

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

MOTION RECORD
OF THE APPLICANT
(Returnable March 31, 2021)

March 29, 2021

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TAB 1

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

NOTICE OF MOTION

The Applicant will make a motion to the Honourable Justice Hailey at 2:30 PM. on Wednesday, March 31, 2021, by way of judicial videoconference via Zoom due to the COVID-19 pandemic, at Toronto, Ontario. Please refer to the conference details attached as Schedule "A" hereto in order to attend the motion and advise if you intend to join the motion by emailing Sepideh Nassabi at snassabi@mindengross.com.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[] in writing under subrule 37.12.1(1);

[] in writing as an opposed motion under subrule 37.12.1(4);

[X] orally.

THE MOTION IS FOR:

- (a) An amended and restated initial order (the “**Amended and Restated Initial Order**”) substantially in the form attached at Tab 2 of this motion record, among other things:
- (i) Abridging the time for service and filing of this notice of motion and the motion record, declaring that the motion is properly returnable on this day, and validating service of this motion record;
 - (ii) Granting an administration charge over Hydrx’s (defined below) current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the “**Property**”) up to a maximum amount of \$250,000 (the “**Administration Charge**”);
 - (iii) Extending the Stay of Proceedings until and including May 3, 2021 (the “**Stay Extension**”);
 - (iv) Authorizing Hydrx to return the C-Tech Machine (defined below) to its owner in the United Kingdom;

- (b) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

The Initial Order

- (a) On March 22, 2021, this Honourable Court granted protection to Hydrx Farms Ltd., Cannscience Innovations Inc. and Scientus Pharma Inc. (collectively, “**Hydrx**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order.
- (b) Under the Initial Order, among other things:
 - (i) Schwartz Levitsky Feldman Inc. was appointed as monitor of Hydrx (in such capacity, the “**Monitor**”);
 - (ii) An initial 10-day stay of proceedings in favour of Hydrx was granted until and including April 1, 2021 (the “**Stay of Proceedings**”);

Hydrx

- (c) Hydrx is vertically integrated cannabis business facing, among other things, a severe liquidity crisis and a deadlocked board of directors.

- (d) The Initial Order was granted on an urgent and without notice basis. The Initial Order declared that the Applicant is an *interested person* under the CCAA.

Administration Charge

- (e) The Applicant is seeking an Administration Charge as part of the relief granted under the Amended and Restated Initial Order.
- (f) The relief sought in the Amended and Restated Initial Order in respect of the Administration Charge is limited to what is reasonably necessary to restart and stabilize the Hydrx business during the proposed extended Stay of Proceedings.
- (g) The involvement of professionals is necessary for the purposes of, among other things, evaluating the options available to Hydrx, including, a review of the letters of intent already received from various parties and those which are still anticipated to be received shortly, as well as considering the merits of proceeding with a sale and investor solicitation process as part of a restructuring plan that will serve to preserve enterprise value. It is anticipated that the Applicant will be seeking relief in respect of these matters at the next hearing.

- (h) The Monitor is supportive of the granting of the Administration Charge and its quantum.

The Stay Extension

- (i) The Initial Order granted a 10-day initial stay of proceedings until and including April 1, 2021.
- (j) Hydrx requires an extension of the Stay of Proceedings. Pursuant to the Amended and Restated Initial Order, an extension of the Stay of Proceedings until and including May 3, 2021 is being sought.
- (k) Hydrx is forecast to have sufficient liquidity to fund its obligations and the cost of this CCAA proceeding through the end of the extended Stay of Proceedings. It is just, convenient, necessary and in the best interest of Hydrx and its stakeholders that the Stay of Proceedings be extended until May 3, 2021.
- (l) The Monitor supports the request to extend the stay period.

C-Tech Machine

- (m) C-Tech Innovation Ltd. holds a purchase money security interest over a large extraction machine (“**C-Tech Machine**”). Hydrx is not using the C-Tech Machine and it is no longer of value to Hydrx.

- (n) In order to reduce/extinguish the approximately US \$400,000 of debt owing to C-Tech, the Applicant is seeking the Court's authorization to return the C-Tech Machine to its owner in the United Kingdom.

Good Faith

- (o) Since the granting of the Initial Order, the Applicant has acted in good faith and with due diligence to, among other things, maintain regulatory status quo, continue discussions with parties who have delivered letters of intent, deploy a communication plan notifying Health Canada, and other stakeholders of the CCAA proceedings, all with the assistance and oversight of the Monitor.

Other Grounds

- (p) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (q) Rules 1.04, 2.03, 3.02, 14.05, 16, 38, and 39 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 and 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and,

- (r) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Affidavit of Domenico Serafino, sworn on March 29, 2021, and the exhibits attached thereto;
- (b) The Factum of the Applicant;
- (c) The First Report of the Monitor; and
- (d) Such further and other evidence as counsel may advise and this Court may permit.

March 29, 2021

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Lawyers for the Applicant

TO: **THE SERVICE LIST**

Schedule “A”

Conference Details to Attend Motion via Zoom

Topic: 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. et al.
Court File No. CV-21-00659187-00CL

Time: Mar 31, 2021 02:30 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://mindengross.zoom.us/j/95509203667?pwd=WGpHZFEyWGZtKy9kazNSTEhxbUt4Zz09>

Meeting ID: 955 0920 3667

Passcode: 127591

One tap mobile

+19292056099,,95509203667#,,,,*127591# US (New York)

+12532158782,,95509203667#,,,,*127591# US (Tacoma)

Dial by your location

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

833 548 0282 US Toll-free

877 853 5247 US Toll-free

888 788 0099 US Toll-free

833 548 0276 US Toll-free

Meeting ID: 955 0920 3667

Passcode: 127591

Find your local number: <https://mindengross.zoom.us/u/afvXiE1IP>

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

NOTICE OF MOTION

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TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	WEDNESDAY, THE 31 ST
)	
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 affidavit of Domenico Serafino sworn March 29, 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 and on hearing submissions for counsel for the Applicant, 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 [INSERT], 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 is authorized to return the C-Tech Machine, as defined in the Serafino Affidavit, to C-Tech Innovation Ltd. in the United Kingdom.
7. 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.

8. 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.

9. 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.

10. 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

11. 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.

12. 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.

13. 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

14. 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

15. 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

16. 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

17. 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

18. 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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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

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

29. 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.

30. 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.

31. 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.

32. 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

33. 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.

34. 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

35. 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

36. 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

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

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

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Lawyers for the Applicant

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	MONDAY <u>WEDNESDAY</u> , THE 22nd <u>31st</u>
)	
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 ~~on an urgent basis and without notice~~ by ZOOM videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Domenico Serafino sworn March ~~19,29~~19,29, 2021 and the Exhibits thereto (the "**Serafino Affidavit**"), and the ~~Pre-Filing Report~~first report of the ~~proposed~~ monitor, Schwartz Levitsky Feldman Inc. ("~~SLF~~the "Monitor"") dated March ~~19, 2021, 29, 2021~~19, 2021, 29, 2021 (the "Report"), the factum of the Applicant and on hearing submissions for counsel for the Applicant, and such other parties listed on the counsel ~~for SLF, and on reading the consent of SLF to act as monitor (the "Monitor"), slip, no one appearing for any other party although duly served as appears from the affidavit of service of Hayley Morgan sworn March [INSERT], 2021,~~

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for servicing and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today. ~~2. THIS COURT ORDERS that the Application Record, Factum, Pre Filing Report of the Monitor and a copy of this Order be served on all affected parties forthwith by email. and hereby dispenses with further service thereof.~~

2. ~~3.~~ 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. ~~4.~~ THIS COURT ORDERS that the Applicant is a person interested in the matter pursuant to section 11 of the CCAA.

4. ~~5.~~ 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. ~~6.~~ 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 is authorized to return the C-Tech Machine, as defined in the Serafino Affidavit, to C-Tech Innovation Ltd. in the United Kingdom.

7. 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.

8. 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.

9. 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.

10. 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 ~~this~~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

11. THIS COURT ORDERS that until and including ~~April 1,~~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.

12. 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.

13. 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

14. 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

15. 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

16. 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

17. 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

18. 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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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

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

29. 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.

30. 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.

31. 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.

32. 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

33. ~~25.~~ 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.

34. ~~26.~~ 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

35. ~~27.~~ 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

36. ~~28.~~ 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

37. ~~29.~~ 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.

38. ~~30.~~ 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.

39. ~~31.~~ 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.

40. ~~32.~~ 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.

41. ~~33.~~ 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.

42. ~~34.~~ 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.

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

INITIAL ORDER

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Lawyers for the Applicant

TAB 4

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.

AFFIDAVIT OF DOMENICO SERAFINO

I, **DOMENICO SERAFINO**, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a significant shareholder and one of two remaining directors of Hydrx. The other director is Richard Goldstein ("**Goldstein**"). I have been a shareholder for 7 years and an independent director of Hydrx for 6 years. In my capacity as a director, and in conjunction with the management team of Hydrx, I am responsible for, among other things, ensuring that Hydrx has effective operational procedures to support its business operations. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have so stated and believe them to be true.

