

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

**MOTION RECORD OF THE APPLICANT**  
(Returnable July 26, 2021)

July 20, 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 court at 10:00 AM on Monday, July 26, 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](mailto:snassabi@mindengross.com).

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

[ ] in writing under subrule 37.12.1(1) because it is [insert on consent, unopposed or made without notice];

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



- in person;
- by telephone conference;
- by video conference.

At the following location:

Join Zoom Meeting

<https://mindengross.zoom.us/j/91491588755?pwd=WWp0d3hOYnRaYVV0SDNFMXZLT3RhUT09>

Meeting ID: 914 9158 8755

Passcode: 288077

**THE MOTION IS FOR:**

- (a) An 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) extending the Stay Period until and including October 28, 2021;

- (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 Period**”);

### **The Amended and Restated Initial Order**

- (c) On March 31, 2021, this Honourable Court granted the Amended and Restated Initial Order, among other things, extended the Stay Period until and including May 3, 2021;

### **Further Extension of Stay Period**

- (d) On April 30, 2021, this Honourable Court granted a further order extending the Stay Period until and including July 30, 2021.
- (e) On that same date, and upon the request of the Monitor, the court granted an order approving the Monitor's proposed sale and investment solicitation process (the "SISP") and the appointment of a Chief Restructuring Officer (the "CRO").

### **The Requested Further Extension of the Stay Period**

- (f) Hydrx requires an extension of the Stay Period until and including October 28, 2021.
- (g) Hydrx is forecast to have sufficient liquidity to fund its obligations and the cost of this CCAA Proceedings through the end of the extended Stay Period.
- (h) A further extension of the Stay Period is required to deal with, among other things, the court sanctioned SISP.
- (i) It is just, convenient, necessary and in the best interest of Hydrx and its stakeholders that the Stay Period be extended.

- (j) Each of the Monitor and the CRO support the request to extend the stay period.

### **Good Faith**

- (k) Since the commencement of the CCAA Proceedings, the Applicant has and continues to act in good faith and with due diligence in evaluating strategic alternatives and formulating a plan that would yield the greatest recovery for the stakeholders of Hydrx.

### **Other Grounds**

- (l) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (m) 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,
- (n) 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 and the exhibits attached thereto;
- (b) The Report of the Monitor; and
- (c) Such further and other evidence as counsel may advise and this Court may permit.

July 20, 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 a Plan of Compromise or Arrangement of Hydrx Farms Ltd.  
et al. - Court File No. CV-21-00659187-00CL

Time: July 26, 2021 at 10:00 AM Eastern Time (US and Canada)

#### Join Zoom Meeting

<https://mindengross.zoom.us/j/91491588755?pwd=WWp0d3hOYnRaYVV0SDNFMXZLT3RhUT09>

**Meeting ID:** 914 9158 8755

**Passcode:** 288077

One tap mobile

+13017158592,,91491588755#,,,,\*288077# US (Washington DC)

+13126266799,,91491588755#,,,,\*288077# US (Chicago)

Dial by your location

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+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

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: 914 9158 8755

Passcode: 288077

Find your local number: <https://mindengross.zoom.us/u/aiqh1tpId>

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.	)	MONDAY, THE 26 <sup>th</sup>
	)	
JUSTICE KOEHNEN	)	DAY OF JULY, 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**”)

**ORDER  
(Extension of Stay Period)**

**THIS MOTION** 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 July 20, 2021 and the Exhibits thereto (the “**Serafino Affidavit**”), the third report of the monitor, Schwartz Levitsky Feldman Inc. (the “**Monitor**”) dated [INSERT], 2021 (the “**Report**”), and on hearing submissions for counsel for the Applicant, counsel for Cobra Ventures Inc., counsel for the Monitor, and such other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service of Hayley Morgan sworn July , 2021,

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for serving and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Serafino Affidavit.

## **EXTENSION OF THE STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including October 28, 2021.

## **GENERAL**

4. **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.

5. **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.

6. **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.

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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

**ORDER  
(Extension of Stay Period)**

**MINDEN GROSS LLP**

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# TAB 3

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

**ONTARIO  
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HYDRX FARMS  
LTD., CANNSCIENCE INNOVATIONS INC. AND SCIENTUS PHARMA  
INC.

(the "Applicant")

**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 director of Hydrx and I am the Applicant in these CCAA Proceedings. 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. I swear this Affidavit in support of an Order, among other things, extending the stay period to and including October 28, 2021 (the “**Extended Stay Period**”).

3. All terms not otherwise defined herein have the meaning ascribed to them in:

- (a) the Initial Order of the Honourable Justice Haaney 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 affidavit sworn March 19, 2021, in the support of the commencement of the CCAA Proceedings, a copy of which is appended hereto, without exhibits, as **Exhibit “B”**;
- (c) the Amended and Restated Initial Order of the Honourable Justice Haaney dated March 31, 2021, a copy of which is appended hereto as **Exhibit “C”**; and,
- (d) my affidavit sworn March 29, 2021 in support of the relief sought in respect of the Amended and Restated Initial Order (the “**March 31**”).

**Serafino Affidavit**”), a copy of which is appended hereto, without exhibits, as **Exhibit “D”**.

- (e) the Extension of Stay Period and Replacing the Responsible Person Order of the Honourable Justice Hainey dated April 30, 2021 which extended the stay period to and including July 30, 2021 (the “**July 30<sup>th</sup> Stay Order**”), a copy of which is appended hereto as **Exhibit “E”**.
- (f) my affidavit sworn April 26, 2021, without exhibits, in support of the relief sought in the July 30<sup>th</sup> Stay Order, a copy of which is appended hereto as **Exhibit “F”**.



### **The Stay Period**

4. Pursuant to the Initial Order, a stay of proceedings was granted until and including April 1, 2021 (“**Stay Period**”).
5. Pursuant to the Amended and Restated Initial Order, the Stay Period was extended to and including May 3, 2021.
6. Pursuant to the July 30<sup>th</sup> Stay Order, the Stay Period was extended to and including July 30, 2021.
7. I am now seeking a 90-day extension of the Stay Period to and including October 28, 2021.

### **The Re-Start Group**

8. As set out in my previous affidavits, the CCAA Proceedings were sought, in part, to bring together the Re-Start Group to fund the re-start of the Hydrx business operations and to drive value through third party co-packing and the other relationships that would permit Hydrx to meet its liabilities as they come due and to maximize the value of the business for the benefit of the Hydrx stakeholders.

9. My previous affidavits set out all of the activities of Hydrx subsequent to each of the orders granting the stay period and all extensions of the stay period.

### **Activities Since Last Stay Extension**

#### **Retail Licenses**

10. During the previous stay period, Hydrx entered into a supply contract with the Ontario Cannabis Store. It has now obtained the necessary licenses to sell on a retail basis in Saskatchewan and Manitoba. It is anticipated that the Ontario Cannabis Store contract and the retail licenses will add about \$1 million or more of asset value to Hydrx.

#### **Employees**

11. At the commencement of the CCAA Proceedings, Hydrx no longer had any employees as it had initiated a planned shutdown. However, the CCAA Proceedings have allowed Hydrx to commence its re-start operations. Since the granting of the most recent extension of the stay period, Hydrx has employed a further 8 former employees. There are now 12 employees.

#### **Purchase Orders**

12. Hydrx continues to fulfill purchase orders totalling about \$201,000 in the next 45 days. Hydrx received a purchase order for its “Medisenol” inventory in the

amount of \$47,304. The product has been packaged for shipping next week to Saskatchewan.

13. In addition, there is a new product listing which was recently awarded by the Ontario Cannabis Store. We expect that this new product listing will provide up to an additional \$341,000 in revenue during August and September of 2021.

14. Hydrx manufactures certain beverages for its customer, Beacon Hill Brands. Hydrx has the materials on-hand to produce 300,000 units. A production of this size could be completed in as little as 90 days.

15. Hydrx is negotiating an exclusive contract to manufacture a unique product for sale to another licensed producer. If negotiations are successful and a contract is entered into, it is expected to generate a guaranteed minimum revenue of \$250,000.

16. The Re-Start Group is developing a line of Hydrx branded products which will be presented in the upcoming provincial product call and submission for launch in the fall of 2021.

17. The Re-Start Group currently has \$500,000 of raw material inputs and \$1.5 million of equipment at its production facility in Whitby.

### **Insurance Refund**

18. Hydrx received a \$44,000 refund from its insurer.

### **Cobra Claims Process**

19. On April 30, 2021, the court granted a SISP order. The court sanctioned SISP contemplated a specific claim process to determine what, if any, secured debt is owing by Hydrx to Cobra Ventures Inc. (the “**Cobra Claims Process**”). The Cobra Claims Process proceeded by way of motion heard by the Honourable Justice Wilton-Siegel on June 30 and July 12, 2021. His Honour’s endorsements are attached as **Exhibit “G”** to this motion record. His Honour’s decision is being appealed and, as at the date of this affidavit, a notice of motion for leave to appeal His Honour’s decision has been served and filed. A copy of the notice of motion is attached hereto as **Exhibit “H”**.

20. The SISP Order contemplates the final determination of the Cobra Claims Process before proceeding with either a conventional restructuring or a sale process.

### **Cashflow**

21. As is demonstrated in the Cash Flow Forecast to be appended to the third Report of the Monitor, Hydrx is forecast to have sufficient liquidity to fund its

obligations and the costs of the CCAA Proceedings through the end of the extended Stay Period.

### **Personal Indemnity**

22. As indicated in my previous affidavit sworn in support of an extension of the stay period, in order to provide the Monitor and the Court with the necessary comfort to permit restart operations to commence, I provided my personal indemnity to cover any operating losses and repairs that may be required to Hydrx equipment. I am prepared to permit my personal indemnity to continue in support of my request for a further extension of the stay period. A copy of my Indemnity is attached hereto and marked as **Exhibit “I”**.

### **Good Faith**

23. Since the granting of the orders in these CCAA proceedings, I, and Hydrx, have acted in good faith and with due diligence to, among other things, capitalize the restart of Hydrx business operations, provide a personal indemnity to support these operations, work with Health Canada to ensure continued compliance with all regulations, apprise the stakeholders of the CCAA proceedings, liaise with co-packing parties, among others, all with the assistance and oversight of the Monitor and the CRO.

### **Monitor & CRO Support Extension of the Stay Period**

24. I understand that the Monitor and the CRO are each supportive of the proposed extension of the Stay Period and believe that it will not materially prejudice any creditor.

### **Regulatory Compliance**

25. Hydrx is in full regulatory compliance with all of its obligations under its Health Canada licenses.

26. In order to provide the Monitor and the Court with comfort that production operations are in full compliance with all regulations, Hydrx commissioned a Regulatory and Operational Compliance Monitor's Report dated April 23, 2021 (the "**Regulatory Compliance Report**") from Samuel Bouabane of Libra Advisory, a boutique consulting service that specializes in providing consulting advice on cannabis compliance matters.

27. Subsequent to the delivery of the Regulatory Compliance Report, the court appointed the CRO on April 30, 2021, to assist the Monitor in ensuring that regulatory compliance was maintained throughout the CCAA process.

**Conclusion**

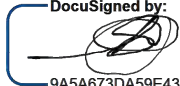
28. It is necessary and in the best interests of Hydrx and its stakeholders that the Stay Period be extended.

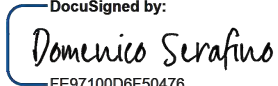
29. I make this Affidavit in support of an Order, among other things, extending the Stay Period to and including October 28, 2021 and for no other improper purpose.

30. 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 20<sup>th</sup> day of July, )  
2021 )

DocuSigned by: )  
 )  
9A5A673DA59E432... )

DocuSigned by: )  
 )  
FE97100D6F50476... )

**DOMENICO SERAFINO**

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

This is **Exhibit "A"** referred to  
in the Affidavit of  
Domenico Serafino  
Sworn this 20<sup>th</sup>  
day of July, 2021.

DocuSigned by:  


.....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 22<sup>nd</sup>  
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](http://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 blue ink, appearing to read "Ainsley J.", is written over a horizontal line. The signature is cursive and includes a large, stylized flourish at the end.

