

S E 2 4 1 1 6 1
No.
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**

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

**BIFANO CONSOLIDATED INC.,
BIFANO FARMS INC.
NATA FARMS INC.,
SSC VENTURES (NO. 105) LTD. and
SPALLUMCHEEN FARM LTD.**

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO: THE RESPONDENTS

The address of the registry is: 800 Smithe St, Vancouver, B.C. V6Z 2E1

The petitioner estimates that the hearing of the petition will take 2.5 hours.

This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by the petitioner.

If you intend to respond to this Petition, you or your lawyer must:

- (a) file a Response to Petition in Form 67 in the above-named registry of this Court within the time for Response to Petition described below, and
- (b) serve on the Petitioner
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response to Petition

A Response to Petition must be filed and served on the Petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by Order of the Court, within that time.

(1)	<p>The ADDRESS FOR DELIVERY is:</p> <p>Fasken Martineau DuMoulin LLP 2900 - 550 Burrard Street Vancouver, B.C. V6C 0A3 Attention: Kibben Jackson / Lisa Hiebert / Mishaal Gill Email: kjackson@fasken.com / lhiebert@fasken.com / mgill@fasken.com</p>
(2)	<p>The name and office address of the Petitioner's Solicitor is:</p> <p>Fasken Martineau DuMoulin LLP 2900 - 550 Burrard Street Vancouver, B.C. V6C 0A3 Telephone: 604 631 3131. Attention: Kibben Jackson / Lisa Hiebert / Mishaal Gill Email: kjackson@fasken.com / lhiebert@fasken.com / mgill@fasken.com Reference: 240537.05745</p>

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. The Petitioner, The Bank of Nova Scotia (the "**Petitioner**" or "**BNS**"), seeks an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") substantially in the form attached hereto as **Schedule "A"**, which, among other things:

- (a) abridges the time for service of this Petition and the supporting materials so that the application is returnable February 20, 2024;

- (b) appoints Alvarez & Marsal Canada Inc. ("**A&M**") as monitor of the Respondents (collectively, the "**Companies**"), with certain enhanced powers;
 - (c) approves interim financing (the "**Interim Financing**") to be provided to the Companies by the Petitioner, for a total facility of \$1,500,000, with \$250,000 being advanced prior to the next application in this matter (the "**Comeback Hearing**"), on the terms and conditions set out in the interim financing term sheet dated as of February 20, 2024 (the "**Term Sheet**");
 - (d) grants a stays of proceedings in respect of the Companies; and
 - (e) grants certain charges over the Companies' property securing: (i) amounts owing to the professionals required to advance these proceedings; (ii) amounts owing to the Petitioner under the Term Sheet; and (iii) amounts for which the Companies' directors and officers may become liable in their capacity as directors and officers during these proceedings.
2. The Petitioner may also seek such further relief as counsel may advise and this Honourable Court may permit.

Part 2: FACTUAL BASIS

3. The Respondents, Bifano Consolidated Inc. ("**Bifano Consolidated**"), Bifano Farms Inc. ("**Bifano Farms**"), Spallumcheen Farm Ltd. ("**Spallumcheen**"), Nata Farms Inc. ("**Nata**") and SSC Ventures (No. 105) Ltd. ("**SSC 105**") are a group of related corporations that operate commercial farming operations, comprised of dairy farming and trucking operations.¹
4. The Companies are BC companies, sharing common ownership and management, led by Joseph Bifano, who is a director of each of the Companies.²
5. The Companies face significant liquidity constraints necessitating the application of BNS, the Companies' primary secured creditor, for the Initial Order to stay the Companies' creditors

¹ Affidavit #1 of James Cook made February 13, 2024 (the "**BNS Affidavit**") at paras. 4, 9 and Exhibit "A".

² Ibid at paras. 4-7 and Affidavit #1 of Ashley Kumar made February 8, 2024 (the "**Kumar Affidavit**") at Exhibit "A".

and facilitate the Interim Financing that the Companies require to continue operations while the Companies undertake a sale process to identify and implement one or more transactions that will maximize value for stakeholders. BNS brings this application, in part, because the Companies are not able or prepared to do so.³

The Companies' Business

6. The Companies operate a 200-acre dairy farm in Armstrong, British Columbia (the “**Dairy Farm**”) and own and lease continuous daily quota (the “**Dairy Quota**”) issued by the British Columbia Milk Marketing Board (“**BCMMB**”).⁴ Bifano Consolidated, Spallumcheen and Nata (collectively, the “**Farm Companies**”) operate the farming business and Bifano Farms and SSC 105 hold the Dairy Quota that the Farm Companies produce against.⁵

7. Bifano Consolidated and Spallumcheen own real property in Armstrong, British Columbia (collectively, the “**Lands**”) that are separate parcels, but contiguous, forming one large plot of land. Collectively, the 2023 assessed value of the Lands is \$4,461,402.⁶

8. Since 2018, the Companies have expanded their trucking operations with debt and, as at the date of this Petition, the Companies had ceased making lease payments pursuant to various arrangements entered into with the respective lessors.⁷

Assets

9. The Companies' primary assets are the Lands, the Dairy Quota, the Dairy Farm, livestock and related equipment and machinery, although it is unclear at this time whether the Companies have any equity in the equipment or machinery.⁸

³ BNS Affidavit at paras. 2 and 7.

