

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

MOTION RECORD
(extension of stay period, approval of monitor's fees and activities)
(returnable September 7, 2021)

August 30, 2021

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

Notice of motion returnable September 7, 2021

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

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

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

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

**NOTICE OF MOTION
(extension of stay period,
approval of monitor's fees and activities)
(returnable September 7, 2021)**

The Applicant will make a motion to Mr. Justice McEwen of the Commercial List at 330 University Avenue, Toronto, on Tuesday, September 7, 2021, at 15:30 or as soon thereafter as the motion can be heard, via Zoom teleconference the details for which are in Schedule "A" hereto.

PROPOSED METHOD OF HEARING: orally.

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

- a. extending the "Stay Period" as defined in the second amended and restated initial order made on October 27, 2020 to and including December 10, 2021 (3 months).
- b. approving the fourth report of the Monitor dated May 19, 2021, the fifth report of the Monitor dated June 3, 2021, and the sixth report of the Monitor to be served and filed separately (the "**Sixth Report**", and, together, the "**Monitor's Reports**"), as well as the activities described therein.

- c. approving the Monitor's and its counsel's fees and disbursements set out in the Fee Affidavits (term defined in the Sixth Report).

THE GROUND FOR THE MOTION ARE:

2. Capitalized terms are defined in the affidavit of Atef Salama sworn August 30, 2021 (the "**Salama August Affidavit**").
3. Since the last extension made on June 8, 2021, EGR has notably:
 - a. continued operating its business in accordance with the court's orders and the Protocol, while complying with COVID-19 legal requirements and best practices, and
 - b. continued managing the Tax Litigation.
4. EGR will be able to support its operations, the Tax Litigation, the herein proceeding and the Protocol for the duration of the extension sought.
5. The Applicant has acted, is acting and will continue to act in good faith and with due diligence, and the sought extension is appropriate, as more fully appears from the Salama August Affidavit.
6. The activities of the Monitor were reported to the court and stakeholders in the Monitor's Reports. Such activities are appropriate, commercially reasonable, and conducted in the best interest of stakeholders. The Monitor's and its counsel's fees and disbursements are proportionate, fair and reasonable, and supported by the Fee Affidavits.
7. CCAA s. 11, 11.02, 11.03, 11.09, and 18.6.
8. Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rules 2.03 and 3.02.
9. Such other and further grounds as counsel may advise and the court permit.

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

- a. the Salama August Affidavit,
- b. the Sixth Report,
- c. the Fee Affidavits, and
- d. such further and other evidence as counsel may advise and the court may permit.

August 30, 2021

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TO: THE SERVICE LIST

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

NOTICE OF MOTION
(extension of stay period,
approval of monitor's fees and activities)
(returnable September 7, 2021)

GOLDMAN SLOAN NASH & HABER LLP
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Lawyers for the Applicant, Express Gold Refining Ltd.

TAB 2

Affidavit of Atef Salama sworn August 30, 2021

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 August 30, 2021)**

I, Atef¹ 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. This affidavit focusses on and updates the court on the matters of utmost concern addressed in my prior affidavit sworn June 3, 2021 filed in this proceeding, of which I attach a copy without exhibits as Exhibit "A" (my "**June 3 Affidavit**"). I specifically refer to paragraphs 28 to 82 of my June 3 Affidavit for necessary context. Capitalized terms used and not otherwise defined herein have the meaning given to them in the June 3 Affidavit.

¹ Sometimes spelled "Atif".

3. In my June 3 Affidavit, I noted four areas which required urgent attention in order to advance the restructuring in a manner which is not gratuitously destructive to EGR's business, time consuming and expensive, and harmful to third parties. These were:
 - a. CRA's unwillingness to address the issue of full disclosure – as contemplated in what I am advised is Rule 82 of the *Tax Court of Canada Rules* – and, as a corollary, permitting EGR to disclose materials provided to EGR in the Tax Litigation to the Monitor, which I understand would have otherwise been disclosed in the ordinary course of a CCAA proceeding.
 - b. the necessity of establishing a suitable litigation timetable and trial date for the Tax Litigation – predicated on a resolution of item a. above – which balances the exigencies of litigation and the fact that the Tax Litigation is taking place in the context a costly CCAA proceeding.
 - c. the requirement that CRA complete its audit for taxation periods following that of the 2020 Reassessments up to the CCAA filing (i.e., from November 1, 2018 to October 14, 2020). Until this is done, EGR will be unable to advance a restructuring as it cannot account for any consequences which might flow from such audit.
 - d. the release of net tax refunds to customers of EGR who are not implicated in CRA's allegations surrounding the 2020 Reassessments, it being understood that as a result, those amounts currently create possible claims against EGR.
4. As noted in my June 3 Affidavit (at paragraphs 66 to 82), these matters would not exist but for the 2020 Reassessments and/or the Tax Litigation and are entirely and solely within CRA's power to remedy through reasonable accommodations. These issues

remain live and pressing, but there are indications that progress may be occurring, as will be discussed.

5. This motion is for an extension of the Stay Period to and including Friday, December 10, 2021 (3 months). Within that timeframe, EGR will seek a resolution to the above issues through continued engagement with CRA. Discussions are ongoing and EGR is hopeful that they will continue and carry meaningful progress.

I. ACTIONS SINCE LAST INITIAL ORDER EXTENSION

6. Since the last extension made on June 8, 2021, EGR has notably:
 - a. continued operating its business in accordance with the Protocol and while complying with COVID-19 legal requirements and best practices,
 - b. continued managing the Tax Litigation, including towards obtaining proper disclosure from CRA, and
 - c. commenced a download of information and documentation to the Monitor and counsel pursuant to the production and confidentiality order dated June 8, 2021 (the “PCO”), of which I attach a copy as **Exhibit “B”**.
7. Each of the above is discussed below.

A. Operations

8. EGR continues its business operations in accordance with this court’s orders, the Protocol and the regulations in place, in cooperation with the Monitor.
9. However, as discussed in my prior affidavits, I believe that EGR’s business was particularly vulnerable to the disincentives introduced by the COVID-19 pandemic as it necessitates the hands-on bringing, exchanging and handling of materials between our

staff and customers. While distancing measures have been implemented, fewer customers are walking in during the pandemic.

10. EGR nevertheless generates revenues, primarily from its trading activities which have historically been a relatively small part of its activities. 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 sixth report (the "**Sixth Report**") to be filed in these proceedings.
11. 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 Sixth Report. However, I continue to be deeply concerned that the issues referred to in paragraph 3 above require attention and resolution. With the making of the PCO, I am hopeful that the spirit of practical cooperation will result in useful and timely approaches to resolving the pressing needs in this restructuring.

B. Status of the Tax Litigation and related issues

i. From inception to June 3, 2021

12. The background and status of the Tax Litigation since its inception and up to June 3, 2021 are fully set out in paragraphs 28 to 65 of my June 3 Affidavit (Exhibit "A"). This includes full particulars on:
 - a. the Audit that resulted in the 2020 Reassessments and began in late 2018.
 - b. the 2019 Reassessments issued 3 weeks following the hearing on EGR's application in the Federal Court for a *mandamus* order for payment of net tax refunds (while judgement was reserved), which had the effect of negating the relief sought by enabling CRA to set off any payments ordered.

- c. the alleged basis for the 2020 Reassessments and EGR's repeated yet unanswered requests for disclosure of the underlying evidence/documentation, including without limitation in May, July, August and October 2020.
- d. EGR's parallel access to information requests since March 2019 and the innumerable frustrations experienced therein, further thwarting proper disclosure of the facts and evidence underlying the 2020 Reassessments.
- e. CRA's disclosure on December 24, 2020 of a position paper and audit report subject to substantial redactions, and the sensational, completely and demonstrably false allegations made therein involving purported discrepancies in the gold purchased and consideration received for gold sold by EGR. This was the first time EGR was provided with the particulars and "basis" for such allegations despite all its requests for disclosure.
- f. EGR's initial refusal then conditional consent to an extension of the time for CRA's filing a Reply in the Tax Litigation. The conditions, accepted by CRA, include that the parties jointly request case management in the Tax Court and, by March 31, 2021, exchange affidavits of documents in accordance with Rule 82, which requires a list of all documents that are or have been in the parties' possession, control or power relevant to any matter in question between or among them in the Tax Litigation, and disclosure of such documents.
- g. the state of pleadings in the Tax Litigation, culminating with DOJ's filing its Reply on January 29, 2021.
- h. the parties' affidavits of documents exchanged on March 31, 2021, and the deficiencies in CRA's affidavit of documents, including excessive redactions, as

well as Tax Counsels' letter to CRA dated April 23, 2021 and CRA's mitigated response dated May 5, 2021 on the same.

