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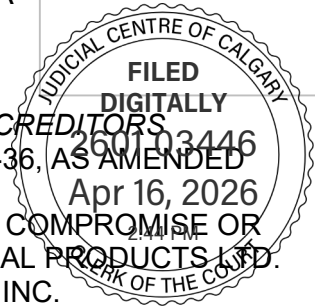
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF RDFN FUM NATURAL PRODUCTS LTD.  
AND RDFN FUM NATURAL PRODUCTS INC.

DOCUMENT **BENCH BRIEF OF RDFN FUM NATURAL PRODUCTS LTD.  
AND RDFN FUM NATURAL PRODUCTS INC.**

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**BENCH BRIEF OF RDFN FUM NATURAL PRODUCTS LTD. AND  
RDFN FUM NATURAL PRODUCTS INC.  
WITH RESPECT TO THE APPLICATION  
TO BE HEARD BY  
THE HONOURABLE JUSTICE A.G. KUNTZ**

**April 23, 2026 at 10:00 a.m.**

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## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION.....	1
II. FACTS .....	2
III. ISSUES.....	8
IV. LAW AND ARGUMENT.....	9
V. CONCLUSION .....	16
VI. LIST OF AUTHORITIES.....	17

## I. INTRODUCTION

1. This bench brief is submitted by RDFN FUM Natural Products Ltd. ("**FUM Canada**") and RDFN FUM Natural Products Inc. ("**FUM US**", FUM US and FUM Canada are collectively referred to as, the "**Applicants**"), in support of the Applicants' application (the "**Application**") seeking:

- (a) an Order (the "**Stay Extension and Guarantee Stay Order**") granting, among other things, the following relief:
  - (i) extending the "**Stay Period**" (as such term is defined in paragraph 14 of the Amended and Restated Initial Order, granted by the Honourable Justice J.S. Little on March 12, 2026 (the "**ARIO**") in the within proceedings (the "**CCAA Proceedings**")), from May 26, 2026 to July 31, 2026;
  - (ii) extending the stay of proceedings granted under the ARIO (the "**Stay**"), to include a stay of any claims against any of the former, current, or future directors, officers, or employees of the Applicants (collectively, the "**Guarantee Stay Parties**") with respect to any claim that arose prior to February 4, 2026 (the "**NOI Filing Date**"), or relates in whole or in part to facts or matters in existence before the NOI Filing Date, which relates to any obligations of the Guarantee Stay Parties under or in connection with any guarantee, indemnity, suretyship, or other claim, contract, or agreement, by which any Guarantee Stay Party may be asserted or alleged to be liable for any obligations, liabilities, or indebtedness, of any Applicant(s) (collectively, the "**Guarantee Claims**");
  - (iii) declaring that any claims under the BDC Guarantee (as defined below), are Guarantee Claims against Guarantee Stay Parties and are subject to such Stay;
  - (iv) approving the Monitor's (as defined below) actions, activities, and conduct, as set out in the reports filed by the Monitor; and,
  - (v) approving the accounts of the Monitor and the Monitor's legal counsel, Osler, Hoskin & Harcourt LLP and Norton Rose Fulbright Canada LLP, for their respective fees and disbursements; and,

- (b) an Order (the “**Claims Process Order**”) approving the Applicants’ proposed claims process attached as Appendix “A” to the proposed form of Claims Process Order (the “**Claims Process**”), for the determination of any and all claims asserted against the Applicants, and authorizing the Monitor and the Applicants to implement and carry out the Claims Process
2. In these CCAA Proceedings, the Applicants have advanced a restructuring premised on the preparation of one or more plans of arrangement, to be submitted by one or both of the Applicants. The Applicants have acted in good faith and with due diligence in pursuing that goal. The relief sought in the Application is appropriate in the circumstances, and will materially advance the Applicants’ restructuring plan, by: (i) identifying all claims against the Applicants, pursuant to the Claims Process, so that such claims may be addressed within these proceedings; (ii) providing an extension to the Stay Period, within which the Applicants and the Monitor may carry out the Claims Process, engage with creditors and stakeholders, and take other steps to advance the preparation of a plan or plans; and, (iii) providing the Applicants’ Guarantee Stay Parties with breathing room and the capacity to devote their full attention to the restructuring process.

## II. **FACTS**

3. Capitalized terms used in this bench brief and not otherwise defined have the same meaning as is ascribed to such terms in the Affidavit of Braeden Pauls, sworn on April 15, 2026 (the “**Pauls #3 Affidavit**”).

