

**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 IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD HOLDING CORP. AND FINAL BELL CORP. (collectively the "Applicants" and each an "Applicant")**

Applicants

**FACTUM OF THE APPLICANTS  
(Returnable August 26, 2024)**

August 22, 2024

**BENNETT JONES LLP**  
One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig** (LSO# 57307I)  
Tel: (416) 777-6254  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Mike Shakra** (LSO# 64604K)  
Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

**Andrew Froh** (LSBC# 517286)  
Email: [froha@bennettjones.com](mailto:froha@bennettjones.com)

**Jamie Ernst** (LSO# 88724A)  
Email: [ernstj@bennettjones.com](mailto:ernstj@bennettjones.com)

Tel: (416) 863-1200  
Fax: (416) 863-1716

Lawyers for the Applicants

**TO: THE SERVICE LIST**

**TABLE OF CONTENTS**

**PART I: OVERVIEW ..... 1**

**PART II: FACTS ..... 2**

    A. Background ..... 2

        (a) The Initial Order ..... 2

        (b) The SISP ..... 4

        (c) Previous Stay Extensions ..... 5

        (d) The Final Bell Litigation ..... 5

        (e) The Disclaimer Motion ..... 6

    B. The Applicants' Activities Since the Granting of the Second Stay Extension ..... 7

    C. The Stay Period ..... 7

    D. Approval of the Fifth Report and Activities ..... 8

    E. Fee Approval ..... 8

**PART III: ISSUES ..... 9**

**PART IV: LAW AND ANALYSIS ..... 10**

    A. The Stay Period Should be Extended ..... 10

    B. Approval of the Fifth Report and Activities ..... 13

    C. Fee Approval ..... 14

**PART V: RELIEF REQUESTED ..... 17**

## PART I: OVERVIEW

1. BZAM Ltd. ("**BZAM**"), BZAM Holdings Inc., BZAM Management Inc., BZAM Cannabis Corp., Folium Life Science Inc., 102172093 Saskatchewan Ltd., The Green Organic Dutchman Ltd. ("**TGOD**"), Medican Organic Inc. ("**Medican**"), High Road Holding Corp., and Final Bell Corp. doing business as BZAM Labs (collectively, the "**Applicants**" or the "**Company**") were granted creditor protection and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 28, 2024.
2. This Factum is filed in support of a motion by the Applicants seeking an Order (the "**Stay Extension and Fee Approval Order**"), among other things:
  - (a) extending the Stay Period (as defined below) to and including October 15, 2024;
  - (b) approving the Fifth Report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), to be filed (the "**Fifth Report**"), and the activities of the Monitor described therein; and
  - (c) approving the fees and disbursements of the Monitor and its counsel, Stikeman Elliott LLP ("**Stikeman**") as set out in the affidavits of Jeffrey Rosenberg and Maria Konyukhova, respectively, each as attached to the Fifth Report (together, the "**Fee Affidavits**").
3. The Applicants seek the Stay Extension and Fee Approval Order to preserve the *status quo* and provide the breathing room and stability required to, among other things, finalize and seek approval of the Stalking Horse Purchase Agreement (as defined below) and the transaction contemplated therein (the "**Transaction**").

## PART II: FACTS

4. The facts underlying this motion are more fully set out in the affidavit of Matthew Milich sworn August 19, 2024 (the "**Milich Affidavit**").<sup>1</sup> The facts underlying the Applicants' financial circumstances and the reasons for commencing these CCAA proceedings (the "**CCAA Proceedings**") are set out in greater detail in the affidavit of Matthew Milich sworn on February 28, 2024 in support of the Initial Order and are not repeated herein.<sup>2</sup>

5. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Milich Affidavit or the amended and restated Initial Order (the "**ARIO**") dated March 8, 2024.

### A. Background

#### (a) The Initial Order

6. BZAM is the ultimate parent company to several companies in the cannabis industry in Canada.<sup>3</sup> Through its subsidiaries, it engages in the production, cultivation, processing and distribution of cannabis and cannabis related products.<sup>4</sup>

7. On February 28, 2024, the Court granted the Initial Order, which, among other things:

- (a) declared that the Applicants are parties to which the CCAA applies;
- (b) appointed FTI as the Monitor;

---

<sup>1</sup> Affidavit of Matthew Milich sworn on August 19, 2024 [Milich Affidavit], Applicants' Motion Record dated August 19, 2024 at Tab 2 [Motion Record].