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., CANNOSCIENCE 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**

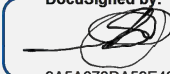
**MINDEN GROSS LLP**  
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**Sepideh Nassabi (L.S.O# 60139B)**  
Tel: 416-369-4323  
[snassabi@mindengross.com](mailto:snassabi@mindengross.com)

Lawyers for the Applicant

This is **Exhibit "B"** referred to  
in the Affidavit of  
Domenico Serafino  
Sworn this 20<sup>th</sup>  
day of July, 2021.

DocuSigned by:  


9A5A673DA69E432.....  
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

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

- 3 -

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 2<sup>nd</sup> 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:

<b>Current Assets: \$2,504,811</b>	
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:

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

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 3<sup>rd</sup> 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 19<sup>th</sup> 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 20<sup>th</sup>  
day of July, 2021.

DocuSigned by:  


9A5A673DA59E432.....

A Commissioner for Taking Affidavits

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 31<sup>ST</sup>  
JUSTICE HAINEY ) DAY OF MARCH, 2021

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

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



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

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

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

## SERVICE AND DEFINITIONS

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

## APPLICATION

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

## POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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



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

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

#### **NO PROCEEDINGS AGAINST HYDRX OR THE PROPERTY**

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

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

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

### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

### **NO INTERFERENCE WITH RIGHTS**

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

### **CONTINUATION OF SERVICES**

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

**NON-DEROGATION OF RIGHTS**

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

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

**APPOINTMENT OF MONITOR**

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

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

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



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

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

21. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in



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

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

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

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

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

26. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of

these proceedings. The Administration Charge shall have the priority set out in paragraphs 28 and 30 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

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

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

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

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

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



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

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

### **SERVICE AND NOTICE**

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

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

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

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

### **SEALING PROVISION**

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

### **GENERAL**

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

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

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

39. THIS COURT ORDERS that each of the Applicant, Hydrx and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or

administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

A handwritten signature in blue ink, appearing to read "Hawley", is written over a horizontal line. The signature is cursive and extends to the right of the line.

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**MINDEN GROSS LLP**

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

**Raymond M. Slattery (L.S.O# 20479L)**

Tel: 416-369-4149  
[rslattery@mindingross.com](mailto:rslattery@mindingross.com)

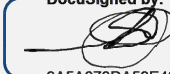
**Sepideh Nassabi (L.S.O# 60139B)**

Tel: 416-369-4323  
[snassabi@mindingross.com](mailto:snassabi@mindingross.com)

Lawyers for the Applicant



This is **Exhibit "D"** referred to  
in the Affidavit of  
Domenico Serafino  
Sworn this 20<sup>th</sup>  
day of July, 2021.

DocuSigned by:  


9A5A679DA59E432.....  
A Commissioner for Taking Affidavits

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 29<sup>th</sup> day of )  
March, 2021 )

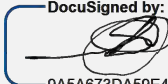
DocuSigned by: )  
*Sepideh Nassabi* )  
9A5A673DA59E432 )

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

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



This is **Exhibit "E"** referred to  
in the Affidavit of  
Domenico Serafino  
Sworn this 20<sup>th</sup>  
day of July, 2021.

DocuSigned by:  


.....  
A Commissioner for Taking Affidavits

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.  
JUSTICE HAINEY

)  
)  
)

FRIDAY, THE 30<sup>th</sup>  
DAY OF APRIL, 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**")

**ORDER**

**(Extension of Stay Period and Replacing the Responsible Person)**

THIS MOTION 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 April 26, 2021 and the Exhibits thereto (the "**Serafino Affidavit**"), the second report of the monitor, Schwartz Levitsky Feldman Inc. (the "**Monitor**") dated April 26, 2021 (the "**Report**"), the affidavit of Richard Goldstein sworn April 23, 2021 and the Exhibits thereto, the factum of the Applicant, and on hearing submissions for counsel for the Applicant, counsel for Cobra Ventures Inc., counsel for the Monitor, and such other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service of Hayley Morgan sworn April 27, 2021,

**SERVICE AND DEFINITIONS**

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

**EXTENSION OF THE STAY PERIOD**

3. THIS COURT ORDERS that the Stay Period be and is hereby extended until and including July 30, 2021.

**REPLACEMENT OF RESPONSIBLE PERSON**

4. THIS COURT ORDERS that given the resignation of Phillip Hemans on April 26, 2021, Thomas Jefferd hereby replaces Phillip Hemans as the designated Responsible Person for Hydrx and Health Canada is hereby directed to amend its records with effect as at April 26, 2021 to reflect Thomas Jefferd as the Responsible Person.

**GENERAL**

5. 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.
6. 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.

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

A handwritten signature in blue ink, appearing to read "Harvey J.", is written over a horizontal line. The signature is cursive and includes a period at the end.

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 SCIENITUS PHARMA INC.

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

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

Proceeding commenced at Toronto

**ORDER**  
**(Extension of Stay Period)**

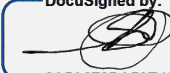
**MINDEN GROSS LLP**  
Barristers and Solicitors  
2200 - 145 King Street West  
Toronto, ON M5H 4G2

**Raymond M. Slattery (LSO# 204791L)**  
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Tel: 416-369-4323  
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Lawyers for the Applicant

This is **Exhibit "F"** referred to  
in the Affidavit of  
Domenico Serafino  
Sworn this 20<sup>th</sup>  
day of July, 2021.

DocuSigned by:  


.....  
A Commissioner for Taking Affidavits

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 director of Hydrx and I am the Applicant in these CCAA Proceedings. 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. I swear this Affidavit in support of an Order, among other things, extending the stay period to and including August 2, 2021 (the “**Extended Stay Period**”).

3. All terms not otherwise defined herein have the meaning ascribed to them in:

- (a) the Initial Order of the Honourable Justice Haaney 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 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”**;
- (c) the Amended and Restated Initial Order of the Honourable Justice Haaney dated March 31, 2021, a copy of which is appended hereto as **Exhibit “C”** ; and,
- (d) my affidavit sworn March 29, 2021 in support of the relief sought in respect of the Amended and Restated Initial Order (the “**March 31**”).



**Serafino Affidavit**”), a copy of which is appended hereto, without exhibits, as **Exhibit “D”**.

### **The Stay Period**

4. Pursuant to the Initial Order, a stay of proceedings was granted until and including April 1, 2021 (“**Stay Period**”). Pursuant to the Amended and Restated Initial Order, the Stay Period was extended to and including May 3, 2021. I am now seeking a 90-day extension of the Stay Period to and including August 2, 2021.

### **Post Initial Order Activities**

5. As set out in the March 19 Serafino Affidavit and March 31 Serafino Affidavit, the CCAA Proceedings were sought, in part, to bring together the Re-Start Group to fund the re-start of the Hydrx business operations and to drive value through third party co-packing and the other relationships that would permit Hydrx to meet its liabilities as they come due and to maximize the value of the business for the benefit of the Hydrx stakeholders.

6. During the initial 10-day Stay Period granted under the Initial Order, Hydrx waited for clearance to commence cannabis operations from the Monitor. During that waiting period, Hydrx completed many tasks needed to re-start its

operations as required under the *Cannabis Act*, the regulations and the Hydrx internal Standard Operating Procedures (“SOPs”).

7. Since the Hydrx Production Facility had been subject to a planned shutdown from March of 2020 to the commencement of the CCAA Proceedings, there were many tasks that needed to be completed in order to re-start business operations including but not limited to:

- (a) Changing all air filters;
- (b) Inspecting all HVAC equipment;
- (c) Pest control inspections;
- (d) Fire suppression system inspections;
- (e) Re-certification of scales;
- (f) Maintenance on environmental controls and logging;
- (g) Standard maintenance of equipment and certain required repairs; and,
- (h) Full sanitizing of the Hydrx Production Facility.

8. In addition to the above:

- (a) Two microwave extraction machines were decommissioned and relocated to the loading dock and shrink wrapped as these machines are of no use or value to Hydrx.
- (b) The supporting infrastructure for the extraction machines were repurposed and a cryo-ethanol extraction system was installed.

- (c) The Hydrx Standard Operating Procedures were also reviewed and updated to ensure compliance with regulatory changes and to promote economic efficiencies.

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

9. Since the granting of the Amended and Restated Initial Order, Hydrx has commenced its re-start operations, particulars of which are described below.

#### **Extraction Services**

10. With re-start operations in effect, Hydrx has commenced extraction services. Third party contract partners of Hydrx have invested in extraction equipment in the amount of \$200,000 and Hydrx has made arrangements to utilize this equipment. Accordingly, Hydrx's extraction capacity has rapidly expanded.

#### ***Cold Pressed Rosin Extract Production***

11. The first product to enter production was cold pressed rosin extracts using equipment at the Hydrx Production Facility. The equipment was brought on site by a Hydrx customer. The rosin will be packaged for retail sale.

### *Cryo-Ethanol Extraction Production*

12. The extraction room at the Hydrx Production Facility went into production to perform cryo-ethanol extraction services for certain business-to-business customers (“**B2B**”).

13. The B2B service involves a licensed producer growing the flower, shipping the flower to Hydrx and Hydrx extracting the cannabis resin.

14. The Restart Group has funded the capital expenditures required for this project. Phase 1 commenced on April 9, 2021, and provides production capacity of 36kgs per day of input material. Phase 2 is scheduled to commence in May of 2021 with the addition of new larger processing equipment that will increase production to 72kgs per day. Additional equipment has been sourced and will be ordered shortly that will serve to increase production capacity to 600kg per day.

15. In terms of revenue, the B2B business is generating \$35,000 for phase 1 production and will be scaled up to \$70,000 per month in May and up to \$800,000 by December of this year. This revenue is over and above the projected revenue set out in the Cash Flow Forecast which is appended to the Second Report of the Monitor.

## **The Ontario Cannabis Store**

16. On April 16, 2021, Hydrx was accepted as a vendor to the Province of Ontario. The submission deadline for seeking vendor approval was April 9, 2021. Hydrx submitted the required application materials on March 26, 2021.

17. The Ontario Cannabis Store (“**OCS**”), which is Ontario’s only online retailer and wholesaler of legal recreational cannabis, is the single largest cannabis customer in Canada.

18. The first two products to be sold at the OCS are beverages for which Hydrx is contracted to produce 150,000 units. This contract will generate revenue in excess of \$600,000 over the next 120 days. This revenue is over and above the projected revenue set out in the Cash Flow Forecast which is appended to the Second Report of the Monitor.

19. In order to produce the beverages, Hydrx has made the necessary arrangements to utilize equipment that has been purchased by a Hydrx customer. It is anticipated that the production equipment will arrive at the Hydrx Production Facility for installation and commissioning in early May of 2021.

## **Regulatory Compliance**

20. Hydrx is in full regulatory compliance with all of its obligations under its Health Canada licenses.

21. In order to provide the Monitor and the Court with comfort that production operations are in full compliance with all regulations, Hydrx commissioned a Regulatory and Operational Compliance Monitor's Report dated April 23, 2021 (the "**Regulatory Compliance Report**") from Samuel Bouabane of Libra Advisory, a boutique consulting service that specializes in providing consulting advice on cannabis compliance matters. A copy of this Regulatory Compliance Report is attached hereto and marked as **Exhibit "E"**.

## **NECESSITY TO REPLACE PHILIP HEMANS**

22. In order to maintain compliance with Health Canada regulations respecting designated personnel, Hydrx requires, among other things, a designated responsible person in charge of the Hydrx Production Facility ("**RPIC**"). The RPIC has the statutory power to lock out any person from the Hydrx Production Facility. The role of the RPIC is integral to the Hydrx business.

23. At the time of my March 31 Serafino Affidavit, the RPIC was Philip Hemans ("**Hemans**").

24. As previously indicated in my March 31 Serafino Affidavit, I had reservations about both (i) Hemans' ability to perform the role of RPIC given his lack of experience (ii) his previous failure to ensure that the requisite Cannabis Excise Tax License was renewed on a timely basis – which required direct intervention on my part and payment of arrears in the amount of approximately \$28,000 by the Re-start Group in order to preserve the license; and (iii) his fidelity to Hydrx given his association with Goldstein and his role as a contractor to Cobra. However, after the Court granted the Initial Order on March 22, 2021, Hemans reached out to me directly and assured me that he would perform his RPIC duties in the best interests of Hydrx.

