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JUDICIAL CENTRE	CALGARY	
MATTER	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED and 420 DISPENSARIES LTD.	
APPLICANT	HIGH PARK SHOPS INC.	
RESPONDENTS	420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED, and 420 DISPENSARIES LTD.	
DOCUMENT	**BENCH BRIEF OF THE RESPONDENTS**	
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I. INTRODUCTION

1. This Bench Brief is submitted on behalf of 420 Investments Ltd. ("**420 Parent**"), 420 Premium Markets Ltd. ("**420 Premium**"), Green Rock Cannabis (EC 1) Limited ("**GRC**") AND 420 Dispensaries Ltd. ("**420 Dispensaries**") (collectively, "**FOUR20**"), in response to the Application of High Park Shops Inc. ("**High Park**") filed and served on March 7, 2025 and returnable March 14, 2025 (the "**High Park Application**"). On March 4, 2025, FOUR20 filed and served its own Application returnable March 14, 2025 (the "**FOUR20 Application**") and already filed and served a brief in support of the relief sought therein. The purpose of this brief is therefore focused on responding to the relief sought in the High Park Application.

2. Through the High Park Application, High Park seeks to re-open the sales and investment solicitation process (the "**SISP**") in order to submit a new bid, notwithstanding the fact that the SISP concluded over three months ago. The SISP and the associated process by which it was to be carried out (the "**SISP Process**") were approved in an Order by the Honourable Justice Jones on September 19, 2024 (the "**SISP Order**").[1] The SISP involved significant marketing efforts and the Monitor, in conjunction with FOUR20, worked diligently with interested bidders to provide information and to solicit bids in Phase I and to advance bids from Phase I to Phase II. Under the SISP Order, bidders were to put their best foot forward by the Phase II bid deadline, after which, FOUR20 and the Monitor would determine the best bid. Upon reviewing the joint Phase II bid (the "**Joint Bid**") received from High Park and One Plant Retail Corp. ("**One Plant**"), FOUR20 and the Monitor together concluded that it was not the best bid as it not only did not offer full cash payout to unsecured creditors as High Park now claims, but it also did not offer the <u>best</u> cash payout to unsecured creditors out of the bids received.[2] Furthermore, as it was drafted, it did not appear to either FOUR20 or the Monitor that Stoke, the secured creditor of 420 OpCo, would receive any payment under the Joint Bid.[3]

3. After reviewing bids received in Phase II, FOUR20 realized that there was an opportunity to provide creditors a better offer through a plan of arrangement (the "**Plan**"). As such, FOUR20, in consultation with the Monitor, decided to reject all of the Phase II bids, as it was entitled to do under the SISP Order.[4] Now, over three months later, and after having the benefit of seeing FOUR20's proposed Plan, High Park has brought an application to re-open the SISP so that it can submit a new bid that it asserts will offer creditors better recovery than what they will receive in the Plan. This shows blatant disregard for the SISP Process that was approved by this Court and that was

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[1] Affidavit of Lisa Roy, sworn March 7, 2025 at Exhibit 17 [Roy Affidavit].
[2] Third Report of the Monitor, dated March 11, 2025 at p 22 [Third Report]; Affidavit of Scott Morrow, sworn March 12, 2025 at para 8 [March 12 Affidavit].
[3] *Ibid*.
[4] Roy Affidavit, *supra* note 1 at Exhibit 17, Appendix A at para 33.

rigorously followed by both FOUR20 and the Monitor. Allowing High Park to re-open the SISP to submit a late bid at this critical juncture would undermine the integrity of the SISP Process. A second SISP would delay these CCAA Proceedings for an unspecified amount of time and necessitate the incurrence of further professional fees and expenses associated with this second SISP and additional Court hearings. Based on FOUR20's current cashflows, that would very likely require FOUR20 to seek DIP financing, eroding any additional value for creditors that High Park alleges could arise from a further SISP. Furthermore, any bid from High Park in a second SISP is entirely hypothetical as there is currently no open bid from High Park before FOUR20 or this Court. As such, there is no guarantee that any bid ultimately submitted by High Park would put creditors in a better position than FOUR20's proposed Plan, nor is there any obligation for any of the previous bidders to bid again; there is a material risk that a second SISP would put creditors in a worse position than FOUR20's proposed Plan, which offers creditors a definitive amount of cash in hand now.

