

**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.

**FACTUM OF COBRA VENTURES INC.**

November 19, 2021

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## PART I - INTRODUCTION

1. Cobra Ventures Inc. (“**Cobra**”) is HydRx Farms Ltd.’s (“**HydRx**”) senior secured creditor, owed approximately \$15M pursuant to a senior secured convertible debenture in the principal amount of \$11.5M (the “**Debenture**”).
2. Cobra files this factum in support of an Order approving the Share Purchase Agreement between HydRx and Cobra dated November 4, 2021 (the “**SPA**”), and the transactions and reorganization contemplated therein (the “**Transactions**”). Upon the completion of the Transactions, Cobra will own all of the shares of HydRx. All other equity interests will be cancelled. All liabilities of HydRx (other than those under the Debenture) will be transferred to 13404994 Canada Inc. (“**Residual Co**”), a new company incorporated by HydRx, and HydRx and its assets will be released of all liabilities (other than those under the Debenture).
3. The SPA contemplates that the Transactions are to be effected through an Order (the “**RVO**”): (a) amending the articles of HydRx in order to cancel all of its existing shares; (b) authorizing the issuance of new shares to be vested in Cobra, free and clear of any claims; (c) transferring to and vesting the Excluded Liabilities and Excluded Contracts (each as defined in the SPA) in Residual Co, such that the Excluded Liabilities shall become liabilities of Residual Co and not liabilities of HydRx or its subsidiaries.
4. The reverse vesting structure has been effectively implemented in other similar transactions for licensed cannabis companies and has the effect of minimizing regulatory hurdles and maximizing recoveries for creditors.

## PART II - FACTS

### A. Background

5. The facts relevant to the motion are set out in the Monitor’s fifth report dated November 12, 2021 (the “**Fifth Report**”).

6. HydRx is a private corporation incorporated under the *Canada Business Corporations Act* R.S.C. 1985, c. C-44 (“**CBCA**”).<sup>1</sup>

7. HydRx has two wholly owned subsidiaries, Scientus Pharma Inc. and CannScience Innovations Inc. (together with HydRx, collectively, the “**Companies**”). Neither of the subsidiaries has carried on any active business while owned by HydRx.<sup>2</sup>

8. HydRx carried on business developing and selling pharmaceutical grade cannabinoid derivative products. HydRx operated out of a 46,000 square foot facility which it owns at 1130 Champlain Court, Whitby, Ontario.<sup>3</sup>

9. Health Canada has approved HydRx as a Controlled Dry Substance Licensed Dealer. HydRx also holds a Licensed Product Cultivation License issued by Health Canada.<sup>4</sup>

## **B. CCAA Proceedings**

10. On March 22, 2021, on the application of Domenic Serafino (“**Serafino**”), a director and shareholder of HydRx, the Court granted an Initial Order pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (“**CCAA**”) in respect of the Companies.<sup>5</sup>

11. On March 31, 2021, the Court granted an Amended and Restated Initial Order, which, among other things, created a first ranking charge to secure payment of the reasonable fees of the Monitor, its counsel, and counsel for Serafino in respect of these proceedings, up to a maximum of \$250K (the “**Administration Charge**”).<sup>6</sup>

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<sup>1</sup> The Fifth Report at para. 12, Monitor’s Motion Record (“**MMR**”), Tab 2, p. 34.

<sup>2</sup> The Fifth Report at para. 13, MMR, Tab 2, p. 34.

<sup>3</sup> The Fifth Report at paras. 15 and 17, MMR, Tab 2, p. 35.

<sup>4</sup> The Fifth Report at para. 16, MMR, Tab 2, p. 34.

<sup>5</sup> The Fifth Report at paras. 1-2, MMR, Tab 2, p. 30; The Initial Order, Appendix A, The Fifth Report, MMR, Tab 2A, pp. 50-63.

<sup>6</sup> The Fifth Report at para. 3., MMR, Tab 2, p. 31; The Amended and Restated Initial Order, Appendix B, The Fifth Report, MMR, Tab 2B, pp. 61-73.

12. On April 30, 2021, the Court granted an Order approving, among other things:<sup>7</sup>
  - (a) the appointment of Macpherson & Associates Inc. as the Chief Restructuring Officer (the “**CRO**”) of Hydrx;
  - (b) the Sale and Investment Solicitation Process (“**SISP**”);
  - (c) an increase in the Administration Charge to \$400K; and
  - (d) a process for determining the quantum of the indebtedness owing to Cobra under the Debenture (the “**Cobra Claim**”).

