



Form 35 (Rules 8-4(1), 13-1(3), 17-1(2) and 25-9(2))

No. B200195
Estate No. 11-2636224
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
TRUE LEAF PET INC.

ORDER MADE AFTER APPLICATION
(SALES PROCESS ORDER)

BEFORE)
) THE HONOURABLE MADAM) May 13, 2020
) JUSTICE FITZPATRICK)

ON THE APPLICATION of True Leaf Pet Inc. (the “**Applicant**”) coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on May 13, 2020 and on hearing Katie G. Mak and Nicholas Carlson (articling student), counsel for the Applicant, and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed, including the Second Report to the Court of FTI Consulting Canada Inc. in its capacity as proposal trustee (the “**Trustee**”) dated May 12, 2020 (the “**Trustee’s Report**”); AND PURSUANT TO the *Bankruptcy and Insolvency Act*, R.S.C. 1983 c. B-3 (the “**BIA**”) and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Notice of Application herein be and is hereby abridged such that the Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.
2. The sales process described in **Schedule “B”** to this Order (the “**Sales Process**”) is hereby approved and the Trustee is authorized to (i) carry out the Sales Process in accordance with its terms and this Order; and (ii) take such additional steps and execute such additional documents as it considers necessary or desirable in furtherance of this Order or in carrying out its obligations hereunder.

3. In connection with the Sales Process, pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, Section 18(1)(i) of the *British Columbia Personal Information Protection Act* and any applicable comparable provincial legislation, the Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders and to their advisors, but only to the extent desirable or required to seek solicitations in respect of the Applicant's assets and business (each a "**Transaction**"). Each prospective purchaser or 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 of a Transaction and, if it does not complete a Transaction, shall return all such information to the Trustee or, in the alternative, destroy all such information. Such purchaser or bidder, if successful shall be entitled to continue to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant and shall return all other personal information to the Trustee or ensure that all other personal information is destroyed.

4. This Court 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, the Trustee 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 and to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist the Applicant and the Trustee and their respective agents in carrying out the terms of this Order.

5. The Applicant and the Trustee be at liberty and are 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 Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having this Order or these proceedings recognized in a jurisdiction outside Canada.

6. The Applicant, the Trustee or any other party that is affected by this Order is at liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

7. Endorsement of this Order by counsel appearing on this application other than counsel for the Applicant is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of Katie G. Mak
Lawyer for the Applicant

**Digitally signed by
Fitzpatrick, J**

BY THE COURT

Registrar in Bankruptcy

Schedule A

| | |
|---------------|-----------------------|
| Ashley Taylor | Lind Asset Management |
| | |
| | |

Schedule B

Sale Process

A. OVERVIEW

On April 2, 2020 True Leaf Brands Inc. (“**TLB**”) and its subsidiaries True Leaf Investment Corp. (“**TLI**”), True Leaf Pet Inc. (“**TLP**”), and True Leaf Cannabis Inc. (“**TLC**” and together with TLB, TLI and TLP, the “**Sellers**” and each a “**Seller**”) filed Notices of Intention to Make a Proposal pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.¹ FTI Consulting, Inc. was appointed as the proposal trustee of the Sellers (in such capacity, the “**Trustee**”).

On May 13, 2020, the Supreme Court of British Columbia (the “**Court**”) issued an order (the “**Sale Process Approval Order**”) approving the process set forth herein by which the Sellers are authorized and directed to conduct a sale process (the “**Sale Process**”) of all the Sellers’ assets (the “**True Leaf Assets**”).

Having obtained the Sale Process Approval Order from the Court, the Sellers will now conduct the Sale Process to obtain the highest and/or otherwise best bids for all, substantially all or any part of the True Leaf Assets.

B. THE SELLERS’ BUSINESS

The Sellers are in the business of providing hemp, cannabis, and plant-focused wellness products that help pets and people live longer, healthier, and happier lives. The Sellers conduct their business through two subsidiaries:

- a. **Pet Division:** TLP, a wholly owned subsidiary of TLB, develops, markets, and sells natural supplements and treats primarily to the specialty pet channel; and
- b. **Cannabis Division:** TLC, a wholly owned subsidiary of TLI (which is itself a wholly owned subsidiary of TLB), is a licensed producer preparing to cultivate, process, and sell medicinal cannabis under Canada’s *Cannabis Act* from an 18,000 square foot facility located on 40 acres in Lumby, British Columbia, Canada.

Consistent with the two business divisions described above, the True Leaf Assets can be divided into two groups: the assets owned by TLP (the “**TLP Assets**”) and the assets owned by TLC (the “**TLC Assets**”). The Sales Process described herein contemplates a bifurcated sales process as between the TLP Assets and the TLC Assets.

