

**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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.**

**MOTION RECORD
(returnable on a date to be determined)**

DATED: September 22, 2023

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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 AS AMENDED**

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

**NOTICE OF MOTION
(returnable on a date to be determined)**

Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as the court-appointed monitor (the "**Monitor**") of Express Gold Refining Ltd. ("**EGR**"), will make a motion to the Honourable Justice Cavanaugh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on a date to be determined by the Court.

PROPOSED METHOD OF HEARING: The motion is to be heard

- In writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location 330 University Ave, Toronto, Ontario, via Zoom (the details of which will be provided by the Court at a later date).

THE MOTION IS FOR:

1. An order, substantially in the form attached as **Appendix “A”** to the Sixteenth Report of the Monitor dated September 22, 2023 (the “**Sixteenth Report**”), for the following relief (the “**Mediation Order**”):

- (a) appointing a mediator as an officer of the Court to act as a neutral third party to assist in the mandatory mediation of certain tax disputes and litigation between EGR and the Canada Revenue Agency (“**CRA**”);
- (b) approving the Confidentiality Protocol (as defined in the Mediation Order) attached as **Schedule “A”** to the Mediation Order;
- (c) approving an increase to the Administration Charge, as defined in the Initial Order of this Court dated October 15, 2020 (the “**Initial Order**”), from \$300,000 to \$500,000; and
- (d) such further and other relief as counsel may advise and this Honourable Court may deem just.

2. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Sixteenth Report.

THE GROUNDS FOR THIS MOTION ARE:

3. EGR is in the business of, among other things, gold refining, trading of gold bullion (and other precious metals) and precious metals forward contracts.

4. Over the past decade, CRA has conducted three full-scale audits of EGR relating to,

among other things, the manner in which EGR charges GST/HST to its customers and recovers such GST/HST as Input Tax Credits from CRA.

5. On July 29, 2020, following its most recent audit, CRA issued Notices of Reassessment related to EGR's June 1, 2016 to October 31, 2018 reporting periods, imposing tax, penalties and interest in excess of \$189.5 million (the "**2020 Reassessments**"). CRA further advised EGR that it intended to take enforcement actions notwithstanding EGR's contestation.

6. Upon receiving Notice of CRA's intention to enforce, on October 15, 2020, EGR sought and obtained creditor protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), and Deloitte was appointed as Monitor in the proceedings (the "**CCAA Proceedings**"). EGR's filing was intended to create breathing room while EGR pursued its appeal from the 2020 Reassessments at the Tax Court of Canada ("**Tax Court**") bearing Court File No. 2020-1214(GST)G (the "**Tax Litigation**").

7. Over the past three years, the Tax Litigation has proceeded in a protracted manner and at an enormous cost to EGR, with EGR's professional fees in connection with the Tax Litigation and these CCAA Proceedings approaching \$11 million to date. EGR and CRA recently completed discoveries, following which they were required to meet to discuss whether a settlement conference would be beneficial, or whether hearing dates should be set for trial.

8. On March 31, 2023, CRA and EGR jointly wrote to the Tax Court requesting that a settlement conference be scheduled for July 20, 2023, noting that "*the parties believe that a settlement conference would be beneficial*" (the "**Joint Settlement Conference Request**").

9. On May 29, 2023, the Tax Court rejected the Joint Settlement Conference Request.

10. The parties have requested trial dates for May or June of 2024; however, the Tax Court has not yet confirmed any dates. Moreover, there is a sizable discrepancy between each party's proposed length of trial. In particular, EGR's Tax Counsel has advised the Monitor that EGR intends to call approximately 11 witnesses during its proposed four-week trial, while CRA intends to call 60 witnesses and seeks up to 65 days of hearing with a 90-day break between the conclusion of hearing evidence and closing arguments.

11. Given the stakes, appeals from any judgment are also a virtual certainty. The Tax Litigation thus has the potential to continue into 2026 and beyond.

12. The Monitor is of the view that in light of: (i) the projected range of costs of trial and the indeterminate time frames currently experienced in the proceeding before the Tax Court; (ii) the parties' Joint Settlement Conference Request, which was unfortunately rejected by the Tax Court; and (iii) in recognition that conducting litigation without the parameters that one would expect to adhere to in a matter on the Commercial List, that it is imperative that the parties move forward at this time with alternative dispute resolution.

13. The objective of the proposed mediation (the "**Mediation Process**") is to facilitate a global resolution of the Tax Litigation and all related current and potential tax disputes between EGR and CRA; or, should a global resolution not be achieved, a narrowing of the issues for trial.

14. The proposed participants in the Mediation Process are EGR and CRA, together with their respective counsel and advisors. The Monitor would attend the mediation and be available to assist as the parties and the mediator may consider beneficial.

15. The Mediation Process would be privileged, confidential and non-binding so as to encourage a candid and fulsome negotiation of all elements of the Tax Litigation. Any

settlement reached within the Mediation Process would become a binding agreement, subject to Court approval where it affects the interests of EGR.

16. The Monitor has consulted with each of EGR and CRA/DOJ regarding the proposed Mediation Process and form of Mediation Order. EGR is prepared and willing to participate in the Mediation Process, and is supportive of the proposed form of Mediation Order. The CRA opposes the relief sought on this motion and will not voluntarily participate in the Mediation Process.

17. The prospect of meaningful negotiation and settlement of the Tax Litigation (or, alternatively, narrowing of issues) in the context of the Mediation Process, is consistent with the statutory and remedial objectives of the CCAA, a framework intended to facilitate compromises and arrangements between companies and stakeholders. Procedures similar to the proposed Mediation Process have been approved in various other CCAA proceedings.

18. The increase of the Administration Charge from \$300,000 to \$500,000 is required in order to adequately secure the fees and disbursements to be incurred by the Mediator. The proposed increase is reasonable and appropriate in the circumstances.

19. The Monitor relies upon:

- (a) The provisions of the CCAA, including section 11, and the inherent and equitable jurisdiction of this Honourable Court;
- (b) Rules 1.04, 1.05, 1.08, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (c) Section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and

- (d) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

20. The Sixteenth Report; and

21. Such further and other evidence as counsel may advise and this Honourable Court may permit.

September 22, 2023

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TO: SERVICE 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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.

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

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

(returnable on a date to be determined)

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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**

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SIXTEENTH REPORT OF THE MONITOR
September 22, 2023

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Appendices

- Appendix “A”:** Draft Mediation Order
- Appendix “B”:** October 2020 Salama Affidavit (without exhibits)
- Appendix “C”:** Fourth Report (without appendices)
- Appendix “D”:** March 2023 Salama Affidavit (without exhibits)
- Appendix “E”:** June 2023 Salama Affidavit (without exhibits)
- Appendix “F”:** Fourteenth Report (without appendices)
- Appendix “G”:** June 2023 Endorsement

INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 15, 2020 (the “**Initial Order**”), Express Gold Refining Ltd. (“**EGR**” or the “**Applicant**”) was granted creditor protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), and Deloitte Restructuring Inc. was appointed as monitor (in such capacity, the “**Monitor**”) in the proceedings (the “**CCAA Proceedings**”). The Initial Order also provided for, among other things, a stay of proceedings with respect to the Applicant until and including October 19, 2020 (the “**Stay Period**”). The Stay Period in these CCAA Proceedings has been extended numerous times by further Orders, most recently up to and including December 12, 2023.
2. Copies of all orders and endorsements granted in these CCAA Proceedings are located on the Monitor’s website accessible at: <https://www.insolvencies.deloitte.ca/en-ca/pages/ExpressGoldRefiningLtd.aspx> (the “**Monitor’s Website**”). The Monitor encourages interested stakeholders to review the Monitor’s Website for a complete history of the CCAA Proceedings, including the various orders, endorsements and Monitor’s reports previously issued.
3. Unless otherwise stated, capitalized terms not defined herein are as defined in the Monitor’s prior reports.

PURPOSE

4. The purpose of this sixteenth report of the Monitor (the “**Sixteenth Report**”) is to provide the Court with:
 - (a) information on the proposed mediation process (the “**Mediation Process**”) as set out and to be implemented in accordance with provisions of a mediation order, substantively in the form attached hereto as **Appendix “A”** (the “**Mediation Order**”); and
 - (b) the Monitor’s conclusions and recommendations in respect thereof.

THE TAX LITIGATION

Background

5. A detailed overview of EGR's business and the events precipitating its CCAA filing are set out in the affidavit of EGR's Vice-President, Atef Salama, dated October 14, 2020 (the "**October 2020 Salama Affidavit**"), a copy of which (without exhibits) is attached hereto as **Appendix "B"**.
6. In summary, a significant part of EGR's business consists of gold refining, which consists of EGR purchasing unrefined bars and scrap gold for refining at its specialized facility in Toronto and arranging for the final stages of refining to be conducted by third-party refiners offsite. EGR also engages in the trading of gold bullion (and other precious metals) and forward contracts, and takes trading positions on its own behalf and for its clients based on short and long-term fluctuations in the price of gold and other precious metals, either for hedging purposes or for investment purposes.
7. As a GST/HST registrant under Part IX of the *Excise Tax Act* (R.S.C., 1985, c. E-15), EGR pays GST/HST on unrefined gold purchased from its suppliers, but does not collect GST/HST on the refined gold sold to its customers (pure gold is zero rated). GST/HST paid to suppliers in a business transaction give rise to Input Tax Credits ("**ITCs**") that can be claimed by EGR. When a registrant's ITCs exceed the GST/HST collected, it is entitled to a net tax refund from the CRA.
8. Over the past decade, CRA has conducted three full-scale audits of EGR relating to, among other things, the manner in which EGR charges GST/HST to its customers and recovers such GST/HST as ITCs from CRA.
9. On July 29, 2020, following its most recent audit, CRA issued Notices of Reassessment related to EGR's June 1, 2016 to October 31, 2018 reporting periods, imposing tax, penalties and interest in excess of \$189.5 million (the "**2020 Reassessments**"). CRA further advised EGR that it intended to take enforcement actions notwithstanding EGR's contestation.

10. Upon receiving Notice of CRA's intention to enforce, on October 15, 2020, EGR sought and obtained creditor protection under the CCAA to provide for the continued operation of the business, and to create breathing room while EGR pursued its appeal from the 2020 Reassessments in the Tax Court of Canada ("**Tax Court**") bearing Court File No. 2020-1214(GST)G (the "**Tax Litigation**").
11. In paragraph 4 of the October 2020 Salama Affidavit, Mr. Salama deposed that "... but for the disputes with the [CRA]... [EGR] would be a solvent and successful business with no need for the protections afforded by these proceedings."
12. As the Monitor noted in its Fourth Report dated May 19, 2021 (the "**Fourth Report**"), EGR's financial statements appeared to support Mr. Salama's evidence. For example, for the year ended May 31, 2020, EGR had earnings before tax of approximately \$8.4 million and, for the year ended May 31, 2019, earnings before tax of approximately \$3.3 million. At that time, EGR appeared to be able to service its debt obligations in the ordinary course except for the contingent liability created by the 2020 Reassessments. A copy of the Fourth Report (without appendices) is attached hereto as **Appendix "C"**.
13. The Monitor has closely observed EGR's operations and its GST/HST filings throughout the CCAA Proceedings pursuant to a Monitoring Protocol dated October 27, 2020, among EGR, CRA and the Monitor, which was amended on March 1, 2021, and December 15, 2021, to account for changes in EGR's business volumes and to reduce costs.

Progress of the Tax Litigation to Date

14. The Tax Litigation has now been ongoing for three years. Following a motion heard on June 8, 2021, and contested by CRA, this Court issued a Production and Confidentiality Order granting the Monitor unfettered access to all documents produced by CRA to EGR in the Tax Litigation. Documentary discovery was spread over various rounds of production in 2021, 2022 and 2023 (following examinations for discovery, which were recently completed). (See Affidavit of Atef Salama sworn March 9, 2023 (the "**March 2023 Salama Affidavit**"), a copy which (without exhibits) is attached hereto as **Appendix "D"**.)

15. Although CRA objected to the Monitor's attendance at the examinations for discovery, the Monitor did ultimately obtain and review all examination transcripts in the fall of 2022 and is familiar with the matters in dispute.

The Parties' Request for a Settlement Conference

16. The Monitor understands that, following the completion of discoveries, EGR and CRA were required to meet to discuss whether a settlement conference would be beneficial, or whether hearing dates should be set for trial.
17. As set out in the March 2023 Salama Affidavit and Mr. Salama's affidavit sworn June 9, 2023 (the "**June 2023 Salama Affidavit**"):
- (a) on February 7, 2023, EGR met with CRA and its counsel at the Department of Justice Canada ("**DOJ**"), to discuss the prospect of a settlement conference;
 - (b) on February 23, 2023, EGR served the CRA/DOJ with a written offer to settle the Tax Litigation (the "**EGR Offer**");
 - (c) on March 10, 2023, CRA and EGR had a call in which CRA's rejected the EGR's Offer;
 - (d) on March 31, 2023, CRA and EGR jointly wrote to the Tax Court requesting that a settlement conference be scheduled for July 20, 2023, noting that "*the parties believe that a settlement conference would be beneficial*" (the "**Joint Settlement Conference Request**"); and
 - (e) on May 29, 2023, the Tax Court rejected the Joint Settlement Conference Request.

A copy of the June 2023 Salama Affidavit (without exhibits) is attached hereto as **Appendix "E"**.

18. The Monitor understands that, since June 2023, the parties have made a joint request for trial dates, and there has been no movement or change in position from the Tax Court regarding the Joint Settlement Conference Request.

19. In the Monitor's view, the delivery of the Joint Settlement Conference Request was a positive step, with each of CRA and EGR suggesting that they desired in good faith to pursue a potential resolution of the Tax Litigation, which allows the CCAA Proceedings to continue forward in parallel from the perspective of the parties' commitment to a diligent and efficient process.

Mediation is Appropriate and Necessary at this Time

20. The Monitor makes the following observations regarding the appropriateness and necessity of exploring alternative dispute resolution mechanisms at this time:
- (a) as noted above, the 2020 Reassessments were the catalyst for EGR initiating the CCAA Proceedings, and CRA remains EGR's largest, but not yet determined (contingent in nature) creditor by a considerable margin. In the Monitor's view, the outcome of the CCAA Proceedings is materially related to the outcome of the Tax Litigation;
 - (b) the Tax Litigation has been lengthy, extremely costly and has no clear end-date, all of which is having a significant impact on EGR's financial viability;
 - (c) October 15, 2023, will mark the third anniversary of these CCAA proceedings. To date, the parties have not participated in any form of alternative dispute resolution;
 - (d) the resolution (or determination) of the claims arising from the Tax Litigation is a necessary pre-requisite to, and component of, any viable EGR plan and / or exit from these CCAA Proceedings, which affects not only EGR and CRA, but all of EGR's stakeholders;
 - (e) CRA is not the sole stakeholder in these CCAA Proceedings. According to EGR's books and records, as of October 15, 2020, EGR had 108 creditors, excluding CRA, with aggregate claims of approximately \$39.9 million;
 - (f) extensive and lengthy documentary and oral discoveries focussing largely on EGR and its principal have been completed in the Tax Litigation, meaning each side has had ample opportunity to know the other's case;

- (g) trial dates have been requested for May or June of 2024; however, the Monitor understands that the Tax Court has not yet confirmed any dates. Moreover, there is a sizable discrepancy between each party's proposed length of trial. In particular, EGR's Tax Counsel has advised the Monitor that EGR intends to call approximately eleven witnesses during its proposed four-week trial, while CRA intends to call 60 witnesses over up to 65 hearing days with a 90-day break between the conclusion of hearing evidence and closing arguments;
 - (h) even if the trial were to begin in May or June 2024, the Monitor understands the trial dates may not be consecutive, particularly on a multi-month trial, and could well spill into 2025;
 - (i) the trial judge will almost certainly reserve their decision, which would further extend the date of judgment; and
 - (j) given the stakes, appeals from any Judgment are also a virtual certainty. The Tax Litigation thus has the potential to continue into 2026 and beyond.
21. The Monitor notes that EGR has been able to fund the significant costs associated with the Tax Litigation and the CCAA Proceedings to date, with professional fees to August 18, 2023, totalling approximately \$10.6 million, and continuing to accrue pending the resolution of the Tax Litigation and CCAA Proceedings. It is conceivable, however, that this burden and the burden of conducting business in the CCAA Proceeding will wear on EGR's capacity to continue to fund the Tax Litigation on an indefinite basis.
22. As discussed above, EGR's tax counsel has recently advised the Monitor that CRA has requested a 65-day trial, with a 90-day break before closing arguments. In contrast, EGR has requested a four-week trial. According to tax counsel's estimates, the EGR's legal costs for a 65-day Tax Court trial would range from \$6.5 million to \$7.5 million compared to a range of \$2.0 million to \$2.5 million for a 4-week trial. EGR's cash balance as at August 21, 2023 was \$2.1 million, which makes it difficult for the company to fund a protracted trial.

