

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 October 26, 2021)

October 22, 2021

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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 11:00 AM on Tuesday, October 26, 2021, or as soon after that time as the motion can be heard by way of judicial video conference via Zoom due to the COVID-19 pandemic, at Toronto, Ontario.

**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://us02web.zoom.us/j/88535001442?pwd=dm5rbDFTZXZTZUtPK1VOK21oNVdkdz09>

Meeting ID: 885 3500 1442

Passcode: 165684

**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 January 28, 2022;
- (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 Extensions 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 July 26, 2021, this Honourable Court granted a further order extending the Stay Period until and including October 28, 2021.

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

- (f) Hydrx requires an extension of the Stay Period until and including January 28, 2022.
- (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 ongoing negotiations as between the Re-Start Group and Hydrx's principal secured creditor, Cobra Ventures Inc. ("**Cobra**") respecting an acquisition by the Re-Start Group of the debt owing by Hydrx to Cobra and the security held in support of such debt. The proposed transaction will directly impact upon the court ordered SISP process and the prospect that Hydrx will file a Plan of Arrangement.

- (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 court appointed 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;
- (b) The Report of the Monitor; and
- (c) Such further and other evidence as counsel may advise and this Court may permit.

October 22, 2021

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TO: **THE SERVICE 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

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

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

THE HONOURABLE MR.	)	TUESDAY, THE 26 <sup>th</sup>
	)	
JUSTICE McEWEN	)	DAY OF OCTOBER, 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 October 22, 2021 and the Exhibits thereto (the "**Serafino Affidavit**"), the report of the monitor, Schwartz Levitsky Feldman Inc. (the "**Monitor**") dated [INSERT], 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 Karen Fox sworn April 22, 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 January 28, 2022.

### **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.

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SUPERIOR COURT OF JUSTICE  
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Proceeding commenced at Toronto

**ORDER  
(Extension of Stay Period)**

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INC.

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. I swear this Affidavit in support of an Order extending the stay period to and including January 28, 2022.

3. All terms not otherwise defined herein have the meaning ascribed to them in the Orders in these CCAA proceedings and as attached to this motion.

### **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 Order of the Honourable Mr. Justice Hainey dated April 30, 2021, the Stay Period was extended to and including July 30, 2021.

7. Pursuant to the Order of the Honourable Mr. Justice Koehnen dated July 26, 2021, the Stay Period was extended to and including October 28, 2021 (the “**July 26 Extension Order**”).

## Post July 26 Extension Order Activities

8. The following paragraphs will set out the activities subsequent to the July 26 Extension Order.

9. As set out in my previous affidavits, the CCAA proceedings were sought, in part, to bring together a re-start group comprised of various stakeholders of Hydrx (“**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.

10. Subsequent to the July 26 Extension Order, the Re-Start Group has:

- (a) Launched five additional SKUs for sale and fulfillment to the Ontario Cannabis Store; and,
- (b) Fulfilled purchase orders totalling \$190,673 to provincial licensed retailers.

11. Hydrx purchase orders, namely its accounts receivables, are financing by Trevor Folk, a member of the Re-Start Group, and affiliates at an annual interest rate of 4%.



12. At the instruction of the court appointed CRO, Hydrx operations wound down in September 2021. As a result, no new purchase orders are being accepted for fulfillment.

13. As a result of the winding down of operations, plans were made to:

- (a) Move out of the Hydrx production facility in Whitby, Ontario; and,
- (b) Terminate the personal indemnity I gave on April 8, 2021 to cover any operating losses and repairs that may be required to Hydrx equipment.

14. However, those plans were not implemented as the Re-Start Group, as represented by Mr. Folk, commenced discussions with Cobra Ventures Inc. (“Cobra”) to take assignment of Cobra’s debt and security over Hydrx. Cobra is Hydrx’s senior secured creditor pursuant to an assignment of a convertible debenture in the principle sum of \$11.5 million from Aphria Inc. to Cobra.

15. I am advised by Mr. Folk, and verily believe, that an agreement with respect to the assignment has been given to Cobra and, if accepted, would result in an assignment of the Cobra debt and security over Hydrx to a corporation to be incorporated by the Re-Start Group (“PurchaserCo”). Under the agreement,

PurchaserCo will engage in a transaction which will result in the issuance of a reverse vesting order.

16. Given the current negotiations involving the Re-Start Group and Cobra respecting the proposed acquisition by the Re-Start Group of the indebtedness owing by Hydrx to Cobra and the security held to support such indebtedness, a further extension of the Stay Period is required.

17. Negotiations are advanced and it is expected that an agreement will be concluded in the near future. The consummation of such a transaction will have a direct impact on the court authorized SISP process (defined below) and the prospect for Hydrx to file a Plan of Arrangement.

18. In addition, if the extension of the Stay Period is granted, it is the intention of the Re-Start Group to:

- (a) Re-commence and ramp up Hydrx operations;
- (b) Fulfill new purchaser orders; and,
- (c) Start production on an additional three SKUs and a B2B manufacturing contract.

19. An extension of the Stay Period is further required in order to deal with a pending appeal. On April 30, 2021, the Court approved a sale and investment solicitation process (“SISP”). A dispute arose regarding the value of the claim that Cobra could assert by way of a credit bid as part of the SISP. On July 12, 2021, the Honourable Justice Wilton-Siegel released a decision holding that Cobra could credit bid the full amount of the indebtedness owing under the convertible debenture in the SISP. The leave to appeal is to be heard in writing and the time period for filing of materials expired on August 26, 2021. Materials for leave to appeal that decision have been filed with the Court of Appeal and as at the date of this affidavit, a decision has not been released.

### **Cash Flow Forecast**

20. As is demonstrated in the Cash Flow Forecast to be appended to the 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 proposed extended Stay Period.

### **Good Faith**

21. Since the granting of the 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 and the CRO.

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

22. I understand that the Monitor and the CRO are supportive of the proposed extension of the Stay Period and believe that it will not materially prejudice any creditor. I also understand from the Monitor that Cobra supports the extension of the Stay Period.

### **Conclusion**

23. It is necessary and in the best interests of Hydrx and its stakeholders that the Stay Period be extended. Negotiations with Cobra are at an advanced stage and the consummation of the proposed transaction will permit Hydrx to re-start and ramp up operations.

24. I make this Affidavit in support of an Order, among other things, extending the Stay Period to and including January 28, 2022 and for no other improper purpose.