C. ASSETS TO BE SOLD

The Sellers are offering for sale all of the TLP Assets and the TLC Assets. All of each Seller’s respective right, title and interest in and to the True Leaf Assets shall be, to the fullest extent permitted by law, sold free and clear of all liens, claims, interests, charges, restrictions and

¹ True Leaf Brands Inc.: Court File No. B200191, Estate No. 11-2636060; True Leaf Pet Inc.: Court File No. B-200195, Estate No. 11-2636224; True Leaf Cannabis Inc.: Court File No. B-200194, Estate No. 11-2636226; True Leaf Investments Corp.: Court File No. B-200196, Estate No. 11-2636236.

encumbrances of any kind or nature thereon (collectively, the “**Liens**”), except for permitted encumbrances and assumed liabilities as may be specified in the approved purchase agreement of the Successful Bidders (as defined below), and with any such Liens to attach solely to the net proceeds of the sale of the applicable True Leaf Asset.

D. SOLICITATION OF INTEREST

The Trustee, in consultation with the Sellers, is responsible for the marketing and sale of the True Leaf Assets pursuant to the Sale Process. As soon as reasonably practical, but in any event by no later than May 15, 2020:

- a. The Trustee, in consultation with the Consultation Parties (as defined below), will prepare a list of potential bidders (the “**Known Potential Bidders**”), including (i) parties that have approached the Sellers or the Trustee indicating an interest in the True Leaf Assets, and (ii) local and international strategic and financial parties who may be interested in purchasing all or part of the True Leaf Assets;
- b. The Trustee will arrange for a notice of the Sale Process (and such other relevant information which the Trustee, in consultation with the Consultation Parties, considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition) and such other newspapers or industry journals as the Trustee or the Consultation Parties consider appropriate, if any;
- c. The Sellers, in consultation with the Trustee, will issue a press release with Canada Newswire or an equivalent newswire setting out the information contained in the Notice and such other relevant information that the Trustee, in consultation with the Consultation Parties, considers appropriate, designating dissemination in Canada; and
- d. The Trustee will prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity to purchase all or part of the True Leaf Assets, outlining the process under the Sale Process and inviting recipients of the Teaser Letter to express interest pursuant to the Sale Process; and (ii) a non-disclosure agreement (the “**NDA**”) in form and substance satisfactory to the Trustee.

The Trustee will send the Teaser Letter and NDA to each Known Potential Bidder by no later than May 15, 2020, and to any other party who requests a copy of the Teaser Letter and NDA or who is identified by the Trustee or the Consultation Parties as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

E. THE BID PROCEDURES

Each person who wishes to participate in the Sale Process (a “**Potential Bidder**”) must adhere to the bidding procedures described herein (the “**Bid Procedures**”).

1. Role of the Trustee

The Trustee, with the consent of the Consultation Parties, shall have the right to adopt such other rules for the Bid Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgement will better promote the goals of the Bid Procedures.

2. The Trustee May Seek Assistance

The Trustee may, with the consent of the Consultation Parties, engage an independent third party to assist with the implementation of these Bid Procedures. This includes, but is not limited to, engaging a commercial real estate agency such as Colliers International to market the real property owned by TLC.

3. Due Diligence

The Trustee, in coordination with the Sellers, will provide any Potential Bidder such due diligence access or additional information as the Trustee deems appropriate in its reasonable business judgement, provided, however, that neither the Trustee nor any Seller will provide such due diligence access or additional information related to the TLP Assets to a Potential Bidder unless the Potential Bidder has provided an executed NDA to the Trustee. For greater certainty, an executed NDA is not required with respect to any due diligence access or additional information related to the TLC Assets.

With respect to the TLP Assets, the due diligence period shall end on the TLP Bid Deadline (as defined below), and none of the Trustee, the Sellers, nor any of their representatives shall be obligated to furnish any due diligence information to any Potential Bidder after the TLP Bid Deadline.

With respect to the TLC Assets, the due diligence period shall end on the TLC Bid Deadline (as defined below), and none of the Trustee, the Sellers, nor any of their representatives shall be obligated to furnish any due diligence information to any Potential Bidder after the TLC Bid Deadline.

