Form 49
Rule 13.19

COURT FILE NUMBERS	25-3086318 / B301-86318	Clerk's stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
MATTER	IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD. and GREEN ROCK CANNABIS (EC 1) LIMITED	
APPLICANTS	420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD. and GREEN ROCK CANNABIS (EC 1) LIMITED	
DOCUMENT	**AFFIDAVIT**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**STIKEMAN ELLIOTT LLP** Barristers & Solicitors 4300 Bankers Hall West 888-3rd Street SW Calgary, AB T2P 5C5 **Karen Fellowes, K.C. / Natasha Doelman** Tel: (403) 724-9469 / (403) 781-9196 Fax: (403) 266-9034 Email: kfellowes@stikeman.com / ndoelman@stikeman.com File No.: 155857.1002	

AFFIDAVIT NO. 2 OF SCOTT MORROW
SWORN AUGUST 6, 2024

I, Scott Morrow, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of 420 Investments Ltd. ("**420 Parent**"), 420 Premium Markets Ltd. ("**420 Premium**") and Green Rock Cannabis (EC 1) Limited ("**GRC**") (collectively, "**FOUR20**" or the "**Applicants**"). I have been the CEO of FOUR20 since January 1, 2021, and a member of the boards of directors since May 6, 2021.

2. I am responsible for overseeing the operations of the Applicants, their liquidity management and, ultimately, for assisting in their restructuring process. Because of my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records and have spoken with certain of the directors, officers

and/or employees of the Applicants, as necessary. Where I have relied upon such information, I do verily believe such information to be true.

3. This affidavit is sworn in support of an application (the "**Application**") returnable before the Alberta Court of King's Bench (Commercial List) (the **"Court**") on August 12, 2024, for an Order:

   (a) abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;

   (b) pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "**BIA**") extending the time within which the Applicants are required to file a proposal to their creditors for 45 days up to and including September 26, 2024 (the "**Second Stay Extension**");

   (c) directing that the appeal of the judgment of Applications Judge J.R. Farrington dated January 7, 2024 (the "**HP Judgment**"), in Alberta Court of King's Bench Action No. 2001-02873 (the "**Tilray Proceeding**") be scheduled on the Calgary Commercial List for September 13, 2024 at 2:00pm before the Honourable Justice C.D. Simard, or such other date as the parties may agree in writing or this Honourable Court may direct; and

   (d) such further and other relief as this Honourable Court may deem just.

4. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

5. I have been advised by the Proposal Trustee that the KSV Restructuring Inc. (the "**Proposal Trustee**") in its capacity as Proposal Trustee supports this Application.

A. BACKGROUND

6. On May 29, 2024 (the "**Filing Date**"), the Applicants each filed Notices of Intention to Make a Proposal (the "**NOI Proceedings**") with the Office of the Superintendent of Bankruptcy Canada pursuant to section 50.4(1) of the BIA (the "**NOIs**"). KSV Restructuring Inc. was appointed Proposal Trustee in the NOI Proceedings. Further information with respect to the Applicants and these NOI Proceedings is provided in my affidavit sworn June 19, 2024 (the "**First Morrow Affidavit**"). This Affidavit should be read in conjunction with the First Morrow Affidavit, a copy of which is attached hereto (without exhibits) as **Exhibit "A"**. Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the First Morrow Affidavit.

7. On June 27, 2024, the Court granted, among other things, an Order granting an extension of time for the Applicants to file a proposal with the Official Receiver under section 50.4(9) of the BIA to

August 12, 2024 (the "**First Stay Extension**"). A copy of the Order is attached hereto as **Exhibit "B"**.

B. REQUIREMENT FOR AN EXTENSION OF TIME TO FILE A PROPOSAL

8. As a result of the First Stay Extension, the Applicants must file a proposal on or before August 12, 2024 (the "**Filing Period**"), unless the Second Stay Extension is granted. Since the First Stay Extension, the Applicants have continued to pursue numerous activities with a view to advancing its NOI Proceedings, restructuring its affairs and working towards its goal of presenting a proposal to its creditors (a "**Proposal**"). These steps have included, but are not limited to:

(a) continuing to provide the Proposal Trustee with access to the Applicants' books and records;

(b) working with the Proposal Trustee and the Applicants' counsel, Stikeman Elliott LLP ("**Stikeman**") generally, and in particular with respect to:

(i) exploring and considering the various exit strategies available to the Applicants in the context of these NOI Proceedings, including the structure and financing of any Proposal and/or sales process;

(ii) preparing cash flow projections and identifying issues with respect to the Applicants' financial condition;

(c) communicating and engaging with stakeholders, employees, contractors and vendors;

(d) communicating through counsel and the Proposal Trustee the release of funds withheld by Moneris and the Bank of Montreal;

(e) reviewing its operating expenses, pursuing collection of accounts receivable and taking other steps to ensure the Applicants remain financially viable;

(f) closing nine operating and seven non-operating locations, as well as the Applicants' head office space (collectively, the "**Disclaimed Leases**");

(g) operating the remaining portfolio of 27 stores in the ordinary course;

(h) consolidating inventory from store locations subject to the Disclaimed Leases to operating stores;

(i) communicating with the Court and counsel to tentatively schedule the appeal of the HP Judgment pending the outcome of this Application;

(j) communicating with the Court and the Challenging Landlords (as defined below) to provide information and schedule their respective applications to challenge the Notices of Disclaimer issued in respect of the Disclaimed Leases (the "**Disclaimer Applications**");

(k) held meetings with potential sales advisors to assist with development of a marketing strategy and sales and investment solicitation process;

(l) advanced discussions with potential stalking horse bidders; and

(m) reviewed operating expenses, pursued the collection of accounts receivable and took other steps to ensure the Applicants remain financially viable during these proposal proceedings.

9. The Second Stay Extension up to and including September 26, 2024 is being sought to protect the Applicants' business and operations while the Applicants work to develop a viable proposal for the benefit of stakeholders. I believe that preserving the value of the business in the proposed manner will achieve a better result for the Applicants' stakeholders than would a liquidation.

10. I believe that the Second Stay Extension will allow the Applicants, in consultation with the Proposal Trustee, to:

(a) continue the restructuring of its business and affairs, and pursue strategic alternatives;

(b) engage a sales advisor to canvass the market for potential refinancing or asset sale transactions, and formulate a potential SISP process for approval by the Court;

(c) continue discussions with a potential stalking horse bidder;

(d) preserve and enhance the Applicants' business for the benefit of all stakeholders;

(e) continue formulating a viable proposal for the benefit of all stakeholders;

(f) allow for the hearing of the appeal of the HP Judgment which is sought to be scheduled for September 13, 2024 pending the outcome of this Application; and

(g) allow for the hearing of the Disclaimer Applications which are presently scheduled for September 19, 2024.

11. The Applicants' creditors will not be prejudiced by the Second Stay Extension. Rather, the Second Stay Extension is critical to ensure that the Applicants can continue its operations and maximize the value of its assets which will benefit its Proposal or restructuring to the benefit of the Applicants and their respective stakeholders.

12. To date, I have not been made aware of any creditor of the Applicants intending to object to the Second Stay Extension. Accordingly, I believe that the Second Stay Extension is necessary and appropriate in the circumstances.

13. The Proposal Trustee supports the requested Second Stay Extension.

C. LANDLORD DISCLAIMER APPLICATIONS

14. As of the date of filing the NOIs, 420 Premium was party to 44 leases. After filing the NOIs, 420 Premium issued 16 Notices of Disclaimer for nine (9) uneconomic operating locations and seven (7) non-operating locations, including its head office (collectively, the "**Disclaimed Leases**").

15. The Notices of Disclaimer for the Disclaimed Leases were issued by FOUR20, in consultation with and approval of the Proposal Trustee, after it was determined that they were in the best interests of the respective companies, creditors, employees and other stakeholders, and necessary for the making of a viable proposal. The Proposal Trustee has estimated that the disclaimer of operating leases alone will result in an estimated net improvement in profitability of approximately $850,000 annually.

16. Since the issuance of the Notices of Disclaimer, two landlords have filed applications to challenge the same pursuant to section 65.2(1) of the BIA – Strathcona Building Inc. and Meadowlands Development Corporation (together, the "**Landlords**").

17. I am advised by my counsel, and verily believe, that the Disclaimer Applications are scheduled to be heard by this Court on September 19, 2024.

18. I am further advised by my counsel, and verily believe, that communications are ongoing with counsel for the Landlords with the view to resolving the Disclaimer Applications in advance of the hearing. I believe resolution of the Disclaimer Applications is necessary and desirable to preserve the value of FOUR20's estate to the benefit of all stakeholders.

D. REQUEST FOR EARLIER APPEAL DATE ON COMMERCIAL LIST

19. On August 28, 2019, 420 Parent, High Park Shops Inc. ("**High Park**") and Tilray, Inc. ("**Tilray**") each entered into an arrangement agreement (the "**Arrangement Agreement**") relating to the purchase of outstanding shares in 420 Parent by High Park and Tilray (the "**Tilray Transaction**"). High Park was formed for the purpose of the acquisition of 420 Parent and is a subsidiary of Tilray.

20. In connection with the Tilray Transaction, 420 Parent, as borrower, and High Park, as lender, entered into a Loan Agreement (the "**HP Loan Agreement**") whereby High Park agreed to advance $7,000,000 to 420 Parent on a secured basis (the "**HP Loan**").

21. In late January and February of 2020, High Park and Tilray delivered a series of breach notices and notices that purported to terminate the Arrangement Agreement.

22. On February 21, 2020, 420 Parent commenced an action for breach of contract and related relief with respect to the terminated Arrangement Agreement (the "**420 Claim**"). High Park and Tilray each defended the 420 Claim (the "**HP Defence**"). 420 Parent's position is that the Arrangement Agreement was wrongfully terminated. 420 Parent is seeking specific performance or, alternatively, damages in excess of $130 million. The 420 Claim has not yet been determined, although questioning has occurred, and undertakings are in the course of being answered. Attached and marked as **Exhibit "B"** is a copy of the 420 Claim, attached as **Exhibit "C"** is a copy of the HP Defence and attached as **Exhibit "D"** is a copy of the Statement of Defence to Counterclaim.

23. On March 20, 2020, High Park filed a counterclaim in relation to the HP Loan (the "**HP Counterclaim**") and three years later filed an application for summary judgment on March 2, 2023. Attached and marked as **Exhibit "E"** is a copy of the HP Counterclaim.

24. On February 7, 2024, Applications Judge J.R. Farrington granted High Park summary judgment on the HP Counterclaim in the amount of $9,810,364.12, inclusive of pre-judgment interest and costs (the "**HP Judgment**"). Attached and marked as **Exhibit "F"** is a copy of the endorsement, HP Judgment, and associated Writ of Enforcement. High Park's attempts to execute on the Writ of Enforcement was the main trigger for the NOI filing.

25. 420 Parent has appealed the HP Judgment to a single Justice of the Alberta Court of King's Bench, which is currently scheduled to be heard on December 5, 2024. Materials in relation to the appeal of the HP Judgment have been filed by High Park and 420 Parent.

26. The Applicants believe that there is merit to their appeal of the HP Judgment on the basis that the Applications Judge failed to consider the effect of set-off rights and other errors in law. Attached and marked as **Exhibit "G"** is a copy of the Brief of Argument filed by 420 Parent in relation to the appeal. High Park has filed their own Brief in response, which is attached as **Exhibit "H"**, and has indicated that they may wish to amend their materials to reflect further legal arguments relating to the effect of these proceedings.

27. The Applicants believe that the 420 Claim is a significant asset in the estate of 420 Parent, and intend to pursue the litigation in order to monetize this asset and bring value to the estate and stakeholders.

28. High Park and Tilray have advised the Applicants that they intend to participate in these proceedings, either through a vote on a proposal, a credit bid on assets through a SISP, or a sale

or assignment of their debt and security. An earlier hearing of the appeal will clarify their role in these proceedings.

29. While the 420 Claim and the Appeal are not technically part of the NOI Proceeding, they represent a significant asset and liability in the estates of the Applicants, and are therefore integral to the success of this restructuring process.

30. I am advised by my counsel and verily believe that the Commercial Coordinator has tentatively reserved September 13, 2024, at 2:00pm before Justice Simard for the appeal pending the outcome of this Application. Attached and marked as **Exhibit "I"** is a copy of the requesting letter to tentatively schedule the appeal and the approval received from the Court for the same.

31. I am further advised by my counsel and verily believe that all relevant parties to the appeal of the HP Judgment have confirmed their availability and willingness to proceed on September 13, 2024. I also understand that counsel are in the process of negotiating an interim schedule for steps leading up to the appeal.

E. CONCLUSION

32. I make this Affidavit in support of the Applicants' Application to extend the stay of proceedings and the time for filing a proposal by an additional 45 days, and for certain other ancillary relief, and for no improper purpose.

33. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology and the remote commissioning process has been utilized.

SWORN via video conference this 6 day of August, 2024.

ARCHER BELL
BARRISTER & SOLICITOR

SCOTT MORROW

This is Exhibit "A" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

_____

A Commissioner for Oaths
in and for the Province of Alberta

Form 49
Rule 13.19

B301-086304

COURT FILE NUMBERS	25-3086318 25-3086304 25-3086302
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
MATTER	IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD. and GREEN ROCK CANNABIS (EC 1) LIMITED
APPLICANTS	420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD. and GREEN ROCK CANNABIS (EC 1) LIMITED
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**STIKEMAN ELLIOTT LLP** Barristers & Solicitors 4300 Bankers Hall West 888-3rd Street SW Calgary, AB T2P 5C5 **Karen Fellowes, K.C. / Natasha Doelman** Tel: (403) 724-9469 / (403) 781-9196 Fax: (403) 266-9034 Email: kfellowes@stikeman.com / ndoelman@stikeman.com File No.: 155857.1002

Clerk's stamp

JUDICIAL CENTRE OF CALGARY
FILED
Jun 20, 2024
NB
by Email
CLERK OF THE COURT

C61256
COM June 27, 2024

AFFIDAVIT NO. 1 OF SCOTT MORROW
SWORN JUNE 19, 2024

I, Scott Morrow, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of 420 Investments Ltd. ("**420 Parent**"), 420 Premium Markets Ltd. ("**420 Premium**") and Green Rock Cannabis (EC 1) Limited ("**GRC**") (collectively, "**FOUR20**" or the "**Applicants**"). I have been the CEO of FOUR20 since January 1, 2021, and a member of the boards of directors since May 6, 2021.

2. I am responsible for overseeing the operations of the Applicants, their liquidity management and, ultimately, for assisting in their restructuring process. Because of my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise

stated. I have also reviewed the records and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon such information, I do verily believe such information to be true.

3. This affidavit is sworn in support of an application (the "**Application**") returnable before the Alberta Court of King's Bench (Commercial List) (the **"Court**") on June 27, 2024, for an Order:

(a) abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;

(b) extending the time within which the Applicants are required to file a proposal to their creditors for 45 days to August 12, 2024, pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "**BIA**");

(c) directing that the proposal proceedings and estates of the Applicants shall be procedurally consolidated and shall continue under a single estate (each individual estate being an "**Estate**", and the consolidated estate being the "**Consolidated Estate**"), authorizing and directing the Proposal Trustee (defined below) to administer the Estates making up the Consolidated Estate on a consolidated basis and permitting the Applicants to file a joint proposal to its creditors, and granting ancillary relief arising from the procedural consolidation of the Estates;

(d) authorizing and empowering the Applicants to obtain and borrow under an interim facility loan agreement (such facility, the "**Interim Facility**" and such agreement, the "**Interim Facility Agreement**"), the terms of which are still being negotiated and will be disclosed in a supplemental affidavit if an agreement is reached;

(e) granting the following super-priority charges on all the property, assets and undertaking of the Applicants (the "**Property**"):

i. an Administration Charge (the "**Administration Charge**") to KSV Restructuring Inc. ("**KSV**"), in its capacity as Trustee under the Notices of Intention to Make a Proposal filed by the Applicants (the "**Proposal Trustee**"), counsel to the Proposal Trustee and the Applicants' counsel, as security for their professional fees and disbursements up to the maximum amount of $300,000;

ii. a charge (the "**Interim Lender's Charge**") to secure the Applicants' obligations under the Interim Facility Agreement;

iii. a directors' and officers' charge (the "**D&O Charge**") in the amount of $721,000; and

iv. a key employee retention plan ("**KERP**") described in the Confidential Exhibit (as defined below) for certain key employees of the Applicants ("**KERP Employees**") and granting a charge as security for payments under the KERP, up to the maximum amount of $373,928.17 ("**KERP Charge**"); and

(f) granting the following priority to the Court-ordered charges on the Property of the Applicants;

i. First – Administration Charge;

ii. Second – Interim Lender's Charge;

iii. Third – D&O Charge; and

iv. Fourth – KERP Charge,

(g) an Order (the "**Sealing Order**") sealing **Exhibit "Q"** of this Affidavit (the "**Confidential Exhibit**") on the Court record in relation to the KERP and KERP Charge; and

(h) such further and other relief as this Honourable Court may deem just.

4. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

5. I have been advised by the Proposal Trustee that the Proposal Trustee supports the Application.

A. NOTICE OF INTENTION TO MAKE A PROPOSAL

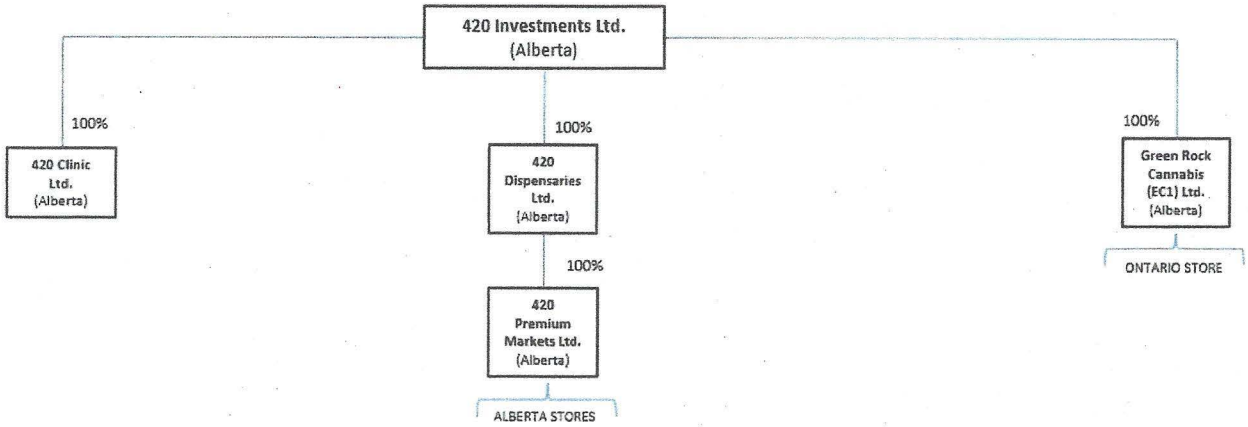
6. For the reasons described below, on May 29, 2024 (the "**Filing Date**"), each of the Applicants filed Notices of Intention to Make a Proposal with the Office of the Superintendent of Bankruptcy Canada under Part III of the BIA in Estate numbers 25-3086318, 25-3086304 and 25-3086302 (the "**NOIs**"). KSV was appointed Proposal Trustee in each of the Applicants' proposal proceedings. Attached and marked as **Exhibit "A"** are copies of the NOIs.

7. For efficiency and due to the related nature of the Applicants' business, the Applicants request the authorization of this Court to consolidate the three proposal proceedings in action nos. 25-3086318, 25-3086304 and 25-3086302 into a single proceeding. I believe this will allow for a more efficient restructuring and will benefit the Applicants' stakeholders.

B. FOUR20'S BUSINESS

(a) Corporate Structure

8. FOUR20 operates through a group of companies comprising the "FOUR20" brand. The organizational chart showing the corporate structure of FOUR20 is as follows:



9. Each of the Applicants are private corporations existing under the laws of the Province of Alberta, with their registered offices located in Calgary, Alberta. Copies of Alberta corporate searches for each of the Applicants are attached and marked as **Exhibit "B".**

10. 420 Parent is the ultimate parent company of a group of companies that includes the Applicants, 420 Clinic Ltd. ("**420 Clinic**") and 420 Dispensaries Ltd. ("**420 Dispensaries**"). The group carries on business as a cannabis retailer in Western Canada and Ontario.

11. 420 Parent has five directors: Freida Butcher; Gordon Cameron; Geoff Gobert; Scott Morrow; and Aaron Serruya. 420 Parent is owned by a small group of privately held individuals and corporations.

12. 420 Premium and GRC each have three directors: Freida Butcher; Geoff Gobert; and Scott Morrow. 420 Premium's sole shareholder is 420 Dispensaries, a wholly owned subsidiary of 420 Parent. GRC's sole shareholder is 420 Parent. 420 Dispensaries is a holding company and has no operations or assets other than its holding 420 Premium.

13. 420 Clinic was historically in the business of providing cannabinoid education and introducing patients to medical cannabis treatments through education and referring patients to authorized producers. 420 Clinic is no longer in operations.

14. All of the financial statements of FOUR20 are prepared on a consolidated basis with 420 Dispensaries and 420 Clinic. 420 Dispensaries and 420 Clinic have no material assets or liabilities (excluding the shares of 420 Premium held by 420 Dispensaries).

(b) FOUR20's Operations

15. FOUR20 is in the business of direct-to-consumer sales of cannabis and cannabis accessories through its retail locations. Prior to the filing of the NOIs, 420 Premium operated 33 licensed cannabis retail stores under the banner name of "FOUR20" in Alberta. GRC operates one licensed cannabis retail store in Ontario under the banner name "FOUR20".

16. FOUR20 operates in a highly regulated environment, in accordance with the *Cannabis Act* (Canada) and applicable provincial and municipal legislation. Each province and territory is responsible for determining the regime for the sale and distribution of cannabis within its jurisdiction. Among other things, these governments establish rules regarding how cannabis can be sold, how retail stores must be operated, where such stores can be located and who is allowed to sell cannabis. Adult-use recreational cannabis products are only permitted to be sold through retailers authorized by provincial and territorial governments.

17. As set out below, each provincial and territorial government has established its own rules and criteria for obtaining and maintaining a private cannabis retail licence. In general, all provinces and territories require:

(a) that a licence be obtained and maintained prior to the commencement of any activities with cannabis. The licensing application process considers the physical location of the proposed retail outlet, as well as the financial and personal backgrounds of key persons associated with the proposed licensed operation, including directors and officers of a corporation, investors, retail store managers and security personnel;

(b) that a licence is required for each cannabis retail store, and that the location of all cannabis stores is subject to municipal oversight/approval;

(c) that specified physical security measures be in place at the retail store location (including physical security requirements around locks, as well as visual monitoring and protection by way of a third-party monitored alarm system) to ensure that there is no unauthorized entry and/or unauthorized access to cannabis;

(d) certain requirements for employees of the proposed cannabis retail store, including background and/or criminal record checks and requirements for employee training prior to beginning their employment at the store; and

(e) that the licensee maintain and submit certain records, and be subject to inspection by the provincial or territorial regulator.

18. As of the date of filing NOIs, 420 Premium and GRC held all required permits and licences to sell cannabis at all then operated stores as follows:

(a) In Alberta, 420 Premium holds 33 licences to operate cannabis retail stores, issued by the Alberta Gaming, Liquor and Cannabis Commission;[1] and

(b) In Ontario, GRC held one licence to operate a cannabis retail store, issued by the Alcohol and Gaming Commission of Ontario.

(c) Employees

19. As of the Filing Date, the Applicants employed a total of 175 active employees and 10 employees on leave. Of those 175 active employees, 127 were paid hourly and 48 were paid by salary. The Applicants also engaged three part time contractors.

20. As of the Filing Date, the Applicants employed approximately 168 active employees in Alberta, and seven active employees in Ontario. The majority of the Applicants' employees work in retail operations.

21. None of the Applicants' employees are subject to a collective bargaining agreement. The Applicants do not have a pension plan in place.

(d) Leased Locations

22. All of 420 Premium's retail stores are operated from leased premises. 420 Premium also has a leased property in Calgary, Alberta, which it used as a corporate office. As of the date of filing the NOIs, 420 Premium was party to 44 leases. GRC operates from one leased premises in Ontario. Attached and marked as **Exhibit "C"** is a chart showing all FOUR20 leases as of the date of filing the NOIs.

23. After filing the NOIs, 420 Premium disclaimed 16 leases to preserve liquidity and facilitate the making of a viable proposal: seven operating locations, three subleased locations and four non-operating locations, including its head office (collectively, the "**Disclaimed Leases**"). Attached and marked as **Exhibit "D"** is a chart summarizing the Disclaimed Leases and copies of the notices of disclaimer (the "**Notices of Disclaimer**") sent with respect to each of those leased locations.

[1] This figure excludes licences that may still be held by the Applicants in connection with closed stores.

24. The Notices of Disclaimer in respect of the disclaimed locations were issued by FOUR20, in consultation with the Proposal Trustee, after it was determined that they were in the best interests of the respective companies, creditors, employees and other stakeholders, and necessary for the making of a viable proposal.

25. The Proposal Trustee supported the issuance of the Notices of Disclaimer for each of the Disclaimed Leases.

C. FINANCIAL POSITION OF FOUR20

26. A copy of FOUR20's unaudited consolidated financial statements for the fiscal year ended December 31, 2023, is attached as **Exhibit "E"**.

(a) Assets

27. As appears in FOUR20's Q4 2023 Financial Statement as at December 31, 2023, FOUR20 had assets with an unaudited book value of approximately $32,449,000, which consisted of the following:

Asset Type	**Value ($)**
Current Assets	
Cash	1,378,000
Trade and other receivables	515,000
Merchandise inventories	2,167,000
Prepaid and other assets	432,000
Non-Current Assets	
Deposits	552,000
Property and equipment, net	6,514,000
Right-of-use assets, net	17,207,000
Goodwill (inc. Intangibles)	3,684,000
Total Assets	**32,449,000**

(b) Liabilities

28. As appears in FOUR20's Q4 2023 Financial Statement as at December 31, 2023, FOUR20 has liabilities with an unaudited book value of approximately $30,720,000, which consisted of the following:

Liability Type	Value ($)
Current Liabilities	
Accounts payable and accrued liabilities	2,411,000
Debentures and loans[2]	8,452,000
Other current liabilities	82,000
Non-Current Liabilities	
Lease liabilities	19,775,000
Total Liabilities	**30,720,000**

29. FOUR20 lacks adequate working capital, with $4,492,000 in current assets and $10,945,000 in current liabilities as of December 31, 2023 (if the HP Loan (as defined below) is excluded from FOUR20's current liabilities, then the current liabilities are $3,945,000). Even if FOUR20 could realize on the full book value of its current assets, then it would still be unable to satisfy its current liabilities in the immediate term.

30. The Applicants sought creditor protection primarily as a result of the adverse outcome in the Tilray Proceeding (defined below). Additionally, as a result of unprofitable store locations and non-operating leases, the Applicants have experienced some ongoing financial liquidity issues.

(c) Shareholder Loans

31. As of the date of filing the NOIs, the shareholder loans of 420 Parent totaled $340,000, plus interest. There are no shareholder loans to 420 Premium and GRC.

(d) Secured Debt

32. Attached and marked as **Exhibit "F"** are copies of the personal property registry searches of 420 Parent, 420 Premium and GRC.

(i) Nomos Litigation Funding Agreement

33. On September 24, 2020, 420 Parent, as borrower, and Nomos Capital I-A LP ("**Nomos**"), as lender, entered into a litigation funding agreement (the "**Funding Agreement**") related to the Tilray Proceeding (as defined and described below).

34. Pursuant to the terms of the Funding Agreement, Nomos agreed to provide 420 Parent funding of legal fees and disbursements up to a maximum amount of $1,000,000 incurred in relation to the

[2] Includes the HP Loan of $7,000,000. As discussed below, the HP Loan was the subject of a summary judgment on February 7, 2024, which resulted in the HP Judgment being awarded against 420 Parent in the amount of $9,810,364.12.

Tilray Proceeding. The Funding Agreement provided Nomos with a priority secured interest in any proceeds arising from the Tilray Proceeding and Property of 420 Parent.

35. On the Filing Date, in accordance with Section 13 of the Funding Agreement, Nomos terminated the Funding Agreement, and the parties waived the ten-day notice requirement thereunder. Attached and marked as **Exhibit "G"** is a copy of the email evidencing the termination of the Funding Agreement.

36. Nomos elected to receiving the "Investment Repayment Amount" under the Funding Agreement, which means the aggregate amount of funds advanced by Nomos in respect of legal fees, disbursements and expenses, together with interest calculated at a rate of 12% per annum, compounded monthly.

37. As of the Filing Date, $1,062,660.57 was due and owing to Nomos under the terms of the Nomos Funding Agreement (the "**Nomos Loan**").

(ii) High Park Loan Agreement

38. On August 28, 2019, 420 Parent, High Park Shops Inc. ("**High Park**") and Tilray, Inc. ("**Tilray**") each entered into an arrangement agreement (the "**Arrangement Agreement**") relating to the purchase of outstanding shares in 420 Parent by High Park and Tilray (the "**Tilray Transaction**"). High Park was formed for the purpose of the acquisition of 420 Parent and is a subsidiary of Tilray.

39. In connection with the Tilray Transaction, 420 Parent, as borrower, and High Park, as lender, entered into a Loan Agreement (the "**HP Loan Agreement**") whereby High Park agreed to advance $7,000,000 to 420 Parent (the "**HP Loan**"). In accordance with the terms of the HP Loan Agreement, High Park advanced $5,000,000 to 420 Parent on August 29, 2019, and a further $2,000,000 on November 29, 2019. Attached and marked as **Exhibit "H"** is a copy of the HP Loan Agreement.

40. 420 Parent's obligations under the HP Loan Agreement are secured by a general security agreement dated August 28, 2019, executed by 420 Parent (the "**HP GSA**"). Pursuant to the GSA, the Applicants granted a charge on all 420 Parent's Property in favour of High Park. Due to the expiry of the registration of the HP GSA, the HP Loan ranks in second priority to the Nomos Loan. A copy of the HP GSA is attached as **Exhibit "I"**.

41. In late January and February of 2020, High Park and Tilray delivered a series of breach notices and notices that purported to terminate the Arrangement Agreement. Attached and marked as **Exhibit "J"** is a copy of the Notice of Termination of the Arrangement Agreement.

42. On February 21, 2020, 420 Parent commenced an action relating to the wrongfully terminated Arrangement Agreement (the "**420 Claim**"). High Park and Tilray each defended the 420 Claim. 420 Parent's position is that the Arrangement Agreement was wrongfully terminated. 420 Parent is seeking specific performance or, alternatively, damages in excess of $130 million. The 420 Claim has not yet been determined.

43. On March 11, 2020, High Park provided 420 Parent with a Notice of Acceleration, which demanded full payment of the HP Loan immediately. Attached and marked as **Exhibit "K"** is a copy of the Notice of Acceleration.

44. On March 20, 2020, High Park filed a counterclaim in relation to the HP Loan (the "**HP Claim**" and together with the 420 Claim, the "**Tilray Proceeding**") and three years later filed an application for summary judgment on March 2, 2023. On February 7, 2024, Applications Judge J.R. Farrington granted High Park summary judgment on the HP Claim in the amount of $9,810,364.12, inclusive of pre-judgment interest and costs (the "**HP Judgment**"). Attached and marked as **Exhibit "L"** is a copy of the HP Judgment and associated Writ of Enforcement.

45. As of the Filing Date, the HP Judgment remains outstanding. 420 Parent has appealed the HP Judgment to a Justice of the Alberta Court of King's Bench, which is currently scheduled to be heard on December 5, 2024.

(iii) Stoke Canada Finance Corp.

46. On June 26, 2023, 420 Premium and Stoke Canada Finance Corp. ("**Stoke**") entered into an asset-based loan agreement whereby Stoke agreed to provide to 420 Premium a revolving line of credit in the original principal amount of $500,000 to be evidenced by one or more promissory notes (the "**Stoke Line of Credit**"). The Stoke Line of Credit was secured by a general security agreement dated June 26, 2023. As of the date of filing, 420 Premium owed $300,497.48 to Stoke in relation to the Stoke Line of Credit.

(e) Unsecured Creditors

47. As of the date of filing the NOIs, the Applicants owed the following amounts to unsecured creditors:

(a) 420 Parent: $921,693.86;

(b) 420 Premium: $1,394,828.17; and

(c) GRC: $0.00.

48. The Applicants obligations to the Canada Revenue Agency are current.

D. EVENTS LEADING TO THE APPLICANTS' INSOLVENCY

(a) Market Conditions and Leased Locations

49. FOUR20 has been operating at a loss since its inception. While FOUR20's financial difficulties were driven by a variety of factors, the significant net losses suffered by the business are largely in relation market conditions and uneconomic and/or non-operating leased locations.

(i) Market Conditions

50. On April 13, 2017, the Government of Canada introduced Bill C-45 - the *Cannabis Act* (Canada) - intended to legalize the production and sale of cannabis for recreational purposes in Canada. After the Senate passed Bill C-45, the Government of Canada announced that the production and use of recreational cannabis would become legal on October 17, 2018.

51. I understand, based on my experience and exposure to the cannabis industry, that this industry has experienced a variety of challenges since its legalization including increased competition, oversupply of industry capacity, margin pressure; a decrease in the availability of adequate funding; a period in which the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**") froze licence distribution; and general regulatory uncertainty. There remains an entrenched black market for cannabis in Canada that, to my knowledge, continues to operate notwithstanding the strict regulations of the *Cannabis Act* (Canada). Each of these factors contribute to downward pressure on revenue, and in the case of the Applicants, has resulted in financial returns that are lower than what was initially expected when the cannabis industry was legalized. Given how many peer companies I have witnessed commence insolvency proceedings, I do not believe that the Applicants are not alone in their financial struggles.

(ii) Leased Locations

52. 420 Premium entered into several leases in anticipation of receiving licences from the AGLC. However, licences for these locations were ultimately not issued for a variety of unanticipated reasons, such as their proximity to a sensitive use area or a decline in expected revenue due to market deterioration and/or increased competition. 420 Premium also entered into leases for stores that were licensed and subsequently closed following a review of operating results and revised expectations regarding their potential profitability.

53. As a result, 420 Premium is party to multiple uneconomic leases. I understand that this situation is not unique to 420 Premium. To my knowledge, there are several major cannabis retailers in Canada that hold or held leases for anticipated cannabis retail stores that, for a variety of reasons, were never licensed by the applicable licensing authority and never ultimately opened. Similarly, I am aware of major cannabis retailers that entered into leases and opened or planned to open cannabis

retail stores but either closed the stores after opening or never proceeded to open them due to low profits or profit forecasts.

54. Lease obligations are a significant portion the Applicants' overall liabilities, representing approximately 64% of FOUR20's aggregate liabilities as of December 31, 2023. As of the Filing Date, the Applicants' lease obligations were approximately $19,553,000. The Applicants' lease obligations have impacted cash flows, and this impact has been exacerbated due to the retail locations related to these lease obligations not generating the level of revenue that they were anticipated to generate.

55. In an effort to downsize its business, 420 Premium negotiated out of 11 leases in exchange for paying significant settlement amounts for uneconomic and non-operating locations beginning in or around March 2020. Notwithstanding these efforts, FOUR20 continued to struggle with profitability in its remaining portfolio of locations on the Filing Date. After the Filing Date, 420 Premium disclaimed 16 leases in an effort to preserve liquidity and facilitate the making of a viable proposal, as discussed above.

(b) Ongoing Litigation with Tilray and High Park

56. As noted above, 420 Parent has been actively involved in the Tilray Proceeding since February 2020. 420 Parent believes that the 420 Claim is well-founded. The 420 Claim has not yet been determined. Tilray and High Park walking away from the Arrangement Agreement, and the resulting and on-going litigation has resulted in a net drain on 420 Parent's resources, including that it was required to obtain the Nomos Loan and became further indebted.

57. On February 7, 2024, Applications Judge J.R. Farrington granted the HP Judgment in the amount of $9,810,364.12. The 420 Claim and HP Judgment are closely related and stem from the Arrangement Agreement with Tilray and High Park, as the HP Loan was advanced for the purposes of building out and opening new locations.

58. As a result of the HP Judgment and related enforcement steps, the Applicants urgently required creditor protection to stabilize its business operations with a view to restructuring its business. If High Park were to enforce the HP Judgment, it would have disastrous consequences for the Applicants' stakeholders, landlords, suppliers and 185 employees, and its ability to remain a going concern.

E. POST-FILING ISSUES

(a) Cash Management System

59. In the ordinary course of business, 420 Premium uses a cash management system (the "**Cash Management System**") to, among other things, collect funds and pay expenses associated with its retail operations. This Cash Management System provides 420 Premium with the ability to efficiently and accurately track and control revenue and to ensure cash availability. The Applicants had 44 bank accounts on the day the NOIs were filed.

60. 420 Premium uses Moneris Solutions Corporation ("**Moneris**") to facilitate credit and debit card purchases. Attached and marked as **Exhibit "M"** is a copy of the National Merchant Agreement with Moneris (the "**Merchant Agreement**").

61. 420 Premium typically receives the proceeds of a sale facilitated by Moneris within a matter of days; however, a customer may initiate a chargeback at a later date or 420 Premium may be assessed a fee, penalty, or amount that creates a debt owing by 420 Premium to Moneris. On June 10, 2024 (i.e., post-NOI filing), without any advance notice or effort to engage with the Applicants or the Proposal Trustee, the Applicants received notice from Moneris that, effective immediately, Moneris would allocate 25% of value of the transactions it processes to a reserve (the "**Reserve**") until the Reserve has $100,000. Moneris also shifted to collecting interchange and other fees on a daily basis. Moneris alleges that the Reserve and change in payment terms is necessary due to the "increased financial risk" to Moneris of providing the Applicants with payment processing services. Moneris characterizes the payments it sends 420 Premium as an advance of credit and that it is not required to advance further money or credit to an entity subject to a notice of intention under the BIA. Attached and marked as **Exhibit "N"** is a copy of the notice received from Moneris in relation to the Reserve.

62. The effect of Moneris allocating 25% of transaction proceeds to the Reserve was unexpected and has resulted in reduced cash flow receipts. The Applicants have concerns that the reduced cash flows will be detrimental to their financial situation and hinder their ability to restructure. The Applicants' ability to order inventory for stores may be impacted.

(b) Garnished Funds from 420 Parent

63. In connection with the HP Judgment, High Park served a Financial Statement of Debtor under the *Civil Enforcement Act* and took steps to garnish 420 Parent's Bank of Montreal bank account on the Filing Date.

64. Since High Park served the garnishee summons, the Bank of Montreal seized approximately $15,500 (the "**Garnished Funds**") from 420 Parent's bank account notwithstanding the stay of

proceedings in place for the NOIs. The exact quantum of the Garnished Funds is unknown as the Applicants no longer have access to the relevant bank account. The Bank of Montreal had notice of the Applicants' NOIs at the time it garnished the Garnished Funds because it had been sent a letter advising it of the Applicants NOIs. Attached and marked as **Exhibit "O"** is a copy of this letter. Despite multiple requests from the Proposal Trustee and 420 Parent to the Bank of Montreal, the Garnished Funds have not been returned to 420 Parent.

65. It is my understanding that the Bank of Montreal has transferred the Garnished Funds to the Accounting Department of the Alberta Court of King's Bench and that the Accounting Department is currently in possession of the Garnished Funds. If, however, this transfer has not yet happened and the Bank of Montreal is still in possession of the Garnished Funds, then I understand, based on correspondence between Ryan Pernal (the Applicants' Chief Financial Officer) and a representative of the Bank of Montreal, that the Bank of Montreal will require a "withdrawal letter from the court to release the garnishment."

66. 420 Parent requires the Garnished Funds for its continued operations. Recovery of the Garnished Funds will assist the Applicants' ability to fund on-going obligations during the proposal proceedings. It is, accordingly, important that the 420 Parent recover the Garnished Funds.

F. REQUIREMENT FOR AN EXTENSION OF TIME TO FILE A PROPOSAL

67. As a result of the NOIs, the Applicants must file a proposal on or before June 28, 2024 (the "**Filing Period**"), unless an extension is granted.

68. Since the Filing Date, the Applicants have acted, and continue to act, in good faith and with due diligence and have taken the following steps, among others:

(a) prepared and analyzed lists of creditors and identified issues specific to certain creditors;

(b) provided the Proposal Trustee with access to their books and records;

(c) worked with the Proposal Trustee on the preparation of cash flow projections and weekly monitoring for the Applicants;

(d) communicated with stakeholders regarding the proposal process;

(e) worked with counsel and other professional advisors in beginning to develop a proposal;

(f) sent 16 Notices of Disclaimer in relation to the Disclaimed Leases for uneconomic, subleased or non-operating locations;

(g) terminated 15 full time employees and 34 part time employees;

(h) consolidated inventory to operating stores from locations subjected to the Disclaimed Leases;

(i) reduced compensation in employment and contractor contracts;

(j) sent a Notice of Disclaimer in relation to the head office space and have moved to a remote working environment;

(k) commenced the process of creating a sales and investment solicitation process and liaised with potential bidders; and

(l) reviewed operating expenses, pursued the collection of accounts receivable and took other steps to ensure the Applicants remain financially viable during these proposal proceedings.

69. The requested extension of the Filing Period is being sought to protect the Applicants' business and operations while the Applicants work to develop a viable proposal for the benefit of stakeholders. I believe that preserving the value of the business in the proposed manner will achieve a better result for the Applicants' stakeholders than would a liquidation. I believe that the requested extension of the Filing Period will allow the Applicants, in consultation with the Proposal Trustee, to:

(a) engage a sales advisor to canvass the market for potential refinancing or asset sale transactions, including a potential sale of the 420 Claim; and

(b) continue formulating a viable proposal for the benefit of all stakeholders.

70. Without an extension of the Filing Period, the Applicants would be forced to shut down operations, which would be extremely detrimental to the Applicants' landlords, suppliers, lenders, customers, and employees. Accordingly, it is the Applicants' view that an extension of the Filing Period will not materially prejudice any of the Applicants' creditors.

71. To date, I have not been made aware of any creditor of the Applicants intending to object to an extension of the stay of proceedings and time for filing a proposal.

72. The Applicants believe that an extension of the Filing Period is necessary and appropriate in the circumstances.

G. REQUIREMENT FOR ADMINISTRATION CHARGE

73. The requested relief contains a first priority Administration Charge against the Applicants' Property as security for professional fees and disbursements incurred by their counsel, the Proposal Trustee and the Proposal Trustee's counsel both prior to and after the filing of the NOI.

74. The Applicants require the services of their counsel, the Proposal Trustee and the Proposal Trustee's counsel to develop a viable proposal. I believe that the Administration Charge is reasonable and appropriate in the circumstances and critical to the success of the Applicants' proposal proceedings.

H. REQUIREMENT FOR INTERIM FACILITY AND INTERIM LENDER'S CHARGE

75. Attached and marked as **Exhibit "P"** is a projected 13-week cashflow statement that the Applicants have prepared with the assistance of the Proposal Trustee.

76. The Applicants are in the process of negotiating the Interim Facility Agreement. The Interim Facility is intended to cover any potential liquidity shortfall. The terms of the Interim Facility Agreement, if an agreement is reached, will be provided to this Court as part of a supplemental affidavit. It is expected that a term of the Interim Facility Agreement will be that the Interim Facility be secured by a second ranking super-priority Interim Lender's Charge.

I. REQUIREMENT FOR A D&O CHARGE

77. In order to continue to carry on business during these proposal proceedings, the Applicants require the active and committed involvement of their directors and officers ("**D&Os**"). The requested relief contains a third ranking charge against the Applicants' Property as security for any obligations and liabilities the Applicants' D&Os may incur after the Filing Date, up to the maximum amount of $721,000.

78. The Applicants maintain directors' and officers' liability insurance (the "**D&O Insurance**") for the D&Os which provides up to $2 million in aggregate coverage for all claims. It is uncertain whether the coverage provided by the D&O Insurance will be sufficient to adequately protect the D&Os from liability and/or to incentivize the D&Os to continue their service with the Applicants.

79. A successful restructuring of the Applicants will only be possible with the continued participation of the Applicants' D&Os. These individuals have specialized expertise and relationships with the Applicants' stakeholders. In addition, the D&Os have gained significant knowledge of the cannabis industry that cannot be easily replaced or replicated.

80. Since the continued assistance of the D&Os is required to ensure the success of the proposal proceedings, the D&Os require, in turn, that the Applicants indemnify them for liabilities which they may incur in the context of their positions with the Applicants after the filing of these proposal proceedings, including liabilities relating to employee vacations accrued prior to these proposal proceedings.

81. Although the Applicants intend to comply with all applicable laws and regulations, including with respect to the timely remittance of deductions at source and federal and provincial sales taxes, the directors and officers remain nevertheless concerned about their potential personal liability, particularly in the present circumstances.

82. The Applicants therefore seek the D&O Charge over its Property in the amount of $721,000 favour of the D&Os in connection with any claim which may be asserted against them from and after the commencement of these proposal proceedings, including employee related claims, to the extent that such claims are not sufficiently covered by the D&O Insurance.

83. The Proposal Trustee has advised that it is supportive of the proposed D&O Charge and quantum thereof.

84. I believe that in these circumstances, the requested D&O Charge is reasonable and adequate given the corresponding potential exposure of the Applicants' D&Os to personal liability. The quantum of the D&O Charge was specifically sized by the Applicants, in consultation with the Proposal Trustee, taking into account the exposure to the D&Os for unpaid employee wages and related source deductions, excise tax payable, and employee termination and vacation pay based upon the potential director liabilities that could be outstanding at any time during the proposal proceedings.

85. The proposed D&O Charge would apply only to the extent that the D&Os do not have coverage under the D&O Insurance, or there is insufficient coverage.

J. REQUIREMENT FOR A KERP AND KERP CHARGE

86. Prior to and since the filing of the NOIs, the Applicants' employees and officers have been working tirelessly to consider and implement the steps required to both stabilize and restructure the Applicants' business. In particular, the KERP Employees have expended significant time and effort in demanding circumstances to stabilize the Applicants' business and preserve value for its stakeholders.

87. As with any company in creditor protection proceedings, there is significant uncertainty regarding the employment future of the Applicants' employees (either with the Applicants or a prospective investor in, or purchaser of, its assets and business). This uncertainty, combined with the need to

continue the Applicants' day-to-day operations, preserve value of the companies and undertake significant work required to guide the Applicants' restructuring efforts, have emphasized the importance of retaining the KERP Employees.

88. In consultation with its legal counsel and the Proposal Trustee, the Applicants have developed a draft key employee retention plan ("**KERP**"), the terms and conditions of which are set forth in the Confidential Exhibit (**Exhibit "Q"** hereto) for which the Applicants seek the Sealing Order.

89. The KERP identifies KERP Employees that are critical to the implementation and success of the proposal proceedings. The KERP Employees have been drawn from a broad range of various teams and departments within the Applicants' business and include members of its senior management, operations, human resources and finance teams. They collectively provide critical leadership, experience and resources to run the Applicants' business operations.

90. In addition to the day-to-day operations of the Applicants, the retention of the KERP Employees will be significant to the Applicants in completing the necessary steps to successfully restructure in the proposal proceedings. They will provide strategic and technical direction for the restructuring efforts and will be necessary to identify, develop and implement initiatives intended to maximize value.

91. I believe that the KERP Employees will have more certain employment opportunities available to them with other companies due to their experience and expertise. Without the benefit of the KERP, there is a very real and genuine risk that the KERP Employees will consider other employment opportunities.

92. The Applicants have considered the roles of the KERP Employees in both its ongoing business operations and its restructuring efforts in light of the role played by the Proposal Trustee and do not believe there is any unwarranted duplication of roles.

93. Under the terms of the KERP each of the KERP Employees will receive a retention payment (the "**Retention Payment**") as an incentive to continue their respective employment for the duration of the proposal proceedings, which shall be earned in the following manner:

(a) 25% of the total Retention Payment and the end of week 7 of the proposal proceedings; and

(b) 75% of the remaining total Retention Payment following the closing of an asset sale transaction or a restructuring transaction that results in the conclusion of the proposal proceedings.

94. The Retention Payment will only be paid to the respective KERP Employees if they have not resigned or been terminated for cause. If the KERP Employees are terminated without cause, the full amount of the Retention Payment(s) then due and owing (to the extent not already paid) will be payable upon termination.

95. It is anticipated that the Retention Payments payable under the KERP will be funded out of the Applicants' cash flow. To ensure that the KERP Employees receive reasonable assurances that their entitlements under the KERP are secure in light of the Applicants' proposal proceedings, the Applicants' requests a KERP Charge in respect of their obligations under the KERP in a maximum amount of $373,928.17 on account of anticipated Retention Payments. The KERP Charge is intended to provide the KERP Employees with a reasonable level of assurance the Retention Payments will be paid.

96. The proposed KERP Charge would rank fourth after the Administration Charge, Interim Lender's Charge and the D&O Charge. On June 18, 2024, the Applicants' Board of Directors approved the KERP and the associated KERP Charge.

97. The Proposal Trustee has advised that it is supportive of the approval of the KERP and the corresponding KERP Charge. Accordingly, I believe that it is appropriate in the circumstances for this Court to approve the KERP and grant the KERP Charge.

K. RESTRICTED COURT ACCESS

98. The Confidential Exhibit includes a list of the KERP Employees, their salaries, their Retention Payment, and a short summary of their roles and importance to the Applicants' business and restructuring efforts.

99. Disclosure of the information contained in the Confidential Exhibit will be prejudicial to the Applicants, the KERP Employees and others. Among other issues, disclosure of the Confidential Exhibit could (a) create morale and other issues as between employees who are either not subject to the KERP or are receiving different entitlements under the KERP; (b) allow the Applicants' business competitors and others to attempt to induce the KERP Employees to depart from their employment for more lucrative opportunities; and (c) make it more difficult for the Applicants to negotiate employment terms for replacement employees if required. In addition, and generally speaking, salary and compensation levels for employees is a particularly personal and private matter to employees.

