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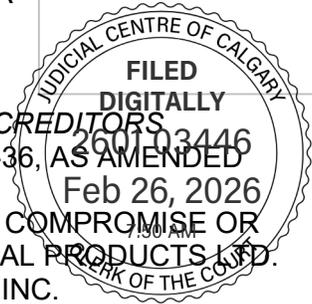
JUDICIAL CENTRE CALGARY

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 J.T. NEILSON**

March 2, 2026 at 10:00 a.m.

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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' Originating Application (the "**Initial Application**") seeking an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangements Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), granting, among things, the following relief:
 - (a) declaring that the Applicants are companies to which the CCAA applies;
 - (b) with respect to the Proposal Proceedings (as defined below):
 - (i) declaring that the Proposal Proceedings of the Applicants are taken up and continued under the CCAA, pursuant to section 11.6(a) of the CCAA;
 - (ii) declaring that Division I of Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") has no further application to the Applicants; and,
 - (iii) terminating the Proposal Proceedings and deeming the NOIs (as defined below) filed by the Applicants to be withdrawn;
 - (c) authorizing the Applicants to carry on business in a manner consistent with the preservation of their business and property;
 - (d) authorizing the Applicants to pay the reasonable expenses incurred by the Applicants in carrying out their business in the ordinary course, including certain expenses incurred prior to the date of the Initial Order;
 - (e) staying all proceedings, rights, and remedies, against or in respect of the Applicants or their business or property, except as otherwise set forth in the Initial Order, for an initial ten (10) day period (as may be amended or extended from time to time, the "**Stay Period**");
 - (f) appointing Alvarez and Marsal Canada Inc. ("**A&M**") as the monitor (the "**Proposed Monitor**") of the Applicants in these proceedings;

- (g) authorizing the Applicants to pay all reasonable fees and disbursements of the Proposed Monitor, the Proposed Monitor's legal counsel, and the Applicants' legal counsel;
- (h) granting the following charges against the Applicants' current and future assets, undertakings, and properties, of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), for the purposes of securing the payment and performance of:
 - (i) the fees and the disbursements of the Proposed Monitor, the Proposed Monitor's legal counsel, and the Applicants' legal counsel (the "**Administration Charge**"), to be secured against all of the Applicants' Property, in the amount of \$150,000; and,
 - (ii) the Applicants' obligations to indemnify the Applicants' directors and officers for liabilities they may incur after the commencement of these proceedings (the "**Directors' Charge**"), to be secured against all of the Applicants' Property, in the maximum amount of \$200,000;
- (i) declaring that the Administration Charge and the Directors' Charge (collectively, the "**Initial Order Charges**") rank in priority to all existing liens, security interests, encumbrances, or claims, with respect to concerning, or as and against, all of the Property, and providing for the respective priority of the Initial Order Charges, as between them, as follows:
 - (i) **First** - Administration Charge; and,
 - (ii) **Second** - Directors' Charge;
- (j) continuing the Foreign Representative Order (as defined below), by confirming that FUM Canada is authorized and empowered to:
 - (i) act as foreign representative of the proceedings under the CCAA (the "**CCAA Proceedings**") for the purpose of having the CCAA Proceedings recognized in the United States of America, or any other foreign jurisdiction; and,

- (ii) as foreign representative, 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 (the “**US Bankruptcy Code**”) and any other provision of the *US Bankruptcy Code*; and,
 - (k) setting the date of a comeback hearing in respect of the Initial Order (the “**Comeback Hearing**”), in relation to an application for an order granting various amendments to the Initial Order.
- 2. The Applicants seek relief under the CCAA to provide breathing room to ensure that they are able to continue operating as a going concern, while undertaking necessary restructuring steps. The Applicants are suffering from significant liquidity constraints as a result of, among other things, the effects of American tariffs, increases in advertising costs, and cash constraints resulting from the Settlement Agreement, as described below. As a result, the Applicants require a stay of proceedings to stabilize operations and prevent value-eroding enforcement steps. The purpose of the proposed CCAA proceedings, and the companion proceedings under Chapter 15 of the *US Bankruptcy Code*, is to preserve the Applicants’ business and assets while they work with professional advisors to develop a restructuring plan. The flexibility of the CCAA, as compared with the BIA, offers better prospects of a positive result for all of the Applicants’ stakeholders.

Affidavit of Braeden Pauls, sworn on February 23, 2026 (the “Pauls Affidavit”) at paras. 5-7.

II. FACTS

- 3. All references to monetary amounts referenced herein are in Canadian dollars, unless otherwise stated. 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 February 23, 2026 (the “**Pauls Affidavit**”).

A. Background

- 4. FUM Canada is a corporation incorporated pursuant to the federal laws of Canada, and is extra-provincially registered in Alberta, with a registered office located in Calgary.

Pauls Affidavit at para. 8.

5. FUM US is a corporation incorporated pursuant to the laws of the State of Delaware.

Pauls Affidavit at para. 9.

6. The Applicants carry on business within a corporate group structure. Certain management, strategic, and administrative functions are coordinated at the group level, including from Calgary, where the Applicants' senior management is located.

