

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

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

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

AND 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.

Applicant

**FACTUM OF THE APPLICANT**  
(Returnable April 30, 2021)

April 26, 2021

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LTD., CANNSCIENCE INNOVATIONS INC. AND SCIENTUS PHARMA  
INC.

**(the “Applicant”)**

**FACTUM OF THE APPLICANT DOMENICO SERAFINO AS A PERSON  
INTERESTED IN THE MATTER**

(Returnable April 30, 2021)

**PART I – OVERVIEW**

1. The Applicant seeks a 90-day extension of the stay of proceedings to and including August 2, 2021 under the CCAA.
2. The Initial Order granted a 10-day stay period until April 1, 2021 (the “**Stay Period**”) and appointed Schwartz Levitsky Feldman Inc. as monitor (the “**Monitor**”). The Amended and Restated Initial Order extended the Stay Period until May 3, 2021.
3. A further 90-day extension of the Stay Period is necessary to support the continuation of the re-start operations and to address key restructuring issues

including the determination of the quantum of the secured indebtedness owing to Cobra.

4. The Monitor supports the extension of the Stay Period. The Applicant has and continues to act in good faith.

## **PART II – FACTS**

### **Background**

5. The facts underlying these CCAA proceedings are more fully set out in the affidavits of Applicant, Domenico Serafino, and the reports of the Monitor.

### **Post Initial Order Activities**

6. The Initial Order was sought, in part, to bring together the Re-Start Group to fund the re-start of the Hydrx business.<sup>1</sup> During the initial 10-day Stay Period, Hydrx completed many tasks needed to re-start its operations as required under the *Cannabis Act*, the regulations and Hydrx's internal Standard Operating Procedures.<sup>2</sup>

### **Post Amended and Restated Initial Order Activities**

7. Since the granting of the Amended and Restated Initial Order, Hydrx commenced re-start operations as follows.

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<sup>1</sup> Affidavit of Domenico Serafino Affidavit, sworn April 26, 2021 ["April 26 Serafino Affidavit"], para 5.

<sup>2</sup> April 26 Serafino Affidavit, para 6.

### *Extraction*

8. Third party contract partners of Hydrx invested in extraction equipment and Hydrx commenced extraction services including extraction of cryo-ethanol extraction services for B2B customers and production of cold pressed rosin extracts which will be packaged for retail sale.<sup>3</sup> The B2B sales is expected to generate revenue of \$70,000 per month commencing May, 2021.<sup>4</sup>

### *Ontario Cannabis Store*

9. On April 16, 2021, Hydrx sought and was accepted as a vendor to the Ontario Cannabis Store (“OCS”) and will begin selling two beverage products through the OCS which is expected to generate revenue in excess of \$600,000.<sup>5</sup>

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<sup>3</sup> April 26 Serafino Affidavit, para 11.

<sup>4</sup> April 26 Serafino Affidavit, para 15.

<sup>5</sup> April 26 Serafino Affidavit, para 18.

## **Regulatory Compliant**

10. Hydrx remains and is in full regulatory compliance with all of its obligations under its Health Canada licenses.<sup>6</sup>

## **Necessity to Replace Philip Hemans as RPIC**

11. Pursuant to the Amended and Restated Initial Order, the Court ordered Hydrx to maintain its regulatory compliance with Health Canada regulations.

12. At the time of granting the Initial Order and Amended and Restated Initial Order, Philip Hemans was the RPIC. Recently, Mr. Hemans:

- a. Has made deliberate prejudicial comments to Health Canada;<sup>7</sup>
- b. Is refusing to grant access to the online licensing portal to the current Head of Security, Thomas Jefferd, and the designated quality assurance person, Carol-Ann Scott;<sup>8</sup> and,
- c. Has failed to prepare and file the requisite key investor report required by Health Canada.<sup>9</sup>

13. As a result of the foregoing, Hydrx wrote to Health Canada to replace Mr. Hemans as RPIC with Mr. Jefferd effective as at April 14, 2021.<sup>10</sup> However, Health

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<sup>6</sup> April 26 Serafino Affidavit, para 9.

<sup>7</sup> April 26 Serafino Affidavit, paras 26-29.

<sup>8</sup> April 26 Serafino Affidavit, para 30.

<sup>9</sup> April 26 Serafino Affidavit, para 33.