25. Unfortunately, it appears that my original misgivings about Hemans have been borne out.

**(a) Deliberately Prejudicial Comments To Health Canada**

26. On April 13, 2021, I was disappointed and surprised to receive a letter from Health Canada which is attached hereto and marked as **Exhibit "F"**. The letter indicates that Hemans and Health Canada had a telephone call on April 1, 2021, during which Hemans informed Health Canada that he had lost access to the site. This statement was false.

27. The incident that Hemans is referring to relates to his attendance with Goldstein at the Hydrx Production Facility on Saturday, March 28, 2021. The SOPs for authorized building access outside of normal operating hours require the presence of two authorized persons. As no prior notice was given that Hemans intended to attend, electronic access was denied as the authorized personnel were not present.

28. Hemans made the phone call to Health Canada without my knowledge or authorization, despite assuring me that he would act in a manner that would serve to preserve the status quo respecting compliance. I do not know what motivated Hemans to contact Health Canada. His access to the Hydrx Production Facility had not been revoked. The security protocol had simply not been satisfied.

29. Subsequent to the April 1, 2013 call to Health Canada, Hemans has attended at the Hydrx Production Facility without any issue but he chose not to inform Health Canada that he has had regular and unobstructed access. As a consequence, Health Canada has now been sending correspondence threatening to suspend Hydrx's licenses.

**(b) Refusal To Permit Ordinary Course Operations**

30. In addition, I am advised by Thomas Jefferd, the current Head of Security for Hydrx, and verily believe, that Hemans is refusing to grant Mr. Jefferd and Ms.



- 11 -

Carol-Ann Scott, the designated quality assurance person, access to the online licensing portal. Without such access, Hydrx is unable to file any amendments to update its license or to add any new products to the Hydrx sales platform. Such access is standard practice in the industry and the refusal by Hemans to permit designated and approved personnel from discharging their duties is jeopardizing the ability of Hydrx to operate.

31. By way of a specific example, Health Canada requires a 60 day period to review any new product and to provide any comments or concerns. Accordingly, once a new product is added to the sales platform via the online licensing portal, a period of sixty (60) days must pass from that date in order for Hydrx to be permitted to sell the product. Any delay represents a delay in product acceptance by Health Canada and the associated sales revenue being received by Hydrx.

32. As Hydrx is ramping up its business activity, it is essential that our RPIC is not an impediment to ordinary course operations. It is immaterial whether Hemans' conduct is by design or simply due to a lack of understanding or confidence in his role. The bottom line for me is that both his actions and his inaction are detrimental to the business of Hydrx and, as I have personally indemnified Hydrx for any operating losses, I am keenly aware of my personal financial exposure if Hemans is permitted to disrupt our business plan.

**(c) Failure To Submit Key Investor Report**

33. In addition, it has recently come to light that Hemans has failed to prepare and file the requisite key investor report required by Health Canada. Reminder letters were apparently sent to Hemans by Health Canada on January 29, 2021 and March 16, 2021, but these reminders were ignored. The subject report was due on March 31, 2021, and I am making the necessary arrangements for a late filing with Health Canada. A copy of the most recent Health Canada reminder notice is attached and marked as **Exhibit “G”**.

34. Pursuant to provision 12 of the Amended and Restated Initial Order, the Court ordered that no person shall take any steps that would cause Hydrx to be unable to conduct its business operations in compliance with Health Canada regulations. Irrespective of his motivation, Hemans’ failure to permit the designated personnel to perform their everyday duties is causing severe prejudice to Hydrx and impeding the ordinary course of business operations.

35. As a result of the foregoing, I felt compelled to write to Health Canada on April 14, 2021, and request the replacement of Hemans as RPIC with Thomas Jefferd. Thomas is the current Head of Security for Hydrx and is recognized by Health Canada. He has a thorough knowledge of cannabis business operations and

the regulatory requirements and is fully qualified to act as the RPIC for Hydrx. A copy of this email is attached hereto and marked as **Exhibit “H”**.

36. Health Canada has responded to my request to replace Hemans with an email dated April 21, 2021, in which they confirm that Hemans access to the license record has been restricted but will require a resolution of the board of directors before making the requested replacement. Obviously, given the deadlocked nature of the board of directors and Goldstein’s refusal to resign, the impasse is causing a serious risk to the Hydrx licenses.

### **Shareholders’ Meeting**

37. In an attempt to provide some clarity to our corporate structure, I called a special meeting of the shareholders of Hydrx to be held virtually and by teleconference on April 28, 2021 at 10:00 AM. The purpose of the meeting is to discuss the following:

- (a) Consider a resolution to remove a Goldstein as director and elect Thomas Jefferd as a new director; and
- (b) To receive a verbal report from me, as the independent director of Hydrx and from my counsel as to the status of the CCAA Proceedings.

The notice of the special meeting of shareholders is attached hereto and marked as **Exhibit “I”**.

- 14 -

38. On April 21, 2021, my counsel received a letter from Mr. Posen of Garfinkel Biderman (the “**Biderman Letter**”), in which Mr. Posen purports to be acting on behalf of Hydrx. Given the deadlocked nature of the board of directors of Hydrx, it has not been possible for Hydrx to formally retain its own counsel. As Garfinkle Biderman had historically acted for Goldstein, I assume that Mr. Posen was acting on instructions from Goldstein. Indeed, this assumption appears to be borne out by the fact that the Biderman Letter and my counsel’s response were attached by Goldstein to a recent letter he sent to the shareholders of Hydrx. A copy of the Biderman Letter is attached hereto and marked as **Exhibit “J”**.

39. I called the special meeting of shareholders in an attempt to regularize the corporate affairs of Hydrx and to give Hydrx the best possible opportunity to navigate the restructuring process. I had hoped that given his acknowledged conflict of interest, Goldstein would simply resign as a director of Hydrx. Indeed, in his email to me of February 21, 2021, Goldstein indicated his intention to resign. A copy of this email is attached here to as **Exhibit “K”**.

40. On April 22, 2021, my counsel responded to Mr. Posen by saying that the special meeting of shareholders would proceed and should Mr. Posen wish to challenge the legitimacy of the same, it may be necessary to schedule a motion to have Goldstein removed as a director of Hydrx pursuant to the statutory authority

afforded the Court under section 11.5 of the CCAA. This is not my preference as I would rather focus all of my efforts on moving toward a successful restructuring. However, should such a motion be necessary to ensure that Goldstein does not unreasonably impair the ability of Hydrx to complete a viable plan of arrangement then I am prepared to bring the same in the best interests of Hydrx and its stakeholders. A copy of this letter is attached here to as **Exhibit “L”**.

41. The receipt of the Biderman Letter has brought into sharp focus the increasing need of Hydrx to retain its own counsel. Of necessary, due to the deadlocked nature of the board of directors, I commenced this process in the only way I could, as an “interested person”. While I am acting in the best interests of Hydrx and my counsel is acting in my best interests, Goldstein’s refusal to resign has made it impossible for Hydrx to properly retain Minden Gross LLP as its counsel. While this may serve Goldstein’s interests, it does not serve the interests of Hydrx and its stakeholders. As such, should Goldstein refuse to resign, an expedited removal motion will be necessary in order to ensure Hydrx is properly protected and represented throughout this process.

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

42. As is demonstrated in the Cash Flow Forecast to be appended to the Second Report of the Monitor, Hydrx is forecast to have sufficient liquidity to fund

its obligations and the costs of the CCAA Proceedings through the end of the Extended Stay Period.

43. As previously indicated, in order to provide the Monitor and the Court with the necessary comfort to permit restart operations to commence, I have provided my personal indemnity to cover any operating losses and repairs that may be required to Hydrx equipment. A copy of my Indemnity is attached hereto and marked as **Exhibit “M”**.

#### **SALE AND INVESTMENT SOLICITATION PROCESS**

44. I, and other representatives of Hydrx, have been working with the Monitor to identify and address the key issues of concern that need to be resolved before a restructuring can be effected.

45. My principal concern is that we do not take any steps that would prejudice the ability of Hydrx to successfully complete a conventional restructuring. From my perspective, the critical issue that needs to be determined is the quantum of debt that Hydrx owes to Cobra.

46. In my view, this issue is straightforward. Goldstein repeatedly breached his fiduciary obligations as a director of Hydrx and he should not be permitted to profit from such breaches at the expense of Hydrx and its stakeholders. Once the

issue of what, if anything, is owing to Cobra as a secured creditor of Hydrx is finally decided, I fully expect that Hydrx will redeem any secured debt and file a Plan of Arrangement. This will obviate the need for a sales process.

47. I have a related concern. Cobra entered into a loan arrangement with Windsor in which Cobra pledged as collateral security the assets of Hydrx it had acquired when it purchased the Aphria Debenture. This is relevant in connection with the expected redemption of debt. Specifically, Hydrx does not want to find itself with a determined secured debt amount owing to Cobra only to have a residual secured creditor right existing in favour of Windsor over its assets as a result of Cobra pledging the assets of Hydrx to Windsor in order to support its loan obligation.

48. Hydrx needs to know what amount is needed to eliminate the secured debt purportedly owing to Cobra and/or Windsor. It is in the interests of all concerned to render transparent the entitlement of both Cobra and Windsor and to ensure both parties are bound by the decision of either the Court or a privately appointed arbitrator.

49. I am firmly of the view that all efforts should be directed to resolving the issue of the entitlement of Cobra / Windsor before any sales process is initiated unnecessarily.

**Good Faith**

50. Since the granting of the Initial Order and the Amended and Restated Initial Order, I have acted in good faith and with due diligence to, among other things, capitalize the restart of Hydrx business operations, provide a personal indemnity to support these operations, work with Health Canada to ensure continued compliance with all regulations, apprise the stakeholders of the CCAA proceedings, liaise with co-packing parties, among others, all with the assistance and oversight of the Monitor.

**Monitor Supports Extension of the Stay Period**

51. I understand that the Monitor is supportive of the proposed extension of the Stay Period and believes that it will not materially prejudice any creditor.

**Conclusion**

52. It is necessary and in the best interests of Hydrx and its stakeholders that the Stay Period be extended. Re-start operations are underway which will preserve and maximize the value of the Hydrx business for its stakeholders. The extension of the Stay Period is also necessary in order to address and finally determine the quantum of secured indebtedness owing to Cobra in order to permit Hydrx to



redeem this secured debt and effect a conventional restructuring through the filing of a plan of arrangement.

53. I make this Affidavit in support of an Order, among other things, extending the Stay Period to and including August 2, 2021 and for no other improper purpose.

54. 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 26<sup>th</sup> day of )  
April, 2021 )

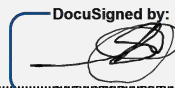
DocuSigned by: )  
*Sepideh Nassabi* )  
9A5A673DA59E432... )

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

DocuSigned by: )  
*[Signature]* )  
FE97100D6F50476... )

\_\_\_\_\_  
**DOMENICO SERAFINO**

This is **Exhibit "G"** referred to  
in the Affidavit of  
Domenico Serafino  
Sworn this 20<sup>th</sup>  
day of July, 2021.

DocuSigned by:  


.....  
A Commissioner for Taking Affidavits

Court File Number: CV-21-006591871380CL

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Re HydrRx Farms et al

Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No.:	Facsimile No.:

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

For written reasons to follow, the orders sought by Domenico Serafino as set out in his Factum dated June 29, 2021 in this proceeding ~~is denied in its entirety~~, at paragraph 97 is denied in its entirety. With respect to the relief sought in paragraph 6(1) of the Motion Record of Cobra Ventures Inc. dated April 23, 2021 in respect of the amount of indebtedness owing by the debtor, the motion is adjourned to a videoconference to be conducted at 10:30am on July 6, 2021.

June 30/2021  
Date

W. Ken M.J.  
Judge's Signature

Additional Pages \_\_\_\_\_

CITATION: Serafino (Re), 2021 ONSC 4734  
COURT FILE NO.: CV-21-00659187-00CL  
DATE: 20210712

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

**RE: 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.**

**BEFORE:** Wilton-Siegel, J.

**COUNSEL:** *D. Preger, L. Corne and J. Cheung*, for the Moving Party, Cobra Ventures Inc.

*R. Slattery, S. Nassabi and T. Dunn*, for the Respondent, Domenico Serafino

*J. Larry*, for the Monitor, Schwartz Levitsky Feldman Inc.