### A. **Background**

4. The Applicants are engaged in the development, production, and sale of nicotine-free, smokeless, vaporless, non-electronic flavoured air devices under the FÜM brand (the “**Products**”). The Products are an alternative health product, frequently used as a behavioral aid for individuals seeking to cease their smoking or vaping habits.

**Affidavit of Braeden Pauls, sworn on February 23, 2026 (“Pauls #1 Affidavit”) at para. 15.**

5. On February 4, 2026, the Applicants each filed a Notice of Intention to Make a Proposal (the “**NOIs**”, and such proceedings, the “**Proposal Proceedings**”) under and pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*. Alvarez and Marsal Canada Inc.

(“**A&M**”) was appointed to act as the proposal trustee of the Applicants (in such capacity, the “**Proposal Trustee**”) in the Proposal Proceedings.

**Affidavit of Braeden Pauls, sworn on April 15, 2026 (“Pauls #3 Affidavit”) at para. 2.**

6. On March 2, 2026, the Honourable Justice J.T. Neilson granted an initial order (the “**Initial Order**”), in respect of the Applicants, in these CCAA Proceedings, under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). Among other things, the Initial Order: (i) continued the Applicants’ Proposal Proceedings under the CCAA; (ii) established the Stay against the Applicants for an initial ten (10) day Stay Period; and, (iii) appointed A&M as the monitor (when referred to in such capacity, the “**Monitor**”) of the Applicants.

**Pauls #3 Affidavit at para. 3.**

7. On March 12, 2026, the Honourable Justice J.S. Little granted the ARIO, in respect of the Applicants. The ARIO, among other things, extended the Stay Period, to May 26, 2026.

**Pauls #3 Affidavit at para. 4.**

8. The Applicants have also commenced proceedings under Chapter 15 of the *U.S. Bankruptcy Code* (the “**Chapter 15 Proceedings**”) before the United States Bankruptcy Court, District of Nevada (the “**US Bankruptcy Court**”). On March 24, 2026, the US Bankruptcy Court granted two orders in relation to motions by the Applicants seeking final post-recognition relief within the Chapter 15 Proceedings and the joint administration of the Applicants’ estates.

**Pauls #3 Affidavit at paras. 36-37 and Exhibit “C”.**

**B. The Applicants’ Activities Since the ARIO**

9. The Applicants have continued to advance their restructuring since the granting of the ARIO, on March 12, 2026. Specifically, among other things, the Applicants’ activities have included:
  - (a) continuing to advance the Chapter 15 Proceedings;
  - (b) engaging with the Applicants’ professional advisors and the Monitor in relation to various cross-border matters arising in relation to the CCAA Proceedings and the Chapter 15 Proceedings, and other international operational matters, including

with respect to the treatment of the Applicants' pre- and post-filing tax obligations in various jurisdictions and certain of the Applicants' insurance policies;

- (c) engaging with the Applicants' professional advisors and the Monitor in relation to the formulation of a plan or plans of arrangement, including continuing in-progress preparatory work such as the preparation of a long-term financial forecast;
- (d) engaging with various creditors and stakeholders, including, among others, contractual counterparties and other trade creditors, regarding the Applicants' CCAA Proceedings, post-filing credit and payment terms (including the resolution of certain post-filing credit issues with operationally critical advertising partners), the overall restructuring plan being advanced by the Applicants, and other matters;
- (e) responding to questions and enquiries from creditors and stakeholders, concerning these CCAA Proceedings;
- (f) engaging with the Monitor and certain creditors regarding potential disputes concerning their claims;
- (g) working with the Monitor and the Applicants' professional advisors to prepare the Claims Process;
- (h) working with the Monitor to prepare a Third Cash Flow Forecast (as defined in the Pauls #3 Affidavit, and anticipated to be attached to the forthcoming Second Report of the Monitor); and,
- (i) carrying on operations in the ordinary course.

**Pauls #3 Affidavit at para. 8.**

### **C. BDC Guarantee and Other Guarantee Claims**

10. FUM Canada is the borrower under a Letter of Offer, dated August 15, 2024 (the "**BDC Loan Agreement**"), pursuant to which Business Development Bank of Canada ("**BDC**") advanced, to FUM Canada, an unsecured term loan (the "**BDC Loan**") denominated in Canadian Dollars.