25. 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 Toronto, in the Province )  
of Ontario, this 22<sup>nd</sup> day of )  
October, 2021. )

  
\_\_\_\_\_  
Sepideh K. Nassabi (Oct 22, 2021 11:32 EDT)

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

  
\_\_\_\_\_  
Dom Serafino (Oct 22, 2021 11:31 EDT)

**DOMENICO SERAFINO**

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 Applicant

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

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

THE HONOURABLE MR.

)

MONDAY, THE 22<sup>nd</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**")



**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.

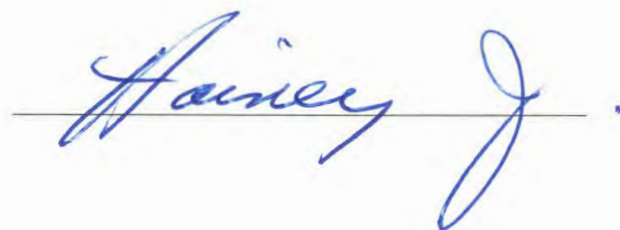
30. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of Hydrx, the Business or the Property.

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.





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 SCIENTUS PHARMA INC.

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

**ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL ORDER**

**MINDEN GROSS LLP**  
 Barristers and Solicitors  
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Lawyers for the Applicant

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 J.", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "H" and a long, sweeping tail.

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**MINDEN GROSS LLP**

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Lawyers for the Applicant

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 ARRANGMENT OF HYDRX FARMS LTD.,  
CANNSCIENCE INNOVATIONS INC. AND SCIENTUS PHARMA INC.**

(the "Applicant")

**ORDER**

**(CRO APPOINTMENT AND SISF APPROVAL)**

**THIS MOTION**, made by the Schwartz Levitsky Feldman Inc. in its capacity as Court-appointed monitor (the "**Monitor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*, appointing a Chief Restructuring Officer ("**CRO**") of Hydrx Farms Ltd. ("**Hydrx**"), Cannscience Innovations Inc. ("**CII**") and Scientus Pharma Inc. ("**SPI**") and together with Hydrx and CII, the "**Debtors**"), and approving the SISF (as defined below) and certain related relief, was heard this day by Zoom videoconference at Toronto, Ontario.

**ON READING** the Monitor's Motion Record (the "**Motion Record**"), including the Monitor's Notice of Motion dated April 26, 2021 (the "**Notice of Motion**"), and the Monitor's second report dated April 26, 2021 (the "**Second Report**"), filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and counsel for Cobra Ventures Inc., and such other counsel as were present, no one else

appearing although duly served as appears from the affidavit of service of Michelle Jackson, sworn April 26, 2021.

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated, and hereby dispenses with any further service thereof so that this motion is properly returnable today;
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them under the Sale and Investment Solicitation Process attached hereto as Schedule "A" (the "SISP") or the initial order, as subsequently amended and restated (the "Initial Order"), as applicable.

### **APPOINTMENT OF CRO**

3. **THIS COURT ORDERS AND DIRECTS** Hydrx to execute the engagement letter appended hereto as Schedule "B" (the "CRO Engagement Letter"), and that Macpherson & Associates Inc. is hereby appointed as the chief restructuring officer of the Debtors (the "CRO") on the following terms:
  - (a) subject to review by and any further order of this court, the CRO shall have the powers and obligations set out in the CRO Engagement Letter, to the exclusion of all others, which, for greater certainty, the CRO shall exercise in its discretion, without interference from Hydrx's board of directors;
  - (b) the CRO shall be entitled to payment from the Debtors in accordance with the terms of the CRO Engagement Letter, for obligations owing thereunder and the expenses and disbursements contemplated therein (the "CRO Fees");



- (c) the CRO shall be responsible for performing its functions and obligations as set out in the CRO Engagement Letter for the benefit of the Debtors and shall provide timely updates to the Monitor in respect of such functions and obligation;
- (d) neither the CRO nor Jim Macpherson shall be nor be deemed to be a director, de facto director, or employee of any of the Debtors;
- (e) nothing in this Order shall be construed as resulting in the CRO or Jim Macpherson being an employer, successor employer, a responsible person, operator or person with apparent authority within the meaning of any statute, regulation or rule of law, or equity (including any Environmental Legislation) for any purpose whatsoever;
- (f) the CRO shall not, as a result of the performance of their respective obligations and duties in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation; provided however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO shall be entitled to the benefits and protections in relation to the Debtors and such Property as are provided to a monitor under Section 11.8(3) of the CCAA; provided further however, that nothing in this subparagraph 32(f) shall exempt the CRO from any duty to report or make disclosure imposed by a law and incorporated by reference in Section 11.8(4) of the CCAA;

- (g) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO or Jim Macpherson, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this court on notice to the Monitor and the CRO, provided, however, that nothing in this order shall affect such investigations, actions, suits or proceedings by a regulatory body that are permitted by Section 11.1 of the CCAA;
- (h) the CRO Fees shall not be compromised pursuant to any plan of arrangement, any proposal under the *Bankruptcy and Insolvency Act of Canada* (the "BIA"), or any other restructuring and no such plan, proposal, restructuring or sale transaction shall be approved that does not provide for the payment in full of all amounts due to the CRO pursuant to the terms of the CRO Engagement Letter; and
- (i) the CRO, in respect of its monthly fees and expense reimbursement, shall be entitled to the benefit of and is hereby granted the Administration Charge as security for the CRO Fees.

4. **THIS COURT ORDERS** that, save and except for gross negligence or willful misconduct, neither the CRO nor Jim Macpherson, nor their respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of CRO or the carrying out by it of the provisions of this Order or the CRO Engagement Letter.

### **APPROVAL OF THE SISP**

5. **THIS COURT ORDERS** that the SISP (subject to any amendments thereto that may be made in accordance therewith and with this Order) be and is hereby approved and the Monitor, together with the CRO, are authorized and directed to carry out the SISP in accordance with its terms and this Order, and are hereby authorized and directed to take such steps as they consider necessary or desirable in carrying out each of their obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SISP.

6. **THIS COURT ORDERS** that the Monitor, the CRO, and their respective assistants, affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Monitor or CRO, as applicable, as determined by this court.

7. **THIS COURT ORDERS** that notwithstanding anything contained herein or in the SISP, the Monitor and the CRO shall not take possession of the Property or be deemed to take possession of the Property.

8. **THIS COURT ORDERS** that the Monitor may apply to this court for directions with respect to the SISP at any time.

### **INCREASE IN ADMINISTRATION CHARGE**

9. **THIS COURT ORDERS** that the Administration Charge at paragraph 26 of the Amended and Restated Initial Order dated March 31, 2021, is hereby increased from \$250,000 to \$400,000.