The Monitor's Consultations with EGR and CRA

23. On June 12, 2023, this Court heard and granted EGR's motion for an Order extending the Stay Period to September 12, 2023. At the hearing of the motion, the Monitor informed Justice McEwen of the Joint Settlement Conference Request and the Tax Court's refusal to schedule the requested settlement conference. As noted at paragraph 30 of the Monitor's Fourteenth Report dated June 8, 2023, the Monitor was of the view that given the parties' willingness to pursue a potential settlement, discussions regarding the alternative fora for settlement discussions (*e.g.* through the CCAA Proceedings) should occur as soon as possible. A copy of the Fourteenth Report (without appendices) is attached hereto as **Appendix "F"**.
24. On June 12, 2023, Justice McEwen issued an endorsement (the "**June 2023 Endorsement**") directing the Monitor to take steps to host discussions with CRA/DOJ and EGR in relation to developing an alternative dispute resolution procedure to facilitate the resolution of the Tax Litigation. A copy of the June 2023 Endorsement is attached hereto as **Appendix "G"**.
25. Following the issuance of the June 2023 Endorsement, the Monitor has held various discussions with EGR and CRA/DOJ regarding alternative dispute resolution procedures.
26. EGR has expressed to the Monitor a strong interest in exploring and participating in alternative dispute resolution procedures.
27. On June 29, 2023, the Monitor delivered correspondence to DOJ requesting a discussion with CRA with respect to the June 2023 Endorsement. Specifically, the Monitor indicated that the discussion would be centred upon potential alternative dispute resolution procedures given CRA's prior indication of its willingness to participate in a settlement conference, and the direction of Justice McEwen.
28. On July 7, 2023, DOJ advised the Monitor that CRA "*is not prepared to discuss settlement of the tax litigation at this time*". The Monitor continued communications and efforts with CRA/DOJ to determine if any consensus could be reached on the nature and timing of a potential dispute resolution procedure, however, CRA continued to oppose these initial

discussions despite its previous agreement to a joint Settlement Conference Request. To date, CRA/DOJ has not formally provided the Monitor with the underlying basis upon which CRA refuses to engage in settlement discussions.

29. As discussed above, there are no parameters emanating from the Tax Court which currently address the pressing need to move the CCAA Proceedings forward and in turn contribute to a resolution of the issues and claims arising from the Tax Litigation.
30. Accordingly, in light of: (i) the projected range of costs of trial and the indeterminate timeframes currently experienced in the proceeding before the Tax Court; (ii) the parties' Joint Settlement Conference Request, which was unfortunately rejected by the Tax Court; and (iii) in recognition that conducting litigation without the parameters that one would expect to adhere to in a matter on the Commercial List, that it is imperative that the parties move forward at this time with alternative dispute resolution.

PROPOSED MEDIATION PROCESS AND MEDIATION ORDER

Overview

31. The objective of the proposed Mediation Process is to facilitate a global resolution of the Tax Litigation and all related current and potential tax disputes or claims between EGR and CRA; or, should a global resolution not be achieved, a narrowing of the issues and timeframes for trial.
32. The proposed participants in the Mediation Process are EGR and CRA, together with their respective counsel and advisors. The Monitor would attend the mediation and be available to assist as the parties and the Mediator (as defined herein) may consider beneficial.
33. The Mediation Process would be privileged, confidential and non-binding so as to encourage a candid and fulsome negotiation of all elements of the Tax Litigation. Any settlement reached within the Mediation Process would become a binding agreement, subject to Court approval where it affects the interests of EGR.
34. Importantly, and as noted above, the Mediation Process is designed to minimize prejudice to any party, which is supported by the protective provisions contained in the Mediation

Order addressing privilege, confidentiality and the non-binding nature of the process. Nothing in the Mediation Process is intended to affect the continuation of the Tax Litigation should a settlement not be reached.

Court-Appointed Mediator and Form of Mediation Order

35. The proposed Mediation Order includes the following:
- (a) paragraph 3 – the parties’ participation in the Mediation Process is mandatory;
 - (b) paragraph 4 – the parties shall participate in the Mediation Process in good faith and provide such reasonable cooperation to each other and the Mediator as may be necessary or desirable to achieve a resolution of the Tax Litigation;
 - (c) paragraph 5 – the Mediator shall adopt processes, procedures, and timelines which he, in his discretion, considers appropriate to facilitate an effective and efficient Mediation Process consistent with the purposes of the CCAA Proceedings;
 - (d) paragraph 7 – the Monitor shall provide the Mediator with such assistance as the Mediator shall reasonably request;
 - (e) paragraph 11 – the Mediation Process shall be subject to the Confidentiality Protocol (as defined in the Mediation Order);
 - (f) paragraph 13 – the Mediation Process shall terminate on the earlier of: (i) a declaration of the Mediator that a resolution of the Tax Litigation has been concluded, or that a resolution of the Tax Litigation Issues is not achievable; and (ii) any further Order of this Court; and
 - (g) paragraphs 14 and 15 of the Mediation Order – EGR will pay the reasonable fees and disbursements of the Mediator on a monthly basis and the Mediator will be entitled to the benefit of the Administration Charge as security for the Mediator’s fees and disbursements.
36. The Monitor is currently in discussions with two highly-qualified mediators regarding the Mediation Process, both of whom have eminent credentials, willingness and capacity to act

as Mediator. Once the ideal candidate has been identified, the Monitor will provide a summary of the candidate's qualifications, together with its recommendation, to this Court in a brief supplemental report.

CONCLUSIONS AND RECOMMENDATIONS

37. The Monitor is of the view (even in light of CRA's apparent opposition) that there is considerable merit in the parties participating in the Mediation Process. The Mediation Process will allow EGR to begin identifying potential restructuring options, potentially narrow the issues related to the Tax Litigation, or produce a settlement that could support a successful restructuring for the benefit of all stakeholders. Moreover, the Mediation Process reinforces the imperative that progress of the CCAA Proceedings proceed at a reasonable pace, consistent with the parties' obligation to act with due diligence which means, among other things, addressing the parameters and timeframes of the Tax Litigation.
38. The prospect of meaningful negotiation and settlement of the Tax Litigation (or, alternatively, narrowing of issues) in the context of the Mediation Process, is consistent with the statutory and remedial objectives of the CCAA, a framework intended to facilitate compromises and arrangements between companies and stakeholders. Procedures similar to the proposed Mediation Process have been approved in various other CCAA proceedings.
39. For the reasons stated herein, the Monitor recommends that the Court approve the Mediation Process and grant the Mediation Order. The Monitor further views its recommendation as a rational extension of the June 2023 Endorsement, by which Justice McEwen directed the Monitor to take steps to host discussions regarding alternative dispute resolution procedures. Justice McEwen in fact found it "necessary" to have CRA / DOJ engage in these discussions.

All of which is respectfully submitted this 22nd day of September, 2023.

**Deloitte Restructuring Inc., solely in its
capacity as Court-appointed Monitor of
Express Gold Refining Ltd.**



Philip Reynolds, LIT
Senior Vice-President



Warren Leung, LIT
Senior Vice-President

Appendix “A”
to the Sixteenth Report of the Monitor

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

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

THE HONOURABLE)	
)	●, THE ●
JUSTICE CAVANAUGH)	DAY OF ●, 2023

**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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.**

**ORDER
(Re: Appointment of Mediator)**

THIS MOTION, made by Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Express Gold Refining Ltd. ("**EGR**"), for an order appointing a mediator as an officer of the Court to act as a neutral third party to assist in the potential resolution of certain litigation between EGR and the Canada Revenue Agency ("**CRA**"), was heard this day at the Superior Court of Justice (Commercial List) (the "**Court**") located at 330 University Avenue, Toronto, Ontario, via judicial videoconference.

ON READING the Motion Record of the Monitor, including the Sixteenth Report of the Monitor and Notice of Motion, each dated September 22, 2023 (collectively, the "**Motion Record**"), and on hearing the submissions of counsel for the Monitor, EGR and CRA, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amanda Campbell sworn ●, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Motion Record is hereby dispensed with.

APPOINTMENT OF MEDIATOR

2. **THIS COURT ORDERS** that ● is hereby appointed mediator, as an officer of the Court, and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to assist EGR and CRA (together, the “**Parties**”) with the resolution of outstanding issues and matters under the appeal commenced by EGR at the Tax Court of Canada bearing Court File No. 2020-1214(GST)G and similar outstanding issues and matters referable to GST/HST reporting periods of EGR not currently at issue before the Tax Court of Canada (collectively, the “**Tax Litigation Issues**”) through a mediation process (the “**Mediation Process**”).

3. **THIS COURT ORDERS** that the Parties’ participation in the Mediation Process is mandatory, subject to paragraph 13 herein.

4. **THIS COURT ORDERS** that the Parties shall participate in the Mediation Process in good faith and provide such reasonable cooperation to each other and the Mediator, as may be necessary or desirable to achieve a potential resolution of the Tax Litigation Issues.

5. **THIS COURT ORDERS** that in carrying out the Court-Appointed Mediator’s mandate, the Mediator shall, among other things, adopt processes, procedures, and timelines which, in the Court-Appointed Mediator’s discretion, considers appropriate to facilitate an effective and

efficient Mediation Process for the Tax Litigation Issues consistent with the purposes of these CCAA Proceedings (as defined herein).

6. **THIS COURT ORDERS** that in carrying out the Court-Appointed Mediator's mandate, the Mediator may, among other things:

- (a) consult with any appointed representative(s) of the Monitor, the Parties, and other persons or stakeholders the Mediator considers appropriate in the circumstances; and
- (b) file periodic reports with the Court, in consultation with the Monitor, detailing the Parties' progress towards resolving the Tax Litigation Issues.

7. **THIS COURT ORDERS** that the Monitor shall provide the Mediator with such assistance as the Mediator shall reasonably request.

8. **THIS COURT ORDERS** that the Mediator is authorized to take all steps and to do all acts reasonably necessary or desirable to carry out the terms of this Order, including dealing with any court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

9. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Mediator shall incur no liability or obligation as a result of the Mediator's appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on the Mediator's part. Nothing in this Order shall derogate from the protections afforded to a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

10. **THIS COURT ORDERS** that the confidentiality protocol (the “**Confidentiality Protocol**”), attached hereto as **Schedule "A"**, is hereby approved and that the entirety of the Mediation Process or anything reasonably incidental to the Mediation Process including, but not limited to, all written and oral communications as between all persons that have participated in the Mediation Process, shall be subject to the Confidentiality Protocol.

11. **THIS COURT ORDERS** that the Court, the Monitor and the Mediator may communicate between one another directly to discuss, on an ongoing basis, the conduct of the Mediation Process and the manner in which it will be coordinated with these *Companies’ Creditors Arrangement Act* proceedings (the “**CCAA Proceedings**”).

12. **THIS COURT ORDERS** that the Court shall not disclose to the Mediator how the Court will decide any matter which may come before the Court for determination, and the Mediator and the Monitor will not disclose to the Court the negotiating positions or confidential information of the Parties in the Mediation.

13. **THIS COURT ORDERS** that the Mediation Process shall terminate upon the earlier of the following circumstances:

(a) by declaration of the Mediator that a resolution of the Tax Litigation has been concluded, or that a resolution of the Tax Litigation Issues is not achievable pursuant to the Mediation Process; or

(b) by further Order of the Court.

14. **THIS COURT ORDERS** that, subject to an agreement between EGR and the Mediator, all reasonable fees and disbursements of the Mediator and the Mediator’s legal counsel and

financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to carrying out this Mediation Process shall be paid by EGR on a monthly basis, forthwith upon the rendering of accounts to EGR.

15. **THIS COURT ORDERS** that the Mediator shall be entitled to the benefit of the Administration Charge, as defined in the Second Amended and Restated Initial Order of Justice McEwen dated October 27, 2020, as security for the Mediator's fees and disbursements and for the fees and disbursements of the Mediator's legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings.

16. **THIS COURT ORDERS** that the Administration Charge is hereby increased to \$.

GENERAL

17. **THIS COURT ORDERS** that the Monitor and the Court-Appointed Mediator may apply to this Court for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order. For greater certainty, in the event there is any conflict between the provisions of this Order and any future claims procedure order granted these CCAA Proceedings (a "**Claims Procedure Order**"), the provisions of the Claims Procedure Order shall govern to the extent of the conflict.

18. **THIS COURT ORDERS** that each of EGR 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.

19. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto Time) on the date hereof, and is enforceable without any need for entry and filing.

SCHEDULE “A” – CONFIDENTIALITY PROTOCOL

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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.**

CONFIDENTIALITY PROTOCOL

OVERVIEW

1. Pursuant to the Order of Justice Cavanaugh dated ●, 2023 (the “**Mediation Order**”), ● was appointed as Court-Appointed Mediator to assist the Parties with the resolution of the Tax Litigation Issues. The Mediation Order authorizes the Court-Appointed Mediator to adopt processes, procedures, and timelines which, in his discretion, he considers appropriate to facilitate an effective and efficient Mediation Process for the Tax Litigation Issues. This Confidentiality Protocol shall apply to all written and oral communications related to or arising out of the Mediation Process undertaken pursuant to the Mediation Order (collectively, “**Mediation Communications**”).
2. For greater certainty, Mediation Communications include, but is not limited to, all statements, discussion, promises, conduct, offers, opinions, views, admissions and communications for the purposes of conducting, considering, initiating, continuing, or reconvening the Mediation Process together with the delivery and exchange of any documents in the course of the Mediation Process made by any party, their agents, employees, representatives, or other invitees, and by the Court-Appointed Mediator.
3. All capitalized terms used herein but not otherwise defined shall have the meaning ascribed to that term pursuant to the Mediation Order.

COURT-APPOINTED MEDIATOR CONFIDENTIALITY

4. As part of the Mediation Process, the Court-Appointed Mediator may disclose to EGR or CRA any information provided by EGR or CRA, unless the disclosing party has specifically requested the Court-Appointed Mediator to keep the information confidential, in which case the Court-Appointed Mediator will keep that information confidential on a best effort basis.

5. The Court-Appointed Mediator will not disclose to anyone who is not a party to the Mediation Process anything said, or any materials submitted to the Court-Appointed Mediator, except:
 - a. where applicable, to counsel or other professionals retained on behalf of the Parties or to non-parties consented to in writing by the Parties, as deemed appropriate or necessary by the Court-Appointed Mediator;
 - b. to the Court, to the extent permitted herein and in the Mediation Order; or
 - c. where otherwise ordered to do so by a judicial authority or where required to do so by law.
6. Except as noted above, the notes, records, statements, and recollections of the Court-Appointed Mediator shall be confidential and protected from disclosure for all purposes.

PARTIES AND MONITOR CONFIDENTIALITY

7. The Parties and the Monitor acknowledge and agree that:
 - a. the purpose of the Mediation Process is to resolve the Tax Litigation Issues;
 - b. the Mediation Process is confidential and no visual or audio recordings shall be made, and any written notes shall not be admissible or referred to in any court for any purpose;
 - c. any Mediation Communication of the Court-Appointed Mediator in conducting the Mediation Process shall be confidential, without prejudice, and protected from disclosure for all purposes;
 - d. no Mediation Communication shall be discoverable, admissible or referred to in Court for any purpose, and shall not be discussed with anyone, provided that Communication otherwise admissible or subject to discovery do not become inadmissible or protected from discovery or admission by reason of their use in the Mediation Process; and
 - e. except as permitted by law, the Parties will not subpoena or otherwise require the Court-Appointed Mediator to testify or produce records or notes from the Mediation Process in an action or in any other proceeding.

CONSENT TO THIS AGREEMENT

8. The Parties have reviewed this Confidentiality Protocol, and agree to proceed with the Mediation Process on the terms herein contained.

**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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.**

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

PROCEEDING COMMENCED AT TORONTO

ORDER

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77 King Street West, Suite 400
Toronto-Dominion Centre
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*Lawyers for Deloitte Restructuring Inc., in its capacity
as court-appointed Monitor of Express Gold Refining Ltd.*

Appendix “B”
to the Sixteenth Report of the Monitor

Court File No.: _____

**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.
(the "Applicant")

**AFFIDAVIT OF ATEF SALAMA
(sworn October 14, 2020)**

I, Atef¹ Salama, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Vice-President of the Applicant, Express Gold Refining Ltd. ("EGR"), and have been since 2001, and as such I have personal knowledge of the facts and matters hereinafter deposed to save and except 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 graduated from the University of Toronto in 1998 with a degree in computer engineering. I also obtained a Masters of Engineering in Telecommunication, having graduated in 2001. Since 1999, I have been a licensed Engineer with Professional Engineers Ontario.

3. This Affidavit is sworn in support of an application by EGR for an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), to preserve and protect the business and undertakings of EGR.

OVERVIEW

4. As will be discussed in greater detail below, EGR is a family business that was established in 1994 by my father. Its primary business is refining gold. It enjoys a good

¹ Sometimes spelled "Atif".

reputation among its suppliers and customers, and, but for the disputes with the Canada Revenue Agency (the “CRA”), which will be described in detail, would be a solvent and successful business with no need for the protections afforded by these proceedings.

5. EGR employs 14 people and operates a specialized facility in downtown Toronto. It performs various refining functions in that facility, and also arranges for the final stages of refining to be conducted by third-party refiners offsite. Its customer base is comprised primarily of jewellery manufacturers, wholesalers, importers/exporters, scrap gold consolidators/resellers, cash-for-gold buyers, prospectors and miners who seek to have their unrefined gold converted to pure gold so it can be used in industry, manufacturing, trade, investment or speculation.

