

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

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

**AND 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**

Estate Number: **33-2618512**
Court File No.: **33-2618512**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
LIVEWELL FOODS CANADA INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF
ONTARIO**

Estate Number: **33-2618510**
Court File No.: **33-2618510**

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

Estate Number: **33-2618513**
Court File No.: **33-2618513**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
VITALITY CBD NATURAL HEALTH PRODUCTS INC. OF THE CITY OF OTTAWA IN
THE PROVINCE OF ONTARIO**

SUPPLEMENTARY MOTION RECORD

Date: February 25 ,2020

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AND TO:	<p>OLYMPIA TRUST COMPANY PO Box 2581, STN Central Calgary, AB T2P 1C8</p>
AND TO:	<p>DOMINION CAPITAL LLC 256 West 38th St, 15th Floor New York, NY 10018</p> <p>Represented by: Bennett Jones LLP 3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4</p> <p>Sean Sweig & Aiden Nelms T. 416 777 4642 F. 416 863 1716 nelmsa@bennettjones.com ZweigS@bennettjones.com</p>
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

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

**AND 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**

Estate Number: 33-2618512
Court File No.: 33-2618512

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF LIVEWELL FOODS CANADA INC. OF THE CITY OF OTTAWA IN THE
PROVINCE OF ONTARIO**

Estate Number: 33-2618510
Court File No.: 33-2618510

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

Estate Number: 33-261513
Court File No.: 33-261513

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF VITALITY CBD NATURAL HEALTH PRODUCTS INC. OF THE CITY OF
OTTAWA IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF SEANN POLI
(sworn February 25, 2020)**

I, **SEANN POLI**, of the City of Ottawa, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a director of Eureka 93 Inc. ("**Eureka 93**"), Livewell Foods Canada Inc. ("**LiveWell**"), Artiva Inc. ("**Artiva**") and Vitality CBD Natural Health Products Inc. ("**Vitality**") and, together with Eureka 93, LiveWell and Artiva, the "**Debtors**"). I am a shareholder of Eureka 93 and was a director of LiveWell until April of 2019, at which point I resigned. I became a director

of the Debtors and co-CEO of Eureka 93 in September of 2019, when the majority of the directors and officers of Eureka 93 resigned *en masse*. I have personal knowledge of the matters herein deposed, save and except where I rely on information provided to me by others or from my review of documentation, in which cases I provide the source of that information and that I believe it to be true.

2. I am swearing this Affidavit as a Supplementary Affidavit to the Affidavit I swore on 18 February 2020 and to address what I understand to be the objection of Dominion Capital LLC (“**Dominion Capital**”) to all of the relief being sought by the Debtors.

3. I am surprised by Dominion Capital’s objection to the relief being sought by the Debtors. Since as early as November of 2019, Dominion Capital has been aware of the Debtors’ intention to commence the Proposal Proceedings and secure interim financing to complete and commence operations at the Ottawa Facility so that a proposal could be made to creditors. As is set forth further below, I have been in regular contact with Dominion Capital throughout the process and at no time until after the materials in support of the Motion returnable on 25 February 2020 were served, was there any indication from Dominion Capital that there would be any issue with the Proposal Proceedings or the concept of interim financing¹. In fact, based on my discussions with Phillip Gross, I had every reason to believe that Dominion Capital was supportive of the Debtors and their efforts to restructure. The supporting approach continued after Dominion Capital received title to the plant in New Mexico owned by Vitality Natural Health LLC.

¹ There is no dispute that Dominion Capital did not know the specific terms of the Interim Financing until it received the Motion Record.

4. I note that on or about 1 December 2019, Mr. Gross indicated to me in an e-mail that Dominion Capital was aware that the Eureka 93 Group had retained insolvency counsel in Canada and expected that the Eureka 93 Group would “act in the interests of all stakeholders”. Those communications related to enforcement by a prior-ranking secured creditor in the United States. The Eureka 93 Group had no money to commence insolvency proceedings in the United States, but the e-mail from Mr. Gross formed the foundation of my understanding as to what Dominion Capital expected would be done *vis-à-vis* the Debtors and, based on my other discussions with Mr. Gross, I understood that Dominion Capital supported the Proposal Proceedings and the Interim Financing as being in the best interest of all stakeholders.