**HEARD:** June 30, 2021

**ENDORSEMENT**

[1] By motion record dated April 23, 2021, Cobra Ventures Inc. (“Cobra”) sought certain determinations regarding the indebtedness owing by the debtor, HydRx Farms Ltd. (“HydRx”), to Cobra (the “Cobra Secured Indebtedness”), the validity and enforceability of a senior secured convertible debenture issued by HydRx currently held by Cobra, and Cobra’s entitlement to credit bid up to the full amount of the Cobra Secured Indebtedness, including in any sale and investment solicitation process approved in this proceeding under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “*CCAA*”). The relief sought was opposed by Domenic Serafino (“Serafino”), a director of HydRx, who has, in turn, sought certain declarations that would limit the amount of the Cobra Secured Indebtedness and Cobra’s entitlement to credit bid the Cobra Secured Indebtedness in any sale and investment solicitation process. By an endorsement dated June 30, 2021, the Court denied the relief sought by Serafino for written reasons to follow. This endorsement sets out the Court’s reasons for that determination.

**Factual Background**

[2] The following are the relevant facts in this matter.

[3] HydRx is a corporation incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the “*CBCA*”). In 2017, HydRx, the debtor in these proceedings under the *CCAA*, issued a senior secured convertible debenture in the principal amount of \$11.5 million (the

“Debenture”) to Aphria Inc. (“Aphria”). The Debenture was secured against all of the property and undertaking of HydRx and was registered against HydRx’s real property in Whitby, Ontario.

[4] The maturity date of the Debenture was originally August 14, 2019. It was subsequently extended to November 12, 2019, and further extended until the earlier of January 30, 2020 and the date of the occurrence of a termination event under a support agreement between Aphria and HydRx. On January 20, 2020, Aphria demanded repayment and issued a notice of intention to enforce security.

[5] In July 2020, after a sales process, Aphria agreed to sell the Debenture for \$5 million to Cobra. The sale closed on September 28, 2020. The assignment of the Debenture from Aphria to Cobra was registered against title to HydRx’s real property. At all relevant times, the only asset of Cobra was the Debenture.

[6] Cobra is a corporation that was incorporated by World Class Extractions Inc. (“WCE”). At the time of acquisition of the Debenture, Cobra was owned, as to 50%, by WCE and, as to 50%, by 2775361 Ontario Inc. (“277”). The owner of WCE is Leo Chamberland (“Chamberland”). 277 is owned, as to 60%, by personal friends of Richard Goldstein (“Goldstein”) and, as to 40%, by First Republic Holdings Corporation (“FRHC”). FRHC is Goldstein’s family holding corporation. He is the president and sole director of that corporation. At all relevant times, it appears that Goldstein was the controlling mind of FRHC.

[7] At the time of entering into the transaction to acquire the Debenture in Cobra, Goldstein and Chamberland contemplated using the Debenture in a possible recapitalization plan of HydRx which would have involved the conversion of the Debenture and a further equity financing of HydRx (the “July Plan”). Chamberland and Goldstein discussed the July Plan with Serafino, a director of HydRx, in July 2020. However, no commitments were entered into at that time and the July Plan never progressed beyond a preliminary stage. No agreement on any version of the July Plan was ever reached.

[8] On September 6, 2020, the HydRx board of directors, apart from Serafino, resigned when its D&O insurance carrier refused to renew coverage. On October 23, 2020, Goldstein and Rosie Mondin (“Mondin”), a senior executive of WCE, became directors of HydRx.

[9] On October 7, 2020, Cobra entered into a loan agreement with Rydan Financial Inc. (“Rydan”), pursuant to which Cobra borrowed \$1 million (the “Rydan Loan Transaction”). While it appears that the net proceeds of this loan were advanced by Cobra to HydRx to fund its on-going operations, this fact does not form any part of the Court’s determination. As security for the loan, Cobra granted an assignment of the Debenture to Rydan. On October 23, 2020, Cobra registered a transfer of charge respecting the assignment on the title to HydRx’s real property.

[10] In November and December 2020, Chamberland and Goldstein had a falling out. The parties dispute the reasons for this development. At a minimum, however, it is clear that Goldstein and Chamberland could not reach an agreement on implementing any version of the July Plan. The exact reasons for their differences are not relevant to the issues in this proceeding.

Chamberland and Goldstein agreed that the first of them who was able to buy out the other would be entitled to do so.

[11] On December 22, 2020, Goldstein caused Cobra to demand payment of the Debenture from HydrRx and to issue notices of intention to enforce its security.

[12] On December 29, 2020, Cobra, 277 and Windsor Private Capital Limited Partnership (“Windsor”) entered into a term sheet for the provision of a loan to Cobra (the “Term Sheet”). The terms of the loan were finalized in a commitment letter dated January 15, 2021 (the “Commitment Letter”). Pursuant to the Commitment Letter, Windsor loaned Cobra \$4 million, repayable in one year. The loan was secured by an assignment of the Debenture and a guarantee of 277 (the “Windsor Loan Transaction”). The Term Sheet also provided that Windsor would receive a 10% interest in Cobra.

[13] Cobra used the proceeds of the Windsor Loan Transaction to repay the loan under the Rydan Loan Transaction and to purchase WCE’s 50% interest in Cobra (the “Cobra Buy-Out Transaction”). A portion of the remaining proceeds of the loan, which were approximately \$358,000, were used to meet HydrRx’s immediate liquidity needs. As a result of these transactions, Cobra is now owned 90% by 277 and 10% by Windsor. Mondin resigned as a director of Cobra upon the closing of the Cobra Buy-Out Transaction.

[14] On March 22, 2021, Serafino, as an “interested person”, sought and obtained an initial order under s. 11 of the *CCAA* with respect to HydrRx. He took this step on an *ex parte* basis, as the board of directors, being comprised of only Serafino and Goldstein, was deadlocked. Schwartz Levitsky Feldman Inc. was appointed as the monitor (the “Monitor”).

[15] By order dated April 30, 2021, the Court approved a sale and investment solicitation process (the “SISP”) for HydrRx. As part of the SISP, the Monitor sought a process to determine the amount, if any, owing by HydrRx to Cobra together with any issues affecting the ability of Cobra to credit bid Cobra’s claim in the SISP. That has resulted in the motions before the Court.

### **These Proceedings**

[16] As mentioned, on April 23, 2021, Cobra commenced this motion seeking declarations that

- (1) the indebtedness owing to Cobra by HydrRx is in the amount of approximately \$14.8 million as at March 31, 2021;
- (2) the indebtedness owing to Cobra is secured by valid and enforceable security over all of HydrRx’s property; and
- (3) Cobra is entitled to credit bid up to the full amount of such indebtedness including in any sale and investment solicitation process.

[17] Serafino opposed the Cobra motion. He alleges that Goldstein breached his statutory obligations under s. 120 of the *CBCA* in respect of the Cobra Buy-Out Transaction, the Rydan Loan Transaction and the Windsor Loan Transaction. He submits that Goldstein was required (a)

to make proper disclosure of each transaction to the board of directors of HydRx, as it existed at the time of such transactions, and (b) to obtain the approval of the board of directors to his participation in such transactions and his right to profit in such transactions.

[18] Serafino sought an order (1) prohibiting Goldstein and Cobra from profiting from the Debenture and requiring each of Goldstein and Cobra to account to HydRx for any profit or gain realized as a result of Cobra's acquisition of the Debenture; and (2) further reducing any entitlement of Cobra under the Debenture in an amount equal to the costs incurred by HydRx in respect of the *CCAA* proceedings which would not have been necessary but for the need to protect HydRx from Goldstein as a director, whose actions he characterized as "defaulting and predatory". Alternatively, should Cobra be found to have no entitlement to payment under the Debenture, Serafino sought (3) an order for damages against each of Goldstein and Cobra in an amount equal to the costs incurred by HydRx in respect of the *CCAA* proceedings which would not have been necessary but for the need to protect HydRx from Goldstein; and (4) a declaration that Windsor is not an innocent arm's length third party creditor for value without notice of irregularities and, as such, is not entitled to (i) recover any amount over and above the amount that is found to be owing by HydRx to Cobra, if any; and (ii) a security interest over the real and personal property assets of HydRx to support the loan obligations of Cobra to Windsor.

### **The Issues**

[19] The Court advised Cobra that, in its opinion, the record before it was not sufficient to determine the second declaration sought, which amounted to a corporate law opinion and was, in any event, typically the responsibility of legal counsel to a monitor in proceedings under the *CCAA*. Serafino advised the Court subsequent to the hearing that he does not oppose Cobra's request for an order that the indebtedness owing to Cobra by HydRx is in the amount of approximately \$14.8 million as at March 31, 2021. Accordingly, an order to this effect shall issue.

[20] The hearing on Cobra's motion was limited to the issues of the amount of the Cobra Secured Indebtedness and Cobra's entitlement to credit bid such indebtedness in any *SISP*.

[21] In this respect, Serafino raised three issues in his Factum:

- (1) whether Goldstein discharged his statutory duty of disclosure under s. 120 of the *CBCA*;
- (2) if not, whether Goldstein and Cobra are entitled to profit from Cobra's acquisition of the Debenture; and
- (3) if not, whether HydRx is entitled to damages or protection from the economic loss resulting from Goldstein's breach of his statutory obligations as a fiduciary of HydRx.

[22] In view of the disposition below of the first issue, however, it is not necessary to address the remaining two issues.

**Did Goldstein Fail to Comply with Statutory Obligations of Disclosure Under Section 120 of the *CBCA*?**

[23] As mentioned, Serafino argues that Goldstein breached s. 120 of the *CBCA* in failing to give notice to the board of HydRx of, and to receive the approval of the board for, the Rydan Loan Transaction, the Windsor Loan Transaction and the Cobra Buy-Out Transaction.

[24] The relevant provisions of s. 120 of the *CBCA* read as follows (italics added):

120 (1) A director or an officer of a corporation shall disclose to the corporation, in writing or by requesting to have it entered in the minutes of meetings of directors or of meetings of committees of directors, the nature and extent of any interest that he or she has in a material contract or material transaction, whether made or proposed, *with the corporation*, if the director or officer

(a) is a party to the contract or transaction;

(b) is a director or an officer, or an individual acting in a similar capacity, of a party to the contract or transaction; or

(c) has a material interest in a party to the contract or transaction.

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

(a) at the meeting at which a proposed contract or transaction is first considered;

... or

(d) if an individual who is interested in a contract or transaction later becomes a director, at the first meeting after he or she becomes a director....

(8) If a director or an officer of a corporation fails to comply with this section, a court may, on application of the corporation or any of its shareholders, set aside the contract or transaction on any terms that it thinks fit, or require the director or officer to account to the corporation for any profit or gain realized on it, or do both those things.

[25] Serafino argues that the Debenture is a material contract of HydRx. Accordingly, Serafino suggests that any transactions involving the Debenture or the assignment of the Debenture, whether by way of security or otherwise, constitute transactions with HydRx for the purposes of s. 120 of the *CBCA*. On this theory, because each of the Rydan Loan Transaction, the Windsor Loan Transaction and the Cobra Buy-Out Transaction involved dealing, directly or indirectly, with the Debenture, and because Goldstein had an interest in Cobra, Serafino argues that he was required to give notice of each of these transactions to HydRx and obtain the approval of the board of directors of HydRx.



[26] Two more specific arguments underly the general proposition expressed above. First, Serafino argues that Cobra, and therefore Goldstein, acquired an interest in a material contract with HydRx when Cobra purchased the Debenture from Aphria and acquired a further interest in the Cobra Buy-Out Transaction. In addition, Serafino characterizes each of the Rydan Loan Transaction and the Windsor Loan Transaction as involving, in substance, the pledge of HydRx's assets for the benefit of Goldstein as an interested party in Cobra. He argues that these transactions therefore constituted transactions with HydRx in which Goldstein was interested and therefore required compliance with s. 120.

[27] I do not accept these submissions for the following reasons.

[28] First, and most importantly, I do not think that it is correct that any transactions involving the Debenture, or the assignment of the Debenture, constitute transactions with HydRx for the purposes of s. 120. Section 120 pertains to contracts or transactions "with the corporation". None of the Rydan Loan Transaction, the Windsor Loan Transaction and the Cobra Buy-Out Transaction constituted such a contract or a transaction.

