

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

Estate Number: 33-2618511  
Court File No.: 33-2618511

**AND 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**

Estate Number: 33-2618512  
Court File No.: 33-2618512

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF LIVEWELL FOODS CANADA INC. OF THE CITY OF OTTAWA IN THE  
PROVINCE OF ONTARIO**

Estate Number: 33-2618510  
Court File No.: 33-2618510

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF ARTIVA INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO**

Estate Number: 33-2618513  
Court File No.: 33-2618513

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF VITALITY CBD NATURAL HEALTH PRODUCTS INC. OF THE CITY OF  
OTTAWA IN THE PROVINCE OF ONTARIO**

**MOTION RECORD**

Date: 18 February 2020

**GOWLING WLG (CANADA) LLP**  
Barristers & Solicitors  
1 First Canadian Place, Suite 1600  
100 King Street West  
Toronto, ON M5X 1G5

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Lawyers for the Debtors

**TO: THE ATTACHED SERVICE LIST**

## SERVICE LIST

<b>TO:</b>	<b>GOWLING WLG (CANADA) LLP</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto ON M5X 1G5  <b>E. Patrick Shea</b> Tel: (416) 369-7399 Fax: (416) 862-7661 Email: <a href="mailto:patrick.shea@gowlingwlg.com">patrick.shea@gowlingwlg.com</a>  <i>Solicitors for the Debtors</i>
<b>AND TO:</b>	<b>DELOITTE RESTRUCTURING INC.</b> 8 Adelaide Street West, Suite 200, Toronto, ON M5H 0A9  <b>Attention: Hartley Bricks</b> Tel: (416) 775-7326 Fax: (416) 601-6690 Email: <a href="mailto:hbricks@deloitte.ca">hbricks@deloitte.ca</a>
<b>AND TO:</b>	<b>BLANEY MCMURTRY LLP</b> 2 Queen Street East, Suite 1500 Toronto, Ontario M5C 3G5  <b>Attention: Eric Golden</b> Tel: (416) 593-3927 Fax: (416) 596-2049 Email: <a href="mailto:egolden@blaney.com">egolden@blaney.com</a>  <i>Counsel to Deloitte</i>
<b>AND TO:</b>	<b>FAMILY LENDING INC. / AGRIROOTS CAPITAL MANAGEMENT INC.</b> 136 St. Clair St. Chatham, Ontario N7L3J3  <b>Attention: Robb Nelson and/or Shawn Bustin</b> Tel: (519) 351-5650 Fax: (866) 405-3889 Email: <a href="mailto:robb@ArgiRoots.ca">robb@ArgiRoots.ca</a> Email: <a href="mailto:shawn@ArgriRoots.ca">shawn@ArgriRoots.ca</a>
<b>AND TO:</b>	<b>PERLEY-ROBERTSON HILL &amp; MCDOUGALL LLC</b> 1400-340 Albert St Ottawa, ON K1R 0A5

<b>AND TO:</b>	<b>LAMARCHE ELECTRIC INC.</b> 9374 County Road 17 Rockland, Ontario K4K 1K9
<b>AND TO:</b>	<b>PALADIN TECHNOLOGIES INC.</b> 29 Antares Dr #201 Nepean, ON K2E 7V2
<b>AND TO:</b>	<b>OLYMPIA TRUST COMPANY</b> PO Box 2581, STN Central Calgary, AB T2P 1C8
<b>AND TO:</b>	<b>DOMINION CAPITAL LLC</b> 256 West 38 <sup>th</sup> St, 15 <sup>th</sup> Floor New York, NY 10018
<b>AND TO:</b>	<b>INTERNATIONAL PROCESS PLANTS AND EQUIPMENT CORP</b> 410 Princeton-Hightstown Rd Princeton Junction, NJ 08550
<b>AND TO:</b>	<b>ATTORNEY GENERAL OF CANADA</b> Department of Justice Canada Ontario Regional Office – Tax Law Section The Exchange Tower 130 King Street West, Suite 3400 Box 36 Toronto, ON M5X 1K6  <b>Attention: Diane Winters</b> Tel: (416) 973-3172 Fax: (416) 973-0809 Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a>

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**

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Estate Number: 33-2618513  
Court File No.: 33-2618513

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF VITALITY CBD NATURAL HEALTH PRODUCTS INC. OF THE CITY OF  
OTTAWA IN THE PROVINCE OF ONTARIO**

**NOTICE OF MOTION**

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 “**Debtors**”) will make a Motion to the Bankruptcy Court on Tuesday the 25<sup>th</sup> of February 2020 at 9:00 a.m., or as soon after that time as the motion can be heard, at 161 Elgin Street, Ottawa, Ontario.