4. As has been confirmed in the Third Report of the Monitor, as well as both previous reports of the Monitor, FOUR20 has been operating in good faith and with due diligence to advance a plan of arrangement that would offer creditors better recovery than what they would receive in a liquidation.[5] As such, FOUR20 submits that this Court should reject High Park's call for an unnecessary and costly resumed SISP and should instead grant FOUR20's Creditor Meeting Order and Stay Extension Order and allow FOUR20's creditors to vote on the Plan. FOUR20's creditors will therefore be given the opportunity to decide for themselves which option better suits their interests and vote accordingly.

5. Alternatively, should this Honourable Court grant High Park's Application to re-open the SISP, FOUR20 submits that there is no basis for granting the enhanced powers sought by High Park for the Monitor. The enhanced powers sought by High Park would allow the Monitor to conduct the SISP and select a successful bid without any input or consent from FOUR20. This is extreme and unwarranted in the circumstances. The CCAA is a debtor-in-possession statute and, by default, FOUR20 should be involved in any further SISP that is conducted. High Park's alleged basis for seeking this relief is that FOUR20 has not been acting in good faith, with due diligence, or in the best interests of its creditors. However, as further detailed herein, that is patently untrue and runs contrary to what has been set out in every report issued by the Monitor in these CCAA Proceedings, wherein the Monitor has affirmed that, and detailed how, FOUR20 has been acting in good faith and with due diligence.[6] The determination that High Park's bid in the SISP would not result in the best recovery for creditors and its subsequent rejection were <u>not</u> steps taken unilaterally by

[5] Third Report, *supra* note 2 at p 19, 21, 26; Second Report of the Monitor, dated February 7, 2025 at p 15 [Second Report]; First Report of the Monitor, dated November 28, 2024 at p 12 [First Report].
[6] *Ibid*.

FOUR20 and were not done in bad faith; instead, they were determinations that were supported by the Monitor. High Park's current attempt to shut out FOUR20 and essentially turn this process into a receivership is therefore inappropriate and is motivated solely by High Park's desire to acquire and terminate Litigation, as further detailed herein.

II. STATEMENT OF FACTS

6. The Applicants rely on the facts as set forth in the Affidavit of Scott Morrow, Chief Executive Officer of FOUR20, sworn on March 12, 2025 (the "**March 12 Affidavit**"), as well as the Affidavit of Scott Morrow sworn on March 4, 2025 in support of the FOUR20 Application (the "**March 4 Affidavit**" and, collectively with the March 12 Affidavit, the "**Morrow Affidavits**"). Capitalized terms not defined herein have the meanings given to them in the Morrow Affidavits.

III. ISSUES

7. The issues to be determined by this Court are as follows:

   a) Should the SISP be re-opened to allow High Park to submit a late, revised bid?

   b) If the SISP is re-opened, should the Monitor be granted enhanced powers to allow it to conduct the SISP without any input from FOUR20?

IV. LAW AND ARGUMENT

A. The SISP should not be re-opened to allow High Park to submit a late, revised bid

a) The Law

8. Section 36(3) of the *Companies' Creditors Arrangement Act*[7] (the "**CCAA**") enumerates six non-exhaustive factors that are to be considered by the Court when approving a sale by a CCAA debtor of assets outside the ordinary course of business. Though this Court is not being asked to approve a sale, the factors are nonetheless instructive in determining whether the SISP was conducted properly. The factors enumerated in section 36(3) are:

   a) whether the process leading to the proposed sale was reasonable in the circumstances;

   b) whether the Monitor approved the process leading to the proposed sale;

   c) whether the Monitor filed with the court a report stating that in its opinion the sale would be more beneficial to creditors than a sale or disposition under a bankruptcy;

[7] RSC 1985, c C-36. **[TAB 8]**

d) the extent to which the creditors were consulted;

e) the effects of the proposed sale on creditors and other interested parties; and

f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.[8]

9. Courts will also give consideration to the factors enumerated in *Royal Bank v Soundair Corp*,[9] those being the following:

a) whether the party conducting the sale made sufficient effort to get the best price and did not act improvidently, based on the information known at the time and not information that came to light after the decision was made,[10] which Courts have held can be assessed through, *inter alia*, the following factors:

i whether the offer accepted is so low in relationship to the appraised value as to be unrealistic;

ii whether the circumstances indicate that insufficient time was allowed for the making of bids;

iii whether inadequate notice of sale by bid was given; and

iv whether it can be said that the proposed sale is not in the best interest of either the creditors or the owner;[11]

b) the interests of all parties;

c) the efficacy and integrity of the process by which offers were obtained; and

d) whether there has been unfairness in the process.[12]

10. Additionally, Courts have noted two further factors for consideration, namely:

a) the business judgment rule, in that a court will not lightly interfere with the exercise of the commercial and business judgment of the debtor company and the monitor in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient; and

