

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

In re:)	Chapter 11
)	
GenCanna Global USA, Inc., <i>et al.</i> , ¹)	Case No. 20-50133 (GRS)
)	
)	Jointly Administered
)	
Debtors.)	Hon. Gregory R. Schaaf

NOTICE OF RULE 2004 EXAMINATION *DUCES TECUM*
(Document Production Only)

PLEASE TAKE NOTICE that the Official Committee of Unsecured Creditors (“Committee”), through its undersigned attorneys, requested that MGG Investment Group, LP, c/o Adam Harris, Schulte Roth & Zabel LLP, 919 Third Ave., New York, NY 10022 produce or deliver on or before **Monday, April 20, 2020 at 5:00 p.m.** or such other date and time as may be agreed upon to the office of Foley & Lardner, LLP, Attention: Geoffrey S. Goodman, 321 N. Clark Street, Suite 3000, Chicago, IL 60654, all of the documents as detailed in the Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding) attached hereto.

The request for production of documents is pursuant to Federal Rules of Bankruptcy Procedure and that certain Agreed Order on Rule 2004 Motion of Official Committee of Unsecured Creditors [Docket No. 526] (the “Rule 2004 Order”). The scope of the request is described in Bankruptcy Rule 2004. Pursuant to the Rule 2004 Order, no further order shall be necessary.

¹The Debtors in these chapter 11 bankruptcy cases are (with the last four digits of their federal tax identification numbers in parentheses): GenCanna Global USA, Inc. (0251); GenCanna Global, Inc. (N/A); and Hemp Kentucky LLC (2600).

The Committee has discussed issuance of the Subpoena referenced herein with the Debtors and the Debtors are in agreement with the Committee on the issuance of the subpoena and the documents sought. The Committee will share any documents it receives with the Debtors pursuant to the Rule 2004 Order.

Dated: April 7, 2020

Respectfully submitted,

FOLEY & LARDNER LLP

/s/ Geoffrey S. Goodman

Geoffrey S. Goodman (pro hac vice)

IL Bar No. 6272297

Joanne Molinaro (pro hac vice)

321 N. Clark Street, Suite 3000

Chicago, Illinois 60654

Telephone: (312) 832-4500

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-and-

Laura Day DelCotto

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DELCOTTO LAW GROUP PLLC

200 North Upper Street

Lexington, Kentucky 40507

T: (859) 231-5800 |

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ldelcotto@dlgfirm.com

COUNSEL FOR OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

CERTIFICATE OF SERVICE

In accordance with the Order Establishing Notice Procedures, Master Service List, and Related Relief [ECF No. 99], the above referenced pleading was electronically filed and served via the Court's ECF System on April 7, 2020. In addition, on April 7, 2020, the above referenced pleading was served via electronic mail and via U.S. Mail upon all parties listed in the Master Service List dated February 28, 2020.

s/ Geoffrey S. Goodman

Pro Hac Vice

IL Bar No. 6272297

Foley & Lardner LLP

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Chicago, Illinois 60654

Telephone: 312-832-4500

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COUNSEL FOR OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

Subpoena to Produce Documents – Page 1 of 11
UNITED STATES BANKRUPTCY COURT

Eastern

District of

Kentucky

In re GenCanna Global USA, Inc., et al.¹

Debtor

Case No. 20-50133 (GRS)

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Adv. Proc. No. _____

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: MGG Investment Group, LP, c/o Adam Harris, Schulte Roth & Zabel LLP, 919 Third Ave., New York, NY 10022

(Name of person to whom the subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: **SEE ATTACHED EXHIBIT A**

PLACE Mr. Geoffrey S. Goodman, Foley & Lardner LLP,
321 North Clark Street, Ste. 3000, Chicago, IL 60654

DATE AND TIME
April 20, 2020 at 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE

DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 4/7/2020

CLERK OF COURT

OR

/s/ Geoffrey S. Goodman

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)
Official Committee of Unsecured Creditors, who issues or requests this subpoena, are:

Mr. Geoffrey S. Goodman, Foley & Lardner LLP, 321 North Clark Street, Ste. 3000, Chicago, IL 60654 - ggoodman@foley.com - Tele: 312-832-4500

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any*): _____
on (*date*) _____.