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

**THE MOTION IS FOR:**

1. An Order substantially in the form attached hereto as **Schedule “A”**:

- (a) procedurally consolidating the Proposal Proceedings commenced by each of the Debtors under the Proposal Proceeding commenced by Eureka 93;
  - (b) granting charges over the Debtors' assets, property and undertaking to secure the fees and expenses of Deloitte Restructuring Inc. and Gowling WLG (Canada) LLP;
  - (c) approving \$2.3 million of interim financing to be provided to the Debtors by Spouter Corporation Inc., David VanSegbrook and Donna VanSegbrook (the "**Interim Lender**") and granting to the Interim Lenders a charge over the Property; and
  - (d) extending the date by which the Debtors are required to file proposals to 29 April 2020; and, if necessary
2. An Order sealing certain confidential documents contained in the volume titled Confidential Documents: Poli Affidavit.
  3. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The grounds set out in the Seann Poli Affidavit sworn 18 February 2020 (the "**Poli Affidavit**").
2. The grounds set out in the First Report of Deloitte Restructuring Inc. in its capacity as the Debtors' proposal trustee (the "**First Report**").
3. Such further and other grounds as counsel may advise and this Honourable Court may accept.

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

1. The Poli Affidavit;
2. The First Report; and

3. Such further and other evidence as this Honourable Court may permit.

18 February 2020

**GOWLING WLG (CANADA) LLP**  
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Toronto, Ontario M5X 1G5

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Lawyers for the Debtors

**SCHEDULE "A"**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE M ) TUESDAY, THE 25<sup>TH</sup>  
JUSTICE [NAME] ) DAY OF FEBRAURY, 2020

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**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
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OTTAWA IN THE PROVINCE OF ONTARIO**

**ORDER**

**THIS MOTION**, made by Eureka 93 Inc., LiveWell Foods Canada Inc., Artiva Inc. and Vitality CBD Natural Health Products Inc. (the “**Debtors**”) for various relief pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the “**BIA**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Seann Poli sworn 18 February 20120 and the First Report of Deloitte Restructuring Inc. in its capacity as the Debtors’ proposal trustee (“**Deloitte**”) dated

[Date] February 2020 (the “**First Report**”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Debtors, counsel for Deloitte, no one else appearing:

## **SERVICE**

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

## **ADMINISTRATIVE CONSOLIDATION**

2. **THIS COURT ORDERS** that the proposal proceedings of the Debtors (collectively, the “**Proposal Proceedings**”) be and are hereby administratively consolidated and the Proposal Proceedings are hereby authorized and directed to continue under the following joint title of proceedings:

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**AND 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**

Estate Number: **33-2618512**  
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**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF LIVEWELL FOODS CANADA INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO**

Estate Number: **33-2618510**  
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**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF ARTIVA INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO**

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**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VITALITY CBD NATURAL HEALTH PRODUCTS INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO**

3. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed only in the Eureka 93 Inc. estate and court file (estate number **33-2618511** and court file number **33-2618511**) and hereby dispenses with further filing thereof in the estate and court files of the other Debtors.

#### **ADMINISTRATION CHARGE**

4. **THIS COURT ORDERS** that the Proposal Trustee, counsel for the Proposal Trustee and counsel to the Debtors shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on all of the assets, property and undertaking of the Debtors (the “**Property**”), which Administration Charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 9 and 11 hereof.

#### **INTERIM FINANCING**

5. **THIS COURT ORDERS** that the Debtors shall be entitled, subject to the terms of the Commitment Agreement dated January 2019 (the “**Credit Agreement**”) between the Debtors and Sprouter Corporation Inc., David Van Segbrook and Donna Van Segbrook (the “**Interim Lenders**”) and attached as Schedule [Number] to the First Report, borrow from the Interim Lenders and amount that shall not exceed the amounts contemplated in the Credit Agreement.

6. **THIS COURT ORDERS** that the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees or other definitive documents (the “**Definitive Documents**”), as are contemplated by the Credit Agreement.

7. **THIS COURT ORDERS** that as security for all of the obligations of Debtors to the Lenders relating to advances made under the Credit Agreement from and after the date of this Order, the Interim Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**Interim Lending Charge**”) on the Property, and the DIP Charge shall have the priority set out in paragraphs 9 and 11.