### **C. The Cobra Claim**

13. On June 30, 2021, Justice Wilton-Siegel heard a motion to determine, among other things, the quantum of Hydrx’s indebtedness to Cobra under the Debenture and whether Cobra should be precluded from using its indebtedness to credit bid in the SISP. For the reasons set out in an endorsement released on July 12, 2021, Justice Wilton-Siegel determined that the Cobra could credit bid the full amount of the indebtedness owing under the Debenture and that the quantum of such indebtedness was \$14,857,014.00 as at March 31, 2021 (the “**Cobra Claim Decision**”).<sup>8</sup>

14. On July 14, 2021, Serafino served a Notice of Motion for Leave to Appeal from the Cobra Claims Decision (the “**Leave Motion**”).<sup>9</sup>

15. The Transactions cannot be completed until the Leave Motion is dismissed or abandoned, or if leave is granted, the appeal is dismissed or abandoned.<sup>10</sup> As of the time of the writing of this factum, the Court of Appeal has not released its decision on the Leave Motion.

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<sup>7</sup> The CRO Appointment and SISP Approval Order, Appendix C, the Fifth Report, MMR, Tab 2C, pp. 74-94.

<sup>8</sup> The Fifth Report at paras. 20-22, MMR, Tab 2, p. 37.

<sup>9</sup> The Fifth Report at para. 23, MMR, Tab 2, p. 37.

<sup>10</sup> The Fifth Report at para. 26, MMR, Tab 2, p. 37.

#### **D. The SISIP**

16. From April 30, 2021 to July 27, 2021, the Monitor conducted the SISIP in accordance with the procedures approved by the Court. After considering all of the LOIs, the Monitor, in consultation with the CRO, determined that:<sup>11</sup>

- (a) the Cobra LOI represented the highest and best bid; and
- (b) none of the other offers was in an amount sufficient to repay the Cobra Claim (as determined by Justice Wilton-Siegel in the Cobra Claim Decision).

#### **E. The Transaction**

##### *(i) Overview*

17. The SPA contemplates a credit bid by Cobra pursuant to which Cobra will effectively acquire all of the real and personal property (the “**Property**”) of the Companies (the “**Assets**”), including the real property municipally known as 1130 Champlain Court, Whitby, Ontario and all Cannabis licences (the “**Cannabis Licences**”), tax losses, tax refunds and equipment.<sup>12</sup>

18. The purchase price payable by Cobra (the “**Purchase Price**”) is equal to the amount owing to creditors ranking in priority to Cobra (the “**Priority Payables**”), plus the assumption of the indebtedness under the Debenture. The Purchase Price will be satisfied by payment in cash to the Monitor of the amount of the Priority Payables, and the balance will be satisfied by assumption of the obligations under the Debenture.<sup>13</sup>

19. The Monitor has received an opinion from its counsel confirming that, subject to the usual assumptions and qualifications, the Debenture is a valid first charge on the Property.<sup>14</sup>

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<sup>11</sup> The Fifth Report at paras. 27, 32, and 37, MMR, Tab 2, p. 40.

<sup>12</sup> The Fifth Report at para. 39, MMR, Tab 2, p. 41.

<sup>13</sup> The Fifth Report at paras. 51-52, MMR, Tab 2, p. 44.

<sup>14</sup> The Fifth Report at para. 41, MMR, Tab 2, p. 41.

20. The Transactions are conditional upon the issuance of an Order pursuant to which all of the Companies' liabilities (other than the indebtedness under the Debenture which will be assumed) (the "**Excluded Liabilities**") are transferred to Residual Co, such that HydRx will own the Assets, free and clear of all encumbrances, security interests and rights of others whatsoever (other than the liabilities under the Debenture).<sup>15</sup>

*(ii) The Restructuring*

21. The SPA sets out the terms whereby Cobra will acquire 100% ownership of the issued and outstanding shares of HydRx through the following steps:<sup>16</sup>

- (a) In consideration for the Purchase Price, HydRx shall issue new common shares to Cobra (the "**New Shares**");
- (b) HydRx's Articles will be amended to consolidate the New Shares and the existing common shares ("**Existing Shares**");
- (c) All Existing Shares will be reduced to fractional amounts and cancelled; and
- (d) All existing equity interests, including the Existing Shares, will be extinguished, such that the only remaining issued and outstanding shares will be the post-consolidation shares held by Cobra.

