

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

FIFTH REPORT OF THE MONITOR
DATED JULY 22, 2010

INTRODUCTION

1. On April 29, 2010, Planet Organic Health Corp. ("**Planet**" or the "**Company**") and Darwen Holdings Ltd. ("**Darwen**") (collectively, the "**Applicants**") filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the Order of this Honourable Court dated April 29, 2010 (the "**Initial Order**").
2. Pursuant to the Initial Order, Deloitte & Touche Inc. ("**Deloitte**") was appointed as the Monitor of the Applicants (the "**Monitor**") in the CCAA proceedings and a stay of proceedings was granted in favour of the Applicants. The stay of proceedings has been extended until July 30, 2010 (the "**Stay Period**").
3. The Monitor has provided this Honourable Court with the following reports:
 - i. a pre-filing report of the Proposed Monitor dated April 29, 2010 (the "**Pre-Filing Report**") in connection with the Applicants' application for protection under the CCAA;

- ii. a first report of the Monitor dated May 11, 2010 (the “**First Report**”) in connection with the Applicants’ motion to adjourn and postpone the Applicants’ annual general meeting;
 - iii. a second report of the Monitor dated May 19, 2010 (the “**Second Report**”) in connection with the Applicants’ motion to extend the Stay Period to June 18, 2010; and
 - iv. a third report of the Monitor dated May 28, 2010 (the “**Third Report**”) in connection with the Applicants’ motion for:
 - a. an Order approving the Acquisition Agreement dated May 19, 2010 between the Applicants and The Catalyst Capital Group Inc. on behalf of funds managed by it (“Catalyst”) that resulted from the sales process and pursuant to which an affiliate of Catalyst, 7562578 Canada Inc. (“**Acquireco**”), acquired substantially all of the assets of the Applicants (the “**Acquisition**”); and
 - b. an Order approving the proposed Directors’ & Officers’ Claims Procedure (“the **D&O Claims Procedure**”).
 - v. a fourth report of the Monitor dated June 16, 2010 (the “**Fourth Report**”) in connection with the Applicants’ motion to extend of the Stay Period to July 30, 2010, and to provide this honourable Court with a status update on the closing of the Catalyst Acquisition and the D&O Claims Procedure;
4. Copies of the Initial Order, the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report, all motion records and orders in the CCAA proceedings, and certain other documents related to the CCAA proceedings have been posted and are available on the Monitor’s website at www.deloitte.com/ca/planet-organic.

PURPOSE

5. The Applicants have served a motion returnable on July 28, 2010 for, among other things, an extension of the CCAA stay to November 30, 2010 (the “**Applicants’ Motion**”).
6. The purpose of this fifth report of the Monitor (the “**Fifth Report**”) is to provide:

- i. information on the:
 - a. mandatory corporate income tax, sales tax and other applicable tax filing requirements of the Applicants;
 - b. Vaughan store location lease and dealings with the associated landlord;
 - c. status of obligations settled under the Cash Reserve established pursuant to the Approval and Vesting Order dated June 4, 2010 granted in connection with the Acquisition (the “**Approval and Vesting Order**”);
 - d. status of, and steps taken under, the Directors’ & Officers’ Claims Procedure Order (the “**D&O Claims Procedure Order**”);
 - e. Applicants’ request for an extension of the Stay Period; and
- ii. the Monitor’s recommendation with respect to the relief sought in the Applicants’ motion.

TERMS OF REFERENCE

7. In preparing this Fifth Report, the Monitor has relied upon unaudited interim financial information, the Applicants’ books and records, and discussions with management and its financial and legal advisors. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of this information and, accordingly, the Monitor expresses no opinion or other form of assurance regarding any such information. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants Handbook has not been performed. Future oriented financial information referred to or relied upon in this Fifth Report is based on management’s assumptions regarding future events and conditions that are not ascertainable. Accordingly, actual results achieved will vary from any such information, and the variations may be material.
8. Unless otherwise stated, all monetary amounts contained in this Fifth Report are expressed in Canadian dollars.

9. Capitalized terms used in this Fifth Report but not defined are as defined in the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report and the Approval and Vesting Order.

