

**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

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**MOTION RECORD  
(RETURNABLE ON MAY 12, 2010)**

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May 6, 2010

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**INDEX**

<b><u>Tab No.</u></b>	<b><u>Description</u></b>	<b><u>Page No.</u></b>
1.	Notice of Motion, returnable on May 12, 2010	1-8
2.	Affidavit of Darren Krissie, sworn on May 6, 2010	9-14

## Tab 1

**ONTARIO  
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APPLICANTS



**NOTICE OF MOTION  
(returnable on May 12, 2010)**



The Applicants, Planet Organic Health Corp. and Darwen Holdings Ltd. (collectively, "Planet Organic"), will make a motion to the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on Wednesday, May 12, 2010 at 10:00 am., or as soon after that time as the motion can be heard at the 330 University Avenue, Toronto, Ontario, M5G 1R8.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) an Order abridging time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;

- (b) an Order adjourning and postponing the annual general meeting of shareholders of Planet Organic, which is currently scheduled for May 14, 2010 (the “Planet Organic AGM”); and
- (c) such further and other relief as counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**A. Background**

1. On April 29, 2010, the Applicants sought and obtained protection under the *Companies Creditors Arrangement Act* (the “CCAA”).
2. As part of that initial application, the Applicants sought an order postponing the Planet Organic AGM (then scheduled for April 30, 2010) on the basis that holding such a meeting could impede the orderly restructuring of the Applicants as is set out in greater detail in the Affidavit of Darren Krissie sworn April 29, 2010 (the “April 29 Krissie Affidavit”).
3. The Court declined to deal with the postponement of the Planet Organic AGM, because, *inter alia*:
  - (a) the shareholders and particularly the majority shareholder, Mr. Ron Francisco, did not have notice of the application and of the requested postponement of the Planet Organic AGM; and
  - (b) Planet Organic had the corporate authority and ability to adjourn the date on its own and without court order to as late as May 14, 2010.

4. After the application hearing, Planet Organic adjourned the meeting to May 14, 2010.

**B. The Need to Postpone Planet Organic AGM Beyond May 14, 2010**

5. Planet Organic owes approximately \$32.6 million to The Catalyst Capital Group Inc., on behalf of funds that it manages (“Catalyst”), which is secured against all of the property of the Applicants.
6. Catalyst has recently made demand and Planet Organic is unable to repay said debt. A liquidation analysis undertaken suggests that the liquidation value of Planet Organic is substantially less than the amounts owing to Catalyst.
7. After the conclusion of an extensive refinancing and sales process undertaken by the Applicants, an offer by Catalyst was selected by the Board of Directors as it was the best and most viable offer. The process undertaken by management and the Board of Directors began in 2008 when Planet Organic first defaulted on its financial covenants with its secured creditors and continued up to the date of filing for *CCAA* protection.
8. During that comprehensive process (a process in which Mr. Francisco participated) and to this date, no other parties have come forward with viable offers or proposals that are better than the terms offered by Catalyst.
9. The Applicants are now in the process of settling an acquisition agreement and transaction for the sale of the business and assets of the Applicants with Catalyst (the “Catalyst Transaction”).



10. The Catalyst Transaction contemplates, *inter alia*, that the majority of unsecured creditors would be paid in full and the jobs of the overwhelming majority of the employees at Planet Organic would be preserved.
11. Once finalized, it is the intention of the Applicants to bring a motion for the approval of the Catalyst Transaction to the court in the near future on notice to all interested parties, including Mr. Francisco.
12. Allowing the Planet Organic AGM to proceed at this juncture will only lead to a disruption of an orderly restructuring of the business since Mr. Francisco has made it known that he opposes any transaction whereby he loses control of the business and that he intends to replace the Board of Directors with his nominees. Moreover, it is unlikely that a new board of directors would be in a position to properly discharge their obligations to act in the best interests of the company and to consider the interests of all stakeholders.
13. The Catalyst Transaction is the best available option and Planet Organic should have the opportunity to bring the transaction forward in a timely and orderly fashion for review by the court and creditors of the estate. Under the circumstances, it is fair and reasonable for this Honourable Court to delay the Planet Organic AGM so that the Catalyst Transaction can be considered by this Honourable Court and stakeholders.
14. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.
15. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE:** will be used at the hearing of the motion:

- (a) Affidavit of Darren Krissie sworn April 29, 2010;
- (b) Affidavit of Darren Krissie sworn May 6, 2010; and
- (c) such further and other materials counsel may advise and this Honourable Court may permit.