- 2 -

2. All terms not otherwise defined herein have the meaning ascribed to them in: (a) the Initial Order of the Honourable Justice Hainey dated March 22, 2021 (the “**Initial Order**”) in the Applicant’s proceedings under the CCAA (the “**CCAA Proceedings**”), a copy of which is appended hereto as **Exhibit “A”**; (b) my previous affidavit sworn March 19, 2021, in the support of the commencement of the CCAA Proceedings (the “**March 19 Serafino Affidavit**”), a copy of which is appended hereto, without exhibits, as **Exhibit “B”**;

3. I swear this Affidavit in support of a motion for an amended and restated Initial Order (the “**Amended and Restated Initial Order**”). The proposed Amended and Restated Initial Order, among other things, seeks the following relief:

- (a) An extension of the Stay Period to and including May 3, 2021;
- (b) The approval of the Administration Charge (defined below);
- (c) Authorization for the return of the C-Tech Machine (defined below) to its owner in the United Kingdom.

4. All references to monetary amounts in this affidavit are in Canadian dollars.

Introduction and Background

5. Hydrx is a privately held cannabis company. It is an approved licensed holder with Health Canada under the *Cannabis Act* which license permits Hydrx to

cultivate, wholesale, buy, process, and sell cannabis. Hydrx operates a 46,000 square foot production facility that is fully regulatory compliant.

6. Given the insolvent financial position of Hydrx, the deadlocked nature of its board of directors and the potential adverse consequences flowing from the numerous conflicts of interest that burden Goldstein, I sought protection for Hydrx under the CCAA as an “interested person”. The facts underlying the need for this protection are set out in the March 19 Serafino Affidavit and such facts resulted in the issuance of the Initial Order.

7. Among other things, the Initial Order:

- (a) appointed Schwartz Levitsky Feldman Inc. as monitor (in such capacity, the “**Monitor**”);
- (b) granted an initial 10-day stay of proceedings in favour of Hydrx.

8. The Initial Order was risk and revenue neutral to Goldstein and Cobra as I did not seek any debtor-in-possession authorization or any charges.

Good Faith

9. Since the granting of the Initial Order, I have acted in good faith and with due diligence to, among other things:

- (a) maintain Hydrx’s regulatory compliant status quo;

- 4 -

- (b) deploy a communication plan notifying Goldstein, Cobra, Health Canada and other stakeholders of the CCAA Proceedings;
- (c) evaluate and explore the potential profitability associated with the letters of intent which were provided to the Court as part of the Confidential Appendices with respect to the Initial Order; and,
- (d) work at developing a plan to preserve the enterprise value of Hydrx,

all with the assistance of the Monitor.

Re-Start Investor Group Agrees to Continue Funding

10. As set out in the March 19 Serafino Affidavit, the Re-Start Investor Group agreed to finance and pay all costs of Hydrx during the 10-day initial stay period to keep the cash flow of Hydrx revenue and risk neutral to Cobra.

11. The Re-Start Investor Group has agreed to do the same with respect to the proposed 30 day extension of the Stay Period sought in the Amended and Restated Initial Order, with the exception that it proposes not to continue paying the *per diem* cost of the monthly loan interest payment that Cobra owes to Windsor.

12. This loan was entered into by Cobra with Windsor, without the prior knowledge or consent of me or Hydrx, and it should be the responsibility of Cobra to make all payments going forward.

13. It is anticipated that the Re-Start Investor Group will seek debtor-in-possession financing (the “**DIP Loan**”) and related priority charge at the next comeback date and that, in advance of that hearing, the proposed term sheet in respect of the DIP Loan will be circulated to Cobra (and potentially other parties) to provide them with an opportunity to match the terms of the DIP Loan.

Administration Charge

14. The proposed Amended and Restated Initial Order provides for a Court-ordered charge in favour of the Monitor, as well as counsel to the Monitor and myself, over all assets of Hydrx, to secure payment of professional fees and disbursements incurred in connection with services rendered in respect of these CCAA Proceedings up to a maximum amount of \$250,000 (the “**Administration Charge**”). The Administration Charge is proposed to rank ahead of and have priority over all of the other charges.

15. Hydrx requires the expertise, knowledge and continued participation of the Monitor and legal counsel during these CCAA Proceedings. I am currently working with the Monitor to evaluate the options available to Hydrx, including the potential merits of a sale and investor solicitation process (“**SISP**”). It is anticipated that a recommended path forward will be presented to the Court at the next hearing date should my request for the extension of the stay of proceedings be granted.

16. I have engaged in lengthy discussions with the Monitor in order to determine a reasonable estimate of the appropriate amount for the Administration Charge. I understand that the Monitor supports the request for the Administration Charge and the quantum of the same.

Stay Extension

17. Under the Initial Order, the Court granted the initial Stay Period until and including April 1, 2021. Pursuant to the Amended and Restated Initial Order, I am seeking an extension of the Stay Period until and including May 3, 2021. It should be noted that the expiration of the 30 day period lands on Saturday, May 1, 2021.

18. An extension of the existing stay of proceedings is necessary in order to permit a thorough evaluation of the options available to Hydrx, including, without limitation, a review of and negotiation with each party who has submitted an LOI to arrive at definitive agreements, the potential merits of a SISP and, more generally, the framework of a restructuring plan that will preserve enterprise value while also providing the existing stakeholders with the best opportunity to participate in the future economic prosperity of Hydrx.

19. As is demonstrated in the Cash Flow Forecast appended to the Monitor's report, with funding from the Re-Start Investor Group, Hydrx is forecast to have

sufficient liquidity to fund its obligations and costs of the CCAA Proceedings through the end of the extended Stay Period.

20. I understand that the Monitor supports the request for the extension of the Stay of Proceedings.

C-Tech Innovation Ltd.

21. As indicated in the March 19 Serafino Affidavit, C-Tech Innovation Ltd. holds a purchase money security interest over a large extraction machine (the “**C-Tech Machine**”). There is approximately \$400,000 (USD) outstanding to the owner of the C-Tech Machine.

22. Hydrx is not using the C-Tech Machine and the C-Tech Machine is no longer of value to Hydrx.

23. The C-Tech Machine is currently located at the Hydrx Production Facility.

24. During the 10-day stay period under the Initial Order, representatives of Hydrx have been in discussions with the owner of the C-Tech Machine to reduce/extinguish the debt owing to it by returning the C-Tech Machine to it in the United Kingdom.

25. My understanding from our legal counsel is that Hydrx should seek the Court's authorization to have the C-Tech Machine returned to the owner.

Rydan Financial Inc.

26. I understand, and verily believe, that our legal counsel has been in touch with a representative of Rydan and our counsel has been provided with:

- (a) Confirmation of PPSA assignment registration; and,
- (b) Confirmation of PPSA discharge registration,

both of which are attached hereto as **Exhibit "C"**.

27. Rydan is no longer owed any money by Hydrx.

Conclusions

28. Since the granting of the Initial Order, I have acted in good faith and with due diligence to, among other things, apprise the stakeholders and Goldstein of the CCAA Proceedings, work with the entities that have delivered letters of intent, and maintain the enterprise value of Hydrx for the benefit of all stakeholders.

29. The proposed Amended and Restated Initial Order is in the best interests of Hydrx and its stakeholders. The requested relief is designed to be as revenue and risk neutral as possible to Cobra and other creditors of Hydrx. In order to properly

evaluate the options and opportunities available to Hydrx, the requested breathing space is essential. Absent an order granted for the sought relief, the preservation of enterprise value (through the maintenance of regulatory compliance and contract co-party confidence) will be unnecessarily jeopardized. Hydrx has an opportunity to restart its business and restructure its finances but this opportunity is dependent upon the issuance of the Amended and Restated Initial Order.

30. I make this Affidavit in support of the proposed Amended and Restated Initial Order and for no other or improper purpose.

31. This Affidavit is administered in accordance with O. Reg. 431/20: Administering Oath or Declaration Remotely:

Location of Commissioner administering the Affidavit: Toronto, ON, Canada
Location of Affiant of the Affidavit at the time of administration: Toronto, ON, Canada

SWORN BEFORE ME in the)
City of Vaughan, in the Province)
of Ontario, this 29th day of)
March, 2021)

DocuSigned by:)
Sepideh Nassabi)
9A5A673DA59E432...)

A Commissioner, etc.
Commissioned by Video Conference
Sepideh Nassabi (LSO# 60139B)

DocuSigned by:)
Domenico Serafino)
FE97100D6F50476...)
DOMENICO SERAFINO

This is **Exhibit "A"** referred to

in the Affidavit of
Domenico Serafino

Sworn this 29th

day of March, 2021.

DocuSigned by:

Sepideh Nassabi

9A5A673DA59E432.....

A Commissioner for Taking Affidavits

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE HAINEY

)
)
)

MONDAY, THE 22nd
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**")



INITIAL ORDER

THIS APPLICATION, made by Domenico Serafino (the "**Applicant**") as 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 on an urgent basis and without notice by ZOOM videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Domenico Serafino sworn March 19, 2021 and the Exhibits thereto (the "**Serafino Affidavit**"), and the Pre-Filing Report of the proposed monitor, Schwartz Levitsky Feldman Inc. ("**SLF**") dated March 19, 2021, the factum of the Applicant and on hearing submissions for counsel for the Applicant, counsel for SLF, and on reading the consent of SLF to act as monitor (the "**Monitor**"),

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today.
2. THIS COURT ORDERS that the Application Record, Factum, Pre-Filing Report of the Monitor and a copy of this Order be served on all affected parties forthwith by email.
3. 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

4. THIS COURT ORDERS that the Applicant is a person interested in the matter pursuant to section 11 of the CCAA.
5. 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

6. 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.
7. 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.