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[8] *Ibid*, s 36(3). **[TAB 8]**
[9] (1991), 83 DLR (4th) 76 (Ont CA) [*Soundair*]. **[TAB 12]**
[10] *Harbour Grace Ocean Enterprises Ltd, Re*, 2024 NLSC 47 at para 104 **[TAB 10]**, citing *Terrace Bay Pulp Inc, Re*, 2012 ONSC 4247 at para 45 [*Terrace Bay*]. **[TAB 14]**
[11] *Bank of Montreal v River Rentals Group Ltd*, 2010 ABCA 16 at para 13 [*River Rentals*]. **[TAB 4]**
[12] *Soundair*, *supra* note 9 at para 16. **[TAB 12]**

b) the weight to be given to the recommendation of the monitor.[13]

11. Though *Soundair* and many of the cases citing it involve receiverships, this Court has held that the *Soundair* principles are equally applicable to proceedings under the CCAA overseen by a Court-appointed monitor.[14]

12. Many of these factors either expressly or implicitly go to the integrity of the process. Courts have repeatedly emphasized the importance of maintaining the integrity of a Court-mandated sales process, and that it is "not desirable for a bidder to wait to the last minute, even up to a court approval stage, to submit its best offer".[15] For example, in *Bank of Montreal v River Rentals Group Ltd*[16] ("***River Rentals***"), the Alberta Court of Appeal stated that it "consistently favoured an approach that preserves the integrity of the process."[17] In so stating, the Court referenced *Cameron v Bank of Nova Scotia*[18] wherein the Nova Scotia Supreme Court held the following:

> In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing it should not be set aside simply because a later and a higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement. On the contrary, they would know that other bids could be received and considered up until the application for court approval is heard - this would be an intolerable situation.[19]

13. In *Tool Shed Brewing Company Inc (Re)*[20] ("***Tool Shed***"), this Court referenced the Manitoba Court of Appeal's decision in *Royal Bank of Canada v Keller & Sons Farming Ltd*[21] which dealt with a receivership, but which this Court found to be equally applicable to a sales process run by a proposal trustee:

> The motion judge owed the decision of the Receiver significant deference. While it is the duty of the court to ensure the integrity of the process, it is not appropriate for the court to go into the minutia of that process. The court's role in reviewing the sale process in receiverships is not to second guess the receiver's business decisions, but rather to critically examine the procedural fairness in negotiations and bidding so as to ensure that the integrity of the process is maintained. The court should not intervene in the decision of the receiver except in an exceptional case.[22]

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[13] *Sanjel Corp, Re*, 2016 ABQB 257 at para 57 **[TAB 13]**, citing *AbitibiBowater inc, Re*, 2010 QCCS 1742 at paras 70-72. **[TAB 2]**
[14] *Calpine Canada Energy Ltd, Re*, 2007 ABQB 49 at para 29. **[TAB 7]**
[15] *Sanjel*, *supra* note 13 at para 58. **[TAB 13]**
[16] 2010 ABCA 16. **[TAB 4]**
[17] *Ibid* at para 18. **[TAB 4]**
[18] (1981), 38 CBR (NS) 1 (Sup Ct).
[19] *Ibid* at para 35; *River Rentals*, *supra* note 11 at para 19. **[TAB 4]**
[20] 2024 ABKB 234 [*Tool Shed*]. **[TAB 15]**
[21] 2016 MBCA 46. **[TAB 11]**
[22] *Ibid* at para 11 **[TAB 11]**, cited in *Tool Shed*, *supra* note 20 at para 40. **[TAB 15]**

14. A similar statement was made by the Ontario Supreme Court, High Court of Justice in *Crown Trust Co v Rosenberg,*[23] and has been cited approvingly many times since, wherein the Court held:

> Its decision was made as a matter of business judgment on the elements then available to it. It is of the very essence of a receiver's function to make such judgments and in the making of them to act seriously and responsibly so as to be prepared to stand behind them.
>
> If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.[24]

15. In *1705221 Alberta Ltd v Three M Mortgages Inc*,[25] the Alberta Court of Appeal held the following:

> A court approving a sale recommended by a receiver is not engaged in a perfunctory, rubberstamp exercise. But neither should a court reject a receiver's recommendation on sale absent exceptional circumstances. A receiver plays the lead role in receivership proceedings. They are officers of the court; their advice should therefore be given significant weight. To otherwise approach the proceedings would weaken the receiver's central purpose and function and erode confidence in those who deal with them.[26] (citations omitted)

