

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

951584 ONTARIO INC. DBA MAXIUM FINANCIAL SERVICES

Applicant

– and –

PULSE RX INC. AND FAMILY PHARMACY CLINIC INC.

Respondents

**FACTUM OF THE RECEIVER
(RE: RESTRUCTURING APPROVAL AND APPROVAL AND VESTING)**

May 21, 2022

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capacity as the court appointed receiver
of Pulse Rx Inc. and Family Pharmacy
Clinic Inc.**

TO: THE SERVICE LIST

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PART I – OVERVIEW

1. MNP Ltd. in its capacity as receiver and receiver and manager of all of the property, assets and undertakings of Family Pharmacy Inc. and Pulse RX Inc. (in such capacities, the “**Receiver**”) seeks, *inter alia*:

- (a) An Order, substantially in the form attached at Tab 3 of the Motion Record (the “**Restructuring Transaction Order**”) that, among other things:
 - (i) approves the vesting out of all of the liabilities, assets (other than the minute books), if any, and encumbrances (the “**Reverse Vesting**”) of Pulse RX Inc. (“**Pulse**”) in and to Family Pharmacy Clinic Inc. (“**Family Pharmacy**”);
 - (ii) declares that the issued and outstanding shares of Pulse comprise 100 common shares (the “**Pulse Shares**”) and that the Pulse Shares shall constitute all of the issued and outstanding shares of Pulse and any other shares or securities including, without limitation, any Class B shares shall be deemed to be automatically cancelled;
 - (iii) approves the transfer of all of the Pulse Shares held by Family Pharmacy to MNP Ltd. in trust (in such capacity, the “**Trustee**”) for the benefit of the existing creditors of Pulse and Family Pharmacy (the “**Pulse Share Trust**”);
 - (iv) declares that the administration of the Pulse Share Trust be and shall remain subject to these proceedings and updating the style of cause of these proceedings;
 - (v) declares that the Receiver shall not be required to maintain the books and records of Pulse, including any patient records, patient notes or clinical notes;
 - (vi) approves the Second Report of the Receiver dated May 17, 2022 (the “**Second Report**”) and the activities as described therein; and

- (vii) approving the fees and disbursements of the Receiver and its counsel as set out in the affidavits of Sheldon Title sworn May 17, 2022 and Levi Rivers sworn May 17, 2022 (the “**Fee Affidavits**”).
- (b) An Approval and Vesting Order, substantially in the form attached at Tab 4 of the Motion Record (the “**AVO**”) that, among other things:
 - (i) approves the sale transaction (the “**Transaction**”) contemplated by a share purchase agreement (the “**Purchase Agreement**”) dated April 28, 2022 between the Receiver, as trustee of the Pulse Share Trust and SRX HEALTH SOLUTIONS INC. (the “**Purchaser**”); and
 - (ii) seals the Confidential Appendix, as described herein, to the Second Report (the “**Sealing Order**”).

PART II – FACTS

2. The facts on this motion are set out in the Second Report filed in support of this motion. Capitalized terms used herein but otherwise undefined have the respective meanings given to them in the Second Report. The following is a high-level summary of the facts relevant to this motion.

A. The Pulse Charter

3. Pulse, a wholly-owned subsidiary of Family Pharmacy, was incorporated on January 27, 1936.¹

4. Pulse’s assets consisted primarily of inventory, accounts receivable, certain service contracts (collectively, the “**Business Assets**”) and the charter and articles of incorporation (the

¹ The Second Report of the Receiver dated May 17, 2022, at para 2 Receiver’s **Motion Record**, at Tab 2 ([Caselines at Master E196](#)) [*Second Report*].

“**Pulse Charter**”).² Pulse is considered a “Pre-1954 Charter Company”, under which the owner of a pharmacy is not required to be a pharmacist.³

5. On December 20, 2021, the Receiver closed a transaction for the purchase and sale of the Business Assets, and that transaction was approved by the Court on December 14, 2021 (the “**Business Asset Transaction**”).⁴

B. Charter Sale Process

6. After consulting material Secured Creditors, the Receiver conducted a non-stalking horse sale process for the Charter (the “**Charter Sale Process**”).⁵ Among other things, the 49-day Charter Sale Process involved the Receiver:

- (a) preparing a process summary (the “**Charter Teaser Letter**”) describing the opportunity, outlining the Charter Sale Process, and inviting recipients of the Charter Teaser Letter to express their interest pursuant to the terms of the Charter Sale Process;⁶
- (b) preparing a non-disclosure and confidentiality agreement (an “**NDA**”) for execution by interested potential purchasers;⁷
- (c) gathering and reviewing all due diligence materials that it determined to be relevant to interested parties and established a secure, electronic data room (the “**Charter Data Room**”);⁸
- (d) soliciting offers from a list of 28 potentially interested parties, other parties who responded to advertisements published by the Receiver, 60 lawyers with a focused

² Second Report, *ibid* at para 4 ([Caselines at Master E196](#)).

