

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36 (the "CCA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.
(the "**Applicant**")

MOTION RECORD
(Extension of Stay Period)
(returnable September 11, 2023)

DATE: September 6, 2023

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Ltd.

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IN THE MATTER OF THE *COMPANIES' CREDITORS*
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TAB 1

Court File No. CV-20-00649558-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36 (the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.
(the "**Applicant**")

NOTICE OF MOTION
(extension of stay period)
(returnable September 11, 2023)

The Applicant will make a motion to Mr. Justice Cavanagh of the Commercial List at 330 University Avenue, Toronto, on Monday, September 11, 2023, at 10:30 a.m. or as soon thereafter as the motion can be heard, via Zoom teleconference the details for which will be made available by the courthouse prior to the hearing on the Caselines portal set up for this matter.

PROPOSED METHOD OF HEARING: orally.

THE MOTION IS FOR: an order, substantially in the form of the suggested draft in the motion record:

- a. To the extent necessary, abridging the time for the service on this motion and validating the return of this motion for September 11, 2023 and dispensing with further service thereof;
- b. extending the "Stay Period" as defined in the second amended and restated initial order made on October 27, 2020 to and including December 12, 2023 (3 months).

THE GROUND FOR THE MOTION ARE:

2. Capitalized terms are defined in the affidavit of Atef Salama sworn September 6, 2023 (the “**Salama September 2023 Affidavit**”).
3. Since the last extension made on June 12, 2023, EGR has notably:
 - a. supported and worked toward maintaining the timetable established by order from the Tax Court setting out a timetable for the Tax Litigation;
 - b. continued operating its business in accordance with the court’s orders and the Protocol; and
 - c. continued to prosecute the Tax Litigation with a view to timeliness and cost-efficiency.
4. EGR will be able to support its operations, the Tax Litigation, the herein proceeding and the Protocol for the duration of the extension sought.
5. The Applicant has acted, is acting and will continue to act in good faith and with due diligence, and the sought extension is appropriate, as more fully appears from the Salama September 2023 Affidavit.
6. CCAA s. 11, 11.02, 11.03, 11.09, and 18.6.
7. Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rules 2.03 and 3.02.
8. Such other and further grounds as counsel may advise and the court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

- a. the Salama September 2023 Affidavit,
- b. the Fifteenth Report of the Monitor, Deloitte Restructuring Inc. to be filed separately, and
- c. such further and other evidence as counsel may advise and the court may permit.

September 6, 2023

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Lawyers for the Applicant, Express Gold Refining Ltd.

TO: THE SERVICE LIST

Court File No.: CV-20-00649558-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
 (COMMERCIAL LIST)

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF EXPRESS GOLD REFINING LTD.**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF EXPRESS GOLD REFINING LTD.**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

NOTICE OF MOTION
(extension of stay period)
(returnable September 11, 2023)

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TAB 2

Court File No. CV-20-00649558-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.
("EGR")

**AFFIDAVIT OF ATEF SALAMA
(sworn September 6, 2023)**

I, Atef Salama, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am EGR's Vice-President and have been since 2001. As such I have personal knowledge of the facts and matters deposed in this affidavit save where the same are stated to be based upon information or belief, and where so stated I verily believe the same to be true.
2. I make this affidavit in support of EGR's motion for an extension of these CCAA proceedings and the October 27, 2020 second amended and restated initial order (the "SARIO"), of which I attach a copy as **Exhibit "A"**, to December 12, 2023 (3 months).
3. The current extension expires on September 12, 2023.

I. INITIAL AND CONTINUED NEED FOR CCAA PROTECTION

4. EGR is in the precious metal (predominantly, gold) refining and trading business and has been so engaged since 1994.

5. EGR's resort to relief under the CCAA was necessary due to **(i)** the Canada Revenue Agency ("**CRA**")'s refusal to pay EGR's net tax refunds, including input tax credits under the *Excise Tax Act*, since August 2018, and **(ii)** reassessments in excess of \$189,000,000 issued to EGR on July 28, 2020 for the period from June 1, 2016 to October 31, 2018 (the "**2020 Reassessments**").