Service on Dominion Capital

5. I am advised by Benoit Duchesne, a partner in Gowling WLG Canada LLP (“**Gowling**”), and verily believe, that Dominion Capital received via courier a package that included all of the Debtors’ materials in support of the Motion returnable on 25 Febraury 2020, except the confidential documents, on 20 February 2020. Attached as **Exhibit 1** is the courier receipt.

Funds Borrowed Pursuant to the Convertible Notes

6. The Eureka 93 Group borrowed a total of USD\$15 million via the convertible notes represented by Dominion Capital. Of that amount, USD\$3.6 million was held in escrow and never released to the Eureka 93 Group. I am not aware of the details of the transaction/agreement and have not been able to locate the applicable agreement(s), but it is my understanding that, sometime in or before September of 2019, the previous management of the Eureka 93 Group agreed with

Dominion Capital to release the USD\$3.6 million back to Dominion Capital.

7. Of the net USD\$11.4 million that was borrowed by the Eureka 93 Group pursuant to the convertible notes, only USD\$8.9 was actually available. The following amounts were deducted from the USD\$11.4 million:

- (a) USD\$1.6 million in commissions²;
- (b) USD\$400K in what I believe was advanced interest; and
- (c) USD\$540K in legal fees for Dominion Capital's counsel.

8. As noted in my Affidavit, title to a plant in New Mexico owned by a non-Debtor company was turned over to Dominion in return for the forgiveness of USD\$3 million in debt owing under the convertible notes.

Dominion's Knowledge/Position

9. I am surprised at Dominion Capital's current opposition based on my dealings with Mr. Gross -- the individual who I understood represented the interests of Dominion Capital. Since in or about October of 2019, I have had multiple e-mail exchanges and telephone conversations with Mr. Gross with respect to the Debtors and, in particular, the financial issues facing the Debtors and the reorganization of the Debtors.

10. I record many of my telephone conversations rather than take notes. I have records of

² Dominion Capital has not refunded the commission paid on the USD\$3.6 million.

most, if not all, of my conversations with Mr. Gross and have reviewed those recordings for the purposes of preparing this Affidavit to refresh my memory of my telephone conversations with Mr. Gross.

11. Between October 22, 2019 and February 13, 2020, I had 18 telephone discussions with Mr. Gross.

12. On 22 October 2019, at 16:44 hours, I had a telephone call with Mr. Gross. I have preserved an audio recording of that telephone call. During that telephone call Mr. Gross and I discussed how we could proceed on getting Artiva re-financed. More particularly:

- (a) I informed Mr. Gross that the Ottawa Facility had to be re-financed imminently and that we had other lenders who appeared interested including the existing mortgage holder, but required additional funds to complete the Ottawa Facility;
- (b) I asked Mr. Gross whether Dominion Capital would defer its position in order to permit the re-financing of the Ottawa Facility;
- (c) I informed Mr. Gross that I was in possession of a \$14 million as-built appraisal for the Ottawa Facility³;
- (d) I informed Mr. Gross that I intended to have the re-financing achieved as soon as possible; and

³ I do not recall Mr. Gross asking to see a copy of this appraisal.

- (e) Mr. Gross informed me that he would speak to people and expected to get back to me within a day or two.

13. On 25 November 2019, at 16:25 hours, I received a telephone call from Mr. Gross. I have preserved an audio recording of that telephone call. Mr. Gross wanted an update on the progress of matters with respect to the Debtors and I provided him with a high level update.

14. On 3 December 2019, beginning at 11:34 hours I spoke to Mr. Gross a total of 3 times for more than 70 minutes. I have preserved audio recordings of those telephone calls. During those telephone calls Mr. Gross and I discussed, among other things:

- (a) issues in connection with the business carried out by Vitality Natural Health LLC in the State of Montana;
- (b) that the first-ranking secured creditor was agreeable to providing \$2 million in DIP financing at 15% interest and that the Debtors were going to accept that financing offer⁴;
- (c) that Deloitte had accepted an initial retainer for restructuring;
- (d) that the Ottawa Facility had to be maintained for the benefit of the creditors; and
- (e) potential timeframes for the restructuring process, including filing the restructuring

⁴ That financing did not close because of the terms sought by the lender, but Family Lending found another lender who agreed to provide financing on more favourable terms—the current Interim Financing. The fee payable under both facilities were the same, but the initial financing required that the Debtors incur substantial additional costs by paying multiple professional advisors retained by the lender.

proposal as soon as possible.