<sup>2</sup> Affidavit of Matthew Milich sworn on February 28, 2024 (retrievable at the Monitor's website: <http://cfcanada.fticonsulting.com/bzam/docs>).

<sup>3</sup> Milich Affidavit, *supra* note 1 at para 6, Motion Record at Tab 2.

<sup>4</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2.

- (c) granted an initial stay of proceedings in favour of the Applicants, the Non-Applicant Stay Parties, and their respective Directors and Officers, until and including March 8, 2024 (the "**Initial Stay Period**");
- (d) approved TGOD's ability to borrow up to a principal amount of \$2,400,000 under a debtor-in-possession credit facility (the "**DIP Loan**") from the Company's existing senior secured creditor, Cortland Credit Lending Corporation ("**Cortland**" and in its capacity as lender, the "**DIP Lender**") with the other Applicants acting as guarantors under the DIP Loan; and
- (e) granted the Administration Charge, the DIP Lender's Charge and the Directors' Charge.<sup>5</sup>

8. At the comeback hearing on March 8, 2024, the Court granted the ARIO, which among other things:

- (a) granted an extension of the Initial Stay Period to and including May 25, 2024 (the "**Stay Period**");
- (b) increased the maximum principal amount that the Applicants can borrow under the DIP Loan to \$41,000,000; and
- (c) increased the maximum quantum of the (i) Administration Charge from \$500,000 to \$1,000,000, (ii) DIP Lender's Charge from \$2,400,000 to \$41,000,000 (plus accrued and unpaid interest, fees and costs), and (iii) Directors' Charge from \$5,300,000 to \$12,900,000.<sup>6</sup>

---

<sup>5</sup> Milich Affidavit, *ibid* at para 8, Motion Record at Tab 2.

<sup>6</sup> Milich Affidavit, *ibid* at para 9, Motion Record at Tab 2.

9. Cortland and the Applicants have extended the maturity date under the DIP Loan to and including October 15, 2024.<sup>7</sup> The DIP Loan was previously set to mature on August 28, 2024.<sup>8</sup>

(b) **The SISP**

10. On March 8, 2024, the Court also granted an Order (the "**SISP Approval Order**") which, among other things:

- (a) authorized and approved BZAM's execution of a share subscription agreement (the "**Stalking Horse Purchase Agreement**") among BZAM and 1000816625 Ontario Inc. (the "**Stalking Horse Purchaser**") dated March 1, 2024, *nunc pro tunc*, including the Bid Protections (as defined in the SISP Approval Order); and
- (b) approved a sale and investment solicitation process (the "**SISP**") in which the Stalking Horse Purchase Agreement served as the "**Stalking Horse Bid**".<sup>9</sup>

11. Following the SISP Approval Order, the Monitor and the Applicants took steps to advance the SISP in accordance with the timelines contemplated therein.<sup>10</sup> On April 16, 2024, the Monitor and the Applicants determined that none of the letters of intent submitted constituted a Qualified Bid (as defined in the SISP) and, with the consent of the DIP Lender, terminated the SISP.<sup>11</sup>

12. The Stalking Horse Purchaser and the Applicants, with the consent of the Monitor and the DIP Lender, have both consented to an extension to close the transaction contemplated under the Stalking Horse Purchase Agreement to and including October 15, 2024 (referred to as the "**Outside**

---

<sup>7</sup> Milich Affidavit, *ibid* at para 17, Motion Record at Tab 2.

<sup>8</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2.

<sup>9</sup> Milich Affidavit, *ibid* at para 11, Motion Record at Tab 2.

<sup>10</sup> Milich Affidavit, *ibid* at para 13, Motion Record at Tab 2.

<sup>11</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2.