- i. the Case Management Judge's direction on the parties to agree on disclosure failing which a motion would be heard in September 2021 (formerly early September) to address the issue.
 - j. the parties' litigation timetables proposed to the Case Management Judge, and CRA's timetable being much more protracted.
 - ii. Since June 3, 2021
13. The developments in the Tax Litigation since June 3, 2021 suggest a change in CRA's approach indicating compliance with Rule 82, facilitated disclosure, and a willingness to develop a practical and suitable litigation timetable by early November. However, that is entirely predicated on CRA actually following through on such intentions in a timely manner.
14. Namely, after substantial correspondence and discussions between the parties, CRA agreed, through a letter of July 27, 2021 of which I attach a copy as **Exhibit "C"**, to disclose the following:
- a. emails retained by the primary CRA auditor (emails were excluded from the CRA's initial affidavit or documents and disclosure).
 - b. documents in respect of referrals made to other sections of CRA by the auditor.
 - c. research and reference documents in possession of the auditor.
 - d. 19,735 documents consisting of 107,332 pages / 40.11 gb from CRA's shared drive related to the 2019 and 2020 Reassessments.

- e. 9964 documents consisting of 92,444 pages / 11.85 gb from the primary auditor's personal drive related to the Reassessments or the alleged carousel scheme in general.
15. In addition, CRA acknowledged that, as of July 27, 2021, it had collected:
 - a. 18,724 documents consisting of 168,386 pages / 53.48 gb from CRA audit files for other companies that CRA concluded were part of the alleged carousel scheme, and
 - b. 81.2 GB of data (including emails) from 131 different custodians within CRA (e.g., auditors, team leaders, and business intelligence officers) who responded to "litigation hold letters" distributed to them by CRA's counsel, in response to Tax Counsel's requests for better and further disclosure.
 16. The CRA has agreed to disclose documents from those two categories of documents once the parties have agreed on a reasonable approach for streamlining review and disclosure. I understand that dialogue has commenced between the parties in that regard and is ongoing.
 17. Also in that July 27, 2021 letter (Exhibit "C"), CRA agreed to re-produce documents that had been previously disclosed with substantial redactions that had rendered many of the documents unintelligible. Based on the letter, such reproduction is expected to be made with very minimal redactions, limited to non-substantive items such as social insurance numbers and dates of birth.
 18. Since the July 27, 2021 letter, CRA has provided some additional productions, albeit largely in the nature of previously disclosed productions that are now being produced on a largely unredacted basis.

19. CRA's agreed approach in its July 27, 2021 letter appears to represent a notable expansion to the scope of its disclosure as compared to the documentation that it disclosed by the agreed March 31, 2021 deadline, the outline of which is described in paragraph 43 of my June 3 Affidavit.

20. I understand that Tax Counsel has continued to work within the case management framework in the Tax Litigation and has provided accommodations to CRA to facilitate an opportunity for CRA to follow through on making the disclosures they have indicated they intend to make by mid-September, failing which there will be a motion to deal with the issue.

iii. Long-term considerations

21. In light of the above, I had noted in my June 3 Affidavit and reiterate that the Tax Litigation remains far from progressing at a pace that accounts for the imperatives of EGR's insolvency and the costs of these CCAA proceedings. However, there is hope for progress based on CRA's most recent posture on disclosure and the like. In particular:

a. the most basic element of progress towards certainty as to the efficient advancement of the Tax Litigation is an enforceable litigation timetable. As noted above, if the parties cannot agree on a litigation timetable, a motion may be necessary. I truly hope the parties can agree on a timetable without the need for such a motion, which would only cause yet supplementary costs. In any event, EGR will do everything in its power to set the earliest possible trial date and expects that CRA will do the same as should be its obligation in the context of a CCAA proceeding.

- b. On August 17, 2021, the Monitor obtained the PCO. The PCO was granted on a motion by the Monitor that was contested by CRA. As noted above, EGR has commenced distributing materials immediately upon receiving the PCO and at the time of writing is organizing information sessions with the Monitor to share source materials and analyses regarding the unfounded allegations made by CRA concerning a discrepancy pertaining to “missing gold”.
22. Also noted in my June 3 Affidavit as one of the most important issues that EGR faces is the fact that CRA continues to withhold all (otherwise payable) pre-initial order net tax refunds, which CRA offsets against the debt raised in the 2020 Reassessments. For context:
- a. this is an issue that I noted as early as my affidavit in support of the initial CCAA application.
 - b. one can make three categories of net tax refunds that are payable but withheld: (1) those that EGR would recuperate for its own account (e.g. in respect of operating expenses), (2) those that, for reasons more amply set out in my prior affidavits, would, in the normal course of EGR’s business, have been received by EGR to then “flow through” to its customers and suppliers who are not implicated in CRA’s allegations surrounding the 2020 Reassessments, and (3) those that would flow through to customers and suppliers who are so allegedly implicated.
 - c. EGR accepts that a reasonable *statu quo* period is appropriate as to the third category. However, for the reasons more fully set out, *inter alia*, in my June 3 Affidavit (Exhibit “A”), EGR continues to believe that CRA’s withholding/set-off of net tax refunds in the other two categories creates unjust

prejudice to both EGR and innocent bystanders, which among other issues severely worsens EGR's financial position including by generating possible claims against it.

- d. while the Protocol does not, at this stage, address pre-filing net tax refunds, EGR will determinedly engage with CRA and the Monitor within the sought extension so as to locate a mutually acceptable, final resolution to the problem. Otherwise, EGR will consider all available options and remedies towards the same, including a motion to this court for a remedying order under its CCAA jurisdiction, which EGR would be prepared to bring during the sought extension.
- e. it is worth noting that most recently, CRA has approved the disbursement of a net tax refund to one of EGR's customers that is in the second category identified above. I cannot say whether this means that other similarly situated customers will be treated the same but this is a matter under discussion between EGR and CRA.

- 23. One other critical issue identified in my June 3 Affidavit is the need for CRA's completion of the outstanding audit for the period from November 1, 2018 to October 14, 2020. It is essential to the CCAA process and a financial restructuring that EGR be in a position to address any consequences which may flow from the release of such audit in a timely matter as part of the CCAA proceeding.

II. NEED FOR CONTINUED CCAA RELIEF

- 24. The need for extension of the stay provisions is self-explanatory considering the \$180 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.

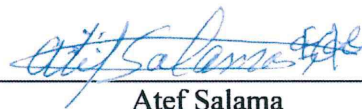
25. The SARIO provides that the Protocol terminates automatically upon termination of these CCAA proceedings, and so EGR requests the continuation of these proceedings to allow the Protocol to remain within this court's jurisdiction to enforce, as the case may be.
26. With the above in place, EGR has and will continue to act with due diligence and good faith with respect to the Tax Litigation, its business and operations, and its relationship with CRA more generally.

SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 30th day of August, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*




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

Soën Turgeon



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

This is **Exhibit "A"** to the affidavit of Atef Salama sworn before me via Zoom this 30th day of August, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON

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

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

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

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

**AFFIDAVIT OF ATEF SALAMA
(sworn June 3, 2021)**

I, Atef¹ 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.

I. PURPOSE HEREOF

2. This affidavit is long and I want to explain why.

3. This affidavit is filed in support of EGR's motion for an extension of the Stay Period (defined below) to and including September 10, 2021 (3 months).

¹ Sometimes spelled "Atif".

4. To that end, I am informed that EGR must demonstrate that it satisfies the CCAA requirements to act with due diligence and good faith. I thus begin by recounting below EGR's actions since the last CCAA stay extension from an operational perspective (section III.A.).
5. However, as discussed, the unquestionable central element of EGR's current situation, including its insolvency and these CCAA proceedings, is the Tax Litigation (defined below). We are now 8 months into these CCAA proceedings and more than one year into the Tax litigation and there are clearly elements present in this process which require attention alongside the prerequisite of recounting how EGR is acting in good faith and due diligence with respect to the Tax Litigation.
6. With the original notice of appeal to the Tax Court of Canada having been filed over 14 months ago (and the "Fresh-as-Amended" notice of appeal having been filed almost one year ago), I am concerned, as I further discuss below (in section III.C.), that the Tax Litigation is not progressing at a pace that accounts for the imperatives of EGR's insolvency and the costs of these CCAA proceedings. As will be explained, EGR is by necessity focussed on the expeditious prosecution of the Tax Litigation. This is true because both it and these CCAA proceedings can present existential threats to EGR's business and the treatment of EGR's stakeholders, other than CRA. In Section III.C., I set out the issues that prevent any attempt at a financial restructuring, and for which CRA is responsible both as a cause and a potential solution.
7. To substantiate and bridge the gap between such long-term considerations (section III.C.), the current status of the Tax Litigation (discussed at section III.B.ii.-iv.), and EGR's good faith and due diligence throughout, it is appropriate to summarize the events leading to

the CCAA application as they relate to the Tax Litigation (section III.B.i.), and to provide an overview of the many difficulties, delays and obstacles faced by EGR not only in the Tax Litigation, but also in surrounding procedures such as access to information requests (section III.B.v.).

