

Court File No.

10-8699-
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**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

**APPLICATION RECORD
(RETURNABLE ON APRIL 29, 2010)**

April 29, 2010

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**Lawyers for The Catalyst Capital Group Inc., on behalf of funds
managed by it**

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TAB 1

Court File No.

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APPLICANTS

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing at 10:00 am before a judge on Thursday, April 29, 2010 at the Court House, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 2M2.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: April 29, 2010

Issued by _____
Local registrar

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**Lawyers for The Catalyst Capital Group Inc., on behalf of funds
managed by it**

APPLICATION

1. The Applicants, Planet Organic Health Corp. ("Planet Organic") and its subsidiary, Darwen Holdings Ltd. ("Darwen" and collectively, the "Applicants"), make application for an Initial Order under the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36, as amended (the "CCAA") in the form attached as Tab "3" to the Application Record, *inter alia*:

- (a) abridging the time for service of this Notice of Application and dispensing with service on any person other than those served;
- (b) declaring that the Applicants are parties to which the CCAA applies;
- (c) appointing Deloitte & Touche Inc. as Monitor to monitor the assets, businesses and affairs of the Applicants;
- (d) staying all proceedings taken or that might be taken in respect of the Applicants, its directors and officers, and the Monitor;
- (e) adjourning and post-poning the annual meeting of shareholders for Planet Organic; and
- (f) such further and other relief as this Honourable Court may deem just.

2. The grounds for the application are:

- (a) Planet Organic is a TSX Venture Exchange listed publicly traded corporation, incorporated in Alberta (ticker symbol: POH: TSX-

V) and a leading Canadian/US retailer of organic products. Planet Organic has retail operations across Canada, in Ontario, British Columbia, Nova Scotia and Alberta, as well as retail operations in the United States (in New York State and Connecticut) through US incorporated subsidiaries;

- (b) Darwen is a non-operating Saskatchewan corporation and a wholly owned subsidiary of Planet Organic;
- (c) Planet Organic's growth into a national natural and organic foods retailer was accomplished through a series of strategic acquisitions financed by approximately \$43 million in working capital, term debt and subordinated debt, which debt was guaranteed by, amongst others, Darwen;
- (d) the recent global economic downturn has had a significant negative impact on Planet Organic's business in both Canada and the US and has put it in default of its various secured loans as is more particularly set out in the supporting affidavit of Darren Krissie;
- (e) as a result of its financial condition, Planet Organic:
 - i. undertook a restructuring of its management and operations in 2008 and 2009;
 - ii. attempted to refinance and/or recapitalize the business; and

iii. undertook a divestiture of non-core assets process in 2009-2010, all with a view to reducing secured debt.

- (f) notwithstanding the non-core divestiture and pay down of debt, Planet Organic remains severely overleveraged;
- (g) as efforts to fully restructure or refinance have failed, the Applicants turned their focus on a sale of the core operations. The Catalyst Group Inc. ("Catalyst"), which has taken an assignment of the Applicants' secured indebtedness (the "Secured Indebtedness"), intends to complete an acquisition transaction whereby Catalyst will acquire all of the Applicants' assets, including its shares in its US subsidiaries (the "Purchased Assets") in exchange for a portion of the Secured Indebtedness;
- (h) the Applicants are insolvent within the meaning of the CCAA as they have claims against them that exceed \$5,000,000 and therefore are companies to which the CCAA applies;
- (i) a liquidation analysis of the Applicants suggests that the liquidation value of the Applicants is substantially less than the Secured Indebtedness;
- (j) Catalyst has demanded repayment of the Secured Indebtedness (because of existing defaults) and the Applicants are not able to repay that debt;

- (k) if granted relief under the CCAA, the Applicants intend to operate post-filing in the normal course while negotiating the terms of a deal with Catalyst, and failing which to return to court with other alternatives;
- (l) the grounds as set out in greater detail in the affidavit of Darren Krissie sworn April 28, 2010, in support of this application;
- (m) the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (n) Rules 2.03, 3.02, 14.05(2) and 16 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
- (o) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- a) Affidavit of Darren Krissie, sworn on April 29, 2010; and
- b) such further and other evidence as counsel may advise and this Honourable Court may permit.

April 29, 2010

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Lawyers for the Applicants

TAB 2

Court File No.