**Date**" under the Stalking Horse Purchase Agreement).<sup>12</sup> The Outside Date was originally June 21, 2024 and has been subsequently amended multiple times.<sup>13</sup>

(c) **Previous Stay Extensions**

13. On May 17, 2024, the Court granted an Order which, among other things, extended the Stay Period to and including July 15, 2024 (the "**First Stay Extension**").<sup>14</sup> The Court granted a further extension on July 15, 2024, extending the Stay Period to and including August 28, 2024 (the "**Second Stay Extension**").<sup>15</sup>

(d) **The Final Bell Litigation**

14. Final Bell Holdings International Ltd. ("**Final Bell**") served a notice of motion on March 18, 2024, in support of its rescission claim – alleging that the Applicants had made numerous false misrepresentations which induced Final Bell into entering and closing the Share Exchange Agreement (as defined in the Second Report of the Monitor dated April 17, 2024).<sup>16</sup>

15. On April 24, 2024, BZAM and Cortland each served motions seeking orders that Final Bell immediately pay into this Court security for costs on the basis, among other things, that Final Bell lacked sufficient assets in Ontario (and elsewhere) to satisfy an adverse cost award in the Final Bell litigation.<sup>17</sup>

16. Final Bell abandoned its rescission claim on May 3, 2024, seeking in the alternative: (i) equitable damages in lieu of rescission, and (ii) a declaration that such damages are subject to a

---

<sup>12</sup> Milich Affidavit, *ibid* at para 14, Motion Record at Tab 2.

<sup>13</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2; Fifth Report of the Monitor dated August 21, 2024 at para 24 [Fifth Report].

<sup>14</sup> Milich Affidavit, *ibid* at para 16, Motion Record at Tab 2.

<sup>15</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2.

<sup>16</sup> Milich Affidavit, *ibid* at para 18, Motion Record at Tab 2.

<sup>17</sup> Milich Affidavit, *ibid* at para 22, Motion Record at Tab 2.



constructive trust (the "**Amended Claim**").<sup>18</sup> In response, Cortland brought a motion seeking a declaration that the claims of Final Bell in relation to the assets of the Applicants or the sale proceeds related thereto are subordinate to Cortland's secured interest, including its DIP Lender's Charge, in such assets and proceeds (the "**Threshold Motion**").<sup>19</sup> BZAM, on behalf of the Applicants, supports Cortland's position on the Threshold Motion.<sup>20</sup>

17. In accordance with the endorsement of the Honourable Justice Osborne dated June 30, 2024, on or around July 17, 2024, Final Bell posted security in the amounts of \$350,000 and \$147,000 in respect of the costs of BZAM and Cortland, respectively, and paid costs to BZAM and Cortland in respect of the security for costs motions in the amounts of \$20,000 and \$8,500, respectively.<sup>21</sup>

18. Counsel to BZAM, Cortland and Final Bell, as well as the Monitor and Stikeman, attended a case conference on August 7, 2024, in connection with the potential scheduling of the Threshold Motion.<sup>22</sup> The Threshold Motion has been scheduled for September 18, 2024 at 10:00 a.m.<sup>23</sup>

(e) **The Disclaimer Motion**

19. On June 25, 2024, Mr. France Boisvert and Mr. Daniel Fontaine (the "**Motion Parties**") served a Notice of Motion on the Applicants (the "**Disclaimer Motion**") objecting to a Notice by Debtor Company to Disclaim or Resiliate an Agreement sent by Medican on May 29, 2024.<sup>24</sup>

---

<sup>18</sup> Milich Affidavit, *ibid* at para 18, Motion Record at Tab 2.

<sup>19</sup> Milich Affidavit, *ibid* at para 19, Motion Record at Tab 2.

<sup>20</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2.

<sup>21</sup> Milich Affidavit, *ibid* at para 23, Motion Record at Tab 2.

<sup>22</sup> Milich Affidavit, *ibid* at para 20, Motion Record at Tab 2.

<sup>23</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2.

<sup>24</sup> Milich Affidavit, *ibid* at para 25, Motion Record at Tab 2.

20. The Applicants and the Monitor continue to engage with the Motion Parties in an effort to reach a consensual resolution in respect of the Disclaimer Motion.<sup>25</sup> As of August 19, 2024, the Motion Parties have not indicated whether they intend to proceed with the Disclaimer Motion.<sup>26</sup>

**B. The Applicants' Activities Since the Granting of the Second Stay Extension**

21. Since the granting of the Second Stay Extension, the Applicants have acted in good faith and with due diligence to, among other things,

- (a) attend and prepare materials for the case conference held on August 7, 2024;
- (b) attend to matters related to the Threshold Motion and the Final Bell litigation more generally;
- (c) engage with the Motion Parties to resolve the issues surrounding the Disclaimer Motion;
- (d) implement, with the assistance of the Monitor, certain restructuring steps, including renegotiating certain supplier agreements; and
- (e) finalize certain aspects of the Stalking Horse Purchase Agreement.<sup>27</sup>

**C. The Stay Period**

22. The Stay Period under the Second Stay Extension is set to expire on August 28, 2024.<sup>28</sup> Pursuant to the proposed Stay Extension and Fee Approval Order, the Applicants are seeking to

---

<sup>25</sup> Milich Affidavit, *ibid* at para 26, Motion Record at Tab 2.

