

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

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.)**

EIGHTH REPORT OF THE PROPOSAL TRUSTEE

August 27, 2020

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden LSO #38239M
(416) 593-3927 (Tel)
(416) 593-5437 (Fax)
Email: egolden@blaney.com

Chad Kopach LSO #48084G
(416) 593-2985 (Tel)
(416) 593-5437 (Fax)
Email: ckopach@blaney.com

Lawyers for the Proposal Trustee

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INTRODUCTION

1. This eighth report (the “**Eighth 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 filed six bi-weekly reports in these proceedings, the latest being dated June 1, 2020 (the “**Seventh Report**”), until the Proposals (as defined below) were filed by the Companies.
6. On June 12, 2020, the Companies filed their proposals with the Proposal Trustee (the

“**Proposals**”), with Artiva and LiveWell filing a Joint Proposal (the “**Joint Proposal**”).

7. The general meetings of creditors to vote on the Proposals were held on July 28, 2020 (the “**Creditor Meetings**”). Due to issues raised at those Creditor Meetings by Dominion Capital LLC, those Creditor Meetings were adjourned. In his Case Management Order and Direction dated August 5, 2020, Justice MacLeod ordered that the votes on the proposals should be completed no later than August 28, 2020. Accordingly, the Proposal Trustee set the dates for the reconvened Creditor Meetings as August 28, 2020.
8. On August 20, 2020, Justice MacLeod issued a Case Conference Memorandum, which among other things, directed the Proposal Trustee to update its last bi-weekly report prior to the next Case Conference, which is scheduled for September 2, 2020.

TERMS OF REFERENCE AND DISCLAIMER

9. In preparing this Eighth 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**”).
10. 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.
11. Some of the information referred to in this Eighth 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.

12. Future oriented financial information referred to in this Eighth 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.
13. While this Eighth 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.
14. Capitalized terms not otherwise defined in this Eighth Report are as defined in the First Report through the Seventh Report.
15. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

STATUS OF INTERIM FINANCING FACILITY

16. The Proposal Trustee has confirmed that since Court approval of the Interim Financing Facility, Artiva has fully drawn down on the \$2.3 million Interim Financing Facility.
17. The following is a comparison of the actual cash flow results for the period from March 9 to August 21, 2020, to the Forecast. For purposes of this Eighth Report, the "Forecast" is a combination of the following cash flow projections for Artiva: i) the first six weeks of the Statement of Projected Cash Flow as filed with the Superintendent of Bankruptcy on February 19, 2020, and which was attached in Appendix "E" to the First Report, ii) the first five 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, and iii) 11 weeks of the updated cash flow forecast for the period June 6 to August 21, 2020 which was provided to the Proposal

Trustee on July 14, 2020.

Actual Interim Financing Facility Draws and Disbursements Compared to the Forecast For the 24 week period ended August 21, 2020			
(in \$CDN)	Forecast to Aug 21st	Actual Results to Aug 21	Variance
Receipts			
DIP Funding	2,300,000	2,300,000	-
Clone and Extractions Sales - (Net Gross Margin)	535,665	21,726	(513,939)
HST refund	163,284	181,762	18,478
Other	34,912	45,310	10,398
Total Receipts	3,033,861	2,548,798	(485,063)
Disbursements			
Contract Labour / Architectural Fees	28,660	25,071	3,589
Inventory / Seed / Plantlet Purchase	200,580	116,500	84,080
Integrated Pest Prevention	28,308	23,666	4,642
Packaging and Shipping	-	4,775	(4,775)
Equipment Rental (Backup generator)	19,453	15,777	3,675
Management Personnel Costs (3 Persons)	307,740	251,712	56,028
Operations Personnel Costs (2 Persons)	38,750	48,500	(9,750)
Master Grower Team Costs (4 Month Lead Time)	86,193	87,127	(934)
Sales & Marketing (incl. WebSite)	-	11,289	(11,289)
Internet Costs for Security Systems	1,000	1,650	(650)
Laboratory Testing	-	2,276	(2,276)
Office Expenses	2,850	2,885	(35)
Travel Expenses	4,500	4,859	(359)
Professional Fees (Proposal Trustee & Legal Counsel)	377,500	289,373	88,127
Utilities and Power	28,849	9,663	19,186
Insurance (Business and Property Liability)	21,132	17,885	3,247
Property Taxes for Artiva Location	18,000	34,501	(16,501)
Capital Expenditures	638,891	613,388	25,503
Operations Costs & Maintenance	37,900	38,499	(599)
Licence Costs (Health Canada& Regulatory)	28,000	36,748	(8,748)
DIP Fees and Refinance Charges	300,000	300,000	-
Accrued Interest Expense on 1st Positions	478,179	489,422	(11,243)
Liability Insurance on Property & Assets	-	65,372	(65,372)
Other (365 Cannabis ERP and Other Assets)	26,487	48,145	(21,658)
Total Disbursements	2,672,972	2,539,083	133,889
Net Cash Flow	360,889	9,714	(351,175)