15. On 7 December 2019, at 15:28 hours I had a telephone call with Mr. Gross. That call lasted 35 minutes. I have preserved an audio recording of that telephone call. During that telephone call Mr. Gross and I discussed:

- (a) that interim financing was anticipated to be obtained by the end of the week of 9 December 2019⁵;
- (b) that I understood that Dominion Capital was anxious to recover their loans and that I wanted to act in a manner that provided them with the best repayment plan possible, fairly and properly;
- (c) that, according to Mr. Gross, Dominion Capital was more than happy to work with me to restructure the Debtors and develop a plan to repay Dominion Capital; and,
- (d) that, according to Mr. Gross, Dominion Capital wanted title to the plant owned by Vitality Natural Health LLC located in the State of New Mexico, thereby permitting them to sell the plant to another purchaser, and that Dominion Capital wanted to me to agree on such a transfer of title by close of business on 9 December 2019.

16. On 9 December 2019, at 21:01 hours, I had a telephone call with Mr. Gross. That call lasted 6 minutes and 50 seconds. I have preserved an audio recording of that telephone call. During our call I informed Mr. Gross that it appeared that a transfer of title to the plant located in New Mexico to Dominion Capital as suggested by Mr. Gross could be feasible. While it was never explicitly

⁵ That timeframe was stretched when the negotiations slowed down over the Holidays.

stated, I took this as a *quid pro quo* and it was implicit that the transfer of the New Mexico plant was required to forestall enforcement by Dominion Capital to permit the Debtors with the opportunity to restructure in Canada.

17. On 10 December 2019, at 16:29 hours, I received a telephone call from Mr. Gross. The call lasted 1 minute and 4 seconds. I have preserved an audio recording of that telephone call. Mr. Gross wanted confirmation of a few items pertaining to the transfer of title to the New Mexico plant.

18. On 22 December 2019, I had a telephone call with Mr. Gross. I have preserved an audio recording of that telephone call. During that telephone call Mr. Gross and I discussed the plan forward for the Debtors and whether it entailed a freeze or restructuring. He asked me about the process for the Debtors' plan going forward. I told him that I was not familiar with the process to be followed but was waiting for the paperwork.

19. On 24 December 2019, I had a telephone call with Mr. Gross. I have preserved an audio recording of that telephone call. During that telephone call Mr. Gross asked where we were with respect to a restructuring. I informed him that we were progressing. Mr. Gross asked whether I could provide him with a timeline as to the restructuring efforts until profitability could be achieved. I told him that progress was being made⁶.

⁶ As noted below, the development of the Debtors' business plan/cash flows took some time to develop and was only finalized and approved on the eve of the commencement of the Proposal Proceedings.

20. On 13 January 2020, at 9:25 am, I had another telephone call with Mr. Gross. I have preserved an audio recording of that telephone call. During that telephone call:

- (a) Mr. Gross asked about the progress of the restructuring and refinancing efforts;
- (b) I informed Mr. Gross that I was being patient with the first mortgage holder with respect to efforts to securing interim and DIP financing;
- (c) I informed Mr. Gross that I did not know the exact date on which the Debtors would be filing, told him that this was the first time I was involved in restructuring efforts, but understood that the process would not be as long as a CCAA process;
- (d) I informed Mr. Gross that he would be getting a copy of all of the documentation at issue and that he should be prepared to receive documents with respect to the restructuring; and,
- (e) I told him that the Interim Financing was going to be for \$ 2.3 million and would be “highly secured”.

21. Mr. Gross did not request an “advanced” copy of anything and seemed content of receive the documents at the same time as the other creditors. Mr. Gross did not give me the impression that Dominion Capital had any interest in being involved in the development of the Debtors’ go-forward business plan and just wanted to be made generally aware of what was happening. This was consistent with my expectation of what would happen vis-à-vis Dominion Capital after the New Mexico plant was turned over to Dominion Capital.

22. On 30 January 2020, I had another telephone call with Mr. Gross. I have preserved an audio recording of that telephone call. During that telephone call:

- (a) I informed Mr. Gross that I was reviewing the Interim Financing term sheet;
- (b) I informed Mr. Gross that I expected a court date would be sought and that I did not believe that a court date would be very far in the future after the term sheet was signed; and,
- (c) I informed Mr. Gross that I wanted the transactions to move forward as quickly as possible.