<sup>10</sup> April 26 Serafino Affidavit, para 35.

Canada is requiring a resolution from the Board of Directors which Hydrx cannot provide given the current deadlock and dysfunction.<sup>11</sup> Accordingly, Hydrx requires an Order of the Court to direct the replacement of the RPIC.

### **90-Day Extension of Stay Period**

14. A 90-day extension of the Stay Period is needed to:

- a. Continue the re-start operations;
- b. Address the key issues that need to be resolved before a restructuring can be effected including, and most importantly, a determination of the quantum of debt that Hydrx owes to Cobra.

### **Cash Flow and Indemnity Backstop**

15. Hydrx is forecast to have sufficient liquidity to fund the 90-day extension of the Stay Period as demonstrated in the Cash Flow Forecast.<sup>12</sup> The Applicant has provided a personal indemnity to cover any operating losses.<sup>13</sup>

### **Good Faith**

16. The Applicant continues to act in good faith and with due diligence to capitalize the re-start of operations, ensure continued regulatory compliance, apprise

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<sup>11</sup> April 26 Serafino Affidavit, para 36.

<sup>12</sup> April [●] Serafino Affidavit, para 42.

<sup>13</sup> April [●] Serafino Affidavit, para 43.

stakeholders of the CCAA proceedings, liaise with co-packing parties, all with the assistance and oversight of the Monitor.<sup>14</sup>

### **Monitor's Support**

17. The Monitor supports the request for an extension of the Stay Period.<sup>15</sup>

### **PART III – ISSUES AND LAW**

18. The issue to be considered is whether a 90-day extension of the Stay Period should be granted? Yes, the appropriate circumstance exist and the Applicant has and continues to act in good faith.

19. Section 11.02(2) of the CCAA permits a court to make an order staying all proceeding taken in respect of a debtor company.<sup>16</sup> The court must be satisfied that: (a) the circumstances exist that make the order appropriate; and (b) the applicant has acted, and is acting, in good faith and with due diligence.<sup>17</sup>

20. A stay of proceedings is appropriate where it provides the debtors with breathing room while the debtors seek their solvency and emerge from their restructuring on a going concern basis.<sup>18</sup> Further, a stay of proceedings will be appropriate where it advances the purposes of the CCAA.<sup>19</sup>

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<sup>14</sup> April 26 Serafino Affidavit, para 50.

<sup>15</sup> April 26 Serafino Affidavit, para 51.

<sup>16</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 [CCAA], s. 11.02(2).

<sup>17</sup> *Ibid* s. 11.02(3) (b).

<sup>18</sup> *Target Canada Co.*, [2015] O.J. No. 247 (Ont. Sup. Ct. J.), at para. 8.

<sup>19</sup> *Century Services Inc. v. Attorney General (Canada)*, 2010 SCC 60, at para 70.

### *Appropriate Circumstances*

21. The circumstances exist that make an extension of the Stay Period appropriate. The proposed 90-day extension of the Stay Period is necessary for the continuation of the re-start operations and will be used to address key issues, including the quantum of debt owing to Cobra, before restructuring can be affected.

### *Good Faith*

22. The Applicant has and continues to act in good faith to re-start and expand business operations, maintain regulatory compliance, apprise stakeholders, all with the assistance and oversight of the Monitor.

23. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period. Pursuant to the Cash Flow Forecast, Hydrx will have sufficient liquidity and the Applicant has provided a personal indemnity.

24. The Monitor supports the proposed extension.

### **PART IV – ORDER REQUESTED**

25. For the reasons above, the Applicant respectfully submits that it is appropriate for this Honourable Court to grant the relief as set out in the draft Order.



April 26, 2021

**ALL OF WHICH IS RESPECTFULLY  
SUBMITTED**

*Raymond M. Slattery*

Raymond M. Slattery

Minden Gross LLP

Lawyers for the Applicant

## SCHEDULE “A”

### Statutes Referred To

#### 1. *Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36*

##### **Stays, etc. — other than initial application:**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Burden of proof on application**

**11.02 (3)** The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

## SCHEDULE “B”

### **Authorities Referred To**

1. *Century Services Inc. v. Attorney General (Canada)*, 2010 SCC 60
2. *Target Canada Co.*, [2015] O.J. No. 247 (Ont. Sup. Ct. J.)

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Proceeding Commenced at **Toronto**

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