

**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.)**

**SUPPLEMENTARY MOTION RECORD OF THE PROPOSAL TRUSTEE  
(MOTION FOR SECURITY FOR COSTS)**

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
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Lawyers for the Proposal Trustee

**TO: SERVICE LIST**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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PRODUCTS INC.)**

**SUPPLEMENT TO THE NINTH REPORT OF THE PROPOSAL TRUSTEE  
DELOITTE RESTRUCTURING INC.**

**Dated September 13, 2020**

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**APPENDICES**

**APPENDIX “A”**      Written Questions of Mikhail Gurevich dated September 10, 2020

**APPENDIX “B”**      Letter from Chitiz Pathak LLP dated September 12, 2020 with responses to the Written Questions of Mikhail Gurevich

## PURPOSE OF THE SUPPLEMENTAL REPORT

1. This supplement to the Ninth Report (the “**Supplemental Report**”) is prepared by Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) in response to the “Responding Brief of Dominion Capital” dated September 11, 2020 (the “**Responding Brief**”), to the Proposal Trustee’s motion for security for costs scheduled to be heard by Justice MacLeod on September 14, 2020, and to draw the Court’s attention to certain responses made by Mikhail Gurevich/DC to the questions proposed by the Companies.
2. Terms not otherwise defined herein are as defined in the Ninth Report.

## WRITTEN INTERROGATORIES

3. The Written Questions of Mikhail Gurevich (the “**Companies’ Interrogatories**”) delivered by the Companies’ counsel in respect of the Appeal are attached hereto as **Appendix “A”**. The response of Mikhail Gurevich/DC to the Companies’ Interrogatories were provided by DC’s counsel in a letter dated September 12, 2020 and attached hereto as **Appendix “B”**. The Proposal Trustee notes that on September 10, 2020, DC’s counsel advised that, despite his previous positions and motions to conduction examinations of Mr. Poli, DC had decided not to conduct written examinations in respect of the Appeal.
4. The Proposal Trustee draws the Court’s attention to the Companies’ question #37 (p. 10, Appendix “A”) and DC’s response (p. 5, Appendix “B”) regarding the purpose of the Appeal:

Question #37. Aside from bankrupting Artiva, LiveWell and Vitality based on the votes that DC cast at the meetings of creditors held on 28 August 2020, what, if any, objective(s) does DC seek to achieve by establishing claims against Artiva, LiveWell and Vitality?

Answer # 37. This is not a proper question. The Noteholders wish to have their rights *qua* creditors recognized.

## PROPOSAL TRUSTEE'S COMMENTS ON THE RESPONDING BRIEF

5. Further allegations of misconduct and impropriety are made against the Proposal Trustee and its counsel in paragraphs 6 (which was subsequently withdrawn by DC in an email to the Court dated September 11, 2020), 7, 8, and 10 to 15 of the Responding Brief. The Proposal Trustee categorically denies the allegations of misconduct and impropriety.
6. The Proposal Trustee notes that the emails incorporated into paragraphs 13 and 14 of the Responding Brief are not in evidence (including an attempt by DC to place an inadmissible settlement offer before the Court simply by using the words "with prejudice"). The Proposal Trustee's position is that these communications are taken out of context and are inadmissible.
7. Furthermore, DC has not included nor referred to an email from the Proposal Trustee on August 26, 2020, delivered in response to, and shortly after, DC served a draft unsworn affidavit for the Appeal that was over 1,300 pages.
8. The Proposal Trustee advised that it would proceed directly to the Appeal without a motion for security for costs if DC simply dealt with the merits of its Appeal, and removed from its draft affidavit the allegations of misconduct and impropriety against the Proposal Trustee. That exchange of emails between counsel on August 26, 2020 is set out below:

**From:** Michael Crampton [<mailto:MCrampton@chitizpathak.com>]  
**Sent:** Wednesday, August 26, 2020 6:12 PM  
**To:** 'Shea, Patrick' <[Patrick.Shea@gowlingwlg.com](mailto:Patrick.Shea@gowlingwlg.com)>; Eric Golden <[egolden@blaney.com](mailto:egolden@blaney.com)>; 'Bricks, Hartley' <[hbricks@deloitte.ca](mailto:hbricks@deloitte.ca)>; [barbara.vanbunderen@siskinds.com](mailto:barbara.vanbunderen@siskinds.com); Benjamin G. Blay <[blay@cohenhighley.com](mailto:blay@cohenhighley.com)>; Chad Kopach <[ckopach@blaney.com](mailto:ckopach@blaney.com)>; 'Andrew J. Lenz' <[alenz@perlaw.ca](mailto:alenz@perlaw.ca)>  
**Cc:** Elliot Birnboim <[EBirnboim@ChitizPathak.com](mailto:EBirnboim@ChitizPathak.com)>  
**Subject:** In re Eureka 93 Inc. - Motion materials

Counsel, Mr. Bricks,

Please find attached the Notice of Motion for our client's disallowances appeal. The affiant for the supporting affidavit is in transit so to provide you with our client's materials ahead of Friday's meetings as Justice MacLeod intended we are serving an unsworn copy at this time. It is too large to email but may be downloaded at the following temporary link: <https://we.tl/t-4zj97MEDaK>

A motion record compiling the Notice of Motion and sworn affidavit will be served upon the full service list and filed ahead of the case conference scheduled for September 2, 2020.

Best,  
Michael

**From:** Eric Golden  
**Sent:** Wednesday, August 26, 2020 7:16 PM  
**To:** 'Elliot Birnboim' <EBirnboim@ChitizPathak.com>  
**Cc:** 'Shea, Patrick' <Patrick.Shea@gowlingwlg.com>; 'Bricks, Hartley' <hbricks@deloitte.ca>; barbara.vanbunderen@siskinds.com; Benjamin G. Blay <blay@cohenhighley.com>; Chad Kopach <ckopach@blaney.com>; 'Andrew J. Lenz' <alenz@perlaw.ca>; Michael Crampton <MCrampton@chitizpathak.com>  
**Subject:** RE: In re Eureka 93 Inc. - Motion materials

The intention of RSJ Macleod seems straightforward as per below from the attached Memorandum issued August 20, 2020.

1. The noteholders shall serve their appeals and supporting materials by August 26th, 2020.

The "appeal" materials are 1304 pages long, because they are not simply appeal materials.

A quick review of the proposed record reveals that you are also using the "appeal" process as a cloak to personally attack the Proposal Trustee and its counsel, with frivolous, scandalous and vexatious allegations, and attempting to litigate your motion to remove the Proposal Trustee. Besides the fact that the removal motion without merit, it was ordered bumped down the line by RSJ MacLeod. As a result of submissions on the last Case Conference, you are also clearly aware of what the test is to remove a Trustee, and what you are therefore alleging.

Your conduct in this proceeding (and others, such as *Dunford v. Birnboim*, which will be brought to the Court's attention if required) reveals a pattern of behavior that involves attacking opposing counsel, at almost every turn.

However, since you have not delivered your client's sworn affidavit yet, you still have an opportunity to pull back and simply focus on the merits of the appeal. If you do so, the parties can simply proceed to argue the appeal.

If you do not, and instead serve the draft affidavit in a sworn form, your client will be met with a motion for it to post security for costs for the "appeal", and you will be met with a motion seeking costs against you personally, both on a full indemnity basis.

**Eric Golden**

Partner - Co-chair, Business Reorganization & Insolvency Group  
[egolden@blaney.com](mailto:egolden@blaney.com)

☎ 416-593-3927 | ☎ 416-596-2049

9. There was no further communication from DC to the Proposal Trustee or its counsel on this issue until the following email from counsel for DC to the Service List on August 31, 2020, serving a sworn version of the entire DC draft Appeal affidavit:

**From:** Juliet Vergara [mailto:JVergara@ChitizPathak.com]  
**Sent:** Monday, August 31, 2020 3:31 PM  
**To:** Service List  
**Cc:** Elliot Birnboim <EBirnboim@ChitizPathak.com>; Michael Crampton <MCrampton@chitizpathak.com>  
**Subject:** In the matter of the Notice of Intention to Make a Proposal of Eureka 93 Inc. et al., CFN - 33-2618511 et al.

