Form 32 (Rule 8-1(4))

No. **S1910194**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, C. 57

AND

IN THE MATTER OF ENERGOLD DRILLING CORP., CROS-MAN DIRECT UNDERGROUND LTD., EGD SERVICES LTD., BERTRAM DRILLING CORP. AND OMNITERRA INTERNATIONAL DRILLING INC.

PETITIONERS

NOTICE OF APPLICATION

Name of Applicant: Extract Advisors LLC, in its capacity as the administrative agent for secured noteholders (the "**Agent**")

To: the Service List attached as **Schedule "A"**

TAKE NOTICE that an application will be made by the Agent to the Honourable Justice Milman at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on January 17, 2020 at 9:00 a.m. for the Order set out in Part 1 below.

PART 1: ORDER SOUGHT

1. An Order substantially in the form attached as **Schedule "B"** hereto (the "**Sanction Order**"), *inter alia*,

   (a) sanctioning the Amended Plan of Compromise and Arrangement dated December 19, 2019 (the "**Plan**")[1] considered at the Creditors' Meeting held in Vancouver, British Columbia on January 13, 2020, substantially in the form attached to the Sanction Order as "Schedule B";

[1] Capitalized terms not otherwise defined herein have the meanings given to them in the Plan.

(b) authorizing the Agent, the Petitioners and the Monitor to take such steps as may be necessary to implement the Plan and complete such transactions as are contemplated by the Plan; and

(c) granting releases to certain Releasees (as defined below).

2. An Order substantially in the form attached as **Schedule "C"** hereto vesting the purchased shares in the Latin America Unit to the Agent.

3. An Order substantially in the form attached as **Schedule "D"** hereto vesting the purchased shares in the EMEA Unit to the Agent.

4. An Order substantially in the form attached as **Schedule "E"** hereto vesting the purchased shares in the BDI Unit to the Agent.

5. An Order substantially in the form attached as **Schedule "F"** hereto vesting the Cros-Man Assets to Cros-Man Direct Underground (Acq) Inc.

6. An Order substantially in the form attached as **Schedule "G"** hereto vesting the Residual Assets to Energold Drilling (Canada) Inc.

7. Such further relief as this Honourable Court deems just.

PART 2: FACTUAL BASIS

1. On September 13, 2019, the Honourable Justice Milman granted the Initial Order pursuant to the CCAA.

2. Pursuant to the Sales Process Order, the Financial Advisor and the Petitioners under the Sales Process Order and the SSP conducted a marketing process that involved identifying a list of potential bidders and preparing a confidential information memorandum that was made available to interested parties and conducting an auction in respect of assets which received multiple qualified offers.

3. The Agent is the administrative agent for Noteholders, who are secured creditors with a first ranking security interest over the majority of Energold Group's' assets, pursuant to the Note Purchase Agreement.

4. Pursuant to the SSP, the Agent placed bids for the Purchased Shares and the Cros-Man Assets, which bids were deemed to be the stalking horse bids.

5. As of December 16, 2019, the total amount owing to the Noteholders is CAD$25,701,919.58.

6. On October 31, 2019, the Financial Advisor conducted an auction. There were no other qualified bids except for the stalking horse bids for the Latin America Unit, the BDI Unit and the Cros-Man Assets under the SSP. There was one

other qualified bidder for the EMEA Unit, which resulted in an auction of the EMEA Unit with the final winning bid by the Agent.

7. Following the conclusion of the SSP, the Agent, as purchaser was therefore the successful bidder for the Purchased Shares and the Cros-Man Assets.

8. Pursuant to the SSP, the Agent entered into the following Purchase Agreements:

   (a) share purchase agreement with Energold and Omniterra for the purchase of the Purchased Shares in the Latin America Unit for a credit bid amount of $4,160,000 (giving effect to $2,640,000 working capital adjustment due to assumption of debt owed by Energold to the Economic Development Corporation of Canada (the "**EDC**")) and a cash payment of $2,000, subject to further working capital adjustments to be calculated in due course;

   (b) share purchase agreement with Energold for the purchase of the Purchased Shares in the EMEA Unit for a credit bid amount of $3,050,000, subject to further working capital adjustments to be calculated in due course;

   (c) share purchase agreement with Energold for the purchase of the Purchased Shares in the BDI Unit for a credit bid amount of $1,500,000, subject to further working capital adjustments to be calculated in due course; and

   (d) asset purchase agreement with Energold for the purchase of the Cros-Man Assets for a credit bid amount of $3,000,000, subject to further working capital adjustments to be calculated in due course.