### **CLAIMS PROCESS FOR COBRA CLAIM**

10. **THIS COURT ORDERS** the process to be followed to determine the amount of the debt, if any, owing to Cobra Ventures Inc. ("Cobra") by HydRx (the "Cobra Claim"),

together with any issues impacting the ability to credit-bid the Cobra Claim as part of the SISP, including, without limitation, all issues pertaining to the validity, enforceability, and perfection of any security in respect the Cobra Claim, resulting in a final determination as expeditiously as possible and by no later than June 30, 2021 (the "Cobra Claims Process"), shall be determined by this court at a case conference to be held on Monday, May 10, 2021.

11. **THIS COURT ORDERS** that the Monitor shall, forthwith, send a copy of this order, by email, to everyone who has served a Notice of Appearance in these proceedings, and any person interested in and wishing to participate in the Cobra Claims Process shall give notice of their interest, together with a brief statement of their position in respect of the Cobra Claim, the basis for that position and the proposed process to be followed, to the Service List in these proceedings, and file the same with the court by no later than 1:00 p.m. on Friday, May 7, 2021, and anyone failing to provide such notice in accordance with the terms of this order shall be barred from participating in the Cobra Claims Process.

12. **THIS COURT ORDERS** that the Monitor shall provide a copy of the ultimate decision in respect of the issues raised in the Cobra Claims Process (the "Cobra Claim Decision"), to each Phase 1 Qualified Bidder, and advise them of the precise date of the Phase 1 Qualified Bid Deadline.

13. **THIS COURT ORDERS** that the costs of the Applicant, including the costs of the Applicant's counsel, associated with the Cobra Claims Process shall be paid in the first instance by the Applicant, and that the issue of the Applicant's entitlement to indemnification or reimbursement for such costs from the Debtors and the applicability of the Administrative Charge thereto is reserved and shall be determined by this court following the final determination of the Cobra Claim Decision.

#### **PIPEDA**

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Debtors, the CRO and the Monitor, and their respective advisors and representatives are hereby authorized and

permitted to disclose and transfer to each Phase 1 Qualified Bidder personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "Transaction"). Each Phase 1 Qualified Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Companies and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Companies, and shall return all other personal information to the Monitor or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor.

#### **GENERAL**

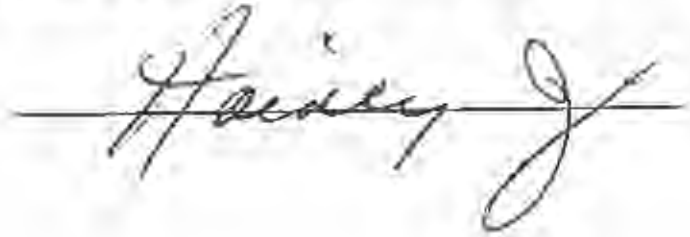
15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, United States, or elsewhere to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the 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 Monitor and its agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that 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.

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.

A handwritten signature in cursive script, appearing to read "Haidy J.", is written over a horizontal line. The signature is fluid and stylized, with a large initial 'H' and a long, sweeping tail on the 'y'.

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

ENICO SARAJNO AS A PERSON INTERESTED IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HYDRIX  
CANNSCIENCE INNOVATIONS INC. AND SCIENTIUS PHARMA INC.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDINGS COMMENCED  
IN TORONTO

ORDER  
(RE APPOINTMENT AND SISP)

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP  
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### Procedures for the Sale and Investment Solicitation Process

1. Upon application by Domenico Serafino ("Serafino") to the Ontario Superior Court of Justice (Commercial List) (the "Court"), on March 22, 2021, HydRx Farms Ltd. ("HydRx"), Cannscience Innovations Inc. ("Cannscience") and Scientus Pharma Inc. ("Scientus", and together with HydRx and Cannscience, the "Companies") were granted creditor protection pursuant to an Initial Order, as subsequently amended and restated (the "Initial Order") under the *Companies' Creditors Arrangement Act* ("CCAA").
2. Pursuant to the Initial Order, Schwartz Levitsky Feldman Inc. was appointed as court-appointed monitor of the Companies (the "Monitor").
3. By order dated April 30, 2021 (the "SISP Approval Order"), the Court approved the Sale and Investment Solicitation Process ("SISP") set out herein.
4. This SISP shall govern the process for soliciting and selecting bids for (i) the acquisition of all or substantially all of the property, assets and undertakings of the Companies (the "Property") or all or substantially all of the equity of HydRx (either, a "Sale Transaction"), or (ii) the restructuring, recapitalization or refinancing of the Companies, including pursuant to any CCAA plan of compromise or arrangement (an "Investment Transaction"). Both a Sale Transaction and Investment Transaction will be referred to herein as an "Opportunity".
5. Set forth below are the procedures (the "SISP Procedures") to be followed with respect to the SISP and, following determination of a Successful Bid (as defined below), to complete the Transaction contemplated thereby.

#### Defined Terms

6. All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Initial Order.

#### Solicitation Process and Timeline

7. These SISP Procedures describe the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Companies, their businesses and operations (the "Business") and their Property, the manner in which a bid becomes a Qualified LOI, the receipt and negotiation of bids received, the ultimate selection of a Successful Bid, if any, and the approval thereof by the Court.
8. The Monitor shall independently implement these SISP Procedures without involvement or consultation with the Companies, Serafino or Cobra Ventures Inc. ("Cobra") except as expressly permitted herein. As set out herein, the Monitor will consult with [name of CRO], the Chief Restructuring Officer of HydRx (the "CRO"). In the event that there is disagreement as to the interpretation or application of these SISP Procedures, the Court will have jurisdiction to hear and resolve any such dispute.



9. The following table sets out the key deadlines under this SISP pursuant to and in accordance with these SISP Procedures:

Milestone	Deadline
"Solicitation of Interest Deadline"	Preliminary solicitation efforts will commence immediately after issuance of the SISP Approval Order  The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than 14 days from the date of the SISP Approval Order, (collectively, the "Solicitation Period")
"Phase 1 Bid Deadline"	21 days from the Cobra Claim Decision (as defined in the SISP Approval order), or such later date as the Monitor, in its discretion, may specify, in writing, by notice given to each Known Potential Bidder.
"Phase 2 Bid Deadline"	To be specified in the Phase 2 Bid Process letter.