16. *River Rentals* was a case involving a Court-appointed receiver who was responsible for selling certain assets of the debtor company. The receiver put out a call for offers with a firm deadline for receipt of same. Following the deadline, the receiver brought an application before the Court to approve a sale to the successful bidder. One of the unsuccessful bidders objected on the basis that, after the offer deadline he realized he had misunderstood one of the terms of the proposed sale and thus had resubmitted a late, revised bid, which he argued was then the highest bid. The receiver had rejected the offer as "at the time tenders closed [his] offer was found wanting".[27] The lower Court decided to grant an order extending the deadline to submit revised offers. On appeal, the Alberta Court of Appeal allowed the appeal, noting that there was no evidence that the receiver had acted improvidently in accepting the original offer, nor was there any "cogent evidence" of any unfairness to the unsuccessful bidder. Instead, the Court of Appeal found that the extended offer

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[23] (1986), 60 OR (2d) 87. **[TAB 9]**
[24] *Ibid* at 112 **[TAB 9]**, cited in *Soundair*, *supra* note 9 at para 11 **[TAB 12]**; *Terrace Bay*, *supra* note 10 at para 45. **[TAB 14]**
[25] 2021 ABCA 144. **[TAB 1]**
[26] *Ibid* at para 22. **[TAB 1]**
[27] *River Rentals*, *supra* note 11 at para 9. **[TAB 4]**

deadline conferred an unfair advantage on the unsuccessful bidder "who then knew the price that had previously been offered by the Appellant when re-tendering his offer".[28]

17. In *Tool Shed*, this Court was presented with an application to approve a reverse vesting order for a stalking horse bid that had been selected by the proposal trustee after running a SISP within the context of proposal proceedings under the BIA. The application was opposed by two creditors who had submitted a late, competing bid after requesting two extensions for submitting said bid (one which was partially accepted and one which was rejected). In rejecting the late bid, the proposal trustee stated that the bid was rejected for several reasons, including that failure to comply with the SISP and bid deadline contravened the integrity of the overall process and that, upon review, the late bid was deemed to not actually provide better recovery for all involved stakeholders.[29]

18. The Court referred to the *Soundair* principles to determine if the proposal trustee had properly selected the best bid arising from the SISP. In conducting this analysis, this Court gave consideration to the factors enumerated in section 65.13(4) of the *Bankruptcy and Insolvency Act*[30] (which includes identical factors to section 36(3) of the CCAA) and the *Soundair* principles, specifically noting, *inter alia*, that:

a) the process leading to the proposed sale was reasonable in the circumstances as the SISP process was detailed and incorporated into a SISP order approved by the Court and if the unsuccessful bidders had any concerns with the process, those should have been raised when the SISP process was before the Court;[31]

b) the proposal trustee approved the process leading to the proposed sale as the SISP process was granted as part of the SISP order and the proposal trustee was involved in its implementation;[32]

c) the Court noted that there did not appear to have been any creditor consultation, but that the SISP process approved by the Court did not contemplate any involvement of the creditors so the factor was nonetheless met;[33]

d) there were sufficient efforts to get the best price without acting improvidently as the SISP process contemplated an advertising process to encourage interest in the company and the proposal trustee took steps in that regard;[34]

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[28] *Ibid* at para 20. **[TAB 4]**
[29] *Tool Shed*, *supra* note 20 at para 73. **[TAB 15]**
[30] RSC 1985, c B-3, s 65.13. **[TAB 5]**
[31] *Tool Shed*, *supra* note 20 at para 44, 60, 96 & 101. **[TAB 15]**
[32] *Ibid* at para 45. **[TAB 15]**
[33] *Ibid* at para 47. **[TAB 15]**
[34] *Ibid* at para 55. **[TAB 15]**

e) the proposal trustee had populated and maintained a virtual data room for the SISP and worked with the Company to respond to all inquiries and due diligence requests;[35]

f) the late bid was determined by the proposal trustee to be neither a qualified bid nor a superior offer (as required in the SISP process), and such a decision is to be accorded deference.[36]

19. As such, this Court declined to interfere with the proposal trustee's decision to reject the late bid and go forward with another proposal.