Pauls Affidavit at para. 10.

7. FUM Canada is the primary operating entity of the group and conducts the majority of the Applicants' commercial activities. FUM US is a wholly owned subsidiary of FUM Canada, incorporated primarily to support operations and employment in the United States.

Pauls Affidavit at para. 11.

8. While the Applicants coordinate aspects of their operations, each Applicant is a separate corporation, and the Applicants' business activities, financing arrangements, and creditor relationships have developed over time in a manner consistent with that structure.

Pauls Affidavit at para. 12.

9. FUM Canada has two directors, located in Calgary and Herbert, Saskatchewan, and FUM US has one director, located in Calgary. The Applicants lease an office space at Bay 120A, 1212 34 Ave SE, Calgary (the "**Head Office**"), which serves as the head office.

Pauls Affidavit at paras. 13 and 18.

10. The Applicants are engaged in the development, production, and sale of nicotine-free, smokeless, vaporless, non-electronic flavoured air devices under the FUM 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.

Pauls Affidavit at para. 15.

11. FUM Canada was the first company to produce flavoured air products and holds a significant share of the market, together with various intellectual property rights in relation to the Products; which are manufactured in China and Vietnam and subsequently imported to other countries.

Pauls Affidavit at paras. 16-17.

12. The majority of the Applicants' operations are carried out by employees working remotely.

Pauls Affidavit at para. 19.

13. The Applicants have eighteen (18) employees, of which twelve (12) are employed by FUM Canada and six (6) are employed by FUM US. Of the Applicants' employees, eleven (11) are located in Canada (including five (5) in Calgary), six (6) are located in the United States of America, and one (1) is located in the United Kingdom.

Pauls Affidavit at para. 20.

14. FUM Canada's inventory of Products is primarily located at a leased warehouse in Las Vegas, United States (the "**Las Vegas Warehouse**"). In addition, FUM Canada maintains inventory with third-party logistics providers in various countries, including Australia, Netherlands, and the United Kingdom.

Pauls Affidavit at paras. 21-22.

15. FUM Canada distributes the Product through third-party distributors and direct-to-consumer sales; primarily through online platforms.

Pauls Affidavit at para. 23.

16. 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 BIA.

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

B. The Applicants' Financial Position

18. As at the filing date of the NOIs, the Applicants' material assets include the following:

- (a) approximately \$1,079,652 in cash;
- (b) inventory, consisting of approximately: (i) \$2,443,161 in finished goods; and, (ii) \$1,018,509 in raw materials; and,
- (c) approximately \$160,968 in prepaid expenses.

Pauls Affidavit at para. 39.

19. The Applicants owe approximately USD\$1,937,000 to secured creditors, which include: Wayflyer Financial LLC and Wayflyer Advances LLC; CFT Clear Finance Technology Corp.; and, WebBank.

Pauls Affidavit at para. 40.

20. The Applicants owe approximately CAD\$2,406,938 and USD\$2,300,000 to unsecured creditors and stakeholders, which include: Business Development Bank of Canada; Amex Bank of Canada; BFL Metal Products Co., Ltd. (“**BFL**”), a Chinese limited company, in respect of the Settlement Agreement (as defined below); and, various trade creditors.

Pauls Affidavit at para. 40.

C. Litigation

21. The Applicants are defendants in litigation commenced against them by, *inter alios*:
- (a) BFL, pursuant to a trademark infringement lawsuit commenced in the United States District Court for the Southern District of Florida (the “**Infringement Suit**”); and,
 - (b) the Center for Environmental Health, a non-profit corporation, regarding alleged violations of California Proposition 65 concerning certain consumer notification requirements, commenced in the Superior Court of California, County of San Francisco.

Pauls Affidavit at paras. 26 and 44.

(i) The Infringement Suit

22. The Infringement Suit is subject to a Confidential Settlement and Release Agreement (the “**Settlement Agreement**”), entered into by the Applicants and BFL in late October 2025.

Pauls Affidavit at para. 27.

23. Among other things, the Settlement Agreement contemplates the payment, by the Applicants to BFL, of USD\$2,500,000 (Two Million, Five Hundred Thousand United States Dollars), in two tranches, as follows:

- (a) an initial tranche of USD\$1,400,000, payable in fourteen equal payments of USD\$100,000, on the first business day of each month beginning on November 1, 2025; and,
- (b) a second tranche of USD\$1,100,000, payable beginning on February 1, 2027 and ending on November 1, 2028, by way of a monthly royalty payment of 2.2% on FUM Canada's gross sales internationally, with the remaining balance (if any) payable on November 1, 2028,

(collectively, the "**Settlement Payments**").

Pauls Affidavit at para. 28.

- 24. The Settlement Payments placed a significant burden on the Applicants' cash flow and liquidity, which were already constrained by the effects of tariffs and increased advertising costs.

Pauls Affidavit at para. 29.

- 25. Although the Applicants were able to satisfy the Settlement Payments due in November and December 2025, the Applicants failed to make the Settlement Payments due on January 1, 2026 and February 1, 2026 (the "**Settlement Defaults**").