6. The 2020 Reassessments are being challenged by EGR (the "**Tax Litigation**") in the Tax Court of Canada ("**Tax Court**"). However, they are enforceable notwithstanding contestation,¹ and on or around October 8, 2020, CRA announced it would commence enforcement measures on October 15, 2020.

7. This is not an operational restructuring. But for CRA's refusal to pay EGR's net tax refunds and the 2020 Reassessments, EGR would be solvent and its business would be profitable. An application under the CCAA was necessary to create a *status quo* and allow EGR to obtain, as a first milestone of a restructuring, a decision on the merits in the Tax Litigation.

8. The SARIO provides that a stay of proceedings applies but the Tax Litigation may continue.²

II. TAX LITIGATION STATUS

9. A description of the matters and activities in the Tax Litigation leading up to June 9, 2023 is contained in my affidavit of the same date, which is annexed hereto as **Exhibit "B"** without exhibits.

10. In his endorsement dated June 12, 2023, Justice MacEwen directed the Monitor to "take steps to host discussions" to assist the parties to resolve their disputes in the CCAA. For its part,

¹ I am referred to the [*Excise Tax Act*](#), s. 315.

EGR has been a consistent advocate for the exploration and utilization of appropriate discussions and procedures to enable the parties to streamline the Tax Litigation process, with the objectives of avoiding delays, and redundant and unnecessary process, which is expensive, time consuming and unproductive. By pursuing appropriate alternate dispute resolution avenues to promote the achievement of the prior two objectives, EGR expects that it and its stakeholders will benefit from a timely resolution of the issues in the Tax Litigation.

11. In this regard, EGR welcomed Justice MacEwen's direction and has made itself fully available and responsive to the Monitor and any requests or input required of it in the period following the issuance of the endorsement as well as proactively assisting with any useful input it might inject into the process to better enable the Monitor to fulfill the spirit of the direction.

12. At the time of swearing, EGR understands that the Monitor will propose moving forward with a mediation process and a claims process to be implemented as soon as possible following approval of this Honourable Court. In addition, through counsel, EGR has maintained a parallel dialogue with CRA's CCAA counsel with a view to continuing discussions on process and procedure.

III. OTHER MATTERS

13. As outlined in my previous three affidavits sworn December 6, 2022, March 9, 2023, and June 9, 2023 respectively, I described a situation where proceedings were commenced against EGR in violation of the stay of proceedings connected to EGR through several transactions conducted by persons who are alleged to have committed mortgage fraud against the party and had obtained various relief against EGR. This relief was expunged against EGR, and EGR has engaged in discussions alongside the Monitor to settle the terms of an order providing disclosure

² I am referred to paragraph 10 of the SARIO.

of all information EGR has with respect to those impugned transactions which occurred between July 20 and August 24, 2020. The matter remains in the hands of the Monitor who is communicating with the party on a form of order to address information requests concerning the impugned transactions and the parties to those transactions. At the time of the swearing of this affidavit, there is no resolution of this element of the proceedings, through no fault of EGR who remains engaged and has put forward useful and productive suggestions and drafts to settle the matter months ago.

IV. OPERATIONS

14. Throughout these CCAA proceedings and as mentioned at every extension hearing, EGR has continued to operate its business in accordance with the Protocol as currently drafted. As noted above, this is not an operational restructuring. There are no material changes or developments. EGR's day-to-day, and it is operating in the normal course. There is a financial reality that the Tax Litigation is expensive and such expenses will need to be addressed by EGR. EGR and its counsel have been working together to achieve such efficiencies and accommodations as may be required to ensure that EGR is able to meet its obligations in the ordinary course over the currency of the litigation process.

15. I understand that the details and figures regarding EGR's business since the latest Monitor's report will be set out in the Monitor's fifteenth report (the "**Fifteenth Report**"), to be filed and served separately.