20. In general, Courts are not receptive by attempts from so-called "bitter bidders" to attack the SISP, second guess the valid business judgment of the Monitor, and attempt to force acceptance of their bid. For example, in *Bloom Lake, g.p.l., Re*,[37] the Superior Court of Quebec stated the following:

> 84 A losing bidder is not seeking to promote the best interests of the creditors, but is looking to promote its own interest. It will seek to raise these issues, not because it has any particular interest in fairness or integrity, but because it lost and it wants a second kick at the proverbial can. The narrow technical ground on which the losing bidder is found to have no interest is that it has no legal or proprietary right in the property being sold. The underlying policy reason is that the losing bidder is a distraction, with the potential for delay and additional expense.
>
> 85 However, if the losing bidder is excluded from the process, who will raise the issues of fairness and integrity? The creditors will not do so, because their interest is limited to getting the best price. Where there is a subsequent higher bid, their interest will be in direct conflict with the integrity of the sale process.
>
> 86 Perhaps the way to reconcile all of this is to exclude the losing bidder from the Court approval process and instead require the losing bidder to make its complaints and objections to the monitor. The monitor would then be required to report to the Court on any such complaints and objections.[38]

a) **Application to the Facts**

21. On September 19, 2024, the Honourable Justice Jones granted the SISP Order allowing the Monitor and FOUR20 to solicit bids for the sale of all, substantially all, or one or more portions of FOUR20's business or property, or for the restructuring, recapitalization or refinancing of FOUR20 and FOUR20's business. The SISP Process approved by Justice Jones states that the SISP shall be conducted by the Monitor, in consultation with FOUR20.[39]

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[35] *Ibid* at paras 61-64. **[TAB 15]**
[36] *Ibid* at paras 93-94. **[TAB 15]**
[37] 2015 QCCS 1920. **[TAB 6]**
[38] *Ibid* at paras 84-86. **[TAB 6]**
[39] Roy Affidavit, *supra* note 1 at Exhibit 17, Appendix A at para 4.

22. The Monitor and FOUR20 worked diligently to advance the SISP and solicit offers that would offer the best recovery for all stakeholders. This is detailed in the Monitor's reports, wherein the Monitor states, *inter alia*, the following:

a) Following granting of the SISP Order, the Monitor distributed an interest solicitation letter (the "**Teaser**") detailing the purchase and investment opportunities contained in the SISP. The Teaser was posted on the Monitor's website and was distributed to 124 potentially interested parties (the "**Interested Parties**"). Interested Parties were invited to sign a confidentiality agreement to gain access to an online data room managed by the Monitor and providing further information on FOUR20 and its business.[40]

b) Ultimately, 15 Interested Parties executed the confidentiality agreement and were provided access to the data room. The Monitor worked with FOUR20 to diligently respond to all due diligence questions from Interested Parties in a timely fashion.[41]

c) FOUR20 and the Monitor thereafter received letters of intent from five Interested Parties (with a total of eight offers) by the Phase I deadline in the SISP. After several bidders who were qualified to advance to Phase II requested an extension of the deadline for submitting their final Phase II bids (which were originally due on November 30, 2024), the Monitor, in consultation with FOUR20, decided to extend the Phase II bid deadline to December 20, 2024 and the deadline for selecting a successful bid to January 6, 2025.[42]

d) Prior to receiving the Phase II bids, FOUR20 was giving strong consideration to certain Phase I bids that ultimately were revised and less favourable in Phase II.[43]

e) Upon reviewing the bids that materialized in Phase II, FOUR20 realized there was an opportunity to present a plan of arrangement that would offer equal or better recovery to creditors than any of the bids received in Phase II.[44]

23. FOUR20 gave serious consideration to the offers it received in Phase I and worked hard to ensure that those offers would materialize into Phase II offers. Unfortunately, not all of the favourable bids received in Phase I materialized in the same form in Phase II, including High Park's own bid. The subscription agreement provided by High Park as part of their Phase II bid did not provide for an allocation of the cash consideration and, based on the way it was written, it was determined by both the Monitor and FOUR20 that the funds would provide repayment of Nomos, the senior secured creditor at 420 Parent, with the remainder of the cash consideration actually flow back to High Park instead of to Stoke, the secured creditor of 420 OpCo, or any of the unsecured creditors in any of

[40] First Report, *supra* note 5 at p 9.
[41] *Ibid* at p 10.
[42] *Ibid*.
[43] Second Report, *supra* note 5 at p 6.
[44] *Ibid*.

the FOUR20 entities.[45] High Park's bid did not offer guaranteed payout to Stoke or unsecured creditors and was not deemed to be the best bid in the SISP.[46] After High Park's bid was rejected, High Park reached out to the Monitor to attempt to re-characterize its final, Phase II bid. This attempt at recharacterization after the fact does not change the Phase II as it was written and submitted by High Park.

24. The SISP Process was reasonable in the circumstances and the Monitor approved of same, as evidenced by the information presented in the Monitor's reports and this Court's endorsement of the SISP Process in the SISP Order. The Monitor has filed a report stating that in its opinion the Plan would be more beneficial and would offer better recovery to creditors than a liquidation, with liquidation value of FOUR20 based on a variety of factors, including the value of the bids received in the SISP.[47] As such, the consideration to be received under the Plan is reasonable and fair and takes into consideration the interests of all stakeholders.