To the Service List:

Served upon you pursuant to the *Rules*, please find hereafter a temporary download link for the Motion Record of Dominion Capital for the Disallowances Appeal to be scheduled at the case conference before Justice MacLeod on September 2, 2020: <https://we.tl/t-tcfEo3oqLp>

The link will remain live for seven days.

Best regards,

Regards,  
Juliet Vergara  
Law Clerk

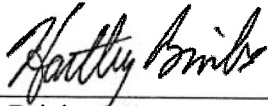
#### **ADMINISTRATION CHARGE UPDATE**

10. In paragraph 18 of the Eighth Report, the Proposal Trustee advised that as of August 21, 2020, the Companies had accrued and outstanding professional fees of approximately \$254,000. They have since incurred further professional fees as a result of the Appeal, which fees have the benefit of the security of the Administration Charge provided for under the March 9, 2020 Order of Justice MacLeod. As a result, the cost of an Appeal, whose purpose DC has admitted is simply to exercise its right to bankrupt Artiva, Livewell and Vitality (should the Appeal be successful), would be borne by the Companies' creditors (to whom the Appeal has no ostensible benefit) if the Appeal is dismissed, and with no possibility of recovery of costs from DC if security for costs is not posted.



All of which is respectfully submitted this 13<sup>th</sup> day of September, 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*

# APPENDIX A

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS (LIVEWELL  
FOODS CANADA INC., ARTIVA INC., AND VITALITY CBD NATURAL HEALTH  
PRODUCTS INC.)**

**AND IN THE MATTER OF SECTION 192 OF THE CANADA BUSINESS CORPORATIONS  
ACT, R.S.C. 1985, c. C-44, AS AMENDED, AND IN THE MATTER OF A PROPOSED  
ARRANGEMENT OF 12112744 CANADA LIMITED AND INVOLVING LIVEWELL FOODS  
CANADA INC. AND ARTIVA INC.**

**WRITTEN QUESTIONS OF MIKHAIL GUREVICH**

Date: 10 September 2020

**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors  
1 First Canadian Place, Suite 1600  
100 King Street West  
Toronto, ON M5X 1G5

**E. PATRICK SHEA (LSO No. 39655K)**

Tel: (416) 369-7399 / Fax: (416) 862-7661  
Email: [patrick.shea@gowlingwlg.com](mailto:patrick.shea@gowlingwlg.com)

**BENOIT M. DUCHESNE (LSO No. 44922I)**

Tel: (613) 786-0142 / Fax: (613) 788-3637  
Email: [benoit.duchesne@gowlingwlg.com](mailto:benoit.duchesne@gowlingwlg.com)

Lawyers for the Debtors

## Written Questions of Mikhail Gurevich

### I. Introduction

1. This are the written questions to Mikhail Gurevich in connection with the appeal by Dominion Capital LLC (“**DC**”) of the disallowance of its claims against Artiva Inc. (“**Artiva**”), LiveWell Foods Canada (“**LiveWell**”) and Vitality CBD Natural Health Products Inc. (“**Vitality**” and together with Artiva and LiveWell, the “**Debtors**”).

2. In the interests of focusing on the substantive merits of the appeal, not all of the assertions or arguments made by Mr. Gurevich in his Affidavit sworn 31 August 2020 (the “**Affidavit**”) will be addressed or challenged. That should not be taken as the Debtors agreeing with the assertions or arguments made by Mr Gurevich.

### II. Questions of Mr Gurevich

#### A. Claims against Directors

**In paragraph 47 of the Affidavit, you make the assertion that, in your view, the claims made by DC against the Debtors’ directors and disallowed by the Trustee are not “properly dealt with as part of this Appeal”.**

1. Has DC now abandoned its appeal of the disallowance of the claims asserted against the Debtors’ directors?

#### B. Counsel to the Debtors

**In paragraph 4(a) of the Affidavit, you assert that Gowling WLG (Canada) LLP (“Gowling”) was counsel for the Debtors in connection with the sale of the New Mexico Facility to the Noteholders and the Partial Payment Agreement. In paragraphs 27 and 42(b)(ii), you assert that Gowling was “involved in [the Montana Transaction]”.**

2. On what documentation/information did or do you rely in asserting that Gowling was counsel to the Debtors in connection with the New Mexico Transaction and the Partial Payment Agreement or "involved in" the Montana Transaction?

**Attached as Exhibit [A] are e-mails relating to the New Mexico Transaction/Partial Payment Agreement that include e-mails from Thierry Valat De Cordova, who identifies himself as General Counsel and Chief Compliance Officer at DC, and Philip Gross to Seann Poli with respect to the Partial Payment Agreement and the closing of the New Mexico Transactions.**

3. If DC believed that Gowling represented the Debtors in connection with the New Mexico Transaction and the Partial Payment Agreement why were Mr De Cordova and Mr Gross dealing directly with the Debtors' management instead of with Gowling?
4. Is it not the case that Mr. De Cordova, or other lawyers acting for DC, prepared all of the documentation with respect to the New Mexico Transaction, ie the Partial Payment Agreement, the Bill of Sale and all of the closing document? If not, who prepared the Partial Payment Agreement, the Bill of Sale and the closing documents?

### **C. Montana Transaction**

**Attached as Exhibit [B] is an e-mail exchanged between Mr Gross and Mr Poli in December of 2019 with respect to DC's security over Vitality LLC's property in Montana.**

5. Please provide copies of all e-mail or other correspondence between Mr Gross and DC or any of the Noteholders or among the Noteholders arising as a result of or relating to the attached e-mail exchanges?
6. What, if any, steps did DC take to perfect, register or assert its security interest over Vitality LLC's property in Montana as a result of the steps taken by Surety or the attached e-mail exchange?
7. Has DC taken any proceedings in Montana or elsewhere to assert its security interest in Vitality LLC's property in Montana? If not, why?

**DC has asserted that the Mutual Release signed by Eureka 93 impacted DC's "first ranking" security over Vitality LLC in Montana.**

8. Please provide evidence that DC had registered its security interest over Vitality LLC's property in Montana?
9. Explain on what basis DC asserts that the release by Eureka 93 of its rights in the Montana Facility impacted DC's rights as a secured creditor of Vitality LLC or DC's security over Vitality LLC's property in Montana?

**At paragraph 29 of the Affidavit, you quote from a single e-mail from Mr Poli to, among others, Mr Gross.**

10. Can you please provide copies of all of the e-mails to and from Mr. Gross with respect to the Montana Facility and DC's security over Vitality LLC's property in Montana?

**D. Assertion re Single Transaction**

**In paragraph 14 of the Affidavit, you assert that each of the February and March Notes were part of a one single financing transaction**

11. Is it not correct that: (a) there are separate Term Sheets and Securities Purchase Agreements for the February Notes and the March Notes; and (b) the Securities Purchase Agreements each contemplated separate security packages—see Article 2.4 for example—and include "entire agreement" provisions—see Article 5.3?
12. How do you reconcile this with your assertion that the February and March Notes were part of a one single financing transaction?

**E. Scope of February Guarantee**

**In paragraph 36 of the Affidavit, you quote from various documents in an effort to establish the scope of the February Guarantee includes the obligations owing under the March Notes.**

13. Please provide the specific page reference in DC's Motion Record for the provision quoted in paragraph 36(b)?

**F. Assertions re Intention**

**In paragraph 40 of the Affidavit, you rely on statements made by Mr. Poli in three Affidavits sworn by him in these proceedings to support your position with respect to the interpretation of the.**

14. Do you assert that the statement in paragraph 41 of the Affidavit of Seann Poli sworn 18 February 2020 and reproduced at Exhibit M to the Affidavit is accurate in terms of DC's position *vis-à-vis* Eureka 93 and the Debtors?

**G. Partial Payment Agreement/New Mexico Transaction**

**In DC's Proofs of Claim and Amended Proofs of Claim DC assert that the credit that Eureka 93 is to be given based on the flow of funds resulting from the sale by Vitality LLC of the New Mexico Facility to the Noteholders is USD\$300K and not the USD\$3MM provided for by the Partial Payment Agreement.**

15. Can you confirm whether DC has abandoned the assertion that USD\$300K, as opposed to USD\$3MM, is to be applied to reduce the amount owing to the Noteholders?
16. If DC is still asserting that USD\$300K as opposed to USD\$3MM is to be applied to reduce the amount owing to the Noteholders then:
- (a) Please provide copies of the appraisal(s) or other documentary evidence that DC relies upon to assert that the value of the New Mexico Facility is no more than USD\$300K?