[29] The Rydan Loan Transaction and the Windsor Loan Transaction were each transactions solely between Cobra and Rydan or Windsor, respectively. While it is correct that Cobra assigned its rights as the holder of the Debenture to its lenders, HydRx had no involvement whatsoever in these loan transactions. In particular, as a contractual matter, Cobra did not require the approval of HydRx to enter into or complete these transactions. There was also no legal or economic effect whatsoever upon HydRx as a result of these transactions.

[30] Similarly, the Cobra Buy-Out Transaction constituted a transaction solely between WCE and 277 under which 277 acquired WCE's 50% shareholding in Cobra. There was no contractual obligation of an assignor of the Debenture to obtain the approval of HydRx. HydRx had no involvement in this transaction and no right to participate in any manner. Nor was there any effect whatsoever upon HydRx's legal or economic position as a result of this transaction.

[31] Second, Serafino says that s. 120 should be interpreted liberally to catch all instances in which a director or officer of a corporation benefits from a transaction involving the corporation. For this reason, he suggests that the phrase "material transaction ... with the corporation" should extend to the present circumstances. In particular, he suggests that the *CBCA* amendment in 2001 which introduced the term "material transaction" into s. 120 was intended to enlarge the scope of s. 120 to include transactions of the nature involved in this proceeding.

[32] However, there is no support for this interpretation of the scope of a "material transaction" in s. 120. In particular, there is nothing in the wording of the *Analysis of the Changes to the Canada Business Corporations Act* issued by the Government of Canada in connection with the amendments to the *CBCA* in 2001, upon which Serafino relies, that supports his view of the intention of the insertion of the word "transaction". Instead, consistent with the purpose of s. 120, as discussed below, I think it is clear that the use of the word "transactions" was intended to do no more than capture transactions that do not involve a formal contract between a corporation and a director or officer of the corporation, an entity in which a director or officer of the corporation has

a material interest, or an entity of which a director or officer of the corporation is also a director or officer.

[33] Third, Serafino acknowledges that he has been unable to identify any case law in which a court has applied s. 120 to a contract or transaction in which the corporation at issue was not a party. In fact, in the only case directly on point, *Roppovalente v. Daris*, 2020 ONSC 5290, 12 B.L.R. (6th) 145, while admittedly dealing with very different circumstances, Ryan Bell J. reached the opposite conclusion at para. 26:

Section 120(1) captures material contracts or transactions, or proposed material contracts or transactions, with the corporation – in this case, BCO Group. The s. 120 conflict of interest regime applies where a director or officer has an interest in a material contract with the corporation. ... Read in the context of the section as a whole, it is plain that the “contract or transaction” referred to in s. 120(8) that may be set aside must be (a) material, (b) with the corporation, and (c) one in which the director or officer is, directly or indirectly, a party, or has a material interest....

[34] The nature of the contract or transaction contemplated by s. 120 is, in fact, reflected in the case law cited by Serafino for the definition of materiality under s. 120. For example, in *McAteer v. Devencroft Developments Ltd.*, 2001 ABQB 917, 307 A.R. 1, at para. 309, the court cited with approval the following passage in Professor B.L. Welling in *Corporate Law in Canada: The Governing Principles*, 2<sup>nd</sup> ed. (Vancouver: Butterworths, 1991) at pp 452-453. The italicized language specifically contemplates transactions directly between the corporation and an entity in which a director is interested:

What is meant by "material".... In the context of conflict of interest contracts, the meaning of "material contract" and "material interest" is conditioned by the purpose behind the section. *The purpose is to identify those negotiations in which a corporate manager's ability to bargain effectively on behalf of the corporation may be inhibited by some interest he has in the other side.* Any personal relationship or monetary interest he may have in the other side that might be thought to be an inhibiting factor is a material interest if disclosure of the relationship or interest might be relevant to the corporate decision *whether to involve the particular manager in the negotiations. Whether to participate in a proposed contract is a corporate decision and the corporation is entitled to full disclosure from its fiduciaries of all facts that might affect that decision.* [Emphasis added.]

[35] Similarly, at para. 62 of *Zysko v. Thorarinson*, 2003 ABQB 911, 345 A.R. 139, the court cited with approval the statement of Lax J. in *UPM-Kymmene Corp. v. UPM-Kymmene Miramichi Inc.* (2002), 214 D.L.R. (4th) 496 (Ont. S.C.), at para. 194, that “[t]he purpose of section 120 of the *BCA* is to mitigate the strictness of the common law principle relating to contracts between a director and a corporation.”

[36] Fourth, there is no policy need for such an extensive operation of s. 120. Section 120 addresses circumstances in which the personal interest of a director or officer in a contract or a transaction may prejudice the corporation in the negotiation of the contract or transaction because

of a conflict of interest on the part of the director or officer. Other provisions of the *CBCA* and common law principles are available to police actions of directors or officers in bad faith or in breach of their fiduciary duties as directors. Section 120 is not necessary to provide a remedy in all circumstances in which a director or officer of a corporation acts in the director's or officer's own interests in respect of shares or debt of the corporation owned by the director.

[37] I also do not accept the specific conceptual characterizations of the Rydan Loan Transaction, the Windsor Loan Transaction and the Cobra Buy-Out Transaction upon which Serafino grounds his arguments for the following reasons.

[38] First, I do not think it is conceptually correct to characterize the Debenture as a material contract of HydRx in the sense contemplated by s. 120 of the *CBCA*. I accept that it is a material obligation of HydRx, but that is not the same as saying that it is a "material contract ... with the corporation" for the purposes of s. 120.

[39] Serafino's argument that the Debenture is a material contract in which Goldstein is interested assumes that, upon an assignment of the Debenture to Cobra, a contract arose between HydRx and the assignee. Because Goldstein has a material interest in Cobra, Serafino says that the assignment of the Debenture to Cobra therefore gave rise to a material contract between HydRx and Cobra in which Goldstein has a material interest. For this reason, Serafino says that Goldstein was required pursuant to s. 120 to give HydRx notice of Cobra's acquisition of the Debenture upon becoming a director of HydRx. On the same theory, he argues that Goldstein was required to give notice of his proposed indirect acquisition of a further 40% interest in the Debenture pursuant to the Cobra Buy-Out Transaction and to receive the approval of the HydRx board to that transaction prior to completion.

[40] I do not think that this is an accurate characterization of the position of a debenture holder for the purposes of s. 120. The Debenture consists of an acknowledgement of a liability, a promise to repay the principal with interest, and a bundle of rights granted by HydRx to the holder of the Debenture from time to time which the holder may exercise in the event of non-payment. The issuance of the Debenture did not entail, or give rise to, any obligations of the holder of the Debenture that could be construed to establish a contract between the holder and HydRx. In the hands of the holder of the Debenture, it is an asset rather than the subject of a contract with HydRx.

[41] Similarly, I think that it is conceptually incorrect to suggest that an assignment by way of security or a pledge of a secured debenture constitutes a charge over the assets of the issuer of the debenture and, therefore, the use of assets of the issuer corporation for the benefit of parties who have an interest in the assignor or pledgor. Accordingly, I do not think that it is correct to suggest that Cobra pledged HydRx's assets for its benefit, or Goldstein's benefit, in connection with these transactions. For the same reason, I do not think it is correct to say that Goldstein caused Cobra to pledge or charge the assets of HydRx for his benefit pursuant to the Rydan Loan Transaction or the Windsor Loan Transaction. The assets of HydRx were charged by the Debenture at the time of, and upon the issue of, the Debenture. Cobra merely granted security over the package of rights constituted by the Debenture in its hands as the holder of the Debenture, which were limited to the rights of the holder of the Debenture to realize against the HydRx assets if HydRx failed to repay the debt evidenced by the Debenture.

[42] Lastly, I note the following matters in respect of Serafino's position. In his Factum, Serafino argues that Goldstein used his fiduciary position as a director of HydRx to orchestrate events in such a manner as to effect either an acquisition of the HydRx business for the \$5 million it cost Cobra to acquire the Aphria Debenture or a realization upon the assets of HydRx for his material personal benefit to the disadvantage of the stakeholders of HydRx that he was duty bound to protect. However, Serafino does not point to any action that Goldstein took as a director that had either effect.

[43] This is not an action for an alleged breach of a corporate opportunity of HydRx. There is also no allegation that Goldstein used any confidential corporate information of HydRx. Nor does Serafino allege any negotiations respecting any of the Rydan Loan Transaction, the Windsor Loan Transaction or the Cobra Buy-Out Transaction that gave rise to a conflict of interest between Goldstein's personal interest and the interest of HydRx. Because the transactions by which Goldstein indirectly acquired his 90% interest in the Debenture were between Cobra and Aphria in respect of the Aphria Transaction, and between Goldstein and Chamberland in respect of the Cobra Buy-Out Transaction, any "profit" that Cobra might make on the redemption of the Debenture was at the expense of Aphria and Chamberland, respectively, who will have sold their interests in the Debenture at less than market price. There is no sense in which any such "profit" will be realized at the expense of HydRx.

[44] Serafino's argument is ultimately that Goldstein was required to give notice of, and receive the approval for, transactions to which HydRx was not a party solely because he was a director of HydRx at the time. As discussed above, however, there is no policy basis for compliance with s. 120 in such circumstances. Moreover, fundamentally, Serafino's objection is not with any of these three transactions but rather with the fact that Cobra will be able to credit bid in the SISP in an amount that is greater than the amount paid by it for the Debenture. That situation arose because Aphria chose to sell the Debenture at a discount. The possibility of such a credit bid existed from the moment Cobra acquired the Debenture, before Goldstein became a director. HydRx could have repurchased the Debenture from Aphria to avoid this situation. The record does not disclose whether or not it participated in the Aphria sales process.

[45] In any event, while Serafino says that he does not seek to challenge the well accepted authority that indebtedness and security can be purchased at a deep discount, I think that that is exactly what he is doing in arguing that Goldstein's position alone as a director overrides the rights of a debenture holder in an insolvency. None of the Rydan Loan Transaction, the Windsor Loan Transaction and the Cobra Buy-Out Transaction had any effect whatsoever upon HydRx. It was in default before, and it remained in default after, each of these transactions. The fact that, after the Cobra Buy-Out Transaction and the Windsor Loan Transaction, Cobra was no longer owned as to 50% by Chamberland, whom HydRx would have the Court believe would never have demanded payment of the Debenture, and was thereafter controlled by Goldstein, who determined to have Cobra enforce its rights under the Debenture, is of no legal significance to HydRx. However, it demonstrates that Serafino's real objection is that Cobra intends to exercise its rights under the Debenture in these *CCAA* proceedings. Section 120 cannot serve as a substitute for an action specifically addressing the propriety of that action by Goldstein and Cobra to the extent grounds for such an action exist. In my view, as discussed above, the scope of s. 120 is limited to transactions between a corporation and a director or officer of the corporation, an entity in which

a director or officer of the corporation has a material interest, or an entity of which a director or officer of the corporation is also a director or officer.

[46] Based on the foregoing, Serafino's requested relief is denied in its entirety and an order shall issue that Cobra is entitled to credit bid up to the full amount of the indebtedness owing under the Debenture, including in any sale and investment solicitation process conducted in these *CCAA* proceedings.

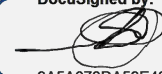


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Wilton-Siegel, J.

**Released:** July 12, 2021

This is **Exhibit "H"** referred to  
in the Affidavit of  
Domenico Serafino  
Sworn this 20<sup>th</sup>  
day of July, 2021.

DocuSigned by:  


9A5A673DA69E432.....  
A Commissioner for Taking Affidavits

Court of Appeal File No.: M52661  
Court File No. CV-21-00659187-00CL

**COURT OF APPEAL FOR ONTARIO**

**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 (Appellant in Appeal)

**NOTICE OF MOTION FOR LEAVE TO APPEAL**

**TAKE NOTICE THAT THE MOVING PARTY**, Domenico Serafino (the “**Appellant**”) as a person interested in the matter pursuant to section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”) will make a motion to a panel of the Court of Appeal for Ontario to be heard on a date to be fixed by the Registrar, which date shall not be before the earlier of the Appellant’s reply factum, if any, and the expiry of the time for filing the Appellant’s reply factum.