☒ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on (*date*) _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**EXHIBIT A
TO COMMITTEE’S BANKRUPTCY RULE 2004 MOTION**

DEFINITIONS

A. Case-Specific Definitions

1. “Debtor(s)” shall mean GenCanna Global USA, Inc. (“GenCanna USA”); GenCanna Global, Inc. (“GenCanna Global”); and Hemp Kentucky LLC (“Hemp Kentucky”).
2. “Hemp Products” shall mean any hemp (wet or dry) or any products derived therefrom.
3. “Colby” shall mean 4274 Colby, LLC.
4. “Director” shall mean any current or former member of the Debtors’ Boards of Directors.
5. “Officer” shall mean any current or former officer of the Debtors.
6. “Insider” shall have the meaning ascribed to it under 11 U.S.C. § 101(31).
7. “Voluntary Petition Date” shall mean February 5, 2020.
8. “MGG” shall mean MGG Investment Group LP and the lenders identified in Schedule 1(a) of the proposed Debtor-in-Possession Secured Multi-Draw Term Promissory Note, attached as Exhibit A to the DIP Motion.
9. “Debtors’ Lawsuits” shall mean the lawsuits identified in Section 74 of the GenCanna USA Schedules and Section 7 of the GenCanna USA SOFA.
10. “Stegman Arbitration” shall mean *Stegman v. GenCanna Global USA, Inc.*, Case No. AAA 01-20-0000-1034, pending before the American Arbitration Association.
11. “First Day Declaration” shall mean the *Declaration of James Alt in Support of Chapter 11 Filings and First Day Motions* [Dkt. No. 44], dated February 6, 2020.

12. “2018 Audit” shall mean the incomplete audit referenced in paragraphs 53-55 of the First Day Declaration.

13. “HRC Fire” shall mean the fire at the “HRC facility” referenced in paragraph 49 of the First Day Declaration.

14. “Former Officers and Executives” shall mean to the individuals listed in Section 29 of the GenCanna USA SOFA.

15. “GenCanna USA Schedules” shall mean GenCanna USA’s *Schedules of Assets and Liabilities* [Dkt. No. 246], dated March 1, 2020.

16. “GenCanna USA SOFA” shall mean GenCanna USA’s *Statement of Financial Affairs* [Dkt. No. 247], dated March 1, 2020, as it was amended on March 4, 2020 [Dkt. No. 272].

17. “Cowen” shall mean Cowen and Company LLC.

18. “Goldman” shall mean Goldman Sachs & Co., LLC.

19. “Jefferies” shall mean Jefferies, LLC.

20. “Involuntary Petition Date” shall mean January 24, 2020.

21. “DIP Motion” shall mean *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief*, dated February 6, 2020 [Dkt. No. 55].

B. General Definitions

1. “Document(s)” shall have the full meaning ascribed to it under the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure and shall include, without

limitation, all emails, text messages, instant messages, “tweets,” voicemails, and any items in computer or other electronic storage.

2. “Communication(s)” shall mean any oral, written, electronic, or other transfer of information, ideas, opinions, or thoughts by any means from or to any person, thing, or entity, including, but not limited to, discussions, conversations, meetings, conferences, correspondence, memoranda, telephone calls or messages, facsimile transmissions, or any other form of transmittal of information of any kind.

3. “Relate,” “relating,” or “regarding” shall mean evidencing, memorializing, comprising, connected with, mentioning, describing, containing, enumerating, involving or in any way concerning, pertaining, being connected with, reflecting upon, or resulting from a stated subject matter whether in whole or in part or directly or indirectly.

INSTRUCTIONS

1. The Documents and Communications requested herein shall be produced as they are kept in the usual course of business, except that they shall be organized and labeled to correspond with the categories set forth in this document request. Your duty to produce Documents or Communications shall not be limited or affected by the fact that the same Document or Communication is available through another source. If there are no Documents or Communications responsive to a particular request, so state in writing.

2. In responding to these Requests, you are required to furnish all information that is available to you or subject to your reasonable inquiry, including, without limitation, information in the possession of your affiliates, employees, attorneys, accountants, advisors, agents, representatives or other persons directly or indirectly employed by or connected with you, and anyone else otherwise subject to your control.

3. All Documents and Communications that respond, in whole or in part, to any portion of the Requests below shall be produced in their entirety, including all attachments and enclosures.

4. Documents or Communications not otherwise responsive to this Request should be produced if such Documents or Communications refer to, relate to, or explain the Documents or Communications called for by the document request or if such Documents or Communications are attached Documents or Communications called for by the request and constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar Documents or Communications.