<sup>26</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2.

<sup>27</sup> Milich Affidavit, *ibid* at para 30, Motion Record at Tab 2; Fifth Report, *supra* note 13 at para 34.

<sup>28</sup> Milich Affidavit, *ibid* at para 27, Motion Record at Tab 2.

extend the Stay Period, including in respect of the Non-Applicant Stay Parties, to and including October 15, 2024 (the "**Stay Extension**").<sup>29</sup>

23. The Applicants, with the assistance of the Monitor, have prepared a revised cash flow forecast (the "**Third Revised Cash Flow Forecast**"), which demonstrates that the Applicants will have sufficient cash to support the Company's ordinary course operations and the costs of these CCAA Proceedings throughout the Stay Extension.<sup>30</sup> The Third Revised Cash Flow Forecast is attached as Appendix "A" to the Fifth Report.<sup>31</sup>

#### **D. Approval of the Fifth Report and Activities**

24. The proposed Stay Extension and Fee Approval Order also seeks approval of the Fifth Report and the activities of the Monitor described therein.<sup>32</sup>

#### **E. Fee Approval**

25. The Applicants seek approval of the fees, disbursements and other costs of the Monitor incurred from February 26, 2024 through to and including July 31, 2024 (the "**Monitor Fee Period**") and Stikeman incurred from February 21, 2024 through to and including July 31, 2024 (the "**Stikeman Fee Period**", and together with the Monitor Fee Period, the "**Fee Periods**").<sup>33</sup>

26. In support of this motion, the Monitor delivered its Fifth Report, including the Fee Affidavits, which provides a detailed listing of the accounts sought to be passed, including descriptions for each account entry (redacted for privilege), and summary tables detailing the

---

<sup>29</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2.

<sup>30</sup> Milich Affidavit, *ibid* at para 32, Motion Record at Tab 2; Fifth Report, *supra* note 13 at para 31, Exhibit "A".

<sup>31</sup> Fifth Report, *ibid*.

<sup>32</sup> Milich Affidavit, *supra* note 1 at para 34, Motion Record at Tab 2.

<sup>33</sup> Fifth Report, *supra* note 13 at paras 39-40.

professionals who have worked on this matter, their hourly billing rates and their total number of hours worked, among other information.

27. During the Monitor Fee Period, the Monitor incurred: (i) fees in the amount of \$1,075,676.50, and (ii) disbursements and other charges in the amount of \$37,551.00, each exclusive of HST.<sup>34</sup> In total, the Monitor is seeking \$1,168,888.89 (inclusive of HST) as compensation for fees, disbursements, and other charges.<sup>35</sup>

28. During the Stikeman Fee Period, Stikeman incurred: (i) legal fees in the amount of \$540,415.00, and (ii) disbursements and other charges in the amount of \$3,357.45, each exclusive of HST.<sup>36</sup> In total, Stikeman Elliott is seeking \$614,741.70 (inclusive of HST) as compensation for fees, disbursements, and other charges.<sup>37</sup>

### **PART III: ISSUES**

29. The issues to be considered on this motion are whether this Court should:

- (a) extend the Stay Period to and including October 15, 2024;
- (b) approve the Fifth Report and the activities of the Monitor described therein; and
- (c) approve the fees of the Monitor and Stikeman, as set out in the Fee Affidavits.

---

<sup>34</sup> Fifth Report, *ibid.*, at para 39.

<sup>35</sup> Fifth Report, *ibid.*

<sup>36</sup> Fifth Report, *ibid.*, at para 40.