- (b) Please explain the basis upon which DC now asserts the right unilaterally amend the Partial Payment Agreement in light of the fact that the Partial Payment Agreement contemplates that the Noteholders would only close after being satisfied with their own due diligence and in light of the fact that the Bill of Sale provides for the transfer of the New Mexico Facility on an “as is, where is” basis without any representations or warranties?

**DC asserts that the Partial Payment Agreement permitted the Noteholders to allocate the USD\$3MM (or USD\$300K) payable to Vitality LLC against the obligations owing on the Notes in their sole and absolute discretion.**

17. Can you refer to the specific provisions in the Transaction Documents that you assert permit the Noteholders to apply the USD\$3MM (or USD\$300K) to the February Notes or March Notes at their sole discretion?

**Attached as Exhibit [C] are e-mails from Mr. Gross in November of 2019 referencing a transaction with a Wes Richins with respect to the sale of the New Mexico Facility.**

18. Can you please provide a copy of any and, all agreements with Wes Richins with respect to the New Mexico Facility?
19. Can you please provide copies of all correspondence and documents in your possession or under your control relating to the transaction with Wes Richins?

#### **H. Subordination and Postponement Agreement**

**Attached as Exhibit [D] is a Subordination and Postponement Agreement dated 14 February 2019 (the “February Postponement”). This document was taken from an e-mail link provided by Bennett Jones LLP in response to a request by the Debtors for copies of DC’s security.**



20. Do you dispute that the attached Subordination and Postponement was delivered in connection with the February Note Transaction?
21. Why did you not include the February Postponement in the Documents delivered to the Trustee?

#### **I. Interest Calculation**

**In paragraphs 45 and 46 of the Affidavit, you include interest calculations. Those interest calculations are based on the base amount owing under the February and March Notes being USD\$11.4MM.**

22. Can you confirm that the USD\$11.4MM is an error and that the actual base amount owing is USD\$8.4MM?
23. Can you provide a detailed calculation of the claimed Mandatory Default Amount?

#### **J. USD\$3.6MM Repayment**

**Eureka 93 sold USD\$15MM in Notes to the Noteholders in March of 2019. A 10% fee was deducted from the funds provided to Eureka 93 and certain funds were placed into escrow. In or about August of 2019, USD\$3.6MM was paid out of escrow back to the Noteholders rather than to Eureka 93.**

24. Why has DC not given a "credit" to Eureka 93 for the USD\$360K in fees Eureka 93 paid in respect of the USD\$3.6MM?

#### **K. Other Security**

**Article 2.4 of both the February and March Securities Purchase Agreements provides for the delivery of various security to DC to secure the performance by Eureka 93 of its obligations under the February and March Notes.**

25. Is it correct that DC did not take security over the property of Acenzia as provided for in Article 2.4(e)?

**L. Valuation of Ottawa Property**

**In paragraphs 83 through 86 of the Affidavit, you make various assertions with respect to what you refer to in paragraph 83 as the reliance letter dated 29 October 2019 (the “Reliance Letter”). In response to DC’s request for information, Rock Kouwenberg provided DC with a package of documents that related to, among other things, the Reliance Letter. That package included a PDF document titled “2018 Reliance Letter” (the “Reliance Letter Document”). A copy of the Reliance Letter Document is attached as Exhibit [E].**

26. Were you aware of and provided a complete copy of the Reliance Letter Document when you swore the Affidavit?

**In paragraphs 83 and 84 of the Affidavit, you take excerpts from the Reliance Letter Document.**

27. Why did you not refer to or include the full Reliance Letter Document in the Affidavit or attach a copy of the Reliance Letter Document to the Affidavit?

**In paragraph 84 of the Affidavit, you take an excerpt from the Reliance Letter Document that you refer to as the “back up analysis of sales”.**

28. Is it not the case that the Reliance Letter Document also includes notes from inquiries that Mr Kouwenberg made with respect to the market? Why did you not refer to or reference these notes?

**In paragraph 85 of the Affidavit, you assert that the information you quote in paragraph 84 shows cannabis facilities listed in 2019.**

29. On what basis do you assert that some or all of the properties listed in paragraph 84 were cannabis facilities? Did you confirm this fact with Mr Kouwenberg before swearing the Affidavit? If yes, please provide copies of the correspondence with Mr Kouwenberg or his counsel?

**In paragraph 85 of the Affidavit, you assert that the listing and sale prices in paragraph 84 support the conclusion that \$15MM valuation of the Ottawa Facility did not represent market value and is higher than market value.**

30. Without knowing the acreage of the properties listed in paragraph 84, how can you make the assertion that the \$15MM valuation of the Ottawa facility did not represent market value and is high?
31. Is it not the case that Mr Kouwenberg provided a listing for a 22.542 acre greenhouse property in Manotick, Ontario at \$5.3MM? Is it also not the case that the Ottawa Facility is 100 acres? On what basis do you assert that a \$5.3MM listing for a 22.542 acre property indicates that a \$15MM valuation for a 100 acre property is high?
32. Do you know the size of any of the other properties identified in paragraph 84? Did you request that information from Mr Kouwenberg before swearing the Affidavit? If yes, please provide copies of the correspondence with Mr Kouwenberg or his counsel?

**M. Reference re Timing of Proposal Proceedings**

**In paragraph 86 of the Affidavit, you imply that you were surprised that the Proposal Proceedings were being contemplated in the Fall/Winter of 2019.**

33. Is it not the case that in in paragraph 18 his Affidavit sworn 28 February 2020, Mr Gross confirmed that the Noteholders have “been actively engaged in discussions with the Eureka Group since October, 2019” and “[a]s part of those discussions, we have had a number of e-mail exchanges and telephone conversations to discuss, among other things, the financial issues facing the Eureka Group”?

34. Do you deny that at least by early December of 2019, Mr. Gross was expressly aware that the Proposal Proceedings were being contemplated? To refresh your memory you may wish to refer to the summaries of the recorded telephone conversations between Mr. Gross and Mr Poli referenced in paragraphs 11 through 19 of Mr. Poli's Affidavit sworn 25 February 2020?

**N. Revenue Projections**

**In paragraph 87 of the Affidavit, you assert that: (a) the Trustee has "endorsed" revenue projections that you assert are those of Mr Poli; and (b) Artiva has, as at 1 June 2020, failed to generate any revenue.**

35. Please identify and provide a copy of the revenue projections that you assert are those of Mr Poli?
36. Please identify the evidence that you rely on to assert that the revenue projection you assert are those of Mr Poli were "endorsed" by the Trustee?

**M. DC's Objective**

**DC cast its votes against each of the Proposals filed by the Debtors. As a result, if DC's Appeals are allowed, the Debtor's will be deemed to have made assignments and will be bankrupt. DC has conceded that the realizable value of the Debtors' property is such that DC's security is of no value and it will receive no distribution in the bankruptcies of the Debtors.**

37. Aside from bankrupting Artiva, LiveWell and Vitality based on the votes that DC cast at the meetings of creditors held on 28 August 2020, what, if any, objective(s) does DC seek to achieve by establishing claims against Artiva, LiveWell and Vitality?

**EXHIBIT A**

---

**From:** Thierry Valat De Córdoba <[thierry@domcapllc.com](mailto:thierry@domcapllc.com)>  
**Sent:** January 31, 2020 11:28 AM  
**To:** Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>  
**Cc:** Philip Gross <[pg@templeasset.com](mailto:pg@templeasset.com)>; Mikhail Gurevich <[mikhail@domcapllc.com](mailto:mikhail@domcapllc.com)>  
**Subject:** Explanation of Closing Documents to Sign

Hello:

Nice to meet you, even if only by email. I understand from Phil it would be helpful for me to describe the closing documents. I am happy to do that. Let me know if you have a preferred time, otherwise I will try you shortly.

In case it is helpful, I have pulled out the docs that need signature and attached them, together with the bill of sale for the equipment which I believe to be the last document needed (basically a one sentence document that refers to the letter and says the equipment is transferred). So please ignore the other docs in the other email - only the ones attached need to be signed.