*(iii) Releases*

22. The proposed RVO provides for a full and final release of the Companies' current and former officers and directors, from any and all present and future claims (including, without limitation, claims for contribution or indemnity), of any nature or kind whatsoever based in whole or in part on any act or omissions, transaction, dealing or other occurrence existing or taking place prior to the completion of the Transactions and that relate in any manner whatsoever to the Companies or any of their assets, obligations, business or affairs or this

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<sup>15</sup> The Fifth Report at paras. 46-50, MMR, Tab 2, pp. 42-43.

<sup>16</sup> The Fifth Report at para. 43, MMR, Tab 2, p. 42.

CCAA proceeding. Nothing in the proposed release will waive, discharge, release, cancel or bar any claim that:<sup>17</sup>

- (a) Is not permitted to be released pursuant to section 5.1(2) of the CCAA;
- (b) Is against the directors and officers for breach of trust arising from acts or omissions occurring before the date of the Initial Order;
- (c) May be made against any applicable insurance policy of the Companies prior to the date of the Initial Order; and
- (d) Is against Domenic Serafino in connection with the indemnity that he gave to HydRx and the Monitor and the fees of Minden Gross LLP.

*(iv) Monitor's Analysis of the Transaction*

23. The Monitor has concluded that the Transactions represent, by far, the highest and best offer for the Companies' assets. The Transactions, if consummated, will allow the Companies to exit CCAA and continue in operation with the existing Cannabis Licences.<sup>18</sup>

24. The SPA provides the best possible outcome for creditors of HydRx in the circumstances given that, among other things:

- (a) It is the product of a broad, transparent and fair, Court-approved SISP,
- (b) It is the highest and best offer obtained in the SISP; and,
- (c) The consideration to be paid under the SPA includes the payment in cash of all claims ranking in priority to Cobra's secured claim and assumption of the existing indebtedness under the Debenture.

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<sup>17</sup> The Fifth Report at paras. 55-56, MMR, Tab 2, pp. 45-46.

<sup>18</sup> The Fifth Report at para. 61, MMR, Tab 2, p. 47.



### PART III - ISSUES AND LAW

25. The issue to be considered on this motion is whether this Court should grant the RVO.

#### A. The SPA and Transactions Should be Approved

26. Section 36 of the *CCAA* authorizes this Court to approve a sale of a debtor company's assets outside of the ordinary course of business.<sup>19</sup> Pursuant to subsection 36(6), any such sale may be authorized "free and clear of any security, charge or other restriction".<sup>20</sup> In deciding whether to authorize such a sale, subsection 36(3) of the *CCAA* requires that the following non-exhaustive factors be considered:<sup>21</sup>

- (a) Whether the process leading to the proposed sale was reasonable in the circumstances;
- (b) Whether the monitor approved the process leading to the proposed sale;
- (c) Whether the monitor filed a report stating that in its opinion the proposed sale would be more beneficial to creditors than a sale or disposition under a bankruptcy;
- (d) The effects of the proposed sale on the creditors and other interested parties;
- (e) The extent to which creditors were consulted; and
- (f) Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

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<sup>19</sup> [Companies' Creditors Arrangement Act](#), RSC 1985, c C-36, s. 36(1).

<sup>20</sup> *Ibid* at section 36(6).

<sup>21</sup> *Ibid* at section 36(3); [Nelson Education Ltd, Re](#), 2015 ONSC 5557 at para. 38 [*Nelson*]; [Target Canada Co. \(Re\)](#), 2015 ONSC 1487 at paras. 14-15 [*Target*]; [Canwest Global Communications Corp., \(Re\)](#), 2010 ONSC 2870 at para. 13 [*Canwest*].

27. These factors are frequently considered concurrently with those articulated in *Royal Bank v Soundair*:<sup>22</sup>

- (a) Whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) The efficacy and integrity of the process by which offers have been obtained;
- (c) Whether the interests of all parties have been considered; and
- (d) Whether there has been unfairness in the working out of the process.