25. Ultimately, FOUR20 and the Monitor, using their best business judgment and discretion, evaluated and subsequently rejected the bids received in the SISP in favour of developing a Plan that would result in better recovery for and be in the best interest of creditors. It would be inappropriate and prejudicial to all stakeholders to run a second SISP that would incur significant expenses and delay any potential payout for creditors to some uncertain time in the future and at an uncertain payout value. Based on FOUR20's current cashflows, there is a significant risk that FOUR20 would need to seek DIP financing in order to fund a second SISP, which would prime the recovery of all creditors.[48] Further, there is no guarantee what bids, if any, would be received in a second SISP, and there is no guarantee that High Park would actually submit a bid that would see unsecured creditors receive 100 cents on the dollar and that would be accepted by this Court.[49] The Plan offers certainty to all stakeholders and would see Affected Creditors have their claims paid out by the end of April if ultimately approved by this Court.

26. As such, and for the reasons already outlined in the materials submitted in support of the FOUR20 Application, FOUR20 submits that this Honourable Court should dismiss High Park's Application to re-open the SISP and should grant FOUR20's Application to hold a creditor meeting to vote on the Plan. This will allow the creditors to decide for themselves whether they wish to accept the Plan.

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[45] March 12 Affidavit, *supra* note 2 at para 8.
[46] *Ibid*.
[47] Third Report, *supra* note 2 at p 20.
[48] March 12 Affidavit, *supra* note 2 at para 15.
[49] Third Report, *supra* note 2 at p 7.

B. The Monitor should not be granted enhanced powers

27. In the High Park Application, High Park seeks what it refers to as "enhanced powers to control the SISP". At paragraph 4 of High Park's proposed form of order, these enhanced powers are described as follows:

> The Monitor is hereby empowered and authorized, but not obligated, to do all things reasonable necessary to complete the Resumed SISP, including to review and evaluate all bids submitted in the Resumed SISP, to identify and select the highest or otherwise best bid or bids, and to apply to the Court for orders approving any successful bids, in each case without the consent of or consultation with FOUR20.

28. These enhanced powers would strip FOUR20 of any involvement or input in the SISP and would essentially transform the SISP into a receivership. It is important to keep in mind the debtor in possession nature of proceedings under the CCAA. In *Alternative Fuel Systems Inc, Re*,[50] the Alberta Court of Appeal stated the following about CCAA proceedings:

> 50 The role of the CCAA is unique. It affords the debtor company an opportunity to restructure its affairs in a manner that will permit it to continue as a going concern without intervention by creditors which might hamper or prevent the restructuring process. Its ultimate goal is to avoid bankruptcy, thereby maximizing creditor compensation, reducing the inevitable loss of employment precipitated by bankruptcy and, if successful, offering the prospect of shareholder equity. The debtor remains in possession and control of the company under the supervision of a court appointed monitor.
>
> 51 The decision to seek protection under the CCAA is that of the debtor. There are numerous considerations in choosing the CCAA as opposed to utilizing the proposal provisions of the BIA, however, one significant factor is the high degree of flexibility the CCAA offers in terms of plan fundamentals and process. The BIA is highly rule driven with clearly defined standards and processes for developing a proposal. Thus, the debtor company under CCAA has far broader latitude within which to propose a plan capable of winning creditor support.
>
> 52 A company which invokes the CCAA process retains a great deal of control over it. Under the CCAA claims process, the company, not the monitor, initially accepts or rejects claims. Section 12(2)(a)(iii) states, "if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor".
>
> 53 Section 12(2)(a)(iii) permits different treatment of different claims. The company can admit a claim, or refer it to a court to determine by summary application or trial. In recent cases, recognizing the need for expedited valuation of claims to facilitate the process, the courts have begun appointing a claims officer to make this determination.
>
> 54 Rehabilitation of a company under the CCAA is furthered by a climate that allows for commercial realities and variables to be considered and negotiated among and by the affected parties. The debtor company, through the operation of

[50] 2004 ABCA 31. **[TAB 3]**

> the stay, is given the breathing room to explore alternatives and to structure a proposed plan that will find favour with creditors, sufficient to support the restructuring.
>
> 55 To maximize flexibility, it is unwise and unnecessary to incorporate, by oblique reference, portions of the BIA or the LRBA that may not assist the process. What the CCAA requires is that the end result, the plan of arrangement, be fair and reasonable. Only when those conditions are met, will a plan of arrangement be approved by a court. What constitutes fairness is largely determined by the circumstances of each case. An important measure of fairness is the degree to which creditors approve it. Creditor support can create an inference that assenting creditors see the plan as viable and commercially reasonable given other available alternatives. The courts generally accept the view that the creditors are in a better position to determine whether the plan is in their own best interests.[51]
>
> (citations omitted)