8. **THIS COURT ORDERS AND DECLARES** that the Interim Lender shall be unaffected: (a) by the stay of proceedings provided for in section 69 or 69.1 of the BIA, as applicable, or any other stay that may be ordered by the Court in any other proceedings initiated by the Debtors; and (b) under any proposal, or plan of compromise or arrangement filed by the Debtors.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

9. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Interim Lending Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000).

Second – Interim Lending Charge.

10. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the Interim Lending Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

11. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property so charged by them and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any person.

12. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any charge, security interest or other encumbrance over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Debtors obtain the prior written consent of the Proposal Trustee, the Interim Lenders and the beneficiaries of the Administration Charge or an Order of this Court.

13. **THIS COURT ORDERS** that the Charges, the the Credit Agreement, the other Credit Documents and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the

“Chargees”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the Debtors, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Credit Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Debtors of any Agreement to which any one of them is a party; and
- (b) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the Debtors entering into the Credit Agreement or the Definitive Documents or the creation of the Charges, or the execution, delivery or performance of any such documents.

14. **THIS COURT ORDERS** that any of the Charges created by this Order over leases of real property in Canada shall only be a charge in the Debtors’ interest in such real property leases.

#### **EXTENSION OF TIME TO MAKE PROPOSAL**

15. **THIS COURT ORDERS** that the date by which the Debtors are required to file proposals be and is hereby extended to 29 April 2020.

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AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF ARTIVA INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

Estate Number/Court File No.: 33-2618513

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VITALITY CBD NATURAL HEALTH PRODUCTS INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**(PROCEEDING COMMENCED AT OTTAWA)**

**NOTICE OF MOTION**

**GOWLING WLG (CANADA) LLP**

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Lawyers for the Debtors

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**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
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OTTAWA IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF SEANN POLI**  
**(sworn 18 February 2020)**

**I, SEANN POLI, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND  
SAY:**

1. I am a director 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 "**Debtors**"). I am a

shareholder of Eureka 93 and was a director of LiveWell until April of 2019, at which point I resigned. I became a director of the Debtors and co-CEO of Eureka 93 in September of 2019, when the majority of the directors and officers of Eureka 93 resigned *en masse*. I have personal knowledge of the matters herein deposed, save and except where I rely on information provided to me by others or from my review of documentation, in which cases I provide the source of that information and that I believe it to be true.

**I. The Motion**

2. This Affidavit is being sworn in connection with a Motion by the Debtors seeking an Order:
  - (a) procedurally consolidating the Proposal Proceedings (as defined below) commenced by each of the Debtors under the Proposal Proceeding commenced by Eureka 93;
  - (b) granting charges over the Debtors' assets, property and undertaking (the "**Property**") to secure the fees and expenses of Deloitte Restructuring Inc. ("**Deloitte**") and Gowling WLG (Canada) LLP ("**Gowling**");
  - (c) approving \$2.3 million of interim financing (the "**Interim Financing**") to be provided to the Debtors by Spouter Corporation Inc., David VanSegbrook and Donna VanSegbrook (the "**Interim Lender**") and granting to the Interim Lenders a charge over the Property;
  - (d) extending the date by which the Debtors are required to file proposals to 29 April 2020; and, if necessary,

(e) sealing certain confidential documents.

## II. Books of Exhibits

3. Produced and shown to me are two volumes of exhibits: one titled “**Eureka 93 Documents: Poli Affidavit**” and a second titled “**Eureka 93 Confidential Documents: Poli Affidavit**”. These volumes include all of the exhibits referenced by me in this Affidavit.

4. The volume titled Eureka 93 Confidential Documents contains: (a) a market value valuation (the “**Ottawa Facility Valuation**”) of property owned by Artiva located at 5130 and 5208 Ramsayville Road in Ottawa, Ontario (the “**Ottawa Facility**”) prepared for AgriRoots Capital Management Inc. by Valco Consultants Inc.; and (b) an unsolicited offer (the “**Artiva Offer**”) for the shares of Artiva received in November of 2019. In the event that the restructuring of the Debtors is not successful, the Debtors’ assets, including the Ottawa Facility, will have to be marketed for sale. Disclosure of the Ottawa Facility Valuation and the Artiva Offer may adversely impact the marketing for sale of the Debtors’ property, including the Ottawa Facility.