⁴ Ibid. at para. 12.

⁵ Ibid at paras. 14-15 and 22.

⁶ Ibid at paras. 16-19 and Exhibit “B”.

⁷ Ibid at paras. 11 and 23-25.

⁸ Ibid at paras. 12-19.

The Companies' Creditors

The Bank of Nova Scotia

10. BNS is the Companies' primary secured creditor and is owed approximately \$36.5 million in principal, plus interest and costs that continue to accrue.⁹ BNS made demand for payment on June 15, 2023.¹⁰

11. The debt owing to BNS is pursuant a credit agreements with the Farm Companies as Borrowers, and guarantees from Bifano Farms, SSC 105, Nata and Spallumcheen (as well as two parties not named as respondents)¹¹ and is secured by general security agreements from each of the Companies, mortgages against the Lands and assignment of Dairy Quota and proceeds from the sale of milk.¹²

12. The Companies have been in default since 2022, but BNS has provided the Companies with time and opportunities to resolve the defaults. This has included entering into forbearance agreements in December 2022 and February 2023¹³ and BNS issuing reservations of rights letters whereby BNS agreed to defer the Farm Companies' scheduled loan payments, as well as working with the Companies in respect of a proposed restructuring.¹⁴ The Companies have been unable to resolve the defaults, restructure or refinance and, accordingly, BNS commences these proceedings.

Other Creditors

13. The Companies' various equipment lessors and financiers have registered financing statements in the BC Personal Property Registry. Based on financial statements provided by the Companies, they owe approximately \$16.7 million on these leases and, in December 2023, Nata and Bifano Consolidated received demands from two lessors, including CWB National Leasing Inc. ("CWL"), for payment of amounts owed to them.¹⁵

⁹ Ibid at para. 43.

¹⁰ Ibid at para. 40 and Exhibit "R".

¹¹ Ibid at para. 31 and Exhibits "C", "D", "E", "F", "G", "H", "I" and "Q".

¹² Ibid at paras. 34-35 and Exhibits "J" through "P" and Kumar Affidavit at Exhibits "B" through "H".

¹³ BNS Affidavit at paras. 37-39 and Exhibit "Q".

¹⁴ Ibid at paras. 41-42 and Exhibit "S".

¹⁵ Ibid at paras. 26-28 and Kumar Affidavit at Exhibits "B" through "F".

14. Since approximately April 2023, by agreements with the lessors or financiers, the Companies have ceased making payments required of them under the respective lease of financing agreements in respect of the subject equipment.¹⁶

15. Additionally, there are significant tax debts, over \$1.8 million in total, owing by Nata, in respect of certain source deductions and with respect to GST and HST. The Companies also have additional debt of approximately \$800,000 and shareholder loans of approximately \$1.6 million.¹⁷

CWB National Leasing Inc.

16. CWL leases various pieces of equipment (collectively, the “**CWL Equipment**”) for use by the Companies. BNS and CWL have reached an agreement whereby CWL will be excluded from the stay in these proceedings and the charges, provide certain conditions are met, including that CWL will agree to defer payments owing under its lease agreements.

The Initial Order

Stay of Proceedings

17. The Companies require a stay of proceedings to maintain the status quo, particularly in light of their financial circumstances, so that they can continue operations and efficiently advance a sale process. Without a stay of proceedings, BNS is concerned that there will be an immediate and significant erosion of value.¹⁸

Appointment of the Monitor and Enhanced Powers

18. BNS seeks the appointment of A&M as monitor with enhanced powers and A&M has consented to such appointment, including with enhanced powers.¹⁹ These enhanced powers are a condition of BNS agreeing to provide the Interim Financing, and are intended to ensure that the sale process and CCAA proceedings can be completed efficiently.²⁰

¹⁶ BNS Affidavit at para. 27

¹⁷ Ibid at paras. 29-30

¹⁸ Ibid at para. 54-55.

¹⁹ Ibid at para. 46.

²⁰ Ibid at para. 53.

