

**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 PLANET ORGANIC HEALTH CORP. AND DARWEN HOLDINGS LTD.**

Applicants

**FOURTH REPORT OF THE MONITOR  
DATED JUNE 16, 2010**

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**INTRODUCTION**

1. On April 29, 2010, Planet Organic Health Corp. ("**Planet**" or the "**Company**") and Darwen Holdings Ltd. ("**Darwen**") (collectively, the "**Applicants**") filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the Order of this Honourable Court dated April 29, 2010 (the "**Initial Order**").
2. Pursuant to the Initial Order, Deloitte & Touche Inc. ("**Deloitte**") was appointed as the Monitor of the Applicants (the "**Monitor**") in the CCAA proceedings and a stay of proceedings was granted in favour of the Applicants. The stay of proceedings has been extended until June 18, 2010 (the "**Stay Period**").
3. The Monitor has provided this Honourable Court with the following reports:
  - i. a pre-filing report of the Proposed Monitor dated April 29, 2010 (the "**Pre-Filing Report**") in connection with the Applicants' application for protection under the CCAA;
  - ii. a first report of the Monitor dated May 11, 2010 (the "**First Report**") in connection with the Applicants' motion to adjourn and postpone the Applicants' annual general

- meeting;
- iii. a second report of the Monitor dated May 19, 2010 (the “**Second Report**”) in connection with the Applicants’ motion to extend the Stay Period to June 18, 2010; and
  - iv. a third report of the Monitor dated May 28, 2010 (the “**Third Report**”) in connection with the Applicants’ motion for:
    - a. an Order approving the Acquisition Agreement dated May 19, 2010 between the Applicants and The Catalyst Capital Group Inc. on behalf of funds managed by it (“**Catalyst**”) that resulted from the sales process (the “**Acquisition**”); and
    - b. an Order approving the proposed Directors’ & Officers’ Claims Procedure (the “**D&O Claims Procedure**”).
4. Copies of the Initial Order, the Pre-Filing Report, the First Report, the Second Report, the Third Report, all motion records and orders in the CCAA proceedings, and certain other documents related to the CCAA proceedings have been posted and are available on the Monitor’s website at [www.deloitte.com/ca/planet-organic](http://www.deloitte.com/ca/planet-organic).

## **PURPOSE**

5. The purpose of this fourth report of the Monitor (the “**Fourth Report**”) is to provide information on the:
- i. operations of the Company since the Third Report;
  - ii. closing of the Catalyst Acquisition;
  - iii. status of, and steps taken under, the Directors’ & Officers’ Claims Procedure Order (the “**D&O Claims Procedure Order**”);
  - iv. Applicants’ request for an extension of the Stay Period; and
  - v. Monitors’ conclusions and recommendations.

## **TERMS OF REFERENCE**

6. In preparing this Fourth Report, the Monitor has relied upon unaudited financial information, the Applicants' books and records, the Affidavit of Darren Krissie sworn April 29, 2010, the Affidavit of Darren Krissie sworn May 20, 2010, the Affidavit of Tripp Baird sworn May 20, 2010, the unsworn Affidavit of Darren Krissie and discussions with management of the Company and its financial and legal advisors. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of this information and, accordingly, the Monitor expresses no opinion or other form of assurance regarding any such information. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants Handbook has not been performed. Future oriented financial information referred to or relied upon in this Third Report is based on management's assumptions regarding future events and conditions that are not ascertainable. Accordingly, actual results achieved will vary from any such information, and the variations may be material.
7. Unless otherwise stated, all monetary amounts contained in this Fourth Report are expressed in Canadian dollars.
8. Capitalized terms used in this Fourth Report but not defined are as defined in the Pre-Filing Report, the First Report, the Second Report, the Third Report and the Approval and Vesting Order dated June 4, 2010 (the "**Approval and Vesting Order**").

## **OPERATIONS OF THE COMPANY SINCE THE THIRD REPORT**

9. Up to the close of the Acquisition on June 4, 2010 (the "**Closing Date**"), the Company continued to pay its employees and remit statutory deductions in the normal course of business, as authorized by the Initial Order.
10. Highlights of the Company's financial performance for the period from May 22, 2010 to the Closing Date are presented in the Cash Flow Variance Analysis annexed hereto as Exhibit "A". The Monitor's comments on the financial performance of the Company during this period are as follows:

- i. Compared with the Cash Flow Statement provided as Exhibit “B” to the Third Report, the Company experienced a cumulative unfavourable variance of approximately \$1.5 million in respect of ending cash flows for Week 5 and Week 6. Cash flows from operations resulted in a favourable variance to forecast of approximately \$0.1 million which was offset by a disbursement of approximately \$1.6 million to 7562578 Canada Inc., comprised of funds on hand in excess to the approximately \$2.1 million required to fund the Cash Reserve.
- ii. The Company experienced lower sales than initially projected during this two week period, with deposits from sales having a cumulative unfavourable variance compared to forecast of approximately \$142,000. Off-setting this unfavourable variance was a deposit of approximately \$156,000 related to the sale of assets removed subsequent to the closure of the Bayview, Ontario location to Mrs. Green’s in the US.
- iii. Trade payable disbursements had a cumulative favourable variance compared to forecast of \$83,000. The Company incurred higher trade disbursements in weeks past, increasing inventory levels and reducing stock requirements for Week 5 and Week 6. In addition, the trade payable expenses included utility expenses, which were originally forecast in the rent expense line item.
- iv. Operating expenses had a cumulative unfavourable variance of approximately \$32,000, due to timing differences related to the payment of professional services for accounting and tax related engagements. Rent expense had a cumulative favourable variance of approximately \$80,000, mainly attributable to utility costs forecasted as rent expense, but recorded under trade payables as discussed above. Payroll costs were fairly consistent with the Company’s forecast, with a favourable variance of approximately \$25,000.
- v. Restructuring costs had a cumulative unfavourable variance of approximately \$36,000, due to the timing of receipt of invoices from the Applicants’ restructuring advisors. Professional fees for all restructuring advisors were paid up to and including May 30<sup>th</sup>, in anticipation of the closing of the Acquisition.

11. At the close of Week 6 of the Stay Period, cash on hand amounted to approximately \$2.1 million. As presented in the Updated Cash Flow Statement annexed hereto as Exhibit “B”, this cash on hand was distributed to the Monitor to fund the Cash Reserve in Week 7.
12. As at the Closing Date, all expenses incurred were paid from the working capital of the Company. Going forward, Catalyst will be responsible for the expenses it has assumed as the new owner of the business, and the Cash Reserve held in trust with the Monitor will respond to certain other remaining liabilities of the Applicants, as per the terms of the Cash Reserve and the Approval and Vesting Order as further described below.

### **CLOSING OF THE ACQUISITION**

13. The Catalyst Acquisition Agreement was approved by this Honourable Court on June 4, 2010 pursuant to the terms of the Approval and Vesting Order. Closing under the Catalyst Acquisition Agreement occurred later in the day on June 4, 2010.
14. On closing, and in accordance with the terms of the Acquisition Agreement, Catalyst acquired all of the operating assets of the Applicants, except for the Vaughan Lease (and the non-operating Nanaimo Lease). In acquiring the assets of Planet Organic, Catalyst acquired the shares of the U.S. holdco that owns Mrs. Green’s in the U.S.
15. With respect to Darwen, Darwen’s operating business and assets were sold in the pre-CCAA non-core asset sale (which closed in February 2010) and, accordingly, the only assets that Catalyst acquired from Darwen on the Closing Date were certain remaining accounts receivable.
16. Under the Acquisition Agreement, Catalyst assumed essentially all of the Applicants’ contracts and leases and all of the Applicants’ trade payables, as discussed in the Third Report. It is the Monitor’s understanding that the vast majority of the employees were notified of the termination of their employment with the Applicants on June 4, 2010; and most of the remaining employees (being those who were on vacation or otherwise away from work) were notified during the week of June 7, 2010.

17. The Monitor understands, to date, approximately 90% of the employees (excluding Vaughan employees) have accepted new employment offers with Catalyst.
18. All conditions precedent to closing of the Acquisition were either fulfilled or waived on or before the Closing Date. The conditions precedent to closing of the Acquisition included the following:
  - i. the Initial Order shall not have been stayed, vacated, reversed or amended without the prior consent of Catalyst;
  - ii. the Approval and Vesting Order sought shall have been granted by the Court on or before June 4, 2010 and shall not have been stayed, varied or vacated, and no order shall have been issued to restrain or prohibit the acquisition;
  - iii. the D&O Claims Procedure Order shall have been granted on the day that the Approval and Vesting Order is granted, and shall not have been stayed, varied or vacated; and
  - iv. all payments and distributions by the Applicants shall have been in accordance with the 13-week cash flow forecast filed with the Court in connection with the Initial Order, subject to an allowed 15% cumulative variance.

These conditions, and others, all having been satisfied in accordance with the terms of the Acquisition Agreement and the Approval and Vesting Order, the Monitor delivered the Monitor's Certificate attached as Schedule A to the Approval and Vesting Order, to Catalyst on the evening of Friday, June 4, 2010. The Monitor's Certificate was filed with this Honourable Court on the morning of Monday, June 7, 2010.

