

**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 NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC.,  
3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS  
INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON  
LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC  
(WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE  
B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO

(the “Applicants”)

**FACTUM OF THE APPLICANTS**

**(RE: Plan approval, Meeting Order, Stay Extension, and Sealing Order returnable  
January 17, 2024)**

**Date:** January 15, 2024

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**TO: SERVICE LIST**

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**FACTUM OF THE APPLICANTS**

**PART I – NATURE OF MOTION AND OVERVIEW**

1. This motion is brought by the Applicants, North American Fur Auctions Inc. and its other named related entities (collectively, “**NAFA**” or the “**Company**”), for:

- (a) An Amended and Restated Claims Process Order (the “**Amended Claims Process Order**”);
- (b) A Meeting Order (the “**Meeting Order**”) that, among other things,
  - (i) accepts the filing of the Plan of Compromise and Arrangement dated January 11, 2024 (the “**Plan**” or the “**Proposed Plan**”);

- (ii) authorizes NAFA to establish one class of affected creditors for the purpose of considering and voting on the Plan;
- (iii) authorizes NAFA to call and hold a hybrid meeting of the affected creditors with voting claims on February 21, 2024 at 10:00 a.m. (EST), (the “**Creditors’ Meeting**”) to consider and vote on a resolution to approve the Plan;
- (iv) approves the procedures to followed with respect to the calling and conduct of the Meeting;
- (v) settles the date for the hearing of the Applicants’ motion seeking an Order sanctioning the Plan provided the Plan is approved by the Required Majority of Affected Creditors at the Meeting;
- (vi) extends the stay of proceedings from January 19, 2024 to and including April 1, 2024;
- (vii) approves the activities and conduct of the Monitor and its counsel, Miller Thomson LLP, as set out in the Monitor’s Sixteenth Report dated January 15, 2024 (the “**Sixteenth Report**”); and
- (viii) seals the cash flow forecast of the Applicants attached as Confidential Appendix “**1**” to the Sixteenth Report (the “**Cash Flow Forecast**”).

2. This motion is supported by Deloitte Restructuring Inc., in its capacity as the court-appointed monitor (“**Monitor**”) for the Applicants.

3. Capitalized terms not otherwise defined in this factum shall have the meanings ascribed to them in the Plan.

4. The requested Meeting Order, together with the Plan, represent an important milestone in the CCAA proceedings of NAFA. The threshold for granting the Meeting Order is clearly satisfied. Considerations of fairness and reasonableness are matters to be addressed at the motion for Court approval of the Plan (the “**Sanction Motion**”). At this stage, this Court must be satisfied only that there are no legal impediments to placing the Plan before the Affected Creditors for their approval. The Company submits that there are none.

5. The Plan contains a number of typical features that have been approved in numerous other plans. Specifically, the Plan is presented on a consolidated basis in light of the significant intertwining of the NAFA entities, which together carried out the NAFA business in Canada and around the world. Accordingly, the Plan contemplates a single class of Affected Creditors, all of which have unsecured Claims against one of the NAFA entities.

6. If the Meeting Order is granted, the Plan is approved by the Required Majority of Creditors and the Plan is sanctioned by the Court and subsequently implemented, this process will result in the orderly, timely and efficient distribution of cash to Affected Creditors with Proven Claims.

## **PART II – FACTS**

### **A. Background and Update on the CCAA Proceedings**

7. The relevant facts are set out in this section and are more fully described in the Affidavit of Douglas Lawson sworn January 11, 2024 (the “**Lawson Affidavit**”), and the Sixteenth Report.

**Motion Record of the Applicants dated January 11, 2024 (“Applicants’ MR”), the Affidavit of Douglas Lawson sworn January 11, 2024 (“Lawson Affidavit”), at Tab B, p 15.**

8. The business of the Applicants was principally the funding of the production of farmed mink around the world, and conducting quarterly auctions for the sale of those mink along with wild furs trapped and delivered to NAFA for sale in its auctions.

9. NAFA’s principal creditors are its secured lenders who hold secured claims, and those parties who delivered farmed mink or other wild fur products to it for sale who hold unsecured claims.

10. As further discussed below, while the number of secured creditors are relatively small, the number of unsecured creditors are numerous, in excess of 9,000. The vast majority of the unsecured creditors have claims in an amount, which is less than \$10,000. The secured creditors are located in Canada, and the majority of unsecured creditors are located around the world.