**Pauls #3 Affidavit at para. 19(a); Pauls #1 Affidavit at paras. 40(a)(i), 43(a) and Exhibit "P".**

11. As at the NOI Filing Date, BDC was owed approximately CAD\$312,000 in respect of the BDC Loan.

**Pauls #3 Affidavit at para. 19(b); Pauls #1 Affidavit at para. 40(a)(i).**

12. The BDC Loan is guaranteed by Braeden Pauls (“**Braeden**”), Daniel Ogden (“**Daniel**”), and Josiah Pauls (“**Josiah**”, Braeden, Daniel, and Josiah, are collectively referred to as, the “**Personal Guarantors**”), pursuant to a guarantee, dated August 22, 2024 (the “**BDC Guarantee**”), granted to and in favour of BDC by the Personal Guarantors.

**Pauls #3 Affidavit at para. 19(c) and Exhibit “A”; Pauls #1 Affidavit at para. 43(b) and Exhibit “Q”.**

13. The payments in respect of the BDC Loan were historically made by way of automated, pre-authorized debit (“**PAD**”) drawn upon FUM Canada’s primary bank account. FUM Canada took steps to cancel this PAD following the NOI Filing Date, but it appears that such cancellation was not completed by the bank. As a result, BDC inadvertently received payments in respect of the BDC Loan, following the NOI Filing Date (collectively, the “**Post-Filing PADs**”).

**Pauls #3 Affidavit at paras. 20-22.**

14. In April 2026, a representative of FUM Canada contacted a representative of BDC with respect to the Post-Filing PADs. BDC’s representative advised that the Post-Filing PADs would be returned, but “since the borrower has entered into CCAA, if the payments are not resolved, the bank will proceed to demand the loan against the guarantors”.

**Pauls #3 Affidavit at para. 23 and Exhibit “B”.**

15. Each of the Personal Guarantors is an employee or director of FUM Canada. Specifically, the Personal Guarantors’ roles with FUM Canada are as follows: (i) Braeden is the Chief Executive Officer of FUM Canada, and has primary responsibility for the Applicants’ leadership and operations, as well as the Applicants’ restructuring within these CCAA Proceedings. Braeden is also a director of FUM Canada; (ii) Daniel is the Chief Marketing Officer of FUM Canada, and has primary responsibility for marketing efforts. Digital marketing is a critical aspect of FUM Canada’s business, the primary form of advertising for FUM Canada’s products, and an important revenue driver. Accordingly, Daniel plays a key role in customer acquisition; and, (iii) Josiah is a graphic designer employed by FUM Canada, and also plays an important role in customer relations and customer retention matters, including managing a significant part of FUM Canada’s customer-facing emails.

At present, Josiah is on paternity leave, but the Applicants consider him to be an important member of the operations team. Josiah is also a director of FUM Canada.

**Pauls #3 Affidavit at para. 24.**

16. While BDC is the only known creditor holding an executed guarantee agreement, the Applicants have identified at least one other creditor which may seek to assert a claim for indemnity against a Guarantee Stay Party.

**Pauls #3 Affidavit at para. 30.**

**D. Proposed Claims Process**

17. The primary purpose of the Claims Process is to identify, quantify, and, if and when necessary, determine, all existing claims against the Applicants.

**Pauls #3 Affidavit at para. 11.**

18. The Claims Process contemplates that any Persons asserting Claims will submit Proofs of Claim (each as defined in the Claims Process), and their Claims will be accepted, revised, or disallowed by the Monitor, and subsequently (if necessary) adjudicated upon.

**Pauls #3 Affidavit at para. 16.**

19. The Applicants have a high level of confidence that the Applicants' books and records accurately describe the identities of their creditors and the quantum of their respective claims. However, the Applicants understand that at least two creditors dispute aspects of the characterization of their claims, as currently understood by the Applicants. Obtaining certainty in this regard is a critical step in the preparation of a plan or plans of arrangement.

**Pauls #3 Affidavit at paras. 13-14.**

20. To promote efficiency and timeliness, the Applicants intend to continue advancing their restructuring plan, in parallel, while the Claims Process is ongoing. The proposed Claims Process would result in the identification, and potentially the resolution, of any disputed claims within the extended Stay Period. The Applicants anticipate that any plan(s) of arrangement which may be proposed will incorporate terms addressing such disputed claims, depending upon the ultimate determination of same in the Claims Process.