³ Second Report, *ibid* at para 4 ([Caselines at Master E196](#)); *Drug and Pharmacies Regulations Act*, RSO 1990, c H.4 at s 142(4).

⁴ Second Report, *ibid* at para 8 ([Caselines at Master E197](#)).

⁵ Second Report, *ibid* at para 15 ([Caselines at Master E202](#)).

⁶ Second Report, *ibid* at para 15 ([Caselines at Master E202](#)).

⁷ Second Report, *ibid* at para 15 ([Caselines at Master E202](#)).

⁸ Second Report, *ibid* at para 15 ([Caselines at Master E202](#)).

practice in the health care sector and to representatives of the larger accounting firms to enable them to share with their clients;⁹ and

- (e) providing all bidders who had executed NDAs with access to the Charter Data Room, which included among other items, copies of the minute books, share register, articles of incorporation and tax records.¹⁰

7. The Charter Sale Process resulted in 13 parties signing an NDA and the submission of one conditional bid.¹¹ After engaging counsel and carrying out further due diligence, the sole bidder chose not to pursue the opportunity for the purchase of the Pulse Charter.¹²

8. The main source of concern expressed by potential bidders was related to the potential tax consequences associated with an acquisition of the Pulse Shares.¹³ As a result of the dearth of books and records of Pulse, bidders were not able to assess: (i) the existence and quantum of Pulse's tax losses to absorb any debt forgiveness tax; and (ii) the overall tax impact of the potential inclusion of debt forgiveness.¹⁴

C. Further Steps

9. The Receiver, its counsel and tax counsel developed strategies to address these concerns, which culminated in the development of the Reorganization Steps (as described below) as a means of addressing the tax implications.¹⁵

10. The proposed Reorganization Steps to be approved by this Court are summarized below:

- (a) the creation of the Pulse Share Trust;

⁹ Second Report, *ibid* at para 15 ([Caselines at Master E202](#)).

¹⁰ Second Report, *ibid* at para 15 ([Caselines at Master E202](#)).

¹¹ Second Report, *ibid* at para 16 ([Caselines at Master E203](#)).

¹² Second Report, *ibid* at para 16 ([Caselines at Master E203](#)).

¹³ Second Report, *ibid* at para 18 ([Caselines at Master E204](#)).

¹⁴ Second Report, *ibid* at para 18 ([Caselines at Master E204](#)).

¹⁵ Second Report, *ibid* at para 20 ([Caselines at Master E204](#)).

- (b) the addition of the Pulse Share Trust as a respondent in these receivership proceedings;
- (c) the Reverse Vesting - the vesting out of all of the liabilities, assets (other than the minute books), if any, and encumbrances of Pulse in and to Family Pharmacy;
- (d) the release and discharge of Pulse from all of the claims vesting in Family Pharmacy; and
- (e) the transfer of the Pulse Shares in and to the Pulse Share Trust, such that that the Pulse Share Trust will be the sole registered and beneficial owner of the Pulse Shares.¹⁶

(collectively, the “**Reorganization Steps**”)

11. Since completing the Charter Sale Process, the Receiver was introduced to three potential bidders (the “**Subsequent Bidders**”) by existing creditors of Pulse. The Receiver engaged in discussions with these prospective purchasers, each of whom expressed an urgent need to acquire a Pre-1954 Charter.¹⁷ The Receiver and its counsel shared the Reorganization Steps, including the Reverse Vesting and Pulse Share Trust, with two of the three of the Subsequent Bidders.¹⁸

12. As a result of the complexities associated with an acquisition of the Pulse Shares, including the proposed Reorganization Steps as a means of facilitating the Transaction, the Receiver limited its discussions and negotiations to the Subsequent Bidders who were represented by insolvency counsel, culminating in the Receiver executing the Purchase Agreement.¹⁹

¹⁶ Second Report, *ibid* at para 24 ([Caselines at Master E205](#)).