8. 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.

9. 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.

10. 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 this date; (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

11. THIS COURT ORDERS that until and including April 1, 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.

12. 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.

13. 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

14. 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

15. 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

16. 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

17. 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

18. 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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

SERVICE AND NOTICE

25. 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.

26. 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

27. 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

28. 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

29. THIS COURT ORDERS that the Applicant, Hydrx or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

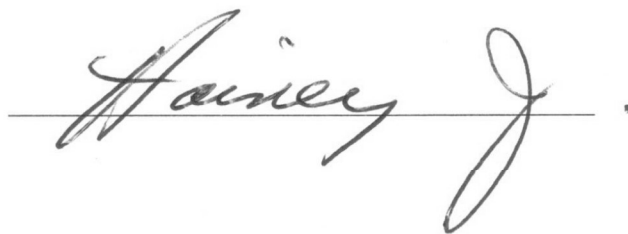
30. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of Hydrx, the Business or the Property.

31. 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.

32. 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.

33. 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.

34. 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 cursive script, reading "Ainey J.", is written over a horizontal line. The signature is positioned in the lower right quadrant of the page.

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 SCIENTIUS PHARMA INC.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

INITIAL ORDER

MINDEN GROSS LLP
Barristers and Solicitors
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Sepideh Nassabi (LSO# 60139B)
Tel: 416-369-4323
snassabi@mindengross.com

Lawyers for the Applicant

This is **Exhibit "B"** referred to

in the Affidavit of
Domenico Serafino

Sworn this 29th

day of March, 2021.

DocuSigned by:

Sepideh Massabi

9A5A673DA59E432

.....
A Commissioner for Taking Affidavits

Court File No.

**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.

AFFIDAVIT OF DOMENICO SERAFINO

I, **DOMENICO SERAFINO**, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. This Affidavit is made in support of an urgent Application without notice by me as a person interested in this matter seeking relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-35 ("**CCAA**") for the benefit and on behalf of Hydrx Farms Ltd. ("**Hydrx**"), Scientus Pharma Inc. ("**Scientus Pharma**") and CannScience Innovations Inc. ("**CannScience**") (collectively, "**Hydrx**").
2. I am a significant shareholder and one of two remaining directors of Hydrx. I have been a shareholder for 7 years and an independent director of Hydrx for 6 years. In my capacity as a director, and in conjunction with the management

- 2 -

team of Hydrx, I am responsible for, among other things, ensuring that Hydrx has effective operational procedures to support its business operations. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have so stated and believe them to be true.

3. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise.

REASON FOR APPLICATION BY “INTERESTED PERSON”

4. I am making the Application as an “interested person” due to a deadlock between myself and Richard Goldstein who is the only other director of Hydrx (“**Goldstein**”). For the reasons set forth herein, Goldstein finds himself in a position of conflict between his fiduciary obligations as a director of Hydrx and his role as CEO and owner of Cobra Ventures Inc. (“**Cobra**”), a secured lender to Hydrx and his role as a shareholder, director and officer of Canntab Therapeutics Limited (“**Canntab**”), a prospective competitor of Hydrx. Particulars of Goldstein’s numerous conflicts of interest are set forth in more detail throughout various sections of this Affidavit but may be summarized as follows:

- (a) Goldstein publically disclosed his ownership interest and role as CEO of Cobra Ventures Inc. (“**Cobra**”) on October 1, 2020, shortly before consenting to act as a director of Hydrx and after Cobra had acquired the debt and security

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held by Hydrx's then principal secured creditor, Aphria Ltd. (“**Aphria**”) earlier that same month at a deep discount. His appointment to the board of directors was in furtherance of a business plan formulated in July of 2020 and in respect of which I acquiesced to his joining the board.

- (b) Subsequently, Goldstein did not disclose that Cobra entered into a loan arrangement with Rydan Financial Inc. (“**Rydan**”) for \$1 million and pledged the assets of Hydrx in support of the loan. The Rydan loan was used to assist Cobra in its acquisition of the debt and security held by Aphria.
- (c) Goldstein subsequently did not disclose the decision by Cobra to obtain a loan from Windsor Private Capital Limited Partnership (“**Windsor**”), in the amount of \$4 million again securing this loan with assets of Hydrx. Hydrx received no benefit from these loan proceeds as they were used to fund the repayment to Rydan and to fund the corporate divorce between Goldstein and the then co-owner of Cobra, World Class Extractions (“**WCE**”).
- (d) In order for Hydrx to be able to sell cannabis products, it must maintain an Excise Tax License (“**ETL**”). The ETL expires on April 17, 2021 and the deadline to renew was March 16, 2021. This deadline was known to Goldstein but he gave instructions to Roula Sotirakos, the then consultant of Cobra responsible for such compliance matters, to not file the requisite renewal application.

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- (e) In order for Hydrx to legally operate, it needs to remain in compliance with various regulatory obligations, including licenses under the *Cannabis Act*. Goldstein has informed various third parties that his intention is to obtain a license for either Cobra or Canntab by using the same structure and regulatory submissions used by Hydrx for its cannabis related licenses. To this end, modifications to the Hydrx license in respect of the key personnel required by Health Canada have already been made without board approval by Hydrx.
- (f) Goldstein acknowledged his increasing conflicts of interest and growing discomfort with same in an email to me dated February 21, 2021. A copy of his email is attached as Exhibit “T”. Indeed, Goldstein indicated that he intended to resign. To date, he has not resigned and, as a consequence, we have a deadlocked board of directors and one director who is admittedly in an intractable conflict of interest.

HYDRX BACKGROUND

5. Hydrx was incorporated under the *Canadian Business Corporations Act*, R.S.C., 1985, c. C-44 on April 29, 2014.
6. Hydrx is a privately held corporation and its shares are not publicly traded.

7. Hydrx is a vertically-integrated biopharmaceutical company with a focus on developing and commercializing pharmaceutical-grade cannabinoid derivative products.

8. Hydrx is an approved licensed holder with Health Canada under the *Cannabis Act*. The license permits Hydrx to cultivate, wholesale, buy, process, and sell cannabis and cannabinoid derivatives from and to licensed producers (as such term is defined in the *Cannabis Act*). Hydrx is also permitted to sell cannabis to approved patients.

9. Hydrx's registered corporate address is 79 Wellington Street West, Suite 3000 Toronto, Ontario and is the registered owner of 1130 Champlain Court, Whitby, Ontario (the "**Hydrx Real Property**"). Situated on the Hydrx Real Property is a 46,000 square foot production facility that is fully regulatory compliant (the "**Production Facility**").

CORPORATE STRUCTURE

10. Hydrx is the ultimate parent company of the business, owner of all assets and holder of all applicable licenses.

11. Hydrx has two wholly-owned subsidiaries, Scientus Pharma and CannScience.

12. Scientus Pharma was incorporated on the premise that it would be the go forward corporate name of Hydrx should the business ever go public. Hydrx has not completed any initial public offering, reverse takeover or any other form of go-public transaction. To my knowledge, there also has never been any business conducted by or through Scientus Pharma.

13. CannScience was acquired by Hydrx Farms in March of 2017 principally for its patents. Hydrx has utilized intellectual property (“IP”) from the acquisition in its extraction line and has also applied for Scientific Research and Experimental Development Tax Credits through CannScience, though no such credits were applied for in 2020.

14. As of the date of this Affidavit, Scientus Pharma and CannScience have not carried on active business operations while owned by Hydrx. Nonetheless, both are being included in these CCAA proceedings, despite their inactive status and the fact that neither have any obligations of their own to any creditors directly, as both retain some usefulness to Hydrx stakeholders given the IP held through CannScience and the fact that Hydrx has in the past held itself out as o/a Scientus Pharma.

THE HYDRX BUSINESS

Cannabis Industry in Canada

15. Prior to 2018, cannabis was only permitted to be used for medical purposes in Canada. On October 17, 2018, the non-medical use of cannabis was legalized in Canada and the *Cannabis Act*, which regulates retail cannabis for recreational/adult-use, medical cannabis and industrial hemp in Canada, came into effect. Additionally, cannabis was removed as a controlled substance from the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

16. The cannabis industry continues to be a highly regulated industry, with the *Cannabis Act* regulating the possession, cultivation, production, distribution, sale, research, testing, import and export and promotion of cannabis based products.

Business

17. Hydrx's business, which is headquartered at the Hydrx Real Property, is a vertically-integrated biopharmaceutical company with a focus on developing and commercializing pharmaceutical-grade cannabinoid derivative products.

18. Hydrx provides a premium product mix with a focus on ensuring product consistency across their clinically developed pharma-grade manufacturing processes. This approach leads to well researched products that are accurate and provide a consistent dosage of active pharmaceutical ingredients.

19. Hydrx was approved by Health Canada as a Controlled Drug and Substances Licensed Dealer in October of 2016. Hydrx subsequently received a Licensed Producer Cultivation License (“**LP**”) in September of 2020. The LP was subsequently amended to include, among other things: (i) cultivation, (ii) the sale of dried flower, (iii) the processing of capsules and oils, (iv) the sale of capsules and oils, and most recently (v) the processing and sale of edibles (collectively, the “**Permitted License Uses**”). Attached hereto and marked as **Exhibit “A”** is a copy of the LP.