5. If any Document or Communication is known to exist but cannot be produced, that Document or Communication is to be specifically identified as precisely as possible and the reasons for the inability to produce the Document or Communication stated.

6. In the event that a Document or Communication called for by a Document request has been destroyed, the response hereto shall identify: the preparer of the Document or Communication; its addressor (if different), addressee, each recipient thereof; each person to whom it was distributed or shown; the date it was prepared; the date it was transmitted (if different); the date it was received; a description of its contents and subject matter; the date of its destruction; the manner of its destruction; the name, title, and address of person authorizing its destruction; the reason(s) for its destruction; the name, title, and address of the person destroying the Document or Communication; and a description of efforts to locate the Document or Communication and copies of it.

7. If you withhold a Document or Communication on claim of privilege, identify:

a. The name(s) of the author(s) of the Document or Communication;

- b. The name(s) of the addressee(s) and all others who have received or read the Document or Communication;
- c. The names of those who have knowledge of the matters contained in the Document or Communication;
- d. The job title of each individual identified in (i), (ii), and (iii) above;
- e. The date of the Document or Communication;
- f. The present location of the Document or Communication and all copies of it;
- g. The name of each and every person having custody or control of the Document and all copies of it;
- h. A brief description of the nature and subject matter of the Document or Communication; and
- i. The nature and basis of the privilege.

8. The singular number and masculine gender as used herein shall embrace, and be read and applied as, the plural or the feminine or the neuter, as the circumstances may make appropriate, and in order to make the request inclusive rather than exclusive.

9. “Any” includes the word “all” and “all” includes the word “any.” The disjunctive includes the conjunctive and vice versa as necessary to bring within the scope of these Requests Documents or Communications that might otherwise be considered to be beyond its scope.

10. These Requests are continuing in nature. You have a duty to seasonably supplement any prior response to the extent information, objects, or tangible things come into your possession, custody, or control or become known to you.

11. Unless otherwise specified, the relevant time period for each Request is January 1, 2017 to the present.

12. If a Document or Communication responsive to any of these Requests has already been produced, identify:

- a. The name or subject matter of the Document or Communication;

- b. The date on which the Document or Communication was produced;
- c. The persons to whom they were produced; and
- d. The Request(s) to which the Document or Communication is responsive.

REQUESTS FOR PRODUCTION

1. All Documents and Communications relating to receivables owed or owing or claimed to be owed or owing to the Debtors from the following:

- a. Colby
- b. Any entity with which a Debtor has joint venture agreement
- c. Any Director or Officer
- d. Any family member of a Director or Officer
- e. Any entity in which a Director, Officer, or Debtor owns an interest
- f. Any other Insider not included in (a)-(e).

2. All Documents and Communications relating to any agreements between the Debtors and the following:

- a. Colby
- b. Any entity with which a Debtor has joint venture agreement
- c. Any Director or Officer
- d. Any family member of a Director or Officer
- e. Any entity in which a Director, Officer, or Debtor owns an interest
- f. Any other Insider not included in (a)-(e).

3. All Documents and Communications relating to any transfers from January 1, 2017 through the Voluntary Petition Date from the Debtors to the following:

- a. Colby
- b. Any entity with which a Debtor has joint venture agreement
- c. Any Director or Officer

- d. Any family member of a Director or Officer
- e. Any entity in which a Director, Officer, or Debtor owns an interest
- f. Any other Insider not included in (a)-(e).

4. All Documents and Communications relating to MGG's status as a secured creditor, including, but not limited to, all UCC filings and other documents evidencing the granting, attachment or perfection of MGG's liens.

5. All Documents and Communications relating to MGG's status as an equity holder in Debtors.

6. Copies of all Documents filed in the Stegman Arbitration.

7. All Documents and Communications relating to any pre-petition or post-petition proposals to extend financing to, restructure or recapitalize the Debtors or convert debt to equity at the Debtors.

8. All Documents and Communications relating to the former CFO identified in paragraph 54 of the First Day Declaration and his allegation of "purportedly fraudulent activity."

9. All Documents and Communications relating to the Debtors' subsequent investigation of the former CFO's claims of fraudulent activity or any other internal investigation related to potentially fraudulent activity, as referenced in paragraph 55 of the First Day Declaration.