#### Solicitation of Interest

10. As soon as reasonably practicable following the granting of the SISP Approval Order, the Monitor shall, in consultation with the CRO, Serafino and Cobra (a) prepare a list of potential bidders, including (i) local and international strategic and financial parties who may be interested in pursuing an Opportunity; (ii) parties who have approached the Monitor, the CRO, Serafino, or Cobra and advised that they have an interest in an Opportunity; (iii) any other credible parties as determined by the Monitor and the CRO to be a potential bidder ("Known Potential Bidders"); (b) prepare a summary teaser describing the opportunity to participate in the SISP and an overview of the SISP Procedures (the "Teaser Letter"); (c) prepare a non-disclosure agreement ("NDA"); and (d) establish a data room (the "Data Room") of due diligence materials (the "Diligence Materials") that the Monitor believes may be useful for Known Potential Bidders. The Monitor may consult with, and obtain information from, the Companies, Serafino and Cobra as the Monitor may require in its discretion in preparing the Teaser Letter, the Data Room and the Diligence Materials.

11. As soon as reasonably practicable following the granting of the SISP Approval Order, and in any event no later than the Solicitation of Interest Deadline the Monitor shall contact the Known Potential Bidders to introduce the Opportunity, providing a copy of the Teaser Letter and NDA, and shall post a copy of the SISP and the Teaser Letter on the website maintained by the Monitor in respect of the CCAA proceedings. The Monitor shall also provide a copy of the Teaser Letter and NDA to any party who is identified to the Monitor as a potential bidder or who requests a copy of the Teaser Letter and NDA, if deemed a credible bidder by the Monitor as soon as reasonably practicable after such request or identification, as applicable.

#### 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.

14. Upon payment being made to Cobra and/or Windsor, the Companies shall provide written notification to the Monitor of such payment (the "Payment Notice"). Immediately upon receipt of the Payment Notice, the SISP process shall be suspended for an initial period of 30 days (the "Initial Suspension Period") to permit the Companies to prepare and file a Plan of Arrangement (the "Plan"). The Monitor shall notify all interested parties in writing of the Initial Suspension Period.

15. Should the Companies fail to file a Plan on or before the expiration of the Initial Suspension Period, the SISP shall resume on and subject to the terms as set out herein.

16. In the event that the Plan is filed on or before the expiration of the Initial Suspension Period, the SISP shall be suspended pending consideration of the plan by creditors and the Court.

17. Should the Plan be accepted by the creditors and approved by the Court, the SISP shall be considered terminated upon the Order sanctioning the Plan becoming final and the Monitor shall notify all interested parties in writing of the SISP termination.

18. Should the Plan be rejected by the court or by creditors, with all appeals being unsuccessful and finally determined, the SISP shall resume on and subject to the terms as set out herein, with such modifications as may be required by the passage of time.

#### **Phase 1: Non-Binding LOIs**

19. Any party who wishes to participate in the SISP (a "Potential Bidder") must provide to the Monitor an NDA executed by it, which shall enure to the benefit of any purchaser of or investor in the Companies or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, and the contact information for such Potential Bidder (each a "Phase 1 Qualified Bidder").

20. The Monitor will provide access to the Data Room and Diligence Materials to each Phase 1 Qualified Bidder. The Monitor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated, provided that, if such representative is not the CRO or an employee of the Monitor, such representative shall provide written confirmation satisfactory to the Monitor that he or she will not participate in the SISP as a Potential Bidder, Phase 1 Qualified Bidder or Phase 2 Qualified Bidder and is not and will not be affiliated with any Potential Bidder, Phase 1 Qualified Bidder or Phase 2 Qualified Bidder.

21. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Companies in connection with their participation in the SISP and any transaction they may enter into with the Monitor.

#### **Non-Binding Letters of Intent from Phase 1 Qualified Bidders**

22. A Phase 1 Qualified Bidder that wishes to pursue the Opportunity further must deliver a non-binding letter of interest (an "LOI") to the Monitor in accordance with these SISP Procedures

at the addresses specified in Appendix "A" hereto (including by email) so as to be received by the Monitor no later than 5:00 PM (Eastern Time) on the Phase 1 Bid Deadline.

23. Subject to paragraph 17, an LOI so submitted will be considered a qualified LOI (each, a "Qualified LOI") only if it includes:

- (a) the identity of the Phase 1 Qualified Bidder, the contact information for such Phase 1 Qualified Bidder and full disclosure of the direct and indirect owners of the Phase 1 Qualified Bidder and their principals;
- (b) the identity of each entity or person that will be sponsoring or participating in or benefiting from the transaction contemplated by the LOI;
- (c) in the case of a Sale Transaction,
  - (i) the purchase price in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) evidence of the financial capability of the Phase 1 Qualified Bidder to consummate the transaction and the expected structure and financing of the transaction;
- (d) in the case of an Investment Transaction,
  - (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
  - (ii) the aggregate amount of the equity and/or debt investment to be made in the Companies in Canadian dollars;
  - (iii) key assumptions supporting the Phase 1 Qualified Bidder's valuation;
  - (iv) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interests or dividend rates, amortization, voting rights or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);
- (e) an outline of any additional due diligence required to be conducted to submit a final and binding offer;
- (f) a description of the Phase 1 Qualified Bidder's proposed treatment of any obligations or liabilities and information sufficient for the Monitor to determine whether the Phase 1 Qualified Bidder has the ability to satisfy such obligations or liabilities;
- (g) a description of all conditions to closing that the Phase 1 Qualified Bidder expects to include in its final and binding offer, including without limitation any regulatory approvals and any form of agreement required from a government body, stakeholder or other third party and an outline of the principal terms thereof;



- (h) a description of the conditions and approvals required for the Phase 1 Qualified Bidder to be in a position to submit a final and binding offer, including any anticipated corporate, security holder or other internal approvals and any anticipated impediments for obtaining such approvals;
- (i) such other information as requested by the Monitor.

24. The Monitor may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI.

#### **Review of Qualified LOIs**

25. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the CRO, will assess any Qualified LOIs received. If it is determined by the Monitor that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (i) has a bona fide interest in completing a Sale Transaction or Investment Transaction (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed a "Phase 2 Qualified Bidder", provided that the Monitor may, in its reasonable business judgment, limit the number of Phase 2 Qualified Bidders (and thereby eliminate any bidders from the process) taking into account the factors identified in paragraph 26 below. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.

26. As part of the assessment of Qualified LOIs and the determination of the process subsequent thereto, the Monitor, in consultation with the CRO, shall determine the process and timing to be followed in pursuing Qualified LOIs based on such factors and circumstances as they consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified LOIs received; (ii) the extent to which the Qualified LOIs relate to the same Property or Companies or involve Investment Transactions predicated on certain Property or Companies; (iii) the scope of the Property or Companies to which any Qualified LOIs may relate; (iv) the conditions to closing contained in the Qualified LOIs; and (v) whether to proceed by way of sealed bid or auction (with or without a stalking horse bidder) with respect to some or all of the Property.