Best,  
Thierry

---

**Thierry Valat De Córdoba**  
General Counsel & Chief Compliance Officer\*  
**Dominion Capital Holdings LLC**  
256 West 38th Street • 15th Floor • New York NY 10018  
Office: (212) 785-4682  
Mobile: (978) 460-7395  
[www.domcapllc.com](http://www.domcapllc.com)  
[www.pickwickcapitalpartners.com](http://www.pickwickcapitalpartners.com)

---

**From:** [Seann Poli](#)  
**To:** [Thierry Valat De Córdoba](#); [Mikhail Gurevich](#)  
**Cc:** [Philip Gross](#)  
**Subject:** RE: BILL OF SALE.docx  
**Date:** February 6, 2020 12:50:59 PM  
**Attachments:** [New Mexico BILL OF SALE.pdf](#)  
[image002.png](#)

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Here you go Gents.

**PRIVILEGED AND CONFIDENTIAL**

Have a great day and live well,

**Seann Poli**  
CEO

---

**Eureka 93 Inc.**  
Ingenuity. From the ground up.  
Ottawa, Ontario  
[www.eureka93.com](http://www.eureka93.com)



**Confidentiality Note:**

This email may contain confidential and/or private information. If you received this email in error please delete and notify sender.

**From:** Thierry Valat De Córdoba <[thierry@domcapllc.com](mailto:thierry@domcapllc.com)>  
**Sent:** February 6, 2020 11:09 AM  
**To:** Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>; Mikhail Gurevich <[mikhail@domcapllc.com](mailto:mikhail@domcapllc.com)>  
**Cc:** Philip Gross <[pg@templeasset.com](mailto:pg@templeasset.com)>  
**Subject:** Re: BILL OF SALE.docx

We'll try to make it work without a notary. Thanks Sean.

Best,  
Thierry.

---

**Thierry Valat De Córdoba**  
General Counsel & Chief Compliance Officer\*  
**Dominion Capital Holdings LLC**  
256 West 38th Street • 15th Floor • New York NY 10018  
Office: (212) 785-4680  
Mobile: (978) 460-7395

[www.domcapllc.com](http://www.domcapllc.com)  
[www.pickwickcapitalpartners.com](http://www.pickwickcapitalpartners.com)

---

*\*Registered Representative - Broker-Dealer Services provided through Pickwick Capital Partners, LLC  
- Member FINRA and SIPC - 445 Hamilton Avenue, Suite 1102, White Plains, NY 10601 -  
914.358.3269.*

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On Thu, Feb 6, 2020 at 11:03 AM Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)> wrote:

Hi Phil.

I'll sign that document today. I'm not inclined to get it notarized. I've put it way too much of my own cash into the company over the last few months already.

Have a great day and live well

Co-CEO, Director  
Seann Poli

---

**From:** Philip Gross <[pg@templeasset.com](mailto:pg@templeasset.com)>  
**Sent:** Wednesday, February 5, 2020 7:58:20 PM  
**To:** Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>  
**Cc:** Thierry Valat De Córdova <[thierry@domcapllc.com](mailto:thierry@domcapllc.com)>  
**Subject:** Re: BILL OF SALE.docx

Sean

Have you managed to sign? It's pretty routine for the transaction and shouldn't be complicated. When do you want to discuss future prospects?

Regards

Phil

> On Feb 5, 2020, at 11:34 AM, Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)> wrote:

>

> Morning gents,

> I'm getting to your document right now.



> Phil, we definitely have to chat about the Artiva plans. I have a couple of bizdev items I want to solidify over the next few days and then will be ready to discuss further.

> Just had a call from another processor who is trying to sell me Canadian made cbd isolate for \$25k/kilo....I think there is some margin there to compete with.....

>

>

> PRIVILEGED AND CONFIDENTIAL

>

> Have a great day and live well,

>

> Seann Poli

> CEO

> \_\_\_\_\_

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> Ottawa, Ontario

> [www.eureka93.com](http://www.eureka93.com)

>

>

>

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>

> -----Original Message-----

> From: Philip Gross <[pg@templeasset.com](mailto:pg@templeasset.com)>

> Sent: February 4, 2020 9:15 PM

> To: Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>

> Cc: Thierry Valat De Córdova <[thierry@domcapllc.com](mailto:thierry@domcapllc.com)>

> Subject: BILL OF SALE.docx

>

> Sean,

>

> We have managed to eliminate the requirement for all the other documents so all that is needed now is the attached document signed and notarized. It's very straight forward and should be self explanatory. Please sign and return.

>

> On a separate note, we would really like to analyze with you the plans and forecast for artiva and how we can work together to achieve this. Absent any information we are not in a position to evaluate your proposition for moving forward. Let me know when you can discuss and what information you can provide in this regards.

>

> Regards

>

> Phil

>

\*\*\*\*\*  
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\*\*\*\*\*

**From:** Philip Gross <[pg@templeasset.com](mailto:pg@templeasset.com)>  
**Sent:** Wednesday, December 18, 2019 1:13:51 PM  
**To:** Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>  
**Cc:** Owen Kenney <[okenney@eureka93.com](mailto:okenney@eureka93.com)>  
**Subject:** Re: Agreement for Transfer of NM Property 07.docx

Hi Sean

We are working on the final documents now but there has been some confusion on the exact pinpoint details of the plot which is currently being resolved. Might have all documents later today or tomorrow

Regards

Phil

> On Dec 18, 2019, at 5:15 PM, Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)> wrote:  
>  
> Hi Phil.  
  
> How is this doc with attachments coming along?  
>  
> PRIVILEGED AND CONFIDENTIAL  
>  
> Have a great day and live well,  
>  
> Seann Poli  
> Co-CEO  
>  
> \_\_\_\_\_  
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> Ingenuity. From the ground up.  
> Ottawa, Ontario  
> [www.eureka93.com](http://www.eureka93.com)

**EXHIBIT B**

**From:** Philip Gross <[pg@templeasset.com](mailto:pg@templeasset.com)>

**Sent:** December 12, 2019 11:48 AM

**To:** Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>

**Subject:** Re: Montana security

This ucc looks like it was filed last month?

On Dec 12, 2019, at 4:44 PM, Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)> wrote:

Hi Phil,

Do you have any UCC reports showing the security that the hedge funds have security at the Montana facility? I am getting a report that shows only Surety on the UCC and I would be shocked if dominion et al was not registered. Also, can you confirm that there were no documents in the dataroom at the time when the funds were conducting due diligence before lending funds. They should have a link to the folder.

The reason why I ask this is because it just seems strange with this Surety claim and I want to make sure the funds maintain any claim that's fair to them.

I would like to also have a discussion about how to split the GSA between Artiva, Montana, and New Mexico. I don't think its right that Montana skirts any obligations.

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Have a great day and live well,

**Seann Poli**

Co-CEO

---

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<image001.jpg>

<image004.png>

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<Surety Land Development.pdf>

**From:** Philip Gross <[pg@templeasset.com](mailto:pg@templeasset.com)>  
**Sent:** December 12, 2019 11:47 AM  
**To:** Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>  
**Subject:** Re: Montana security

I will check with the funds on this as I was not involved in any of this. Will you be signing the latest draft now?

On Dec 12, 2019, at 4:44 PM, Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)> wrote:

Hi Phil,

Do you have any UCC reports showing the security that the hedge funds have security at the Montana facility? I am getting a report that shows only Surety on the UCC and I would be shocked if dominion et al was not registered. Also, can you confirm that there were no documents in the dataroom at the time when the funds were conducting due diligence before lending funds. They should have a link to the folder.

The reason why I ask this is because it just seems strange with this Surety claim and I want to make sure the funds maintain any claim that's fair to them.

I would like to also have a discussion about how to split the GSA between Artiva, Montana, and New Mexico. I don't think its right that Montana skirts any obligations.