10. All Documents and Communications relating to the uncompleted 2018 Audit.

11. All Documents and Communications evidencing the "considerable hardship upon the Company for its fundraising, refinancing, and M&A activities" resulting from the 2018 Audit, as referenced in paragraph 55 of the First Day Declaration.

12. All Documents and Communications relating to the HRC Fire, including, but not limited to, the investigation related to the cause of the HRC Fire, any inventory (whether owned

by the Debtor or in the Debtors' possession) potentially damaged by the HRC Fire and the estimated value thereof, any insurance claims submitted in connection with the HRC Fire, the proceeds of such insurance claims, and the estimated value of the losses sustained in connection with the HRC Fire.

13. All Documents and Communications relating to the resignation or termination of the Debtors' Former Officers and Executives.

14. All Documents and Communications relating to the process by which each Debtor entered bankruptcy and the reasons for each Debtor's bankruptcy.

15. All of the Debtors' financial statements from 2016 to the present, including draft or incomplete audits.

16. All minutes of meetings of the Debtors' Board of Directors from January 1, 2018 through the Petition Date.

17. Any letters or other indications of interest or proposals to acquire all or a material portion of the Debtors' assets prior to the Petition Date.

18. Copies of all of the Debtors' business plans, both current and historic.

19. A schedule identifying all payments made by the Debtors from the Involuntary Petition Date through the Voluntary Petition Date, including the date of such payment, the payor, the payee, and the reason for the payment.

20. Copies of the Debtors' general liability, personal and real property, product liability, errors and omissions, key-man, directors and officers, worker's compensation, performance bonds and other insurance with deductibles, coverage limits, and other significant terms. Please indicate the name and address of all insurance agents, brokers and companies.

UNITED STATES BANKRUPTCY COURT

Eastern

District of

Kentucky

In re GenCanna Global USA, Inc., et al.¹

Debtor

Case No. 20-50133 (GRS)

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Adv. Proc. No. _____

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: MGG Investment Group, LP, c/o Adam Harris, Schulte Roth & Zabel LLP, 919 Third Ave., New York, NY 10022

(Name of person to whom the subpoena is directed)

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DATE AND TIME
April 20, 2020 at 5:00 pm

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Date: 4/7/2020

CLERK OF COURT

OR

/s/ Geoffrey S. Goodman

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)
Official Committee of Unsecured Creditors, who issues or requests this subpoena, are:

Mr. Geoffrey S. Goodman, Foley & Lardner LLP, 321 North Clark Street, Ste. 3000, Chicago, IL 60654 - ggoodman@foley.com - Tele: 312-832-4500

Notice to the person who issues or requests this subpoena

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PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

☒ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**EXHIBIT A
TO COMMITTEE'S BANKRUPTCY RULE 2004 MOTION**

DEFINITIONS

A. Case-Specific Definitions

1. “Debtor(s)” shall mean GenCanna Global USA, Inc. (“GenCanna USA”); GenCanna Global, Inc. (“GenCanna Global”); and Hemp Kentucky LLC (“Hemp Kentucky”).
2. “Hemp Products” shall mean any hemp (wet or dry) or any products derived therefrom.
3. “Colby” shall mean 4274 Colby, LLC.
4. “Director” shall mean any current or former member of the Debtors’ Boards of Directors.
5. “Officer” shall mean any current or former officer of the Debtors.
6. “Insider” shall have the meaning ascribed to it under 11 U.S.C. § 101(31).
7. “Voluntary Petition Date” shall mean February 5, 2020.
8. “MGG” shall mean MGG Investment Group LP and the lenders identified in Schedule 1(a) of the proposed Debtor-in-Possession Secured Multi-Draw Term Promissory Note, attached as Exhibit A to the DIP Motion.
9. “Debtors’ Lawsuits” shall mean the lawsuits identified in Section 74 of the GenCanna USA Schedules and Section 7 of the GenCanna USA SOFA.
10. “Stegman Arbitration” shall mean *Stegman v. GenCanna Global USA, Inc.*, Case No. AAA 01-20-0000-1034, pending before the American Arbitration Association.
11. “First Day Declaration” shall mean the *Declaration of James Alt in Support of Chapter 11 Filings and First Day Motions* [Dkt. No. 44], dated February 6, 2020.

12. “2018 Audit” shall mean the incomplete audit referenced in paragraphs 53-55 of the First Day Declaration.