20. Hydrx currently cultivates and processes cannabis for the medical and lifestyle market and sells medical cannabis to other appropriately licensed entities and directly to consumers with medical documents in Canada.

21. The Production Facility located on Hydrx Real Property is the sole processing facility, with cultivation, extraction, manufacturing and distribution capabilities. Hydrx’s license under the *Cannabis Act* was renewed September 22, 2020. Attached

hereto and marked as **Exhibit “B”** is a copy of the renewal approval letter from Health Canada dated September 22, 2020.

22. As the holder of the LP license, Hydrx is subject to a comprehensive and rigorous regulatory regime as set out in the *Cannabis Act* and the regulations thereunder. This regime requires ongoing compliance with a variety of operational requirements, including that directors, officers and certain management personnel must hold security clearances, compliance with site location requirements and ongoing reporting obligations.

Employees

23. Hydrx no longer has any employees. Hydrx initiated a planned shutdown in March of 2020 as a result of its severe liquidity crisis, operational difficulties and the increased market downturn due to the Covid-19 pandemic. Hydrx was forced to lay off the majority of its 29 person staff, retaining only those employees required to maintain its standing with Health Canada and those required to sell, package, ship and account for its built up inventories and products sold.

24. Hydrx currently relies on contractors funded by Cobra, described below, to maintain its operational and regulatory compliance status.

25. There are no registered pension plans for Hydrx's former employees nor are there, or were there, any unions or collective bargaining arrangements in respect of Hydrx.

26. Hydrx did offer employee benefits through its provider Sun Life Financial Inc., offering health and dental benefits and life and accidental death and dismemberment insurance for all of its employees. These benefits were terminated for non-payment of premiums as of July 31, 2020.

Leased and Owned Property

27. As at the date of my affidavit, the encumbrances registered on title to the Hydrx Real Property are a charge/mortgage in favour of Aphria Inc. and a series of transfers of the charge from Aphria to Cobra, Cobra to Rydan, Rydan back to Cobra and finally Cobra to Windsor. Attached as **Exhibit "C"** to this Affidavit is a copy of the parcel register for the Hydrx Real Property as at March 18, 2021.

28. The explanation for the series of transfers of charge set out above is as follows. The Aphria Secured Debenture is a senior, secured convertible debenture which has a face principal amount of \$11,500,000 (the "**Aphria Secured Debenture**"). With accumulated interest the debt owing under the Aphria Secured Debenture is about \$13 million. Cobra became aware that the Aphria Secured Debenture could be

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purchased from Aphria at a considerable discount. Cobra arranged to acquire the Aphria Secured Debenture from Aphria for \$5 million. It is my understanding that the principal direct or indirect shareholders of Cobra at that time were Goldstein and WCE. It is my further understanding that WCE contributed \$2.5 million as share capital to Cobra and Goldstein arranged the financing of \$1.5 million as share capital in Cobra. In order to close the deal with Aphria to acquire the debt owing to Aphria by Hydrx and the security for the debt, Cobra required \$1 million in addition to its available resources. Accordingly, in or about July, 2020, Cobra entered into an agreement with Rydan whereby Rydan agreed to loan \$1 million to Cobra.

29. As will be discussed further below, in or about January 2021, Cobra then entered into a loan agreement with Windsor whereby Windsor agreed to loan Cobra the sum of \$4 million. Once the Windsor deal closed, Cobra paid Rydan the full amount owing to Rydan, namely \$1 million, and Cobra paid WCE, it's 50% owner, the sum of \$2.5 million to complete its corporate divorce (see paragraphs 81 to 83 below).

30. I was not privy to any of the shareholding arrangements within Cobra or any of the loan arrangements negotiated by Cobra with either Rydan or Windsor and no board approval was either sought or given by Hydrx despite the fact that these arrangements involved the pledging of Hydrx's assets.

31. Hydrx leases a company delivery truck via Mercedes Benz Finance. The vehicle is a 2016 Sprinter model panel van. The payments under the lease are \$550.00 payable on the 2nd of each month. The term of the lease expires in September of 2021.

Suppliers

32. Hydrx relies on a number of vendors and third-party service providers to operate its business. For instance, security providers, insurance providers and utility providers are all essential to Hydrx's operations. As is further detailed later in this Affidavit, Hydrx has been unable to adequately fund these expenditures and its senior secured lender, Cobra, has instead funded such services on Hydrx's behalf to ensure its continued regulatory compliance.

EXCISE TAX

33. In order to legally sell cannabis production, Hydrx is required to maintain a cannabis Excise Tax License. In paragraph 108 of this Affidavit I describe how Goldstein directed that no steps be taken to renew this license and, but for my

intervention, the requisite renewal application would not have been filed by the deadline of March 16, 2021.

34. A federal excise duty is payable by a licensed cannabis producer under *Excise Act, 2001*, S.C. 2002, c. 22 when the cannabis products they package are delivered to a purchaser. Hydrx pays federal excise tax on a monthly basis in respect of the amount of cannabis product delivered in the prior month.

35. In addition, cannabis producers are required to post security pursuant to the *Excise Act*. The security provides Canada Revenue Agency (“**CRA**”) with financial assurance for any outstanding excise taxes payable. The security can be posted in the form of a surety bond or a deposit with the CRA.

36. The security required to be posted with the CRA is calculated as the highest amount of cannabis duties payable for a calendar month in the previous twelve (12) calendar months. As of the date of this Affidavit, Hydrx has provided a deposit/surety bond through its insurance broker KRGinsure in an amount of \$75,000.00 which bond is continued in force through to August 21, 2021. Attached hereto as **Exhibit “D”** is a Continuation Certificate for Hydrx’s bond with the Guarantee Company of North America. Attached hereto as **Exhibit “E”** is a copy of Hydrx’s insurance policy with KRGinsure.

37. Hydrx has filed its monthly returns with the CRA through March 15, 2021 with no balance outstanding at this time.

Banking Arrangements and Cash Management

38. Hydrx has a total of three (3) bank accounts, all with Royal Bank of Canada (“RBC”):

- (a) RBC CAD chequing account is Hydrx’s main operating account and is used to deposit receipts and pay disbursements;
- (b) RBC USD Account is used for any US dollar transactions; and,
- (c) RBC High interest rate Account is used to manage cash balance and garner interest.

39. The total balance for the 3 RBC accounts is less than \$5,000.

40. I believe that Hydrx also provided corporate credit cards to certain employees but I do not have any information about who received such cards or what they were used for.

Litigation

41. Hydrx is currently subject to three (3) significant legal proceedings:
- (a) On January 19, 2017, Zidane Capital Corp. commenced an action in the Supreme Court of British Columbia against Hydrx for an unspecified amount of damages in relation to a purported breach of an alleged amalgamation agreement between the Plaintiff and Hydrx. Hydrx denies the allegations and has served its defence to the action.
 - (b) On July 27, 2018, Jacob Securities Inc. and Sasha Jacob commenced an action in the Ontario Superior Court of Justice – Commercial List seeking an Order that Scientus Pharma deliver 421,377 shares and 165,239 warrants for shares in Scientus Pharma or alternatively an equivalent amount in monetary damages plus \$162,296.43 in alleged unpaid commissions and \$45,000.00 in alleged unpaid expenses. Scientus Pharma denies the allegations and has served a defence to the action.

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(c) On May 8, 2020, The Cadillac Fairview Corporation Limited commenced an action in the Ontario Superior Court of Justice claiming \$1,091,231.55 in damages for an alleged breach of a commercial lease. I am not aware of the current status of this proceeding.

42. I am aware of three (3) other law suits brought by former employees of Hydrx each of which results from the cessation of business operations in March of 2020.

FINANCIAL POSITION OF HYDRX

43. As of the date of the swearing of this Affidavit, Hydrx has not prepared any 2019 or 2020 financial statements. The most recent Trial Balance Report is dated as at October 31, 2020 (the “**Trial Balance Report**”) which demonstrated that Hydrx has current assets of \$2,504,811 and liabilities of \$13,286,979 for a net deficiency of \$10,782,168. Certain information contained in this Trial Balance Report is summarized below. A copy of the Trial Balance Report is attached as **Exhibit “F”**.

44. As of October 16, 2020, the Applicants had only \$4,580.00 cash on hand.

45. I am advised by Timothy Dunn of Minden Gross LLP and verily believe that, for the purposes of the CCAA, a company is insolvent if, among other things:

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- (a) the aggregate of its 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 its obligations, due and accruing due; or
- (b) it is, for any reason, unable to meet its obligations as they generally become due.

46. In light of the present circumstances, Hydrx is insolvent.

a) Assets

47. As at October 31, 2020, the current assets of Hydrx had a book value of approximately \$2,504,811 and consist of the following:

Current Assets: \$2,504,811	
Cash	\$4,580.00
Inventory	\$2,450,000.00
Prepaid Expenses and Deposits	\$29,509.00

48. Other assets, including tangible assets, goodwill and real property, plant and production equipment were valued internally at approximately \$60,000,000. Given the passage of time and the cessation of business operations last year, these values

will need to be revisited and cannot be relied upon as an accurate reflection of current asset values.

b) Liabilities

49. As at the date of my affidavit, the recorded liabilities of Hydrx total approximately \$13,300,000 and consist of the following:

Current Liabilities: \$13,286,979	
Trades and other accounts payables	\$2,293,253
Secured Convertible debenture	\$11,500,000
Non-current Liabilities: \$7,955,912	
Deferred tax liability	\$7,955,912
Total	\$13,286,979

50. I am of the view that in a forced liquidation scenario, the assets of Hydrx are insufficient to satisfy in full its existing liabilities.