¹⁷ Second Report, *ibid* at para 19 ([Caselines at Master E204](#)).

¹⁸ Second Report, *ibid* at para 22 ([Caselines at Master E205](#)).

¹⁹ Second Report, *ibid* at para 23 ([Caselines at Master E205](#)).

D. Shares of Pulse

13. Based on Pulse's corporate records and minute books, Pulse issued 100 common shares to Family Pharmacy. On October 31, 2016, Pulse appears to have attempted to issue Class B shares to the previous President and sole officer of Pulse and certain of his presumed family members.²⁰

14. The articles of Pulse do not provide for the issuance of Class B shares.²¹

E. Records

15. As it was vacating Pulse's leased premises, the Receiver seized the balance of records not acquired by the purchaser of the Business Assets, which include Pulse's patient records that do not relate to the Business Assets.

16. Pulse and Family Pharmacy have in excess of 162 boxes of books and records (the "**Records**") that are currently being stored at DocuVault Solutions Inc.²² Based on the Receiver's review of the Records, the records relate to the period 2011 to 2021, with most of the boxes relating to 2014 to 2016.²³ Certain of these are patient records, which are not organized by patient but rather grouped by year, and accordingly, are not easily findable or searchable.²⁴

17. The Receiver believes it is appropriate to retain selected books and records required for the administration of the Receivership. The Receiver is satisfied that the balance of the Records are not required for the purpose of administering the receivership (the "**Redundant Records**").

²⁰ Second Report, *ibid* at para 26 ([Caselines at Master E206](#)).

²¹ Second Report, *ibid* at para 27 ([Caselines at Master E207](#)).

²² Second Report, *ibid* at para 41 ([Caselines at Master E212](#)).

²³ Second Report, *ibid* at para 42 ([Caselines at Master E212](#)).

²⁴ Second Report, *ibid* at para 33 ([Caselines at Master E211](#)).

PART III – ISSUES

18. The issues at his motion are whether this Court should order that:
- (a) the Reverse Vesting should be granted;
 - (b) the Pulse Shares constitute all of the issued and outstanding shares of Pulse;
 - (c) the Pulse Shares should be transferred to the Pulse Share Trust
 - (d) the Receiver has no obligation maintain the books and records of Pulse;
 - (e) the Fees and Activities of the Receiver and its Counsel Should be Approved
 - (f) the Transaction should be approved; and
 - (g) the Confidential Appendix to the Second Report of the Monitor (the “**Confidential Appendix**”) should be sealed.

PART IV – LAW & ARGUMENT

A. The Reverse Vesting Should Be Granted

19. As part of the Reorganization Steps, the Receiver seeks approval of a Reverse Vesting Transaction pursuant to which all of the assets, if any and the liabilities of Pulse be vested out in and to Family Pharmacy.

20. Canadian courts’ jurisdiction to issue reverse vesting orders was canvassed extensively in *Nemaska Lithium*, in which the court held that “the nature of today’s economic problems calls for innovative solutions to be considered and, if they allow reaching the *CCAA*’s basic objectives, to all parties’ benefit, then they must be ratified.”²⁵

²⁵ *Arrangement relatif a Nemaska Lithium inc*, 2020 QCCS 3218 at para 53 [*Nemaska Lithium*]; see also: *Harte Gold Corp (Re)*, 2022 ONSC 653 at para 38 [*Harte Gold*].

21. The purpose of receiverships under the *Bankruptcy and Insolvency Act* (the “**BIA**”) are to “enhance and facilitate the preservation and realization of the assets [of a debtor] for the benefit of creditors.”²⁶ The Reverse Vesting encourages the realization of the Pulse Charter as it addresses the potential adverse tax consequences arising from any debt forgiveness by having the debt forgiven by virtue of the transferring/vesting the liabilities of Pulse in Family Pharmacy.²⁷

22. This Court in *Harte Gold* states that the approval of a Reverse Vesting transaction entails “close scrutiny”. In particular,

The Monitor and the court must be diligent in ensuring that the restructuring is fair and reasonable to all parties having regard to the objectives and statutory constraints of the CCAA. This is particularly the case where there is no party with a significant stake in the outcome opposing the use of an RVO structure. The debtor, the purchaser and especially the Monitor, as the court appointed officer overseeing the process and answerable to the court (and in addition to all the usual enquiries and reporting obligations), must be prepared to answer questions such as:

- (a) Why is the Reverse Vesting necessary in this case?
- (b) Does the Reverse Vesting structure produce an economic result at least as favourable as any other viable alternative?
- (c) Is any stakeholder worse off under the Reverse Vesting structure than they would have been under any other viable alternative? and
- (d) Does the consideration being paid for the debtor’s business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the Reverse Vesting structure?²⁸

²⁶ *Hamilton Wentworth Credit Union Ltd. (Liquidator of) v Courtcliffe Park Ltd.*, 1995 CanLII 7059 (ONSC) at para 18, [1995] OJ No 1482; RSC 1985, c B-3.

²⁷ Second Report, *supra* at para 25 ([Caselines at Master E206](#)).

²⁸ *Harte Gold*, *supra* at para 38.

23. The Receiver submits that the Reverse Vesting and Pulse Share Trust are appropriate in the circumstances and the criteria as set out in *Harte Gold* is met.

Why is the Reverse Vesting necessary in this case?

24. The principal benefit of the Reverse Vesting structure is the preservation of non-transferable assets, such as licenses and regulatory approvals.²⁹ In this case, the Pulse Charter (being the constating documents of a company) is not a transferable asset.

25. The Pulse Charter, as a non-transferable marketable asset of Pulse, has significant value for the creditors of Pulse if commercialized. The Reverse Vesting is necessary to provide the Purchaser with the Pulse Charter absent of liabilities, including the tax liabilities arising as a result of any debt forgiveness.

26. The robust Charter Sale Process resulted in zero firm offers after 49 days on market.³⁰ Based on the feedback provided to the Receiver by potential bidders, the uncertainty of any tax consequences was having a significant deleterious effect on value and therefore recovery for creditors.³¹ After providing the proposed Reorganization Steps to sophisticated bidders, the Receiver was able to execute the Purchase Agreement, despite the Purchaser's initial reservations.³²

²⁹ *Harte Gold*, *supra* at paras 70-72; *Quest University Canada (Re)*, 2020 BCSC 1883, at para 138; *Beleave Inc., Re*, Endorsement dated September 18, 2020, Court File No. CV-20-00642097-00CL (ONSC [Commercial List]).

³⁰ Second Report, *supra* at para 18 ([Caselines at Master E204](#)).

³¹ Second Report, *ibid* at para 18 ([Caselines at Master E204](#)).

³² Second Report, *ibid* at paras 19, 23 ([Caselines at Master E204](#)).

Does the Reverse Vesting structure produce an economic result at least as favourable as any other viable alternative?

27. The Reverse Vesting structure has been developed with input from insolvency and tax counsel to address the concerns raised by prospective purchasers during the Charter Sale Process.³³

As noted above, the Reverse Vesting intends to address the potential adverse tax consequences arising from the debt forgiveness by having the debt forgiven by virtue of the transferring/vesting the liabilities of Pulse in Family Pharmacy and a corresponding release of Pulse from these liabilities.³⁴

28. The material significant creditors of Pulse are the Canada Revenue Agency (the “**CRA**”), Maxium Financial Services (“**Maxium**”) and 2047944 Ontario Inc. (“**National Pharmacy**”).³⁵

29. It is likely that recovery from the sale of assets of Pulse, including the Pulse Charter will not be enough to satisfy all secured creditors or even the debt of the first two secured creditors- Maximum and National Pharmacy.³⁶ Without the approval of the Reverse Vesting, neither Maxium or National Pharmacy would receive recovery on their indebtedness.³⁷

30. The claim of the CRA for debt forgiveness (and the vesting out of such claim) is a potential unsecured claim based on corporate income taxes and is not a priority claim. If Pulse were to become bankrupt, the CRA would not receive any recovery on its unsecured claim.³⁸

³³ Second Report, *ibid* at para 20 ([Caselines at Master E204](#)).

³⁴ Second Report, *ibid* at para 25 ([Caselines at Master E206](#)).

³⁵ Second Report, *ibid* at paras 5, 30 ([Caselines at Master E196](#)).

³⁶ Second Report, *ibid* at para 30 ([Caselines at Master E209](#)).

³⁷ Second Report, *ibid* at para 30 ([Caselines at Master E209](#)).

