

**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.**

**SIXTH REPORT OF THE MONITOR  
DATED NOVEMBER 24, 2010**

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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 this Honourable 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 November 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, 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 (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 Acquisition and the D&O Claims Procedure; and
- 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 this Honourable Court with a status update on the following:
  - a. 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;
  - b. the Vaughan store location lease and related dealings and disputes with the Vaughan landlord;

- c. the 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**”); and
  - d. the status of, and steps taken under, the Directors’ & Officers’ Claims Procedure Order (the “**D&O Claims Procedure Order**”).
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, 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 sixth report of the Monitor (the “**Sixth Report**”) is to provide the Court with information on the few remaining matters in these CCAA proceedings, being:
  - i. the status of the Tax Filings (as defined in the last Order of this Court dated July 28, 2010 (the “**July 28 Order**”)) made by New Planet Organic on behalf of the Applicants;
  - ii. the resolution of the Vaughan store issues with the associated landlord;
  - iii. the status of obligations settled under the Cash Reserve established pursuant to the Approval and Vesting Order; and
  - iv. certain other matters concerning the Applicants,in each case in connection with the motion filed by the Monitor, on behalf of the Applicants (who, post-Acquisition, have no remaining management, officers, directors or employees), for an Order that will, among other things, allow these proceedings to automatically terminate once the tax refunds expected in respect of the Tax Filings (the “**Tax Refunds**”) are received by the Applicants and endorsed over to New Planet Organic in accordance with the Acquisition Agreement and the Approval and Vesting Order (the “**Monitor’s Motion**”).

## **TERMS OF REFERENCE**

6. In preparing this Sixth Report, the Monitor has relied upon unaudited interim financial information, the Applicants' books and records, and discussions with the Applicants' former management. 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.
7. Unless otherwise stated, all monetary amounts contained in this Sixth Report are expressed in Canadian dollars.
8. Capitalized terms used in this Sixth 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 and the Approval and Vesting Order.

## **TAX FILINGS**

9. Pursuant to the July 28 Order, 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.
10. New Planet Organic has completed and filed the Tax Filings. As contemplated by the July 28 Order, the Monitor was provided with an adequate opportunity to review the Tax Filings prior their remittance. The Monitor understands that to date, the Tax Refunds have not yet been received by the Applicants.
11. Once the Tax Refunds are received, New Planet Organic will again need authority from this Court to, on behalf of the Applicants (who have no ability to do so themselves), endorse the Tax Refunds over to New Planet Organic in accordance with the Acquisition Agreement and the Approval and Vesting Order. Accordingly, the Monitor supports the relief requested in the proposed Order in that regard.

## **CONCLUSION OF THE VAUGHAN LEASE MATTERS**

12. As reported in the Fifth Report, the Applicants disclaimed the Vaughan location lease on June 4, 2010 and, on July 7, 2010, the Monitor attended at a joint walk through of the Vaughan location with representatives from New Planet Organic, 8000 Bathurst Street Realty Inc. (the “**Vaughan Landlord**”) and the Applicants for purposes of identifying which assets any party believed to be fixtures or improvements.
13. Subsequently, pursuant to an executed release and quit claim agreement dated September 7, 2010, New Planet Organic and the Vaughan Landlord resolved the disputes between them over the remaining property at the Vaughan location. Under this agreement, the Vaughan Landlord agreed to pay the all-inclusive sum of \$275,000 to New Planet Organic in exchange for complete conveyance of title to the disputed leasehold improvements.
14. Accordingly, all matters between the Applicants, New Planet Organic and the Vaughan Landlord with respect to the Vaughan location have now been resolved.

## **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 was established to 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. As reported in the Fifth Report, the Monitor has already:

- i. satisfied all 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, and distributed, with the approval of New Planet Organic and the Applicants, any and all excess and remaining Cash Reserve funds in respect of the D&O Charge to New Planet Organic, as required by the Acquisition Agreement and the Approval and Vesting Order;
- ii. reviewed 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, and with the approval of New Planet Organic and the Applicants, distributed to New Planet Organic the \$75,000 set aside for this purpose in the Cash Reserve, as required by the Acquisition Agreement and the Approval and Vesting Order; and
- iii. 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, in accordance with the Acquisition Agreement and the Approval and Vesting Order.

17. Accordingly, the only funds that remain in the Cash Reserve at this time are \$144,000 in respect of the Administration Charge and the costs covered thereby, as detailed below.