11. On October 31, 2019, NAFA commenced proceedings under the CCAA pursuant to the Initial Order, which was amended and restated on November 8, 2019. The stay period in these CCAA proceedings has been extended numerous times. The last Order extending the stay period was granted on November 29, 2023, which extended the stay period to January 19, 2024 (“**Stay Period**”).

**Applicants’ MR, Lawson Affidavit, at Tab B, para 6.**

12. Since the commencement of these proceedings in 2019, this Court has supervised the attempted restructuring of NAFA, including the sale of its inventory and real property holdings both in Canada and around the world, along with the prosecution of litigation, resolution of claims and collection efforts in Finland, Lithuania, Denmark, Poland, Latvia and the United States.

**Applicants' MR, Lawson Affidavit, at Tab B, para 7**

### **The Proposed Amended Claims Process Order**

13. On May 25, 2023, Justice McEwen issued a claims process order in these CCAA proceedings (the "**Claims Process Order**"). The Claims Process Order allowed NAFA to identify and determine the universe of claims to allow it to deal with such claims, and formulate a Plan.

**Applicants' MR, Lawson Affidavit, at Tab B, para 16 and Exhibit ("Ex.") 2.**

14. The Claims Process Order expressly did not contain an adjudication and resolution process for Proofs of Claim submitted to the Monitor ("**Claims Adjudication Process**"), as it was not certain at the time whether or not a plan would necessarily be put forward thereafter.

**Applicants' MR, Lawson Affidavit, at Tab B, paras 17-18 and Ex 3.**

15. The Claims Process Order has a Claims Bar Date of August 3, 2023.

**Applicants' MR, Lawson Affidavit, at Tab B, para 19.**

16. In order to hold a meeting, allow voting, and eventually allow for distribution if the Plan is approved, the Claims must now be reviewed. As such, the Amended Claims Process Order now contains a process to allow the Monitor and the Applicant to review, revise, and reject proofs of claim while attempting to minimize costs.

**Applicants' MR, Lawson Affidavit, at Tab B, para 21.**

17. Having considered the universe of claims received, and having conducted a preliminary review of the Claims against the books and records of the company, but having conducted no further analysis, the Monitor and the Applicants are satisfied that the Claims (other than the

Duplicate Claims (as defined below)) can be accepted for voting purposes at a Creditors' Meeting, without prejudice to the ultimate determination of those claims for distribution purposes.

**Sixteenth Report, at paras 21 - 26.**

18. The Claims Process Order also allowed for all claims under \$10,000 to be deemed accepted without the requirement for the Creditors to file a Proof of Claim, absent a dispute. As such, the vast majority of claims under \$10,000 are accepted in accordance with the Claims Process Order.

**Sixteenth Report, at para 20.**

19. There are some Claims filed that are obvious duplicative claims (a "**Duplicate Claim**"). The Monitor is able to easily identify a Duplicate Claim, as the Duplicate Claims is on the same proof of claim, with multiple creditors listed, sharing the same mailing address, telephone number, email address, and contact person, and with each Creditor claiming the same amount.

**Sixteenth Report, at paras 27 and 28.**

20. In accordance with the Amended Claims Process Order, the Monitor will notify the applicable Creditor with a Duplicate Claims that its Claim has been disallowed for voting and distribution purposes, and the reasons for doing so, by sending a Notice of Revision or Disallowance at least 20 days prior to the proposed Meeting Date.

**Sixteenth Report, at para 29.**

21. In the event a Duplicate Claim holder disputes the disallowance of its Duplicate Claim by filing a Notice of Dispute in accordance with the terms of the Amended Claims Process Order, they will be entitled to vote their Unresolved Disputed Claim at the Meeting. The Monitor will keep a separate tally on how the Duplicate Claim holders voted, however, that vote shall not be



counted for any purpose unless, until and only to the extent that such disputed Duplicate Claim is Finally Determined to be a Proven Claim.

**Sixteenth Report, at para 30.**

22. The review and determination of Affected Claims (other than Duplicate Claims) for distribution purposes do not need to be completed before the Meeting to consider and vote on the Plan can be held, and all such Affected Claims are entitled to vote (with Unresolved Duplicate Claims being dealt with as set out above). The proposed Claims Adjudication Process contemplates that the process for adjudicating disputed Claims will be completed at least 20 days prior to the first distribution under the Plan.