³⁸ Second Report, *ibid* at para 30 ([Caselines at Master E209](#)).

31. In light of the impaired ability for recovery of any creditors should the Pulse Charter be unable to be commercialized, the Reverse Vesting structure produces an economic result better than any alternative structure.

Is any stakeholder worse off under the Reverse Vesting structure than they would have been under any other viable alternative?

32. No stakeholder is worse off under the Reverse Vesting structure than compared to the alternative, which is the Receiver being unable sell the Pulse Charter due to unascertained tax consequences for any potential purchaser.

Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the Reverse Vesting structure?

33. The consideration being paid for the Pulse Charter is fair, and is the result of discussion and negotiation between the Receiver and two sophisticated bidders.³⁹

34. For these reasons, the Reverse Vesting should be granted.

B. The Pulse Shares Constitute All of the Issued and Outstanding Shares of Pulse

35. The Receiver submits that it is appropriate for this Court to declare that the Pulse Shares shall constitute all of the issued and outstanding shares of Pulse and any other shares or securities including, without limitation, any Class B shares shall be deemed to be automatically cancelled.

36. Based on Pulse's corporate records and minute books, Pulse issued 100 common shares to Family Pharmacy. On October 31, 2016, Pulse appears to have attempted to issue Class B shares to the previous President and sole officer of Pulse and certain of his presumed family members.⁴⁰

³⁹ Second Report, *ibid* at para 23 ([Caselines at Master E205](#)).

⁴⁰ Second Report, *ibid* at para 26 ([Caselines at Master E206](#)).

The articles of Pulse do not provide for the issuance of Class B shares and are void on that basis alone.⁴¹

C. The Transfer of the Pulse Shares to the Pulse Share Trust

37. As part of the Reorganization Steps, the Receiver seeks the approval by this Court of the transfer of the Pulse Shares to MNP, in trust for the creditors of Pulse.

38. The transfer of the Pulse Shares to the Pulse Share Trust following the Reverse Vesting is required in order to create a deemed year end. The transfer of the Pulse Shares to the Pulse Share Trust results in a change of control and a new taxation year for Canadian income tax purposes is deemed to occur (“**Deemed Year End**”).⁴²

39. The Receiver intends on reporting the debt forgiveness arising from the Reverse Vesting Transaction as part of the Deemed Year End corporate tax filing. The resulting corporate taxes, if any, arising from the Deemed Year End will be included in the debts and liabilities transferred to Family Pharmacy.

40. The use of a creditor trust administered by a Court-appointed receiver was approved by the Ontario Superior Court of Justice in the *Vert Infrastructure Ltd.* receivership proceedings.⁴³ The Court said the following the approving the use of a creditor trust in *Vert Infrastructure*:

The transaction has been designed in a practical manner that uses judicial tools available to this court – a vesting order, channeling claims, and creation of a common law trust. I am satisfied that I can grant the order. Ultimately, [the Receiver of Vert], will be holding these same assets in trust for the very same creditors of Vert – it mirrors the structure and rights/obligations that are in place

⁴¹ Second Report, *ibid* at para 27 ([Caselines at Master E207](#)); *Business Corporations Act*, RSO 1990, c B.16 at s 23(1).

⁴² Second Report, *ibid* at para 25 ([Caselines at Master E206](#)).

⁴³ [Re Vert Infrastructure Ltd., Approval and Vesting Order](#) granted June 8, 2021, Court File No. CV-20-00642256-00CL at paras 4, 7 and 9.

under the receivership. It is all for the benefit of those creditors. ⁴⁴[emphasis added]

41. Similar to *Vert Infrastructure Ltd*, the creation of the Pulse Share Trust is for the benefit of the creditors of Pulse. In *Vert Infrastructure Ltd*, the Court allowed the creation of the trust under section 243(1)(c) of the BIA which provides this Court with the jurisdiction to appoint a receiver to “take any other action that the court considers advisable” if just or convenient to do so.⁴⁵ Elsewhere, courts have approved the creation of trusts in insolvency proceedings to allow an asset of the debtor to be monetized or to facilitate a restructuring or compromise.⁴⁶

42. The Pulse Share Trust will allow the Receiver to realize the value of the Pulse Charter to the benefit of Pulse’s creditors. Without the Pulse Share Trust and the Deemed Year End arising from its creation, the Pulse Charter will be unable to be commercialized, to the detriment of the secured creditors of Pulse.