9. The Agent, as purchaser, will also purchase the Residual Assets for a credit bid amount of $3,869,755.

10. The total amount of the Credit Bid Amount for the Purchased Assets is $15,579,755, subject to further working capital adjustments to be calculated in due course and the Agent's reservation of rights regarding the fair market valuation of the assets for all other purposes except for Plan approval purposes.

11. The Petitioners and the Agent wish to enter into an arrangement that will see the paydown and extinguishment of the debt owing by the Energold Group to the Noteholders by application of the Credit Bid Amount to each of the Latin America Unit, the EMEA Unit, the BDI Unit, the Cros-Man Assets and the Residual Assets. The Noteholders in return will receive their pro rata share of shares in a new acquisition vehicle (the "**US LP**") which will manage and run the business formally owned by the Energold Group.

12. The Plan will allow for the continued operations of the business and will derive a greater benefit to stakeholders, including employees and trade suppliers.

13. The sale transactions pursuant to the Purchase Agreements will be concluded through implementation of the Plan, the Sanction Order and the Vesting Order which will transfer the Energold Group's assets directly or indirectly to the US LP.

14. On December 19, 2019, the Agent sought and was granted approval of the Meeting Order. The Meeting Order authorized the filing of the form of the plan of compromise and arrangement dated December 19, 2019, authorized the Monitor to call the Creditors' Meeting and outlined the notice that was to be provided to the Affected Noteholders regarding the meeting.

15. The Monitor, on behalf of the Agent, provided the notice required under the Meeting Order by taking the following steps in accordance with the Meeting Order:

    (a) *Notice to Affected Noteholders*: The Monitor, on behalf of the Agent, caused to be sent by email copies of the Information Package, to each Affected Noteholder by e-mail by December 23, 2019, at the last known email address of such Affected Noteholder as set out in the books and records of the Agent, or to such other address subsequently provided to the Agent in writing by such Affected Noteholder.

    (b) *Posting on Monitor's Website:* The Monitor posted electronic copies of the Information Package on its website on or before December 23, 2019. The Monitor will ensure that the Information Package remains posted on its website until at least the Business Day following the Implementation Date.

16. The Meeting Order and the Plan provided for one class of Affected Noteholders, being the Affected Noteholder Class.

17. The Meeting Order authorized the Monitor to call, hold and conduct the Creditors' Meeting on January 13, 2020, for the purpose of considering, and if deemed advisable by the Affected Noteholder Class, voting in favour of, with or without variation, the Plan Resolution to approve the Plan.

18. On January 13, 2020, in accordance with the Meeting Order, the Agent served on the service list maintained in these proceedings the Plan dated January 13, 2020, which contained amendments to the version dated December 19, 2019 attached to the Meeting Order.

19. In compliance with the Meeting Order, the Creditors' Meeting was held on January 13, 2020. At the Creditors' Meeting, the Plan was voted on, agreed to, and approved by the Required Majority, all in conformity with the CCAA and the terms of the Meeting Order. The Plan was unanimously approved by the Affected Noteholder Class present and voting in person or by proxy in accordance with the CCAA.

20. The Agent is now seeking approval of the Sanction Order, which provides for, among other things, implementation of the Plan and vesting of the Purchased Assets directly or indirectly to the Agent and the US LP.

21. The Monitor, in its Third Report, has stated that, in its view:

    (a) the SSP was fair and transparent and all participants were treated consistently and with equal access to information;

    (b) the accepted offers represent the highest and best offers resulting from the SSP;

    (c) concluding the transactions contemplated by the accepted offers will enable Energold to transition its assets to new ownership and mitigate the significant costs of protracted CCAA proceedings and/or an extended sales process;

    (d) the Plan provides for an effective way to complete the transactions contemplated by the accepted offers from the SSP and transfer ownership of the Purchased Assets to the Noteholders in a manner that will enable the Noteholders to each receive their proportionate share of the Purchased Assets through the issuance of partnership units in the US LP; and

    (e) the Plan is fair and reasonable and is in the best interests of the stakeholders.

22. The Notice of Creditors' Meeting and Sanction Application included a request that any Affected Noteholder that wished to oppose this Sanction Application hearing serve on the Service List a notice setting out the basis for such opposition and a copy of the materials to be used at such hearting at least two (2) days before the date of the hearing, or such shorter time as the Court, by Order, allowed.