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APPLICANTS

AFFIDAVIT OF DARREN KRISSIE

(Sworn April 29, 2010)

I, **DARREN KRISSIE** of the City of Edmonton, in the Province of Alberta,
MAKE OATH AND SAY:

1. I am a co-founder, current Executive Vice-President, and one member of the two-member Office of the Chief Executive Officer ("OCEO") of the Applicant, Planet Organic Health Corp. ("Planet Organic"). Prior to my appointment as EVP, I served as the Vice-President Business Development and Chief Financial Officer of Planet Organic since its inception. In addition, I am an director and officer of the Applicant, Darwen Holdings Ltd. ("Darwen"), which is a subsidiary of Planet Organic. As such, I have personal knowledge of the matters to which I hereinafter depose, save and except where stated to be based on information and belief, in which case, I do verily believe the same to be true.

2. I swear this affidavit in support of an application under the *Companies' Creditors Arrangement Act* (the "CCAA").

3. Unless otherwise indicated, all monetary amounts referenced in this affidavit are expressed in Canadian dollars.

I. Background

A. Overview of the Business

4. Planet Organic is a TSX Venture Exchange listed publicly traded corporation, incorporated under the Business Corporations Act (Alberta) (ticker symbol: POH: TSX-V) and is a leading Canadian/US retailer of organic products. Planet Organic has retail operations across Canada, in Ontario, British Columbia, Nova Scotia and Alberta, and retail operations in the United States (in New York State and Connecticut), which operate through its wholly owned subsidiary, Planet Organic Holding Corp. (the "US Holdco"), dba Mrs. Green's Natural Markets ("Mrs. Green's").

5. Planet Organic started as a single store in Alberta in 2001 under the brand name Planet Organic Market ("POM"), with a view to participating in the natural and organic foods segment of the food industry. This industry segment has experienced double-digit annual growth in recent years. This first store was followed by the acquisition of stores located in Victoria, British Columbia, and Calgary, Alberta, which were rebranded as POM stores.

6. POM distinguishes itself from its competition through its commitment to organic and natural products sold in an average store size of approximately 9,000 square feet in

locations with lower population densities and attractive demographics where larger competitors cannot support stores.

7. This early success in Western Canada was followed by a period of expansion through which Planet Organic built a national, natural/organic sales and distribution business. This expansion was accomplished by a series of strategic acquisitions meant to grow and expand the business, summarized as follows:

- (a) in July 2004, Darwen and Sangster's Enterprises Ltd., two (2) companies which operated a chain of 43 franchised small footprint vitamin stores with locations across Canada, were acquired by Planet Organic. These two (2) companies were subsequently amalgamated as Darwen in December 2004 ("Sangster's"). Planet Organic also acquired S-5 Holdings Ltd., a holding corporation which held certain real property leases for the Sangster's retail locations, as part of this transaction;
- (b) in August 2005, Planet Organic acquired 616407 Alberta Ltd. (operating as "Newfound Health"), a franchise chain of supplement and body care locations in Alberta whose operations were subsequently folded into Sangster's;
- (c) in January 2005, Trophic Canada Limited ("Trophic"), one of Canada's leading manufacturers of natural supplements located in Penticton, British Columbia, was acquired by Planet Organic with a view to vertically integrating its vitamin supply into the Planet Organic family and expanding Trophic's retail presence throughout Canada. Trophic was vertically amalgamated with Planet Organic on July 1, 2007;

- (d) in June 2006, Healthy's, The Athletes Edge Inc., Amdek Marketing Inc., and Hatem Inc. (a chain of seven (7) vitamin stores in Toronto), were acquired by Planet Organic. These three entities were amalgamated into Healthy's, The Athletes Edge Inc. on July 1, 2007. Healthy's, The Athletes Edge Inc. was subsequently vertically amalgamated with Planet Organic on January 1, 2010 and became the Healthy's division of Planet Organic;
- (e) in September 2006, Planet Organic acquired The Big Fresh Inc. a single store located in Edmonton, Alberta, which was rebranded as a POM store and was amalgamated with Planet Organic on July 1, 2007; and
- (f) in July 2007, eleven (11) separate legal entities operating as Mrs. Green's Natural Food Markets, Inc., a U.S chain with nine (9) stores in New York state and two (2) stores in Connecticut was acquired along with a management company by Planet Organic through US Holdco which was incorporated for the purpose of making the purchase. Mrs. Green's is a leading small-format natural organic food retailer and its stores are of similar size and concept to the POM stores in Canada.

8. The total combined acquisition cost was approximately \$43 million, a significant portion of which was financed through working capital, term debt and subordinated debt, described in more detail in Section B.4 below. A chart outlining the corporate structure of Planet Organic and its subsidiaries as of January 31, 2010, is attached hereto as **Exhibit "A"**.