8. So, alongside the necessity of obtaining an extension of the Stay Period, this is an opportunity to bring to the attention of the court, with adequate substantiation, my most serious concerns expressed in section III.C. which reflect on the potential impairment of the CCAA proceedings caused by CRA's choices and conduct both in and around the Tax Litigation.

II. OVERVIEW OF THESE PROCEEDINGS

9. EGR is in the precious metal (predominantly, gold) refining and trading business.
10. 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* (the "ETA"), 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**").
11. 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,² and on or around October 8, 2020, CRA announced it would commence enforcement measures on October 15, 2020.

² I am referred to the [Excise Tax Act](#), s. 315.

12. The orders made so far in this proceeding are:
 - a. the October 15, 2020 initial order made by Hainey J.,
 - b. the October 19, 2020, amended and restated initial order made at the comeback hearing by McEwen J.,
 - c. the October 27, 2020, second amended and restated initial order (the “**SARIO**”) made by McEwen J., of which I attach a copy as **Exhibit “A”**, and
 - d. the December 14, 2020 and March 8, 2021 orders of McEwen J., respectively extending to March 15, 2021 and June 11, 2021 the “**Stay Period**” defined in the SARIO (3 months each). I attach a copy of the March 8 order (the “**March 8 Order**”) as **Exhibit “B”**.

13. 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 due to the impending threat to invoke collection remedies in respect of the 2020 Reassessments which, if effected, would have terminated EGR’s business to the detriment of EGR and its stakeholders other than CRA. These CCAA proceedings are intended, *inter alia*, to maintain a *statu quo* and allow EGR to obtain, as a first milestone of a restructuring, a decision on the merits in the Tax Litigation.

14. Hence, the SARIO provides:
 - a. that EGR remains, under a stay of proceedings, in possession of its business and property and is entitled to pay its normal business expenses and to satisfy its

creditor obligations whether incurred before or after the making of the initial order,³

- b. that a stay of proceedings applies but the Tax Litigation may continue,⁴ and
- c. for the court's approval and sealing of a protocol (the "**Protocol**") agreed to on October 27, 2020 among EGR, CRA and Deloitte Restructuring Inc. as monitor in the herein proceedings (in such capacity, the "**Monitor**"),⁵ as such Protocol was amended with court approval provided in the March 8 Order.

15. This motion is for an extension of the Stay Period to and including September 10, 2021 (3 months).

III. ACTIONS SINCE LAST INITIAL ORDER EXTENSION

16. Since the last extension made on March 8, 2021, EGR has notably:
- a. continued operating its business in accordance with the Protocol and while complying with COVID-19 legal requirements and best practices, and
 - b. continued managing the Tax Litigation.
17. Each of the above is discussed below.

A. Operations

i. Protocol

18. I provided background on the necessity of the Protocol in my prior affidavit sworn December 9, 2020 in support of the first motion for extension. I attach a copy of that affidavit, without exhibits, as **Exhibit "C"**.
19. In a nutshell, the Protocol was proposed, developed and implemented through collaboration between EGR, CRA and the Monitor to, among other things and in

³ I am referred to paragraphs 4 to 9 of the SARIO.

⁴ I am referred to paragraph 10 of the SARIO.

⁵ I am referred to paragraphs 15 to 18 of the SARIO.

combination with the stay of proceedings, allow EGR to receive, in accordance with the applicable tax statutes, its net tax refunds payable in respect of periods postdating the stay of proceedings.

20. For reasons further set out in my prior affidavit sworn March 3, 2021, of which I attach a copy without exhibits as **Exhibit “D”**, the Protocol was amended with common accord of the parties and was approved by this court, as amended, in the March 8 Order.
21. The Protocol, as amended, is subject to a sealing order and confidentiality terms. I will not discuss its substance but by way of update to the court, it has now been firmly implemented and is ongoing. The Monitor is performing its role thereunder, including at EGR’s premises (with the appropriate social distancing measures in place), as I understand will be more fully set out in the Monitor’s fifth report, to be served and filed separately (the “**Fifth Report**”).

- ii. State of the business

22. EGR continues its business operations in accordance with this court’s orders.
23. While the Ontario reopening plan (or “[Roadmap to Reopen](#)”) has been announced on May 20, 2021, the province is not out of COVID-19. At the time of writing this affidavit, Ontario had not yet reached step 1 of the reopening plan. Toronto in particular remains under, *inter alia*, a stay-at-home order which I am advised is provided in Ontario Regulation 265/21 made under the *Emergency Management and Civil Protection Act* on April 7, 2021.
24. EGR continues to operate its business in accordance with the regulations in place. Since and for the duration of the temporary lockdown, EGR has and will, in cooperation with

the Monitor, continue to take all necessary steps to ensure it operates in accordance with the applicable regulations.

25. However, I believe the disruption, uncertainty and concern caused by the pandemic have had a negative adverse effect on EGR's business, which is difficult to precisely quantify and isolate from the other factors discussed below, but can hardly be denied. EGR's business was particularly vulnerable to those disincentives as it necessitates the hands-on bringing, exchanging and handling of materials between our staff and customers. While distancing measures have been implemented to limit and prevent where possible direct and indirect physical contacts, the fact remains that I have predictably noticed throughout the pandemic that fewer customers have walked in.

26. Beyond COVID-19, however, I believe that the additional issues and factors noted in paragraph 22 of my December 9, 2020 affidavit (Exhibit "C") continue to adversely affect the business.

27. Notwithstanding such decline in business, EGR generates revenues, primarily from its trading activities which have historically been a relatively small part of EGR's activities. I understand that the details and figures regarding EGR's business since the latest Monitor's report will be set out in the Fifth Report. 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 Fifth Report.

B. Status of the Tax Litigation

28. The background of the CRA audit that resulted in the 2020 Reassessments ("Audit") and other events are necessary context for a proper understanding of the status of the Tax Litigation, including with respect to lack of information/document disclosure.

i. Recap of events leading to CCAA application

29. This background leading up to the commencement of this CCAA application is referenced in some further detail in my affidavit sworn October 14, 2020 and filed in support of the CCAA application, of which I attach a copy without exhibits as **Exhibit “E”** for reference. A summary of those events is as follows:

- a. The CRA auditor (the “**Auditor**”) requested various information and documentation from EGR in November 2018. EGR promptly complied with this request and hosted the CRA Audit team for a site visit of EGR’s premises and interview in January 2019.
- b. Between January 2019 and May 2020 (when the 2020 Reassessment proposal was issued), the Auditor did not ask me, EGR, or EGR’s representatives for any additional documents or information whatsoever, except for the following:
 - i. a site visit took place in October 2019 to a premises leased by EGR that has not been operational for many years.
 - ii. a November 2019 request from the Auditor and corresponding response from EGR regarding financial report working papers and inventory.
 - iii. information and documentation requested when CRA added additional reporting periods to the audit.
 - iv. I note that on multiple occasions (the latest being March 2020) I contacted the Auditor by phone to confirm whether she required any additional documentation and information, and the Auditor confirmed to me that nothing additional was required.

