



NO. S-227894  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
GREAT PANTHER MINING LIMITED

PETITIONER

**NOTICE OF APPLICATION**

**NAME OF APPLICANT:** Great Panther Mining Limited.

**TO:** Service List, attached hereto as **Schedule "A"** (the "**Service List**")

TAKE NOTICE that an application will be made by the Petitioner to the Honourable Mr. Justice Walker at the courthouse at 800 Smithe Street, Vancouver, British Columbia, **on October 14, 2022 at 10:00 a.m.**, for the order set out in Part 1 below.

**Part 1: ORDER SOUGHT**

1. The Petitioner, Great Panther Mining Limited ("**GPML**"), seeks the following orders:
  - (a) an order substantially in the form attached hereto as **Schedule "B"** (the "**Healey Affidavit Sealing Order**"), sealing the Affidavit of Paul Healey made on October 12, 2022 (the "**Healey Affidavit**") and all exhibits thereto on the Court file pending further order of the Court; and
  - (b) such further and other relief as may be sought by GPML.

## Part 2: FACTUAL BASIS

1. This Notice of Application is submitted in connection with and further to GPML's Notice of Application dated October 12, 2022 (the "**Comeback Application**"). Capitalized terms used but not otherwise defined in this Notice of Application have the same meaning as ascribed to them in the Second Affidavit of Sandra Daycock affirmed on October 12, 2022 (the "**Second Daycock Affidavit**") or the First Affidavit of Sandra Daycock Affirmed on September 28, 2022 (the "**First Daycock Affidavit**"), as context may require.
2. On October 13, 2022, Asahi Refining Canada Ltd. ("**Asahi**") filed the Healey Affidavit in the within proceedings (the "**CCAA Proceedings**"). The Healey Affidavit is tendered in support of Asahi's Notice of Application filed October 13, 2022 (the "**Asahi Application**") seeking, among other relief, the lifting of the stay of proceedings ordered pursuant to the Initial Order pronounced by the Honourable Justice Walker on October 4, 2022 and authorization for Asahi to make a bankruptcy petition with respect to GPML.
3. The Healey Affidavit and the exhibits thereto contain commercially-sensitive and confidential information with respect to the business, operations, and finances of GPML, including but not limited to:
  - (a) the Refining Agreement and amendments thereto (being Exhibits "A", "B", "C", "D", and "E" to the Healey Affidavit), which the parties expressly agreed would be confidential pursuant to section 26 thereof (except with respect to the terms of the Post-Filing Asahi Agreement, which pursuant to section (ix) thereof, the parties agreed shall not be treated as confidential information); and,
  - (b) email exchanges and copies of financial models containing or referring to confidential financial, business, and operational information with respect to GPML, including copies of cash flow and financial models, mine plans, and other operational information (as set out or referred to in Exhibits "I", "J", "K", "L", and "M" to the Healey Affidavit, among others).
4. The models contained in the Healey Affidavit are expressly marked "Strictly Private and Confidential". Such models include information regarding reserves, anticipated production, plant throughput and recovery rates, costs of production, projections, and other information

(collectively, the “**Confidential Information**”), the public disclosure of which could prejudice the SISP (as defined in the Second Daycock Affidavit), as discussed below.

5. Pursuant to the Comeback Application, GPML has also requested the sealing of the Third Affidavit of Sandra Daycock affirmed on October 12, 2022 (the “**Third Daycock Affidavit**”) as it contains the Confidential Financial Advisor Exhibit (as defined in the Second Daycock Affidavit). Among other things, the Confidential Financial Advisor Exhibit contains detailed information concerning GPML’s financial and operational projections, the Proposed Financial Advisor’s proposed fee structure and strategy, information regarding indicators of the potential value of the Tucano Mine which could potentially prejudice the results of the SISP if disclosed (including by establishing a “ceiling” for bids or otherwise influencing the quantum of bids), and other commercially-sensitive information.