13. “HRC Fire” shall mean the fire at the “HRC facility” referenced in paragraph 49 of the First Day Declaration.

14. “Former Officers and Executives” shall mean to the individuals listed in Section 29 of the GenCanna USA SOFA.

15. “GenCanna USA Schedules” shall mean GenCanna USA’s *Schedules of Assets and Liabilities* [Dkt. No. 246], dated March 1, 2020.

16. “GenCanna USA SOFA” shall mean GenCanna USA’s *Statement of Financial Affairs* [Dkt. No. 247], dated March 1, 2020, as it was amended on March 4, 2020 [Dkt. No. 272].

17. “Cowen” shall mean Cowen and Company LLC.

18. “Goldman” shall mean Goldman Sachs & Co., LLC.

19. “Jefferies” shall mean Jefferies, LLC.

20. “Involuntary Petition Date” shall mean January 24, 2020.

21. “DIP Motion” shall mean *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief*, dated February 6, 2020 [Dkt. No. 55].

B. General Definitions

1. “Document(s)” shall have the full meaning ascribed to it under the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure and shall include, without

limitation, all emails, text messages, instant messages, “tweets,” voicemails, and any items in computer or other electronic storage.

2. “Communication(s)” shall mean any oral, written, electronic, or other transfer of information, ideas, opinions, or thoughts by any means from or to any person, thing, or entity, including, but not limited to, discussions, conversations, meetings, conferences, correspondence, memoranda, telephone calls or messages, facsimile transmissions, or any other form of transmittal of information of any kind.

3. “Relate,” “relating,” or “regarding” shall mean evidencing, memorializing, comprising, connected with, mentioning, describing, containing, enumerating, involving or in any way concerning, pertaining, being connected with, reflecting upon, or resulting from a stated subject matter whether in whole or in part or directly or indirectly.

INSTRUCTIONS

1. The Documents and Communications requested herein shall be produced as they are kept in the usual course of business, except that they shall be organized and labeled to correspond with the categories set forth in this document request. Your duty to produce Documents or Communications shall not be limited or affected by the fact that the same Document or Communication is available through another source. If there are no Documents or Communications responsive to a particular request, so state in writing.

2. In responding to these Requests, you are required to furnish all information that is available to you or subject to your reasonable inquiry, including, without limitation, information in the possession of your affiliates, employees, attorneys, accountants, advisors, agents, representatives or other persons directly or indirectly employed by or connected with you, and anyone else otherwise subject to your control.

3. All Documents and Communications that respond, in whole or in part, to any portion of the Requests below shall be produced in their entirety, including all attachments and enclosures.

4. Documents or Communications not otherwise responsive to this Request should be produced if such Documents or Communications refer to, relate to, or explain the Documents or Communications called for by the document request or if such Documents or Communications are attached Documents or Communications called for by the request and constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar Documents or Communications.

5. If any Document or Communication is known to exist but cannot be produced, that Document or Communication is to be specifically identified as precisely as possible and the reasons for the inability to produce the Document or Communication stated.

6. In the event that a Document or Communication called for by a Document request has been destroyed, the response hereto shall identify: the preparer of the Document or Communication; its addressor (if different), addressee, each recipient thereof; each person to whom it was distributed or shown; the date it was prepared; the date it was transmitted (if different); the date it was received; a description of its contents and subject matter; the date of its destruction; the manner of its destruction; the name, title, and address of person authorizing its destruction; the reason(s) for its destruction; the name, title, and address of the person destroying the Document or Communication; and a description of efforts to locate the Document or Communication and copies of it.

7. If you withhold a Document or Communication on claim of privilege, identify:

a. The name(s) of the author(s) of the Document or Communication;

- b. The name(s) of the addressee(s) and all others who have received or read the Document or Communication;
- c. The names of those who have knowledge of the matters contained in the Document or Communication;
- d. The job title of each individual identified in (i), (ii), and (iii) above;
- e. The date of the Document or Communication;
- f. The present location of the Document or Communication and all copies of it;
- g. The name of each and every person having custody or control of the Document and all copies of it;
- h. A brief description of the nature and subject matter of the Document or Communication; and
- i. The nature and basis of the privilege.

8. The singular number and masculine gender as used herein shall embrace, and be read and applied as, the plural or the feminine or the neuter, as the circumstances may make appropriate, and in order to make the request inclusive rather than exclusive.

