

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2675970 ONTARIO INC., 2733181  
ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA  
LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC.,  
2826475 ONTARIO INC., 14284585 CANADA INC., 2197130  
ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO  
CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON  
INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC.,  
10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND &  
LABRADOR INC.

**SECOND REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.**

**SEPTEMBER 16, 2024**

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## **APPENDICES**

**Appendix A – First Report of the Monitor (without Appendices)**

## 1.0 INTRODUCTION

- 1.1 On August 28, 2024 (the “**Filing Date**”), 2675970 Ontario Inc. (“**ParentCo**”) and 16 affiliated entities (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The proceedings commenced by the Applicants under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 Tokyo Smoke (as defined below) owns, operates, and franchises retail cannabis dispensaries across Canada. The Applicants’ stores, both corporate and franchised, operate in Ontario, Saskatchewan, Manitoba, and Newfoundland & Labrador. The CCAA Proceedings were commenced by the Applicants to stabilize and maintain their business and provide a platform to pursue certain restructuring initiatives, including closing a subset of underperforming locations and commencing discussions with landlords to seek consensual lease amendments for remaining store locations.
- 1.3 The Initial Order, among other things:
- (i) appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as the monitor of the Applicants in the CCAA Proceedings (in such capacity, the “**Monitor**”);
  - (ii) granted a stay of proceedings (the “**Stay**”) up to and including September 7, 2024, in favour of the Applicants and extended the Stay to TS-IP Holdings Ltd., TS Programs Ltd., 1000451353 Ontario Inc., and 1000451354 Ontario Inc. (the “**Non-Applicant Entities**”, and together with the Applicants, “**Tokyo Smoke**”);

- (iii) approved an initial draw of \$3.3 million from a debtor-in-possession credit facility (the “**DIP Facility**”) provided by TS Investments Corp. (“**TS Investments**”, in such capacity, the “**DIP Lender**”), and granted a corresponding charge in respect thereof (the “**DIP Lender’s Charge**”); and
- (iv) granted the Administration Charge and Directors’ Charge over the Property up to a maximum of \$400,000 and \$2.25 million, respectively (each as defined in the Initial Order).

1.4 On September 6, 2024, the Court granted the Amended and Restated Initial Order (the “**ARIO**”), which modified the Initial Order in certain respects. The ARIO, among other things:

- (i) increased the Administration Charge and Directors’ Charge up to a maximum of \$850,000 and \$3.0 million, respectively;
- (ii) approved the Applicants’ key employee retention plan (the “**KERP**”) and granted a super-priority charge over the Property as security for payments to be made in accordance with the KERP in the maximum amount of \$218,500;
- (iii) increased the amounts which may be borrowed by the Applicants under the DIP Term Sheet from \$3.3 million to \$8 million and correspondingly increased the DIP Lender’s Charge to the maximum principal amount of \$8 million plus interest, fees and costs;

- (iv) increased the quantum that the Applicants can pay to certain suppliers for pre-filing expenses, with the consent of the Monitor and in accordance with the terms of the DIP Term Sheet and the Cash Flow Forecast (as defined herein); and
- (v) extended the Stay up to and including December 6, 2024.

1.5 In connection with the CCAA Proceedings, A&M, in its capacity as proposed monitor, filed the Pre-Filing Report of the Proposed Monitor dated August 27, 2024 (the “**Pre-Filing Report**”). The Monitor has also provided the Court with the First Report of the Monitor dated September 4, 2024 (the “**First Report**”). The Pre-Filing Report, the First Report and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at: [www.alvarezandmarsal.com/TokyoSmoke](http://www.alvarezandmarsal.com/TokyoSmoke) (the “**Case Website**”). A copy of the First Report, without appendices, is attached hereto as **Appendix “A”**.

1.6 The purpose of this report (the “**Second Report**”) is to provide the Court with information, and where applicable, the Monitor’s views on:

- (i) the proposed sale and investment solicitation process (the “**SISP**”);
- (ii) the Applicants’ motion for an order (the “**Sale Process Approval Order**”), which among other things:
  - (a) approves the SISP in a form substantially similar to the form attached as “Schedule A” to the Sale Process Approval Order;
  - (b) authorizes and directs the Applicants and the Monitor to immediately commence the SISP, and to take any and all actions as may be necessary or

desirable to implement and carry out the SISP in accordance with its terms and the Sales Process Approval Order; and

- (c) approves the Stalking Horse Agreement (as defined herein) between ParentCo, as vendor, and TS Investments (a related party), as purchaser (in such capacity the “**Stalking Horse Bidder**”), solely for the purpose of constituting the “**Stalking Horse Bid**” under the SISP; and
- (iii) the Applicants’ motion for an amendment to the ARIO extending the Stay to stay all proceedings against or in respect of DAK Capital Inc. (“**DAK**”), an entity related to the Applicants, that relate to or involve any of the Applicants or Non-Applicant Entities (any such proceeding a “**Related Proceeding**”) except with the written consent of DAK and the Monitor, or with leave of the Court (the “**Related Proceeding Stay**”);
- (iv) certain updates since the granting of the ARIO;
- (v) the cash flow results of the Applicants for the two-week period ended September 6, 2024;
- (vi) the activities of the Monitor since the date of the First Report (September 4, 2024); and
- (vii) the Monitor’s conclusions and recommendations in connection with the foregoing.

## 2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Second Report, A&M, in its capacity as Monitor, has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicants and has held discussions with management of the Applicants and their legal counsel, as well as certain individuals of TS Investments, the ultimate parent company of the Applicants' (collectively, the "**Information**"). Except as otherwise described in this Second Report in respect of the Applicants' cash flow forecast:

- (i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor 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 Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "**CPA Handbook**") and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (ii) some of the information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

2.2 Future oriented financial information referred to in this Second Report was prepared based on the estimates and assumptions of the Applicants. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not

ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.3 The Second Report should be read in conjunction with the affidavit of Andrew Williams sworn on September 12, 2024 (the “**Third Williams Affidavit**”). Capitalized terms used and not defined in the Second Report have the meanings given to them in the ARIO or the Third Williams Affidavit, as applicable.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

### **3.0 STALKING HORSE AGREEMENT AND SALE AND INVESTMENT SOLICITATION PROCESS**

#### Stalking Horse Agreement

3.1 The objective of these CCAA Proceedings is to stabilize and restructure the Applicants’ business and to commence a court-supervised marketing and sale process for the business and assets of Tokyo Smoke. The Monitor understands that the Applicants view entering into a stalking horse agreement as beneficial to such marketing process as it provides a level of certainty that the Applicants’ restructured business can be preserved as a going concern, and also sets a “floor” price that bidders in the SISP must bid against.

3.2 On September 12, 2024, ParentCo entered into the stalking horse subscription agreement with the Stalking Horse Bidder (the direct and indirect shareholder of the Applicants), as purchaser to acquire substantially all of Tokyo Smoke’s assets on the terms and conditions



set forth therein (the “**Stalking Horse Agreement**”). A copy of the Stalking Horse Agreement is attached as Exhibit “D” to the Third Williams Affidavit.