27. Following the receipt of any LOI, the Monitor may seek clarification with respect to any of the terms or conditions of such LOI and/or request one or more amendments to such LOI prior to determining if the LOI should be considered a Qualified LOI.

28. Upon the determination by the Monitor of the manner in which to proceed to Phase 2 of the SISP, the Monitor will prepare a bid process letter for Phase 2 (the "Bid Process Letter"), and the Bid Process Letter will be: (i) sent by the Monitor to all Phase 2 Qualified Bidders as soon as practically possible following the Phase 1 Bid Deadline; and (ii) posted by the Monitor on the Monitor's Website.

29. In the event that the Monitor determines that no Qualified LOIs are received or if the Qualified LOIs received are not in an amount sufficient to repay the secured indebtedness owing to Cobra (as determined by the Court pursuant to the Cobra Claim Decision) in immediately available funds on closing, the Monitor shall report to the Court, and subject to any contrary provision contained in the Cobra Claim Decision or any order contrary direction from the Court, or unless otherwise agreed by Cobra in writing, the Monitor shall not proceed with Phase 2 of the SISP and shall proceed to complete a credit-bid transaction with Cobra.

30. Notwithstanding the process and deadlines outlined above with respect to Phase 1 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter,

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- (a) the Monitor may, in consultation with and on notice to both Serafino and Cobra, at any time:
  - (i) pause, terminate, amend or modify the SISP or these SISP Procedures;
  - (ii) remove any portion of the Companies and the Property from the SISP;
  - (iii) establish further or other procedures for Phase 1;
- (b) the Monitor may, in consultation with and on notice to both Serafino and Cobra, at any time bring a motion to the Court to seek approval of:
  - (i) a sale of, or investment in, all or part of the Property or the Companies whether or not such sale or investment is in accordance with the terms or timelines set out in this SISP Procedure or the Bid Process Letter; or
  - (ii) a stalking horse agreement in respect of some or all of the Property or Companies and related bid procedures in respect of such Property.

### **Phase 2: Formal Offers and Selection of Successful Bidder**

21. Paragraphs 32 to 37 below and the conduct of Phase 2 are subject to: paragraphs 25 to 30, above; any adjustments made to Phase 2 in accordance with the Bid Process Letter; and, any further Court order regarding the SISP.

#### ***Formal Binding Offers***

32. Phase 2 Qualified Bidders who wish to make a formal offer to purchase or make an investment in the Companies or their Property shall submit a binding offer (a "Phase 2 Bid") that complies with all of the following requirements to the Monitor at the addresses specified in Appendix "A" hereto (including by email), so as to be received by them no later than the date set out in the Bid Process Letter (the "Phase 2 Bid Deadline"):

- (a) the bid shall comply with all of the requirements set forth in paragraph 16 above in respect of Phase 1 Qualified LOIs;
- (b) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Companies or their Property and is consistent with any necessary terms and conditions established by the Monitor and communicated to Phase 2 Qualified Bidders;
- (c) the bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- (d) the bid includes duly authorized and executed transaction agreements, including the purchase price (in an exact figure and not expressed as a range), investment amount and any other key economic terms expressed in Canadian dollars (the "Purchase Price"), together with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), and proposed order to approve the transaction by the Court.

- (e) the bid includes a blackline comparison between the transaction agreements submitted and the template provided to Phase 2 Qualified Bidder in the data room;
- (f) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Monitor to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
- (g) the bid is not conditioned on: (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 1 from the Phase 2 Qualified Bidder; or (ii) obtaining financing, but may be conditioned upon the Companies receiving the required approvals or amendments relating to the licenses required to operate its business, if necessary;
- (h) the bid fully discloses the identity of each entity that will be (directly or indirectly) entering into the transaction or the financing (including through the issuance of debt in connection with such bid), or that is participating or benefiting from such bid, and such disclosure shall include, without limitation: (i) in the case of a Phase 2 Qualified Bidder formed for the purposes of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such Phase 2 Qualified Bidder and the terms and participation percentage of such equity holder's interest in such bid; and (ii) the identity of each entity that has or will receive a benefit from such bid from or through the Phase 2 Qualified Bidder or any of its equity holders and the terms of such benefit;
- (i) for a Sale Transaction, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 5% of the cash Purchase Price offered upon the Phase 2 Qualified Bidder being selected as having a Qualified Bid or as being the Successful Bidder, as provided below;
- (j) for an Investment Transaction, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 5% of the total new investment contemplated in the bid upon the Phase 2 Qualified Bidder being selected as having a Qualified Bid or as being the Successful Bidder, as provided below;
- (k) the bid includes acknowledgements and representations of the Phase 2 Qualified Bidder that the Phase 2 Qualified Bidder: (i) confirms that the transaction is on an "as is, where is" basis; (ii) has had an opportunity to conduct any and all due diligence regarding the Property and the Companies prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld in Phase 1 from the Phase 2 Qualified Bidder); (iii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iv) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Companies or the Property, or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Monitor on behalf of HyDRx;



- (l) the bid contains other information required by the Monitor in consultation with the CRO including, without limitation, such additional information as may be required in the event Phase 2 is supplemented in accordance with paragraph 16 to contemplate that an auction of certain Property be conducted; and
- (m) the bid is received by the Phase 2 Bid Deadline.

33. Following the Phase 2 Bid Deadline, the Monitor, in consultation with the CRO, will assess the Phase 2 Bids received. The Monitor will designate the most competitive bids that comply with the foregoing requirements to be "Qualified Bids". Only Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

34. The Monitor, in consultation with the CRO, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Phase 2 Bids to be a Qualified Bid.

35. The Monitor shall notify each Phase 2 Qualified Bidder in writing as to whether its Phase 2 Bid constituted a Qualified Bid within ten business days of the Phase 2 Bid Deadline, or at such later time as the Monitor deems appropriate, and within 7 days of the Monitor giving such notice, the Qualified Bidder shall provide a refundable deposit (the "Deposit") in the form of a wire transfer (to a bank account specified by the Monitor) payable to the order of the Monitor, in trust, in an amount equal to 5% of the cash consideration in the Qualified Bid, which Deposit is to be held and dealt with in accordance with these SISP Procedures, provided that the Deposit provided by a credit bidder shall not exceed the amount of any prior ranking secured debt, as determined by the Monitor.

36. If the Monitor, in consultation with the CRO, is not satisfied with the number or terms of the Qualified Bids, the Monitor may, subject to contrary direction obtained from the Court, extend the Phase 2 Bid Deadline, or the Monitor may amend the SISP or this SISP Procedure in accordance with the terms set out herein.