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Have a great day and live well,

**Seann Poli**  
Co-CEO

---

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<image001.jpg>

<image004.png>

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<Surety Land Development.pdf>

**EXHIBIT C**

**From:** Philip Gross <[pg@templeasset.com](mailto:pg@templeasset.com)>  
**Sent:** Tuesday, November 5, 2019 2:23:48 PM  
**To:** Owen Kenney <[okenney@eureka93.com](mailto:okenney@eureka93.com)>  
**Cc:** Dave lawyer <[dave.dwslaw@me.com](mailto:dave.dwslaw@me.com)>; Kent Hoggan (Yahoo) <[kenthoggan@yahoo.com](mailto:kenthoggan@yahoo.com)>; Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>; Willie Blocker <[willie@canopy.com](mailto:willie@canopy.com)>  
**Subject:** Re: Los Cruces sale to Wes Richins

Do we have any movement on this? Need to respond to Wes and his counsel to get this done.

On Nov 4, 2019, at 5:16 PM, Owen Kenney <[okenney@eureka93.com](mailto:okenney@eureka93.com)> wrote:

Dave can you handle this or do we need a New Mexico Lawyer?

**Sent:** Monday, November 04, 2019 at 4:10 PM  
**From:** "Philip Gross" <[pg@templeasset.com](mailto:pg@templeasset.com)>  
**To:** "Owen Kenney" <[okenney@eureka93.com](mailto:okenney@eureka93.com)>  
**Subject:** Re: Los Cruces

Do you have a lawyer on this? It might be better if we get lawyer to lawyers talking?

On Nov 4, 2019, at 5:00 PM, Owen Kenney <[okenney@eureka93.com](mailto:okenney@eureka93.com)> wrote:

There is not any loans or lien registered to the property. The lien that showed up is Wes's loan on the rest of the property. Should the merger agreement not suffice for proof that Eureka 93 is the successor to Vitality CBD

**Sent:** Monday, November 04, 2019 at 2:16 PM  
**From:** "Philip Gross" <[pg@templeasset.com](mailto:pg@templeasset.com)>  
**To:** "Seann Poli" <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>, "Owen Kenney" <[okenney@eureka93.com](mailto:okenney@eureka93.com)>  
**Subject:** Los Cruces

Sean / Owen,

Hope all is well. Just trying to facilitate the closing of the above transaction and the lawyers for Wes have indicated that they are still missing the below documents. Would it be possible to provide today? Is there a lawyer on your side dealing with this? Please call me to discuss

Thanks  
 Phil

- Certified copies of documentation from the appropriate agency of the Government of Canada that Eureka 93, Inc. is the successor entity to Vitality CBD Natural Health Products, Inc. I'm attaching what I found last week online. The Title Company won't rely on on-line information, but this information suggests to me that a merger resulting in Eureka 93 having title to the Advancement property hasn't been filed with the appropriate Canadian entity.
- LCAT may also want a Release of Lien from a mortgage or other lien holder, but as I've mentioned, I don't have a copy of a mortgage or other form of lien, and when I spoke to Belinda a couple of months ago about it, she said she had not recorded a mortgage for the transaction. The Word document provided to me last week also doesn't mention Eureka.



**EXHIBIT D**

## SUBORDINATION AND POSTPONEMENT AGREEMENT

WHEREAS Vitality CBD Natural Health Products Inc. (the "Debtor") is indebted and may become further indebted to Hindsdale I, LP ("Hindsdale") and other Purchasers (as such term is defined in the Guarantee Agreement) pursuant to a guarantee agreement (as amended, restated, extended, replaced or otherwise modified from time to time the "Guarantee Agreement") entered into on or about the date hereof by, among others, the Debtor, in favour of Dominion Capital LLC ("Dominion"), as collateral agent for the Purchasers (including Hindsdale) and with respect to other indebtedness, liabilities and obligations of the Debtor to the Purchasers (including Hindsdale) under a securities purchase agreement dated on or about the date hereof (as amended, restated, extended, replaced or otherwise modified from time to time the "Securities Purchase Agreement") and the other Transaction Documents (as such term is defined in the Securities Purchase Agreement) (such past, present and future indebtedness, liabilities and obligations are collectively called the "Senior Obligations");

AND WHEREAS the Senior Obligations are and may in the future be secured by certain security documents and related documents executed or to be executed in favour of the Purchasers by the Debtor (such past, present and future security documents and related documents are collectively called the "Senior Security");

AND WHEREAS the Debtor is liable and obligated or will become liable and obligated to LiveWell Canada Inc. ("LiveWell") with respect to certain monies advanced or to be advanced by LiveWell (the "Subordinated Loan"), and with respect to indebtedness, liabilities and obligations of the Debtor to LiveWell (such past, present and future indebtedness, liabilities and obligations are collectively called the "Subordinated Obligations");

AND WHEREAS the Subordinated Obligations are secured by certain security documents and related documents executed in favour of LiveWell by the Debtor, including, without limitation, a general security agreement registered in the Personal Property Security Registry of Ontario under registration number 748220841 and may be further secured by certain security documents and related documents to be executed in favour of LiveWell by the Debtor (such past, present and future security documents and related documents are collectively called the "Subordinated Security");

AND WHEREAS LiveWell has agreed to postpone and subordinate the Subordinated Loan and the Subordinated Security in favour of the Senior Obligations and the Senior Security ;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereto hereby acknowledge, covenant and agree as follows:

1. LiveWell hereby acknowledges and agrees that, so long as any portion of the Senior Obligations are outstanding and until all of the Senior Obligations have been paid in full, the payments of all or any portion of the Subordinated Loan, unless otherwise permitted under the Securities Purchase Agreement or other Transaction Documents, shall be postponed and subordinated to the payment in full of all of the Senior Obligations. LiveWell hereby further acknowledges and agrees that, unless otherwise permitted under the Securities Purchase Agreement or other Transaction Documents, if LiveWell receives any payments of all or any portion of the Subordinated Loan before all of the Senior Obligations have been indefeasibly paid in full, then such payments shall be received and held by LiveWell in trust for the Purchasers and LiveWell shall promptly pay such payments to Dominion for application against the Senior Obligations until all of the Senior Obligations have been indefeasibly paid in full.

- 2 -

2. LiveWell hereby acknowledges and agrees that, so long as any portion of the Senior Obligations are outstanding and until all of the Senior Obligations have been paid in full, the rights, interests and entitlements that LiveWell has or may have as a holder of the Subordinated Security shall be postponed and subordinated to the rights, interests and entitlements that the Purchasers have or may have as the holder of the Senior Security . For greater certainty, notwithstanding anything contained herein or in any other agreement to the contrary, LiveWell hereby acknowledges and agrees that the Senior Security shall rank and be enforceable in priority to the Subordinated Security .
3. LiveWell hereby acknowledges and agrees that, upon any distribution of any of the assets of the Debtor to any of its creditors upon any dissolution, winding-up, total or partial liquidation, readjustment of debt, reorganization, compromise, arrangement with creditors or similar proceedings of the Debtor or any of its assets, or in any bankruptcy, insolvency or receivership, assignment for the benefit of creditors, marshalling of assets and liabilities or similar proceedings, or in the event of any bulk sale of any of the assets of the Debtor within the bulk transfer provisions of any applicable laws or similar proceedings in relation thereto, whether any of the foregoing is voluntary or involuntary, partial or complete, all of the Senior Obligations shall be paid in full before LiveWell shall be entitled to retain or receive any payment or distribution from the Debtor in respect of the Subordinated Loan.
4. LiveWell hereby acknowledges and agrees that, upon any dissolution, winding-up, liquidation, readjustment, reorganization, compromise, adjustment of debt, arrangement with creditors or similar proceedings involving the Debtor, any payment or distribution of assets or securities of the Debtor of any kind or character, whether in cash, property or securities, received by LiveWell before all of the Senior Obligations have been indefeasibly paid in full, shall be received and held in trust by LiveWell for the benefit of, and shall promptly be paid over, in the form received (duly endorsed, if necessary) to Dominion for application against the Senior Obligations until all of the Senior Obligations have been indefeasibly paid in full.
5. LiveWell hereby acknowledges and agrees that, unless such payment is otherwise permitted under the Securities Purchase Agreement or other Transaction Documents, it shall not make demand for payment of the Subordinated Loan without providing prior written notice of such demand to Dominion. LiveWell hereby further acknowledges and agrees that it shall not accelerate, nor take any actions, steps or proceedings to otherwise enforce or realize upon or in respect of the Subordinated Loan or the Subordinated Security without the prior written consent of Dominion. LiveWell hereby further acknowledges and agrees that any and all rights which LiveWell may have to appoint a receiver or receiver and manager or other agent or to seek the appointment by any court of a receiver or receiver and manager or other agent to enforce all or any part of the Subordinated Security shall be postponed and subordinated to any and all rights of Dominion to appoint a receiver or receiver and manager or other agent or to seek the appointment by any court of a receiver or receiver and manager or other agent to enforce all or any part of the Senior Security. If Dominion decides to make any demand for all or any portion of the Senior Obligations or to enforce the Senior Security, then LiveWell shall, in good faith and as may be reasonably required, cooperate with Dominion in order to implement such decisions in an efficient and business-like manner. LiveWell hereby agrees that, in the event of a private appointment of a receiver or receiver and manager or agent in respect of the Debtor, such person shall, unless otherwise agreed in writing by Dominion, act only in respect of the enforcement of the Senior Security.
6. LiveWell hereby acknowledges and agrees that, so long as any portion of the Senior Obligations are outstanding and until all of the Senior Obligations have been paid in full, LiveWell shall not assign or transfer all or any part of the Subordinated Loan or the Subordinated Security or any interest therein without obtaining the prior written consent of Dominion thereto unless the transferee or assignee thereof shall have assumed, by instrument in form and substance acceptable to Dominion, all of the obligations and covenants of LiveWell hereunder.