- 3.3 Pursuant to the Sale Process Approval Order, the Applicants seek, among other things: (i) authorization to enter into the Stalking Horse Agreement; (ii) that the Stalking Horse Agreement be approved and recognized as the Stalking Horse Bid under the SISP; and (iii) approval of the Break Fee (as defined below) in the event the Stalking Horse Bidder is not the Successful Bid under the SISP. Capitalized terms used and not defined in this section of the Second Report have the meanings given to them in the Stalking Horse Agreement.
- 3.4 The Monitor’s understanding of certain key terms of the Stalking Horse Agreement is summarized below:
- (i) the Stalking Horse Bidder will subscribe to newly issued common shares of ParentCo, through a reverse vesting transaction, pursuant to which all equity interest of ParentCo will be cancelled without consideration, and the Stalking Horse Bidder will be the sole parent of the Applicants and the Non-Applicant Entities (the “**Transaction**”);
  - (ii) prior to the acquisition of the shares, Residual Co., will be incorporated by ParentCo and all of the Excluded Assets, Excluded Contracts and Excluded Liabilities of the Applicants will be transferred to Residual Co.;
  - (iii) the estimated Purchase Price under the Stalking Horse Agreement is approximately \$77 million, comprised of:

- (a) the outstanding obligations payable by the Applicants as of the Closing Date under the DIP Facility plus all accrued and unpaid interest, fees, and costs (the “**DIP Credit Bid**”);
  - (b) the outstanding indebtedness under the BMO Loan Documents (approximately \$38.3 million as of the date of this Second Report);
  - (c) the amount of \$31 million representing a portion of the outstanding secured obligations payable by the Applicants under the TS Investments Grid Note (the “**Secured Credit Bid**”, together with the DIP Credit Bid, the “**Credit Bid Consideration**”);
  - (d) the assumption of Retained Liabilities (other than the amount of indebtedness owing to BMO) that have accrued as of the Closing Date, which is defined to include, among other things, certain employee, real property lease, post-filing trade, tax, Intercompany Liabilities and gift card/loyalty program obligations; and
  - (e) a cash amount required to fund the Cash Consideration<sup>1</sup>;
- (iv) the Stalking Horse Bidder, by nature of its ownership of ParentCo, will acquire substantially all of the assets and businesses of Tokyo Smoke. The Stalking Horse

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<sup>1</sup> “Cash Consideration” is defined in the Stalking Horse Agreement as an amount equal to: (i) indebtedness under the BMO Loan Documents, if the Stalking Horse Bidder elects to have the outstanding indebtedness paid in cash; (ii) any Cure Cost amounts required to cure monetary defaults of the Applicants under any Retained Contract, Retained Lease or Restructured Lease; (iii) the Priority Payment Amount; and (iv) the Administrative Expense Amount (cash in an amount to be agreed as between the Monitor and the Stalking Horse Bidder, acting reasonably, and to be held by the Monitor) to fund the completion of these CCAA Proceedings and final wind-down of any remaining estates.

Bidder has various rights to exclude or add certain assets and liabilities at prescribed times under the Stalking Horse Agreement;

- (v) the Stalking Horse Agreement is conditional upon, among other things, the Court issuing the Sale Process Approval Order, the Stalking Horse Bid being selected as the Successful Bid and the Court issuing the Approval and Reverse Vesting Order;
- (vi) the Stalking Horse Agreement includes certain termination rights in favour of the Stalking Horse Bidder, among others, if the Stalking Horse Bidder is not the Successful Bid (as defined in the SISP) and the transaction contemplated by the Successful Bid is closed. In such case, the Stalking Horse Bidder is entitled to a break-up fee in an amount up to \$390,000 (being the aggregate of 1% of the Credit Bid Consideration) (the “**Break Fee**”); and
- (vii) the Outside Date to consummate the Transaction is December 6, 2024.

#### Overview of the SISP

3.5 Pursuant to the Sale Process Approval Order, the Applicants are also seeking, among other things, the Court’s approval of the SISP and the Bidding Procedures set forth therein. Capitalized terms in this section not otherwise defined herein have the meanings ascribed to them in the proposed SISP.

3.6 The SISP contemplates a two-phase sale process that will be administered by the Monitor over approximately 50 days. The Stalking Horse Agreement will act as the Stalking Horse Bid and will be subject to better and higher offers that may be received during the SISP. Pursuant to the Bidding Procedures, the SISP is intended to solicit interest in, and

opportunities for a sale of or investment in all or part of Tokyo Smoke’s assets and business operations, as a going concern or otherwise (the “**Opportunity**”).

3.7 The Monitor, with the assistance of the Applicants, has developed a list of potential bidders, a Teaser Letter describing the Opportunity and a form of non-disclosure agreement (“**NDA**”), each of which will be sent to potential bidders and other parties expressing interest in the Opportunity upon the commencement of the SISP.

3.8 The following is a summary of the key terms and milestones contemplated by the SISP:

<b>SISP Summary</b> <i>(Certain capitalized terms below have the meanings ascribed in the proposed SISP)</i>		
<b>Phase / Event</b>	<b>Timeline</b>	<b>Description of Activities</b>
<b>Approval and Commencement of the SISP</b>	September 18, 2024	<ul style="list-style-type: none"> <li>Hearing of the Applicants motion for the Sale Process Approval Order on September 18, 2024.</li> <li>Commencement of marketing and solicitation of interest as soon as reasonably practicable but no later than September 20, 2024 (the “<b>Commencement Date</b>”).</li> <li>Prior to or on the Commencement Date, the Monitor in consultation with the Applicants, shall prepare a list of known bidders, publish a notice of the SISP on the Case Website, prepare the Teaser Letter, the NDA and a preliminary virtual data room.</li> </ul>
<b>Phase 1</b>	For a period of up to 33 days after the commencement of the SISP	<ul style="list-style-type: none"> <li>The Monitor and the Applicants will solicit non-binding letters of interest (“<b>LOI</b>”).</li> <li>Upon execution of the NDA, Participants will be granted access to a preliminary virtual data room, which may include limitations regarding specific confidential information as described in the SISP.</li> </ul>
<b>Phase 1 Bid Deadline</b>	5:00PM ET on Monday October 21, 2024	<ul style="list-style-type: none"> <li>Participants wishing to bid are required to submit an LOI to the Monitor prior to the Phase 1 Bid Deadline.</li> <li>The LOI must meet certain criteria as set out in the SISP to be considered a Phase 1 Qualified Bid.</li> <li>The LOI must, at a minimum, provide cash consideration to pay in full the purchase price in the Stalking Horse Agreement which is approximately \$77 million (plus an incremental bid in the minimum amount of \$250,000, a break fee in the amount of \$390,000, and an administrative reserve, in an amount satisfactory to the Monitor, necessary to wind-down the CCAA Proceedings (the “<b>Minimum Purchase Price</b>”).</li> </ul>