Secured Debt

Aphria Secured Debenture

51. On August 14, 2017, Hydrx reached an agreement with Aphria for a subscription agreement which included the Aphria Secured Debenture.

52. The Aphria Secured Debenture originally had a two-year term, bore interest at the rate of 8%, paid semi-annually, was convertible into common shares of Hydrx at a conversion price of \$2.75 per share, and was secured by a first charge over all of the current and future assets, property and undertakings of Hydrx. A copy of the Aphria Secured Debenture is attached hereto as **Exhibit “G”** to my Affidavit.

53. The Aphria Secured Debenture was registered on title to the Hydrx Real Property pursuant to a charge/mortgage registered August 15, 2017 as Instrument No. DR1626830 in the principal amount of \$11,500,000 (the “**Mortgage**”). Attached hereto as **Exhibit “H”** is a copy of the Charge/Mortgage registered August 15, 2017 as Instrument No. DR1626830.

54. The Aphria Secured Debenture was amended to extend its term on August 14, 2019, and again by further amendment on November 14, 2019. Attached hereto and

marked as **Exhibit “I”** is a copy of the Aphria Secured Debenture Amendment Agreement.

55. The intended purpose of the financing by Aphria was to significantly expand Hydrx’s existing partnership with Aphria and to allow Hydrx to complete implementation of its patent pending commercial scale microwave extraction platform, which was an important step toward creating an active pharmaceutical ingredient that could be subsequently formulated into a range of effective dosing forms, and to execute the commercial launch of its first differentiated product.

56. Over the course of 2019, the senior management changed at Aphria and it was decided that Aphria would not exercise its right to convert debt to equity in the capital stock of Hydrx. Accordingly, Hydrx was informed that the debt would need to be paid.

57. On or about January 20, 2020, Aphria demanded repayment of the indebtedness owing to it. Negotiations followed and resulted in the execution of a Support Agreement between Hydrx and Aphria which provided Hydrx until January 31, 2020, to arrange refinancing to repay Aphria.

58. The then management of Hydrx actively pursued alternative financing but was unable to repay Aphria by the time of the expiration of the support arrangements on January 31, 2020.

59. Aphria took no immediate action to enforce its right as a secured creditor and discussions continued in the hope that repayment could be arranged without recourse to an enforcement proceeding.

Enter Goldstein & Cobra

60. In July of 2019, Goldstein was introduced to Hydrx by the former COO of Hydrx, namely, Philip Hemans (“**Hemans**”). Hemans continues to be a contractor to various cannabis entities owned by Goldstein, including Cobra.

61. Hemans facilitated an introduction between Goldstein and a former director of Hydrx who had expiring stock options, namely, Dr. Hance Clarke (“**Clarke**”). Goldstein loaned monies to Clarke so that Clarke could exercise his options and then sell the shares to Goldstein at a discount to the then market price. Goldstein purchased 200,000 shares at \$0.75 per share and 115,000 shares at \$1.30 per share. The share acquisition gave Goldstein a 0.65% ownership interest in the capital stock

of Hydrx. On the date of Goldstein's share acquisition, Hydrx raised \$3.5 million from a private offering at \$3.50 per share.

62. At the time of his equity acquisition, Goldstein was aware that the Aphria Secured Debenture was maturing on August 17, 2019.

63. On or about May 21, 2020, Hemans introduced Goldstein to the then board of directors of Hydrx. Goldstein proposed a transaction that would resolve the financial problems faced by Hydrx. At this time, Hydrx had already defaulted in its obligations to Aphria under the Aphria Secured Debenture and Hemans was aware that active efforts were underway to find refinancing.

64. By email dated May 23, 2020, Goldstein set out his proposal to the Hydrx board and indicated that it would "not be predatory in nature". Goldstein indicated that his intention was to acquire the Aphria Secured Debenture with the costs being rolled into Hydrx without a "lift" in exchange for certain fees and warranties. However, Goldstein required Hydrx to terminate all of its other efforts to raise capital through its own sources.

65. In or around July of 2020, Goldstein, Leo Chamberland ("**Chamberland**"), Chair of WCE and Rosy Mondin ("**Mondin**"), CEO of WCE, came to my house to

put forward a financing proposal whereby Goldstein was described as the “banker”. I understood this to be a reference to his role as an owner, officer and director of First Republic Capital, an investment dealer. Chamberland was known to me as the owner of WCE, a cannabis extraction company. At this time, I was not aware of Goldstein’s ownership interest in Cobra or WCE’s 50% interest in Cobra. In fact, I was not even aware of the entity called Cobra.

66. At this meeting, Goldstein and Chamberland presented a written proposal setting out a transaction structure under which they proposed to proceed in their relationship with Hydrx. The premise of the proposal was that Goldstein and Chamberland collectively would acquire the Aphria Secured Debenture for \$5 million following which, the Hydrx balance sheet and shareholdings would be restructured. The details of this arrangement are summarized in a spreadsheet attached hereto as **Exhibit “J”** and referred to herein as the “July Plan”.

67. The principal elements of the July Plan may be summarized as follows:

- (a) The Aphria Secured Debenture, after being acquired by Goldstein and Chamberland would be converted to equity in Hydrx;

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- (b) Goldstein and First Republic (an investment dealer controlled by Goldstein), would raise \$6.5 million of new equity for Hydrx;
- (c) Canntab, a public cannabis company controlled by Goldstein would invest \$3.5 million in new equity for Hydrx; and
- (d) The existing shareholders of Hydrx would be allocated shares in Hydrx.

(collectively, the “**July Plan**”)

In effect, Hydrx’s secured debt (the Aphria Secured Debenture) would be eliminated and Hydrx would be not need to deal with any other parties in order to move forward with the Hydrx expanding business.

The July Plan had the advantage that:

- (a) WCE was a successful operator in the cannabis extraction and manufacturing business and a public company, bringing both financial resources and valuable experience as an “operating partner” to the Hydrx business, including bringing valuable extraction equipment to the Production Facility;

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- (b) First Republic is a securities dealer with its own ability to raise the \$6.5 million of additional capital contemplated in the July Plan;
- (c) Goldstein is a director of Canntab, which is also public company in the cannabis industry with the available resources to fulfill its commitment under the July Plan.

68. The July Plan was fundamental to all my future dealings with Goldstein, Chamberland and Mondin on behalf of Hydrx.

69. During the period from July through mid-October, none of the elements of the July Plan were implemented.

70. During the month of September, 2020, all members of the Board of Directors of Hydrx, other than myself, resigned.

71. In or about mid-October, 2020, Goldstein and Chamberland approached me with a request that Goldstein and a representative of WCE be appointed to the Board of Directors of Hydrx. The proposed WCE nominee was Mondin, CEO of WCE. Goldstein and Chamberland continued to represent to me that a re-structuring in the spirit of the July Plan was still being sought.

72. The Aphria Secured Debenture was apparently assigned on or about July 28, 2020, to Cobra for \$5 million (the “**Cobra Security**”) pursuant to an assignment arrangement with Aphria. However, this assignment arrangement was not disclosed to me and the actual registration of the transfer of Charge bearing Instrument No. DR1932365 (the “**Cobra Assignment**”) was not effected until October 2, 2020. Attached hereto as **Exhibit “K”** is a copy of the Transfer of Charge/Mortgage registered October 2, 2020 as Instrument No. DR1932365. My knowledge of the actual assignment date of July 28, 2020 is a result of a reference being made to the same in the demand letter issued by Cobra to Hydrx on December 22, 2020. Contemporaneously with the issuance of this demand for payment, Cobra also issued notices of intention to enforce its security under the *Bankruptcy and Insolvency Act*.

73. On October 1, 2020, WCE issued a press release in which its ownership interest in Cobra was disclosed. The press release also disclosed that Cobra was owned in part by Goldstein. The net effect of these arrangements is that when Goldstein consented to act as a director of Hydrx three weeks later on October 23, 2020, he became simultaneously a director and shareholder of Hydrx as well as its principal secured creditor. Contemporaneously with Goldstein becoming a director, Mondin, CEO of WCE also joined the Hydrx board of directors. At this time, I was perturbed that these disclosures had not been made earlier on when we had

formulated the July Plan but I was still being told by Goldstein that steps were being taken to implement the July Plan.

74. In order to complete its acquisition of the Aphria Secured Debenture, Cobra needed to source an additional amount of \$1 million to close the transaction. Unbeknownst to me, Cobra entered into a loan transaction with Rydan for the \$1 million it was short to complete the transaction with Aphria. As security for the loan, Cobra pledged the assets of Hydrx.

75. I was not consulted nor was Hydrx board approval obtained in respect of the Rydan loan transaction. To this day, I have not been provided with copies of the loan documents. The loan arrangements were negotiated by Goldstein.

76. I understand that Rydan was repaid from the proceeds of the loan that Cobra obtained from Windsor. The parcel page for the Hydrx Real Property and the PPSA Enquiry Response reflect a transfer of the Aphria Secured Debenture by Cobra to Rydan on October 23, 2020, and a transfer back to Cobra by Rydan on January 18, 2021. Attached hereto and marked as **Exhibit "L"** is a copy of the PPSA results dated March 15, 2021.