**Applicants' MR, Lawson Affidavit, at Tab B, para 24.**

23. Certain creditors, including some creditors with larger claims failed to file Claims by the Claims Bar Date, but filed Claims prior to the development of the proposed Plan (the "**Late Claims**"). The last of these Late Claims was filed on November 16, 2023.

**Applicants' MR, Lawson Affidavit, at Tab B, para 26.**

24. Given that the Plan has not yet been filed or voted on by the Affected Creditors and no distribution has yet been made and that these Late Claims were all known when the Plan was developed, the Applicants, in consultation with the Monitor, believe it appropriate to deem these Late Claims to have been filed on or before the Claims Bar Date.

25. As such, the Amended Claims Process Order allows for all Claims, filed up until the date of the Amended Claims Process Order, to be deemed filed by the Claims Bar Date. The Late

Claims will then be reviewed in accordance with the Claims Adjudication Process for distribution purposes.

**Applicants' MR, Lawson Affidavit, at Tab B, para 27.**

### **The Development of the Proposed Plan**

26. NAFA continues to have material assets, which, including contingent assets, could result in material recovery.

27. NAFA, in consultation with the Monitor, was able to determine that a potential Plan, which included distributions to its unsecured creditors, was feasible, only if it obtained concessions from its secured creditors, being the Syndicated Lenders, Farm Credit Canada ("FCC"), and the shareholders of NAFA whom advanced secured loans to NAFA as far back as 2009 (the "**Secured Shareholders**", together with FCC and the Syndicated Lenders, the "**Secured Creditors**").

**Applicants' MR, Lawson Affidavit, at Tab B, para 30.**

28. Subject to the approval of the Plan, the Syndicated Lenders as NAFA's first ranking and largest Secured Creditors, have agreed, on its implementation, to effectively convert \$2.4 million of their approximate \$3.6 million remaining secured debt into unsecured debt and share in distributions with all other creditors on a *pari passu* basis.

**Applicants' MR, Lawson Affidavit, at Tab B, paras 31-32.**

29. The Agent and the Syndicated Lenders have agreed to not collect, and on implementation of the proposed Plan, waive, all interest and fees that have accrued or will accrue in respect of such first ranking secured indebtedness from and after October 1, 2023. This is a material accommodation.

**Ibid.**

30. FCC and the Secured Shareholders have also agreed, on implementation of the proposed Plan, to convert their cumulative secured debt in the amount of approximately \$4,500,000 into unsecured debt.

**Applicants' MR, Lawson Affidavit, at Tab B, para 33.**

31. As a result, together with the accommodations agreed to by the Syndicated Lenders, an aggregate total of approximately \$7,000,00 in principal of secured debt (plus fees and interest), which would otherwise rank ahead of unsecured creditors will effectively be converted to unsecured debt, permitting distributions to unsecured creditors.

**Ibid.**

32. The Meeting Order provides that the Secured Creditors will vote their claims, (other than the Unaffected Secured Syndicate Claim, which is not being converted) as unsecured creditors at the Meeting.

**Ibid.**

33. Under the Proposed Plan, it is forecast that all creditors, including unsecured creditors (after the conversion of the secured debt as set out above to unsecured debt) will have recoveries in the range of 3.6% to 11.0%. These forecast recoveries are predicated based upon on a number of assumptions of NAFA's realization of its remaining assets and are provided in the Sixteenth Report.

**Applicants' MR, Lawson Affidavit, at Tab B, para 33; Sixteenth Report, at para. 48.**

## The Proposed Plan

34. The Proposed Plan establishes a mechanism for the Company to realize upon its remaining assets on a cost-effective basis, provides for a compromise of all Affected Claims, and provides for voting and distribution mechanisms. If approved, sanctioned and implemented, the Plan will complete the orderly and timely termination of the CCAA proceedings, effect a release and discharge of all Claims and Released Claims pursuant to the Plan.