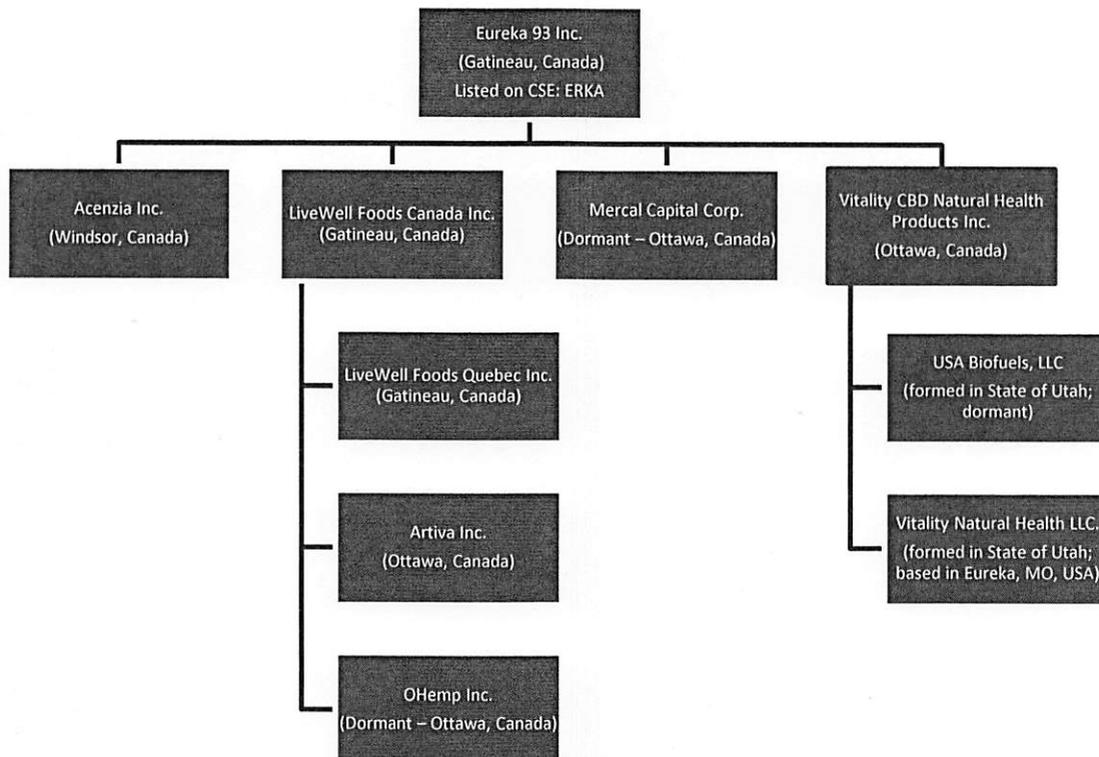
## III. The Proposal Proceedings

5. On or about 14 February of 2020, each of the Debtors commenced proceedings (the “**Proposal Proceedings**”) under Part III of the *Bankruptcy and Insolvency Act* (the “**BIA**”) by filing a Notice of Intention to Make a Proposal naming Deloitte Restructuring Inc. (“**Deloitte**”) as proposal trustee. The filing-related documents for each of the Debtors are at **Exhibits [1] through [4]** of the Eureka 93 Documents.

6. Deloitte has or will retain independent counsel to advise it in connection with the performance of its duties as proposal trustee. Each of the Debtors has retained Gowling as its legal advisor for the purposes of the Proposal Proceedings.

#### IV. Background

7. The Debtors are members of a corporate group the ultimate parent of which is Eureka 93 (the “Eureka 93 Group”). A corporate chart for the Eureka 93 Group is immediately below:



8. The Eureka 93 Group was intended to be a vertically integrated hemp and cannabis company focused on research in CBD and other cannabinoids, as well as to develop and distribute consumer health products. The Eureka 93 Group’s corporate headquarters is located in, and the Eureka 93 Group’s business is currently managed from, Ottawa.

**V. The Debtors**

9. **Eureka 93.** Prior to 24 April 2019, Eureka 93 was named “LiveWell Canada Inc.” The company is incorporated under the *Canada Business Corporations Act* (the “CBCA”) and was created in June of 2018 by the amalgamation of three companies.
10. Until November of 2018, Eureka 93’s shares were traded on the TSX Venture Exchange under the symbol “TSXV:LVWL”. On 23 November 2018, Eureka 93 delisted from the TSX-V and began trading on the Canadian Stock Exchange under the symbol “CSE:LVWL”.
11. Trading in Eureka 93’s shares was ceased by the Ontario Securities Commission on or about 5 September 2019 as a result of the failure of the company make certain required filings.
12. Eureka 93 has no assets or property other than the shares of other companies and related inter-company accounts receivable of no realizable value.
13. Eureka 93 now has five employees, including me. Eureka 93 has also engaged Peter Ostapchuk as a senior financial consultant.
14. **LiveWell.** LiveWell is incorporated under the CBCA and is 100% owned by Eureka 93 and, in turn, owns all of the issued and outstanding shares of two Canadian companies that are not included in the Proposal Proceedings: LiveWell Foods Quebec Inc. (“**LiveWell Quebec**”) and OHemp Inc. (“**OHemp**”), and Artiva. As noted above, of these three companies, only Artiva has commenced proceedings under the BIA.