23. Again, Mr. Gross did not ask to see any of the documents. He expressed no concern with how matters were progressing and, so far as I was concerned, was content that the Debtors would be moving forward with the Proposal Proceedings and to get the Interim Financing approved.

24. On 13 February 2020, at 14:46 hours, I had a telephone call with Mr. Gross. I have preserved an audio recording of that telephone call. During that telephone call:

- (a) I requested that Mr. Gross provide me with contact information for the purposes of notifying the holders of the convertible notes of the Proposal Proceedings and the Interim Financing;
- (b) In response to a question by Mr. Gross about our intended timeline to file with the Court, I informed him that the Debtors were hoping to file with the Court as soon as possible and were relying on Gowling and Deloitte Restructuring Inc. to

complete the paperwork required for the Debtors to commence the Proposal Proceedings and go before the Court;

- (c) Mr. Gross requested a copy of the term sheet and financing terms we had agreed upon and I informed him we would get those to him “next week”, being during the week of 17 February 2020, during which all of the creditors were served with the Debtors’ materials in support of the Motion⁷;
- (d) I informed Mr. Gross that our intention was to be in front of the Court as soon as possible;
- (e) I informed Mr. Gross that my understanding was that the funds contemplated by the Interim Financing would only be delivered once the Interim Financing was approved by the court;
- (f) I understood from Mr. Gross that Dominion Capital was not interested in any further involvement in the Debtors’ business, which was consistent with my previous dealings and with what I expected would be the case once the New Mexico plant was transferred to Dominion Capital; and
- (g) I informed Mr. Gross that we would proceed on the basis of the Interim Financing which had been obtained.

25. Mr. Gross did not: (a) take any issues with the timing of the Debtors’ Motion to approve

⁷ I did not understand Mr. Gross to be asking for an “advanced” copy of the term sheet or otherwise looking for anything other than notice in advance of the attendance before the Court to have the Interim Financing approved.

the Interim Financing of the timeline for the filing or the delivery of materials; (b) ask to see an “advance” copy of the materials that would be filed by the Debtors; or (c) provide me with the address(es) of anyone for notice purposes.

26. Aside from my own communications with Mr. Gross, I understand that Dominion Capital had multiple discussions with the representatives of the first-ranking secured creditor and the Interim Lender. I was not involved in any of those conversations, but advised them of the position now being taken by Dominion Capital and I received the following e-mail report on 25 February 2020:

Sean

I don't have an exact date but we have had a few calls with them over the last three weeks.

We also have another call with them today at 1pm.

They asked what the options were to get out of this deal:

We said the following:

To be in control of this deal you can payout out our first mortgage. They didn't want to do that or invest further in the deal.

We said that we understood that they were offered the DIP financing but they refused it. We said we were willing to do it but didn't give them any particulars about it.

We asked them how much of their capital went into this site and they weren't sure of how much if any.

We mentioned about Farm Debt Mediation and the process that would follow and they didn't even know what it FDM was.

We explained that if we prop the business up fix all the greenhouses that the value will significantly increase where they may realize on some of their debt. As currently we don't think the property is worth more then (sic) \$10M.

That's a high level of you need exact dates of some of the conversations I can get them.

27. As noted above, Dominion Capital was provided with the materials in support of the Motion returnable on 25 February 2020 on 20 February 2020. Shortly thereafter, Gowling was contacted by Bennett Jones LLP (“**Bennett Jones**”), who indicated they had been acting for Dominion Capital. From that point, Dominion Capital’s approach to the Debtors’ restructuring changed completely and Dominion Capital appeared to forget all of our previous dealings and that it had been given title to the New Mexico plant. Bennett Jones first demanded an adjournment of the hearing on 25 February 2020 and insisted on seeing the confidential documents so that Dominion Capital could consider its position vis-à-vis the Proposal Proceedings and the Interim Financing. Bennett Jones ultimately took the position that Dominion Capital would oppose all of the relief being sought by the Debtors and insisted that the Motion not be scheduled except on a date that a specific lawyer from Bennett Jones was available to attend at Ottawa to oppose the Motion. Dominion Capital also sought to preserve for itself the ability to “credit bid” to acquire the Ottawa Facility in the event that it was marketed for sale in the Proposal Proceedings.