19. In April 2023, A&M, with the consent of the Farm Companies, was engaged by BNS to provide financial advisory services in respect of the Companies. In that role, A&M has accumulated significant knowledge regarding the Companies, their background, and their financial difficulties, which would be of assistance to the monitor in these CCAA proceedings.²¹

Interim Financing

20. The Companies will require funding to meet critical expenses over the 13 weeks ending May 19, 2024, including expenses relating to the maintenance of the Companies' livestock and their payroll obligations. Without the Interim Financing, the Companies will not have sufficient cash on hand required to continue operations and the Companies' assets will be at risk, adversely affecting the Companies' stakeholders.²²

21. Accordingly, BNS has prepared the Term Sheet, attached as **Appendix "C"** to the pre-filing report of A&M, pursuant to which it will advance the Interim Financing required to meet these shortfalls, subject to the Court authorizing such Interim Financing.²³ The critical terms of the Term Sheet include:

- (a) a maximum facility of \$1,500,000, of which \$250,000 will be available prior to the Comeback Hearing;
- (b) interest of 15%;
- (c) a commitment fee of \$20,000, payable from the first advance;
- (d) a maturity date of July 31, 2024, unless extended by BNS or terminated due to various events, including, but not limited to, a sale pursuant to the proposed sale process or an event of default under the Term Sheet; and
- (e) certain conditions to funding, including, but not limited to, the Initial Order being made and Court approval of the Interim Financing and the Interim Financing Charge.

²¹ Ibid at para. 48.

²² Ibid at paras. 2 and 44.

²³ Ibid at para 44.

Charges

22. BNS seeks various charges ranking in priority as follows:

- (a) an administration charge of \$150,000 to secure the amounts that may become owing to the Companies' counsel, the monitor or the monitor's counsel (the "**Administration Charge**");²⁴
- (b) a charge securing amounts owing on the Interim Financing (the "**Interim Financing Charge**"), with limited advances prior to the Comeback Hearing;²⁵ and
- (c) a charge securing an indemnity in favour of the Companies' directors and officers (the "**Directors' Charge**").

23. BNS believes that each of the charges is necessary to facilitate these proceedings.²⁶

Part 3: LEGAL BASIS

24. The Petitioner relies on the following:

- (a) The CCAA;
- (b) *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 ("**BIA**");
- (c) *Supreme Court Civil Rules* of British Columbia;
- (d) The inherent jurisdiction of this Honourable Court; and
- (e) Such further and other legal basis as counsel may advise and this Honourable Court may allow.

Purpose and application of the CCAA

25. The CCAA is remedial legislation which gives Canadian Courts broad and flexible authority to achieve the legislation's objectives, being to facilitate an orderly restructuring of debtor companies in order to avoid the social and economic losses resulting from the liquidation of an insolvent company. Accordingly, the CCAA includes empowering courts to make any order

²⁴ Ibid at paras. 56-57.

²⁵ Ibid at paras. 44-45

²⁶ Ibid at paras. 45 and 57.

considered appropriate in the circumstances (including without notice), unless prohibited by the Act.

Century Services inc. v. Canada (Attorney General),
2010 SCC 60 at paras. 59 and 70 (“*Century Services*”).

CCAA, s.11.

26. The CCAA allows companies to carry on business while undertaking a restructuring in order to protect stakeholder interests, including preserving jobs and going concern value (where possible), maximizing creditor recovery, and enhancing the credit system generally.

9354-9186 Québec inc. v. Callidus Capital Corp.,
2020 SCC 10 at para 42 (“*Callidus Capital*”).

Century Services at para 15.

27. While the historical focus of the CCAA was to facilitate a going-concern reorganization of the debtor company, CCAA proceedings may also facilitate a sale of the business (referred to as “liquidating CCAA’s”), while still achieving the remedial purpose of the legislation, which may be achieved by, among other things, a sale process that allows the business to survive under a different corporate form or ownership.

Callidus Capital at paras 41-42 and 45.

28. The CCAA applies in respect of a “debtor company” or “affiliated debtor companies” where the total amount of claims against the debtor or its affiliates exceeds five million dollars (\$5,000,000). Each of the Respondents is a “company” incorporated under the *Business Corporations Act* (British Columbia) and the claims against each of them exceed \$5,000,000.

CCAA, s. 2(1).

29. The term “debtor company” is defined in Section 2 of the CCAA to include any company that is bankrupt or insolvent. Although insolvency is not defined in the CCAA, the BIA defines an “insolvent person” as:

a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

BIA, s. 2.

CCAA, ss. 2(1) and 3(1).

30. Courts have routinely applied the BIA definition of “insolvent person” to CCAA proceedings. Further, in the context of the CCAA, this test has been interpreted expansively to include a financially troubled corporation that is “reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring.”

Quest University Canada (Re), 2020 BCSC 318 at para 26.

Stelco Inc. (Re), 2004 CanLII 24933, 48 C.B.R. (4th) 299 (Ont. S.C.J.) at para. 26 (“*Stelco*”).

31. Under either definition, the Companies individually and collectively meet this test: they are unable to meet obligations as they come due and will run out of cash before they are able to implement a restructuring. Their ability to meet operating expenses is contingent on the Interim Financing sought to be approved in these proceedings.

32. Documentation required by Section 10(2) of the CCAA will be delivered in connection with this hearing, specifically:

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

CCAA, s. 10(2).