77. On or about November 11, 2020, Goldstein sent me the email suggesting a “reach-out” to Health Canada regarding compliance issues that would arise from Cobra’s intended CCAA proceeding with respect to Hydrx. This was the first time that I was informed that Cobra may be contemplating a CCAA proceeding for Hydrx. In particular, this intention was not disclosed to me at the time of the appointment of Goldstein and Mondin to the board of Hydrx. Attached hereto and marked as **Exhibit “M”** is a copy of the email.

78. On or about November 17, 2020, I sent an email to Goldstein and Mondin requesting from them a definitive plan in accordance with the July Plan so that the shareholders of Hydrx could be informed as to the affairs of the company. No plan was proffered in response to this request. Attached hereto and marked as **Exhibit “N”** is a copy of the email.

79. On or about December 15, 2020 Goldstein verbally informed me that the July Plan may be in jeopardy since Goldstein and the representatives of WCE (Mondin and Chamberland) had reached an impasse on how to proceed.

80. In December 2020, Cobra and WCE had a falling out and by late January 2021, they parted ways and Cobra became wholly owned by Goldstein. The

particulars of the funding of the corporate divorce between Cobra and WCE are set out below.

Windsor Private Capital

81. As indicated above:

- (a) the Aphria Secured Debebture is owned by Cobra.
- (b) Cobra was originally owned as to 50% by WCE having invested \$2.5 million.
- (c) in addition, Rydan originally had an effective 20% interest in Cobra having invested \$1.0 million.

82. Sometime during December 2020 and January 2021, Goldstein acquired the 50% interest of WCE in Cobra and the 20% interest of Rydan in Cobra. Goldstein financed that acquisition through a loan he obtained from Windsor. After the agreement had been reached, Goldstein provided to me a copy of a commitment letter from Windsor to Cobra. The terms and conditions of the Windsor loan are, in part, as follows:

- (a) Loan facility of \$4 million funded in one advance;

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- (b) One year term;
- (c) Fee of 2% of the advancement amount;
- (d) Annual interest rate of 10%;
- (e) Monthly interest-only payments;
- (f) 10% ownership stake in Cobra; and
- (g) Security:
 - (i) Assignment by Cobra of the Aphria Secured Debenture and
 - (ii) Fully perfected first charge mortgage on the Hydrx Real Property with closing to occur no later than January 15, 2021.

Attached hereto and marked as **Exhibit "O"** is the Windsor terms and conditions.

83. Following these transactions, Goldstein became the only or predominant shareholder of Cobra and, as a consequence, the sole or predominant indirect owner of the Aphria Secured Debenture. In other words, Goldstein became the principal secured creditor of Hydrx.

No Board Approval of Significant Transactions

84. With respect to the sale of the \$2,500,000 Cobra ownership interest by WCE to Goldstein, it should be noted that (i) I was not advised, in my capacity as the sole independent director of Hydrx, of that sale (ii) neither Goldstein nor Mondin

requested a meeting of the board of Hydrx to consider the sale by WCE to Goldstein even though Goldstein was a director of Hydrx at the time, and (iii) Hydrx was afforded no opportunity to participate in that transaction.

85. With respect to the sale of the additional \$1,000,000 ownership interest in Cobra sold by Rydan to Goldstein as part of the combined transaction it should be noted that (i) I was not advised, in my capacity as the sole independent director of Hydrx, of that sale (ii) neither Goldstein nor Mondin requested a meeting of the board of Hydrx to consider the sale by Rydan to Goldstein even though Goldstein was a director of Hydrx at the time, and (iii) Hydrx was afforded no opportunity to participate in the Rydan transaction.

86. With respect to the financing transaction with Windsor that facilitated the acquisition by Goldstein of the Cobra ownership interests previously held by WCE and Rydan, it should be noted that as partial consideration for the Windsor loan, Cobra granted WPC a 10% shareholding interest in Cobra. In addition, it should be further noted that (i) I was not advised, in my capacity as the sole independent director of Hydrx, of the Windsor financing transaction (ii) neither Goldstein nor Mondin requested a meeting of the board of Hydrx to consider the Windsor financing transaction (which allowed Goldstein to materially increase his ownership interest in Cobra and thereby the Aphria Secured Debenture) even though Goldstein was a

director of Hydrx at the time, and (iii) Hydrx was afforded no opportunity to participate in that financing transaction.

87. It is particularly noteworthy that, had Goldstein and Mondin advised me and Hydrx of the WPC financing transaction and provided Hydrx an opportunity to match that financing transaction, Hydrx, or an entity affiliated with Hydrx, could have acquired an approximately 80% interest in the +- \$13 million Aphria Secured Debenture for \$4 million. Instead, Goldstein, who at all material times during the planning and execution of these transactions, was a director of Hydrx, usurped that opportunity for his personal benefit.

88. It is my fervent belief that, on behalf of Hydrx, I could have quickly and easily raised the \$4 million that would have been required by Hydrx, or an entity affiliated with Hydrx, to take advantage of the opportunity that was seized by Goldstein and Windsor. Attached hereto and marked as **Exhibit "P"** is a term sheet for a sale and leaseback transaction that was under discussion within the last month or two resulting in the attached. In addition, through my discussions with certain of the shareholders of Hydrx in January of this year, I am satisfied that Hydrx could have quickly raised at least \$2 million of additional financing from shareholders.

89. Indeed, I have an undrawn personal line of credit in the amount of \$5 million that was available at the time of the Windsor opportunity and remains available today. Had I or Hydrx been aware of the opportunity, I would have utilized my personal line of credit to take full advantage of the same for the benefit of Hydrx.

90. If the Windsor opportunity had been properly presented to Hydrx by Goldstein and Mondin, I fervently believe that Hydrx would now be the owner of 80% of the Aphria Secured Debenture and, with the business opportunities currently available to Hydrx (see paragraphs 118 to 123 below), Hydrx would now be a stable entity.

Cobra Makes Demand on Hydrx for Payment

91. By email to me dated January 27, 2021, Chamberland on behalf of WCE wrote, in part, as follows:

- (a) Hydrx owes Cobra approximately \$12.5 million;
- (b) To date, Cobra has not enforced its security but it has made a demand for payment.

Attached hereto and marked as **Exhibit “Q”** is a copy of the email.

92. Goldstein and I began discussing ways to salvage Hydrx.

93. By email dated January 29, 2021, Goldstein wrote to me, in part, as follows:

We have already spoken to Health Canada and it is clear that Hydrx can't transfer its Licenses. The only way not to lose the Licenses is a Plan of Arrangement which we all believe is untenable. Even the CCAA RVO process to preserve the licenses for a buyer would have flushed all creditors...As well, how could the Company fund the cost and time to maintain the facility while all these efforts take place? How long and at what cost? I am the only one that is cutting cheques and I am not prepared to continue doing that without a realistic positive outcome. Putting more money is just throwing more of my limited capital down the drain...At the end of the day, I do not see how there is value beyond Cobra's \$14mm of debt and I am not prepared to continue to fund losses to no end. At this point, there is simply risk and uncertainty in continuing without any realistic prospect of recovery and we need to wind up the existing business which is no longer viable in its current form and monetize the assets and business going forward.

Attached hereto and marked as **Exhibit "R"** is a copy of the email.

94. By email dated February 3, 2021, Goldstein, on behalf of Cobra, laid out a proposal for the creation of a new corporation between Cobra and certain investors being existing shareholders of Hydrx. As part of that proposal, Goldstein proposed as follows:

- (a) Cobra will provide a runway of 30 days within which me (and my investor group) are to raise \$2 million for a new company to be created by Cobra ("**Newco**");
- (b) Cobra will subscribe for 80% of the shares in Newco and shareholders of Hydrx who agree to participate in the

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offering and assuming receipt of total subscription of \$2 million, will receive 20% of the shares of Newco;

- (c) The foregoing is based on a debt value of \$10 million of which \$8 million will be allocated to Cobra (being the difference between the present balance owing on the Aphria Secured Debenture assigned to Cobra and the assets and building being retained outside of Newco by Cobra);
- (d) Cobra will cause Hydrx to issue a convertible debenture to Newco which will bear interest at 8% per annum, accruing for the first 12 months and convertible into shares of Hydrx. This debenture will exclude the Hydrx Real Property and equipment which will be owned separately by Cobra.
- (e) Assuming the conversion of the debenture, the resulting shareholders of Hydrx would be as follows:
 - (i) 56% Cobra;
 - (ii) 14% the Investors;
 - (iii) 30% existing Hydrx shareholders and creditors;
- (f) In the event that the funds are not raised, Cobra will proceed, with my consent in my capacity as director of Hydrx, with a receivership.

Attached hereto and marked as **Exhibit "S"** is a copy of the email.

95. At this time, I was desperate to consider any arrangement that may save Hydrx but I was also concerned about the motivation of Goldstein and wary of any collaborative venture.

96. By email to me dated February 21, 2021, Goldstein wrote to me, in part, as follows:

Let me start by saying that the arrangement between Cobra, Windsor, and any other of Cobra's sources of funding is none of your business. The area you really ought to focus on is the accumulating debt of the company for which you are a fiduciary by virtue of your being a Director...