28. Applied here, the factors enumerated in subsection 36(3) of the *CCAA* and *Soundair* support approval of the SPA and the granting of the RVO:

- (a) The SPA is the culmination of a comprehensive, fair and transparent Court-approved SISP conducted by the Monitor;
- (b) The Monitor has expressed its view that the proposed Transactions provide stakeholders with a greater recovery than any other offer submitted.
- (c) No consideration equal to or greater than the purchase price under the SPA was obtained after a fulsome SISP, and the SPA is therefore in the best interests of HydRx's creditors in the circumstances.
- (d) Based on the results of the SISP, the consideration under the SPA is commensurate with or exceeds the market value of the Companies' assets and is therefore fair and reasonable.

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<sup>22</sup> [1991 CanLII 2727 \(ON CA\)](#) at para. 16 [*Soundair*]; [Nelson](#) at paras. 37-38; [Target](#) at para. 17; [Canwest](#) at para. 13.

## **B. The Court has Jurisdiction to Grant the RVO**

29. The SPA contemplates that the Transactions will be implemented by way of what is known as a “reverse vesting order”. Instead of this Court vesting all right, title and interest in assets to a third party, the RVO will vest and channel all Excluded Liabilities, and Excluded Contracts in and to Residual Co, and allow Cobra to acquire the New Shares, free and clear.

30. This type of transaction has been previously approved by numerous CCAA courts in similar circumstances,<sup>23</sup> including in particular, where the proposed transaction involved the transfer of licences for the production and sale of cannabis.<sup>24</sup> Examples include the following:

- (a) *Plasco*, where Justice Wilton-Siegel approved a corporate reorganization by which the shares of the debtor company were transferred to an acquisition corporation owned by the purchasers and the remaining assets were transferred to a new corporation which assumed all of the liabilities and obligations of the debtor. Justice Wilton- Siegel was satisfied that the section 11 of the CCAA provides the court with authority to approve the transaction notwithstanding that no plan of compromise or arrangement was proposed under section 6 of the CCAA.<sup>25</sup>

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<sup>23</sup> Endorsement of Justice Wilton-Siegel in the matter of [Plasco Energy et al](#) dated July 16, 2015, Toronto, Court File No. CV-15-10869-00CL [*Plasco*]; Approval and Vesting Order in the matter of [Stornoway Diamonds Inc. et al.](#), dated October 7, 2019, District of Montreal, Court File No. 500-11-057094-191; Approval and Vesting Order and CCAA Termination Order in the matter of [Comark Holdings Inc. et al.](#), dated July 13, 2020, Toronto, Court File No. CV-20-00642013-00CL; Reverse Vesting Order in the matter of [JMB Crushing Systems Inc.](#) et al., dated October 16, 2020, Calgary, Court File No. 2001-05482; Reverse Vesting Order in the matter of [Redrock Camps Inc.](#) et al., dated February 18, 2021, Court File No. 2001-06194; Saction Order in the matter of [Tribalscale Inc.](#), dated January 11, 2021, Toronto, Court File No. CV-20-00645116-00CL; Approval and Vesting Order in the matter of [Cirque Du Soleil Canada Inc.](#) et al. dated October 26, 2020, District of Montreal, Court File No. 500-11-058415-205; Reverse Vesting Order in the matter of [Nemaska Lithium Inc.](#) et al. dated October 15, 2020, District of Montreal, Court File No. 500-11- 057716-199; and Approval and Vesting Order in the matter of [Quest University Canada](#) dated November 16, 2020, Vancouver, Court File No. S-200586.

<sup>24</sup> Approval and Vesting Order and Endorsement of Justice Hainey in the matter of [Wayland Group Corp.](#) et al. dated April 21, 2020, Toronto, Court File No. CV-19-006632079-00CL [*Wayland Group Corp.*]; Approval and Vesting Order in the matter of [Green Relief Inc.](#) dated November 9, 2020, Toronto, Court File No. CV-20-0063921 7-00CL [*Green Relief Inc.*]; and Approval and Vesting Order in the matter of [Beleave Kannabis Corp.](#) et al. dated September 18, 2020, Toronto, Court File No. CV-20- 00642097-00CL.

<sup>25</sup> *Plasco*.

- (b) Similarly, Justice Conway approved a reverse vesting order in the CCAA proceedings of *Beleave Inc.* where the preservation of valuable cannabis licenses were at stake.<sup>26</sup>

31. More recently, in *Quest University Canada (re)*, Justice Fitzpatrick noted:<sup>27</sup>

There is no dispute between the parties that this Court has authority to grant the RVO under its general statutory jurisdiction found in s. 11 of the CCAA. 42 . . . . .