9. As set out in greater detail in paragraphs 55 to 58 below, there were a series of subsequent divestiture transactions (the "Non-Core Asset Sales") to pay down debt

during February and March 2010. A chart outlining the current corporate structure of Planet Organic and subsidiaries after completing the Non-Core Asset Sales is attached hereto as **Exhibit "B"**.

10. Darwen is a wholly owned subsidiary of Planet Organic incorporated under the laws of Saskatchewan which operated the "Sangster's" business. As one of the Non-Core Asset Sales, the main assets of the "Sangster's" business were acquired by JAMM Enterprises, Inc. which left Darwen as a non-operating shell company with significant liabilities, as it guaranteed the liabilities of Planet Organic, and a few assets, including accounts receivable.

11. Planet Organic currently operates nine (9) natural food supermarkets in Canada under the POM banner of which six (6) are in Western Canada, two (2) are in Ontario and one (1) is in Nova Scotia. Eleven (11) natural food supermarkets are owned and operated by US Holdco's subsidiaries in the United States under the Mrs Green's brand.

B. Planet Organic's Current Operations

12. Planet Organic is a reporting issuer, as such term is defined pursuant to applicable securities legislation in the Provinces of Alberta and British Columbia. Planet Organic is currently in good standing with the British Columbia and Alberta Securities Commissions.

B.1 Leases

13. The POM stores in Canada and Mrs Green's stores in the United States operate from leased premises. All of the leased premises are owned by arm's length parties. All of the leases are currently in good standing.

B.2 Employees

14. There are approximately 500 employees employed in POM stores, of which 300 are full time and 200 are part-time. US Holdco and its subsidiaries in the US, collectively, employ a total of approximately 300 employees of which 90 are full-time and 210 are part-time. All of the employees are currently non-unionized. A recent attempt to unionize the workers at Planet Organic's Port Coquitlam store in British Columbia was unsuccessful.

15. Planet Organic is current with employee related obligations. There are no employee registered or unregistered pension plans.

B.3. Unsecured Creditors

16. Planet Organic's unsecured net debt as it appears from its books and records, as at April 22, 2010 is \$1,051,696.77. Planet Organic is current with the majority of its unsecured creditors.

17. As of March 31, 2010, the inter-company payables break down as follows:

- (a) \$1,337,236 is owing to Darwen; and
- (b) \$2,522,027 is owing from US Holdco.

18. Planet Organic is currently a party to the following legal proceedings:

- (a) on January 15, 2010, Ms. Nora Aboudaya commenced an application at the Human Rights Tribunal of Ontario against Planet Organic alleging that she was discriminated against her in the course of her employment and is seeking \$32,500 in financial remedies, and the implementation of policies and training for Planet Organic's staff.

B.4 Secured Creditors

19. As mentioned, Planet Organic significantly increased its borrowing to finance the acquisition of Mrs. Green’s, the expansion and development of new POM stores, and the upgrading/remodelling of existing facilities. As a result, Planet Organic has several long term debt instruments, including term debt and convertible debt. The debt facilities are denominated in US dollars or Canadian dollars. Some of the debt facilities are recorded on Planet Organic books and some on US Holdco’s books.

B.4.1 The Toronto-Dominion Bank

20. The Toronto-Dominion Bank (“TD”) provided secured loans in the amount of US\$4,000,000 in a Canadian revolving credit commitment, US\$3,500,000 revolving credit commitment and US\$4,000,000 in a term loan (of which US\$2.8 million was drawn). TD was repaid in full on March 17, 2010 from the proceeds of the Non-Core Asset Sales. Following repayment of its loans, TD discharged its security registered against Planet Organic and against the US Holdco.

B.4.2 Ares Capital Corporation

21. Ares Capital Corporation arranged for secured financing in the amount of US\$17.5 million in term loans from a series of lenders and, prior to the sale of such loans (as described in paragraph 25), acted as agent for those lenders (Ares Capital Corporation and the lenders are collectively referred to as “Ares”) under the terms of the Amended and Restated Term Loan Agreement, dated as of November 30, 2007 (the “Ares Loan”). Attached and marked as Exhibit “C” is a copy of said agreement.

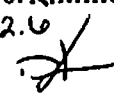
22. Ares and Partnership Capital Growth Fund I LP, a fund owned/operated by an affiliate of PCG (defined below), also arranged secured financing of US\$11 million for Planet Organic by way of convertible notes pursuant to a Note Purchase Agreement, dated July 3, 2007 (the "Ares/PCG Loan"). A copy of the Note Purchase Agreement and two (2) convertible notes are attached and marked as Exhibit "D", "E" and "F", respectively.