16. With accommodations, I believe EGR will be able to support its operations, the Tax Litigation, the herein proceeding and the Protocol for the duration of the extension sought, as I understand will more fully appear from the Fifteenth Report.

V. NEED FOR CONTINUED CCAA RELIEF

17. The extension of the stay provisions is necessary considering that the \$189 million 2020 Reassessments are otherwise enforceable notwithstanding contestation. The continuation of the stay is intended to maintain the *status quo* so that EGR may obtain, as a first milestone of its restructuring, a decision on the merits of its case in the Tax Litigation.

18. The SARIO provides that the Protocol terminates automatically upon termination of these CCAA proceedings, and so EGR requests the continuation of these proceedings to allow the Protocol to remain within this court's jurisdiction to enforce, as the case may be.

19. With the above in place, EGR has and will continue to act with due diligence and in good faith with respect to the Tax Litigation, its business and operations, and its relationship with CRA more generally.

SWORN BEFORE ME via video conference at the City of Toronto, in the Province of Ontario, this 6th day of September, 2023 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



Commissioner for taking affidavits
(present at Toronto at the time of swearing)



ATEF SALAMA
(present at Toronto at the time of
swearing)

This is **Exhibit "A"** to the affidavit of Atef Salama sworn before me via Zoom this 6th day of September, 2023 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

A handwritten signature in blue ink, consisting of a large, stylized initial 'A' followed by several wavy lines.

A Commissioner, etc.

Court File No. CV-20-00649558-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE MR.)

TUESDAY, THE 27TH

JUSTICE McEWEN)

DAY OF OCTOBER, 2020)

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.
(the "Applicant")**

SECOND AMENDED AND RESTATED INITIAL ORDER

THE INITIAL APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard on October 15, 2020 at 330 University Avenue, Toronto, Ontario, by videoconference due to the COVID-19 pandemic.

THE APPLICANT'S MOTION for the first Amended and Restated Initial Order was heard on October 19, 2020, and THE APPLICANT'S MOTION for the herein Second Amended and Restated Initial Order was heard this day on October 19, 2020 at 330 University Avenue, Toronto, Ontario, also by videoconference due to the COVID-19 pandemic.

ON READING the affidavit of Atef Salama sworn October 14, 2020 and the exhibits thereto (collectively, the "**Salama Affidavit**"), and on reading the pre-filing report of Deloitte Restructuring Inc. ("**Deloitte**") as proposed monitor, and on reading the consent of Deloitte to act as the appointed monitor (in such capacity, the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, Deloitte, and such other counsel as were present as indicated on the counsel slip, no one else appearing despite being served as evidenced in the affidavit of service, filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

3. THIS COURT ORDERS AND DECLARES that the herein Order continues the Initial Order made on October 15, 2020 by Hainey J. and effective as of 12:01 a.m. Eastern Standard/Daylight Time on such date, together with any amendment or restatement of the same.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is 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 it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay or otherwise deal with its creditors' claims, whether arising before or after the making of this Order, in accordance with the contracts and agreements in place as of the date of this Order, or that may be mutually agreed upon thereafter.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably 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;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date or thereafter.

8. THIS COURT ORDERS that the Applicant shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and

services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that the Applicant is hereby directed, until further Order of this Court:

- (a) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (b) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

10. THIS COURT ORDERS that from the date of the present Order and until and including **[December 15, 2020]**, or such later date as this Court may order (the “**Stay Period**” or the “**Stay**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, and any and all Proceedings currently underway against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended, but the Stay shall not apply:

- (a) to the proceeding in Tax Court File No. 2020-1214(GST)G, which for avoidance of doubt shall remain procedurally unaffected by the Stay, but the Stay is applicable to the enforcement of any order made in such proceeding affecting the Monitor, the Business or the Property; and