### Applicants' MR, Lawson Affidavit, at Tab B, para 38 (a)-(f)

35. Details regarding the features and mechanics of the Plan are set out in the Lawson Affidavit and the Monitor's Sixteenth Report. Since the fairness and reasonableness of the Plan are issues for the hearing of the Sanction Motion, only certain features of the Plan are summarized here:

- (a) The Plan is being presented on a consolidated basis;
- (b) The Creditors with Proven Secured Claims have agreed that, upon the Plan Implementation Date, their Claims will be deemed to be converted to Unsecured Claims (with the exception of the Unaffected Secured Syndicate Claim);
- (c) The Plan creates a single class of Affected Creditors that will be entitled to vote as a single class of Affected Creditors. The Proven Secured Claims of the Secured Creditors (with the exception of the Unaffected Secured Syndicate Claim) will also be voted in the same single class of Affected Creditors;
- (d) The Unaffected Secured Syndicate Claim and certain other Claims are unaffected by the Proposed Plan (defined in the Plan as "**Unaffected Claims**") and will not be compromised or released;

- (e) NAFA will use its cash to establish (a) Creditor Distribution Pool; (b) Administrative Reserve and (c) Unresolved Claims Reserve;
- (f) After payment of the Unaffected Secured Syndicate Claim, distributions will be made in accordance with the Plan from time to time as sufficient funds accumulate. Affected Creditors will receive *pro rata pari passu* share of the proceeds, net of costs;
- (g) The Plan does not contain a convenience class;
- (h) The Plan provides that only distributions in excess of \$25 will be made to Affected Creditors; and,
- (i) The Plan contemplates a number of releases, including third-party releases in favour of parties connected to these proceedings. The proposed releases of the directors and officers are limited in accordance with the limitations prescribed by section 5.1 of the CCAA.

**Applicants' MR, Lawson Affidavit, at Tab B, para 38 (a)-(f); The Plan, ss. 3.2-3.4, 4.1, 5.4, 5.8, 6.1-6.3**

### **The Proposed Meeting Order**

36. The proposed Meeting Order authorizes the Company to convene the Creditors' Meeting for the purpose of allowing a single class of Creditors comprised of the Affected Creditors with Voting Claims to consider and vote on the Proposed Plan. The Creditors' Meeting is scheduled for February 21, 2024 at 10:00 a.m. (EST).

**Applicants' MR, Lawson Affidavit, at Tab B, para 61.**

37. The Meeting Order provides for comprehensive notification of the Creditors' Meeting, including by having the relevant materials published on the Monitor's website, sending copies of the materials to Affected Creditors by e-mail or regular mail, and soliciting fur trade websites to post an information bulletin advising of the Meeting Order and Plan. It follows the manner of service that was set out and approved by this Court in the Claims Process Order.

**Applicants' MR, Lawson Affidavit, at Tab B, para 62(a)-(b); Meeting Order at paras 11-18.**

38. Each Affected Creditor's Claim (other than a Duplicate Claim) will be deemed accepted for voting purposes only, in the amount set out in a Creditor's Proof of Claim. As such, all Affected Creditors, with the exception of Affected Creditors holding Duplicate Claims, will be entitled to vote their Voting Claims at the Creditors' Meeting.

**Applicants' MR, Lawson Affidavit, at Tab B, para 65; Meeting Order at paras 19-36.**

39. With respect to Duplicate Claims, the Monitor will send Notices of Revision or Disallowance to Affected Creditors with Duplicate Claims at least 20 days prior to February 21, 2024.

40. In the event a Duplicate Claim holder disputes the disallowance of its Duplicate Claim, then, without prejudice to the ultimate determination of that Duplicate Claim, the Creditor will be entitled to vote the Duplicate Claim at the Creditors' Meeting and the Monitor will keep a separate tally on how the Duplicate Claim holders voted. However, that vote shall not be counted for any purpose unless, until and only to the extent that such disputed Duplicate Claim is Finally Determined to be a Proven Claim.

**Applicants' MR, Lawson Affidavit, at Tab B, para 65; Meeting Order at para 22, 33-35.**

41. As soon as practicable following the Creditors' Meeting, the Monitor will report on the voting results to the Court, and, if the Proposed Plan achieves the Required Majority at the Creditors' Meeting, the Meeting Order provides for the Sanction Motion to be heard on March 1, 2014, or as soon as possible after that date.

**Applicants' MR, Lawson Affidavit, at Tab B, paras 68-69.**

### **PART III – ISSUES**

42. The principal issues on this motion are:

- (a) whether this Court should approve the proposed Amended Claims Process Order.
- (b) whether the Plan should be accepted for filing and the Creditors' Meeting authorized;  
and,
- (c) whether the Stay Period should be extended;
- (d) whether the Cash Flow Forecast attached to the Sixteenth Report as Confidential Appendix "1" should be sealed.