23. Pursuant to the Ares Loan and Ares/PCG Loan, Planet Organic and its subsidiaries provided security to Ares over all of its assets, including security over US Holdco. As noted above, Darwen guaranteed the obligations of Planet Organic under the Ares Loan.

24. As of the most recent audited financial statements for the fiscal year ended June 30, 2009, Planet Organic owed US\$36,412,069 in long-term debt and notes to these secured creditors as determined under Canadian generally accepted accounting principles. The face value of the debt outstanding at June 30, 2009 was US\$35,683,294. As of March 16, 2010, this number rose to approximately US\$38.5 million. As a result of the Non-Core Asset Sales as of March 17 2010, the Planet Organic debt outstanding to secured creditors was reduced to approximately US\$29.7 million.

B.4.3 Catalyst Acquisition of Indebtedness

25. On or about April 20, 2010, The Catalyst Capital Group Inc. ("Catalyst") acquired the Ares Loan, the Ares/PCG Loan and the related security by way of assignment. As a result, Catalyst is now Planet Organic's senior secured lender. As at the date of the swearing of this Affidavit, Catalyst is owed approximately US\$~~30.1~~ million.

\$ 32.6


B.4.4 Other Secured Creditors

26. There are a total of four (4) other secured creditors of Planet Organic who are registered in Alberta and each appears to hold security over specific equipment. There is one (1) other secured creditor of Darwen who is registered in Alberta and who appears to hold security over specific equipment.

B.4.5 Personal Property Security Searches

27. Attached hereto for informational purposes are true copies of personal property security searches from each of Ontario, Alberta, British Columbia and Nova Scotia marked as Exhibits "G", "H", "I" and "J", respectively.

B.5 Share Capital

28. Planet Organic is authorized to issue an unlimited number of common shares and an unlimited number of preferred shares, of which 34,664,794 common shares have been issued and are outstanding. No preferred shares have been issued.

29. Planet Organic has approved a stock option plan whereby options may be granted to employees, consultants, officers and directors totalling up to 10% of its issued and outstanding common shares. Other than unexercised options expiring, there have been no share option transactions from June 30, 2009 to the date of this Affidavit. There were no warrant transactions from June 30, 2009 to the date of this Affidavit.

30. Mr. Ron Francisco, who is the majority shareholder of Planet Organic, holds approximately 67% of the outstanding shares of Planet Organic and is a controlling shareholder of a major supplier to Planet Organic, Horizon Distributors Ltd.

B.6 Governmental Agencies

31. Planet Organic is current on its governmental remittances, including source deductions, GST and provincial sales taxes.

B.7 Assets vs. Liabilities

32. Attached and marked as Exhibits "K" and "L" are copies of Planet Organic's last audited financial statement for the year ending June 30, 2009 and the unaudited financial statement for the period ending December 31, 2009.

33. As is evident from both statements, there is significant goodwill associated with the ongoing business, which goodwill would be jeopardized if operations were disrupted.

34. In addition, a liquidation analysis of Planet Organic was undertaken by PricewaterhouseCoopers LLP and suggests that the liquidation value of Planet Organic is substantially less than the secured indebtedness owing to Catalyst.

35. Catalyst has demanded repayment of the loans and Planet Organic is unable to repay said debt.

C. Covenant Defaults in 2008 and 2009

36. The recent global economic downturn did not spare POM in Canada or Mrs. Green's in the US. In FY09, POM stores sales increased 5.4%, yet EBITDA declined from positive \$752,042 to negative (\$225,604), primarily related to \$1.4 million of losses at two new Ontario locations in Vaughan and Markham. In the same period, Mrs. Green's experienced 1.4% sales growth, yet with a resulting EBITDA decline of (US\$209,979).

Consolidated EBITDA declined 15% percent between FY2008 and FY2009. Significant EBITDA declines in both Planet Organic and other non-core business units resulted in debt to EBITDA ratios of 6.2 times, well above allowable covenant levels.

37. Under existing debt arrangements, there are five (5) financial covenants that management regularly monitors and then reports on a quarterly basis. The ratios are:

- (a) total leverage ratio;
- (b) senior leverage ratio;
- (c) fixed charge coverage ratio;
- (d) interest coverage ratio; and
- (e) capital expenditure limits ratio.