**Pauls #3 Affidavit at para. 15.**

21. The proposed Claims Process contemplates that:<sup>1</sup>
- (a) the Monitor will publish a newspaper notice advertising the Claims Process (the “**Newspaper Notice**”), and will post a copy of the Claims Process Order and other relevant information on the website maintained by the Monitor in respect of the CCAA Proceedings (the “**Website**”);
  - (b) a “**Claims Package**” including the proof of claim form (a “**Proof of Claim**”), instructions regarding the Claims Process, and the Claims Process Order, will be sent to all known creditors of the Applicants (the “**Known Creditors**”);
  - (c) creditors must submit Proofs of Claim, on or before 5:00 p.m. (Mountain Time) on June 15, 2026 (the “**Claims Bar Date**”);
  - (d) the Monitor, in consultation with the Applicants, will review all Proofs of Claim submitted, and: (i) may attempt to consensually resolve the quantum or classification of any Proof of Claim prior to accepting, revising, or disallowing it; and, (ii) shall either accept the quantum and classification set forth in the Proof of Claim, or elect to revise or disallow the Proof of Claim, including with respect to quantum, secured or unsecured status, priority, or any other aspect thereof, in which case the Monitor shall send a “**Notice of Revision or Disallowance**”;
  - (e) any person who wishes to dispute the Notice of Revision or Disallowance shall: (i) no later than seven (7) days following the date the Notice of Revision or Disallowance was delivered, deliver a “**Notice of Dispute**” to the Monitor setting out the particulars of the dispute; and, (ii) no later than fourteen (14) days following the delivery of the Notice of Dispute, file an application with the Court (a “**Creditor Application**”) supported by an affidavit setting out the basis for the dispute;
  - (f) the Monitor, in consultation with the Applicants, may attempt to consensually resolve a Notice of Dispute and, if such Notice of Dispute is resolved by consent, that person shall have a “**Proven Claim**” in the amount, quantum, and classification agreed upon;

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<sup>1</sup> Capitalized or bolded terms used in the following list and not otherwise defined have the same meaning as ascribed to such terms in the form of Claims Process attached to the proposed form of Claims Process Order.

- (g) any person who fails to submit a Proof of Claim by the Claims Bar Date shall be forever barred, estopped and enjoined from asserting such claim against the Applicants, and such claim will be forever extinguished, except as otherwise may be ordered by the Court; and,
- (h) any person who does not submit a Notice of Dispute and take the other requisite steps in relation to a Notice of Revision or Disallowance shall be deemed to have a Proven Claim in the amount set out in the Notice of Revision or Disallowance.

**Pauls #3 Affidavit at para. 17.**

22. The proposed Claims Process contemplates the following material dates or milestones:

<b>Step</b>	<b>Date</b>
Claims Package to be posted on Website	April 27, 2026
Claims Package to be sent to Known Creditors	April 30, 2026
Newspaper Notice to be published	April 30, 2026
Claims Bar Date	June 15, 2026
Deadline for delivery of a Notice of Dispute	Seven (7) days following the date the Notice of Revision or Disallowance was delivered
Filing of a Creditor Application and affidavit	Fourteen (14) days following the date the Notice of Dispute was delivered
Creditor Applications	To be scheduled on a date consented to by the Monitor

**Pauls #3 Affidavit at para. 18.**

### **III. ISSUES**

23. The issues this bench brief addresses<sup>2</sup> are whether:

- (a) the Stay Period should be extended;
- (b) the Stay should be extended to apply to Guarantee Claims; and,

<sup>2</sup> Matters in relation to the requested approval of the activities, actions, and conduct of the Monitor, and the approval of the fees and disbursements of the Monitor and its counsel, will be addressed in the forthcoming Second Report of the Monitor, to be filed.

(c) the Claims Process should be approved.

#### IV. LAW AND ARGUMENT

##### A. The Stay Period Should Be Extended

24. The Applicants seek to extend the Stay Period from May 26, 2026 to July 31, 2026.

25. The stay of proceedings is critical to both supporting the underlying policy rationale for the CCAA and to optimizing outcomes once CCAA proceedings are commenced.

*Timminco Limited (Re)*, 2012 ONSC 506 at paras. 49-50 [BOA TAB 25];  
*Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at para. 15 [BOA  
TAB 6].

26. Subsections 11.02(2) - (4) of the CCAA provide this Honourable Court with the jurisdiction to extend the Stay Period, and state:

##### **Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, **on any terms that it may impose**,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that **circumstances exist that make the order appropriate**; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that **the applicant has acted, and is acting, in good faith and with due diligence**.

##### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

[Emphasis added]

**CCA at s. 11.02(2)-(4) [BOA TAB 1].**

27. In assessing whether an extension of the Stay Period is “appropriate” in the circumstances, the focus of the inquiry is whether the extension advances the remedial purpose of the CCAA.

**Century Services at paras. 15, 70 [BOA TAB 6];  
9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10 [Callidus] at para. 50  
[BOA TAB 2], citing Century Services at para. 70 [BOA TAB 6].**

28. The CCAA is a remedial regime primarily designed to rehabilitate an insolvent company. The provisions of the CCAA provide for a structured environment in which an insolvent company can continue to carry on business and retain control over its assets, while it attempts to gain the approval of creditors for a proposed arrangement that will enable it to remain in operation for the future benefit of all stakeholders.

**Canadian Airlines Corp. (Re), (2000), 19 CBR (4<sup>th</sup>) I, at para. 19 [BOA TAB 4].**

29. The requested extension of the Stay Period is intended to provide the Applicants with sufficient time to: (i) assist the Monitor in carrying out the Claims Process; (ii) continue advancing their restructuring plan, including by engaging with creditors and stakeholders and preparing a plan or plans of arrangement, as may be applicable; (iii) engage with creditors concerning any proposed plan or plans of arrangement; (iv) if permitted by timing, seek Court approval of a meeting order in respect of such plan or plans of arrangement; and, (v) operate in the ordinary course of business.

**Pauls Affidavit #3 at para. 34.**

30. The Third Cash Flow Forecast is anticipated to demonstrate that the Applicants have sufficient liquidity to satisfy their post-filing obligations as they come due. No creditor is likely to be materially prejudiced by the requested extension of the Stay Period.

**Pauls Affidavit #3 at para. 35;  
Second Report of the Monitor, to be filed.**

31. Accordingly, the extension of the Stay Period, as requested by the Applicants, is appropriate in the circumstances as it will provide the Applicants with sufficient time to complete the immediate next steps described above, while preserving the *status quo* pending the resolution of the Claims Process and the presentation of a plan or plans of

arrangement by one or both of the Applicants. The length of the requested Stay Period is reasonable in the circumstances as it aligns with the Applicants' stated objectives.

32. Furthermore, there is clear evidence that the Applicants are proceeding with due diligence within these proceedings, and have made substantial progress toward their restructuring plan since the granting of the ARIO.

**Pauls #3 Affidavit at para. 8; the Applicants also understand that the Second Report of the Monitor will confirm the Monitor's view that the Applicants are proceeding in good faith and with due diligence.**

33. Based on the foregoing, the Applicants respectfully submit that the requested extension of the Stay Period is reasonable, appropriate in the circumstances, and should be granted.

## **B. The Stay Against Guarantee Claims Should be Granted**

### ***Jurisdiction***

34. Section 11 of the CCAA states:

#### **General power of court**

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, **the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.**

**[Emphasis added]**

CCAA at s. 11 [BOA TAB 1].

35. The jurisdiction under section 11 of the CCAA has been described as "broad and flexible authority" and "the engine" driving the CCAA, which is famously "skeletal in nature" and does not expressly provide for all forms of relief which may be appropriate or necessary.

***Wiebe v Weinrich Contracting Ltd*, 2020 ABCA 396 at paras. 27, 30 [BOA TAB 27];  
*Century Services* at para. 57 [*Century Services*] [BOA TAB 6], citing *Stelco Inc (Re)*,  
2005 CanLII 8671 (ONCA) at para. 36 [BOA TAB 23];  
*Callidus* at para. 48 [BOA TAB 2], citing *Metcalfe & Mansfield Alternative  
Investments II Corp. (Re)*, 2008 ONCA 587 at para. 44 per Blair J [BOA TAB 14].**

36. In exercising the jurisdiction under section 11 of the CCAA to craft an appropriate remedy in the circumstances, Courts must give consideration to the three "baseline

considerations”, that: (i) the order sought is appropriate in the circumstances; (ii) the applicant has been acting in good faith; and, (iii) the applicant has acted with due diligence. The order must promote the remedial objectives of the CCAA.

*Callidus* at para. 49 [BOA TAB 2], citing *Century Services* at paras. 59, 70 [BOA TAB 6].

37. Section 11.04 of the CCAA states:

**Persons obligated under letter of credit or guarantee**

**11.04** No order made under section 11.02 has affect on any action, suit or proceeding against a person, other than the company in respect of whom the order is made, who is obligated under a letter of credit or guarantee in relation to the company.

