

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

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.)**

**THIRD REPORT OF THE PROPOSAL TRUSTEE  
DELOITTE RESTRUCTURING INC.**

**Dated April 6, 2020**

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## INTRODUCTION

1. This third report (the “**Third Report**”) is filed by Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) in connection with the Notices of Intention to Make a Proposal (individually, an “**NOI**”, and collectively, the “**NOIs**”) filed by each 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 “**Companies**”).
2. On February 14, 2020 (the “**Filing Date**”), the Companies each filed an NOI under Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c.B-3, as amended (the “**BIA**”). Deloitte was appointed as Proposal Trustee under each NOI. By way of Order of Justice MacLeod dated March 9, 2020 (the “**Initial Order**”), among other things, the proposal proceeding for each of the Companies was administratively consolidated under the Estate and Court File number of Eureka 93, and the date by which the Companies are required to file proposals was extended to April 29, 2020.
3. Paragraph 16 of the Initial Order directs the Proposal Trustee, beginning on March 23, 2020, to file with the Court, and deliver to any party on the Service List who requests a copy, a bi-weekly status report: (a) confirming that the interim funding approved pursuant to paragraph 5 of the Initial Order is in place; (b) verifying progress of construction at the facility owned by 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.
4. The purpose of this Third Report is to provide the second status report required under the Initial Order.

## TERMS OF REFERENCE AND DISCLAIMER

5. In preparing this Third Report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, unaudited financial information, books and records, construction reports and financial information prepared by the Companies, and discussions with Seann Poli, CEO of Eureka 93 and also a Director of each of the Companies, and Peter Ostapchuk, CFO of Artiva and Senior Financial Advisor to the Eureka Group of Companies (“**Management**”) (collectively, the “**Information**”).
6. The Proposal Trustee has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposal Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards (“**Canadian GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*. Accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
7. Some of the information referred to in this Third Report consists of financial projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
8. Future oriented financial information referred to in this Third Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
9. This Third Report does not include any consideration of the likely impact of the Coronavirus (“**COVID-19**”) on sales, production, supply chain or any other aspect of the business, which may have an adverse impact on the performance of the Companies. Readers should consider the increasingly broad effects on the financial condition of the

Companies, as a result of the negative impact on Canada, the global economy and major financial markets from COVID-19.

10. Capitalized terms not otherwise defined in this Third Report are as defined in the First Report and/or Second Report.
11. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

#### **STATUS OF INTERIM FINANCING FACILITY**

12. The Proposal Trustee has confirmed that since Court approval of the Interim Financing Facility, Artiva has made four draw requests totaling \$1,193,641. The fourth draw request was made on April 3, 2020, and the funds are anticipated to be received by Artiva on April 6, 2020.
13. The following is a comparison of the first four draw requests to the first four weeks of Statement of Projected Cash Flow for Artiva as filed with the Superintendent of Bankruptcy on February 19, 2020, and which was attached in Appendix “E” to the First Report (the “**Projections**”).

Actual Interim Financing Facility Draws and Disbursements Compared to Statement of Projected Cash-Flow For the 4-week period ended April 3, 2020			
(in \$CDN)	NOI Forecast to 3-Apr-20	Actual Draws to 3-Apr-20	Variance
<b>Receipts</b>			
DIP Funding February 2020	2,300,000	1,193,641	1,106,359
<b>Total Receipts</b>	<b>2,300,000</b>	<b>1,193,641</b>	<b>1,106,359</b>
<b>Disbursements</b>			
Inventory/Seed/Plantlet Purchases	-	133,805	(133,805)
Contract Labour / Architectural Fees	-	8,383	(8,383)
Equipment Rental (Backup generator)	3,242	3,243	(1)
Management Personnel Costs (3 persons)	50,692	64,858	(14,166)
Operations Personnel Costs (2 persons)	6,000	7,000	(1,000)
Master Grower Team Costs (4 Month Lead Time)	10,000	42,374	(32,374)
Internet Costs for Security Systems	167	1,817	(1,650)
Office Expenses	600	150	450
Travel Expenses	-	4,766	(4,766)
Professional Fees (Proposal Trustee & Legal Counsel)	100,000	232,981	(132,981)
Utilities and Power	3,784	4,400	(616)
Insurance (Business and Property Liability)	6,502	6,503	(1)
Property Taxes for Artiva Location	3,000	3,000	-
Repairs & Maintenance	400	-	400
Capital Expenditures	525,954	176,255	349,699
Licence Costs (Health Canada & Regulatory)	28,000	23,250	4,750
DIP Fees and Charges	320,000	300,000	20,000
DIP & Accrued Interest Expense on 1st Positions	130,856	130,856	(0)
Other (Liability Insurance on Property and Assets)	-	50,000	(50,000)
<b>Total Disbursements</b>	<b>1,189,196</b>	<b>1,193,641</b>	<b>(4,445)</b>
<b>Net Cash Flow</b>	<b>1,110,804</b>	<b>-</b>	<b>1,110,804</b>