37. The Monitor may aggregate separate Phase 2 Bids from unaffiliated Phase 2 Qualified Bidders to create one Qualified Bid.

#### Evaluation of Competing Bids

38. A Qualified Bid will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the value provided by such bid; (ii) the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions; (iii) the proposed transaction documents; (iv) factors affecting the speed, certainty and value of the transaction; (v) the assets or liabilities included or excluded from the bid; (vi) any related restructuring costs; (vii) whether the Qualified Bid would provide sufficient cash consideration to repay the secured debt owing to Cobra (as determined pursuant to the Cobra Claim Decision); and, (viii) the likelihood and timing of consummating such transaction, each as determined by the Monitor in consultation with the CRO.

#### Selection of Successful Bid

39. The Monitor, in consultation with the CRO, will: (a) review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated between the Monitor on behalf of HydrRx and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations; and (b) identify the highest or otherwise best bid (the "Successful Bid", and the Phase 2 Qualified Bidder making such Successful Bid, the "Successful Bidder") for any particular Property or the Companies in whole

or part. The determination of any Successful Bid by the Monitor on behalf of HydRx shall be subject to approval by the Court.

40. Upon identifying the Successful Bid, the Monitor shall notify each Qualified Bidder, in writing, of the identity of the Successful Bidder, and within 48 hours of the Monitor giving such notice or such later time as the Monitor may permit, the Successful Bidder shall supplement their Deposit, by wire transfer (to a bank account specified by the Monitor) payable to the order of the Monitor, in trust, such that the Deposit is equal to 5% of the cash consideration in the Successful Bid, which Deposit is to be held and dealt with in accordance with these SISP Procedures, provided that the Deposit provided by a credit bidder shall not exceed the amount of any prior ranking secured debt, as determined by the Monitor;

41. The Monitor shall have no obligation to enter into a Successful Bid on behalf of HydRx, and it reserves the right to reject any or all Phase 2 Qualified Bids.

42. Notwithstanding the process and deadlines outlined above with respect to Phase 2 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter

- (a) the Monitor may at any time:
  - (i) pause, terminate, amend or modify the SISP or this SISP Procedure;
  - (ii) remove any portion of the Companies and the Property from the SISP;
  - (iii) establish further or other procedures for Phase 2;
- (b) the Monitor may at any time bring a motion to the Court to seek approval of:
  - (i) a sale of, or investment in, all or part of the Property or the Companies whether or not such sale or investment is in accordance with the timelines set out in this SISP Procedure or the Bid Process Letter; or
  - (ii) a stalking horse agreement in respect of some or all of the Property or Companies and related bid procedures in respect of such Property

#### Sale Approval Motion Hearing

43. At the hearing of any motion to approve any transaction with a Successful Bidder (the "Sale Approval Motion"), the Monitor shall seek, among other things, approval from the Court to consummate such Successful Bid. To the extent other Phase 2 Qualified Bids other than the Successful Bid are in respect of the same Property as such Successful Bid, such other Phase 2 Qualified Bids shall be deemed to be rejected on and as of the date of approval of the Successful Bid by the Court.

44. For the avoidance of doubt, the completion of any Sale Transaction or Investment Transaction shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

#### Confidentiality and Access to Information

45. The Monitor, the CRO, and their respective advisors make no representation or warranty as to the information contained in the Confidential Information Package, data room or otherwise made available pursuant to the SISP, except in respect of the Monitor to the extent expressly



contemplated in any definitive agreement with a Successful Bidder ultimately executed and delivered by the Monitor on behalf of HydRx.

46. Participants and prospective participants in the SISP, including Serafino and Cobra, shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Monitor and such other bidders or Potential Bidders in connection with the SISP, except where the Monitor, in its discretion believes that it is advisable to share such information: (i) with the consent of the applicable participants, for the purpose of combining separate bids from Phase 1 Qualified Bidders or Phase 2 Qualified Bidders; or (ii) to negotiate a compromise or arrangement of the debt owing to Cobra, as an alternative to a credit bid.

#### Supervision of the SISP

47. The Monitor shall oversee, in all respects, the conduct of the SISP and, without limitation to that role, the Monitor will participate in the SISP in the manner set out in these SISP Procedures, the SISP Approval Order, the Initial Order and any other orders of the Court, and is entitled to receive all information in relation to the SISP.

48. This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Monitor and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Monitor on behalf of HydRx.

49. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, the Companies, Serafino, Cobra, or any other creditor or other stakeholder of the Companies, for any act or omission related to the process contemplated by these SISP Procedures, except to the extent such act or omission is the result from its gross negligence or wilful misconduct. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct of the Monitor.

#### Court Approval

50. The Monitor shall apply to the Court (the "Approval Motion") for an order (the "Approval Order") approving a Successful Bid.

51. All Qualified Bids (other than a Successful Bid) shall be deemed rejected on and as of the date of the Approval Order.

#### Deposits

52. All Deposits shall be retained by the Monitor and deposited in a non-interest bearing trust account.

53. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Motion shall be applied (without interest) to the Purchase Price to be

paid or cash consideration amount to be paid by the Successful Bidder upon closing of the Successful Bid and will be non-refundable.

54. The Deposits of Qualified Bidders not selected as the Successful Bidder shall be returned (without interest) to such bidders within two Business Days of the earlier of (i) the date of the Approval Order or (ii) the date that this SISP is terminated.

#### Approvals

55. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA, or any other statute or as otherwise required at law in order to implement or complete a Successful Bid.

#### "As is, Where is"

56. Any Transaction will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by any member of the Companies or the Monitor or any of their employees, agents or estates, except to the extent expressly provided under a Definitive Agreement with a Successful Bidder executed and delivered by the Monitor on behalf of HydRx.

#### Further Orders

57. At any time during the SISP, the Monitor may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

Appendix "A"  
Monitor Address for Notices

If to the Monitor:

SCHWARTZ LEVITSKY FELDMAN INC.  
2300 Yonge Street  
Suite 1500, Box 2434  
Toronto, ON M4P 1E4

Attention: Alan Page  
Email: [alan.page@slf.ca](mailto:alan.page@slf.ca)  
Tel: 416-780-2206

With a copy to:

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP  
Barristers & Solicitors  
155 Wellington Street West, 35th Floor  
Toronto, ON M5V 3H1

Attention: Jeffrey Larry, Max Starnino, Elizabeth Rathbone  
Email: [Jeff.Larry@paliereroland.com](mailto:Jeff.Larry@paliereroland.com), [Max.Starnino@paliereroland.com](mailto:Max.Starnino@paliereroland.com),  
[Elizabeth.Rathbone@paliereroland.com](mailto:Elizabeth.Rathbone@paliereroland.com)  
Tel: 416-646-4330

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

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

THE HONOURABLE MR.