Urgency

28. The Debtors have been without cash or available financing for about six months. Dominion Capital knows this. I have done my best to preserve the core business for the benefit of all stakeholders. I have not been paid since 28 August 2019 and I have, since September of 2019, been paying a number of essential corporate expenses in order to maintain the Debtors. I paid these expenses through my personal credit cards.

29. There were, however, a number of expenses that I could not afford to pay such as:

- (a) property taxes for the Ottawa Facility,

- (b) insurance for the Ottawa Facility;
- (c) internet;
- (d) employees' salaries;
- (e) the fee payable to Health Canada for the cannabis producer license; and
- (f) the fee to CRA for the excise tax license,

all of which were to be paid through the Interim Financing.

30. Based on my discussions with Mr Gross outlined above, I believed that Dominion Capital was supportive of, or at least had no issues with and would not oppose, the Proposal Proceedings and the Interim Financing and, for that reason, had every reason to believe that the Interim Financing would be approved before the end of February of 2020 such that the Debtors would be able to complete the Ottawa Facility and begin generating positive cash flow as outlined in my 18 February 2020 Affidavit. Dominion Capital's late-breaking activism has, however, resulted in the Debtors' situation becoming critical. Dominion Capital is, or ought to be, aware that the delay that will result from opposition to the Interim Financing may cause the Debtors' restructuring efforts to fail thereby forcing the Debtors to try to sell the Ottawa Facility on an "as is, where is" basis, which I do not believe is in the best interests of the Debtors' stakeholders, although it may permit Dominion Capital to obtain the Ottawa Facility.

31. Two Artiva employees have been working without pay for a number of months. Charlie Abboud is the Facility Manager for the Ottawa Facility and Justin Ambar is Artiva is the

Regulatory and Security Officer. The Interim Financing was to fund the salaries of Mr. Abboud and Mr. Ambar. If the Debtors are unable to pay these individuals beginning on 1 March 2020, they may quit.

32. Artiva has been without money to pay its insurance premiums and the Interim Financing was to be used to pay the insurance premiums for 2020. The insurance for the Ottawa Facility has not yet been cancelled, but I fear that if Artiva is unable to pay the premiums as soon as possible, the insurance will be cancelled.

33. Artiva has been unable to pay its internet service provider. The remote cameras at the Ottawa Facility require the internet to function. On 21 February 2020, the internet service provider terminated service to the Ottawa Facility. The only way that Artiva will be able to have the internet restored at the Ottawa Facility is if the Interim Financing is approved. Currently, Mr. Abboud and Mr. Ambar are at the Ottawa Facility on a regular basis to ensure there are no issues, but, as noted above, there is risk that Artiva may lose these employees if it is unable to pay them beginning 1 March 2020.

Business Plan

34. The development of a go-forward Debtors' business plan/pro forma financials/cash flows took some time for the Debtors to develop. The representative of the first secured lender and the Interim Lender wished to be actively engaged in assisting me in the development of the business plan and cash flows, which Dominion Capital and Mr. Gross did not seem interested in doing. The consent of the Interim Lender was required for the go-forward cash flow and capital expenditure

plan. Those matters were not finalized and approved until the eve of the commencement of the Proposal Proceedings and are reflected in the cash flow statement.

35. As described in my Affidavit, Artiva's go-forward plan includes growing and selling what are referred to as "clones". This business will provide Artiva with positive cash flow beginning in or about April or May of 2020 with a view to refinancing the company out the Interim Financing by June of 2020 and the other secured creditors thereafter.

36. I firmly believe that the value of Artiva once it goes into production will be much higher than its current liquidation value. There are a number of licensed producers that have failed and there are number of (completed) production facilities that are on the market. The risk that the Ottawa Facility, if sold into this market, will realize less than its current appraised value is high. However, by focussing on "clones", Artiva will be able to generate positive revenue and increase the value of the company for the benefit of all stakeholders.

37. There are approximately 250 standard cultivation licenses, not including micro cultivation licenses nor home grow licences, issued across Canada. In addition, individuals can grow a limited number of plants for their own use. This means that there are literally millions of plants grown nationally per cycle and, for many producers, there are between 4 to 6 plant growth cycles per year.