23. To date, the Agent is not aware of any objection by an Affected Creditor to the Creditors' Meeting, the provisions of the Plan, or the Sanction Application before this Court.

24. Upon the implementation of the Plan:

    (a) the Purchased Assets shall be transferred pursuant to the Vesting Orders;

    (b) the US LP will directly or indirectly hold the Purchased Assets which will be managed by the general partner of the US LP;

    (c) the Affected Noteholders will hold their Affected Noteholder Pro Rata Share of the partnership units in the US LP, which will manage and run the business formerly owned by the Energold Group;

(d) the outstanding obligations of Energold to the Affected Noteholders up to the Affected Noteholder Claim shall be fully extinguished; and

(e) all Intercompany Working Capital Obligations shall be extinguished.

PART 3: LEGAL BASIS

1. Section 6(1) of the CCAA provides this Court express jurisdiction to sanction a plan of compromise or arrangement where the Required Majority of creditors has approved the plan.

2. The general requirements for court approval of a CCAA plan are well established:

   (a) there must be strict compliance with all statutory requirements;

   (b) all materials filed and procedures carried out must be examined to determine if anything has been done or purported to have been done which is not authorized by the CCAA; and

   (c) the plan must be fair and reasonable.

Re Canadian Airlines Corp, 2000 ABQB 442
at para 60, leave to appeal denied, 2000 ABCA 238
Re Sino-Forest Corp, 2012 ONSC 7050
at para 51, leave to appeal denied, 2013 ONCA 456
Re Bul River Mineral Corporation,
2015 BCSC 113 at para 40
Re TLC The Land Conservancy of British Columbia, Inc.
2015 BCSC 656 at para 47

There has been strict compliance with all statutory requirements

3. In the first part of the test for sanctioning a plan, the factors considered by the courts include whether:

   (a) the applicant comes within the definition of "debtor company" under section 2 of the CCAA;

   (b) the applicant has total claims in excess of $5 million;

   (c) the notice calling the creditors' meeting was sent in accordance with the Meeting Order;

   (d) the creditors were properly classified;

   (e) the meeting of creditors was properly constituted;

   (f) the voting was properly carried out; and

(g) the plan was approved by the Required Majority.

Canadian Airlines, at para 62

4. The Agent and the Energold Group have complied with all procedural requirements of the CCAA, the Initial Order and all subsequent orders granted by the Court, and the requirements noted above have all been satisfied in this case:

   (a) At the granting of the Initial Order, this Court found that the Energold Group met the statutory requirements for relief under the CCAA and that they were all affiliated debtor companies with total claims against them exceeding $5 million and insolvent.

   (b) The Plan was filed in accordance with the Meeting Order.

   (c) The Information Package (including the Notice of Creditors' Meeting and Sanction Application) was delivered and posted on the Monitor's Website in accordance with the terms of the Meeting Order.

   (d) The classification of the Affected Noteholders into one Affected Noteholder Class to vote on a resolution to approve the Plan was approved by the Court in the Meeting Order.

   (e) The Creditors' Meeting was properly carried out in accordance with the Meeting Order.

   (f) Pursuant to the Meeting Order, the Plan Resolution was approved by the number of Affected Noteholders representing at least a majority in number of the Affected Noteholder Claims, whose Affected Noteholder Claims represent at least two-thirds in value of the Affected Noteholders who validly voted on the Plan Resolution at the Creditors' Meeting. The Plan was unanimously approved by the Affected Noteholder Class present or voting by proxy at the Creditors' Meeting.

5. Sections 6(3), 6(5) and 6(6) of the CCAA provide that the court may not sanction a plan unless the plan contains certain specified provisions concerning Crown claims, employee claims and pension claims.

6. The Plan satisfies the requirements of Section 6(3): it provides that the Monitor shall, within six months after the Sanction Order, pay in full, on behalf of the Energold Group, all Crown Priority Claims that were outstanding as at the Filing Date, from the Priority Claim Reserve.

7. The Plan satisfies the requirements of Section 6(5): it provides that the Monitor shall, immediately after the Sanction Order, pay in full, on behalf of the Energold Group, all Employee Priority Claims to the extent unpaid prior to the Implementation Date, from the Priority Claim Reserve.

8. No "Pension Priority Claims" exist that require payment for under the Plan pursuant to Section 6(6) of the CCAA.

9. Further, the Plan complies with Section 6(8) of the CCAA as the Plan does not provide for the payment of any equity claims.