)

FRIDAY, THE 30<sup>th</sup>

JUSTICE HAINEY

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DAY OF APRIL, 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. (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 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)**

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Lawyers for the Applicant

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE WILTON-SIEGEL )

TUESDAY DAY, THE 6TH  
DAY OF JULY 2021

BETWEEN:

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

**ORDER**

**THIS MOTION**, made by Cobra Ventures Inc. ("**Cobra**") for, among other things, a declaration regarding the quantum of indebtedness owing by HydRx Farms Ltd. ("**HydRx**") to Cobra was heard on June 30, 2021, and on this day, by Zoom videoconference due to the COVID-19 pandemic,

**ON READING** the Affidavit of Richard Goldstein ("**Goldstein**") sworn April 23, 2021, the Affidavit of Domenico Serafino ("**Serafino**") sworn May 20, 2021, the Reply Affidavit of Goldstein sworn June 3, 2021, the transcript of the cross-examination of Serafino held on June 14, 2021, the exhibits marked on the cross-examination of Serafino, the answers to undertakings





given on the cross-examination of Serafino, the Factum of Cobra, the Responding Factum of Serafino, and on hearing the submissions of counsel for Cobra and counsel for Serafino.

1. **THIS COURT ORDERS** that Serafino's request for an Order:

- (a) prohibiting Goldstein and Cobra from profiting from the indebtedness owed by HydRx to Cobra and requiring each of Goldstein and Cobra to account to HydRx for any profit or gain realized as a result of Cobra's acquisition from Aphria Inc. ("**Aphria**") of the senior, secured convertible debenture that was granted by HydRx in favour of Aphria on April 15, 2017 (the "**Aphria Debenture**");
- (b) further reducing any entitlement of Cobra under the Aphria Debenture in an amount equal to the costs incurred by HydRx in respect of the within proceedings which would not have been necessary but for the need to protect HydRx from Goldstein as a defaulting and predatory director;
- (c) alternatively, should Cobra be found to have no entitlement to payment under the Aphria Debenture, an order for damages against each of Goldstein and Cobra in an amount equal to the costs incurred by HydRx in respect of the within proceedings which would not have been necessary but for the need to protect HydRx from Goldstein as a defaulting and predatory director; and,
- (d) a declaration that Windsor Private Capital Limited Partnership 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 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.

be and is hereby dismissed.

2. **THIS COURT ORDERS AND DECLARES** that the indebtedness owing by HydRx to Cobra is in the amount of \$14,837,014.04, as at March 31, 2021, plus interest, fees and costs accrued and accruing thereafter.

W. J. - W. J.

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

Court File No. CV-21-00659/87-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
  
PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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Lawyers for Cobra Ventures Inc.

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 SISF.

[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. Devconcroft 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 *CBCA* 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.

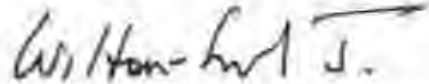
[43] This is not an action for an alleged breach of a corporate opportunity of HydRx. There is also no allegation that Goldstein used any confidential corporate information of HydRx. Nor does Serafino allege any negotiations respecting any of the Rydan Loan Transaction, the Windsor Loan Transaction or 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

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 July 21, 2021, the Affidavit of Richard Goldstein sworn July 23, 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 July 21, 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)**

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Lawyers for the Applicant

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**  
**(Expanding Monitor's Powers)**

**THIS MOTION** by Cobra Ventures Inc. ("**Cobra**") for an Order expanding the powers of Schwartz Levitsky Feldman Inc., in its capacity as monitor (the "**Monitor**") of 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 Richard Goldstein sworn July 23, 2021, the Affidavit of Domenico Serafino sworn July 20, 2021 and the Exhibits thereto (the "**Serafino Affidavit**"), the third report of the Monitor dated July 21, 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 Jacky Cheung sworn July 23, 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 Amended and Restated Initial Order dated March 31, 2021 (“**ARIO**”), and the Sale and Investment Solicitation Process Approval Order dated April 30, 2021 (“**SISP Approval Order**”).

### **MONITOR’S EXPANDED POWERS**

3. In addition to its prescribed rights pursuant to the CCAA and the powers and duties set out in the ARIO, the SISP Approval Order or any other Order granted in these proceedings, and without altering in any way the limitations and obligations of Hydrx as a result of these proceedings, the Monitor is hereby authorized and empowered, but not required, to:

- (a) cause Hydrx to take any action permitted pursuant to the ARIO or any other Order granted in these CCAA proceedings;
- (b) preserve, protect and maintain control of the Property, or any parts thereof;
- (c) receive, collect and take possession of all monies and accounts now owed or hereafter owing to Hydrx, including proceeds payable pursuant to a sale of the Property;

- (d) execute any agreement, document, instrument or writing in the name of and on behalf of Hydrx as may be necessary or desirable in order to carry out the provisions of this Order, the ARIO or any other Order granted in these proceedings or to facilitate the orderly completion of these proceedings;
- (e) take any and all actions and steps in the name of and on behalf of Hydrx to facilitate the administration of the Business, Property, operations, affairs and estate of Hydrx as may be necessary, appropriate, or desirable, in the opinion of the Monitor;
- (f) conduct, supervise, and direct the sale, conveyance, transfer, lease, assignment or disposal of the Property of Hydrx or any part or parts thereof, whether or not outside of the normal course of business, in accordance with SISP Approval Order, and subject to approval of this Court as may be required pursuant to the ARIO, and to sign or execute on behalf of Hydrx any conveyance or other closing documents in relation thereto;
- (g) have access to all books and records relating to or comprising the Property of Hydrx in the possession or control of Hydrx;
- (h) conduct, supervise and direct the continuation or commencement of any process or effort to recover Property or other assets belonging or owing to Hydrx;
- (i) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of Hydrx (including any governmental authority) in the name of and on behalf of Hydrx;
- (j) claim or cause Hydrx to claim any and all insurance refunds or tax refunds, including refunds of goods and services taxes and harmonized sales taxes, to which Hydrx is entitled;
- (k) engage, retain, or terminate the services of, or cause Hydrx to engage, retain or terminate the services of any officer, employee, consultant, agent, representative,

advisor, or other persons or entities, all under the supervision and direction of the Monitor, as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of its powers and duties;

