

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.)**

FIFTH REPORT OF THE PROPOSAL TRUSTEE

May 4, 2020

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INTRODUCTION

1. This fifth report (the “**Fifth Report**”) is filed by Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) in connection with the Notices of Intention to Make a Proposal (individually, an “**NOI**”, and collectively, the “**NOIs**”) filed by each of Eureka 93 Inc. (“**Eureka 93**”), LiveWell Foods Canada Inc. (“**LiveWell**”), Artiva Inc. (“**Artiva**”) and Vitality CBD Natural Health Products Inc. (“**Vitality**” and, together with Eureka 93, LiveWell and Artiva, the “**Companies**”).
2. On February 14, 2020 (the “**Filing Date**”), the Companies each filed an NOI under Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c.B-3, as amended (the “**BIA**”). Deloitte was appointed as Proposal Trustee under each NOI. By way of Order of Justice MacLeod dated March 9, 2020 (the “**Initial Order**”), among other things, the proposal proceeding for each of the Companies was administratively consolidated under the Estate and Court File number of Eureka 93, and the date by which the Companies are required to file proposals was extended to April 29, 2020 (the “**Proposal Filing Date**”).
3. Paragraph 16 of the Initial Order directs the Proposal Trustee, beginning on March 23, 2020, to file with the Court, and deliver to any party on the Service List who requests a copy, a bi-weekly status report: (a) confirming that the interim funding approved pursuant to paragraph 5 of the Initial Order is in place; (b) verifying progress of construction at the facility owned by Artiva (the “**Artiva Facility**”); (c) confirming the continued validity of the cultivation licence of Artiva; and (d) setting out the progress towards production of a first crop by Artiva.
4. The Receiver has filed three bi-weekly reports in these proceedings, the latest being on April 20, 2020 (the “**Fourth Report**”), which report also addressed the Companies’ motion to extend the date by which the Companies must file their proposals to June 12, 2020. On April 23, 2020, the Court granted the extension sought.

5. The purpose of this Fifth Report is to provide the fourth bi-weekly status report required under the Initial Order.

TERMS OF REFERENCE AND DISCLAIMER

6. In preparing this Fifth Report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, unaudited financial information, books and records, construction reports and financial information prepared by the Companies, and discussions with Seann Poli, CEO of Eureka 93 and also a Director of each of the Companies, and Peter Ostapchuk, CFO of Artiva and Senior Financial Advisor to the Eureka Group of Companies (“**Management**”) (collectively, the “**Information**”).
7. The Proposal Trustee has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposal Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards (“**Canadian GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*. Accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
8. Some of the information referred to in this Fifth Report consists of financial projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
9. Future oriented financial information referred to in this Fifth Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

10. While this Fifth Report does reference some of the known impacts of the Coronavirus pandemic (“**COVID-19**”) on the Companies’ operations, there may be further impacts not yet identified that may impact sales, production, supply chain or any other aspect of the business, which may have an adverse impact on the performance of the Companies. Readers should consider the increasingly broad effects on the financial condition of the Companies, as a result of the negative impact on Canada, the global economy and major financial markets from COVID-19.
11. Capitalized terms not otherwise defined in this Fifth Report are as defined in the First Report through the Fourth Report.
12. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

STATUS OF INTERIM FINANCING FACILITY

13. The Proposal Trustee has confirmed that since Court approval of the Interim Financing Facility, Artiva has made eight draw requests totaling \$1,820,390, out of the total availability of \$2.3 million. The eighth draw request of \$176,010 was made on May 1, 2020, and the funds are anticipated to be received by Artiva on May 4, 2020.
14. The following is a comparison of the first eight weeks of actual draw requests to forecast (the “**Forecast**”), the Forecast being a combination of the first six weeks of the Statement of Projected Cash Flow for Artiva as filed with the Superintendent of Bankruptcy on February 19, 2020, which was attached in Appendix “E” to the First Report (the “**Projections**”), and the first two weeks of the Cash Flow Forecast for the period April 20 to June 12, 2020, which was attached as Appendix “E” to the Fourth Report (the “**Cash Flow Forecast**”):

Actual Interim Financing Facility Draws and Disbursements Compared to the Forecast For the 8-week period ended May 1, 2020			
(in \$CDN)	NOI Forecast to 1-May-20	Actual Results to 1-May-20	Variance
Receipts			
DIP Funding February 2020	2,300,000	1,820,389	(479,611)
Collection of A/R (Net Gross Margin)	203,280	-	(203,280)
Other	-	2,000	2,000
Total Receipts	2,503,280	1,822,389	(680,891)
Disbursements			
Inventory/Seed/Plantlet Purchases	200,580	133,805	66,775
Contract Labour / Architectural Fees	-	24,820	(24,820)
Integrated Pest Prevention	6,066	-	6,066
Equipment Rental (Backup generator)	6,484	6,487	(3)
Management Personnel Costs (3 persons)	112,451	137,683	(25,232)
Operations Personnel Costs (2 persons)	12,500	14,000	(1,500)
Master Grower Team Costs (4 Month Lead Time)	26,865	68,714	(41,849)
Internet Costs for Security Systems	333	2,137	(1,804)
Office Expenses	1,200	6,978	(5,778)
Travel Expenses	-	6,312	(6,312)
Professional Fees (Proposal Trustee & Legal Counsel)	215,000	292,208	(77,208)
Utilities and Power	8,551	8,600	(49)
Insurance (Business and Property Liability)	13,004	13,007	(3)
Property Taxes for Artiva Location	6,000	11,000	(5,000)
Repairs & Maintenance	800	-	800
Capital Expenditures	574,604	411,296	163,307
Licence Costs (Health Canada & Regulatory)	28,000	52,774	(24,774)
DIP Fees and Charges	300,000	300,000	-
DIP & Accrued Interest Expense on 1st Positions	261,711	270,584	(8,873)
Other (Liability Insurance on Property and Assets)	-	61,983	(61,983)
Total Disbursements	1,774,149	1,822,389	(48,240)
Net Cash Flow	729,131	-	(729,131)
Opening Escrow Cash Balance	2,300,000	2,300,000	-
Closing Escrow Cash Balance	-	477,611	