100. The Applicants are proposing that the Confidential Exhibit be sealed on the Court file and not form part of the public record. In doing so, the Applicants believe that (a) the Sealing Order is as narrow as possible and only seeks to maintain the confidentiality the KERP Employees and KERP; (b) the

scope of the proposed Sealing Order is proportionate and restricted to only what is necessary; (c) there are no reasonable alternatives to the Sealing Order that will prevent the risk of disclosure; and (d) the benefits of the Sealing Order outweigh the risks.

L. CONCLUSION

101. I make this Affidavit in support of the Applicants' Application to extend the stay of proceedings and the time for filing a proposal by an additional 45 days, and for certain other ancillary relief, and for no improper purpose.

SWORN at Calgary, Alberta, this 19 day of June 2024.

NATASHA DOELMAN
BARRISTER & SOLICITOR

SCOTT MORROW

This is Exhibit "B" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

_____

A Commissioner for Oaths
in and for the Province of Alberta

Form 10
[Rule 3.25]

CLERK OF THE COURT
FILED
Clerk's Stamp
FEB 21 2020
JUDICIAL CENTRE OF CALGARY

COURT FILE NUMBER	2001-02873
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF(S)	420 INVESTMENTS LTD.
DEFENDANT(S)	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**JENSEN SHAWA SOLOMON DUGUID HAWKES LLP** Barristers 800, 304 - 8 Avenue SW Calgary, Alberta T2P 1C2 Robert Hawkes, QC Phone: 403-571-1544 Fax: 403-571-1528 File: 14826-001

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

A. The Parties

1. The Plaintiff, 420 Investments Ltd. ("**Four20**") is a private company incorporated and operating in Alberta. Four20 operates a network of retail cannabis stores located in Alberta.

2. The Defendant Tilray, Inc. ("**Tilray**") is a large multi-national publicly traded company incorporated in Delaware and operating, *inter alia*, throughout North America and in Europe. Tilray was the first NASDAQ listed cannabis company, and currently cultivates and sells cannabis.

3. The Defendant High Park Shops Inc. ("**High Park**") is incorporated in British Columbia. High Park is indirectly a wholly owned subsidiary of Tilray.

B. Overview

4. Tilray and High Park (the "**Defendants**") entered into an Arrangement Agreement dated August 28, 2019 (the "**Arrangement Agreement**") with Four20 and Geoff Gobert, Freida Butcher and Charles Mannix (collectively, the "**Representative Shareholders**"). Tilray, through High Park, was to acquire all issued and outstanding securities of Four20 for a total purchase price of up to $110,000,000, in cash or shares and promissory notes. Following the acquisition, Four20 was to operate as a wholly owned subsidiary of High Park, and an indirect subsidiary of Tilray.

5. At some point following execution of the Arrangement Agreement, the Defendants had a change of heart and no longer wished to proceed with the acquisition of Four20. In consequence the Defendants have not proceeded diligently under the Arrangement Agreement and are breaching the Arrangement Agreement by failing to take reasonable or timely steps to obtain the regulatory approvals needed to close the transaction.

6. Specifically, the Defendants have failed or refused to work jointly with Four20 on the regulatory approvals and have also failed to provide Four20 with the documentation and communications which would have revealed the Defendants' breach of the Arrangement Agreement. Both breaches occurred despite the Defendants' positive obligations under the Arrangement Agreement to provide Four20 with such documentation and to work directly with Four20 to obtain the necessary regulatory approval.

7. When five months had passed following execution of the Arrangement Agreement, the Defendants attempted to scuttle the Arrangement, issuing false, improper and deficient termination notices to Four20 in late January and early February of 2020 (the "**Notices**"). The Notices advanced false allegations, lacked particulars, claimed mutually agreed upon actions as breaches, and were entirely without merit.

8. The Defendants have breached the Arrangement Agreement and have failed to perform their contractual obligations in good faith. The Arrangement Agreement reflects a detailed, negotiated and unique agreement, pursuant to which Four20 was agreeing to fold its retails sites, brand and operations into a multi-national corporate group that is currently cultivating cannabis and operating throughout North America.

9. Damages alone would be insufficient to compensate for the loss of that opportunity. The inadequacy of damages was expressly recognized by the parties to the Arrangement Agreement, in Article 9.12, and the parties have agreed that specific performance is the appropriate remedy for any breach of the Agreement. Four20 seeks an order for specific performance, and damages in the alternative, along with solicitor client costs.

C. The Arrangement Agreement

10. The transaction the Defendants are trying to undo was the result of a long process between the parties starting in April of 2019 and culminating with the execution of the Arrangement Agreement, effective August 28, 2019. This process included months of due diligence and negotiations, offers and counteroffers, a non-binding letter of intent, further negotiations and due diligence, a heavily negotiated arrangement agreement and, finally Four20, the Representative Shareholders and the Defendants entered into the Arrangement Agreement effective August 28, 2019.

11. The bargain ultimately struck was that Tilray, through High Park, was to acquire all issued and outstanding securities of Four20 for a total purchase price of up to $110,000,000, to be paid in two parts at closing:

a. $70,000,000 in Tilray shares or cash; and

b. Up to $40,000,000 in contingent (based on future store openings) promissory notes.

12. Following the acquisition, Four20 was to operate as a wholly owned subsidiary of High Park and an indirect subsidiary of Tilray. Post-execution of the Arrangement Agreement, Four20:

a. Applied for and obtained an interim approval order ("**Interim Order**") from the Court on September 20, 2019;

b. Held a shareholder meeting and obtained approval of the arrangement resolution prior to October 17, 2019;

c. Applied for and obtained a final approval order ("**Final Order**") from the Court, pursuant to 193(9) of the *Business Corporations Act*, RSA 2000, c B-9 on October 17, 2019; and

d. Took all steps required of it under the provisions of the Arrangement Agreement in good faith.

13. The terms of the Arrangement Agreement include, *inter alia*:

a. The Defendants must use commercially reasonable efforts to consummate and make effective the Arrangement, including efforts to satisfy all conditions precedents in the Arrangement Agreement, refrain from action which is inconsistent with the Arrangement Agreement and to carry out the terms of the Final Order;

b. All parties were to prepare and file all necessary documents to seek regulatory approvals;

c. All parties were to use commercially reasonable efforts to obtain and maintain regulatory approvals;

d. All parties were to cooperate with each other in obtaining the regulatory approvals, including providing one another of all notices and other correspondence from any government authority;

e. All parties were to cooperate and keep each other fully informed as to the status, process and proceedings related to obtaining the regulatory approvals, including promptly notifying each other of communications from any government authority;

f. Four20 and High Park were to notify each other in writing of any communications from any government authority relating to any retail cannabis license held or applied for by either Four20 or High Park; and

g. The parties were to obtain government approvals that were required as conditions precedent to closing the Arrangement Agreement.

14. In addition, the Arrangement Agreement imposed stringent and significant interim restrictions on Four20's management and operations in the period leading up to closing the Arrangement transaction, including restrictions barring Four20 from:

a. Deviating from the ordinary course of business, which restricted Four20's ability to take advantage of new opportunities;

b. Acquiring new assets;

c. Making or committing to any single capital expenditure in excess of $50,000, or $250,000 in aggregate;

d. Amending or terminating any material contracts;

e. Entering into material contracts, subject to time and termination restrictions;

f. Raising capital, borrowing or extending existing indebtedness;

g. Making any investments;

h. Making commitments on any material claims or rights;

i. Commencing, settling or compromising any Actions;

j. Incurring expenses related to any Action;

k. Increasing employee remuneration;

l. Hiring new employees above a certain salary threshold, including hiring a new President;

m. Entering into transactions with affiliates;

n. Making changes to the accounting methods, principles or policies;

o. Changing any tax elections;

p. And other obligations with respect to accounts payable, accounts receivable, licensing, changes to existing insurance and authorizing retail location designs.

("**Interim Restrictions**")

15. Further, the Defendants insisted, and Four20 agreed, that the Defendants could attend Four20's board meetings, and receive all critically sensitive pricing, supplier, sales and operating expense data. The Defendants have taken full advantage of that access, which was not an issue when it was contemplated that:

a. The interim, pre-closing, period would be no longer than necessary;

b. The Defendants would proceed with the Arrangement transaction as agreed; and

c. The Defendants would proceed to perform their obligations under the Arrangement Agreement diligently and in good faith.

Currently, however, the Defendants are seeking to terminate the Arrangement transaction while still holding interests in various other Alberta based competing cannabis retailers. In this context Four20 has significant concerns about the confidential nature of its information and the use of such information going forward, if the Defendants continue to refuse to close the Arrangement transaction.

16. The Defendants were to use commercially reasonable efforts to satisfy all conditions precedent in the Arrangement Agreement, and to carry out the terms of the Interim Order and the Final Order in good faith.

D. The Defendants' Breach of Contract

17. In order to close the Arrangement Agreement, the Defendants are required to obtain certain regulatory approvals from the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**"). They agreed under the Arrangement Agreement to pursue these regulatory approvals with reasonable effort.

18. The only condition precedent still to be fulfilled under the Arrangement Agreement is the requirement that the Defendants obtain approval to operate retail cannabis outlets ("**Retail Cannabis License**") from the AGLC.

19. Despite this, the Defendants have failed or refused to diligently pursue proper licensing with AGLC, and to consult Four20 or keep them fully informed as to the status of the regulatory approvals and licensing procedure. These Actions by the Defendants were and are a breach of the Arrangement Agreement and have delayed and impeded closing of the Arrangement Agreement.

20. The Defendants are in breach of the Arrangement Agreement, particulars of which include that they have failed or refused to:

    a. Use reasonable efforts to satisfy the condition precedents and carry out the Final Order;

b. Diligently pursue regulatory approvals;

c. Cooperate with Four20 in connection with obtaining the regulatory approvals, and have specifically failed to share information and correspondence from government authorities with regards to the regulatory approvals;

d. Keep Four20 fully informed as to the status of and proceedings related to obtaining the regulatory approvals;

e. Consult with Four20 in attempts to obtain the regulatory approvals or correspond with the government authorities; and

f. Notify Four20 of communications from government authorities.

21. Instead, the Defendants have taken actions which are inconsistent with, prevent, delay or impede closing of the Arrangement Agreement, most recently advancing spurious claims of breach and termination.

E. The Defendants Have Advanced Spurious Breach and Termination Allegations

22. On January 28, 2020 the Defendants gave notice and alleged that Four20 was, or would be at the time of closing, in breach of the Arrangement Agreement ("**Breach Notice**").

23. On February 4, 2020 the Defendants sent a second notice which alleged Four20 had caused a Company Material Adverse Effect ("**Company MAE**") by virtue of the breaches alleged on January 28, 2020. High Park also sent notice of their intention to terminate the Arrangement Agreement as a result of the Company MAE ("**Termination Notice**").

24. The Notices were deficient as they failed to provide enough detail to allow Four20 to cure such alleged breaches. The Arrangement Agreement specifically provides that any breach notice must specify "in reasonable detail all breaches" so as to provide the party alleged to have been in breach with an opportunity to cure. The Breach Notice failed to provide detail, let alone reasonable detail of all breaches. The Company MAE was based

on the deficient Breach Notice and the Termination Notice was similarly without foundation.

25. Further, under the Arrangement Agreement High Park could only terminate the transaction on its own behalf or on behalf of Tilray in certain circumstances, including if:

    a. A breach by Four20 occurs that causes a condition precedent not to be satisfied and such a breach is incapable of being cured or is not cured (a "**Cure Breach**"); or

    b. A Company MAE occurs.

26. Importantly, the Defendants are not allowed to claim a Cure Breach, while they are in breach of the Arrangement Agreement and such breach causes a condition precedent not to be satisfied. As a result of the Defendants' breaches, as set out above, the Defendants were and are unable to assert a Cure Breach.

27. The Arrangement Agreement defines Company MAE as effects that would be materially adverse to the business carried out by Four20 and its subsidiaries, but excludes:

    a. Changes affecting the Canadian cannabis industry generally;

    b. Changes affecting the Canadian retail industry generally;

    c. Changes to the market price of cannabis;

    d. General economic, financial, currency exchange, security or commodity market conditions in Canada or the United States;

    e. The announcement of the Arrangement Agreement or related transactions; and

    f. Any action taken or omitted by Four20 or its subsidiaries that is required under the Arrangement Agreement,

unless such changes disproportionately affect Four20 compared to other companies of similar size in the industry.

28. Both the Breach Notice and the Termination Notice are without foundation and cannot be relied upon by the Defendants to evade closing the transaction approved by the shareholders and Court, as set out in the Arrangement Agreement, as:

    a. Four20 has been and remains compliant with the Arrangement Agreement in pursuing consummation of the Arrangement Agreement. Four20 is capable of meeting all condition precedents of the Arrangement Agreement;

    b. The Defendants have failed to provide sufficient details which would reasonably allow Four20 to understand what specifically it is alleged to have done or, more to the point, cure the alleged breaches;

    c. The Defendants are in breach of the Arrangement Agreement and therefore are unable to unilaterally terminate the Arrangement Agreement.

    d. Even if Four20 has breached the Arrangement Agreement, which is denied:

        i. The general nature of the breaches alleged appear capable of being cured, but that has been prevented by the Defendants' neglect to provide particulars;

        ii. The alleged breaches appear to be so minor as to not impair Four20's business to a level that would allow termination;

        iii. Such breaches, or some of them, are due to the fault of the Defendants; and

        iv. Any such breaches, even in aggregate, do not constitute a Company MAE.

F. The Bridge Loan

29. On August 28, 2019 Four20 and High Park entered into a loan agreement (the "**Loan Agreement**") whereby High Park would make available to Four20 an amount up to $7,000,000 (the "**Bridge Loan**").

30. Pursuant to the Loan Agreement Four20 used the Bridge Loan for financing the construction, development and improvements of its existing and future licensed retail cannabis stores.

31. Pursuant to the Loan Agreement the Bridge Loan is repayable on the later of one hundred and eighty (180) days after the advance of the Bridge Loan or the termination of the Arrangement Agreement.

32. In conjunction with the Loan Agreement a general security agreement (the "**GSA**") was entered into giving High Park security interests in the assets of Four20 in exchange for the Bridge Loan. The Loan Agreement was entered into in contemplation of the Arrangement Agreement being completed.

33. It was always contemplated, and the Arrangement Agreement reflects, that the Bridge Loan was not to be repaid unless and until:

    a. The Defendants closed the Arrangement transaction, at which point it would have been an inter-company transaction, entirely within their control; or

    b. The Arrangement Agreement was legitimately terminated, in accordance with its terms, with the Defendants acting in good faith and having taken all reasonable steps to obtain regulatory approval and close the Arrangement transaction.

34. Those conditions do not presently exist, and the Bridge Loan is not repayable.

G. Post-Arrangement Developments

35. It is acknowledged that the cannabis industry is experiencing industry-wide challenges however such challenges were specifically contemplated in the Arrangement Agreement and are not grounds to terminate. It is further acknowledged that the Defendants are experiencing various pressures from its other operations that they may not have been anticipating. In particular, the Defendants' difficulties include:

    a. Tilray's share price declining by roughly 50% since the effective date of the Arrangement Agreement;

    b. Tilray recently having to lay off 10% of its staff;

    c. Tilray's declining cash position; and

    d. Such further and other difficulties that the Defendants may be experiencing;

    and are not grounds to claim a Cure Breach or a Company MAE.

36. Even if that were not the case, the Defendants' challenges do not justify the Defendants failing to perform their Arrangement Agreement obligations in good faith, including:

    a. Failing to take the necessary steps to diligently seek approval of the Retail Cannabis License;

    b. Serving deficient and meritless Breach and Termination Notices;

    c. Purporting to terminate the Arrangement Agreement to provide them with a basis to seek early repayment of the Bridge Loan; and

    d. Seeking to avoid the Arrangement transaction altogether.

37. At all times, the Defendants owed Four20 a common law duty of honesty and good faith in relation to the performance of their contractual obligations under the Arrangement

Agreement. Such a duty requires the Defendants to be honest, reasonable, candid and forthright with Four20 in relation to their performance of their contractual obligations.

38. Four20 had reasonable expectations that the Defendants would pursue performance of the Arrangement Agreement in good faith and would not seek to undermine Four20's interests in the Arrangement Agreement.

39. In breach of these duties of honest performance and good faith, the Defendants have misinformed Four20 about matters linked to the performance of the Arrangement Agreement and have taken steps to avoid the consummation of the Arrangement Agreement. Specifically, they have failed to diligently pursue the Retail Cannabis License, failed to keep Four20 informed as to their efforts (or lack of efforts) to obtain a Retail Cannabis License and have attempted to terminate the Arrangement Agreement on improper pretexts. The Defendants taken actions to avoid their contractual obligations and which are inconsistent with, prevent, delay or impede closing of the Arrangement Agreement, including advancing spurious claims of breach and termination.

40. As a result of the Defendants' breach of their common law duties, Four20 has or will suffer losses. Additionally, Four20 has suffered and continues to suffer from the Interim Restrictions imposed on them by the Arrangement Agreement and the Defendants' subsequent access to proprietary and sensitive pricing, supplier, sales and operating expense data. Again, Four20 only agreed to the Interim Restrictions and shared access on the reasonable expectation that the Defendants would pursue honest performance of the Arrangement Agreement as expeditiously as possible.

H. Real and Substantial Connection to Alberta

41. 420 proposes to serve this Statement of Claim on the Defendants outside of Alberta. Service outside of Alberta is necessary, and permitted pursuant to Rule 11.25(1), (2) and (3) of the *Alberta Rules of Court*, AR 124/2010, in that the *Ex Juris* Defendants are

incorporated outside of Alberta. 420 proposes to serve both Defendants at the agreed address for service, being:

1100 Maughan Rd
Nanaimo, BC, V9X 1J2
Canada

Alternatively, for service of High Park, High Park's registered office is:

Suite 2400, 745 Thurlow Street
Vancouver BC V6E 0C5
Canada

42. Where this Claim is served on the *Ex Juris* Defendants outside of Alberta, it will be served on the basis that a real and substantial connection exists between Alberta and the facts on which this action, and this Claim, are based. The connection arises from the fact that the parties to the Arrangement Agreement have:

    a. Attorned to the Alberta Courts; and

    b. Specifically agreed that any dispute under the Arrangement Agreement will be governed in accordance with Alberta Law; and

A central breach of the Arrangement Agreement is the Defendants' failure to diligently pursue and secure AGLC approval, which was a condition precedent that was to be performed in Alberta.

I. Remedy sought:

43. Four20 seeks:

    a. An Order for Specific Performance of the Arrangement Agreement;

    b. An Order or Declaration that Four20 has not breached the Arrangement Agreement, and further that there has been no Company MAE;

c. An Order or Declaration that the unilateral termination of the Arrangement Agreement by the Defendants is void and of no force and effect; and further that the Bridge Loan has therefore not become due;

d. An Order or Declaration that the Defendants have breached the Arrangement Agreement;

e. Damages for breach of contract, in an amount to be determined at trial;

f. Damages for breach of duty of honest performance and good faith in the discharge of the Defendants' obligations under the Arrangement Agreement, in the amount of $110,000,000 or for such other amount as this Honourable Court deems just;

g. Aggravated or punitive damages in the amount of $20,000,000.00;

h. Pre-judgment and post-judgment interest pursuant to the agreements referenced herein. In the alternative pre-judgment and post-judgment interest pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;

i. Costs on a solicitor-client basis, or alternatively on such basis as this Court deems just; and

j. Any such further and other relief as shall be requested at trial of this action and this Honourable Court deems just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

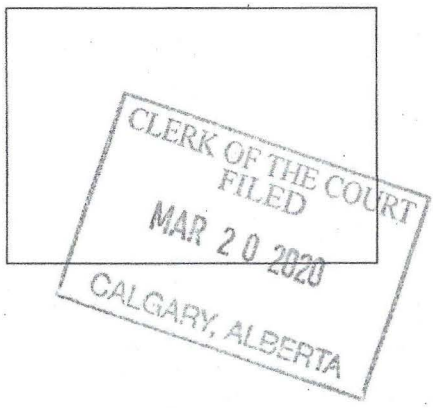
WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is Exhibit "C" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

_____

A Commissioner for Oaths
in and for the Province of Alberta



COURT FILE NUMBER	2001-02873
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF	420 INVESTMENTS LTD.
DEFENDANTS	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**STATEMENT OF DEFENCE**
PARTIES FILING THIS DOCUMENT	TILRAY INC. and HIGH PARK SHOPS INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF THE PARTIES FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP 3500 Bankers Hall East 855 – 2nd Street S.W. Calgary, Alberta T2P 4J8 Attention: David V. Tupper Peter L. Rubin Telephone: 403-260-9722 604-631-3315 Facsimile: 403-260-9700 604-631-3309 Email: david.tupper@blakes.com peter.rubin@blakes.com

STATEMENT OF FACTS RELIED UPON

1. The Defendants deny every allegation in the Statement of Claim except as specifically admitted in this Statement of Defence.

2. The Defendants admit paragraphs 1-3 of the Statement of Claim.

Overview

3. The Plaintiff, 420 Investments Ltd. ("**420**") has brought this action as a defensive tactic in response to (a) the lawful and entirely justified termination by the Defendants of an agreement between 420 and the Defendants (the "**Arrangement Agreement**"), and (b) the anticipated default by 420 under a related bridge loan made by the Defendant High Park Shops Inc. ("**High Park**") to 420, which default has now occurred and has resulted in a $7,000,000 secured debt obligation becoming due and payable by 420 to High Park.

4. After the parties entered into the Arrangement Agreement in August 2019, the Defendants proceeded diligently and in good faith towards a closing of the applicable transaction with 420. As part of those efforts, the Defendants, *inter alia*, provided the above noted loan to 420 to assist 420 in financing the construction, development and improvement of its existing licensed retail cannabis locations; participated in various meetings and discussions with 420; participated in regular update calls with 420; provided certain written consents and waivers to 420 at 420's request; and provided information to the regulatory agencies, all of which took place over several months and in furtherance of an anticipated closing of the transaction.

5. However, it became increasingly apparent to 420 that, if it continued to carry on business in the ordinary course, including adhering to the business plan that the parties agreed to, it would be unable to meet the conditions precedent to closing, including, but not limited to, being unable to meet its obligation to have sufficient cash on hand at closing (the working capital obligation). 420 ceased carrying on business in the ordinary course, failed and refused to follow the agreed upon retail business model and, generally speaking, sacrificed the financial health and prospects of the business and the possibility of implementing the very financial plan that underpinned the entire Arrangement Agreement. By doing so, 420 breached numerous provisions of the Arrangement Agreement. In addition, it transpired that 420 had also breached the warranties, representations and covenants in the Arrangement Agreement in other respects, including misrepresenting the status of two of its leases (leases that were material contracts, and expressly defined as such, under the Arrangement Agreement).

6. In early 2020, 420 provided its actual 2019 financial results to the Defendants and also provided revised financial projections for 2020 in respect of 420's business, as approved by 420's board of directors. The actual 2019 financial results had materially missed expected results. In addition, there were dramatic differences between the 2020 financial projections provided by 420 to the Defendants in August 2019 which underpinned the Arrangement Agreement and the updated information provided to the Defendants in January 2020:

2020			
	Projected in August 2019	Projected on January 27, 2020	% Change
# of Retail Cannabis Locations	22	13	(41%)
Target Annual Sales Per Location	$3,300,000	$1,975,000	(40%)
Revenue	$65,656,000	$22,339,000	(66%)
Gross Profit	$21,687,000	$6,792,000	(69%)
EBITDA	$5,219,000	($4,265,000)	(182%)
Free Cash Flow	$2,076,000	($5,380,000)	(359%)

7. By taking the steps it did, and failing to take others as contractually obligated, 420 breached numerous provisions of the Arrangement Agreement and fundamentally breached that agreement. Furthermore, a "Company Material Adverse Effect" occurred. The foregoing triggered a right on the part of the Defendants to terminate the Arrangement Agreement and call for the repayment of the above noted loan.

8. 420's allegations do not bear scrutiny and are not grounded in fact or law. Contrary to the allegations in the Statement of Claim, the Defendants pursued the implementation and consummation of the Arrangement Agreement with all reasonable diligence, in compliance with the agreement, in good faith and honestly. The Defendants exercised a contractual right to terminate and were lawfully entitled to do so.

The Agreements

9. On August 28, 2019, the Defendants, High Park and Tilray Inc. ("**Tilray**"), entered into the Arrangement Agreement with 420 and certain of its shareholders.

10. Pursuant to the Arrangement Agreement, the Defendants and 420 agreed to implement an arrangement under section 193 of the *Business Corporations Act*, R.S.A. 2000, c. B-9, involving the acquisition by High Park of all of the issued and outstanding shares of 420 in exchange for shares of Tilray (or, at High Park's election, cash) in an amount equal to $70 million, plus earnout payments in the maximum amount of up to $40 million structured as "Contingent Promissory Notes".

11. In conjunction and contemporaneously with the negotiation of the Arrangement Agreement:

(a) the parties agreed upon the terms of the "Contingent Promissory Notes" that would be issued to 420's shareholders under the proposed arrangement, as more particularly described at paragraphs 27-**Error! Reference source not found.** of this Statement of Defence (the "**Earnout Terms**");

(b) 420 delivered to the Defendants a disclosure letter dated August 28, 2019, the provisions of which (including exhibits) were deemed to be incorporated by reference in the Arrangement Agreement (the "**Disclosure Letter**");

(c) the parties agreed upon and approved a business plan that would govern 420's operations from the date of the Arrangement Agreement until the closing date for the agreement (the "**Effective Date**"), and thereafter once 420 had been acquired by High Park. The business plan was set out in a document entitled "Four20 Path to 22 Locations" (the "**Path to 22**"), which was incorporated by reference in the Disclosure Letter and in the Earnout Terms, and thus in the Arrangement Agreement; and

(d) the Defendants agreed to provide a loan to 420 for the purpose of supplying the capital which 420 represented was required in order to implement the Path to 22. Accordingly, on or about August 28, 2019, High Park and 420 entered into a loan agreement (the "**Loan Agreement**") pursuant to which High Park agreed to advance a loan (the "**Bridge Loan**") to 420 in the amount of up to $7,000,000.

12. The Path to 22 was a fundamental and critical element of the entire agreement between the parties. The operation of the Business in a manner consistent with the Path to 22, or in a manner that did not materially and adversely affect the operations, financial conditions, liabilities or prospects of the Business, was essential to the purpose and object of the parties in entering into the Arrangement Agreement and the Loan Agreement.

Good faith

13. At all material times, 420 owed a duty of good faith in the performance of all of its contractual obligations, including but not limited to:

(a) a duty of honest performance; and

(b) a duty not to act in such a manner as to defeat the very purpose and objective of the Arrangement Agreement or the Loan Agreement, or to deprive the Defendants of the benefit of either agreement, contrary to the original purpose and expectation of the parties.

14. In the alternative, it was an implied term of the Arrangement Agreement and of the Loan Agreement that 420 would not carry on its business, between the date of the agreement and the Effective Date, in such a way as to undermine or substantially nullify the object and expected benefit to the Defendants of the Arrangement Agreement (the "**Implied Term**").

15. In particular, 420 was bound, by virtue of its duty of good faith or alternatively the Implied Term, not to act in such a manner as to:

(a) substantially impair the value of 420's business; or

(b) prevent or substantially interfere with the implementation of the Path to 22.

The Arrangement Agreement

The Conditions of Closing

16. It was a condition precedent to the Defendants' obligations under the Arrangement Agreement ("**Condition of Closing**") that no "Company Material Adverse Effect" ("**MAE**") must have occurred between the date of the Arrangement Agreement and the Effective Date. A MAE was defined as including any "change, event, development, occurrence, state of facts, condition or effect" ("**Effect**") that was, or would reasonably be expected to be, individually or in the

aggregate with all other Effects, materially adverse to the "Business" or condition (financial or otherwise), assets, liabilities, operations, earnings or prospects of 420 or any of its subsidiaries. Excluded from the definition of a MAE were any changes affecting the Canadian cannabis industry generally, changes affecting the Canadian retail industry generally or changes in the market price of cannabis *except* to the extent that such changes related primarily to 420 and its subsidiaries, taken as a whole, or had a disproportionate effect on 420 and its subsidiaries compared to other companies of similar size operating in the same industries.

17. "Business" was defined in the Arrangement Agreement as the businesses carried on by 420 and its subsidiaries as of the date of the agreement, "being the businesses of the current operation, planned opening and ongoing support of recreational Cannabis retail stores in Canadian jurisdictions where the private sale of recreational cannabis is permitted."

18. The Conditions of Closing also included the following:

(a) the approval of the plan of arrangement contemplated by the Arrangement Agreement (the "**Plan of Arrangement**") by 420's shareholders and by this Court;

(b) all consents, approvals, actions, filings and notifications necessary for the proposed transaction having been obtained from the relevant governmental authorities and agencies;

(c) 420 having performed or complied in all material respects with all of the covenants, agreements and obligations that were required by the Arrangement Agreement to be performed or complied with prior to the Effective Date;

(d) the issuance to High Park or an affiliate by the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**"), concurrently with the closing of the Arrangement Agreement, of a "cannabis licence" for each location in respect of which 420 held a license as at the date the Arrangement Agreement (the "**Retail Cannabis Licences**"); and

(e) the estimated working capital of 420, as at the Effective Date, being at least $13,878,375 less a variance of $1,525,000 (the "**Working Capital Condition**").

19. It was a further Condition of Closing that the representations and warranties made by 420 must be true and correct in all material respects as of the Effective Date as if made on that date

and, with respect to those representations and warranties that were expressed in terms of materiality or material adverse effect, must be true and correct in *all* respects. 420's representations and warranties in the Arrangement Agreement included representations and warranties that:

(a) 420 and its subsidiaries had conducted the Business only in the ordinary course of business (the "**Ordinary Course Warranty**");

(b) there had been no MAE (the "**MAE Warranty**");

(c) there had been no action taken that would constitute a breach of covenant (the "**Covenant Warranty**");

(d) the Disclosure Letter provided a complete and accurate list of all the leases to which 420 was a party (the "**Leases Warranty**");

(e) all "Material Contracts" (defined as including the leases listed in the Disclosure Letter) were in full force and effect (the "**Material Contracts Warranty**"); and

(f) 420 was not insolvent (the "**Solvency Warranty**").

20. The Arrangement Agreement provided that it was subject to termination if the Effective Date did not occur prior to the "Outside Date", defined as May 28, 2020 or such later date as the parties might agree in writing. The Outside Date was fixed by the parties knowing that there was a potential for significant delay associated with the governmental approvals required to consummate the transaction, and, in particular, associated with the issuance by the AGLC of the Retail Cannabis Licences.

The Ordinary Course Covenant and the Path to 22

21. The covenants of 420 in the Arrangement Agreement included a covenant that, from the date of the Arrangement Agreement to the Effective Date, 420 and its subsidiaries would:

(a) conduct the Business (including current operations and planned openings) only in the ordinary course of business; and

(b) use commercially reasonable efforts to preserve intact the business organization and goodwill of the Business, to maintain the companies' relationships with

suppliers, clients and other business associates, and to keep available the services of their officers and employees as a group,

(the "**Ordinary Course Covenant**"). Without limiting the generality of the Ordinary Course Covenant, 420 expressly covenanted that it would not, and would not cause its subsidiaries to, make any material change in the operation of the Business except as required by the Arrangement Agreement, required by law or approved in writing by High Park in its sole discretion.

22. In specific reply to paragraphs 14 and 40 of the Statement of Claim:

(a) any restrictions imposed on the business of 420 by the Arrangement Agreement were voluntarily accepted by 420 for good and valuable consideration and any loss or damages caused to 420 by virtue of such restrictions (which loss or damages are not admitted but specifically denied) flowed from the terms of the Arrangement Agreement, to which 420 agreed, and not from any breach of the Arrangement Agreement by the Defendants;

(b) the terms of the Arrangement Agreement permitted 420 to seek the Defendants' approval for any material change in the operation of the Business;

(c) on more than one occasion, when asked, the Defendants provided their approval or a partial waiver of the relevant contractual requirements;

(d) if the Defendants withheld their approval of, or consent to, any material change in the operation of the Business, then such approval or consent was not withheld unreasonably or in breach of the Arrangement Agreement;

(e) had 420 sought the Defendants' approval or consent for any additional changes that the Defendants reasonably considered would be beneficial to the Business, condition, assets, liabilities or prospects of 420, or the successful implementation of the Path to 22, such approval or consent would have been granted; and

(f) the Defendants specifically deny that the Ordinary Course Covenant, or any provision of the Arrangement Agreement, has prevented or will prevent 420 from satisfying the Conditions of Closing or successfully implementing the Path to 22, as alleged in the Statement of Claim or at all.

23. At all material times, compliance with the Ordinary Course Covenant regarding the conduct of the Business required the continued implementation of the Path to 22 from the date of the Arrangement Agreement until at least the Effective Date.

24. The Path to 22 set out the measures that 420 was required to take toward achieving its goal of opening an additional 16 retail locations, for a total of 22 locations, by the end of May of 2020. These measures included:

(a) planning and executing construction;

(b) obtaining permits and licences;

(c) hiring and training employees; and

(d) purchasing cannabis products for sale.

25. The projected opening dates set out in the Path to 22 extended from late September 2019 to late May 2020.

26. In the Path to 22, 420 represented to the Defendants that:

(a) the 16 new locations were "projected to all be open by the end of May 2020"; and

(b) overall, "management feels that the plan as laid out is achievable while still maintaining the operating strength of the business."

The Earnout Terms

27. The parties agreed that the amounts, if any, payable to the former shareholders of 420 pursuant to the Earnout Terms would be contingent on the number of stores opened at new locations, as contemplated by the Path to 22. The Earnout Terms contemplated two payment dates (the "**Determination Dates**"). The first was six months after the Effective Date and the second was December 31, 2020. The amount payable on each Determination Date was to be calculated based on the number of new store locations that had been opened between the date of the Arrangement and the Determination Date. The full amount of the earnout would only be payable if all 16 new locations contemplated by the Path to 22 were open by the second Determination Date.

28. The Earnout Terms provided that, prior to the Effective Date, 420 was responsible for overseeing the implementation of the Path to 22. From the Effective Date until the second Determination Date, High Park would also ensure that 420 continued to adhere to the Path to 22.

Termination of the Arrangement Agreement

Breaches and MAE

29. 420 has breached the Arrangement Agreement, including the Ordinary Course Covenant, the Ordinary Course Warranty, the MAE Warranty, the Covenant Warranty, the Leases Warranty, the Material Contracts Warranty, the Conditions of Closing and the Implied Term, and has breached its duties of good faith. Particulars of 420's breaches include:

(a) as at the date of the Arrangement Agreement, two of the agreements listed as leases in the Disclosure Letter were not valid and subsisting leases, in full force and effect and in good standing, as represented by 420, but rather were offers to lease which remained subject to negotiation, in breach of the Leases Warranty and the Material Contracts Warranty; and

(b) subsequent to the date of the Arrangement Agreement, 420 made a number of changes to its Business and operations, including curtailing its cash expenditures. The changes were not approved by High Park as required by the Ordinary Course Covenant and were neither required nor permitted by the Arrangement Agreement.

30. In curtailing its use of cash, 420 was motivated by concerns extraneous to the purposes and objects of the Arrangement Agreement, including but not limited to the artificial inflation of 420's working capital in order to satisfy the Working Capital Condition.

31. Without limiting the foregoing, 420 curtailed its use of cash by:

(a) ceasing, curtailing or delaying construction of new locations;

(b) ceasing, curtailing or delaying the hiring and training of new employees;

(c) abandoning, suspending or delaying the implementation of the Path to 22; and

(d) breaching the Loan Agreement by failing to apply the Bridge Loan proceeds to finance the construction, development and improvement of its retail locations.

32. The steps taken by 420 to curtail its use of cash immediately and adversely affected the Business, condition (financial and otherwise), assets, liabilities, operations and prospects of 420. Accordingly these steps constituted or resulted in a MAE, either in themselves or alternatively in conjunction with other Effects (including but not limited to adverse market conditions disproportionately affecting 420). In particular, but without limiting the foregoing, the steps taken by 420:

(a) substantially undermined the prospects of the Business, including the prospects of successfully implementing the Path to 22;

(b) caused 420 to be disproportionately affected by market conditions affecting incumbent retail cannabis licensees; and

(c) caused 420 to be in breach of fundamental covenants, representations, warranties and conditions of the Arrangement Agreement including the Ordinary Course Covenant and the Implied Term.

33. The degree to which 420's breaches and the MAE have impaired 420's Business, operations, financial position and prospects, and the implementation of the Path to 22, is such as to make impossible:

(a) the satisfaction of the Conditions of Closing prior to the Outside Date or within any reasonable time thereafter;

(b) High Park's compliance with the requirement in the Earnout Terms to adhere to the Path to 22 after the Effective Date, should the Effective Date occur; and

(c) the achievement of the goal of opening 16 new store locations by the Second Determination Date so as to entitle the holders to payment of the contingent notes in the full amount of their face value.

Termination by the Defendants

34. Pursuant to the terms of the Arrangement Agreement, the Defendants had the right to terminate the agreement if there was a MAE. Further, pursuant to the terms of the Arrangement Agreement, the Defendants had the right to terminate the agreement when the breach by 420 of any representation or warranty or its failure to perform any covenant or agreement would result in the failure to satisfy a Condition of Closing, provided that notice and an opportunity to cure the

breach was given in accordance with the terms of the agreement. No prior notice or opportunity to cure was required when a MAE had occurred.

35. On February 4, 2020, the Defendants delivered a notice to 420 (the "**First Termination Notice**") notifying 420 that the Defendants were terminating the Arrangement Agreement effective immediately on the ground that a MAE had occurred.

36. Also on February 4, 2020, the Defendants delivered a notice to 420 in accordance with the terms of the Arrangement Agreement (the "**Breach Notice**") notifying 420 of the following breaches, and providing particulars of such breaches:

(a) breach of the Ordinary Course Covenant and the Ordinary Course Warranty;

(b) breach of the MAE Warranty;

(c) breach of the Covenant Warranty;

(d) breach of the Leases Warranty and the Material Contracts Warranty; and

(e) breach of the Conditions of Closing.

37. 420 failed to cure the breaches identified in the Breach Notice within the time permitted by the terms of the Arrangement Agreement.

38. On February 26, 2020, after the cure period for the Breach Notice had expired, the Defendants delivered a notice to 420 (the "**Second Termination Notice**") notifying 420 that, without prejudice to the First Termination Notice, it was exercising its right to terminate for failure to cure the breaches identified in the Breach Notice.

39. The First Termination Notice or, alternatively the Second Termination Notice, validly effected the termination of the Arrangement Agreement. The Defendants deny that the First Termination Notice, the Breach Notice and the Second Termination Notice, or any of them, was false, inaccurate, improper, deficient or otherwise ineffective as alleged in the Statement of Claim or at all.

40. At all material times, until the agreements were lawfully and properly terminated, the Defendants complied with their obligations under the Arrangement Agreement and the Loan

Agreement, including any obligations of good faith or honest performance that they may have owed to 420 in connection with those agreements, and in particular they:

(a) proceeded diligently and in good faith and undertook all commercially reasonable measures within their control to ensure that the Conditions of Closing, as described in paragraphs 16-19 of this Statement of Defence, were met, including, *inter alia*, diligently pursuing the issuance of all necessary licences, consents and other regulatory or administrative approvals necessary to consummate the transaction contemplated by the Arrangement Agreement (the "**Approvals**");

(b) cooperated with 420 in pursuing the Approvals, kept 420 regularly and fully informed as to the status of the processes and proceedings relating to obtaining the Approvals, and consulted with 420 as required by the Arrangement Agreement, including attending regularly scheduled meetings and telephone calls to discuss the progress of the approval process;

(c) cooperated with 420 in its efforts to implement the Path to 22;

(d) regularly participated in meetings and calls, consulted with 420 and otherwise engaged in positive efforts towards the consummation of the Arrangement Agreement;

(e) in furtherance of consummating the transaction contemplated by the Arrangement Agreement, provided consents and waivers at 420's request where such were required under the Arrangement Agreement; and

(f) otherwise fulfilled all of their obligations under the Arrangement Agreement and the Loan Agreement.

41. The Defendants specifically deny that they have:

(a) terminated the Arrangement Agreement, avoided the consummation of that agreement or otherwise taken action for any ulterior or improper purpose or motive, as alleged in the Statement of Claim or at all, and in particular deny that they have terminated the Arrangement Agreement for any reason other than the breaches by 420 of the Arrangement Agreement and the resulting MAE as described further in this Statement of Defence;

(b) failed or refused to diligently pursue the Approvals or to work jointly, cooperate or consult with 420 in its efforts to secure the Approvals, as alleged in the Statement of Claim or at all;

(c) failed to comply, or alternatively failed to materially comply, with their obligations under the Arrangement Agreement to keep 420 informed of their efforts to secure the Approvals;

(d) misled or misinformed 420 in any respect, or alternatively any material respect, as alleged in the Statement of Claim or at all;

(e) failed or refused to satisfy any condition necessary for the consummation of the Arrangement Agreement;

(f) used, or have any intention of using, the information provided by 420, or to which they have been given access by 420, for any purpose other than that contemplated by the Arrangement Agreement;

(g) taken any actions which would prevent, impede or delay, or alternatively materially delay, the closing of the Arrangement Agreement, as alleged in the Statement of Claim or at all; or

(h) breached the Arrangement Agreement or the Loan Agreement or their obligations of good faith or honest performance in connection with those agreements, as alleged in the Statement of Claim or at all.

42. Alternatively, if the Defendants breached the Arrangement Agreement or the Loan Agreement or their duties of good faith or honest performance, as alleged in the Statement of Claim or at all, which is not admitted but specifically denied, such breach, in any event, was not material, caused no loss or damage to 420 and did not in any manner cause, contribute to or excuse the failure by 420 to perform its obligations under the Arrangement Agreement or under the Loan Agreement as described in this Statement of Defence.

The Loan Agreement

43. Pursuant to the Loan Agreement, High Park agreed to advance the Bridge Loan in two tranches. The first tranche, in the amount of $5,000,000, was to be made available to 420 on the date of the Loan Agreement and the second tranche, in the amount of $2,000,000, was to be

made available on or after October 31, 2019 provided that, by that date, High Park had opened at least eight new retail stores.

44. According to the terms of the Loan Agreement, the Bridge Loan was repayable in full on the later of:

(a) 180 days from the date that the Bridge Loan was advanced; or

(b) the termination of the Arrangement Agreement.

45. It was an express term of the Loan Agreement that:

> The proceeds of the Loan will be applied by the Borrower in financing the construction, development and improvements of its existing licensed retail cannabis locations. For the avoidance of doubt, none of the proceeds of the Loan may be applied by the Borrower in repaying any of its financial indebtedness or in otherwise servicing or discharging any other obligations or liabilities....

46. On August 29, 2019, High Park advanced the first tranche of the Bridge Loan to 420. The first tranche of the Bridge Loan was therefore repayable on the later of February 25, 2020 (180 days after advancement) or the date when the Arrangement Agreement was terminated (February 4 or, alternatively, February 26, 2020); that is, by February 26, 2020 at the latest.

47. By October 31, 2019, 420 had opened eight new retail stores and, based on 420's representations, the Defendants reasonably believed that the Path to 22 was being implemented on an ongoing basis. Based on that assumption, and acting in good faith, High Park advanced the second tranche of the Bridge Loan on November 29, 2019, as requested by 420, with the result that 420 became indebted to High Park for the total principal amount of $7,000,000.

48. The Loan Agreement defined an "Event of Default" as including:

(a) the failure by 420 to pay any amount due under the Loan Agreement within three business days of the date when it became payable; and

(b) the failure by 420 to comply with any other provision of the Loan Agreement.

49. 420 failed to repay the first tranche by March 1, 2020, which was three business days after the first tranche of the Bridge Loan became payable (at the latest) as required by the Loan Agreement. Therefore, as of March 1, 2020, two Events of Default under the Loan Agreement had occurred and were continuing in that:

(a) 420 had failed to repay the first tranche of the Bridge Loan; and

(b) 420 had breached the Loan Agreement by failing to apply the proceeds of the Bridge Loan to the construction, development and improvement of its existing licensed retail cannabis locations, and in particular by ceasing to adhere to the Path to 22.

50. The Loan Agreement provided that, if an "Event of Default" occurred and was continuing, High Park as lender might at any time, by notice to 420, declare that the total amount of the Bridge Loan and any other amounts payable under the Loan Agreement were immediately due and payable and the Bridge Loan would thereupon terminate.

51. On March 11, 2020, High Park delivered a Notice of Acceleration to 420, declaring the total outstanding amount of the Bridge Loan and all other amounts due under the Loan Agreement to be due and payable immediately, with the result that the full amount of the Bridge Loan is now due and payable by 420.

MATTERS THAT DEFEAT THE PLAINTIFF'S CLAIM:

No Specific Performance

52. Specific performance of the Arrangement Agreement is not available because the Arrangement Agreement was validly terminated by the First Termination Notice, or alternatively by the Second Termination Notice, and is no longer binding on or enforceable against the Defendants.

53. In the alternative, 420 has fundamentally breached and repudiated the Arrangement Agreement and the Defendants have accepted such repudiation, such that the agreement is at an end.

54. Further, or in the alternative, specific performance of the Arrangement Agreement is not available because:

(a) specific performance of the Arrangement Agreement in accordance with its terms has become impossible such that any such order would be futile. In particular, but without limiting the foregoing, the Conditions of Closing are incapable of being satisfied by the Outside Date, including:

(i) the Condition of Closing that 420 must have performed or complied in all material respects with its covenants, agreements and obligations under the Arrangement Agreement, including the Ordinary Course Covenant;

(ii) the Condition of Closing that no MAE must have occurred;

(iii) the Working Capital Condition; and

(iv) the Condition of Closing that all representations and warranties made by 420 must be true and correct at the time of closing as if made on that date, including the Ordinary Course Warranty, the MAE Warranty, the Covenant Warranty, the Leases Warranty, the Material Contracts Warranty and the Solvency Warranty.

(b) in the alternative, the Defendants' obligations of performance under the Arrangement Agreement, and in particular their obligation to complete the arrangement transaction, are contingent and conditional on the satisfaction of the Conditions of Closing. The Conditions of Closing have not been satisfied and therefore the Defendants are not bound to perform;

(c) in the further alternative, performance of the parties' agreement, including but not limited to the Ordinary Course Covenant and the Path to 22, is incapable of being adequately supervised by the Court;

(d) in the further alternative, if the Arrangement Agreement was wrongfully terminated, which is not admitted but specifically denied, then damages are an adequate remedy for such wrongful termination; and

(e) in the further alternative, 420 is barred from seeking specific performance by the equitable doctrines of laches, acquiescence and clean hands. In particular, but without limiting the foregoing, 420 has breached and continues to breach the Arrangement Agreement and its duties of good faith to the Defendants and as such is barred from seeking specific performance of the Arrangement Agreement.

No Damages for Breach of Contract or Breach of Good Faith

55. The Defendants deny that they have breached the Arrangement Agreement or any duty of good faith or honest performance which they may owe in relation to the Arrangement Agreement, as alleged in the Statement of Claim or at all.

56. Further, or in the alternative, if the Defendants breached the Arrangement Agreement or their duties of good faith or honest performance, as alleged in the Statement of Claim or at all, which is not admitted but specifically denied, then 420 has suffered no damages as a result of such breach. In particular, but without limiting the foregoing:

(a) if 420 has suffered loss or damages as a result of the restrictions on its business imposed by the Arrangement Agreement, which is not admitted but specifically denied, then such losses flowed from the terms of the Arrangement Agreement, to which 420 voluntarily agreed, and not from any breach of the Arrangement Agreement;

(b) if 420 has suffered loss or damages as a result of the disclosure of confidential or other information, which is not admitted but specifically denied, then such loss or damages flowed from the terms of the Arrangement Agreement, to which 420 voluntarily agreed, or from the voluntary disclosure of information by 420, or both, and not from any breach of the Arrangement Agreement;

(c) the only persons who will suffer a loss if the transaction contemplated by the Arrangement Agreement is not completed are the shareholders of 420. The shareholders are not plaintiffs in this action; and

(d) further, or in the alternative, if the Arrangement Agreement had not been terminated by the Defendants, the Defendants would not in any event have been obliged to complete the contemplated transaction, and would not have completed the transaction, due to the inability of 420 to satisfy the Conditions of Closing prior to the Outside Date.

57. In the further alternative, if 420 has suffered loss or damages, which is denied, then:

(a) no acts or omissions of the Defendants are the proximate cause of such loss or damages;

(b) such loss or damages were caused, or contributed to, by the fault of 420, or others, or both;

(c) such loss or damages are too uncertain, remote, hypothetical and speculative to be recoverable in law; and

(d) 420 has failed to take reasonable steps to mitigate its losses and damages.

58. There is no legal basis on the facts of this case for an award of aggravated or punitive damages as sought by 420.

REMEDY SOUGHT:

59. The Defendants ask that 420's claim be dismissed with costs.

This is Exhibit "D" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

_____

A Commissioner for Oaths
in and for the Province of Alberta

8:48 a.m.

Form 11

[Rule 3.31]

P. P.

4979

COURT FILE NUMBER	2001-02873
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF/DEFENDANT BY COUNTERCLAIM	420 INVESTMENTS LTD.
DEFENDANTS	TILRAY INC. and HIGH PARK SHOPS INC.
PLAINTIFF BY COUNTERCLAIM	HIGH PARK SHOPS INC.
DOCUMENT	**STATEMENT OF DEFENCE TO COUNTERCLAIM OF 420 INVESTMENTS LTD.**
PARTY FILING THIS DOCUMENT	420 Investments Ltd.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**JENSEN SHAWA SOLOMON DUGUID HAWKES LLP** 800, 304 - 8 Avenue SW Calgary, Alberta T2P 1C2 Robert Hawkes QC Tel: 403 571 1520 Fax: 403 571 1528 File: 14826-001

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. Except as specifically admitted herein, the Defendant by Counterclaim, 420 Investments Ltd ("**Four20**") denies each and every allegation set out in the Counterclaim filed by the Plaintiff by Counterclaim, High Park Shops Inc. ("**High Park**").