TAX FILING REQUIREMENTS

10. Pursuant to the Applicants' Notice of Motion dated July 22, 2010, the Applicants are seeking an Order authorizing Acquireco to file required corporate income tax, sales tax and other applicable tax returns on behalf of Planet. The Monitor supports the Applicants' request given (i) Acquireco's knowledge of the Applicants' affairs, (ii) the fact that there are no remaining directors, officers or employees of the Applicants to make the filings on behalf of the Applicants and (iii) the fact that any tax refunds to which the Applicants may be entitled were acquired by Acquireco as part of the Acquisition.
11. The Applicants' Motion also seeks liability coverage for Acquireco in respect to the remittance of said tax filing requirements, other than liabilities or obligations that may arise due to any gross negligence or wilful misconduct of Acquireco associated with such tax filings. The Monitor supports the Applicants' request so long as the Monitor is given sufficient opportunity to review the tax returns prior to filing, as per the proposed Order.

DISCLAIMER OF VAUGHAN LEASE

12. On June 4, 2010, the Applicants disclaimed the Vaughan location lease.
13. On July 7, 2010, the Monitor attended at a joint walk through of the Vaughan location with representatives from Acquireco, the Vaughan landlord and the Applicants for purposes of identifying which assets any party believes are fixtures or improvements.
14. The parties continue to have discussions to arrive at a consensual arrangement for the removal or any other disposition of all or any part of the assets. In the event that the parties cannot reach a consensual arrangement, the parties have agreed to resolve a dispute by way of a motion to this Honourable Court.

STATUS OF THE CASH RESERVE

15. Pursuant to the Approval and Vesting Order, a Cash Reserve was established with the Monitor on the Closing Date, to be held in trust for the benefit of the Persons entitled to be paid Cash Reserve Costs per the terms of the Acquisition Agreement and the Approval and Vesting Order. The Cash Reserve would fund the following obligations of the Applicants:
- i. obligations secured by the Administration Charge established in the Initial Order to the extent required for the completion of the CCAA proceedings up to an aggregate maximum amount of \$300,000;
 - ii. obligations secured by the D&O Charge established in the Initial Order in respect of any claims covered by the D&O Charge and arising prior to the Closing Date up to an aggregate maximum amount of \$500,000;
 - iii. all claims under subsection 6(5)(a) of the CCAA in respect of the excluded employees to the extent not paid by the Applicants or assumed by Catalyst prior to the Closing Date; and
 - iv. Planet Organic's obligation to pay the amount owed to its financial advisor, PCG, under the April 20, 2010 letter agreement between PCG and Catalyst.
16. No cash flow statement is included with this Fifth Report as the only cash available to the Applicants post closing of the Acquisition is the Cash Reserve held by the Monitor for payment of the Cash Reserve Costs outlined in paragraph 15 above. Detailed below are all Cash Reserve disbursements that have been made to date pursuant to the terms of the Acquisition Agreement and the Approval and Vesting Order.
17. On June 8, 2010, the Monitor paid from the Cash Reserve approximately \$1.2 million to PCG in respect of the amount owing to PCG under the April 20, 2010 letter agreement.
18. With the approval of Acquireco and the Applicants, the Monitor subsequently paid approximately \$89,000 to the Monitor, its counsel, and the Applicants' counsel for obligations secured by the Administration Charge. The Monitor continues to hold

approximately \$211,000 in the Cash Reserve for future obligations secured by the Administration Charge in relation to the completion of the CCAA proceedings.

19. Upon reviewing adequate evidence that all claims under subsection 6(5)(a) of the CCAA in respect of excluded employees were fully paid by Acquireco on behalf of the Applicants subsequent to the closing of the Acquisition Agreement, and with the approval of Acquireco and the Applicants, the Monitor refunded to Catalyst the \$75,000 set aside for this purpose in the Cash Reserve. The payments made by Acquireco to excluded employees included full payment of outstanding wages, time in lieu, vacation pay and expense claim reimbursements.
20. The settlement of obligations secured by the D&O Charge established in the Initial Order, is discussed in detail in the section below.

STATUS OF THE D&O CLAIMS PROCEDURE

21. In the Fourth Report, the Monitor informed this Honourable Court of its performance of the following tasks as prescribed by the D&O Claims Procedure Order:
 - a. the Monitor made publicly available a copy of the Proof of Claim Document Package for the D&O Claims Process on the Monitor's website at www.deloitte.com/ca/planet-organic; and
 - b. the Monitor published notices on two separate days, within 5 business days of the D&O Claims Procedure Order, regarding the D&O Claims Procedure and the Claims Bar Date in each of the Globe and Mail, National Post, Toronto Star, Calgary Herald and Edmonton Journal.
22. As at the Claims Bar Date, which was 4:00 p.m. (EDT) on June 25th 2010, the Monitor received claims pursuant to the D&O Claims Procedure totalling \$57,912.59 from five claimants (the "**Claimants**"), summarized as follows:
 - i. 1668381 Ontario Inc. - \$17,118.45;
 - ii. 1668382 Ontario Inc. - \$17,118.45;
 - iii. Waste Services (CA) Inc. - \$855.92;

iv. 600869 BC Ltd. DBA New Age Media - 8,487.27

v. White Rose Building Services Ltd. - \$14,332.50.