If I may summarize the current situation as my legal team sees it, the shareholders of Hydrx have essentially lost their entire investment – including me, as a private investor in earlier rounds. The same applies to all of the creditors and employees. There is essentially no bargaining position for any unsecured creditor including the lawsuits and the Termination fees. Our recent conversations were based on the investors of Cobra finding the right balance between recognizing their risk when it acquired the debt. Any opportunity discussed had been offered on a purely gratuitous basis in the spirit of getting something to the existing shareholders while obviously preserving the licenses and the tax losses...

Cobra is the secured creditor, period. We purchased Aphria's debt and security and we are entitled to all of the rights thereunder, based on the face value of the debt, and the accrued interest, funding and working capital.

I find myself increasingly aware of the potential conflicts of interest and am discussing with my lawyers and Health Canada the prospect of resigning as soon as practical, likely within the next 14 days, to take effect within 30 days..

In the absence of any commitments for working capital for Hydrx from you, your proposed investor group or any other interested party, Cobra has reached its end in terms of funding the working capital needs of Hydrx.

We believe that a CCAA proposal to the courts funded by Hydrx or some other 3rd party group makes the most sense to find a way to help shareholders participate in the future of the company, and I am looking to you, in the next 10 days, to jointly sign the required documentation to move this forward.

In the absence of a CCAA proposal, Cobra is prepared to install a receiver commencing immediately thereafter. [Emphasis Added]

Attached hereto and marked as **Exhibit “T”** is a copy of the email.

97. Given my misgivings about Goldstein’s conduct, his disregard of his fiduciary duty as a director of Hydrx and a mounting concern that his intentions were not to save Hydrx but to remove Hydrx as competition to either Cobra or Canntab as soon as the regulatory infrastructure could be put in place, I decided to take Goldstein up on his invitation to arrange a group of like-minded individuals to fund a re-start of Hydrx. This group of mostly current stakeholders has already made available funding sufficient to fund all costs shown on the Cash Flow Forecast (the “**Re-Start Group**”) attached to the Pre-Filing Report of the Proposed Monitor (defined below).

98. My misgivings about Goldstein’s motivation have been subsequently borne out. I have recently received a copy of an email dated January 21, 2021, written by Hemans to representatives of Health Canada in which he asks,

“we kindly request that Health Canada provide us with guidance on how the current license of Hydrx can be transferred to Cobra Ventures

(preferred option as this would help avoid further business disruptions) or an indication of how long a new license application would take to process given that the facility and operations (key positions, SOPs, GIPs, etc.) would remain predominantly the same as what has already been approved by Health Canada....". [Emphasis added]

A copy of this email is attached as **Exhibit "U"** to this my Affidavit.

99. In addition, it appears that in response to my continued pressing of Goldstein for evidence of the steps he was taking to implement the July Plan, his key consultant, Hamish Sutherland, sent an email to Goldstein on February 21, 2021 which, in part, reads, "*He [Dom] has a number of days to ponder his next steps.... And, if Dom gets in the way, throw it all at him*" [Emphasis Added] (the "**Sutherland Email**"). The Sutherland Email makes it clear that Goldstein was not acting in good faith toward finding a solution that would benefit Hydrx and its stakeholders despite his claims to me to the contrary. A copy of the Sutherland Email is attached hereto as **Exhibit "V"**.

Other Secured Debt

100. Based upon searches conducted of the Personal Property Security Registration System, the following entities have security interest registrations in respect of Hydrx:

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- (1) Mercedes-Benz Financial Services Corporation was respect to the vehicle lease of the company delivery van;
- (2) Rydan is a legacy registration that should be discharged as no debt remains owing to Rydan;
- (3) Royal Bank of Canada with respect to the company credit card;
- (4) Alpine Specialty Chemicals Ltd. with respect to a commercial grade dishwasher purchased for \$25,000.00 and being paid down with monthly payments of \$250.00;
- (5) Cobra with respect to its acquisition of the Aphria Secured Debenture.

101. As well, Ctech Ltd. a company operating out of the United Kingdom, holds a purchase money security interest over an extraction machine located at the Hydrx Real Property. The amount of \$400,000 USD remains owing for the machine. We have reached out to Ctech Ltd. and understand that in the event we ship the machine back to Ctech Ltd., the debt owing to it will be considered as fully paid and satisfied.

Unsecured Indebtedness

102. The unsecured indebtedness of Hydrx is approximately \$2,400,000.

103. Along with the aforementioned obligations, the Applicants' additional unsecured creditors include:

(a) ***Third Party Suppliers:*** Given the nature of its business, Hydrx relies on a number of vendors and third party services and, as such, is party to a number of agreements for the provision of certain essential services including, among other things, insurance, phone and internet, security, utilities, education fees, contractor costs and other miscellaneous services and products provided in connection with operating a business in the cannabis industry.

104. As of the date of this Affidavit, Hydrx is indebted to third party suppliers in the aggregate amount of approximately \$225,000.

CANNABIS EXCISE TAX LICENSE

105. By notice dated January 16, 2021 from the CRA, Hydrx had outstanding arrears under the Cannabis Excise Tax program in the amount of \$27,263.42. Attached hereto and marked as **Exhibit "W"** is a copy of the notice.

106. By letter dated January 20, 2021, from the CRA, Hydrx was advised that its license will expire on April 16, 2021, and that Hydrx's completed renewal

application was required to be filed before March 16, 2021. Attached hereto and marked as **Exhibit “X”** is a copy of the letter.

107. The Cannabis Excise Tax License is required in order to permit the sale of any cannabis product.

108. The license renewal process requires the submission of a business plan, payment of all outstanding taxes and fees, a listing of officers and directors and usually a certain amount of back and forth over several weeks with the CRA.

109. I am advised by Roula J. Sotirakos, the former contractor of Cobra who was responsible for the license renewal, and do verily believe, that she was told by Goldstein not to work on the renewal application as Goldstein intended to put Hydrx into “receivership” and that he would reapply for the license in another entity.

110. In order to preserve the ability of Hydrx to sell cannabis products, I made the necessary arrangements to have the renewal application prepared and submitted to CRA, together with full payment of all arrears. The renewal application was submitted on March 16, 2021. Attached hereto and marked as **Exhibit “Y”** is our exchange of correspondence with the CRA and CRA2 email confirmation that the renewal documents have been forwarded for processing.

HEALTH CANADA CANNABIS LICENSE

111. Hydrx is fully compliant with its regulatory requirements.

112. As it currently stands, the designated responsible person in charge (“**RPIC**”) of the Hydrx’s processing facility is Hemans. Goldstein is the alternate RPIC. The RPIC has the statutory power to lock out any person from the Hydrx Production Facility in order to safeguard the cannabis at the facility.

113. Thomas Jefferd (“**Jefferd**”) is an officer of Hydrx and the current head of security which is a Health Canada designated position and a contractor for Cobra. I am advised by Jefferd and verily believe that:

- (a) Goldstein told him that he intends to take the steps necessary to have Health Canada issue a cannabis license at the Hydrx Real Property in the name of either Cobra or Canntab.
- (b) Goldstein is pressuring Jefferd to sign the required Organizational Security Plan (“**OSP**”) for submission to Health Canada which was due on March 15, 2021. Jefferd has resisted due to his discomfort with the accuracy and adequacy of various of the provisions contained in the proposed OSP including a provision which makes Goldstein the designated “Master Grower” – a position for which he is

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seemingly unqualified as he has no previous cannabis cultivation experience.

114. The role of the RPIC is integral to our business.

GOLDSTEIN'S USE OF HYDRX PRODUCTION FACILITY

115. Since at least December 16, 2020, the Hydrx Production Facility and production equipment has only been used by Goldstein for the benefit of Canntab. No production has occurred for the benefit of Hydrx.

116. Goldstein has an ownership interest in and acts as director of other cannabis based corporations, including Canntab. Goldstein has been producing or, at least, attempting to produce, cannabis products at the Hydrx Production Facility for the benefit of his other cannabis corporations.

117. In fact, employees of Canntab, a direct competitor of Hydrx, have been at the Hydrx Production Facility for the purposes of obtaining the required licenses for Canntab including, but not limited to, preparing documentation and packaging machines to perform packing services. The Production Facility maintains entry log information (the "**Entry Log**") and I am informed by Jefferd, and verily believe, that

such Entry Log has recorded numerous attendances by Goldstein and Canntab representatives. A summary of the attendances by Goldstein and Canntab representatives for the period between December 16, 2020 through to March 11, 2021 is attached hereto as **Exhibit “Z”**.

BUSINESS OPPORTUNITIES

118. As previously noted, through my efforts, I have brought together the Re-Start Group that is prepared to fund the restart of Hydrx business operations and to drive value through third party co-packing and the other relationships that will permit Hydrx to meet its liabilities as they come due. Hydrx cannot restart operations and maintain regulatory compliance without the protection of these CCAA proceedings. Hydrx is entering these CCAA proceedings with a financial solution that will permit Hydrx to preserve and protect its licenses and maintain its business as a going concern and maximize value for all stakeholders. The structure of the Court-supervised CCAA proceedings will bring much needed stabilization to the business and provide prospective customers and business partners with the confidence to commit to long term co-packing and other contracts.