14. The Proposal Trustee notes the following concerning the actual draws made to date and the significant variances:

- while the Projections anticipated all of the Interim Funding would be received in one initial draw, the parties have elected to operate on a draw request basis in order to satisfy invoices received or fund disbursements scheduled to be incurred during the following week;
- the negative disbursement variance for plantlets of \$133,805 is a timing difference, as it was initially planned for the fifth week of the forecast, but was actually made during draw weeks one, two and four;

- the negative disbursement variance for professional fees of \$132,981 is a result of:
  - (i) a timing difference, as the Projections provided for a straight-line expense of professional fees on a weekly basis, whereas the initial invoices from the Proposal Trustee, its counsel and the Companies' counsel reflect the significant up-front fees and disbursements incurred for the filing of the NOIs, and the preparation of the motion materials for the relief provided for in the Initial Order; and
  - (ii) a potential permanent difference due to the unanticipated additional fees involved in dealing with the opposition by Dominion Capital LLC ("**Dominion**") to the making of the Initial Order, which also required two adjournments of that motion, and the filing by the Companies of additional and more substantive material to respond to the material and positions put forward by Dominion.
- the positive disbursement variance for capital expenditures of \$349,698 is both a permanent and timing difference. Artiva initially anticipated an expenditure of approximately \$110,000 for the installation of a concrete floor in one of the growing rooms. The Company has decided to defer that expense as it can operate with the current flooring while redirecting those funds to more crucial operational requirements. In addition, there are certain capital expenditures that have been slightly delayed due to delays in obtaining satisfactory supplier quotes to complete the work, most notably from the electrical contractor (which quote has now been obtained and the work has been scheduled).

## **PROGRESS OF CONSTRUCTION**

15. The Proposal Trustee has been provided with access to an on-line tool that tracks the progress of construction at the Artiva facility. Work continues on lighting, installation of troughs, irrigation, HVAC, well and septic tank, and various production rooms. Due to the delays in obtaining quotes and some materials, the Company believes it is now two-to-three weeks behind its initial construction schedule. Management is not yet aware

at this time of what the additional implications are, if any, of the continuing evolving policies of the City of Ottawa and the Province of Ontario to deal with the COVID-19 pandemic that may have an impact on the construction schedule.

## **CULTIVATION LICENCE**

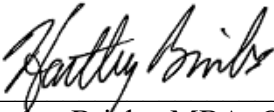
16. The Proposal Trustee confirmed on April 6, 2020, through the Government of Canada's website that Artiva continues to hold a licence issued by Health Canada under the Cannabis Regulations.

## **PROGRESS TOWARDS PRODUCTION OF A FIRST CROP**

17. In its Second Report, the Proposal Trustee reported that, subject to the timely completion of the HVAC system and the delivery and installation of grow lights, Artiva estimated that: i) they would be in a position to receive their first plantlet crop on or around April 10, 2020, and; ii) the first crop should be ready for cultivation on or about April 27, 2020. Due to the delays as discussed above, the Company now estimates that they should be in a position to receive their first plantlet crop on or around April 30, 2020, and that the first crop should be ready for cultivation on or around May 21, 2020. However, the recent suspension of non-essential construction by the Province may impact the work at the facility, which may result in a further delay in the progress towards a first crop.

All of which is respectfully submitted this 6<sup>th</sup> day of April, 2020.

**DELOITTE RESTRUCTURING INC,**  
**solely in its capacity as the Proposal Trustee**  
**of the Companies and not in its personal or**  
**corporate capacity**

Per:   
Hartley Bricks, MBA, CPA, CA, CIRP, LIT  
*Senior Vice-President*