Pauls Affidavit at para. 30.

- 26. As a result of the Settlement Defaults, BFL, through its counsel, has advised the Applicants that BFL intends to commence enforcement steps in the immediate near term.

Pauls Affidavit at para. 31.

D. Chapter 15 Proceedings

- 27. The Applicants determined that it would be necessary to seek relief in the United States under Chapter 15 of the *U.S. Bankruptcy Code* as a result of, among other factors:

- (a) the prospect of imminent enforcement steps by BFL, including the threatened application seeking an injunction against sales of the Products in the United States, which, if continued, may materially disrupt the Applicants' operations and cash flow, impair their relationships with key customers and suppliers, and generally

prevent the Applicants from carrying out a restructuring within the CCAA Proceedings; and,

- (b) the facts that approximately eighty percent (80%) of FUM Canada's sales occur in the United States, a significant portion of the inventory of Products is located at the Las Vegas Warehouse, and certain U.S.-based counterparties and suppliers have recently tightened their credit terms, taken steps to terminate or suspend their agreements with the Applicants, or required cash on or in advance of delivery.

Pauls Affidavit at para. 47.

- 28. On February 17, 2026, the Honourable Justice M.H. Bourque granted an order (the "**Foreign Representative Order**") which, among other things, authorized FUM Canada to act as the foreign representative of the Proposal Proceedings for the purpose of having the Proposal Proceedings recognized in the United States of America.

Pauls Affidavit at para. 48.

- 29. On February 19, 2026, the Applicants filed, among other ancillary documents, materials in the United States Bankruptcy Court, District of Nevada (the "**US Bankruptcy Court**") for the recognition of the Proposal Proceedings and related provisional relief (the "**US Chapter 15 Materials**").

Pauls Affidavit at para. 49.

- 30. The Applicants are seeking, as part of the Initial Order, that FUM Canada's authorization to act as the Foreign Representative be continued in the CCAA Proceedings, to ensure that FUM Canada can continue the Chapter 15 Proceedings.

E. Objective for Converting the NOI Proceedings to CCAA Proceedings

- 31. In light of the Applicants' liquidity constraints and the prospect of imminent enforcement actions by BFL or other creditors, the Applicants, in consultation with the Proposal Trustee, determined that it was necessary to commence the Proposal Proceedings under the BIA to stabilize their operations and pursue an orderly restructuring under Court supervision.
- 32. The Applicants, with the assistance of their external counsel and the Proposal Trustee, are currently evaluating restructuring options and formulating a restructuring plan.

33. The Applicants require that the NOI Proceedings be continued under the CCAA because of, among other things, the ability to seek appropriate relief with respect to suppliers; the timelines contemplated by the CCAA; and the availability of flexible relief in connection with any potential restructuring transaction.

Pauls Affidavit at para. 51.

III. ISSUES

34. The issues this Bench Brief addresses are whether:
- (a) the Applicants are companies to which the CCAA applies;
 - (b) this Honourable Court should (i) permit the Applicants to continue the NOI Proceedings under the CCAA; and, (ii) grant the proposed stay of proceedings;
 - (c) the Proposed Monitor should be appointed as the monitor of the Applicants;
 - (d) this Honourable Court should approve the Initial Order Charges; and,
 - (e) it is appropriate to continue FUM Canada's authorization to act as Foreign Representative.

IV. LAW AND ARGUMENT

A. The Applicants are "affiliated debtor companies" to which the CCAA applies

35. The CCAA applies to "a debtor company or affiliated debtor companies" if the total of claims against the debtor company, or affiliated debtor companies, is more than \$5 million. A "debtor company" is defined, *inter alia*, as a "company" that is "insolvent" or that has committed an act of bankruptcy within the meaning of the BIA.
36. Each of the Applicants is: (i) a "company"; (ii) insolvent; and, (iii) "affiliated", as contemplated by the CCAA. The total claims against the Applicants exceed \$5 million.

CCAA, at s. 2(1) (definition of "debtor company") and s. 3(1) [Book of Authorities ("BOA") Tab 2]; Pauls Affidavit at paras. 52-53.

(i) Each of the Applicants is a “company” under the CCAA

37. The CCAA defines a “company” as:

[...] any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated [...]

CCAA, s. 2(1) (definition of “company”) [emphasis added] [BOA Tab 2].

38. FUM Canada is a corporation incorporated under the laws of Canada and is extra-provincially registered in Alberta, and accordingly, FUM Canada is a “company” as defined in the CCAA.

Pauls Affidavit at para. 8.

39. It is well established that bank or trust account funds are sufficient to satisfy the low threshold for a debtor “having assets [...] in Canada.”. FUM US is a corporation incorporated under the laws of Delaware, with assets, in the form of trust account funds, located in the Alberta, and accordingly, FUM US is a “company” as defined in the CCAA.

***Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC) at para. 30 [BOA TAB 6]; *In the Matter of Global Light Telecommunications Inc. et al.*, 2004 BCSC 745 at para. 17 [BOA TAB 11]; Pauls Affidavit at para. 9.**

(ii) The Applicants are “debtor companies” under the CCAA

40. As set out above, a “debtor company” includes, *inter alia*, a “company” that is “insolvent”.

CCAA, s. 2(1) [BOA Tab 2].