D. The Receiver should not be required to maintain the books and records of Pulse

43. There are currently an excess of 162 boxes of books and records of Pulse.⁴⁷ Certain of these are patient records, which are not organized by patient, and accordingly, are not easily findable or searchable.⁴⁸

44. The Receiver is seeking authorization to destroy the Redundant Records in accordance with following the terms:

- (a) the Receiver will send a letter to Pulse’s former directors and officers (“D&Os”) and the designated pharmacist providing each with notice that the Redundant

⁴⁴ [Re Vert Infrastructure Ltd., Endorsement of Madam Justice Conway](#) dated June 8, 2021, Court File No. CV-20-00642256-00CL.

⁴⁵ [BIA](#) at s 243(1)(c).

⁴⁶ See: [Re Sino-Forest Corp.](#), 2012 ONSC 7050.

⁴⁷ Second Report, *supra* at para 41 ([Caselines at Master E212](#)).

⁴⁸ Second Report, *ibid* at para 33 ([Caselines at Master E211](#)).

Records will be destroyed and that the D&Os and/or the designated pharmacist will have 30 days following the sending of such notice to obtain any such Redundant Records;⁴⁹

- (b) the Receiver will notify the Ontario College of Pharmacists (the “OCP”) and CRA as to its intention to destroy the Redundant Records;⁵⁰
- (c) following the 30-day notice period, should (i) the D&Os advise that they do not wish to retain the Redundant Records or fail to respond to such notice, and (ii) no objection by the OCP or CRA is received by the Receiver, the Receiver seeks approval of this Court to destroy the Redundant Records;⁵¹
- (d) if an objection is received from the CRA or OCP, the Receiver will work with the CRA or OCP to resolve the issue, failing which the Receiver may seek the advice and direction of the Court; and⁵²
- (e) the Receiver will ensure that the third party it retains to dispose of the records complies with the *Personal Health Information Protection Act*.⁵³

45. This Court has the jurisdiction to authorize the destruction of the Redundant Records pursuant to section 243(1)(c) of the BIA which provides this Court with the jurisdiction to appoint a receiver to “take any other action that the court considers advisable” if just or convenient to do so”.⁵⁴ Section 243(1)(c) has been interpreted broadly and found to grant Canadian courts jurisdiction to do what “justice dictates” and “practicality demands”.⁵⁵

⁴⁹ Second Report, *ibid* at para 45 ([Caselines at Master E213](#)).

⁵⁰ Second Report, *ibid* at para 45 ([Caselines at Master E213](#)).

⁵¹ Second Report, *ibid* at para 45 ([Caselines at Master E213](#)).

⁵² Second Report, *ibid* at para 46 ([Caselines at Master E213](#)).

⁵³ Second Report, *ibid* at para 47 ([Caselines at Master E213](#)); *Personal Health Information Protection Act*, 2004, SO 2004, c 3, Sch A.

⁵⁴ [BIA](#) at s 243(1)(c).

⁵⁵ [Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc](#), 2019 ONCA 508 at paras 52 and 57.

46. Practicality demands that the Court issue an order directing the Receiver to destroy the Redundant Records in accordance with the terms above. Without an order allowing the destruction of the Redundant Records, the Receiver's ability to realize on the assets of Pulse and Family Pharmacy for the benefit of creditors is impaired as the Receiver faces indiscriminate liability for the storage, retention and organization of Redundant Records.

E. The Fees and Activities of the Receiver and its Counsel Should be Approved

47. The activities of the Receiver and its Counsel are addressed in the Second Report. The fees of the Receiver and its Counsel are addressed in the Fee Affidavits.

48. The Fee Affidavits show that the fees incurred are fair and reasonable, based on the: (i) the nature and extent of the proceeding, (ii) the complications and difficulties encountered, (iii) the time spent by the court officer, (iv) the professionals' knowledge, experience and skill, (v) the results achieved, and (vi) the costs of comparable services.⁵⁶

F. The AVO Should Be Granted

49. It is well established by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.*⁵⁷ that in reviewing a proposed sale of assets by a receiver, the Court will consider the following principles:

- (a) whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;
- (b) whether the interests of all the parties have been considered;
- (c) the efficacy and integrity of the process by which offers had been obtained; and

⁵⁶ [Confectionately Yours Inc. \(Re\)](#), 2002 CanLII 45059 (ONCA) at paras 42-54; Second Report, *supra* at Appendix "E" and "F" ([Caselines at Master E275](#) and [E334](#)).