29. In this case, there is no basis to strip FOUR20 of the rights afforded to it within CCAA proceedings. The basis for the proposed removal of FOUR20's involvement and the associated "enhanced powers" for the Monitor is an allegation form High Park that FOUR20 has been acting in bad faith. In support of this allegation, High Park makes a variety of statements that are based either on pure conjecture or a mischaracterization of the facts:

    a) High Park alleges that FOUR20 attempted to exclude the Litigation from the SISP and are still attempting to exclude it despite a Court order indicating that the Litigation was to form part of the SISP.[52] This is not accurate. Pursuant to Justice Jones' Order of September 19, 2024, the Litigation was included and marketed in the SISP.[53] During Phase I, one of the offers being strongly considered by FOUR20 included a sale of the litigation; this offer did not, however, ultimately materialized in Phase II.[54] FOUR20's rejection of High Park's bid was based on it not being the best bid received in Phase II, not because it included a sale of the Litigation.[55] Additionally, in High Park's counsel's submissions to Justice Jones with respect to including the Litigation in the SISP, she argued that including the Litigation in the SISP did not obligate FOUR20 to sell it, stating that "there's nothing in the sales process that says once an asset is in, they must sell it. This is the market test."[56]

    b) Justice Feasby, in an appeal of a summary judgment order in the Litigation, stated that a sale of FOUR20's assets in the SISP may render FOUR20's remedy of specific performance untenable. High Park alleges that this is what caused FOUR20 to reject the bids in the SISP.[57] High Park points to no evidence to support this point. As stated in the

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[51] *Ibid* at paras 50-55. **[TAB 3]**
[52] Bench Brief of High Park Shops Inc., filed March 7, 2025 at para 19 & 86(a) [High Park Brief].
[53] Roy Affidavit, *supra* note 1 at Exhibit 17, Appendix A.
[54] March 12 Affidavit, *supra* note 2 at para 9.
[55] *Ibid*.
[56] Affidavit of Scott Morrow, sworn March 4, 2025 at Exhibit C.
[57] High Park Brief, *supra* note 52 at para 86(b).

Third Report of the Monitor, the cash payout offered to unsecured creditors in the Plan is better than what was offered in any of the bids received in the SISP and offers better value than what would be received in a liquidation scenario.[58]

c) High Park alleges that FOUR20 did not exercise due diligence in its conduct of the SISP because it "failed to engage High Park and One Plant in any way on the Joint Bid, even after clarifications were pro-actively provided".[59] The "clarifications" offered by High Park after its bid was rejected did not "clarify" how the bid would operate; instead, it attempted to re-write the bid to say something that it did not originally say. This was communicated to High Park by the Monitor.[60] High Park did not submit a revised bid at that time and, had it done so, it would not have been proper for the Monitor and FOUR20 to accept what at that point would be a late, revised bid.

d) High Park alleges that the Plan does nothing to resolve the continuing insolvency of 420 Parent and instead worsens the financial position of 420 Parent's secured creditors.[61] First, FOUR20 notes that High Park is the junior secured creditor with a contingent claim at 420 Parent; the senior secured creditor, Nomos, has not voiced any opposition. Second, the allegation that the Plan is only to the creditors of 420 OpCo and GreenRock misapprehends the intent of the Plan. At the time that FOUR20's materials were filed and served, it was believed that unsecured creditors at 420 Parent were going to resubmit their proofs of claim to 420 OpCo to better reflect where the funds were used; this then influenced how the Plan was drafted. Since then, to account for the fact that there will still be unsecured creditors at 420 Parent, FOUR20 has amended the Plan to offer the 55% cash payout and litigation proceeds or equity top up option to unsecured creditors of 420 Parent as well. Lastly, 420 Parent and its secured creditors, including High Park, will benefit financially from the operating subsidiaries going from cashflow negative prior to these CCAA Proceedings to cashflow positive and free of creditor claims if the Plan is approved.

e) High Park alleges that FOUR20 has failed to disclose material terms related to its Plan, including the processes by which unsecured creditors will receive litigation proceeds or shares in FOUR20 to top-up their recovery.[62] As noted in the Plan, these processes were being finalized at the time FOUR20's materials were filed and served and FOUR20 is working to fully finalize these in advance of the proposed creditor meeting. Regardless, the fact remains that even without considering the additional top-up, the Monitor has

