

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**

**THE HONOURABLE MR** ) **MONDAY, THE 9<sup>TH</sup>**  
 )  
**JUSTICE MACLEOD** ) **DAY OF MARCH, 2020**

Estate Number: **33-2618511**  
Court File No.: **33-2618511**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
EUREKA 93 INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS (LIVEWELL  
FOODS CANADA INC., ARTIVA INC., AND VITALITY CBD NATURAL HEALTH  
PRODUCTS INC.)**

**ORDER**

**THIS MOTION**, made by Eureka 93 Inc., LiveWell Foods Canada Inc., Artiva Inc. and Vitality CBD Natural Health Products Inc. (the “**Debtors**”) for various relief pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the “**BIA**”), was heard Friday 6 March 2020, at 161 Elgin Street, Ottawa, Ontario, with judgment being reserved to this day.

**ON READING** the Affidavits of Seann Poli sworn 18 February 20120, 25 February 2020 and 2 March 2020, the Affidavit of Robb Nelson sworn 2 March 2020, the Affidavit of Philip Gross sworn 28 February 2020, the Affidavit of Dirk Bouwer sworn 24 February 2020 and the First Report of Deloitte Restructuring Inc. in its capacity as the Debtors’ proposal trustee (“**Deloitte**”) dated 19 February 2020 (the “**First Report**”), on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Debtors, counsel for Deloitte, counsel to Dominion Capital LLC and Perley-Robertson, Hill & McDougall LLP, no one else appearing:

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

## **ADMINISTRATIVE CONSOLIDATION**

2. **THIS COURT ORDERS** that the proposal proceedings of the Debtors (collectively, the “**Proposal Proceedings**”) be and are hereby administratively consolidated and the Proposal Proceedings are hereby authorized and directed to continue under the following joint title of proceedings:

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PRODUCTS INC.)**

3. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed only in the Eureka 93 Inc. estate and court file (estate number **33-2618511** and court file number **33-2618511**) and hereby dispenses with further filing thereof in the estate and court files of the other Debtors.

## **ADMINISTRATION CHARGE**

4. **THIS COURT ORDERS** that the Proposal Trustee, counsel for the Proposal Trustee and counsel to the Debtors shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on all of the assets, property and undertaking of the Debtors (the “**Property**”), which Administration Charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 9 and 11 hereof.

## **INTERIM FINANCING**

5. **THIS COURT ORDERS** that the Debtors shall be entitled, subject to the terms of the Commitment Agreement dated January 2019 (the “**Credit Agreement**”) between the Debtors and Sprouter Corporation Inc., David Van Segbrook and Donna Van Segbrook (the “**Interim Lenders**”) and attached as **Appendix C** to the First Report, to borrow from the Interim Lenders an amount that shall not exceed the amounts contemplated in the Credit Agreement.

6. **THIS COURT ORDERS** that the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees or other definitive documents (the “**Definitive Documents**”), as are contemplated by the Credit Agreement.

7. **THIS COURT ORDERS** that as security for all of the obligations of Debtors to the Interim Lenders relating to advances made under the Credit Agreement from and after the date of this Order, the Interim Lenders shall be entitled to the benefit of, and are hereby granted, a charge (the “**Interim Lending Charge**”) on the Property, and the Interim Lending Charge shall have the priority set out in paragraphs **9** and **11**.

8. **THIS COURT ORDERS AND DECLARES** that the Interim Lenders shall be unaffected: (a) by the stay of proceedings provided for in section 69 or 69.1 of the BIA, as applicable, or any other stay that may be ordered by the Court in any other proceedings initiated by the Debtors; and (b) under any proposal, or plan of compromise or arrangement filed by the Debtors.

## **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

9. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Interim Lending Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000); and

Second – Interim Lending Charge.

10. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge and/or the Interim Lending Charge (collectively, the “**Charges**”) shall not be required,

and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

11. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property so charged by them and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any person.

12. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any charge, security interest or other encumbrance over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Debtors obtain an Order of this Court.

13. **THIS COURT ORDERS** that the Charges, the Credit Agreement and the Definitive Documents shall not be rendered invalid or unenforceable, and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way, by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Debtors, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Credit Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Debtors of any Agreement to which any one of them is a party; and
- (b) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the Debtors entering

into the Credit Agreement or the Definitive Documents or the creation of the Charges, or the execution, delivery or performance of any such documents.

14. **THIS COURT ORDERS** that any of the Charges created by this Order over leases of real property in Canada shall only be a charge in the Debtors' interest in such real property leases.

#### **EXTENSION OF TIME TO MAKE PROPOSAL**

15. **THIS COURT ORDERS** that the date by which the Debtors are required to file proposals be and is hereby extended to 29 April 2020.

16. **THIS COURTS ORDERS** that beginning on 23 March 2020, Deloitte shall file with the Court, and deliver to any party on the Service List that requests a copy, bi-weekly status reports: (a) confirming that the interim funding approved pursuant to paragraph 5 is in place; (b) verifying progress of construction at the facility owned by Artiva Inc. ("**Artiva**"); (c) confirming the continued validity of the cultivation licence of Artiva; and (d) setting out the progress towards production of a first crop by Artiva.

17. **THIS COURT ORDERS** that: (a) in the event that there is a significant deviation from Artiva's cash flow statement; or (b) any of the assumptions built into the Credit Agreement fail to materialize or require significant readjustment, any creditor may move to lift the stay arising under the BIA or for amendment of this Order.



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**MR. JUSTICE C. MACLEOD**