- 3 -

7. LiveWell hereby acknowledges and agrees that the postponements and subordinations contained in this subordination agreement shall apply in all events and circumstances regardless of:
- (a) the date of execution, attachment, registration, perfection or re-perfection of any security interest held by the Purchasers or LiveWell or either of them;
  - (b) the date of any advance or advances made by the Purchasers or LiveWell or either of them to the Debtor;
  - (c) the date of default by the Debtor under the Senior Obligations, the Senior Security, the Subordinated Obligations or the Subordinated Security;
  - (d) the timing of crystallization of any floating charges granted under the Senior Security or the Subordinated Security or any other action or proceedings taken to enforce the Senior Security or the Subordinated Security; or
  - (e) any priority granted by any principle of law or any statute, regulation or bylaw including, without limitation, any personal property statute, regulation or bylaw.
8. LiveWell hereby covenants and agrees that it shall not at any time challenge, dispute or contest the validity or enforceability of the Senior Obligations or the Senior Security nor the priorities applicable to the Senior Obligations or the Senior Security, as provided herein.
9. LiveWell hereby authorizes Dominion to register one or more financing change statements or similar statements at the appropriate registries in connection with any registrations applicable to the Subordinated Security in order to state that the Subordinated Loan and the Subordinated Security have been postponed and subordinated in favour of the Senior Obligations and the Senior Security.
10. This subordination and postponement agreement may not be amended except in writing with the prior written consent of Dominion and LiveWell.
11. This subordination and postponement agreement shall be governed by the laws of the Province of Ontario.
12. This subordination and postponement agreement shall be binding upon the parties hereto and their successors and permitted assigns.
13. This subordination and postponement agreement may be executed in one or more counterparts, each of which counterparts when executed shall constitute an original and all of which counterparts when so executed shall constitute one and the same subordination and postponement agreement.
14. A fax copy or an electronic copy of an executed copy of this subordination and postponement agreement shall have the same force and effect as an originally executed copy of this subordination and postponement agreement.

*[Signature page follows]*

- 4 -

This subordination agreement has been executed by Dominion and LiveWell as of the 14th day of February 2019.

**Dominion Capital LLC**, as collateral agent for the Purchasers

By: Dominion Capital Holdings, LLC, its manager

DocuSigned by:

By:

*Mikhail Gurevich*

Name: Mikhail Gurevich

Title: Managing Member

**LiveWell CANADA INC.**

By:

Name: Steven Archambault

Title: CFO

Acknowledged and agreed by the Debtor.

**VITALITY CBD NATURAL HEALTH PRODUCTS INC.**

By:

Name: Steven Archambault

Title: CFO

*[Signature page – Subordination and Postponement Agreement]*

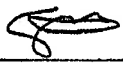
- 4 -

This subordination agreement has been executed by Dominion and LiveWell as of the 14th day of February 2019.

**Dominion Capital LLC, as collateral agent for the Purchasers**


By: \_\_\_\_\_  
Name:  
Title:

**LiveWell CANADA INC.**

By:  \_\_\_\_\_  
Name: Steven Archambault  
Title: CFO

Acknowledged and agreed by the Debtor.

**VITALITY CBD NATURAL HEALTH PRODUCTS INC.**

By:  \_\_\_\_\_  
Name: Steven Archambault  
Title: CFO

*[Signature page – Subordination and Postponement Agreement]*

**EXHIBIT E**

**Rock Kouwenberg**

---

**From:** Rock Kouwenberg  
**Sent:** October 29, 2019 11:22 AM  
**To:** Robb - FamilyLending.ca; Seann Poli  
**Subject:** RE: reminder  
**Attachments:** 35500 - Reliance Letter.pdf; 35500.pdf

Hi Seann and Robb,

Please see the attached documents for a copy of the report and reliance letter.

Regards,

**Rock Kouwenberg, Appraiser**  
 B.Comm, AACI, P.App



251-759 Hyde Park Road  
 London, ON N6H 3S2  
 T: 519-667-9050 Ext. 231  
 F: 519-667-9087  
 Toll Free: 1-800-305-2650 Ext. 231  
 E: [rkouwenberg@valcoconsultants.com](mailto:rkouwenberg@valcoconsultants.com)  
 W: [www.valcoconsultants.com](http://www.valcoconsultants.com)



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**From:** Robb - FamilyLending.ca <[robb@familylending.ca](mailto:robb@familylending.ca)>  
**Sent:** Friday, October 25, 2019 11:10 AM  
**To:** Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>  
**Cc:** Rock Kouwenberg <[rkouwenberg@valcoconsultants.com](mailto:rkouwenberg@valcoconsultants.com)>  
**Subject:** Re: reminder

Can you send us the updated appraisal. To AgriRoots Capital Management Inc.

136 St Clair St  
 Chatham ON  
 N7M 3J3



Robb Nelson , Broker, CEO  
519-351-7283 ext 201  
519-436-3353 cell  
FamilyLending.ca Inc.  
AgriRoots.ca  
Lic. 12114

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On Oct 22, 2019, at 2:32 PM, Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)> wrote:

Thanks Rock.

Have a great day and live well,

**Seann Poli**  
Co-CEO

---

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**From:** Rock Kouwenberg <[rkouwenberg@valcoconsultants.com](mailto:rkouwenberg@valcoconsultants.com)>  
**Sent:** October 22, 2019 2:11 PM  
**To:** Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>  
**Subject:** RE: reminder

Hi Seann,

Sorry for the delay. I had a quick review of the old report and several new sales and don't see any significant change value from the previous report. The greenhouse market on the whole has remained fairly level.

Regards,

**Rock Kouwenberg, Appraiser**  
 B.Comm, AACI, P.App

<image002.jpg>

251-759 Hyde Park Road  
 London, ON N6H 3S2  
 T: 519-667-9050 Ext. 231  
 F: 519-667-9087  
 Toll Free: 1-800-305-2650 Ext. 231  
 E: [rkouwenberg@valcoconsultants.com](mailto:rkouwenberg@valcoconsultants.com)  
 W: [www.valcoconsultants.com](http://www.valcoconsultants.com)

<image003.jpg>

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---

**From:** Seann Poli <[SPoli@eureka93.com](mailto:SPoli@eureka93.com)>  
**Sent:** October 10, 2019 12:39 PM  
**To:** Rock Kouwenberg <[rkouwenberg@valcoconsultants.com](mailto:rkouwenberg@valcoconsultants.com)>  
**Subject:** reminder

Hey Rock,

Just a reminder that you were going to get back to me on the valuation on our property and the land value.

I don't need a full valuation, just an update saying the value is either the same (considering nothing has changed since a year ago) or higher because of the land value.  
 Even just a new cover page would suffice.