<b>SISP Summary</b> <i>(Certain capitalized terms below have the meanings ascribed in the proposed SISP)</i>		
<b>Assessment of Phase 1 Qualified Bids</b>	Three business days after the Phase 1 Bid Deadline, being October 24, 2024	<ul style="list-style-type: none"> <li>Phase 1 Qualified Bids will be assessed by the Monitor, in consultation with the Applicants, to determine whether any Phase 1 Qualified Bidder will be deemed a Phase 2 Qualified Bidder.</li> <li>Phase 2 Qualified Bidders will be notified in writing by the Monitor within three business days following the Phase 1 Bid Deadline.</li> <li>In the event that no Phase 1 Qualified Bid is received: <ul style="list-style-type: none"> <li>i. the Stalking Horse Bidder shall be deemed by the Monitor as the Successful Bidder;</li> <li>ii. the Monitor will post a notice on the Case Website that the SISP has been terminated; and</li> <li>iii. the Applicants shall seek Court approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein.</li> </ul> </li> <li>The Monitor, in consultation with the Applicants, may waive compliance with any one or more of the requirements to otherwise qualify a Phase 1 Qualified Bid.</li> </ul>
<b>Phase 2</b>	For a period of 21 days after the Phase 1 Bid Deadline	<ul style="list-style-type: none"> <li>Phase 2 Qualified Bidders will be provided the opportunity to perform further due diligence and submit a binding offer (“<b>Binding Offer</b>”) in accordance with the requirements set out in the SISP.</li> <li>An offer will only be considered a Binding Offer where it complies with certain criteria identified in the SISP including, among other things: <ul style="list-style-type: none"> <li>i. Binding Offers may not be subject to any financing condition and must provide for net cash proceeds that are not less than the Minimum Purchase Price (unless it is part of an Aggregated Bid);</li> <li>ii. If the Binding Offer is structured: (i) as a “reverse vesting transaction”, it shall include a duly authorized and executed binding transaction agreement, describing the terms and conditions of the proposed transaction, together with a blackline against the Stalking Horse Agreement; or (ii) in a form other than a “reverse vesting transaction”, it includes a duly authorized and executed definitive transaction agreement containing detailed terms and conditions of the proposed transaction;</li> <li>iii. Binding Offers must be accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be;</li> <li>iv. Binding Offers must be unconditional, other than upon receipt of the Approval Order(s) and satisfaction of any other conditions expressly set forth in the Binding Offer; and</li> <li>v. The Binding Offer is accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the Applicants by countersigning the Binding Offer; and (ii) is irrevocable and capable of acceptance until the earlier of (A) two business days after the date of closing of the Successful Bid(s); and (B) the Outside Date.</li> </ul> </li> </ul>

	<b>SISP Summary</b> <i>(Certain capitalized terms below have the meanings ascribed in the proposed SISP)</i>	
<b>Phase 2 Bid Deadline</b>	5:00PM ET on November 11, 2024	<ul style="list-style-type: none"> <li>• Binding Offers will be reviewed by the Monitor, in consultation with the Applicants and BMO to determine which bids are to be deemed the Successful Bid(s).</li> <li>• In the event that no Binding Offers are received, the Monitor will, as soon as reasonably practicable, post a notice on the Case Website that the SISP has concluded, and the Applicants will promptly seek a motion before the Court for approval of the Stalking Horse Agreement.</li> </ul>
<b>Evaluation and Successful Bid Selection Deadline</b>	Two business days after the Phase 2 Bid Deadline, being November 13, 2024	<ul style="list-style-type: none"> <li>• A Binding Offer will be valued based upon numerous factors, including items such as the purchase price contemplated, the net value provided by such bid, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transaction(s), the proposed transaction documents, the effects of the bid on the stakeholders of the Applicants, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Monitor, in consultation with the Applicants and BMO.</li> <li>• If a Binding Offer is received other than the Stalking Horse Agreement, the Monitor, in consultation with the Applicants, will direct such Binding Bidders to participate in an auction (the “<b>Auction</b>”) to be conducted and administered by the Monitor in accordance with the Auction Procedures Letter to be prepared by the Monitor. The highest bid at the Auction will be deemed the Successful Bid.</li> </ul>
<b>Approval of Successful Bid(s)</b>	As soon as reasonably practicable after the selection of a Successful Bid	<ul style="list-style-type: none"> <li>• The Applicants will bring a motion for an Order approving the Successful Bid(s).</li> <li>• The SISP shall have an outside date of December 6, 2024, by which the parties are to close the transaction(s) contemplated in the Successful Bid(s).</li> </ul>

### General Comments Regarding the SISP and Stalking Horse Agreement

3.9 The SISP timeline was negotiated among the Applicants, the Monitor, and the Stalking Horse Bidder in consultation with BMO. The SISP and its timeline are supported by all of the aforementioned parties and adherence to the timelines and milestones set out in the SISP is a requirement of the DIP Lender providing the DIP Facility. The SISP milestones were developed to balance the time required to administer a commercially reasonable marketing process designed to maximize opportunities for sale of, or investment in, all or

part of the Applicants' assets and business with the available financial resources of the Applicants.

- 3.10 The SISP provides the flexibility for the Monitor to modify, amend, vary or supplement the Bidding Procedures (as defined in the SISP), in order to give effect to the substance of the SISP, the Bidding Procedures or the Sale Process Approval Order, without the need for obtaining an order of the Court. Specifically, the Monitor, in consultation with the Applicants, may extend the milestones and deadlines in the SISP by up to two weeks. The Outside Date can only be extended or amended, without court approval, with the written consent of the DIP Lender and BMO.
- 3.11 The Monitor will manage the day-to-day execution of the SISP. The Applicants are required to assist and support the efforts of the Monitor as provided for in the SISP. In the event that clarification is required with respect to the SISP, the Monitor will seek the advice and direction of the Court.
- 3.12 The Monitor has considered and supports the relief sought by the Applicants pursuant to the proposed Sale Process Approval Order for the following reasons:
- (i) the Monitor is of the view that the SISP and Bidding Procedures are commercially reasonable and have been designed to maximize value through a competitive bidding process, and to provide greater certainty of a going concern outcome for the business should the SISP not produce a superior result to the Stalking Horse Agreement;

- (ii) although the timelines included in the proposed SISP and Bidding Procedures are condensed, the Monitor is of the view that SISP participants will have been provided sufficient time to review the Opportunity and submit a non-binding LOI (33 days) or a Binding Offer (54 days). Of note, the Monitor has sufficiently advanced the materials supporting the SISP (i.e., Teaser Letter, NDA, list of interested parties, and certain information to be populated in the virtual data room) such that the materials can be sent to interested parties and Known Potential Bidders immediately following the commencement of the SISP;
- (iii) while not included as Applicants in the CCAA Proceedings, the business and assets of the Non-Applicant Entities (comprised of the Tokyo Smoke intellectual property, data programs business, medical business and banner business) are included in the SISP given that their shares are assets of the Applicants;
- (iv) the Monitor has compared the Break Fee (1% of the Credit Bid Consideration) to other stalking horse break fees and expense reimbursements approved by this Court in similar proceedings (including in situations where the stalking horse purchaser is also a related party and/or participated in the existing equity of the business), and based on the Monitor's review, the Break Fee appears to be reasonable in circumstances and typical for a transaction of this size and complexity; and
- (v) the Monitor does not believe the creditors of the Applicants would be materially prejudiced by the Stalking Horse Agreement, the SISP or the Bidding Procedures.