There is no provision in the CCAA that prohibits an RVO structure. As is usually the case in CCAA matters, the court must ensure that any relief is “appropriate” in the circumstances and that all stakeholders are treated as fairly and reasonably “as the circumstances permit”: *Century Services* at para. 70....

32. Section 191 of the *CBCA* confers jurisdiction upon the Court to amend the articles of a corporation as contemplated in the SPA. Section 191 reads as follows:

191 (1) In this section, ***reorganization*** means a court order made under

- (a) section 241;
- (b) the Bankruptcy and Insolvency Act approving a proposal; or
- (c) any other Act of Parliament that affects the rights among the corporation, its shareholders and creditors.

(2) If a corporation is subject to an order referred to in subsection (1), its articles may be amended by such order to effect any change that might lawfully be made by an amendment under section 173.

(3) If a court makes an order referred to in subsection (1), the court may also

- (a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms thereof; and

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<sup>26</sup> [Beleave Inc. endorsement dated November 18, 2020.](#)

<sup>27</sup> [2020 BCSC 1883](#) at paras. 127, 157, 158, and 160.

(b) appoint directors in place of or in addition to all or any of the directors then in office.

(7) A shareholder is not entitled to dissent under section 190 if an amendment to the articles of incorporation is effected under this section.

33. In *Beatrice Foods, Inc. Re*, Holden J.A. quoted from the *Dickerson Report*, which formed the basis for the reform of Canada's corporation law and noted that it clearly anticipated that s. 191 of the *CBCA* would permit the elimination of issued shares.<sup>28</sup> The report states with reference to the section in the draft bill which became Section 191 as follows:<sup>29</sup>

...The object of this section is to enable the court to effect any necessary amendment of the articles of a corporation in order to achieve the objective of the reorganization without having to comply with all the formalities of the draft Act, particularly shareholder approval of the proposed amendment. For example, the reorganization of an insolvent corporation may require the following steps: first, reduction or even elimination of the interest of the common shareholders; second, relegation of the preferred shareholders to the status of common shareholders; and third, relegation of the secured debenture holders to the status of either unsecured noteholders or preferred shareholders.

34. Holden J.A. cited with approval, the authors of *Fraser & Stewart: Company Law of Canada*, (6<sup>th</sup> Ed.: 1993), where they conclude that the *CCAA* is an example of a federal statute which would fall within the reference to "any other federal Act that affects the rights of a corporation" within the meaning of section 191 of the *CBCA*.<sup>30</sup>

35. In *Stelco Inc. (Re)*, Justice Farley similarly noted:<sup>31</sup>

It is well established that a reorganization pursuant to s. 191 of the *CBCA* may be made in conjunction with a sanction order under the *CCAA* and that such a reorganization may result in the cancellation of existing shares of the reorganized corporation based on those shares/equity having no present value ...

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<sup>28</sup> 1996 CarswellOnt 5598 at para. 12, Book of Authorities, Tab 1, p. 3.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid* at para. 13.

<sup>31</sup> [2006 CanLII 1773](#) at para. 14.

36. In *Re: CanWest Global Communications Corp.*, Pepall, J. (as she then was) concluded that the CCAA is an “Act of Parliament that affects the rights among the corporation, its shareholders and creditors” within the meaning of s.191 of the CBCA. She also stated:<sup>32</sup>

In exercising its discretion to approve a reorganization under Section 191 of the CBCA, the court must be satisfied that: (a) there has been compliance with all statutory requirements; (b) the debtor company is acting in good faith; and (c) the capital restructuring is fair and reasonable.

37. In the case at bar, there has been compliance with all statutory requirements of the reorganization as set out in sections 173 and 191 of the CBCA. HydRx and the Companies are acting in good faith in attempting to resolve the Companies’ financial difficulties, and the reorganization is a necessary step under the SPA. Accordingly, the reorganization is fair and reasonable and will achieve a satisfactory resolution of the outstanding financial issues affecting HydRx.

### **C. Jurisdiction to Approve the Release**

38. This court has jurisdiction under s. 5.1 of the CCAA to grant a release in connection with a compromise or arrangement under the CCAA. The absence of a plan does not deprive the court of this jurisdiction.<sup>33</sup> For example, in *Re Clearbeach Resources Inc. and Forbes Resources Corp.*, Justice Gilmore approved a third-party release that was sought in connection with a RVO. The release discharged landowners from any outstanding municipal tax liabilities in connection with the debtor’s assets which were located on their land.<sup>34</sup>

### **D. The Releases Should be Approved**

39. In *Re Green Relief*, Justice Koehnen identified the following factors relevant to the approval of releases in CCAA proceedings:<sup>35</sup>

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<sup>32</sup> [2010 ONSC 4209](#) at para. 36.