6. EGR has historically viewed its refining activities as a service it provides to its customers. It typically earns 1 to 2% of the value of the gold refined as, in effect, fees for such refining services. However, despite that historical view and the economic reality that EGR’s refining activities are effectively services, I understand that, further to a CRA ruling, under Part IX of the *Excise Tax Act* (R.S.C., 1985, c. E-15) (the “ETA”), which governs the Goods and Services Tax/Harmonized Sales Tax (“GST/HST”), the relevant transactions are treated as a purchase of unrefined gold and a sale back of refined gold for GST/HST purposes.

7. This “buy/sell” treatment of gold refining transactions has important GST/HST implications. I understand that supplies of unrefined gold are subject to GST/HST, but supplies of refined gold are generally not. As a result, EGR pays GST/HST on the unrefined gold it is considered to have purchased from its customers, but does not collect GST/HST on the refined gold it is considered to have sold back to its customers. Since the GST/HST EGR pays is refundable in the form of input tax credits (“ITCs”), EGR is in a constant, large GST/HST refund position.

8. EGR lobbied against the buy/sell treatment with the CRA and the Department of Finance on the basis that it would have negative cash flow implications for EGR and would increase tax leakage risk for the CRA. With respect to the tax leakage risk, EGR was concerned that customers could potentially collect the GST/HST payable in connection to transactions with refiners like EGR, and then abscond with the GST/HST without remitting it to the CRA. EGR advocated for several alternative approaches to address those problems.

9. However, the approaches that EGR advocated for were rejected by the CRA and the Department of Finance. The buy/sell treatment of EGR's refining activities was confirmed in a ruling by the CRA Rulings Directorate in 2013 (the "**2013 Ruling**").

10. EGR has been under constant scrutiny from the CRA for over two decades, including two full-blown, multi-year audits from 2004 to 2013. EGR was fully cooperative with the CRA and devoted considerable resources to those audits. While the CRA proposed several substantial adjustments at various times during the audits, the audits ended without any material unrecoverable GST/HST being assessed. During those audits, the CRA withheld EGR's GST/HST refunds for months and years at a time, causing significant cash flow problems to EGR. However, the CRA ultimately paid the refunds, as it was obliged to do.

11. In September 2018, the CRA again stopped paying GST/HST refunds to EGR and commenced a GST/HST audit of EGR's reporting periods beginning in June 2016 to October 2018.

12. That audit spiralled out of control and ultimately resulted in this application becoming necessary. The CRA made inflammatory accusations of wrongdoing against EGR, but has refused to provide any evidentiary basis for those allegations. The only context that the CRA has provided for its allegations relate to its conclusions that the volume and purity level of unrefined gold purchased by EGR differed from certain volume and purity levels that the CRA considers benchmarks for the gold market in the Greater Toronto area. The CRA has never explained the details of the market it considers EGR to participate in. This matter is being challenged in the Tax Court of Canada.

13. I am confident that EGR will be able to disprove the CRA's allegations in the Tax Court of Canada. EGR has never participated in any wrongdoing.

14. However, EGR urgently needs this Court's protection because, the CRA has issued assessments totaling approximately \$180 million, rendering EGR insolvent and EGR has been contacted by CRA Collections officials threatening to take enforcement action forthwith.

15. Perhaps more importantly for purposes of this application, the CRA has also failed to refund any of the GST/HST that EGR has paid to its customers or any other commercial

suppliers from the August 2018 reporting period onwards. To date, the CRA has withheld approximately \$37 million of GST/HST refunds from EGR. EGR requires such refunds to pay its suppliers and operate its business – as discussed, it generally earns gross revenue of 1 to 2% of the value of the unrefined gold that it refines for its customers, but it is generally required to pay 13% in GST/HST to its customers and 13% GST/HST to its non-customer commercial suppliers. It is simply untenable for the CRA to require EGR to pay GST/HST on an ongoing basis but to refuse to refund that GST/HST to EGR.

16. It is not the purpose of this restructuring to compromise or seek to otherwise impair the ordinary course customers and suppliers of the business, but rather to provide a platform to accelerate the process to a hearing or resolution of the issues that have been alleged by CRA in the appropriate forum.

BACKGROUND

(a) EGR's Business and Ownership

17. EGR is a corporation duly incorporated under the laws of Ontario. It is a family-owned and operated business and the current iteration of the Salama family's involvement in the precious metals business that spans back four generations.

18. My parents immigrated to Canada from Egypt with me and my two brothers in July 1984, when I was 7 years old. My father is a third-generation precious metal dealer and jeweller, as well as a lawyer in Egypt

19. In April 1991, my father developed an interest in refining methods for precious metal and his interest extended into research and experimentation. EGR was incorporated in 1994 as a result of these activities.

20. In 2001, the same year that I received my Masters of Engineering, I took over most of the management responsibilities at EGR rather than pursuing a career in telecommunications. My father and my mother continue to be involved in EGR's activities.

21. All of the issued and outstanding shares in EGR are owned by family members through a corporation or the Atef Salama Family Trust.

22. I am the Vice President of EGR and a director. The other officers and directors are Nabil Salama, my father, who is President, and Mary Salama, my mother, who is Secretary.

23. EGR's primary business, which generates the substantial portion of its revenue has been gold refining.² A typical refining transaction in EGR's business primarily involves the following steps:

- a) receiving unrefined gold (typically in the form of gold jewelry or bars of melted scrap recycled gold) from a customer;
- b) melting and assaying the unrefined gold to determine the gold content;
- c) consolidating various lots of unrefined gold and forwarding them to a third-party refiner for the final stages of refining to convert the lots into pure gold; and
- d) payment in pure gold, wire, cheque or cash or sale of pure gold to the (often, same) customers.

24. As noted above, I understand that the receiving of unrefined gold from a customer and the transfer back of pure gold are treated as a purchase and sale for purposes of the ETA and that this was confirmed in the 2013 Ruling.

25. While its sales volume has been high, due in part to the high value of gold, EGR's gross profit margin on gold transactions is low (i.e., typically 1-2%) while being consistent with market rates. This margin is what EGR historically considered its "fee" for refining gold. Specifically:

- a) EGR purchased its unrefined gold based on the volume of gold content times the market rate, less a 1-2% discount;
- b) in turn, EGR sold the refined product (i.e., pure gold) at the market price; and

² More specifically, EGR's business also involves three other types of precious metals, silver, platinum and palladium. However, since gold refining is far more important to EGR's business than the refining of those other precious metals, since the dispute with the CRA involves only gold refining transactions, and for the sake of simplicity, gold is the focus of this affidavit.

- c) from that gross margin, EGR had to pay third-party refining fees, operating expenses and income tax.

26. At all relevant times, EGR has dealt with well-established third-party, final refiners, including the Royal Canadian Mint and, primarily, Asahi Refining Canada Limited (“**Asahi Refining**”) to perform the last stages in the refining process: chemical separation of the gold, pouring the pure gold into ingots or bars, and affixing London Bullion Market Association purity seals. Asahi Refining is the Canadian subsidiary of Asahi Holdings, Inc. a publicly traded company on the Tokyo Stock Exchange.

27. EGR also participates in the trading of gold bullion and forward contracts. EGR takes positions for EGR and for its clients based on short and long-term fluctuations in the price of gold, either for hedging purposes or for investment purposes. It buys and sells physical gold bullion on its own account. It takes positions in the gold futures markets using accounts with Asahi Refining, RJ O’Brien, FXDD, as well as Saxo Bank.

28. In connection with both its refining and trading activities, EGR holds deposits, gold bullion (and other precious metals) and forward contracts on behalf of its customers. In connection with its refining business, customers deliver unrefined gold to EGR, as discussed above. The transfer of the unrefined gold is considered a purchase. Once the customer’s gold has been valued, there is a settlement report created and the customer is paid at that time in cash, by wire, or in gold bullion.

29. In the ordinary course, for GST/HST-registered customers, EGR is charged 13% GST/HST on EGR’s purchase of the unrefined gold. EGR claims the GST/HST payable as an ITC and, after receiving the corresponding net tax refund for the ITC a few months later, EGR pays the applicable GST/HST to its customers by cheque or wire transfer to the customer’s account.

30. EGR also stores gold bullion on behalf of several of its customers with which it has a long-standing relationship of trust and, as noted above, takes positions on behalf of several of its long-standing customers in the gold futures markets using EGR’s accounts, either for hedging purposes or for investment purposes. EGR also occasionally holds cash in its accounts with

Asahi Refining, RJ O'Brien, FXDD as well as Saxo Bank on behalf of several of its long-standing customers, to facilitate the trading of gold bullion or gold future contracts.

31. EGR maintains a large transaction volume; however, its profit margins are small. For example, the purchase price for unrefined gold is dictated by the market price for gold times the purity of the recycled precious metal being purchased, less the 1 to 2% margin. Hedging contracts are used to protect against fluctuations in market price as they relate to buy and sell transactions. Unrefined gold purchased from a customer is hedged – for example where EGR accumulates 100 ounces of gold in bullion purchases plus gold content in unrefined gold purchases, then a sale contract is entered into at that time to balance the market fluctuation risks.

32. The business is conducted from a 5200 square foot facility located at 215 Victoria Street in Toronto comprising a dedicated customer area, with 11 customer booths as well as a melt room with 5 induction furnaces, 1 gas torch, 1 large burning oven, 3 x-ray assay machines, 3 wet chemical assay machines, 13 scales, 2 class 3 safes, and multiple desks and computers.

33. EGR enjoys a good reputation with its customers arising from its long history, its trustworthiness and its ability to refine gold in a timely manner. Both myself, my father and my mother are usually at EGR's business premises. Competitors often take two to three days to process a purchase of unrefined gold. At EGR, customers leave with their settlement payment right away. EGR has instantaneous assay machines, although some competitors have acquired similar machines. The combination of instant assay, transparent melting on the premises where customers can witness their gold being processed, and advanced access to pure gold and funds through the business relationship with Asahi, permit EGR to offer the "express" service for which it is known. Over the years, EGR has dealt with over 7000 customers. Its refining customers consist of jewellers, jewellery manufacturers, wholesalers, resellers/consolidators and prospectors and miners.

34. As a Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") reporting entity, EGR complied (and complies) with strict FINTRAC rules regarding customer identification.

35. EGR verifies that its customers who supply EGR with unrefined gold to be refined and charge EGR GST/HST are duly registered for GST/HST purposes using the CRA's online GST/HST registry.

(b) The GST/HST Implications of EGR's Business

36. EGR is a GST/HST registrant under Part IX of the ETA. It has monthly reporting periods under the ETA and therefore files its GST/HST returns on a monthly basis.

37. I understand that EGR's sales of unrefined gold are "taxable supplies" under the ETA, and subject to GST/HST at the full rate applicable in the relevant province (*i.e.*, 13% in Ontario),³ whereas EGR's supplies of refined gold (*i.e.*, gold with a purity level of at least 99.5% and in ingot or bar form) are "zero-rated",⁴ and therefore subject to GST/HST at a rate of 0%.⁵

38. I also understand that GST/HST that is paid to suppliers in the course of a commercial activity gives rise to ITCs,⁶ and that when a registrant's ITCs exceed the GST/HST it has collected in a reporting period, it is entitled to a net tax refund from the CRA.⁷

(c) EGR's Historical Interactions With the CRA

39. Prior to September 2004, EGR was subject to periodic audits by the CRA to verify EGR's ITC claims. Those audits generally involved EGR providing the CRA with information and documentation to support its ITC claims, and the CRA reviewing such information and documentation without conducting any on-site visits of EGR's premises. Despite those audits, EGR consistently received its net tax refund from CRA within approximately 30 to 45 days of filing each monthly GST/HST return.

40. Between 2004 and 2013, EGR was subject to constant and extensive CRA GST/HST audit activity including two full-scale GST/HST audits spanning multiple years each. EGR was

³ See the general taxing provisions contained in subsections 165(1) and (2) of the ETA and the CRA Ruling.

⁴ Section 3 of Part IX of Schedule VI and of the ETA and the definition of "precious metal" in section 123 of the ETA.

⁵ Subsection 165(3) of the ETA.

⁶ Subsection 169(1) of the ETA.

⁷ Subsection 225(1) and subsections 228(1) and (3) of the ETA.

always fully cooperative and devoted considerable resources to complying with the CRA's requests for information and documentation. During that time, the CRA withheld EGR's net tax refunds for many months at a time, causing considerable cash flow difficulties. Multiple audit theories were raised by the CRA and ultimately abandoned.

(i) *The CRA's First Full-Scale Audit*

41. During a full-scale audit from October 2004 until January 2006, the CRA performed a substantial review of EGR's records and accessed EGR's premises for several weeks. During that audit, the CRA proposed adjustments on the basis that EGR sold "gold cut bars" to its customers, which would be subject to GST/HST, rather than standard gold bars. However, the CRA ultimately abandoned that position and did not issue any reassessments. EGR's net tax refunds had been withheld for 16 months, causing significant cash flow issues.

42. Later in 2006, a second auditor recreated much of the work that the first auditor had performed, and EGR's net tax refunds were again put on hold.

43. In an internal CRA note dated May 2006 (which EGR obtained under an access to information request), a CRA official stated as follows:

[EGR's audit and certain audits of other unrelated parties] have been ongoing for over a year/two years [...]. Our auditees are understandably applying pressure to obtain the requested refunds and are in a position to apply for writs of mandamus.

44. A copy of that note is attached to this Affidavit as **Exhibit "A"**.

45. Later in 2006, a third auditor again recreated much of the work that the first and second auditors had performed. In November 2006, that auditor proposed to issue reassessments to EGR for \$12 million in uncollected GST/HST based on an interpretation of the ETA that differed from EGR's interpretation. The interpretive issue was essentially whether refined gold in grain form (rather than a bar, ingot, etc.) constitutes a "precious metal" under the definition of that term in subsection 123(1) of the ETA (and is thus zero-rated for GST/HST purposes). At that time, EGR would from time to time deliver refined gold to its customers in grain form. A copy of the CRA's reassessment proposal letter is attached to this Affidavit as **Exhibit "B"**.

46. However, under the CRA's interpretation, EGR would also have been entitled to ITCs for GST/HST payable to the third-party refiners. That point was made by EGR to the CRA in a submission dated January 3, 2007, a copy of which is attached as **Exhibit "C"**.⁸

47. In a letter dated June 29, 2007, the CRA agreed that such ITCs would be available, reducing the proposed adjustments from approximately \$12 million to approximately \$3,000 in net tax. A copy of the CRA's letter dated June 29, 2007 is attached as **Exhibit "D"**.

48. Nonetheless, even though the CRA had concluded that EGR was entitled to the net tax refunds it had claimed, the CRA continued to withhold the refunds. EGR requested multiple times for the CRA to pay the refunds, including in a letter dated January 11, 2008, a copy of which is attached as **Exhibit "E"**. The CRA finally issued reassessments in accordance with the letter dated June 29, 2007 on March 28, 2008, and thereafter paid refunds totaling over \$750,000. A copy of the results portion of those notices of reassessment are attached as **Exhibit "F"**.

49. The CRA again inexplicably withheld EGR's net tax refunds for months at a time in 2008 and 2009 but those refunds were eventually paid.

(ii) *The Second Full-Scale Audit*

50. In March 2010, the CRA commenced a second full scale GST/HST audit of EGR and began withholding EGR's net tax refunds.

51. During that audit, the CRA again performed a substantial review of EGR's records. The CRA auditor indicated early in the audit that GST/HST paid by EGR on its purchases of unrefined gold might constitute "business losses", such that ITCs would not be recoverable. Thankfully, the CRA ultimately abandoned that position.

52. On August 6, 2010, EGR sent a letter to the CRA outlining its previous interactions with the CRA and requesting that its net tax refunds be paid. At that point, more than \$350,000 worth of net tax refunds were outstanding dating back to August 2009. Having received no response

⁸ Note that the relevant letter was sent on behalf of EGR by its counsel, Stephen K. D'Arcy, then of Bennett Jones LLP (now Justice at the Tax Court of Canada). Much of EGR's correspondence with the CRA over the years was made by EGR's representatives acting on behalf of EGR. For purposes of this Affidavit, references to interactions between EGR and the CRA should be considered to include such interactions that were conducted by way of EGR's representatives.

from the CRA, follow up letters were sent October 6, November 2, and December 22, 2010. Copies of these letters are attached to this Affidavit as **Exhibit “G”**.

53. In January 2011, the CRA issued reassessments confirming EGR’s entitlement to the net tax refunds, but the CRA only refunded approximately \$250,000 of a total of about \$800,000 in net tax refunds owing.

54. By way of letter dated March 14, 2011, the CRA proposed to reassess EGR on two bases that also depended on alternative interpretations of the ETA and alternative characterizations of EGR’s transactions with its customers and third-party refiners. A copy of that letter is attached as **Exhibit “H”**.

55. Between May 2011 and January 2012, a meeting was held with the CRA, and several detailed submissions were made to the CRA in connection with the CRA’s audit theory. A copy of EGR’s submission dated July 15, 2011 is attached as **Exhibit “I”**.