18. With the approval of New Planet Organic and the Applicants, the Monitor has to date paid approximately \$137,000 to the Monitor, its counsel, and the Applicants' counsel for obligations secured by the Administration Charge since the Closing Date. The Monitor also incurred miscellaneous expenses of approximately \$19,000, mainly attributable to

advertising costs associated with placing newspaper notice of the D&O Claims Process, as directed by the Court. The Monitor continues to hold approximately \$144,000 in the Cash Reserve for future obligations secured by the Administration Charge in relation to the completion of the CCAA proceedings. A summary of professional fees secured and settled by the Administration Charge to date, with the consent of all relevant parties, is as follows:

<b>Invoice Date</b>	<b>Service Provider</b>	<b>Invoice Amount</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
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
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
		\$ 137,203.27

19. The amounts above detail the payments of fees and expenses that the Monitor and its legal counsel have received from the Cash Reserve since the closing of the Acquisition, with the approval of New Planet Organic. On the closing of the Acquisition, the Monitor and its legal counsel also received payment of their fees and expenses incurred in these CCAA proceedings to the date of closing, again with the approval of New Planet Organic. For the Court's information, these amounts were \$215,677.39 and \$223,127.80, respectively.

#### **HUMAN RIGHTS APPLICATION**

20. For the Court's information, the Monitor is aware that on September 21, 2010, the Human Rights Tribunal of Ontario ("HRTO") issued a notice of mediation regarding an application by certain individuals in respect of Planet. The mediation date was scheduled for November 2, 2010.

21. On October 21, 2010, counsel for the Applicants (Baker & McKenzie LLP) provided written notice to the HRTO and Human Rights Advisory Services, as the representative of one of the individuals, that Planet was subject to a stay of proceedings until November 30, 2010 pursuant to the July 28 Order. The Applicants' counsel also advised that substantially all of the assets of Planet were sold pursuant to the Approval and Vesting Order, and that it had no instructions to act or respond to the human rights application, or participate in any mediation or proceeding, the stay of proceedings notwithstanding.
22. On October 29, 2010, the HRTO issued a notice of cancelation of the mediation date. The HRTO requested that counsel for the Applicants provide it with an update on the status of these proceedings at the beginning of December 2010. The Monitor understands that counsel to the Applicants will do so.

#### **STAY PERIOD EXTENSION**

23. 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. As stated, the Tax Filings have been made, but the Tax Refunds have not yet been received.
24. Given that only the few administrative-type matters outlined above remain in these CCAA proceedings, the Monitor, the Applicants and New Planet Organic agree that, rather than extending the stay period for another fixed period of time and incurring the cost and time of further proceedings before the Court, it is more efficient and appropriate at this stage in the CCAA proceedings to now seek the proposed form of Order which will allow these proceedings to automatically terminate once the Tax Refunds are received by the Applicants and endorsed over to New Planet Organic in accordance with the Acquisition Agreement and the Approval and Vesting Order.
25. As discussed, to accomplish this final step, New Planet Organic requires authority from the Court to receive and endorse over the Tax Refunds on behalf of the Applicants, again given that the Applicants have no remaining personnel to accomplish that themselves. The Monitor



supports this request, as does New Planet Organic. The Applicants' counsel has been consulted and does not object.

## **MONITOR'S CONCLUSIONS AND RECOMMENDATIONS**

26. The Monitor supports and recommends that this Court grant the relief sought in the proposed form of final Order for these CCAA proceedings, in substantially the form set out in the draft order annexed to the Monitor's Notice of Motion. In the Monitor's view, the proposed form of Order is appropriate at this stage of these CCAA proceedings and will allow for an efficient and orderly conclusion and termination of these CCAA proceedings and the few administrative-type matters that remain.

27. No cash flow statement is included with this Sixth Report as the only cash available to the Applicants post closing of the Acquisition is the Cash Reserve held by the Monitor, which funds are being held solely for purposes of payment of the Cash Reserve Costs outlined in paragraph 15 above.

All of which is respectfully submitted at Toronto, Ontario, this 24<sup>th</sup> day of November, 2010.

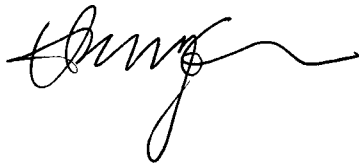
### **DELOITTE & TOUCHE INC.**

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

Per:



Pierre Laporte, CA•CIRP  
President



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

**SIXTH REPORT OF THE MONITOR**

**Goodmans LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Brian F. Empey (LSUC#: 30640G)  
Tel: 416.597.4194

Brendan O'Neill (LSUC #: 43331J)  
Tel: 416.849.6017

Fax: 416.979.1234

Lawyers for the Monitor