**PROPOSED METHOD OF HEARING:** The motion is to be heard in writing.

**THE MOTION IS FOR:**

- (a) An Order granting leave to the Appellant to appeal the decision of the Honourable Mr. Justice Wilton-Siegel by endorsements

dated June 30, 2021 and July 12, 2021, of the Superior Court of Justice, Commercial List (collectively, the “**Endorsements**”);

- (b) An Order validating the manner of service of this notice of motion and motion materials herein, if necessary;
- (c) The costs of this motion, to be fixed by the court; and,
- (d) Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The heart of this proposed appeal is an issue of statutory interpretation of section 120 of the *Canada Business Corporations Act* (“**CBCA**”) which provides, in part, as follows:

A director of a corporation shall disclose to the corporation, in writing or by requesting to have it entered into the minutes of meetings of directors, the nature and extent of *any interest* that the director has in a *material contract or material transaction*, whether made or proposed, *with the corporation*, if the director is a party to the contract/transaction, if a director or acting in a similar capacity,



of a party to the contract/transaction, or has a *material interest in a party to the contract/transaction*. [Emphasis Added]

2. As will be discussed further below, by way of the Endorsements, the Honourable Justice Wilton-Siegel applied a strict reading of the act and held that section 120 of the CBCA is only triggered when the impugned contract or transaction is *directly* with the corporation. His Honour erred in his interpretation of the CBCA. In particular, His Honour:

- (a) Failed to read section 120 of the CBCA in its entire context and in its grammatical and ordinary sense harmoniously with the scheme of the CBCA, the object of the CBCA, and the intention of Parliament; and,
- (b) Failed to interpret section 120 of the CBCA as being remedial and failed to give it a fair, large and liberal interpretation.

3. Section 120 of the CBCA prohibits a director of a corporation from profiting from a material contract or transaction with that corporation absent full disclosure to the corporation and informed consent from either the independent directors or the shareholders of the corporation.

4. By concluding that section 120 of the CBCA does not apply to a contract of the corporation with a third party that is subsequently assigned to a corporation in respect of which a director of Hydrx has a substantial interest (and which interest is significantly increased after he becomes a director of Hydrx), the Honourable Justice Wilton-Siegel has made a fundamental error in law.

5. The moment a person becomes a director the legal landscape changes. Section 120 of the CBCA is the codification of the well-established common law prohibiting fiduciaries from profiting from estates or corporations to which they have a fiduciary obligation. All contracts carry a risk of loss and a chance of profit. If a fiduciary is a counter-party to a contract (either directly or indirectly) with a corporation to which he or she owes a fiduciary duty, the inevitable pursuit of profit or risk mitigation arising from that contractual interest, conflicts, of necessity, with the obligation of the fiduciary to unreservedly advance and protect the interests of the corporation.

6. A director should not be permitted to do indirectly what he or she would otherwise be statutorily precluded from doing under section 120 of the CBCA. In effect, the learned judge's decision is that a director may freely acquire, for instance, a pre-existing contract with the corporation at an advantageous price or terms and

have no obligation to comply with section 120 of the CBCA in respect of that contract.

7. The fundamental underlying principles of section 120 are equally applicable to (i) contracts entered into directly by the fiduciary with the corporation and (ii) contracts originally entered into by a third party with the corporation and subsequently acquired by a fiduciary on advantageous terms. A director cannot serve two masters under a contract, regardless of the manner in which the director becomes the counter-party to the contract.

8. In addition, in the instant case, it is the most important issue in the CCAA proceedings as it determines the amount owing by Hydrx to its principal secured creditor controlled by its now former director. It is a gating issue to whether a conventional restructuring will occur or whether there will be a sale of the Hydrx assets with the concomitant loss of the existing shareholder equity.

9. The leaned judge further concluded that when a director of a corporation acquires a pre-existing contract on advantageous terms, the corporation cannot suffer a “loss”. If there is a “loss”, it has been suffered by the original counter-party to the contract. The conclusion is that if the corporation suffers no loss, there can be no “profit” to which Section 120 can apply. The essential conclusion is that when a director acquires a pre-existing contract of a corporation, “nothing has

changed” for the corporation. With the greatest of respect, something very fundamental has changed for the corporation in these circumstances. A director is now a counter-party to a material contract of the corporation. That director can actively pursue all benefits of that contract while remaining a director of the corporation and utilizing his/her fiduciary office to further the pursuit of personal profit under that contract with the corporation. This is the very situation that Section 120 and the pre-existing common law is designed to prohibit.

10. There is an additional troubling implication to the learned judge’s conclusion that incumbent directors can profit without constraint from pre-existing contracts with the corporation to which they owe their fiduciary obligation. “Notice” and “profit” are parallel concepts in fiduciary fulfillment. The one is the pre-condition of the other. The corollary to the learned judge’s ruling that incumbent directors can profit from acquiring pre-existing contracts is that, perforce – such acquisitions can proceed in secret! If an incumbent director is entitled at law to acquire a pre-existing contract and vigorously pursue rights thereunder against the corporation with a view to personal profit, there is nothing to notify the corporation about.

11. In concluding that a director can acquire a controlling interest in a pre-existing material contract of a corporation without complying with section 120, the learned judge has created a new exception to the historic position that fiduciaries cannot, in any circumstance, profit from the estates or corporations to which their fiduciary obligation is owed. The learned judge made a fundamental error in law. This error in law, if allowed to stand, would have implications far beyond bankruptcy and insolvency proceedings as it goes to the very root of the Canadian law of fiduciary obligations of directors. In addition, in the instant case, it is the most important issue in the CCAA proceedings as it defines the amount owing by the corporation to the director under a secured debenture that is material in amount.

### **Hydrx**

12. Hydrx Farms Ltd. (“**Hydrx**”) is a private, vertically integrated cannabis business. Hydrx is a company incorporated under the *Canada Business Corporations Act* (“**CBCA**”).

13. The Appellant is an independent director of Hydrx.

### **The Aphria Secured Debenture – The “Material Contract”**

14. On August 14, 2017, Hydrx reached an agreement with Aphria Ltd. (“**Aphria**”) for a subscription agreement which included a senior, secured convertible debenture with a face principal amount of \$11.5 million (the “**Aphria**”).

**Secured Debenture**”). The Aphria Secured Debenture creates a first charge on all of the assets of Hydrx.

15. At all material times, the Aphria Secured Debenture was a *material contract* of Hydrx, if not the *only* material contract of Hydrx.

16. The Aphria Debenture when into payment default during 2019. At present, with accumulated interest, the amount of debt owing is approximately \$15 million.

### **Cobra Acquires the Material Contract**

17. On July 28, 2020, Cobra Ventures Inc. (“**Cobra**”), entered into an agreement with Aphria to take an assignment of the Aphria Secured Debenture for a purchase price of \$5 million.

18. Cobra completed the acquisition of the Aphria Secured Debenture on October 1, 2020.

19. On October 1, 2020, Cobra was owned as to 50% by Richard Goldstein (“**Goldstein**”) through his company, 2775361 Ontario Inc. (“**277 Ontario**”), and 50% by World Class Extractions Inc. (“**WCE**”), a public company.

20. During the period from July of 2020 through October of 2020, Goldstein and WCE made repeated representations to the Appellant that they

intended to refinance and strengthen the balance sheet of Hydrx by converting the bulk of the indebtedness owing under the Aphria Secured Debenture to common share equity in Hydrx thereby leaving the existing Hydrx shareholders with a continuing 30% equity interest in Hydrx.

21. The principal elements of these representations were set forth in a written summary given to the Appellant in late July of 2020 (the “**July Plan**”).

22. On September 6, 2020, all but one of the directors of Hydrx resigned when the D&O insurance carrier refused to extend coverage. The only remaining director of Hydrx was the Appellant, Dominic Serafino (“**Serafino**”).

23. On October 23, 2020, Goldstein became a director of Hydrx as did a representative of WCE named Rosy Mondin (“**Mondin**”).

24. During December of 2020, the principals of Cobra had a falling out over how to implement the July Plan.

25. The Cobra corporate divorce was finalized in January of 2021 with Goldstein’s company acquiring the 50% interest of WCE in Cobra (the “**Cobra Buyout Transaction**”) that he did not previously own for a purchase price of \$2.5 million.

26. Mondin resigned from the board of Hydrx upon completion of the acquisition transaction leaving a “deadlocked” board consisting of Serafino and Goldstein.

### **The Cobra Buyout Transaction**

27. Following the completion of the Cobra Buyout Transaction, Goldstein, through 277 Ontario became a 90% shareholder of Cobra, and, as a consequence, *the predominant indirect owner of the Aphria Secured Debenture.*

28. The net effect of the Cobra Buyout Transaction was that Goldstein acquired through 277 Ontario an aggregate 90% indirect interest in the Aphria Secured Debenture, being an additional 40% increase in such interest after he became a director of Hydrx.

29. The transactions undertaken by Goldstein to acquire and increase his indirect interest in the Aphria Secured Debenture are irrelevant from the standpoint of section 120 of the CBCA applicably until he made the decision to cause Cobra to realize upon the assets of Hydrx and by doing so to profit from his interest.

### **Steps To Realize on Aphria Secured Debenture**

30. Following completion of the Cobra Buyout Transaction, Goldstein took active steps to cause Cobra to realize on the Aphria Secured Debenture.



31. Specifically, on December 22, 2020, he directed Cobra to make demand for payment from Hydrx and to issue the requisite Notice of Intention to Enforce Security. He also took active steps in his capacity as a director of Hydrx to frustrate the ability of Hydrx to protect itself from the realization process. Specifically, after causing Cobra to demand payment from Hydrx and while a director of Hydrx, Goldstein (i) refused to file the requisite renewal application for the Cannabis Excise Tax license which is required for Hydrx to legally sell cannabis product; and (ii) attempted to transfer the Hydrx Health Canada cannabis license to Cobra.

32. At no time from and after his appointment as a director of Hydrx did Goldstein ever comply with section 120 of the CBCA. He gave no disclosure to any of the corporation, the directors or the shareholders of Hydrx of his intention to profit from his indirect contractual relationship with Hydrx through his substantial ownership interest in Cobra (being the owner of the Aphria Secured Debenture) nor did he obtain approval from either the independent board or the shareholders of Hydrx that is the statutory precondition to profit from such relationship.

### **The CCAA Proceedings**

33. The remaining stakeholders of Hydrx were desirous of taking the necessary steps to protect Hydrx from Goldstein's predatory behaviour. However,

given the deadlocked nature of the board, Hydrx was not in a position to make an Application for CCAA protection.

34. Accordingly, in March of 2021, the CCAA proceedings were commenced by the Appellant as an “interested person” under section 11 of the CCAA due to the deadlocked board of directors.

35. On March 22, 2021, the Honourable Justice Hainey granted protection to Hydrx under the CCAA (the “**Initial Order**”). The Initial Order:

- (a) Declared the Appellant as a “person interested in the matter” under section 11 of the CCAA;
- (b) was granted on a without notice and urgent basis;
- (c) a stay of proceedings was granted until and including April 1, 2021 (the “**Stay Period**”).

36. Schwartz Levitsky Feldman Inc. was appointed as monitor under the Initial Order (the “**Monitor**”).

37. Subsequent to the granting of the Initial Order, Goldstein was served with the CCAA application materials, including the supporting affidavit which sets out all of the Appellant’s allegations against Goldstein.

### **Amended and Restated Initial Order**

38. On March 31, 2021, the Appellant sought and was granted an amended and restated initial Order (the “**Amended and Restated Initial Order**”) extending the Stay Period to and including May 3, 2021 (the “**Extended Stay Period**”).

39. The Extended Stay Period was granted, in part, on the basis that Hydrx had sufficient liquidity to finance operations and the CCAA proceedings.

### **Further Extension of Stay Period, Court Approved SISP & CRO**

40. On April 30, 2021, the Appellant sought and was granted an order extended the Extended Stay Period to and including July 30, 2021 (the “**Further Extended Stay Period**”). The Further Extended Stay Period was granted, in part, on the basis that Hydrx had sufficient liquidity to fund its obligations up to and including the Further Extended Stay Period.