2. Four20 repeats and adopts the entire contents of its Statement of Claim filed in this Action, including all defined terms.

Any matters that defeat the Claim of the Plaintiff:

3. On August 28, 2019 Four20 and High Park entered into a loan agreement (the "**Loan Agreement**") whereby High Park agreed to loan Four20 an amount up to $7,000,000 (the "**Bridge Loan**"). The Loan Agreement was entered into contemporaneously with the Arrangement Agreement, whereby all issued and outstanding securities of Four 20 were to be acquired by Tilray, Inc. through High Park and Four20 was to operate as a wholly owned subsidiary of High Park.

4. The Bridge Loan was necessary as:

(a) Outside of the Bridge Loan, under the terms of the Arrangement Agreement Four20 was prohibited from raising capital; and

(b) Four20 required capital, by way of debt or equity, to, *inter alia*, expand operations by opening additional retail outlets.

Even with the Bridge Loan, Four20 was constrained in its operations and would not have entered into either the Loan Agreement or the Arrangement Agreement (collectively "the **Agreements**") if it were not for its reasonable expectations that Tilray, Inc. and High Park would perform their contractual obligations under the Arrangement Agreement in good faith.

5. Four20 used funds advanced under the Bridge Loan in accordance with the terms of the Loan Agreement and as contemplated in the Arrangement Agreement. Four20 did not breach any use of the proceeds provisions in the Loan Agreement and Four20 fulfilled its duties and obligations under the Arrangement Agreement.

6. It was always contemplated, and the Arrangement Agreement reflects, that the Bridge Loan was not to be repaid unless and until:

(a) High Park and Tilray, Inc. closed the arrangement transaction, at which point the Bridge Loan would have been an inter-company transaction, entirely within the High Park's control; or

(b) The Arrangement Agreement was legitimately terminated, in accordance with its terms, with High Park and Tilray, Inc. acting in good faith.

7. Instead, Tilray, Inc. and High Park failed to take reasonable steps to obtain regulatory approval and close the arrangement transaction, both as required under the Arrangement Agreement and their good faith obligations, with the intention of delaying or frustrating the Arrangement Agreement. Further, Tilray, Inc. and High Park have now falsely alleged that Four20 has breached the Arrangement Agreement and purported to terminate the Agreement.

8. As the Arrangement Agreement was not performed by Tilray, Inc. or High Park in good faith, nor was it legitimately terminated, the Bridge Loan is not currently repayable.

No Event of Default

9. High Park and Tilray, Inc. have taken actions which are inconsistent with, prevent, delay or impede closing of the Arrangement Agreement, most recently advancing baseless claims of breach and termination. Both termination notices issued by High Park are unfounded and improperly purport to terminate the Arrangement Agreement. The Arrangement Agreement has failed to close due to High Park and Tilray, Inc.'s actions.

10. The Arrangement Agreement has not been terminated legitimately. As a result, there is no Event of Default and the Bridge Loan is not currently repayable.

11. In specific response to paragraph 10 of the Counterclaim, Four20 did not misuse the Bridge Loan proceeds. Four20 pursued completion of the proposed additional retail locations and used the Bridge Loan proceeds as anticipated. As specifically stated in the "Four20 Path to 22 Locations" roadmap, the timelines identified were acknowledged as potential timelines and subject to change or delay. The timelines and this roadmap were not binding terms of either the Arrangement Agreement or the Loan Agreement, and the possibility that some retail locations

might not open by the deadline was contemplated by the parties and was dealt with in the earnout provisions of the Arrangement Agreement. The growth Four20 did achieve prior to the purported termination was appropriate and within the contemplation of the parties at the time the Arrangement Agreement and Loan Agreement were executed.

12. As there has been no event of default by Four20, no legitimate termination of the Arrangement Agreement and no misuse of proceeds, the Notice of Acceleration issued by High Park on March 11, 2020 was improper and without effect. The Bridge Loan is not currently repayable.

Set-Off

13. As described in the Statement of Claim, High Park has breached the Arrangement Agreement and breached their duty of honest performance and good faith discharge of its obligations under the Arrangement Agreement.

14. The Bridge Loan is closely connected to the original claim filed by Four20 as High Park is liable to Four20 for damages under the same Agreement and from the same events as described in the Statement of Claim and the Counterclaim.

15. Even if Four20 were to owe High Park any damages under the Bridge Loan, which it does not, Four20 claims a right of set-off, at law or in equity, as against any amounts owed to Four20.

Remedy sought:

16. Four20 seeks the dismissal of the Counterclaim as against it, with costs payable by High Park on a solicitor-client basis or a scale to be determined by this Honourable Court and such further and other remedy that this Honourable Court deems just in the circumstances.

This is Exhibit "E" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

_____

A Commissioner for Oaths
in and for the Province of Alberta

	Clerk's Stamp:
COURT FILE NUMBER	2001-02873
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF	420 INVESTMENTS LTD.
DEFENDANTS	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**COUNTERCLAIM OF HIGH PARK SHOPS INC.**
PARTY FILING THIS DOCUMENT	HIGH PARK SHOPS INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP 3500 Bankers Hall East 855 – 2nd Street S.W. Calgary, Alberta T2P 4J8 Attention: David V. Tupper Peter L. Rubin Telephone: 403-260-9722 604-631-3315 Facsimile: 403-260-9700 604-631-3309 Email: david.tupper@blakes.com peter.rubin@blakes.com File Ref: 191284/24

CLERK OF THE COURT
FILED
MAR 20 2020
CALGARY, ALBERTA

NOTICE TO DEFENDANT BY COUNTERCLAIM:

You are being sued. You are a Defendant by Counterclaim.

Go to the end of this document to see what you can do and when you must do it.

STATEMENT OF FACTS RELIED ON:

1. The Plaintiff by Counterclaim, High Park Shops Inc. ("**High Park**") files this Counterclaim against the Defendant by Counterclaim, 420 Investments Ltd. ("**420**") (the "**Counterclaim**").

2. High Park repeats and incorporates in this Counterclaim the allegations, facts and definitions contained in the Statement of Defence of Tilray Inc. and High Park filed in Court of Queen's Bench of Alberta Action No. 2001-02873 (the "**Statement of Defence**"). Capitalized terms not defined in the Counterclaim shall have the meaning given to them in the Statement of Defence.

Counterclaim Overview

3. This Counterclaim relates to the Bridge Loan of $7,000,000 that High Park advanced to 420 pursuant to the Loan Agreement. As described in paragraphs 46 and 47 of the Statement of Defence, High Park advanced the first tranche of Bridge Loan to 420, in the amount of $5,000,000, on August 29, 2019 and the second tranche of the Bridge Loan to 420, in the amount of $2,000,000, on November 29, 2019.

4. The Loan Agreement provided that, if an "Event of Default" occurred and was continuing, High Park as lender might at any time, by notice to 420, declare that the total amount of the Bridge Loan and any other amounts payable under the Loan Agreement were immediately due and payable, and the Bridge Loan would thereupon terminate. Events of Default under the Loan Agreement included:

   (a) the failure by 420 to pay any amount due under the Loan Agreement within three business days of the date when it became payable; and

   (b) the failure by 420 to comply with any other provision of the Loan Agreement.

5. This Counterclaim arises as a result of two Events of Default under the Loan Agreement, and the Notice of Acceleration that High Park issued to 420 on March 11, 2020. That Notice declared the total outstanding amount of the Bridge Loan and all other amounts due under the Loan Agreement to be due and payable immediately (the "**Notice of Acceleration**").

Event of Default – Repayment Due Date Lapsed by more than 3 Days

6. It was a term of the Loan Agreement that the Bridge Loan was repayable in full on later of:

(a) 180 days from the date that the Bridge Loan was advanced; or

(b) the termination of the Arrangement Agreement.

7. As indicated in paragraph 46 of the Statement of Defence, the first tranche of Bridge Loan, in the amount of $5,000,000, became repayable on February 26, 2019, at the latest, because:

(a) the Defendants terminated the Arrangement Agreement on February 4, 2020, as a result of the First Termination Notice or, in the alternative, the Defendants terminated the Arrangement Agreement on February 26, 2020, as a result of the Second Termination Notice; and

(b) as of February 25, 2020, more than 180 days had passed since High Park advanced the first tranche of the Bridge Loan.

8. 420 did not repay the first tranche of the Bridge Loan to High Park by March 1, 2020, which was three business days after the first tranche of the Bridge Loan became payable (at the latest) pursuant to the circumstances described in the paragraph above. This triggered an Event of Default under the Loan Agreement.

Event of Default – Misuse of Bridge Loan Proceeds

9. It was a term of the Loan Agreement that:

> The proceeds of the Loan will be applied by the Borrower in financing the construction, development and improvements of its existing licensed retail cannabis locations. For the avoidance of doubt, none of the proceeds of the Loan may be applied by the Borrower in repaying any of its financial indebtedness or in otherwise servicing or discharging any other obligations or liabilities....

10. As indicated in paragraph 49 of the Statement of Defence, 420 breached the Loan Agreement by failing to apply the proceeds of the Bridge Loan to the construction, development and improvement of its existing licensed retail cannabis locations, and by ceasing to adhere to the Path to 22 in order to preserve cash. This misuse of Bridge Loan proceeds by 420 triggered

an Event of Default under the Loan Agreement which permitted immediate termination by High Park, regardless of whether the Arrangement Agreement was terminated or the Loan Agreement was otherwise in default.

Notice of Acceleration

11. The Events of Default described above permitted High Park to deliver the Notice of Acceleration to 420 which High Park did on March 11, 2020. At this time, 420 had not repaid any portion of the Bridge Loan or other amounts payable under the Loan Agreement.

12. As of the filing date of this Counterclaim, 420 has not repaid to High Park the Bridge Loan and all other amounts payable under the Loan Agreement (collectively, the "**Debt**") as required by the Acceleration Notice.

REMEDY SOUGHT:

13. High Park seeks the following relief against 420:

(a) repayment of the Debt, which totals $7,000,000, plus interest in accordance with the terms of the Loan Agreement;

(b) any other amounts that are due and owing to High Park pursuant to the terms of the Loan Agreement;

(c) interest pursuant to the *Judgment Interest Act*, RSA 2000, c J-1, as amended, and the regulations thereunder;

(d) costs; and

(e) such further and other relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT BY COUNTERCLAIM

You only have a short time to do something to respond to this counterclaim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice to counterclaim in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice to counterclaim on the plaintiff by counterclaim's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice to counterclaim within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff by counterclaim against you after notice of the application has been served on you.

This is Exhibit "F" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

_____

A Commissioner for Oaths
in and for the Province of Alberta

COURT FILE NUMBER	2001 02873
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	Calgary
PLAINTIFF ***Respondent***	420 Investments Inc.
DEFENDANT ***Applicant***	Tilray Inc. and High Park Shops Inc.
DOCUMENT	**CHAMBERS ENDORSEMENT**

Clerk's Stamp

JUDICIAL CENTRE OF CALGARY
FILED
Feb 07, 2024
by Email
CLERK OF THE COURT

☒ **Order Granted**

☐ **Information Required**

☐ **Order Rejected**

☐ **Unable to Complete – see Comments/Reasons for further information**

Comments/Reasons:

I heard this matter as a special chambers application on February 5, 2024. It is an application for summary judgement on a counterclaim notwithstanding that all of the parties acknowledge that there are issues that will likely require a trial on the "main" claim.

The dealings between the parties related to the business of 420 Investments Inc. ("420"). They took place shortly after the legalization of cannabis sales in Canada, and the parties hoped to develop new opportunities. 420 was in the cannabis sales business. The defendant Tilray, Inc. was in various businesses and as a result of the discussions and negotiations between the parties, it hoped to acquire the cannabis business of 420 through its vehicle High Park Shops Inc. ("High Park").

Significant sums of money were involved. If the plaintiff is right, the total consideration to be paid exceeded $100,000,000.00 payable by a combination of Tilray shares and cash depending on the circumstances.

For the purposes of the issues on this summary judgement application, two agreements form the primary basis for the discussion and the framework for the issues.

On the one hand, 420, Tilray and High Park entered into an Arrangement Agreement. The Arrangement Agreement was a relatively complex agreement which described the transaction which the parties sought to close and how they were obliged to get there. The agreement had various benchmarks which needed to met in order for the full purchase price to be earned and payable. It was structured as an "arrangement" under the ***Business Corporations Act***, RSA 2000, c B-9. The transaction included the opening of new stores by 420 prior to closing.

The opening of new stores required financing. 420 did not have the financial wherewithal to develop the new stores itself. The evidence describes, and it does not seem to be contradicted, that financing in the cannabis industry was relatively complicated at the time. Tilray and High Park had the resources to loan $7 million in tranches of $5 million and $2 million so that 420 could develop new stores. The loan agreement was much like a third party lender would have done, but it was directly between High Park and 420. While some transactions contemplate vendor take back financing, this one effectively had "purchaser" financing.

The Loan Agreement contained Clause 6.1 which provides in part:

> All payments due and payable from the Borrower hereunder shall be made in immediately available funds, ***without and set-off, deduction or withholding of any nature whatsoever***...
> (Emphasis added)

Regarding the term of the loan, the Loan Agreement provided at Clause 7.1:

> The total outstanding amount of the Loan, other than any amounts advanced under the Working Capital Note, if applicable, shall be repaid in full on the later of (i) the date falling one hundred and eighty (180) days after the date of the advance of the Loan; and (ii) the termination of the Arrangement Agreement (in either case, the "Maturity Date")...

The transaction under the Arrangement Agreement did not close at the time of the events in issue here. 420 says that Tilray and High Park engaged in buyer's remorse and chose to not proceed with the transaction. Tilray and High Park say that 420 did not meet or remedy various requirements under the Arrangement Agreement and the loan is due.

The obligation in s. 4.7(4) of the Arrangement Agreement with respect to a termination notice is "...specifying in reasonable detail all breaches of covenants, representations and warranties or other matters which the Terminating Party asserts as the basis for termination.

Tilray and High Park gave a number of default notices leading to termination from their perspective and demanding repayment of the loan. The most important one appears to be one that was issued on February 4, 2020 which sets out various allegations of breach against 420. Subsequent notices of termination followed when the alleged breaches were not cured. The February 4, 2020 notice appears to have been the most detailed one. If the only notices issued were the later ones or a prior notice on January 28, 2020, I would have had concerns about whether the notices met the requirement under the Arrangement Agreement to give reasonable details of the alleged breaches so that they could be cured, but in my view reasonable particulars were given in the February 4, 2020 notice. The alleged breaches were numerous.

High Park says that the loan is due and owing with contractual interest. 420 says that the matter cannot be determined without reference to its main claim, including its claim for specific performance or alternatively its claim for an ultimate reconciliation in damages.

Summary judgement remedies are encouraged when matters can be resolved fairly on a balance of probabilities basis by the judge or applications judge. The record must be sufficient such that the judge or applications judge can have reasonable confidence in the result. The "modern" litigation culture originates in ***Hryniak v. Mauldin***, 2014 SCC 7 and continues in Alberta with cases such as ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49.

Seeking only partial summary judgement can be a complicating factor. At paragraph 60 in ***Hryniak***, the Supreme Court of Canada held:

> [60] The "interest of justice" inquiry goes further, and also considers the consequences of the motion in the context of the litigation as a whole. For example, if some of the claims against some of the parties will proceed to trial in any event, it may not be in the interest of justice to use the new fact-finding powers to grant summary judgment against a single defendant. Such partial summary judgment may run the risk of duplicative proceedings or inconsistent findings of fact and therefore the use of the powers may not be in the interest of justice. On the other hand, the resolution of an important claim against a key party could significantly advance access to justice, and be the most proportionate, timely and cost effective approach.

Subsequent cases such as Justice Sidnell's decision in ***DIRTT Environmental Solutions Ltd v Falkbuilt Ltd***, 2021 ABQB 252, and my decision in ***O'Chiese Energy Limited Partnership v Bellatrix Exploration Ltd***, 2019 ABQB 53 speak of the caution that is necessary in considering the granting of partial summary judgement. One of the most important issues to consider is whether the issue on which partial summary judgement is sought is sufficiently discrete from the balance of the litigation such that it can be determined in isolation.

There is no doubt that the monies are owed here. 420 says that the matter cannot be determined without a determination as to whether the termination of the Arrangement Agreement was proper or not.

The Supreme Court of Canada's decision in ***Sattva Capital Corp. v. Creston Moly Corp.***, 2014 SCC 53 tells us at paragraph 57:

> [57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and Hall, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 1997 CanLII 4085 (BC CA), 101 B.C.A.C. 62).

The plain wording of the Loan Agreement says that the loan is to be paid without set off or deduction "whatsoever". That is a term that was agreed upon between the parties. The Loan Agreement includes an entire agreement clause. In my view, as a third party objective observer, I find that there was clearly an intent to sever the terms regarding payment of the loan from the other dealings between the parties. A third party lender would certainly be entitled to do so. High Park was similarly constituted as a lender under the Loan Agreement.

420 argues that the matter cannot be determined without determining whether there was a proper termination or not, but that position is contrary to the agreement reached between the parties, and contrary to commercial business sense. Should a party be able to obtain a stay on the loan repayment obligation simply by filing a pleading and adducing evidence on the Arrangement Agreement aspects of the claim when it agreed to pay the loan without set-off?

High Park has purported to terminate the Arrangement Agreement. The grounds for the termination may or may not be found to be proper in due course. If the termination was improper, High Park and Tilray may be liable as alleged in the statement of claim. In the mean time, they are entitled to issue a default notice and proceed as they did. Many enforcement proceedings proceed with the validity of those proceedings, or the existence of default, being challenged later in appropriate litigation.

420 has had the use of the $7 million since it was advanced, and it seeks to continue to have the use of that money until after trial and presumably any appeals. That is not what the parties agreed to with respect to the loan aspect of the transaction. The only

way that the loan would not be payable in actual funds was if the arrangement fully closed in accordance with its terms and it became an intercorporate loan. The main action is currently a significant distance from that result.

I find that High Park was entitled to make a demand, it made the demand with reasonable particulars as required under the Arrangement Agreement, and the loan is payable. High Park is entitled to judgement for the principal amount plus interest at the contractual rate. Finding otherwise, in my view, would overwhelm the terms of the Loan Agreement which would be contrary to the caution in ***Sattva***. The issue on this application largely reduces itself to which of the parties should have use of the loan funds pending determination of the balance of the action?

The loan aspect of this matter can be determined fairly and summarily based upon the existing record. There are no significant facts in dispute with respect to the loan, and the Loan Agreement contemplates enforceability without set-off.

Thank you to the parties for their very helpful briefs, materials, and oral submissions. If the parties cannot agree on costs, either party may contact the office of the Applications Judges Specials Coordinator to arrange a time to speak to costs at the end of one of my chambers lists within four months of release of these reasons.

DATE OF DECISION: 2024-02-07

Signed: _____

APPLICATIONS JUDGE J. R. FARRINGTON

CERTIFIED E. Wheaton
by the Court Clerk as a true copy of the document digitally filed on May 21, 2024

JUDICIAL CENTRE OF CALGARY
FILED DIGITALLY
2001 02873
May 21, 2024
12:52 PM
CLERK OF THE COURT

COURT FILE NUMBER	2001-02873
COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF / DEFENDANT BY COUNTERCLAIM/ RESPONDENT	420 INVESTMENTS LTD.
DEFENDANTS / PLAINTIFFS BY COUNTERCLAIM/ APPLICANT	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**ORDER**
PARTY FILING THIS DOCUMENT	HIGH PARK SHOPS INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP 3500 Bankers Hall East 855 – 2nd Street S.W. Calgary, Alberta T2P 4J8 Attention: David V. Tupper Tom Wagner Telephone: 403-260-9722 403-260-9734 Facsimile: 403-260-9700 Email: david.tupper@blakes.com tom.wagner@blakes.com File Ref.: 191284/35

DATE ON WHICH ORDER WAS PRONOUNCED:	May 21, 2024
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary Courts Centre 601 – 5th Street SW Calgary, Alberta T2P 5P7
NAME OF APPLICATIONS JUDGE WHO MADE THIS ORDER:	Applications Judge J.R. Farrington

UPON THE APPLICATION of the Plaintiff by Counterclaim/Applicant, High Park Shops Inc. ("**High Park**") pursuant to Rules 9.12 and 9.14 to correct the Order of Applications Judge J.R. Farrington pronounced on February 5, 2024 (the "**Summary Judgment Order**") and make a further Order; **AND UPON HAVING READ** High Park's Application, the Affidavit of Carl Merton, affirmed on February 16, 2023, and the Affidavit of Carl Merton, affirmed on April 19, 2024; **AND UPON** noting the consent of counsel for High Park and counsel for Four20;

IT IS HEREBY ORDERED THAT:

1. Paragraph 1 of the Summary Judgment Order, which currently states

> "High Park's application for summary judgment against Four20 is granted"

shall be changed to read:

> "High Park's application for summary judgment against Four20 is granted. High Park is entitled to judgment in the amount of CAD$9,810,364.12, comprised of a principal amount of CAD $7,000,000, plus pre-judgment interest in the amount of CAD $2,810,364.12, plus post-judgment interest at the contractual rate of interest of eight percent (8.0%) per annum, compounded daily."

2. The Clerk of the Court is directed to file the Writ of Enforcement attached as Schedule "A" to this Order.

3. There shall be no costs of this Order to either party.

Applications Judge J.R. Farrington

CONSENTED TO THIS 16TH DAY OF MAY, 2024:

BLAKE, CASSELS & GRAYDON LLP	**JENSEN SHAWA SOLOMON DUGUID HAWKES LLP**
David V. Tupper / Tom Wagner Counsel for the Applicant, High Park Shops Inc.	Robert Hawkes, K.C. / Gavin Price / Sarah Miller Counsel for the Respondent, 420 Investments Ltd.

SCHEDULE "A" – WRIT OF ENFORCEMENT

Form 10
Civil Enforcement Regulation
Financing Statement

Clerk's Stamp
Filed & Issued

Writ of Enforcement

Civil Enforcement Act

Court Location: Calgary

Court File Number: 2001-02873

Type of Judgment Crown Employment Standards Other

This writ authorizes enforcement proceedings in accordance with the *Civil Enforcement Act*. The particulars of the writ are as follows:

DEBTOR Individual __ Male __ Female Other Z Occupation: Date of Birth: *yyyy/mm/dd*

420 Investments Ltd.
Business Name or Last Name | *First Name* | *Middle Name*

Suite 4000, 421 - 7th Avenue S.W., Suite 4000 (*Address*) | Calgary (*City*) | Alberta (*Province*) | T2P 4K9 (*Postal Code*)

CREDITOR Individual ☐ Other Z P.P.R. Party Code

High Park Shops Inc.
Business Name or Last Name | *First Name* | *Middle Name*

Suite 2700, 1133 Melville Street (*Address*) | Vancouver (*City*) | British Columbia (*Province*) | V6E 4E5 (*Postal Code*)

Additional debtors and creditors and/or other information listed on attached addendum.

If claiming priority based on an attachment order or partial assignment, indicate previous P.P.R. registration number:

Date of judgment (or date judgment effective, if different) February 7, 2024 (date)

Amount of original judgment	$9,810,364.12
Post-judgment interest	$0
Costs	$0
Current Amount Owing	$ 9,810,364.12

SOLICITOR/AGENT/CREDITOR P.P.R. Party Code

Blake, Cassels & Graydon LLP
Name in Full

Suite 3500, Bankers Hall East, 855 - 2nd Street S.W. (*Address*) | Calgary (*City*) | Alberta (*Province*) | T2P 4J8 (*Postal Code*)

403-260-9722 (*Area Code and Telephone Number*) | 403-260-9700 (*Fax Number*) | (*Call Box Number*) | 191284/35 (*Your Reference Number*)

To register against Serial Number Goods at Personal Property Registry, complete the following:

Serial Number (only applicable to serial number goods, e.g. motor vehicles)	Year	Make and Model	Category
-			

Authorized Signature

Tom Wagner
Print Name

Control Number

Compound Interest Owing From Advance Date

First Tranche:

No.	Period	Interest Rate	Amount Outstanding	Interest
1.	August 29, 2019 to January 1, 2020	8.00%	$5,000,000.00	$136,986.30
2.	January 1, 2020 to January 1, 2021	8.00%	$5,136,986.30	$412,084.82
3.	January 1, 2021 to January 1, 2022	8.00%	$5,549,071.12	$443,925.69
4.	January 1, 2022 to January 1, 2023	8.00%	$5,992,996.81	$479,439.74
5.	January 1, 2023 to January 1, 2024	8.00%	$6,472,436.55	$517,794.92
6.	January 1, 2024 to February 7, 2024	8.00%	$6,990,231.48	$56,687.90
		TOTAL:	**$7,046,919.38**	**$2,046,919.38**

Second Tranche:

No.	Period	Interest Rate	Amount Outstanding	Interest
1.	November 29, 2019 to January 1, 2020	8.00%	$2,000,000.00	$14,465.75
2.	January 1, 2020 to January 1, 2021	8.00%	$2,014,465.75	$161,598.79
3.	January 1, 2021 to January 1, 2022	8.00%	$2,176,064.54	$174,085.16
4.	January 1, 2022 to January 1, 2023	8.00%	$2,350,149.70	$188,011.98
5.	January 1, 2023 to January 1, 2024	8.00%	$2,538,161.68	$203,052.93
6.	January 1, 2024 to February 7, 2024	8.00%	$2,741,214.61	$22,230.12
		TOTAL:	**$2,763,444.74**	**$763,444.74**

Total Outstanding Amounts:

Trance	Amount Outstanding
First Tranche	$7,046,919.38
Second Tranche	$2,763,444.74
TOTAL:	**$9,810,364.12**

Form 10
Civil Enforcement Regulation
Financing Statement

Clerk's Stamp
Filed & Issued

Writ of Enforcement

Civil Enforcement Act

JUDICIAL CENTRE OF CALGARY
FILED DIGITALLY
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CLERK OF THE COURT

Court Location: Calgary

Court File Number: 2001-02873

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DEBTOR Individual ___ Male ___ Female Other Z Occupation: Date of Birth: *yyyy/mm/dd*

420 Investments Ltd.
Business Name or Last Name *First Name* *Middle Name*

Suite 4000, 421 - 7th Avenue S.W., Suite 4000 *Address* | Calgary *City* | Alberta *Province* | T2P 4K9 *Postal Code*

CREDITOR Individual ☐ Other Z P.P.R. Party Code

High Park Shops Inc.
Business Name or Last Name *First Name* *Middle Name*

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Current Amount Owing	$ 9,810,364.12

SOLICITOR/AGENT/CREDITOR P.P.R. Party Code

Blake, Cassels & Graydon LLP
Name in Full

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Serial Number (only applicable to serial number goods, e.g. motor vehicles)	Year	Make and Model	Category

Authorized Signature

Tom Wagner
Print Name

Control Number

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		TOTAL:	**$2,763,444.74**	**$763,444.74**

Total Outstanding Amounts:

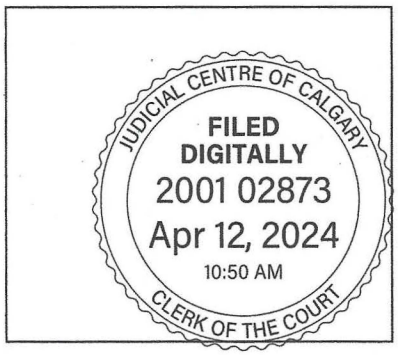
Trance	Amount Outstanding
First Tranche	$7,046,919.38
Second Tranche	$2,763,444.74
TOTAL:	**$9,810,364.12**

This is Exhibit "G" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

_____

A Commissioner for Oaths
in and for the Province of Alberta

Clerk's Stamp



COURT FILE NUMBER	2001-02873
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF AND DEFENDANT BY COUNTERCLAIM (APPELLANT)	420 INVESTMENTS LTD.
DEFENDANT AND PLAINTIFF BY COUNTERCLAIM (RESPONDENT)	HIGH PARK SHOPS INC.
DEFENDANT	TILRAY INC.
DOCUMENT	**BRIEF OF ARGUMENT OF THE APPELLANT, 420 INVESTMENTS LTD.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP
Barristers
800, 304 - 8 Avenue SW
Calgary, Alberta T2P 1C2

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millers@jssbarristers.ca
File: 14826-001

INDEX

walked away from a $100+ million arrangement agreement (the "**Arrangement Agreement**") under which High Park had agreed to purchase all the issued and outstanding shares of Four20 (the "**Transaction**").[2] As part of the Transaction, High Park advanced a $7 million dollar loan to Four20 (the "**Development Loan**"), which was to become an intercompany debt upon the close of the Transaction.

3. High Park, is a single purpose corporation incorporated by Tilray for the acquisition transaction—High Park is non-operational and has no employees.[3]

4. The Development Loan would not have been advanced if not for the parties' contemplation of the Arrangement Agreement and overall Transaction.

5. After purporting to terminate the Arrangement Agreement,[4] Tilray's Chief Corporate Development Officer met with Four20, advising them that Tilray's plan was to call the loan advanced under the Arrangement Agreement and put Four20 under.[5]

6. High Park filed its Counterclaim the following month and has now applied for summary judgment on the Development Loan, which was granted in the SJ Order. Four20 appeals.

II. FACTS

7. On or around March 21, 2019, Four20 contacted the Defendant, Tilray Inc ("**Tilray**") in seeking a strategic partner to either invest in or purchase its business. On or around April 2,

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[1] Affidavit of Freida Butcher, sworn February 23, 2024 [the "**Butcher Affidavit**"], para 19.
[2] Affidavit of Garrett Popadynetz, sworn April 14, 2024 [the "**Popadynetz Affidavit #1**"], para 41.
[3] Transcript of the August 18, 2023 cross-examination of Daniel Wang at 11:13-20.
[4] Note that whether the Arrangement Agreement could be, or was, terminated effectively, is a question for trial in the main Action commenced by Four20.
[5] Popadynetz Affidavit #1, para 79; Butcher Affidavit, para 18.

I. INTRODUCTION

1. The Appellant, 420 Investments Ltd. ("**Four20**") appeals Applications Judge J.R. Farrington's February 5, 2024 decision granting the Respondent, High Park Inc ("**High Park**") partial summary judgment (the "**SJ Order**") on a Counterclaim over a loan in the within Action.

2. Four20 filed the within Action in February 2020[1] after Tilray Inc. ("**Tilray**") and High Park

2019, Tilray executed a non-disclosure agreement and was provided information on Four20's business.[6]

8. The final letter of interest set the purchase price for Four20 at $110 million consisting of: (i) $70 million in base consideration, and (ii) $40 million in consideration contingent Four20's development of 16 retail cannabis stores at a rate of $2.5 million per store. As Four20 had been looking to obtain funding to help build stores, the letter of intent also contemplated the Development Loan to help convert existing development permits into stores and to meet the growth requirements for the contingent part of the purchase price.[7]

9. On August 28, 2019, the Defendants, Four20, and Four20's representative shareholders entered into the Arrangement Agreement.[8]

10. Tilray's Vice President of Retail acknowledged that Four20 required additional capital before the theoretical closing date of a purchase, and that it did not make sense to starve Four20 of capital before closing.[9]

11. As part of the Transaction, High Park and Four20 entered into a loan agreement (the "**Loan Agreement**") under which High Park would advance the Development Loan to Four20 for the further development of retail cannabis stores.[10] As the Arrangement Agreement contained restrictions on raising capital,[11] the Loan Agreement was executed to provide Four20 capital to open stores while waiting for the Defendants' regulatory approval to take over operations.[12]

12. The Development Loan was to become an intercompany loan at closing of the Arrangement Agreement.[13]

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[6] Popadynetz Affidavit #1, paras 7-8.
[7] Popadynetz Affidavit #1, paras 18-20 and Ex. M.
[8] Popadynetz Affidavit #1, para 40 and Ex. CC.
[9] Popadynetz Affidavit #1, paras 11(a) and 25, and Ex. R.
[10] Popadynetz Affidavit #1, paras 18-20 and Ex. M.
[11] Popadynetz Affidavit #1, Ex. CC s. 4.1.
[12] Popadynetz Affidavit #1, paras 11(a) and 25, and Ex. R.
[13] Butcher Affidavit, para 3.

13. The Loan Agreement itself refers to the Arrangement Agreement.[14] Notably, the Loan Agreement provided that the amounts advanced under it were due on the **later** of 180 days after advance of funds under the Loan Agreement, and the termination of the Arrangement Agreement.[15] Four20 denies that the Arrangement Agreement was terminated[16]—this is a question for the trial judge to determine.

14. Throughout negotiations on the letter of interest, Arrangement Agreement, and Loan Agreement, and through to the purported termination of the Arrangement Agreement, Tilray and High Park (collectively, the "**Defendants**") were assisted and advised by Daniel Wang ("**Mr. Wang**")[17] and Mark Silvestre ("**Mr. Silvestre**")[18] among many others.

15. On August 25, 2019 Mr. Wang confirmed by email to Mr. Silvestre that there was no expectation that Four20 would pay back the Development Loan if Tilray entered into a definitive agreement and acquired them.[19] During a June 2, 2023 Questioning in this Action, Mr. Wang again confirmed that if the deal to purchase Four20 closed, then there was no expectation that Four20 would be required to repay the intercompany loan.[20]

16. All the parties involved intended to treat the Loan Agreement as an intercompany loan, knew Four20 was unable to repay it, and had no expectation that it would be repaid when the transaction closed.[21]

17. Despite being a sophisticated party, with ample resources and assistance to determine an appropriate purchase price for Four20, the Defendants soon began to question whether they had overpaid.[22] At some point around December 30, 2019, Tilray and High Park decided

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[14] Popadynetz Affidavit #1, Ex. DD ss. 1 and 7.1.
[15] Popadynetz Affidavit #1, Ex. DD s. 7.1.
[16] Statement of Claim, filed by Four20 on February 21, 2020 ("**Four20 SOC**") at paras 7, 8, 16, 21, and 22-28.
[17] Mergers and Acquisitions Manager for Tilray: Popadynetz Affidavit #1, para 27.
[18] Author of fairness opinion from Canaccord Genuity: Popadynetz Affidavit #1, Ex. A.
[19] Popadynetz Affidavit #1, Ex. Z.
[20] Affidavit of Garrett Popadynetz, filed August 10, 2023 ("**Popadynetz Affidavit #2**"), Ex. A.
[21] Popadynetz Affidavit #2, Ex. A.; Transcript of the Cross-examination of Garrett Popadynetz on August 18, 2023 ("**Popadynetz Transcript**"), at 21:12-18.
[22] Popadynetz Affidavit #1, para 51 and Ex. GG.

they needed to walk away from the transaction.[23] Throughout January and in to February 2020, the Defendants issued notices to Four20 erroneously alleging breaches and the occurrence of a "Company Material Adverse Effect", culminating in the Defendant's spurious attempt to terminate the Arrangement Agreement effective as of February 4, 2020.[24]

18. At the time the Termination Notice was issued the only condition precedent that remained to be fulfilled under the Arrangement Agreement was the requirement that the Defendants obtain a regulatory approval from the Alberta Gaming, Liquor and Cannabis Commission.[25] Four20 denies that the Defendants had any valid cause to terminate the Arrangement Agreement and denies that a Company Material Adverse Effect had occurred.

19. On February 21, 2020, Four20 filed a Statement of Claim commencing the within Action against the Defendants alleging improper termination of the Arrangement Agreement and seeking specific performance of the Arrangement Agreement.[26]

20. On March 20, 2020, the Defendants filed a Statement of Defence, and High Park commenced the Counterclaim against Four20 for the repayment of the amounts advanced under the Loan Agreement.[27] On April 14, 2020, Four20 filed a Statement of Defence to Counterclaim.

21. The Arrangement Agreement was not properly terminated by the Defendants and Four20 seeks specific performance of the Arrangement Agreement or damages in lieu thereof. Four20 and its shareholders have suffered damages up to $110,000,000 as a result. If the Arrangement Agreement was not properly terminated, and if the Claim is resolved in Four20's favour, then the Development Loan is not payable until closing.[28] The Development Loan obligation would then be acquired by High Park.

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[23] Popadynetz Affidavit #1, para 66 and Ex. VV.
[24] Popadynetz Affidavit #1, para 70, 73-75 and Ex. ZZ, CC (s. 4.7(4)), CCC, DDD, EEE, and FFF.
[25] Popadynetz Affidavit #1, Ex. III at paras 17-18.
[26] Popadynetz Affidavit #1, para 80 and Ex. III at paras 22-28 and 43(a).
[27] Popadynetz Affidavit #1, para 80 and Ex. LLL.
[28] Popadynetz Affidavit #1, Ex. SSS at paras 6-8.

22. On March 2, 2023, High Park filed its application for summary judgment on the Development Loan (the "**Summary Judgment Application**").[29] On February 7, 2024, the Applications Judge granted the application. Four20 appeals on the basis that the issues raised in the Application were not suitable for resolution on a partial summary basis.[30]

23. High Park asserts that the Development Loan is repayable because the Arrangement Agreement was terminated on February 26, 2020.[31] Four20 denies that the Arrangement Agreement could be, or was, terminated. That is an issue for trial and cannot be summarily determined at this time.

III. ISSUES AND POSITION

24. The issues on appeal are:

(a) Whether High Park has met the legal test for partial summary judgment and whether this is an appropriate case for partial summary judgment; and

(b) Whether the analysis on summary judgment is impacted by:

(i) The Entire Agreement clause in the Loan Agreement, or

(ii) Four20 seeking specific performance on the main action.

A. Four20's Position

25. There are genuine issues for trial, and it is not more proportionate, expeditious, or less expensive to entertain summary judgment on the development loan. High Park has not satisfied its burden in this regard.

26. Ordering the Development Loan to be repaid presupposes the determination of issues in the main action, which are questions for the trial judge to determine. It is not appropriate to award partial summary judgment in this case.

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[29] Butcher Affidavit, para 21.

[30] Four20 also brought a stay application (dismissed March 22, 2024) and appealed that dismissal (dismissed April 11, 2024).

[31] Summary Judgment Application at para 13(b).

27. Summary judgment should be precluded by the factual matrix. Entire Agreement clauses do not cause Courts to completely disregard the other related contracts or the factual matrix. Four20 seeks specific performance of the Arrangement Agreement, which would leave the Development Loan on its balance sheet, to be acquired by the Defendants and not otherwise due or payable by Four20. Summary judgment is not appropriate in this case.

IV. LAW AND ARGUMENT

A. Standard of Review for Appeal

28. An appeal from an Applications Judge's decision is governed by Rule 6.14.[32]

29. An appeal from an Applications Judge's decision is often referred to as a hearing *de novo*.[33] The Justice must decide the appeal on the record and consider the Applications Judge's decision on a standard of correctness, without deference.[34]

B. Partial Summary Judgment is Rarely Granted and is Not Appropriate in the Present Case

30. The Loan Agreement provided that amounts advanced under it were due on the **later** of (i) 180 days after advance of funds under the Loan Agreement, and (ii) the termination of the Arrangement Agreement.[35]

31. The issue is whether the Arrangement Agreement was terminated, not whether the Defendants purported to terminate by issuing increasingly flawed termination notices. Four20's claim is rooted in the Defendants' attempts to improperly terminate the Arrangement Agreement. Four20's defence on the Summary Judgment Application is reliant on the same issue.

32. Four20 relies on the contractual duty of honest performance to assert that the Arrangement Agreement must have been properly terminated for the Development Loan to be

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[32] *Alberta Rules of Court*, Alta Reg 124/2010 [***Rules***], Rule 6.14.
[33] *Agrium v Orbis Engineering Field Services*, 2022 ABCA 266 at para 30 (leave to appeal refused); *Hierath v Shock*, 2021 ABQB 185 at para 15.
[34] *Steer v Chicago Title Insurance Company*, 2019 ABQB 318 [***Steer***] at paras 6-10.
[35] Popadynetz Affidavit #1, Ex. DD s. 7.1.

payable.[36] The Arrangement Agreement was not terminated properly, and was terminated for collateral, artificial, and fictitious reasons.[37] These are questions for the trial judge to determine.

33. To find that the Development Loan is currently payable, is to predetermine whether the Arrangement Agreement was terminated properly. That question is not before this Court, and the application record is insufficient to determine that issue.

34. Rule 7.3 requires High Park to establish that there is no defence to its counterclaim. High Park has failed to meet that burden, as whether the agreement was terminated is dependent on whether there were grounds for termination at the point the termination notices were issued, and whether the notices were properly issued.

35. The test for summary judgment is set out by the Supreme Court of Canada in *Hryniak v Mauldin* ("***Hyrniak***"). The moving party must establish (i) that the application record allows the judge to make the necessary findings of fact, (ii) that the application record allows the judge to apply the law to the facts, and (iii) that the summary judgment procedure is a proportionate, more expeditious, and less expensive means to achieve a just result.[38]

36. The facts are clearly in dispute. Four20 denies the Arrangement Agreement was terminated, including that any of the grounds alleged for termination were valid. If the Arrangement Agreement was not terminated, then the Development Loan has not yet become due. High Park, through its Summary Judgment Application, is asking this Court to determine whether the Arrangement Agreement was terminated—the very issue which must be determined in Four20's main action at trial.

37. Although summary judgment is not strictly limited to cases where the facts are not in dispute, the Court must be able to make the necessary findings of fact in order to determine

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[36] *Bhasin v Hrynew*, 2014 SCC 71 at para 74; *NEP Canada ULC v MEC OP LLC*, 2021 ABQB 180 at para 947, citing *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 [***IFP Technologies***] at para 4 and *CM Callow Inc v Zollinger*, 2020 SCC 45 [***Callow***] at para 83; *Telsec Developments Ltd v Abstak Holdings Inc*, 2020 ABCA 40 at para 52; *IFP Technologies* at para 4.

[37] Four20 SOC at paras 7, 8, 16, 21, and 22-28.

[38] *Hryniak v Mauldin*, 2014 SCC 7 [***Hryniak***] at para 49.

the issues before it.[39] The use of the summary judgment procedure must not result in any procedural or substantive injustice to either party.[40]

38. High Park has the onus of proof in the Summary Judgment Application to establish that there is no defence and no genuine issue requiring trial. High Park must satisfy its onus on a balance of probabilities.[41]

39. If High Park satisfies this court as to there being no defence and no genuine issue, the burden then shifts to Four20 to show that there is a genuine issue for trial, by identifying a positive defence or that a fair and just determination is not realistic.[42]

40. Four20 has raised a positive defence, which is an issue that will be determined at trial—Four20's claim in the main Action is that the purported termination was improper, ineffective, and attempted contrary to the Defendants' obligations to fulfill its contractual duties in good faith. That is also Four20's defence to the Counterclaim.

41. The issue of whether the Arrangement Agreement was terminated, rests on the validity of three Notices of termination, issued by Tilray/High Park, in short succession. The Arrangement Agreement provides that a termination notice may not be issued unless it provides sufficient detail of the alleged breaches[43]. The reason for that requirement is that the Agreement further provides that Four20 was to have 10 days to cure any breach. In this case all three Notices failed:

(a) The January 28, 2020 Notice alleged breach, but failed to provide any detail. Even Brandon Kennedy, Tilray's CEO at the time, admitted during questioning that reading the Notice he had no idea what breaches were being alleged. That notice was ineffectual as it had no detail, but also because Tilray then purported

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[39] *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 [***Weir-Jones***] at para 21.
[40] *Weir-Jones*, *ibid*.
[41] *Weir-Jones* at para 47.
[42] *Weir-Jones* at para 47.
[43] Arrangement Agreement, s. 4.7(4)

to terminate the Arrangement Agreement prior to the 10-day cure period running, in breach of the Arrangement Agreement;

(b) The February 4, 2020, notice was also ineffective for two reasons: first, Tilray was in breach of the Arrangement Agreement at that time,[44] second, again there was no 10-day cure period, as Tilray purported to terminate immediately, alleging a Material Adverse Event claim; and

(c) Also on February 4, 2020, Tilray issued a third termination notice, alleging a right to terminate based on a Material Adverse Event claim.[45] Whether such an event had occurred, and whether Tilray was legally entitled to terminated on that basis, are, again, the determining issues in Four20's Action against Tilray/High Park. They are the very issues that will be determined at the main trial.

42. There are several issues that require a trial—of key importance is whether the Defendants improperly attempted to terminate the Arrangement Agreement. If the Defendants did not properly terminate the Arrangement Agreement, then the Loan Agreement is not payable. Determining this issue has a direct impact and determinative effect on Four20's claim.

43. The issues arising in Four20's claim are *inextricably intertwined* with and arise from the same contractual framework as the issues in the Summary Judgment Application. The counterclaim cannot be readily bifurcated from the issues in the main action, and therefore it is inappropriate for summary determination.[46]

44. Summary judgment is not appropriate in this case. As noted in *Hryniak*:

> [I]f some of the claims against some of the parties will proceed to trial in any event, it may not be in the interest of justice to use the new fact-finding powers to grant summary judgment against a single defendant. Such partial summary judgment may run

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[44] Arrangement Agreement, s. 4.7(4); Popadynetz Affidavit #1, Ex. DDD

[45] Popadynetz Affidavit #1, Ex. EEE.

[46] *Butera v Chown, Cairns LLP*, 2017 ONCA 783 [***Butera***] at para 34; *DIRTT Environmental Solutions Ltd v Falkbuilt Ltd*, 2021 ABQB 252 [***DIRTT***] at para 23.

> the risk of duplicative proceedings or inconsistent findings of fact and therefore the use of the powers may not be in the interest of justice.

45. Summary judgment on the Counterclaim is exactly the kind of partial summary judgment which the Court warned against. Summary judgment on the Counterclaim engages many of the same questions and issues which arise in Four20's claim, which may result in duplicative proceedings and inconsistent findings of fact once the Court has heard the trial and made determinations on the entire factual matrix and the credibility and reliability of the witnesses.

46. This Court, as well as the Ontario Court of Appeal, have been clear—there are certain risks associated with allowing partial summary judgment, and it should be granted sparingly.[47] The test for summary judgment is:

> A motion for partial summary judgment should be considered to be a rare procedure that is reserved for an issue or issues that may be **readily bifurcated** from those in the main action and that may be dealt with expeditiously and in a cost-effective manner.[48]

47. Further, the Court must consider (among other things):

(a) Whether the objectives of proportionality, efficiency and cost effectiveness are satisfied, and the partial summary judgment is appropriate given the action is proceeding to trial on other matters;

(b) Whether the claims determined on partial summary judgment are intertwined with the issues proceeding to trial; and

(c) Whether there is a risk of inconsistent findings, especially considering that the application record will not be an extensive as the trial record.[49]

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[47] *DIRTT*, *ibid* at para 23, citing *Butera*, *ibid*. *Butera* has been cited with approval by other appeal courts in Saskatchewan (*AC Forestry Ltd v Big River First Nation*, 2023 SKCA 96), Manitoba (*Bibeau et al v Chartier et al*, 2022 MBCA 2), and New Brunswick (*Babin v CJM Dieppe Investments Ltd and TG 378 Gauvin Ltd and Sood*, 2019 NBCA 44 at paras 39-41). Ontario Court of Appeal has also reaffirmed *Butera*: *Mason v Perras*, 2018 ONCA 978 and *Service Mold + Aerospace Inc v Khalaf*, 2019 ONCA 369 [***Service Mold***].

[48] *Butera*, *supra* note 46 at para 34.

48. Partial summary judgment is "more complex" than summary judgment motions generally and, especially if used imprudently, partial summary judgment is likely to cause delay, increased expense, and increased risk of inconsistent findings.[50]

49. Partial summary judgment on the Counterclaim in this case undermines the purpose of summary procedures. It is far more appropriate, proportionate, fair, and just to have these issues adjudicated at trial, upon the full trial record.

50. In addition, the nature of the claim and counterclaim call for some consideration of equitable setoff. It is just and equitable in the present circumstances to dismiss the application for summary judgment—the claim and counterclaim are inextricably connected, arising from the same contractual framework, and it is manifestly unjust to allow High Park to enforce payment without taking the claim into account.[51]

51. If Four20 is successful on its claim at trial, the Development Loan is not and never has been payable. As High Park is a non-operating company incorporated solely for the Arrangement Agreement on behalf of its American-based parent company, Tilray, there are serious questions as to whether Four20 will be able to enforce an award at trial or secure the awarded remedy.

52. It is inefficient and inequitable to grant summary judgment on the Counterclaim. Summary judgment puts High Park is a position better than it would have been had the Transaction been concluded because (i) the purchase price is not paid to Four20; (ii) High Park is able to collect the Development Loan plus interest for the intervening years (a debt that it would have simply acquired otherwise); and (iii) High Park is able to leverage the judgment into putting Four20 out of business and may acquire Four20's assets at a significant discount.

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[49] *DIRTT*, *supra* note 46 at para 23; *Issa v BMB Inc*, 2024 ABKB 159 at para 76, citing *DIRTT* and *Butera*; *Kudzin v APM Construction Services Inc*, 2023 ABKB 425 at paras 182-187, citing *DIRTT* and *Butera*, among others.
[50] *Service Mold*, *supra* note 47 at para 14.
[51] *Lion Creek Properties Ltd LLP v Sorobey*, 2015 ABQB 223 at para 20, citing *Soler & Palau Canada Inc v Meyer's Sheet Metal Ltd*, 2012 ABQB 496 at paras 47-49.

53. In this case, Applications Judge Farrington identified that obtaining partial summary judgment is a more difficult test to satisfy, but then failed to apply that standard, or even return to the issue prior to granting partial summary judgment.