Nothing has been done or purported to be done that is not authorized by the CCAA

10. Courts rely on the reports of the Monitor and on submissions of other parties to assess whether anything has been done or purported to have been done that is not authorized by the CCAA.

Canadian Airlines, at para 64
Re CanWest Global Communications Corp, 2010 ONSC 4209, at para 17
TLC, at para 51

11. The Court has been kept apprised of ongoing developments throughout the CCAA Proceeding by way of a number of reports from the Monitor, application materials and affidavits filed with the Court.

12. The Monitor's reports to the Court have made no reference to any conduct or action by the Agent or the Petitioners that is not authorized by the CCAA.

13. In connection with the motions for extensions of the Stay Period, the Monitor has reported on each occasion that in its view, the Petitioners have been acting in good faith and with due diligence throughout the course of these proceedings.

The Plan is fair and reasonable

14. A plan must be fair and reasonable – not perfect – to be sanctioned.

15. CCAA courts measure the fairness and reasonableness of a plan against the available commercial alternatives, weigh the equities and balance the relative degrees of prejudice that would flow from granting or refusing the relief being sought under the CCAA.

Canadian Airlines, at paras 3 and 179
CanWest Global, at para 19

16. Factors considered by the courts when evaluating if a plan is fair and reasonable have included:

    (a) classification of creditors and creditor approval;

    (b) what creditors would receive on liquidation or bankruptcy compared to the plan;

    (c) alternatives to the plan and bankruptcy;

(d) oppression;

(e) unfairness to shareholders; and

(f) the public interest.

CanWest Global, at para 21
Sino-Forest, at para 61
Bul River, at para 69
TLC, at para 51

17. The Plan is fair and reasonable in the circumstances for the following reasons:

(a) The Financial Advisor and the Petitioners under the Sales Process Order and the SSP conducted a fair and reasonable marketing process that involved identifying a list of potential bidders and preparing a confidential information memorandum that was made available to interested parties and conducting an auction in respect of assets which received multiple qualified offers.

(b) The Plan will see the paydown of the debt owing by the Energold Group to the Noteholders by application of the Credit Bid to each of the Latin America Unit, the EMEA Unit, the BDI Unit, the Cros-Man Assets and the Residual Assets. The Noteholders in return will receive their pro rata share of units in a new limited partnership acquisition vehicle which will manage and run the business formerly owned by the Energold Group. This will preserve operations and employee jobs.

(c) The Plan provides for the satisfaction, settlement, extinguishment, release and discharge of all Affected Noteholder Claims.

(d) Pursuant to the Meeting Order, the Plan was unanimously approved by the Affected Noteholder Class in accordance with the CCAA. The level of approval by creditors is an important measure of whether a plan is fair and reasonable. Affected Noteholders have also been given an opportunity to oppose this Sanction Application, and the Agent is not aware of any opposition to date to the sanctioning of the Plan or the vote at the Creditors' Meeting.

Canadian Airlines, at para 97

(e) The Plan treats Affected Noteholders fairly and provides for the same distribution within the single class of Affected Noteholders

(f) The releases provided under the Plan are appropriate under the circumstances, as further discussed below.

(g) The Plan does not affect Excluded Creditors to the extent of their Excluded Claims. Nothing in the Plan affects the Energold Group's rights

and defences, both legal and equitable, with respect to any Excluded Claims, including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Excluded Claims.

(h) The Noteholders and certain Excluded Creditors will receive more from the implementation of the Plan than in a bankruptcy or forced liquidation of the Energold Group.

The Vesting Orders are appropriate and should be authorized by the Court

18. Section 36(1) of the CCAA prohibits a debtor company from selling or disposing of assets outside the ordinary course of business unless authorized to do so by the court.

19. Section 36(2) of the CCAA requires a debtor company that applies to the court for an authorization to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

20. Section 36(3) sets out the factors to be considered in deciding whether to grant authorization to sell or dispose of assets:

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

(b) whether the monitor approved the process leading to the proposed sale or disposition;

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

(d) the extent to which the creditors were consulted;

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

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

21. The Vesting Orders are necessary in order to complete the SSP, close the credit bid transactions and implement the Plan, which is fair and reasonable for the reasons outlined above.

22. The Monitor has approved the SSP leading to the credit bids and Vesting Orders.

23. The Monitor has filed with the court the Third Report of the Monitor, in which the Monitor concludes that the transactions will enable Energold to transition its

assets to new ownership and mitigate the significant costs of the CCAA proceedings and/or an extended sales process.