Security Review

- 3.13 As referenced in the Pre-Filing Report, the Monitor instructed its legal counsel, Stikeman Elliott LLP (“**Stikeman**”), to review the security interest granted pursuant to: (i) a general security agreement dated October 7, 2022, as amended by a general security agreement amending agreement on each of December 30, 2022, February 21, 2023 and May 31, 2024, by the Applicants and others in favour of TS Investments (collectively, the “**Security Agreement**”) in respect of the Applicants’ obligations under the TS Investments Grid Note (as defined in the Pre-Filing Report); and (ii) the guarantee dated October 7, 2022, as amended by a guarantee amending agreement on each of December 30, 2022, February 21, 2023 and May 31, 2024, by the Applicants and others in favour of TS Investments (collectively, the “**Guarantee**”), and provide an opinion on the validity, enforceability and perfection of the Security Agreement with respect to the personal property of each of the Applicants.
- 3.14 Stikeman’s opinion dated September 16, 2024 (the “**Stikeman Opinion**”), addresses the laws of Ontario, for all Applicants, and Alberta, in respect of the Applicants organized in that jurisdiction (being 2161907 Alberta Ltd., 2197130 Alberta Ltd. and 2385816 Alberta Ltd.). Stikeman retained: (i) McInnes Cooper to provide an opinion dated September 16, 2024, addressing the laws of Newfoundland and Labrador (the “**NL Opinion**”) in respect of the Applicant organized in that jurisdiction (being 80694 Newfoundland & Labrador Inc.); (ii) Pitblado LLP to provide an opinion dated September 16, 2024, addressing the laws of Manitoba (the “**MB Opinion**”) in respect of the Applicant organized in that jurisdiction (being 10006215 Manitoba Ltd.); and (iii) MLT Aikins LLP, to provide an opinion dated September 16, 2024, addressing the laws of Saskatchewan in respect of the

Applicant with security registration in that jurisdiction (being 14284585 Canada Inc.) (the “**SK Opinion**”, together with the Stikeman Opinion, the NL Opinion and the MB Opinion, collectively, the “**Security Opinions**”).

- 3.15 The Security Opinions provide, with respect to the Applicants noted above, that, subject to the customary assumptions and qualifications of an opinion of such nature: (i) the Security Agreement entered into between the Applicants and TS Investments constitutes a legal, valid and binding agreement of the Applicants, enforceable against each Applicant in accordance with its terms; (ii) the personal property security granted by the Applicants to TS Investments appears to have been properly registered in the jurisdictions noted in the Security Opinions; and (iii) the Security Agreement creates a valid security interest in the personal property of the Applicants described in the Security Agreement in favour of TS Investments.
- 3.16 Copies of the Security Opinions can be made available to the Court upon request.
- 3.17 The Monitor understands that the TS Investments Grid Note was originally incurred in connection with a refinancing of certain indebtedness owed to another related party of the Applicants, DAK Capital Inc., in October 2022. The Monitor understands, that since the refinancing, TS Investments has continued to make advances of over \$20 million to the Applicants pursuant to the TS Investments Grid Note.

#### **4.0 UPDATES SINCE THE COMEBACK HEARING**

##### Rent Dispute

4.1 As described in the First Report, on August 26, 2024, the Applicants informed the landlords for seven of the Vacant Stores that the leases have been repudiated, the premises are not being occupied and the landlords may relet the premises and no post-filing rents would be paid at such vacant locations. The landlords of certain of these locations asserted that post-filing rent is payable until such time as the disclaimers issued for these leases become effective.

4.2 Regarding the issues raised by these landlords, the parties have now reached an agreement regarding the rent to be paid during the disclaimer period, and such rent has been paid by the Applicants in connection with the disputed amounts.

##### Rent Negotiations

4.3 As described in the Pre-Filing Report and First Report, a principal component of the Applicants' restructuring plan is to seek consensual lease amendments for stores which are anticipated to remain part of the business going forward. Among other things, the primary objectives of the negotiations are to achieve rent reductions such that remaining store locations could be cash flow positive based on the respective store's revenue, obtain an acceptable length of lease term to provide a level of certainty for the restructured business, or close store locations that do not achieve the desired level of profitability.

4.4 On or about September 4, 2024, the Applicants commenced contacting certain of their landlords with the aim of negotiating lease amendments to ensure each location is economically feasible.

4.5 As of the date of this Second Report, the Applicants continue to advance discussions with landlords and anticipate that sufficient concessions can be obtained. The Monitor will provide further updates to the Court and SISP participants as negotiations progress.

## 5.0 CASH FLOW RESULTS RELATIVE TO FORECAST

5.1 Receipts and disbursements for the two-week period from August 24, 2024 to September 6, 2024 (the “**Reporting Period**”), as compared to the cash flow forecast that was attached as Appendix “C” to the Pre-Filing Report (the “**Cash Flow Forecast**”), are summarized in the table below.

Cash Flow Variance Reporting	Cumulative 2-Week Period Ended September 6, 2024		
<i>(CAD \$000s, unaudited)</i>	<u>Actual</u>	<u>Forecast</u>	<u>Variance</u>
<b>Receipts</b>	<b>3,209</b>	<b>2,674</b>	<b>535</b>
<b>Disbursements</b>			
Merchandise Vendors	(1,927)	(1,671)	(256)
Payroll & Benefits	(703)	(1,038)	335
Rent	(747)	(1,268)	521
Non-Merchandise Vendors	(237)	(684)	447
Professional Fees	(302)	(626)	323
BMO Financing Costs	(325)	(375)	51
Sales Tax Remittances	(60)	(130)	70
<b>Total Disbursements</b>	<b>(4,302)</b>	<b>(5,791)</b>	<b>1,489</b>
Non-Applicant Net Cash Flow	205	71	134
<b>Net Cash Flow</b>	<b>(888)</b>	<b>(3,047)</b>	<b>2,159</b>
Opening Cash	147	147	--
Net Cash Flow	(888)	(3,047)	2,159
DIP Facility Advance / (Paydown)	1,270	3,220	(1,950)
<b>Closing Cash</b>	<b>529</b>	<b>320</b>	<b>209</b>

- 5.2 During the Reporting Period, the Applicants' total receipts were approximately \$535,000 greater than projected in the Cash Flow Forecast. The positive variance is primarily attributed to higher than forecast sales at closing stores.
- 5.3 During the Reporting Period, the Applicants' total disbursements were approximately \$1.5 million less than projected in the Cash Flow Forecast. The net positive variance is primarily attributable to:
- (i) timing variances in rent payments as rent for remaining stores is paid on the 1<sup>st</sup> and the 15<sup>th</sup> of the month, while the Cash Flow Forecast included payment of the full month rents during the Reporting Period;
  - (ii) lower than forecast non-merchandise vendor costs and professional fees, which are primarily timing and expected to reverse in future weeks;
  - (iii) lower than forecast payroll costs associated with personnel at closing stores due to reduced hours and the final calculation of accrued vacation pay; and
  - (iv) the above positive variances are partially offset by a negative variance related to higher than forecast payments to merchandise vendors to replenish inventory levels due to higher sales.
- 5.4 As at September 6, 2024, Tokyo Smoke's: (i) cash balance was approximately \$529,000 compared to the forecast cash balance of \$320,000; and (ii) borrowings under the DIP Facility were approximately \$1.3 million.