- (b) to any Proceeding the continuation or commencement of which is consented to in writing by the Applicant and the Monitor or allowed with leave of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities, as those terms may be understood in their broadest sense (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is 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 security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

12. THIS COURT ORDERS that 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 Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates 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 Applicant, 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 Applicant, and that the Applicant shall be entitled to the continued use of its 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 date of this Order are paid by the Applicant in accordance with normal

payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

14. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROTOCOL

15. THIS COURT ORDERS AND DECLARES that the protocol agreed to on October 27, 2020 among the Applicant, the Canada Revenue Agency (the “CRA”) and the Monitor and appended as a confidential appendix to the Supplement to the Monitor’s First Report dated October 27, 2020 (the “Protocol”) is hereby approved.

16. THIS COURT ORDERS that (i) the Protocol is hereby sealed from the public record until further order of this Court, and (ii) no party to the Protocol shall disclose to any Person all or any portion of the Protocol which shall be confidential information among the Applicant, the CRA and the Monitor, unless (a) the parties thereto agree to such disclosure in advance and in writing, (b) subject to prior notice to the other parties which notice shall provide an opportunity to seek protective relief, disclosure is required by a party in order to satisfy any legal or regulatory requirement, or (c) upon further Order of this Court.

17. THIS COURT ORDERS that the Protocol shall not be amended, restated or supplemented, except with the written consent of the Monitor, the Applicant and the CRA, or further Order of this Court.

18. THIS COURT ORDERS that the Protocol and all monitoring and control measures described therein shall automatically terminate on the earlier of: (i) the mutual agreement of the Monitor, the Applicant and the CRA to terminate the Protocol; (ii) the termination of the CCAA

Proceedings and Deloitte's discharge as Monitor; or (iii) further Order of this Court providing for the termination of the Protocol.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 (including, but not limited to Proceedings arising from section 323 of the ETA), until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

21. THIS COURT ORDERS that the directors and officers of the Applicant 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 \$100,000, as security for the indemnity provided in paragraph 16 of this Order. The Directors' Charge shall have the priority set out in paragraph 27 herein.

22. THIS COURT ORDERS that, 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 Applicant's 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 16 of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's 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) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant as to the herein proceedings, including the eventual formulation of a plan of arrangement or compromise;
- (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 Applicant, to the extent that is necessary to adequately assess the Applicant's 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.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require 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 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant 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 Applicant 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 Applicant may agree.

28. THIS COURT ORDERS that, 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 or the Protocol, save and except for any gross negligence or wilful misconduct on its part. Nothing in

this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant incurred in respect of these proceedings or attendant matters both before and during the period for which this Order is effective, and the Applicant is further hereby authorized to pay to the Monitor and counsel to the Applicant, retainers in the amount of \$50,000 for the former and \$40,000 for the latter, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel, which for clarity includes all Applicant's counsel such as restructuring counsel and tax counsel, 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 \$300,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order, and both in respect of these proceedings and proceedings in respect of any tax assessment or reassessment or similar proceedings. The Administration Charge shall have the priority set out in paragraph 27 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

31. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$300,000); and

Second – Directors' Charge (to the maximum amount of \$100,000).

32. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the

Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

33. THIS COURT ORDERS that the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

34. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Charges unless the Applicant also obtains the prior written consent of the beneficiaries of the Charges, or further Order of this Court.

35. THIS COURT ORDERS that the Charges 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**”) 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 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, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is 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 Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order 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.

36. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

37. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (national edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (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 Applicant of more than \$1000, 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.

38. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**E-Service Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the E-Service Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the E-Service Protocol, service of documents in accordance with the E-Service Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the E-Service Protocol with the following URL: [insolvencies.deloitte.ca/en-ca/ExpressGoldRefiningLtd].

39. THIS COURT ORDERS that if the service or distribution of documents in accordance with the E-Service Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile 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.