56. In January 2012, the CRA audit team indicated that the issue would be referred to the Rulings Directorate at CRA Headquarters. A letter referencing that referral is attached as **Exhibit “J”**.

57. Following the referral to CRA Headquarters, there were numerous discussions and correspondence between EGR, the CRA and the Department of Finance regarding the treatment that should be afforded to gold refining activities under the ETA. EGR and its advisors submitted that EGR’s transactions with its customers should be treated as a service under the ETA (such that GST/HST would only apply on the fee charged for the refining). Alternatively, EGR submitted that subsection 153(3) of the ETA could apply to those transaction on the basis that they involve the exchange of property of same class or kind (i.e., gold), which would result in no GST/HST applying whatsoever.

58. EGR and its advisors noted that, if EGR’s transactions with its customers were instead treated as a purchase of unrefined gold and a sale back of refined gold, it would have negative cash flow implications for EGR and would increase tax leakage risk for the CRA.

59. Specifically, on March 29, 2012, EGR's representatives wrote a letter warning the Department of Finance that the CRA's position "will have the obvious but unfortunate consequence of increasing the risk of further tax evasion in an industry where fraudulent practices have already been identified (and prosecuted)." A copy of that letter is attached to this Affidavit as **Exhibit "K"**. Similarly, in a November 9, 2011 submission to the CRA, a copy of which is attached as **Exhibit "L"**, EGR's representatives stated:

Ironically, the CRA's proposal increases the risk of tax leakage and tax fraud. In fact, given the CRA's recent experience with fraud in the gold industry, which primarily involved suppliers who collected but failed to remit GST/HST, it is to the CRA's benefit that subsection 153(3) of the ETA apply to the transactions between EGR and its clients. That is, the CRA's proposal contemplates the collection of GST/HST by large numbers of businesses, which complicates the administrative process for the CRA and increases the risk of tax leakage. As each of the parties would be able to recover the GST/HST payable by way of ITC, there is no financial benefit to the CRA in not applying subsection 153(3) to these transactions.

60. In January 2013, the Rulings Directorate issued the 2013 Ruling, which took the form of a detailed, 12-page memorandum with respect to the treatment of EGR's business operations under the ETA. A copy of the 2013 Ruling is attached as **Exhibit "M"**. Notwithstanding EGR's submissions, the 2013 Ruling held that EGR's transactions with its customers should be treated a purchase of unrefined gold and a sale back of refined gold.

61. EGR has subsequently followed the framework set out in the 2013 Ruling.

62. By way of letter dated February 11, 2013, the CRA proposed to issue reassessments to EGR in accordance with the approach set out in the 2013 Ruling. A copy of that letter is attached as **Exhibit "N"**. Specifically, the CRA proposed to assess EGR approximately \$1.5 million in GST/HST on transactions whereby EGR received unrefined gold from its customers and returned refined gold to them in grain form (i.e., a similar issue to the issue raised in 2006). The CRA assessed on the basis that the sale of refined gold in grain form was subject to GST/HST, which EGR had failed to collect and remit to the CRA. The CRA implemented its proposal by way of reassessments dated November 14, 2013. Those reassessments resulted in "wash transactions", as EGR was able to charge the relevant GST/HST to its customers and they were also presumably able to recover such GST/HST as ITCs.

(iii) *Interactions from 2013 to 2018*

63. Since 2013, EGR has been engaged in constant interactions with the CRA regarding its GST/HST practices, primarily in the form of responding to information requests from CRA with respect to EGR's customers.

64. EGR has hired a full-time staff member to deal with the added burden of CRA's on-going inquiries with respect to GST/HST matters.

65. Since the beginning of 2017, EGR has responded to at least 36 separate inquiries from tax authorities (primarily the CRA), generally involving GST/HST payments made to EGR's customers. Many of the responses included hundreds of pages of documentation. An EGR employee involved in handling those various information requests, prepared a chart summarizing these inquiries and EGR's responses since the beginning of 2017. That chart and copies of the requests themselves are attached as **Exhibit "O"** to this Affidavit.

66. The CRA also conducted a payroll account examination of EGR in late 2017, for which EGR provided the CRA examiner with extensive books and records for review. A copy of the CRA's letter in connection with the audit is attached as **Exhibit "P"**.

67. After the 2013 Ruling was issued, EGR regularly received requests from its customers requesting that EGR pay them GST/HST on past purchases. These requests arose out of CRA reassessments issued to such customers. That, in turn, significantly increased EGR's monthly ITC claims. In a letter dated February 1, 2013, EGR requested confirmation from the CRA that the CRA reassessment proposal documentation EGR was provided by customers met documentary requirements for EGR to claim ITCs. A copy of that letter (without attachments) is attached as **Exhibit "Q"**.

68. Since the 2013 Ruling, EGR's core gold refining operations have not materially changed.

(iv) *2018 Meetings with Toronto West CRA Officials*

69. On February 22, 2018, EGR received a letter from CRA officials from the Toronto West Tax Services Office requesting to review EGR's books and records for the purpose of verifying the ITCs claimed. The CRA did not take issue with any of EGR's ITC claims as a result of this

review; however, these ITC claims were the subject of the later audit (discussed in detail below) and many of them were subsequently denied as a result of that audit. A copy of the letter is attached as **Exhibit “R”**.

70. In March and April 2018, I met with those CRA officials in connection with that review. During those meetings, one of the officials noted that he had initiated certain earlier audits of EGR, indicated that he was familiar with EGR’s affairs, highlighted general issues with GST/HST fraud in the gold industry, acknowledged that EGR was clearly not involved in any such fraud, and requested EGR’s assistance in combatting such fraud, both by remitting the GST/HST owing to customers directly to the CRA, and by supporting and advocating for legislative amendments with the Department of Finance.

71. Following that meeting, EGR made inquiries with other officials within the CRA about the aforementioned meetings with officials from the Toronto West Tax Services Office. EGR was informed that the CRA officials from the Toronto West Tax Services Office who had met with me had not been acting in their formal capacity as CRA officials, such that there would be no point in continuing interactions and discussions with them. On that basis, EGR took no further steps with respect to the meetings.

(d) The Most Recent Audit, Judicial Review Application and \$180 Million Assessments

72. By way of letter dated October 4, 2018, the CRA informed EGR that EGR’s August 2018 GST/HST return was under audit by the Toronto West Tax Services Office (by different officials than those who had been involved in the meetings in March and April 2018). The letter also requested certain information and documentation for purposes of the audit. A copy of that letter is attached to this Affidavit as **Exhibit “S”**.

73. On October 15, 2018, I met with the CRA auditor and her team leader and provided them with all requested information and documentation.

74. On November 6, 2018, a CRA auditor from the Saskatchewan Tax Services Office contacted me and advised me that the CRA was expanding the audit to a full-scale GST/HST audit covering the period from June 1, 2016 to October 31, 2018. That auditor requested EGR’s full software backup for the period and advised that she would be asking for numerous invoices

and other documents. The auditor also stated that the CRA would not be paying any net tax refunds to EGR for its reporting periods from August 2018 forward, including reporting periods not under audit (the “**Decision**”). She indicated that the basis for the Decision was that CRA had identified high risk in the gold industry. However, she stated that she could not identify any specific risk vis-à-vis EGR.

75. On November 7, 2018, EGR sent a letter to the auditor providing a detailed chronology of EGR’s interactions with the CRA over the years and demanding that EGR’s net tax refunds be paid pursuant to the CRA’s obligations under section 229 of the Act. A copy of that letter is attached as **Exhibit “T”**.

76. On November 26, 2018, the auditor responded and confirmed the Decision in writing, indicating that all net tax refunds claimed by EGR for its August 2018 reporting period forward were being withheld by CRA until the full audit was complete. A copy of that letter is attached as **Exhibit “U”**.

77. On the same day, the auditor also wrote to EGR requesting various information as part of the audit. A copy of that letter is attached as **Exhibit “V”**. I subsequently provided her with all requested information.

78. On December 6, 2018, EGR challenged the Decision by way of an application for judicial review in Federal Court. A copy of the notice of application is attached as **Exhibit “W”**. In the application, EGR took the position that the Minister of National Revenue (who acts through her delegates at the CRA) did not have the jurisdiction to withhold EGR’s net tax refunds, because she was required to pay the refunds “with all due dispatch” under section 229 of the Act. EGR sought an order of *mandamus* requiring the net tax refunds to be paid.

79. In January 2019, the auditor and her team leader traveled to Toronto and conducted on-site audit activity at EGR’s premises for a week. During that time, they interviewed me for a full day, toured EGR’s facilities and reviewed EGR’s records. When I asked them whether EGR should continue paying GST/HST to its GST/HST-registered customers, even though the CRA was refusing to pay ITC refunds for that GST/HST, they stated that EGR should. They also

informed me that they also attended Asahi Refining's premises and obtained documentation referable to EGR's transactions with Asahi Refining.

80. In connection with the judicial review application, a CRA official from CRA's Headquarters testified under oath that the CRA's goal was to complete the audit by September 2019, and that the CRA did not have concerns about EGR's compliance with the ETA. He also acknowledged under oath that the CRA's concerns about non-compliance by other industry participants, including EGR's customers, are irrelevant to EGR's entitlement to ITCs.

81. The judicial review application was heard by Justice Pentney on July 3, 2019. During the hearing, Justice Pentney asked the Department of Justice lawyer whether he could cite a legal basis for the CRA not paying net tax refunds for reporting periods that were not under audit. At that time, the CRA was withholding approximately \$10 million in net tax refunds for reporting periods outside of the period under audit. The Department of Justice lawyer acknowledged that he was unable to cite such a legal basis.

82. On July 9, 2019, just four business days after the hearing, the CRA sent a letter to EGR indicating that the audit was being expanded again to include additional reporting periods (for which net tax refunds were being withheld). A copy of that letter is attached as **Exhibit "X"**.

83. On July 22, 2019, the CRA issued GST/HST notices of reassessment to EGR with no warning whatsoever (the "**2019 Reassessments**"). The reassessments related to EGR's June 1, 2016 to July 31, 2018 reporting periods, for which no net tax refunds were outstanding. They increased EGR's net tax for those periods by almost \$10 million (approximately the same amount of outstanding net tax refunds as of the time of the hearing) and imposed gross negligence penalties and interest. A copy of the 2019 Reassessments is attached as **Exhibit "Y"**.

84. The following day, EGR received letter from the CRA, which noted that the reassessed periods "remain under audit and subsequent (re)assessment(s) may be issued for the same periods". In other words, the reassessments were provisional. A copy of that letter is attached to this Affidavit as **Exhibit "Z"**.

85. With respect to the basis for the reassessments, the letter indicated that ITCs were denied in respect of invoices from 10 different customers. The letter also made various inflammatory (and contradictory) allegations, including the following:

The invoices created to support this business activity create the illusion of business activities and transactions that have legal rights and obligations that do not exist, or differ from the actual legal rights and obligations. [...]

Audit has concluded that [the relevant customers] did not, and in fact could not have, supplied the unrefined gold purportedly purchased by EGR. Audit has concluded that these 10 suppliers are missing traders [...]

As these missing traders are said to deal directly with EGR, and yet did not make supplies to EGR, EGR must have direct involvement in the GST/HST scheme, tantamount to intentional deceit. [...]

Audit has concluded that all of these suppliers are missing traders, and as a result did not supply EGR with the unrefined gold indicated on the invoices of accommodation. If it can be shown that there was the transfer of physical goods to EGR, it would be our position that this unrefined gold was a supply of debased gold as part of a carousel scheme, and/or that it did not come from the suppliers named on the invoices.

86. With respect to the CRA's alternative allegation that the transactions related to a "carousel scheme", the CRA explained that a carousel scheme involves a group of persons colluding to create fraudulent GST/HST refunds. The CRA explained that, in the gold refining context, a carousel scheme would involve a customer transacting with a refiner to refine gold, collecting the relevant GST/HST from the refiner, debasing the refined gold with other metals such as zinc, copper or silver in order to change its status for GST/HST purposes, transacting again with the refiner, collecting the relevant GST/HST, etc., until ultimately the customer absconds with the GST/HST without remitting it to the CRA.

87. The CRA's allegations are demonstrably false. The fact that the CRA felt the need to make contradictory, alternative allegations of wrongdoing is telling.

88. With respect to the CRA's first allegation that EGR created false invoices, EGR keeps scrupulous records and can prove beyond any doubt that it transacted with its customers as shown in its invoices (indeed, the CRA seemingly de-emphasized that allegation in subsequent reassessments, as discussed above).

89. EGR can (and will) also disprove the CRA's second allegation that EGR participated in a carousel scheme beyond any doubt. Over the years, EGR has always conducted its business with integrity and in compliance with its legal obligations. EGR has been exceedingly careful in ensuring that its customers are properly identified and GST/HST-registered. The steps that EGR has taken in this regard include the following:

- a) EGR turned away potential customers if they failed to meet EGR's strict onboarding identification requirements;
- b) EGR never transacted with customers if it had any suspicion that they might be engaged in nefarious activities;
- c) EGR stopped transacting with customers on several occasions when the CRA advised EGR that the customer was noncompliant with its GST/HST obligations;
- d) EGR has, for decades, always been fully cooperative with the CRA, other regulators and law enforcement agencies in many different contexts;
- e) EGR confirms that its customers' GST/HST registrations are in good standing with the CRA at the following times: (1) on the initial intake of a customer, (2) on a monthly basis when EGR claims ITCs for GST/HST paid or payable to a customer, and (3) prior to paying GST/HST to a customer; and
- f) EGR generally does not make GST/HST payments to its customers until it has received a corresponding net tax refund from the CRA (relying on the CRA's refund as validation of the customer's legitimacy) and has verified the customer's GST/HST registration number on the three separate occasions described above.

90. On August 20, 2019, EGR filed notices of objection to challenge the 2019 Reassessments. A copy of those notices of objection is attached as **Exhibit "AA"** (without appendices).

91. On September 20, 2019, EGR made a motion in connection with its judicial review application requesting that the hearing be reopened to allow additional evidence relating to the CRA's post-hearing actions. EGR submitted that the 2019 Reassessments appeared to be

intended to establish an artificial debt in order to mitigate against or completely blunt a potential *mandamus* order from the Federal Court, and represented further evidence that the CRA was refusing to pay net tax refunds with all due dispatch in the manner required under the ETA.

92. On March 16, 2020, EGR filed a Notice of Appeal in the Tax Court of Canada pursuant to paragraph 306(b) of the ETA in order to dispute the 2019 Reassessments. A copy of the Notice of Appeal is attached as **Exhibit “BB”**.

93. On May 12, 2020, the Honourable Justice Pentney dismissed EGR’s application for an order of *mandamus* and also dismissed the motion to reopen the hearing. Justice Pentney held that, based on the evidence before him, the application for *mandamus* was premature. He held that the CRA’s duty to pay net tax refunds with due dispatch does not displace the Minister’s authority to verify a claim before paying a refund so long as the audit is conducted with due dispatch. He stated:

[82] On the facts of this case, I am not persuaded that a sufficient time had elapsed for the conduct of the audit before the Applicant launched this application. It should be recalled that the argument centres on the audit of the August 2018 return, which was filed on September 6, 2018. The Applicant was advised on October 4, 2018 that an audit had commenced. On November 7, 2018, the Applicant’s representative wrote to demand that the net tax refund be paid, and it launched this proceeding on December 6, 2018. Unlike the situation in *Nautica Motors*, I do not find that this was a sufficient time to complete the audit.

94. A copy of Justice Pentney’s decision is attached as **Exhibit “CC”**.

95. By way of letter dated May 27, 2020 (the “**May 2020 Proposal Letter**”), the CRA proposed to deny ITCs totaling \$133,451,149.90 in connection with its audit of EGR’s reporting periods from June 1, 2016 to October 31, 2018 (which, apart from the periods from August 1 to October 31, 2018, had already been reassessed pursuant to the 2019 Reassessments). The CRA alleged that the ITCs related to invoices from 66 of EGR’s customers that were “part of a carousel scheme”, and that EGR “is a willing participant in the carousel scheme”. A copy of the May 2020 Proposal Letter is attached as **Exhibit “DD”**.

96. Unlike the proposal letter preceding the 2019 Reassessments, the CRA did not make any allegations that EGR had created false invoices or misrepresented its transactions with its customers.

97. It is notable that the CRA's conclusions in the May 2020 Proposal Letter were expressly only made "on a balance of probabilities". In addition, the only basis for the allegations relates to certain general calculations that the CRA apparently made regarding the gold refining market in the greater Toronto area, and purported differences between EGR's business and that of a typical market participant. The CRA's calculations were as follows:

- a) the weighted purity of unrefined gold purchased by EGR was 83%, while the "expected range" in the market would be 50% to 65%; and
- b) 90% of EGR's volume of unrefined gold purchases were from only 20% of EGR's customers, and those customers were, on average, doing almost double the weekly volume used as a "benchmark" by the CRA (while refusing, despite being asked, to provide any detail whatsoever of what either their "expected range" or "benchmark" is actually based upon).

98. In the May 2020 Proposal Letter, the CRA also alleged that EGR had failed to exercise sufficient diligence with respect to its customers, suggesting that EGR should have vetted customers based on factors like credit score (even though the CRA did not dispute that EGR was compliant with its customer identification obligations under the ETA and FINTRAC).

