

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  
PLANET ORGANIC HEALTH CORP. AND  
DARWEN HOLDINGS LTD.

SEVENTH REPORT OF THE MONITOR  
DATED MAY 31, 2011

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**INTRODUCTION**

1. On April 29, 2010, Planet Organic Health Corp. ("**Planet**") 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 the Court (the "**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. By further Orders of the Court, the stay of proceedings was extended until May 31, 2011 (the "**Stay Period**").
  3. The Monitor has provided the 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;
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- 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;
- iv. a third report of the Monitor dated May 28, 2010 (the “**Third Report**”) in connection with the Applicants’ motion for, among other things:
  - 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. (“**New Planet Organic**”), acquired substantially all of the assets of the Applicants, including the Tax Refunds discussed and defined below (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 Stay Period to July 30, 2010 and to provide the Court with a report on:
  - a. the closing of the Acquisition; and
  - b. the status of the D&O Claims Procedure;
- vi. a fifth report of the Monitor dated July 22, 2010 (the “**Fifth Report**”) in connection with the Applicants’ motion to extend the Stay Period to November 30, 2010 and to provide the Court with a report on:
  - a. the status of obligations settled under the Cash Reserve (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**”);

- b. the completion of the D&O Claims Procedure;
  - c. certain matters relating to the Vaughan store location lease and related dealings and disputes with the Vaughan landlord (the “**Vaughan Lease Matters**”); and
  - d. certain mandatory corporate income tax, sales tax and other applicable tax filing requirements of the Applicants to be completed by New Planet Organic on behalf of the Applicants (the “**Tax Filings**”) in connection with the acquisition of any associated refunds (the “**Tax Refunds**”) by New Planet Organic as part of the Acquisition; and
- vii. a sixth report of the Monitor dated November 24, 2010 (the “**Sixth Report**”) in connection with the Monitor’s motion to extend the Stay Period (up to the time at which the Tax Refunds are received) and to provide the Court with a report on:
- a. the general status of obligations settled under the Cash Reserve established pursuant to the Approval and Vesting Order;
  - b. the resolution of the Vaughan Lease Matters; and
  - c. the completion of the Tax Filings and the status of the Tax Refunds.
4. Copies of the Initial Order, the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth 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](http://www.deloitte.com/ca/planet-organic).

#### **PURPOSE**

5. The purpose of this seventh report of the Monitor (the “**Seventh Report**”) is to provide the Court with a further update on the few remaining matters in these CCAA proceedings, being namely (a) the status of the Cash Reserve, (b) the status of receipt of the Tax Refunds and (c) the Applicants’ and New Planet Organic’s decision not to seek a further extension of the Stay Period in connection with these few remaining matters, or any other matter.

## TERMS OF REFERENCE

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

## STATUS OF THE CASH RESERVE

7. As described in detail in the Sixth Report, 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 purposes set out below:
  - i. 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;
  - ii. 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, which amounts were not expected to exceed \$75,000;
  - iii. Planet Organic's obligation to pay the amount owed to its financial advisor, PCG, of approximately \$1.2 million as defined in the Acquisition Agreement; and
  - iv. 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.
8. With respect to the obligations and claims intended to be protected by the Cash Reserve, the Monitor reports as follows. A reconciliation of funds held in trust by the Monitor is attached as **Exhibit "A"**.
  - i. Following the completion of the Court approved D&O Claims Process, no claims were accepted for payment from the Cash Reserve relating to the D&O Claims. Accordingly, the full \$500,000 has been refunded to New Planet Organic pursuant to the Acquisition Agreement and the Approval and Vesting Order.

- ii. With respect to the excluded employees, the Monitor obtained adequate evidence that all claims under subsection 6(5)(a) of the CCAA in respect of excluded employees were fully paid by New Planet Organic on behalf of the Applicants subsequent to the closing of the Acquisition Agreement. With the approval of New Planet Organic and the Applicants, the Monitor returned to New Planet Organic \$71,284, being the amount remaining of the \$75,000 charge subsequent to payment of fees of the Applicants' legal counsel covered under subsection 6(5)(a) of the CCAA.
- iii. With respect to the amounts owed to PCG, the Monitor paid from the Cash Reserve approximately \$1,207,502 to PCG in respect of the amount owing to PCG, in accordance with the Acquisition Agreement and the Approval and Vesting Order.
- iv. With respect to the cost to complete the CCAA proceedings, since the Closing Date, and with the pre-approvals of New Planet Organic and the Applicants, the Monitor has settled the following fees and disbursements from the Cash Reserve, being obligations secured by the Administration Charge:

<u>Invoice Date</u>	<u>Service Provider</u>	<u>Invoice Amount</u>
<b><u>Professional Fees</u></b>		
Jun 23, 2010	Deloitte & Touche Inc.	\$ 52,827.33
Jul 23, 2010	Deloitte & Touche Inc.	14,490.00
Sep 15, 2010	Deloitte & Touche Inc.	9,361.24
Nov 11, 2010	Deloitte & Touche Inc.	7,058.63
Dec 10, 2010	Deloitte & Touche Inc.	7,756.89
Jun 22, 2010	Goodmans LLP	12,548.20
Jul 12, 2010	Goodmans LLP	1,809.47
Aug 9, 2010	Goodmans LLP	723.14
Sep 21, 2010	Goodmans LLP	13,277.81
Nov 30, 2010	Goodmans LLP	15,509.44
Jun 9, 2010	Baker McKenzie LLP	3,733.51
Jun 17, 2010	Baker McKenzie LLP	11,240.25
Jun 22, 2010	Baker McKenzie LLP	14,087.38
Jun 10, 2010	Heighington Law Firm	3,104.94
		<u>\$ 167,528.23</u>
<b><u>Publication Costs</u></b>		
Jun 30, 2010	TMP Worldwide	\$ 18,437.91
		<u>\$ 185,966.14</u>

9. Accordingly, the balance remaining in the Cash Reserve at this time is approximately \$114,000 in respect of the Administration Charge and the costs covered thereby.

#### **STATUS OF TAX REFUNDS**

10. Pursuant to the Order of the Court dated July 28, 2010 (the “**July 28 Order**”), attached to this Seventh Report as **Exhibit “B”**, New Planet Organic was authorized to make the Tax Filings on behalf of the Applicants given that (i) New Planet Organic had acquired any Tax Refunds due to the Applicants under the Acquisition Agreement and (ii) post-Acquisition, the Applicants did not (and do not) have any remaining officers, directors or employees who could have made the Tax Filings.
11. As reported in the Sixth Report, New Planet Organic timely completed and filed the Tax Filings. However, the Tax Refunds have not yet been received. The Monitor is advised by William Jean, CFO of New Planet Organic, that the Tax Refunds are in the process of being reviewed by CRA, but that the Refunds are currently being withheld by CRA pending receipt of certain missing corporate income tax returns and sales tax filings for one of the affiliates of the Applicants. Management of New Planet Organic is reviewing the books and records of the Applicants and continuing discussions with CRA in order to compile and file such tax returns as soon as possible. Mr. Jean was unable to provide an estimate as to when these matters will be resolved with CRA, which will facilitate the processing and final receipt of the Tax Refunds.
12. Pursuant to the Court’s November 29, 2010 Order (the “**November 29 Order**”), attached to this Seventh Report as **Exhibit “C”**, the Court:
- a. extended the Stay Period for approximately six months (to May 31, 2011) in the expectation that the Tax Refunds would be received by then; and
  - b. established a process whereby, once the Tax Refunds are received, (i) New Planet Organic is to file an Officer’s Certificate with the Court confirming that the Tax Refunds have been received and paid to New Planet Organic, in accordance with the Acquisition and the Approval and Vesting Order and (ii) the Monitor is to file

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a brief status update which will address any remaining matters in these proceedings, such as fees or discharge.

**EXPIRY OF STAY PERIOD**

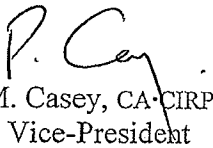
13. Pursuant to the July 28 Order, the Stay Period was extended for approximately three months to November 30, 2010 because it was expected that the Tax Refunds might be received by then.
14. Pursuant to the November 29 Order, the Stay Period was extended for a further approximately six months to May 31, 2011 because it was expected that the Tax Refunds might be received by then.
15. As stated, the Tax Filings have been made, but the Tax Refunds have not yet been received.
16. The Monitor has conferred with counsel to the Applicants and counsel to New Planet Organic and has been advised that, at this stage, the parties do not consider it necessary to seek a further extension of the Stay Period pending receipt of the Tax Refunds, and the Monitor is not aware of any other reason to do so.
17. Per the procedures that have been established by prior Orders of the Court, when the Tax Refunds are received by New Planet Organic (which was authorized in prior Orders to make the Tax Filings and receive the Tax Refunds), New Planet Organic is required to file an Officer's Certificate with the Court confirming same and the Monitor is to file a further status update regarding any final matters in these proceedings.
18. At that point, the final steps in these proceedings – such as fee approvals, discharge of the Monitor and the final distributions from the Cash Reserve – can and would be expected to be addressed.

All of which is respectfully submitted at Toronto, Ontario, this 31<sup>st</sup> day of May, 2011.