41. On April 30, 2021, the Monitor sought and was granted an order:

- (a) Appointing Macpherson & Associates Inc. as the chief restructuring officer of Hydrx (the “**CRO**”). The Monitor sought the appointment of the CRO in part due to the deadlocked Hydrx board of directors;

- (b) Approving a sale and investment solicitation process (the “SISP”).

## **The SISP**

42. The determination of Cobra’s rights in respect of its alleged claim was a gating issue for the purpose of determining rights in the court sanctioned SISP.

43. As part of the court sanctioned SISP, the Monitor sought a process to be followed to determine the amount, if any, owing to Cobra, together with any issues impacting the ability to credit-bid Cobra’s claim as part of the SISP. The SISP order provides as follows:

### **“Redemption of Secured Debt and Filing of CCAA Plan of Arrangement**

12. Within 29 days of the Cobra Claim Decision becoming final, the Companies shall have the right to redeem the secured debt owing to Cobra As established by the Cobra Claims Decision and any appeals therefrom (the “Cobra Secured Debt”).

13. Upon payment of the Cobra Secured Debt in readily available funds, Cobra shall, at the sole option of the Companies, either discharge its security interest in the Property of the Companies or assign the same to a third party as directed by the Companies. For greater certainty: the form of any assignment of security shall be on an “as is, where is” basis with no recourse to Cobra, and to avoid or reduce a potential residual security interest in favour of Windsor Private Capital Limited Partnership (“Windsor”) in the assets of Hydrx, the first funds payable by Hydrx as part of its redemption of the Cobra Secured Debt shall be paid directly to Windsor up to the extent of any indebtedness owing by Cobra to Windsor, in the event that Windsor continues to hold a security interest in the assets of Hydrx at the time of such redemption

payment. The quantum of any such payment to Windsor by Hydrx shall reduce on a dollar for dollar basis any indebtedness owing by Hydrx to Cobra in respect of the Cobra Secured Debt.”

### **No Independent Board or Shareholder Approval of Material Transaction**

44. The Aphria Secured Debenture is a *material contract* of Hydrx. The assignment of the Aphria Secured Debenture to Cobra is a material transaction within the scope of section 120 given the substantial equity interest of Goldstein in Cobra. Under subsection 120(7) of the CBCA, Goldstein is prohibited from realizing a profit from a *contract or transaction* with Hydrx as he did not:

- (a) Make formal disclosure of his indirect interest in the Aphria Secured Debenture;
- (b) He did not obtain approval from the board of directors or shareholders to profit from such interest in the Aphria Secured Debenture.

45. The decision by Goldstein to cause Cobra to realize upon the Aphria Secured Debenture rather than proceeding with the July Plan was designed to solely benefit Goldstein and Cobra at a time when Goldstein had a clear fiduciary and statutory duty to Hydrx.

46. It is immaterial whether Aphria or WCE sold their respective interests in the Aphria Secured Debenture at less than market price or whether these parties suffered a loss. The material question to be addressed is whether a director of Hydrx is entitled to profit from his interest in a corporation that took an assignment of a material contract of Hydrx, namely, the Aphria Secured Debenture. The purpose of section 120 of the CBCA is to impose upon a director a certain statutory pre-conditions to the ability to profit. Such pre-conditions were not met.

### **The June 30, 2021 Motion**

47. By way of motion commenced by Cobra and heard on June 30, 2021, Cobra sought:

- (a) An order declaring and confirming that the indebtedness owing by Hydrx to Cobra is in the approximate amount of \$15 million;
- (b) Cobra is entitled to credit bid up to the full amount of the Cobra secured indebtedness, including in the SISF.

48. The Appellant opposed the relief sought by Cobra on the basis that Goldstein and Cobra ought to be prohibited from profiting from the Aphria Secured Debenture and requiring Goldstein and Cobra to account to Hydrx for any profit or gain realized as a result of Cobra's acquisition of the Aphria Secured Debenture.

49. The Honourable Justice Wilton-Siegel denied the relief sought by the Appellant on the basis that section 120 of the CBCA was not triggered as there was no material contract or transaction directly with Hydrx. By way of endorsement dated June 30, 2021, His Honour endorsed as follows:

*For written reasons to follow, the order sought by Domenico Serafino as set out in his Factum dated June 29, 2021 in this proceeding at paragraph 97 is denied in its entirety.*

50. By way of endorsement dated July 12, 2021, His Honour released the written reasons which provide, in part, as follows:

*First, and most importantly, I do not think that it is correct that any transactions involving the Debenture, or the assignment of the Debenture, constitute transactions with Hydrx for the purposes of s. 120. Section 120 pertains to contracts or transactions “with the corporation”. None of the Rydan Loan Transaction, the Windsor Loan Transaction and the Cobra Buy-Out Transaction constituted such a contract or transaction. (At paragraph 28 of His Honour’s Endorsement); and*

*...Because the transactions by which Goldstein indirectly acquired his 90% interest in the Debenture were between Cobra and Aphria in respect of the Aphria Transaction, and between Goldstein and Chamberland in respect of*

*the Cobra Buy-Out Transaction, any “profit” that Cobra might make on the redemption of the Debenture was at the expense of Aphria and Chamberland, respectively, who will have sold their interests in the Debenture at less than market price. There is no sense in which any such “profit” will be realized at the expense of Hydrx. (At paragraph 43 of His Honour’s Endorsement)*

51. The above conclusions misapprehend the policy intention of section 120. Specifically, section 120 is intended as a statutory safeguard to preclude a director from profiting in respect of any interest such director has in a contract to which the corporation is a party - unless the statutory preconditions of disclosure and approval have been satisfied.

### **The Proposed Appeal**

52. The Appellant seeks leave to appeal the decision of the Honourable Justice Wilton-Siegel. The proposed appeal raises serious issues about the interpretation, purpose and scope of section 120 of the CBCA, including what constitutes *a material contract or transaction with a corporation* under the statute.

53. The Honourable Justice Wilton-Siegel applied a strict reading of section 120 of the CBCA, namely that the *any interest in a material contract or transaction* needs to be a contract or transaction *directly* with the corporation. His Honour erred in this strict reading of the plain language of section 120 of the CBCA.



54. The words under section 120 of the CBCA are to be read in their entire context and in their grammatical and ordinary sense *harmoniously* with the scheme of the CBCA, the object of the CBCA, and the intention of Parliament. The policy behind section 120 of the CBCA is to identify those situations in which a director's ability to consider, fairly and effectively, the corporation's interest may be inhibited by self-interest. In 2001, the section was amended to add the term *transaction* to broaden the coverage of section 120 and clarify the extent of the section's application by requesting identification of interests which extend beyond those resulting from material contracts. The Honourable Justice Wilton-Siegel erred in failing to read section 120 of the CBCA *harmoniously* with the scheme and object of the CBCA and intention of Parliament.

55. Section 64 of the *Legislation Act, 2006*, S.O. 2006, c 21, Sch F, requires that every act shall be interpreted as being remedial and shall be given such fair, large, and liberal interpretation as best ensures the attainment of its objects. The Honourable Justice Wilton-Siegel failed to interpret section 120 as being remedial and failed to give it a fair, large and liberal interpretation.

56. The policy behind section 120 of the CBCA is one of protection for a corporation from the actions of a director who seeks to benefit himself at the expense of the corporation.

57. To accept the position that section 120 of the CBCA is only triggered where the *material contract/transaction* is *directly* with the corporation will only allow any other director to do exactly what Goldstein has done with no consequence: use a separate corporation (Cobra) as a tool to gain an interest in and profit by a material contract (the Aphria Secured Debenture) of a company. That was surely not the intention of Parliament when it enacted section 120 of the CBCA and subsequently expand the statutory scope to include material transactions as well as material contracts.

***Prima Facie Meritorious***

58. The proposed appeal is *prima facie* meritorious. The Honourable Justice Wilton-Siegel erred in his statutory interpretation of section 120 of the CBCA. Specifically, the learned judge erred by failing to recognize that the provisions of section 120 require a director to disclose any interest in a material contract or transaction such a director has with the corporation whether directly or indirectly by way of a material interest in a counter-party to such a contract or transaction with the corporation of which he is a director.

59. In the case at bar, Goldstein was a director and controlling mind of Cobra when Cobra acquired the most material contract in the corporate history of Hydrx. He was subsequently both a director of Cobra and Hydrx at the time of the

Cobra Buyout Transaction which resulted in Goldstein significantly increasing his ownership interest in Cobra and thereby his indirect interest in the Aphria Secured Debenture. He was a director at the time that the decision was made to abandon the July Plan and simply realized on the Aphria Secured Debenture for personal benefit.

60. When Goldstein made the decision to have Cobra realize upon the assets of Hydrx under the Aphria Secured Debenture for personal profit, the statutory safeguards built into section 120 of the CBCA were triggered. Specifically, in order to profit from a contract or transaction involving Hydrx (in this case as a co-party with Cobra in its capacity as an assignee of Aphria), Goldstein needed to satisfy the statutory pre-conditions of disclosure and consent. He did not.

61. Section 120 provides a statutory precondition to a director from profiting from a material contract. Goldstein neither disclosed his material interest nor obtained the statutorily required consent from the independent board of Hydrx or its shareholders.

62. Section 120 is equally applicable to (i) contracts entered into directly by the fiduciary with the corporation and (ii) contracts originally entered into by a third-party with the corporation and subsequently acquired by a fiduciary on advantageous terms. A director cannot serve two masters under a contract, regardless of the manner in which the director becomes the counter-party to the contract.

63. The concept of “profit” should be given its normal meaning. There is no less “profit” accruing to a director by virtue of the fact that the wording in the pre-existing contract acquired by that director has not changed.

64. The conclusion that if a director acquires a pre-existing contract with the corporation “nothing has changed” is a misperception. Something very fundamental has changed, a director is now a counter-party to a material contract of the corporation. That director can actively pursue all benefits of that contract while remaining a director of the corporation and utilizing his or her fiduciary office to further the pursuit of personal profit under that contract with the corporation. This is entirely inconsistent with the purpose and intent of section 120 and the common law that preceded it.

65. If a director can acquire a pre-existing contract and actively pursue remedies and profit thereunder without any obligation to account to the corporation then there can be no basis for insisting that the director disclose his/her interest in the contract. This concept is entirely foreign to the current and historical regime for fiduciary fulfillment.

66. Goldstein became a director of his own volition. He concluded that it was in his commercial interests to do so. After becoming a director, his rights and obligations as a counter-party to contracts with Hydrx changed irrevocably. He could no longer pursue risk mitigation and profit maximization in respect of that

contract without limitation. Section 120 and the historical regime for fiduciary fulfillment are admittedly a “blunt instrument”. It is quite impossible to parse out circumstances in which the law should allow some degree of profitability in contractual relations between fiduciaries and corporations or other estates. As a result, the law has consistently enforced a fundamental rule – no profit under any circumstances.

67. The integrity of the capital markets requires that purchasers of distress debt instruments be able to rely on those instruments in accordance with their terms. The case at hand is based upon an admittedly unusual fact situation, involving as it does the acquisition of a distress debt instrument by a director of the debt issuer. Traditional holders of distress debt instruments universally avoid assuming fiduciary obligations in respect of the underlying debtor for the simple reason that doing so would restrict the pursuit of remedies and profit under the debt instrument. Requiring directors to comply with the rules applicable to all fiduciaries and all contracts (including debt instruments) will have no impact on the trade in distress instruments in the capital markets generally.

68. In concluding that a director can acquire a controlling interest in a pre-existing material contract of a corporation without complying with section 120, the learned justice has created a new exception to the historic position that fiduciaries cannot, in any circumstance, profit from the estates or corporations to which their

fiduciary obligation is owed. The learned judge made a fundamental error in law. This error in law, if allowed to stand, would have implications far beyond bankruptcy and insolvency proceedings as it goes to the very root of the Canadian law of fiduciary fulfillment. In addition, in the instant case, it is the most important issue in the CCAA proceedings as it defines the amount owing by the corporation to the director under a secured debenture that is material in amount.

### **Issues are Significant**

69. The proposed appeal raises issues of significance to the practice and business community.

70. The learned judge concluded that Section 120 did not apply to the case at bar. The learned judge's reasoning appears to be that the acquisition of a pre-existing contract (in this case the Aphria Secured Debenture) is not a material contract or material transaction relating to Hydrx because the steps taken to acquire that pre-existing contract did not involve Hydrx. Instead, the steps involve a director of Hydrx and one or more third-parties.