9. “Any” includes the word “all” and “all” includes the word “any.” The disjunctive includes the conjunctive and vice versa as necessary to bring within the scope of these Requests Documents or Communications that might otherwise be considered to be beyond its scope.

10. These Requests are continuing in nature. You have a duty to seasonably supplement any prior response to the extent information, objects, or tangible things come into your possession, custody, or control or become known to you.

11. Unless otherwise specified, the relevant time period for each Request is January 1, 2017 to the present.

12. If a Document or Communication responsive to any of these Requests has already been produced, identify:

- a. The name or subject matter of the Document or Communication;

- b. The date on which the Document or Communication was produced;
- c. The persons to whom they were produced; and
- d. The Request(s) to which the Document or Communication is responsive.

REQUESTS FOR PRODUCTION

1. All Documents and Communications relating to receivables owed or owing or claimed to be owed or owing to the Debtors from the following:

- a. Colby
- b. Any entity with which a Debtor has joint venture agreement
- c. Any Director or Officer
- d. Any family member of a Director or Officer
- e. Any entity in which a Director, Officer, or Debtor owns an interest
- f. Any other Insider not included in (a)-(e).

2. All Documents and Communications relating to any agreements between the Debtors and the following:

- a. Colby
- b. Any entity with which a Debtor has joint venture agreement
- c. Any Director or Officer
- d. Any family member of a Director or Officer
- e. Any entity in which a Director, Officer, or Debtor owns an interest
- f. Any other Insider not included in (a)-(e).

3. All Documents and Communications relating to any transfers from January 1, 2017 through the Voluntary Petition Date from the Debtors to the following:

- a. Colby
- b. Any entity with which a Debtor has joint venture agreement
- c. Any Director or Officer

- d. Any family member of a Director or Officer
- e. Any entity in which a Director, Officer, or Debtor owns an interest
- f. Any other Insider not included in (a)-(e).

4. All Documents and Communications relating to MGG's status as a secured creditor, including, but not limited to, all UCC filings and other documents evidencing the granting, attachment or perfection of MGG's liens.

5. All Documents and Communications relating to MGG's status as an equity holder in Debtors.

6. Copies of all Documents filed in the Stegman Arbitration.

7. All Documents and Communications relating to any pre-petition or post-petition proposals to extend financing to, restructure or recapitalize the Debtors or convert debt to equity at the Debtors.

8. All Documents and Communications relating to the former CFO identified in paragraph 54 of the First Day Declaration and his allegation of "purportedly fraudulent activity."

9. All Documents and Communications relating to the Debtors' subsequent investigation of the former CFO's claims of fraudulent activity or any other internal investigation related to potentially fraudulent activity, as referenced in paragraph 55 of the First Day Declaration.

10. All Documents and Communications relating to the uncompleted 2018 Audit.

11. All Documents and Communications evidencing the "considerable hardship upon the Company for its fundraising, refinancing, and M&A activities" resulting from the 2018 Audit, as referenced in paragraph 55 of the First Day Declaration.

12. All Documents and Communications relating to the HRC Fire, including, but not limited to, the investigation related to the cause of the HRC Fire, any inventory (whether owned

by the Debtor or in the Debtors' possession) potentially damaged by the HRC Fire and the estimated value thereof, any insurance claims submitted in connection with the HRC Fire, the proceeds of such insurance claims, and the estimated value of the losses sustained in connection with the HRC Fire.

13. All Documents and Communications relating to the resignation or termination of the Debtors' Former Officers and Executives.

14. All Documents and Communications relating to the process by which each Debtor entered bankruptcy and the reasons for each Debtor's bankruptcy.

15. All of the Debtors' financial statements from 2016 to the present, including draft or incomplete audits.

16. All minutes of meetings of the Debtors' Board of Directors from January 1, 2018 through the Petition Date.

17. Any letters or other indications of interest or proposals to acquire all or a material portion of the Debtors' assets prior to the Petition Date.

18. Copies of all of the Debtors' business plans, both current and historic.

19. A schedule identifying all payments made by the Debtors from the Involuntary Petition Date through the Voluntary Petition Date, including the date of such payment, the payor, the payee, and the reason for the payment.

20. Copies of the Debtors' general liability, personal and real property, product liability, errors and omissions, key-man, directors and officers, worker's compensation, performance bonds and other insurance with deductibles, coverage limits, and other significant terms. Please indicate the name and address of all insurance agents, brokers and companies.