<sup>37</sup> Fifth Report, *ibid.*

## PART IV: LAW AND ANALYSIS

### A. The Stay Period Should be Extended

30. The Stay Period is currently set to expire on August 28, 2024.<sup>38</sup> Subsection 11.02(2) of the CCAA expressly authorizes this Court to grant an extension of the stay of proceedings for "any period the court considers necessary."<sup>39</sup> To grant such an extension, the Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.<sup>40</sup>

31. The jurisdiction vested in Courts to stay proceedings under section 11.02 "should be construed broadly to accomplish the legislative purposes of the CCAA and in particular to enable continuance of the company seeking CCAA protection."<sup>41</sup> These purposes include, among others, enabling the continuation of the applicants' business, avoiding the social and economic costs of a liquidation, and facilitating a value-maximizing restructuring.<sup>42</sup> Accordingly, a stay of proceedings will be appropriate where it maintains the *status quo* and provides applicants with breathing room while they seek to restore solvency and emerge from the CCAA Proceedings on a going-concern basis.<sup>43</sup>

---

<sup>38</sup> Milich Affidavit, *supra* note 1 at para 27, Motion Record at Tab 2.

<sup>39</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 s 11.02(2) [CCAA]; *Laurentian University of Sudbury*, 2021 ONSC 1098 at para 56.

<sup>40</sup> *CCAA*, *ibid*, s 11.02(2) and s 11.02(3); *U.S. Steel Canada Inc. (Re)*, 2017 ONSC 1967 at para 23; *Urbancorp Cumberland 2 GP Inc., Re.* 2022 ONSC 3248 at para 8.

<sup>41</sup> *Canwest Global Communications Corp.*, 2011 ONSC 2215 at para 24.

<sup>42</sup> *Ibid*; *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 15; *Target Canada Co.*, 2015 ONSC 303 at para 8; *Re Timminco Limited*, 2012 ONSC 2515 at para 15; *1057863 BC Ltd (Re)*, 2022 BCSC 876 at para 34.

<sup>43</sup> *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 14; *Target Canada Co.*, 2015 ONSC 303 at para 8; *Canwest Global Communications Corp.*, 2011 ONSC 2215 at paras 24-25; *Re Clover Leaf Holdings Company*, 2019 ONSC 6966 at para 19; *Harte Gold Corp (Re)*, 2022 ONSC 653 at para 88.

32. The Applicants have acted, and continue to act, with good faith and due diligence in these CCAA Proceedings and have acted at all times in accordance with the CCAA and the various orders of the Court.<sup>44</sup>

33. It is both necessary and in the best interests of the Applicants, the Non-Applicant Stay Parties and their stakeholders that the Stay Period be extended to allow the Applicants to:

- (a) implement additional restructuring steps to improve the financial efficiency of the Company for the benefit of its stakeholders;
- (b) prepare for and attend the adjudication of the Threshold Motion and, if necessary, the Amended Claim (should adjudication of the Amended Claim ultimately be required);
- (c) subject to the resolution of the issues noted above, finalize and seek approval of the Stalking Horse Purchase Agreement; and
- (d) continue to advance matters towards a termination of these CCAA Proceedings that will allow certain of the Applicants to emerge as going concern entities.<sup>45</sup>

34. Despite their best efforts to seek approval of the Stalking Horse Purchase Agreement and the Transaction prior to the expiry of the First Stay Extension, the Applicants continue to postpone seeking such approval due to uncertainty surrounding the determination of the Threshold Motion and the Amended Claim (should adjudication of the Amended Claim become necessary).<sup>46</sup>

35. A determination of the Amended Claim is required prior to seeking approval of the Stalking Horse Purchase Agreement and the Transaction. Pursuant to the terms of the DIP Loan, the

---

<sup>44</sup> Milich Affidavit, *supra* note 1 at para 30, Motion Record at Tab 2; Fifth Report, *supra* note 13 at para 34(b).

<sup>45</sup> Milich Affidavit, *ibid* at para 31, Motion Record at Tab 2; Fifth Report, *ibid*, at para 34.

<sup>46</sup> Milich Affidavit, *ibid* at para 28, Motion Record at Tab 2.

Applicants cannot enter into any sale or similar transaction pursuant to a sale and investment solicitation process without the prior consent of Cortland, save and except for a transaction that provides for the full satisfaction, in cash, of Cortland's pre- and post-filing obligations (the "**Cortland Obligations**").<sup>47</sup> However, until the Amended Claim is resolved, the Applicants and Cortland cannot determine whether the consummation of the Stalking Horse Purchase Agreement would result in full payment of the Cortland Obligations – as such analysis depends on whether the Amended Claim ranks in priority to the obligations under the DIP Loan (the "**DIP Obligations**").<sup>48</sup> Despite Cortland's and Final Bell's contention that the Amended Claim cannot supersede the DIP Obligations, the Applicants and the Stalking Horse Purchaser are nevertheless unable to seek approval of the Stalking Horse Purchase Agreement and the Transaction until this issue is resolved.