Have a great day and live well,

**Seann Poli**  
 Co-CEO

---

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**Ingenuity. From the ground up.**  
 Ottawa, Ontario  
[www.eureka93.com](http://www.eureka93.com)

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## Searn Poli

- verbal confirmation from Searn to send letter
- reliance letter request for Agri-roots
- File 35500 Pete Nelson
- Financing purposes
- most of proposed work ~~was~~ is essentially complete
- no changes to building ~~plans~~ or other improvements

## Don Laner

- hasn't noticed any changes in the market for greenhouses
- appears to be stable
- not aware of any recent sales I don't already have

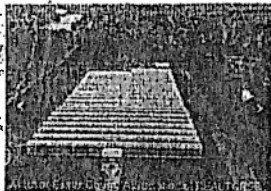
## Sales Review

- several sales since ~~ADP~~ report was sent
- appear to be consistent with the market in 2018 → no notable change

Ron Dierksen - ~~still~~ lots of interest for greenhouses from vegetable and marijuana growers

Dom

<u>List date</u>	<u>Price (list)</u>	<u>take price</u>	<u>Market time (months)</u>	<u>Status</u>
Nov 16, 2018	<del>2,000,000</del>	7.3m	2	S
Aug 18, 2017	5.5m	5,815,000	2	S
July 9, 2018	7.5m		6	E
Sept 28, 2018	4.95m		11	E
Aug 10, 2018	9,222,000	8.6	3	S
Dec 7, 2018	5.3		7	E
Nov 23, 2018	7.1		8	S
April 18, 2017	6.5		6	E



MLS#: 1N011200 List Price: \$5,300,000.00  
 Status: Expired Property Type: Farm  
 Major Area: Windsor-Essex CSD/CD  
 Trans. Type: Sale Sub-District: 00  
 Legal Description: PT LT 20 CON 1 OSGOODIE AS IN OS22634 (FOURTHLY) OSGOODIE  
 Address: 5501 DIXIE ROAD  
 City/Town/Village: Manotick, Ontario K4M 1B4  
 Side of Road: North  
 Nearest Cross St: RIVER ROAD  
 Nearest Town: MANOTICK  
 Area/Property Known As:  
 Property Size: 22.542 ACRES (APPROX)  
 Acreage: 22.542 Approx Sq Ft:  
 Zoning: RURAL RES Occupancy: Seller  
 Start Date: 07-Dec-2018 Expiry Date: 06-Jul-2019  
 Possession: 90-180 DAYS  
 Property Includes: Outbuildings, Residence

Remarks: BEAUTIFUL MODERN 22 ACRE GREENHOUSE FARM, CONSISTING OF 4.1 ACRES (170,704 SQ') MODERN 14' x 18' DOUBLE POLY GREENHOUSES + 17,856 SQ' PACKING/OFFICE/UTILITY AREA FOR TOTAL 4.3 ACRE STRUCTURE. THIS FARM COMES EQUIPPED WITH RAISED TROUGH/HOT WATER HEAT/600 AMP ELECTRIC SERVICE/GROW LIGHTS/600HP CRANE GAS-POWERED BOILERS, BACK-UP GENERATORS/WORKERS ACCOMMODATIONS FOR (12) + ALL EQUIPMENT AND PACKING EQUIPMENT UNIQUE TO THE GREENHOUSE OPN/ (2) HIGH QUALITY DRILLED WELL CAPACITY 60 GA/MIN/WATER RECYCLING SYSTEM, WEEKLY GARBAGE RECOLLECTION AND MUCH MORE. INCLUDED IN THIS OFFERING IS AN IMPRESSIVE CUSTOM BUILT EXECUTIVE STYLE HOME BUILT IN 1998.

Year Built: 1999 Approx Taxes/Year: \$4866.00/2010  
 Farm & Land Information

Approx. Acreage Cleared: 22 Approx. Acreage Workable: Tiled: Yes  
 Lot Remarks: CLAY LOAM  
 Easements: None  
 UASRA Restrictions:  
 UASRA Type/Restrictions: Fronts On Paved Road, Hydro, Natural Gas, Telephone, Water Rights  
 Farm Type 1: Greenhouse  
 Farm Type 2: 600HP Elec Svcs: 600 AMP Fuel: GAS Phase: 3  
 List of Chattels Included: No  
 Farm Structures: Barn  
 Storage:  
 Soil Type: Loam  
 Residence Features  
 Parking Type (Garage): 2.5 Garage Driveway: Double Width Or More Drive, Gravel Drive  
 Exterior Finish: Aluminum/Vinyl, Stone  
 Attached: Attached  
 Foundation: Concrete  
 # of Bedrooms: 4+ Total Bathrooms: 2.3 # In-Bathrooms: 2  
 Basement: Full Basement Development: Unfinished  
 Heating/Cooling: Central Air Conditioning, Forced Air, Heating Fuel: Natural Gas  
 Flooring: Carpeted, Ceramic/Porcelain, Hardwood/Engineered Hwd  
 Fireplace Type: Insert Fuel/Fire Fuel: Gas  
 Hot Water Tank: Owned HWT - Type: Gas  
 Aerial Equipment: None  
 Other Features:

Room	Level	Room Size	Room	Level	Room Size
FOYER	M		KITCHEN	M	
EATING AREA	M		DINING ROOM	M	
LIVING ROOM / FIREPLACE	M		MASTER BEDROOM	M	
BEDROOM	M		BEDROOM	2	
BEDROOM	2		OFFICE	M	
ATTIC	2		5 PC. ENSUITE BATHROOM	M	
2 PC. BATHROOM	M		4 PC. BATHROOM	2	

Site Influences: Patio(s), Sundeck, Tree Lot  
 Under Water/Avail: Drilled Well/Installed  
 Utility Sewer/Avail: Septic System/Connected

Miscellaneous  
 Handicap: Garbage Pick-up Provided: Yes UFFI: SPIS:  
 Retain Certificates: Survey Available: Work Order:  
 Mortgage: Local Improvements:

REALTORS Information  
 Data Modification: Yes  
 Seller: SUNTECH GREENHOUSES LTD Title to Land: Freehold

List Branch: 635 ROYAL LEBAGE BINDER REAL ESTATE - G75 L/BR Phone: (519) 326-9007  
 List Salesperson: RONALD BERKSEN (S) L/SR Phone: (519) 791-3462  
 Showings: Call First CB Share: 2.5

REMARKS: BEAUTIFUL MODERN 22 ACRE GREENHOUSE FARM, CONSISTING OF 4.1 ACRES (170,704 SQ') MODERN 14' x 18' DOUBLE POLY GREENHOUSES + 17,856 SQ' PACKING/OFFICE/UTILITY AREA FOR TOTAL 4.3 ACRE STRUCTURE. THIS FARM COMES EQUIPPED WITH RAISED TROUGH/HOT WATER HEAT/600 AMP ELECTRIC SERVICE/GROW LIGHTS/600HP CRANE GAS-POWERED BOILERS, BACK-UP GENERATORS/WORKERS ACCOMMODATIONS FOR (12) + ALL EQUIPMENT AND PACKING EQUIPMENT UNIQUE TO THE GREENHOUSE OPN/ (2) HIGH QUALITY DRILLED WELL CAPACITY 60 GA/MIN/WATER RECYCLING SYSTEM, WEEKLY GARBAGE RECOLLECTION AND MUCH MORE. INCLUDED IN THIS OFFERING IS

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

AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS (LIVEWELL FOODS CANADA INC., ARTIVA INC., AND VITALITY CBD NATURAL HEALTH PRODUCTS INC.)

AND IN THE MATTER OF SECTION 192 OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44, AS AMENDED, AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 12112744 CANADA LIMITED AND INVOLVING LIVEWELL FOODS CANADA INC. AND ARTIVA INC.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY & INSOLVENCY)

(PROCEEDING COMMENCED AT OTTAWA)

WRITTEN QUESTIONS OF MIKHAIL GUREVICH

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Lawyers for the Debtors

# APPENDIX B

Reply To:  
Michael Crampton  
Phone extension: (416) 644-9972  
mcrampton@chitizpathak.com

77 King Street West, Suite 700  
TD North Tower, P.O. Box 118  
Toronto, Ontario M5K 1G8  
phone 416.368.6200 fax 416.368.0300

Partners:  
Daniel Chitiz  
Elliot Birnboim  
Navin Khanna  
Paul Pathak  
Josh Arbuckle

September 12, 2020

**BY EMAIL: Patrick.Shea@gowlingwlg.com**

**E. PATRICK SHEA**  
Gowling WLG (Canada) LLP  
Barristers & Solicitors  
1 First Canadian Place, Suite 1600  
100 King Street West  
Toronto, ON M5X 1G5

Dear Mr. Shea:

**Re: In the matter of the Proposal of Eureka 93 Inc. et al - Our file no: 004184**

---

We have your questions and the answers are as below.