### **PART IV – LAW & ARGUMENT**

#### **A. The Amended Claims Process Order should be Approved**

43. Claims processes assist organizations under the protection of the CCAA in determining the universe of claims against the debtor entity for the purposes of, among other things, voting on a plan and/or determining potential distributions to creditors. A claims process provides certainty

for the debtor and its stakeholders in making informed choices about restructuring options. These orders should be both flexible and expeditious.

***Timminco* at para. 32; *ScoZinc* at para. 23.**

44. The proposed Amended Claims Process Order meets the purpose of claims processes generally, which is “to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner”.

***Canwest Global Communications Corp, (Re)*, 2011 ONSC 2215 at para. 40.**

45. Now that the Monitor has completed the claims gathering stage contemplated in the Claims Process Order and the Claims Bar Date has expired, NAFA, in consultation with the Monitor, is in a position to review and either accept, revise, or reject each Proof of Claim submitted.

46. Accordingly, a Claims Adjudication Process has been incorporated into the Amended Claims Process Order, which contemplates that the Monitor will send Notices of Revision or Disallowance, but will not provide notice to a creditor if the Company, in consultation with the Monitor, agrees with the amount and characterization of the Claim as set out in a Proof of Claim.

47. The Amended Claims Process Order leaves undisturbed the acceptance of those Claims under \$10K which were allowed without the necessity of those creditors filing proofs of claim, in accordance with original Claims Process Order.

48. A streamlined dispute resolution process is contemplated in the Amended Claims Process Order whereby creditors that dispute a Notice of Revision or Disallowance can file the appropriate form with the Monitor, and the parties will attempt to resolve and settle the disputed claim. The Company, in consultation with the Monitor and any applicable Directors and Officers, retains the



power to refer a dispute to adjudication by the Court. If a Notice of Revision or Disallowance is not sent at least twenty days prior to the first distribution in accordance with the Plan, the claim will be deemed to be a Proven Claim.

49. It is submitted that the proposed Amended Claims Process is fair, efficient, and reasonable for the determination of all Claims against the Company and its Directors and Officers and should be approved by the Court.

(i) *Amended Claims Bar Date*

50. As set out in *Blue Range Resources Corp., Re, 2000*, the appropriate criteria to apply accepting late-filed claims is:

- (a) Was the delay caused by inadvertence and if so, did the claimant act in good faith?
- (b) What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
- (c) If relevant prejudice is found, can it be alleviated by attaching appropriate conditions to an order permitting late filing?
- (d) If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?

*Enron Canada Corp. v. National Oil-Well Canada Ltd*, [2000 ABCA 285](#), at para 26.

51. Allowing claims filed after a claims bar date has been held by this Court to be reasonable where there has not yet been a distribution and with regard to the stage of the proceedings at which the late claims are sought to be allowed. A claims bar process is not intended to create a windfall

for the company or other creditors at the expense of parties who fail to file their claim by the claims bar date.

*Target Canada Co., Re, 2017 (“Target”), [2017 ONSC 327](#), at para 27.*

52. There are 18 late filed claims totalling approximately \$7.1 million, with the final claim being filed November 16, 2023, being approximately three months after the expiry of the claims bar date.

**Sixteenth Report, at para. 31.**

53. The first part of the Blue Range Test is satisfied. There is no evidence that any of the late filed claims were filed late in bad faith, and conversely, it should be assumed that the creditors were acting in good faith. Indeed, FCC was one of the late filed claims, and counsel to FCC has been in contact with the Applicants and the Monitor throughout these CCAA Proceedings. Moreover, the late claims were filed in a relatively short period after the expiry of the claims bar date.

***Target, at para 31***

54. The second part of the *Blue Range* Test is satisfied. Given that the Claims have not been reviewed or adjudicated yet and the proposed Plan had not been filed or voted on by the Affected Creditors when the Late Claims were received, NAFA and the Monitor are of the view that it is appropriate to deem these Late Claims to have been filed on or before the Claims Bar Date as contemplated in paragraph 19 of the Amended Claims Process Order. The Agent does not oppose deeming these Late Claims to have been filed on or before the Claims Bar Date.

**Sixteenth Report, at para. 33.**

55. Moreover, FCC's agreement to convert their secured claim to an unsecured claim is essential to the design of the Plan, and that claim was filed on November 16, 2023. It would be inequitable to allow the FCC claim and disallow other Late Claims.

56. Given there is no prejudice, at this stage in the proceedings to admit the late filed claims, parts three and four are irrelevant. The entirety of the Blue Range Test as been satisfied.