40. THIS COURT ORDERS that except to the extent incompatible with paragraphs 33 to 35 hereof, due to the COVID-19 pandemic and save Court instructions, the *Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media* dated May 13, 2020, as amended (the "**Consolidated Notice**"), the text of which is available at [ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice], and the guidelines set out on the *Changes to Commercial List Operations in light of COVID-19* available at [ontariocourts.ca/scj/changes-to-commercial-list-operations-in-light-of-covid-19], as both may be amended or supplemented from time to time, shall apply to the herein proceeding.

GENERAL

41. THIS COURT ORDERS that the Applicant or the Monitor may apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

42. THIS COURT ORDERS that 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 Applicant, the Business or the Property.

43. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

44. THIS COURT ORDERS that each of the Applicant 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 that 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.

45. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice 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.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 28 2020

PER / PAR:



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

**AND IN THE MATTER OF A COMPROMISE OR ARRANGEMENT OF
EXPRESS GOLD REFINING LTD.**

27 Oct 20

The Order shall go on an unopposed basis as per the draft filed and signed.
It has the Monitor's support.

I have reviewed the draft with counsel. The provisions in the draft are fair and
reasonable. The confidentiality terms meet the Sierra Club criteria.
The stay extension meets the required legal test.



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced in TORONTO

**SECOND AMENDED AND RESTATED INITIAL
ORDER**

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Email: forte@gsnh.com

Joël Turgeon (Member of the Bar of Quebec,
Ontario Student-at-Law)

Lawyers for the Applicant, Express Gold Refining Ltd.

This is **Exhibit “B”** to the affidavit of Atef Salama sworn before me via Zoom this 6th day of September, 2023 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

A handwritten signature in blue ink, consisting of a large, stylized initial 'A' followed by several wavy lines.

A Commissioner, etc.

Court File No. CV-20-00649558-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.
("EGR")

**AFFIDAVIT OF ATEF SALAMA
(sworn June 9, 2023)**

I, Atef Salama, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am EGR's Vice-President and have been since 2001. As such I have personal knowledge of the facts and matters deposed in this affidavit save where the same are stated to be based upon information or belief, and where so stated I verily believe the same to be true.

2. I make this affidavit in support of EGR's motion for an extension of these CCAA proceedings and the October 27, 2020 second amended and restated initial order (the "SARIO"), of which I attach a copy as **Exhibit "A"**, to September 12, 2023 (3 months).

3. The current extension expires on June 16, 2023.

I. INITIAL AND CONTINUED NEED FOR CCAA PROTECTION

4. EGR is in the precious metal (predominantly, gold) refining and trading business and has been so engaged since 1994.

5. EGR's resort to relief under the CCAA was necessary due to **(i)** the Canada Revenue Agency ("CRA")'s refusal to pay EGR's net tax refunds, including input tax credits under the *Excise Tax Act*, since August 2018, and **(ii)** reassessments in excess of \$189,000,000 issued to EGR on July 28, 2020 for the period from June 1, 2016 to October 31, 2018 (the "**2020 Reassessments**").

6. The 2020 Reassessments are being challenged by EGR (the "**Tax Litigation**") in the Tax Court of Canada ("**Tax Court**"). However, they are enforceable notwithstanding contestation,¹ and on or around October 8, 2020, CRA announced it would commence enforcement measures on October 15, 2020.

7. This is not an operational restructuring. But for CRA's refusal to pay EGR's net tax refunds and the 2020 Reassessments, EGR would be solvent and its business would be profitable. An application under the CCAA was necessary to create a *statu quo* and allow EGR to obtain, as a first milestone of a restructuring, a decision on the merits in the Tax Litigation.

8. The SARIO provides that a stay of proceedings applies but the Tax Litigation may continue.²

II. TAX LITIGATION STATUS

9. As outlined in my affidavit sworn March 9, 2023, the parties exchanged follow-up questions arising from answers to undertakings on December 19, 2022 and exchanged responses to same on January 27, 2023.