38. As a result of the economic pressures caused by the general economic downturn, Planet Organic breached its total leverage ratio by December 31, 2008 and by June 30, 2009, the senior leverage ratio and interest coverage ratio had also been breached.

D. Attempts to Raise Capital/Equity in 2008 and Early 2009

39. Early in 2008, after recognizing that the increased leverage and risk would ultimately affect the viability of the business, Planet Organic decided to initiate a process to raise capital and engaged Canaccord Adams to assist in raising equity through a secondary offering. Canaccord Adams secured a proposed investment at \$1.80 to \$2.00 per share which at the time represented an approximately 10% discount to the then average share price. The secondary offering was blocked by Mr Francisco, because I

understand that he did not want any dilution to existing shareholders and/or an offering of less than \$2.00 per share.

40. After several days of negotiations with Mr. Francisco, the Board of Directors authorized a price of \$2.00 per share because Mr. Francisco would not approve a capital raise below that price. Planet Organic, though, was unable to raise any capital at the price of \$2.00 per share.

41. In early 2009, Planet Organic engaged Partnership Capital Growth LLC ("PCG"), an investment bank based in San Francisco, California, to act as advisor for the purpose of reorganizing or recapitalizing the business or other restructuring alternatives, including a sale and/or divestiture process. In addition to being the financial advisor for Planet Organic, through its affiliate Partnership Capital Growth Fund I LP, PCG is a convertible note holder as referenced in paragraph 22 above. Brent Knudsen who is a principal of PCG is also a member of the Planet Organic's Board of Directors and OCEO.

42. As a result of engaging PCG, Planet Organic has had confidential discussions with a broad group of potential investors and buyers in respect of a sale of or investment in Planet Organic. PCG contacted approximately 213 parties in total over the course of its engagement. However, investor interest waned as Planet Organic's performance continued to deteriorate in 2009.

E. Management and Operational Restructuring in Spring-Summer 2009

43. The covenant breaches and declining financial performance resulted in an in-depth operational review that led to several key management and organizational changes.

44. On May 22, 2009, Mr. Francisco was replaced as CEO with a 2-member OCEO of which I am a member along with Mr. Knudsen. The OCEO was appointed by the Board to fulfill the CEO role on an interim basis. Arthur Warsaw, a specialist in company turnarounds, was hired through PCG as a third party consultant to assist in stabilizing the business and advise the OCEO. Mr. Warshaw brings 50 years of experience leading businesses in a variety of industries.

45. Additionally, in light of the poor operating results Mark Craft and Diane Shaskin, VP of Operations and VP of Marketing, respectively, were terminated and replaced by promoting two (2) individuals from within the organization. Mark Craft was a Company founder and a member of the Board of Directors up to this time.

46. In or about June 2009, a 100-Day Operational Plan was instituted by the OCEO and the Board of Directors, which plan included a full review of corporate strategy, operations, and restructuring opportunities. The operational plan included the following key initiatives:

- (a) board & corporate restructuring, including a complete review and assessment of historic and ongoing results which drove management changes;
- (b) rationalizing core business;
- (c) instituting formal reporting packages and controls focused on awarding incremental performance across key functional areas including revenue, EBITDA, inventory turns, and margin;
- (d) implementing a compensation plan that aligned employee performance with corporate objectives;

- (e) implementing a revised and more efficient/targeted marketing program focused on driving traffic including new in-store training, programs, contests aimed at increasing average sale; and
- (f) monitoring ongoing progress through weekly operating calls and holding regular board meetings.

47. Driven by mounting losses and a lack of visible improvement in performance, the OCEO determined to and completed the closure of the POM store in Markham, Ontario. For similar reasons, it determined to close the Healthy's Vaughan store in February 2010 prior to the sale of those assets. The issues facing Planet Organic were reported to the shareholders in the most recent 2008/2009 Annual Report including that a refinancing and/or divestiture strategy may be pursued.

F. Negotiations with Lenders in Fall 2009

48. Negotiations with Planet Organic's lenders began in earnest in September 2009 with a view to finding an option that would allow Planet Organic to continue as a going concern, including the renegotiation or refinancing of its loan agreements and the covenants therein.

49. Planet Organic and Ares entered into Forbearance Agreements dated September 25, 2009. Planet Organic entered into a Forbearance Agreement with TD, dated September 25, 2009. Under the terms of the Forbearance Agreements, Ares and TD agreed to waive their rights to call the loans due to the covenant breaches until November 30, 2009. Attached and marked as Exhibits "M" and "N" are copies of the Forbearance Agreements.