4. Provisions Governing Bids

Subject to the reasonable business judgement of the Trustee or an order of the Court, in order to be considered by the Trustee, a submitted bid must comply with each of the following (each, a “**Qualified Bid**”, and each party submitting the bid, a “**Qualified Bidder**”):

- a. It discloses in detail which of the TLP Assets or the TLC Assets is covered by the bid;
- b. It fully discloses the identity of each entity that is bidding for or will be purchasing some or all of the True Leaf Assets, including any equity holders in the case of a Potential Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such bid (including any co-bidder or team bidder). A bid must also fully disclose any

- connections or agreements with the Sellers, and/or any officer, director or equity holder of the Sellers or any other Potential Bidder;
- c. It provides a description of any anticipated regulatory or governmental approvals necessary to consummate the bid;
 - d. It includes a commitment to close the transaction within 10 days of approval by the Court of the Successful Bid;
 - e. It includes a written commitment that the bid is irrevocable unless and until the applicable Seller accepts a higher or otherwise better bid. If the bidder is a special purpose vehicle, such writing shall guarantee performance of the bidder by its parent entities, or provide such other guarantee of performance acceptable to the Trustee;
 - f. It shall be accompanied by a deposit into the trust account of the Trustee of an amount of cash equal to 10% of the purchase price (the “**Good Faith Deposit**”);
 - g. It includes confirmation that all necessary internal and shareholder approvals have been obtained prior to the bid;
 - h. It includes an executed copy of a proposed asset purchase agreement and a blackline of the proposed asset purchase agreement reflecting amendments and modifications to the draft asset purchase agreement provided by the Trustee (the “**Proposed Asset Purchase Agreement**”);
 - i. It includes written evidence of (i) sufficient cash on hand to fund the purchase price or (ii) sources of immediately available funds that are not conditioned on third-party approvals or commitments, in each case, that will allow the Trustee, in consultation with the Consultation Parties, to make a reasonable determination as to the bidder’s financial and other capabilities to consummate the transaction contemplated by the Proposed Asset Purchase Agreement;
 - j. It includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all required due diligence prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the True Leaf Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the True Leaf Assets or the completeness of any information provided in connection therewith, except as expressly stated in the draft asset purchase agreement provided by the Trustee; and (iv) is not entitled to any expense reimbursement, break-up fee, termination fee, or similar type of payment in connection with its bid;
 - k. It contains such other information reasonably requested by the Trustee; and
 - l. With respect to the TLC Assets, it is received by the applicable Notice Parties (as defined below) on or prior to 5:00 p.m. (Pacific Daylight Time) on June 15, 2020 (the “**TLC Bid Deadline**”), and with respect to the TLP Assets it is received by the

applicable Notice Parties (as defined below) on or prior to 5:00 p.m. (Pacific Daylight Time) on June 19, 2020 (the “**TLP Bid Deadline**”, and together with the TLC Bid Deadline, the “**Bid Deadlines**”), provided that the Bid Deadlines may be extended by the Trustee with the consent of the Consultation Parties or by order of the Court.

5. Notice Parties

Any Potential Bidder must submit its bid by e-mail, so as to be received on or before the TLP Bid Deadline or the TLC Bid Deadline, as applicable, to each of the following parties (the “**Notice Parties**”):

- m. the Trustee: FTI Consulting, Inc. 701 West Georgia Street, Suite 1450, PO Box 10089, Vancouver, BC V7Y 1B6 (Attn: Craig Munro, craig.munro@fticonsulting.com);
- n. counsel to the Sellers: Clark Wilson LLP, 900 – 885 West Georgia Street, Vancouver, BC V6C 3H1 (Attn: Chris Ramsay, cramsay@cwilson.com);
- o. Lind Asset Management XV, LLC (“**Lind**”): trueleaf@thelindpartners.com; and
- p. Counsel to Lind: Stikeman Elliott LLP, 1700 – 666 Burrard Street, Vancouver, BC V6C 2X8 Canada (Attn: Victor Gerchikov, vgerchikov@stikeman.com).

6. Evaluation of Bids

The Trustee shall review the bids and determine which bids are Qualified Bids.

A Qualified Bid will be valued based upon several factors including, without limitation: (a) the amount of such bid (including value provided by the assumption of liabilities); (b) the risks and timing associated with consummating such bid; (c) any proposed revisions to the Proposed Asset Purchase Agreement (including any additional conditions to closing); (d) any assets included or excluded from the Qualified Bid; (e) the likelihood of the bidders’ ability to close a transaction, the conditions thereof and the timing thereof; (f) any purchase-price adjustments; (g) indemnification or similar provisions; (h) the net economic effect of any changes to the value to be received by the applicable Seller’s estate from the transaction contemplated by the bid; (h) whether the bid is a bid for all or some of the True Leaf Assets; and (i) any other factors deemed relevant by the Trustee in consultation with the Consultation Parties. The Trustee reserves the right to determine the value of any Qualified Bids.