10. On February 23, 2023, EGR served the CRA with a written offer to settle the Tax Litigation. On that same date, CRA counsel requested that the parties jointly write to the Tax

¹ I am referred to the [Excise Tax Act](#), s. 315.

Court to request that the Timetable Order be amended to move the final step in the timetable from February 28, 2023 to March 31, 2023. EGR counsel agreed and a joint letter was dispatched on the following day.

11. On March 1, 2023, the Tax Court amended the Timetable Order in accordance with the parties' joint request.

12. On March 10, 2023, CRA and EGR counsel had a call to discuss the CRA's response to EGR's written settlement offer and to discuss what update will be provided to the Tax Court in accordance with the final step in the Timetable Order. CRA counsel indicated during that call that EGR's settlement offer was rejected. During that call, CRA counsel agreed to review the productions served on the Respondent on August 30, 2022 and revert regarding a proposed timeline for additional discoveries on those documents. EGR's counsel indicated that it did not require additional discoveries of the CRA's witness arising from the 1,690 additional documents served by the CRA on EGR in August 2022, September 2022 and January 2023.

13. On March 30, 2023, CRA and EGR counsel had a call to discuss a response to the Tax Court in accordance with the Timetable Order. CRA counsel indicated that they would have some questions on some additional productions and indicated that they would be providing the questions in writing by April 28, 2022, upon which EGR would have until May 31 to respond.

14. On March 31, 2023, EGR and CRA counsel jointly wrote to the Court requesting that a settlement conference be scheduled for July 20, 2023, and noting that: "The parties believe that a settlement conference would be beneficial".

² I am referred to paragraph 10 of the SARIO.

15. The Court responded April 5, 2023, requesting additional information. On or about that date, EGR's counsel was also advised by phone by the Tax Court Hearings Coordinator that the Court no longer had July 20, 2023 available for a settlement conference.

16. On April 17, 2023, EGR and CRA counsel jointly wrote to the Court providing the requested information and requesting that a settlement conference be scheduled for July 13, 2023. The letter noted that EGR made a written settlement offer that was rejected by the CRA. I understand that this needed to be communicated to the Tax Court, as the Tax Court's Practice Note No. 21 regarding settlement conferences states that: "Settlement conferences will not be scheduled unless parties to the litigation have confirmed that a written offer of settlement has been made and that a written reply has been provided."

17. On April 28, 2023, CRA counsel wrote to EGR counsel enclosing written questions with respect to the Appellant's 'additional productions' from August 30, 2022, which consisted of over 960 questions, spanning 47 pages.

18. On May 29, 2023, the Tax Court Hearings Coordinator wrote to the parties, rejecting their joint request for a settlement conference, because the "Parties must have exchanged written offers of settlement before the Court will consider scheduling a Settlement Conference." The letter also asked the Parties to submit a Joint Application for hearing on or before June 12, 2023.

19. On May 31, 2023, EGR counsel wrote to CRA counsel enclosing responses to the over 960 questions posed and noted that 74 of the 98 documents for which questions were asked were in fact documents that the CRA had in its possession since January 16, 2019, during the CRA's audit of EGR.

III. OTHER MATTERS

20. As outlined in my previous two affidavits sworn December 6, 2022, and March 9, 2023 respectively, I described a situation where proceedings were commenced against EGR in violation of the stay of proceedings connected to EGR through several transactions conducted by persons who are alleged to have committed mortgage fraud against the party and had obtained various relief against EGR. This relief was expunged against EGR, and EGR has engaged in discussions alongside the Monitor to settle the terms of an order providing disclosure of all information EGR has with respect to those impugned transactions which occurred between July 20 and August 24, 2020. The matter is remains in the hands of the Monitor who is communicating with the party on a form of order to address information requests concerning the impugned transactions and the parties to those transactions. At the time of the swearing of this affidavit, there is no resolution of this element of the proceedings, through no fault of EGR who remains engaged and has put forward useful and productive suggestions and drafts to settle the matter.