⁵⁷ [\(1991\), 4. OR \(3d\) 1 \(CA\)](#) [*Soundair*].

- (d) whether there has been unfairness in the working out of the process.

50. The Purchase Agreement and Transaction contemplated thereunder should be approved because the *Soundair* principles have been met.

- (a) Sufficient effort was made to obtain the best price. Good faith efforts were made to market and sell the Pulse Charter.⁵⁸ The Receiver undertook a significant marketing effort and directly contacted prospective purchasers in the Charter Sale Process. Once it became apparent that tax consequences were hindering the ability to sell the Pulse Charter, the Receiver developed the Reorganization Steps with the assistance of counsel.

Following the development of the Reorganization Steps, the Receiver determined that the field of potential bidders was limited to those parties that were prepared to present an offer to the Receiver having regard to the foregoing issues and who were sophisticated enough to assess whether the Reorganization Steps sufficiently mitigated the tax risks. Given the proposed Reorganization Steps involved the use of the Reverse Vesting to deal with any potential debt forgiveness liability, sophisticated insolvency counsel was needed to provide bidders with the requisite advice to evaluate the Reorganization Steps.⁵⁹ Due to this, the Receiver focused its efforts on the three bidders who had retained sophisticated insolvency counsel.⁶⁰

The proposed purchase price is in the range of values the Receiver understands distressed Pre-1954 Charters have been selling for in the marketplace and the consideration being paid for the Pulse Charter reflects the importance and value of a Pre-1954 Charter.⁶¹

- (b) The interests of all parties have been served. The Transaction provides for the best possible outcome in the circumstances for all parties with an economic interest in these proceedings.⁶² The Receiver consulted Pulse and Family Pharmacy's secured

⁵⁸ Second Report, *supra* at para 15 ([Caselines at Master E202](#)).

⁵⁹ Second Report, *ibid* at paras 22-23 ([Caselines at Master E205](#)).

⁶⁰ Second Report, *ibid* at paras 22-23 ([Caselines at Master E205](#)).

⁶¹ Second Report, *ibid* at para 30 ([Caselines at Master E209](#)).

⁶² Second Report, *ibid* at para 30 ([Caselines at Master E209](#)).

creditors and the Purchase Agreement is supported by those secured creditors that have an economic interest in the potential outcome of any sale involving the Pulse Shares.⁶³

- (c) The Charter Sale Process was run with integrity. The Receiver made extensive efforts to source potential purchasers of the Pulse Charter.⁶⁴ All interested parties were given a meaningful opportunity to participate in the Charter Sale Process and were provided with access to the data room upon executing the appropriate confidentiality arrangements. The Transaction was negotiated in good faith and with due diligence.

Given the proposed Reorganization Steps involved the use of the Reverse Vesting to deal with any potential debt forgiveness liability, the Receiver focused its efforts on bidders who had retained sophisticated insolvency counsel.⁶⁵

- (d) There was no unfairness. Over thirty potential bidders were initially contacted and the Pulse Charter was marketed to the greater business community.⁶⁶ Based on the complex nature of the Transaction, following the development of the Reorganization Steps the Receiver contacted to potential purchasers who were best situated to evaluate whether the proposed Transaction and Reverse Vesting sufficiently mitigated the associated tax risks.⁶⁷

51. Accordingly, for the foregoing reasons, the Receiver requests that this Court approve the Purchase Agreement and the Transaction.

G. The Sealing Order Should Be Granted

52. The Receiver is seeking the Sealing Order for the Confidential Appendix until further Order of the Court.

⁶³ Second Report, *ibid* at para 30 ([Caselines at Master E209](#)).

⁶⁴ Second Report, *ibid* at para 15 ([Caselines at Master E202](#)).

⁶⁵ Second Report, *ibid* at paras 22-23 ([Caselines at Master E205](#)).

⁶⁶ Second Report, *ibid* at para 15 ([Caselines at Master E202](#)).

⁶⁷ Second Report, *ibid* at para 22 ([Caselines at Master E205](#)).