C. The Factual Matrix Cannot be Disregarded

54. In *IFP Technologies*, the Alberta Court of Appeal grappled with whether an entire agreement clause precluded consideration of the factual matrix. Justice Fraser, writing for the majority, stated:

> The goal of contractual interpretation is to **determine the objective intent of the parties at the time the contract was made** through the application of legal principles of interpretation... To this end, "the exercise is not to determine what the parties subjectively intended but **what a reasonable person would objectively have understood from the words of the document read as a whole and from the factual matrix**".... Accordingly, disputed contractual terms **must be interpreted**, not in isolation, but **in light of the contract as a whole**...[52]

55. Justice Fraser further stated (emphasis added and citations removed):[53]

> Thus, in interpreting a contract, a trial judge must consider the relevant surrounding circumstances even in the absence of ambiguity...
>
> Determining what constitute properly surrounding circumstances is a question of fact. As to what is meant by surrounding circumstances, this consists of "objective evidence of the background facts at the time of the execution of the contract ... that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting"... **Examples of relevant background facts include: (1) the genesis, aim or purpose of the contract;** (2) the nature of the relationship created by the contract; and (3) the nature or custom of the market or industry in which the contract was executed: ... Ultimately, the **surrounding circumstances can include "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man"** ...

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[52] *IFP Technologies*, *supra* note 36 at para 79 (emphasis added and citations removed), citing *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 [***Sattva***] at para 49, Geoff R Hall, *Canadian Contractual Interpretation Law*, 2nd ed (Markham: LexisNexis, 2012) [***Hall***] at 33, and *Tercon Contractors Ltd. v British Columbia (Transportation and Highways)*, 2010 SCC 4 at para 64.

[53] *IFP Technologies*, *supra* note 36 at paras 82-83, citing, amongst other things, *Hall*, *ibid* at 24-25, and *Sattva*, *ibid* at paras 47-48 and 58.

56. In *Dow Chemicals*, Justice Slatter, writing for the majority of the Court of Appeal, stated that:

> Exclusion clauses should be interpreted like all other contractual clauses, not in isolation, but giving the words used their ordinary and grammatical meaning, considered in harmony with the rest of the contract and in light of their purpose and commercial context.[54]

57. The factual matrix surrounding the Loan Agreement and Arrangement Agreement can not be ignored when analyzing both documents. As previously noted, the Loan Agreement was part of a larger transaction as outlined in the Arrangement Agreement. Both the Loan Agreement and Arrangement Agreement refer to each other — as such the Entire Agreement Clause within the Loan Agreement can not be used to exclude consideration of the events surrounding the Arrangement and the efforts to close along with the terms of the Arrangement Agreement.

D. Four20 is Entitled to Seek Specific Performance

58. All the parties involved intended to treat the Loan Agreement as an intercompany loan, knew Four20 was unable to repay it, and had no expectation that it would be repaid when the transaction closed.[55]

59. This understanding is further evidenced by Schedule "E" to the Arrangement Agreement, which sets out a working capital requirement upon the closing of the transaction. The calculation contemplates every dollar spent from the money advanced pursuant to the Loan Agreement to be used in the construction of stores.[56]

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[54] *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2020 ABCA 320 at para 47, citing *Sattva*, *supra* note 52 at para 47.
[55] Popadynetz Affidavit #2, and Ex. A.; Popadynetz Transcript, at 21:12-18; and Popadynetz Affidavit #1 at para 49.
[56] Popadynetz Affidavit #1, at paras 45-49 and Ex. C at Schedule "E".

60. Four20 seeks specific performance of the of the Arrangement Agreement.[57] This would involve the purchase of all its issued and outstanding shares while the Development Loan remains outstanding on its books to become an intercompany loan.

61. Specific performance is often awarded to enforce contracts for the purchase and sale of shares.[58]

62. If High Park argues that Four20 has delayed prosecuting this action and is therefore not entitled to specific performance, such submissions ignore that considerable delay in this action resulted from the Defendants' delay in producing Mr. Wang as a witness.[59] Four20 has proposed and filed a litigation plan and has pursued the prosecution of the action.[60] No application of laches is appropriate in the circumstances.

63. It would be manifestly unjust to allow Applicants to rely on delay they caused, created, and contributed to, to bar Four20 from seeking specific performance of the Arrangement Agreement. In any event, that again will be a question for trial and is not determined by the Court on a Summary Judgment Application.

E. Conclusion

64. Four20 and High Park are parties to a high value transaction where High Park was to acquire Four20 for $70,000,000 in either cash or Tilray shares and $40,000,000 in promissory notes (contingent on achieving development goals). As part of this arrangement, High Park loaned Four20 $7,000,000 in order to achieve those development goals. Once Four20 was acquired, High Park would garner the benefit of that development and additional store fronts—work and time that High Park would be saved from undertaking itself.

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[57] Popadynetz Affidavit #1, para 80 and Ex. III at paras 22-28 and 43(a).

[58] *UBS Securities Canada Inc v Sands Brothers Canada Ltd*, [2008] OJ No 1676 (QL) at paras 64, 65, and 68.

[59] Four20 repeatedly requested dates on which Mr. Wang could be questioned. After Four20 served Tilray and High Park a Notice of Appointment for Questioning for Mr. Wang, Tilray and High Park's position was that its counsel were not counsel for Mr. Wang (Popadynetz Affidavit #1, paras 93-94). Four20 then took steps to locate Mr. Wang and questioned him on June 2, 2023. Notably, counsel for Tilray and High Park acted as counsel for Mr. Wang during that questioning (Popadynetz Affidavit #2, para 2).

[60] The Standard Litigation Plan, filed August 16, 2023, originally anticipated that the parties would file a Form 37 and attend a pre-trial conference no later than December 6, 2024. The dates in the litigation plan have been delayed as the Defendants have not yet completed their questioning.

65. The Transaction did not close, due to the Defendants attempts to terminate and walk away from the Arrangement Agreement. Four20 commenced a claim in respect of the purported termination. There are clear issues requiring trial with respect to Four20's claim. Many of these same issues arise with respect to High Park's counterclaim. The Development Loan is only repayable if the Arrangement Agreement was terminated. This is an issue for trial.

66. High Park is a non-operational, American-owned company seeking the rare remedy of partial summary judgment against Four20 for $7,000,000 plus interest in the face of Four20's claim valued at $110,000,000. Partial summary judgment should be granted sparingly, only where the adjudged issue can be readily bifurcated. The present case is simply inappropriate for summary judgment. It would be unjust, inequitable, and provides no efficiency to the proceedings to grant summary judgment of the Counterclaim.

V. RELIEF REQUESTED

67. Four20 requests:

(a) An order dismissing High Park's application for summary judgment on the Counterclaim;

(b) Costs for the Appeal and the Summary Judgment Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of April, 2024.

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per: _____

Robert Hawkes KC / Gavin Price / Sarah Miller
Counsel for the Appellant, 420 Investments Ltd.

VI. TABLE OF AUTHORITIES

TAB NAME

A. *Legislation*

A. *Alberta Rules of Court*, Alta Reg 124/2010

B. *Case Law*

B. *Agrium v Orbis Engineering Field Services*, 2022 ABCA 266

C. *Hierath v Shock*, 2021 ABQB 185

D. *Steer v Chicago Title Insurance Company*, 2019 ABQB 318

E. *Bhasin v Hrynew*, 2014 SCC 71

F. *NEP Canada ULC v MEC OP LLC*, 2021 ABQB 180

G. *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157

H. *CM Callow Inc v Zollinger*, 2020 SCC 45

I. *Telsec Developments Ltd v Abstak Holdings Inc*, 2020 ABCA 40

J. *Hryniak v Mauldin*, 2014 SCC 7

K. *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49

L. *Butera v Chown, Cairns LLP*, 2017 ONCA 783

M. *DIRTT Environmental Solutions Ltd v Falkbuilt Ltd*, 2021 ABQB 252

N. *AC Forestry Ltd v Big River First Nation*, 2023 SKCA 96

O. *Bibeau et al v Chartier et al*, 2022 MBCA 2

P. *Babin v CJM Dieppe Investments Ltd and TG 378 Gauvin Ltd and Sood*, 2019 NBCA 44

Q. *Mason v Perras*, 2018 ONCA 978

R. *Service Mold + Aerospace Inc v Khalaf*, 2019 ONCA 369

S. *Issa v BMB Inc*, 2024 ABKB 159

T. *Kudzin v APM Construction Services Inc*, 2023 ABKB 425

U. *Lion Creek Properties Ltd LLP v Sorobey*, 2015 ABQB 223

V. *Soler & Palau Canada Inc v Meyer's Sheet Metal Ltd*, 2012 ABQB 496

W. *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53

X. *Tercon Contractors Ltd. v British Columbia (Transportation and Highways)*, 2010 SCC 4

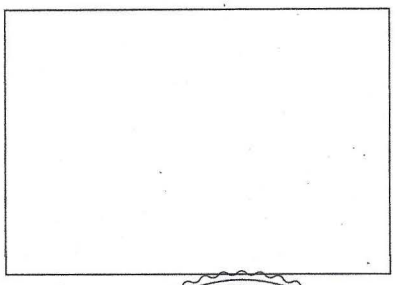
Y. *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2020 ABCA 320

Z. *UBS Securities Canada Inc v Sands Brothers Canada Ltd*, [2008] OJ No 1676 (QL)

This is Exhibit "H" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

_____

A Commissioner for Oaths
in and for the Province of Alberta



COURT FILE NUMBER	2001-02873
COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF / DEFENDANT BY COUNTERCLAIM / RESPONDENT	420 INVESTMENTS LTD.
DEFENDANTS / PLAINTIFFS BY COUNTERCLAIM / APPLICANT	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**BRIEF OF ARGUMENT OF HIGH PARK SHOPS INC.**
PARTY FILING THIS DOCUMENT	HIGH PARK SHOPS INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP 3500 Bankers Hall East 855 – 2nd Street S.W. Calgary, Alberta T2P 4J8

Attention:	David Tupper Tom Wagner
Telephone:	403-260-9722 403-260-9734
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Email:	david.tupper@blakes.com tom.wagner@blakes.com
File Ref.:	191284/35

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PART I - OVERVIEW

1. This Brief is provided by High Park Shops Inc. ("**High Park**"), a wholly-owned subsidiary of Tilray Inc. ("**Tilray**"), in opposition to the appeal (the "**Appeal**") brought by 420 Investments Ltd. ("**Four20**"). The Appeal relates to High Park's summary judgment application (the "**Application**"). The Appeal seeks to overturn the Order of Applications Judge J.R. Farrington filed March 11, 2024, granting summary judgment to High Park (the "**Summary Judgment Order**").

2. The Summary Judgment Order resulted from an endorsement with reasons of Applications Judge Farrington, pronounced on February 7, 2024 (the "**Summary Judgment Decision**"). In the Summary Judgment Decision, Applications Judge Farrington granted High Park summary judgment of its Counterclaim. The Counterclaim sought the repayment of a $7,000,000 loan (the "**Loan**"), plus contractual interest from Four20 pursuant to the terms of a loan agreement dated August 28, 2019 (the "**Loan Agreement**").

    - Affidavit of Freida Butcher sworn February 23, 2024 ("**Butcher Affidavit**") at Exhibit R, p 5.

3. The only issue that this Court must decide in this Appeal is whether Judge Farrington made the correct decision when he granted the Summary Judgment Order.

4. This Appeal is simply about repayment of the Loan, which is long past its contractual due date. There are no material facts in dispute and there are no genuine issues that require a trial. In addition, summary judgment is the most cost-effective and expedient way to resolve the Counterclaim. The Counterclaim is an independent action that is not intertwined with the matters at issue in the Statement of Claim filed by Four20 against Tilray and High Park (the "**Main Action**"). Accordingly, this Honourable Court should uphold the Summary Judgment Order.

PART II - BACKGROUND

A. <u>The Underlying Action</u>

5. Two separate and independent claims have been filed this Action:

    (a) The Main Action was filed by Four20 against Tilray and High Park. The claim in the Main Action relates to the alleged breach of an arrangement agreement that

was entered into on August 28, 2019, between Tilray, High Park, Four20, and the representative shareholders of Four20 (the "**Arrangement Agreement**"); and

(b) The Counterclaim was filed by High Park against Four20 for the repayment of the Loan that High Park advanced to Four20 in 2019 (the "**Counterclaim**").

B. The Arrangement Agreement

6. On August 28, 2019, Tilray, High Park, Four20, and the representative shareholders of Four20 entered into the Arrangement Agreement.

7. Pursuant to the Arrangement Agreement, Tilray, through High Park, was to acquire all of the issued and outstanding securities of Four20 for a total purchase price of:

(a) $70,000,000 in the form of Tilray shares, or at High Park's election, cash; and

(b) Up to $40,000,000 in promissory notes, contingent on Four20 meeting the store openings and business plans contemplated by the Arrangement Agreement.

8. The acquisition was to be completed through a plan of arrangement pursuant to section 193 of the *Alberta Business Corporations Act* (the "**Arrangement**").

9. The Arrangement Agreement provided, among other things, that it was subject to termination if certain conditions precedent were not met prior to the expected closing date of the Arrangement (the "**Effective Date**").

10. After the acquisition, Four20 was to operate as a wholly owned subsidiary of High Park.

C. The Interim Period

11. Tilray, High Park, and Four20 agreed that an interim period (the "**Interim Period**") would be required between the date that the Arrangement Agreement was entered into and the Effective Date. The Interim Period was required in part because of the length of time that the Alberta, Gaming, Liquor and Cannabis Commission ("**AGLC**") required to approve the transfer of Four20's retail cannabis licences to Tilray, through High Park.

- Affidavit of Garett Popadynetz affirmed on April 14, 2023 ("**Popadynetz Affidavit**") at Exhibit "CC" s. 4.4.

12. During the Interim Period, Four20 maintained control of its business, according to the terms of the Arrangement Agreement. Four20 was also contractually obligated to maintain minimum working capital levels and achieve certain operating milestones, which it failed to satisfy as conditions under the Arrangement Agreement.

- Popadynetz Affidavit at Exhibit "CC", ss. 1.1 "Working Capital Target", 4.1, and 4.2.

D. The Loan Agreement

13. During the Interim Period, Four20 wanted a loan to finance the construction, development, and improvement of retail cannabis stores in accordance with the store openings and business plans contemplated by the Arrangement Agreement.

14. On August 28, 2019, High Park and Four20 entered into the Loan Agreement.

- Affidavit of Carl Merton affirmed on February 16, 2023 ("**Merton Affidavit**") at para 4.
- Popadynetz Affidavit at para 43 and Exhibit "DD".
- Transcript from the August 18, 2023 Cross Examination Transcript of Garett Popadynetz ("**Popadynetz Transcript**") at 8:16-9:18.

15. Pursuant to the terms of the Loan Agreement, High Park advanced the Loan to Four20 in two separate tranches of $5,000,000 (the "**First Tranche**") and $2,000,000 (the "**Second Tranche**").

- Merton Affidavit at para 5 and Exhibits "B" and Exhibit "C".
- Popadynetz Transcript at 10:17-20 and 11:14-25.
- Undertaking Responses of Garett Popadynetz at Undertakings 1 and 2.

16. The Loan Agreement contains an explicit repayment provision (the "**Repayment Provision**"). It provides:

> 7.1 **The total outstanding amount of the Loan**, other than any amounts advanced under the Working Capital Note, if applicable, **shall be repaid in full on the later of (i) the date falling one hundred and eighty (180) days after the date of the advance of the Loan; and (ii) the termination of the Arrangement Agreement** (the "Maturity Date") [...] [Emphasis added.]

- Merton Affidavit at Exhibit "A", s. 7.1.

17. The Loan Agreement further provides that the Loan is not subject to any right of set-off. Section 6.1 of the Loan Agreement provides:

> 6.1 **All payments due and payable** from the Borrower hereunder **shall be made in immediately available funds, without any set-off**, deduction or withholding of any nature whatsoever except to the extent that the Borrower is obliged by law to make payment subject to tax deduction or withholding. [Emphasis added.]

- Merton Affidavit at Exhibit "A", s. 6.1.

18. The parties also agreed that the Loan Agreement was the entire agreement between the parties as it relates to the underlying Loan and its repayment requirements:

> **This Agreement constitutes the entire agreement** as between the parties hereto in respect of the subject matter of the Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties relating to the subject matter of this Agreement and entered into prior to the date of the Agreement.

- Merton Affidavit at Exhibit "A", s. 13.7.

19. The Loan Agreement and Arrangement Agreement were two distinct agreements. The Arrangement Agreement set out the details of and conditions for the Arrangement to be completed. The Loan Agreement related solely to the advance of the Loan, the interest that would be paid on the Loan, and the required repayment of the Loan.

E. The Loan Becomes Repayable

20. On February 26, 2020, pursuant to the Loan Agreement, the First Tranche became payable because:

(a) As of February 25, 2020, more than 180 days had passed since High Park advanced the First Tranche; and

(b) The Arrangement Agreement was terminated on February 26, 2020.

- Merton Affidavit at paras 10 and 11 and Exhibit "D".
- Popadynetz Transcript at 13:4-14:3 and Exhibit "1".

F. The Event of Default Pursuant to the Loan Agreement

21. The Loan Agreement defined an "Event of Default" as the failure by Four20 to pay any amount due pursuant to the Loan Agreement within three business days of the date when it became payable.

- Merton Affidavit at para 11 and Exhibit "D".

22. Four20 failed to repay the First Tranche by March 1, 2020, three business days after the First Tranche became payable. This triggered an Event of Default according to the Loan Agreement.

- Merton Affidavit at para 12 and Exhibit "A", s. 11(a).

23. The Loan Agreement provided that if an "Event of Default" occurred and was continuing that High Park, as lender, could at any time by notice to Four20 declare that the total amount of the Loan and any other amounts payable under the Loan Agreement were immediately due and payable. The Loan would then terminate.

- Merton Affidavit at Exhibit "A", s. 11.

G. The Notice of Acceleration Pursuant to the Loan Agreement

24. On March 11, 2020, High Park provided Four20 with a Notice of Acceleration because of the Event of Default. The entire Loan, including both the First Tranche and the Second Tranche, accordingly, became immediately due and payable on March 11, 2020.

- Merton Affidavit at para 13 and Exhibit "E".
- Popadynetz Transcript at 15:4-25 and Exhibit "B".

25. Four20 has not repaid any portion of the Loan as required by the Notice of Acceleration. The full amount of the Loan remains owing by Four20. Accordingly, High Park filed the Counterclaim to recover the amount of the Loan.

- Merton Affidavit at para 14.
- Popadynetz Transcript at 17:3-6.

H. The Summary Judgment Decision of Applications Judge Farrington

26. On February 7, 2024, Applications Judge Farrington granted summary judgment to High Park on the Counterclaim. He said:

> 420 argues that the matter cannot be determined without determining whether there was a proper termination or not, but that position is contrary to the agreement reached between the parties and contrary to commercial business sense.
>
> [...]
>
> High Park is entitled to judgement for the principal amount plus interest at the contractual rate. Finding otherwise, in my view, would overwhelm the terms of the Loan Agreement which would be contrary to the caution in *Sattva*.

- Butcher Affidavit at Exhibit R, pp. 4-5.

PART III - ISSUE

27. High Park agrees with Four20 that there is only one issue for the Court to consider in this Appeal. The question is whether Applications Judge Farrington was correct when he granted the Summary Judgment Order.

28. For the reasons set out below, Applications Judge Farrington was correct when he granted the Summary Judgment Order.

PART IV - LAW

A. Standard of Review

29. High Park agrees with Four20 that the standard of review is correctness. No new evidence has been filed. As a result, the Summary Judgment Application is not to be heard and decided anew. Instead, this Court must determine whether or not, based on the record, the decision of Applications Judge Farrington to grant the Summary Judgment Order was correct.

- **Appellant's Table of Authorities Tab D:** *Steer v Chicago Title Insurance Company*, 2019 ABQB 318 at para 10.

B. Summary Judgment

30. Rule 7.3 permits this Court to grant summary judgment if Four20 has no defence to High Park's Counterclaim or part of it.

- **Respondent's Book of Authorities Tab 1:** *ARC*, r. 7.3.

31. If the plaintiff is the moving party, as in this case, it must prove that the defendant has no defence to the plaintiff's claim based on a balance of probabilities. In addition, certain

factual disputes, including bald allegations and self-serving evidence unsupported by other evidence, do not defeat an application for summary judgment.

- **Respondent's Book of Authorities Tab 2**: *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 ("***Weir-Jones***") at paras 32-33.
- **Respondent's Book of Authorities Tab 3**: *Templanza v Ford*, 2018 ABQB 168 at para 65.

32. Similarly, the fact that there might be some conflicting evidence does not mean that a "fair and just adjudication" is not possible.

- **Respondent's Book of Authorities Tab 4**: *Goodswimmer v Canada* (Attorney General), 2017 ABCA 365 at para 40.

33. Applications for summary judgment should be granted when there is no genuine issue requiring a trial. As set out by the Supreme Court of Canada in *Hyrniak*:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

- **Respondent's Book of Authorities Tab 5**: *Hryniak v Mauldin*, 2014 SCC 7 at para 49.

34. Canadian courts have strongly encouraged the expanded use of summary judgment by decision-makers. As stated by Justice Slatter, speaking for the majority in *Weir-Jones*:

> There is no policy reason to cling to the old, strict rules for summary judgment. This can only serve to undermine the shift in culture called for by *Hryniak v Mauldin*. Summary judgment should be used when it is the proportionate, more expeditious and less expensive procedure. It frequently will be. Its usefulness should not be undermined by attaching conclusory and exaggerated criteria like "obvious" or "high likelihood" to it.

- **Respondent's Book of Authorities Tab 2**: *Weir-Jones* at para 48.
- See also **Respondent's Book of Authorities Tab 6**: *Hannam v Medicine Hat School District No. 76,* 2020 ABCA 343 at para 48.

PART V - ARGUMENT

A. <u>The Loan is Due and Owing</u>

35. The Repayment Provision contains two clear terms that trigger the repayment of the Loan. Based on the clear words of the Repayment Provision, both conditions for the repayment

of the Loan have been fully satisfied. One hundred and eighty days have passed since the advance of the Loan and the Arrangement Agreement has been terminated. Accordingly, the Loan must be repaid to High Park.

B. There are No Material Facts in Dispute

36. None of the material facts are disputed. The evidence of both Tilray's affiant, Mr. Merton, and Four20's affiant, Mr. Popadynetz is that:

(a) High Park and Four20 entered into the Loan Agreement;

- Merton Affidavit at para 4.
- Popadynetz Affidavit at para 43 and Exhibit "DD".
- Popadynetz Transcript at 8:16-9:18.

(b) High Park advanced the Loan to Four20 in two tranches on August 29, 2019, and November 29, 2019;

- Merton Affidavit at para 5, Exhibit "B", and Exhibit "C".
- Popadynetz Transcript at 10:17-20 and 11:14-25.
- Undertaking Responses of Garett Popadynetz at Undertakings 1 and 2.

(c) Tilray and High Park sent two notices of breach to Four20, on January 28, 2020 and February 4, 2020, respectively. The second notice of breach was sent in response to the request of Four20 for additional detail about its breaches of the Arrangement Agreement. The second notice of breach accordingly included extensive detail about Four20's breaches of the Arrangement Agreement;

- Popadynetz Affidavit at paras 70, 73, and 74 and Exhibits "ZZ", "CCC", and "EEE".

(d) A notice of termination of the Arrangement Agreement arising from the two prior notices of breach was sent to and received by Four20 on February 26, 2020;

- Merton Affidavit at para 11 and Exhibit "D".
- Popadynetz Transcript at 13:4-14:3 and Exhibit "1".

(e) The Acceleration Notice, in which Tilray demanded full repayment of the Loan in accordance with the Loan Agreement, was sent to and received by Four20 on March 11, 2020; and

- Merton Affidavit at para 13 and Exhibit "E".
- Popadynetz Transcript at 15:4-25 and Exhibit "B".

(f) Four20 has failed to repay the Loan.

- Merton Affidavit at para 14.
- Popadynetz Transcript at 17:3-6.

37. The only matters in dispute are Four20's claimed defences, including whether the termination of the Arrangement Agreement was effective. These defences are not material facts but are instead questions of law and contractual interpretation. For all of the reasons set out below, the claimed defences of Four20 do not raise genuine issues requiring a trial and do not prevent the determination of the Counterclaim by way of summary judgment.

C. Four20 Does Not Have a Defence to the Counterclaim

38. Four20's Statement of Defence to Counterclaim claims that the Loan is not due because the Loan was not to be repaid until either:

(a) The Arrangement Agreement was legitimately and in good faith terminated, in accordance with its terms (the "**Legitimate Termination Defence**"); or

(b) The Arrangement was completed, at which time the Loan would convert to an intercompany transaction (the "**Intercompany Loan Defence**").

39. In its Appeal Brief, Four20 makes a new, third argument: that the Arrangement Agreement has not been terminated at all (the "**No Termination Defence**").

- Appeal Brief of Four20 at paras 40-41.

40. In the following, High Park first addresses Four20's "Legitimate Termination Defence". High Park then addresses Four20's "No Termination Defence". Finally, High Park addresses the "Intercompany Loan Defence" and various other arguments that have been made by Four20 and raised as potential impediments to summary judgment.

41. As set out in detail below, none of the defences raised by Four20 raise a genuine issue requiring a trial.

(1) Four20's "Legitimate Termination Defence"

42. The "Legitimate Termination Defence" does not present a genuine issue requiring a trial.

43. The words of a contract matter and the language chosen by the parties is paramount. As stated by Geoff Hall in *Canadian Contractual Interpretation Law*:

> Given the paramount importance of the words, being the very language agreed upon by the parties to govern their legal obligations, in cases of conflict the words will always prevail over the context.

- **Respondent's Book of Authorities Tab 7**: Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis: 2020) at p 35.
- **Respondent's Book of Authorities Tab 8**: *Bighorn No. 8 (Municipal District) v Bow Valley Waste Management Commission*, 2013 ABQB 723 at para 9, aff'd on other grounds 2015 ABCA 127, citing *Black Swan Gold Mines Ltd v Goldbelt Resources Ltd,* [1996] BCJ No. 1458, [1997] 1 WWR 605 (BCCA) at para 19.

44. The words used in the Repayment Provision are straightforward and clear. The provision does not state that the termination of the Arrangement Agreement must be proper and does not state that the termination must be acknowledged and accepted by both parties in order for the Loan to be repayable. Four20 is attempting to import additional words and meaning into the Repayment Provision that were not intended by the parties. The factual matrix cannot be used to overwhelm the clear terms of the Arrangement Agreement and Loan Agreement.

- **Respondent's Book of Authorities Tab 9**: *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 ("***Sattva***") at para 57.

45. The "Legitimate Termination Defence", if accepted, would prevent High Park from ever obtaining repayment of the Loan. The natural consequence of Four20's argument that only a "proper" or "effective" termination will trigger the repayment of the Loan is that, if it is ultimately determined that the termination was not "proper" or "effective", the Loan may never be repayable. This is a commercially absurd consequence. Much clearer language in the Repayment Provision would be expected if the parties intended this outcome.

46. The "Legitimate Termination Defence" also, in effect, converts the Repayment Provision into a species of penalty clause for the "improper" or "ineffective" termination of the Arrangement Agreement, penalizing High Park in the amount of $7 million plus interest. Again, much clearer language would be expected in the Repayment Provision if the parties intended the Repayment Provision to penalize Tilray and High Park for the "improper" or "ineffective" termination of the Arrangement Agreement.

47. As Judge Farrington correctly recognized, Four20's interpretation is "contrary to the agreement reached between the parties" and "contrary to commercial business sense".

- Butcher Affidavit at Exhibit R, p. 4.

48. The Court does not need to determine whether the termination of the Arrangement Agreement was "legitimate" or "proper" to grant summary judgment. The "Legitimate Termination Defence" is not a valid defence and does not present a genuine issue requiring a trial.

(2) Four20's "No Termination Defence"

49. In its appeal of the Summary Judgment Order, Four20 raises a new argument, that the Arrangement Agreement was never terminated at all.

50. This new "No Termination Defence", however, is fundamentally flawed because:

(a) it overlaps with the arguments made pursuant to the "Legitimate Termination Defence". Indeed, Four20 specifically sets out its argument by saying that "[i]f the Defendants did not properly terminate the Arrangement Agreement, then the Loan Agreement is not payable". As a result, the issues addressed in the foregoing section about the "Legitimate Termination Defence" apply equally to the "No Termination Defence";

(b) it requires an interpretation of the Arrangement Agreement and the Loan Agreement that runs counter to the agreement of the parties and commercial business sense;

(c) it ignores and misstates the facts; and

(d) it in effect seeks specific performance, which is not an appropriate remedy in the circumstances.

(i) The "No Termination Defence" Runs Counter to the Terms of the Arrangement Agreement and the Loan Agreement

51. The "No Termination Defence" runs counter to commercial business sense and the stated agreement of the parties in both the Arrangement Agreement and the Loan Agreement.

52. With respect to the Arrangement Agreement, Four20's argument that absent a "proper" or "effective" termination the Arrangement Agreement binds Tilray and High Park in perpetuity is contrary to the stated agreement of the parties and commercial business sense.

53. As recently held by Justice Marion in *Serinus Energy,* whether the parties intended a contract to be of perpetual duration is a matter of interpretation of the agreement and its surrounding circumstances.

- **Respondent's Book of Authorities Tab 10**: *Serinus Energy PLC v SysGen Solutions Group Ltd.*, ("***Serinus Energy***") 2023 ABKB 625 at para 128.

54. In this case, Tilray and High Park agreed, subject to the detailed terms of the Arrangement Agreement, to purchase the business of Four20 as it existed in August 2019 for an amount that was determined to be fair market value as of that point in time. The fairness opinion provided to Tilray and High Park by their financial advisor was specifically provided "on the basis of securities markets, economic, financial and general business conditions prevailing as of the date hereof" [emphasis added].

- Popadynetz Affidavit at paras 35-41 and Exhibit "BB".

55. Tilray, High Park, and Four20 also agreed that the Arrangement Agreement would have an Outside Date of May 28, 2020.

- Popadynetz Affidavit at Exhibit "CC" at s. 1.1, p. 12.

56. In contrast to this, the "No Termination Defence" means that, notwithstanding the clear and stated intention of the parties, the Arrangement Agreement would exist indefinitely and at least until the hearing of the Main Action and all appeals of the Main Action. This, in effect, would bind Tilray and High Park at some unknown but distant future date to purchase Four20 for the compensation determined to be fair market value in August 2019, regardless of the significant changes in the businesses of Tilray and Four20 and changes in the cannabis market as a whole since that time. This cannot be right.

57. Another consequence of the "No Termination Defence" is that it would permit Four20 to avoid repayment of the Loan simply by challenging the validity of the termination of the

Arrangement Agreement. As correctly identified by Applications Judge Farrington, that argument runs counter to the intent of the parties:

> Should a party be able to obtain a stay on the loan repayment obligation simply by filing a pleading and adducing evidence on the Arrangement Agreement aspects of the claim when it agreed to pay the loan without set-off?
>
> [...]
>
> 420 has had the use of the $7 million since it was advanced, and it seeks to continue to have the use of that money until after trial and presumably any appeals. That is not what the parties agreed to with respect to the loan aspect of the transaction.

- Butcher Affidavit at Exhibit R, p. 4.

58. It is clear that the Arrangement Agreement was terminated. Even if it was not, the passage of time and clear terms of the Arrangement Agreement and Loan Agreement mean that the Loan is payable. Accordingly, the No Termination Defence must fail.

(ii) The "No Termination Defence" Ignores and Misstates the Facts

59. According to Four20, "[t]he issue of whether the Arrangement Agreement was terminated, rests on the validity of three notices of termination, issued by Tilray/High Park, in short succession". According to Four20, these notices were not effective. This argument, however, misstates and ignores key facts already on the record before this Court.

- Appeal Brief of Four20 at paras 40-41.

60. The first notice, sent on January 28, 2024 (the "**January 28 Notice**"), was not a notice of termination. Instead, and as stated on the face of the January 28 Notice and reflected in the evidence of Mr. Popadynetz, the affiant of Four20, it was a notice of breach sent by High Park and Tilray to Four20. As stated in the January 28 Notice, it was sent to Four20 to provide notice of Four20's breaches of the Arrangement Agreement as required by Clause 4.7(4) of the Arrangement Agreement.

- Popadynetz Affidavit at para 70 and Exhibit "ZZ".

61. Four20 argues that the January 28 Notice was "ineffectual because it had no detail". The January 28 Notice, however, clearly listed the provisions of the Arrangement Agreement that Four20 had breached. In addition, Four20 provided a notice of breach to High Park on February 3, 2020, setting out alleged breaches by High Park of the Arrangement

Agreement, in exactly the same format and with the same level of detail as the January 28 Notice.

- Popadynetz Affidavit at para 73 and Exhibit "DDD".

62. Regardless, on February 4, 2020, High Park and Tilray issued a new notice to Four20 (the "**February 4 Notice**"). Once again, and as stated in the February 4 Notice and reflected in the evidence of Mr. Popadynetz, the affiant of Four20, the February 4 Notice was a notice of breach, not a notice of termination as now claimed by Four20 in its Appeal Brief. In addition, the February 4 Notice contained extensive detail about the breaches of the Arrangement Agreement by Four20. As a result, by at least February 4, 2020, Tilray and High Park had provided a valid notice of breach to Four20.

- Popadynetz Affidavit at para 74 and Exhibit "EEE".

63. Pursuant to the February 4 Notice, Tilray and High Park provided Four20 with a notice of termination on February 26, 2020 (the "**February 26 Notice**") following the cure period provided for in the Arrangement Agreement. Notably, the February 26 Notice is not mentioned by Four20 at all in its Appeal Brief. This is despite the fact that Mr. Popadynetz during cross-examination acknowledged that Four20 received the February 26 Notice and the February 26 Notice is an exhibit to the Affidavit of Carl Merton, the affiant for High Park.

- Appeal Brief of Four20 at paras 40-41.
- Merton Affidavit at para 11 and Exhibit "D".
- Popadynetz Transcript at 13:4-14:3 and Exhibit "1".

64. As a result, by February 26, 2020, Four20 had been provided with clear notice of its breaches of the Arrangement Agreement and had been provided with a cure period to attempt to remedy those breaches. Four20 did not do so. The Arrangement Agreement was accordingly terminated. Only after that, on March 11, 2020, did Tilray demand repayment of the Loan according to its terms.

- Merton Affidavit at para 13 and Exhibit "E".

65. In addition, regardless of whether the breach and termination notices were effective, the Arrangement Agreement is at an end in any event.

66. There were several conditions precedent that had to be satisfied before the Arrangement Agreement could close. For example, Subsection 6.1(2) of the Arrangement Agreement

provides that, as conditions precedent to the close of the Arrangement Agreement, Tilray and High Park were required to obtain certain regulatory approvals from the AGLC prior to the Effective Date:

> The obligations of the Parties to complete the Arrangement are subject to the satisfaction or ... waiver, in whole or in part, by the Purchaser and the Company on or prior to the Effective Date, of each of the following conditions: [...]
>
> > (2) Government Approvals. All consents, approvals, and actions of or by and all the filings with and notifications to, any Governmental Authority required to complete the Arrangement and will have obtained, taken or made, as applicable, on terms satisfactory to the Company and Purchaser, each acting reasonably, and will remain in force and effect.

- Popadynetz Affidavit at Exhibit CC at s. 6.1, p. 39-40.

67. It is not disputed that AGLC approval was never obtained. In fact, it is not clear that AGLC approval is even capable of being obtained by Tilray or High Park at this point, many years after the fact. Accordingly, and even if the Arrangement Agreement was not properly terminated, conditions precedent to the close of the transaction were never met. As a result, the Arrangement Agreement has come to an end, rendering the Loan due and payable.

(iii) The "No Termination Defence" Seeks Specific Performance

68. The "No Termination Defence is also, in effect, a request for specific performance. Pursuant to the "No Termination Defence", Four20 argues that the Arrangement Agreement remains valid and enforceable. Four20 also argues directly in its Appeal Brief that it is entitled to specific performance.

69. Four20's claim for specific performance is flawed and has no reasonable prospect of success. Counsel for Four20 acknowledged this fact at the hearing of the summary judgment application before Applications Judge Farrington, saying:

> Do I think that specific performance is the ultimate remedy here? No, I think that damages are probably the right remedy, but I think that's an argument for another day, and I know that Mr. Tupper spent some time on that, and I -- and I -- I take his point that let's be realistic here, but I don't think the determination of realism needs to occur today.

- Transcript of Hearing before J.R. Farrington dated February 5, 2024 at 32:31-34.

70. This candid admission was appropriate. Four20's claim is compensable in damages. Four20 seeks to force Tilray and High Park to buy Four20's business. The loss of that sale, if Tilray or High Park are found to be liable, is compensable in damages. Four20 has not demonstrated why damages would not be an adequate remedy.

- **Respondent's Book of Authorities Tab 11**: *Semelhago v Paramadevan,* [1996] 2 SCR 415, [1996] SCJ No. 71 at para 22.
- **Respondent's Book of Authorities Tab 12**: *Garrett v Niagara-on-the-Lake Sailing Club*, 2023 ONSC 2891, at para 71.

71. In addition, Four20's delay in prosecuting this action disentitles it to specific performance pursuant to the doctrine of laches.

- **Respondent's Book of Authorities Tab 13**: R.J. Sharpe, *Injunctions and Specific Performance* 2nd ed. (Toronto: Canada Law Book, 2022) (loose leaf, release 2022 part 1), ch. 1, at 1.21.
- **Respondent's Book of Authorities Tab 14**: *370866 Ontario Ltd. v Chizy,* [1987] O.J. No. 2244 at paras 41-42.

72. Tilray and Four20 entered into the Arrangement Agreement on August 28, 2019. Tilray and High Park sent a Notice of Termination of the Arrangement Agreement to Four20 on February 4, 2020. It is now more than four years later, and the parties have just completed initial questioning. The parties are nowhere near ready for trial.

- Popadynetz Affidavit at paras 40, 75 and Exhibits "CC" and "FFF".

73. If Four20 truly wanted specific performance of the Arrangement Agreement, rather than damages in lieu of specific performance, it should have prosecuted its claim far more quickly.

74. Based on all of this, Four20's claim for specific performance has no prospect of success and is not relevant to the determination about whether High Park's claim for summary judgment should be granted. As a result, Four20 should not be permitted to prevent summary judgment on High Park's clear debt claim by alleging it is entitled to specific performance, either directly or pursuant to Four20's "No Termination Defence".

(3) <u>Four20's "Intercompany Loan Defence"</u>

75. With respect to the "Intercompany Loan Defence", the Loan Agreement contains the Repayment Provision. That does not state that the Loan would convert to an intercompany loan. The parties agreed that the terms included in the Loan Agreement represented the entire agreement between them.

76. Four20 disputes this on the basis that the "factual matrix cannot be disregarded", even if an entire agreement clause is present. High Park agrees. Indeed, extensive evidence of the factual matrix is before this Honourable Court in this Appeal. That factual matrix evidence, however, cannot be used to overwhelm the clear terms of the Loan Agreement. The Supreme Court of Canada has held that courts cannot deviate from the text of an agreement when that would result in the creation of a new agreement:

> While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement. The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement. [Emphasis added, citations omitted.]

- **Respondent's Book of Authorities Tab 9**: *Sattva* at para 57.

77. The Repayment Provision says nothing about conversion of the Loan to an intercompany loan. The Repayment Provision is clear that if the Arrangement was not completed and the Arrangement Agreement was terminated, the Loan would be repaid. The "Intercompany Loan Defence" would overwhelm these clear terms and is not a valid defence.

(4) Four20's Set-Off Defence

78. Four20 has also alleged that it is entitled to equitable set-off. Four20 claims that the Loan Agreement and Arrangement Agreement are so closely related that it would be unjust for the Court to grant summary judgment and to allow High Park to enforce payment of the Loan before the Main Action is decided.

79. This argument neither provides Four20 with a defence nor presents a genuine issue requiring a trial.

80. Four20 expressly contracted out of any right to claim set-off as a defence. Section 6.1 of the Loan Agreement states that "[a]ll payments due and payable from the Borrower hereunder shall be made in immediately available funds, without any set-off, deduction or

withholding of any nature whatsoever except to the extent that the Borrower is obliged by law to make payment subject to tax deduction or withholding".

- Merton Affidavit at Exhibit "A", s. 6.1.

81. Four20 accordingly agreed it would not have any right to set-off the Loan for any reason, subject to a very narrow exception for taxes or deductions required by law. This Honourable Court has held that parties can explicitly or impliedly contract out of their right to both contractual and equitable set-off. Accordingly, a defence of set-off is not available to Four20.

- **Respondent's Book of Authorities, Tab 15:** *Alberta Treasury Branches v COGI Limited Partnership,* 2018 ABQB 356 at para 36.
- **Respondent's Book of Authorities, Tab 16:** *Bernum Petroleum Ltd v Birch Lake Energy Inc.,* 2014 ABQB 652 at para 97.

(5) Brief Conclusion about Four20's Claimed Defences

82. For all of these reasons, Four20 does not have a defence to the Counterclaim and there is no genuine issue requiring a trial.

D. Applications Judge Farrington's Order is Not "Partial Summary Judgment"

83. High Park's application for summary judgment of the Counterclaim is not an application for partial summary judgment. As set out in Section 6.1 of the Loan Agreement and discussed in detail in this Brief of Argument, Four20 contracted out of any right of set-off with respect to the Loan. As a result, Four20 cannot claim set-off as a defence against the Counterclaim. As then-Master Hanebury in *Soler* said:

> Rule 3.58 provides that a counterclaim is an independent action. It will not, in and of itself, prevent a plaintiff from obtaining summary judgment, unless the counterclaim constitutes a defence. A legal or equitable setoff, as defences, may prevent summary judgment. Procedural set-off does not.

- Merton Affidavit at Exhibit "A", s. 6.1.
- **Respondent's Book of Authorities Tab 1**: *Alberta Rules of Court*, AR 124/2010 ("**ARC**"), r. 3.58.
- **Respondent's Book of Authorities Tab 17**: *Soler & Palau Canada Inc. v Meyer's Sheet Metal Ltd.*, 2012 ABQB 496 ("***Soler***") at para 47.

84. For this reason, the law related to partial summary judgment is not applicable to the present Appeal. In *Novosell*, for instance, Justice Lema cited a paper by Justice Brown of

the Ontario Court of Appeal that summarized the circumstances that the term "partial summary judgment" has been used to describe:

> Scenario 1: The sole defendant moves to dismiss the claim against it by asking the judge to determine one of several defences - usually a limitation defence - which, if established, would end the action. A judicial practice has emerged in some places that even where summary judgment is not granted, the motion judge makes a partial, "final" pronouncement on the availability of the limitation defence;
>
> Scenario 2: One of several defendants moves for the dismissal of the claim as against it alone, leaving the plaintiff free to pursue the remaining defendants. This is the sense in which the Supreme Court of Canada used the term "partial summary judgment" in *Hryniak v. Mauldin*, 2014 SCC 7, at para. 60 [...]
>
> Scenario 3: A plaintiff or defendant asks the court to determine an issue within a claim — i.e., one of the several constituent elements of a claim or defence. No "judgment" results, in the sense of a final disposition within the meaning of Rule 1.03. All claims remain; no party exits the lawsuit.

- **Respondent's Book of Authorities Tab 18**: *Novosell v Bolster,* 2022 ABKB 804 at para 21 ("***Novosell***").

85. Judgment of a counterclaim, as sought by High Park and granted by Applications Judge Farrington, does not fall into any of these categories.

86. Even if the Counterclaim was not an independent action, however, partial summary judgment would still be appropriate in the circumstances. The matters in issue in the Counterclaim and in this Appeal are not intertwined with the Main Claim. There is accordingly no risk of duplicative or inconsistent findings of fact.

87. The Repayment Provision of the Loan Agreement requires repayment within 180 days after the date of the advance of the Loan or the termination of the Arrangement Agreement. As a result, the only matter to be determined in this Appeal with respect to the Counterclaim is whether an event that triggered the repayment obligation of the Loan occurred.

88. This finding would not preclude Four20 from advancing the Main Claim, alleging that Tilray and High Park "improperly" or "illegitimately" terminated the Arrangement Agreement, or seeking damages or specific performance for that "improper" or "illegitimate" termination. This was recognized by Applications Judge Farrington, who wrote:

> High Park has purported to terminate the Arrangement Agreement. The grounds for the termination may or may not be found to be proper in due

> course. If the termination was improper, High Park and Tilray may be liable as alleged in the statement of claim. In the mean time, they are entitled to issue a default notice and proceed as they did. Many enforcement proceedings proceed with the validity of those proceedings, or the existence of default, being challenged later in appropriate litigation. [emphasis added]

- Butcher Affidavit at Exhibit R, p 4.

89. The Counterclaim is a simple debt claim. The issues raised by Four20 do not need to be decided in this Appeal but are issues in the Main Claim that will be addressed in the context of that claim. As a result, even if High Park were seeking partial summary judgment, which it is not, partial summary judgment would be appropriate in the circumstances.

PART VI - RELIEF SOUGHT

90. Four20 has failed to demonstrate that Judge Farrington was incorrect when he granted the Summary Judgment Order. In fact, for all of the reasons discussed in this Brief, Judge Farrington correctly concluded that High Park's Counterclaim for the repayment of the Loan is a simple debt claim that is ideally suited to summary determination. Summary judgment is the most expedient and least expensive way to achieve a just result in the Counterclaim. High Park accordingly asks that:

(a) The Appeal of Four20 be dismissed; and

(b) Tilray and High Park be awarded the costs of the Appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of May, 2024.

David V. Tupper / Tom Wagner
Counsel to the Respondents, Tilray Inc. and High Park Shops Inc.

TABLE OF AUTHORITIES

1. Excerpts of the *Alberta Rules of Court*, AR 124/2010.
2. *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49.
3. *Templanza v Ford*, 2018 ABQB 168.
4. *Goodswimmer v Canada* (Attorney General), 2017 ABCA 365.
5. *Hryniak v Mauldin*, 2014 SCC 7.
6. *Hannam v Medicine Hat School District No. 76*, 2020 ABCA 343.
7. Canadian Contractual Interpretation Law, 4th ed (Toronto: LexisNexis: 2020).
8. *Bighorn No. 8 (Municipal District) v Bow Valley Waste Management Commission*, 2013 ABQB 723.
9. *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53.
10. *Serinus Energy PLC v SysGen Solutions Group Ltd.*, 2023 ABKB 62.
11. *Semelhago v Paramadevan*, [1996] 2 SCR 415, [1996] SCJ No. 71.
12. *Garrett v Niagara-on-the-Lake Sailing Club*, 2023 ONSC 2891.
13. R.J. Sharpe, *Injunctions and Specific Performance* 2nd ed. (Toronto: Canada Law Book, 2022) (loose leaf, release 2022 part 1).
14. *370866 Ontario Ltd. v Chizy*, [1987] O.J. No. 2244.
15. *Alberta Treasury Branches v COGI Limited Partnership*, 2018 ABQB 356.
16. *Bernum Petroleum Ltd v Birch Lake Energy Inc.*, 2014 ABQB 652.
17. *Soler & Palau Canada Inc. v Meyer's Sheet Metal Ltd.*, 2012 ABQB 496.
18. *Novosell v Bolster*, 2022 ABKB 804 at para 21.

This is Exhibit "I" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

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A Commissioner for Oaths
in and for the Province of Alberta

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August 1, 2024

File No.: 155857.1002 **By Email**

Court of King's Bench of Alberta
601-5th Street SW
Calgary, Alberta T2P 5P7

Attention: The Honourable Justice Simard c/o Commercial Duty Coordinator

Re: ITMO the Notice of Intention to Make a Proposal under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 ("BIA") of 420 Investments Ltd., 420 Premium Markets Ltd. and Green Rock Cannabis EC 1) Limited (collectively, the "Debtors"); Court File No. 25-3086318 / B301-86318 (the "Proposal Proceedings")

Re: 420 Investments Ltd. v. Tilray Inc. and High Park Shops Inc.; Court File No. 2001-02873 (the "Tilray Proceeding")

Please be advised that we are counsel to the Debtors in the Proposal Proceedings. We write jointly on behalf of the Debtors, the Proposal Trustee and a creditor, Tilray Inc. and High Park Shops Inc. ("**High Park**"). This correspondence has been reviewed and approved by counsel for Tilray Inc. and High Park, counsel for the Proposal Trustee, as well as litigation counsel for 420 Investments Ltd. ("**420 Parent**") in the Tilray Proceedings.

420 Parent and High Park have been involved in litigation since 2020, relating to a breach of contract claim and counterclaim (the "**Tilray Proceeding**"). This litigation (including the counterclaim) is a potential asset in the estate. There is a pending appeal of an Application Judge's summary judgment decision on the counterclaim, which is currently scheduled to be heard by a single judge of the Court of King's Bench on December 5, 2024. Unfortunately, this date is outside the 6-month time limit to complete the Proposal Proceedings. The parties have agreed that the appeal should be expedited if possible. Therefore, we write to request permission to tentatively schedule the hearing of the appeal before Your Lordship on September 13, 2024 from 2:00pm-4:30pm (the "**Appeal Hearing**") pending the outcome of an application to schedule the same before Associate Chief Justice Nixon on August 12, 2024 (the "**Expedited Appeal Application**"). The Expedited Appeal Application will seek to schedule the Appeal Hearing on the Commercial List an expedited basis to bring more certainty to the Proposal Proceedings

The following are the relevant parties for the Appeal Hearing and Expedited Appeal Application:

- The Debtors are represented by Karen Fellowes, K.C. and Natasha Doelman of Stikeman Elliott LLP;
- 420 Parent is represented by Robert Hawkes, K.C. and Gavin Price of Jensen Shawa Solomon Duguid Hawkes LLP in relation to the Tilray Proceeding;

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- The Proposal Trustee, KSV Restructuring Inc., is represented by Michael Selnes of Bennett Jones LLP; and

- High Park and Tilray Inc. are represented by David Tupper, Kelly Bourassa, and Tom Wagner of Blake, Cassels and Graydon LLP.

We note that given your history with Bennett Jones LLP there may be a conflict concern related to presiding over the Appeal Hearing as Mr. Selnes is acting on behalf of the Proposal Trustee. However, we confirm that the Proposal Trustee does not intend to take a position at the Appeal Hearing or speak to its merits. The Tilray Proceeding is distinct to the Proposal Proceeding. Therefore, all relevant parties listed above are of the view that it would not be a conflict of interest to have Your Lordship preside over the Appeal Hearing.