41. The term “insolvent” is not defined under the CCAA; however, it has been clearly established that, in proceedings under the CCAA, the term “insolvent” can be interpreted by reference to the definition of “insolvent person” set out in s. 2(1) of the BIA.

***Cinram International Inc (Re)*, 2012 ONSC 3767 [“*Cinram*”], at para. 37 and Schedule “C” (bench brief sections incorporated in decision by reference) at paras. 49-51 [BOA Tab 8]; *Stelco Inc, Re*, 2004 CarswellOnt 1211 (Sup Ct [Comm List]) [“*Stelco*”], at paras. 21-22 [BOA Tab 21].**

42. The definition of “insolvent person” in the BIA is:

[...] a person who is not bankrupt and who resides, carries on business or has property in Canada, and whose liability 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, at s. 2(1) (definition of “insolvent person”) [emphasis added] [BOA Tab 1].

43. In *Stelco*, Farley J. applied an expanded definition of insolvent in the CCAA context, to reflect the “rescue” emphasis of the CCAA, holding that part (a) of the BIA’s definition of “insolvent person” should be interpreted to include a financially troubled corporation that is “reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring”.

***Stelco*, at paras. 4, and 25-26 [BOA Tab 21].**

44. In this case, the Applicants filed the NOIs in February of 2026 to commence the NOI Proceedings, thereby acknowledging their insolvency. The Applicants are facing imminent liquidity challenges, and are unable to satisfy their obligations as they come due.

Pauls Affidavit at paras. 2, 5, 29-30, 32-34, 38-40.

45. Furthermore, based on their books and records, the Applicants’ liabilities, in the aggregate, amounted to approximately CAD\$2,406,938 and USD\$4,237,000 as at January 26, 2026; whereas, the aggregate book value of the Applicants’ assets amounted to approximately \$5,169,670 as at August 31, 2025 (the date of the most recent financial statements).

Pauls Affidavit at paras. 39-40.

(iii) The Applicants are “affiliated” under the CCAA

46. Subsections 3(2)-(4) of the CCAA establish the circumstances in which companies are affiliated with one another:

Affiliated companies

- (2) For the purposes of this Act,**

- (a) **companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company** or each of them is controlled by the same person; and
- (b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

- (a) **securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held**, other than by way of security only, **by or for the benefit of that person** or by or for the benefit of those companies; and
- (b) **the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.**

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

- (a) **it is controlled by**
 - (i) **that other company** [...]

CCAA, s. 3(2)-(4) **[emphasis added]** [BOA Tab 2].

47. FUM US is a wholly owned subsidiary of FUM Canada and is therefore an “affiliate” of FUM Canada as defined under the CCAA.

Pauls Affidavit at para. 11.

(iv) The Applicants are subject to over \$5 million in known claims

48. There is no doubt that the claims, against the Applicants as a whole, exceed \$5 million total.

Pauls Affidavit at para. 40.

49. The fact that, taken in isolation, the claims against FUM US are less than \$5 million, does not preclude relief being granted under the CCAA, because the Applicants collectively satisfy the definition of “affiliated debtor companies”. The decision of Newbould J. in

Ghana Gold Corporation is illustrative. The Court first applied section 3 of the CCAA to determine that the individual applicants were affiliated. CCAA relief was available to the collective group because the \$5,000,000 threshold established in section 3(1) of the CCAA was met, notwithstanding that the judgment indicates that one of the individual debtors (Aburi) had less than \$5,000,000 in claims against it:

Aburi is a debtor. As of May 6, 2013, the applicants had accounts payable of approximately \$2.2 million apart from the US\$4 million owed to FCMI. The Monitor advises that Aburi is the debtor for approximately \$1.3 million of these accounts payable. As well, Aburi owed approximately \$1.6 million in intercompany debt to Coastal. The pre-filing cash available to the applicants was only \$165,000.

Re Ghana Gold Corporation, 2013 ONSC 3284 (CanLII) at para. 33 [BOA Tab 18].

50. Accordingly, the Applicants are affiliated debtor companies to which the CCAA applies.

(v) The Applicants' center of main interests is in Alberta

51. In the absence of evidence to the contrary, a debtor company's registered office is deemed to be the centre of its main interests. Other relevant objective factors include: the location of the headquarters, the location of those who manage the debtor's business, the location of primary assets and operations, the location of the majority of creditors, and the legitimate expectations of third parties dealing with the corporate group.