38. There is a finite amount of space that is licensed for cultivation in any licensed facility, and the only thing that produces revenue from a grow operation is flower. For this reason, flowering

plants take up 75% of the space in most facilities. However, licensed producers have to grow their plants from cuttings taken off of “mother” plants—“clones”. Licensed producers are looking to purchase clones from other licensed producers so that they can increase the amount of space they have available for flower.

39. Clones are also important for “recovery”. Where, for example, a licensed producer’s crop becomes contaminated, the licensed producer is forced to destroy its entire crop and re-start. In those circumstances, the licensed producer is forced to either start from the stage of cuttings or purchase clones from another licensed producer.

40. The clone market is currently underserved. There is currently only one company of which I am aware that specializes in clones and that company is small and not able to satisfy market demands. I am also not aware of any other licensed producers who are planning to enter the clone market although a small number of producers sell clones as one segment of their revenue—many of them are struggling to survive. While the profit margin on clones is high, the market has to date focussed on flower and finished product. A licensed producer that has built its facility to produce flower cannot easily switch over production to focus on clones. They cannot take the time to switch their facility and forego the income needed to sustain itself. The current market place is also not favourable for raising more capital at previous high market valuations if a producer has to raise capital to change the equipment needed for clone production. The result is a rather high demand for clones in a market where many licensed producers are struggling, which provides an opportunity for Artiva. The Ottawa Facility will produce clones and sell them to other licensed producers. It will take about 2 weeks for Artiva to produce a 2-inch “starter” plant from a

clipping—as opposed to about 12 weeks to grow a plant to flower—which means that Artiva’s business cycle will be accelerated.

41. I have been in contact with a number of licensed producers with respect to supplying clones. Based on these discussions, I am confident that the cash flow projections are attainable. Licensed producers have attended at the facility and have expressed interest in buying clones once the Ottawa Facility is operational. Artiva cannot, however, sign any agreements to sell clones until the Interim Financing is approved. The completion of the Ottawa Facility is essential for Artiva to be able to grow the “clones”. If construction at the Ottawa Facility does not begin immediately, we will not have clones to deliver to clients who have committed to purchasing them in April 2020.

Refinancing of Artiva

42. I have had discussions with a loan broker who has indicated that it will be possible to re-finance Artiva once the Ottawa Facility is completed and production has commenced. I note that this same broker had, in or about late April of 2019, secured financing to pay-out the first secured creditor, but Dominion Capital would not consent to that re-financing unless there was a substantial pay-down of its own subordinate secured loan and that was not possible at the time given the fact that the Ottawa Facility had not been completed.

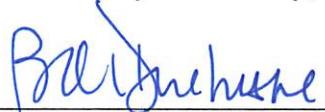
43. I have had discussions with Farm Credit Canada (“FCC”) with respect to financing Artiva’s operations going forward. FCC was open to assist Artiva with financing going forward

for its operations, but before FCC would move forward with any financing, Artiva would have to complete the Ottawa Facility, commence production, and complete its first crop.

Interim Financing Fee

44. I wish to explain the \$320K fee being paid for the Interim Financing. \$20K is to reimburse the Interim Lender for the \$20K retainer that was paid to retain the proposal trustee. \$100K is the renewal fee owing on the first mortgage on the Ottawa Facility. \$100K is to pay for the assistance provided (and to be provided) by the representative of the Interim Lender in assessing the Debtors' financial situation, and developing the cash flow and capital expenditure plan for the Ottawa Facility. The commitment fee for the Interim Financing is \$100K. An e-mail from the representative of the Interim Lender explaining this is attached hereto as **Exhibit 2**. I also note that: (a) there are no on-going “monitor” or “draw” fees being charged by the Interim Lender; (b) the Interim Lender did not retain a large law firm and the professional fees payable in connection with the Interim Financing have been low; and (c) the Interim Lender has not required that the Debtors retain a separate firm to provide supervision or cash-flow reporting and is content to rely on the proposal trustee.

Sworn before me at
the City of Ottawa
in the Province of Ontario
on this 25th day of February, 2020



A Commissioner etc.
LSO #44922J

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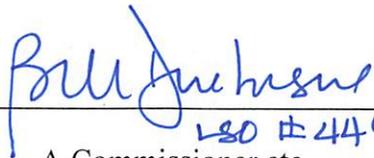
SEANN POLI

TAB 1

This is Exhibit 1 to the Affidavit of

SEANN POLI

Sworn before me on this 25th day of February, 2020.