Second Daycock Affidavit at paras 13-14

Third Daycock Affidavit at Exhibit “A”

6. The public disclosure of the Confidential Information contained in the Healey Affidavit is likely to cause significant prejudice to GPML and its stakeholders for substantially the same reasons as are present with respect to the prospect of public disclosure of the Confidential Financial Advisor Exhibit.

7. GPML does not object to the public filing of a redacted copy of the Healey Affidavit which excludes or redacts the Confidential Information.

### **Part 3: LEGAL BASIS**

#### **The Healey Affidavit Sealing Order is Appropriate**

1. GPML seeks the Healey Affidavit Sealing Order directing that the current, unredacted copy of the Healey Affidavit be placed under seal, with such affidavit to remain under seal pending further Order of the Court. The Healey Affidavit Sealing Order is necessary to ensure the integrity of GPML’s restructuring efforts, and in particular, the integrity of the SISP or any other sales or realization process with respect to GPML or any or all of its assets (including any liquidation which might be conducted by a trustee in bankruptcy, receiver, or similar Court officer, if Asahi successfully obtains the relief sought under the Asahi Application).

2. This Court has jurisdiction to order that certain materials be file under seal when:

- (a) court openness poses a serious risk to a “public interest”, which is not restricted solely to the interests of the parties, but applies at the level of a general principle;
- (b) such an order is necessary in order to prevent serious risk to the identified interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (c) as a matter of proportionality, the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible Court proceedings.

*Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, at para 53

*Sherman Estate v Donovan*, 2021 SCC 25, at paras 38, 41 - 43

3. The public disclosure of the Confidential Information, as described above, could affect the bids received pursuant to the sales process to be completed under the SISP or any other realization process in respect of GPML. The Confidential Information includes detailed information regarding GPML’s financial and operational projections, and information which relates to the potential value of the Tucano Mine.

4. The sealing of the Healey Affidavit is necessary in order to prevent serious risk to the commercial interests of GPML and its stakeholders, and no other person (other than Asahi, which has already received all of the Confidential Information) has a reasonable expectation of accessing the Confidential Information.

See Second Daycock Affidavit at paras 13, 15 regarding similar concerns

5. Further, there is an important public interest in preserving: (i) the integrity of distressed sales processes generally; and (ii) confidentiality with respect to the assessed value of assets to be sold pursuant to sales process within an insolvency proceeding. These interests apply equally to the Confidential Information set out in the Healey Affidavit, as to the Confidential Financial Advisor Exhibit attached to the Third Daycock Affidavit.

6. The request to seal the Healey Affidavit until further Order of the Court is necessary as it is not currently possible to identify the period of time during which such information must be

sealed, as such period will depend upon the details and results of the SISP; and the unfolding of events in Brazil.

7. As a matter of proportionality, in light of the period of time during which the Healey Affidavit will be under seal, and particularly given that GPML does not oppose the public filing of a redacted copy of the Healey Affidavit (as noted above), the salutary effects of the Healey Affidavit Sealing Order outweigh its deleterious effects. Accordingly, GPML submits that the Healey Affidavit Sealing Order is necessary and appropriate in the circumstances.

#### **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Sandra Daycock, made September 28, 2022;
2. Affidavit #2 of Sandra Daycock, made October 12, 2022;
3. Affidavit #1 of Paul Healey, made October 12, 2022;
4. First Report of the Monitor, filed on October 13, 2022; and
5. such further and other materials as counsel may advise and this Honourable Court may permit.

The applicant estimates that the application will take 15 minutes.