15. LiveWell has no employees. Up until August of 2019, LiveWell employed about 20 individuals, but these individuals were terminated as a result of the Debtors' financial difficulties.
16. **Artiva.** Among the Debtors, Artiva is the only operating company. Artiva is incorporated under the CBCA and all of the company's issued and outstanding shares are owned by Livewell. The company was incorporated in March of 2017 in anticipation of the legalization of adult-use cannabis in Canada.
17. At the end of December of 2017, Artiva acquired a vegetable farm comprising 100 acres of land, 540,000 square feet of gutter-connected greenhouses and 200,000 square feet of small greenhouses—the Ottawa Facility. After this acquisition, Artiva proceeded with retrofitting approximately 61,000 square feet of the gutter-connected greenhouse for the cultivation, processing and distribution of cannabis.
18. On or about 24 September 2019, Artiva received final approval for its cannabis cultivation license from Health Canada.
19. The only barrier remaining to Artiva being able to carry on business is the completion of the Ottawa Facility. Artiva has developed a timeline and budget to complete the Ottawa Facility. The completion of the Ottawa Facility will require approximately \$650,000 and will take until approximately the end of March of 2020. The Interim Financing will be used to finance the completion of the Ottawa Facility.
20. I have been engaged in discussions with potential purchasers and expect that Artiva will be able to secure contracts to supply plants that are in the initial growth stage—which are

known in the industry as “clones”. I anticipate that Artiva will be able to begin to generate cash flow through the sale of clones by about April or May of 2020.

21. Artiva currently has no employees. Up until August of 2019, Artiva employed four individuals, but these individuals were terminated as a result of the Debtors’ financial difficulties. It is anticipated that Artiva will, when operational, provide employment for ten individuals once the Ottawa Facility is completed, and will employ many more individuals as the cultivation and processes business expands post-restructuring.
22. **Vitality.** Vitality is a holding company incorporated under the CBCA. It owns the shares of two US companies that are not included in the Proposal Proceedings: USA Biofuels, LLC (“**US Biofuels**”) and Vitality Natural Health LLC (“**VNH**”). Eureka 93 acquired Vitality in or about April of 2019 through a complicated reverse take-over transaction.

## **VI. Other Companies**

23. The following members of the Eureka 93 Group have not commenced proceedings under the BIA: Acenzia Inc. (“**Acenzia**”), LiveWell Foods Quebec Inc. (“**LiveWell Quebec**”), OHemp Inc. (“**OHemp**”), Mercal Capital Corp. (“**Mercal**”), US Biofuels and VNH.
24. **OHemp and Mercal.** OHemp is a wholly owned subsidiary of LiveWell. Mercal is a wholly owned subsidiary of Eureka 93. Both companies are dormant companies. OHemp and Mercal carry on no active business and have no assets.
25. **Acenzia.** Acenzia carries on business developing and manufacturing natural health products in Windsor, Ontario. Acenzia was acquired by Eureka 93 in or about October of 2018 with the intention of expanding Eureka 93’s business beyond cannabis and hemp.

26. Acenzia's operating lender is The Toronto-Dominion Bank ("TD"). In or about September of 2019, TD provided Acenzia with a default notice and notice that it intended to enforce its security over Acenzia's asset and property. Subsequently, in December of 2019, an agreement was reached to "unwind" the acquisition of Acenzia and the board of Eureka 93 has passed resolutions to effect this result. Eureka 93 has, however, been unable to execute on this transaction because of a cease trade order that is in effect. There is no equity in Acenzia's assets and the "unwinding" of the acquisition will result in the forgiveness of a \$2 million debt owing by Eureka 93 to the principals of Acenzia.
27. **LiveWell Quebec.** LiveWell Quebec was incorporated with a view to establishing a research and innovation center in Litchfield, Quebec (the "**Litchfield Project**"). To that end, in or about April of 2018, the company purchased land in Litchfield and then demolished the existing structure on that land with a view to constructing a new state-of-the-art research facility and greenhouses on the site. The Litchfield Project was, however, plagued by cost overruns and anticipated financial support from the Quebec government did not materialize. Eureka 93's management has re-evaluated the Litchfield Project and determined that it is not financially viable. The debt secured against the Litchfield Property and the liens against the Litchfield Property exceed its value, and the Litchfield Property and secured lenders with security over the Litchfield Property have already commenced proceedings to enforce their secured claims.
28. **USA Biofuels and VNH.** USA Biofuels and VNH are incorporated and carry on business in the United States. They are wholly owned subsidiaries of Vitality. USA Biofuels is a dormant company. VNH was an active company and carried on business trying to extract

CBD. However, secured creditors with security over the assets of VNH have already taken steps to enforce their security over the assets and property of VNH.