*CCAA at s. 45(2);
Probe Resources Ltd. (Re), 2011 BCSC 552 at paras. 22 and 28 [BOA TAB 17].*

52. The following factors support the conclusion that the Applicants' centre of main interests is located in Calgary:

- (a) FUM Canada's registered office, and the Applicants' head office, are located in Calgary;
- (b) the Applicants' senior management (including the sole director of FUM US and one of the two directors of FUM Canada) is located in Calgary;
- (c) the Applicants' operational and management decisions are made primarily in Calgary, which is the location of the majority of the Applicants' management and a significant number of their employees;

- (d) the Applicants' administrative, accounting and treasury functions are overseen and managed from Calgary;
- (e) the Applicants' assets are located in various locations, and although a significant portion of inventory is located in Las Vegas, Nevada, the operational decisions concerning such inventory are managed from Calgary and FUM Canada also maintains inventory at other locations; and,
- (f) the Applicants' creditors are located in various jurisdictions, including Alberta, and the Applicants' material agreements (including the Las Vegas Lease and various security agreements), refer to the Applicants' current Calgary address or prior addresses in Calgary. In addition, many of the registrations made against the Applicants in the Alberta PPR and Delaware UCC, refer to Calgary addresses for the Applicants.

Pauls Affidavit at paras. 8, 11, 13, 20-21, 47, 54, Exhibits "N" (Alberta PPR Search) and "O" (Delaware UCC Search).

B. This Honourable Court should permit the Applicants to continue the NOI Proceedings under the CCAA

53. This Court has approved the continuation of BIA proceedings under the CCAA on many occasions.

By way of example:

In the Matter of the Compromise or Arrangement of Mantle Materials Group, Ltd., Alberta Court of King's Bench, Court File No. 2301-16114, CCAA Initial Order pronounced by the Honourable ACJ D.B. Nixon on January 10, 2024 ["Mantle Initial Order"] [BOA Tab 13];
In the Matter of a Plan of Compromise or Arrangement of Free Rein Resources Ltd., Alberta Court of King's Bench, Court File No. 2301-16260, CCAA Initial Order pronounced by the Honourable Justice J.T. Neilson on December 7, 2023 ["FRR Initial Order"] [BOA Tab 10].

54. Courts across Canada have applied the following three factors set out in *Clothing for Modern Times* ("**Modern**") in determining whether it is appropriate to continue NOI proceedings under the CCAA:

- (a) whether the moving parties have satisfied the sole statutory condition to continuance set out in section 11.6 of the CCAA, being that they have not filed a proposal under the BIA;

- (b) whether the proposed continuation is consistent with the purposes of the CCAA; and,
- (c) whether the applicants have provided the Court with the information that would otherwise form part of an initial application pursuant to Section 10(2) of the CCAA.

Clothing for Modern Times Ltd., Re, 2011 ONSC 7522 [“*Modern*”], at para 9 [BOA Tab 9].

(i) The Applicants have applied in the correct jurisdiction

55. Section 9 of the CCAA provides, in pertinent part, that an application “...may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated...”.

CCA, s. 9(1) [BOA Tab 2].

56. The Applicants carry on business within a corporate group structure, and , while each of the Applicants coordinates aspects of their own operations, certain management, strategic, and administrative functions are coordinated at the group level, including from Calgary, where the Applicants’ senior management is located. All accounting and management functions of the Applicants are carried out in Calgary. Alberta is the proper jurisdiction.

Pauls Affidavit at paras. 10, 12, and 54.

(ii) The Applicants have met the sole statutory condition to continuance under the CCAA

57. Section 11.6(a) of the CCAA contemplates that this Court may take up and continue the NOI Proceedings under the CCAA, so long as the Applicants have not filed a proposal within the meaning of Part III of the BIA.

CCA, at s. 11.6(a) [BOA Tab 2].

58. Neither of the Applicants have filed a proposal in the NOI Proceedings.

(iii) The proposed continuance is consistent with the purposes of the CCAA

59. 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 (4th) I, at para. 19 [BOA Tab 4].

60. The Applicants' intentions are consistent with the underlying purposes of the CCAA. The flexibility and stability afforded by the CCAA will allow the Applicants to continue to:
- (a) continue operations in the ordinary course;
 - (b) maximize the value of the Applicants' property, to the benefit of all creditors and stakeholders; and,
 - (c) enable the preparation and presentation of a viable plan of compromise or arrangement, by one or both of the Applicants, prepared in consultation with the Applicants' professional advisors.

Pauls Affidavit at para. 51.

61. It is appropriate that the NOI Proceedings continue on under the CCAA, as (i) the Applicants have been acting diligently and in good faith in their efforts to address their insolvency and facilitate a restructuring of their business, as confirmed by the Proposed Monitor and Proposal Trustee; (ii) continuance will permit the Applicants time to administer and the SISF; and, (iii) no creditor will be materially prejudiced by the continuance.

9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10, at para. 49 [BOA Tab 3];
the Applicants understand the Proposed Monitor's forthcoming report will confirm
its view in this regard.

C. The requirements of section 10(2) of the CCAA are met

62. In order for the Initial Application to be approved by this Honourable Court, it must be accompanied by:
- (a) a statement indicating, on a weekly basis, the Applicants' projected cash flow;
 - (b) a report containing the prescribed representations regarding the preparation of the cash-flow statement; and,

- (c) copies of all financial statements, audited or unaudited, prepared by the Applicants during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statements.

CCAA, at s. 10(2) [BOA Tab 2].