19. Pursuant to the Approval and Vesting Order, a Cash Reserve was established with the Monitor on the Closing Date, to be held in trust for the benefit of the Persons entitled to be paid Cash Reserve Costs per the terms of the Acquisition Agreement and the Approval and Vesting Order. The amount funded for the Cash Reserve of \$2,082,502 was \$51,221 higher than the amount of the Cash Reserve per the Approval and Vesting Order due to a

change in the exchange rate for the obligation to pay the PCG Transaction Fee. Going forward, the Cash Reserve will fund the following obligations of the Applicants:

- i. obligations secured by the Administration Charge established in the Initial Order to the extent required for the completion of the CCAA case up to an aggregate maximum amount of \$300,000;
  - ii. obligations secured by the D&O Charge established in the Initial Order in respect of any claims covered by the Charge and arising prior to the Closing Date up to an aggregate maximum amount of \$500,000;
  - iii. all claims under subsection 6(5)(a) of the CCAA in respect of the excluded employees to the extent not paid by the Applicants or assumed by Catalyst prior to the Closing Date; and
20. On June 8, 2010, the Monitor paid from the Cash Reserve approximately CDN\$1.2 million to PCG in respect of the amount owing to PCG under the April 20, 2010 letter agreement noted above and in accordance with the Approval and Vesting Order.

#### **STATUS OF AND STEPS TAKEN UNDER THE D&O CLAIMS PROCEDURE**

21. The D&O Claims Procedure Order was granted by this Honourable Court on June 4, 2010, the same day that this Honourable Court granted the Approval and Vesting Order. The granting of the D&O Claims Procedure Order was a condition precedent to closing which was satisfied as required under the terms of the Acquisition Agreement.
22. The D&O Claims Procedure is intended to determine claims, if any, against the Applicants' directors and officers during the period from the commencement of the CCAA proceedings to the Closing Date, such that the amount of any claims that may properly be made against the \$500,000 set aside in the Cash Reserve for such claims can be determined. At the end of this process, any remaining amounts will be distributed to Catalyst per the terms of the Acquisition Agreement and the Approval and Vesting Order.
23. Under the D&O Claims Procedure, any creditor asserting a claim against the directors and officers of the Applicants is required to file a proof of claim with the Monitor prior to 4:00

p.m. (EDT) on June 25<sup>th</sup> 2010, or such later date as may be ordered by the Court (the “**Claims Bar Date**”).

24. Since the date of the D&O Claims Procedure Order, the Monitor has:
- (a) made publicly available a copy of the Proof of Claim Document Package for the D&O Claims Process on the Monitor’s website at [www.deloitte.com/ca/planet-organic](http://www.deloitte.com/ca/planet-organic); and
  - (b) published notices on two separate days, within 5 business days of the D&O Claims Procedure Order, regarding the D&O Claims Procedure and the Claims Bar Date in each of the Globe and Mail, National Post, Toronto Star, Calgary Herald and Edmonton Journal.
25. To date, the Monitor has received one claim pursuant to the D&O Claims Procedure. The claim filed did not include supporting documentation and the Monitor is currently following up to obtain required information to assess the validity of the claim.

#### **APPLICANTS’ REQUEST FOR AN EXTENSION OF THE STAY PERIOD**

26. The Applicants have notified the Monitor of their intention to request an extension of the Stay Period to allow for the completion of the transition of the business and the completion of the D&O Claims Procedure. The Applicants have requested an extension of the Stay Period to July 30, 2010 to allow for this.
27. In support of the Applicants’ request for an extension of the Stay Period to July 30, 2010, the Applicants are providing an updated weekly cash flow forecast up to and including July 30, 2010, a copy of which is attached hereto as Exhibit B.

#### **MONITOR’S CONCLUSIONS AND RECOMMENDATIONS**

28. Based on the Applicants’ cash flow forecast, the Applicants appear to have sufficient available funding resources to support an extension of the Stay Period up to and including July 30, 2010.



29. It is the view of the Monitor that the Applicants continue to act in good faith and with due diligence and, as such, the Monitor supports the Applicants' request for an extension of the Stay Period to July 30, 2010.

All of which is respectfully submitted at Toronto, Ontario, this 16th day of June, 2010.

**DELOITTE & TOUCHE INC.,**  
**in its capacity as Monitor of**  
**Planet Organic Health Corp. and Darwen Holdings Ltd.**

Per:

A handwritten signature in black ink, appearing to read 'Pierre Laporte', written in a cursive style.

Pierre Laporte, CA, CIRP  
President

A handwritten signature in black ink, appearing to read 'Huey Lee', written in a cursive style.