71. The learned judge reaches this conclusion notwithstanding the fact that the true subject matter of the acquisition is the Aphria Secured Debenture. The Aphria Secured Debenture is a material contract of Hydrx within the intended scope

of section 120 of the CBCA. In fact, it is the most material contract of Hydrx in its corporate history.

72. After Cobra acquiring its 100% interest in the Aphria Secured Debenture for a total cost of \$5 million, Goldstein was both the mind and management and principal owner of Cobra (and therefore the Aphria Secured Debenture) and a director of Hydrx. His cost of acquisition of the Aphria Secured Debenture is \$5 million. The face value of the Aphria Secured Debenture is approximately \$15 million. His potential profit from the Aphria Secured Debenture is a straightforward calculation - \$10 million. As the indirect owner of the Aphria Secured Debenture he is entirely focused on mitigating the risk of loss and maximizing the chance of profit from the ownership of the Aphria Debenture. The pursuit of that undertaking is entirely adverse in interest to Hydrx. At the same time, he is a director of Hydrx and charged with the responsibility of putting Hydrx's interest ahead of all others. This is precisely the position of fundamental conflict that Section 120 and the preceding body of common law is designed to eliminate. One cannot serve two masters in a contractual relationship no matter how that relationship arose.

73. The implication of the learned judge's ruling creates fertile ground for mischief. Every pre-existing service agreement, supply agreement, joint venture agreement, co-tenancy agreement, lease agreement, debt instrument etc. etc. entered

into by a corporation with an arm's length third-party can now be acquired by incumbent directors of the corporation through intermediary corporations, possibly at advantageous prices or on advantageous terms. Those directors can then pursue risk mitigation and profit maximization under a contract with the corporation while still being a director and bound to place the corporation's interests above all others.

74. In the ordinary course of business, such mischief may be addressed by recourse to the other areas of statutory redress under the CBCA, such as a claim in oppression. However, when dealing with a secured debt instrument, and the remedies available to a creditor thereunder, the ability of the debtor corporation to defend itself against a conflicted miscreant director is limited and the practical reality is any recourse to an oppression or other claim may ultimately provide some recovery for stakeholders but it will not protect the corporation.

75. Goldstein acquired 50% of his interest in the Aphria Secured Debenture on October 1, 2020. He became a director of Hydrx on October 23, 2020. Subsection 120 (2) (d) specifically applies to this situation. A director who has an interest in a material contract of the corporation (in this case the Aphria Debenture) prior to becoming a director and who then becomes a director is required to comply with Section 120 in respect of that contract.



76. Goldstein, through Cobra, acquired the remaining 50% of his interest in the Aphria Secured Debenture, from WCE, in January 2021. This acquisition of an interest in a material contract of Hydrx should clearly fall within Section 120.

77. The obligations under Section 120 are applicable only to directors of a corporation. All other third parties are unrestrained in their contractual dealings with corporations and may pursue profit from those contracts without limitation.

78. Both Goldstein and Mondin requested appointment as directors of Hydrx. Regardless of their reasons for becoming directors of Hydrx, once they accepted the appointment as directors their rights and obligations as counter-parties to contracts with Hydrx change irrevocably. They could no longer pursue risk mitigation and profit maximization in respect of that contract without limitation.

79. Once the July Plan was abandoned and Goldstein, through Cobra, acquired the 100% interest in the Aphria Secured Debenture, Goldstein remained constrained by his obligations as a director. Goldstein had no obligation to impose a loss upon himself as the counter-party to the Aphria Secured Debenture. However, he is constrained in his ability to “profit” as a counter-party to that contract by long established common law as codified in the provisions of Section 120.

80. Under Section 120, once Goldstein abandoned the July Plan and proceeded to maximize his personal profit from the Aphria Debenture by simply realizing on the instrument and retaining the net proceeds above \$5 million, he was obliged to strictly comply with the provisions of Section 120 which require:

- (a) Formal written notice of the “nature and extent of the interest in” the Aphria Secured Debenture – which “nature and extent” would have included disclosure of the intent to realize on the instrument and retain the “profit” for his personal benefit; and
- (b) Seeking express consent from the independent directors or the shareholders of Hydrx allowing him to retain any profit from such realization for his personal advantage.

Goldstein did neither. He took no steps whatever to comply with Section 120.

81. Goldstein, as a counter-party to a material contract (the Aphria Secured Debenture) with a corporation in which he is a director (Hydrx) cannot profit from his interest in that material contract without full compliance with Section 120.

82. Goldstein’s motives or intentions in becoming a director of Hydrx are not relevant to the determination of his rights and obligations as a counter-party to a material contract of Hydrx. He gave up his right to unrestrained pursuit of profit with respect to that contract that is otherwise available to third-parties, once he accepted his appointment as a director of Hydrx.

83. The fact that the material contract was a pre-existing contract of Hydrx and that Goldstein acquired the contract from a third-party does not relieve him of his most fundamental fiduciary obligation. He cannot profit from being a counterparty to a material contract with Hydrx while being a director. To rule otherwise would undermine the entire framework controlling fiduciary conflicts of interest and create multiple pathways for abuse.

84. The Appellant requests leave to appeal the order of the learned judge be granted to allow this issue of fundamental importance to be heard by the Court of Appeal.

#### **No Undue Delay or Hindrance**

85. The proposed appeal will not unduly hinder the progress of the proceedings. In fact, the SISP order contemplates Cobra claims process and the proposed appeal will not hinder the restructuring.

86. The CCAA orders including the granting the Stay Period, Extended Stay Period, and Further Extended Stay Period have allowed Hydrx to commence and continue re-start operations.

87. Each of the stay periods were granted on the basis that Hydrx had sufficient liquidity to fund its obligations and costs of the CCAA proceedings.

88. As it currently stands, Hydrx is forecast to have sufficient liquidity to fund its obligations and the costs of the CCAA proceedings through the end of the Further Extended Stay Period.

89. It is anticipated that an extension of the Further Extended Stay Period will be sought to implement either a conventional restructuring under the CCAA as desired by the Appellant or a sale under the SISP.

90. Rule 61.03.1 of the *Rules of Civil Procedure*.

91. Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c.C.43.

92. Section 120 of the *Canada Business Corporations Act*.

93. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion: (List the affidavits or other documentary evidence to be relied on)

- (a) Affidavits of Domenico Serafino.
- (b) Affidavits of Richard Goldstein.
- (c) Transcript.

- (d) Endorsement of the Honourable Justice Wilton-Siegel dated June 30, 2021.
- (e) Endorsement of the Honourable Justice Wilton-Siegel dated July 12, 2021;
- (f) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 14, 2021

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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 of Appeal File No.: M52661  
Court File No. CV-21-00659187-00CL

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at TORONTO

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**NOTICE OF MOTION  
FOR LEAVE TO APPEAL**


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Lawyers for the Applicant (Appellant in Appeal)

This is **Exhibit "I"** referred to  
in the Affidavit of  
Domenico Serafino  
Sworn this 20<sup>th</sup>  
day of July, 2021.

DocuSigned by:  


9A5A673DA59E432.....

A Commissioner for Taking Affidavits

**INDEMNITY AGREEMENT**

**DATE:** April 8, 2021

**TO:** Hydrx Farms Ltd. (the “Indemnitee”)

**AND TO:** SCHWARTZ LEVITSKY FELDMAN INC., in its capacity as the Monitor of the Applicant (the “Monitor”)

**FROM:** Domenico Serafino (the “Indemnitor”)

**RE:** In the matter of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“CCAA”), and in the matter of the plan of compromise or arrangement of the Indemnitee, CannScience Innovations Inc., and Scientus Pharma Inc. (collectively, the “Applicant”)

**WHEREAS** the Applicant is subject to proceedings under the CCAA pursuant to an Initial Order issued by the Ontario Superior Court of Justice (“**Court**”) on March 22, 2021, and an Amended and Restated Initial Order issued by the Court on March 31, 2021 (“**Amended and Restated Initial Order**”).

**AND WHEREAS** pursuant to the Amended and Restated Initial Order, the Court granted a broad stay of proceedings in favour of the Applicant, which stay of proceeding is effective from March 22, 2021 through to and including May 3, 2021 and which stay of proceeding may be extended by further Order of the Court (“**Stay Period**”)

**AND WHEREAS** the Indemnitor has agreed to indemnify the Indemnitee in respect of: (i) any repair costs (“**Repair Costs**”) incurred by the Indemnitee specifically relating to the use of the Equipment (as defined herein) during the period of March 31, 2021 through the remainder of the Stay Period (the “**Indemnity Period**”); and (ii) any Operating Losses (as defined herein) incurred by the Indemnitee during the Indemnity Period, subject to the Indemnitor’s right to end the Indemnity Period as provided herein.

**NOW THEREFORE**, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Indemnitor shall indemnify and hold harmless the Indemnitee from and against all costs of repairs arising directly as result of the Indemnitee’s use of the Equipment during the Indemnity Period where such costs of repairs are not otherwise reimbursed to the Indemnitee under warranty or subject to insurance coverage. In the event repair costs are incurred as a result of the action or inaction of a third party, and the Indemnitee has a claim against such third party for such damages, the Indemnitor shall have a right of subrogation. For the purposes of this Indemnity Agreement, “**Equipment**” shall mean all equipment owned by the Indemnitee and used in connection with the ordinary course of its business operations.

2. The Indemnitor shall indemnify and hold harmless the Indemnitee from and against all Operating Losses incurred by the Indemnitee during the Indemnity Period. For purposes of this Indemnity Agreement, “**Operating Losses**” shall mean the extent, if any, to which: (i) the operating expenses plus costs of goods sold of the Indemnitee exceed (ii) the revenue generated by the Indemnitee, all as determined by the Monitor in its sole discretion, during the Indemnity Period. In determining the operating expenses and costs of goods sold, the Monitor will take into account, without limitation, those costs and expenses set out in Schedule “A” hereto.
3. The Indemnitor shall not be obligated to indemnify the Indemnitee under Sections 1 and 2 of this Indemnity Agreement in respect of any Repair Costs or Operating Losses incurred by the Indemnitee outside of the duration of the Indemnity Period.
4. The Indemnitor may provide notice, in writing by email, to the Indemnitee and the Monitor of his intention to end the Indemnity Period. After receiving such notice, the Indemnity Period shall end upon Hydrx and the Monitor confirming, in writing, both acting reasonably, that all of the following conditions have been satisfied to its satisfaction:
  - a. Hydrx has no continuing contractual obligations in respect of production for production to any third party;
  - b. all production at Hydrx’s facility has ceased; and
  - c. Hydrx’s facility and all equipment that was used during the Indemnity Period has been cleaned to a reasonable commercial standard and in compliance with applicable regulations.
5. This Indemnity Agreement shall be binding upon and enure to the benefit of the Indemnitor and Indemnitee, and their respective successors and assigns.
6. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving.
7. This Indemnity Agreement and all matters arising out of or relating to this Indemnity Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws of Canada applicable therein.

[SIGNATURE PAGE FOLLOWS]



**IN WITNESS WHEREOF** the Parties hereto have duly executed this Indemnity Agreement with effect as and from the date first written above.

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
**DOMENICO SERAFINO**

**HYDRX FARMS LTD.**

Per:   
Name: *Dom. Serafino*  
Title: *DIRECTOR*  
  
Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We Have Authority to bind the Corporation

**SCHEDULE "A"**

**Cost of Goods Sold**

Primary Packaging  
Primary Packaging Label  
Excise Label  
SHRINK  
THC Label  
Non cannabis ingredients, if applicable  
Distillate sourced from other LPs  
Shipping  
Labour for Filling and Packing  
Secondary Packaging Label  
Secondary Container  
Pack and ship labour  
Shipping Master Container  
Pallets  
Lab Testing

**Operating Expenses**

Insurance  
Electricity  
Natural Gas  
Property Tax  
Water/Sewer  
Security Monitoring  
Software License  
Pest Control  
Licensing Fees  
Urgent Maintenance  
Preventative Maintenance  
PPE/Cleaning

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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at **Toronto**

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**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 OF THE APPLICANT**  
(Returnable July 26, 2021)

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