63. The financial statements prepared by the Applicants (on a consolidated basis) during the year prior to the Initial Application are attached to the Pauls Affidavit, as Exhibit "F". The Applicants' cash-flow statement filed in the Proposal Proceedings has been attached to the Pauls Affidavit, as Exhibit "U". The Applicants are working with the Proposed Monitor to update the NOI Cash Flow Statement for filing in the CCAA Proceedings, and will file a copy of same in advance of the Initial Application

Pauls Affidavit at paras. 36, 55-56.

64. Accordingly, the requirements under section 10(2) of the CCAA are satisfied and the three continuation factors set out in *Modern* have been satisfied.

D. This Honourable Court should grant the stay of proceedings

(i) The proposed CCAA stay of proceedings should be granted

65. 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 22];
Century Services Inc v Canada (Attorney General), 2010 SCC 60 at para 15
[BOA Tab 7].**

66. The Applicants seek to extend the automatic stay which commenced under the NOI Proceedings, upon the filing of the NOIs, to continue under the CCAA.

BIA, at s. 69(1) [BOA Tab 1].

67. Subsection 11.02(1) of the CCAA permits the Court to grant a stay of proceedings, "on any terms it may impose", provided that the initial period may not be more than ten (10) days. Following the Initial Application, the stay of proceedings may be extended at the comeback application for a longer period, under subsection 11.02(2) of the CCAA.

CCAA, at ss. 11.02(1) - (2) [BOA Tab 2].

68. Subsection 11.02(3) of the CCAA sets out the requirements for a stay:

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.**

CCAA, at s. 11.02(3)(b) [emphasis added] [BOA Tab 2].

69. The imposition of the stay is appropriate for the reasons referred to above under the heading **“The Proposed Continuance Is Consistent With The Purpose of the CCAA”**; and, additionally, because (i) the value of the Applicants’ business will be maximized if it continues as a going concern; and, (ii) the stay is necessary to prevent the following risks, which could materialize without the stay:

- (a) suppliers or service and trade providers ceasing to supply or provide services to the Applicants or tightening payment terms in a manner that further exacerbates the liquidity challenges facing the Applicants;
- (b) the filing of the NOIs and payment-related defaults have given rise to further defaults under the Applicants’ various loan and security agreements, risking security enforcement actions against the Property; and,
- (c) the potential termination of agreements that are critical to the operation of the applicants’ business, including shipping contracts, supply contracts, and advertising agreements.

Pauls Affidavit at para. 57.

70. While evidence of good faith and due diligence is not required on an Initial Application (in which case the stay is granted under subsection 11.02(1), not 11.02(2)), the Applicants understand that the Proposed Monitor is of the view that the Applicants are acting in good faith and with due diligence.

The Proposed Monitor’s Report is forthcoming and anticipated to be filed in advance of the Application.

71. The Applicants' secured creditors, and other interested parties who asked to be on or were added to the service list, were provided with proper notice of the Initial Application and have had an opportunity to participate in the NOI Proceedings and in this Initial Application. Accordingly, the Applicants' stakeholders have had prior knowledge of the Applicants' intention to continue the NOI Proceedings through the CCAA.

Affidavit of Service, to be filed.

72. Further, as will be confirmed in the forthcoming Proposed Monitor's Report, the Applicants will have sufficient liquidity to continue operating during the Stay Period. It is submitted that no creditor will be materially prejudiced by the granting of the relief sought.

The Proposed Monitor's Report, to be filed.

73. Based on the foregoing, circumstances exist which make the order appropriate.

(ii) The NOIs should be deemed to be withdrawn

74. An insolvent person that files an NOI will be deemed to be bankrupt in certain circumstances, including, *inter alia*, if it fails to file a proposal within thirty (30) days of the filing of the NOI, or within any extension of that thirty (30) day period granted by the Court.

BIA at s. 50.4(8) [BOA Tab 1].

75. The BIA does not expressly address the circumstances in which an NOI may be withdrawn and the proposal proceedings terminated. However, courts exercising their inherent jurisdiction have granted orders permitting insolvent persons to withdraw their NOIs in various circumstances, including: (i) where the insolvent person demonstrates it is no longer insolvent, as in *Poly Innovation Inc. (Re)*; (ii) where "the affected creditors consent and the court does [not] have cause to disallow", as in *Re Greey*; or, (iii) where the insolvent person's proposal proceedings are continued under the CCAA, as in, for example, this Honourable Court's recent CCAA initial orders in *In The Matter of the Compromise or Arrangement of Mantle Materials Group, Ltd.*, *In the Matter of a Plan of Compromise or Arrangement of Free Rein Resources Ltd.*, and *In the Matter of a Plan of Compromise or Arrangement of Razor Energy Corp., et al.*

***Poly Innovation Inc. (Re)*, 2013 ONSC 2782 at paras. 1, 5 - 10 [BOA Tab 16];
Re Greey, 1995 CarswellOnt 940 [BOA Tab 19];
Mantle Initial Order at para. 3 [BOA Tab 13];
FRR Initial Order at para. 3 [BOA Tab 10];
Razor Energy Corp. et al Initial Order at para. 3 [BOA TAB 15].**

76. The Applicants respectfully submit that this Honourable Court has the jurisdiction, under section 11 of the CCAA, to deem all of the NOIs to be withdrawn. This jurisdiction is founded upon substantially the same grounds as the jurisdiction to extend the stay of proceedings to a non-applicant entity. Section 11 of the CCAA expressly states that:

Despite anything in the *Bankruptcy 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.**

CCAA at s. 11 [**emphasis added**] [BOA Tab 2].