15. The Proposal Trustee notes the following concerning the actual draws made to date and the significant variances:
- while the Projections anticipated all of the principal under the Interim Financing Facility would be received in one initial draw, the parties have elected to operate on a draw request

basis in order to satisfy invoices received or fund disbursements scheduled to be incurred during the following week;

- the \$203,280 negative variance in A/R receipts is the result of Artiva having not yet finalized the contract for the sale of clones, as discussed in the Fourth Report. As a result, the 50% deposit totaling \$203,280 was not received as forecast. Artiva anticipates finalizing those arrangements in the coming week;
- the positive variance in plantlet purchases of \$66,775 is a timing difference as Artiva anticipates completing those additional plantlet purchases in the coming weeks;
- the negative variance of \$24,820 for contract labour/architectural fees is a permanent difference as such fees were not initially anticipated, but were incurred as a result of a change in the growing room layouts to optimize work and process flow;
- the management personnel costs negative variance of \$25,232 is partly a temporary difference, as the forecast did not include HST for such costs, but which will become refundable upon submission of Artiva's HST return (approximately \$11,100), and is partly a permanent difference as greater time has been incurred by the CFO than was initially forecast (approximately \$14,100);
- the master grower team costs negative variance of \$41,849 is a permanent difference as there were greater up-front costs, and the size of the overall team was greater than anticipated;
- the negative disbursement variance for professional fees has decreased from \$82,981 to \$77,208 since the Fourth Report, but continues to be the result of:
 - (i) a timing difference, as the Projections provided for a straight-line expense of professional fees on a weekly basis, whereas the initial invoices from the Proposal Trustee, its counsel and the Companies' counsel reflected the significant up-front fees and disbursements incurred for the filing of the NOIs, and the preparation of the motion materials for the relief provided for in the Initial Order; and

- (ii) a potential permanent difference due to the unanticipated additional fees involved in dealing with the opposition by Dominion Capital LLC (“**Dominion**”) to the making of the Initial Order, which also required two adjournments of that motion, and the filing by the Companies of additional and more substantive material to respond to the material and positions put forward by Dominion.
- the positive disbursement variance for capital expenditures of \$163,307 is both a permanent and timing difference. As previously reported, Artiva initially anticipated an expenditure of approximately \$110,000 for the installation of a concrete floor in one of the growing rooms. The Company has decided to defer that expense as it can operate with the current flooring while redirecting those funds to more crucial operational requirements. In addition, there are certain capital expenditures that were slightly delayed due to delays in obtaining satisfactory supplier quotes to complete the work, which work is now in progress, which is reflected in an approximately \$39,000 decrease in the positive variance since the Fourth Report; and
- there remains \$477,611 available for drawdown under the Interim Financing Facility.

PROGRESS OF CONSTRUCTION

16. In addition to discussions with Management, the Proposal Trustee continues to access an on-line tool that tracks the progress of construction at the Artiva Facility. Since the Fourth Report, work continues on septic tank, boilers, HVAC, bathrooms and kitchen, lighting, sheet metal finishing, irrigation, and various production rooms.
17. As set out in previous reports, Management indicated that COVID-19 was having minimal impact on construction. Management now advises that they are experiencing delays in completing certain of the electrical work at the Facility, which they directly attribute to COVID-19 related issues with the electrical contractor. As a result, they have engaged a new electrician who started working at the Facility on May 2, 2020.

CULTIVATION LICENCE

18. The Proposal Trustee confirmed on May 4, 2020, through the Government of Canada's website, that Artiva continues to hold a licence issued by Health Canada under the Cannabis Regulations.
19. Artiva has advised that they have also now received a cannabis licence from Canada Revenue Agency under the *Excise Act, 2001* ("**CRA Cannabis Licence**"), which will permit them to cultivate, produce, package and sell cannabis products.

PROGRESS TOWARDS PRODUCTION OF A FIRST CROP

20. In its Fourth Report, the Proposal Trustee reported that Management had estimated that they should be in a position to receive their first plantlet crop in the first week of May 2020, and that the projected timing for cultivation of the first crop was on or around May 21, 2020. As discussed above, having received a CRA Cannabis Licence, the first plantlet crop was received during the week ending May 1, 2020. Management has not altered their projected timing for cultivation of the first crop, although any further delays in completion of electrical work may impact the likelihood of meeting that projected timing.

All of which is respectfully submitted this 4th day of May, 2020.

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

Per:



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

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