CCAA at s. 11.04 [BOA TAB 1].

38. Commentators have noted that the intended scope of Section 11.04 is unclear, and reported decisions have diverged significantly in their interpretation of the statutory provision. Possible interpretations include: (i) a “narrow” interpretation (*i.e.* Section 11.04 only provides that stays against debtor companies do not affect the ability of a creditor to call on a letter of credit or guarantee, but the section does not prohibit third-party stays from being extended to guarantors); (ii) a “broad” interpretation (*i.e.* Section 11.04 prohibits the extension of a stay to a third party that is a guarantor of a debtor company, in any circumstances); and, (iii) a “standalone” interpretation (wherein derivative obligations may be stayed, but standalone financial obligations may not).

*Staying Guarantees By Non-Debtors and Section 11.04 of the CCAA, 2022 20 Annual Review of Insolvency Law*, Jamey D. Gage and Trevor Courtis, 2022 CanLIIDocs 4310 [“2022 ARIL Paper”] [BOA TAB 28].

39. In *Re Northern Transportation Company Limited*, 2016 ABQB 522 (“**Northern Transportation**”), Justice Dario took a broad view of Section 11.04 and, while not closing the door upon extending the stay to guarantors in appropriate circumstances, held that doing so should be reserved for “exceptional cases to ensure that the intent and purpose of the CCAA proceedings are not frustrated”.

*Re Northern Transportation Company Limited*, 2016 ABQB 522, at para. 101 [*Northern Transportation*] [BOA TAB 19].

40. The decision in *Northern Transportation* was recently considered by this Honourable Court in *Mantle Materials Group, Ltd (Re)*, 2024 ABKB 19, in which ACJ Nixon granted a stay against a related party guarantor. Upon noting that Section 11.04 has been “the subject

of varying interpretive approaches, from the narrow to the broad”, and that *Northern Transportation* left open the possibility of granting such stays, the Court cited the following quotation from an ARIL paper as being “of particular note” in granting the relief:

On balance, the factors seem to weigh in favour of a narrow interpretation of section 11.04 that would maintain the CCAA court’s flexibility to grant stays of proceedings that are necessary to facilitate the restructuring of the debtor company while preserving the court’s discretion to refuse to extend stays to issuers of letters of credit and guarantors if it is not appropriate to do so in the circumstances of a particular case. It that regard, it would be reasonable to expect that courts may draw a distinction between the treatment of letters of credit and guarantees in light of different policy and other considerations relating to them depending on their terms.

***Mantle Materials Group, Ltd (Re)*, 2024 ABKB 19 at paras. 56-58 [BOA TAB 12], citing 2022 ARIL Paper [BOA TAB 28] and *Northern Transportation* at para. 101 [BOA TAB 19].**

41. A significant number of CCAA decisions have extended stays of proceedings to cover guarantee obligations, including in respect of guarantees given by individual directors, related corporate entities which are not part of the CCAA proceedings, and other parties.

**See, for example, *Re Canwest Global Communications Corp*, 59 CBR (5th) 72, 2009 CanLII 55114 (WL Can) at paras 28–30 (Ont Sup Ct) [BOA TAB 16]; *Re Sino-Forest Corp*, 2012 ONSC 2063 at paras 26–29 [BOA TAB 20]; *Re Forme Development Group Inc* (30 November 2018), Toronto CV-18-608313-00CL (Ont Sup Ct [Comm List]), Initial Order at para 18 [BOA TAB 17]; *Re Lydian International Limited*, 2019 ONSC 7473 at para 39 [BOA TAB 18]; *McEwan Enterprises Inc*, 2021 ONSC 6453 at paras. 43-45 [BOA TAB 13]; *Target Canada Co. (Re)*, 2015 ONSC 303 at paras. 48-50 [BOA TAB 24].**

42. Accordingly, it is respectfully submitted that the weight of reported case law, including in Alberta, supports a narrow interpretation of Section 11.04 of the CCAA, and in appropriate circumstances, Section 11 of the CCAA may be relied upon to grant a stay against guarantors of a debtor company.