Please do not hesitate to contact me if you require any additional information or have any questions.

Yours truly,

Stikeman Elliott LLP

Karen Fellowes, K.C.

119751153 v5

Form 49
Rule 13.19

COURT FILE NUMBERS	25-3086318 / B301-86318	Clerk's stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
MATTER	IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD. and GREEN ROCK CANNABIS (EC 1) LIMITED	
APPLICANTS	420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD. and GREEN ROCK CANNABIS (EC 1) LIMITED	
DOCUMENT	**AFFIDAVIT**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**STIKEMAN ELLIOTT LLP** Barristers & Solicitors 4300 Bankers Hall West 888-3rd Street SW Calgary, AB T2P 5C5 **Karen Fellowes, K.C. / Natasha Doelman** Tel: (403) 724-9469 / (403) 781-9196 Fax: (403) 266-9034 Email: kfellowes@stikeman.com / ndoelman@stikeman.com File No.: 155857.1002	

AFFIDAVIT NO. 2 OF SCOTT MORROW
SWORN AUGUST 6, 2024

I, Scott Morrow, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of 420 Investments Ltd. ("**420 Parent**"), 420 Premium Markets Ltd. ("**420 Premium**") and Green Rock Cannabis (EC 1) Limited ("**GRC**") (collectively, "**FOUR20**" or the "**Applicants**"). I have been the CEO of FOUR20 since January 1, 2021, and a member of the boards of directors since May 6, 2021.

2. I am responsible for overseeing the operations of the Applicants, their liquidity management and, ultimately, for assisting in their restructuring process. Because of my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records and have spoken with certain of the directors, officers

AB

and/or employees of the Applicants, as necessary. Where I have relied upon such information, I do verily believe such information to be true.

3. This affidavit is sworn in support of an application (the "**Application**") returnable before the Alberta Court of King's Bench (Commercial List) (the **"Court**") on August 12, 2024, for an Order:

   (a) abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;

   (b) pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "**BIA**") extending the time within which the Applicants are required to file a proposal to their creditors for 45 days up to and including September 26, 2024 (the "**Second Stay Extension**");

   (c) directing that the appeal of the judgment of Applications Judge J.R. Farrington dated January 7, 2024 (the "**HP Judgment**"), in Alberta Court of King's Bench Action No. 2001-02873 (the "**Tilray Proceeding**") be scheduled on the Calgary Commercial List for September 13, 2024 at 2:00pm before the Honourable Justice C.D. Simard, or such other date as the parties may agree in writing or this Honourable Court may direct; and

   (d) such further and other relief as this Honourable Court may deem just.

4. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

5. I have been advised by the Proposal Trustee that the KSV Restructuring Inc. (the "**Proposal Trustee**") in its capacity as Proposal Trustee supports this Application.

A. BACKGROUND

6. On May 29, 2024 (the "**Filing Date**"), the Applicants each filed Notices of Intention to Make a Proposal (the "**NOI Proceedings**") with the Office of the Superintendent of Bankruptcy Canada pursuant to section 50.4(1) of the BIA (the "**NOIs**"). KSV Restructuring Inc. was appointed Proposal Trustee in the NOI Proceedings. Further information with respect to the Applicants and these NOI Proceedings is provided in my affidavit sworn June 19, 2024 (the "**First Morrow Affidavit**"). This Affidavit should be read in conjunction with the First Morrow Affidavit, a copy of which is attached hereto (without exhibits) as **Exhibit "A"**. Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the First Morrow Affidavit.

7. On June 27, 2024, the Court granted, among other things, an Order granting an extension of time for the Applicants to file a proposal with the Official Receiver under section 50.4(9) of the BIA to

August 12, 2024 (the "**First Stay Extension**"). A copy of the Order is attached hereto as **Exhibit "B"**.

B. REQUIREMENT FOR AN EXTENSION OF TIME TO FILE A PROPOSAL

8. As a result of the First Stay Extension, the Applicants must file a proposal on or before August 12, 2024 (the "**Filing Period**"), unless the Second Stay Extension is granted. Since the First Stay Extension, the Applicants have continued to pursue numerous activities with a view to advancing its NOI Proceedings, restructuring its affairs and working towards its goal of presenting a proposal to its creditors (a "**Proposal**"). These steps have included, but are not limited to:

(a) continuing to provide the Proposal Trustee with access to the Applicants' books and records;

(b) working with the Proposal Trustee and the Applicants' counsel, Stikeman Elliott LLP ("**Stikeman**") generally, and in particular with respect to:

(i) exploring and considering the various exit strategies available to the Applicants in the context of these NOI Proceedings, including the structure and financing of any Proposal and/or sales process;

(ii) preparing cash flow projections and identifying issues with respect to the Applicants' financial condition;

(c) communicating and engaging with stakeholders, employees, contractors and vendors;

(d) communicating through counsel and the Proposal Trustee the release of funds withheld by Moneris and the Bank of Montreal;

(e) reviewing its operating expenses, pursuing collection of accounts receivable and taking other steps to ensure the Applicants remain financially viable;

(f) closing nine operating and seven non-operating locations, as well as the Applicants' head office space (collectively, the "**Disclaimed Leases**");

(g) operating the remaining portfolio of 27 stores in the ordinary course;

(h) consolidating inventory from store locations subject to the Disclaimed Leases to operating stores;

(i) communicating with the Court and counsel to tentatively schedule the appeal of the HP Judgment pending the outcome of this Application;

(j) communicating with the Court and the Challenging Landlords (as defined below) to provide information and schedule their respective applications to challenge the Notices of Disclaimer issued in respect of the Disclaimed Leases (the "**Disclaimer Applications**");

(k) held meetings with potential sales advisors to assist with development of a marketing strategy and sales and investment solicitation process;

(l) advanced discussions with potential stalking horse bidders; and

(m) reviewed operating expenses, pursued the collection of accounts receivable and took other steps to ensure the Applicants remain financially viable during these proposal proceedings.

9. The Second Stay Extension up to and including September 26, 2024 is being sought to protect the Applicants' business and operations while the Applicants work to develop a viable proposal for the benefit of stakeholders. I believe that preserving the value of the business in the proposed manner will achieve a better result for the Applicants' stakeholders than would a liquidation.

10. I believe that the Second Stay Extension will allow the Applicants, in consultation with the Proposal Trustee, to:

(a) continue the restructuring of its business and affairs, and pursue strategic alternatives;

(b) engage a sales advisor to canvass the market for potential refinancing or asset sale transactions, and formulate a potential SISP process for approval by the Court;

(c) continue discussions with a potential stalking horse bidder;

(d) preserve and enhance the Applicants' business for the benefit of all stakeholders;

(e) continue formulating a viable proposal for the benefit of all stakeholders;

(f) allow for the hearing of the appeal of the HP Judgment which is sought to be scheduled for September 13, 2024 pending the outcome of this Application; and

(g) allow for the hearing of the Disclaimer Applications which are presently scheduled for September 19, 2024.

11. The Applicants' creditors will not be prejudiced by the Second Stay Extension. Rather, the Second Stay Extension is critical to ensure that the Applicants can continue its operations and maximize the value of its assets which will benefit its Proposal or restructuring to the benefit of the Applicants and their respective stakeholders.

12. To date, I have not been made aware of any creditor of the Applicants intending to object to the Second Stay Extension. Accordingly, I believe that the Second Stay Extension is necessary and appropriate in the circumstances.

13. The Proposal Trustee supports the requested Second Stay Extension.

C. LANDLORD DISCLAIMER APPLICATIONS

14. As of the date of filing the NOIs, 420 Premium was party to 44 leases. After filing the NOIs, 420 Premium issued 16 Notices of Disclaimer for nine (9) uneconomic operating locations and seven (7) non-operating locations, including its head office (collectively, the "**Disclaimed Leases**").

15. The Notices of Disclaimer for the Disclaimed Leases were issued by FOUR20, in consultation with and approval of the Proposal Trustee, after it was determined that they were in the best interests of the respective companies, creditors, employees and other stakeholders, and necessary for the making of a viable proposal. The Proposal Trustee has estimated that the disclaimer of operating leases alone will result in an estimated net improvement in profitability of approximately $850,000 annually.

16. Since the issuance of the Notices of Disclaimer, two landlords have filed applications to challenge the same pursuant to section 65.2(1) of the BIA – Strathcona Building Inc. and Meadowlands Development Corporation (together, the "**Landlords**").

17. I am advised by my counsel, and verily believe, that the Disclaimer Applications are scheduled to be heard by this Court on September 19, 2024.

18. I am further advised by my counsel, and verily believe, that communications are ongoing with counsel for the Landlords with the view to resolving the Disclaimer Applications in advance of the hearing. I believe resolution of the Disclaimer Applications is necessary and desirable to preserve the value of FOUR20's estate to the benefit of all stakeholders.

D. REQUEST FOR EARLIER APPEAL DATE ON COMMERCIAL LIST

19. On August 28, 2019, 420 Parent, High Park Shops Inc. ("**High Park**") and Tilray, Inc. ("**Tilray**") each entered into an arrangement agreement (the "**Arrangement Agreement**") relating to the purchase of outstanding shares in 420 Parent by High Park and Tilray (the "**Tilray Transaction**"). High Park was formed for the purpose of the acquisition of 420 Parent and is a subsidiary of Tilray.

20. In connection with the Tilray Transaction, 420 Parent, as borrower, and High Park, as lender, entered into a Loan Agreement (the "**HP Loan Agreement**") whereby High Park agreed to advance $7,000,000 to 420 Parent on a secured basis (the "**HP Loan**").

21. In late January and February of 2020, High Park and Tilray delivered a series of breach notices and notices that purported to terminate the Arrangement Agreement.

22. On February 21, 2020, 420 Parent commenced an action for breach of contract and related relief with respect to the terminated Arrangement Agreement (the "**420 Claim**"). High Park and Tilray each defended the 420 Claim (the "**HP Defence**"). 420 Parent's position is that the Arrangement Agreement was wrongfully terminated. 420 Parent is seeking specific performance or, alternatively, damages in excess of $130 million. The 420 Claim has not yet been determined, although questioning has occurred, and undertakings are in the course of being answered. Attached and marked as **Exhibit "B"** is a copy of the 420 Claim, attached as **Exhibit "C"** is a copy of the HP Defence and attached as **Exhibit "D"** is a copy of the Statement of Defence to Counterclaim.

23. On March 20, 2020, High Park filed a counterclaim in relation to the HP Loan (the "**HP Counterclaim**") and three years later filed an application for summary judgment on March 2, 2023. Attached and marked as **Exhibit "E"** is a copy of the HP Counterclaim.

24. On February 7, 2024, Applications Judge J.R. Farrington granted High Park summary judgment on the HP Counterclaim in the amount of $9,810,364.12, inclusive of pre-judgment interest and costs (the "**HP Judgment**"). Attached and marked as **Exhibit "F"** is a copy of the endorsement, HP Judgment, and associated Writ of Enforcement. High Park's attempts to execute on the Writ of Enforcement was the main trigger for the NOI filing.

25. 420 Parent has appealed the HP Judgment to a single Justice of the Alberta Court of King's Bench, which is currently scheduled to be heard on December 5, 2024. Materials in relation to the appeal of the HP Judgment have been filed by High Park and 420 Parent.

26. The Applicants believe that there is merit to their appeal of the HP Judgment on the basis that the Applications Judge failed to consider the effect of set-off rights and other errors in law. Attached and marked as **Exhibit "G"** is a copy of the Brief of Argument filed by 420 Parent in relation to the appeal. High Park has filed their own Brief in response, which is attached as **Exhibit "H"**, and has indicated that they may wish to amend their materials to reflect further legal arguments relating to the effect of these proceedings.

27. The Applicants believe that the 420 Claim is a significant asset in the estate of 420 Parent, and intend to pursue the litigation in order to monetize this asset and bring value to the estate and stakeholders.

28. High Park and Tilray have advised the Applicants that they intend to participate in these proceedings, either through a vote on a proposal, a credit bid on assets through a SISP, or a sale

or assignment of their debt and security. An earlier hearing of the appeal will clarify their role in these proceedings.

29. While the 420 Claim and the Appeal are not technically part of the NOI Proceeding, they represent a significant asset and liability in the estates of the Applicants, and are therefore integral to the success of this restructuring process.

30. I am advised by my counsel and verily believe that the Commercial Coordinator has tentatively reserved September 13, 2024, at 2:00pm before Justice Simard for the appeal pending the outcome of this Application. Attached and marked as **Exhibit "I"** is a copy of the requesting letter to tentatively schedule the appeal and the approval received from the Court for the same.

31. I am further advised by my counsel and verily believe that all relevant parties to the appeal of the HP Judgment have confirmed their availability and willingness to proceed on September 13, 2024. I also understand that counsel are in the process of negotiating an interim schedule for steps leading up to the appeal.

E. CONCLUSION

32. I make this Affidavit in support of the Applicants' Application to extend the stay of proceedings and the time for filing a proposal by an additional 45 days, and for certain other ancillary relief, and for no improper purpose.

33. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology and the remote commissioning process has been utilized.

SWORN via video conference this 6 day of August, 2024.

ARCHER BELL
BARRISTER & SOLICITOR

Archer Bell
Barrister & Solicitor

SCOTT MORROW

This is Exhibit "A" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

A Commissioner for Oaths
in and for the Province of Alberta

Archer Bell
Barrister & Solicitor

Form 49
Rule 13.19

B301-086304

COURT FILE NUMBERS	25-3086318 25-3086304 25-3086302
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
MATTER	IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD. and GREEN ROCK CANNABIS (EC 1) LIMITED
APPLICANTS	420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD. and GREEN ROCK CANNABIS (EC 1) LIMITED
DOCUMENT	**AFFIDAVIT**

Clerk's stamp

JUDICIAL CENTRE OF CALGARY
FILED
Jun 20, 2024
NB
by Email
CLERK OF THE COURT

C61256
COM June 27, 2024

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

STIKEMAN ELLIOTT LLP
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File No.: 155857.1002

AFFIDAVIT NO. 1 OF SCOTT MORROW
SWORN JUNE 19, 2024

I, Scott Morrow, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of 420 Investments Ltd. ("**420 Parent**"), 420 Premium Markets Ltd. ("**420 Premium**") and Green Rock Cannabis (EC 1) Limited ("**GRC**") (collectively, "**FOUR20**" or the "**Applicants**"). I have been the CEO of FOUR20 since January 1, 2021, and a member of the boards of directors since May 6, 2021.

2. I am responsible for overseeing the operations of the Applicants, their liquidity management and, ultimately, for assisting in their restructuring process. Because of my involvement with the Applicants, I have knowledge of the matters to which I hereinafter depose, except where otherwise

stated. I have also reviewed the records and have spoken with certain of the directors, officers and/or employees of the Applicants, as necessary. Where I have relied upon such information, I do verily believe such information to be true.

3. This affidavit is sworn in support of an application (the "**Application**") returnable before the Alberta Court of King's Bench (Commercial List) (the **"Court"**) on June 27, 2024, for an Order:

(a) abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;

(b) extending the time within which the Applicants are required to file a proposal to their creditors for 45 days to August 12, 2024, pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "**BIA**");

(c) directing that the proposal proceedings and estates of the Applicants shall be procedurally consolidated and shall continue under a single estate (each individual estate being an "**Estate**", and the consolidated estate being the "**Consolidated Estate**"), authorizing and directing the Proposal Trustee (defined below) to administer the Estates making up the Consolidated Estate on a consolidated basis and permitting the Applicants to file a joint proposal to its creditors, and granting ancillary relief arising from the procedural consolidation of the Estates;

(d) authorizing and empowering the Applicants to obtain and borrow under an interim facility loan agreement (such facility, the "**Interim Facility**" and such agreement, the "**Interim Facility Agreement**"), the terms of which are still being negotiated and will be disclosed in a supplemental affidavit if an agreement is reached;

(e) granting the following super-priority charges on all the property, assets and undertaking of the Applicants (the "**Property**"):

i. an Administration Charge (the "**Administration Charge**") to KSV Restructuring Inc. ("**KSV**"), in its capacity as Trustee under the Notices of Intention to Make a Proposal filed by the Applicants (the "**Proposal Trustee**"), counsel to the Proposal Trustee and the Applicants' counsel, as security for their professional fees and disbursements up to the maximum amount of $300,000;

ii. a charge (the "**Interim Lender's Charge**") to secure the Applicants' obligations under the Interim Facility Agreement;

iii. a directors' and officers' charge (the "**D&O Charge**") in the amount of $721,000; and

iv. a key employee retention plan ("**KERP**") described in the Confidential Exhibit (as defined below) for certain key employees of the Applicants ("**KERP Employees**") and granting a charge as security for payments under the KERP, up to the maximum amount of $373,928.17 ("**KERP Charge**"); and

(f) granting the following priority to the Court-ordered charges on the Property of the Applicants;

i. First – Administration Charge;

ii. Second – Interim Lender's Charge;

iii. Third – D&O Charge; and

iv. Fourth – KERP Charge,

(g) an Order (the "**Sealing Order**") sealing **Exhibit "Q"** of this Affidavit (the "**Confidential Exhibit**") on the Court record in relation to the KERP and KERP Charge; and

(h) such further and other relief as this Honourable Court may deem just.

4. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

5. I have been advised by the Proposal Trustee that the Proposal Trustee supports the Application.

A. NOTICE OF INTENTION TO MAKE A PROPOSAL

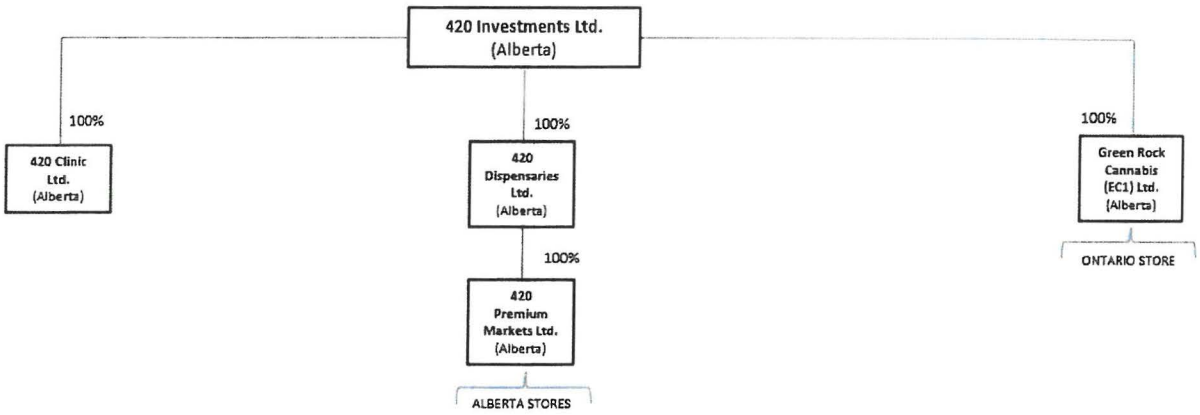
6. For the reasons described below, on May 29, 2024 (the "**Filing Date**"), each of the Applicants filed Notices of Intention to Make a Proposal with the Office of the Superintendent of Bankruptcy Canada under Part III of the BIA in Estate numbers 25-3086318, 25-3086304 and 25-3086302 (the "**NOIs**"). KSV was appointed Proposal Trustee in each of the Applicants' proposal proceedings. Attached and marked as **Exhibit "A"** are copies of the NOIs.

7. For efficiency and due to the related nature of the Applicants' business, the Applicants request the authorization of this Court to consolidate the three proposal proceedings in action nos. 25-3086318, 25-3086304 and 25-3086302 into a single proceeding. I believe this will allow for a more efficient restructuring and will benefit the Applicants' stakeholders.

B. FOUR20'S BUSINESS

(a) Corporate Structure

8. FOUR20 operates through a group of companies comprising the "FOUR20" brand. The organizational chart showing the corporate structure of FOUR20 is as follows:



9. Each of the Applicants are private corporations existing under the laws of the Province of Alberta, with their registered offices located in Calgary, Alberta. Copies of Alberta corporate searches for each of the Applicants are attached and marked as **Exhibit "B".**

10. 420 Parent is the ultimate parent company of a group of companies that includes the Applicants, 420 Clinic Ltd. ("**420 Clinic**") and 420 Dispensaries Ltd. ("**420 Dispensaries**"). The group carries on business as a cannabis retailer in Western Canada and Ontario.

11. 420 Parent has five directors: Freida Butcher; Gordon Cameron; Geoff Gobert; Scott Morrow; and Aaron Serruya. 420 Parent is owned by a small group of privately held individuals and corporations.

12. 420 Premium and GRC each have three directors: Freida Butcher; Geoff Gobert; and Scott Morrow. 420 Premium's sole shareholder is 420 Dispensaries, a wholly owned subsidiary of 420 Parent. GRC's sole shareholder is 420 Parent. 420 Dispensaries is a holding company and has no operations or assets other than its holding 420 Premium.

13. 420 Clinic was historically in the business of providing cannabinoid education and introducing patients to medical cannabis treatments through education and referring patients to authorized producers. 420 Clinic is no longer in operations.

14. All of the financial statements of FOUR20 are prepared on a consolidated basis with 420 Dispensaries and 420 Clinic. 420 Dispensaries and 420 Clinic have no material assets or liabilities (excluding the shares of 420 Premium held by 420 Dispensaries).

(b) FOUR20's Operations

15. FOUR20 is in the business of direct-to-consumer sales of cannabis and cannabis accessories through its retail locations. Prior to the filing of the NOIs, 420 Premium operated 33 licensed cannabis retail stores under the banner name of "FOUR20" in Alberta. GRC operates one licensed cannabis retail store in Ontario under the banner name "FOUR20".

16. FOUR20 operates in a highly regulated environment, in accordance with the *Cannabis Act* (Canada) and applicable provincial and municipal legislation. Each province and territory is responsible for determining the regime for the sale and distribution of cannabis within its jurisdiction. Among other things, these governments establish rules regarding how cannabis can be sold, how retail stores must be operated, where such stores can be located and who is allowed to sell cannabis. Adult-use recreational cannabis products are only permitted to be sold through retailers authorized by provincial and territorial governments.

17. As set out below, each provincial and territorial government has established its own rules and criteria for obtaining and maintaining a private cannabis retail licence. In general, all provinces and territories require:

(a) that a licence be obtained and maintained prior to the commencement of any activities with cannabis. The licensing application process considers the physical location of the proposed retail outlet, as well as the financial and personal backgrounds of key persons associated with the proposed licensed operation, including directors and officers of a corporation, investors, retail store managers and security personnel;

(b) that a licence is required for each cannabis retail store, and that the location of all cannabis stores is subject to municipal oversight/approval;

(c) that specified physical security measures be in place at the retail store location (including physical security requirements around locks, as well as visual monitoring and protection by way of a third-party monitored alarm system) to ensure that there is no unauthorized entry and/or unauthorized access to cannabis;

(d) certain requirements for employees of the proposed cannabis retail store, including background and/or criminal record checks and requirements for employee training prior to beginning their employment at the store; and

(e) that the licensee maintain and submit certain records, and be subject to inspection by the provincial or territorial regulator.

18. As of the date of filing NOIs, 420 Premium and GRC held all required permits and licences to sell cannabis at all then operated stores as follows:

(a) In Alberta, 420 Premium holds 33 licences to operate cannabis retail stores, issued by the Alberta Gaming, Liquor and Cannabis Commission;[1] and

(b) In Ontario, GRC held one licence to operate a cannabis retail store, issued by the Alcohol and Gaming Commission of Ontario.

(c) Employees

19. As of the Filing Date, the Applicants employed a total of 175 active employees and 10 employees on leave. Of those 175 active employees, 127 were paid hourly and 48 were paid by salary. The Applicants also engaged three part time contractors.

20. As of the Filing Date, the Applicants employed approximately 168 active employees in Alberta, and seven active employees in Ontario. The majority of the Applicants' employees work in retail operations.

21. None of the Applicants' employees are subject to a collective bargaining agreement. The Applicants do not have a pension plan in place.

(d) Leased Locations

22. All of 420 Premium's retail stores are operated from leased premises. 420 Premium also has a leased property in Calgary, Alberta, which it used as a corporate office. As of the date of filing the NOIs, 420 Premium was party to 44 leases. GRC operates from one leased premises in Ontario. Attached and marked as **Exhibit "C"** is a chart showing all FOUR20 leases as of the date of filing the NOIs.

23. After filing the NOIs, 420 Premium disclaimed 16 leases to preserve liquidity and facilitate the making of a viable proposal: seven operating locations, three subleased locations and four non-operating locations, including its head office (collectively, the "**Disclaimed Leases**"). Attached and marked as **Exhibit "D"** is a chart summarizing the Disclaimed Leases and copies of the notices of disclaimer (the "**Notices of Disclaimer**") sent with respect to each of those leased locations.

[1] This figure excludes licences that may still be held by the Applicants in connection with closed stores.

24. The Notices of Disclaimer in respect of the disclaimed locations were issued by FOUR20, in consultation with the Proposal Trustee, after it was determined that they were in the best interests of the respective companies, creditors, employees and other stakeholders, and necessary for the making of a viable proposal.

25. The Proposal Trustee supported the issuance of the Notices of Disclaimer for each of the Disclaimed Leases.

C. FINANCIAL POSITION OF FOUR20

26. A copy of FOUR20's unaudited consolidated financial statements for the fiscal year ended December 31, 2023, is attached as **Exhibit "E"**.

(a) Assets

27. As appears in FOUR20's Q4 2023 Financial Statement as at December 31, 2023, FOUR20 had assets with an unaudited book value of approximately $32,449,000, which consisted of the following:

Asset Type	Value ($)
Current Assets	
Cash	1,378,000
Trade and other receivables	515,000
Merchandise inventories	2,167,000
Prepaid and other assets	432,000
Non-Current Assets	
Deposits	552,000
Property and equipment, net	6,514,000
Right-of-use assets, net	17,207,000
Goodwill (inc. Intangibles)	3,684,000
Total Assets	**32,449,000**

(b) Liabilities

28. As appears in FOUR20's Q4 2023 Financial Statement as at December 31, 2023, FOUR20 has liabilities with an unaudited book value of approximately $30,720,000, which consisted of the following:

Liability Type	Value ($)
Current Liabilities	
Accounts payable and accrued liabilities	2,411,000
Debentures and loans[2]	8,452,000
Other current liabilities	82,000
Non-Current Liabilities	
Lease liabilities	19,775,000
Total Liabilities	**30,720,000**

29. FOUR20 lacks adequate working capital, with $4,492,000 in current assets and $10,945,000 in current liabilities as of December 31, 2023 (if the HP Loan (as defined below) is excluded from FOUR20's current liabilities, then the current liabilities are $3,945,000). Even if FOUR20 could realize on the full book value of its current assets, then it would still be unable to satisfy its current liabilities in the immediate term.

30. The Applicants sought creditor protection primarily as a result of the adverse outcome in the Tilray Proceeding (defined below). Additionally, as a result of unprofitable store locations and non-operating leases, the Applicants have experienced some ongoing financial liquidity issues.

(c) Shareholder Loans

31. As of the date of filing the NOIs, the shareholder loans of 420 Parent totaled $340,000, plus interest. There are no shareholder loans to 420 Premium and GRC.

(d) Secured Debt

32. Attached and marked as **Exhibit "F"** are copies of the personal property registry searches of 420 Parent, 420 Premium and GRC.

(i) Nomos Litigation Funding Agreement

33. On September 24, 2020, 420 Parent, as borrower, and Nomos Capital I-A LP ("**Nomos**"), as lender, entered into a litigation funding agreement (the "**Funding Agreement**") related to the Tilray Proceeding (as defined and described below).

34. Pursuant to the terms of the Funding Agreement, Nomos agreed to provide 420 Parent funding of legal fees and disbursements up to a maximum amount of $1,000,000 incurred in relation to the

[2] Includes the HP Loan of $7,000,000. As discussed below, the HP Loan was the subject of a summary judgment on February 7, 2024, which resulted in the HP Judgment being awarded against 420 Parent in the amount of $9,810,364.12.

Tilray Proceeding. The Funding Agreement provided Nomos with a priority secured interest in any proceeds arising from the Tilray Proceeding and Property of 420 Parent.

35. On the Filing Date, in accordance with Section 13 of the Funding Agreement, Nomos terminated the Funding Agreement, and the parties waived the ten-day notice requirement thereunder. Attached and marked as **Exhibit "G"** is a copy of the email evidencing the termination of the Funding Agreement.

36. Nomos elected to receiving the "Investment Repayment Amount" under the Funding Agreement, which means the aggregate amount of funds advanced by Nomos in respect of legal fees, disbursements and expenses, together with interest calculated at a rate of 12% per annum, compounded monthly.

37. As of the Filing Date, $1,062,660.57 was due and owing to Nomos under the terms of the Nomos Funding Agreement (the "**Nomos Loan**").

(ii) High Park Loan Agreement

38. On August 28, 2019, 420 Parent, High Park Shops Inc. ("**High Park**") and Tilray, Inc. ("**Tilray**") each entered into an arrangement agreement (the "**Arrangement Agreement**") relating to the purchase of outstanding shares in 420 Parent by High Park and Tilray (the "**Tilray Transaction**"). High Park was formed for the purpose of the acquisition of 420 Parent and is a subsidiary of Tilray.

39. In connection with the Tilray Transaction, 420 Parent, as borrower, and High Park, as lender, entered into a Loan Agreement (the "**HP Loan Agreement**") whereby High Park agreed to advance $7,000,000 to 420 Parent (the "**HP Loan**"). In accordance with the terms of the HP Loan Agreement, High Park advanced $5,000,000 to 420 Parent on August 29, 2019, and a further $2,000,000 on November 29, 2019. Attached and marked as **Exhibit "H"** is a copy of the HP Loan Agreement.

40. 420 Parent's obligations under the HP Loan Agreement are secured by a general security agreement dated August 28, 2019, executed by 420 Parent (the "**HP GSA**"). Pursuant to the GSA, the Applicants granted a charge on all 420 Parent's Property in favour of High Park. Due to the expiry of the registration of the HP GSA, the HP Loan ranks in second priority to the Nomos Loan. A copy of the HP GSA is attached as **Exhibit "I"**.

41. In late January and February of 2020, High Park and Tilray delivered a series of breach notices and notices that purported to terminate the Arrangement Agreement. Attached and marked as **Exhibit "J"** is a copy of the Notice of Termination of the Arrangement Agreement.

42. On February 21, 2020, 420 Parent commenced an action relating to the wrongfully terminated Arrangement Agreement (the "**420 Claim**"). High Park and Tilray each defended the 420 Claim. 420 Parent's position is that the Arrangement Agreement was wrongfully terminated. 420 Parent is seeking specific performance or, alternatively, damages in excess of $130 million. The 420 Claim has not yet been determined.

43. On March 11, 2020, High Park provided 420 Parent with a Notice of Acceleration, which demanded full payment of the HP Loan immediately. Attached and marked as **Exhibit "K"** is a copy of the Notice of Acceleration.

44. On March 20, 2020, High Park filed a counterclaim in relation to the HP Loan (the "**HP Claim**" and together with the 420 Claim, the "**Tilray Proceeding**") and three years later filed an application for summary judgment on March 2, 2023. On February 7, 2024, Applications Judge J.R. Farrington granted High Park summary judgment on the HP Claim in the amount of $9,810,364.12, inclusive of pre-judgment interest and costs (the "**HP Judgment**"). Attached and marked as **Exhibit "L"** is a copy of the HP Judgment and associated Writ of Enforcement.

45. As of the Filing Date, the HP Judgment remains outstanding. 420 Parent has appealed the HP Judgment to a Justice of the Alberta Court of King's Bench, which is currently scheduled to be heard on December 5, 2024.

(iii) Stoke Canada Finance Corp.

46. On June 26, 2023, 420 Premium and Stoke Canada Finance Corp. ("**Stoke**") entered into an asset-based loan agreement whereby Stoke agreed to provide to 420 Premium a revolving line of credit in the original principal amount of $500,000 to be evidenced by one or more promissory notes (the "**Stoke Line of Credit**"). The Stoke Line of Credit was secured by a general security agreement dated June 26, 2023. As of the date of filing, 420 Premium owed $300,497.48 to Stoke in relation to the Stoke Line of Credit.

(e) Unsecured Creditors

47. As of the date of filing the NOIs, the Applicants owed the following amounts to unsecured creditors:

(a) 420 Parent: $921,693.86;

(b) 420 Premium: $1,394,828.17; and

(c) GRC: $0.00.

48. The Applicants obligations to the Canada Revenue Agency are current.

D. EVENTS LEADING TO THE APPLICANTS' INSOLVENCY

(a) Market Conditions and Leased Locations

49. FOUR20 has been operating at a loss since its inception. While FOUR20's financial difficulties were driven by a variety of factors, the significant net losses suffered by the business are largely in relation market conditions and uneconomic and/or non-operating leased locations.

(i) Market Conditions

50. On April 13, 2017, the Government of Canada introduced Bill C-45 - the *Cannabis Act* (Canada) - intended to legalize the production and sale of cannabis for recreational purposes in Canada. After the Senate passed Bill C-45, the Government of Canada announced that the production and use of recreational cannabis would become legal on October 17, 2018.

51. I understand, based on my experience and exposure to the cannabis industry, that this industry has experienced a variety of challenges since its legalization including increased competition, oversupply of industry capacity, margin pressure; a decrease in the availability of adequate funding; a period in which the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**") froze licence distribution; and general regulatory uncertainty. There remains an entrenched black market for cannabis in Canada that, to my knowledge, continues to operate notwithstanding the strict regulations of the *Cannabis Act* (Canada). Each of these factors contribute to downward pressure on revenue, and in the case of the Applicants, has resulted in financial returns that are lower than what was initially expected when the cannabis industry was legalized. Given how many peer companies I have witnessed commence insolvency proceedings, I do not believe that the Applicants are not alone in their financial struggles.

(ii) Leased Locations

52. 420 Premium entered into several leases in anticipation of receiving licences from the AGLC. However, licences for these locations were ultimately not issued for a variety of unanticipated reasons, such as their proximity to a sensitive use area or a decline in expected revenue due to market deterioration and/or increased competition. 420 Premium also entered into leases for stores that were licensed and subsequently closed following a review of operating results and revised expectations regarding their potential profitability.

53. As a result, 420 Premium is party to multiple uneconomic leases. I understand that this situation is not unique to 420 Premium. To my knowledge, there are several major cannabis retailers in Canada that hold or held leases for anticipated cannabis retail stores that, for a variety of reasons, were never licensed by the applicable licensing authority and never ultimately opened. Similarly, I am aware of major cannabis retailers that entered into leases and opened or planned to open cannabis

retail stores but either closed the stores after opening or never proceeded to open them due to low profits or profit forecasts.

54. Lease obligations are a significant portion the Applicants' overall liabilities, representing approximately 64% of FOUR20's aggregate liabilities as of December 31, 2023. As of the Filing Date, the Applicants' lease obligations were approximately $19,553,000. The Applicants' lease obligations have impacted cash flows, and this impact has been exacerbated due to the retail locations related to these lease obligations not generating the level of revenue that they were anticipated to generate.

55. In an effort to downsize its business, 420 Premium negotiated out of 11 leases in exchange for paying significant settlement amounts for uneconomic and non-operating locations beginning in or around March 2020. Notwithstanding these efforts, FOUR20 continued to struggle with profitability in its remaining portfolio of locations on the Filing Date. After the Filing Date, 420 Premium disclaimed 16 leases in an effort to preserve liquidity and facilitate the making of a viable proposal, as discussed above.

(b) Ongoing Litigation with Tilray and High Park

56. As noted above, 420 Parent has been actively involved in the Tilray Proceeding since February 2020. 420 Parent believes that the 420 Claim is well-founded. The 420 Claim has not yet been determined. Tilray and High Park walking away from the Arrangement Agreement, and the resulting and on-going litigation has resulted in a net drain on 420 Parent's resources, including that it was required to obtain the Nomos Loan and became further indebted.

57. On February 7, 2024, Applications Judge J.R. Farrington granted the HP Judgment in the amount of $9,810,364.12. The 420 Claim and HP Judgment are closely related and stem from the Arrangement Agreement with Tilray and High Park, as the HP Loan was advanced for the purposes of building out and opening new locations.

58. As a result of the HP Judgment and related enforcement steps, the Applicants urgently required creditor protection to stabilize its business operations with a view to restructuring its business. If High Park were to enforce the HP Judgment, it would have disastrous consequences for the Applicants' stakeholders, landlords, suppliers and 185 employees, and its ability to remain a going concern.

E. POST-FILING ISSUES

(a) Cash Management System

59. In the ordinary course of business, 420 Premium uses a cash management system (the "**Cash Management System**") to, among other things, collect funds and pay expenses associated with its retail operations. This Cash Management System provides 420 Premium with the ability to efficiently and accurately track and control revenue and to ensure cash availability. The Applicants had 44 bank accounts on the day the NOIs were filed.

60. 420 Premium uses Moneris Solutions Corporation ("**Moneris**") to facilitate credit and debit card purchases. Attached and marked as **Exhibit "M"** is a copy of the National Merchant Agreement with Moneris (the "**Merchant Agreement**").

61. 420 Premium typically receives the proceeds of a sale facilitated by Moneris within a matter of days; however, a customer may initiate a chargeback at a later date or 420 Premium may be assessed a fee, penalty, or amount that creates a debt owing by 420 Premium to Moneris. On June 10, 2024 (i.e., post-NOI filing), without any advance notice or effort to engage with the Applicants or the Proposal Trustee, the Applicants received notice from Moneris that, effective immediately, Moneris would allocate 25% of value of the transactions it processes to a reserve (the "**Reserve**") until the Reserve has $100,000. Moneris also shifted to collecting interchange and other fees on a daily basis. Moneris alleges that the Reserve and change in payment terms is necessary due to the "increased financial risk" to Moneris of providing the Applicants with payment processing services. Moneris characterizes the payments it sends 420 Premium as an advance of credit and that it is not required to advance further money or credit to an entity subject to a notice of intention under the BIA. Attached and marked as **Exhibit "N"** is a copy of the notice received from Moneris in relation to the Reserve.

62. The effect of Moneris allocating 25% of transaction proceeds to the Reserve was unexpected and has resulted in reduced cash flow receipts. The Applicants have concerns that the reduced cash flows will be detrimental to their financial situation and hinder their ability to restructure. The Applicants' ability to order inventory for stores may be impacted.

(b) Garnished Funds from 420 Parent

63. In connection with the HP Judgment, High Park served a Financial Statement of Debtor under the *Civil Enforcement Act* and took steps to garnish 420 Parent's Bank of Montreal bank account on the Filing Date.

64. Since High Park served the garnishee summons, the Bank of Montreal seized approximately $15,500 (the "**Garnished Funds**") from 420 Parent's bank account notwithstanding the stay of

proceedings in place for the NOIs. The exact quantum of the Garnished Funds is unknown as the Applicants no longer have access to the relevant bank account. The Bank of Montreal had notice of the Applicants' NOIs at the time it garnished the Garnished Funds because it had been sent a letter advising it of the Applicants NOIs. Attached and marked as **Exhibit "O"** is a copy of this letter. Despite multiple requests from the Proposal Trustee and 420 Parent to the Bank of Montreal, the Garnished Funds have not been returned to 420 Parent.

65. It is my understanding that the Bank of Montreal has transferred the Garnished Funds to the Accounting Department of the Alberta Court of King's Bench and that the Accounting Department is currently in possession of the Garnished Funds. If, however, this transfer has not yet happened and the Bank of Montreal is still in possession of the Garnished Funds, then I understand, based on correspondence between Ryan Pernal (the Applicants' Chief Financial Officer) and a representative of the Bank of Montreal, that the Bank of Montreal will require a "withdrawal letter from the court to release the garnishment."

66. 420 Parent requires the Garnished Funds for its continued operations. Recovery of the Garnished Funds will assist the Applicants' ability to fund on-going obligations during the proposal proceedings. It is, accordingly, important that the 420 Parent recover the Garnished Funds.

F. REQUIREMENT FOR AN EXTENSION OF TIME TO FILE A PROPOSAL

67. As a result of the NOIs, the Applicants must file a proposal on or before June 28, 2024 (the "**Filing Period**"), unless an extension is granted.

68. Since the Filing Date, the Applicants have acted, and continue to act, in good faith and with due diligence and have taken the following steps, among others:

(a) prepared and analyzed lists of creditors and identified issues specific to certain creditors;

(b) provided the Proposal Trustee with access to their books and records;

(c) worked with the Proposal Trustee on the preparation of cash flow projections and weekly monitoring for the Applicants;

(d) communicated with stakeholders regarding the proposal process;

(e) worked with counsel and other professional advisors in beginning to develop a proposal;

(f) sent 16 Notices of Disclaimer in relation to the Disclaimed Leases for uneconomic, subleased or non-operating locations;

(g) terminated 15 full time employees and 34 part time employees;

(h) consolidated inventory to operating stores from locations subjected to the Disclaimed Leases;

(i) reduced compensation in employment and contractor contracts;

(j) sent a Notice of Disclaimer in relation to the head office space and have moved to a remote working environment;

(k) commenced the process of creating a sales and investment solicitation process and liaised with potential bidders; and

(l) reviewed operating expenses, pursued the collection of accounts receivable and took other steps to ensure the Applicants remain financially viable during these proposal proceedings.

69. The requested extension of the Filing Period is being sought to protect the Applicants' business and operations while the Applicants work to develop a viable proposal for the benefit of stakeholders. I believe that preserving the value of the business in the proposed manner will achieve a better result for the Applicants' stakeholders than would a liquidation. I believe that the requested extension of the Filing Period will allow the Applicants, in consultation with the Proposal Trustee, to:

(a) engage a sales advisor to canvass the market for potential refinancing or asset sale transactions, including a potential sale of the 420 Claim; and

(b) continue formulating a viable proposal for the benefit of all stakeholders.

70. Without an extension of the Filing Period, the Applicants would be forced to shut down operations, which would be extremely detrimental to the Applicants' landlords, suppliers, lenders, customers, and employees. Accordingly, it is the Applicants' view that an extension of the Filing Period will not materially prejudice any of the Applicants' creditors.

71. To date, I have not been made aware of any creditor of the Applicants intending to object to an extension of the stay of proceedings and time for filing a proposal.

72. The Applicants believe that an extension of the Filing Period is necessary and appropriate in the circumstances.

G. REQUIREMENT FOR ADMINISTRATION CHARGE

73. The requested relief contains a first priority Administration Charge against the Applicants' Property as security for professional fees and disbursements incurred by their counsel, the Proposal Trustee and the Proposal Trustee's counsel both prior to and after the filing of the NOI.

74. The Applicants require the services of their counsel, the Proposal Trustee and the Proposal Trustee's counsel to develop a viable proposal. I believe that the Administration Charge is reasonable and appropriate in the circumstances and critical to the success of the Applicants' proposal proceedings.

H. REQUIREMENT FOR INTERIM FACILITY AND INTERIM LENDER'S CHARGE

75. Attached and marked as **Exhibit "P"** is a projected 13-week cashflow statement that the Applicants have prepared with the assistance of the Proposal Trustee.

76. The Applicants are in the process of negotiating the Interim Facility Agreement. The Interim Facility is intended to cover any potential liquidity shortfall. The terms of the Interim Facility Agreement, if an agreement is reached, will be provided to this Court as part of a supplemental affidavit. It is expected that a term of the Interim Facility Agreement will be that the Interim Facility be secured by a second ranking super-priority Interim Lender's Charge.

I. REQUIREMENT FOR A D&O CHARGE

77. In order to continue to carry on business during these proposal proceedings, the Applicants require the active and committed involvement of their directors and officers ("**D&Os**"). The requested relief contains a third ranking charge against the Applicants' Property as security for any obligations and liabilities the Applicants' D&Os may incur after the Filing Date, up to the maximum amount of $721,000.

78. The Applicants maintain directors' and officers' liability insurance (the "**D&O Insurance**") for the D&Os which provides up to $2 million in aggregate coverage for all claims. It is uncertain whether the coverage provided by the D&O Insurance will be sufficient to adequately protect the D&Os from liability and/or to incentivize the D&Os to continue their service with the Applicants.

79. A successful restructuring of the Applicants will only be possible with the continued participation of the Applicants' D&Os. These individuals have specialized expertise and relationships with the Applicants' stakeholders. In addition, the D&Os have gained significant knowledge of the cannabis industry that cannot be easily replaced or replicated.

80. Since the continued assistance of the D&Os is required to ensure the success of the proposal proceedings, the D&Os require, in turn, that the Applicants indemnify them for liabilities which they may incur in the context of their positions with the Applicants after the filing of these proposal proceedings, including liabilities relating to employee vacations accrued prior to these proposal proceedings.

81. Although the Applicants intend to comply with all applicable laws and regulations, including with respect to the timely remittance of deductions at source and federal and provincial sales taxes, the directors and officers remain nevertheless concerned about their potential personal liability, particularly in the present circumstances.

82. The Applicants therefore seek the D&O Charge over its Property in the amount of $721,000 favour of the D&Os in connection with any claim which may be asserted against them from and after the commencement of these proposal proceedings, including employee related claims, to the extent that such claims are not sufficiently covered by the D&O Insurance.

83. The Proposal Trustee has advised that it is supportive of the proposed D&O Charge and quantum thereof.

84. I believe that in these circumstances, the requested D&O Charge is reasonable and adequate given the corresponding potential exposure of the Applicants' D&Os to personal liability. The quantum of the D&O Charge was specifically sized by the Applicants, in consultation with the Proposal Trustee, taking into account the exposure to the D&Os for unpaid employee wages and related source deductions, excise tax payable, and employee termination and vacation pay based upon the potential director liabilities that could be outstanding at any time during the proposal proceedings.

85. The proposed D&O Charge would apply only to the extent that the D&Os do not have coverage under the D&O Insurance, or there is insufficient coverage.

J. REQUIREMENT FOR A KERP AND KERP CHARGE

86. Prior to and since the filing of the NOIs, the Applicants' employees and officers have been working tirelessly to consider and implement the steps required to both stabilize and restructure the Applicants' business. In particular, the KERP Employees have expended significant time and effort in demanding circumstances to stabilize the Applicants' business and preserve value for its stakeholders.

87. As with any company in creditor protection proceedings, there is significant uncertainty regarding the employment future of the Applicants' employees (either with the Applicants or a prospective investor in, or purchaser of, its assets and business). This uncertainty, combined with the need to

continue the Applicants' day-to-day operations, preserve value of the companies and undertake significant work required to guide the Applicants' restructuring efforts, have emphasized the importance of retaining the KERP Employees.

88. In consultation with its legal counsel and the Proposal Trustee, the Applicants have developed a draft key employee retention plan ("**KERP**"), the terms and conditions of which are set forth in the Confidential Exhibit (**Exhibit "Q"** hereto) for which the Applicants seek the Sealing Order.

89. The KERP identifies KERP Employees that are critical to the implementation and success of the proposal proceedings. The KERP Employees have been drawn from a broad range of various teams and departments within the Applicants' business and include members of its senior management, operations, human resources and finance teams. They collectively provide critical leadership, experience and resources to run the Applicants' business operations.

90. In addition to the day-to-day operations of the Applicants, the retention of the KERP Employees will be significant to the Applicants in completing the necessary steps to successfully restructure in the proposal proceedings. They will provide strategic and technical direction for the restructuring efforts and will be necessary to identify, develop and implement initiatives intended to maximize value.

91. I believe that the KERP Employees will have more certain employment opportunities available to them with other companies due to their experience and expertise. Without the benefit of the KERP, there is a very real and genuine risk that the KERP Employees will consider other employment opportunities.

92. The Applicants have considered the roles of the KERP Employees in both its ongoing business operations and its restructuring efforts in light of the role played by the Proposal Trustee and do not believe there is any unwarranted duplication of roles.

93. Under the terms of the KERP each of the KERP Employees will receive a retention payment (the "**Retention Payment**") as an incentive to continue their respective employment for the duration of the proposal proceedings, which shall be earned in the following manner:

(a) 25% of the total Retention Payment and the end of week 7 of the proposal proceedings; and

(b) 75% of the remaining total Retention Payment following the closing of an asset sale transaction or a restructuring transaction that results in the conclusion of the proposal proceedings.

94. The Retention Payment will only be paid to the respective KERP Employees if they have not resigned or been terminated for cause. If the KERP Employees are terminated without cause, the full amount of the Retention Payment(s) then due and owing (to the extent not already paid) will be payable upon termination.

95. It is anticipated that the Retention Payments payable under the KERP will be funded out of the Applicants' cash flow. To ensure that the KERP Employees receive reasonable assurances that their entitlements under the KERP are secure in light of the Applicants' proposal proceedings, the Applicants' requests a KERP Charge in respect of their obligations under the KERP in a maximum amount of $373,928.17 on account of anticipated Retention Payments. The KERP Charge is intended to provide the KERP Employees with a reasonable level of assurance the Retention Payments will be paid.

96. The proposed KERP Charge would rank fourth after the Administration Charge, Interim Lender's Charge and the D&O Charge. On June 18, 2024, the Applicants' Board of Directors approved the KERP and the associated KERP Charge.

97. The Proposal Trustee has advised that it is supportive of the approval of the KERP and the corresponding KERP Charge. Accordingly, I believe that it is appropriate in the circumstances for this Court to approve the KERP and grant the KERP Charge.

K. RESTRICTED COURT ACCESS

98. The Confidential Exhibit includes a list of the KERP Employees, their salaries, their Retention Payment, and a short summary of their roles and importance to the Applicants' business and restructuring efforts.

99. Disclosure of the information contained in the Confidential Exhibit will be prejudicial to the Applicants, the KERP Employees and others. Among other issues, disclosure of the Confidential Exhibit could (a) create morale and other issues as between employees who are either not subject to the KERP or are receiving different entitlements under the KERP; (b) allow the Applicants' business competitors and others to attempt to induce the KERP Employees to depart from their employment for more lucrative opportunities; and (c) make it more difficult for the Applicants to negotiate employment terms for replacement employees if required. In addition, and generally speaking, salary and compensation levels for employees is a particularly personal and private matter to employees.