23. The Monitor reviewed each claim, in collaboration with Acquireco and former employees of the Applicants, and disallowed each claim on the basis of (i) the claim filed did not include supporting documentation or (ii) the claim filed did not constitute a valid claim against the directors and officers of Planet.

24. A Notice of Disallowance was issued by the Monitor to each Claimant on July 2, 2010 by registered mail, disallowing each claim, and informing each Claimant that in order to dispute the Notice of Disallowance, a Dispute Notice must be received by the Monitor before 4:00 p.m. (EDT) on July 16, 2010, being fourteen days after the Notice of Disallowance was sent by the Monitor.

25. As at 4:00 p.m. (EDT) on July 16, 2010, the Monitor did not receive a Dispute Notice from any Claimants noted above. As of the close of business on July 21, 2010 the Monitor is not aware of having received a Dispute Notice from any of the Claimants.

26. Subsequent to the issuance of the Notices of Disallowance and approval from all directors and officers, the Monitor issued an interim payment to Acquireco in the amount of \$425,000, effectively holding \$75,000 of the \$500,000 set aside in the Cash Reserve for director and officer claims in order to cover the potential claims received of approximately \$58,000 (as discussed above), plus other incidental expenses that may arise.

27. Legal fees were incurred in relation to professional services provided by Miller Thomson LLP, as legal counsel to the directors of the Applicants, prior to the Acquisition Agreement close in the amount of \$1,832.33, which obligation was not settled at the time of Acquisition Agreement close. This obligation qualified for settlement under the Directors' Charge, as defined by paragraph 10(b) of the Approval and Vesting Order which establishes that the \$500,000 set aside under that provision is available to respond to any obligations secured by the Directors' Charge including, legal fees and costs, etc. Accordingly, with the approval of Acquireco and the Applicants, the Monitor settled the above invoice for professional services

rendered out of the funds held in the Cash Reserve for payment of any claims pursuant to the D&O Charge.

28. The Monitor is aware of another invoice from Miller Thomson LLP for services rendered as legal counsel of the directors of the Applicants, in the amount of \$1,883.63, which it anticipates settling through funds set aside in the Cash Reserve for director and officer claims, subsequent to approval from Acquireco and the Applicants. As no other such claims are known to exist, on July 21, 2010, the Monitor distributed to Acquireco, with the approval of the directors and officers and per the terms of the Acquisition Agreement and the Approval and Vesting Order, funds set aside in the Cash Reserve for director and officer claims, amounting to approximately \$71,000.

STAY PERIOD EXTENSION

29. The Applicants' Motion seeks an extension of the Stay Period to November 30, 2010 to allow the time required for: (i) the Vaughan landlord process to conclude or for any related matters to be decided by the Court if need be; and (ii) Acquireco to file returns and collect any tax refunds owing to Planet in respect to corporate income tax, sales tax or other tax.
30. The Monitor understands that Acquireco supports the Applicants' request for an extension of the Stay Period to November 30, 2010.
31. It is the view of the Monitor that the Applicants have been acting and continue to act in good faith and with due diligence in their restructuring efforts. As such, the Monitor supports the Applicants' request for an extension of the Stay Period to November 30, 2010.

MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

32. The Monitor supports and recommends that this Court grant the relief sought in the Applicants' Motion in substantially the form set out in the draft order annexed to the Notice of Motion.

All of which is respectfully submitted at Toronto, Ontario, this 22nd day of July, 2010.

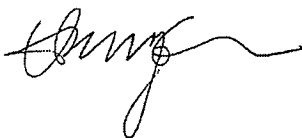
DELOITTE & TOUCHE INC.

In its capacity as Monitor of Planet Organic Health Corp. and Darwen Holdings Ltd.

Per:

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Pierre Laporte, CA•CIRP
President

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

Huey Lee, MBA, CMA, CIRP
Vice President

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Court File No.: 10-8699-00CL

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Proceeding commenced at Toronto

FIFTH REPORT OF THE MONITOR

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