**DELOITTE & TOUCHE INC.**

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

Per:

  
Paul M. Casey, CA-CIRP  
Senior Vice-President



"A"

<b>CCAA Proceedings of Planet Organic Health Corp.</b> <b>Reconciliation of the Cash Reserve</b> <b>As at May 31, 2011</b>		
<b>Proceeds from sale distributed to Monitor</b>		\$ 2,082,502
Less: Payment to PCG, Financial Advisor, per Acquisition Agreement		(1,207,502)
Proceeds held by Monitor in trust to cover specific obligations and claims per the Approval and Vesting Order		\$ 875,000
<b>Administration Charge</b>	<b>\$ 300,000</b>	
Less: Professional fees	(167,528)	(167,528)
Less: Publication costs	(18,438)	(18,438)
<b>Balance of Administration Charge</b>	<u><b>\$ 114,034</b></u>	
<b>D&amp;O Charge</b>	<b>\$ 500,000</b>	
Less: Claims settled by D&O Charge	-	-
Less: Distribution to New Planet Organic	(500,000)	(500,000)
<b>Balance of D&amp;O Charge</b>	<u><b>\$ -</b></u>	
<b>Charge for claims under subsection 6(5)(a) of the CCAA</b>	<b>\$ 75,000</b>	
Less: Claims under subsection 6(5)(a) of the CCAA Applicant's Counsel	(3,716)	(3,716)
Less: Distribution to New Planet Organic	(71,284)	(71,284)
<b>Balance of charge under subsection 6(5)(a) of the CCAA</b>	<u><b>\$ -</b></u>	
Less: Misc Expenses Bank Charges		(224)
<b>Balance in Cash Reserve (balance applicable to Administration Charge)</b>		<u><b>\$ 113,810</b></u>

"B"

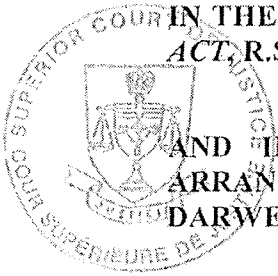
Court File No. 10-8699-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR. ) WEDNESDAY, THE 28<sup>th</sup>  
 )  
JUSTICE MORAWETZ ) DAY OF JULY, 2010

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

ORDER

THIS MOTION made by Planet Organic Health Corp. ("POHC") and Darwen Holdings Ltd. ("Darwen") (collectively, the "the Applicants") for an order, *inter alia*, extending the stay of proceedings granted in this application (the "Stay Period") from July 30, 2010 to and including November 30, 2010 and other relief, as set out in the Applicants' Notice of Motion, dated July 22, 2010, was heard this day at 330 University Avenue, Toronto, Ontario M5G 1R8.

ON READING the notice of motion, dated July 22, 2010, the Fifth Report of Deloitte & Touche Inc. (the "Monitor") dated July 22, 2010 (the "Fifth Report"), and the previously filed Fourth Report of the Monitor dated June 16, 2010 (the "Fourth Report"), and on hearing the submissions of counsel for the Applicants, and the Monitor, and such other counsel as were present.

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

2. THIS COURT ORDERS that the Stay Period in paragraph 14 of the Initial Order of the Honourable Mr. Justice Morawetz dated April 29, 2010, be and hereby is extended to and including November 30, 2010.

3. THIS COURT ORDERS that 7562578 Canada Inc. ("**New Planet Organic**") is hereby authorized, but not obligated, to prepare, sign and file, on behalf of either Applicant, any returns, elections, authorizations, forms, declarations, certificates, instruments or other documentation necessary or desirable for the purpose of establishing the tax refund entitlements of the Applicants and receiving any amount owing, or eligible to be refunded to either Applicant (including on behalf of Healthy's, The Athletes Edge Inc. ("**Healthy's**"), which amalgamated with POHC on January 1, 2010) or any predecessor or assignee of the Applicants, currently or in the future, by or on behalf of any government or government authority in respect of any period that (i) ends on or prior to the Closing Date (as defined in the Fourth Report), or (ii) includes the Closing Date, including, without limitation, the T2 Corporation Income Tax Return and any and all related returns and schedules in respect of the net income or loss for income tax purposes of POHC, Darwen and/or Healthy's referable to the taxation year ended on December 31, 2009 (collectively, "**Tax Filings**").

4. THIS COURT ORDERS that any government or government authority shall accept any Tax Filings, signed and filed by an authorized signing officer of New Planet Organic as having been duly signed and filed by an authorized signing officer of the Applicants.

5. THIS COURT ORDERS that neither New Planet Organic nor the Monitor shall incur any liability or obligation as a result of the carrying out of the actions set out in paragraph 3 above, save and except for any such liabilities or obligations resulting from gross negligence or wilful misconduct on its part.

6. THIS COURT ORDERS that New Planet Organic shall provide the Monitor with an opportunity to review any Tax Filings before being filed, if so requested by the Monitor.