100. The Applicants are proposing that the Confidential Exhibit be sealed on the Court file and not form part of the public record. In doing so, the Applicants believe that (a) the Sealing Order is as narrow as possible and only seeks to maintain the confidentiality the KERP Employees and KERP; (b) the

scope of the proposed Sealing Order is proportionate and restricted to only what is necessary; (c) there are no reasonable alternatives to the Sealing Order that will prevent the risk of disclosure; and (d) the benefits of the Sealing Order outweigh the risks.

L. CONCLUSION

101. I make this Affidavit in support of the Applicants' Application to extend the stay of proceedings and the time for filing a proposal by an additional 45 days, and for certain other ancillary relief, and for no improper purpose.

SWORN at Calgary, Alberta, this 19 day of June 2024.

NATASHA DOELMAN
BARRISTER & SOLICITOR

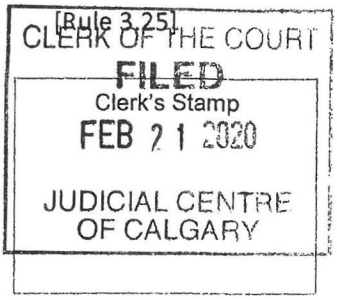
SCOTT MORROW

This is Exhibit "B" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

A Commissioner for Oaths
in and for the Province of Alberta

Archer Bell
Barrister & Solicitor

Form 10
[Rule 3.25]



COURT FILE NUMBER	2001-02873
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF(S)	420 INVESTMENTS LTD.
DEFENDANT(S)	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File: 14826-001

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

A. The Parties

1. The Plaintiff, 420 Investments Ltd. ("**Four20**") is a private company incorporated and operating in Alberta. Four20 operates a network of retail cannabis stores located in Alberta.

2. The Defendant Tilray, Inc. ("**Tilray**") is a large multi-national publicly traded company incorporated in Delaware and operating, *inter alia*, throughout North America and in Europe. Tilray was the first NASDAQ listed cannabis company, and currently cultivates and sells cannabis.

3. The Defendant High Park Shops Inc. ("**High Park**") is incorporated in British Columbia. High Park is indirectly a wholly owned subsidiary of Tilray.

B. Overview

4. Tilray and High Park (the "**Defendants**") entered into an Arrangement Agreement dated August 28, 2019 (the "**Arrangement Agreement**") with Four20 and Geoff Gobert, Freida Butcher and Charles Mannix (collectively, the "**Representative Shareholders**"). Tilray, through High Park, was to acquire all issued and outstanding securities of Four20 for a total purchase price of up to $110,000,000, in cash or shares and promissory notes. Following the acquisition, Four20 was to operate as a wholly owned subsidiary of High Park, and an indirect subsidiary of Tilray.

5. At some point following execution of the Arrangement Agreement, the Defendants had a change of heart and no longer wished to proceed with the acquisition of Four20. In consequence the Defendants have not proceeded diligently under the Arrangement Agreement and are breaching the Arrangement Agreement by failing to take reasonable or timely steps to obtain the regulatory approvals needed to close the transaction.

6. Specifically, the Defendants have failed or refused to work jointly with Four20 on the regulatory approvals and have also failed to provide Four20 with the documentation and communications which would have revealed the Defendants' breach of the Arrangement Agreement. Both breaches occurred despite the Defendants' positive obligations under the Arrangement Agreement to provide Four20 with such documentation and to work directly with Four20 to obtain the necessary regulatory approval.

7. When five months had passed following execution of the Arrangement Agreement, the Defendants attempted to scuttle the Arrangement, issuing false, improper and deficient termination notices to Four20 in late January and early February of 2020 (the "**Notices**"). The Notices advanced false allegations, lacked particulars, claimed mutually agreed upon actions as breaches, and were entirely without merit.

8. The Defendants have breached the Arrangement Agreement and have failed to perform their contractual obligations in good faith. The Arrangement Agreement reflects a detailed, negotiated and unique agreement, pursuant to which Four20 was agreeing to fold its retails sites, brand and operations into a multi-national corporate group that is currently cultivating cannabis and operating throughout North America.

9. Damages alone would be insufficient to compensate for the loss of that opportunity. The inadequacy of damages was expressly recognized by the parties to the Arrangement Agreement, in Article 9.12, and the parties have agreed that specific performance is the appropriate remedy for any breach of the Agreement. Four20 seeks an order for specific performance, and damages in the alternative, along with solicitor client costs.

C. The Arrangement Agreement

10. The transaction the Defendants are trying to undo was the result of a long process between the parties starting in April of 2019 and culminating with the execution of the Arrangement Agreement, effective August 28, 2019. This process included months of due diligence and negotiations, offers and counteroffers, a non-binding letter of intent, further negotiations and due diligence, a heavily negotiated arrangement agreement and, finally Four20, the Representative Shareholders and the Defendants entered into the Arrangement Agreement effective August 28, 2019.

11. The bargain ultimately struck was that Tilray, through High Park, was to acquire all issued and outstanding securities of Four20 for a total purchase price of up to $110,000,000, to be paid in two parts at closing:

a. $70,000,000 in Tilray shares or cash; and

b. Up to $40,000,000 in contingent (based on future store openings) promissory notes.

12. Following the acquisition, Four20 was to operate as a wholly owned subsidiary of High Park and an indirect subsidiary of Tilray. Post-execution of the Arrangement Agreement, Four20:

a. Applied for and obtained an interim approval order ("**Interim Order**") from the Court on September 20, 2019;

b. Held a shareholder meeting and obtained approval of the arrangement resolution prior to October 17, 2019;

c. Applied for and obtained a final approval order ("**Final Order**") from the Court, pursuant to 193(9) of the *Business Corporations Act*, RSA 2000, c B-9 on October 17, 2019; and

d. Took all steps required of it under the provisions of the Arrangement Agreement in good faith.

13. The terms of the Arrangement Agreement include, *inter alia*:

a. The Defendants must use commercially reasonable efforts to consummate and make effective the Arrangement, including efforts to satisfy all conditions precedents in the Arrangement Agreement, refrain from action which is inconsistent with the Arrangement Agreement and to carry out the terms of the Final Order;

b. All parties were to prepare and file all necessary documents to seek regulatory approvals;

c. All parties were to use commercially reasonable efforts to obtain and maintain regulatory approvals;

d. All parties were to cooperate with each other in obtaining the regulatory approvals, including providing one another of all notices and other correspondence from any government authority;

e. All parties were to cooperate and keep each other fully informed as to the status, process and proceedings related to obtaining the regulatory approvals, including promptly notifying each other of communications from any government authority;

f. Four20 and High Park were to notify each other in writing of any communications from any government authority relating to any retail cannabis license held or applied for by either Four20 or High Park; and

g. The parties were to obtain government approvals that were required as conditions precedent to closing the Arrangement Agreement.

14. In addition, the Arrangement Agreement imposed stringent and significant interim restrictions on Four20's management and operations in the period leading up to closing the Arrangement transaction, including restrictions barring Four20 from:

a. Deviating from the ordinary course of business, which restricted Four20's ability to take advantage of new opportunities;

b. Acquiring new assets;

c. Making or committing to any single capital expenditure in excess of $50,000, or $250,000 in aggregate;

d. Amending or terminating any material contracts;

e. Entering into material contracts, subject to time and termination restrictions;

f. Raising capital, borrowing or extending existing indebtedness;

g. Making any investments;

h. Making commitments on any material claims or rights;

i. Commencing, settling or compromising any Actions;

j. Incurring expenses related to any Action;

k. Increasing employee remuneration;

l. Hiring new employees above a certain salary threshold, including hiring a new President;

m. Entering into transactions with affiliates;

n. Making changes to the accounting methods, principles or policies;

o. Changing any tax elections;

p. And other obligations with respect to accounts payable, accounts receivable, licensing, changes to existing insurance and authorizing retail location designs.

("**Interim Restrictions**")

15. Further, the Defendants insisted, and Four20 agreed, that the Defendants could attend Four20's board meetings, and receive all critically sensitive pricing, supplier, sales and operating expense data. The Defendants have taken full advantage of that access, which was not an issue when it was contemplated that:

a. The interim, pre-closing, period would be no longer than necessary;

b. The Defendants would proceed with the Arrangement transaction as agreed; and

c. The Defendants would proceed to perform their obligations under the Arrangement Agreement diligently and in good faith.

Currently, however, the Defendants are seeking to terminate the Arrangement transaction while still holding interests in various other Alberta based competing cannabis retailers. In this context Four20 has significant concerns about the confidential nature of its information and the use of such information going forward, if the Defendants continue to refuse to close the Arrangement transaction.

16. The Defendants were to use commercially reasonable efforts to satisfy all conditions precedent in the Arrangement Agreement, and to carry out the terms of the Interim Order and the Final Order in good faith.

D. The Defendants' Breach of Contract

17. In order to close the Arrangement Agreement, the Defendants are required to obtain certain regulatory approvals from the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**"). They agreed under the Arrangement Agreement to pursue these regulatory approvals with reasonable effort.

18. The only condition precedent still to be fulfilled under the Arrangement Agreement is the requirement that the Defendants obtain approval to operate retail cannabis outlets ("**Retail Cannabis License**") from the AGLC.

19. Despite this, the Defendants have failed or refused to diligently pursue proper licensing with AGLC, and to consult Four20 or keep them fully informed as to the status of the regulatory approvals and licensing procedure. These Actions by the Defendants were and are a breach of the Arrangement Agreement and have delayed and impeded closing of the Arrangement Agreement.

20. The Defendants are in breach of the Arrangement Agreement, particulars of which include that they have failed or refused to:

    a. Use reasonable efforts to satisfy the condition precedents and carry out the Final Order;

b. Diligently pursue regulatory approvals;

c. Cooperate with Four20 in connection with obtaining the regulatory approvals, and have specifically failed to share information and correspondence from government authorities with regards to the regulatory approvals;

d. Keep Four20 fully informed as to the status of and proceedings related to obtaining the regulatory approvals;

e. Consult with Four20 in attempts to obtain the regulatory approvals or correspond with the government authorities; and

f. Notify Four20 of communications from government authorities.

21. Instead, the Defendants have taken actions which are inconsistent with, prevent, delay or impede closing of the Arrangement Agreement, most recently advancing spurious claims of breach and termination.

E. The Defendants Have Advanced Spurious Breach and Termination Allegations

22. On January 28, 2020 the Defendants gave notice and alleged that Four20 was, or would be at the time of closing, in breach of the Arrangement Agreement ("**Breach Notice**").

23. On February 4, 2020 the Defendants sent a second notice which alleged Four20 had caused a Company Material Adverse Effect ("**Company MAE**") by virtue of the breaches alleged on January 28, 2020. High Park also sent notice of their intention to terminate the Arrangement Agreement as a result of the Company MAE ("**Termination Notice**").

24. The Notices were deficient as they failed to provide enough detail to allow Four20 to cure such alleged breaches. The Arrangement Agreement specifically provides that any breach notice must specify "in reasonable detail all breaches" so as to provide the party alleged to have been in breach with an opportunity to cure. The Breach Notice failed to provide detail, let alone reasonable detail of all breaches. The Company MAE was based

on the deficient Breach Notice and the Termination Notice was similarly without foundation.

25. Further, under the Arrangement Agreement High Park could only terminate the transaction on its own behalf or on behalf of Tilray in certain circumstances, including if:

    a. A breach by Four20 occurs that causes a condition precedent not to be satisfied and such a breach is incapable of being cured or is not cured (a "**Cure Breach**"); or

    b. A Company MAE occurs.

26. Importantly, the Defendants are not allowed to claim a Cure Breach, while they are in breach of the Arrangement Agreement and such breach causes a condition precedent not to be satisfied. As a result of the Defendants' breaches, as set out above, the Defendants were and are unable to assert a Cure Breach.

27. The Arrangement Agreement defines Company MAE as effects that would be materially adverse to the business carried out by Four20 and its subsidiaries, but excludes:

    a. Changes affecting the Canadian cannabis industry generally;

    b. Changes affecting the Canadian retail industry generally;

    c. Changes to the market price of cannabis;

    d. General economic, financial, currency exchange, security or commodity market conditions in Canada or the United States;

    e. The announcement of the Arrangement Agreement or related transactions; and

    f. Any action taken or omitted by Four20 or its subsidiaries that is required under the Arrangement Agreement,

unless such changes disproportionately affect Four20 compared to other companies of similar size in the industry.

28. Both the Breach Notice and the Termination Notice are without foundation and cannot be relied upon by the Defendants to evade closing the transaction approved by the shareholders and Court, as set out in the Arrangement Agreement, as:

    a. Four20 has been and remains compliant with the Arrangement Agreement in pursuing consummation of the Arrangement Agreement. Four20 is capable of meeting all condition precedents of the Arrangement Agreement;

    b. The Defendants have failed to provide sufficient details which would reasonably allow Four20 to understand what specifically it is alleged to have done or, more to the point, cure the alleged breaches;

    c. The Defendants are in breach of the Arrangement Agreement and therefore are unable to unilaterally terminate the Arrangement Agreement.

    d. Even if Four20 has breached the Arrangement Agreement, which is denied:

        i. The general nature of the breaches alleged appear capable of being cured, but that has been prevented by the Defendants' neglect to provide particulars;

        ii. The alleged breaches appear to be so minor as to not impair Four20's business to a level that would allow termination;

        iii. Such breaches, or some of them, are due to the fault of the Defendants; and

        iv. Any such breaches, even in aggregate, do not constitute a Company MAE.

F. The Bridge Loan

29. On August 28, 2019 Four20 and High Park entered into a loan agreement (the "**Loan Agreement**") whereby High Park would make available to Four20 an amount up to $7,000,000 (the "**Bridge Loan**").

30. Pursuant to the Loan Agreement Four20 used the Bridge Loan for financing the construction, development and improvements of its existing and future licensed retail cannabis stores.

31. Pursuant to the Loan Agreement the Bridge Loan is repayable on the later of one hundred and eighty (180) days after the advance of the Bridge Loan or the termination of the Arrangement Agreement.

32. In conjunction with the Loan Agreement a general security agreement (the "**GSA**") was entered into giving High Park security interests in the assets of Four20 in exchange for the Bridge Loan. The Loan Agreement was entered into in contemplation of the Arrangement Agreement being completed.

33. It was always contemplated, and the Arrangement Agreement reflects, that the Bridge Loan was not to be repaid unless and until:

    a. The Defendants closed the Arrangement transaction, at which point it would have been an inter-company transaction, entirely within their control; or

    b. The Arrangement Agreement was legitimately terminated, in accordance with its terms, with the Defendants acting in good faith and having taken all reasonable steps to obtain regulatory approval and close the Arrangement transaction.

34. Those conditions do not presently exist, and the Bridge Loan is not repayable.

G. Post-Arrangement Developments

35. It is acknowledged that the cannabis industry is experiencing industry-wide challenges however such challenges were specifically contemplated in the Arrangement Agreement and are not grounds to terminate. It is further acknowledged that the Defendants are experiencing various pressures from its other operations that they may not have been anticipating. In particular, the Defendants' difficulties include:

    a. Tilray's share price declining by roughly 50% since the effective date of the Arrangement Agreement;

    b. Tilray recently having to lay off 10% of its staff;

    c. Tilray's declining cash position; and

    d. Such further and other difficulties that the Defendants may be experiencing;

    and are not grounds to claim a Cure Breach or a Company MAE.

36. Even if that were not the case, the Defendants' challenges do not justify the Defendants failing to perform their Arrangement Agreement obligations in good faith, including:

    a. Failing to take the necessary steps to diligently seek approval of the Retail Cannabis License;

    b. Serving deficient and meritless Breach and Termination Notices;

    c. Purporting to terminate the Arrangement Agreement to provide them with a basis to seek early repayment of the Bridge Loan; and

    d. Seeking to avoid the Arrangement transaction altogether.

37. At all times, the Defendants owed Four20 a common law duty of honesty and good faith in relation to the performance of their contractual obligations under the Arrangement

Agreement. Such a duty requires the Defendants to be honest, reasonable, candid and forthright with Four20 in relation to their performance of their contractual obligations.

38. Four20 had reasonable expectations that the Defendants would pursue performance of the Arrangement Agreement in good faith and would not seek to undermine Four20's interests in the Arrangement Agreement.

39. In breach of these duties of honest performance and good faith, the Defendants have misinformed Four20 about matters linked to the performance of the Arrangement Agreement and have taken steps to avoid the consummation of the Arrangement Agreement. Specifically, they have failed to diligently pursue the Retail Cannabis License, failed to keep Four20 informed as to their efforts (or lack of efforts) to obtain a Retail Cannabis License and have attempted to terminate the Arrangement Agreement on improper pretexts. The Defendants taken actions to avoid their contractual obligations and which are inconsistent with, prevent, delay or impede closing of the Arrangement Agreement, including advancing spurious claims of breach and termination.

40. As a result of the Defendants' breach of their common law duties, Four20 has or will suffer losses. Additionally, Four20 has suffered and continues to suffer from the Interim Restrictions imposed on them by the Arrangement Agreement and the Defendants' subsequent access to proprietary and sensitive pricing, supplier, sales and operating expense data. Again, Four20 only agreed to the Interim Restrictions and shared access on the reasonable expectation that the Defendants would pursue honest performance of the Arrangement Agreement as expeditiously as possible.

H. Real and Substantial Connection to Alberta

41. 420 proposes to serve this Statement of Claim on the Defendants outside of Alberta. Service outside of Alberta is necessary, and permitted pursuant to Rule 11.25(1), (2) and (3) of the *Alberta Rules of Court*, AR 124/2010, in that the *Ex Juris* Defendants are

incorporated outside of Alberta. 420 proposes to serve both Defendants at the agreed address for service, being:

1100 Maughan Rd
Nanaimo, BC, V9X 1J2
Canada

Alternatively, for service of High Park, High Park's registered office is:

Suite 2400, 745 Thurlow Street
Vancouver BC V6E 0C5
Canada

42. Where this Claim is served on the *Ex Juris* Defendants outside of Alberta, it will be served on the basis that a real and substantial connection exists between Alberta and the facts on which this action, and this Claim, are based. The connection arises from the fact that the parties to the Arrangement Agreement have:

    a. Attorned to the Alberta Courts; and

    b. Specifically agreed that any dispute under the Arrangement Agreement will be governed in accordance with Alberta Law; and

A central breach of the Arrangement Agreement is the Defendants' failure to diligently pursue and secure AGLC approval, which was a condition precedent that was to be performed in Alberta.

I. Remedy sought:

43. Four20 seeks:

    a. An Order for Specific Performance of the Arrangement Agreement;

    b. An Order or Declaration that Four20 has not breached the Arrangement Agreement, and further that there has been no Company MAE;

c. An Order or Declaration that the unilateral termination of the Arrangement Agreement by the Defendants is void and of no force and effect; and further that the Bridge Loan has therefore not become due;

d. An Order or Declaration that the Defendants have breached the Arrangement Agreement;

e. Damages for breach of contract, in an amount to be determined at trial;

f. Damages for breach of duty of honest performance and good faith in the discharge of the Defendants' obligations under the Arrangement Agreement, in the amount of $110,000,000 or for such other amount as this Honourable Court deems just;

g. Aggravated or punitive damages in the amount of $20,000,000.00;

h. Pre-judgment and post-judgment interest pursuant to the agreements referenced herein. In the alternative pre-judgment and post-judgment interest pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;

i. Costs on a solicitor-client basis, or alternatively on such basis as this Court deems just; and

j. Any such further and other relief as shall be requested at trial of this action and this Honourable Court deems just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

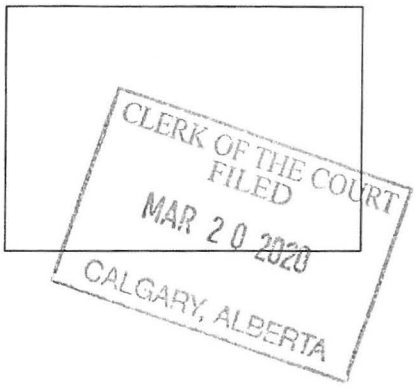
You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is Exhibit "C" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

A Commissioner for Oaths
in and for the Province of Alberta
Archer Bell
Barrister & Solicitor



COURT FILE NUMBER	2001-02873
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF	420 INVESTMENTS LTD.
DEFENDANTS	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**STATEMENT OF DEFENCE**
PARTIES FILING THIS DOCUMENT	TILRAY INC. and HIGH PARK SHOPS INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF THE PARTIES FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP 3500 Bankers Hall East 855 – 2nd Street S.W. Calgary, Alberta T2P 4J8 Attention: David V. Tupper Peter L. Rubin Telephone: 403-260-9722 604-631-3315 Facsimile: 403-260-9700 604-631-3309 Email: david.tupper@blakes.com peter.rubin@blakes.com

STATEMENT OF FACTS RELIED UPON

1. The Defendants deny every allegation in the Statement of Claim except as specifically admitted in this Statement of Defence.

2. The Defendants admit paragraphs 1-3 of the Statement of Claim.

Overview

3. The Plaintiff, 420 Investments Ltd. ("**420**") has brought this action as a defensive tactic in response to (a) the lawful and entirely justified termination by the Defendants of an agreement between 420 and the Defendants (the "**Arrangement Agreement**"), and (b) the anticipated default by 420 under a related bridge loan made by the Defendant High Park Shops Inc. ("**High Park**") to 420, which default has now occurred and has resulted in a $7,000,000 secured debt obligation becoming due and payable by 420 to High Park.

4. After the parties entered into the Arrangement Agreement in August 2019, the Defendants proceeded diligently and in good faith towards a closing of the applicable transaction with 420. As part of those efforts, the Defendants, *inter alia*, provided the above noted loan to 420 to assist 420 in financing the construction, development and improvement of its existing licensed retail cannabis locations; participated in various meetings and discussions with 420; participated in regular update calls with 420; provided certain written consents and waivers to 420 at 420's request; and provided information to the regulatory agencies, all of which took place over several months and in furtherance of an anticipated closing of the transaction.

5. However, it became increasingly apparent to 420 that, if it continued to carry on business in the ordinary course, including adhering to the business plan that the parties agreed to, it would be unable to meet the conditions precedent to closing, including, but not limited to, being unable to meet its obligation to have sufficient cash on hand at closing (the working capital obligation). 420 ceased carrying on business in the ordinary course, failed and refused to follow the agreed upon retail business model and, generally speaking, sacrificed the financial health and prospects of the business and the possibility of implementing the very financial plan that underpinned the entire Arrangement Agreement. By doing so, 420 breached numerous provisions of the Arrangement Agreement. In addition, it transpired that 420 had also breached the warranties, representations and covenants in the Arrangement Agreement in other respects, including misrepresenting the status of two of its leases (leases that were material contracts, and expressly defined as such, under the Arrangement Agreement).

6. In early 2020, 420 provided its actual 2019 financial results to the Defendants and also provided revised financial projections for 2020 in respect of 420's business, as approved by 420's board of directors. The actual 2019 financial results had materially missed expected results. In addition, there were dramatic differences between the 2020 financial projections provided by 420 to the Defendants in August 2019 which underpinned the Arrangement Agreement and the updated information provided to the Defendants in January 2020:

2020			
	Projected in August 2019	Projected on January 27, 2020	% Change
# of Retail Cannabis Locations	22	13	(41%)
Target Annual Sales Per Location	$3,300,000	$1,975,000	(40%)
Revenue	$65,656,000	$22,339,000	(66%)
Gross Profit	$21,687,000	$6,792,000	(69%)
EBITDA	$5,219,000	($4,265,000)	(182%)
Free Cash Flow	$2,076,000	($5,380,000)	(359%)

7. By taking the steps it did, and failing to take others as contractually obligated, 420 breached numerous provisions of the Arrangement Agreement and fundamentally breached that agreement. Furthermore, a "Company Material Adverse Effect" occurred. The foregoing triggered a right on the part of the Defendants to terminate the Arrangement Agreement and call for the repayment of the above noted loan.

8. 420's allegations do not bear scrutiny and are not grounded in fact or law. Contrary to the allegations in the Statement of Claim, the Defendants pursued the implementation and consummation of the Arrangement Agreement with all reasonable diligence, in compliance with the agreement, in good faith and honestly. The Defendants exercised a contractual right to terminate and were lawfully entitled to do so.

The Agreements

9. On August 28, 2019, the Defendants, High Park and Tilray Inc. ("**Tilray**"), entered into the Arrangement Agreement with 420 and certain of its shareholders.

10. Pursuant to the Arrangement Agreement, the Defendants and 420 agreed to implement an arrangement under section 193 of the *Business Corporations Act*, R.S.A. 2000, c. B-9, involving the acquisition by High Park of all of the issued and outstanding shares of 420 in exchange for shares of Tilray (or, at High Park's election, cash) in an amount equal to $70 million, plus earnout payments in the maximum amount of up to $40 million structured as "Contingent Promissory Notes".

11. In conjunction and contemporaneously with the negotiation of the Arrangement Agreement:

(a) the parties agreed upon the terms of the "Contingent Promissory Notes" that would be issued to 420's shareholders under the proposed arrangement, as more particularly described at paragraphs 27-**Error! Reference source not found.** of this Statement of Defence (the "**Earnout Terms**");

(b) 420 delivered to the Defendants a disclosure letter dated August 28, 2019, the provisions of which (including exhibits) were deemed to be incorporated by reference in the Arrangement Agreement (the "**Disclosure Letter**");

(c) the parties agreed upon and approved a business plan that would govern 420's operations from the date of the Arrangement Agreement until the closing date for the agreement (the "**Effective Date**"), and thereafter once 420 had been acquired by High Park. The business plan was set out in a document entitled "Four20 Path to 22 Locations" (the "**Path to 22**"), which was incorporated by reference in the Disclosure Letter and in the Earnout Terms, and thus in the Arrangement Agreement; and

(d) the Defendants agreed to provide a loan to 420 for the purpose of supplying the capital which 420 represented was required in order to implement the Path to 22. Accordingly, on or about August 28, 2019, High Park and 420 entered into a loan agreement (the "**Loan Agreement**") pursuant to which High Park agreed to advance a loan (the "**Bridge Loan**") to 420 in the amount of up to $7,000,000.

12. The Path to 22 was a fundamental and critical element of the entire agreement between the parties. The operation of the Business in a manner consistent with the Path to 22, or in a manner that did not materially and adversely affect the operations, financial conditions, liabilities or prospects of the Business, was essential to the purpose and object of the parties in entering into the Arrangement Agreement and the Loan Agreement.

Good faith

13. At all material times, 420 owed a duty of good faith in the performance of all of its contractual obligations, including but not limited to:

(a) a duty of honest performance; and

(b) a duty not to act in such a manner as to defeat the very purpose and objective of the Arrangement Agreement or the Loan Agreement, or to deprive the Defendants of the benefit of either agreement, contrary to the original purpose and expectation of the parties.

14. In the alternative, it was an implied term of the Arrangement Agreement and of the Loan Agreement that 420 would not carry on its business, between the date of the agreement and the Effective Date, in such a way as to undermine or substantially nullify the object and expected benefit to the Defendants of the Arrangement Agreement (the "**Implied Term**").

15. In particular, 420 was bound, by virtue of its duty of good faith or alternatively the Implied Term, not to act in such a manner as to:

(a) substantially impair the value of 420's business; or

(b) prevent or substantially interfere with the implementation of the Path to 22.

The Arrangement Agreement

The Conditions of Closing

16. It was a condition precedent to the Defendants' obligations under the Arrangement Agreement ("**Condition of Closing**") that no "Company Material Adverse Effect" ("**MAE**") must have occurred between the date of the Arrangement Agreement and the Effective Date. A MAE was defined as including any "change, event, development, occurrence, state of facts, condition or effect" ("**Effect**") that was, or would reasonably be expected to be, individually or in the

aggregate with all other Effects, materially adverse to the "Business" or condition (financial or otherwise), assets, liabilities, operations, earnings or prospects of 420 or any of its subsidiaries. Excluded from the definition of a MAE were any changes affecting the Canadian cannabis industry generally, changes affecting the Canadian retail industry generally or changes in the market price of cannabis *except* to the extent that such changes related primarily to 420 and its subsidiaries, taken as a whole, or had a disproportionate effect on 420 and its subsidiaries compared to other companies of similar size operating in the same industries.

17. "Business" was defined in the Arrangement Agreement as the businesses carried on by 420 and its subsidiaries as of the date of the agreement, "being the businesses of the current operation, planned opening and ongoing support of recreational Cannabis retail stores in Canadian jurisdictions where the private sale of recreational cannabis is permitted."

18. The Conditions of Closing also included the following:

(a) the approval of the plan of arrangement contemplated by the Arrangement Agreement (the "**Plan of Arrangement**") by 420's shareholders and by this Court;

(b) all consents, approvals, actions, filings and notifications necessary for the proposed transaction having been obtained from the relevant governmental authorities and agencies;

(c) 420 having performed or complied in all material respects with all of the covenants, agreements and obligations that were required by the Arrangement Agreement to be performed or complied with prior to the Effective Date;

(d) the issuance to High Park or an affiliate by the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**"), concurrently with the closing of the Arrangement Agreement, of a "cannabis licence" for each location in respect of which 420 held a license as at the date the Arrangement Agreement (the "**Retail Cannabis Licences**"); and

(e) the estimated working capital of 420, as at the Effective Date, being at least $13,878,375 less a variance of $1,525,000 (the "**Working Capital Condition**").

19. It was a further Condition of Closing that the representations and warranties made by 420 must be true and correct in all material respects as of the Effective Date as if made on that date

and, with respect to those representations and warranties that were expressed in terms of materiality or material adverse effect, must be true and correct in *all* respects. 420's representations and warranties in the Arrangement Agreement included representations and warranties that:

(a) 420 and its subsidiaries had conducted the Business only in the ordinary course of business (the "**Ordinary Course Warranty**");

(b) there had been no MAE (the "**MAE Warranty**");

(c) there had been no action taken that would constitute a breach of covenant (the "**Covenant Warranty**");

(d) the Disclosure Letter provided a complete and accurate list of all the leases to which 420 was a party (the "**Leases Warranty**");

(e) all "Material Contracts" (defined as including the leases listed in the Disclosure Letter) were in full force and effect (the "**Material Contracts Warranty**"); and

(f) 420 was not insolvent (the "**Solvency Warranty**").

20. The Arrangement Agreement provided that it was subject to termination if the Effective Date did not occur prior to the "Outside Date", defined as May 28, 2020 or such later date as the parties might agree in writing. The Outside Date was fixed by the parties knowing that there was a potential for significant delay associated with the governmental approvals required to consummate the transaction, and, in particular, associated with the issuance by the AGLC of the Retail Cannabis Licences.

The Ordinary Course Covenant and the Path to 22

21. The covenants of 420 in the Arrangement Agreement included a covenant that, from the date of the Arrangement Agreement to the Effective Date, 420 and its subsidiaries would:

(a) conduct the Business (including current operations and planned openings) only in the ordinary course of business; and

(b) use commercially reasonable efforts to preserve intact the business organization and goodwill of the Business, to maintain the companies' relationships with

suppliers, clients and other business associates, and to keep available the services of their officers and employees as a group,

(the "**Ordinary Course Covenant**"). Without limiting the generality of the Ordinary Course Covenant, 420 expressly covenanted that it would not, and would not cause its subsidiaries to, make any material change in the operation of the Business except as required by the Arrangement Agreement, required by law or approved in writing by High Park in its sole discretion.

22. In specific reply to paragraphs 14 and 40 of the Statement of Claim:

(a) any restrictions imposed on the business of 420 by the Arrangement Agreement were voluntarily accepted by 420 for good and valuable consideration and any loss or damages caused to 420 by virtue of such restrictions (which loss or damages are not admitted but specifically denied) flowed from the terms of the Arrangement Agreement, to which 420 agreed, and not from any breach of the Arrangement Agreement by the Defendants;

(b) the terms of the Arrangement Agreement permitted 420 to seek the Defendants' approval for any material change in the operation of the Business;

(c) on more than one occasion, when asked, the Defendants provided their approval or a partial waiver of the relevant contractual requirements;

(d) if the Defendants withheld their approval of, or consent to, any material change in the operation of the Business, then such approval or consent was not withheld unreasonably or in breach of the Arrangement Agreement;

(e) had 420 sought the Defendants' approval or consent for any additional changes that the Defendants reasonably considered would be beneficial to the Business, condition, assets, liabilities or prospects of 420, or the successful implementation of the Path to 22, such approval or consent would have been granted; and

(f) the Defendants specifically deny that the Ordinary Course Covenant, or any provision of the Arrangement Agreement, has prevented or will prevent 420 from satisfying the Conditions of Closing or successfully implementing the Path to 22, as alleged in the Statement of Claim or at all.

23. At all material times, compliance with the Ordinary Course Covenant regarding the conduct of the Business required the continued implementation of the Path to 22 from the date of the Arrangement Agreement until at least the Effective Date.

24. The Path to 22 set out the measures that 420 was required to take toward achieving its goal of opening an additional 16 retail locations, for a total of 22 locations, by the end of May of 2020. These measures included:

(a) planning and executing construction;

(b) obtaining permits and licences;

(c) hiring and training employees; and

(d) purchasing cannabis products for sale.

25. The projected opening dates set out in the Path to 22 extended from late September 2019 to late May 2020.

26. In the Path to 22, 420 represented to the Defendants that:

(a) the 16 new locations were "projected to all be open by the end of May 2020"; and

(b) overall, "management feels that the plan as laid out is achievable while still maintaining the operating strength of the business."

The Earnout Terms

27. The parties agreed that the amounts, if any, payable to the former shareholders of 420 pursuant to the Earnout Terms would be contingent on the number of stores opened at new locations, as contemplated by the Path to 22. The Earnout Terms contemplated two payment dates (the "**Determination Dates**"). The first was six months after the Effective Date and the second was December 31, 2020. The amount payable on each Determination Date was to be calculated based on the number of new store locations that had been opened between the date of the Arrangement and the Determination Date. The full amount of the earnout would only be payable if all 16 new locations contemplated by the Path to 22 were open by the second Determination Date.

28. The Earnout Terms provided that, prior to the Effective Date, 420 was responsible for overseeing the implementation of the Path to 22. From the Effective Date until the second Determination Date, High Park would also ensure that 420 continued to adhere to the Path to 22.

Termination of the Arrangement Agreement

Breaches and MAE

29. 420 has breached the Arrangement Agreement, including the Ordinary Course Covenant, the Ordinary Course Warranty, the MAE Warranty, the Covenant Warranty, the Leases Warranty, the Material Contracts Warranty, the Conditions of Closing and the Implied Term, and has breached its duties of good faith. Particulars of 420's breaches include:

(a) as at the date of the Arrangement Agreement, two of the agreements listed as leases in the Disclosure Letter were not valid and subsisting leases, in full force and effect and in good standing, as represented by 420, but rather were offers to lease which remained subject to negotiation, in breach of the Leases Warranty and the Material Contracts Warranty; and

(b) subsequent to the date of the Arrangement Agreement, 420 made a number of changes to its Business and operations, including curtailing its cash expenditures. The changes were not approved by High Park as required by the Ordinary Course Covenant and were neither required nor permitted by the Arrangement Agreement.

30. In curtailing its use of cash, 420 was motivated by concerns extraneous to the purposes and objects of the Arrangement Agreement, including but not limited to the artificial inflation of 420's working capital in order to satisfy the Working Capital Condition.

31. Without limiting the foregoing, 420 curtailed its use of cash by:

(a) ceasing, curtailing or delaying construction of new locations;

(b) ceasing, curtailing or delaying the hiring and training of new employees;

(c) abandoning, suspending or delaying the implementation of the Path to 22; and

(d) breaching the Loan Agreement by failing to apply the Bridge Loan proceeds to finance the construction, development and improvement of its retail locations.

32. The steps taken by 420 to curtail its use of cash immediately and adversely affected the Business, condition (financial and otherwise), assets, liabilities, operations and prospects of 420. Accordingly these steps constituted or resulted in a MAE, either in themselves or alternatively in conjunction with other Effects (including but not limited to adverse market conditions disproportionately affecting 420). In particular, but without limiting the foregoing, the steps taken by 420:

(a) substantially undermined the prospects of the Business, including the prospects of successfully implementing the Path to 22;

(b) caused 420 to be disproportionately affected by market conditions affecting incumbent retail cannabis licensees; and

(c) caused 420 to be in breach of fundamental covenants, representations, warranties and conditions of the Arrangement Agreement including the Ordinary Course Covenant and the Implied Term.

33. The degree to which 420's breaches and the MAE have impaired 420's Business, operations, financial position and prospects, and the implementation of the Path to 22, is such as to make impossible:

(a) the satisfaction of the Conditions of Closing prior to the Outside Date or within any reasonable time thereafter;

(b) High Park's compliance with the requirement in the Earnout Terms to adhere to the Path to 22 after the Effective Date, should the Effective Date occur; and

(c) the achievement of the goal of opening 16 new store locations by the Second Determination Date so as to entitle the holders to payment of the contingent notes in the full amount of their face value.

Termination by the Defendants

34. Pursuant to the terms of the Arrangement Agreement, the Defendants had the right to terminate the agreement if there was a MAE. Further, pursuant to the terms of the Arrangement Agreement, the Defendants had the right to terminate the agreement when the breach by 420 of any representation or warranty or its failure to perform any covenant or agreement would result in the failure to satisfy a Condition of Closing, provided that notice and an opportunity to cure the

breach was given in accordance with the terms of the agreement. No prior notice or opportunity to cure was required when a MAE had occurred.

35. On February 4, 2020, the Defendants delivered a notice to 420 (the "**First Termination Notice**") notifying 420 that the Defendants were terminating the Arrangement Agreement effective immediately on the ground that a MAE had occurred.

36. Also on February 4, 2020, the Defendants delivered a notice to 420 in accordance with the terms of the Arrangement Agreement (the "**Breach Notice**") notifying 420 of the following breaches, and providing particulars of such breaches:

(a) breach of the Ordinary Course Covenant and the Ordinary Course Warranty;

(b) breach of the MAE Warranty;

(c) breach of the Covenant Warranty;

(d) breach of the Leases Warranty and the Material Contracts Warranty; and

(e) breach of the Conditions of Closing.

37. 420 failed to cure the breaches identified in the Breach Notice within the time permitted by the terms of the Arrangement Agreement.

38. On February 26, 2020, after the cure period for the Breach Notice had expired, the Defendants delivered a notice to 420 (the "**Second Termination Notice**") notifying 420 that, without prejudice to the First Termination Notice, it was exercising its right to terminate for failure to cure the breaches identified in the Breach Notice.

39. The First Termination Notice or, alternatively the Second Termination Notice, validly effected the termination of the Arrangement Agreement. The Defendants deny that the First Termination Notice, the Breach Notice and the Second Termination Notice, or any of them, was false, inaccurate, improper, deficient or otherwise ineffective as alleged in the Statement of Claim or at all.

40. At all material times, until the agreements were lawfully and properly terminated, the Defendants complied with their obligations under the Arrangement Agreement and the Loan

Agreement, including any obligations of good faith or honest performance that they may have owed to 420 in connection with those agreements, and in particular they:

(a) proceeded diligently and in good faith and undertook all commercially reasonable measures within their control to ensure that the Conditions of Closing, as described in paragraphs 16-19 of this Statement of Defence, were met, including, *inter alia*, diligently pursuing the issuance of all necessary licences, consents and other regulatory or administrative approvals necessary to consummate the transaction contemplated by the Arrangement Agreement (the "**Approvals**");

(b) cooperated with 420 in pursuing the Approvals, kept 420 regularly and fully informed as to the status of the processes and proceedings relating to obtaining the Approvals, and consulted with 420 as required by the Arrangement Agreement, including attending regularly scheduled meetings and telephone calls to discuss the progress of the approval process;

(c) cooperated with 420 in its efforts to implement the Path to 22;

(d) regularly participated in meetings and calls, consulted with 420 and otherwise engaged in positive efforts towards the consummation of the Arrangement Agreement;

(e) in furtherance of consummating the transaction contemplated by the Arrangement Agreement, provided consents and waivers at 420's request where such were required under the Arrangement Agreement; and

(f) otherwise fulfilled all of their obligations under the Arrangement Agreement and the Loan Agreement.

41. The Defendants specifically deny that they have:

(a) terminated the Arrangement Agreement, avoided the consummation of that agreement or otherwise taken action for any ulterior or improper purpose or motive, as alleged in the Statement of Claim or at all, and in particular deny that they have terminated the Arrangement Agreement for any reason other than the breaches by 420 of the Arrangement Agreement and the resulting MAE as described further in this Statement of Defence;

(b) failed or refused to diligently pursue the Approvals or to work jointly, cooperate or consult with 420 in its efforts to secure the Approvals, as alleged in the Statement of Claim or at all;

(c) failed to comply, or alternatively failed to materially comply, with their obligations under the Arrangement Agreement to keep 420 informed of their efforts to secure the Approvals;

(d) misled or misinformed 420 in any respect, or alternatively any material respect, as alleged in the Statement of Claim or at all;

(e) failed or refused to satisfy any condition necessary for the consummation of the Arrangement Agreement;

(f) used, or have any intention of using, the information provided by 420, or to which they have been given access by 420, for any purpose other than that contemplated by the Arrangement Agreement;

(g) taken any actions which would prevent, impede or delay, or alternatively materially delay, the closing of the Arrangement Agreement, as alleged in the Statement of Claim or at all; or

(h) breached the Arrangement Agreement or the Loan Agreement or their obligations of good faith or honest performance in connection with those agreements, as alleged in the Statement of Claim or at all.

42. Alternatively, if the Defendants breached the Arrangement Agreement or the Loan Agreement or their duties of good faith or honest performance, as alleged in the Statement of Claim or at all, which is not admitted but specifically denied, such breach, in any event, was not material, caused no loss or damage to 420 and did not in any manner cause, contribute to or excuse the failure by 420 to perform its obligations under the Arrangement Agreement or under the Loan Agreement as described in this Statement of Defence.

The Loan Agreement

43. Pursuant to the Loan Agreement, High Park agreed to advance the Bridge Loan in two tranches. The first tranche, in the amount of $5,000,000, was to be made available to 420 on the date of the Loan Agreement and the second tranche, in the amount of $2,000,000, was to be

made available on or after October 31, 2019 provided that, by that date, High Park had opened at least eight new retail stores.

44. According to the terms of the Loan Agreement, the Bridge Loan was repayable in full on the later of:

(a) 180 days from the date that the Bridge Loan was advanced; or

(b) the termination of the Arrangement Agreement.

45. It was an express term of the Loan Agreement that:

> The proceeds of the Loan will be applied by the Borrower in financing the construction, development and improvements of its existing licensed retail cannabis locations. For the avoidance of doubt, none of the proceeds of the Loan may be applied by the Borrower in repaying any of its financial indebtedness or in otherwise servicing or discharging any other obligations or liabilities....

46. On August 29, 2019, High Park advanced the first tranche of the Bridge Loan to 420. The first tranche of the Bridge Loan was therefore repayable on the later of February 25, 2020 (180 days after advancement) or the date when the Arrangement Agreement was terminated (February 4 or, alternatively, February 26, 2020); that is, by February 26, 2020 at the latest.

47. By October 31, 2019, 420 had opened eight new retail stores and, based on 420's representations, the Defendants reasonably believed that the Path to 22 was being implemented on an ongoing basis. Based on that assumption, and acting in good faith, High Park advanced the second tranche of the Bridge Loan on November 29, 2019, as requested by 420, with the result that 420 became indebted to High Park for the total principal amount of $7,000,000.

48. The Loan Agreement defined an "Event of Default" as including:

(a) the failure by 420 to pay any amount due under the Loan Agreement within three business days of the date when it became payable; and

(b) the failure by 420 to comply with any other provision of the Loan Agreement.

49. 420 failed to repay the first tranche by March 1, 2020, which was three business days after the first tranche of the Bridge Loan became payable (at the latest) as required by the Loan Agreement. Therefore, as of March 1, 2020, two Events of Default under the Loan Agreement had occurred and were continuing in that:

(a) 420 had failed to repay the first tranche of the Bridge Loan; and

(b) 420 had breached the Loan Agreement by failing to apply the proceeds of the Bridge Loan to the construction, development and improvement of its existing licensed retail cannabis locations, and in particular by ceasing to adhere to the Path to 22.

50. The Loan Agreement provided that, if an "Event of Default" occurred and was continuing, High Park as lender might at any time, by notice to 420, declare that the total amount of the Bridge Loan and any other amounts payable under the Loan Agreement were immediately due and payable and the Bridge Loan would thereupon terminate.

51. On March 11, 2020, High Park delivered a Notice of Acceleration to 420, declaring the total outstanding amount of the Bridge Loan and all other amounts due under the Loan Agreement to be due and payable immediately, with the result that the full amount of the Bridge Loan is now due and payable by 420.

MATTERS THAT DEFEAT THE PLAINTIFF'S CLAIM:

No Specific Performance

52. Specific performance of the Arrangement Agreement is not available because the Arrangement Agreement was validly terminated by the First Termination Notice, or alternatively by the Second Termination Notice, and is no longer binding on or enforceable against the Defendants.

53. In the alternative, 420 has fundamentally breached and repudiated the Arrangement Agreement and the Defendants have accepted such repudiation, such that the agreement is at an end.

54. Further, or in the alternative, specific performance of the Arrangement Agreement is not available because:

(a) specific performance of the Arrangement Agreement in accordance with its terms has become impossible such that any such order would be futile. In particular, but without limiting the foregoing, the Conditions of Closing are incapable of being satisfied by the Outside Date, including:

(i) the Condition of Closing that 420 must have performed or complied in all material respects with its covenants, agreements and obligations under the Arrangement Agreement, including the Ordinary Course Covenant;

(ii) the Condition of Closing that no MAE must have occurred;

(iii) the Working Capital Condition; and

(iv) the Condition of Closing that all representations and warranties made by 420 must be true and correct at the time of closing as if made on that date, including the Ordinary Course Warranty, the MAE Warranty, the Covenant Warranty, the Leases Warranty, the Material Contracts Warranty and the Solvency Warranty.

(b) in the alternative, the Defendants' obligations of performance under the Arrangement Agreement, and in particular their obligation to complete the arrangement transaction, are contingent and conditional on the satisfaction of the Conditions of Closing. The Conditions of Closing have not been satisfied and therefore the Defendants are not bound to perform;

(c) in the further alternative, performance of the parties' agreement, including but not limited to the Ordinary Course Covenant and the Path to 22, is incapable of being adequately supervised by the Court;

(d) in the further alternative, if the Arrangement Agreement was wrongfully terminated, which is not admitted but specifically denied, then damages are an adequate remedy for such wrongful termination; and

(e) in the further alternative, 420 is barred from seeking specific performance by the equitable doctrines of laches, acquiescence and clean hands. In particular, but without limiting the foregoing, 420 has breached and continues to breach the Arrangement Agreement and its duties of good faith to the Defendants and as such is barred from seeking specific performance of the Arrangement Agreement.

No Damages for Breach of Contract or Breach of Good Faith

55. The Defendants deny that they have breached the Arrangement Agreement or any duty of good faith or honest performance which they may owe in relation to the Arrangement Agreement, as alleged in the Statement of Claim or at all.

56. Further, or in the alternative, if the Defendants breached the Arrangement Agreement or their duties of good faith or honest performance, as alleged in the Statement of Claim or at all, which is not admitted but specifically denied, then 420 has suffered no damages as a result of such breach. In particular, but without limiting the foregoing:

(a) if 420 has suffered loss or damages as a result of the restrictions on its business imposed by the Arrangement Agreement, which is not admitted but specifically denied, then such losses flowed from the terms of the Arrangement Agreement, to which 420 voluntarily agreed, and not from any breach of the Arrangement Agreement;

(b) if 420 has suffered loss or damages as a result of the disclosure of confidential or other information, which is not admitted but specifically denied, then such loss or damages flowed from the terms of the Arrangement Agreement, to which 420 voluntarily agreed, or from the voluntary disclosure of information by 420, or both, and not from any breach of the Arrangement Agreement;

(c) the only persons who will suffer a loss if the transaction contemplated by the Arrangement Agreement is not completed are the shareholders of 420. The shareholders are not plaintiffs in this action; and

(d) further, or in the alternative, if the Arrangement Agreement had not been terminated by the Defendants, the Defendants would not in any event have been obliged to complete the contemplated transaction, and would not have completed the transaction, due to the inability of 420 to satisfy the Conditions of Closing prior to the Outside Date.

57. In the further alternative, if 420 has suffered loss or damages, which is denied, then:

(a) no acts or omissions of the Defendants are the proximate cause of such loss or damages;

(b) such loss or damages were caused, or contributed to, by the fault of 420, or others, or both;

(c) such loss or damages are too uncertain, remote, hypothetical and speculative to be recoverable in law; and

(d) 420 has failed to take reasonable steps to mitigate its losses and damages.

58. There is no legal basis on the facts of this case for an award of aggravated or punitive damages as sought by 420.

REMEDY SOUGHT:

59. The Defendants ask that 420's claim be dismissed with costs.

This is Exhibit "D" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

A Commissioner for Oaths
in and for the Province of Alberta

Archer Bell
Barrister & Solicitor

8:48 a.m.

Form 11

[Rule 3.31]

P. P.

4979

COURT FILE NUMBER	2001-02873
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF/DEFENDANT BY COUNTERCLAIM	420 INVESTMENTS LTD.
DEFENDANTS	TILRAY INC. and HIGH PARK SHOPS INC.
PLAINTIFF BY COUNTERCLAIM	HIGH PARK SHOPS INC.
DOCUMENT	**STATEMENT OF DEFENCE TO COUNTERCLAIM OF 420 INVESTMENTS LTD.**
PARTY FILING THIS DOCUMENT	420 Investments Ltd.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**JENSEN SHAWA SOLOMON DUGUID HAWKES LLP** 800, 304 - 8 Avenue SW Calgary, Alberta T2P 1C2 Robert Hawkes QC Tel: 403 571 1520 Fax: 403 571 1528 File: 14826-001

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. Except as specifically admitted herein, the Defendant by Counterclaim, 420 Investments Ltd ("**Four20**") denies each and every allegation set out in the Counterclaim filed by the Plaintiff by Counterclaim, High Park Shops Inc. ("**High Park**").