LSD #449221
A Commissioner etc.



Order Details

Logged in as TERRY NICHOLSON

Order #8772499

PICK UP

GOWLING OTTAWA
 160 ELGIN ST, Unit STE 2600
 OTTAWA, ON K1P1C3
 CANADA
GOWLING WLG
 P: 16137860206
 F:

DELIVER TO

DOMINION CAPITAL LLC
 256 W 38TH ST, Unit 15TH FLR
 NEW YORK, NY 10018
 UNITED STATES
DOMINION CAPITAL LLC
 P: 10000000000
 F:

Order Information

Pick Up Date: 2/19/2020	Ready Time: 11:23	Service: OVN EXPRESS	Vehicle: CAR
Delivery Date: 2/20/2020	Deliver By: 10:30	Insurance: NO	Declared Value: \$0.00
Status: Finalized	Picked Up: 2/19/2020 17:00	Delivered: 2/20/2020 10:20	Waiting Time: 0 min.
Weight: 4 Lbs	Reference: 03420138	Waybill #: 366577	
Ordered By: Office Services	Department: 16317		

Signature: D.DISWIT

Packages
 CUSTOMER PACKAGING 1

Comments:
 FedEx : 390497412185

Charges

Base Amount:	\$47.59
Weight Surcharge:	\$0.00
Waiting Time Surcharge:	\$0.00
Package Surcharge:	\$0.00
Vehicle Surcharge:	\$0.00
After Hours Surcharge:	\$0.00
Insurance Surcharge:	\$0.00
Fuel Surcharge:	\$0.00
Extras:	\$0.00
Subtotal before taxes:	\$47.59
Discount:	\$0.00
Total:	\$47.59

OK

Duplicate

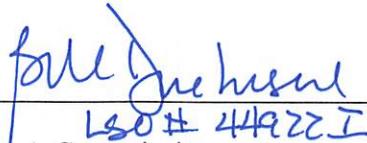


TAB 2

This is Exhibit 2 to the Affidavit of

SEANN POLI

Sworn before me on this 25th day of February, 2020.


LSO# 44922 I

A Commissioner etc.

Duchesne, Benoit

From: Shea, Patrick
Sent: Tuesday, February 25, 2020 9:17 AM
To: Duchesne, Benoit
Subject: FW: DIP Financing

-----Original Message-----

From: Robb - FamilyLending.ca [mailto:robb@familylending.ca]
Sent: February-25-20 9:10 AM
To: Shea, Patrick <Patrick.Shea@gowlingwlg.com>; Shawn Bustin <shawn@agriroots.ca>; Seann Poli <SPoli@eureka93.com>
Subject: DIP Financing

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Patrick

To clarify our fees inside the DIP we are paying three parts to the \$300,000.

\$100,000 to the DIP Financing Group.

\$100,000 to AgriRoots Capital Management to successfully transition the Artiva back to a stable and marketable farm.
\$100,000 payable against a renewal fee to FamilyLending.ca Inc. on the first mortgage. The fee is \$180,000 so this is a partial payment.

Please call me with any questions.

Robb Nelson , Broker, CEO
519-351-7283 ext 201
519-436-3353 cell
FamilyLending.ca Inc.
AgriRoots.ca
Lic. 12114

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Estate Number/Court File No.: 33-2618511

AND 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

Estate Number/Court File No.:33-2618512

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF LIVEWELL FOODS CANADA INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

Estate Number/Court File No.:33-2618510

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF ARTIVA INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

Estate Number/Court File No.:33-2618513

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VITALITY CBD NATURAL HEALTH PRODUCTS INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

ONTARIO

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

(PROCEEDING COMMENCED AT OTTAWA)

AFFIDAVIT OF SEANN POLI

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Barristers and Solicitors

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Benoit M. Duchesne (LSO # 44922I)

Tel: (613) 786-0142 / Fax: (613) 788-3637

Email: benoit.duchesne@gowlingwlg.com

Lawyers for the Debtors

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ONTARIO

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

(PROCEEDING COMMENCED AT OTTAWA)

SUPPLEMENTARY MOTION RECORD

GOWLING WLG (CANADA) LLP

Barristers and Solicitors

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100 King Street West, Suite 1600

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Email: patrick.shea@gowlingwlg.com

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Lawyers for the Debtors