50. In October 2009, Planet Organic attempted to issue bonus shares into escrow to negotiate with debt holders for a reduction in penalty interest and a prospective conversion of debt to equity. This action was approved by the Board of Directors and conditionally approved by the TSX Venture Exchange. However, Mr. Francisco, via his counsel, objected to the issuance and the TSX Venture Exchange subsequently reversed its conditional approval. Ares' counsel subsequently advised Planet Organic of the impact this may have on Ares' willingness to convert debt to equity and negotiate further forbearance.

51. Notwithstanding the foregoing, Planet Organic was optimistic that negotiations with Ares would be successful and lead to a renegotiation of the debt terms and conditions as all the principal and interest payments to Ares continued (and still continues) to be made. Unfortunately, due to the opposition of Mr. Francisco and, in part, the reversal of approval by the TSX-V, Planet Organic was denied a means by which to convert or reduce the debt in the ordinary course of business. Ares in response thereafter (in November 2009) advised Planet Organic that they wished to end their relationship.

52. In the result, both TD and Ares remained in a position to declare all of the loans in default and demand payment from that point onward. And each demanded that Planet Organic work towards reducing the debts owed to each of them, including by way of the sale of some or all of the assets of business.

G. The Refinancing and Divestiture Strategy in Late 2009 and Early 2010

53. Between September 2009 and November 2009, Planet Organic undertook an extensive effort to refinance its operations in conjunction with PCG. PCG was selected by the Board of Directors based on its industry focus and expertise in the healthy living space generally and in natural and organic food/retail specifically, its track record of success, and existing knowledge of Planet Organic and investors focused in the area.

PCG worked closely with the Board and the OCEO throughout the following:

- (a) the OCEO attempted to issue bonus shares into escrow to negotiate with debt holders for a reduction in penalty interest and a prospective conversion of debt to equity as more particularly discussed in paragraph 50 above. As mentioned, because Mr. Francisco objected to the issuance of such shares, the OCEO began pursuing the sale or recapitalization of assets to pay down debt;
- (b) in December 2009, Planet Organic and PCG approached eight (8) banks with an Request for Proposal ("RFP") for the refinancing of POM and Mrs. Green's debt. Following a full review of diligence materials by each, Planet Organic received three (3) indications of interest to provide financing at debt ratios of 1.5 times to 2.5 times EBITDA. Given Planet Organic's then current ratios were well in excess of prospective new lender parameters, the Board of Directors decided to put on hold further refinancing efforts.
- (c) in November/December 2009, Planet Organic actively began to explore options for a sale of some or all of its assets. Due diligence processes with potential investors commenced for the sales of

certain non-core assets, namely, the Sangster's, Healthy's, and Trophic divisions with a view of reducing debt; and

- (d) PricewaterhouseCoopers LLP was engaged to provide fair market value for the sale of key assets.

54. The hope was that a sale of some assets could be concluded, such that the outstanding debt could be paid down to a more manageable and acceptable level and the core elements of the business kept by Planet Organic, or failing which, a sale of the whole business could be concluded which would maximize realizations and keep the business operating as a going concern with a new owner who was prepared to invest and grow the business.

H. Non-Core Asset Sales

55. As a result, Planet Organic undertook an extensive search for buyers of some or all of the non-core assets of the business with a view to maximizing realizations for all stakeholders. The detail of sales processes are as follows:

(a) **Sangster's/Healthy's Sales Process:**

In Q3 of calendar year 2009, PCG contacted 50 potential investors for the acquisition opportunity in the combined assets of the Sangster's and Healthy's divisions. Seven (7) interested parties performed a full review of the opportunity including a combination of legal, accounting and business due diligence as well as conversations with management and site visits. Of the seven (7) investor groups, five (5) submitted formal indications of interest. Following the completion of confirmatory diligence and documentation, on February 18, 2010, JAMM Enterprises, Inc.

purchased Sangster's for gross proceeds of \$1.1 million. The Healthy's division was separately sold to Health-X Corp. on March 16, 2010 for gross proceeds of \$348,500.

(b) Trophic Sales Process:

In Q4 of calendar year 2009, PCG conducted a focused process, contacting 33 targeted potential investors with strong background or strategic interest in the space. 16 groups engaged in a full review of initial diligence materials with five (5) groups expressing interest. Of the sixteen (16) investor groups, four (4) parties submitted formal Letters of Intent. Trophic was sold to Atrium Innovations Inc. on March 17, 2010 for gross proceeds of \$10.6 million.