99. Following the issuance of the May 2020 Proposal Letter, EGR repeatedly requested that the CRA disclose the assumptions and data forming the basis for the CRA's calculations so that EGR could explain why EGR's business might be different from a typical market participant, or explain why the benchmarks used by the CRA are inapplicable to the market that EGR actually participates in. The CRA repeatedly refused under the guise of confidentiality.

100. On July 10, 2020, EGR wrote to the CRA and stated that the "lack of disclosure puts EGR in an impossible situation and deprives it of the most basic fairness and due process, especially given the nature and seriousness of the allegations contained in the [May 2020 Proposal Letter] and their potential fatal impact on EGR". EGR also noted that the CRA's assumptions and data would be general market information that would not contain identifying information, such that they would not be confidential. EGR also noted that, under paragraph 295(5)(b) of the ETA, the CRA would be permitted to provide EGR with confidential

information that can be reasonably regarded as necessary for the purposes of determining EGR's liability under the ETA. A copy of that letter is attached as **Exhibit “EE”**.

101. However, in a letter dated July 28, 2020, the CRA continued to refuse to release the information and insisted on issuing the proposed reassessments. The CRA even weaponized EGR's good faith attempts to lobby the CRA and the Department of Finance to address the risk of tax leakage in connection with the GST/HST treatment of gold refining. The CRA stated that “[t]he explicit warning by Salama to the CRA and Department of Finance only solidify our position that Salama knew the vulnerabilities of the GST/HST system, and took advantage of those vulnerabilities”.⁹ That EGR's pursuing in good faith the democratic processes which are part of our community, to effect positive change in suggesting legislative and policy steps, would be used by the CRA as evidence against us has disturbed me greatly.

102. On July 29, 2020, the CRA issued notices of reassessment for EGR's reporting periods from June 1, 2016 to October 31, 2018 (the “**2020 Reassessments**”). A copy of the 2020 Reassessments is attached as **Exhibit “FF”**. The 2020 Reassessments maintained the adjustments made by way of the 2019 Reassessments, denied additional ITCs, and also imposed gross negligence penalties. In total, the 2020 Reassessments imposed tax, penalties and interest totaling \$189,531,562.93.

103. Details regarding the current status of EGR's ITC refund claims and the amounts owing to and from EGR with respect to its reporting periods from June 1, 2016 to August 31, 2020, following the issuance of the 2019 Reassessments and the 2020 Reassessments, are contained in **Schedule 1** to this Affidavit.

104. By way of letter dated August 12, 2020, the CRA advised EGR that it was commencing a new GST/HST audit for EGR's reporting periods from November 1, 2018 to June 30, 2020.

105. On September 11, 2020, EGR amended its existing Tax Court appeal by filing a Fresh As Amended Notice of Appeal in connection with the 2020 Reassessments for the reporting periods that were also the subject of the 2019 Reassessments (*i.e.*, the June 1, 2016 to July 31, 2018 reporting periods). A copy of the Fresh As Amended Notice of Appeal is attached as **Exhibit**

⁹ Page 4.

“GG”. EGR will file notices of objection in due course to dispute the 2020 Reassessments for the remaining reporting periods (*i.e.*, the August 1 to October 31, 2018 reporting periods).

106. By way of letter dated September 17, 2020, the CRA denied EGR’s request for disclosure of the CRA’s audit file, citing the Tax Court appeal and involvement of Department of Justice. A copy of that letter is attached as **Exhibit “HH”**.

Comments on the Basis For the 2020 Reassessments

107. My family has operated honourably in the precious metals business for four generations, and EGR has built a reputation for trustworthiness since 1994. More than most businesses, EGR’s business depends on maintaining that reputation of trust. EGR’s customers regularly entrust EGR with possession of valuable precious metals and substantial amounts of money. I would never jeopardize my reputation, my family’s reputation and EGR’s reputation by participating in fraud.

108. The CRA’s allegations are based on “audit assumptions” unsupported by the disclosure of any evidence as discussed above. Furthermore, the CRA has never explained the benefit to a trusted and established market participant, EGR, of participating in the purported scheme. It simply does not stand to reason that EGR would pay 13% in GST/HST under fraudulent circumstances, placing it in a position of depending on the CRA to pay ITC refunds (which historically have been difficult to obtain), risking its business and risking criminal charges – all to earn a fee of 1 to 2%.

109. In particular, it does not stand to reason when it is considered that EGR has been under virtually constant audit scrutiny from the CRA since 2004.

110. What seems more reasonable is that the CRA is concerned about flaws in the GST/HST treatment of the gold refining industry that lead to tax leakage and, rather than seeking to address those flaws through changes in legislation or policy, it is seeking to wipe out that industry. If that is the case, it is particularly ironic that the CRA is seeking to destroy EGR, which had advocated to the CRA and the Department of Finance, in good faith, for legislative and policy fixes to those very flaws.

111. Moreover, as was noted in passing in Tax Counsel's letter to CRA dated July 10, 2020 (**Exhibit "EE"**), CRA acknowledges that their current position places a novel theory of responsibility on EGR, and one which in any practical sense is unable to be addressed in the real commercial world by market participants, including EGR.

112. Finally, the fact that EGR is requesting the transparency and oversight of these proceedings shows that the CRA's allegations are wrong. If EGR participated in wrongdoing, it would never expose itself to the scrutiny of the CCAA process and would never invite the proposed monitor to implement and oversee controls over its business.

FINANCIAL POSITION OF EGR

(a) Cash position

113. EGR is generally able to meet its ordinary course obligations as they become due apart from the liabilities associated with the 2019 Reassessments and the 2020 Reassessments.

114. As noted above, EGR's refining business generated approximately 80% of its revenue from the refining business. However, EGR's refining business has declined by approximately 95% as a result of the COVID-19 pandemic. I anticipate that the refining business will increase as businesses re-open.

115. As noted above, EGR also holds trading and hedging positions for certain customers in cash, precious metals and/or forward contracts. I will discuss this in greater detail under the heading "Customer Arrangements" commencing at paragraph 140, below. The following charts outline EGR and their customer positions as at September 30, 2020:

As at September 30, 2020	Held at		Total
	EGR	CIBC	
Total Cash Position			
CAD	864,528	2,518,754	3,383,282
USD	594,115	591,485	1,185,600
Less Customer Amounts			
CAD	-	451,250	451,250
USD	-	-	-
EGR's Cash Position			
CAD	864,528	2,067,503	2,932,032
USD in CAD equivalent	791,540	788,036	1,579,575
	<u>1,656,068</u>	<u>2,855,539</u>	4,511,607

As at September 30, 2020	Held at
	EGR
Total Inventory Position in Base Unit	
Gold	1,183.05
Silver	45,344.33
Platinum	112.98
Palladium	16.51
Less Customer Amounts	
Gold	689.54
Silver	11,793.93
Platinum	32.15
Palladium	-
EGR's Inventory Position	
Gold	493.51
Silver	33,550.39
Platinum	80.83
Palladium	16.51

As at September 30, 2020	
Total Account Value	
Held at	CAD equivalent
Asahi	3,776,215
Asahi Refining	393,429
RCM	55,001
Saxo	688,992
FXDD	370,817
RJO	174,074
Total	5,458,528
Customer Account Position in CAD	(4,912,686)
	545,842
Forward Contracts Positions (Unrealized)	
With Customers	(30,414)
With Third Parties	6,025
	(24,388)

(b) Bullion Buyers

116. EGR transacted business with 363 bullion buyer customers who purchased gold from EGR from May to July 2020 with sales totaling \$29.9 million, excluding GST/HST (\$30.0 million including GST/HST). EGR transacted with 25 bullion buyers with average monthly sales greater than \$100,000 (ranging from average monthly sales of \$772,302 to \$104,100). Such bullion buyers can be identified upon request (keeping in mind that identifying them in a public document could expose them to the risk of robbery).

(c) Gold vendors

117. During May to August, 2020, to supply bullion buyers, EGR purchased from bullion vendors and also supplied bullion derived from the refining of unrefined gold purchases. There were 468 gold vendors from May to August 2020 with EGR's purchases totaling \$40.5 million excluding GST/HST (\$40.7 million including GST/HST).

118. EGR transacted with 26 gold vendors with average monthly purchases greater than \$30,000 (ranging from average monthly purchases of \$3,573,026 to \$30,409). Such vendors can be identified upon request (keeping in mind that identifying them in a public document could expose them to the risk of robbery and theft).

119. Up to this point, we have been forced to advise our gold vendors that GST/HST payments on purchases cannot be made until a resolution is reached with the CRA regarding the CRA's payment of ITC refunds to EGR. This has caused EGR to lose certain vendors who will now only transact with competitors. However, EGR has been continuing business with certain long-term gold vendors under this new arrangement.

120. The chart below outlines a summary of EGR's aggregate creditors as of August 31, 2020:

Type of Creditor	Number of Creditors	Total Amount Owing
Customers with GST/HST owing	94	32,620,607
Customer Accounts	57	1,991,142
Other Suppliers	13	516,718

121. The foregoing is provided for illustration and does not change materially on a monthly basis

(d) Financial Statements

122. EGR's last compiled financial statements was for the year ended May 31, 2019:

Express Gold Refining Ltd.

Balance Sheet

As at May 31, 2019

(Unaudited)

	2019 \$	2018 \$
Assets		
Current Assets		
Cash	5,355,214	12,251,750
Marketable securities	254,865	255,834
Accounts Receivable	35,515,994	11,684,967
Due from related parties	2,746,744	1,340,025

Express Gold Refining Ltd.**Balance Sheet**

As at May 31, 2019

(Unaudited)

Income taxes recoverable	-	16,995
Inventories	3,368,157	4,074,538
Prepaid Expenses	13,500	16,604
	47,254,474	29,640,263
Property and Equipment	280,091	305,662
	47,534,565	29,945,925
Liabilities		
Current Liabilities		
Accounts Payable and accrued liabilities	41,886,810	26,796,322
Income taxes payable	738,374	-
Due to related parties	911,965	915,449
	43,537,149	27,711,771
Shareholders' equity		
Share capital	98	105
Retained earnings	3,997,318	2,234,049
	3,997,416	2,234,154
	47,534,565	29,945,925

123. As at May 31, 2019, EGR had approximately \$5.4 million in net available cash on hand.

124. As at May 31, 2019, EGR's assets had a book value of approximately \$47.5 million and liabilities of approximately \$43.5 million. The majority of EGR's assets on its balance sheet relate to accounts receivable of \$35.5 million, while the majority of EGR's liabilities on its balance sheet relate to accounts payable and accrued liabilities of \$41.9 million.

125. EGR does not have any secured creditors except in relation to the customer funds, bullion and contracts referenced below in my affidavit.

(e) Cash Flow Forecast

126. With the assistance of the proposed monitor, EGR has prepared a 13-week cash flow forecast (the "**Cash Flow Forecast**") for the week commencing October 5, 2020 to the week ending January 1, 2021. A summary of the cash flow appears below.

Receipts	
Sales	28,382,312
HST refunds	-
Interest income	6,000
Total Receipts	28,388,312
Disbursements	
Purchases	26,726,044
HST	770,356
Salaries and wages	151,212
Consulting and professional fees	150,000
General Administrative Expenses	96,402
Insurance	112,500
Rent	43,440
Advertising and promotion	54,676
Vehicle	5,799
Freight	20,000
Income Tax	30,000
Total Disbursements	28,160,429
Net Cash Flow Before Litigation and Restructuring Costs	227,883
Litigation Costs	450,000
Restructuring Costs	550,000
Total Litigation and Restructuring Costs	1,000,000
Net Cash Flow	(772,117)
Opening Cash	2,566,637
Ending Cash	1,794,520

127. EGR's opening cash balance on October 12, 2020 was approximately \$2.6 million. The full 13-week cash flow is attached hereto as **Exhibit "II"**.

128. The forecast cash flow surplus for the 12-week period ("**Cash Flow Period**") before litigation and restructuring costs is estimated to be \$227,883. Sales are estimated to be \$28.4 million over the Cash Flow Period with corresponding purchases of bullion and scrap metals of approximately \$26.7 million. GST/HST payments on goods and services are estimated to total \$770,356. Other significant cash outflows during the Cash Flow Period are as follows:

- a) Salaries and wages: \$151,212

- b) Consulting and professional fees: \$150,000
- c) Insurance: \$112,500
- d) General and administrative expenses: \$96,402

129. Because of the 2019 Reassessments and the 2020 Reassessments, EGR will incur litigation and restructuring costs to defend and resolve the matter, even before considering any amount that may be needed to effect an early resolution. Litigation and restructuring costs are estimated to be \$450,000 and \$550,000 respectively over the Cash Flow Period. The forecast cash flow deficit for the Cash Flow Period after litigation and restructuring costs is estimated to be \$772,117.

130. Based on the cash flow forecast presented, EGR does not have the financial resources to pay the amounts assessed by way of the 2019 Reassessments and the 2020 Reassessments. Furthermore, EGR's liquidity position will continue to erode and additional financing will need to be considered should the restructuring and the litigation relating to the 2019 Reassessments and the 2020 Reassessments extend well past the 12-week cash flow forecast period, which I anticipate.

(f) Cash Management

131. EGR operates a CAD and USD bank account at CIBC. EGR also holds physical cash on hand at its head office. The physical cash on hand and bank accounts at CIBC are used to facilitate day-to-day operational needs. The chart in paragraph 115 above provides details on the September 30, 2020 cash balance held at EGR and at CIBC in CAD and USD.

132. EGR currently has one credit card. The credit cards facilitate payment of various expenses related to office, advertising, telephone and general and administrative expenses.

(g) Related Party Arrangements

133. The following table outlines related party balances as at September 30, 2020:

Related Party	Receivable / (Payable) as at September 30, 2020
---------------	---

Farag Properties Inc.	2,243,350
1420781 Ontario Ltd.	920,843
Express Forex Inc.	311,273
Mary/Nabil	32,000
Atef	16,710
Watchdeals.ca	1,362
Prestige Precious Metals Ltd.	(1,416,897)
Shareholders	(80)
Fr. Pishoy Family Trust	(15)

134. Details relating to those parties and balances are as follows:

- a) Farag Properties Inc. – EGR leases its head office from Farag Properties Inc. at a monthly rent of \$14,480, including GST/HST. EGR manages Farag Properties Inc.’s property and receives an annual management fee of \$60,000 including GST/HST.
- b) 1420781 Ontario Ltd. – EGR's parent company.
- c) Express Forex Inc. – A related company facilitating foreign exchange transactions for EGR and other clients. It holds funds at Luminus Financial and remits certain amounts to EGR on a monthly basis. The receivables balance owing to EGR is typically around \$200,000.
- d) Atef / Nabil / Mary / Fr. Pishoy Family Trust – Shareholders of EGR. The balances represent shareholder advances. There has been a further advance to me of approximately \$300,000 to complete the purchase of residential real estate. I will provide full particulars of this to the monitor.
- e) Watchdeal.ca – A related company with a small receivable balance that is uncollectible and will be written off.
- f) Prestige Precious Metals Ltd. – EGR pays \$150,000 annually in management fees.

NORMALIZING OPERATIONS POSTFILING

(a) Net Tax Refunds

135. In order to stabilize its business, EGR requires that the CRA pay net tax refunds for the ITCs generated when EGR pays GST/HST to its customers and other business suppliers. As discussed above, the GST/HST payments in connection with EGR's business are several times greater than the revenue that EGR generated through that business. Accordingly, by way of this application, EGR is seeking a mechanism overseen by the Court whereby EGR will pay GST/HST to customers that have been approved the Court and other business suppliers, and the CRA will regularly pay the corresponding net tax refunds to EGR.

136. In order to address the concerns raised by CRA relating to certain customers and former customers, EGR will work closely with the prospective monitor to achieve any reasonable commercial transparency that the CRA may suggest.

137. . But for the 2019 Reassessments, the 2020 Reassessments and the CRA's ongoing refusal to pay ITC refunds to EGR, EGR would have no need for these proceedings and would be entirely capable of meeting its obligations as they come due. Accordingly, EGR is asking the Court's permission to carry on its business in the ordinary course without regard to the distinctions usually drawn between pre-filing and post-filing creditors. EGR is also asking that the net tax refunds owing by the CRA to EGR following this application not be offset against the pre-filing amounts owing to the CRA in connection with the 2019 Reassessments or the 2020 Reassessments (as they already have been by the CRA to date).

138. It is my understanding that the prospective monitor is supportive of this approach in these circumstances.

(b) Customer/Supplier Arrangements

139. EGR is also seeking the Court's permission to continue to honour and pay all pre-filing obligations owing to customers and suppliers who have dealt with EGR in good faith.

140. In particular, as discussed above, EGR holds cash, gold and forward contracts for customers in connection with its refining business (the "**Refining Customer Assets**"). The

Refining Customer Assets are typically only held for the duration of the relevant refining transaction (i.e., between the time that the unrefined gold is delivered to EGR and the time that EGR delivers refined gold or equivalent funds to the customer).

141. As discussed above, EGR also holds cash, gold bullion and forward contracts on a longer-term basis for customers with which EGR has a long-standing, trusting relationship (the “**Trading Customer Assets**”).