The Petitioner Has Standing to Bring an Application for an Initial Order

33. Nothing in the CCAA prevents a creditor, rather than a debtor, from bringing an application for an initial order, and there are several examples of orders being made on such applications.

Miniso International Hong Kong Limited v. Migu Investments Inc.,
2019 BCSC 1234 (“*Miniso*”).
See also: *Arrangement relatif à Group Selection Inc.*, 2022 QCCA 1596.

34. The commencement of CCAA proceedings is a proper exercise of creditors’ rights where the CCAA will preserve the going concern value of the business or otherwise avoid losses that would be suffered in an enforcement/ liquidation scenario, particularly where the debtor’s assets or business is not conducive to a receivership. In this case, a significant portion of the Companies’ assets and business are cattle and dairy quota, which can be more efficiently managed and realized upon in a CCAA proceeding.

Miniso at para. 47.

Appointment of Monitor with Enhanced Powers

35. Pursuant to s. 11.7 of the CCAA, the Court is required to appoint a person to monitor the business and financial affairs of a debtor company upon the granting of an initial order under the CCAA. The monitor must be a trustee within the meaning of subsection 2(1) of the BIA.

CCAA, s. 11.7.

36. A&M, is a trustee within the meaning of subsection 2(1) of the BIA, not subject to any restrictions pursuant to subsection 11.7(2), and has executed a Consent to Act as Monitor in the within CCAA proceedings.

CCAA, s. 11.7(2).

37. Section 23(1) of the CCAA sets out the monitor’s duties and functions. Under subsection 23(1)(k) of the CCAA, the Court may direct the monitor to carry out any other function in relation to the debtor company. These additional functions are known as “enhanced” or “expanded” powers of the monitor. This provision gives the Court broad authority to tailor the monitor’s role to the particular circumstances to further the purposes of the CCAA.

CCAA, s.23(1)(k).
Arrangement relatif à Bloom Lake General, 2021 QCCS 2946 at para. 41.

38. BNS seeks relief enhancing the monitor's powers so that it is can exercise such powers and functions as the monitor considers necessary for the sale process or the Companies' restructuring. These enhanced powers are necessary to facilitate the efficient conduct of these proceedings and ensure access to the required funding.

The Requested Stay of Proceedings is Necessary

39. Section 11.02(1) of the CCAA vests the Court the jurisdiction to order a stay of proceedings that temporarily prevents creditors from initiating or advancing claims against the debtor company for a period of not more than 10 days. The stay may also be extended to directors and officers pursuant to section 11.03.

CCAA, s. 11.02 and 11.03.

40. The Ontario Court has made the following comments regarding the purpose and importance of the stay of proceedings:

The Court may grant a stay of proceedings pursuant to s. 11.02 of the CCAA in respect of a debtor company if it is satisfied that circumstances exist that make the order appropriate. In order to determine whether a stay order is appropriate the Court should consider the purpose behind the CCAA. The primary purpose of the CCAA is to maintain the status quo for a period while the debtor company consults with its creditors and stakeholders with a view to continuing the company's operations for the benefit of the company and its creditors. [emphasis added]

JTI-Macdonald Corp. (Re), 2019 ONSC 1625, at para. 12.

41. A stay of enforcement actions preserves the *status quo* for the debtor company and prevents a creditor from gaining an unfair advantage over other creditors. The stay also facilitates the ongoing operations of the debtor company's business, preserves the value of such business, and provides the debtor company with the necessary time, flexibility and "breathing room" to carry out a court-supervised restructuring or organized sale process.

Lehndorf General Partners Ltd. (Re), 1993 CarswellOnt 183,
17 C.B.R. (3d) 24 (Gen. Div.), at paras. 5-7.

42. BNS submits the stay is necessary and appropriate to preserve the value of the Companies' property and business for the benefit of stakeholders. The commencement of any proceedings or

the exercise of rights or remedies against the Companies, particularly in respect of leased equipment, would be detrimental to their restructuring efforts and would undermine a process that would otherwise benefit the Companies' stakeholders as a whole. This concern is heightened where, as here, creditors have delivered demands and notices of intention to enforce security

Administration Charge

43. BNS seek an Administration Charge in the amount of \$150,000 in order to secure the collective fees and disbursements incurred both before and after the commencement of these proceedings of the Companies' legal counsel, the proposed monitor and the proposed monitor's legal counsel.

44. Section 11.52 of the CCAA expressly provides the Court with the power to grant a charge over a debtor company's assets to secure professional fees and disbursements on notice to affected secured creditors.

CCAA, s. 11.52.

45. Courts have recognized that, unless professional advisors are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA could be frustrated because professionals would be unlikely to risk offering their services without any assurance of ultimately being paid. Specifically, any failure to provide protection for professional fees will "result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by a bankruptcy proceeding."

Timminco Ltd. (Re), 2012 ONSC 506 at para. 66.