IV. OPERATIONS

21. Throughout these CCAA proceedings and as mentioned at every extension hearing, EGR has continued to operate its business in accordance with the Protocol as currently drafted. As noted above, this is not an operational restructuring. There are no material changes or developments. EGR's day-to-day, and it is operating in the normal course. There is a financial reality that the Tax Litigation is expensive and such expenses will need to be addressed by EGR. EGR and its counsel have been working together to achieve such efficiencies and accommodations as may be required to ensure that EGR is able to meet its obligations in the ordinary course over the currency of the litigation process.

22. I understand that the details and figures regarding EGR's business since the latest Monitor's report will be set out in the Monitor's fourteenth report (the "**Fourteenth Report**"), to be filed and served separately.

23. With accommodations, I believe EGR will be able to support its operations, the Tax Litigation, the herein proceeding and the Protocol for the duration of the extension sought, as I understand will more fully appear from the Fourteenth Report.

24. The above sets out the notable developments in the Tax Litigation since the last extension.

V. NEED FOR CONTINUED CCAA RELIEF

25. The extension of the stay provisions is necessary considering that the \$189 million 2020 Reassessments are otherwise enforceable notwithstanding contestation. The continuation of the stay is intended to maintain the *statu quo* so that EGR may obtain, as a first milestone of its restructuring, a decision on the merits of its case in the Tax Litigation.

26. The SARIO provides that the Protocol terminates automatically upon termination of these CCAA proceedings, and so EGR requests the continuation of these proceedings to allow the Protocol to remain within this court's jurisdiction to enforce, as the case may be.

27. With the above in place, EGR has and will continue to act with due diligence and in good faith with respect to the Tax Litigation, its business and operations, and its relationship with CRA more generally.

SWORN BEFORE ME via video conference at the City of Toronto, in the Province of Ontario, this 9th day of June, 2023 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



Commissioner for taking affidavits
(present at Toronto at the time of swearing)



Atef Salama
(present at Toronto at the time of swearing)

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

Court File No. CV-20-00649558-00CL

**AND IN THE MATTER OF A COMPROMISE OR
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

AFFIDAVIT OF ATEF SALAMA
(Sworn June 9, 2023)

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Lawyers for the applicant, Express Gold Refining Inc.

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

Court File No. CV-20-00649558-00CL

**AND IN THE MATTER OF A COMPROMISE OR
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced in TORONTO

**AFFIDAVIT OF ATEF SALAMA
(Sworn September 6, 2023)**

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Lawyers for the applicant, Express Gold Refining Inc.

TAB 3

Court File No. CV-20-00649558-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 11 th
)	
JUSTICE CAVANAGH)	DAY OF SEPTEMBER, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.
(the "**Applicant**")

ORDER
(extension of stay period)

THIS MOTION by the Applicant pursuant to the CCAA was heard before me on September 11, 2023 at 330 University Avenue, Toronto, by videoconference.

ON READING the materials filed including the affidavit of Atef Salama sworn September 6, 2023, and the exhibits thereto, and on reading the fifteenth report (the "**Fifteenth Report**") of Deloitte Restructuring Inc. in its capacity as court-appointed monitor (in such capacity, the "**Monitor**") filed, and on hearing the submissions of counsel for the Applicant, the Monitor, Canada Revenue Agency and such other counsel as were present as may be indicated on the counsel slip, no one else appearing despite being served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the Fifteenth Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

 2. **THIS COURT ORDERS** that the “Stay Period” as defined in the second amended and restated initial order made by this court on October 27, 2020 in this proceeding is hereby extended to and including December 12, 2023.

 3. This order is effective as of its date at 12:01 am.
-

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF EXPRESS GOLD REFINING LTD.**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

ORDER
(extension of stay period)

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Lawyers for the Applicant, Express Gold Refining Ltd.

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EXPRESS GOLD REFINING LTD.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced TORONTO

**MOTION RECORD
(Extension of Stay Period)
(returnable September 11, 2023)**

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