## **VI. Financial Difficulties**

29. Based on my review of the Eureka 93 Group's financial records, by in or about July of 2019, the Eureka 93 Group was beginning to run out of cash. The Group had expanded rapidly without having a solid plan as to how the expansion would be financed or how some of the new businesses being acquired by Eureka 93 would be financed going forward. Based on my review of the Eureka 93 Group's financial records it appears that between January and July of 2019, the Eureka 93 Group had approximately \$19.4 million in cash and incurred millions in unsecured debt.
30. Due to a lack of financial resources and complex accounting and financial reporting associated with transactions that resulted in the acquisition of Vitality, Eureka 93 was not able to prepare and file its unaudited condensed interim consolidated financial statements and MD&A for the quarter ending 30 June 2019. Consequently, on 5 September 2019, the Ontario Securities Commission issued a Cease Trade Order in respect of Eureka 93's common stock.
31. On 6 September 2019, the directors of Eureka 93 announced that they were beginning "a review of the strategic and financing alternatives" available to the Eureka 93 Group. Concurrent with the initiation of that review, non-critical work was suspended and a substantial portion of the Eureka 93 Group's employees in Canada were being laid off.

32. On or about 20 September 2019, all of the management at the Eureka 93 Group except for one individual resigned. On or 21 September 2019, I was appointed as Co-CEO of Eureka 93 with responsibility for the Eureka 93 Group's Canadian operations. The other Co-CEO was Owen Kenny, but he resigned in January of 2020.
33. As of September of 2019, when the Eureka 93 Group's management resigned, there was virtually no money remaining in any of the companies. I engaged the services of Peter Ostapchuk as a senior financial consultant to assist me to determine if there was any way to save any part of the Eureka 93 Group's business. We ultimately concluded that the Ottawa Facility could be viable and that we would make efforts to try to develop a plan to reorganize the Eureka 93 Group and repay creditors based on completing the Ottawa Facility and commencing production at the Ottawa Facility. This involved having to make some very hard decisions with respect to the viability of certain of the other business units operated by the Eureka 93 Group and the Proposal Proceedings were commenced to effect to those decisions.
34. A significant factor in developing a plan to try to save some part of the Eureka 93 Group was cost. The previous management of the Eureka 93 Group had left behind a lot of unsecured and secured creditors and there was no money in the companies' accounts to retain professionals. I was ultimately able to secure the assistance of Gowling on a "no money down retainer" basis to assist me to try to develop a plan to save some part of the Eureka 93 Group. The Eureka 93 Group did not, however, have funding to address enforcement action taken in the United States. The conclusion was also reached that there was no equity in the Litchfield Property. Ultimately, I made the decision to focus on the Artiva business and the Ottawa Facility.

35. It was clear that the ability to save any part of the Artiva business would require that formal proceedings be commenced in respect of at least some of the member companies and that interim financing would be required. It was, however, difficult to locate anyone who was willing to provide the about \$1.9 million in financing that was required to complete the Ottawa Facility and fund the necessary insolvency proceedings. Before reaching an agreement with the Interim Lenders, I entertained one possible source of financing, but the fees and other charges that were associated with that source of financing resulted in my concluding that it was not a viable option.
36. While going forward, the focus will be on Artiva's business and the Ottawa Facility, the other three Debtors have been included in the proposal proceedings because of the corporate structure of the Eureka 93 Group.
37. Eureka 93 owns the shares of LiveWell, which in turn owns the shares of Artiva. Stays are necessary to ensure that creditors are not able to disrupt the reorganization of Artiva by securing control of the company through Eureka 93 and/or LiveWell. Including Eureka 93 and LiveWell in the proposal Proceedings will also ensure that any equity value in Acenzia and LiveWell Quebec is available to creditors.
38. While USA Biofuels and VNH are not being included in the go-forward plans, there may be some residual value that flows up to Vitality as the owner of the shares of USA Biofuels and VNH.

