

**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.

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

OCTOBER 16, 2024

TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
2.0	PURPOSE.....	2
3.0	UPDATE REGARDING THE APPLICANTS’ REQUESTED RELIEF IN RESPECT OF THE RELATED PROCEEDING STAY	2
4.0	UPDATE ON MONITOR’S RECOMMENDATION.....	5

APPENDICES

Appendix A – Second Report of the Monitor (without Appendices)

1.0 INTRODUCTION

- 1.1 On August 28, 2024, 2675970 Ontario Inc. 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 Pursuant to the Initial Order, among other things, Alvarez & Marsal Canada Inc. was appointed as the monitor of the Applicants in the CCAA Proceedings (in such capacity, the “**Monitor**”), and a stay of proceedings (the “**Stay**”) was granted in favour of the Applicants and extended to the Non-Applicant Entities (as defined in the Initial Order). On September 6, 2024, the Court granted the Amended and Restated Initial Order (the “**ARIO**”), which modified the Initial Order in certain respects, including an extension of the Stay up to and including December 6, 2024.
- 1.3 On September 16, 2024, the Monitor filed its second report in the CCAA Proceedings (the “**Second Report**”). This report (the “**Supplemental Second Report**”) is supplementary to and should be read in conjunction with the Second Report. All capitalized terms used herein but not defined shall have the meanings given to them in the Second Report, and this Supplemental Second Report is subject to the same terms of reference and disclaimer as set out in the Second Report in all respects. A copy of the Second Report, without appendices, is attached hereto as **Appendix “A”**.

1.4 The Second Report was filed in connection with the Applicants' motion returnable September 18, 2024, seeking (i) the Sale Process Approval Order, and (ii) amendments to the ARIO to permit, (a) a stay of any Related Proceeding against or in respect of DAK – a related party corporation of the Applicants – except with the written consent of DAK and the Monitor, or with leave of the Court, until December 6, 2024 (the “**Related Proceeding Stay**”), and (b) the extension of the applicable limitation periods (to the extent such periods may expire during the CCAA Proceedings) relating to any claim or action of the Recission Claimants against certain of the Applicants (the “**Tolling Provisions**”).

1.5 At the hearing on September 18, 2024, the Sale Process Approval Order and Tolling Provisions were approved, and Justice Cavanagh adjourned the Applicants' motion for the Related Proceeding Stay until October 18, 2024, at the request of Canopy Growth and with the consent of the Applicants.

2.0 PURPOSE

2.1 The purpose of this Supplemental Second Report is to provide additional information to the Court regarding the Applicants' motion for the Related Proceeding Stay, returnable October 18, 2024.

3.0 UPDATE REGARDING THE APPLICANTS' REQUESTED RELIEF IN RESPECT OF THE RELATED PROCEEDING STAY

3.1 As discussed in the Second Report, the Related Proceeding Stay is sought by the Applicants in connection with the Canopy Arbitration commenced on March 8, 2024, against certain of the Applicants (i.e., the TS Respondents) and DAK. While the Canopy Arbitration is

stayed against the TS Respondents as a result of the ARIO, the Canopy Claimants have advised that they wish to continue the Canopy Arbitration against DAK. According to the Applicants, the continuation of the Canopy Arbitration against DAK will necessitate substantial participation from the TS Respondents as the TS Respondents and DAK share a centralized management team.

3.2 Prior to the September 18, 2024, hearing, the Applicants and Canopy Growth, in consultation with the Monitor, agreed to a timetable for the delivery of materials and cross-examinations during the adjournment period in respect of the Related Proceeding Stay – summarized as follows:

- (i) On September 20, 2024, Canopy Growth filed its responding motion record in opposition to the Related Proceeding Stay relief sought by the Applicants (the **“Canopy Responding Record”**);
- (ii) On September 26, 2024, the Applicants filed a supplementary and reply motion record in response to the Canopy Responding Record (the **“Applicants’ Reply Record”**);
- (iii) On October 8, 2024, the Applicants served:
 - (a) the transcript brief of the Applicants and a letter to counsel for Canopy Growth in respect of the cross-examinations (a) conducted by counsel to the Applicants on October 3, 2024, of Dave Paterson in respect of his affidavit sworn September 20, 2024, and (b) conducted by counsel to Canopy Growth on October 4, 2024, of Andrew Williams in respect of his affidavits

sworn August 28, 2024, September 3, 2024, September 12, 2024 and September 26, 2024; and

- (b) the factum of the Applicants in support of the Related Proceeding Stay;
- (iv) On October 11, 2024, Canopy Growth served:
 - (a) the transcript brief of Canopy Growth in connection with the cross-examination of Andrew Williams, and
 - (b) the responding factum of Canopy Growth in respect of the further ARIO sought by the Applicants (the “**Canopy Factum**”); and
- (v) On October 14, 2024, the Applicants served their reply factum in response to the Canopy Factum.

3.3 As of the date of this Supplemental Second Report, the Monitor understands that, despite attempts to negotiate an arbitration timetable that would alleviate the need for the motion for the Related Proceeding Stay and allow the parties to address the Related Proceeding after the conclusion of the SISP and operational restructuring in these CCAA Proceedings, the Applicants and Canopy Growth have not been able to reach a mutual resolution on this issue and therefore the Applicants will be proceeding with their motion for approval of the proposed Related Proceeding Stay on October 18, 2024.

3.4 The Applicants further request that (i) Confidential Exhibit “I” to the Applicants’ Reply Record (the “**Confidential Exhibit**”), which includes a copy of the notice of arbitration of the Canopy Claimants dated March 8, 2024 (the “**Notice of Arbitration**”), and (ii) certain

portions of the cross-examination transcript of Dave Paterson providing confidential details relating to the Notice of Arbitration (the “**Redacted Transcript**”) be sealed until further order of the Court.

4.0 UPDATE ON MONITOR’S RECOMMENDATION

- 4.1 The Applicants maintain that participation of the directors, officers and/or employees of the Applicants in the Canopy Arbitration would likely consume considerable manpower at a time when the management team is focused on the restructuring process.
- 4.2 The Monitor has been working with the Applicants’ management team in respect of the Applicants’ operational restructuring as well as the SISP. The Monitor shares the Applicants’ view that key members of the management team, including Mr. Williams, have been actively involved in the CCAA Proceedings and are critical to the success of the operational restructuring and implementation of the successful transaction ultimately resulting from the SISP.
- 4.3 The Monitor’s view is that the attention of the directors, officers and/or employees of the Applicants should be focused on the Applicants’ ongoing operational restructuring efforts – including supporting the SISP process. Accordingly, if the continuation of the Canopy Arbitration against DAK necessitates the involvement of the Applicants’ management team which may create a distraction for the Applicants, the Monitor would recommend a third party stay in favour of DAK pending completion of the CCAA Proceedings subject to the Court’s discretion.

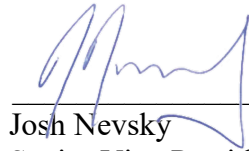
- 4.4 The Monitor shares the views of the Applicants that the disclosure of the information contained in the Confidential Exhibit and Redacted Transcript should be sealed at this time given the confidential nature of the Notice of Arbitration.

All of which is respectfully submitted to the Court this 16th day of October, 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
SECOND REPORT OF THE MONITOR

See attached.

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LABRADOR INC.