18. 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 \$513,939 negative variance in clone and extractions sales receipts is part permanent difference and part temporary difference. The permanent difference relates to a \$203,280 deposit for a proposed sale of clones that was canceled by the purchaser and was discussed in the Sixth Report. The temporary difference of \$310,659 relates to a delay in sales of clones as the result of earlier delays in obtaining approval for the Interim Financing Facility, which delayed construction of the Artiva Facility, which then delayed obtaining the CRA Cannabis Licence that was required to allow Artiva to take delivery of plantlets. The delay in sales is also partly attributable to market uncertainty concerning the proposal proceedings. The Company expects a substantial portion of the negative variance to reverse should the Joint Proposal be approved, at which time further financing would be pursued and parties may be more willing to transact with the Company;
 - the positive variance in plantlet purchases of \$84,080 is a permanent difference as Artiva has established a clipping and strain retention strategy in grow operations such that it did not need to make additional plantlet purchases;
 - the positive variance in management personal costs of \$56,028 is a temporary difference as the Company has not had funds available since June to pay these costs, which have accrued and remain owing;
 - the positive variance in professional fees of \$88,127 is a temporary difference as the Company has not had funds available to pay further fees. As of August 21, 2020, accrued and outstanding professional fees are approximately \$254,000. These unpaid professional

fees have the benefit of the security of the Administration Charge provided for under the March 9, 2020 Order of Justice MacLeod;

- the negative variance in property taxes of \$16,501 is a permanent variance, and will increase by a further \$45,000 as property taxes have gone unpaid with no funds currently available; and
- the negative variance in liability insurance of \$65,372 is a permanent difference as these amounts were not originally included in the Forecast but were a condition for obtaining the Interim Financing Facility. These insurance costs were initially paid for by the Interim Financing lender, and applied against the Interim Financing Facility.

19. Management advises that the maturity date of the Interim Financing Facility has been extended to October 31, 2020. Additionally, they advise that the first mortgage over the Artiva Facility has also been extended to October 31, 2020. Management has indicated that they are in discussions with multiple parties to refinance their existing debt and to obtain further capital either through equity or joint venture arrangements, all of which will be subject to approval and implementation of the Joint Proposal.

ACCOUNTS PAYABLE

20. As discussed above, with the Interim Financing Facility fully drawn, and with clones sales failing to materialize at projected rates as a result of the delay in construction of the Artiva Facility, the delays in obtaining a CRA Cannabis Licence and Health Canada outdoor cultivation licence, and general market uncertainty in the future of the Company, the Company has not had sufficient funds on hand to meet its liabilities. As a result, as at August 21, 2020, the Company's accounts payable consists of the following:

Regular trade payables	\$ 43,243
Long-term trade payables (Bilberry)	49,801
Management salaries	56,028
Property taxes	45,156
Professional fees	254,042
	<u>\$ 448,270</u>

PROGRESS OF CONSTRUCTION

21. Management advises that substantially all of the construction as initially contemplated is now complete.
22. The Company has a number of planned construction projects that it hopes to implement in order to grow its business and achieve the projected distributions to creditors under the Joint Proposal. Those projects include installation and ducting of two further HVAC units, installation of concrete flooring and upgrade of the electrical system from the current single phase to three phase, which will provide more power to the Artiva Facility and allow the Company to increase its production capabilities. These projects will not be initiated until the Joint Proposal is approved and enacted and sufficient funding is available.

CULTIVATION LICENCE

23. The Proposal Trustee confirmed on August 26, 2020, through the Government of Canada's website, that Artiva continues to hold a licence issued by Health Canada under the Cannabis Regulations.
24. The Company has also applied for a Health Canada outdoor cultivation licence, the processing of which was delayed as a result of COVID-19, but was eventually received on August 27, 2020. This licence is necessary to expand their grow operations and permit outdoor cultivation. As a result of the delay in obtaining their own outdoor cultivation licence, in July 2020 the Company entered into a joint venture arrangement ("**JV**") with North Bud Farms Inc. ("**North Bud**"), a cultivation Licensed Producer with a Health Canada outdoor grow license held under its subsidiary GrowPros MMP Inc. North Bud accepted shipment of 2,854 mid- and large-sized plants from Artiva as Artiva's contribution to the JV for their outdoor grow facility. Under the JV arrangement, North Bud will continue to nurture and grow the plants to flower this autumn, sharing the harvest 50/50 with Artiva up to a yield of 1,800 kg of flower to Artiva. Management estimates the

potential revenue from this arrangement at \$1,800,000.

PROGRESS TOWARDS PRODUCTION OF A FIRST CROP

25. In its Seventh Report, the Proposal Trustee reported that Management's revised timing by which the first crop will be ready for cultivation was during the week ending June 5, 2020. That timetable was essentially met. A portion of that first crop formed part of Artiva's contribution to the JV with North Bud. Additionally, Management advises that they have entered into a joint venture arrangement with Empress Agri Sales Inc. ("**Empress**"), which holds an ACMPR Medical Sales Licence and permits them to accept and fulfill online prescriptions for medical cannabis. Up to August 21, 2020, Artiva has sold and shipped approximately \$21,700 of plantlets and clones to ACMPR clients via Empress.
26. Management further advises that they have approximately \$70,000 of orders on hand that that are scheduled for shipment in late August and September.

OTHER ACTIVITIES

27. In order to sustain the Artiva business while these proposal proceedings have moved slowly forward, resulting in the inability to raise new capital, Management reports that they are in the process of negotiating two further joint venture arrangements. The first proposed joint venture is for seed sales to ACMPR customers and the second involves the delivery of extraction equipment which will allow for the manufacture of various cannabis tinctures (alcohol based cannabis extracts) from cannabis flower. Both of these arrangements are contingent on approval and implementation of the Joint Proposal.

All of which is respectfully submitted this 27th day of August, 2020.

**DELOITTE RESTRUCTURING INC,
solely in its capacity as the Proposal Trustee
of the Companies and not in its personal or
corporate capacity**

A handwritten signature in cursive script that reads "Hartley Bricks".

Per:

Hartley Bricks, MBA, CPA, CA, CIRP, LIT
Senior Vice-President

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BLANEY McMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden LSO #38239M
(416) 593-3927 (Tel)
(416) 593-5437 (Fax)
Email: egolden@blaney.com

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