- c. In December 2018, EGR commenced an application in the Federal Court for a *mandamus* order for payment of net tax refunds withheld by CRA. Just over two weeks after the July 3, 2019 hearing of EGR’s *mandamus* application and with no warning whatsoever, CRA issued interim reassessments (the “**2019 Reassessments**”), pending the outcome of the Audit, raising multiple alternative allegations never previously raised with EGR by CRA. This is further described in paragraphs 81-90 of my October 14, 2020 affidavit (Exhibit “E”). Without any apparent reason, CRA did not give EGR the ability to respond to these various allegations prior to issuing those reassessments. The effect of the 2019 Reassessments was to neutralise the relief sought – such that if EGR were to have succeeded on the *mandamus* application with respect to certain periods that were outside of the Audit, the debt raised through the 2019 Reassessments would offset and make such judicial relief moot.
- d. In May 2020, CRA issued the reassessment proposals that underlie the 2020 Reassessments, concluding that the EGR “on a balance of probabilities” was wilfully blind to a carousel scheme. The core basis outlined in the proposal for the allegation relates to certain purported assumptions regarding volume and purity metrics in the gold refining market in the greater Toronto area, and purported differences between EGR’s business and that of a typical market participant.
- e. Following the issuance of the May 2020 proposal letter, EGR repeatedly requested that CRA disclose the assumptions and data forming the basis for CRA’s calculations so that EGR could properly respond to the allegations. EGR also requested a 60-day extension of time from the disclosure from that additional

information to properly respond to the allegations. However, CRA repeatedly refused such disclosure, citing confidentiality provisions under section 295 of the ETA and only granted a two week extension to respond. EGR also requested basic details of CRA's allegation that there were "significant issues" with the data provided that rendered CRA unable to trace scrap gold or pure gold through EGR's books and records with any degree of accuracy; however, CRA refused to disclose such detail (until approximately 6 months later during the course of the Tax Litigation).

- f. On July 10, 2020, EGR's tax counsel ("**Tax Counsel**") wrote to 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". The letter also noted that CRA's assumptions and data would be general market information that would not contain identifying information, such that they would not be confidential and, furthermore, that, under paragraph 295(5)(b) of the ETA, 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.
- g. In a letter dated July 28, 2020, CRA continued to refuse to release the information and insisted on issuing the proposed reassessments. CRA specifically noted that it "was precluded from disclosing this information *at the audit stage* under section 295 of the ETA" (emphasis added).

- h. CRA issued the 2020 Reassessments the following day.
 - i. On August 5, 2020, Tax Counsel again wrote to the Auditor requesting certain information/documentation from the Audit file.
 - j. On September 11, 2020, EGR filed its Fresh As Amended Notice of Appeal in the Tax Court in connection with the 2020 Reassessments for the reporting periods that were also the subject of the 2019 Reassessments.
 - k. By way of letter dated September 17, 2020, CRA denied EGR's August 5, 2020 request for disclosure of CRA's Audit file, citing the Tax Court appeal and involvement of Department of Justice. I am informed by Tax Counsel that the Auditor's file, including position paper, Auditor's notes and Audit Report are typically released to taxpayers as a matter of course when reassessments are issued.
 - l. On October 2, 2020, Tax Counsel wrote to counsel for CRA in the Tax Litigation ("DOJ") to reiterate its information/document request made to the Auditor in its August 5, 2020 letter.
 - m. In early October 2020, CRA commenced collections procedures with respect to the approximately \$180 million debt arising from the 2020 Reassessments, thus forcing EGR into seeking CCAA protection.
 - ii. Procedural developments in the Tax Litigation since the CCAA application
30. Relevant developments in the Tax Litigation subsequent to filing of the CCAA application largely consist of interactions between Tax Counsel and the DOJ.

31. While CRA's Reply in the Tax Litigation was due to be filed on November 12, 2020, by letter of October 14, 2020, DOJ requested that EGR consent to a 60-day extension to January 29, 2021.
32. By letter of October 20, 2020, DOJ stated that it was prepared to provide "key documents" such as the position paper, penalty report, and audit report, subject to redactions for privileged or third party information.
33. With respect to the DOJ's request for an extension of time to file its Reply to January 29, 2021, by letter of November 4, 2020, Tax Counsel initially refused to consent to this request, noting that timely resolution of the Tax Litigation is vital given the magnitude of the 2020 Reassessments, the nature of the allegations and the significant costs being incurred related to the CCAA proceedings that CRA has forced EGR into.
34. After further discussions between Tax Counsel and DOJ, by letter of November 30, 2020, Tax Counsel ultimately consented to CRA's extension request on certain conditions, including that the parties: (1) jointly request case management in the Tax Court; (2) proceed with full disclosure pursuant to Rule 82 of the *Tax Court Rules*; and (3) exchange affidavits of documents and the documents listed therein by March 31, 2021. The purpose of these conditions was to advance the Tax Litigation on a more efficient and timely basis.
35. In this regard, I understand from Tax Counsel that Rule 81 (partial disclosure) is the standard rule for document disclosure in the Tax Court and requires that the parties disclose only documents that they intend to rely on at trial. In proceeding under Rule 81, the parties would have the opportunity to seek any additional relevant documentation through the examination for discovery process, thus leaving significant portions of

relevant documentation undisclosed until after oral examinations for discovery are initially completed.

36. Rather than proceed on the basis of Rule 81, and given the history and complexity of the matter and CRA's on-going refusal to disclose information/documentation (including vis-à-vis access to information requests, discussed further below), EGR sought to have all relevant documents disclosed by each party "up front" in advance of the examinations for discovery process, with a view to having examinations for discovery proceed on a more efficient and timely basis and minimize the otherwise voluminous undertakings expected to result from that process. Accordingly, EGR proposed to proceed under Rule 82, which requires the parties to exchange an affidavit of documents containing a list of all the documents that are or have been in that party's possession, control or power relevant to any matter in question between or among them in the appeal. I understand from Tax Counsel that rule 82 is similar to the document production requirements under the *Ontario Rules of Civil Procedure*.
37. By letter of December 4, 2020, DOJ agreed to the above three conditions.
38. On the afternoon of December 24, 2020, by way of email, the DOJ disclosed copies of a June 28, 2020 Position Paper and an Audit Report, each authored by the Auditor and each appearing to be subject to substantial redactions.
39. The position paper raised two sensational allegations as follows: (1) EGR purchased 858,213.26 more grams of gold than it sent to a third-party refiner; and (2) EGR received \$123,350,000 worth of pure gold that was not accounted for at year end. EGR was never asked about these purported discrepancies by CRA during the course of the Audit nor were they raised in the proposal letter or final reassessment letter, despite Tax Counsel

specifically requesting details of such allegations from CRA at the time. These allegations are completely and demonstrably false. EGR will refute these if/when given the opportunity to do so before the Tax Court.

40. DOJ filed the Reply to the Fresh as Amended Notice of Appeal January 29, 2021.

iii. Tax Litigation document disclosure

41. The parties exchanged affidavits of documents under rule 82 on March 31, 2021 as agreed and also exchanged the documents listed therein.

42. EGR's affidavit of documents and corresponding production disclosure included twelve separate headings of disclosure such as, *inter alia*:

a. all correspondence between EGR or its representatives and CRA and other governmental authorities with respect to GST/HST and related documents from January 1, 2005 to present.

b. correspondence and documents related to GST/HST-related demands from third parties and other third-party correspondence and documents.

c. photographs taken by Asahi Refining of scrap gold lots received by Asahi Refining from EGR during the relevant period.

d. all emails between EGR and the Subject Customers (as defined in the Fresh as Amended Notice of Appeal) from June 1, 2015 to October 31, 2018.

e. all emails between EGR personnel and Asahi Refining / Johnson Matthey from June 1, 2015 to October 31, 2018.

43. After review of the documentation received from CRA in its productions, EGR is of the view that CRA's affidavit of documents is deficient and does not comply with Rule 82. In

this regard, the disclosure appears to merely consist of some, but not all, working papers in the Auditor's exclusive possession; some, but not all, third party disclosure; and certain position papers and reports related to third parties. Despite the plethora of CRA officials involved in the Audit and who interacted with EGR on GST/HST issues over the years or who were otherwise involved in the Audit, the substantive documentation disclosed appears to be limited to about 200 documents that were in the possession of the Auditor. It does not appear that any other CRA officials were canvassed in compiling the CRA disclosure, nor were *any* emails or other communications between and among CRA officials disclosed.

44. Furthermore, many of the documents disclosed by CRA in the course of the Tax Litigation are subject to significant redactions, which EGR understands are purported to be made pursuant to subsections 295(2) and/or (3) of the ETA, and namely, constitute certain information/documentation received from or in respect of third parties. However, subsection 295(4) of the ETA states that: "Subsections (2) and (3) do not apply in respect of... any legal proceedings relating to the administration or enforcement of [the ETA]..." Notably, as discussed above, when CRA purported to rely on section 295 during the Audit in its July 28, 2020 letter, CRA specifically noted that it section 295 precluded the CRA from disclosing this information *at the audit stage*.
45. Tax Counsel wrote a letter to DOJ on April 23, 2021, of which I attach a copy as **Exhibit "F"**, noting that CRA's disclosure is implausibly narrow, falls short of CRA's Rule 82 obligations and fails to include substantial categories of relevant documents. The letter included a list of examples of categories of documentation that are relevant to the Tax Litigation.