36. If extended, the Stay Period will preserve the *status quo* and afford the Applicants the breathing space and stability required to continue operating their business in the ordinary course while the Applicants prepare for the Final Bell litigation.<sup>49</sup> The Applicants intend to seek approval of the Stalking Horse Purchase Agreement without further delay once the Applicants and their major stakeholders obtain additional clarity and certainty surrounding the Amended Claim.

37. The Third Revised Cash Flow Forecast appended to the Fifth Report demonstrates that the Applicants are projected to have sufficient cash over the proposed Stay Extension period to enable the Applicants to meet their day-to-day obligations.<sup>50</sup> The Monitor, the DIP Lender and the Stalking Horse Purchaser are of the view that the Stay Extension is appropriate in the

---

<sup>47</sup> Milich Affidavit, *ibid* at para 29, Motion Record at Tab 2.

<sup>48</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2.

<sup>49</sup> Milich Affidavit, *ibid* at paras 27, 31, Motion Record at Tab 2.

<sup>50</sup> Milich Affidavit, *ibid* at para 32, Motion Record at Tab 2; Fifth Report, *supra* note 13 at para 31, Exhibit "A".

circumstances.<sup>51</sup> The Applicants are also not aware of any creditors who are or would be prejudiced in any meaningful way by the proposed Stay Extension.<sup>52</sup>

38. Taken together, the Applicants submit that the proposed Stay Extension is in the best interests of the Applicants and their stakeholders, consistent with the purposes of the CCAA and appropriate in the circumstances.

## **B. Approval of the Fifth Report and Activities**

39. It has become a usual practice in CCAA proceedings for a Monitor (or an applicant on its behalf) to bring a motion to approve its reports.<sup>53</sup> This Court has recognized a number of policy and practical reasons for the Court to approve a monitor's activities and provide a level of protection for a monitor during the CCAA proceedings.<sup>54</sup> Specifically, Court approval:

- (a) allows the Monitor to move forward with next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
  - (i) re-litigation of steps taken to date, and

---

<sup>51</sup> Milich Affidavit, *ibid* at para 33, Motion Record at Tab 2; Fifth Report, *supra* note 13 at para 42.

<sup>52</sup> Milich Affidavit, *ibid*, Motion Record at Tab 2; Fifth Report, *supra* note 13 at para 34.

<sup>53</sup> [Target Canada Co. \(Re\)](#), 2015 ONSC 7574 at paras 1-2; [Laurentian University of Sudbury](#), 2022 ONSC 2927 at paras 13-14.

<sup>54</sup> *Ibid*; *ibid*.



(ii) potential indemnity claims by the Monitor.<sup>55</sup>

40. Furthermore, the Court has advised that the benefit of any approval in respect of the Monitor's reports and its activities should be limited to the Monitor itself and should not extend to the Applicants or other third parties.<sup>56</sup>

41. Since its appointment, the Monitor has provided valuable assistance to the Applicants and the Court. The Applicants submit that the Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order. There has been no evidence put forward on this motion to the contrary.

42. Further, the approval sought pursuant to the proposed Stay Extension and Fee Approval Order is limited to the Monitor's activities, as described in the Fifth Report, and does not extend to other third parties or the Applicants. As such, the Applicants submit that the requested relief is in line with the case law and reasonable in these circumstances.

43. For these reasons, the Applicants believe it is appropriate for this Court to approve the Fifth Report and the activities of the Monitor referred to therein.

### **C. Fee Approval**

44. The jurisdiction of this Court to approve the accounts of the Monitor and its counsel is confirmed in paragraphs 30 and 31 of the ARIO, which provides that the Monitor and its legal counsel are to be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and pass their accounts from time to time.<sup>57</sup>

---

<sup>55</sup> [Target Canada Co. \(Re\)](#), 2015 ONSC 7574 at para 23.

<sup>56</sup> [Target Canada Co. \(Re\)](#), 2015 ONSC 7574 at para 21; [Nordstrom Canada Retail, Inc.](#), 2023 ONSC 4199 at para 22.

<sup>57</sup> Fifth Report, *supra* note 13 at para 38.

