

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.)**

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

Dated May 19, 2020

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INTRODUCTION

1. This sixth report (the “**Sixth 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 (the “**Proposal Filing Date**”).
3. On April 23, 2020, the Court issued an order extending the date by which the Companies must file their proposals to June 12, 2020.
4. 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 (the “**Artiva Facility**”); (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.
5. The Receiver has filed four bi-weekly reports in these proceedings, the latest being on May 4, 2020 (the “**Fifth Report**”).
6. The purpose of this Sixth Report is to provide the fifth bi-weekly status report required under the Initial Order.

TERMS OF REFERENCE AND DISCLAIMER

7. In preparing this Sixth 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**”).
8. 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.
9. Some of the information referred to in this Sixth 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.
10. Future oriented financial information referred to in this Sixth 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.
11. While this Sixth Report does reference some of the known impacts of the Coronavirus pandemic (“**COVID-19**”) on the Companies’ operations, there may be further impacts not yet identified that may impact 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.

12. Capitalized terms not otherwise defined in this Sixth Report are as defined in the First Report through the Fifth Report.
13. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

STATUS OF INTERIM FINANCING FACILITY

14. The Proposal Trustee has confirmed that since Court approval of the Interim Financing Facility, Artiva has made ten draw requests totaling \$2,051,517, out of the total availability of \$2.3 million. The tenth draw request of \$131,297 was made on May 15, 2020, and the funds are anticipated to be received by Artiva on May 19, 2020.
15. The following is a comparison of the first ten draw requests to the first six 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**”), and the first four weeks of the Cash Flow Forecast for the period April 20 to June 12, 2020, which was attached as Appendix “E” to the Fourth Report (the “**Cash Flow Forecast**”, and collectively with the Projections “**Forecast**”).

Actual Interim Financing Facility Draws and Disbursements Compared to the Forecast For the 10-week period ended May 15, 2020			
(in \$CDN)	NOI Forecast to 14-May-20	Actual Results to 14-May-20	Variance
Receipts			
DIP Funding February 2020	2,300,000	2,051,516	(248,484)
Collection of A/R (Net Gross Margin)	203,280	-	(203,280)
Other	-	46,000	46,000
Total Receipts	2,503,280	2,097,516	(405,764)
Disbursements			
Inventory/Seed/Plantlet Purchases	200,580	133,805	66,775
Contract Labour / Architectural Fees	7,910	37,195	(29,285)
Integrated Pest Prevention	10,110	-	10,110
Equipment Rental (Backup generator)	8,105	8,109	(4)
Management Personnel Costs (3 persons)	148,863	174,096	(25,232)
Operations Personnel Costs (2 persons)	16,000	17,500	(1,500)
Master Grower Team Costs (4 Month Lead Time)	38,730	80,579	(41,849)
Internet Costs for Security Systems	417	2,221	(1,804)
Office Expenses	1,500	7,028	(5,528)
Travel Expenses	1,500	6,312	(4,812)
Professional Fees (Proposal Trustee & Legal Counsel)	280,000	292,208	(12,208)
Utilities and Power	10,934	10,800	134
Insurance (Business and Property Liability)	16,255	16,259	(4)
Property Taxes for Artiva Location	7,500	12,500	(5,000)
Repairs & Maintenance	1,000	-	1,000
Capital Expenditures	587,822	503,435	84,387
Licence Costs (Health Canada & Regulatory)	28,000	53,474	(25,474)
DIP Fees and Charges	300,000	300,000	-
DIP & Accrued Interest Expense on 1st Positions	327,139	336,012	(8,873)
Other (Liability Insurance on Property and Assets)	-	61,983	(61,983)
Total Disbursements	1,992,365	2,053,517	(61,151)
Net Cash Flow	510,915	44,000	(466,915)