2. Four20 repeats and adopts the entire contents of its Statement of Claim filed in this Action, including all defined terms.

Any matters that defeat the Claim of the Plaintiff:

3. On August 28, 2019 Four20 and High Park entered into a loan agreement (the "**Loan Agreement**") whereby High Park agreed to loan Four20 an amount up to $7,000,000 (the "**Bridge Loan**"). The Loan Agreement was entered into contemporaneously with the Arrangement Agreement, whereby all issued and outstanding securities of Four 20 were to be acquired by Tilray, Inc. through High Park and Four20 was to operate as a wholly owned subsidiary of High Park.

4. The Bridge Loan was necessary as:

(a) Outside of the Bridge Loan, under the terms of the Arrangement Agreement Four20 was prohibited from raising capital; and

(b) Four20 required capital, by way of debt or equity, to, *inter alia*, expand operations by opening additional retail outlets.

Even with the Bridge Loan, Four20 was constrained in its operations and would not have entered into either the Loan Agreement or the Arrangement Agreement (collectively "the **Agreements**") if it were not for its reasonable expectations that Tilray, Inc. and High Park would perform their contractual obligations under the Arrangement Agreement in good faith.

5. Four20 used funds advanced under the Bridge Loan in accordance with the terms of the Loan Agreement and as contemplated in the Arrangement Agreement. Four20 did not breach any use of the proceeds provisions in the Loan Agreement and Four20 fulfilled its duties and obligations under the Arrangement Agreement.

6. It was always contemplated, and the Arrangement Agreement reflects, that the Bridge Loan was not to be repaid unless and until:

(a) High Park and Tilray, Inc. closed the arrangement transaction, at which point the Bridge Loan would have been an inter-company transaction, entirely within the High Park's control; or

(b) The Arrangement Agreement was legitimately terminated, in accordance with its terms, with High Park and Tilray, Inc. acting in good faith.

7. Instead, Tilray, Inc. and High Park failed to take reasonable steps to obtain regulatory approval and close the arrangement transaction, both as required under the Arrangement Agreement and their good faith obligations, with the intention of delaying or frustrating the Arrangement Agreement. Further, Tilray, Inc. and High Park have now falsely alleged that Four20 has breached the Arrangement Agreement and purported to terminate the Agreement.

8. As the Arrangement Agreement was not performed by Tilray, Inc. or High Park in good faith, nor was it legitimately terminated, the Bridge Loan is not currently repayable.

No Event of Default

9. High Park and Tilray, Inc. have taken actions which are inconsistent with, prevent, delay or impede closing of the Arrangement Agreement, most recently advancing baseless claims of breach and termination. Both termination notices issued by High Park are unfounded and improperly purport to terminate the Arrangement Agreement. The Arrangement Agreement has failed to close due to High Park and Tilray, Inc.'s actions.

10. The Arrangement Agreement has not been terminated legitimately. As a result, there is no Event of Default and the Bridge Loan is not currently repayable.

11. In specific response to paragraph 10 of the Counterclaim, Four20 did not misuse the Bridge Loan proceeds. Four20 pursued completion of the proposed additional retail locations and used the Bridge Loan proceeds as anticipated. As specifically stated in the "Four20 Path to 22 Locations" roadmap, the timelines identified were acknowledged as potential timelines and subject to change or delay. The timelines and this roadmap were not binding terms of either the Arrangement Agreement or the Loan Agreement, and the possibility that some retail locations

might not open by the deadline was contemplated by the parties and was dealt with in the earnout provisions of the Arrangement Agreement. The growth Four20 did achieve prior to the purported termination was appropriate and within the contemplation of the parties at the time the Arrangement Agreement and Loan Agreement were executed.

12. As there has been no event of default by Four20, no legitimate termination of the Arrangement Agreement and no misuse of proceeds, the Notice of Acceleration issued by High Park on March 11, 2020 was improper and without effect. The Bridge Loan is not currently repayable.

Set-Off

13. As described in the Statement of Claim, High Park has breached the Arrangement Agreement and breached their duty of honest performance and good faith discharge of its obligations under the Arrangement Agreement.

14. The Bridge Loan is closely connected to the original claim filed by Four20 as High Park is liable to Four20 for damages under the same Agreement and from the same events as described in the Statement of Claim and the Counterclaim.

15. Even if Four20 were to owe High Park any damages under the Bridge Loan, which it does not, Four20 claims a right of set-off, at law or in equity, as against any amounts owed to Four20.

Remedy sought:

16. Four20 seeks the dismissal of the Counterclaim as against it, with costs payable by High Park on a solicitor-client basis or a scale to be determined by this Honourable Court and such further and other remedy that this Honourable Court deems just in the circumstances.

This is Exhibit "E" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

A Commissioner for Oaths
in and for the Province of Alberta

Archer Bell
Barrister & Solicitor

Clerk's Stamp:

COURT FILE NUMBER	2001-02873
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF	420 INVESTMENTS LTD.
DEFENDANTS	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**COUNTERCLAIM OF HIGH PARK SHOPS INC.**
PARTY FILING THIS DOCUMENT	HIGH PARK SHOPS INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP 3500 Bankers Hall East 855 – 2nd Street S.W. Calgary, Alberta T2P 4J8 Attention: David V. Tupper Peter L. Rubin Telephone: 403-260-9722 604-631-3315 Facsimile: 403-260-9700 604-631-3309 Email: david.tupper@blakes.com peter.rubin@blakes.com File Ref: 191284/24

NOTICE TO DEFENDANT BY COUNTERCLAIM:

You are being sued. You are a Defendant by Counterclaim.

Go to the end of this document to see what you can do and when you must do it.

STATEMENT OF FACTS RELIED ON:

1. The Plaintiff by Counterclaim, High Park Shops Inc. ("**High Park**") files this Counterclaim against the Defendant by Counterclaim, 420 Investments Ltd. ("**420**") (the "**Counterclaim**").

2. High Park repeats and incorporates in this Counterclaim the allegations, facts and definitions contained in the Statement of Defence of Tilray Inc. and High Park filed in Court of Queen's Bench of Alberta Action No. 2001-02873 (the "**Statement of Defence**"). Capitalized terms not defined in the Counterclaim shall have the meaning given to them in the Statement of Defence.

Counterclaim Overview

3. This Counterclaim relates to the Bridge Loan of $7,000,000 that High Park advanced to 420 pursuant to the Loan Agreement. As described in paragraphs 46 and 47 of the Statement of Defence, High Park advanced the first tranche of Bridge Loan to 420, in the amount of $5,000,000, on August 29, 2019 and the second tranche of the Bridge Loan to 420, in the amount of $2,000,000, on November 29, 2019.

4. The Loan Agreement provided that, if an "Event of Default" occurred and was continuing, High Park as lender might at any time, by notice to 420, declare that the total amount of the Bridge Loan and any other amounts payable under the Loan Agreement were immediately due and payable, and the Bridge Loan would thereupon terminate. Events of Default under the Loan Agreement included:

(a) the failure by 420 to pay any amount due under the Loan Agreement within three business days of the date when it became payable; and

(b) the failure by 420 to comply with any other provision of the Loan Agreement.

5. This Counterclaim arises as a result of two Events of Default under the Loan Agreement, and the Notice of Acceleration that High Park issued to 420 on March 11, 2020. That Notice declared the total outstanding amount of the Bridge Loan and all other amounts due under the Loan Agreement to be due and payable immediately (the "**Notice of Acceleration**").

Event of Default – Repayment Due Date Lapsed by more than 3 Days

6. It was a term of the Loan Agreement that the Bridge Loan was repayable in full on later of:

(a) 180 days from the date that the Bridge Loan was advanced; or

(b) the termination of the Arrangement Agreement.

7. As indicated in paragraph 46 of the Statement of Defence, the first tranche of Bridge Loan, in the amount of $5,000,000, became repayable on February 26, 2019, at the latest, because:

(a) the Defendants terminated the Arrangement Agreement on February 4, 2020, as a result of the First Termination Notice or, in the alternative, the Defendants terminated the Arrangement Agreement on February 26, 2020, as a result of the Second Termination Notice; and

(b) as of February 25, 2020, more than 180 days had passed since High Park advanced the first tranche of the Bridge Loan.

8. 420 did not repay the first tranche of the Bridge Loan to High Park by March 1, 2020, which was three business days after the first tranche of the Bridge Loan became payable (at the latest) pursuant to the circumstances described in the paragraph above. This triggered an Event of Default under the Loan Agreement.

Event of Default – Misuse of Bridge Loan Proceeds

9. It was a term of the Loan Agreement that:

> The proceeds of the Loan will be applied by the Borrower in financing the construction, development and improvements of its existing licensed retail cannabis locations. For the avoidance of doubt, none of the proceeds of the Loan may be applied by the Borrower in repaying any of its financial indebtedness or in otherwise servicing or discharging any other obligations or liabilities....

10. As indicated in paragraph 49 of the Statement of Defence, 420 breached the Loan Agreement by failing to apply the proceeds of the Bridge Loan to the construction, development and improvement of its existing licensed retail cannabis locations, and by ceasing to adhere to the Path to 22 in order to preserve cash. This misuse of Bridge Loan proceeds by 420 triggered

an Event of Default under the Loan Agreement which permitted immediate termination by High Park, regardless of whether the Arrangement Agreement was terminated or the Loan Agreement was otherwise in default.

Notice of Acceleration

11. The Events of Default described above permitted High Park to deliver the Notice of Acceleration to 420 which High Park did on March 11, 2020. At this time, 420 had not repaid any portion of the Bridge Loan or other amounts payable under the Loan Agreement.

12. As of the filing date of this Counterclaim, 420 has not repaid to High Park the Bridge Loan and all other amounts payable under the Loan Agreement (collectively, the "**Debt**") as required by the Acceleration Notice.

REMEDY SOUGHT:

13. High Park seeks the following relief against 420:

(a) repayment of the Debt, which totals $7,000,000, plus interest in accordance with the terms of the Loan Agreement;

(b) any other amounts that are due and owing to High Park pursuant to the terms of the Loan Agreement;

(c) interest pursuant to the *Judgment Interest Act*, RSA 2000, c J-1, as amended, and the regulations thereunder;

(d) costs; and

(e) such further and other relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT BY COUNTERCLAIM

You only have a short time to do something to respond to this counterclaim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice to counterclaim in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice to counterclaim on the plaintiff by counterclaim's address for service.

WARNING

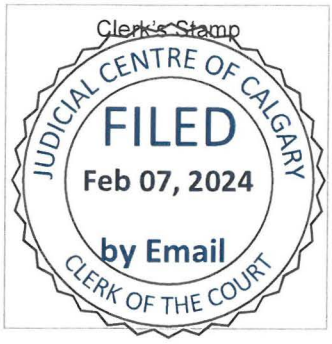
If you do not file and serve a statement of defence or a demand for notice to counterclaim within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff by counterclaim against you after notice of the application has been served on you.

This is Exhibit "F" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

A Commissioner for Oaths
in and for the Province of Alberta

Archer Bell
Barrister & Solicitor

COURT FILE NUMBER	2001 02873
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	Calgary
PLAINTIFF ***Respondent***	420 Investments Inc.
DEFENDANT ***Applicant***	Tilray Inc. and High Park Shops Inc.
DOCUMENT	**CHAMBERS ENDORSEMENT**



☒ **Order Granted**

☐ **Information Required**

☐ **Order Rejected**

☐ **Unable to Complete – see Comments/Reasons for further information**

Comments/Reasons:

I heard this matter as a special chambers application on February 5, 2024. It is an application for summary judgement on a counterclaim notwithstanding that all of the parties acknowledge that there are issues that will likely require a trial on the "main" claim.

The dealings between the parties related to the business of 420 Investments Inc. ("420"). They took place shortly after the legalization of cannabis sales in Canada, and the parties hoped to develop new opportunities. 420 was in the cannabis sales business. The defendant Tilray, Inc. was in various businesses and as a result of the discussions and negotiations between the parties, it hoped to acquire the cannabis business of 420 through its vehicle High Park Shops Inc. ("High Park").

Significant sums of money were involved. If the plaintiff is right, the total consideration to be paid exceeded $100,000,000.00 payable by a combination of Tilray shares and cash depending on the circumstances.

For the purposes of the issues on this summary judgement application, two agreements form the primary basis for the discussion and the framework for the issues.

On the one hand, 420, Tilray and High Park entered into an Arrangement Agreement. The Arrangement Agreement was a relatively complex agreement which described the transaction which the parties sought to close and how they were obliged to get there. The agreement had various benchmarks which needed to met in order for the full purchase price to be earned and payable. It was structured as an "arrangement" under the ***Business Corporations Act***, RSA 2000, c B-9. The transaction included the opening of new stores by 420 prior to closing.

The opening of new stores required financing. 420 did not have the financial wherewithal to develop the new stores itself. The evidence describes, and it does not seem to be contradicted, that financing in the cannabis industry was relatively complicated at the time. Tilray and High Park had the resources to loan $7 million in tranches of $5 million and $2 million so that 420 could develop new stores. The loan agreement was much like a third party lender would have done, but it was directly between High Park and 420. While some transactions contemplate vendor take back financing, this one effectively had "purchaser" financing.

The Loan Agreement contained Clause 6.1 which provides in part:

> All payments due and payable from the Borrower hereunder shall be made in immediately available funds, ***without and set-off, deduction or withholding of any nature whatsoever***...
> (Emphasis added)

Regarding the term of the loan, the Loan Agreement provided at Clause 7.1:

> The total outstanding amount of the Loan, other than any amounts advanced under the Working Capital Note, if applicable, shall be repaid in full on the later of (i) the date falling one hundred and eighty (180) days after the date of the advance of the Loan; and (ii) the termination of the Arrangement Agreement (in either case, the "Maturity Date")...

The transaction under the Arrangement Agreement did not close at the time of the events in issue here. 420 says that Tilray and High Park engaged in buyer's remorse and chose to not proceed with the transaction. Tilray and High Park say that 420 did not meet or remedy various requirements under the Arrangement Agreement and the loan is due.

The obligation in s. 4.7(4) of the Arrangement Agreement with respect to a termination notice is "...specifying in reasonable detail all breaches of covenants, representations and warranties or other matters which the Terminating Party asserts as the basis for termination.

Tilray and High Park gave a number of default notices leading to termination from their perspective and demanding repayment of the loan. The most important one appears to be one that was issued on February 4, 2020 which sets out various allegations of breach against 420. Subsequent notices of termination followed when the alleged breaches were not cured. The February 4, 2020 notice appears to have been the most detailed one. If the only notices issued were the later ones or a prior notice on January 28, 2020, I would have had concerns about whether the notices met the requirement under the Arrangement Agreement to give reasonable details of the alleged breaches so that they could be cured, but in my view reasonable particulars were given in the February 4, 2020 notice. The alleged breaches were numerous.

High Park says that the loan is due and owing with contractual interest. 420 says that the matter cannot be determined without reference to its main claim, including its claim for specific performance or alternatively its claim for an ultimate reconciliation in damages.

Summary judgement remedies are encouraged when matters can be resolved fairly on a balance of probabilities basis by the judge or applications judge. The record must be sufficient such that the judge or applications judge can have reasonable confidence in the result. The "modern" litigation culture originates in ***Hryniak v. Mauldin***, 2014 SCC 7 and continues in Alberta with cases such as ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49.

Seeking only partial summary judgement can be a complicating factor. At paragraph 60 in ***Hryniak***, the Supreme Court of Canada held:

> [60] The "interest of justice" inquiry goes further, and also considers the consequences of the motion in the context of the litigation as a whole. For example, if some of the claims against some of the parties will proceed to trial in any event, it may not be in the interest of justice to use the new fact-finding powers to grant summary judgment against a single defendant. Such partial summary judgment may run the risk of duplicative proceedings or inconsistent findings of fact and therefore the use of the powers may not be in the interest of justice. On the other hand, the resolution of an important claim against a key party could significantly advance access to justice, and be the most proportionate, timely and cost effective approach.

Subsequent cases such as Justice Sidnell's decision in ***DIRTT Environmental Solutions Ltd v Falkbuilt Ltd***, 2021 ABQB 252, and my decision in ***O'Chiese Energy Limited Partnership v Bellatrix Exploration Ltd***, 2019 ABQB 53 speak of the caution that is necessary in considering the granting of partial summary judgement. One of the most important issues to consider is whether the issue on which partial summary judgement is sought is sufficiently discrete from the balance of the litigation such that it can be determined in isolation.

There is no doubt that the monies are owed here. 420 says that the matter cannot be determined without a determination as to whether the termination of the Arrangement Agreement was proper or not.

The Supreme Court of Canada's decision in ***Sattva Capital Corp. v. Creston Moly Corp***., 2014 SCC 53 tells us at paragraph 57:

> [57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and Hall, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 1997 CanLII 4085 (BC CA), 101 B.C.A.C. 62).

The plain wording of the Loan Agreement says that the loan is to be paid without set off or deduction "whatsoever". That is a term that was agreed upon between the parties. The Loan Agreement includes an entire agreement clause. In my view, as a third party objective observer, I find that there was clearly an intent to sever the terms regarding payment of the loan from the other dealings between the parties. A third party lender would certainly be entitled to do so. High Park was similarly constituted as a lender under the Loan Agreement.

420 argues that the matter cannot be determined without determining whether there was a proper termination or not, but that position is contrary to the agreement reached between the parties, and contrary to commercial business sense. Should a party be able to obtain a stay on the loan repayment obligation simply by filing a pleading and adducing evidence on the Arrangement Agreement aspects of the claim when it agreed to pay the loan without set-off?

High Park has purported to terminate the Arrangement Agreement. The grounds for the termination may or may not be found to be proper in due course. If the termination was improper, High Park and Tilray may be liable as alleged in the statement of claim. In the mean time, they are entitled to issue a default notice and proceed as they did. Many enforcement proceedings proceed with the validity of those proceedings, or the existence of default, being challenged later in appropriate litigation.

420 has had the use of the $7 million since it was advanced, and it seeks to continue to have the use of that money until after trial and presumably any appeals. That is not what the parties agreed to with respect to the loan aspect of the transaction. The only

way that the loan would not be payable in actual funds was if the arrangement fully closed in accordance with its terms and it became an intercorporate loan. The main action is currently a significant distance from that result.

I find that High Park was entitled to make a demand, it made the demand with reasonable particulars as required under the Arrangement Agreement, and the loan is payable. High Park is entitled to judgement for the principal amount plus interest at the contractual rate. Finding otherwise, in my view, would overwhelm the terms of the Loan Agreement which would be contrary to the caution in ***Sattva***. The issue on this application largely reduces itself to which of the parties should have use of the loan funds pending determination of the balance of the action?

The loan aspect of this matter can be determined fairly and summarily based upon the existing record. There are no significant facts in dispute with respect to the loan, and the Loan Agreement contemplates enforceability without set-off.

Thank you to the parties for their very helpful briefs, materials, and oral submissions. If the parties cannot agree on costs, either party may contact the office of the Applications Judges Specials Coordinator to arrange a time to speak to costs at the end of one of my chambers lists within four months of release of these reasons.

DATE OF DECISION: 2024-02-07

Signed: _____

APPLICATIONS JUDGE J. R. FARRINGTON

CERTIFIED E. Wheaton
by the Court Clerk as a true copy of the document digitally filed on May 21, 2024

JUDICIAL CENTRE OF CALGARY
FILED DIGITALLY
2001 02873
May 21, 2024
12:52 PM
CLERK OF THE COURT

COURT FILE NUMBER	2001-02873
COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF / DEFENDANT BY COUNTERCLAIM/ RESPONDENT	420 INVESTMENTS LTD.
DEFENDANTS / PLAINTIFFS BY COUNTERCLAIM/ APPLICANT	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**ORDER**
PARTY FILING THIS DOCUMENT	HIGH PARK SHOPS INC.

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
3500 Bankers Hall East
855 – 2nd Street S.W.
Calgary, Alberta T2P 4J8

Attention: David V. Tupper
Tom Wagner

Telephone: 403-260-9722
403-260-9734

Facsimile: 403-260-9700

Email: david.tupper@blakes.com
tom.wagner@blakes.com

File Ref.: 191284/35

DATE ON WHICH ORDER WAS PRONOUNCED:	May 21, 2024
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary Courts Centre 601 – 5th Street SW Calgary, Alberta T2P 5P7
NAME OF APPLICATIONS JUDGE WHO MADE THIS ORDER:	Applications Judge J.R. Farrington

UPON THE APPLICATION of the Plaintiff by Counterclaim/Applicant, High Park Shops Inc. ("**High Park**") pursuant to Rules 9.12 and 9.14 to correct the Order of Applications Judge J.R. Farrington pronounced on February 5, 2024 (the "**Summary Judgment Order**") and make a further Order; **AND UPON HAVING READ** High Park's Application, the Affidavit of Carl Merton, affirmed on February 16, 2023, and the Affidavit of Carl Merton, affirmed on April 19, 2024; **AND UPON** noting the consent of counsel for High Park and counsel for Four20;

IT IS HEREBY ORDERED THAT:

1. Paragraph 1 of the Summary Judgment Order, which currently states

> "High Park's application for summary judgment against Four20 is granted"

shall be changed to read:

> "High Park's application for summary judgment against Four20 is granted. High Park is entitled to judgment in the amount of CAD$9,810,364.12, comprised of a principal amount of CAD $7,000,000, plus pre-judgment interest in the amount of CAD $2,810,364.12, plus post-judgment interest at the contractual rate of interest of eight percent (8.0%) per annum, compounded daily."

2. The Clerk of the Court is directed to file the Writ of Enforcement attached as Schedule "A" to this Order.

3. There shall be no costs of this Order to either party.

Applications Judge J.R. Farrington

CONSENTED TO THIS 16TH DAY OF MAY, 2024:

BLAKE, CASSELS & GRAYDON LLP	**JENSEN SHAWA SOLOMON DUGUID HAWKES LLP**
David V. Tupper / Tom Wagner Counsel for the Applicant, High Park Shops Inc.	Robert Hawkes, K.C. / Gavin Price / Sarah Miller Counsel for the Respondent, 420 Investments Ltd.

SCHEDULE "A" – WRIT OF ENFORCEMENT

Form 10
Civil Enforcement Regulation
Financing Statement

Clerk's Stamp
Filed & Issued

Writ of Enforcement

Civil Enforcement Act

Court Location: Calgary

Court File Number: 2001-02873

Type of Judgment Crown Employment Standards Other

This writ authorizes enforcement proceedings in accordance with the *Civil Enforcement Act*. The particulars of the writ are as follows:

DEBTOR Individual ___ Male ___ Female Other Z Occupation: Date of Birth: *yyyy/mm/dd*

420 Investments Ltd.
Business Name or Last Name | *First Name* | *Middle Name*

Suite 4000, 421 - 7th Avenue S.W., Suite 4000 | Calgary | Alberta | T2P 4K9
Address | *City* | *Province* | *Postal Code*

CREDITOR Individual ☐ Other Z P.P.R. Party Code

High Park Shops Inc.
Business Name or Last Name | *First Name* | *Middle Name*

Suite 2700, 1133 Melville Street | Vancouver | British Columbia | V6E 4E5
Address | *City* | *Province* | *Postal Code*

Additional debtors and creditors and/or other information listed on attached addendum.

If claiming priority based on an attachment order or partial assignment, indicate previous P.P.R. registration number:

Date of judgment (or date judgment effective, if different) February 7, 2024 (date)

Amount of original judgment	$9,810,364.12
Post-judgment interest	$0
Costs	$0
Current Amount Owing	$ 9,810,364.12

SOLICITOR/AGENT/CREDITOR P.P.R. Party Code

Blake, Cassels & Graydon LLP
Name in Full

Suite 3500, Bankers Hall East, 855 - 2nd Street S.W. Calgary | Alberta | T2P 4J8
Address | *City* | *Province* | *Postal Code*

403-260-9722 | 403-260-9700 | | 191284/35
Area Code and Telephone Number | *Fax Number* | *Call Box Number* | *Your Reference Number*

To register against Serial Number Goods at Personal Property Registry, complete the following:

Serial Number (only applicable to serial number goods, e.g. motor vehicles)	Year	Make and Model	Category

Authorized Signature

Tom Wagner
Print Name

Control Number

Compound Interest Owing From Advance Date

First Tranche:

No.	Period	Interest Rate	Amount Outstanding	Interest
1.	August 29, 2019 to January 1, 2020	8.00%	$5,000,000.00	$136,986.30
2.	January 1, 2020 to January 1, 2021	8.00%	$5,136,986.30	$412,084.82
3.	January 1, 2021 to January 1, 2022	8.00%	$5,549,071.12	$443,925.69
4.	January 1, 2022 to January 1, 2023	8.00%	$5,992,996.81	$479,439.74
5.	January 1, 2023 to January 1, 2024	8.00%	$6,472,436.55	$517,794.92
6.	January 1, 2024 to February 7, 2024	8.00%	$6,990,231.48	$56,687.90
		TOTAL:	**$7,046,919.38**	**$2,046,919.38**

Second Tranche:

No.	Period	Interest Rate	Amount Outstanding	Interest
1.	November 29, 2019 to January 1, 2020	8.00%	$2,000,000.00	$14,465.75
2.	January 1, 2020 to January 1, 2021	8.00%	$2,014,465.75	$161,598.79
3.	January 1, 2021 to January 1, 2022	8.00%	$2,176,064.54	$174,085.16
4.	January 1, 2022 to January 1, 2023	8.00%	$2,350,149.70	$188,011.98
5.	January 1, 2023 to January 1, 2024	8.00%	$2,538,161.68	$203,052.93
6.	January 1, 2024 to February 7, 2024	8.00%	$2,741,214.61	$22,230.12
		TOTAL:	**$2,763,444.74**	**$763,444.74**

Total Outstanding Amounts:

Trance	Amount Outstanding
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Form 10
Civil Enforcement Regulation
Financing Statement

Clerk's Stamp
Filed & Issued

Writ of Enforcement

Civil Enforcement Act

JUDICIAL CENTRE OF CALGARY
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420 Investments Ltd.
Business Name or Last Name | *First Name* | *Middle Name*

Suite 4000, 421 - 7th Avenue S.W., Suite 4000 | Calgary | Alberta | T2P 4K9
Address | *City* | *Province* | *Postal Code*

CREDITOR Individual ☐ Other Z P.P.R. Party Code

High Park Shops Inc.
Business Name or Last Name | *First Name* | *Middle Name*

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Blake, Cassels & Graydon LLP
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Authorized Signature

Tom Wagner
Print Name

Control Number

Compound Interest Owing From Advance Date

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Total Outstanding Amounts:

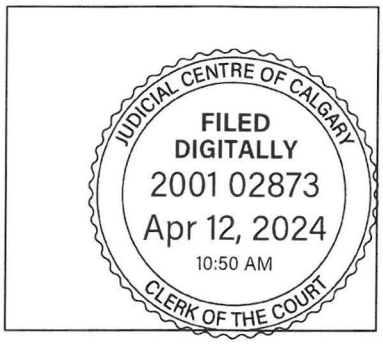
Trance	Amount Outstanding
First Tranche	$7,046,919.38
Second Tranche	$2,763,444.74
TOTAL:	**$9,810,364.12**

This is Exhibit "G" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

A Commissioner for Oaths
in and for the Province of Alberta

Archer Bell
Barrister & Solicitor

Clerk's Stamp



COURT FILE NUMBER	2001-02873
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF AND DEFENDANT BY COUNTERCLAIM (APPELLANT)	420 INVESTMENTS LTD.
DEFENDANT AND PLAINTIFF BY COUNTERCLAIM (RESPONDENT)	HIGH PARK SHOPS INC.
DEFENDANT	TILRAY INC.
DOCUMENT	**BRIEF OF ARGUMENT OF THE APPELLANT, 420 INVESTMENTS LTD.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP
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File: 14826-001

INDEX

I. INTRODUCTION

1. The Appellant, 420 Investments Ltd. ("**Four20**") appeals Applications Judge J.R. Farrington's February 5, 2024 decision granting the Respondent, High Park Inc ("**High Park**") partial summary judgment (the "**SJ Order**") on a Counterclaim over a loan in the within Action.

2. Four20 filed the within Action in February 2020[1] after Tilray Inc. ("**Tilray**") and High Park walked away from a $100+ million arrangement agreement (the "**Arrangement Agreement**") under which High Park had agreed to purchase all the issued and outstanding shares of Four20 (the "**Transaction**").[2] As part of the Transaction, High Park advanced a $7 million dollar loan to Four20 (the "**Development Loan**"), which was to become an intercompany debt upon the close of the Transaction.

3. High Park, is a single purpose corporation incorporated by Tilray for the acquisition transaction—High Park is non-operational and has no employees.[3]

4. The Development Loan would not have been advanced if not for the parties' contemplation of the Arrangement Agreement and overall Transaction.

5. After purporting to terminate the Arrangement Agreement,[4] Tilray's Chief Corporate Development Officer met with Four20, advising them that Tilray's plan was to call the loan advanced under the Arrangement Agreement and put Four20 under.[5]

6. High Park filed its Counterclaim the following month and has now applied for summary judgment on the Development Loan, which was granted in the SJ Order. Four20 appeals.

II. FACTS

7. On or around March 21, 2019, Four20 contacted the Defendant, Tilray Inc ("**Tilray**") in seeking a strategic partner to either invest in or purchase its business. On or around April 2,

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[1] Affidavit of Freida Butcher, sworn February 23, 2024 [the "**Butcher Affidavit**"], para 19.
[2] Affidavit of Garrett Popadynetz, sworn April 14, 2024 [the "**Popadynetz Affidavit #1**"], para 41.
[3] Transcript of the August 18, 2023 cross-examination of Daniel Wang at 11:13-20.
[4] Note that whether the Arrangement Agreement could be, or was, terminated effectively, is a question for trial in the main Action commenced by Four20.
[5] Popadynetz Affidavit #1, para 79; Butcher Affidavit, para 18.

2019, Tilray executed a non-disclosure agreement and was provided information on Four20's business.[6]

8. The final letter of interest set the purchase price for Four20 at $110 million consisting of: (i) $70 million in base consideration, and (ii) $40 million in consideration contingent Four20's development of 16 retail cannabis stores at a rate of $2.5 million per store. As Four20 had been looking to obtain funding to help build stores, the letter of intent also contemplated the Development Loan to help convert existing development permits into stores and to meet the growth requirements for the contingent part of the purchase price.[7]

9. On August 28, 2019, the Defendants, Four20, and Four20's representative shareholders entered into the Arrangement Agreement.[8]

10. Tilray's Vice President of Retail acknowledged that Four20 required additional capital before the theoretical closing date of a purchase, and that it did not make sense to starve Four20 of capital before closing.[9]

11. As part of the Transaction, High Park and Four20 entered into a loan agreement (the "**Loan Agreement**") under which High Park would advance the Development Loan to Four20 for the further development of retail cannabis stores.[10] As the Arrangement Agreement contained restrictions on raising capital,[11] the Loan Agreement was executed to provide Four20 capital to open stores while waiting for the Defendants' regulatory approval to take over operations.[12]

12. The Development Loan was to become an intercompany loan at closing of the Arrangement Agreement.[13]

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[6] Popadynetz Affidavit #1, paras 7-8.
[7] Popadynetz Affidavit #1, paras 18-20 and Ex. M.
[8] Popadynetz Affidavit #1, para 40 and Ex. CC.
[9] Popadynetz Affidavit #1, paras 11(a) and 25, and Ex. R.
[10] Popadynetz Affidavit #1, paras 18-20 and Ex. M.
[11] Popadynetz Affidavit #1, Ex. CC s. 4.1.
[12] Popadynetz Affidavit #1, paras 11(a) and 25, and Ex. R.
[13] Butcher Affidavit, para 3.

13. The Loan Agreement itself refers to the Arrangement Agreement.[14] Notably, the Loan Agreement provided that the amounts advanced under it were due on the **later** of 180 days after advance of funds under the Loan Agreement, and the termination of the Arrangement Agreement.[15] Four20 denies that the Arrangement Agreement was terminated[16]—this is a question for the trial judge to determine.

14. Throughout negotiations on the letter of interest, Arrangement Agreement, and Loan Agreement, and through to the purported termination of the Arrangement Agreement, Tilray and High Park (collectively, the "**Defendants**") were assisted and advised by Daniel Wang ("**Mr. Wang**")[17] and Mark Silvestre ("**Mr. Silvestre**")[18] among many others.

15. On August 25, 2019 Mr. Wang confirmed by email to Mr. Silvestre that there was no expectation that Four20 would pay back the Development Loan if Tilray entered into a definitive agreement and acquired them.[19] During a June 2, 2023 Questioning in this Action, Mr. Wang again confirmed that if the deal to purchase Four20 closed, then there was no expectation that Four20 would be required to repay the intercompany loan.[20]

16. All the parties involved intended to treat the Loan Agreement as an intercompany loan, knew Four20 was unable to repay it, and had no expectation that it would be repaid when the transaction closed.[21]

17. Despite being a sophisticated party, with ample resources and assistance to determine an appropriate purchase price for Four20, the Defendants soon began to question whether they had overpaid.[22] At some point around December 30, 2019, Tilray and High Park decided

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[14] Popadynetz Affidavit #1, Ex. DD ss. 1 and 7.1.
[15] Popadynetz Affidavit #1, Ex. DD s. 7.1.
[16] Statement of Claim, filed by Four20 on February 21, 2020 ("**Four20 SOC**") at paras 7, 8, 16, 21, and 22-28.
[17] Mergers and Acquisitions Manager for Tilray: Popadynetz Affidavit #1, para 27.
[18] Author of fairness opinion from Canaccord Genuity: Popadynetz Affidavit #1, Ex. A.
[19] Popadynetz Affidavit #1, Ex. Z.
[20] Affidavit of Garrett Popadynetz, filed August 10, 2023 ("**Popadynetz Affidavit #2**"), Ex. A.
[21] Popadynetz Affidavit #2, Ex. A.; Transcript of the Cross-examination of Garrett Popadynetz on August 18, 2023 ("**Popadynetz Transcript**"), at 21:12-18.
[22] Popadynetz Affidavit #1, para 51 and Ex. GG.

they needed to walk away from the transaction.[23] Throughout January and in to February 2020, the Defendants issued notices to Four20 erroneously alleging breaches and the occurrence of a "Company Material Adverse Effect", culminating in the Defendant's spurious attempt to terminate the Arrangement Agreement effective as of February 4, 2020.[24]

18. At the time the Termination Notice was issued the only condition precedent that remained to be fulfilled under the Arrangement Agreement was the requirement that the Defendants obtain a regulatory approval from the Alberta Gaming, Liquor and Cannabis Commission.[25] Four20 denies that the Defendants had any valid cause to terminate the Arrangement Agreement and denies that a Company Material Adverse Effect had occurred.

19. On February 21, 2020, Four20 filed a Statement of Claim commencing the within Action against the Defendants alleging improper termination of the Arrangement Agreement and seeking specific performance of the Arrangement Agreement.[26]

20. On March 20, 2020, the Defendants filed a Statement of Defence, and High Park commenced the Counterclaim against Four20 for the repayment of the amounts advanced under the Loan Agreement.[27] On April 14, 2020, Four20 filed a Statement of Defence to Counterclaim.

21. The Arrangement Agreement was not properly terminated by the Defendants and Four20 seeks specific performance of the Arrangement Agreement or damages in lieu thereof. Four20 and its shareholders have suffered damages up to $110,000,000 as a result. If the Arrangement Agreement was not properly terminated, and if the Claim is resolved in Four20's favour, then the Development Loan is not payable until closing.[28] The Development Loan obligation would then be acquired by High Park.

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[23] Popadynetz Affidavit #1, para 66 and Ex. VV.
[24] Popadynetz Affidavit #1, para 70, 73-75 and Ex. ZZ, CC (s. 4.7(4)), CCC, DDD, EEE, and FFF.
[25] Popadynetz Affidavit #1, Ex. III at paras 17-18.
[26] Popadynetz Affidavit #1, para 80 and Ex. III at paras 22-28 and 43(a).
[27] Popadynetz Affidavit #1, para 80 and Ex. LLL.
[28] Popadynetz Affidavit #1, Ex. SSS at paras 6-8.

22. On March 2, 2023, High Park filed its application for summary judgment on the Development Loan (the "**Summary Judgment Application**").[29] On February 7, 2024, the Applications Judge granted the application. Four20 appeals on the basis that the issues raised in the Application were not suitable for resolution on a partial summary basis.[30]

23. High Park asserts that the Development Loan is repayable because the Arrangement Agreement was terminated on February 26, 2020.[31] Four20 denies that the Arrangement Agreement could be, or was, terminated. That is an issue for trial and cannot be summarily determined at this time.

III. ISSUES AND POSITION

24. The issues on appeal are:

(a) Whether High Park has met the legal test for partial summary judgment and whether this is an appropriate case for partial summary judgment; and

(b) Whether the analysis on summary judgment is impacted by:

(i) The Entire Agreement clause in the Loan Agreement, or

(ii) Four20 seeking specific performance on the main action.

A. Four20's Position

25. There are genuine issues for trial, and it is not more proportionate, expeditious, or less expensive to entertain summary judgment on the development loan. High Park has not satisfied its burden in this regard.

26. Ordering the Development Loan to be repaid presupposes the determination of issues in the main action, which are questions for the trial judge to determine. It is not appropriate to award partial summary judgment in this case.

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[29] Butcher Affidavit, para 21.
[30] Four20 also brought a stay application (dismissed March 22, 2024) and appealed that dismissal (dismissed April 11, 2024).
[31] Summary Judgment Application at para 13(b).

27. Summary judgment should be precluded by the factual matrix. Entire Agreement clauses do not cause Courts to completely disregard the other related contracts or the factual matrix. Four20 seeks specific performance of the Arrangement Agreement, which would leave the Development Loan on its balance sheet, to be acquired by the Defendants and not otherwise due or payable by Four20. Summary judgment is not appropriate in this case.

IV. LAW AND ARGUMENT

A. Standard of Review for Appeal

28. An appeal from an Applications Judge's decision is governed by Rule 6.14.[32]

29. An appeal from an Applications Judge's decision is often referred to as a hearing *de novo*.[33] The Justice must decide the appeal on the record and consider the Applications Judge's decision on a standard of correctness, without deference.[34]

B. Partial Summary Judgment is Rarely Granted and is Not Appropriate in the Present Case

30. The Loan Agreement provided that amounts advanced under it were due on the **later** of (i) 180 days after advance of funds under the Loan Agreement, and (ii) the termination of the Arrangement Agreement.[35]

31. The issue is whether the Arrangement Agreement was terminated, not whether the Defendants purported to terminate by issuing increasingly flawed termination notices. Four20's claim is rooted in the Defendants' attempts to improperly terminate the Arrangement Agreement. Four20's defence on the Summary Judgment Application is reliant on the same issue.

32. Four20 relies on the contractual duty of honest performance to assert that the Arrangement Agreement must have been properly terminated for the Development Loan to be

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[32] *Alberta Rules of Court*, Alta Reg 124/2010 [***Rules***], Rule 6.14.
[33] *Agrium v Orbis Engineering Field Services*, 2022 ABCA 266 at para 30 (leave to appeal refused); *Hierath v Shock*, 2021 ABQB 185 at para 15.
[34] *Steer v Chicago Title Insurance Company*, 2019 ABQB 318 [***Steer***] at paras 6-10.
[35] Popadynetz Affidavit #1, Ex. DD s. 7.1.

payable.[36] The Arrangement Agreement was not terminated properly, and was terminated for collateral, artificial, and fictitious reasons.[37] These are questions for the trial judge to determine.

33. To find that the Development Loan is currently payable, is to predetermine whether the Arrangement Agreement was terminated properly. That question is not before this Court, and the application record is insufficient to determine that issue.

34. Rule 7.3 requires High Park to establish that there is no defence to its counterclaim. High Park has failed to meet that burden, as whether the agreement was terminated is dependent on whether there were grounds for termination at the point the termination notices were issued, and whether the notices were properly issued.

35. The test for summary judgment is set out by the Supreme Court of Canada in *Hryniak v Mauldin* ("***Hyrniak***"). The moving party must establish (i) that the application record allows the judge to make the necessary findings of fact, (ii) that the application record allows the judge to apply the law to the facts, and (iii) that the summary judgment procedure is a proportionate, more expeditious, and less expensive means to achieve a just result.[38]

36. The facts are clearly in dispute. Four20 denies the Arrangement Agreement was terminated, including that any of the grounds alleged for termination were valid. If the Arrangement Agreement was not terminated, then the Development Loan has not yet become due. High Park, through its Summary Judgment Application, is asking this Court to determine whether the Arrangement Agreement was terminated—the very issue which must be determined in Four20's main action at trial.

37. Although summary judgment is not strictly limited to cases where the facts are not in dispute, the Court must be able to make the necessary findings of fact in order to determine

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[36] *Bhasin v Hrynew*, 2014 SCC 71 at para 74; *NEP Canada ULC v MEC OP LLC*, 2021 ABQB 180 at para 947, citing *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 [***IFP Technologies***] at para 4 and *CM Callow Inc v Zollinger*, 2020 SCC 45 [***Callow***] at para 83; *Telsec Developments Ltd v Abstak Holdings Inc*, 2020 ABCA 40 at para 52; *IFP Technologies* at para 4.

[37] Four20 SOC at paras 7, 8, 16, 21, and 22-28.

[38] *Hryniak v Mauldin*, 2014 SCC 7 [***Hryniak***] at para 49.

the issues before it.[39] The use of the summary judgment procedure must not result in any procedural or substantive injustice to either party.[40]

38. High Park has the onus of proof in the Summary Judgment Application to establish that there is no defence and no genuine issue requiring trial. High Park must satisfy its onus on a balance of probabilities.[41]

39. If High Park satisfies this court as to there being no defence and no genuine issue, the burden then shifts to Four20 to show that there is a genuine issue for trial, by identifying a positive defence or that a fair and just determination is not realistic.[42]

40. Four20 has raised a positive defence, which is an issue that will be determined at trial—Four20's claim in the main Action is that the purported termination was improper, ineffective, and attempted contrary to the Defendants' obligations to fulfill its contractual duties in good faith. That is also Four20's defence to the Counterclaim.

41. The issue of whether the Arrangement Agreement was terminated, rests on the validity of three Notices of termination, issued by Tilray/High Park, in short succession. The Arrangement Agreement provides that a termination notice may not be issued unless it provides sufficient detail of the alleged breaches[43]. The reason for that requirement is that the Agreement further provides that Four20 was to have 10 days to cure any breach. In this case all three Notices failed:

(a) The January 28, 2020 Notice alleged breach, but failed to provide any detail. Even Brandon Kennedy, Tilray's CEO at the time, admitted during questioning that reading the Notice he had no idea what breaches were being alleged. That notice was ineffectual as it had no detail, but also because Tilray then purported

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[39] *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 [***Weir-Jones***] at para 21.
[40] *Weir-Jones*, *ibid*.
[41] *Weir-Jones* at para 47.
[42] *Weir-Jones* at para 47.
[43] Arrangement Agreement, s. 4.7(4)

to terminate the Arrangement Agreement prior to the 10-day cure period running, in breach of the Arrangement Agreement;

(b) The February 4, 2020, notice was also ineffective for two reasons: first, Tilray was in breach of the Arrangement Agreement at that time,[44] second, again there was no 10-day cure period, as Tilray purported to terminate immediately, alleging a Material Adverse Event claim; and

(c) Also on February 4, 2020, Tilray issued a third termination notice, alleging a right to terminate based on a Material Adverse Event claim.[45] Whether such an event had occurred, and whether Tilray was legally entitled to terminated on that basis, are, again, the determining issues in Four20's Action against Tilray/High Park. They are the very issues that will be determined at the main trial.

42. There are several issues that require a trial—of key importance is whether the Defendants improperly attempted to terminate the Arrangement Agreement. If the Defendants did not properly terminate the Arrangement Agreement, then the Loan Agreement is not payable. Determining this issue has a direct impact and determinative effect on Four20's claim.

43. The issues arising in Four20's claim are *inextricably intertwined* with and arise from the same contractual framework as the issues in the Summary Judgment Application. The counterclaim cannot be readily bifurcated from the issues in the main action, and therefore it is inappropriate for summary determination.[46]

44. Summary judgment is not appropriate in this case. As noted in *Hryniak*:

> [I]f some of the claims against some of the parties will proceed to trial in any event, it may not be in the interest of justice to use the new fact-finding powers to grant summary judgment against a single defendant. Such partial summary judgment may run

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[44] Arrangement Agreement, s. 4.7(4); Popadynetz Affidavit #1, Ex. DDD
[45] Popadynetz Affidavit #1, Ex. EEE.
[46] *Butera v Chown, Cairns LLP*, 2017 ONCA 783 [***Butera***] at para 34; *DIRTT Environmental Solutions Ltd v Falkbuilt Ltd*, 2021 ABQB 252 [***DIRTT***] at para 23.

> the risk of duplicative proceedings or inconsistent findings of fact and therefore the use of the powers may not be in the interest of justice.

45. Summary judgment on the Counterclaim is exactly the kind of partial summary judgment which the Court warned against. Summary judgment on the Counterclaim engages many of the same questions and issues which arise in Four20's claim, which may result in duplicative proceedings and inconsistent findings of fact once the Court has heard the trial and made determinations on the entire factual matrix and the credibility and reliability of the witnesses.

46. This Court, as well as the Ontario Court of Appeal, have been clear—there are certain risks associated with allowing partial summary judgment, and it should be granted sparingly.[47] The test for summary judgment is:

> A motion for partial summary judgment should be considered to be a rare procedure that is reserved for an issue or issues that may be **readily bifurcated** from those in the main action and that may be dealt with expeditiously and in a cost-effective manner.[48]

47. Further, the Court must consider (among other things):

(a) Whether the objectives of proportionality, efficiency and cost effectiveness are satisfied, and the partial summary judgment is appropriate given the action is proceeding to trial on other matters;

(b) Whether the claims determined on partial summary judgment are intertwined with the issues proceeding to trial; and

(c) Whether there is a risk of inconsistent findings, especially considering that the application record will not be an extensive as the trial record.[49]

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[47] *DIRTT*, *ibid* at para 23, citing *Butera*, *ibid*. *Butera* has been cited with approval by other appeal courts in Saskatchewan (*AC Forestry Ltd v Big River First Nation*, 2023 SKCA 96), Manitoba (*Bibeau et al v Chartier et al*, 2022 MBCA 2), and New Brunswick (*Babin v CJM Dieppe Investments Ltd and TG 378 Gauvin Ltd and Sood*, 2019 NBCA 44 at paras 39-41). Ontario Court of Appeal has also reaffirmed *Butera*: *Mason v Perras*, 2018 ONCA 978 and *Service Mold + Aerospace Inc v Khalaf*, 2019 ONCA 369 [***Service Mold***].

[48] *Butera*, *supra* note 46 at para 34.

48. Partial summary judgment is "more complex" than summary judgment motions generally and, especially if used imprudently, partial summary judgment is likely to cause delay, increased expense, and increased risk of inconsistent findings.[50]

49. Partial summary judgment on the Counterclaim in this case undermines the purpose of summary procedures. It is far more appropriate, proportionate, fair, and just to have these issues adjudicated at trial, upon the full trial record.

50. In addition, the nature of the claim and counterclaim call for some consideration of equitable setoff. It is just and equitable in the present circumstances to dismiss the application for summary judgment—the claim and counterclaim are inextricably connected, arising from the same contractual framework, and it is manifestly unjust to allow High Park to enforce payment without taking the claim into account.[51]

51. If Four20 is successful on its claim at trial, the Development Loan is not and never has been payable. As High Park is a non-operating company incorporated solely for the Arrangement Agreement on behalf of its American-based parent company, Tilray, there are serious questions as to whether Four20 will be able to enforce an award at trial or secure the awarded remedy.

52. It is inefficient and inequitable to grant summary judgment on the Counterclaim. Summary judgment puts High Park is a position better than it would have been had the Transaction been concluded because (i) the purchase price is not paid to Four20; (ii) High Park is able to collect the Development Loan plus interest for the intervening years (a debt that it would have simply acquired otherwise); and (iii) High Park is able to leverage the judgment into putting Four20 out of business and may acquire Four20's assets at a significant discount.

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[49] *DIRTT*, *supra* note 46 at para 23; *Issa v BMB Inc*, 2024 ABKB 159 at para 76, citing *DIRTT* and *Butera*; *Kudzin v APM Construction Services Inc*, 2023 ABKB 425 at paras 182-187, citing *DIRTT* and *Butera*, among others.
[50] *Service Mold*, *supra* note 47 at para 14.
[51] *Lion Creek Properties Ltd LLP v Sorobey*, 2015 ABQB 223 at para 20, citing *Soler & Palau Canada Inc v Meyer's Sheet Metal Ltd*, 2012 ABQB 496 at paras 47-49.

53. In this case, Applications Judge Farrington identified that obtaining partial summary judgment is a more difficult test to satisfy, but then failed to apply that standard, or even return to the issue prior to granting partial summary judgment.

C. The Factual Matrix Cannot be Disregarded

54. In *IFP Technologies*, the Alberta Court of Appeal grappled with whether an entire agreement clause precluded consideration of the factual matrix. Justice Fraser, writing for the majority, stated:

> The goal of contractual interpretation is to **determine the objective intent of the parties at the time the contract was made** through the application of legal principles of interpretation... To this end, "the exercise is not to determine what the parties subjectively intended but **what a reasonable person would objectively have understood from the words of the document read as a whole and from the factual matrix**".... Accordingly, disputed contractual terms **must be interpreted**, not in isolation, but **in light of the contract as a whole**...[52]

55. Justice Fraser further stated (emphasis added and citations removed):[53]

> Thus, in interpreting a contract, a trial judge must consider the relevant surrounding circumstances even in the absence of ambiguity...
>
> Determining what constitute properly surrounding circumstances is a question of fact. As to what is meant by surrounding circumstances, this consists of "objective evidence of the background facts at the time of the execution of the contract ... that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting"... **Examples of relevant background facts include: (1) the genesis, aim or purpose of the contract;** (2) the nature of the relationship created by the contract; and (3) the nature or custom of the market or industry in which the contract was executed: ... Ultimately, the **surrounding circumstances can include "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man"** ...