7. Negotiations with Qualified Bidders

Following the TLP Bid Deadline or the TLC Bid Deadline, as applicable, the Trustee may, as it deems appropriate, in consultation with the Consultation Parties, enter into negotiations with one or more Qualified Bidders regarding the terms of the bidder’s Proposed Asset Purchase Agreement for the purpose of maximizing value for the applicable Seller’s estate. The Trustee may, in its discretion, in consultation with the Consultation Parties, regardless of whether it has entered into negotiations with one or more Qualified Bids, invite two or more Qualified Bids to participate in an open auction; provided that the highest existing Qualified Bid shall act as the

floor bid for purposes of the auction and each Qualified Bidder participating in the auction has provided an equivalent deposit to the floor bid.

8. Selection of Successful Bid

The Trustee, in consultation with the Consultation Parties, will review and evaluate each applicable Qualified Bid (including any Qualified Bid that was amended as a result of negotiation or an auction) and determine which Qualified Bid is the highest or otherwise best offer for the TLP Assets and the TLC Assets (such bids, the “**Successful Bids**” and the bidders making such bid, the “**Successful Bidders**”). In determining the Successful Bids, provided that the aggregate cash consideration for the True Leaf Assets is greater than the aggregate amounts owing to Lind, including pursuant to the DIP Loan appended to the First Report of the Trustee to the Court dated April 30, 2020, the Trustee is not required to select the offers with the highest purchase price and may, exercising its reasonable business judgement and taking into consideration any factors that it deems relevant including those described above in paragraph 6, select another offer on the basis that it is the best offer even though it is not the highest purchase price. Without limiting the foregoing, the Trustee may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgement, is appropriate and reasonable. The determination of the Successful Bids by the Trustee shall be final, subject only to approval by the Court.

The applicable Sellers will sell the applicable True Leaf Assets to the applicable Successful Bidders pursuant to the terms of the applicable Successful Bids upon the approval of such Successful Bids by the Court.

9. Consultation Parties

The “**Consultation Parties**” are (a) the Sellers and their counsel; and (b) Lind and its counsel. Notwithstanding anything herein to the contrary, the Trustee shall not be required to consult with any Consultation Party during the Bid Procedures to the extent such Consultation Party is bidding for all or any part of the True Leaf Assets or is a financing source for a bidder.

10. Good Faith Deposit

Except as otherwise provided in this paragraph with respect to any Successful Bid, the Good Faith Deposits of all Qualified Bidders that submitted a Good Faith Deposit under the Bid Procedures shall be returned upon or within three business days after the announcement of the Successful Bids. The Good Faith Deposit of a Successful Bidder shall be held until the closing of the sale of the applicable True Leaf Assets and applied in accordance with the Successful Bid.

If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the applicable Sellers will not have any obligation to return the applicable Good Faith Deposit deposited by such Successful Bidder, which may be retained by the applicable Sellers as liquidated damages, in addition to any and all rights, remedies and/or causes of action that may be available to the applicable Sellers at law or in equity, and, the applicable Sellers shall be free to consummate the proposed transaction at the next highest price bid by a Qualified Bidder, without the need for an additional hearings or orders of the Court.

11. Sale is “As Is/Where Is”

Any Successful Bid or any order by the Court approving any sale of the True Leaf Assets sold pursuant to these Bid Procedures shall be conveyed at the closing of the applicable purchase and sale in their then-present condition, “AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.”

12. Termination of Sale Process

The Trustee may terminate the Sale Process at any point prior to the Sale Hearing (as defined below) provided that (a) all amounts owing to Lind, including pursuant to the DIP Loan appended to the First Report of the Trustee to the Court dated April 30, 2020, have been paid in full, or (b) Lind consents, in its sole discretion, to such termination in writing.

F. SALE HEARING

The Sellers will seek entry of an order from the Court at a hearing (the “**Sale Hearing**”) forthwith after selection of the Successful Bids to approve and authorize the sale transactions to the Successful Bidders (including without limitation the assumption and assignment to the Successful Bidders of any executory contracts to be assigned to them in accordance with the Proposed Asset Purchase Agreements, as applicable, at the Sale Hearing or such other hearing scheduled before the applicable Court) on terms and conditions determined in accordance with the Bid Procedures.

G. CONSENT TO JURISDICTION

The Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of these Bid Procedures. All Qualified Bidders shall be deemed to have consented to the jurisdiction of the Court.

H. MISCELLANEOUS

Except as expressly provided under these Bid Procedures, the Bid Procedures are solely for the benefit of the Sellers, and nothing contained in the orders approving the Bid Procedures shall create any rights in any other person or bidder (including without limitation rights as third-party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the orders approving the Bid Procedures.

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**IN THE SUPREME COURT OF BRITISH
COLUMBIA**

IN THE BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
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ORDER MADE AFTER APPLICATION

File No.: 49786-0001

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