46. The non-exhaustive factors to be considered in determining whether to approve an administration charge is as follows:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and

- (f) the position of the monitor.

Canwest Publishing Inc, 2010 ONSC 222 at para. 54 (“*Canwest Publishing*”).

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 107 at para. 42.

47. The Companies require the specialized expertise, knowledge and continuing participation of the proposed beneficiaries of the Administration Charge in order to undertake their restructuring, including to implement a sale process, and the Administration Charge is necessary to ensure their continued assistance and participation in these proceedings.

48. The amount of the proposed Administration Charge was determined in consultation with the proposed monitor and is fair and reasonable in light of the number of beneficiaries, the size and complexity of the business and the scope and complexity of the proposed restructuring. BNS supports the Administration Charge and does not expect that there will be any duplication of the roles of the beneficiaries of the Administration Charge. Each of these professionals will have a unique and distinct focus in the restructuring, and their joint efforts will produce a better result overall.

The Interim Financing Facility and Charge

49. BNS seeks approval of the Interim Financing, pursuant to the terms of the Term Sheet, and the granting of the related Interim Financing Charge in the maximum amount of \$1,500,000 (of which \$250,000 may be borrowed prior to the Comeback Hearing), plus interest and fees. The Interim Financing Charge is proposed to rank in priority to all other encumbrances on the assets, properties and undertakings of the Companies, other than the Administration Charge.

50. The Court has the jurisdiction to approve the Interim Financing under the CCAA s. 11.2.

CCAA, s. 11.2

U.S. Steel Canada Inc. (Re), 2014 ONSC 6145 at para. 11

51. The purpose of Interim Financing, among other things, is to enhance the prospects of a viable compromise or arrangement and ensure the necessary stability during the CCAA process to the benefit of all stakeholders.

Canwest Publishing at paras. 43-44..

52. Section 11.2 of the CCAA also vests the Court with the jurisdiction to grant an interim financing charge over the assets of a debtor company in priority to the claim of any secured creditor of the debtor company, on notice to the secured creditors who are likely to be affected by such security or charge.

CCAA, s. 11.2

53. In deciding whether to make an order, the Court is to consider, among other things:

- (a) the period during which the debtor company is expected to be subject to proceedings under the CCAA;
- (b) how the debtor company's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the debtor company;
- (e) the nature and value of the debtor company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report, if any.

CCAA, s. 11.2(4)

54. These factors support the granting of the Interim Financing Charge in this proceeding. Without access to the Interim Financing, the Companies will not be able to carry on their business or preserve the value of their assets, to the detriment of their stakeholders, and BNS and the monitor will be unable to advance the sale process expeditiously as proposed. BNS also notes that, in this case, preservation of the Companies' assets includes maintaining the health and wellbeing of the Companies' livestock.

55. The Term Sheet has been finalized in consultation with the proposed monitor and BNS submits it contains commercially reasonable terms.

The Directors' Charge

56. The Petitioner seeks the Directors' Charge in the amount of \$150,000 to secure the indemnity obligations of the Companies in favour of their directors and officers in respect of claims which might arise against those persons as a result of them continuing in such roles after the initiation of these proceedings. The Directors' Charge is necessary to ensure the continued involvement and participation of the Companies directors and officers, primarily Mr. Bifano, during the course of the Companies' restructuring.

57. On notice to the affected secured creditors, this Court is vested with the jurisdiction to grant a charge over the assets of a debtor company with respect to directors and officers' indemnification on a priority basis pursuant to Section 11.51 of the CCAA. The Court must be satisfied with the amount of the proposed charge, and the proposed charge may not provide coverage for the wilful misconduct or gross negligence of any director or officer of a debtor company.

CCAA, s. 11.51
Canwest Publishing at paras. 56-57.

58. Consistent with both the foregoing and the British Columbia Model CCAA Initial Order, the Directors' Charge is not intended to duplicate coverage already in place under the Companies' existing directors and officers' liability insurance policies, but rather, to supplement such coverage in the event that any particular claim is not insured under those policies. The Petitioner understands that proposed monitor and the Companies are supportive of the Directors' Charge.

Part 4: MATERIAL TO BE RELIED ON

59. The Affidavit #1 of James Cook made February 13, 2024;

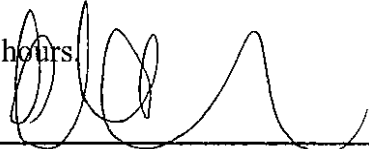
60. The Affidavit #1 of Ashley Kumar made February 15, 2024;

61. The pre-filing report of Alvarez & Marsal Inc., in its capacity as proposed monitor (to be filed);

62. Such further and other materials as counsel may advise and the Court may allow.

The Petitioner estimates that the application will take 2.5 hours.

Dated: February 16, 2024



Signature of Kibben Jackson/Lisa Hiebert
Lawyer for Petitioners

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of
this Petition

☐ with the following variations and additional terms:

.....
.....
.....
.....