We will not have an opportunity to swear the affidavit prior to the deadline set by Justice McLeod but we are providing you the answers in advance. You may rely on them without the affidavit, should you wish to.

However, by way of comment, neither your introductory comments to the questions, the questions themselves, nor the appended documents are evidence. Generally speaking, we have disregarded the ongoing mischaracterizations of Mr. Gurevich's evidence and editorializing and simply answered the questions.

Following your questions numbers:

1. No.
2. On the basis of the email exchange between Mr. Poli and Mr. Gross which copied Mr. Shea and the admission in Mr. Poli's affidavit which acknowledges that the Debtors hired insolvency counsel, as well as the fact that there has been no denial.
3. The premise of the questions has not been established. It is Mr. Gurevich's belief, based upon the facts at #2, which have not been denied, that Mr. Poli was negotiating the matter directly himself with the advice of Gowlings who were copied on previous communications with Mr. Gross.



4. Dominion prepared the documents internally, including the Exhibit “B” which dictates how the proceeds should be applied, which Mr. Poli and Mr. Kenny agreed to.
5. Not surprisingly, given the nature of the correspondence referenced at Exhibit “B” (which is not an exhibit and which is not in evidence), all the correspondence identified to date included Thierry Valat De Córdova and is subject to solicitor-client privilege. We are working to identify emails between December 12 and December 20 that do not include counsel, deal with Montana and will therefore be produced. This date range has been selected as the question is otherwise entirely ambiguous and correspondence “*arising as a result of or relating to the attached e-mail exchanges*” is too broad.
6. After being advised of Surety’s intention to enforce its purported security, Dominion promptly put the Debtors and Surety on notice of Dominion’s first-priority security in a letter dated December 6, 2019, continued to work with Debtors to resolve their financing problems and asserted Dominion’s rights in this insolvency proceeding.
7. Outside this proceeding, no. Without waiving litigation or solicitor-client privilege (and without conceding that legal strategy is relevant) the outcome of this proceeding may materially impact the tack ultimately taken.
8. Refused, registrations are publicly available documents. In any event, registration is merely evidence of security, and in this case security on the assets of Vitality LLC, a subsidiary of the Debtor company, Vitality CBD Natural Health Products Inc., and therefore does not impact the questions on the appeal, i.e. the liability and security of the Proposal Debtor.
9. This is a misstated premise. See paragraph 28 of Mr. Gurevich’s affidavit and Exhibit “J” thereto. However, the impact is a legal question. On a factual basis, Mr. Poli agreed to (and in fact) released Vitality LLC’s rights in the Montana Facility in full knowledge of the Noteholders’ security.
10. Given the question, it appears that the question is directed to communications with Mr. Poli. These would be in Mr. Poli’s possession. If otherwise, given the amorphous time frame this will attract both litigation privilege, common interest privilege and solicitor-client privilege. As this is under the heading “Montana transaction”, we are working to identify any non-privileged emails per answer #5.
11. (a) As part of the entire contemplated transaction, yes. (b) The documents speak for themselves.

12. As set out in the Terms Sheets, the February Bridge Loan was the initial part of the larger single transaction as fully set out in the affidavit of Mr. Gurevich.
13. Page 412-413.
14. The phrase “accurate in terms of DC’s position vis-a-vis Eureka93 and the Debtors” is entirely ambiguous. However, to be clear, the affidavit of Mr. Poli is not adduced for the truth of its contents other than to demonstrate the existence of several formal and informal admissions by Mr. Poli that liability for the Noteholders’ claims for the entirety of the debt extends to all the Debtors.
15. No. However, this is not a matter which is properly dealt with in this forum.
16. Refused, see 15.
17. “.....*which may be allocated to all amounts due under the Notes as the Holders may each decide in accordance with and as provided in the Transaction Documents.*” This is followed by “.....*This payment will be applied to obligations outstanding under the Notes and other Transaction Documents in accordance with Exhibit “B”*”. Exhibit “B” (also referenced as Schedule “B”) was prepared by the Noteholders without input from the Debtors, in the exercise of the Noteholders’ discretion, without objection by the Debtors. Motion Record, pages 699-700 and 707.
18. There is no relevance nor has a foundation been laid.
19. There is no relevance nor has a foundation been laid.
20. Yes, it is disputed. But see the first paragraph which is clearly referencing the entirety of the debts, present and future, not merely the February Notes, consistent with the Guarantee.
21. Not a proper question. However, as noted at question 20, it is particularly supportive of the single transaction position of the Noteholders, referencing present and future debts.
22. It is not an error. USD\$11.4mil is correct up to the date of the New Mexico transaction and is used for interest calculation purposes to that date, the principal is then reduced to USD\$8.4mil – all subject to the ultimate treatment of the New Mexico Transaction as may be otherwise determined (although not in this proceeding).
23. The definition is in section 1 (page 3) of the Notes: “...the sum of (a) the greater of (i) ... or (ii) 130% of the outstanding principal amount of this Note, plus 100% of accrued and unpaid interest hereon and the Make Whole, and (b) all other amounts,

costs, expenses and liquidated damages due in respect of this Note.” The formula applied in the charts in paragraphs 45 and 46 is Principle Amount [i.e. \$11,400,000] \* 0.3.

24. They are not entitled to such a credit nor is the predicate of the question accurate.
25. Despite paragraph 2.4(e), Eureka failed to cause Acenzia to execute a joinder agreement.
26. Mr. Gurevich does not know the answer to the question. Mr. Kouwenberg provided some documentation through counsel. Mr. Gurevich believes that the file provided was incomplete but is not the author of the file or the documents at “Exhibit E”. The documents attached (which are not admitted) are not a “Reliance Letter”.
27. The question is not proper nor has the predicate been established. See 26.
28. The question is not proper nor has the predicate been established. See 26.
29. It was an assumption based on the fact that it would not make sense for Mr. Kouwenberg to value the Ottawa Facility without using cannabis facilities as comparators. The Kouwenberg information is not being put forward for the truth of its contents but merely to illustrate what Mr. Kouwenberg delivered as part of his file, apparently supporting his opinion of value.
30. The question misstates the evidence of Mr. Gurevich in his affidavit.
31. Mr. Kouwenberg is the correct person to explain what he relied on or didn’t rely on. This witness cannot do other than to observe that this is a list of comparators in the file, as delivered by Mr. Kouwenberg, without knowledge of the truth of its contents.
32. No, the witness does not know the size of the other properties or precisely what calculations were done by Mr. Kouwenberg – only that the Ottawa Facility appears to be worth considerably more than any other property which Mr. Kouwenberg *appears* to have looked at, if the handwritten chart is correctly understood. There has been no follow up with Mr. Kouwenberg other than a call to his counsel noting that the file is missing information.
33. The paragraph 18 says what it says.
34. Mr. Gurevich is not aware of what Mr. Gross knew. However, Mr. Gurevich is aware that Patrick Shea, the Debtors’ insolvency counsel, was involved with the Debtors at the time of the New Mexico and Montana transactions, per Mr. Shea being copied on Mr. Poli’s email to Mr Gross.

35. Every revenue projection presented by Mr. Poli in support of the various motions and the Proposal. There may be others we are unaware of.
36. The Trustee supported the DIP motion, which was predicated on a business model and has supported Proposal as advantageous to the unsecured creditors, without any adverse comment on the financial information provided by Mr. Poli (or by Eureka).
37. This is not a proper question. The Noteholders wish to have their rights *qua* creditors recognized.

Yours very truly,  
**Chitiz Pathak LLP**

*Elliot S. Birnboim*

Elliot Birnboim  
EB:al

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ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
Proceeding commenced at Ottawa

SUPPLEMENTARY MOTION RECORD  
OF THE PROPOSAL TRUSTEE  
(returnable September 14, 2020)

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