56. The proceeds of the Non-Core Asset Sales were paid as follows:

- (a) \$5,296,266 to repay all outstanding indebtedness to the TD;
- (b) \$4,533,820 to reduce the existing indebtedness to Ares; and
- (c) \$1,268,614 for transaction related costs.

57. In addition, \$850,000 is currently held in two (2) escrow accounts: (i) \$250,000 for working capital adjustments; and (ii) \$600,000 for an indemnification escrow. Planet Organic expects to receive the \$250,000 from the first escrow account in the near future with the outstanding \$600,000 remaining in escrow for another 12 months.

58. While still a member of the Board of Directors, Mr. Francisco provided his consent to the Non-Core Asset Sales.

I. Impasse with Mr. Francisco

59. After Planet Organic's Board of Directors decided to explore the aforementioned divestiture strategy, Mr. Francisco, who was a director at the time, resigned from the Board of Directors on January 27, 2010 and subsequently advised the Board of Directors that he will not provide consent to any transaction involving core business assets that did not result in his ultimate controlling of Planet Organic.

60. I have been advised by Mr. Heighington (a former director of Planet Organic) who acts as Planet Organic's Alberta counsel that as a matter of Alberta corporate law, absent an Order of the Court, shareholder approval would be required for the sale of all or substantially all assets of Planet Organic. Since Mr. Francisco is the majority shareholder, he effectively has a veto power over any sale of the business and he has made it known to Planet Organic and its advisors that he is prepared to veto any sale that does not result in his control of the resulting company.

61. Mr. Francisco was offered the opportunity to refinance or restructure the business or table a plan that would pay Ares down or out, if his desire was to retain control of the business (as Planet Organic was unable to solicit any interest from any potential new partner that would leave Mr. Francisco with control of the company).

62. Mr. Francisco was advised that a viable offer had been received from Catalyst, one that would see the business survive and grow with new injections of capital. A face-to-face meeting between Mr. Francisco and Mr. Heighington was held in early March 2010 to discuss options and alternatives. I understand that Mr. Francisco rejected Catalyst's proposal and reiterated his opposition to any sale that did not result in his

control of the business. Again, Mr. Francisco was invited to submit an alternative offer or proposal.

63. To date, Mr. Francisco has not put forward any viable alternatives to a going concern sale to a third party despite continued contact and requests to do so.

J. Core-Asset Sales Process

64. Approximately one hundred and thirty (130) parties were canvassed for their interest in acquiring Planet Organic as a whole. Of those parties, fifty one (51) signed confidentiality agreements and were given access to an electronic data room. There were eleven (11) submitted expressions of interest and then six (6) bids were subsequently received for POM and Mrs Green's.

65. The bids received are summarized below:

- (a) an offer by Catalyst to acquire the combined assets of POM and Mrs. Green's for an effective purchase price in the range of \$33 million to \$36 million;
- (b) a revised offer for \$30 million by another party for the recapitalization of the entire business which was subject to arranging for financing;
- (c) a revised offer from another party in the range of USD \$14 million to USD \$18 million to acquire six western locations of POM;
- (d) another party's offer of \$7.6 million for the POM division only;
- (e) another party's offer in the range of USD \$15 million to USD \$18 million for Mrs. Green's only; and

- (f) another party's all cash offer in the range of USD \$20 million for POM and Mrs. Green's only.

66. The proposals received were reviewed by the Board of Directors and it resolved to create a committee of independent directors to review additional detail on the relative merits of the proposals and to make a recommendation to the board of directors of Planet Organic. The independent committee was composed of David Heighington, Ian Newton and me. On February 25, 2010, I resigned from the independent committee to ensure the committee's independence from management. On March 4, 2010, David Heighington resigned from the Board of Directors and the independent committee.

67. Based on these bids, several weeks of discussions and negotiations commenced amongst Planet Organic, its then secured creditor Ares and Catalyst, as the potential acquirer of, and highest bidder for, the assets or the shares of the company as set forth above. Due to a lack progress after several weeks of negotiations for the purchase of the assets or the shares of Planet Organic, Catalyst purchased the debt of Ares. As noted above, this debt purchase was completed on April 20, 2010.

68. During this period Mr Francisco was given the further opportunity to submit his own bid, but none was received.

II. CCAA FILING

A. Reason for CCAA Filing

69. Planet Organic and Darwen are insolvent and both have liabilities in excess of \$5 million.

70. The Applicants do not have the ability to repay the indebtedness owing to Catalyst and as a result, are insolvent and in jeopardy. As noted, Planet Organic has pursued restructuring activities and implemented comprehensive sales processes outside of formal proceedings. However, without the support of Mr. Francisco for an *en bloc* sale of the core assets, it is clear that the only way a successful business and financial restructuring can be achieved is through a formal court-supervised restructuring under the auspices of the CCAA.