Date:

.....
Signature of ☐ Judge ☐ Associate Judge

Schedule "A"

No.
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

BETWEEN:

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NATA FARMS INC.,
SSC VENTURES (NO. 105) LTD. and
SPALLUMCHEEN FARM LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

INITIAL ORDER

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) FEBRUARY 20, 2024
)

ON THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on the 20th day of February, 2024 (the “**Order Date**”); **AND ON HEARING** Lisa Hiebert and Mishaal Gill, counsel for the Petitioner, and those other counsel listed on **Schedule “A”** hereto; **AND UPON READING** the application material filed, including the First Affidavit of James Cook sworn February 13, 2024, the pre-filing report from Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposed monitor, dated February 16, 2024 (the “**Pre-Filing Report**”) and the consent of A&M to act as Monitor; **AND UPON BEING ADVISED** that the secured creditors who are likely to be affected by the charges created herein were given notice; **AND PURSUANT TO** the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as

amended (the “CCAA”), the *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Petition and materials filed in support of the application for this Order (collectively, the “**Application**”) is hereby abridged such that service of the Application is deemed to be timely and sufficient and the Application is properly returnable today.

JURISDICTION

2. Each of the Respondents is a company to which the CCAA applies.

SUBSEQUENT HEARING DATE

3. The hearing of the Petitioner’s application for an extension of the Stay Period (as defined in paragraph 14 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 800 Smithe Street, Vancouver, British Columbia at ____m. on _____, the ____ day of _____, 2024 or such other date as this Court may order.

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, the Respondents shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) and continue to carry on their business (the “**Business**”) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Respondents, with the consent of the Monitor, shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty to retain such

further Assistants as the Respondents, with the consent of the Monitor, deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. The Respondents shall be entitled to use their existing bank accounts with the Petitioner (the “**Accounts**”), and the Petitioner shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in respect of the Accounts, or as to the use or application by the Respondents of the funds transferred, paid, collected or otherwise dealt with in the Accounts. The Petitioner shall provide the Accounts without any liability in respect hereof to any Person (as defined in paragraph 15) other than the Respondents, pursuant to the documentation applicable to the Accounts, and shall be, in its capacity as provider of the Accounts, an unaffected creditor under any plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Accounts.

6. The Respondents shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively “**Wages**”);
- (b) with the consent of the Monitor, amounts owing, to the maximum of \$150,000, for goods and services actually supplied to the Respondents prior to the Order Date by third party suppliers, if such third party is critical to the Business and ongoing operations of the Respondents; and
- (c) the fees and disbursements of any Assistants retained or employed by the Respondents which are related to the Respondents’ restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal

counsel retained by the Respondents, whenever and wherever incurred, in respect of:

- (i) these proceedings or any other similar proceedings in other jurisdictions in which the Respondents or any subsidiaries or affiliated companies of the Respondents are domiciled;
- (ii) any litigation in which the Respondents are named as parties or are otherwise involved, whether commenced before or after the Order Date; and
- (iii) any related corporate matters.

7. Except as otherwise provided herein, the Respondents shall be entitled to pay all expenses reasonably incurred by the Respondents in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure shall be approved by the Monitor;
- (b) all obligations incurred by the Respondents after the Order Date, including without limitation, with respect to goods and services actually supplied to the Respondents following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Respondents' obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph 6(c) which may be incurred after the Order Date.

8. The Respondents are authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Respondents in connection with the sale of goods and services by the Respondents, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Respondents shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Respondents and the landlord from time to time (“**Rent**”), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

10. Except as specifically permitted herein, the Respondents are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Respondents to any of their creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trusts, mortgages, liens, charges or encumbrances upon or in respect of any of the Property, nor become guarantors or sureties, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Respondents to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

11. Subject to such requirements as are imposed by the CCAA, and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Respondents shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$100,000 in the aggregate; and

- (b) terminate the employment of such of their employees or temporarily lay off such employees as they deem appropriate

all of the foregoing to permit the Respondents to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. The Respondents shall provide each of the relevant landlords with notice of the Respondents’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Respondents’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Respondents, or by further Order of this Court upon application by the Respondents, the landlord or the applicable secured creditors on at least two (2) clear days’ notice to the other parties. If the Respondents disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Respondents’ claim to the fixtures in dispute.

13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Respondents and the Monitor 24 hours’ prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Respondents, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Respondents of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

14. Until and including Friday, March 1, 2024, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Respondents or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Respondents and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Respondents or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court, except for claims by CWB National Leasing Inc. (“**CWL**”) in respect of lease agreements between CWL and Nata Farms Inc. and Bifano Consolidated Inc. for specific leased equipment (the “**CWL Leases**”).

15. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Respondents or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Respondents and the Monitor or leave of this Court or claims by CWL for the CWL Leases.,

16. Nothing in this Order, including paragraphs 14 and 15, shall: (i) empower the Respondents to carry on any business which they are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Respondents.