## **6.0 ADDITIONAL RELIEF SOUGHT IN THE FURTHER AMENDED AND RESTATED ARIO**

### Related Proceeding Stay

- 6.1 The Applicants seek an amendment to the ARIO to grant the Related Proceeding Stay, which will stay any Related Proceeding against or in respect of DAK except with the written consent of DAK and the Monitor, or with leave of the Court, until December 6, 2024.
- 6.2 As described in the Pre-Filing Report, DAK is a related party corporation of the Applicants. DAK provides two of the Applicants, ParentCo and 2161907 Alberta Ltd. (“**216 Alberta**”), with management services pursuant to certain management services agreements.
- 6.3 In connection with the management services provided, DAK, as payment guarantor, is party to a share purchase agreement dated September 23, 2022, with Canopy Growth Corporation (“**Canopy Growth**”) and Tweed Inc. (“**Tweed**”), as vendors, and ParentCo, as purchaser (as amended, the “**SPA**”). Pursuant to the SPA, ParentCo purchased Canopy Growth’s Canadian retail cannabis business.
- 6.4 On March 8, 2024, Canopy Growth, Tweed, and Tweed Leasing Corporation (collectively, the “**Canopy Claimants**”) issued a notice of arbitration against four of the Applicants – ParentCo, 216 Alberta, 2733181 Ontario Inc., and 14284585 Canada Inc. (collectively, the “**TS Respondents**”) - as well as DAK (the “**Canopy Arbitration**”). The Canopy Arbitration relates to alleged breaches of a several agreements between the Canopy Claimants, the TS Respondents and DAK, including the SPA. The Monitor understands

that no significant procedural steps have been taken to advance the Canopy Arbitration since its commencement.

- 6.5 As a result of the ARIIO, the Canopy Arbitration is stayed against the TS Respondents, however the Monitor understands that the Canopy Claimants have advised that they wish to continue the Canopy Arbitration against DAK. The Applicants are of the view that given that the allegations by the Canopy Claimants against DAK relate to its role as a party to the SPA, DAK's liability, if any, will derive from any liability of the TS Respondents for breach of the SPA. As such, the Applicants advised the Monitor that the continuation of the Canopy Arbitration against DAK will require substantive participation from the TS Respondents and their employees, as witnesses and/or document custodians, in any such litigation.
- 6.6 The Monitor believes that the participation of the directors, officers and/or employees of the TS Respondents in the Canopy Arbitration would likely consume considerable resources and manpower that would otherwise be focused on the Applicants' ongoing operational restructuring efforts, to the detriment of the success of these CCAA Proceedings.
- 6.7 The proposed Related Proceeding Stay does not purport to release, compromise or permanently enjoin any Related Proceedings. Rather, it imposes a temporary stay of proceedings until December 6, 2024, to maintain stability, preserve the Applicants' and the directors' limited time and resources, and facilitate the administration of these CCAA Proceedings. The Monitor understands that no prejudice (other than a delay of several months) will result from the Related Proceeding Stay.

- 6.8 As such, the Monitor is supportive of the relief sought by the Applicants for an extension of the Stay to DAK in respect of such Related Proceedings.

#### Proposed Tolling of Limitation Periods

- 6.9 In the week of September 9, 2024, the Monitor engaged in discussions with counsel to several franchisees who have commenced rescissions of their franchise agreements with Tokyo Smoke (the “**Rescission Claimants**”) and have sought to continue to preserve their claims during the pendency of the CCAA proceedings. As of the date of this Report, discussions remain ongoing in respect of the Rescission Claimants’ request. The Monitor will update this Court prior to the hearing should there be any developments in those discussions.

### **7.0 ACTIVITIES OF THE MONITOR**

- 7.1 Since the date of the First Report, the primary activities of the Monitor have included the following:
- (i) together with the Monitor’s legal counsel, assisting the Applicants and their legal counsel in developing the SISP and negotiating the Stalking Horse Agreement;
  - (ii) monitoring the Applicants’ cash receipts and disbursements, and assisting in preparing weekly cash flow variance reporting and other reporting required under the DIP Term Sheet and BMO Forbearance (as defined in the First Report);
  - (iii) preparing for and attending by videoconference the comeback hearing held on September 6, 2024;



- (iv) engaging with certain suppliers, stakeholders and landlords and their counsel who have reached out to the Monitor;
- (v) assisting the Applicants with landlord and franchisee discussions, and rent negotiations;
- (vi) coordinating the uploading of Court-filed documents to the Case Website;
- (vii) responding to creditor and other inquiries received via the Monitor's toll-free number or e-mail account for the CCAA Proceedings and other contact points;
- (viii) working with Stikeman to prepare the Security Opinions; and
- (ix) with the assistance of Stikeman, counsel to the Monitor, preparing this Second Report.

## **8.0 CONCLUSIONS AND RECOMMENDATIONS**

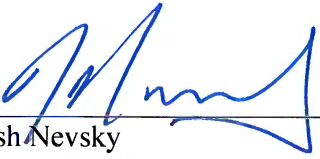
- 8.1 For the reasons set out in this Second Report, the Monitor respectfully recommends that the Court grant the Sale Process Approval Order and the further amended and restated ARIO in the form sought by the Applicants.

All of which is respectfully submitted to the Court this 16<sup>th</sup> day of September, 2024.

**Alvarez & Marsal Canada Inc., in its capacity as**

**Monitor of 2675970 Ontario Inc., 2733181 Ontario Inc., 2385816 Alberta Ltd., 2161907 Alberta Ltd., 2733182 Ontario Inc., 2737503 Ontario Inc., 2826475 Ontario Inc., 14284585 Canada Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc., 10006215 Manitoba Ltd., and 80694 Newfoundland & Labrador Inc.,  
and not in its personal or corporate capacity**

Per:

  
Josh Nevsky  
Senior Vice-President

**APPENDIX A**  
**FIRST REPORT OF THE MONITOR**

See attached.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2675970 ONTARIO INC., 2733181  
ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA  
LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC.,  
2826475 ONTARIO INC., 14284585 CANADA INC., 2197130  
ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO  
CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON  
INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC.,  
10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND &  
LABRADOR INC.