May 6, 2010

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Court File No: 10-8699-00CL

APPLICANTS

**ONTARIO  
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Proceeding commenced at Toronto

**NOTICE OF MOTION**  
(returnable on May 12, 2010)

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**Tab 2**

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**AFFIDAVIT OF DARREN KRISSIE  
(Sworn on May 6, 2010)**

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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 a director and officer of the Applicant, Darwen Holdings Ltd., which is a wholly owned 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 as a supplemental affidavit in support of a motion to adjourn and postpone the annual general meeting of shareholders of Planet Organic. In terms of the factual history of the Applicants and its various efforts to refinance and restructure, I rely on my affidavit sworn April 29, 2010 (the "April 29 Krissie Affidavit"), in support of the application for protection under the *Companies' Creditors Arrangement Act* ("CCAA").

**I. Background**

3. On April 29, 2010, the Applicants sought and obtained protection under the *CCAA*.

4. As part of the initial application, the Applicants sought an order postponing the annual general meeting of shareholders then scheduled for April 30, 2010 (the "Planet Organic AGM") on the basis that holding such a meeting would disrupt the orderly restructuring of the Applicants, as is set out in greater detail in the April 29 Krissie Affidavit.

5. I am advised by the Applicants' counsel that the Court declined to deal with the issue, *inter alia*, as:

- (a) the shareholders and particularly the majority shareholder, Mr. Ron Francisco, did not have notice of the application and of the requested postponement of the Planet Organic AGM; and
- (b) Planet Organic had the corporate authority and ability to adjourn the date on its own and without court order to as late as May 14, 2010.



6. After the application hearing, Planet Organic adjourned the meeting to May 14, 2010.

## **II. The Need to Postpone Planet Organic AGM Beyond May 14, 2010**

7. The reasons for the requested postponement of the Planet Organic AGM are set out in greater detail in the April 29 Krissie Affidavit, and are briefly summarized as follows:

- (a) Planet Organic owes approximately \$32.6 million to The Catalyst Capital Group Inc. on behalf of funds that it manages ("Catalyst") which is secured against all of the property of the Applicants.
- (b) Catalyst has made demand and Planet Organic is unable to repay said debt;
- (c) a liquidation analysis undertaken suggests that the liquidation value of Planet Organic is substantially less than the amounts owing to Catalyst;
- (d) Planet Organic has spent the last eighteen (18) months trying to first restructure or refinance, and then more recently, to down-size and sell itself as a going concern – all with a view of allowing the business to survive;
- (e) in its current form, Planet Organic cannot survive;
- (f) efforts to sell the core divisions of Planet Organic's business (which represent all or substantially all of the remaining assets of Planet Organic), have been opposed by Mr. Francisco, who wishes to retain a majority stake in any go forward business and who has voiced his intention to replace the current Board of Directors at his first opportunity;

- (g) notwithstanding an extensive marketing and sales process, no viable offer was received whereby Mr. Francisco would retain control of the business or that is better or more viable than the offer by Catalyst;
- (h) although given several opportunities, Mr. Francisco has not put forward any viable offer to repay the secured debts and retain the business;
- (i) the current Board of Directors after reviewing all of the offers tabled made a good faith determination that the offer from Catalyst was the best and most viable offer; and
- (j) once the terms of a transaction with Catalyst are finalized, it is the intention of the Applicants to bring a motion to the court for approval, on notice to all interested parties, including Mr. Francisco.

8. The Applicants are currently in the process of settling an acquisition agreement and transaction (the "Catalyst Transaction") for the sale of the business and assets of the Applicants with Catalyst.

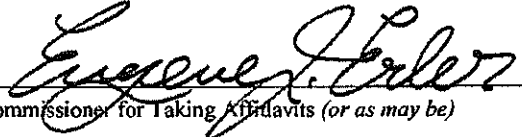
9. The Catalyst Transaction contemplates, *inter alia*, that the majority of unsecured creditors would be paid in full and the jobs of the overwhelming majority of the employees at Planet Organic would be preserved.

10. Allowing the Planet Organic AGM to proceed at this juncture will disrupt the orderly consideration of the transaction by stakeholders that is being finalized with Catalyst. The disruption that would follow Mr. Francisco reconstituting the Board of Directors would likely result in the delay or frustration of the Catalyst Transaction and would impair Planet Organic's efforts to successfully restructure.

11. Planet Organic should have the opportunity to bring forward the Catalyst Transaction in a timely and orderly fashion to the court for consideration and approval by the court and Planet Organic's stakeholders. At that point, it can be determined if it is in the best interests of the Applicants, its creditors and other stakeholders.

12. I swear this affidavit in support of a motion to adjourn and postpone the Planet Organic AGM and for no other or improper purpose.

SWORN BEFORE ME at the )  
City of Edmonton in the )  
Province of Alberta )  
this 6<sup>th</sup> day of May, 2010. )

  
\_\_\_\_\_  
Commissioner for Taking Affidavits (or as may be)

  
\_\_\_\_\_  
Darren Krissie

EUGENE J. ERLER  
BARRISTER AND SOLICITOR  
AND NOTARY PUBLIC

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