<sup>33</sup> [Re Green Relief Inc., 2020 ONSC 6837](#) at para. 23 (“*Green Relief*”).

<sup>34</sup> [2021 ONSC 5564](#) at para. 16 (“*Clearbeach*”).

<sup>35</sup> [Green Relief at para. 27.](#)

- (a) Whether the claims to be released are rationally connected to the purpose of the plan;
- (b) Whether the plan can succeed without the releases;
- (c) Whether the parties being released contributed to the plan;
- (d) Whether the releases benefit the debtors as well as the creditors generally;
- (e) Whether the creditors voting on the plan have knowledge of the nature and effect of the releases; and
- (f) Whether the releases are fair, reasonable, and not overly-broad.

40. Each of the factors do not have to apply in order for the releases to be approved.<sup>36</sup>

41. In *Clearbeach*, Justice Gilmore approved the RVO and the release therein after considering the factors set out under s. 36(3) of the CCAA and in *Royal Bank v Soundair Corp*:<sup>37</sup>

Turning to the specific factors to be considered under the CCAA and *Soundair*, I make the following findings:

- (f) The third-party releases are needed to protect landowners from being held responsible for municipal taxes and penalties related to land used in Clearbeach's operations. They also protect Clearbeach from claims by landowners in relation to municipal taxes and penalties included in the Excluded Liabilities. The releases benefit the creditors and the debtors and are fair and reasonable. [emphasis added]

42. In the facts at bar, the Releases should be approved because:

- (a) They are a condition precedent to the completion of the Transactions, and therefore, necessary to the Transactions.

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<sup>36</sup> [Clearbeach at para. 16.](#)

<sup>37</sup> [Clearbeach at para. 27.](#)

- (b) The releasees are necessary and essential to the restructuring. A restructuring cannot proceed without the company's directors and officers.<sup>38</sup>
- (c) The Releases benefit HydRx in that they permit Cobra to complete the Transactions and allow HydRx to continue its operations with minimal interruptions.
- (d) They are fair, reasonable, not overly-broad and do not release any claims that:
  - (i) cannot be released under to s. 5.1(2) of the CCAA; (ii) are against the directors and officers for breach of trust arising from acts or omissions occurring before the date of the Initial Order; and (iii) may be made against any applicable insurance policy of HydRx prior to the date of the Initial Order.
- (e) The language in the Releases is similar to other releases that have been approved by this court. In *Re Green Relief*, Justice Koehnen approved a release that contained the following language:<sup>39</sup>

...the current directors, officers, employees, independent contractors that have provided legal or financial services to the Applicant, legal counsel and advisors of the Applicant, and (ii) the Monitor and its legal counsel (collectively, the "Released Parties") shall be ... released ... from ...all ... claims ...of any nature or kind whatsoever ... based in whole or in part on any act or omission, ... taking place prior to the filing of the Monitor's Certificate and that relate in any manner whatsoever to the Applicant or any of its assets (current or historical), obligations, business or affairs or this CCAA Proceeding, ... provided that nothing in this paragraph shall ... release... any claim: (i) that is not permitted to be released pursuant to section 5.1(2) of the CCAA, (ii) against the former directors and officers of the Applicant for breach of trust arising from acts or omissions occurring before the date of the Initial Order, (iii) that may be made against any applicable insurance policy of the Applicant prior to the date of the Initial Order, or (iv) that may be made

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<sup>38</sup> [Green Relief at para. 50.](#)

<sup>39</sup> [Green Relief at para. 59.](#)



against the current directors and officers that would be covered by the Directors' Charge granted pursuant to the Initial Order.

**PART IV - RELIEF REQUESTED**

43. For the reasons herein above discussed, Cobra respectfully submits that this Honourable Court should approve the SPA and Transactions and grant the RVO.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19<sup>th</sup> day of November, 2021.