119. As evidence of the value of the Hydrx Real Property and its production assets, on March 15, 2021, Edev Inc. delivered a lease back letter of intent for purchasing

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the Hydrx Real Property and the production equipment (“**Edev LOI**”). Given the commercial sensitivity of the terms of this Edev LOI, coupled with my concern with Goldstein’s various conflicts of interest and his ongoing breach of his fiduciary obligations as a director of Hydrx, I would ask that the same be subject to a sealing order. Attached hereto and marked as **Exhibit “AA”** is a copy of the Edev LOI.

120. Hydrx has in hand two (2) letters of intention from arms-length partners which, when formalized, will generate gross revenue of \$512,000 for the thirteen (13) week period following the hearing of this Application (collectively, the “**LOIs**”). Attached hereto and marked as **Exhibit “BB”** are copies of the LOIs.

121. The potential annualized revenue associated with these LOIs is approximately \$9,000,000.

122. The revenue generated is from a combination of:

- (a) rental
- (b) rental plus revenue sharing; and
- (c) fee for service.

123. Copies of the LOIs contain sensitive commercial information and I would ask that the same also be subject to a sealing order.

124. As set forth herein, Hydrx is positioned for a successful re-start of operations. The funding necessary to cover all operating costs has been obtained and such costs are set out in the Pre-Filing Report of the Proposed Monitor.

125. Hydrx has a state of the art, turnkey Production Facility and a full suite of cannabis licenses to permit production and sale.

126. The steps I propose taking are the very steps that Goldstein suggested I take in his February 21, 2021 email to me. As previously stated, this email is attached as Exhibit "T". Cobra is not willing to fund Hydrx. My Re-Start Group is prepared to advance its funds to re-start operations and use our industry connections to drive profitability.

127. Goldstein deliberately took no action to renew the cannabis Excise Tax License – without which Hydrx is unable to sell cannabis product. Such failure is entirely consistent with his intention to usurp the assets of Hydrx for the benefit of either Cobra or Canntab and to arrange the transfer of the necessary license for either Cobra or Canntab, or failing that, having acquired the Aphria Secured Debenture for a considerable discount, to use his combined position as a secured creditor and a fiduciary of Hydrx to liquidate Hydrx for personal profit.

128. With a deadlocked board of directors and the ability of a conflicted director to manipulate who is registered as key personnel for regulatory compliance purposes, Hydrx finds itself vulnerable to losing the cannabis licenses it depends upon to re-start its business operations.

URGENT NEED FOR RELIEF

a) Stay of Proceedings

129. Hydrx urgently requires a broad stay of proceedings to prevent enforcement action by, and among, its creditors and other contracting parties. The Stay of Proceedings will stabilize and preserve the Applicants' turnkey status and provide the Applicants with the breathing space they need to effect a restart of its production operations, enter into third party co-packing contracts and the other revenue producing activities outlined in the Contracts. In an effort to preserve the value of the Hydrx business, the granting of the Stay of Proceedings is in the best interests of Hydrx and its stakeholders.

130. In addition, Hydrx requires an Order preserving the current regulatory status quo. Specifically, in order to maintain regulatory compliance, Hydrx requires an Order preventing any changes to the existing licenses, including any changes to the

designated key personnel. However, it is possible that following granting of the requested order, persons registered with Health Canada under Hydrx's *Cannabis Act* licenses may resign those appointments. In that event, Hydrx needs to immediately replace such individuals with qualified appointees who are prepared to fulfill the required regulatory functions on behalf of Hydrx. To deal with that eventuality, Hydrx requires an order permitting Jefferd, Hydrx's current Head of Security to appoint qualified persons to fill any such vacancies in order to allow the Hydrx business to continue in compliance with the Cannabis Act. Jefferd is security cleared and recognized by Health Canada.

b) Proposed Monitor

131. It is proposed that Schwartz Levitsky Feldman, LLP ("**SLF**") will act as the Monitor in the CCAA proceedings if the proposed Initial Order is issued (the "**Proposed Monitor**"). The Proposed Monitor has consented to act as the Monitor (the "**Consent**") on the terms set out in the proposed Initial Order. A copy of the Monitor's Consent is attached hereto as **Exhibit "CC"**.

132. It is customary in CCAA proceedings for an applicant to seek a professional fees charge for the Proposed Monitor and the directors. No such relief is being sought on this Application.

133. The Re-Start Group has agreed to pay all costs set out in the Cash Flow Forecast attached to the Pre-Filing Report of the Monitor for the 10 day period before the Comeback Hearing (the “**Comeback Hearing**”).

134. I note that in order to keep the 10 day period revenue and risk neutral to Cobra/Goldstein, the Re-Start Group has also agreed to pay the *per diem* cost of the monthly loan interest payment that Cobra owes to Windsor.

Cash Flow Projections

135. I understand that a projected consolidated cash flow statement for Hydrx for the 13 week period from the week ending March 19, 2021, to the week ending June 11, 2021 (the “**Cash Flow Forecast**”), will be attached to the pre-filing report of the Proposed Monitor.

136. The Cash Flow Forecast demonstrate that funding is required to provide Hydrx with the required liquidity to return it to operational status, including to meeting its contractor payroll obligations. The Re-Start Group has agreed to provide this funding.

137. The Cash Flow Forecast have been prepared with the assistance of the Proposed Monitor and are accompanied by the prescribed representations in accordance with the CCAA.

SERVICE AND NOTICE

138. Given the limitations imposed on the ability to process and send notices to creditors by physical mails as a result of the COVID-19 pandemic, and the fact that many businesses may not have staff on site to open such mailings, I am seeking the Court's authorization to deliver the notices to known creditors by e-mail instead of physical mail. If we do not have e-mail addresses on file for a particular known creditor, the Proposed Monitor will send a notice by physical mail in the usual manner. In the current circumstances, I believe that the notices are more likely to come to the prompt attention of known creditors if they are sent by e-mail.

CONCLUSION

139. The Initial Order I am seeking is in the best interests of Hydrx as well as the best interests of its secured and unsecured creditors as well as its other stakeholders. The Stay of Proceedings is necessary in order to protect Hydrx from potentially harmful actions by a conflicted and ungovernable director who is the directing mind

of Hydrx's largest secured creditor, to prevent enforcement actions against Hydrx, to allow it to re-start operations and to take advantage of significant new business opportunities. Without the Stay of Proceedings, Hydrx will be unable to create the stable environment necessary to restart and give contract co-parties sufficient confidence to enter into production and other contracts.

140. I believe that a CCAA proceeding is the only viable method in the circumstances to restructure Hydrx's business and effect the transactions necessary for the benefit of all stakeholders, and that the relief sought in the Initial Order is necessary at this time.

141. Similarly, an order is required to preserve the regulatory status quo until the Comeback Hearing. This order will serve to protect and preserve regulatory compliance.

142. If the Initial Order is granted, I intend to return to the Court (the "**Court**") at the Comeback Hearing to seek this Court's approval of a restated Initial Order (the "**Amended and Restated Initial Order**"), which, among other things, would:

- (a) Remove Goldstein as a director of Hydrx;
- (b) Authorize a debtor in possession loan; and

(c) Extend the Stay of Proceedings.

143. I make this Affidavit in support of the herein CCAA Application and for no other or improper purpose.

144. This Affidavit is administered in accordance with O. Reg. 431/20:
Administering Oath or Declaration Remotely:

Location of Commissioner administering the Affidavit: Toronto, ON, Canada
Location of Affiant of the Affidavit at the time of administration: Toronto, ON, Canada

SWORN BEFORE ME in the)
City of Vaughan, in the Province)
of Ontario, this 19th day of)
March, 2021)

DocuSigned by:)
Sepideh Nassabi)
9A5A673DA59E432...)

A Commissioner, etc.

Commissioned by Video Conference
Sepideh Nassabi (LSO# 60139B)

DocuSigned by:)
Domenico Serafino)
E1B4B160E324448...)
DOMENICO SERAFINO

This is **Exhibit "C"** referred to
in the Affidavit of
Domenico Serafino
Sworn this 29th
day of March, 2021.

DocuSigned by:

Sepideh Nassabi

9A5A673DA59E432
A Commissioner for Taking Affidavits



ONTARIO PPSA Amendment Registration
2C - D - Assignment by Secured Party
CONFIRMATION

PPSA Ref File No.: 730845657

Expiry Date: N/A

Registration Number: 20210118 1523 1590 1703

CONFIRMATION DEBTOR NAME (BUSINESS)

HYDRX FARMS LTD.

SECURED PARTIES

ASSIGNORS	
	NAME
1	RYDAN FINANCIAL INC.

ASSIGNEES		
	NAME	ADDRESS
1	COBRA VENTURES INC.	40 KING STREET, SUITE 2100 TORONTO ON M5H 3C2

REGISTERING AGENT

NAME	ADDRESS
BARRY POLISUK	150 FERRAND DRIVE, SUITE 800 TORONTO ON M3C 3E5



ONTARIO PPSA Discharge Registration
2C - C - Discharge CONFIRMATION

PPSA Ref File No.: 766970991

Expiry Date: N/A

Registration Number: 20210119 1057 1590 1734

CONFIRMATION DEBTOR NAME (BUSINESS)

COBRA VENTURES INC.

REGISTERING AGENT

NAME	ADDRESS
BARRY POLISUK	150 FERRAND DRIVE, SUITE 800 TORONTO ON M3C 3E5

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**

**AFFIDAVIT OF
DOMENICO SERAFINO**

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Lawyers for the Applicants

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

MOTION RECORD
(Returnable March 31, 2021)

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Toronto, ON M5H 4G2

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