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

- while the Projections anticipated all of the principal under the Interim Financing Facility 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 \$203,280 negative variance in A/R receipts relates to a deposit for a proposed sale of clones that was recently canceled by the purchaser as it was unable to obtain a Cannabis

licence from Health Canada nor was it able to obtain sufficient financing for the proposed purchase. As a result, this represents a permanent variance;

- The positive \$46,000 variance in “Other” receipts is the result of: i) proceeds of \$4,000 from the sale of scrap metal from greenhouse hoops formerly located in the outdoor covered grow area at the Artiva Facility; and ii) proceeds of \$40,000 from a loan Artiva obtained under the Canada Emergency Business Account (“CEBA”). CEBA is a Government of Canada program that provides interest free loans up to \$40,000 to small businesses to help cover their operating costs during a period where their revenues have been temporarily reduced, due to the economic impacts of COVID-19. Under the CEBA program, repayment of the balance of the loan by December 31, 2022 will result in forgiveness of 25% of the amount borrowed. While Artiva appears to meet the eligibility requirements set out by the Government of Canada website, the Proposal Trustee has not undertaken any assessment of Artiva’s entitlement to, or use of, the proceeds of the CEBA loan;
- the positive variance in plantlet purchases of \$66,775 is a timing difference as Artiva anticipates completing those additional plantlet purchases in the coming weeks;
- the negative variance of \$29,285 for contract labour/architectural fees is a permanent difference as such fees were not initially anticipated, but were incurred as a result of a change in the growing room layouts to optimize work and process flow;
- the management personnel costs negative variance of \$25,232 is partly a temporary difference, as the forecast did not include HST for such costs but which will become refundable upon submission of Artiva’s HST return (approximately \$11,100), and is partly a permanent difference as greater time has been incurred by the CFO than was initially forecast (approximately \$14,100);
- the master grower team costs negative variance of \$41,849 is a permanent difference as there were greater up-front costs, and the size of the overall team was greater than anticipated;

- the negative disbursement variance for professional fees has decreased from \$77,208 to \$12,208 since the Fifth Report, but continues to be the 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 reflected 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 \$84,387 is both a permanent and timing difference. As previously reported, 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. A portion of those funds have been repurposed into other areas of the Artiva Facility, including for renovation of the outdoor grow area; and
- there remains \$248,484 available for drawdown under the Interim Financing Facility.

PROGRESS OF CONSTRUCTION

17. In addition to discussions with Management, the Proposal Trustee continues to access an on-line tool that tracks the progress of construction at the Artiva Facility. Since the Fifth Report, work has been completed on the south well pump, septic tank, boiler drainage and kitchen and washrooms, racking and lighting. Work continues on certain HVAC, electrical,

gas and systems installations, including secure camera installations and updates to security systems.

18. As set out in the Fifth Report, Management had indicated that they are experiencing delays in completing certain of the electrical work at the Facility, which they directly attribute to COVID-19 related issues with the electrical contractor. They engaged a new electrician who started working at the Facility on May 2, 2020. Management now anticipates that construction will be completed during the week ending May 29, 2020.

CULTIVATION LICENCE

19. The Proposal Trustee confirmed on May 18, 2020, through the Government of Canada's website, that Artiva continues to hold a licence issued by Health Canada under the Cannabis Regulations.
20. Artiva has advised that they have also now received a cannabis licence from Canada Revenue Agency under the *Excise Act, 2001* ("**CRA Cannabis Licence**"), which will permit them to cultivate, produce, package and sell cannabis products.

PROGRESS TOWARDS PRODUCTION OF A FIRST CROP

21. In its Fifth Report, the Proposal Trustee reported that Management had estimated that they should be in a position to receive their first plantlet crop in the first week of May 2020, and that the projected timing for cultivation of the first crop was on or around May 21, 2020. Having received its CRA Cannabis Licence two weeks later than originally anticipated, the first plantlet crop was not received until the week ending May 1, 2020. Management now anticipates the first crop will be ready for cultivation during the week ending June 5, 2020.

All of which is respectfully submitted this 19th day of May, 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