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David Preger

November 19, 2021

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**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

1. [Nelson Education Ltd, Re](#), 2015 ONSC 5557
2. [Target Canada Co. \(Re\)](#), 2015 ONSC 1487
3. [Canwest Global Communications Corp., \(Re\)](#), 2010 ONSC 2870
4. [Royal Bank of Canada v. Soundair Corp.](#), 1991 CanLII 2727 (ON CA)
5. In the matter of [Plasco Energy et al.](#), dated July 16, 2015
6. In the matter of [Stornoway Diamonds Inc. et al.](#), dated October 7, 2019
7. In the matter of [Comark Holdings Inc. et al.](#), dated July 13, 2020
8. In the matter of [JMB Crushing Systems Inc.](#) et al., dated October 16, 2020
9. In the matter of [Redrock Camps Inc.](#) et al., dated February 18, 2021
10. In the matter of [Tribalscale Inc.](#) et al., dated January 11, 2021
11. In the matter of [Cirque Du Soleil Canada Inc.](#) et al., dated October 26, 2021
12. In the matter of [Nemaska Lithium Inc.](#) et al., dated October 15, 2020
13. In the matter of [Quest University Canada](#), dated November 16, 2020
14. In the matter of [Wayland Group Corp.](#) et al., dated April 21, 2020
15. In the matter of [Green Relief Inc.](#), dated November 9, 2020
16. In the matter of [Beleave Kannabis Corp.](#) et al., dated September 18, 2020
17. [Beleave Inc. endorsement](#), dated November 18, 2020
18. [Quest University Canada \(re\)](#), 2020 BCSC 1883
19. *Beatrice Foods, Inc. Re*, 1996 CarswellOnt 5598
20. [Stelco Inc., Re](#), 2006 CanLII 1773 (ON SC)
21. [CanWest Global Communications Corp.](#), 2010 ONSC 4209
22. [Re Green Relief Inc.](#), 2020 ONSC 6837

23. [Re Clearbeach Resources Inc. and Forbes Resources Corp.](#), 2021 ONSC 5564

## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

[Companies’ Creditors Arrangement Act](#), RSC 1985, c C-36, s. 36(1)

#### **Claims against directors — compromise**

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

#### **Exception**

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

#### **Restriction on disposition of business assets**

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

#### **Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

**Assets may be disposed of free and clear**

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

**Canada Business Corporations Act, RSC 1985, c C-44**

**Amendment of articles**

173 (1) Subject to sections 176 and 177, the articles of a corporation may by special resolution be amended to

- (a) change its name;
- (b) change the province in which its registered office is situated;
- (c) add, change or remove any restriction on the business or businesses that the corporation may carry on;
- (d) change any maximum number of shares that the corporation is authorized to issue;
- (e) create new classes of shares;
- (f) reduce or increase its stated capital, if its stated capital is set out in the articles;
- (g) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;
- (h) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
- (i) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;

(j) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;

(k) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;

(l) revoke, diminish or enlarge any authority conferred under paragraphs (j) and (k);

(m) increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 107 and 112;

(n) add, change or remove restrictions on the issue, transfer or ownership of shares; or

(o) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

### **Termination**

(2) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the shareholders.

### **Amendment of number name**

(3) Notwithstanding subsection (1), where a corporation has a designating number as a name, the directors may amend its articles to change that name to a verbal name.

### **Definition of reorganization**

191 (1) In this section, reorganization means a court order made under

(a) section 241;

(b) the Bankruptcy and Insolvency Act approving a proposal; or

(c) any other Act of Parliament that affects the rights among the corporation, its shareholders and creditors.

### **Powers of court**

(2) If a corporation is subject to an order referred to in subsection (1), its articles may be amended by such order to effect any change that might lawfully be made by an amendment under section 173.

### **Further powers**

(3) If a court makes an order referred to in subsection (1), the court may also

(a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms thereof; and

(b) appoint directors in place of or in addition to all or any of the directors then in office.

#### **Articles of reorganization**

(4) After an order referred to in subsection (1) has been made, articles of reorganization in the form that the Director fixes shall be sent to the Director together with the documents required by sections 19 and 113, if applicable.

#### **Certificate of reorganization**

(5) On receipt of articles of reorganization, the Director shall issue a certificate of amendment in accordance with section 262.

#### **Effect of certificate**

(6) A reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

#### **No dissent**

(7) A shareholder is not entitled to dissent under section 190 if an amendment to the articles of incorporation is effected under this section.

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

**FACTUM OF THE MOVING PARTY COBRA  
VENTURES INC.**

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