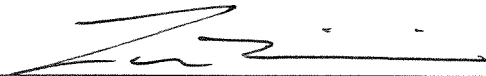
- ☐ This matter is within the jurisdiction of a Master.
- ☒ This matter is not within the jurisdiction of a Master. This matter is scheduled to be heard by the Honourable Mr. Justice Walker

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

- (a) file an Application Response in Form 33,
- (b) file the original of every Affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this Application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;

- (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: October 14, 2022



Signature of Lawyer for the Petitioner  
McCarthy Tétrault LLP  
(H. Lance Williams)

To be completed by the Court only:

Order made

- ☐ in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application
- ☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of ☐ Judge ☐ Master

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ other

# SCHEDULE "A"

NO. S-227894

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### SERVICE LIST

<p><b>McCarthy Tétrault LLP</b> Suite 2400 745 Thurlow Street Vancouver, BC V6E 0C5</p> <p>Attention: H. Lance Williams Forrest Finn Nathan Stewart</p> <p>Tel: (604) 643-7154</p> <p>Email: lwilliams@mccarthy.ca ffinn@mccarthy.ca nstewart@mccarthy.ca sdanielisz@mccarthy.ca</p> <p><b><i>Counsel for the Petitioner</i></b></p>	<p><b>Alvarez &amp; Marsal Canada Inc.</b> Suite 902 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: Anthony Tillman Pinky Law</p> <p>Email: atillman@alvarezandmarsal.com pinky.law@alvarezandmarsal.com</p> <p><b><i>Monitor</i></b></p>
<p><b>Fasken Martineau DuMoulin LLP</b> Suite 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attention: Kibben Jackson Rebecca Barclay Nguinambaye</p> <p>Tel: (604) 631-4786</p> <p>Email: kjackson@fasken.com rnguinambaye@fasken.com</p> <p><b><i>Counsel for the Monitor</i></b></p>	<p><b>Torys LLP</b> 79 Wellington Street West 30th Floor (deliveries) / 33rd Floor (reception) Box 270, TD South Tower Toronto, ON M5K 1N2</p> <p>Attention: David Bish</p> <p>Tel: (416) 865-7353</p> <p>Email: dbish@torys.com</p> <p><b><i>Counsel for Directors of Great Panther Mining Limited</i></b></p>



**Aird & Berlis LLP**

Suite 1800 – 181 Bay Street  
Toronto, ON M5J 2T9

Attention: Kyle Plunkett

Tel: (416) 865-3406

Email: kplunkett@airdberlis.com

**MLT Aikins LLP**

Suite 2600  
1066 West Hastings Street  
Vancouver, BC V6E 3X1

Attention: William E.J. Skelly

Tel: (604) 608-4597

Email: wskelly@mltaikins.com

***Counsel for Asahi Refining Canada Ltd.***

## SCHEDULE "B"

NO. S-117894  
VANCOUVER REGISTRY

### IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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### SEALING ORDER

BEFORE THE HONOURABLE	)	FRIDAY, THE 14 <sup>TH</sup> DAY
	)	
MR. JUSTICE WALKER	)	OF OCTOBER, 2022

ON THE APPLICATION of the Petitioner, Great Panther Mining Limited, coming on for hearing at Vancouver, British Columbia, on the 14<sup>th</sup> day of October, 2022; AND ON HEARING H. Lance Williams and Forrest Finn, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein, including the First Affidavit of Paul Healey filed October 13, 2022;

THIS COURT ORDERS AND DECLARES THAT

- |   |   |
|---|---|
| 1. Access to sealed items permitted by: | <input type="checkbox"/> Counsel of Record              |
|   | <input type="checkbox"/> Parties on Record              |
|   | <input checked="" type="checkbox"/> Further Court Order |
|   | <input type="checkbox"/> Others                         |

**Items to be Sealed**

Document Name	Date Filed ( <i>Date on Court Stamp</i> )	Number of copies filed, including any extra copies for the judge	Duration of sealing order	Sought	Granted	
					Yes	No
<b>Entire File</b>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Specific Documents</b>  First Affidavit of Paul Healey, and all exhibits attached thereto.	Oct. 13, 2022	1	Until further Court Order	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Clerk's Notes</b>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Order</b>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Endorsement of this Order by counsel appearing, other than counsel for the Petitioner, is hereby dispensed with.

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 Lawyer for the Petitioner  
McCarthy Tétrault LLP  
(H. Lance Williams and Forrest Finn)

BY THE COURT

\_\_\_\_\_  
REGISTRAR

## Schedule "A"

### List of Counsel

Name of Counsel	Party Represented