142. EGR and its customers have always understood that EGR holds the Refining Customer Assets and the Trading Customer Assets on behalf of each relevant customer in a manner akin to a legal trust.

143. I have been advised by counsel that these arrangements should be formally documented in a manner to create legal trusts and accordingly, I am now asking for the Court’s permission to do so in a manner which will instil confidence in my customers to continue to transact business with EGR and provide oversight and transparency to the Monitor over all aspects of these arrangements.

144. I believe that these measures will assist EGR to preserve the status quo while the dispute with the CRA is dealt with in the Tax Court of Canada.

145. The proposed measures would not relate to the Refining Customer Assets, since such assets are of a short-term nature and constitute ordinary course obligations. The proposed measures would only relate only to Trading Customer Assets. In particular, the proposal is as follows:

- a) EGR would establish a separate bank account that would hold only funds in trust for customers, such that the trust funds would be segregated from the funds held by EGR on its own account;
- b) EGR would delineate a separate storage area that would hold only gold bullion in trust for customers, such that the bullion would be segregated from the bullion held by EGR on its own account;

- c) EGR would establish a separate account with Asahi Refining or Saxo bank that would hold only funds and forward contracts in trust for customers, such that the relevant funds and forward contracts would be segregated from the funds and forward contracts held by EGR on its own account; and
- d) EGR would provide each of the customers in respect of which EGR holds Trading Customer Assets with a monthly Trust Account Statement specifying the assets held in trust by EGR as of that month, and expressly stating that “the assets set out herein are held in trust by EGR on behalf of the beneficiary listed above”.

EGR IS AT IMMEDIATE RISK

146. On Thursday morning, October 8, 2021 I received a call from a collection officer with CRA seeking to, among other things, inform me that collection proceedings would be commencing against EGR in 7 days if arrangements were not put in place to deal with the approximately \$180 million balance on account with CRA and that I was being put on warning of this eventuality. While I briefly discussed what this entailed for the business, it was made clear to me that EGR was being asked to post security in the form of tangible assets such as real property, letters of credit, cash and the like for the full balance outstanding with CRA of approximately \$180 million. As I was unsure of how to respond to this call which came to me without warning, I instructed my collection advisor Michael Collinge of Deloitte LLP to contact the officer to determine what this meant.

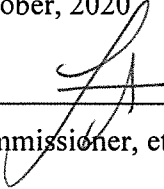
147. I understand from Michael Collinge’s discussion with the collections officer that no collection actions would be taken before the 15th. Attached is a letter as **Exhibit “JJ”** from Michael Collinge to the CRA confirming such an understanding with CRA.

148. EGR does not have the capacity to provide the requested security as demanded by CRA. If unstayed, such collection activities would immediately drive EGR out of business.

149. As such, EGR is seeking the protection of these proceedings while is pursues its appeal to the Tax Court and further seeks to normalize interactions with CRA to ensure a stable cash flow


to the business and preserve the status quo in accordance with the principles of restructuring as I understand them under the CCAA.

Sworn before me via)
videoconferencing this 14th day)
of October, 2020)



A Commissioner, etc.

JANINE ABULUYAN
LSO No. 80807R



ATEF SALAMA

SCHEDULE 1

Status of ITC Refunds – June 1, 2016 to August 31, 2020

Reporting Period	Net HST Claimed	Refunds Received by EGR	ITCs Denied By 2019 Reassessments	ITCs Denied By 2020 Reassessments	Total Denied ITCs	Total Accepted ITCs	Balance Owed to EGR/ (From EGR)
30/06/2016	2,221,450.67	36,238.54	1,990,205.67	2,026,444.21	195,006.46	2,221,450.67	
31/07/2016	2,375,524.81	-	2,067,401.02	2,067,401.02	308,123.79	2,375,524.81	
31/08/2016	2,481,091.49	25,310.87	2,065,681.17	2,090,992.04	390,099.45	2,481,091.49	
30/09/2016	2,430,081.17	97,947.85	1,659,086.46	1,757,034.31	673,046.86	2,430,081.17	
31/10/2016	2,447,802.60	120,810.69	1,655,893.10	1,776,703.79	671,098.81	2,447,802.60	
30/11/2016	2,987,176.15	27,340.93	2,321,434.45	2,348,775.38	638,400.77	2,987,176.15	
31/12/2016	2,611,730.24	112,277.23	2,136,320.52	2,248,597.75	363,132.49	2,611,730.24	
31/01/2017	4,045,539.02	278,975.49	3,196,920.97	3,475,896.46	569,642.56	4,045,539.02	
28/02/2017	3,645,321.28	75,494.25	3,038,312.96	3,113,807.21	531,514.07	3,645,321.28	
31/03/2017	4,260,129.59	100,060.76	3,507,382.12	3,607,442.88	652,686.71	4,260,129.59	
30/04/2017	4,337,545.21	27,901.25	4,025,781.37	4,053,682.62	283,862.59	4,337,545.21	
31/05/2017	5,284,415.66	62,840.18	4,915,438.41	4,978,278.59	306,137.07	5,284,415.66	
30/06/2017	4,596,200.10	45,956.43	4,307,535.06	4,353,491.49	242,708.61	4,596,200.10	
31/07/2017	3,458,823.17	97,522.62	3,065,534.04	3,163,056.66	295,766.51	3,458,823.17	
31/08/2017	5,337,096.30	185,628.47	4,948,418.34	5,134,046.81	203,049.49	5,337,096.30	
30/09/2017	5,880,429.23	323,805.46	5,307,169.71	5,630,975.17	249,454.06	5,880,429.23	
31/10/2017	6,866,554.82	318,275.34	6,255,352.47	6,573,627.81	292,927.01	6,866,554.82	
30/11/2017	6,247,416.70	610,706.80	5,399,164.62	6,009,871.42	237,545.28	6,247,416.70	
31/12/2017	3,572,947.39	423,564.15	2,981,760.44	3,405,324.59	167,622.80	3,572,947.39	
31/01/2018	6,369,341.10	893,991.12	5,185,133.32	6,079,124.44	290,216.66	6,369,341.10	
28/02/2018	7,666,962.47	1,212,799.32	6,192,957.26	7,405,756.58	261,205.89	7,666,962.47	
31/03/2018	8,631,688.25	749,170.63	7,741,165.77	8,490,336.40	141,351.85	8,631,688.25	
30/04/2018	7,019,049.53	723,280.61	5,907,256.16	6,630,536.77	388,512.76	7,019,049.53	
31/05/2018	9,034,754.80	1,267,537.44	7,506,656.43	8,774,193.87	260,560.93	9,034,754.80	
30/06/2018	8,290,188.17	1,412,816.73	6,612,145.41	8,024,962.14	265,226.03	8,290,188.17	
31/07/2018	6,923,029.15	798,076.11	5,884,757.19	6,682,833.30	240,195.85	6,923,029.15	
31/08/2018	9,128,196.67		8,782,974.59	8,782,974.59	345,222.08		9,128,196.67
30/09/2018	8,595,018.21		8,052,022.81	8,052,022.81	542,995.40		8,595,018.21
31/10/2018	7,161,366.90		6,741,288.06	6,741,288.06	420,078.84		7,161,366.90
30/11/2018	1,953,385.55						1,953,385.55
31/12/2018	3,445,018.58						3,445,018.58
31/01/2019	1,859,239.75						1,859,239.75
28/02/2019	645,063.05						645,063.05
31/03/2019	327,637.82						327,637.82

Reporting Period	Net HST Claimed	Refunds Received by EGR	ITCs Denied By 2019 Reassessments	ITCs Denied By 2020 Reassessments	Total Denied ITCs	Total Accepted ITCs	Balance Owed to EGR/ (From EGR)
30/04/2019	392,521.51						392,521.51
31/05/2019	295,519.01						295,519.01
30/06/2019	337,458.61						337,458.61
31/07/2019	285,804.61						285,804.61
31/08/2019	535,029.07						535,029.07
30/09/2019	437,535.05						437,535.05
31/10/2019	307,115.23						307,115.23
30/11/2019	307,720.98						307,720.98
31/12/2019	417,923.99						417,923.99
31/01/2020	195,155.48						195,155.48
28/02/2020	207,825.70						207,825.70
31/03/2020	136,881.51						136,881.51
30/04/2020	73,408.00						73,408.00
31/05/2020	47,418.00						47,418.00
30/06/2020	11,986.56						11,986.56
31/07/2020	34,849.77						34,849.77
31/08/2020	79,122.75						79,122.75
	166,240,491.43	10,028,329.27	133,451,149.90	143,479,479.17	10,427,391.68	129,022,289.07	37,218,202.36
		Total Denied	143,479,479.17				
	Less Balance August, Sept, Oct 2018		-24,884,581.78				
		Balance alleged owing	118,594,897.39		118,594,897.39		
	Sept 24 2020	Interest and Penalty	60,409,088.19				
		Owing on CRA website	179,003,985.58				

**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.**

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

AFFIDAVIT OF ATEF SALAMA
(Sworn October 14, 2020)

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Ontario Student-at-Law)

Lawyers for the Applicant

Appendix “C”
to the Sixteenth Report of the Monitor

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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.

FOURTH REPORT OF THE MONITOR
May 19, 2021

INTRODUCTION

1. On October 15, 2020, Express Gold Refining Ltd. (“EGR” or the “**Applicant**”) filed for and obtained protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of this Court granted October 15, 2020 (as may be amended, restated or supplemented from time to time, the “**Initial Order**”), Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as the Monitor in these proceedings (in such capacity, the “**Monitor**”). The Initial Order also provided for, among other things, a stay of proceedings with respect to the Applicant until and including October 19, 2020 (the “**Stay Period**”). In his endorsement, Justice Hainey scheduled the comeback hearing (the “**Comeback Hearing**”) for October 19, 2020.
2. On October 18, 2020, Deloitte filed the First Report of the Monitor (the “**First Report**”) which, among other things, described the activities of EGR and the Monitor and the

development of a monitoring protocol, in conjunction with the Applicant, with respect to the business operations of EGR.

3. At the Comeback Hearing on October 19, 2020, Justice McEwen amended the Initial Order (the “**Amended Initial Order**”) to, among other things, extend the Stay Period until and including October 27, 2020.
4. On October 27, 2020, the Amended Initial Order was amended a second time (the “**Second Amended Initial Order**”) to approve the monitoring protocol (the “**Monitoring Protocol**”) agreed to among the Applicant, the Canada Revenue Agency (“**CRA**”) and the Monitor, and to extend the Stay Period until and including December 15, 2020.
5. On December 14, 2020, the Court granted an Order extending the Stay Period until and including March 15, 2021.
6. On March 8, 2021, the Court granted an Order approving the amended protocol (the “**Amended Monitoring Protocol**”) agreed to on March 1, 2021 among the Applicant, CRA and the Monitor, and extending the Stay Period until and including June 11, 2021.

PURPOSE

7. The purpose of this fourth report of the Monitor dated May 19, 2021 (the “**Fourth Report**”) is to provide information to the Court on the relief sought by the Monitor related to access to certain books and records of the Applicant that may be restricted by CRA as it relates to the Tax Litigation (defined below).

ACCESS TO EGR'S BOOKS AND RECORDS

8. In his affidavit sworn October 14, 2020 (the “**First Salama Affidavit**”), EGR’s Vice-President, Atef Salama, states that the sole reason for EGR’s application for creditor protection under the CCAA is its ongoing tax disputes with CRA, most notably a GST/HST reassessment by CRA resulting in tax liability in excess of \$180 million. At paragraph 4 of the First Salama Affidavit, Mr. Salama goes as far as to state that “... but for the disputes with the [CRA]... [EGR] would be a solvent and successful business with no need for the protections afforded by these proceedings.” A copy of the First Salama Affidavit (without exhibits) is attached hereto as **Appendix “A”**.
9. EGR’s financial statements appear to support Mr. Salama’s assertions. For example, for the year ended May 31, 2020, EGR had earnings before tax of approximately \$8.4 million and, for the year ended May 31, 2019, EGR had earnings before tax of approximately \$3.3 million. EGR appears to be able to service its debt obligations in the ordinary course except for the tax liability related to the GST/HST reassessment.
10. Pursuant to section 23(1)(c) of the CCAA, the Monitor is required to report to this Court regarding “any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company’s business and financial affairs and the cause of its financial difficulties or insolvency...”.
11. The Monitor’s investigation into EGR’s business and financial affairs must include a full investigation into the ongoing tax disputes/assessments/litigation between EGR and CRA (collectively, the “**Tax Litigation**”), as the Tax Litigation is the root cause of EGR’s

insolvency. To date, the Monitor has faced continuing challenges in accessing certain records related to the Tax Litigation, either from EGR or the CRA.

12. Section 24(e) of the Second Amended Initial Order stipulates that the Monitor shall have “...full and complete access to the... books, records, data, including data in electronic form, and other financial documents of the Applicant...”
13. The Monitor further notes that section 24 of the CCAA provides that “for the purposes of monitoring the company’s business and financial affairs, the monitor shall have access to the company’s property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company, to the extent that it is necessary to adequately assess the company’s business and financial affairs.”
14. To date, EGR has granted the Monitor access to its books and records but it has not been at liberty to provide access to documents produced by CRA to its tax counsel, Baker McKenzie LLP (“**EGR’s Tax Counsel**”) in the course of the Tax Litigation which are subject to the implied undertaking rule which binds EGR’s Tax Counsel (collectively, the “**Tax Documents**”).¹ EGR does not oppose the Monitor’s request for unfettered access to *all* of EGR’s books and records, including the Tax Documents. However, the issue, as the Monitor understands it, is that CRA produced the Tax Documents to EGR in the course of the Tax Litigation and therefore the Tax Documents are protected by operation of the implied undertaking rule to which EGR’s Tax Counsel is subject by operation of law.

¹ The Tax Litigation includes an appeal proceeding that EGR has commenced at the Tax Court of Canada bearing Court File No. 2020-1214(GST_G).

Access to the Tax Documents will allow the Monitor to understand and independently report to this Court, and to EGR's stakeholders, regarding the Tax Litigation.

THE MONITOR'S EFFORTS TO DATE

15. On January 25, 2021, the Monitor requested from CRA, via its counsel in the CCAA Proceedings, the Department of Justice (the "**CCAA DOJ**"), information that would allow the Monitor to substantively understand the Tax Litigation and the carousel scheme that is being alleged by CRA, which includes but is not limited to the Tax Documents.
16. The CCAA DOJ responded to the Monitor's request for information on February 11, 2021, advising that CRA is unable to provide this information to the Monitor directly, due to confidentiality restrictions imposed on CRA pursuant to section 241 of the *Income Tax Act* (Canada). However, CRA then stated that if EGR authorizes the Monitor to obtain a copy of the requested documents, then it would be amenable to the Monitor seeking an Order authorising limited disclosure, provided the Order mandates that the contents of the disclosure be confidential and not form a part of the public record or be shared with anyone else.
17. Separately, the Monitor requested copies of the Tax Documents, including a CRA "position paper" and "audit report", from EGR's Tax Counsel, but it told the Monitor that it cannot produce the Tax Documents unless CRA or its counsel in the Tax Litigation, the Department of Justice Canada ("**Tax DOJ**"), agree to waive the implied undertaking rule which binds EGR's Tax Counsel.

18. The Monitor notes that EGR's Tax Counsel has made two written requests, on January 18 and February 1, 2021, to Tax DOJ asking for its consent to EGR's Tax Counsel's disclosure of the Tax Documents to the Monitor. Tax DOJ responded on February 17, 2021, advising that CRA would consent to an Order authorizing EGR to share the position paper and audit report with the Monitor, but only on the basis that the contents of the disclosure would be kept confidential and not form a part of the public record or be shared in any capacity.
19. In short, both CCAA DOJ and Tax DOJ have told the Monitor that they will only agree to disclose the Tax Documents to the Monitor if such disclosure is made under a Court Order preserving confidentiality.
20. In an effort to avoid the time and cost of a court attendance, on March 1, 2021, Monitor's counsel, Dentons Canada LLP ("**Dentons**"), proposed to satisfy CRA's confidentiality concerns by way of executing a written undertaking.
21. On March 22, 2021, following email and telephone correspondence among Dentons, the Monitor and CCAA DOJ, Dentons provided CCAA DOJ with a draft confidentiality undertaking (the "**Draft Undertaking**") setting out terms under which CRA would provide the Monitor with access to confidential documents in the Tax Litigation, including but not limited to the Tax Documents. On April 14, 2021, CCAA DOJ provided the Monitor's counsel with a revised Draft Undertaking, which limited disclosure to CRA's position paper and audit report. In a separate email, CCAA DOJ advised that it was unable to extend the undertaking to all confidential documents in the Tax Litigation, as a waiver of the implied undertaking rule was required in respect of each specific document. Copies of the email correspondence between Dentons and CCAA DOJ regarding the Draft Undertaking

is attached as **Appendix “B”**. Given the volume of documents in the Tax Litigation, this is not a tenable solution.