## VII. Secured Creditors

39. At Exhibits [5] through [8] of the Eureka 93 Documents are: (a) true copies of Personal Property Register Searches in respect of the Debtors; and (b) a PIN for the Ottawa Facility. Each of the Debtors' secured creditors has been (or will be) provided with notice of the Debtors' Motion.

### A. Eureka 93

40. Eureka 93 has two secured creditors: Dominion Capital LLC ("**Dominion Capital**") and Perley-Robertson, Hill & MacDougall LLP ("**Perley-Robertson**").

41. **Dominion Capital.** Dominion Capital is currently owed no more than USD\$8.4 million. The obligation owing to Dominion Capital relates to the issuance of USD\$11.4 million in convertible notes in 2019. The obligation owing under these notes is secured against all of the assets and property of each of the Debtors.

42. By December of 2019, Dominion Capital was contemplating taking steps to enforce its security against VNH. An agreement was reached with Dominion Capital to transfer certain property owned by VNH in the State of New Mexico to Dominion Capital in return for the forgiveness of USD\$3 million in debt owing to Dominion Capital.

43. **Perley-Robertson.** Perley-Robertson was granted security over Eureka 93's Property on or about 15 August 2019 to secure accounts owing in respect of services provided to the Debtors by Perley-Robertson<sup>1</sup>. On or about 12 February 2020, Perley-Robertson delivered

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<sup>1</sup> Perley-Robertson has Judgment for \$367,961.

an enforcement notice pursuant to Part V of the *Personal Property Security Act* (Ontario). A true copy of that notice is at **Exhibit [9]** of the Eureka 93 Documents. The firm has not, however, delivered a notice pursuant to s. 244 of the BIA.

44. Perley-Robertson's security consists of the shares of Acenzia, LiveWell, Mercal and Viality owned by Eureka 93 and the firm holds the Minute Books for each of these companies.

**B. Vitality**

45. Vitality has four secured creditors: International Process Plants and Equipment Corp ("**International Process**"), LiveWell, Dominion Capital and Perley-Robertson.
46. **International Process.** International Process has security over certain equipment that was purchased for the US operations in 2018. There was no equipment in Canada and International Process has taken steps to enforce its security over the equipment in the United States.
47. **LiveWell.** LiveWell has security for an inter-company debt owing by Vitality in the amount of about \$1 million.

**C. Artiva**

48. Artiva has one secured creditor who has filed a financing statement: Dominion Capital. In addition, there are four secured creditors who have security against the Ottawa Facility: Olympia Trust Company ("**Olympia Trust**"), Dominion Capital, Lamarche Electric Inc. ("**Lamarche**") and Paladine Technologies Inc. ("**Paladine**").

49. **Olympia Trust.** Olympia Trust advanced \$6 million to Artiva to permit Artiva to purchase the Ottawa Facility. The charge/mortgage in favour of Olympia Trust secures this loan.
50. **Lamarche and Paladine.** Lamarche and Paladine are owed money in connection with work carried out at the Ottawa Facility and are asserting liens under the *Construction Act*. Lamarche has registered a lien for \$628,947 and Paladin has registered a lien for \$26,479. Only Lamarche has filed a Certificate of Action.

**D, Livewell**

51. Livewell has one secured creditor: Dominion Capital.

**VIII. Unsecured Creditors**

52. I believe, based on the Debtors' books and records, that, all together, the Debtors' unsecured creditors are owed about \$ 9,233,736 (excluding inter-company debt). The creditors of each of the Debtors that have been identified based on the Debtors' books and records are identified in the documents at Exhibits 1 through 4 of the Eureka 93 Documents.

**IX Litigation Claims**

53. There have been various proceedings commenced against members of the Eureka 93 Group in Canada and the United States by secured creditors seeking to enforce their security over property owned by members of the Eureka 93 Group. To the extent that these proceedings involve companies other than the Debtors, these proceedings are not stayed.
54. Robert Leaker, the former President and CEO of Vitality, has commenced proceedings against, *inter alia*, the debtors seeking, among other things, payment in lieu of notice and

unpaid bonuses. Mr. Leaker's claim against the debtors will be addressed in the Proposal Proceedings.

#### **X. Objective of the Proposal Proceedings**

55. The Debtors' management believes that the Debtors' core business in Canada—the production of cannabis plant clones, and medicinal and recreational cannabis products from the Ottawa Facility—is viable. The Debtors' objective in commencing proceedings under the BIA are to: (a) complete the capital expenditures so that productions can begin at the Ottawa Facility; (b) develop a “basket” or “cash flow” proposal to the unsecured creditors of the Debtor; (c) re-finance (or re-negotiate) the obligations owing to Dominion Capital; and (d) simplify the Debtors' capital structure.