**FIRST REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.**

**SEPTEMBER 4, 2024**

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## **APPENDICES**

**Appendix A – Pre-Filing Report of the Proposed Monitor (without Appendices)**

## 1.0 INTRODUCTION

- 1.1 On August 28, 2024 (the “**Filing Date**”), 2675970 Ontario Inc. (“**ParentCo**”) and 16 affiliated entities (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The proceedings commenced by the Applicants under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 The Stay (as defined below) and other protections and authorizations of the Initial Order were extended to TS-IP Holdings Ltd., TS Programs Ltd., 1000451353 Ontario Inc., and 1000451354 Ontario Inc. (the “**Non-Applicant Entities**”, and together with the Applicants, “**Tokyo Smoke**”). Tokyo Smoke owns, operates, and franchises retail cannabis dispensaries across Canada. The Applicants’ stores, both corporate and franchised, operate in Ontario, Saskatchewan, Manitoba, Newfoundland & Labrador and Alberta.
- 1.3 The CCAA Proceedings were commenced by the Applicants to stabilize and maintain their business and provide a platform to pursue certain restructuring initiatives, including closing a sub-set of underperforming locations and commencing discussions with landlords to obtain consensual lease amendments for remaining store locations.
- 1.4 As set out in the affidavit of Andrew Williams, President of the Applicants, sworn on August 28, 2024 (the “**First Williams Affidavit**”), the affidavit of Andrew Williams, sworn on September 3, 2024 (the “**Second Williams Affidavit**”), and the Pre-Filing Report of Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposed monitor of the Applicants, dated August 27, 2024 (the “**Pre-Filing Report**”), the Applicants intend to

seek Court approval of a sale and investment solicitation process (the “**SISP**”), underpinned by a contemplated share subscription agreement (the “**Stalking Horse Agreement**”) between ParentCo, as vendor, and TS Investments Corp. (“**TS Investments**”) (a related party), as purchaser.

1.5 Additional details regarding the Applicants as well as their business and financial circumstances are set out in the First Williams Affidavit and the Pre-Filing Report. The First Williams Affidavit, the Pre-Filing Report and other Court-filed documents in the CCAA Proceedings are available on the case website of A&M, in its capacity as monitor of the Applicants in the CCAA Proceedings (in such capacity, the “**Monitor**”) at: [www.alvarezandmarsal.com/TokyoSmoke](http://www.alvarezandmarsal.com/TokyoSmoke) (the “**Case Website**”). A copy of the Pre-Filing Report, without appendices, is attached hereto as **Appendix “A”**.

1.6 The Initial Order, among other things:

- (i) appointed A&M as the Monitor of the Applicants in the CCAA Proceedings;
- (ii) granted a stay of proceedings (the “**Stay**”) up to and including September 7, 2024, in favour of the Applicants and the Non-Applicant Entities;
- (iii) approved an initial draw of \$3.3 million from a debtor-in-possession credit facility (the “**DIP Facility**”) provided by TS Investments (in such capacity, the “**DIP Lender**”), and granted a corresponding charge in respect thereof (the “**DIP Lender’s Charge**”); and
- (iv) granted the Administration Charge and Directors’ Charge over the Property (each as defined below).

1.7 The purpose of this report (the “**First Report**”) is to provide the Court with information, and where applicable, the Monitor’s views on:

- (i) certain updates since the granting of the Initial Order;
- (ii) the Applicants’ proposed amended and restated Initial Order (the “**ARIO**”), which, among other things:
  - (a) extends the Stay to and including December 6, 2024;
  - (b) increases the quantum of the Administration Charge to \$850,000 and the Directors’ Charge to \$3 million;
  - (c) increases the amounts which may be borrowed by the Applicants under the DIP Term Sheet from \$3.3 million to \$8 million and correspondingly increases the DIP Lender’s Charge to the maximum principal amount of \$8 million plus interest, fees and costs;
  - (d) approves a key employee retention plan (the “**KERP**”) and grants a super-priority charge over the Property (the “**KERP Charge**”) as security for payments to be made in accordance with the KERP in the maximum amount of \$218,500;
  - (e) seals Schedule ‘A’ of the KERP and related payment information subject to further order of the Court; and
  - (f) increases the quantum that the Applicants can pay to certain suppliers for pre-filing expenses, with the consent of the Monitor and in accordance with



the terms of the DIP Term Sheet and the Cash Flow Forecast (as defined herein);

(iii) the activities of the Monitor since its appointment; and

(iv) the Monitor's conclusions and recommendations in connection with the foregoing.

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

2.1 In preparing the First Report, A&M, in its capacity as Monitor, has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicants and has held discussions with management of the Applicants and their legal counsel, as well as certain individuals of TS Investments, the ultimate parent company of the Applicants' (collectively, the "**Information**"). Except as otherwise described in the First Report in respect of the Applicants' cash flow forecast:

(i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor 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 Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "**CPA Handbook**") and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

(ii) some of the information referred to in the First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

2.2 Future oriented financial information referred to in the First Report was prepared based on the estimates and assumptions of the Applicants. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.3 The First Report should be read in conjunction with the Second Williams Affidavit. Capitalized terms used and not defined in the First Report have the meanings given to them in the Pre-Filing Report or the Second Williams Affidavit, as applicable.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

### **3.0 UPDATES SINCE THE INITIAL ORDER**

#### Restructuring Activities

3.1 As described in the Pre-Filing Report, the Applicants' restructuring plans included an immediate store closure process for a sub-set of underperforming locations. As of the date of this First Report, the Applicants have delivered notices to disclaim a total of 36 leases, comprised of: (i) 21 Corporate Stores (including the Applicants head-office location); (ii) five Franchise Stores; and (iii) 10 Vacant Stores (each as defined in the Pre-Filing Report).

- 3.2 As further described in the Pre-Filing Report, the Monitor noted that on August 26, 2024 (two days prior to the commencement of the CCAA Proceedings), the Applicants informed the landlords for seven of the Vacant Stores being exited that the leases have been repudiated, the premises are not being occupied and the landlords may relet the premises.<sup>1</sup> Since the Applicants were not occupying the premises of the seven Vacant Stores and had provided notice to the landlords that they were free to re-enter the premises, the Monitor understands that the Applicants, in consultation with the DIP Lender, determined that no post-filing rents would be paid at such vacant locations.
- 3.3 The Monitor understands that the landlords of certain of these locations have asserted that post-filing rent is payable until such time as the disclaimers issued for these leases become effective, and have advised the Applicants and the Monitor of same. One landlord has indicated its objection to the KERF (as described below) if no post-filing rents are to be paid to them, as in their view, the KERF funds should otherwise be used to pay the disputed rent amounts.
- 3.4 The aggregate amount of post-filing rents in dispute with respect to these seven locations is approximately \$150,000 (exclusive of sales tax).
- 3.5 At this time, the Monitor understands that discussions among the Applicants and the affected landlords remain ongoing and that the objecting landlords have suggested that a timetable be settled to resolve the dispute. The Monitor is facilitating these discussions and strongly encouraging parties to reach a consensual resolution if possible.

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<sup>1</sup> The other three Vacant Stores are occupied by subtenants.

- 3.6 As a result of the above stores closures, the Applicants have provided notice of termination to approximately 94 store level employees and eight corporate employees.