45. On a motion to pass accounts, the test is to consider the "overriding principle of reasonableness", with the predominant consideration in such assessment being the overall value contributed by the Monitor and its counsel.<sup>58</sup>

46. To assist courts in evaluating whether a court-appointed officer's fees are fair and reasonable, the Ontario Court of Appeal has recognized the following list of non-exhaustive factors:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Monitor's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.<sup>59</sup>

47. Applying these factors to the present case, the Applicants respectively submit that the accounts of the Monitor and Stikeman during the Fee Periods are fair and reasonable, and should be approved, specifically noting that:

---

<sup>58</sup> *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at paras 32-33; *Nortel Networks Inc.*, 2022 ONSC 6680 at para 10;

<sup>59</sup> *Ibid* at para 11.

- (a) the Monitor, with the assistance of Stikeman, carried out extensive activities during the Fee Periods, including: (a) conducting the SISP and reviewing potential bids; (b) drafting materials for and attending various case conferences in connection with the Final Bell litigation; (c) conducting extensive document review and analysis in connection with the Final Bell litigation; (d) communicating with Health Canada with respect to certain cannabis licences; (e) participating and assisting the Applicants in discussions with landlords, suppliers, other creditors and employees related to these CCAA Proceedings and responding to requests for information from such parties; and (f) monitoring the Applicants' receipts and disbursements, including reviewing and commenting on the Applicants' reporting requirements under the DIP Loan;<sup>60</sup>
- (b) the time spent is proportional to the significant role, responsibilities and activities undertaken by the Monitor and Stikeman; and
- (c) the fees, disbursements and other costs incurred by the Monitor and Stikeman are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the ARIO.

48. Accordingly, it is respectfully submitted that the factors enumerated above support the conclusion that the remuneration of the Monitor and Stikeman is fair and reasonable and their fees and disbursements for the Fee Periods should be approved.

---

<sup>60</sup> Fifth Report, *supra* note 13 at para 11; Third Report of the Monitor dated May 14, 2024 at para 12.

**PART V: RELIEF REQUESTED**

49. For the foregoing reasons, the Applicants respectfully requests that this Honourable Court grant the Stay Extension and Fee Approval Order, substantially in the form included at Tab 3 of its Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22<sup>ND</sup> DAY OF AUGUST, 2024.**

*Bennett Jones LLP*

---

Bennett Jones LLP

## SCHEDULE A – LIST OF AUTHORITIES

### *Cases Cited*

1. [1057863 BC Ltd \(Re\), 2022 BCSC 876](#)
2. [Bank of Nova Scotia v. Diemer, 2014 ONCA 851](#)
3. [Canwest Global Communications Corp, 2011 ONSC 2215](#)
4. [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#)
5. [Crystallex International Corp., Re, 2012 ONSC 2125](#)
6. [Laurentian University of Sudbury, 2021 ONSC 1098](#)
7. [Laurentian University of Sudbury, 2022 ONSC 2927](#)
8. [Nordstrom Canada Retail, Inc., 2023 ONSC 4199](#)
9. [Nortel Networks Inc., 2022 ONSC 6680](#)
10. [Re Clover Leaf, 2019 ONSC 6966](#)
11. [Re Timminco Limited, 2012 ONSC 2515](#)
12. [Target Canada Co, 2015 ONSC 303](#)
13. [Target Canada Co. \(Re\), 2015 ONSC 7574](#)
14. [U.S. Steel Canada Inc, \(Re\), 2017 ONSC 1967](#)
15. [Urbancorp Cumberland 2 GP Inc., Re., 2022 ONSC 3248](#)

## SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

### Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

#### Section 11.02

##### **Stays, etc. – initial application**

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

##### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. Court File No.: CV-24-00715773-00CL  
C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC.,  
BZAM CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN  
LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD  
HOLDING CORP. AND FINAL BELL CORP.**

---

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

---

**FACTUM OF THE APPLICANTS**

---

**BENNETT JONES LLP**

3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

Mike Shakra (LSO# 64604K)

Tel: (416) 777-6236

Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

Andrew Froh (LSBC# 517286)

Tel: (604) 891-5166

Email: [froha@bennettjones.com](mailto:froha@bennettjones.com)

Jamie Ernst (LSO# 88724A)

Tel: (416) 777-7867

Email: [ernstj@bennettjones.com](mailto:ernstj@bennettjones.com)

Lawyers for the Applicants