### ***Application***

43. The prospect of enforcement of the BDC Guarantee risks diverting the attention of key employees and management at a critical point in the Applicants’ restructuring. A successful resolution to these CCAA Proceedings will require the active, committed involvement of the Guarantee Stay Parties, including, but not limited to, the Personal Guarantors, in order to carry on the Applicants’ businesses for the benefit of their stakeholders. In particular, the Applicants’ continued ordinary course operations are reliant on the strategic oversight, marketing and customer acquisition, and customer retention

functions performed by the Personal Guarantors; including as the Applicants' business is heavily dependent upon direct to consumer sales and continuous digital marketing.

**Pauls #3 Affidavit at para. 27.**

44. The Applicants respectfully submit that the requested stay against Guarantee Claims is appropriate in the circumstances, and would facilitate the remedial purposes of the CCAA, as: (i) the Guarantee Stay Parties play important roles in the Applicants' operations, as set forth above; (ii) ensuring that the Guarantee Stay Parties can focus on the Applicants' restructuring during the Stay Period is likely to benefit all of the Applicants' creditors and stakeholders; (iii) a limited temporal stay is minimally prejudicial to the parties holding Guarantee Claims, particularly as the extension of the Stay to include Guarantee Claims is requested to be coterminous with the Stay Period in respect of the Applicants, so that the Stay will continue in effect only for the period during which it will serve the purpose of ensuring that the Guarantee Stay Parties can focus on the restructuring process; and, (iv) the stay of Guarantee Claims is consistent with numerous decisions which have extended third-party stays in respect of guarantors, in circumstances where – as in the case at bar – doing so is likely to benefit the operations and restructuring of a debtor company.

**Pauls #3 Affidavit at para. 28.**

**C. The Claims Process Should Be Approved**

45. The Applicants seek approval of the Claims Process, to allow the Applicants to address the claims of their creditors as part of the within proceedings.
46. The establishment of claims processes is common in proceedings under the CCAA. As stated in *Quest University Canada (Re)*, “Establishing a claims process toward determining claims to be advanced under the CCAA is a recognized step in proceedings across Canada”.

*Quest University Canada (Re)*, 2020 BCSC 1845 at para. 21 [Quest] [BOA TAB 15], citing *ScoZinc Ltd. (Re)*, 2009 NSSC 136, at para. 23 [BOA TAB 21] and *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732 at para. 29 [BOA TAB 3].

47. The “first principles” in respect of claims processes include the following:

[41] It is also necessary to return to first principles with respect to claims-bar orders. The CCAA is intended to facilitate a compromise or arrangement between a debtor company and its creditors and shareholders. For a debtor company engaged in restructuring under the CCAA, which may include a liquidation of its assets, it is of

fundamental importance to determine the quantum of liabilities to which the debtor and, in certain circumstances, third parties are subject. It is this desire for certainty that led to the development of the practice by which debtors apply to court for orders which establish a deadline for filing claims.

**Quest at para. 22 [BOA TAB 15], quoting *Timminco Ltd. (Re)*, 2014 ONSC 3393 at paras. 41-44 [BOA TAB 26].**

48. Furthermore, the process provided by a claims process order is essential to any plan of arrangement and a practical means of streamlining the resolution of the “multitude of claims against an insolvent debtor” in the most timely and cost effective manner.

***Laurentian University of Sudbury*, 2021 ONSC 3885 at para. 31 [*Laurentian*] [BOA TAB 11]; *Canwest Global Communications Corp.*, 2011 ONSC 2215 at para. 40 [BOA TAB 5].**

49. Claims process orders must be drafted to ensure that the procedure for determining claims furthers the remedial purposes of the CCAA and is both fair and reasonable to all stakeholders.

***Laurentian* at para. 32 [BOA TAB 11], citing *Steels Industrial Products Ltd.*, 2012 BCSC 1501 at para. 38 [BOA TAB 22].**

50. In the case at bar, the Applicants’ restructuring plan is focused on preparing a plan or plans of arrangement, to be put forward by one or both of the Applicants.

**Pauls #3 Affidavit at para. 7.**

51. Obtaining certainty regarding the nature or characterization, priority status, and quantum of all claims, will be necessary to ensure that any plan(s) of arrangement are viable and represent a reasonable and fair compromise.