57. The Applicants and the Monitor support the inclusion of these Late Claims.

**B. The Plan should be accepted for filing and the Creditors' Meeting authorized**

*(i) The Meeting Order should be Granted*

58. Section 4 of the *Companies Creditors Arrangement Act* ("CCAA") provides that the Court may order a meeting of creditors, or class of creditors, to vote on a compromise or an arrangement.

*Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, section 4* [CCAA].

59. The standard for issuing a meeting order is low. The feasibility of a plan is a relevant factor to be considered in determining whether to order a meeting of creditors. However, the Court should not impose a heavy burden on a debtor company to establish the likelihood of ultimate success at the outset.

*Laurentian University of Sudbury*, 2022 ONSC 4433 at para. 23, citing *Nova Metal Products Inc. v. Comiskey (Trustee of) (1990)*, 41 O.A.C. 282 (C.A.) at para. 90, Doherty J.A., dissenting.

60. Courts are not required to address the fairness and reasonableness of the Proposed Plan at this stage. Issues of fairness are to be considered at the sanction hearing if the plan is approved by the required majorities of creditors at a meeting. Unless it is obvious that a plan cannot be approved

by the affected creditors or would not be approved by the Court for some other reason, a debtor company should be authorized to present its plan to its creditors at a meeting.

*Jaguar Mining Inc. (Re)*, [2014 ONSC 494 at para. 48](#); *Re ScoZinc Ltd.*, [2009 NSSC 163](#) at paras. 4-7; *Arrangement relatif à Bloom Lake*, [2018 QCCS 1657](#) at para. 19.

61. The Proposed Plan is the product of extensive consultation among the Company, the Monitor and a number of key stakeholders, including the Syndicated Lenders. It would present the Affected Creditors with recoveries for their Proven Claims as compared to a bankruptcy scenario, and provides for efficient, near-term distributions to such Creditors.

**Sixteenth Report, at paras. 50, 53.**

62. The method of providing notice to the Creditors follows the notice process which was approved by this Court in the Claims Process Order, and which this Court found to be reasonable in the specific circumstances of these proceedings.

**Applicants' MR, Lawson Affidavit, at Tab B, Exhibit B.**

63. The proposed voting procedures allow for the participation of all creditors in the Meeting and for voting by all creditors, even by creditors who might have disputed claims for distribution purposes and by creditors who might have claims in amounts in respect of which they may not ultimately qualify to receive a distribution.

**(ii) *The Consolidated Plan Should be Accepted for Filing***

64. Under a consolidated plan, affiliated legal entities are treated as one for the purposes of the plan, such that the assets of all debtors are “pooled to create a common fund out of which claims

of creditors of all the debtors are jointly satisfied.” Courts will authorize the filing of a consolidated plan of arrangement in appropriate circumstances.

*Redstone Investment Corp. (Receiver of), Re, [2016 ONSC 4453](#) (“Redstone”) at para. 7; Cline Mining Corporation (Re), [2014 ONSC 6998](#) at para. 80.*

65. In evaluating whether consolidation is appropriate, courts consider a number of factors, including whether (i) the elements of consolidation are present, such as the intertwining of corporate functions and other commonalities; (ii) the benefits of consolidation outweigh the prejudice to particular creditors; and (iii) consolidation is fair and reasonable in the circumstances.

66. The “elements of consolidation” considered at the first stage of the inquiry are: (i) difficulty in segregating assets; (ii) presence of consolidated financial statements; (iii) profitability of consolidation at a single location; (iv) co-mingling of assets and business functions; (v) unity of interests in ownership; (vi) existence of inter-corporate loan guarantees; and (vii) transfer of assets without observing corporate formalities.

*Redstone at paras. [47](#) and [78](#).*

67. Facts that militate in favour of consolidation might include the use of a common head office shared by related companies, one entity’s employment of all employees of a group of companies, and the centralized consolidation and distribution of funds.

*White Oak Commercial Finance, LLC v. Nygård Holdings (USA) Limited et al, [2022 MBQB 48](#) at para. 26, aff’d [2023 MBCA 73](#); Nortel Networks Corp, Re, [2015 ONSC 2987](#) at para. 223, leave to appeal ref’d [2016 ONCA 332](#).*

68. The interrelationship among the NAFA entities demonstrates significant elements supporting consolidation. The Applicants together represented the “NAFA” business on a global scale. North American Fur Auctions Inc. acted as the centralized corporate division of NAFA with

its head office in Toronto. As such, NAFA's operations on the whole, even in Europe and the USA, all ran through the Toronto head office.

