

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 31ST
)
JUSTICE HAINEY) DAY OF MARCH, 2021
)

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

AND DOMENICO SERAFINO AS A PERSON INTERESTED IN THE MATTER OF A PLAN
OF COMPROMISE OR ARRANGEMENT OF HYDRX FARMS LTD., CANNSCIENCE
INNOVATIONS INC. AND SCIENTUS PHARMA INC. (the "**Applicant**")

AMENDED AND RESTATED INITIAL ORDER
(amending Initial Order dated March 22, 2021)

THIS APPLICATION, made by Domenico Serafino (the "**Applicant**") as a person interested in Hydrx Farms Ltd., Cannscience Innovations Inc. and Scientus Pharma Inc. (collectively, "**Hydrx**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by ZOOM videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Domenico Serafino sworn March 29, 2021 and March 31, 2021 and the Exhibits thereto (the "**Serafino Affidavit**"), and the first report of the monitor, Schwartz Levitsky Feldman Inc. (the "**Monitor**") dated March 29, 2021 (the "**Report**"), the factum of the Applicant, the affidavits of Richard Goldstein sworn March 29, 2021 and March 30, 2021 and the Exhibits thereto, and on hearing submissions for counsel for the Applicant, counsel for Cobra Ventures Inc., counsel for the Monitor and such other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service of Hayley Morgan sworn March 30, 2021,



SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for serving and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Serafino Affidavit.

APPLICATION

3. THIS COURT ORDERS that the Applicant is a person interested in the matter pursuant to section 11 of the CCAA.
4. THIS COURT ORDERS AND DECLARES that Hydrx Farms Ltd., Cannscience Innovations Inc. and Scientus Pharma Inc. are insolvent and to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that Hydrx shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, Hydrx shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. Hydrx is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
6. THIS COURT ORDERS that Hydrx shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
 - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by Hydrx in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, Hydrx shall be entitled but not required to pay all reasonable expenses incurred in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to Hydrx following the date of this Order.

8. THIS COURT ORDERS that Hydrx shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by Hydrx in connection with the sale of goods and services by Hydrx, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and which are attributable to or in respect of the carrying on of the Business by the Hydrx.

9. THIS COURT ORDERS that, except as specifically permitted herein, Hydrx is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by Hydrx to any of its creditors as of the date of the Initial Order; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST HYDRX OR THE PROPERTY

10. THIS COURT ORDERS that until and including May 3, 2021, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of Hydrx or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of Hydrx or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

11. THIS COURT ORDERS that during the Stay Period, Hydrx is directed to maintain its licenses and regulatory compliance with Health Canada under the *Cannabis Act* and *Excise Tax Act* and there shall be no amendments or modifications to its existing licenses including any changes to the Health Canada designated personnel save and except in the event of the resignation of any designated personnel. In the event of a resignation of a designated person, Thomas Jefferd, current Head of Security for Hydrx, shall appoint any and all qualified persons to ensure continued compliance with all Health Canada regulations.

12. THIS COURT ORDERS that no person shall take any steps, or refuse to take any steps, that would cause Hydrx to be unable to conduct its business operations in compliance with Health Canada regulations or otherwise.

NO EXERCISE OF RIGHTS OR REMEDIES

13. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of Hydrx or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower Hydrx to carry on any business which Hydrx is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

14. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by Hydrx, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with Hydrx or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or Hydrx, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by Hydrx, and that Hydrx shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by Hydrx in accordance with normal payment practices of Hydrx or such other practices as may be agreed upon by the supplier or service provider and each of Hydrx and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

16. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to Hydrx. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

17. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of Hydrx with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of Hydrx whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of Hydrx, if one is filed, is sanctioned by this Court or is refused by the creditors of Hydrx or this Court.

APPOINTMENT OF MONITOR

18. THIS COURT ORDERS that Schwartz Levitsky Feldman Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of Hydrx with the powers and obligations set out in the CCAA or set forth herein and that Hydrx and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant and Hydrx pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor Hydrx's receipts and disbursements;

- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Hydrx in its preparation of the Hydrx's cash flow statements;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of Hydrx, to the extent that is necessary to adequately assess Hydrx's business and financial affairs or to perform its duties arising under this Order;
- (e) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (f) perform such other duties as are required by this Order or by this Court from time to time.

20. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property 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 *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in

pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

22. THIS COURT ORDERS that that the Monitor shall provide any creditor of Hydrx with information provided by Hydrx in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by Hydrx is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and Serafino may agree.

23. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

24. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by Hydrx as part of the costs of these proceedings. Hydrx is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis.

25. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

26. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the Applicant's counsel 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 \$250,000, 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 28 and 30 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

27. THIS COURT ORDERS that the Administration Charge shall have first ranking priority to the maximum amount of \$250,000.

28. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge (the "**Charge**") shall not be required, and that the Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

29. THIS COURT ORDERS that the Charge shall constitute a charge on the Property and such Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

30. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, Hydrx shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, any of the Administration Charge, unless Hydrx also obtains the prior written consent of the Monitor, and the beneficiaries of the Administration Charge, or further Order of this Court.

31. THIS COURT ORDERS that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charge (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease,

sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds Hydrx, and notwithstanding any provision to the contrary in any Agreement:

- (a) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from creation of the Charge; and
- (b) the payments made by Hydrx pursuant to this Order and the granting of the Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE AND NOTICE

32. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail, National Edition, a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, by email, a notice to every known creditor who has a claim against Hydrx of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

33. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.slfinc.ca

34. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or

distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Hydrx's creditors or other interested parties at their respective addresses as last shown on the records of Hydrx and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

SEALING PROVISION

35. THIS COURT ORDERS that the Confidential Appendices is hereby sealed pending further Order of the Court and shall not form part of the public record.

GENERAL

36. THIS COURT ORDERS that the Applicant, Hydrx, 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 its powers and duties hereunder.

37. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of Hydrx, the Business or the Property.

38. 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 Applicant, Hydrx, 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 Applicant, Hydrx 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 Applicant, Hydrx and the Monitor and their respective agents in carrying out the terms of this Order.

39. THIS COURT ORDERS that each of the Applicant, Hydrx 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.

40. THIS COURT ORDERS that any interested party (including the Applicant, Hydrx and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

41. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order and is enforceable without any need for entry and filing.

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Hawley J".

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED
AND DOMENICO SERAFINO AS A PERSON INTERESTED IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF HYDRX FARMS LTD., CANNSCIENCE INNOVATIONS INC. AND SCIENTUS PHARMA INC.

Court File No. CV-21-00659187-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

MINDEN GROSS LLP

Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Raymond M. Slattery (LSO# 20479L)

Tel: 416-369-4149
rslattery@mindengross.com

Sepideh Nassabi (LSO# 60139B)

Tel: 416-369-4323
snassabi@mindengross.com

Lawyers for the Applicant