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

SEPTEMBER 16, 2024

TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
2.0	TERMS OF REFERENCE AND DISCLAIMER	5
3.0	STALKING HORSE AGREEMENT AND SALE AND INVESTMENT SOLICITATION PROCESS	6
4.0	UPDATES SINCE THE COMEBACK HEARING	17
5.0	CASH FLOW RESULTS RELATIVE TO FORECAST	18
6.0	ADDITIONAL RELIEF SOUGHT IN THE FURTHER AMENDED AND RESTATEMENT OF AFFAIRS.....	20
7.0	ACTIVITIES OF THE MONITOR.....	22
8.0	CONCLUSIONS AND RECOMMENDATIONS.....	23

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 (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 Consideration¹;
- (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

¹ “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:

SISP Summary <i>(Certain capitalized terms below have the meanings ascribed in the proposed SISP)</i>		
Phase / Event	Timeline	Description of Activities
Approval and Commencement of the SISP	September 18, 2024	<ul style="list-style-type: none"> Hearing of the Applicants motion for the Sale Process Approval Order on September 18, 2024. Commencement of marketing and solicitation of interest as soon as reasonably practicable but no later than September 20, 2024 (the “Commencement Date”). 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.
Phase 1	For a period of up to 33 days after the commencement of the SISP	<ul style="list-style-type: none"> The Monitor and the Applicants will solicit non-binding letters of interest (“LOI”). 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.
Phase 1 Bid Deadline	5:00PM ET on Monday October 21, 2024	<ul style="list-style-type: none"> Participants wishing to bid are required to submit an LOI to the Monitor prior to the Phase 1 Bid Deadline. The LOI must meet certain criteria as set out in the SISP to be considered a Phase 1 Qualified Bid. 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 “Minimum Purchase Price”).

	SISP Summary <i>(Certain capitalized terms below have the meanings ascribed in the proposed SISP)</i>	
Assessment of Phase 1 Qualified Bids	Three business days after the Phase 1 Bid Deadline, being October 24, 2024	<ul style="list-style-type: none"> 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. Phase 2 Qualified Bidders will be notified in writing by the Monitor within three business days following the Phase 1 Bid Deadline. In the event that no Phase 1 Qualified Bid is received: <ul style="list-style-type: none"> i. the Stalking Horse Bidder shall be deemed by the Monitor as the Successful Bidder; ii. the Monitor will post a notice on the Case Website that the SISP has been terminated; and iii. the Applicants shall seek Court approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein. 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.
Phase 2	For a period of 21 days after the Phase 1 Bid Deadline	<ul style="list-style-type: none"> Phase 2 Qualified Bidders will be provided the opportunity to perform further due diligence and submit a binding offer (“Binding Offer”) in accordance with the requirements set out in the SISP. 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"> 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); 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; 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; 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 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.

	SISP Summary <i>(Certain capitalized terms below have the meanings ascribed in the proposed SISP)</i>	
Phase 2 Bid Deadline	5:00PM ET on November 11, 2024	<ul style="list-style-type: none"> • 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). • 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.
Evaluation and Successful Bid Selection Deadline	Two business days after the Phase 2 Bid Deadline, being November 13, 2024	<ul style="list-style-type: none"> • 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. • 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 “Auction”) 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.
Approval of Successful Bid(s)	As soon as reasonably practicable after the selection of a Successful Bid	<ul style="list-style-type: none"> • The Applicants will bring a motion for an Order approving the Successful Bid(s). • 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).

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>
Receipts	3,209	2,674	535
Disbursements			
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
Total Disbursements	(4,302)	(5,791)	1,489
Non-Applicant Net Cash Flow	205	71	134
Net Cash Flow	(888)	(3,047)	2,159
Opening Cash	147	147	--
Net Cash Flow	(888)	(3,047)	2,159
DIP Facility Advance / (Paydown)	1,270	3,220	(1,950)
Closing Cash	529	320	209

- 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 1st and the 15th 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

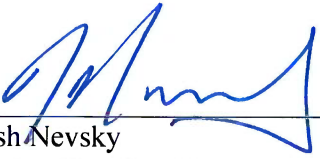
- 8.1 For the reasons set out in this Second Report, the Monitor respectfully recommends that the Court grant the Sale Process Approval Order and the further amended and restated ARIO in the form sought by the Applicants.

All of which is respectfully submitted to the Court this 16th 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