Huey Lee, MBA, CMA, CIRP  
Vice President

## Exhibit A – Cash Flow Variance Analysis

	<u>Forecast</u>	<u>Actual</u>	<u>Variance</u>
Two week period beginning May 23, opening cash balance	4,047,458	4,047,458	-
Cash Outflows			
Trade Payables	(1,658,931)	(1,575,957)	82,974
Operating Expenses	(164,552)	(196,751)	(32,199)
Payroll	(515,832)	(491,046)	24,786
Rent	(298,875)	(218,393)	80,482
Maintenance Capex	(25,000)	-	25,000
Disbursement to 7562578 Canada Inc.	-	(1,616,208)	(1,616,208)
Total outflows	<u>(2,663,190)</u>	<u>(4,098,355)</u>	<u>(1,435,165)</u>
Cash Inflows			
Deposits - sales	2,534,605	2,393,083	(141,522)
Deposits - other	-	155,777	155,777
Total inflows	<u>2,534,605</u>	<u>2,548,860</u>	<u>14,255</u>
Net weekly operating cash position	(128,585)	(1,549,495)	(1,420,910)
Exchange difference on USD accounts	-	498	498
Disbursements - Restructuring	(380,000)	(415,959)	(35,959)
Two week period ending June 4, closing cash balance	<u><u>3,538,873</u></u>	<u><u>2,082,502</u></u>	<u><u>(1,456,371)</u></u>

## Exhibit B – Revised Cash Flow Statement

### Planet Organic Health Corp.

13-Week Operating Cash Flow Forecast

	ACT	ACT	ACT	ACT	ACT	ACT	ACT	FCST	FCST	FCST	FCST	FCST	FCST
Week #	1	2	3	4	5	6	7	8	9	10	11	12	13
Week ending	1-May-10	8-May-10	15-May-10	22-May-10	29-May-10	5-Jun-10	12-Jun-10	19-Jun-10	26-Jun-10	3-Jul-10	10-Jul-10	17-Jul-10	24-Jul-10
<b>Forecast Opening Cash Balance</b>	<b>\$3,132,825</b>	<b>\$4,115,104</b>	<b>\$4,134,599</b>	<b>\$3,843,965</b>	<b>\$4,047,458</b>	<b>\$3,890,504</b>	<b>\$2,082,502</b>	-	-	-	-	-	-
<b>Cash Outflows</b>													
Trade Payables	-	\$888,106	\$765,874	\$949,362	\$771,235	\$804,722							
Operating Expenses	10,698	105,785	38,059	148,487	44,330	152,421							
Payroll Expense	-	-	509,885	-	491,046	-		75,000					
Rent Expense	-	238,049	-	-	-	218,393							
Maintenance Capex	-	-	-	-	-	-							
Disbursement to 7562578 Canada Inc.						1,616,208							
Disbursement of Cash Reserve to Monitor							2,082,502						
<b>Total Cash Outflows</b>	<b>\$10,698</b>	<b>\$1,231,940</b>	<b>\$1,313,818</b>	<b>\$1,097,849</b>	<b>\$1,306,611</b>	<b>\$2,791,744</b>	<b>\$2,082,502</b>	-	<b>\$75,000</b>	-	-	-	-
<b>Cash Inflows</b>													
Sales Forecast	\$800,634	\$1,326,322	\$1,315,844	\$1,343,270	\$1,287,703	\$1,105,380							
Other Receipts	250,064	11,024	(3,928)	20,827	(2,596)	158,871		75,000					
<b>Total Cash Inflows</b>	<b>\$1,050,698</b>	<b>\$1,337,346</b>	<b>\$1,311,916</b>	<b>\$1,364,097</b>	<b>\$1,285,107</b>	<b>\$1,264,251</b>	-	-	<b>\$75,000</b>	-	-	-	-
<b>Net Weekly Cash Position</b>	<b>\$1,040,000</b>	<b>\$105,406</b>	<b>(\$1,902)</b>	<b>\$266,248</b>	<b>(\$21,504)</b>	<b>(\$1,527,493)</b>	<b>(\$2,082,502)</b>	-	-	-	-	-	-
Restructuring Costs	(57,721)	(85,911)	(288,732)	(62,755)	(135,450)	(280,509)	-						
<b>Forecast Bank Balance</b>	<b>\$4,115,104</b>	<b>\$4,134,599</b>	<b>\$3,843,965</b>	<b>\$4,047,458</b>	<b>\$3,890,504</b>	<b>\$2,082,502</b>	-	-	-	-	-	-	-

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

Court File No.:10-8699-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FOURTH REPORT OF THE MONITOR**

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