46. CRA’s counsel responded by letter dated May 5, 2021, of which I attach a copy as **Exhibit “G”**, endeavouring to provide certain missing documents by the end of June 2021, but denying that certain categories of documentation identified by Tax Counsel are required to be disclosed.

47. The case management judge in the Tax Litigation (the “**Case Management Judge**”) directed the parties to attempt to reach an agreement on the scope of CRA’s disclosure of documents, in lieu of which a motion would be heard in early September 2021 to address the issue. I attach a copy of that direction as **Exhibit “H”**.

iv. Tax Litigation timetable

48. The Case Management Judge encouraged the parties to agree to a proposed timetable for the remaining steps in the litigation. Tax Counsel proposed a timetable via a May 3, 2021 email to DOJ, of which I attach a copy as **Exhibit “I”**, as follows:

Step	Deadline
Additional disclosure from CRA and resolving related issues	May 31, 2021
Complete Examinations for Discovery	July 31, 2021
Satisfy undertakings, if any	August 31, 2021
Communicate questions arising from undertakings, if any	September 15, 2021
Provide answers to questions arising from undertakings, if any	September 30, 2021
Resolution of issues arising from Examinations for Discovery, if any	September 30, 2021
Formal Application to fix hearing	September 30, 2021

49. In a May 5, 2021 letter, of which I attach a copy as **Exhibit “J”**, DOJ rejected the above timetable and noted that the expectation that discoveries could take “a couple of years” to complete is reasonable and provided a much more protracted timetable as follows:

Step	Deadline
Deadline for EGR to bring motion re: CRA productions	September 15, 2021
Parties complete disclosure arising out of motion result	Unknown
Complete Examinations for Discovery	+ 6-8 months
Respond to undertakings	+ 60 days
Communicate questions arising from undertakings, if any	+ 30 days

Provide answers to questions arising from undertakings, if any	+ 30 days
Formal Application to fix hearing	+ 60 days

50. The Case Management Judge has not determined a timetable for the remaining steps in the appeal, pending resolution of the document disclosure issues discussed above.

v. In parallel: EGR’s access to information requests

51. EGR has also been seeking documentation from CRA pursuant to access to information requests that have not been satisfied, in whole or in part, to date.

52. Namely, through a March 28, 2019 letter, of which I attach a copy as **Exhibit “K”**, Tax Counsel submitted an *Access to Information Act* request (the “**First Request**”) to the Access to Information and Privacy Directorate of the CRA (“**ATIPD**”). The First Request was for all records from/to any CRA employee relating to EGR, from December 1, 2013 through to March 28, 2019. Specific CRA employees were named in the First Request.

53. A Senior Consultant with the ATIPD, Regional Operations Case Division, Montreal (“**ATIP Official 1**”) wrote a letter to Tax Counsel on April 8, 2019, on which I attach a copy as **Exhibit “L”**, confirming ATIPD’s receipt of the First Request on April 1, 2019, indicating that a reply to the First Request would be sent as soon as possible. I am informed by Tax Counsel that ATIP Official 1 contacted Tax Counsel by phone on April 9, 2019 to confirm the scope of the First Request and that Tax Counsel confirmed that submissions by EGR or its representatives to CRA could be excluded from the response to the First Request.

54. I am informed by Tax Counsel that ATIPD subsequently advised that the First Request would not be responded to within the statutory time period and that the ATIPD would respond to the First Request by December 1, 2020.

55. I am informed by Tax Counsel that Tax Counsel contacted ATIP Official 1 on September 11, 2020 to determine the status of the response. ATIP Official 1 indicated that the file was transferred to his colleague (“**ATIP Official 2**”) and that Tax Counsel should contact ATIP Official 2 for a response.
56. I am informed by Tax Counsel that Tax Counsel reached ATIP Official 2 by phone on September 21, 2020 and ATIP Official 2 confirmed that:
- a. the file was transferred to her,
 - b. the documents had already been received by the ATIPD from the various CRA employees at issue,
 - c. she did not know when a response would be provided,
 - d. timing would depend on whether ATIP Official 1 had completed any review of the documents before transferring them to her, and
 - e. she would review the file and provide Tax Counsel with an update.
57. I am informed by Tax Counsel that having not heard back, Tax Counsel contacted ATIP Official 2 by phone on November 19, 2020 for a status update, at which time ATIP Official 2 advised that:
- a. neither her, ATIP Official 1, nor any other ATIPD official reviewed any of the received documents to date,
 - b. the response could not be provided by December 1, 2020, and
 - c. she would discuss with her Team Leader (“**ATIP Official 3**”) whether the documents could be released in partial tranches as they were reviewed.

58. I am informed by Tax Counsel that, having not heard back, Tax Counsel contacted ATIP Official 2 by phone on December 8, 2020 to determine the status, at which time ATIP Official 2 stated that:
- a. the ATIPD refused to provide any partial release of the documents as they were reviewed (*i.e.*, no documents would be released until all documents were reviewed and released), and
 - b. if the scope of the First Request was reduced in any way at that juncture, the entire process would have to start again from scratch.
59. I am informed by Tax Counsel that ATIP Official 3 contacted Tax Counsel by phone on December 9, 2020 and indicated that the ATIPD would work to provide the response as soon as possible.
60. I am informed by Tax Counsel that Tax Counsel left each of ATIP Official 2 and ATIP Official 3 voicemails March 22, 2021 to determine status.
61. I am informed by Tax Counsel that ATIP Official 3 contacted Tax Counsel by phone on March 23, 2021, during which she confirmed that:
- a. ATIP Official 3 was in contact with GST/HST auditors at the Saskatchewan Tax Services Office (who were named in the First Request) to discuss the file and that those auditors stated to her that the First Request was a “big deal” and that there are on-going court proceedings that are relevant to the First Request.
 - b. neither ATIP Official 3 nor anyone at the ATIPD had reviewed any of the documents received by the ATIPD with respect to the First Request to date.

- c. the file was transferred to another officer (“**ATIP Official 4**”) and that he was out of office on vacation.
62. I am informed by Tax Counsel that Tax Counsel contacted ATIP Official 4 by phone on April 7, 2021, upon his return to office, at which time ATIP Official 4 stated that:
 - a. the First Request was transferred to him.
 - b. no one at the ATIPD, including him, had commenced a review of any of the documents provided to ATIPD.
 - c. he would not be able to *commence* work on the file for the foreseeable future because he had other larger files in priority, including a 25,000 page file.
 - d. given his limited capacity, he did not know the rationale behind the First Request being transferred to him and that such decisions as to allocation are made at higher levels.
 - e. given his current capacity, ATIP Official 4 would endeavor to *update* Tax Counsel as to the status of the First Request in October 2021 (a full 2.5 years after the First Request was made) to provide a better idea of when the response could be completed.
63. EGR filed a complaint with respect to the handling of the First Request pursuant paragraph 30(1)(c) of the ATIA, which remains open.
64. EGR filed a separate an *Access to Information Act* request (the “**Second Request**”) to the ATIPD on April 7, 2021, requesting all correspondence between and among all ATIPD officials and all personnel of the Saskatchewan Tax Services Office regarding the First Request.

65. The Second Request remains open and ATIPD wrote to Tax Counsel on May 10, 2021 extending the time to complete the Second Request by up to 60 days beyond the 30-day statutory time limit because meeting the original time limit would unreasonably interfere with CRA operations.

C. Long-term considerations

66. EGR being able to sustain itself and the costs of all the legal and administrative processes in which it must engage (i.e. the Protocol, the Tax Litigation and the herein proceedings) for the next extension period of 3 months is quite different from EGR being able to do so for the medium or long term (e.g., 1 year or more). While those heads of costs are not individually problematic, unreasonable or unjustified, they together amount to a substantial weight on EGR's cash flow over time. I understand that an indication of the current expenses in this regard will more fully appear from the figures in the Fifth Report. I discuss some resulting long-term considerations below.

i. CRA has not assessed EGR for periods postdating those targeted by the 2020 Reassessments and predating the initial order/stay of proceedings

67. As stated above, the 2020 Reassessments are in respect of the period from June 1, 2016 to October 31, 2018.

68. Assessments (or reassessments) are typically issued in the ordinary course and they provide any business, including EGR, with certainty as to their GST/HST position with CRA.

69. Of all the conditions necessary for EGR to be able to formulate a viable plan of arrangement and to exit these CCAA proceedings, CRA's assessments of EGR for all periods preceding the CCAA initial order, in good faith and on the basis of correct and verifiable positions in fact and in law, is a *sine qua non*.