E. A&M should be appointed as Monitor

77. Upon the granting of an Initial Order, subsection 11.7(1) of the CCAA requires that the Court appoint a person to monitor the business and financial affairs of the company.

CCAA at s. 11.7(1) [BOA Tab 2].

78. The Applicants are seeking the appointment of the Proposed Monitor, A&M, to serve as the monitor in these CCAA proceedings.

79. A&M is a trustee within the meaning of sub-section 2(1) of the BIA (as required by subsection 11.7(1) of the CCAA) and is not subject to any of the restrictions set out in subsection 11.7(2) of the CCAA. A&M has consented to act as the Applicants' monitor, if so appointed by this Honourable Court.

The Proposed Monitor's Report, to be filed.

80. In this case, it is appropriate that A&M be appointed as monitor. A&M has familiarity with, and knowledge of, the Applicants' business and operations, including key personnel, stakeholders, and key issues in the restructuring proceedings, through its prior mandates, since late January, 2026, as described in the Pauls Affidavit. This familiarity and knowledge will create cost efficiencies during the course of the proposed CCAA proceedings, should A&M be appointed as monitor.

Pauls Affidavit at paras. 64-65.

F. The Initial Order Charges are appropriate and should be approved

81. The Applicants are seeking the approval of the Initial Order Charges, which will be limited to the Administration Charge and the Directors' Charge. The proposed Initial Order provides that each of the Initial Order Charges constitutes a charge over the Property that ranks in priority to all other Encumbrances (as each is defined in the Initial Order) in favour of any person, except for any secured creditor who did not receive notice of the motion for the Initial Order. Each of the secured creditors who are likely to be affected by the proposed priority charges were given notice of this motion.

Affidavit of Service, to be filed.

(i) The Administration Charge should be granted

82. The Applicants are requesting that the Administration Charge be approved in the amount of \$150,000.

83. Section 11.52 of the CCAA establishes jurisdiction to order the Administration Charge.

CCAA, s. 11.52 [BOA Tab 2].

84. The Court has considered the following non-exhaustive list of factors in deciding whether to grant an administration charge pursuant to section 11.52:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an 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 [BOA Tab 6].**

85. The approval of the Administration Charge is warranted given that:

- (a) these proceedings will require the extensive involvement of professional advisors, who will provide essential legal and financial advice throughout the CCAA proceedings;
- (b) there is no unwarranted duplication of roles;
- (c) it is appropriate for the beneficiaries of the Administration Charge to be afforded the charge, as they will be undertaking a necessary and integral role in these proceedings; and,
- (d) the initial amount of the Administration Charge was determined in consultation with the Proposed Monitor, with consideration to the amounts to be incurred under such charge during the initial ten-day Stay Period.

The Applicants understand the Proposed Monitor's forthcoming report will confirm its view in this regard.

(ii) The Directors' Charge should be granted

86. The Applicants are seeking approval of the Directors' Charge over the Property in the amount of \$200,000. The Applicants do not currently maintain any directors and officers insurance policies. Although the Applicants do have insurance coverage under a general commercial liability policy, and the Directors and Officers have certain indirect coverage thereunder in relation to the insured risks, the Applicants understand that such policies do not directly address the perils which may arise in the CCAA Proceedings. The Directors' Charge will secure the indemnity provided to the Directors and Officers in the draft Initial Order in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers; provided, however, that the Directors' Charge will only apply if and to the extent that the Directors and Officers do not have coverage under any existing insurance policies or there is insufficient coverage under same.

Pauls Affidavit at paras. 72 and 74.

87. Section 11.51 of the CCAA provides the court with the jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.

CCAA, s. 11.51 [BOA Tab 2].

88. In *Re Jaguar Mining Inc.*, Morawetz J. set out a list of factors that the Court must be satisfied of prior to granting a directors' charge. These factors are:

- (a) that notice has been given to the secured creditors likely to be affected by the charge;
- (b) the amount is appropriate;
- (c) the applicant could not obtain adequate indemnification insurance for the director(s) at a reasonable cost; and,
- (d) the charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or willful misconduct.

***Re Jaguar Mining Inc.*, 2014 ONSC 494 at para 45 [BOA Tab 20].**

89. The Applicants' Directors and Officers have expressed their desire for certainty and that their continued service is conditional upon a charge securing their indemnification.

Pauls Affidavit at paras. 73.