**Applicants' MR, Lawson Affidavit, at Tab B, para 39.**

69. Additional factors supporting consolidation include the fact that when the Applicants were operational, employees that worked for the different named Applicants, were employed to support the "NAFA" brand and "NAFA's" global business operations. While each of the Applicants were to perform various different functions, the common goal was to further the interest of "NAFA" as a whole.

**Applicants' MR, Lawson Affidavit, at Tab B, para 40.**

70. In this case, where 9,800 were received (or deemed received) by the Applicants (including employee or Creditor under \$10K claims), only 5 creditors have filed claims against any entity other than North American Fur Auctions Inc. The total value of these claims (as filed but not yet finally determined) is approximately \$450,000.

**Sixteenth Report, at paras. 57.**

71. Given this interrelationship between the Applicants, debts owing for each of the Applicants were often cross-guaranteed or collateralized across the various Applicants. During the operations of the Applicants, there was often co-mingling of funds between the various Applicants. Further, various entities of the Applicants had consolidated financial statements. In addition, costs of this process have been shared among the Applicants.

**Applicants' MR, Lawson Affidavit, at Tab B, para 41.**

72. The Monitor has stated, having regard to all of the circumstances, that a significant majority of Affected Creditors will receive a better financial recovery under the consolidated Plan relative to an unconsolidated scenario, and that there is no material prejudice to Affected Creditors from the Applicants' decision to proceed by way of a consolidated Plan. The Monitor also notes that there are efficiency benefits and cost savings realized by proceeding by way of a consolidated Plan.

**Sixteenth Report, at para. 59.**

73. Given all of the foregoing, it is submitted that proceeding on the basis of a consolidated plan is appropriate in this instance.

### **C. The Stay Period Should be Extended**

74. The Stay Period has been extended a number of times, most recently to January 19, 2024. The Company submits that the extension of the Stay Period until and including March 6, 2024 should be granted, as it continues to act in good faith and with due diligence.

75. The requested extension of the Stay Period will provide the opportunity to present the Proposed Plan to the Affected Creditors for their consideration and for voting at the Creditors' Meeting. Provided that the Plan is approved by the Required Majority of Affected Creditors voting on the Plan, the proposed stay extension will permit the Company to bring the Sanction Motion. Maintaining the stay of proceedings during this time period will continue to provide stability to the CCAA proceedings.

**D. The Confidential Appendix “1” attached to the Sixteenth Report should be Sealed**

76. The Company seeks to seal the Cash Flow Forecast appended as Confidential Appendix “1” to the Sixteenth Report, which contains confidential and commercially sensitive information.

77. Section 10(3) of the CCAA authorizes the Court to make an order restricting the disclosure of the Cash Flow Forecast or any part thereof if it is satisfied that the release would unduly prejudice the debtor, but not unduly prejudice the debtor’s creditors.

s. 10(3), CCAA.

78. Further, the test to determine if a sealing order should be granted as set out in *Sierra Club*, as recast in *Sherman Estate*:

- (a) Court openness poses a serious risk to an important public interest;
- (b) The order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) As a matter of proportionality, the benefits of the order outweigh its negative effects.

*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 and 43.

79. On previous stay extensions, this Honourable Court has sealed prior cash flow forecasts on the basis that the requirements of s. 10(3) of the CCAA have been met, and the test in *Sierra Club/Sherman Estate* has been satisfied. Although, only one these tests needs to be met, the



Applicants have in the past satisfied both. The same basis applies to sealing the current Cash Flow Forecast in the Sixteenth Report.

80. The Cash Flow Forecast contains confidential business information and assumptions about the Applicants which, if disclosed, could hamper or interfere with the restructuring of the Applicants or the maximization of value. Specifically, NAFA has ongoing litigation and settlement negotiations with various entities around the world.

**Applicants' MR, Lawson Affidavit, at Tab B, paras 75-76, and Exhibit A, at para 51.**

81. NAFA would be prejudiced, and be at a disadvantage, in the event adverse parties in the litigation and settlement negotiations had access to the Cash Flow Forecast, and thereby, the short-term financials of the Applicants. This is valuable confidential information in any litigation or settlement negotiation that would not normally be divulged to adverse parties in the circumstances. NAFA's litigation and settlement negotiations are valuable (contingent) assets in its restructuring, and anything to compromise those assets would undermine the restructuring process.