NO INTERFERENCE WITH RIGHTS

17. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondents except with the written consent of the Respondents and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

18. During the Stay Period, all Persons having oral or written agreements with the Respondents or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Respondents and that the Respondents shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Respondents in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and the Respondents and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Respondents on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Respondents with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Respondents whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Respondents, if one is filed, is sanctioned by this Court or is refused by the creditors of the Respondents or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Respondents that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

21. The Respondents shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Respondents after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. The directors and officers of the Respondents shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 41 and 43 herein.

23. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Respondents' directors and officers shall only be entitled to the benefit of the Directors'

Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR AND MONITOR'S POWERS

24. A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Respondents with the powers and obligations set out in the CCAA or set forth herein, and that the Respondents and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Respondents pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. The Monitor, in addition to its prescribed rights and obligations under the CCAA and all applicable law, is hereby directed and empowered to:

- (a) monitor the Respondents' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Respondents, to the extent required by the Respondents, in their dissemination to the Interim Lender (as hereinafter defined) and their counsel of financial and other information as agreed to between the Respondents and the Interim Lender, which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
- (d) advise the Respondents in its preparation of the Respondents' cash flow statements, including such reporting as may be required by the Interim Lender, which information shall be delivered to the Interim Lender and its counsel on a

periodic basis, but not less than monthly, or as otherwise agreed to by the Interim Lender;

- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Respondents (collectively, the “**Books and Records**”), to the extent that is necessary to adequately assess the Respondents’ business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

26. Without altering in any way the obligations of the Respondents in this CCAA proceeding, the Monitor, on behalf and in the name of the Respondents, as the Monitor deems appropriate, is hereby authorized and empowered, but not required, to exercise any powers which may be properly exercised by a board of directors or any officers of the Respondents to cause the Respondents, including without limitation to:

- (a) perform any actions or take any steps, and execute all agreements, documents and writings, on behalf of, and in the name of, the Respondents, including execution of the Interim Credit Agreement (as defined in paragraph 36) and any ancillary documents;
- (b) engage, retain, or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, as the Monitor deems necessary or appropriate to assist with the exercise of its powers and duties or those of the Respondents;

- (c) perform such other functions or duties, and enter into any agreements or incur any obligations, as the Monitor considers necessary or desirable in order to facilitate or assist in the Respondents' restructuring, including the sale of all or any part of the Respondents' Property, the distribution of any net proceeds of the Property (the "**Proceeds**") or any other related activities;
- (d) exercise any rights of the Respondents;
- (e) initiate, defend, continue, settle or compromise any and all Proceedings now pending or hereafter instituted with respect to the Respondents, the Property or the Proceeds, including such appeals or applications for judicial review in respect of any order or judgment pronounced in any such Proceeding;
- (f) deal with any taxing or regulatory authority, including to execute any appointment or authorization form on behalf of the Respondents that any taxing or regulatory authority may require, in order to confirm the appointment of an authorized representative of the Respondents (which may be a representative of the Monitor) for such purposes;
- (g) claim any and all insurance refunds or tax refunds to which any of the Respondents is entitled on behalf of such Respondent;
- (h) file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Respondents, (i) any tax returns, and (ii) the Respondents' employee-related remittances, T4 statements and records of employment for the Respondents' former employees, in either case, based solely upon the information in the Respondents' books and records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documents; and
- (i) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations

(collectively, the “**Monitor’s Powers**”).

27. Notwithstanding anything contained in this Order, where the Monitor exercises any of the Monitor’s Powers, it shall be the sole Person authorized to exercise such powers, to the exclusion of all other Persons, and no director or officer of the Respondents shall incur any liability for any decisions or actions of the Monitor acting under such authority.

28. Notwithstanding anything contained in this Order, the Monitor shall not take possession of the Property or Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

29. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be: (i) environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the “**Environmental Legislation**”); (ii) considered livestock or an animal under any federal, provincial or other law regulating the possession, protection, conservation, management, farming, sale or transport of livestock or animals including, without limitation, the *British Columbia Prevention of Cruelty to Animals Act*, the *British Columbia Livestock Act*, the *British Columbia Animal Health Act*, the *British Columbia Livestock Public Sale Act* and regulations thereunder (the “**Farm Animal Legislation**”); or (iii) considered unpasteurized or raw milk, fluid milk or manufactured milk (“**Milk**”) under any federal, provincial or other law regulating the production, transportation, packing, storing, marketing and sale of Milk including, without limitation, the *Canadian British*

Columbia Milk Order (SOR 95-511), *The Consolidated Order* of the British Columbia Milk Marketing Board, the *British Columbia Milk Industry Act*, the *British Columbia Natural Products Marketing (BC) Act*, the *Canadian Agricultural Products Marketing Act* and the regulations thereunder (the “**Dairy Legislation**”) provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation, Farm Animal Legislation or Dairy Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, Farm Animal Legislation or Dairy Legislation, unless it is actually in possession.