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[52] *IFP Technologies*, *supra* note 36 at para 79 (emphasis added and citations removed), citing *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 [***Sattva***] at para 49, Geoff R Hall, *Canadian Contractual Interpretation Law*, 2nd ed (Markham: LexisNexis, 2012) [***Hall***] at 33, and *Tercon Contractors Ltd. v British Columbia (Transportation and Highways)*, 2010 SCC 4 at para 64.

[53] *IFP Technologies*, *supra* note 36 at paras 82-83, citing, amongst other things, *Hall*, *ibid* at 24-25, and *Sattva*, *ibid* at paras 47-48 and 58.

56. In *Dow Chemicals*, Justice Slatter, writing for the majority of the Court of Appeal, stated that:

> Exclusion clauses should be interpreted like all other contractual clauses, not in isolation, but giving the words used their ordinary and grammatical meaning, considered in harmony with the rest of the contract and in light of their purpose and commercial context.[54]

57. The factual matrix surrounding the Loan Agreement and Arrangement Agreement can not be ignored when analyzing both documents. As previously noted, the Loan Agreement was part of a larger transaction as outlined in the Arrangement Agreement. Both the Loan Agreement and Arrangement Agreement refer to each other — as such the Entire Agreement Clause within the Loan Agreement can not be used to exclude consideration of the events surrounding the Arrangement and the efforts to close along with the terms of the Arrangement Agreement.

D. Four20 is Entitled to Seek Specific Performance

58. All the parties involved intended to treat the Loan Agreement as an intercompany loan, knew Four20 was unable to repay it, and had no expectation that it would be repaid when the transaction closed.[55]

59. This understanding is further evidenced by Schedule "E" to the Arrangement Agreement, which sets out a working capital requirement upon the closing of the transaction. The calculation contemplates every dollar spent from the money advanced pursuant to the Loan Agreement to be used in the construction of stores.[56]

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[54] *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2020 ABCA 320 at para 47, citing *Sattva*, *supra* note 52 at para 47.
[55] Popadynetz Affidavit #2, and Ex. A.; Popadynetz Transcript, at 21:12-18; and Popadynetz Affidavit #1 at para 49.
[56] Popadynetz Affidavit #1, at paras 45-49 and Ex. C at Schedule "E".

60. Four20 seeks specific performance of the of the Arrangement Agreement.[57] This would involve the purchase of all its issued and outstanding shares while the Development Loan remains outstanding on its books to become an intercompany loan.

61. Specific performance is often awarded to enforce contracts for the purchase and sale of shares.[58]

62. If High Park argues that Four20 has delayed prosecuting this action and is therefore not entitled to specific performance, such submissions ignore that considerable delay in this action resulted from the Defendants' delay in producing Mr. Wang as a witness.[59] Four20 has proposed and filed a litigation plan and has pursued the prosecution of the action.[60] No application of laches is appropriate in the circumstances.

63. It would be manifestly unjust to allow Applicants to rely on delay they caused, created, and contributed to, to bar Four20 from seeking specific performance of the Arrangement Agreement. In any event, that again will be a question for trial and is not determined by the Court on a Summary Judgment Application.

E. Conclusion

64. Four20 and High Park are parties to a high value transaction where High Park was to acquire Four20 for $70,000,000 in either cash or Tilray shares and $40,000,000 in promissory notes (contingent on achieving development goals). As part of this arrangement, High Park loaned Four20 $7,000,000 in order to achieve those development goals. Once Four20 was acquired, High Park would garner the benefit of that development and additional store fronts—work and time that High Park would be saved from undertaking itself.

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[57] Popadynetz Affidavit #1, para 80 and Ex. III at paras 22-28 and 43(a).

[58] *UBS Securities Canada Inc v Sands Brothers Canada Ltd*, [2008] OJ No 1676 (QL) at paras 64, 65, and 68.

[59] Four20 repeatedly requested dates on which Mr. Wang could be questioned. After Four20 served Tilray and High Park a Notice of Appointment for Questioning for Mr. Wang, Tilray and High Park's position was that its counsel were not counsel for Mr. Wang (Popadynetz Affidavit #1, paras 93-94). Four20 then took steps to locate Mr. Wang and questioned him on June 2, 2023. Notably, counsel for Tilray and High Park acted as counsel for Mr. Wang during that questioning (Popadynetz Affidavit #2, para 2).

[60] The Standard Litigation Plan, filed August 16, 2023, originally anticipated that the parties would file a Form 37 and attend a pre-trial conference no later than December 6, 2024. The dates in the litigation plan have been delayed as the Defendants have not yet completed their questioning.

65. The Transaction did not close, due to the Defendants attempts to terminate and walk away from the Arrangement Agreement. Four20 commenced a claim in respect of the purported termination. There are clear issues requiring trial with respect to Four20's claim. Many of these same issues arise with respect to High Park's counterclaim. The Development Loan is only repayable if the Arrangement Agreement was terminated. This is an issue for trial.

66. High Park is a non-operational, American-owned company seeking the rare remedy of partial summary judgment against Four20 for $7,000,000 plus interest in the face of Four20's claim valued at $110,000,000. Partial summary judgment should be granted sparingly, only where the adjudged issue can be readily bifurcated. The present case is simply inappropriate for summary judgment. It would be unjust, inequitable, and provides no efficiency to the proceedings to grant summary judgment of the Counterclaim.

V. RELIEF REQUESTED

67. Four20 requests:

(a) An order dismissing High Park's application for summary judgment on the Counterclaim;

(b) Costs for the Appeal and the Summary Judgment Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of April, 2024.

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per: _____

Robert Hawkes KC / Gavin Price / Sarah Miller
Counsel for the Appellant, 420 Investments Ltd.

VI. TABLE OF AUTHORITIES

TAB NAME

A. *Legislation*

A. *Alberta Rules of Court*, Alta Reg 124/2010

B. *Case Law*

B. *Agrium v Orbis Engineering Field Services*, 2022 ABCA 266

C. *Hierath v Shock*, 2021 ABQB 185

D. *Steer v Chicago Title Insurance Company*, 2019 ABQB 318

E. *Bhasin v Hrynew*, 2014 SCC 71

F. *NEP Canada ULC v MEC OP LLC*, 2021 ABQB 180

G. *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157

H. *CM Callow Inc v Zollinger*, 2020 SCC 45

I. *Telsec Developments Ltd v Abstak Holdings Inc*, 2020 ABCA 40

J. *Hryniak v Mauldin*, 2014 SCC 7

K. *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49

L. *Butera v Chown, Cairns LLP*, 2017 ONCA 783

M. *DIRTT Environmental Solutions Ltd v Falkbuilt Ltd*, 2021 ABQB 252

N. *AC Forestry Ltd v Big River First Nation*, 2023 SKCA 96

O. *Bibeau et al v Chartier et al*, 2022 MBCA 2

P. *Babin v CJM Dieppe Investments Ltd and TG 378 Gauvin Ltd and Sood*, 2019 NBCA 44

Q. *Mason v Perras*, 2018 ONCA 978

R. *Service Mold + Aerospace Inc v Khalaf*, 2019 ONCA 369

S. *Issa v BMB Inc*, 2024 ABKB 159

T. *Kudzin v APM Construction Services Inc*, 2023 ABKB 425

U. *Lion Creek Properties Ltd LLP v Sorobey*, 2015 ABQB 223

V. *Soler & Palau Canada Inc v Meyer's Sheet Metal Ltd*, 2012 ABQB 496

W. *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53

X. *Tercon Contractors Ltd. v British Columbia (Transportation and Highways)*, 2010 SCC 4

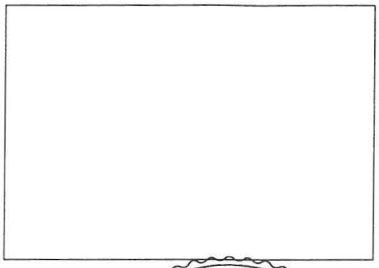
Y. *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2020 ABCA 320

Z. *UBS Securities Canada Inc v Sands Brothers Canada Ltd*, [2008] OJ No 1676 (QL)

This is Exhibit "H" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

A Commissioner for Oaths
in and for the Province of Alberta

Archer Bell
Barrister & Solicitor



COURT FILE NUMBER	2001-02873
COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF / DEFENDANT BY COUNTERCLAIM / RESPONDENT	420 INVESTMENTS LTD.
DEFENDANTS / PLAINTIFFS BY COUNTERCLAIM / APPLICANT	TILRAY INC. and HIGH PARK SHOPS INC.
DOCUMENT	**BRIEF OF ARGUMENT OF HIGH PARK SHOPS INC.**
PARTY FILING THIS DOCUMENT	HIGH PARK SHOPS INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP 3500 Bankers Hall East 855 – 2nd Street S.W. Calgary, Alberta T2P 4J8 Attention: David Tupper Tom Wagner Telephone: 403-260-9722 403-260-9734 Facsimile: 403-260-9700 Email: david.tupper@blakes.com tom.wagner@blakes.com File Ref.: 191284/35

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PART I - OVERVIEW

1. This Brief is provided by High Park Shops Inc. ("**High Park**"), a wholly-owned subsidiary of Tilray Inc. ("**Tilray**"), in opposition to the appeal (the "**Appeal**") brought by 420 Investments Ltd. ("**Four20**"). The Appeal relates to High Park's summary judgment application (the "**Application**"). The Appeal seeks to overturn the Order of Applications Judge J.R. Farrington filed March 11, 2024, granting summary judgment to High Park (the "**Summary Judgment Order**").

2. The Summary Judgment Order resulted from an endorsement with reasons of Applications Judge Farrington, pronounced on February 7, 2024 (the "**Summary Judgment Decision**"). In the Summary Judgment Decision, Applications Judge Farrington granted High Park summary judgment of its Counterclaim. The Counterclaim sought the repayment of a $7,000,000 loan (the "**Loan**"), plus contractual interest from Four20 pursuant to the terms of a loan agreement dated August 28, 2019 (the "**Loan Agreement**").

    - Affidavit of Freida Butcher sworn February 23, 2024 ("**Butcher Affidavit**") at Exhibit R, p 5.

3. The only issue that this Court must decide in this Appeal is whether Judge Farrington made the correct decision when he granted the Summary Judgment Order.

4. This Appeal is simply about repayment of the Loan, which is long past its contractual due date. There are no material facts in dispute and there are no genuine issues that require a trial. In addition, summary judgment is the most cost-effective and expedient way to resolve the Counterclaim. The Counterclaim is an independent action that is not intertwined with the matters at issue in the Statement of Claim filed by Four20 against Tilray and High Park (the "**Main Action**"). Accordingly, this Honourable Court should uphold the Summary Judgment Order.

PART II - BACKGROUND

A. <u>The Underlying Action</u>

5. Two separate and independent claims have been filed this Action:

    (a) The Main Action was filed by Four20 against Tilray and High Park. The claim in the Main Action relates to the alleged breach of an arrangement agreement that

was entered into on August 28, 2019, between Tilray, High Park, Four20, and the representative shareholders of Four20 (the "**Arrangement Agreement**"); and

(b) The Counterclaim was filed by High Park against Four20 for the repayment of the Loan that High Park advanced to Four20 in 2019 (the "**Counterclaim**").

B. The Arrangement Agreement

6. On August 28, 2019, Tilray, High Park, Four20, and the representative shareholders of Four20 entered into the Arrangement Agreement.

7. Pursuant to the Arrangement Agreement, Tilray, through High Park, was to acquire all of the issued and outstanding securities of Four20 for a total purchase price of:

(a) $70,000,000 in the form of Tilray shares, or at High Park's election, cash; and

(b) Up to $40,000,000 in promissory notes, contingent on Four20 meeting the store openings and business plans contemplated by the Arrangement Agreement.

8. The acquisition was to be completed through a plan of arrangement pursuant to section 193 of the *Alberta Business Corporations Act* (the "**Arrangement**").

9. The Arrangement Agreement provided, among other things, that it was subject to termination if certain conditions precedent were not met prior to the expected closing date of the Arrangement (the "**Effective Date**").

10. After the acquisition, Four20 was to operate as a wholly owned subsidiary of High Park.

C. The Interim Period

11. Tilray, High Park, and Four20 agreed that an interim period (the "**Interim Period**") would be required between the date that the Arrangement Agreement was entered into and the Effective Date. The Interim Period was required in part because of the length of time that the Alberta, Gaming, Liquor and Cannabis Commission ("**AGLC**") required to approve the transfer of Four20's retail cannabis licences to Tilray, through High Park.

- Affidavit of Garett Popadynetz affirmed on April 14, 2023 ("**Popadynetz Affidavit**") at Exhibit "CC" s. 4.4.

12. During the Interim Period, Four20 maintained control of its business, according to the terms of the Arrangement Agreement. Four20 was also contractually obligated to maintain minimum working capital levels and achieve certain operating milestones, which it failed to satisfy as conditions under the Arrangement Agreement.

- Popadynetz Affidavit at Exhibit "CC", ss. 1.1 "Working Capital Target", 4.1, and 4.2.

D. The Loan Agreement

13. During the Interim Period, Four20 wanted a loan to finance the construction, development, and improvement of retail cannabis stores in accordance with the store openings and business plans contemplated by the Arrangement Agreement.

14. On August 28, 2019, High Park and Four20 entered into the Loan Agreement.

- Affidavit of Carl Merton affirmed on February 16, 2023 ("**Merton Affidavit**") at para 4.
- Popadynetz Affidavit at para 43 and Exhibit "DD".
- Transcript from the August 18, 2023 Cross Examination Transcript of Garett Popadynetz ("**Popadynetz Transcript**") at 8:16-9:18.

15. Pursuant to the terms of the Loan Agreement, High Park advanced the Loan to Four20 in two separate tranches of $5,000,000 (the "**First Tranche**") and $2,000,000 (the "**Second Tranche**").

- Merton Affidavit at para 5 and Exhibits "B" and Exhibit "C".
- Popadynetz Transcript at 10:17-20 and 11:14-25.
- Undertaking Responses of Garett Popadynetz at Undertakings 1 and 2.

16. The Loan Agreement contains an explicit repayment provision (the "**Repayment Provision**"). It provides:

> 7.1 **The total outstanding amount of the Loan**, other than any amounts advanced under the Working Capital Note, if applicable, **shall be repaid in full on the later of (i) the date falling one hundred and eighty (180) days after the date of the advance of the Loan; and (ii) the termination of the Arrangement Agreement** (the "Maturity Date") [...] [Emphasis added.]

- Merton Affidavit at Exhibit "A", s. 7.1.

17. The Loan Agreement further provides that the Loan is not subject to any right of set-off. Section 6.1 of the Loan Agreement provides:

> 6.1 **All payments due and payable** from the Borrower hereunder **shall be made in immediately available funds, without any set-off**, deduction or withholding of any nature whatsoever except to the extent that the Borrower is obliged by law to make payment subject to tax deduction or withholding. [Emphasis added.]

- Merton Affidavit at Exhibit "A", s. 6.1.

18. The parties also agreed that the Loan Agreement was the entire agreement between the parties as it relates to the underlying Loan and its repayment requirements:

> **This Agreement constitutes the entire agreement** as between the parties hereto in respect of the subject matter of the Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties relating to the subject matter of this Agreement and entered into prior to the date of the Agreement.

- Merton Affidavit at Exhibit "A", s. 13.7.

19. The Loan Agreement and Arrangement Agreement were two distinct agreements. The Arrangement Agreement set out the details of and conditions for the Arrangement to be completed. The Loan Agreement related solely to the advance of the Loan, the interest that would be paid on the Loan, and the required repayment of the Loan.

E. The Loan Becomes Repayable

20. On February 26, 2020, pursuant to the Loan Agreement, the First Tranche became payable because:

(a) As of February 25, 2020, more than 180 days had passed since High Park advanced the First Tranche; and

(b) The Arrangement Agreement was terminated on February 26, 2020.

- Merton Affidavit at paras 10 and 11 and Exhibit "D".
- Popadynetz Transcript at 13:4-14:3 and Exhibit "1".

F. The Event of Default Pursuant to the Loan Agreement

21. The Loan Agreement defined an "Event of Default" as the failure by Four20 to pay any amount due pursuant to the Loan Agreement within three business days of the date when it became payable.

- Merton Affidavit at para 11 and Exhibit "D".

22. Four20 failed to repay the First Tranche by March 1, 2020, three business days after the First Tranche became payable. This triggered an Event of Default according to the Loan Agreement.

- Merton Affidavit at para 12 and Exhibit "A", s. 11(a).

23. The Loan Agreement provided that if an "Event of Default" occurred and was continuing that High Park, as lender, could at any time by notice to Four20 declare that the total amount of the Loan and any other amounts payable under the Loan Agreement were immediately due and payable. The Loan would then terminate.

- Merton Affidavit at Exhibit "A", s. 11.

G. The Notice of Acceleration Pursuant to the Loan Agreement

24. On March 11, 2020, High Park provided Four20 with a Notice of Acceleration because of the Event of Default. The entire Loan, including both the First Tranche and the Second Tranche, accordingly, became immediately due and payable on March 11, 2020.

- Merton Affidavit at para 13 and Exhibit "E".
- Popadynetz Transcript at 15:4-25 and Exhibit "B".

25. Four20 has not repaid any portion of the Loan as required by the Notice of Acceleration. The full amount of the Loan remains owing by Four20. Accordingly, High Park filed the Counterclaim to recover the amount of the Loan.

- Merton Affidavit at para 14.
- Popadynetz Transcript at 17:3-6.

H. The Summary Judgment Decision of Applications Judge Farrington

26. On February 7, 2024, Applications Judge Farrington granted summary judgment to High Park on the Counterclaim. He said:

> 420 argues that the matter cannot be determined without determining whether there was a proper termination or not, but that position is contrary to the agreement reached between the parties and contrary to commercial business sense.
>
> [...]
>
> High Park is entitled to judgement for the principal amount plus interest at the contractual rate. Finding otherwise, in my view, would overwhelm the terms of the Loan Agreement which would be contrary to the caution in *Sattva*.

- Butcher Affidavit at Exhibit R, pp. 4-5.

PART III - ISSUE

27. High Park agrees with Four20 that there is only one issue for the Court to consider in this Appeal. The question is whether Applications Judge Farrington was correct when he granted the Summary Judgment Order.

28. For the reasons set out below, Applications Judge Farrington was correct when he granted the Summary Judgment Order.

PART IV - LAW

A. Standard of Review

29. High Park agrees with Four20 that the standard of review is correctness. No new evidence has been filed. As a result, the Summary Judgment Application is not to be heard and decided anew. Instead, this Court must determine whether or not, based on the record, the decision of Applications Judge Farrington to grant the Summary Judgment Order was correct.

- **Appellant's Table of Authorities Tab D:** *Steer v Chicago Title Insurance Company*, 2019 ABQB 318 at para 10.

B. Summary Judgment

30. Rule 7.3 permits this Court to grant summary judgment if Four20 has no defence to High Park's Counterclaim or part of it.

- **Respondent's Book of Authorities Tab 1:** *ARC*, r. 7.3.

31. If the plaintiff is the moving party, as in this case, it must prove that the defendant has no defence to the plaintiff's claim based on a balance of probabilities. In addition, certain

factual disputes, including bald allegations and self-serving evidence unsupported by other evidence, do not defeat an application for summary judgment.

- **Respondent's Book of Authorities Tab 2**: *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 ("***Weir-Jones***") at paras 32-33.
- **Respondent's Book of Authorities Tab 3**: *Templanza v Ford*, 2018 ABQB 168 at para 65.

32. Similarly, the fact that there might be some conflicting evidence does not mean that a "fair and just adjudication" is not possible.

- **Respondent's Book of Authorities Tab 4**: *Goodswimmer v Canada* (Attorney General), 2017 ABCA 365 at para 40.

33. Applications for summary judgment should be granted when there is no genuine issue requiring a trial. As set out by the Supreme Court of Canada in *Hyrniak*:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

- **Respondent's Book of Authorities Tab 5**: *Hryniak v Mauldin*, 2014 SCC 7 at para 49.

34. Canadian courts have strongly encouraged the expanded use of summary judgment by decision-makers. As stated by Justice Slatter, speaking for the majority in *Weir-Jones*:

> There is no policy reason to cling to the old, strict rules for summary judgment. This can only serve to undermine the shift in culture called for by *Hryniak v Mauldin*. Summary judgment should be used when it is the proportionate, more expeditious and less expensive procedure. It frequently will be. Its usefulness should not be undermined by attaching conclusory and exaggerated criteria like "obvious" or "high likelihood" to it.

- **Respondent's Book of Authorities Tab 2**: *Weir-Jones* at para 48.
- See also **Respondent's Book of Authorities Tab 6**: *Hannam v Medicine Hat School District No. 76,* 2020 ABCA 343 at para 48.

PART V - ARGUMENT

A. <u>The Loan is Due and Owing</u>

35. The Repayment Provision contains two clear terms that trigger the repayment of the Loan. Based on the clear words of the Repayment Provision, both conditions for the repayment

of the Loan have been fully satisfied. One hundred and eighty days have passed since the advance of the Loan and the Arrangement Agreement has been terminated. Accordingly, the Loan must be repaid to High Park.

B. There are No Material Facts in Dispute

36. None of the material facts are disputed. The evidence of both Tilray's affiant, Mr. Merton, and Four20's affiant, Mr. Popadynetz is that:

(a) High Park and Four20 entered into the Loan Agreement;

- Merton Affidavit at para 4.
- Popadynetz Affidavit at para 43 and Exhibit "DD".
- Popadynetz Transcript at 8:16-9:18.

(b) High Park advanced the Loan to Four20 in two tranches on August 29, 2019, and November 29, 2019;

- Merton Affidavit at para 5, Exhibit "B", and Exhibit "C".
- Popadynetz Transcript at 10:17-20 and 11:14-25.
- Undertaking Responses of Garett Popadynetz at Undertakings 1 and 2.

(c) Tilray and High Park sent two notices of breach to Four20, on January 28, 2020 and February 4, 2020, respectively. The second notice of breach was sent in response to the request of Four20 for additional detail about its breaches of the Arrangement Agreement. The second notice of breach accordingly included extensive detail about Four20's breaches of the Arrangement Agreement;

- Popadynetz Affidavit at paras 70, 73, and 74 and Exhibits "ZZ", "CCC", and "EEE".

(d) A notice of termination of the Arrangement Agreement arising from the two prior notices of breach was sent to and received by Four20 on February 26, 2020;

- Merton Affidavit at para 11 and Exhibit "D".
- Popadynetz Transcript at 13:4-14:3 and Exhibit "1".

(e) The Acceleration Notice, in which Tilray demanded full repayment of the Loan in accordance with the Loan Agreement, was sent to and received by Four20 on March 11, 2020; and

- Merton Affidavit at para 13 and Exhibit "E".
- Popadynetz Transcript at 15:4-25 and Exhibit "B".

(f) Four20 has failed to repay the Loan.

- Merton Affidavit at para 14.
- Popadynetz Transcript at 17:3-6.

37. The only matters in dispute are Four20's claimed defences, including whether the termination of the Arrangement Agreement was effective. These defences are not material facts but are instead questions of law and contractual interpretation. For all of the reasons set out below, the claimed defences of Four20 do not raise genuine issues requiring a trial and do not prevent the determination of the Counterclaim by way of summary judgment.

C. Four20 Does Not Have a Defence to the Counterclaim

38. Four20's Statement of Defence to Counterclaim claims that the Loan is not due because the Loan was not to be repaid until either:

(a) The Arrangement Agreement was legitimately and in good faith terminated, in accordance with its terms (the "**Legitimate Termination Defence**"); or

(b) The Arrangement was completed, at which time the Loan would convert to an intercompany transaction (the "**Intercompany Loan Defence**").

39. In its Appeal Brief, Four20 makes a new, third argument: that the Arrangement Agreement has not been terminated at all (the "**No Termination Defence**").

- Appeal Brief of Four20 at paras 40-41.

40. In the following, High Park first addresses Four20's "Legitimate Termination Defence". High Park then addresses Four20's "No Termination Defence". Finally, High Park addresses the "Intercompany Loan Defence" and various other arguments that have been made by Four20 and raised as potential impediments to summary judgment.

41. As set out in detail below, none of the defences raised by Four20 raise a genuine issue requiring a trial.

(1) Four20's "Legitimate Termination Defence"

42. The "Legitimate Termination Defence" does not present a genuine issue requiring a trial.

43. The words of a contract matter and the language chosen by the parties is paramount. As stated by Geoff Hall in *Canadian Contractual Interpretation Law*:

> Given the paramount importance of the words, being the very language agreed upon by the parties to govern their legal obligations, in cases of conflict the words will always prevail over the context.

- **Respondent's Book of Authorities Tab 7**: Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis: 2020) at p 35.
- **Respondent's Book of Authorities Tab 8**: *Bighorn No. 8 (Municipal District) v Bow Valley Waste Management Commission*, 2013 ABQB 723 at para 9, aff'd on other grounds 2015 ABCA 127, citing *Black Swan Gold Mines Ltd v Goldbelt Resources Ltd,* [1996] BCJ No. 1458, [1997] 1 WWR 605 (BCCA) at para 19.

44. The words used in the Repayment Provision are straightforward and clear. The provision does not state that the termination of the Arrangement Agreement must be proper and does not state that the termination must be acknowledged and accepted by both parties in order for the Loan to be repayable. Four20 is attempting to import additional words and meaning into the Repayment Provision that were not intended by the parties. The factual matrix cannot be used to overwhelm the clear terms of the Arrangement Agreement and Loan Agreement.

- **Respondent's Book of Authorities Tab 9**: *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 ("***Sattva***") at para 57.

45. The "Legitimate Termination Defence", if accepted, would prevent High Park from ever obtaining repayment of the Loan. The natural consequence of Four20's argument that only a "proper" or "effective" termination will trigger the repayment of the Loan is that, if it is ultimately determined that the termination was not "proper" or "effective", the Loan may never be repayable. This is a commercially absurd consequence. Much clearer language in the Repayment Provision would be expected if the parties intended this outcome.

46. The "Legitimate Termination Defence" also, in effect, converts the Repayment Provision into a species of penalty clause for the "improper" or "ineffective" termination of the Arrangement Agreement, penalizing High Park in the amount of $7 million plus interest. Again, much clearer language would be expected in the Repayment Provision if the parties intended the Repayment Provision to penalize Tilray and High Park for the "improper" or "ineffective" termination of the Arrangement Agreement.

47. As Judge Farrington correctly recognized, Four20's interpretation is "contrary to the agreement reached between the parties" and "contrary to commercial business sense".

- Butcher Affidavit at Exhibit R, p. 4.

48. The Court does not need to determine whether the termination of the Arrangement Agreement was "legitimate" or "proper" to grant summary judgment. The "Legitimate Termination Defence" is not a valid defence and does not present a genuine issue requiring a trial.

(2) Four20's "No Termination Defence"

49. In its appeal of the Summary Judgment Order, Four20 raises a new argument, that the Arrangement Agreement was never terminated at all.

50. This new "No Termination Defence", however, is fundamentally flawed because:

(a) it overlaps with the arguments made pursuant to the "Legitimate Termination Defence". Indeed, Four20 specifically sets out its argument by saying that "[i]f the Defendants did not properly terminate the Arrangement Agreement, then the Loan Agreement is not payable". As a result, the issues addressed in the foregoing section about the "Legitimate Termination Defence" apply equally to the "No Termination Defence";

(b) it requires an interpretation of the Arrangement Agreement and the Loan Agreement that runs counter to the agreement of the parties and commercial business sense;

(c) it ignores and misstates the facts; and

(d) it in effect seeks specific performance, which is not an appropriate remedy in the circumstances.

(i) The "No Termination Defence" Runs Counter to the Terms of the Arrangement Agreement and the Loan Agreement

51. The "No Termination Defence" runs counter to commercial business sense and the stated agreement of the parties in both the Arrangement Agreement and the Loan Agreement.

52. With respect to the Arrangement Agreement, Four20's argument that absent a "proper" or "effective" termination the Arrangement Agreement binds Tilray and High Park in perpetuity is contrary to the stated agreement of the parties and commercial business sense.

53. As recently held by Justice Marion in *Serinus Energy,* whether the parties intended a contract to be of perpetual duration is a matter of interpretation of the agreement and its surrounding circumstances.

- **Respondent's Book of Authorities Tab 10**: *Serinus Energy PLC v SysGen Solutions Group Ltd.*, ("***Serinus Energy***") 2023 ABKB 625 at para 128.

54. In this case, Tilray and High Park agreed, subject to the detailed terms of the Arrangement Agreement, to purchase the business of Four20 as it existed in August 2019 for an amount that was determined to be fair market value as of that point in time. The fairness opinion provided to Tilray and High Park by their financial advisor was specifically provided "on the basis of securities markets, economic, financial and general business conditions prevailing as of the date hereof" [emphasis added].

- Popadynetz Affidavit at paras 35-41 and Exhibit "BB".

55. Tilray, High Park, and Four20 also agreed that the Arrangement Agreement would have an Outside Date of May 28, 2020.

- Popadynetz Affidavit at Exhibit "CC" at s. 1.1, p. 12.

56. In contrast to this, the "No Termination Defence" means that, notwithstanding the clear and stated intention of the parties, the Arrangement Agreement would exist indefinitely and at least until the hearing of the Main Action and all appeals of the Main Action. This, in effect, would bind Tilray and High Park at some unknown but distant future date to purchase Four20 for the compensation determined to be fair market value in August 2019, regardless of the significant changes in the businesses of Tilray and Four20 and changes in the cannabis market as a whole since that time. This cannot be right.

57. Another consequence of the "No Termination Defence" is that it would permit Four20 to avoid repayment of the Loan simply by challenging the validity of the termination of the

Arrangement Agreement. As correctly identified by Applications Judge Farrington, that argument runs counter to the intent of the parties:

> Should a party be able to obtain a stay on the loan repayment obligation simply by filing a pleading and adducing evidence on the Arrangement Agreement aspects of the claim when it agreed to pay the loan without set-off?
>
> [...]
>
> 420 has had the use of the $7 million since it was advanced, and it seeks to continue to have the use of that money until after trial and presumably any appeals. That is not what the parties agreed to with respect to the loan aspect of the transaction.

- Butcher Affidavit at Exhibit R, p. 4.

58. It is clear that the Arrangement Agreement was terminated. Even if it was not, the passage of time and clear terms of the Arrangement Agreement and Loan Agreement mean that the Loan is payable. Accordingly, the No Termination Defence must fail.

(ii) The "No Termination Defence" Ignores and Misstates the Facts

59. According to Four20, "[t]he issue of whether the Arrangement Agreement was terminated, rests on the validity of three notices of termination, issued by Tilray/High Park, in short succession". According to Four20, these notices were not effective. This argument, however, misstates and ignores key facts already on the record before this Court.

- Appeal Brief of Four20 at paras 40-41.

60. The first notice, sent on January 28, 2024 (the "**January 28 Notice**"), was not a notice of termination. Instead, and as stated on the face of the January 28 Notice and reflected in the evidence of Mr. Popadynetz, the affiant of Four20, it was a notice of breach sent by High Park and Tilray to Four20. As stated in the January 28 Notice, it was sent to Four20 to provide notice of Four20's breaches of the Arrangement Agreement as required by Clause 4.7(4) of the Arrangement Agreement.

- Popadynetz Affidavit at para 70 and Exhibit "ZZ".

61. Four20 argues that the January 28 Notice was "ineffectual because it had no detail". The January 28 Notice, however, clearly listed the provisions of the Arrangement Agreement that Four20 had breached. In addition, Four20 provided a notice of breach to High Park on February 3, 2020, setting out alleged breaches by High Park of the Arrangement

Agreement, in exactly the same format and with the same level of detail as the January 28 Notice.

- Popadynetz Affidavit at para 73 and Exhibit "DDD".

62. Regardless, on February 4, 2020, High Park and Tilray issued a new notice to Four20 (the "**February 4 Notice**"). Once again, and as stated in the February 4 Notice and reflected in the evidence of Mr. Popadynetz, the affiant of Four20, the February 4 Notice was a notice of breach, not a notice of termination as now claimed by Four20 in its Appeal Brief. In addition, the February 4 Notice contained extensive detail about the breaches of the Arrangement Agreement by Four20. As a result, by at least February 4, 2020, Tilray and High Park had provided a valid notice of breach to Four20.

- Popadynetz Affidavit at para 74 and Exhibit "EEE".

63. Pursuant to the February 4 Notice, Tilray and High Park provided Four20 with a notice of termination on February 26, 2020 (the "**February 26 Notice**") following the cure period provided for in the Arrangement Agreement. Notably, the February 26 Notice is not mentioned by Four20 at all in its Appeal Brief. This is despite the fact that Mr. Popadynetz during cross-examination acknowledged that Four20 received the February 26 Notice and the February 26 Notice is an exhibit to the Affidavit of Carl Merton, the affiant for High Park.

- Appeal Brief of Four20 at paras 40-41.
- Merton Affidavit at para 11 and Exhibit "D".
- Popadynetz Transcript at 13:4-14:3 and Exhibit "1".

64. As a result, by February 26, 2020, Four20 had been provided with clear notice of its breaches of the Arrangement Agreement and had been provided with a cure period to attempt to remedy those breaches. Four20 did not do so. The Arrangement Agreement was accordingly terminated. Only after that, on March 11, 2020, did Tilray demand repayment of the Loan according to its terms.

- Merton Affidavit at para 13 and Exhibit "E".

65. In addition, regardless of whether the breach and termination notices were effective, the Arrangement Agreement is at an end in any event.

66. There were several conditions precedent that had to be satisfied before the Arrangement Agreement could close. For example, Subsection 6.1(2) of the Arrangement Agreement

provides that, as conditions precedent to the close of the Arrangement Agreement, Tilray and High Park were required to obtain certain regulatory approvals from the AGLC prior to the Effective Date:

> The obligations of the Parties to complete the Arrangement are subject to the satisfaction or ... waiver, in whole or in part, by the Purchaser and the Company on or prior to the Effective Date, of each of the following conditions: [...]
>
> > (2) Government Approvals. All consents, approvals, and actions of or by and all the filings with and notifications to, any Governmental Authority required to complete the Arrangement and will have obtained, taken or made, as applicable, on terms satisfactory to the Company and Purchaser, each acting reasonably, and will remain in force and effect.

- Popadynetz Affidavit at Exhibit CC at s. 6.1, p. 39-40.

67. It is not disputed that AGLC approval was never obtained. In fact, it is not clear that AGLC approval is even capable of being obtained by Tilray or High Park at this point, many years after the fact. Accordingly, and even if the Arrangement Agreement was not properly terminated, conditions precedent to the close of the transaction were never met. As a result, the Arrangement Agreement has come to an end, rendering the Loan due and payable.

(iii) The "No Termination Defence" Seeks Specific Performance

68. The "No Termination Defence is also, in effect, a request for specific performance. Pursuant to the "No Termination Defence", Four20 argues that the Arrangement Agreement remains valid and enforceable. Four20 also argues directly in its Appeal Brief that it is entitled to specific performance.

69. Four20's claim for specific performance is flawed and has no reasonable prospect of success. Counsel for Four20 acknowledged this fact at the hearing of the summary judgment application before Applications Judge Farrington, saying:

> Do I think that specific performance is the ultimate remedy here? No, I think that damages are probably the right remedy, but I think that's an argument for another day, and I know that Mr. Tupper spent some time on that, and I -- and I -- I take his point that let's be realistic here, but I don't think the determination of realism needs to occur today.

- Transcript of Hearing before J.R. Farrington dated February 5, 2024 at 32:31-34.

70. This candid admission was appropriate. Four20's claim is compensable in damages. Four20 seeks to force Tilray and High Park to buy Four20's business. The loss of that sale, if Tilray or High Park are found to be liable, is compensable in damages. Four20 has not demonstrated why damages would not be an adequate remedy.

- **Respondent's Book of Authorities Tab 11**: *Semelhago v Paramadevan,* [1996] 2 SCR 415, [1996] SCJ No. 71 at para 22.
- **Respondent's Book of Authorities Tab 12**: *Garrett v Niagara-on-the-Lake Sailing Club*, 2023 ONSC 2891, at para 71.

71. In addition, Four20's delay in prosecuting this action disentitles it to specific performance pursuant to the doctrine of laches.

- **Respondent's Book of Authorities Tab 13**: R.J. Sharpe, *Injunctions and Specific Performance* 2nd ed. (Toronto: Canada Law Book, 2022) (loose leaf, release 2022 part 1), ch. 1, at 1.21.
- **Respondent's Book of Authorities Tab 14**: *370866 Ontario Ltd. v Chizy,* [1987] O.J. No. 2244 at paras 41-42.

72. Tilray and Four20 entered into the Arrangement Agreement on August 28, 2019. Tilray and High Park sent a Notice of Termination of the Arrangement Agreement to Four20 on February 4, 2020. It is now more than four years later, and the parties have just completed initial questioning. The parties are nowhere near ready for trial.

- Popadynetz Affidavit at paras 40, 75 and Exhibits "CC" and "FFF".

73. If Four20 truly wanted specific performance of the Arrangement Agreement, rather than damages in lieu of specific performance, it should have prosecuted its claim far more quickly.

74. Based on all of this, Four20's claim for specific performance has no prospect of success and is not relevant to the determination about whether High Park's claim for summary judgment should be granted. As a result, Four20 should not be permitted to prevent summary judgment on High Park's clear debt claim by alleging it is entitled to specific performance, either directly or pursuant to Four20's "No Termination Defence".

(3) Four20's "Intercompany Loan Defence"

75. With respect to the "Intercompany Loan Defence", the Loan Agreement contains the Repayment Provision. That does not state that the Loan would convert to an intercompany loan. The parties agreed that the terms included in the Loan Agreement represented the entire agreement between them.

76. Four20 disputes this on the basis that the "factual matrix cannot be disregarded", even if an entire agreement clause is present. High Park agrees. Indeed, extensive evidence of the factual matrix is before this Honourable Court in this Appeal. That factual matrix evidence, however, cannot be used to overwhelm the clear terms of the Loan Agreement. The Supreme Court of Canada has held that courts cannot deviate from the text of an agreement when that would result in the creation of a new agreement:

> While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement. The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement. [Emphasis added, citations omitted.]

- **Respondent's Book of Authorities Tab 9**: *Sattva* at para 57.

77. The Repayment Provision says nothing about conversion of the Loan to an intercompany loan. The Repayment Provision is clear that if the Arrangement was not completed and the Arrangement Agreement was terminated, the Loan would be repaid. The "Intercompany Loan Defence" would overwhelm these clear terms and is not a valid defence.

(4) Four20's Set-Off Defence

78. Four20 has also alleged that it is entitled to equitable set-off. Four20 claims that the Loan Agreement and Arrangement Agreement are so closely related that it would be unjust for the Court to grant summary judgment and to allow High Park to enforce payment of the Loan before the Main Action is decided.

79. This argument neither provides Four20 with a defence nor presents a genuine issue requiring a trial.

80. Four20 expressly contracted out of any right to claim set-off as a defence. Section 6.1 of the Loan Agreement states that "[a]ll payments due and payable from the Borrower hereunder shall be made in immediately available funds, without any set-off, deduction or

withholding of any nature whatsoever except to the extent that the Borrower is obliged by law to make payment subject to tax deduction or withholding".

- Merton Affidavit at Exhibit "A", s. 6.1.

81. Four20 accordingly agreed it would not have any right to set-off the Loan for any reason, subject to a very narrow exception for taxes or deductions required by law. This Honourable Court has held that parties can explicitly or impliedly contract out of their right to both contractual and equitable set-off. Accordingly, a defence of set-off is not available to Four20.

- **Respondent's Book of Authorities, Tab 15:** *Alberta Treasury Branches v COGI Limited Partnership,* 2018 ABQB 356 at para 36.
- **Respondent's Book of Authorities, Tab 16:** *Bernum Petroleum Ltd v Birch Lake Energy Inc.,* 2014 ABQB 652 at para 97.

(5) Brief Conclusion about Four20's Claimed Defences

82. For all of these reasons, Four20 does not have a defence to the Counterclaim and there is no genuine issue requiring a trial.

D. Applications Judge Farrington's Order is Not "Partial Summary Judgment"

83. High Park's application for summary judgment of the Counterclaim is not an application for partial summary judgment. As set out in Section 6.1 of the Loan Agreement and discussed in detail in this Brief of Argument, Four20 contracted out of any right of set-off with respect to the Loan. As a result, Four20 cannot claim set-off as a defence against the Counterclaim. As then-Master Hanebury in *Soler* said:

> Rule 3.58 provides that a counterclaim is an independent action. It will not, in and of itself, prevent a plaintiff from obtaining summary judgment, unless the counterclaim constitutes a defence. A legal or equitable setoff, as defences, may prevent summary judgment. Procedural set-off does not.

- Merton Affidavit at Exhibit "A", s. 6.1.
- **Respondent's Book of Authorities Tab 1**: *Alberta Rules of Court*, AR 124/2010 ("**ARC**"), r. 3.58.
- **Respondent's Book of Authorities Tab 17**: *Soler & Palau Canada Inc. v Meyer's Sheet Metal Ltd.*, 2012 ABQB 496 ("***Soler***") at para 47.

84. For this reason, the law related to partial summary judgment is not applicable to the present Appeal. In *Novosell*, for instance, Justice Lema cited a paper by Justice Brown of

the Ontario Court of Appeal that summarized the circumstances that the term "partial summary judgment" has been used to describe:

> Scenario 1: The sole defendant moves to dismiss the claim against it by asking the judge to determine one of several defences - usually a limitation defence - which, if established, would end the action. A judicial practice has emerged in some places that even where summary judgment is not granted, the motion judge makes a partial, "final" pronouncement on the availability of the limitation defence;
>
> Scenario 2: One of several defendants moves for the dismissal of the claim as against it alone, leaving the plaintiff free to pursue the remaining defendants. This is the sense in which the Supreme Court of Canada used the term "partial summary judgment" in *Hryniak v. Mauldin*, 2014 SCC 7, at para. 60 [...]
>
> Scenario 3: A plaintiff or defendant asks the court to determine an issue within a claim — i.e., one of the several constituent elements of a claim or defence. No "judgment" results, in the sense of a final disposition within the meaning of Rule 1.03. All claims remain; no party exits the lawsuit.

- **Respondent's Book of Authorities Tab 18**: *Novosell v Bolster,* 2022 ABKB 804 at para 21 ("***Novosell***").

85. Judgment of a counterclaim, as sought by High Park and granted by Applications Judge Farrington, does not fall into any of these categories.

86. Even if the Counterclaim was not an independent action, however, partial summary judgment would still be appropriate in the circumstances. The matters in issue in the Counterclaim and in this Appeal are not intertwined with the Main Claim. There is accordingly no risk of duplicative or inconsistent findings of fact.

87. The Repayment Provision of the Loan Agreement requires repayment within 180 days after the date of the advance of the Loan or the termination of the Arrangement Agreement. As a result, the only matter to be determined in this Appeal with respect to the Counterclaim is whether an event that triggered the repayment obligation of the Loan occurred.

88. This finding would not preclude Four20 from advancing the Main Claim, alleging that Tilray and High Park "improperly" or "illegitimately" terminated the Arrangement Agreement, or seeking damages or specific performance for that "improper" or "illegitimate" termination. This was recognized by Applications Judge Farrington, who wrote:

> High Park has purported to terminate the Arrangement Agreement. The grounds for the termination may or may not be found to be proper in due

> course. If the termination was improper, High Park and Tilray may be liable as alleged in the statement of claim. In the mean time, they are entitled to issue a default notice and proceed as they did. Many enforcement proceedings proceed with the validity of those proceedings, or the existence of default, being challenged later in appropriate litigation. [emphasis added]

- Butcher Affidavit at Exhibit R, p 4.

89. The Counterclaim is a simple debt claim. The issues raised by Four20 do not need to be decided in this Appeal but are issues in the Main Claim that will be addressed in the context of that claim. As a result, even if High Park were seeking partial summary judgment, which it is not, partial summary judgment would be appropriate in the circumstances.

PART VI - RELIEF SOUGHT

90. Four20 has failed to demonstrate that Judge Farrington was incorrect when he granted the Summary Judgment Order. In fact, for all of the reasons discussed in this Brief, Judge Farrington correctly concluded that High Park's Counterclaim for the repayment of the Loan is a simple debt claim that is ideally suited to summary determination. Summary judgment is the most expedient and least expensive way to achieve a just result in the Counterclaim. High Park accordingly asks that:

(a) The Appeal of Four20 be dismissed; and

(b) Tilray and High Park be awarded the costs of the Appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of May, 2024.

David V. Tupper / Tom Wagner
Counsel to the Respondents, Tilray Inc. and High Park Shops Inc.

TABLE OF AUTHORITIES

1. Excerpts of the *Alberta Rules of Court*, AR 124/2010.
2. *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49.
3. *Templanza v Ford*, 2018 ABQB 168.
4. *Goodswimmer v Canada* (Attorney General), 2017 ABCA 365.
5. *Hryniak v Mauldin*, 2014 SCC 7.
6. *Hannam v Medicine Hat School District No. 76*, 2020 ABCA 343.
7. Canadian Contractual Interpretation Law, 4th ed (Toronto: LexisNexis: 2020).
8. *Bighorn No. 8 (Municipal District) v Bow Valley Waste Management Commission*, 2013 ABQB 723.
9. *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53.
10. *Serinus Energy PLC v SysGen Solutions Group Ltd.*, 2023 ABKB 62.
11. *Semelhago v Paramadevan*, [1996] 2 SCR 415, [1996] SCJ No. 71.
12. *Garrett v Niagara-on-the-Lake Sailing Club*, 2023 ONSC 2891.
13. R.J. Sharpe, *Injunctions and Specific Performance* 2nd ed. (Toronto: Canada Law Book, 2022) (loose leaf, release 2022 part 1).
14. *370866 Ontario Ltd. v Chizy*, [1987] O.J. No. 2244.
15. *Alberta Treasury Branches v COGI Limited Partnership*, 2018 ABQB 356.
16. *Bernum Petroleum Ltd v Birch Lake Energy Inc.*, 2014 ABQB 652.
17. *Soler & Palau Canada Inc. v Meyer's Sheet Metal Ltd.*, 2012 ABQB 496.
18. *Novosell v Bolster*, 2022 ABKB 804 at para 21.

This is Exhibit "I" referred to in the Affidavit of Scott Morrow,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 6th day of August, 2024

A Commissioner for Oaths
in and for the Province of Alberta

Archer Bell
Barrister & ~~Solicitor~~

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August 1, 2024

File No.: 155857.1002

By Email

Court of King's Bench of Alberta
601-5th Street SW
Calgary, Alberta T2P 5P7

Attention: The Honourable Justice Simard c/o Commercial Duty Coordinator

Re: ITMO the Notice of Intention to Make a Proposal under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 ("BIA") of 420 Investments Ltd., 420 Premium Markets Ltd. and Green Rock Cannabis EC 1) Limited (collectively, the "Debtors"); Court File No. 25-3086318 / B301-86318 (the "Proposal Proceedings")

Re: 420 Investments Ltd. v. Tilray Inc. and High Park Shops Inc.; Court File No. 2001-02873 (the "Tilray Proceeding")

Please be advised that we are counsel to the Debtors in the Proposal Proceedings. We write jointly on behalf of the Debtors, the Proposal Trustee and a creditor, Tilray Inc. and High Park Shops Inc. ("**High Park**"). This correspondence has been reviewed and approved by counsel for Tilray Inc. and High Park, counsel for the Proposal Trustee, as well as litigation counsel for 420 Investments Ltd. ("**420 Parent**") in the Tilray Proceedings.

420 Parent and High Park have been involved in litigation since 2020, relating to a breach of contract claim and counterclaim (the "**Tilray Proceeding**"). This litigation (including the counterclaim) is a potential asset in the estate. There is a pending appeal of an Application Judge's summary judgment decision on the counterclaim, which is currently scheduled to be heard by a single judge of the Court of King's Bench on December 5, 2024. Unfortunately, this date is outside the 6-month time limit to complete the Proposal Proceedings. The parties have agreed that the appeal should be expedited if possible. Therefore, we write to request permission to tentatively schedule the hearing of the appeal before Your Lordship on September 13, 2024 from 2:00pm-4:30pm (the "**Appeal Hearing**") pending the outcome of an application to schedule the same before Associate Chief Justice Nixon on August 12, 2024 (the "**Expedited Appeal Application**"). The Expedited Appeal Application will seek to schedule the Appeal Hearing on the Commercial List an expedited basis to bring more certainty to the Proposal Proceedings

The following are the relevant parties for the Appeal Hearing and Expedited Appeal Application:

- The Debtors are represented by Karen Fellowes, K.C. and Natasha Doelman of Stikeman Elliott LLP;
- 420 Parent is represented by Robert Hawkes, K.C. and Gavin Price of Jensen Shawa Solomon Duguid Hawkes LLP in relation to the Tilray Proceeding;

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- The Proposal Trustee, KSV Restructuring Inc., is represented by Michael Selnes of Bennett Jones LLP; and

- High Park and Tilray Inc. are represented by David Tupper, Kelly Bourassa, and Tom Wagner of Blake, Cassels and Graydon LLP.

We note that given your history with Bennett Jones LLP there may be a conflict concern related to presiding over the Appeal Hearing as Mr. Selnes is acting on behalf of the Proposal Trustee. However, we confirm that the Proposal Trustee does not intend to take a position at the Appeal Hearing or speak to its merits. The Tilray Proceeding is distinct to the Proposal Proceeding. Therefore, all relevant parties listed above are of the view that it would not be a conflict of interest to have Your Lordship preside over the Appeal Hearing.

Please do not hesitate to contact me if you require any additional information or have any questions.

Yours truly,

Stikeman Elliott LLP

Karen Fellowes, K.C.

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