**Applicants' MR, Lawson Affidavit, at Tab B, paras 75-76, and Exhibit A, at para 52.**

82. There is no reasonable alternative measure to a sealing order over the Cash Flow Forecast. For example, I have reviewed the Cash Flow Forecast and there would be no practical way to seal a portion thereof, and releasing other portions as each component of the Cash Flow Forecast works together.

**Applicants' MR, Lawson Affidavit, at Tab B, paras 75-76, and Exhibit A, at para 53.**

83. There would be little benefit to the public in releasing the Cash Flow Forecast, and the negative effects set out above would far outweigh any of those benefit.

**Applicants' MR, Lawson Affidavit, at Tab B, paras 75-76, and Exhibit A, at para 54.**

84. The Agent and FCC have been provided with the Cash Flow Forecast under terms of confidentiality.

**Sixteenth Report, at paras 109.**

85. The Monitor is in agreement with the grounds set out seeking the sealing order.

**Sixteenth Report, at para 110.**

86. As a result, the Company requests that the Cash Flow Forecast be sealed.

**PART V – ORDERS REQUESTED**

87. The Company seeks Orders in the form contained at Tab C and D to the Motion Record dated January 11, 2024.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15<sup>TH</sup> DAY OF JANUARY 2024  
BY:**



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David Ullmann / Stephen Gaudreau

**SCHEDULE “A”— LIST OF AUTHORITIES**

<b>No.</b>	<b>List of Cases</b>
2.	<i>Arrangement relatif à Bloom Lake</i> , <a href="#"><u>2018 QCCS 1657</u></a>
3.	<i>Canwest Global Communications Corp, (Re)</i> , <a href="#"><u>2011 ONSC 2215</u></a>
4.	<i>Cline Mining Corporation (Re)</i> , <a href="#"><u>2014 ONSC 6998</u></a>
5.	<i>Enron Canada Corp. v. National Oil-Well Canada Ltd</i> , <a href="#"><u>2000 ABCA 285</u></a>
6.	<i>Jaguar Mining Inc. (Re)</i> , <a href="#"><u>2014 ONSC 494</u></a>
7.	<i>Laurentian University of Sudbury</i> , <a href="#"><u>2022 ONSC 4433</u></a>
8.	<i>Nortel Networks Corp, Re</i> , <a href="#"><u>2015 ONSC 2987</u></a> leave to appeal ref’d 2016 ONCA 332
9.	<i>Nova Metal Products Inc. v. Comiskey (Trustee of) (1990)</i> , <a href="#"><u>41 O.A.C. 282 (C.A.)</u></a>
10.	<i>Re ScoZinc Ltd.</i> , <a href="#"><u>2009 NSSC 163</u></a>
11.	<i>Redstone Investment Corp. (Receiver of), Re</i> , <a href="#"><u>2016 ONSC 4453</u></a>
12.	<i>ScoZinc Ltd., Re</i> , <a href="#"><u>2009 NSSC 136</u></a>
13.	<i>Sherman Estate v. Donovan</i> , <a href="#"><u>2021 SCC 25</u></a>
14.	<i>Sierra Club of Canada v. Canada (Minister of Finance)</i> , <a href="#"><u>2002 SCC 41</u></a>
15.	<i>Target Canada Co., Re, 2017 (“Target”)</i> , <a href="#"><u>2017 ONSC 327</u></a>
16.	<i>Timminco Ltd., Re, 2012</i> <a href="#"><u>ONSC 4471</u></a>
17.	<i>White Oak Commercial Finance, LLC v. Nygård Holdings (USA) Limited et al</i> , <a href="#"><u>2022 MBQB 48</u></a>

## SCHEDULE “B”—STATUTORY PROVISIONS

*Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36

### **PART I**

#### **Compromises and Arrangements**

##### **Compromise with unsecured creditors**

4. Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

### **PART II**

#### **Jurisdiction of Courts**

[...]

#### **Form of applications**

**10 (1)** Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

[...]

#### **Publication ban**

**(3)** The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company’s creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.

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 NORTH AMERICAN FUR PRODUCERS INC., NAFA  
PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC.,  
NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA  
EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO

(the “**Applicants**”)

**Service Address of Recipients:** See Service List

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS  
(Re: Meeting Order returnable January 18, 2024)**

**BLANEY McMURTRY LLP**

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