30. The Monitor shall provide any creditor of the Respondents and the Interim Lender with information provided by the Respondents in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Respondents is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Respondents may agree.

31. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

32. The Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Respondents as part of the cost of these proceedings. The Respondents are hereby authorized and directed to pay the accounts of the Monitor and counsel to the Monitor on a periodic basis.

33. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

34. The Monitor and counsel to the Monitor shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and its counsel, both before and after the making of this Order which are related to the Respondents' restructuring. The Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof.

INTERIM FINANCING

35. The Respondents are hereby authorized and empowered to obtain and borrow under an interim credit facility from the Petitioner (in such capacity, the "**Interim Lender**") in order to finance the Respondents' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such interim credit facility shall not exceed \$250,000 under this Order unless permitted by further Order of this Court.

36. Such interim credit facility shall be on the terms and subject to the conditions set forth in the interim financing credit agreement between the Respondents and the Interim Lender dated as of February 20, 2024 (the "**Interim Credit Agreement**") attached as Appendix "D" to the Pre-Filing Report by A&M, in its capacity as proposed monitor in these proceedings.

37. The Respondents and the Monitor are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (with the Interim Credit Agreement, collectively the "**Definitive Documents**"), as are contemplated by the Interim Credit Agreement or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Respondents are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities

and obligations to the Interim Lender under and pursuant to the Interim Credit Agreement and the Definitive Documents (collectively, the "**Interim Financing Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

38. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property as security for the Interim Financing Obligations, which Interim Lender's Charge shall be in the aggregate amount of the Interim Financing Obligations outstanding at any given time under the Definitive Documents. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 41 and 43 hereof.

39. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon three (3) business days' notice to the Respondents and the Monitor, may exercise any and all of its rights and remedies against the Respondents or the Property under or pursuant to the Interim Credit Agreement, Definitive Documents and the Interim Lender's Charge, including without limitation, to cease making advances to the Respondents and set off and/or consolidate any amounts owing by the Interim Lender to the Respondents against the obligations of the Respondents to the Interim Lender under the Interim Credit Agreement, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Respondents and for the appointment of a trustee in bankruptcy of the Respondents; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Respondents or the Property.

40. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Respondents under the CCAA, or any proposal filed by the Respondents under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

41. The priorities of the Administration Charge, the Directors' Charge and the Interim Lenders' Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$150,000);

Second – Interim Lender's Charge (to the maximum amount of the Interim Financing Obligations at the relevant time); and

Third – Directors' Charge (to the maximum amount of \$150,000).

42. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Lender's Charge and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

43. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except:

- (a) those claims contemplated by section 11.8(8) of the CCAA;
- (b) valid and perfected security interests in favour of CWL for specific equipment leased by Nata Farms Inc. and Bifano Consolidated Inc. which rank in priority to the Petitioner's security interests under the *Personal Property Security Act* (British Columbia); and
- (c) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (British Columbia) or such other applicable legislation that has not been served with notice of this Application.

44. Except as otherwise expressly provided herein, or as may be approved by this Court, the Respondents shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Respondents obtain the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge and the Director's Charge.

45. The Charges, the Interim Credit Agreement and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Respondents; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Interim Credit Agreement or the Definitive

Documents shall create or be deemed to constitute a breach by the Respondents of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Respondents entering into the Interim Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Respondents pursuant to this Order, the Interim Credit Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Respondents' interest in such real property leases.

SERVICE AND NOTICE

47. The Monitor shall (i) without delay, publish in The Daily Courier (Kelowna) a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Respondents of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

48. The Respondents and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission (including by e-mail) to the Respondents' creditors or other interested parties at their respective addresses

as last shown on the records of the Respondents and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

49. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the “**Service List**”) to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: <http://www.alvarezmarsal.com/BifanoNata> (the “**Monitor’s Website**”).

50. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor’s Website.

51. Notwithstanding paragraphs 48 and 50 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

52. The Respondents or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

53. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Respondents, the Business or the Property.

54. **THIS COURT REQUESTS** the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Respondents and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Respondents and the Monitor and their respective agents in carrying out the terms of this Order.

55. Each of the Respondents and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Respondents to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

56. The Respondents may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if the Respondents determine that such a filing is appropriate.

57. The Respondents are hereby at liberty to apply for such further interim or interlocutory relief as they deem advisable within the time limited for Persons to file and serve Responses to the Petition.

58. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

59. Any interested party (including the Respondents and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 41 and 43 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

60. Endorsement of this Order by counsel appearing on this application, other than counsel for the Respondents, is hereby dispensed with.

61. This Order and all its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lisa Hiebert

☐ Party ☒ Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule "A"**Appearance List**

Counsel Name	Party Represented
	Alvarez & Marsal Canada Inc., in its capacity as proposed Monitor