7. THIS COURT ORDERS AND DECLARES that the actions and conduct of the Monitor in the CCAA proceedings from May 28, 2010 to the date of the Fifth Report, as more particularly set out in the Fourth Report and Fifth Report, and the Fourth and Fifth Reports, be and are hereby approved, and that the Monitor has satisfied all of its obligations from May 28, 2010 up to and including the date of the Fifth Report.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 29 2010

PER / PAR:



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.

Court File No: 10-8699-00CL

APPLICANTS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

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Lawyers for the Applicants

"C"

Court File No. 10-8699-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR.  
JUSTICE MORAWETZ

)  
)  
)

MONDAY, THE 29TH  
DAY OF NOVEMBER, 2010



IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. and  
DARWEN HOLDINGS LTD.

ORDER

THIS MOTION, made by Deloitte & Touche Inc., in its capacity as Monitor (the "Monitor") of Planet Organic Health Corp. and Darwen Holdings Ltd. (collectively, the "Debtors"), for an order, *inter alia*, extending the stay of proceedings initially granted pursuant to the Order of the Honourable Mr. Justice Morawetz dated April 29, 2010 (the "Initial Order") for a period of time necessary to complete the administration of these proceedings, and certain related relief, as set out in the Monitor's Notice of Motion dated November 24, 2010, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Notice of Motion and the Report of the Monitor, and on hearing the submissions of counsel for the Monitor, counsel for 7562578 Canada Inc. ("New Planet Organic") and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

**SERVICE**

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

**CCAA STAY**

2. THIS COURT ORDERS that the Stay Period in paragraph 14 of the Initial Order be and is hereby extended to and including May 31, 2011.

**TAX REFUNDS**

3. THIS COURT ORDERS AND AUTHORIZES New Planet Organic to endorse on behalf of either Debtor any and all cheques to New Planet Organic as payee in respect of any refunds or other amounts (the "**Tax Refunds**") that the Debtors may receive in connection with the Tax Filings (as defined in the Order of this Court dated July 28, 2010).

4. THIS COURT ORDERS AND AUTHORIZES New Planet Organic to deliver an officer's certificate to the Monitor certifying, once such matters have occurred, that (i) the Tax Filings are complete and have been assessed by the Canada Revenue Agency and any applicable provincial revenue authority and (ii) any Tax Refunds received by the Debtors have been paid to, and received by, New Planet Organic or New Planet Organic's entitlement to the Tax Refunds has otherwise been resolved to the satisfaction of New Planet Organic (the "**Officer's Certificate**").

5. THIS COURT ORDERS AND DECLARES that New Planet Organic shall incur no liability or obligation as a result of the carrying out of the actions set out in paragraphs 3 and 4, save and except for any such liabilities or obligations resulting from gross negligence or wilful misconduct on its part.

6. THIS COURT ORDERS AND DECLARES that, upon receipt of the Officer's Certificate, the Monitor shall file a brief update report, which report shall address any remaining matters in the CCAA proceedings such as fees and the timing of discharge.

**DISCHARGE OF CHARGES**

7. THIS COURT ORDERS that the Directors' Charge (as defined in the Initial Order) shall be and is hereby discharged and released.

**THE MONITOR**

8. THIS COURT ORDERS that the actions and conduct of the Monitor in these CCAA proceedings from July 22, 2010 (the date of the Fifth Report of the Monitor) to November 24, 2010 (the date of the Sixth Report of the Monitor), as set out in the Sixth Report of the Monitor, and the Sixth Report itself, are approved.

9. THIS COURT ORDERS that, except to the extent the Initial Order has been varied by or is inconsistent with this Order, the provisions of the Initial Order shall remain in full force and effect until the Filing Date, and the Monitor shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of Deloitte & Touche, Inc. in its capacity as Monitor.

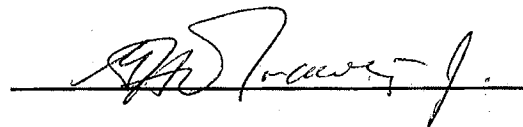
**FURTHER ADVICE AND DIRECTION**

10. THIS COURT ORDERS that the Monitor or New Planet Organic may apply to this Court for further advice, directions or assistance as may be necessary to give effect to the terms of this Order, provided that any such application shall be on not less than five (5) days notice to either New Planet Organic or the Monitor, as applicable, and any other party likely to be affected by the application.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

DEC 03 2010

PER / PAR:





**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

Court File No. 10-8699-00CI

**AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. and DARWEN  
HOLDINGS LTD.**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**ORDER**

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Lawyers for the Monitor

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. AND DARWEN HOLDINGS LTD.

Court File No.:10-8699-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SEVENTH REPORT OF THE MONITOR**

**Goodmans LLP**

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