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Hand Delivered

The Honourable Justice Glen G. McDougall
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

My Lord:

Re: Application by Victory Farms Incorporated and Jonathan Mullen Mink Ranch Limited (the "Applicants") for Relief under the Companies' Creditors Arrangement Act ("CCAA") - Hfx No. 454744

The undersigned represents American Legend Cooperative ("ALC"), one of the significant secured creditors of the Applicants. Please accept this letter as a pre-hearing submission on behalf of ALC in relation to the application for interim financing to be provided by North American Fur Auctions Limited ("NAFA").

ALC is opposed to this application. Fundamentally, before interim financing is ordered by a court in connection with CCAA proceedings where the interests of one or more secured creditors will be adversely affected, it should be clearly demonstrated that such financing is urgently needed by the debtor in order to sustain its operations throughout the CCAA process. This requirement is clearly necessary to enable the Court to engage in the balancing of interests which is needed to consider the material prejudice to affected creditors (as set out in para. 11.2(4)(f) of the CCAA) (Tab 1).

It is clear from the materials provided by the Applicants that the interests of ALC (among others) will be adversely affected if this Court grants the proposed order for interim financing. However, there is simply no evidence before this Court of any urgency. Without such evidence, it is submitted that the Court cannot assess whether the granting of the order should be made in the face of the prejudice to be suffered by the affected creditors.

The affidavit of Jonathan Mullen filed in connection with this application makes no comment about the need for financing other than paragraph 7 thereof which states in part "The DIP Terms conform with the needs of the Applicants as set out in the Consolidated Cash Flow Projections...". There is no indication that there will be adverse consequences if the financing is not provided.

Beyond the general issue of prejudice to creditors, ALC has a more fundamental concern in relation to this application and its timing. Included with these submissions is an affidavit of the undersigned, attaching at Exhibit "A" a copy of a subordination and intercreditor agreement (the "Intercreditor Agreement") among ALC, NAFA, Victory Farms Incorporated ("Victory Farms")

and Jonathan L. Mullen dated October 9, 2015. The Court's attention is drawn to paragraph E in the Recitals which provides as follows:

E. NAFA has agreed to make an additional non-revolving loan to the Borrower (the "**Additional Non-Revolving Loan**") in the amount of CDN \$2,000,000, with an initial advance of CDN \$1,000,000 to be made on the date of the advance of the advance on the Initial Non-Revolving Loan specified in Recital C above and with the remaining advance of CDN \$1,000,000 to be made no later than September 1, 2016, provided the Borrower satisfies the condition that the Borrower consign to NAFA the Borrower's 2016 mink pelt production.

To date, NAFA has refused to make the final \$1,000,000 payment to ALC. The justification is provided in the electronic mail message from Doug Lawson of NAFA to Anne Daffern of ALC sent on Aug. 29, 2016 attached to my affidavit at Exhibit "B". Essentially, Mr. Lawson advises NAFA is not prepared to make the final payment to ALC given the impending insolvency of the Victory Farms.

It is curious that NAFA would refuse to make the final payment to ALC yet agree to provide interim financing to the Applicants. The security provided as part of the interim financing is essentially the same as the requirement in the Intercreditor Agreement. From ALC's perspective, the granting of the interim financing will cause a double prejudice to ALC. The first arises from the simple priming of ALC's position. The second arises by virtue of the fact that ALC is not receiving the \$1,000,000 payment which NAFA has agreed to make. The combination of the two is clearly a material prejudice to ALC – more than any other creditor of the Applicants.

ALC is concerned that this application has been brought before this Court on short notice – the materials were received on Sunday – and that this application seems to suggest that there are no material issues with other creditors. Clearly, there are significant issues to be resolved between ALC and NAFA.

If this Court is prepared to grant the interim financing order as requested, ALC submits that this Court further order that NAFA be obligated to make the final payment of \$1,000,000 to ALC as contemplated under the Intercreditor Agreement. The priority to be granted to NAFA under the interim financing order essentially satisfies the condition precedent set out in the Intercreditor Agreement. As a result, the payment clearly becomes due and owing. In the alternative, ALC submits that any order which this Court is prepared to make be made explicitly subject to the rights of ALC to pursue its claim for payment against NAFA.

ALC recognizes that NAFA is not being provided with an opportunity to make submissions in relation to this matter. As such, the only fair result may be to adjourn this application in its entirety to allow all parties to make appropriate submissions.

We would be pleased to respond to any questions which Your Lordship may have in relation to these submissions.

Respectfully yours,



tv Maurice P. Chiasson, Q.C.

MPC/wmi

Companies' Creditors Arrangement Act

R.S.C., 1985, c. C-36

An Act to facilitate compromises and arrangements between companies and their creditors

Short Title

Short title

1 This Act may be cited as the *Companies' Creditors Arrangement Act*, R.S., c. C-25, s. 1.

...

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a)** the period during which the company is expected to be subject to proceedings under this Act;
- (b)** how the company's business and financial affairs are to be managed during the proceedings;
- (c)** whether the 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 company;
- (e)** the nature and value of the 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 referred to in paragraph 23(1)(b), if any.