[58] Third Report, *supra* note 2 at p 21-22.
[59] High Park Brief, *supra* note 52 at para 86(d).
[60] Roy Affidavit, *supra* note 1, Confidential Exhibit D.
[61] High Park Brief, *supra* note 52 at para 86(e).
[62] High Park Brief, *supra* note 52 at paras 46, 58 & 86(f).

confirmed that the cash payment of 55 cents on the dollar alone would provide better recovery for unsecured creditors than any of the bids received in the SISP.[63]

f) FOUR20 has failed to disclose the terms of the new financing that will fund the Plan.[64] However, the executed loan agreement and a comfort letter from the lender's bank have both been provided to the Monitor for review.[65] These have not been disclosed publicly at this time due to confidentiality concerns from the lender, however, the Monitor has reviewed and confirmed that it is confident in the lender's ability to advance the funds when called upon and has disclosed the key commercial terms of the loan agreement.[66]

30. High Park is not able to point to any cogent evidence that FOUR20 has not been acting in good faith and with due diligence and any allegations to such effect are directly contradicted by the statements from the Court-appointed Monitor in all its reports issued in these CCAA Proceedings.[67]

31. Ultimately, this attempt by High Park to re-open the SISP and seek enhanced powers for the Monitor is a desperate attempt to take control of and crush the Litigation, in which it is facing liability of over $100 million, for its sole benefit.[68] High Park is not motivated by a lack of integrity in the SISP Process or a lack of good faith on the part of FOUR20. Of particular note, none of the other bidders, including bidders that presented higher or better bids than High Park have challenged the legitimacy of either the SISP or FOUR20's decision to pursue a plan of arrangement.

V. CONCLUSION

32. FOUR20 has been acting diligently and in good faith throughout these CCAA Proceedings and its goal in advancing the Plan is to offer the best recovery possible to all creditors and to exit these CCAA Proceedings as a going concern for the benefit of all stakeholders. Any attempt by High Park to derail that now is solely for its own benefit and to the material risk of all other creditors who are not guaranteed better (or any) recovery in a renewed SISP. As such, FOUR20 submits that this Honourable Court should reject the High Park Application to re-open the SISP and grant the Monitor enhanced powers and should instead grant the FOUR20 Application and allow the creditors to decide whether they want to proceed with FOUR20's proposed Plan at a creditor vote.

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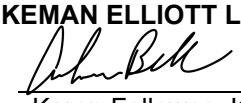
[63] Third Report, *supra* note 2 at p 21-22.
[64] High Park Brief, *supra* note 52 at para 59.
[65] Third Report, *supra* note 2 at p 18.
[66] *Ibid*; Second Report, *supra* note 5 at p 8.
[67] Third Report, *supra* note 2 at p 19, 21, 26; Second Report, *supra* note 5 at p 15; First Report *supra* note 5 at p 12.
[68] March 12 Affidavit, *supra* note 2 at para 17.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12th DAY OF MARCH, 2025.

STIKEMAN ELLIOTT LLP

By: 

Karen Fellowes, K.C. / Archer Bell

Lawyers for the Applicants

VI. TABLE OF AUTHORITIES

TAB	DOCUMENT
1.	*1705221 Alberta Ltd v Three M Mortgages Inc*, 2021 ABCA 144
2.	*AbitibiBowater inc*, 2010 1742
3.	*Alternative Fuel Systems Inc, Re*, 2004 ABCA 31
4.	*Bank of Montreal v River Rentals Group Ltd*, 2010 ABCA 16
5.	*Bankruptcy and Insolvency Act, RSC 1985 c B-3*
6.	*Bloom Lake, g.p.l., Re*, 2015 QCCS 1920
7.	*Calpine Canada Energy Ltd,* 2007 ABQB 49
8.	*Companies' Creditors Arrangement Act,* RSC 1985, c C-36
9.	*Crown Trust Co. v Rosenberg,*(1986), 60 OR (2d) 87
10.	*Harbour Grace Ocean Enterprises Ltd.*, 2024 NLSC 47
11.	*Royal Bank of Canada v Keller & Sons Farming Ltd,* 2016 MBCA 46
12.	*Royal Bank v Soundair Corp,* (1991) 4OR (3) 1
13.	*Sanjel Corp. Re,* 2016 ABQB 257
14.	*Terrace Bay Pulp Inc,* 2012 ONSC 4247
15.	*Tool Shed Brewing Company Inc (Re),* 2024 ABKB 234