22. The Monitor has exhausted its efforts to obtain access to information that is critically important to its ability to understand the Tax Litigation and fulfil its obligations under the CCAA and the Orders issued by this Court. The Monitor is therefore seeking an Order of this Court that would facilitate the unfettered access to the books and records of EGR, including all documents in EGR’s possession in connection with the Tax Litigation. It is important to note that the proposed Order would add and contain necessary protections and safeguards to ensure that no confidential information is disclosed to third parties, or used by the Monitor for any purpose other than fulfilling its duties under the Second Amended Initial Order and the CCAA (subject to further Order(s) of the Court).
23. To be clear, the Monitor does not seek access to the Tax Documents in order to “insert” itself into the Tax Litigation. The Monitor’s aims are to discharge its duties to this Court and to EGR’s stakeholders, and to advance the CCAA Proceeding. In this regard, the Monitor is hopeful that such disclosure will also allow the Monitor to report to this Court regarding the *bona fides* of EGR’s filing for creditor protection, the state of EGR’s business and financial affairs and the cause of its insolvency, and whether EGR “has acted, and is acting, in good faith and with due diligence”, as required by section 11.02(3) of the CCAA. A fulsome understanding of the Tax Litigation will also enable the Monitor to assess the prospects of the business continuing as a going concern, to assist with possible non-litigation resolutions, potentially aiding in preserving value for all stakeholders and to assist EGR and its stakeholders in facilitating a plan of compromise or arrangement.

24. The Monitor's current efforts to facilitate a compromise or arrangement are being frustrated by its inability to fully access EGR's books and records in connection with the Tax Litigation and better assess the nature of CRA's claims against EGR.
25. The Monitor understands that the Tax Litigation will not be judicially determined in the near-term (*i.e.* 1-2 years) and that the *status quo* is having a material adverse effect on EGR's financial position. For example, the cash flow forecast appended to the Monitor's Third Report shows a net cash outflow of \$1.4 million during the 17-week period – from a cash position of \$5.3 million in February 2021 to a projected cash position of \$3.9 million in June 2021. The forecast decline in cash position is a result of estimated litigation and restructuring costs totaling \$1.5 million during the 17-week period. The Monitor is concerned that a further delay in the CCAA Proceeding, under the *status quo*, may put EGR's chances of successfully restructuring through a plan of compromise or arrangement at risk.

All of which is respectfully submitted this 19th day of May, 2021.

**Deloitte Restructuring Inc.,
Solely in its capacity as Court-appointed Monitor
of Express Gold Refining Ltd.**

A handwritten signature in cursive script, appearing to read "Phil Reynolds".

Phil Reynolds, LIT
Senior Vice-President

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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FOURTH REPORT OF THE MONITOR

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Ltd.*

Appendix “D”
to the Sixteenth Report of the Monitor

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 March 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 June 15, 2023 (3 months).
3. The current extension expires on March 15, 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

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

² I am referred to paragraph 10 of the SARIO.

II. TAX LITIGATION STATUS

9. As outlined in my affidavit sworn December 6, 2022, oral examinations for discovery were completed by October 31, 2022, in accordance with the timetable as ordered by Justice Russell of the Tax Court on March 22, 2022 (the “**Timetable Order**”). Also in accordance with the Timetable Order, the parties served answers to undertakings given at examinations for discovery on November 30, 2022.
10. During the examination for discovery of the CRA’s deponent, which took place over a period of 16 days, the CRA answered 113 questions by way of undertaking, took 120 questions under advisement and refused to answer 119 questions.
11. I was examined for discovery on behalf of EGR over the course of 15 days. During those discoveries, EGR provided 279 undertakings, refused to answer 14 questions and took 43 questions under advisement. (Of these 336 total questions, EGR provided answers for all but 3 questions in providing responses to undertakings on November 30, 2022.)
12. Also, in accordance with the Timetable Order, the parties exchanged follow-up questions arising from answers to undertakings on December 19, 2022 and exchanged responses to same on January 27, 2023.
13. The final step in the Timetable Order is to: “[a]dvice the Hearings Coordinator in writing on or before February 28, 2023, whether the appeal will settle, whether a settlement conference would be beneficial or whether a hearing date should be set and in the latter event, the parties shall file a joint application to fix a time and place for the hearing...”.
14. In contemplation of that step, EGR’s counsel and CRA’s counsel in the Tax Litigation met on February 7, 2023.

15. 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 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. Attached hereto as **Exhibit “B”** is a copy of the parties’ joint letter to the Tax Court dated February 24, 2023.
16. On March 1, 2023, the Tax Court amended the Timetable Order in accordance with the parties’ joint request. Attached hereto as **Exhibit “C”** is a copy of the Order of Justice Russell dated March 1, 2023 amending the Timetable Order.
17. CRA and EGR counsel have a call scheduled for March 10, 2023 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 (as amended).

III. OTHER MATTERS

18. As outlined in my affidavit sworn December 6, 2022, 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 currently in the hands of the Monitor who has reviewed and I understand has communicated EGR’s comments on a form of

order to address information requests concerning the impugned transactions and the parties to those transactions.

IV. OPERATIONS

19. 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 has entered an expensive phase and such expenses will need to be addressed by EGR. EGR and its counsel are 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.
20. 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 thirteenth report (the "**Thirteenth Report**"), to be filed and served separately.
21. 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 Thirteenth Report.
22. The above sets out the notable developments in the Tax Litigation since the last extension.

V. NEED FOR CONTINUED CCAA RELIEF

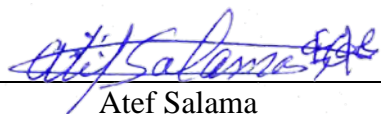
23. The extension of the stay provisions is necessary considering that the \$189 million 2020 Reassessments are otherwise enforceable notwithstanding contestation. The

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.

24. 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.
25. 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 March, 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 March 9, 2023)**

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Appendix “E”
to the Sixteenth Report of the Monitor

**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 5, 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 January 27, 2023, EGR's counsel in the Tax Litigation asked CRA's counsel for a meeting to have a without prejudice, candid and frank discussion about the case. CRA's counsel

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

agreed to meet on February 7, 2023; however, at that meeting, CRA's counsel communicated to EGR's counsel that it was not willing to engage in discussion about the Tax Litigation (including potential resolution), unless and until EGR served the CRA with a written offer to settle.

11. On February 23, 2023, EGR served the CRA with a written offer to settle the Tax Litigation.

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 and that the CRA was considering making a counteroffer; however, to date, no counteroffer has been made and the parties have not had any candid and frank discussions about the merits of the case. During that call, CRA counsel also suggested that discoveries of EGR be reconvened in July 2023 with respect to productions served on the Respondent on August 30, 2022. EGR's counsel refused that timeline, noting that the productions consisted largely of documents that the CRA had possession of long before August 30, 2022. CRA counsel agreed to review the productions and revert regarding a proposed timeline. 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.

² I am referred to paragraph 10 of the SARIO.

CRA counsel proposed that this step be completed before requesting a settlement conference; however, EGR counsel insisted that a settlement conference be scheduled for July, without waiting for this step to be completed.

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".

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 5th 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 5, 2023)

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Appendix “F”
to the Sixteenth Report of the Monitor

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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.

FOURTEENTH REPORT OF THE MONITOR
June 8, 2023

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- A **Appendix “A”**: Thirteenth Report of the Monitor (without appendices)
- B **Appendix “B”**: Revised Cash Flow Forecast

INTRODUCTION

1. On October 15, 2020, Express Gold Refining Ltd. (“**EGR**” or the “**Applicant**”) filed for and obtained protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on October 15, 2020 (the “**Initial Order**”), Deloitte Restructuring Inc. was appointed as the Monitor in these proceedings (in such capacity, the “**Monitor**”). The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”. The Initial Order also provided for, among other things, a stay of proceedings with respect to the Applicant until and including October 19, 2020 (the “**Stay Period**”). In his endorsement, Justice Hainey scheduled the comeback hearing (the “**Comeback Hearing**”) for October 19, 2020.
2. At the Comeback Hearing, Justice McEwen amended the Initial Order to, among other things, order that the stay of proceedings shall not apply to the Tax Litigation (as defined herein) and extend the Stay Period until and including October 27, 2020. The Initial Order was amended and restated on October 19, 2020, and again on October 27, 2020 (the “**SARIO**”). The Stay Period in these CCAA Proceedings has been extended numerous times by further Orders, most recently up to and including June 16, 2023.
3. The following provides a summary of select orders and endorsements of the Court that are material to the CCAA Proceedings:
 - (a) on March 8, 2021, the Court granted an Order approving an amendment to the Monitoring Protocol dated March 1, 2021, among the Applicant, Canada Revenue Agency (“**CRA**”) and the Monitor (the “**Amended Monitoring Protocol**”);
 - (b) on May 20, 2021, the Monitor filed a motion (the “**Production Motion**”) for an Order granting the Monitor unfettered access to all documents in EGR’s possession and control that have been provided to EGR or its tax counsel, Baker McKenzie LLP (“**EGR’s Tax Counsel**”), by CRA in connection with all GST/HST assessments and reassessments that have been issued or will be issued by CRA (the “**Tax Documents**”), including all Tax Documents produced by CRA

to EGR or EGR's Tax Counsel in connection with the appeal commenced by EGR at the Tax Court of Canada ("**Tax Court**") bearing Court File No. 2020-1214(GST)G (the "**Tax Litigation**"). The Production Motion was heard on June 8, 2021. CRA opposed the Production Motion;

- (c) on June 9, 2021, the Court issued an endorsement (the "**June 9 Endorsement**") in respect of the Production Motion. In summary, the June 9 Endorsement provided reasons supporting the Court's jurisdiction to direct the delivery of the Tax Documents by EGR to the Monitor and further directed an additional hearing, if necessary, to determine any restrictions to be imposed upon certain documents, as identified by CRA;
 - (d) on August 17, 2021, the Court issued a Production and Confidentiality Order, dated June 8, 2021, ordering EGR to produce and make available to the Monitor all Tax Documents;
 - (e) on December 15, 2021, EGR, CRA and the Monitor agreed to amend the Amended Monitoring Protocol (the "**Second Amended and Restated Monitoring Protocol**") to account for current business volumes and reduce the costs associated with implementing the Amended Monitoring Protocol; and
 - (f) on January 18, 2022, the Court issued an Order, dated December 14, 2021, approving the Second Amended and Restated Monitoring Protocol;
4. Copies of all orders and endorsements granted in the CCAA Proceedings are located on the Monitor's website accessible at: <https://www.insolvencies.deloitte.ca/en-ca/pages/ExpressGoldRefiningLtd.aspx> (the "**Monitor's Website**"). The Monitor encourages interested stakeholders to review the Monitor's Website for a complete history of the CCAA Proceedings, including the various orders and endorsements issued.

PURPOSE

5. The purpose of this fourteenth report of the Monitor (the "**Fourteenth Report**") is to provide the Court with information and updates on the following:

- (a) the activities of EGR and the Monitor from March 10, 2023, the date of the Thirteenth Report of the Monitor (the “**Thirteenth Report**”), a copy of which is attached hereto as **Appendix “A”**, filed in connection with the previous motion to extend the Stay Period granted in the CCAA Proceedings, to the date of this Fourteenth Report;
 - (b) EGR’s cash flow results for the 12-week period ended May 12, 2023, with a comparison to forecast amounts in the 17-week cash flow forecast that was included in the Thirteenth Report;
 - (c) EGR’s revised cash flow forecast (the “**Revised Cash Flow Forecast**”) for the 18-week period from May 15, 2023 to September 15, 2023, and the Monitor’s comments thereon;
 - (d) the status of the Tax Litigation;
 - (e) the status of the Third Party Mareva Injunction; and
 - (f) EGR’s requested extension of the Stay Period up to and including September 12, 2023 (the “**Stay Extension Period**”).
6. This Fourteenth Report should be read in conjunction with the Affidavit of Atef Salama sworn June 5, 2023 in support of the Applicant’s motion for the extension of the Stay Period (the “**Salama Affidavit**”).

TERMS OF REFERENCE AND DISCLAIMER

7. In preparing this Fourteenth Report and making the comments herein, the Monitor has been provided with, and has relied upon the following information (collectively, the “**Information**”): unaudited financial information, books and records and financial information prepared by EGR, and discussions with management of the Applicant (“**Management**”).
8. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise

attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards (“**Canadian GAAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.

9. Some of the information referred to in this Fourteenth Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
10. Future oriented financial information referred to in this Fourteenth Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
11. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

ACTIVITIES OF EGR SINCE THE THIRTEENTH REPORT

12. The activities of EGR since the Thirteenth Report are set out in the Salama Affidavit, and such activities of EGR that are related to or arising out of these CCAA Proceedings include:
 - (a) complying with the terms of the Second Amended and Restated Monitoring Protocol;
 - (b) continuing to manage its relationships with customers and suppliers to minimize business disruption;
 - (c) continuing to provide regular updates and information to the Monitor with respect to EGR’s business and the Tax Litigation; and

- (d) continuing its efforts to advance the Tax Litigation. A status update of the Tax Litigation is provided in paragraphs 9 to 19 of the Salama Affidavit.

ACTIVITIES OF THE MONITOR SINCE THE THIRTEENTH REPORT

- 13. Since the Thirteenth Report, the Monitor has undertaken the following activities:
 - (a) monitored EGR's business in accordance with the Second Amended and Restated Monitoring Protocol;
 - (b) reviewed EGR's GST/HST filings and communicated with CRA regarding the processing status. In this regard, CRA processed and released net tax refunds for GST/HST filings for the periods from October 16, 2020 to February 28, 2023. The GST/HST filing for the March 2023 and April 2023 periods are currently under review by CRA;
 - (c) communicated with EGR's restructuring counsel regarding developments in the CCAA Proceedings and Tax Counsel regarding the status of the Tax Litigation; and
 - (d) assisted EGR in preparing the Revised Cash Flow Forecast and cash flow variance reporting.

CASH FLOW FORECAST AND RESULTS RELATIVE TO FORECAST

- 14. Summarized in the following table are EGR's actual cash receipts and disbursements for the 12-week period ended May 12, 2023 (the "**Reporting Period**"), as compared to the corresponding weeks in the cash flow forecast included in the Thirteenth Report.

Express Gold Refining Ltd.				
Summary of Actual versus Forecast Cash Flows				
For the 12-week period from February 20, 2023 to May 12, 2023				
(SCAD '000s)				
Unaudited				
	Actual	Forecast	Variance	Note
Receipts				
Collection from Sales and Accounts Receivable	12,740	12,535	205	A
HST refunds	658	869	(211)	B
Interest income	11	13	(2)	
Other	(1)	-	(1)	
Total Receipts	13,408	13,417	(9)	
Disbursements				
Purchases	(13,381)	(12,033)	(1,348)	C
Customer accounts and hedging	676	-	676	D
Salaries and wages	(188)	(192)	4	
Consulting and professional fees	(20)	(32)	12	E
General Administrative Expenses	(68)	(65)	(3)	
Insurance	(72)	(125)	53	F
Rent	(50)	(50)	-	
Advertising and promotion	(40)	(33)	(7)	
Vehicle	(6)	(6)	-	
Freight	(28)	(26)	(2)	
Income Tax	-	(90)	90	G
Total Disbursements	(13,177)	(12,652)	(525)	
Litigation Costs	(430)	(300)	(130)	H
Restructuring Costs	(340)	(600)	260	I
Total Litigation and Restructuring Costs	(770)	(900)	130	
Intercompany loan	-	-	-	
Total Intercompany loan	-	-	-	
Net Cash Flow	(539)	(135)	(404)	
Opening Cash	1,841	1,841	-	
Ending Cash	1,302	1,706	(404)	

15. EGR's actual net cash outflow for the Reporting Period was \$539,000 compared to forecast net cash outflow of \$135,000, resulting in an unfavourable variance of \$404,000. The following are the reasons for the major variances, identified by the Notes in the table above:

- A** A favourable variance of \$205,000 in sales receipts is due in part to a permanent difference due to increased customer traffic as a result of the increase in gold price during the Reporting Period and a timing difference from prior periods;
- B** An unfavourable variance of \$211,000 in HST refunds is a timing difference due to the delay in receipt of February 2023 net tax refunds from CRA, which was received subsequent to the Reporting Period on May 25, 2023;
- C** An unfavourable variance of \$1.3 million in purchases is due in part to a permanent difference due to increased customer traffic as a result of the increase in gold price during the Reporting Period and a timing difference from prior periods;
- D** A favourable variance of \$676,000 in customer accounts and hedging is a permanent difference primarily due to funds withdrawn from EGR's Saxo Bank account. EGR takes positions in the gold futures markets using the Saxo Bank hedging/trading account to hedge against short and long-term fluctuations in the price of gold;
- E** A favourable variance of \$12,000 in consulting and professional fees is a permanent difference due to lower than expected activities requiring consulting and professional services;
- F** A favourable variance of \$53,000 in insurance is a timing difference that will reverse in the future;
- G** A favourable variance of \$90,000 in income tax is a timing difference that will reverse in the future;
- H** An unfavourable variance of \$130,000 in litigation costs is a permanent difference due to higher than expected activity in the Tax Litigation; and
- I** A favourable variance of \$260,000 in restructuring costs is a timing difference that will reverse in the future.