BMO Forbearance

- 3.7 The Monitor has been advised by the Applicants and BMO that they have settled the terms of forbearance and have entered into a forbearance agreement dated August 29, 2024 (the **“Forbearance Agreement”**).
- 3.8 Pursuant to the Forbearance Agreement, BMO agreed to forbear from exercising any and all rights and remedies under the BMO Credit Agreement, guarantees and security agreements, until the earlier of: (i) December 6, 2024; and (ii) various other customary milestones such as the termination of the CCAA Proceedings, the closing of the sale of all or substantially all Tokyo Smoke’s business and assets, and the occurrence of a default under the Forbearance Agreement.
- 3.9 In consideration of BMO entering into the Forbearance Agreement and the accommodations extended by BMO therein, ParentCo is to pay a forbearance fee of \$75,000 to BMO (the **“Forbearance Fee”**). The Forbearance Fee was fully earned upon execution of the Forbearance Agreement, but payable on the earlier of: (i) the closing of a transaction for all or substantially all of the assets of the Applicants pursuant to the SISF; or (ii) the expiry of the Forbearance Agreement.
- 3.10 BMO will remain an unaffected creditor in the CCAA Proceedings. However, the terms of the Forbearance Agreement, the BMO Credit Agreement, and related guarantees and security agreements will be subject to the terms of the Initial Order and the ARIO (if

granted by the Court), including if a forbearance termination event occurs under the Forbearance Agreement. As BMO is an important stakeholder, the Monitor will continue to consult with BMO during the SISP and the CCAA Proceedings, as per the terms of the Forbearance Agreement, and as may be permitted under any future Court Order approving the SISP.

#### **4.0 KEY EMPLOYEE RETENTION PLAN AND EMPLOYEE INCENTIVES**

4.1 In order to facilitate and encourage the continued participation of senior and operational management during the CCAA Proceedings, the Applicants are seeking approval of: (i) a KERP for 14 employees who are considered by the Applicants to be critical to the successful completion of the SISP and the CCAA Proceedings (collectively, the “**KERP Participants**”); and (ii) the granting of the KERP Charge to secure the payments due under the KERP.

4.2 In addition to the KERP, the Monitor also notes that the Applicants intend to pay their employees, including the KERP Participants, their normal course annual bonuses, which are described further below.

##### KERP & KERP Charge

4.3 The proposed KERP provides for retention bonuses calculated as a percentage of the KERP Participants’ annual salary, totaling approximately \$218,500 in the aggregate across the KERP Participants. Such retention bonuses are payable on the date (the “**Retention Date**”) that is the earlier of: (i) the completion of a court-approved transaction pursuant to the SISP, including the Stalking Horse Agreement; or (ii) court approval of a plan of

compromise and arrangement in the CCAA Proceedings. An unredacted version of the proposed KERP was provided to this Court as Confidential Exhibit “1”.

4.4 The ARIIO provides for a KERP Charge over the Property in an amount not to exceed \$218,500 in favour of the KERP Participants.

4.5 As part of its review and consideration of the KERP, the Monitor examined key employee retention plans that have recently been approved by the Court in similar proceedings. The Monitor supports the approval of the proposed KERP, granting of the KERP Charge and of having Schedule ‘A’ to the KERP sealed and not form part of the public record as:

- (i) the KERP will provide stability to the business and facilitate the successful completion of the CCAA Proceedings by incentivizing the retention of KERP Participants;
- (ii) the KERP Participants are considered by the Applicants, exercising their business judgement, to be crucial to maximizing realizations in the CCAA Proceedings for the benefit of the Applicants stakeholders;
- (iii) the terms of the KERP and the quantum of the payments expected to be made thereunder are reasonable both in the circumstances and when compared to other key employee retention and incentive plans previously approved by the Court<sup>2</sup>; and

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<sup>2</sup> In the Monitor’s view, even on a combined basis, the quantum of the KERP and the Incentive Programs remains reasonable when compared to other key employee retention plans previously approved by the Court.

- (iv) Schedule 'A' of the proposed KERP contains personal and sensitive information, which may cause harm to the applicable employees should such information be made available to the public.

Normal Course Employee Bonuses

- 4.6 In addition to the proposed KERP, the Applicants also intend to pay their normal course incentive plan payments to approximately 111 employees in the aggregate amount of \$570,000.
- 4.7 These normal course incentive payments relate to the Applicants' existing short-term and long-term incentive programs (the "**Incentive Programs**"). The Incentive Programs payments are calculated by the Applicants based on a combination of factors, including individual performance and key financial targets.
- 4.8 Each of the 14 KERP Participants also participate in the Incentive Programs, and are scheduled to receive an aggregate amount of approximately \$370,000, in addition to the KERP.
- 4.9 The Applicants have advised that the Incentive Programs payments are excluded from the proposed KERP and KERP Charge as these payments are part of the continuing employees' earned compensation, have already been awarded and communicated to the respective employees, and such payments will be made in the ordinary course.
- 4.10 The Applicants' 15-week cash flow forecast attached to the Pre-Filing Report as Appendix "C" (the "**Cash Flow Forecast**") included the payments for both the proposed KERP and the Incentive Programs.

## 5.0 COURT-ORDERED CHARGES SOUGHT IN THE AMENDED AND RESTATED INITIAL ORDER

5.1 The proposed ARIO seeks an increase to the Administration Charge, DIP Lender's Charge and Directors' Charge, and the granting of a KERP Charge over the Property (collectively, the "**Charges**").

5.2 The priorities of the Charges and the BMO Security (as defined in the Pre-Filing Report), as between them, are proposed to be as follows:

Proposed Charges & Priorities		
1. Administration Charge		\$850,000
2. BMO Security		<i>Outstanding Balance</i>
3. DIP Lender's Charge	<i>Maximum principal amount of \$8 million, plus interest, fees and costs</i>	
4. Directors' Charge		\$3 million
5. KERP Charge		\$218,500

### Administration Charge

5.3 The Initial Order provides for a super-priority charge over the Property in an amount not to exceed \$400,000 in favour of the Monitor, counsel to the Monitor and counsel to the Applicants (the "**Administration Charge**"). The Applicants are seeking an increase in the amount of the Administration Charge to \$850,000.

5.4 The Monitor assisted the Applicants in the calculation of the Administration Charge and is of the view that the amount of the charge is reasonable and appropriate in the circumstances, having regard to the nature of the proceedings, potential work involved at peak times, and the size of charges approved in similar CCAA proceedings.



DIP Lender's Charge

- 5.5 The Initial Order authorized the Applicants to borrow up to the maximum principal amount of \$3.3 million under the DIP Facility and granted a corresponding DIP Lender's Charge on the Property as security for the outstanding obligations under the DIP Facility.
- 5.6 The Applicants seek to increase the maximum principal amount which they can draw under the DIP Facility to \$8 million and a corresponding increase to the DIP Lender's Charge.
- 5.7 It is a condition precedent to the disbursements of DIP advances, among other things, that the Court grants the DIP Lender's Charge up to the maximum amount of obligations under or in connection with the DIP Facility (being the maximum principal amount of \$8 million, accrued interest, unpaid legal fees, and commitment fee).
- 5.8 Notwithstanding the proposed maximum amount of the DIP Lender's Charge, the Applicants are not anticipated to, at any point during the period presented in the Cash Flow Forecast, have more than approximately \$7.5 million of new advances drawn under the DIP Facility.
- 5.9 As set out in the Cash Flow Forecast, absent the additional amounts to be borrowed under the DIP Facility, the Applicants would not have sufficient liquidity to continue operations and advance their restructuring efforts in these CCAA Proceedings.
- 5.10 The Monitor is therefore of the view that the proposed increased amounts the Applicants may borrow under the DIP Facility and a corresponding increase to the DIP Lender's Charge are reasonable in the circumstances.