53. The *Courts of Justice Act* (Ontario) grants this Court the discretion to order that any document filed in a civil proceeding be treated as confidential and sealed and not form part of the public record.⁶⁸

54. As set out in *Sierra Club of Canada v Canada (Minister of Finance)*, and affirmed in *Sherman Estate v Donovan*, the test to determine if a sealing order should be granted is as follows:

- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.⁶⁹

55. In insolvency proceedings, courts have applied the *Sierra Club* test to seal confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.⁷⁰ No stakeholder will be prejudiced by the sealing.

56. The Receiver respectfully submits that the foregoing test has been satisfied in the circumstances. The Confidential Appendix contains commercially sensitive information, being the purchase price of the Transaction, the disclosure of which could adversely impact the Receiver's ability to market and sell the Pulse Charter should the Transaction not close.

⁶⁸ [Courts of Justice Act](#), RSO 1990 c C 43 at s 137(2).

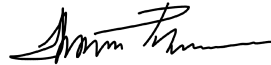
⁶⁹ [Sierra Club of Canada v Canada \(Minister of Finance\)](#), 2002 SCC 41 at para 53 [*Sierra Club*]; [Sherman Estate v Donovan](#), 2021 SCC 25 [*Sherman Estate*].

⁷⁰ [Re Danier Leather Inc](#), 2016 ONSC 1044 at para 82.

PART V – RELIEF REQUESTED

57. For the reasons set out above, the Receiver requests that this Honourable Court grant the Restructuring Transaction Order and AVO included at Tabs 3 and 4 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21st DAY OF MAY, 2022



WEISZ FELL KOUR LLP

SCHEDULE "A"**List of Authorities**

1. <i>Arrangement relatif a Nemaska Lithium inc</i> , 2020 QCCS 3218.
2. <i>Harte Gold Corp (Re)</i> , 2022 ONSC 653.
3. <i>Hamilton Wentworth Credit Union Ltd. (Liquidator of) v Courtcliffe Park Ltd</i> , 1995 CanLII 7059 (ONSC).
4. <i>Quest University Canada (Re)</i> , 2020 BCSC 1883.
5. <i>Beleave Inc., Re, Endorsement of Justice Conway</i> .
6. <i>Re Vert Infrastructure Ltd., Approval and Vesting Order</i> .
7. <i>Re Vert Infrastructure Ltd., Endorsement of Madam Justice Conway</i> .
8. <i>Re Sino-Forest Corp</i> , 2012 ONSC 7050.
9. <i>Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc</i> , 2019 ONCA 508.
10. <i>Confectionately Yours Inc. (Re)</i> , 2002 CanLII 45059 (ONCA).
11. <i>Royal Bank of Canada v. Soundair Corp</i> , (1991), 4. OR (3d) 1 (CA).
12. <i>Sierra Club of Canada v Canada (Minister of Finance)</i> , 2002 SCC 41.
13. <i>Sherman Estate v Donovan</i> , 2021 SCC 25.
14. <i>Re Danier Leather Inc</i> , 2016 ONSC 1044.

SCHEDULE "B"

Statutory Authorities

[*Drug and Pharmacies Regulations Act*](#), RSO 1990, c H.4

Operation of pharmacies by corporation

142 (1) No corporation shall own or operate a pharmacy unless the majority of the directors of the corporation are pharmacists.

Same

(2) No corporation shall own or operate a pharmacy unless a majority of each class of shares of the corporation is owned by and registered in the name of pharmacists or in the name of health profession corporations each of which holds a valid certificate of authorization issued by the College.

Idem

(4) Subsection (2) does not apply to any corporation operating a pharmacy on the 14th day of May, 1954.

[*Business Corporations Act*](#), RSO 1990, c B.16

Issuance of shares

23 (1) Subject to the articles, the by-laws, any unanimous shareholder agreement and section 26, shares may be issued at such time and to such persons and for such consideration as the directors may determine. R.S.O. 1990, c. B.16, s. 23 (1).

[*Bankruptcy and Insolvency Act*](#), RSC 1985, c B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

[Courts of Justice of Act](#), RSO 1990 c C 43

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

1951584 ONTARIO INC. dba MAXIUM FINANCIAL
SERVICES
Applicant

and

PULSE RX INC. and FAMILY PHARMACY CLINIC
INC.
Respondents

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

Proceedings commenced at Toronto

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capacity as the court appointed receiver of Pulse
Rx Inc. and Family Pharmacy Clinic Inc.**