90. The quantum of the proposed Directors' Charge is both fair and reasonable given the size and complexity of the Applicants' business, and was calculated with the assistance and input of the Proposed Monitor. The Directors and Officers have played, and will continue to play, a critical role in the NOI Proceedings and these proceedings, and, among other things:

- (a) the secured creditors have been notified of this Application;
- (b) the continued support and service of the Directors and Officers of the Applicants during the proceedings would be beneficial to the Applicants' efforts to preserve value and maximize recoveries;
- (c) the proposed Directors' Charge will not provide protection in the event a director or officer commits gross negligence or wilful misconduct; and,
- (d) the Directors' Charge will only be engaged if there is no coverage under the applicable insurance policies or the claim(s) exceed the coverage.

Pauls Affidavit at paras. 73-74.

91. Accordingly, the Applicants respectfully submit that this Honourable Court should exercise its discretion to grant the Directors' Charge.

G. FUM Canada Should Continue as the Foreign Representative

92. Section 56 of the CCAA permits a Court to authorize any person to act as a foreign representative of proceedings under that Act:

Authorization to act as representative of proceeding under this Act

56 The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

CCAA at s. 56 [emphasis added] [BOA TAB 2].

93. Canadian courts have appointed a debtor company to act as a "foreign representative" for the purpose of seeking recognition of Canadian insolvency proceedings in foreign jurisdictions.

See, e.g., Amended and Restated Initial Order, granted in *In the Matter of Just Energy Group Inc.*, Court File No. CV-21-000658423-00CL, March 19, 2021 (ON SJ) [BOA TAB 12]; Amended and Restated Initial Order, granted in *In the Matter of a Plan of Compromise or Arrangement of Felix Payment Systems Ltd.*, Vancouver Registry No. S-248103, December 6, 2024 (BC SC) [BOA TAB 14].

94. FUM Canada, in its capacity as the foreign representative of the Proposal Proceedings pursuant to the Foreign Representative Order, has filed the US Chapter 15 Materials to commence the Chapter 15 Proceedings, seeking recognition of the Canadian insolvency proceedings in the United States.
95. The Applicants submit that it is appropriate that FUM Canada's authorization to act as the Foreign Representative be continued in the CCAA Proceedings. This is the most efficient and expeditious means of enabling the Chapter 15 Proceedings to continue and will avoid any confusion which might arise as a result of replacing the Foreign Representative at this stage.

V. CONCLUSION

96. The Applicants respectfully request that this Honourable Court grant the Initial Order, substantially in the form attached to the Initial Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26TH DAY OF FEBRUARY, 2026.

“McCarthy Tétrault LLP”

Sean Collins, KC / Nathan Stewart /
Samantha Arbor
Counsel to the Applicants,
RDFN FUM Natural Products Ltd. and RDFN
FUM Natural Products Inc.

VI. LIST OF AUTHORITIES

Statutes

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, at sections 2(1), 50.4(8), and 69(1);
2. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, at sections 2(1), 3(1), 3(2)-(4), 9(1), 10(2), 11, 11.02(1)-(2), 11.02(3)(b), 11.51, 11.52, 11.6(a), 11.7(1), and 45(2);

Case Law

3. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10;
4. *Canadian Airlines Corp. (Re)*, (2000), 19 CBR (4th) I;
5. *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC);
6. *Canwest Publishing Inc.*, 2010 ONSC 222;
7. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60;
8. *Cinram International Inc (Re)*, 2012 ONSC 3767;
9. *Clothing for Modern Times Ltd., Re*, 2011 ONSC 7522;
10. *In the Matter of a Plan of Compromise or Arrangement of Free Rein Resources Ltd.*, Alberta Court of King's Bench, Court File No. 2301-16260, CCAA Initial Order pronounced by the Honourable Justice J.T. Neilson on December 7, 2023;
11. *In the Matter of Global Light Telecommunications Inc. et al.*, 2004 BCSC 745;
12. *In the Matter of Just Energy Group Inc.*, Court File No. CV-21-000658423-00CL, Amended and Restated Initial Order granted on March 19, 2021 (ON SJ);
13. *In the Matter of the Compromise or Arrangement of Mantle Materials Group, Ltd.*, Alberta Court of King's Bench, Court File No. 2301-16114, CCAA Initial Order pronounced by the Honourable ACJ D.B. Nixon on January 10, 2024;
14. *In the Matter of a Plan of Compromise or Arrangement of Felix Payment Systems Ltd.*, Vancouver Registry No. S-248103, Amended and Restated Initial Order granted on December 6, 2024 (BC SC);
15. *In the Matter of a Plan of Compromise or Arrangement of Razor Energy Corp., et al.*, Alberta Court of King's Bench, Court File No. 2401-02680, CCAA Initial Order pronounced by the Honourable Justice N.J. Whitting on February 28, 2024;
16. *Poly Innovation Inc. (Re)*, 2013 ONSC 2782;
17. *Probe Resources Ltd. (Re)*, 2011 BCSC 552
18. *Re Ghana Gold Corporation*, 2013 ONSC 3284 (CanLII);

19. *Re Greey*, 1995 CarswellOnt 940;
20. *Re Jaguar Mining Inc.*, 2014 ONSC 494;
21. *Stelco Inc, Re*, 2004 CarswellOnt 1211 (Sup Ct [Comm List]); and,
22. *Timminco Limited (Re)*, 2012 ONSC 506.