Applicants' sole expense.

## **APPROVAL OF MONITOR'S ACTIVITIES, CONDUCT, AND REPORTS**

14. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor dated April 2, 2024, and the First Report of the Monitor dated April 10, 2024 (together, the “**Monitor’s Reports**”), and the actions, conduct and activities of the Monitor referred to therein, be and are hereby ratified and approved; provided, however, that only the Monitor, in its capacity as Monitor and 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.

## **AMENDMENT TO THE ARIO**

15. **THIS COURT ORDERS** that paragraph 31 of the ARIO is hereby amended by replacing the reference to “Owens Wright LLP” to “WeirFoulds LLP” such that, after giving effect to such amendment, paragraph 31 of the ARIO shall provide as follows:

**THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' corporate counsel (WeirFoulds LLP) and insolvency counsel (Chaitons LLP) shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

## **GENERAL**

16. **THIS COURT ORDERS** that each of the Applicants or the Monitor may, from time to time, apply to this Court to amend, vary, or supplement this Order or for advice and directions in the discharge of their respective powers and duties under this Order or in the interpretation of this Order.

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

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

19. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

20. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto Time) on the date of this Order without the need for entry or filing.

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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-24-00717664-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HERITAGE CANNABIS HOLDINGS CORP., 1005477 B.C. LTD., HERITAGE CANNABIS WEST CORPORATION, MAINSTRAIN MARKET LTD., HERITAGE CANNABIS EAST CORPORATION, PUREFARMA SOLUTIONS INC., 333 JARVIS REALTY INC., 5450 REALTY INC., HERITAGE CANNABIS EXCHANGE CORP., AND PREMIUM 5 LTD.

**ONTARIO  
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(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ANCILLARY RELIEF ORDER**

**CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton** (LSO#: 21592F)

Tel: (416) 218-1129

Email: [harvey@chaitons.com](mailto:harvey@chaitons.com)

**George Benchetrit** (LSO#: 34163H)

Tel: (416) 218-1141

Email: [george@chaitons.com](mailto:george@chaitons.com)

**Danish Afroz** (LSO#: 65786B)

Tel: (416) 218-1137

E-mail: [dafroz@chaitons.com](mailto:dafroz@chaitons.com)

Lawyers for the Applicants