**Pauls #3 Affidavit at para. 14.**

52. The proposed Claims Process Order is reasonable and appropriate in the circumstances as, among other reasons:

- (a) the Monitor supports the approval of the Claims Process;
- (b) the Claims Process is similar in structure to other claims processes approved in similar proceedings;

**See, for example, *In the Matter of the Compromise or Arrangement of Lynx Air Holdings Corporation, et al.*, Order (D&O Claims Process), granted on June 28, 2024 (ABKB Court File No. 2401-02664) [BOA TAB 9]; *In the Matter of the Compromise or Arrangement of Coalspur Mines (Operations) Ltd.*, Order (Claims Process), granted on August 9,**

2021 (ABKB File No. 2101-05019) [BOA TAB 8]; *In the Matter of a Plan of Compromise or Arrangement of AlphaBow Energy Ltd.*, Order (Claims Process), granted on September 20, 2024 (ABKB Court File No. 2401-05179) [BOA TAB 7]; *In the Matter of the Notice of Intention to Make a Proposal of Goldenkey Oil Inc.*, Order (Claims Process), granted on April 13, 2023 (ABKB Court File No. 25-2906009) [BOA TAB 10].

- (c) the Claims Process will provide an expedited, efficient means of addressing claims, permitting the Applicants to focus on their restructuring;
- (d) establishing the quantum, classification, and priority of claims is key for the development of any plan(s) of arrangement or other restructuring; and,
- (e) the Claims Process is structured to strike a reasonable balance between the Applicants' need for an accelerated process, with the objective of providing creditors with a reasonable opportunity to establish a claim. The proposed Claims Process provides a fair and reasonable means of addressing claims, while preserving creditors' substantive rights, including the right to seek the resolution of any disputed claims before this Honourable Court.

53. Accordingly, the Applicants submit that the Claims Process should be approved.

#### **V. CONCLUSION**

54. The Applicants respectfully request that this Honourable Court grant the Stay Extension and Guarantee Order, and the Claims Process Order, substantially in the forms attached to the Application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16<sup>TH</sup> DAY OF APRIL, 2026.**



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## VI. LIST OF AUTHORITIES

### Statutes

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, at sections 11, 11.02(2)-(4), and 11.04;

### Case Law

2. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10;
3. *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732;
4. *Canadian Airlines Corp. (Re)*, (2000), 19 CBR (4th) 1;
5. *Canwest Global Communications Corp.*, 2011 ONSC 2215;
6. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60;
7. *In the Matter of a Plan of Compromise or Arrangement of AlphaBow Energy Ltd.*, Order (Claims Process), granted on September 20, 2024 (ABKB Court File No. 2401-05179);
8. *In the Matter of the Compromise or Arrangement of Coalspur Mines (Operations) Ltd.*, Order (Claims Process), granted on August 9, 2021 (ABKB File No. 2101-05019);
9. *In the Matter of the Compromise or Arrangement of Lynx Air Holdings Corporation, et al.*, Order (D&O Claims Process), granted on June 28, 2024 (ABKB Court File No. 2401-02664);
10. *In the Matter of the Notice of Intention to Make a Proposal of Goldenkey Oil Inc.*, Order (Claims Process), granted on April 13, 2023 (ABKB Court File No. 25-2906009);
11. *Laurentian University of Sudbury*, 2021 ONSC 3885;
12. *Mantle Materials Group, Ltd (Re)*, 2024 ABKB 19;
13. *McEwan Enterprises Inc*, 2021 ONSC 6453;
14. *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587;
15. *Quest University Canada (Re)*, 2020 BCSC 1845;
16. *Re Canwest Global Communications Corp*, 59 CBR (5th) 72, 2009 CanLII 55114;
17. *Re Forme Development Group Inc* (30 November 2018), Toronto CV-18-608313-00CL (Ont Sup Ct [Comm List]), Initial Order;
18. *Re Lydian International Limited*, 2019 ONSC 7473;
19. *Re Northern Transportation Company Limited*, 2016 ABQB 522;

20. *Re Sino-Forest Corp*, 2012 ONSC 2063;
21. *ScoZinc Ltd. (Re)*, 2009 NSSC 136;
22. *Steels Industrial Products Ltd.*, 2012 BCSC 1501;
23. *Stelco Inc (Re)*, 2005 CanLII 8671;
24. *Target Canada Co. (Re)*, 2015 ONSC 303;
25. *Timminco Limited (Re)*, 2012 ONSC 506;
26. *Timminco Limited (Re)*, 2014 ONSC 3393;
27. *Wiebe v Weinrich Contracting Ltd*, 2020 ABCA 396; and,

**Other Authorities**

28. *Staying Guarantees By Non-Debtors and Section 11.04 of the CCAA, 2022 20 Annual Review of Insolvency Law*, Jamey D. Gage and Trevor Courtis, 2022 CanLIIDocs 4310.