- (l) facilitate or assist Hydrx with the accounting, tax and financial reporting functions of Hydrx, including the preparation of cash flow forecasts, employee-related remittances, T4 statements and records of employment, in each case based solely upon the information provided by Hydrx on the basis that the Monitor shall incur no liability or obligation to any person with respect to such reporting, remittances, statements and records;
- (m) cause Hydrx to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist Hydrx in dealing with the Property, operations, restructuring, wind-down, liquidation, distribution of proceeds, and any other related activities;
- (n) exercise any shareholder, partnership, joint venture or other rights of Hydrx;
- (o) disclaim, in accordance with the CCAA, any contracts of Hydrx;
- (p) apply to this Court for advice and directions regarding the Monitor's powers hereunder; and
- (q) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Monitor takes any such actions or steps, it shall be exclusively, authorized and empowered to do so, to the exclusion of all other Persons, including Hydrx and its past or present directors and officers and shareholders, and without interference from any other Person, provided, however, that the Monitor shall comply with all applicable laws and shall not have any authority or power to elect or to cause the election or removal of directors of the



Applicants or to take any action to restrict or to transfer to the Monitor any of their powers, duties or obligations, except in accordance with section 11.5(1) of the CCAA.

4. Hydrx, and its consultants, agents, representatives and advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order, the SISP Approval Order or the ARIO and shall provide such assistance as the Monitor may reasonably request from time to time to enable the Monitor to carry out its duties and powers pursuant to the CCAA, this Order, the ARIO, and any other Order granted in these proceedings.

5. The Monitor is authorized and empowered to operate and control, on behalf of Hydrx, all of Hydrx' existing accounts at any financial institution (each an “**Account**” and collectively the “**Accounts**”), including, without limitation, to:

- (a) exercise control over the funds credited to or deposited in the Accounts;
- (b) effect any disbursement from the Accounts permitted by the ARIO or any other Order granted in these proceedings;
- (c) give instructions from time to time with respect to the Accounts and the funds credited to or deposited therein, including to transfer the funds credited to or deposited in such Accounts to such other account or accounts as the Monitor may direct; and
- (d) add or remove persons having signing authority with respect to any Account or to direct the closing of any Account,

and the financial institutions maintaining such Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor as to the use or application

of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions, and such financial institutions shall be authorized to act in accordance with and in reliance upon the instructions of the Monitor without any liability in respect thereof to any person.

6. The Monitor is hereby authorized, but not required, to open one or more new accounts in its own name (the “**Monitor's Accounts**”) and receive third party funds into the Monitor’s Accounts or transfer into the Monitor’s Accounts such funds of Hydrx as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of the Monitor’s powers and duties set out herein, provided that the monies standing to the credit the Monitor’s Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order, other Orders in this proceeding, or by further Order of this Court, and further the Monitor is hereby authorized to make use of the funds in the Monitor’s Accounts from time to time to make disbursements and pay amounts for and on behalf of Hydrx or in connection with the Monitor’s exercise of its powers and duties in these proceedings, as the Monitor may in its sole opinion deem necessary or appropriate from time to time.

7. The Monitor may, from time to time, apply to this Court for advice and directions in respect of the exercise and discharge of its powers and duties hereunder.

#### **MONITOR’S ADDITIONAL PROTECTIONS**

8. In addition to the rights and protections afforded the Monitor in the ARIIO, under the CCAA, or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment, the carrying out of the provisions of this Order, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except for: (i) any gross negligence or wilful misconduct on its part; or (ii) liability for any costs award made

in connection with any proceeding joined, continued or commenced by the Monitor on behalf of Hydrx or any of them. Save as aforesaid, nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA, any other Order of this Court in these proceedings, or any applicable legislation.

9. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor is not, and shall not be deemed to be, an owner of any of the Property for any purpose including without limitation for purposes of Environmental Legislation (for purposes of this Order, the term "**Environmental Legislation**" shall mean any federal, provincial, territorial or other jurisdictional legislation, statute, regulation or rule of law or equity (whether in effect in Canada or any other jurisdiction) 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, 1999*, S.C. 1999, c. 33, the *Environmental Protection Act*, R.S.O.1990,c. E19.

10. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purpose of this Order, the term "**Adverse Environmental Condition**" shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the date of the ARIO.

11. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof that arose,

occurred, or continued after the date of this Order unless such Adverse Environmental Condition is caused by the gross negligence or wilful misconduct of the Monitor.

12. Notwithstanding the immediately preceding paragraph, the Monitor shall not be liable beyond the net realized cash value received and available to the Monitor from the Property under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof which is caused by the gross negligence or wilful misconduct of the Monitor.

13. Nothing contained in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "**Possession**"), or require the Monitor to take Possession, of any part of the Property which may be a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any Environmental Legislation.

14. The Monitor shall not be liable for any employee-related liabilities of Hydrx, including any successor employer liabilities as provided for in Section 14.06(1.2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Applicants, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

15. The enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by Hydrx of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties shall not

constitute the Monitor as the employer, successor employer or related employer of the employees of Hydrx within the meaning of any provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by Hydrx. In particular, the Monitor shall not be liable to any of the employees for any wages, including severance pay, termination pay and vacation pay except for such wages as the Monitor may specifically agree to pay.

16. The Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the CCAA, the ARIO and any other Order of this Court and all such indemnities, charges, protections and priorities (as amended herein) shall apply and extend to the Monitor in the fulfilment of its duties or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the powers of the Monitor as provided in the CCAA, the ARIO and the other Orders of in this proceeding.

17. The Monitor is not and shall not be deemed to be a director, officer, or employee of Hydrx.

18. Nothing in this Order or any other Order granted in these proceedings shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of Hydrx within the meaning of any relevant legislation, including subsection 159(2) of the *Income Tax Act* (Canada), as amended (the “ITA”), and any distributions to creditors of Hydrx by the Monitor will be deemed to have been made by Hydrx themselves. Nothing in this Order shall constitute or be deemed to constitute the Monitor as a person subject to subsection 150(3) of the ITA.

**GENERAL**

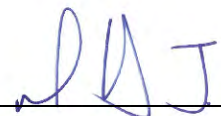
19. Except as may be necessary to give effect to this Order, the ARIO and any other Order granted in these proceedings shall remain in full force and effect. In the event of any conflict or inconsistency between this Order, the ARIO, or any other Order in these proceedings, the terms of this Order shall govern.

20. The power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of Hydrx with respect to such matters.

21. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator or similar person of Hydrx, the Business, or the Property.

22. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, in the United States or in any of its states, or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

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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. (the "Applicant")

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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Lawyers for Cobra Ventures Inc.



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 October 26, 2021)

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