APPLICANT'S REVISED CASH FLOW FORECAST

16. The Applicant, with the assistance of the Monitor, has prepared the Revised Cash Flow Forecast, which covers the period from May 15, 2023 to September 15, 2023 (the “**Revised Cash Flow Period**”) for the purposes of projecting the cash position of the Applicant’s planned operations and other activities during the Revised Cash Flow Period. A copy of the Revised Cash Flow Forecast is attached hereto as **Appendix “B”**.
17. The Revised Cash Flow Forecast has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Revised Cash Flow Forecast (the “**Assumptions**”), and is presented on a weekly basis during the Revised Cash Flow Period.
18. EGR’s opening cash balance on May 15, 2023 was \$1.3 million. The forecast cash flow surplus for the Revised Cash Flow Period before litigation and restructuring costs is estimated to be approximately \$1.8 million. Litigation and restructuring costs in connection with the Tax Litigation and these CCAA proceedings are estimated to be approximately \$600,000 and \$600,000, respectively, over the Revised Cash Flow Period. As a result, the forecast cash flow surplus for the Revised Cash Flow Period after litigation and restructuring costs is estimated to be \$583,000, resulting in an estimated ending cash balance of \$1.9 million on September 15, 2023.
19. Accordingly, the Applicant is expected to have sufficient liquidity to operate during the proposed Stay Extension Period.
20. The Monitor has reviewed the Revised Cash Flow Forecast to the standard required of a Court-appointed monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor’s cash flow statement as to its reasonableness and to file a report with the Court on the monitor’s findings. The Canadian Association of Insolvency and Restructuring Professionals’ Standards of Professional Practice include a standard for monitors fulfilling their statutory responsibilities under the CCAA in respect of a monitor’s report on a cash flow statement.
21. In accordance with the standard, the Monitor’s review of the Revised Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Information.

Since the Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor also reviewed the support provided by Management for the Assumptions and the preparation and presentation of the Revised Cash Flow Forecast.

22. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:
 - (a) the Assumptions are not consistent with the purpose of the Revised Cash Flow Forecast;
 - (b) as at the date of this Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Assumptions; or
 - (c) the Revised Cash Flow Forecast does not reflect the Assumptions.
23. Since the Revised Cash Flow Forecast is based on Assumptions regarding future events, actual results will vary from the information presented even if the Assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Revised Cash Flow Forecast or relied upon by the Monitor in preparing this Fourteenth Report.
24. The Revised Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

TAX LITIGATION UPDATE

25. As discussed in the Monitor's prior reports, CRA's re-assessments and potential enforcement against EGR was the catalyst for EGR's filing for creditor protection under the CCAA. The Tax Litigation (which is EGR's appeal against such re-assessments) is a central component of the CCAA Proceedings.

26. The timetable for the Tax Litigation is set out in an order of the Tax Court dated March 23, 2022 (the “**Timetable Order**”), and is summarized as follows:

Step	Deadline for Completion
Examinations for Discovery	October 31, 2022
Fulfill undertakings	November 30, 2022
Follow-up questions arising from undertakings	December 19, 2022
Responses to follow-up questions	January 27, 2023
Status update to court re: readiness for hearing	February 28, 2023

27. EGR advises the Monitor that the Tax Litigation is generally proceeding in accordance with the Timetable Order, with the examinations for discovery (the “**Examinations**”) having concluded on or about October 31, 2022, and the parties now addressing follow-up questions arising from the Examinations. As noted at paragraphs 17 to 19 of the Salama Affidavit, on May 31, 2023, EGR delivered a written response to more than 960 of such follow-up questions posed by CRA in April 2023.
28. The Monitor understands that the next milestones in the Tax Litigation are for EGR and CRA to convene a settlement conference at the Tax Court and/or set the matter down for trial. As discussed at paragraphs 10 to 18 of the Salama Affidavit, EGR served CRA with a written offer to settle the Tax Litigation on February 23, 2023, which CRA rejected without (to date) making a counteroffer. In past discussions, the parties have indicated to the Monitor that a trial in this matter could be measured in weeks, if not months. In the Monitor’s view, given the resources that would be expended at such a protracted trial, there should be a strong impetus on both parties at this juncture to explore settlement of some or all issues in the Tax Litigation.
29. On March 31, 2023, EGR and CRA jointly wrote to the Tax Court requesting a settlement conference date in July 2023. On May 29, 2023, the Tax Court advised the parties that their request for a settlement conference was rejected because, as a pre-condition to scheduling a settlement conference, the Tax Court required that the parties “must have exchanged written offers of settlement”.

30. In the Monitor's view, the parties' willingness to discuss settlement and mutual request for a settlement conference should be pursued at this stage of the Tax Litigation, either within or outside of the formal Tax Court procedures. The Monitor will discuss potential alternative forums for settlement discussions (e.g. through processes available under the CCAA) with the parties and is willing to assist in facilitating a settlement as required.

THIRD PARTY MAREVA INJUNCTION

31. On December 19, 2022, the parties, including the Monitor and its counsel, attended before Justice Myers regarding, among other matters, whether EGR should have been added as a defendant to the action that Chicago Title Insurance Company ("CTIC") had initiated in June 2022, and whether the *Mareva* relief should have been extended against EGR. Justice Myers set aside the prior orders that added EGR as a defendant and extended the *Mareva* relief against it. Justice Myers also indicated that CTIC and EGR should cooperate regarding the former's request for certain documents and that the Monitor should provide assistance if necessary.
32. Following Justice Myers' Endorsement, counsel to CTIC and EGR have been collaborating on a proposed form of production order pursuant to which the scope of EGR's document production would be circumscribed. While certain issues remain to be resolved, the Monitor is hopeful that a resolution can be achieved without the need for advice and directions from this Court.

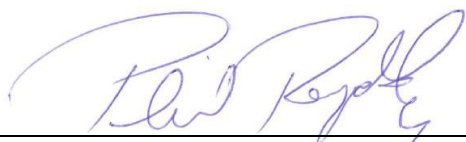
STAY EXTENSION

33. The current Stay Period expires on June 16, 2023. EGR is seeking an extension of the Stay Period up to and including September 12, 2023 in order to allow EGR, with the assistance of the Monitor, to:
- (a) preserve the *status quo* and continue to maintain the stability of operations;
 - (b) work towards a resolution of the Tax Litigation with CRA; and
 - (c) determine next steps in respect of the CCAA Proceedings.

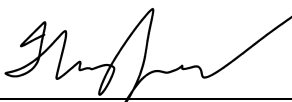
34. As described above, the Revised Cash Flow Statement indicates that EGR will have sufficient liquidity during the Stay Extension Period.
35. In the Monitor's view, EGR has acted and continues to act in good faith and with due diligence in these CCAA Proceedings.
36. The Monitor supports EGR's request for the extension of the Stay Period to September 12, 2023.

All of which is respectfully submitted this 8th day of June, 2023.

**Deloitte Restructuring Inc., solely in its
capacity as Court-appointed Monitor of
Express Gold Refining Ltd.**



Phil Reynolds, LIT
Senior Vice-President



Warren Leung, LIT
Senior Vice-President

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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.

ONTARIO

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

PROCEEDING COMMENCED AT TORONTO

FOURTEENTH REPORT OF THE MONITOR

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Lawyers for Deloitte Restructuring Inc., the Monitor

Appendix “G”
to the Sixteenth Report of the Monitor



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-20-00649558-00CL DATE: 12 June 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: Express Gold Refining LTD. v. Attorney General of Canada

BEFORE: JUSTICE MCEWEN

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Mario FORTE	Counsel for the Applicant	forte@gsnh.com
Bryan HERRIGAN	Counsel for Express Gold in their tax litigation (not CCAA counsel)	bryan.herrigan@bakermckenzie.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Fozia CHAUDARY Sarah MACKENZIE	Counsel for the Respondent	fozia.chaudary@justice.gc.ca sarah.mackenzie@justice.gc.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Mark FREAKER	Counsel for the Monitor	mark.freaker@dentons.com

ENDORSEMENT OF JUSTICE MCEWEN:

The order shall go as per the draft filed and signed, as attached.

The relief sought is unopposed, and the Monitor supports the relief sought.

I am satisfied that the Applicant is acting in good faith and with due diligence. There is sufficient liquidity during the stay period.

The parties also display a willingness to resolve their disputes in this CCAA proceeding. I have directed the Monitor to take steps to host discussions in this regard. All counsel should participate and it would be useful and necessary to have CRA counsel engage as they represent a stakeholder in this CCAA matter.

MCEWEN

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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.

ONTARIO

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

PROCEEDING COMMENCED AT TORONTO

SIXTEENTH REPORT OF THE MONITOR

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Lawyers for Deloitte Restructuring Inc., the Monitor

Tab 3

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

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

THE HONOURABLE)	
)	●, THE ●
JUSTICE CAVANAUGH)	DAY OF ●, 2023

**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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.**

**ORDER
(Re: Appointment of Mediator)**

THIS MOTION, made by Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Express Gold Refining Ltd. ("**EGR**"), for an order appointing a mediator as an officer of the Court to act as a neutral third party to assist in the potential resolution of certain litigation between EGR and the Canada Revenue Agency ("**CRA**"), was heard this day at the Superior Court of Justice (Commercial List) (the "**Court**") located at 330 University Avenue, Toronto, Ontario, via judicial videoconference.

ON READING the Motion Record of the Monitor, including the Sixteenth Report of the Monitor and Notice of Motion, each dated September 22, 2023 (collectively, the "**Motion Record**"), and on hearing the submissions of counsel for the Monitor, EGR and CRA, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amanda Campbell sworn ●, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Motion Record is hereby dispensed with.

APPOINTMENT OF MEDIATOR

2. **THIS COURT ORDERS** that ● is hereby appointed mediator, as an officer of the Court, and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to assist EGR and CRA (together, the “**Parties**”) with the resolution of outstanding issues and matters under the appeal commenced by EGR at the Tax Court of Canada bearing Court File No. 2020-1214(GST)G and similar outstanding issues and matters referable to GST/HST reporting periods of EGR not currently at issue before the Tax Court of Canada (collectively, the “**Tax Litigation Issues**”) through a mediation process (the “**Mediation Process**”).

3. **THIS COURT ORDERS** that the Parties’ participation in the Mediation Process is mandatory, subject to paragraph 13 herein.

4. **THIS COURT ORDERS** that the Parties shall participate in the Mediation Process in good faith and provide such reasonable cooperation to each other and the Mediator, as may be necessary or desirable to achieve a potential resolution of the Tax Litigation Issues.

5. **THIS COURT ORDERS** that in carrying out the Court-Appointed Mediator’s mandate, the Mediator shall, among other things, adopt processes, procedures, and timelines which, in the Court-Appointed Mediator’s discretion, considers appropriate to facilitate an effective and

efficient Mediation Process for the Tax Litigation Issues consistent with the purposes of these CCAA Proceedings (as defined herein).

6. **THIS COURT ORDERS** that in carrying out the Court-Appointed Mediator's mandate, the Mediator may, among other things:

- (a) consult with any appointed representative(s) of the Monitor, the Parties, and other persons or stakeholders the Mediator considers appropriate in the circumstances; and
- (b) file periodic reports with the Court, in consultation with the Monitor, detailing the Parties' progress towards resolving the Tax Litigation Issues.

7. **THIS COURT ORDERS** that the Monitor shall provide the Mediator with such assistance as the Mediator shall reasonably request.

8. **THIS COURT ORDERS** that the Mediator is authorized to take all steps and to do all acts reasonably necessary or desirable to carry out the terms of this Order, including dealing with any court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

9. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Mediator shall incur no liability or obligation as a result of the Mediator's appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on the Mediator's part. Nothing in this Order shall derogate from the protections afforded to a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

10. **THIS COURT ORDERS** that the confidentiality protocol (the “**Confidentiality Protocol**”), attached hereto as **Schedule "A"**, is hereby approved and that the entirety of the Mediation Process or anything reasonably incidental to the Mediation Process including, but not limited to, all written and oral communications as between all persons that have participated in the Mediation Process, shall be subject to the Confidentiality Protocol.

11. **THIS COURT ORDERS** that the Court, the Monitor and the Mediator may communicate between one another directly to discuss, on an ongoing basis, the conduct of the Mediation Process and the manner in which it will be coordinated with these *Companies’ Creditors Arrangement Act* proceedings (the “**CCAA Proceedings**”).

12. **THIS COURT ORDERS** that the Court shall not disclose to the Mediator how the Court will decide any matter which may come before the Court for determination, and the Mediator and the Monitor will not disclose to the Court the negotiating positions or confidential information of the Parties in the Mediation.

13. **THIS COURT ORDERS** that the Mediation Process shall terminate upon the earlier of the following circumstances:

- (a) by declaration of the Mediator that a resolution of the Tax Litigation has been concluded, or that a resolution of the Tax Litigation Issues is not achievable pursuant to the Mediation Process; or
- (b) by further Order of the Court.

14. **THIS COURT ORDERS** that, subject to an agreement between EGR and the Mediator, all reasonable fees and disbursements of the Mediator and the Mediator’s legal counsel and

financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to carrying out this Mediation Process shall be paid by EGR on a monthly basis, forthwith upon the rendering of accounts to EGR.

15. **THIS COURT ORDERS** that the Mediator shall be entitled to the benefit of the Administration Charge, as defined in the Second Amended and Restated Initial Order of Justice McEwen dated October 27, 2020, as security for the Mediator's fees and disbursements and for the fees and disbursements of the Mediator's legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings.

16. **THIS COURT ORDERS** that the Administration Charge is hereby increased to \$.

GENERAL

17. **THIS COURT ORDERS** that the Monitor and the Court-Appointed Mediator may apply to this Court for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order. For greater certainty, in the event there is any conflict between the provisions of this Order and any future claims procedure order granted these CCAA Proceedings (a "**Claims Procedure Order**"), the provisions of the Claims Procedure Order shall govern to the extent of the conflict.

18. **THIS COURT ORDERS** that each of EGR 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.

19. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto Time) on the date hereof, and is enforceable without any need for entry and filing.

SCHEDULE “A” – CONFIDENTIALITY PROTOCOL

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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.**

CONFIDENTIALITY PROTOCOL

OVERVIEW

1. Pursuant to the Order of Justice Cavanaugh dated ●, 2023 (the “**Mediation Order**”), ● was appointed as Court-Appointed Mediator to assist the Parties with the resolution of the Tax Litigation Issues. The Mediation Order authorizes the Court-Appointed Mediator to adopt processes, procedures, and timelines which, in his discretion, he considers appropriate to facilitate an effective and efficient Mediation Process for the Tax Litigation Issues. This Confidentiality Protocol shall apply to all written and oral communications related to or arising out of the Mediation Process undertaken pursuant to the Mediation Order (collectively, “**Mediation Communications**”).
2. For greater certainty, Mediation Communications include, but is not limited to, all statements, discussion, promises, conduct, offers, opinions, views, admissions and communications for the purposes of conducting, considering, initiating, continuing, or reconvening the Mediation Process together with the delivery and exchange of any documents in the course of the Mediation Process made by any party, their agents, employees, representatives, or other invitees, and by the Court-Appointed Mediator.
3. All capitalized terms used herein but not otherwise defined shall have the meaning ascribed to that term pursuant to the Mediation Order.

COURT-APPOINTED MEDIATOR CONFIDENTIALITY

4. As part of the Mediation Process, the Court-Appointed Mediator may disclose to EGR or CRA any information provided by EGR or CRA, unless the disclosing party has specifically requested the Court-Appointed Mediator to keep the information confidential, in which case the Court-Appointed Mediator will keep that information confidential on a best effort basis.

5. The Court-Appointed Mediator will not disclose to anyone who is not a party to the Mediation Process anything said, or any materials submitted to the Court-Appointed Mediator, except:
 - a. where applicable, to counsel or other professionals retained on behalf of the Parties or to non-parties consented to in writing by the Parties, as deemed appropriate or necessary by the Court-Appointed Mediator;
 - b. to the Court, to the extent permitted herein and in the Mediation Order; or
 - c. where otherwise ordered to do so by a judicial authority or where required to do so by law.
6. Except as noted above, the notes, records, statements, and recollections of the Court-Appointed Mediator shall be confidential and protected from disclosure for all purposes.

PARTIES AND MONITOR CONFIDENTIALITY

7. The Parties and the Monitor acknowledge and agree that:
 - a. the purpose of the Mediation Process is to resolve the Tax Litigation Issues;
 - b. the Mediation Process is confidential and no visual or audio recordings shall be made, and any written notes shall not be admissible or referred to in any court for any purpose;
 - c. any Mediation Communication of the Court-Appointed Mediator in conducting the Mediation Process shall be confidential, without prejudice, and protected from disclosure for all purposes;
 - d. no Mediation Communication shall be discoverable, admissible or referred to in Court for any purpose, and shall not be discussed with anyone, provided that Communication otherwise admissible or subject to discovery do not become inadmissible or protected from discovery or admission by reason of their use in the Mediation Process; and
 - e. except as permitted by law, the Parties will not subpoena or otherwise require the Court-Appointed Mediator to testify or produce records or notes from the Mediation Process in an action or in any other proceeding.

CONSENT TO THIS AGREEMENT

8. The Parties have reviewed this Confidentiality Protocol, and agree to proceed with the Mediation Process on the terms herein contained.

**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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.**

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

PROCEEDING COMMENCED AT TORONTO

ORDER

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**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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.**

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