#### **XI. Value of the Property and Business**

56. The Ottawa Facility was purchased in 2017 for \$7,750,000. A fair market valuation of the Ottawa Facility is at **Exhibit 1** of the Eureka 93 Confidential Documents. Since the Ottawa Facility was appraised, capital expenditures and improvements totaling about \$7.8 million have been made to bring the Ottawa Facility to the standard established by Health Canada for cannabis production.
57. On or about 5 November 2019, an unsolicited offer was made for Artiva. At **Exhibit 2** of the Eureka 93 Confidential Documents.

**X. Procedural/Administrative Consolidation**

58. The Debtors have historically operated as an integrated part of the Eureka 93 Group and do not have independent management. Of the four Debtors, only Artiva carries on active business. The cash flow projections for the other Debtors do not show any financial activity.
59. The costs associated with the administration of the Proposal Proceedings will be reduced by procedurally consolidating the Proposal Proceedings. There is no request being made to substantively consolidate Debtors such that they will be treated as a single entity. All that is being requested at this time is a procedural consolidation of the Proposal Proceedings.

**XI. Administrative Charge**

60. When the Eureka 93 Group's former management resigned in the fall of 2019, the companies had virtually no money in the bank and were unable to: (a) provide Deloitte with a retainer; or (b) provide Gowling with a retainer or to pay Gowling's accounts for the work undertaken to provide advice in connection with, or prepare for, the commencement of the Proposal Proceedings. The only funds that will be available to the Debtors until the Ottawa Facility is up and running will be the proceeds from the loan to be advanced by the Interim Lenders. While the budget underlying interim financing includes certain amounts to pay Gowling and Deloitte, it is difficult to predict the level of involvement that Deloitte and Gowling will have in the Debtors' restructuring. Gowling and Deloitte have requested the Administrative Charge to secure any unpaid amounts that may become owing by the Debtors as a result of professional services provided by them in

the Proposal proceedings. The Interim Lender has consented to the amount and priority of the Administrative Charge.

## **XII. Interim Financing**

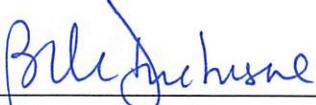
61. The Interim Lender and the Debtors have executed a Commitment Letter dated January 2020 in respect of the Interim Financing (the “**Commitment Letter**”). A true copy of the Commitment Letter is at **Exhibit [10]** of the Eureka 93 Documents. The Interim Lender’s obligation to advance the Interim Financing is conditional on: *inter alia*, the making of an Order substantially in the form being sought by the Debtors.
62. The primary purposes of the Interim Financing are: (a) to fund the operation of the Debtors’ business during the proposal Proceedings, including paying the fees and expenses of Gowling and Deloitte; and (b) fund the budgeted costs to complete the Ottawa Facility so that production can begin and Artiva can begin to generate sales and revenue. The Interim Financing will also be used to bring the current first-ranking charge/mortgage registered against the Ottawa Facility current and keep it current.
63. Pursuant to the Commitment Letter, the Debtors’ are required to operate within a cash flow projection and a budget, and to provide to the Interim Lender regular reporting with respect to the Debtors’ expenditures.

## **XIII Extension of Time to File Proposal**

64. The Debtors are requesting that the time by which they are required to file proposals be extended to 29 April 2020.

**XIV. Conclusion**

65. The Proposal Proceedings are in the best interests of the Debtors' creditors and the relief requested by the Debtors is necessary in order for the Debtors to make a proposal to their creditors. The ability of the Debtors to successfully restructure is, for example, dependent on completing the work necessary to commence production at the Ottawa Facility and this is, in turn, dependent of the ability of the Debtors to secure interim financing from the Interim Lender.

SWORN BEFORE ME at the City of )  
Ottawa, in the Province of Ontario, )  
this 18<sup>th</sup> day of February 2020. )  
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)  
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\_\_\_\_\_)  
Commissioner for taking Affidavits )  
LSO # 249221 )

  
\_\_\_\_\_)  
SEANN POLI

Estate Number/Court File No.: 33-2618511  
AND 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

Estate Number/Court File No.: 33-2618512  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF LIVEWELL FOODS CANADA INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

Estate Number/Court File No.: 33-2618510  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF ARTIVA INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

Estate Number/Court File No.: 33-2618513  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VITALITY CBD NATURAL HEALTH PRODUCTS INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
  
(PROCEEDING COMMENCED AT OTTAWA)

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**SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**(PROCEEDING COMMENCED AT OTTAWA)**

**MOTION RECORD**

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