24. The sale and disposition of the Purchased Assets would be more beneficial to the stakeholders than a sale or disposition under a bankruptcy or forced liquidation of the Energold Group.

25. The Noteholders are secured creditors with a first-ranking security interest over the majority of the Energold Group's assets. The Noteholders have voted in favour of the Plan.

26. The Vesting Orders give effect to the Plan, and as described above, the Noteholders and certain Excluded Creditors will receive more from the implementation of the Plan than in a bankruptcy or forced liquidation of the Energold Group.

27. The consideration to be received for the Purchased Assets is reasonable and fair, taking into account the results of the SSP and the valuation of the Residual Assets.

The releases of the Releasees are appropriate under the circumstances

28. The Plan provides for the full and final release of Energold from any and all claims of any Affected Noteholder, to the extent of their Affected Noteholder Claim, arising out of or in connection with the Notes or the Plan.

29. The Plan provides for full and final release of certain restructuring support parties, being the Petitioners' legal counsel, the Financial Advisor, the Monitor, the Agent and their respective subsidiaries and affiliates and each of their respective shareholders, partners, officers, directors, current and former employees, financial advisors, legal counsel and agents (being referred to collectively as the "**Third Party Released Parties**", and together with Energold as the "**Releasees**"), solely with respect to claims arising out of or in connection with the Affected Noteholder Claims or the Plan.

30. It is well-established that a plan of compromise or arrangement may include releases in favour of third parties.

31. A plan is a contract between a debtor and its creditors, and therefore parties are entitled to include in it any terms that could be included in a contract.

Olympia & York Developments Ltd v Royal Trust Co (1993), 17 CBR (3d) 1 (Ont Gen Div) at para 74

32. In addition, CCAA courts have the jurisdiction to approve plans containing third-party releases.

ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp, 2008 ONCA 587, leave to appeal denied, [2008] SCCA No 337

Re Angiotech Pharmaceuticals Inc, 2011 BCSC 450 at para 12

33. For example, in *MuscleTech*, the Ontario Superior Court of Justice noted that it is "not uncommon in CCAA proceedings, in the context of a plan of compromise or arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made" and, after review of U.S. and Canadian authorities, held that "the jurisdiction of the courts to grant Third Party Releases has been recognized both in Canada and the U.S."

Re MuscleTech Research and Development Inc, (2006), 25 CBR (5th) 231 (Ont Sup Ct) at paras 8-9

34. In *ATB Financial*, the Court of Appeal for Ontario unanimously found that a CCAA court could approve a plan of compromise or arrangement that included a release of claims against parties other than the debtor company or its directors, and that third-party releases negotiated as part of an arrangement that reasonably relate to a proposed restructuring fall within the objectives and flexible framework of the CCAA:

> On a proper interpretation, in my view, the CCAA permits the inclusion of third party releases in a plan of compromise or arrangement to be sanctioned by the court where those releases are reasonably connected to the proposed restructuring. I am led to this conclusion by a combination of (a) the open-ended, flexible character of the CCAA itself, (b) the broad nature of the term "compromise or arrangement" as used in the Act, and (c) the express statutory effect of the "double-majority" vote and court sanction which render the plan binding on all creditors, including those unwilling to accept certain portions of it. The first of these signals a flexible approach to the application of the Act in new and evolving situations, an active judicial role in its application and interpretation, and a liberal approach to that interpretation. The second provides the entree to negotiations between the parties affected in the restructuring and furnishes them with the ability to apply the broad scope of their ingenuity in fashioning the proposal. The latter afford necessary protection to unwilling creditors who may be deprived of certain of their civil and property rights as a result of the process.

ATB Financial, at para 43

35. A third-party release will be justified as part of a compromise or arrangement if there is a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan.

ATB Financial, at para 69

36. CCAA courts have approved third-party releases in the context of plans of arrangement and settlement agreements where the releases are rationally related to a resolution of the debtors' claims, the releases will benefit creditors generally, and the releases are not overly broad. Factors considered by courts in determining whether to approve third party releases include:

    (a) whether the parties to be released are necessary and essential to the restructuring of the debtor;

    (b) whether the parties who are to have claims against them released are contributing in a tangible and realistic way to the plan;

    (c) whether the claims to be released are rationally related to the purpose of the plan and necessary for it;

    (d) whether the plan would fail without the releases;

    (e) whether the plan would benefit not only the debtor companies but creditors generally;

    (f) whether the creditors voting on the plan had knowledge of the nature and effect of the releases; and

    (g) whether the releases are fair and reasonable and not overly broad.