70. The reasons for this are multiple, but the most evident is that EGR cannot realistically hope to effect an arrangement that is subject to the sword of Damocles represented by *post facto* assessments or reassessments from CRA. I am aware and acutely anxious that CRA could, including through yet-issued assessments or reassessments for pre-filing periods, prolong the Tax Litigation, create additional tax litigation, or generally delay the timely resolution of the disputes between EGR and CRA, all requiring EGR to embark on yet additional financially crippling procedures while continuing to bear the costs of the CCAA proceeding along the way.
71. No viable plan may account for such a contingency; yet, CRA has not provided assessments to EGR for any periods between those targeted in the 2020 Reassessments (from June 1, 2016 to October 31, 2018) and the CCAA initial order and stay of proceedings (dated October 15, 2020).⁶ I am advised by Tax Counsel that such periods remain under audit. One must therefore realize that CRA truly holds complete power over EGR's ability to work towards an arrangement until it issues such assessments.
72. I anticipate that should EGR commence a typical CCAA claims process, CRA would object and maintain that they cannot or should not be made subject to such routine CCAA measures. EGR currently seems to have no means to compel CRA to deliver the aforementioned assessments and these proceedings will as a result be adversely affected until this hurdle can be breached either by CRA's acquiescence or resort to legal process. I remain hopeful that CRA will recognize that participating in this proceeding in good faith requires the production of such assessments and that it will do so of its own *bona fides* volition. However, if this does not come to pass in the near future, EGR would be

⁶ It being understood that post-filing periods fall under the umbrella of the Protocol, and in respect of those there have been some assessments issued.

compelled to seek a resolution to such an impediment as it is a fundamental element of diligently and effectively pursuing a viable restructuring process in keeping with the imperatives of the CCAA.

ii. The Tax Litigation has the potential to drive EGR out of business permanently, regardless of merits

73. I review EGR's professionals' accounts and can confirm that the Tax Litigation is, unsurprisingly, expensive to maintain.
74. I believe CRA is, with respect to the Tax Litigation, in a position to create an environment which would erode EGR's financial viability by simply seeking ways and means to lengthen and complicate the Tax Litigation through refusals, delays, splitting issues, lack of particulars, far-reaching allegations, insistence on procedural steps, etc., so as to force EGR out of business by having to respond to such actions. This would rob EGR and its stakeholders of the benefit of showing that the substance of the 2020 Reassessments and CRA's allegations in the Tax Litigation are unfounded.
75. While (overly) zealous litigating may not be illegitimate *per se* in the case of a solvent entity, EGR is facing the bright line of insolvency, and it and its stakeholders must bear the necessary burden of funding the CCAA proceeding, including the Protocol, alongside the Tax Litigation. The financially corrosive effect of this is a threat to EGR's capacity to survive, yet EGR's collapse would be to the detriment of all its stakeholders other than CRA – including its employees, customers, suppliers, and equity holders.
76. In light of the status and development of the Tax Litigation as set out above, I am deeply concerned that EGR may be forced to experience fresh and continuing financial hardship by reason of CRA's positioning in the Tax Litigation – in addition to the ever-floating

assessment process – unless there is a recognition of this situation and appropriate engagement by the parties in a manner consistent with the exigencies of a CCAA proceeding, not those of ordinary civil litigation.

iii. CRA's continued withholding of pre-initial order net tax refunds

77. As is noted in my initial affidavit (Exhibit "E"), CRA has been withholding payment of EGR's input tax credits in respect of periods pre-dating the stay of proceedings that relate to GST/HST paid by EGR to suppliers who have not been implicated by the CRA through the 2020 Reassessments. This is because CRA is setting off those pre-stay input tax credits against the debt raised in the 2020 Reassessment, which is enforceable notwithstanding contestation, as an enforcement mechanism.
78. There are customers and suppliers of EGR who have been adversely affected by such CRA withholding/set-off despite not being implicated in CRA's allegations surrounding the 2020 Reassessments. This is because, for reasons more amply set out in my prior affidavits, a large proportion of such input tax credits would, in the normal course of EGR's business, be received by EGR to then "flow through" to such customers and suppliers. Due to CRA's withholding/set-off, and notwithstanding that such parties are not implicated in CRA's allegations, those innocent bystanders suffer a prejudice, which in turns creates possible claims against EGR for the deficiency.
79. This also adds to the adverse perception of EGR's business in the market, as customers and suppliers would be reluctant to risk being caught up in such CRA's withholding of input tax credits preventing their flowing through to them. Despite EGR and the Monitor's confidence that CRA cannot raise such issues with respect to transactions postdating the stay of proceedings onward, it remains that:

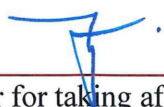
- a. the Protocol does not, at this stage, address pre-filing net tax refunds, and
 - b. EGR's customers and suppliers have to "take EGR's word for it", since (i) the Protocol's terms are sealed and confidential, and (ii) the Protocol remains subject to CRA's good faith compliance.
80. I can understand that from the perspective of a "lay person" (such as most commercial actors who are not jurists or versed in restructuring practices), those are complex matters which create a perceived risk and therefore a disincentive to deal with EGR; this in turn affects EGR's bottom line for as long as the Tax Litigation persists.
81. Another issue is that the proportion of pre-filing net tax refunds that EGR would in the normal course recuperate for its own account (i.e., the proportion that would not flow through to third parties, e.g. for operating expenses) is money to which EGR is entitled to but for the fact that the 2020 Reassessments are enforceable notwithstanding contestation. In other words, if EGR wins its case in Tax Court (which EGR and Tax Counsel are confident will happen if allowed to), those amounts set off will be handed back to EGR. If those amounts set off were freed now, this would alleviate the pressure on EGR's finances, and potentially prevent the need for EGR to resort to what I am referred to as "debtor-in-possession" or "DIP" financing, which should not be necessary in the short term but may become necessary later. Avoiding DIP financing is indeed in the interest of all stakeholders, including CRA.
82. Furthermore, it strikes me as unfair that the parties affected by the pre-filing withholding, and that are not implicated by CRA's allegations in the Tax Litigation, are being treated differently than any such parties who happened to conduct business with EGR post-Protocol. It is EGR's position that these amounts should be released to these parties,

which would have the added benefit of providing tangible evidence that EGR is in a position to conduct its business in a viable manner while engaging CRA in the Tax Litigation.

IV. NEED FOR CONTINUED CCAA RELIEF

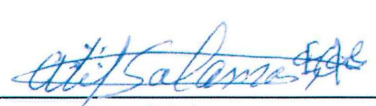
83. The need for extension of the stay provisions is self-explanatory considering the \$180 million 2020 Reassessments are otherwise enforceable notwithstanding contestation. The continuation of the stay is intended to maintain the *statu quo* so that EGR may obtain, as a first milestone of its restructuring, a decision on the merits of its case in the Tax Litigation.
84. 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.
85. With the above in place, EGR has and will continue to act with due diligence and good faith with respect to the Tax Litigation, its business and operations, and its relationship with CRA more generally.

SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 3rd day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



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

JOËL TORGEON



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

This is **Exhibit "B"** to the affidavit of Atef Salama sworn before me via Zoom this 30th day of August, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joel Tulgeau

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

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

THE HONOURABLE) TUESDAY, THE 8TH
)
JUSTICE MCEWEN) DAY OF JUNE, 2021

B E T W E E N :

**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.**

PRODUCTION AND CONFIDENTIALITY ORDER

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 granting the Monitor unfettered access to the books and records of EGR, including all documents in EGR's possession in connection with the Tax Litigation (as defined herein) and GST/HST Reassessments (as defined herein), was heard this day at 330 University Avenue, Toronto, Ontario, via judicial videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the Monitor dated May 19, 2021, including the Fourth Report of the Monitor dated May 19, 2021, and the consent of EGR to the relief sought by the Monitor, and upon the CRA filing materials and making submissions opposing the relief sought by the Monitor on the basis that the Tax Court of Canada was the proper court of jurisdiction to



hear EGR and the Monitor's request for a waiver of the implied undertaking made by EGR in the Tax Litigation and on the basis of s. 295 of the *Excise Tax Act* and on hearing the submissions of counsel for the Monitor and counsel for EGR, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amanda Campbell sworn June 7, 2021, filed;

INTERPRETATION

1. **THIS COURT ORDERS** that for the purposes of this Order:

- (a) “**CCAA**” means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (b) “**CCAA Proceeding**” means the within proceeding commenced by EGR at the Ontario Superior Court of Justice (Commercial List), at Toronto, bearing Court File No. CV-20-00649558-00CL;
- (c) “**CRA**” means the Canada Revenue Agency, and shall include its legal counsel in connection with the Tax Litigation, being the Department of Justice, Canada;
- (d) “**EGR's Tax Counsel**” means Baker McKenzie LLP;
- (e) “**GST/HST (Re)Assessments**” means all GST/HST assessments and reassessments that have been issued or will be issued by the CRA to EGR that form part of the Tax Litigation, including but not limited to reassessments dated July 22, 2019 and assessments and reassessments dated July 29, 2020;
- (f) “**Monitor's Legal Counsel**” means Dentons Canada LLP;

- (g) “**Subject Document(s)**” means all documents in EGR’s possession and control that have been provided to EGR or EGR’s Tax Counsel by the CRA in connection with the GST/HST (Re)Assessments relating to the Tax Litigation including, but not limited to, documents produced to EGR or EGR’s Tax Counsel by the CRA in the course of the Tax Litigation;
- (h) “**SARIO**” means the Second Amended and Restated Initial Order of Justice McEwen dated October 27, 2020;
- (i) “**Tax Litigation**” means the appeal commenced by EGR at the Tax Court of Canada bearing Court File No. 2020-1214(GST)G;

PRODUCTION

2. **THIS COURT ORDERS** that, notwithstanding any express, deemed or implied undertaking given by EGR or EGR’s Tax Counsel to any person, and notwithstanding the limitations on disclosure of confidential taxpayer/registrant information set out in s. 295 of the *Excise Tax Act*, EGR shall forthwith produce and make available to the Monitor all Subject Documents.

CONFIDENTIALITY

3. **THIS COURT ORDERS** that, in the event any privileged, irrelevant or inadvertently unredacted Subject Document is disclosed to EGR and provided to the Monitor in accordance with this Order, CRA shall immediately bring such inadvertent disclosure to the attention of EGR and the Monitor, and such disclosure and treatment of the Subject Document shall be addressed and governed by written agreement between EGR and CRA, or by further Order of the Court.

4. **THIS COURT ORDERS** that the Monitor shall keep the Subject Documents strictly confidential, shall use the Subject Documents solely for the purposes of the CCAA Proceeding, including for the purposes of discharging its duties as Monitor pursuant to the SARIO and the CCAA, and shall not produce or disclose the Subject Documents to any person (in whole or in part), except to the following firms, entities and individuals:

- (a) any Judge, Master or personnel of the Court as may be necessary for the conduct of the CCAA Proceeding, in which case the Subject Documents shall be marked as “confidential” and filed under seal;
- (b) Monitor’s Legal Counsel; and
- (c) such other persons as EGR, EGR’s Tax Counsel, CRA and the Monitor may agree in writing or as the Court may order.

5. **THIS COURT ORDERS AND DIRECTS** that in the event any Subject Document is disclosed to any person other than in the manner authorized by this Order, the party responsible for such disclosure shall immediately bring all pertinent facts relating to the disclosure to the attention of EGR’s Tax Counsel, CRA and the Monitor’s Legal Counsel and shall make every effort to prevent further disclosure of the Subject Documents.

6. **THIS COURT FURTHER ORDERS** that the termination of the CCAA Proceeding shall not relieve any person to whom the Subject Documents were disclosed pursuant to this Order from the obligation of maintaining the confidentiality of the Subject Documents in accordance with the provisions of this Order.

7. **THIS COURT ORDERS** that upon final termination of the CCAA Proceeding (including appeals, if any), or the earlier discharge of the Monitor in the CCAA Proceeding, all copies of the Subject Documents in the possession of the Monitor and the Monitor's Legal Counsel shall be destroyed within thirty (30) days, unless CRA and EGR's Tax Counsel authorize some other disposition, and confirmation of destruction will be sent in writing to all parties.

8. **THIS COURT ORDERS** that nothing in this Order shall:

- (a) foreclose or limit a party from moving before the Court to vary any term of this Order, provided that such motion is brought on notice to the Monitor, EGR and CRA;
- (b) foreclose or limit the Monitor, EGR or CRA from applying for a further order of confidentiality with respect to documents to be submitted to the Court or produced in connection with the Tax Litigation; or
- (c) constitute a waiver of solicitor-client privilege as between EGR and EGR's Tax Counsel, the Monitor and Monitor's Legal Counsel, and the CRA and the Department of Justice.

9. **THIS COURT ORDERS** that CRA may only waive all or any part of its rights over the Subject Documents under this Order expressly and in writing.

10. **THIS COURT ORDERS** that, if part or all of the Subject Documents subsequently become available in the public domain, such Subject Documents thereafter cease to be governed by this Order. The onus of establishing that particular Subject Documents have become available

in the public domain through no fault or participation of the Monitor or EGR shall rest with the party asserting such.

11. **THIS COURT ORDERS** that the Monitor, EGR and CRA shall have the right to apply to the Court, on notice, for any modification or variation of the restrictions on disclosure imposed by this Order as applied to any specific document.



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.

8 June 21

Order to go, on an unopposed basis, as per the draft filed and signed.



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

PROCEEDING COMMENCED AT TORONTO

PRODUCTION AND CONFIDENTIALITY ORDER

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*Lawyers for Deloitte Restructuring Inc., in its capacity
as court-appointed Monitor of Express Gold Refining
Ltd.*

This is **Exhibit "C"** to the affidavit of Atef Salama sworn before me via Zoom this 30th day of August, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOËL TURGEON.



Department of Justice
Canada

Ministère de la Justice
Canada

Ontario Region
National Litigation Sector
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Région de l'Ontario
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Our File Number LEX-500025225

BY EMAIL

July 27, 2021

Baker & McKenzie LLP
Brookfield Place
181 Bay Street, Suite 2100
Toronto, Ontario M5J 2T3

Attention: Jacques Bernier and Bryan Horrigan

Dear Counsel:

**Re: EXPRESS GOLD REFINING LTD. v. H.M.Q.
Court File No.: 2020-1214(GST)G**

Further to our meeting of June 30 and our subsequent exchange of letters, we write to provide the following information about documents we have collected and produced to date and additional documents to be produced in the coming weeks, with the goal of reaching a mutually satisfactory resolution to any outstanding issues regarding the respondent's documentary disclosure.

First, the following is an update on the production status of various categories of documents you have requested. (Please note that the production of a document is not an admission of its relevance.)

Referrals

Copies of the Collections and Criminal Investigations referrals the auditor made regarding EGR will be produced. Please note that the copies we have received are not signed. We have asked the auditor to determine if she has other copies and to date, she has not located any. If she does locate any, we will provide a copy (in accordance with our obligation to provide ongoing disclosure).

Emails

In general, the auditor did not retain emails. We have collected the emails that she did retain and will be producing those after we complete the privilege review.

Research

We have collected the research/reference documents that the auditor saved to her personal drive and that were saved to the shared drive (these drives are described below). They will be produced in the coming weeks.

Drafts

In general, the auditor did not retain drafts. We have collected those drafts attached to her emails and those on her personal and shared drives. We will produce those documents we have coded as drafts.

Tables of Contents and lists of Integras documents for EGR

See three documents attached

- Excel Table of Contents (R014069) with production numbers
- Two Integras printouts with full list of files

Collection Diaries

We will produce the EGR Collection Diary. In general, our view is that CRA's collection attempts with respect to EGR's vendors are not relevant. However, we are prepared to review a sampling of collection diaries from EGR's vendors and determine whether we are prepared to produce them. If there are particular vendors you would like us to start with, please let us know.

Redactions

We have removed many of the redactions from the three documents described below and attached to this letter. If the modified redactions are satisfactory, we will make the same types of changes to the remaining redacted documents in our productions and provide you updated copies.

The reasons for the remaining redactions are indicated on each redaction. As two of the documents are quite long, we have included only representative sections of each. To facilitate your review, we have highlighted in yellow the former redactions, except on certain portions of the Position Paper (R001116) where we have deleted all redactions (i.e. everything under the headings "Information From Express Gold Refining Inc.").

We have maintained redactions for irrelevant private information (e.g SINs, DOBs, and children and spouse's names if they aren't involved in the business). We have also redacted information that relates to ongoing audits of third parties or investigations of third parties (for example, information regarding referrals to Criminal Investigations.) Such information is irrelevant to the correctness of EGR's assessments and is protected under s. 37 of the *Canada Evidence Act*.¹

Production Number	People/Organizations From	Document Date	Document Type	Redactions	Total Page Count	Pages included for review
R000088	Bartlett, Jaclyn <jaclyn.bartlett@cra-arc.gc.ca> / cra-arc.gc.ca	6/8/2016	CRA Working Paper	(3) Irrelevant Private Info.	5	All

¹ *Canada (Attorney General) v. Chad*, 2018 FC 556 (CanLII), at paras 74, 79, and 98 <https://canlii.ca/t/hsirm#par74>.