B. Venue

71. The Commercial List in Toronto is the proper venue for this CCAA application. Planet Organic is a diverse company with assets and operations spread across Canada, including the Greater Toronto Area and Ontario (where it has both operations and creditors), and into the United States, via its US Holdco. Planet Organic's directors are located in both Canada and the United States and management generally meets via conference call.

72. Toronto has been the centre of Planet Organic's restructuring activities since 2009 for a variety of reasons, including the fact that Planet Organic's restructuring counsel and advisors are located in Toronto, and TD and Ares' counsel and advisors were located in Toronto as well. In addition, Mr. Ron Francisco is also in the Greater Toronto Area, as is his counsel. And, Catalyst's advisors and counsel are also located in Toronto.

73. It is therefore appropriate and convenient for Planet Organic to file for CCAA protection in Toronto, and this will benefit Planet Organic's stakeholders as well. Catalyst supports Planet Organic's application under the CCAA in Toronto.

C. Proposed Monitor

74. Planet Organic proposes Deloitte & Touche Inc. ("Deloitte or "Proposed Monitor") as monitor under the CCAA. I am advised that Deloitte has extensive experience in such proceedings and has consented to act. Attached hereto and marked as **Exhibit "O"** is a true copy of Deloitte's consent.

75. Planet Organic and Darwen with the assistance of the proposed monitor have developed a statement of projected consolidated cash flow for the period May 1, 2010 to July 24, 2010. Attached as **Exhibit "P"** is a copy of the consolidated projected cash flow.

D. Post-Filing Plan of Action

76. At this juncture, Planet Organic is of the view that the best solution for the enterprise and its employees, customers and creditors is to proceed to complete the negotiation of the terms of a credit bid with Catalyst. Planet Organic intends to finalize an agreement with Catalyst, which will preserve the business as a going concern and seek the Court's approval of the agreement in the very near future. If Planet Organic is unable to reach an agreement with Catalyst, it will return to court with other alternatives.

77. At this time, it does not appear that debtor-in-possession financing will be required.

78. Planet Organic is seeking an administrative charge of \$400,000 and an indemnification charge for its officers and directors of \$1.75 million.

79. The Board of Directors currently consists of Ian Newton, Brent Knudsen, and me. The current D&O insurance policy expires on June 15, 2010 and I understand that to extend the coverage would result in an 150% premium increase over the existing premium.

80. Said charges are not sought against the other secured creditors of Planet Organic, namely, the four (4) creditors with equipment security.

81. Planet Organic is required under section 132 of the *Alberta Business Corporations Act (ABCA)* to call an annual meeting of its shareholders no later than 15 months after the last preceding meeting. The Court may extend the time for the calling of the meeting if it is satisfied that it is in the best interests of the corporation. Planet Organic's last shareholder meeting was held on December 19, 2008 and one is currently scheduled for April 30, 2010. I am advised by Heighington that as a matter of corporate law, Planet Organic could further adjourn the meeting of shareholder to May 14, 2010.

82. At this juncture, a postponement of the time for the holding of the meeting is required, in my view, as holding the annual meeting of shareholders could impede the successful restructuring of the business if Mr. Francisco uses his status as majority shareholder to thwart current management's effort to sell the business to Catalyst. Mr. Francisco has indicated that he intends to replace the board with his nominees. This would constitute a change of control under the Ares Loan and Ares/PCG Loan, and would likely result in Catalyst moving to enforce its security, which in turn would destabilize and harm the enterprise. Catalyst has expressed to me its confidence in the current Board of Directors.

83. Financial and other information will continue to be available to Mr. Francisco and the public through court filings which will be easily accessible on the Proposed Monitor's website and all public filings required under securities laws will continue to be made.

84. I swear this affidavit in support of the application for the Initial Order and for no other or improper purpose.

SWORN BEFORE ME at the)
City of Edmonton in the)
Province of Alberta)
this 29th day of April, 2010.)

Eugene J. Erler
Commissioner for Taking Affidavits (or as may be)

[Signature]
Darren Krissie

EUGENE J. ERLER
BARRISTER AND SOLICITOR
AND NOTARY PUBLIC

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.

Court File No:

APPLICANTS

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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