Directors' Charge

- 5.11 The Initial Order provides that the Applicants shall indemnify their respective directors and officers against obligations and liabilities that they may incur as directors and officers of the Applicants after the commencement of the CCAA Proceedings, except to the extent that the obligation or liability was incurred as a result of an officer's or director's gross negligence or wilful misconduct. The Initial Order provides for a super-priority charge over the Property in the amount of \$2.25 million in favour of the Applicants' directors and officers as security for such indemnity (the "**Directors' Charge**"). The Applicants are seeking an increase in the amount of the Directors' Charge to \$3 million in the ARIO.
- 5.12 The Monitor assisted the Applicants in the calculation of the quantum of the Directors' Charge, taking into consideration the amount of the Applicants' payroll, vacation pay and federal and provincial sales tax liabilities. The components that comprise the Directors' Charge are as follows:

Revised Directors' Charge	
Provision for sales taxes (HST, GST, PST)	\$950,000
Provision for employee wages and source deductions	\$1,182,000
Provision for accrued vacation outstanding as of the filing date	\$380,000
Provision for employee benefits, EHT and other similar amounts	\$438,000
Provision for employee termination and severance (Saskatchewan)	\$50,000
<b>Total</b>	<b>\$3,000,000</b>

- 5.13 As described above, the Monitor believes that the Charges are reasonable in the circumstances.

## **6.0 ACTIVITIES OF THE MONITOR SINCE THE FILING DATE**

6.1 Since the Filing Date, the primary activities of the Monitor have included the following:

- (i) reviewing and approving notices for the disclaimer of leases for 21 Corporate Stores (including the head office lease), five Franchise Stores and 10 Vacant Stores, and the termination of three franchise agreements;
- (ii) together with the Monitor's legal counsel, assisting the Applicants and their legal counsel in developing the SISP and negotiating the Stalking Horse Agreement;
- (iii) engaging in negotiations with BMO, the Applicants and their respective counsel in respect of the Forbearance Agreement;
- (iv) monitoring the Applicants' cash receipts and disbursements, and assisting in preparing weekly cash flow variance reporting;
- (v) activating the Case Website and coordinating the posting of Court-filed documents thereon;
- (vi) engaging with certain suppliers, stakeholders and landlords and their counsel who have reached out to the Monitor;
- (vii) completing and/or coordinating the notice requirements pursuant to paragraph 46 of the Initial Order, including, among other things:
  - (a) arranging for publication of notice of the CCAA Proceedings, in the prescribed form, in *The Globe and Mail* (National Edition) on September 4 and for September 11, 2024;

- (b) posting the Initial Order to the Case Website on September 3, 2024;
  - (c) arranging for notice of the CCAA Proceedings, in the prescribed manner, to be emailed or mailed, on September 2, 2024, to all known creditors having a claim against the Applicants' of more than \$1,000 ("**Notice Creditors**");
  - (d) preparing and posting to the Case Website on September 2, 2024 a listing of the names and addresses of Notice Creditors; and
  - (e) activating the Monitor's toll-free number and email account for the CCAA Proceedings and responding to creditor and other inquiries received through those and other contact points.
- (viii) with the assistance of Stikeman, counsel to the Monitor, preparing this First Report.

## **7.0 EXTENSION OF THE STAY PERIOD**

- 7.1 The Stay period under the Initial Order expires on September 6, 2024. Pursuant to the proposed ARIO, the Applicants are seeking an extension of the Stay period to and including December 6, 2024.
- 7.2 The Monitor supports the Applicants' request to extend the Stay for the following reasons:
- (i) the proposed Stay extension will provide the Applicants with the time and stability necessary to implement the proposed SISP and pursue a going concern sale transaction in earnest and, if successful in this regard, return to Court to seek approval of such transaction;

- (ii) as demonstrated in the Cash Flow Forecast, the Applicants are expected to have sufficient liquidity to fund their operations and the costs of the CCAA Proceedings during the requested extension of the Stay period;
- (iii) the Applicants' have acted, and continue to act in good faith and with due diligence to advance their restructuring efforts and the CCAA Proceedings; and
- (iv) the Monitor is not aware of any party that would be materially prejudiced by the proposed Stay extension.

## **8.0 PAYMENT OF PRE-FILING AMOUNTS**

- 8.1 The Initial Order permits the Applicants to pay, with the consent of the Monitor and in accordance with the DIP Term Sheet and the Cash Flow Forecast, up to a maximum amount of \$330,000 to certain suppliers for expenses incurred prior to the Filing Date. In the ARIO, the Applicants seek to remove the cap of \$330,000.
- 8.2 The Monitor understands that the Applicants acquire products and services from a relatively small number of suppliers given the regulated nature of the cannabis industry. Any interruption of service from these third parties, either because they are unable to continue to provide their services to the Applicants or refuse to do so on account of pre-filing amounts owed to them by the Applicants, may prevent the Applicants from operating in the ordinary course and continuing to provide uninterrupted services to their customers.
- 8.3 The Monitor intends to work closely with the Applicants to ensure that only the most critical suppliers receive any payments in respect of their pre-filing amounts.

## **9.0 SISP AND STALKING HORSE AGREEMENT**

9.1 The Monitor understands that a primary objective of these CCAA Proceedings is to conduct the SISP in order to implement a long-term solution to the Applicants' liquidity challenges and maximize value for their stakeholders.

9.2 As referenced above, the Monitor and its legal counsel have assisted the Applicants and their legal counsel in developing the SISP and negotiating the Stalking Horse Agreement that is proposed to underpin a going-concern solution for the business. The Monitor is continuing to assist the Applicants with their efforts to develop the SISP and negotiate the Stalking Horse Agreement.


9.3 The Monitor understands that the Applicants anticipate seeking Court approval of the SISP and the Stalking Horse Agreement, solely for the purpose of constituting a stalking horse bid under the SISP, in the near future, with appropriate notice to all the Applicants' stakeholders.

## **10.0 CONCLUSIONS AND RECOMMENDATIONS**

10.1 For the reasons set out in this First Report, the Monitor respectfully recommends that the Court grant the ARIO in the form sought by the Applicants.

All of which is respectfully submitted to the Court this 4<sup>th</sup> day of September, 2024.

**Alvarez & Marsal Canada Inc., in its capacity as  
Monitor of 2675970 Ontario Inc., 2733181 Ontario Inc., 2385816 Alberta Ltd., 2161907  
Alberta Ltd., 2733182 Ontario Inc., 2737503 Ontario Inc., 2826475 Ontario Inc., 14284585  
Canada Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation,  
2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc.,  
10006215 Manitoba Ltd., AND 80694 Newfoundland & Labrador Inc.,  
and not in its personal or corporate capacity**

Per:   
Josh Nevsky  
Senior Vice-President

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No: CV-24-00726584-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2675970 ONTARIO INC., 2733181 ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC., 2826475 ONTARIO INC., 14284585 CANADA INC., 2197130 ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC., 10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND & LABRADOR INC.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**SECOND REPORT OF THE MONITOR  
(September 16, 2024)**

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