ATB Financial, at paras 70-1
Bul River, at para 80
Re Target Canada Co,
2016 ONSC 3651 at para 36

37. In determining whether to approve a third-party release, the Court will consider the circumstances of the case and the objectives of the CCAA. No single factor set out above will be determinative.

Target, at para 38
Kitchener Frame Ltd (Re) 2012
ONSC 234 at para 82

38. The Agent submits that the third-party releases in the Plan are fair and reasonable for the reasons outlined below.

The Third Party Released Parties have made necessary and tangible contributions to this CCAA Proceeding

39. CCAA courts have granted releases in favour of parties that make a "tangible and realistic" contribution in a CCAA proceeding.

Target, at para 42
Angiotech, at para 12
Sino Forest, at para 73

40. In particular, CCAA courts have routinely sanctioned releases in favour of third parties such as the Monitor, legal counsel, financial advisors, and other parties retained to advise the petitioners or the Court throughout the conduct of a CCAA proceeding that contribute to the success of a CCAA proceeding.

Re Cline Mining Corporation,
2015 ONSC 622 at paras 12 and 28
Bul River, at paras 76 and 83
Target, at para 32

The Releases are appropriately narrow and rationally connected to the purposes of the Plan

41. The Releases in the Plan are appropriately narrow and rationally connected to the overall purposes of the Plan and the CCAA.

42. The Releases in favour of the Third Party Released Parties are the result of the significant and material contributions they made to the successful resolution of these CCAA proceedings.

43. The Releases do not discharge any Petitioner from any Excluded Claim, any Third Party Released Party from liability for gross negligence or wilful misconduct, or any Releasee from any obligation created by or existing under the Plan or any related document.

The Plan benefits creditors generally

44. The Plan is demonstrably to the benefit of all the Affected Noteholders in respect of the Affected Noteholder Claims.

Creditors had knowledge of the nature and effect of the Releases

45. Full notice and disclosure of the Releases contained in the plan has been given to the service list maintained in these proceedings and posted on the Monitor's website.

46. Pursuant to the Meeting Order, Affected Noteholders have the opportunity to appear before the court and register objections to the Plan notwithstanding the Creditors Meeting.

47. As noted above, no objections have been received to date to the material terms of the Plan, including the Releases.

The Releases are fair and reasonable and not overly broad

48. The Releases contained in the Plan to be fair and reasonable in the circumstances.

Other Grounds

49. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

50. *Supreme Court Civil Rules*, including Rules 8-1 and 13-1.

51. The inherent and equitable jurisdiction of this Honourable Court and such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

PART 4: MATERIAL TO BE RELIED ON

1. Third Report of the Monitor dated December 18, 2019.
2. Fourth Report of the Monitor, to be filed.
3. Meeting Order, pronounced December 19, 2019
4. Affidavit #5 of Mark Berger, made November 1, 2019.
5. Affidavit #2 of Mike Bell, made November 5, 2019.
6. Affidavit #2 of Matthew Freeman, made December 18, 2019.
7. Pleadings and other materials filed herein.
8. Such further and other materials as counsel may advise and this Honourable Court may permit.

The Applicant estimates that the application will take 1 hour.

☐ This matter is within the jurisdiction of a Master.

☑ This matter is not within the jurisdiction of a Master. Justice Milman is seized of this proceeding.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application:

(a) file an Application Response in Form 33;

(b) file the original of every Affidavit, and of every other document, that:

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding; and

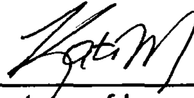
(c) serve on the Applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of filed Application Response;

(ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: January 14, 2020



Signature of Lawyer for Applicant
Lawyer: Christopher J. Ramsay / Katie G. Mak

This NOTICE OF APPLICATION is prepared by Katie G. Mak of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.643.3105, Fax #: 604.687.6314, Email: KMak@cwilson.com) (File #: 49117-0001).

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs __________ of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

____

____

____

Date: ______________________ ______________________________
[dd/mmm/yyyy] Signature of ☐ Judge ☐ Master

APPENDIX

[*The following information is provided for data collection purposes only and is of no legal effect.*]

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matters concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above

Schedule "A"

NO. S1910194
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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PETITIONERS

SERVICE LIST

[as at December 19, 2019]

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