				(6) CAE, s. 37		
R001116	Chris Antulov	5/11/2020	Position Paper	(3) Irrelevant Private Info.	142	1-7,15-30, 117-128, 138-142 (40 pages total)
R001105	Bartlett, Jaclyn <jaclyn.bartlett@cra-arc.gc.ca> / cra-arc.gc.ca	11/9/2020	Research/ Background	(3) Irrelevant Private Info. (6) CAE, s. 37	924	1-8, 20-26, 27-37, 38-50, 209-220, 400-409, 775-805 (92 total pages)

Documents collected from Canada Revenue Agency

We thought it would be helpful to set out the number of documents we have collected and reviewed so that you can appreciate the volume of documents we are dealing with and how long it will take to produce additional documents.

To date, we have collected:

1. CRA's Integras files² for the EGR audit, consisting of:
 - a. 16 documents, consisting of 34 pages / 4.91 mb from Integras file 77823631 (the 2019 reassessment)
 - b. 7,259 documents, consisting of 80,122 pages / 10.35 gb from Integras file 34690331 (the 2020 reassessment)
 - c. 2184 documents, consisting of 5729 pages / 806 mb from CAS (computer auditors) from Integras file 34690331 (the 2020 reassessment)
 - d. 1 document, consisting of 2 pages from Integras file 76398931 (one letter that post-dates the 2020 reassessment)
2. 19,735 documents consisting of 107,332 pages / 40.11 gb from the shared drive related to the 2019 and 2020 reassessments of Express Gold or to the gold carousel scheme in general
3. 9964 documents consisting of 92,444 pages / 11.85 gb from Jaclyn Bartlett's personal drive related to the 2019 and 2020 reassessments of Express Gold or the gold carousel scheme in general.
4. 18,724 documents consisting of 168,386 pages / 53.48 gb from the Integras files for other companies that CRA concluded were part of the carousel scheme.

² Integras files are the electronic files that CRA maintains in respect of each audit. When a reassessment is issued, that Integras file is closed.

Our review to date

We have completed our review of category 1 and have nearly completed our review of categories 2 and 3. There is a great deal of duplication between the documents in categories 1 to 3 and we have removed duplicates from the productions. For example, most, if not all, of the Integras documents from the 2020 audit file are reproduced on the auditor's personal and shared drives.

We have not begun a comprehensive review of the documents in category 4 (files of EGR's vendors). Our litigation support team has nearly completed the objective coding - identifying documents by date, type, author (to) and recipient (from) - in respect of these documents. We have produced the Audit Reports and Position Papers from EGR's vendors and indirect vendors, which provide the reasons for the CRA's determination that each vendor was participating in the carousel scheme (The auditor's working papers for EGR also summarize and refer to the findings she relied on from third parties in her audit of EGR.)

In addition to the documents we have collected from Integras and the auditor, we have sent litigation hold letters to 131 people ("custodians") who may have relevant documents. The custodians are largely auditors, team leaders, and business intelligence officers. For clarity, please be advised that not all of these custodians worked on the EGR file. The custodians are people who may have documents related to any file in the Carousel Scheme. We also sent litigation hold letters to those persons you identified in your letter of April 23. A complete list of custodians is attached, along with the file(s) that they worked on. (Please note that our agreement to make inquiries of the custodians you have identified does not mean we agree that they have relevant documents.)

We asked the custodians to send us all their electronic documents other than those already uploaded to Integras. We also asked the custodians to send us copies of any paper documents that they don't have in electronic form.

To date, we have received 81.2 GB of data from the litigation hold letters. This number does not include the paper documents. We have not yet begun the review of these documents. Based on experience in prior files, we expect a lot of these documents to be duplicates and drafts. The core audit documents such as Audit Reports, Position Papers, and Working Papers, as well as the books and records received from each registrant, such as receipts, invoices, and contracts, should normally be included in the Integras files. As further detailed below, we invite your input as to how to proceed with the review of these documents, keeping in mind that "a significant portion of the [electronic data] collected will still likely be irrelevant or only marginally relevant. It can be impractical or prohibitively expensive to manually review all the information collected."³ We would like to work with the appellant to complete the productions without undue costs and delay.

³ The Sedona Conference, The Sedona Canada Principles Addressing Electronic Discovery, Third Edition, Public Comment Version, April 2021, Commentary to Principle 7, pp45-50 Available online: https://thesedonaconference.org/publication/The_Sedona_Canada_Principles. See also, Sedona Principle 5: *The parties should be prepared to produce relevant electronically stored information that is reasonably accessible in terms of cost and burden*

Proposal for moving document production process ahead

We believe it would take **at least** a year to review all the documents from the custodians and from the remaining Integras files.

Here are some suggestions to focus the review and production of the remaining documents in the interests of trying to resolve this issue without bringing a motion to the Case Management Judge:

- Identify and agree to produce specific types documents for each vendor (for example, T2020s and interview notes). We have already provided the Audit Reports and Position Papers for EGR's vendors.
- Use search terms to narrow documents we review
- Perform a global deduplication and not by custodian
 - In a global deduplication, each document is compared to the whole data set. Only the first instance of each unique document or file makes it to review and categorization. This will reduce the documents but make it difficult to know how many documents each custodian provided.
 - In a custodial deduplication, each document is compared to the documents from the same custodian. Only the first instance of each unique document per custodian goes to review. However, there may be duplicates of the same document elsewhere within the project.
- Explore the possibility of using Technology Assisted Review to further reduce the volume of documents

Search terms

We have run the searches using the keywords you suggested in your letter of July 13. We believe they are too broad to meaningfully narrow the document set. However, we may be able to narrow the searches by document type, for example by excluding bills and invoices, settlement reports, and similar documents, or by searching by keyword in specific file types. We are willing to continuing conferring with the appellant to produce more useful search terms.

Here are some results using your search terms (the document totals in the examples below do not include duplicates).

- Salama = 4,736 documents / 132,277 pages / 8.31 gb
- "215 Victoria" = 12,263 documents / 200,412 pages / 35.69 gb
- "215 Victoria" excluding the document types below = 3,545 documents / 35,413 pages / 12.51 gb
 - invoice
 - cheque
 - bills/invoice
 - settlement document
 - EGR settlement report
- Xau.com = 1 document (R001051)
- Xau = 966 documents / 86,314 pages / 3.41 gb

- Xau excluding the document types below = 449 documents / 3894 pages / 868 mb
 - invoice
 - cheque
 - bills/invoice
 - settlement document
 - EGR settlement report

Next steps

We will be producing the additional documents referred to in the coming weeks. The object of this exercise is to move this matter along expeditiously and efficiently for both parties. While the respondent does not agree that all documents we will be producing (e.g. drafts and sample collection diaries) are relevant and has taken a different approach in terms of assessing the relevance of documents than the appellant has, the respondent does share the appellant's desire to move the matter along. We believe it is in the interest of both parties to spend the next few weeks working cooperatively towards the goal of achieving mutually acceptable closure to documentary disclosure and moving forwards with the next phase of this litigation (i.e. examinations for discovery).

We trust that with the respondent's flexibility and accommodations regarding the appellant's requests for further documentary disclosure, a motion will not be necessary in September and the parties can instead spend their time over the next few weeks on the process of documentary disclosure itself, as opposed to expending that time instead on preparing and responding to motion materials. Please be advised that should this matter proceed to a motion in September, the respondent reserves her right to dispute the relevance of various categories of documents for the reasons previously provided.

We look forward to hearing from you.

Sincerely,



Diana Aird
Senior Counsel

Enclosures: R014069 with production numbers
Integras Case 34690331
Integras Case 77823631
List of Custodians
R000088 with modified redactions
R001116 with modified redactions
R001105 with modified redactions

cc: Marilyn Vardy, Jasmeen Mann and Michael Ding - Counsel for the respondent, Department of Justice (*by email*)

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 August 30th, 2021)

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Lawyers for the applicant, Express Gold Refining Inc.

TAB 3

Draft order

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE 7th
)
JUSTICE McEWEN) DAY OF SEPTEMBER, 2021
)

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

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

ORDER
(**extension of stay period,**
approval of monitor's fees and activities)

THIS MOTION by the Applicant pursuant to the CCAA was heard before me on September 7, 2021 at 330 University Avenue, Toronto, by videoconference due to the COVID-19 pandemic.

ON READING the materials filed including the affidavit of Atef Salama sworn August 30, 2021 and the exhibits thereto (the "**Salama August Affidavit**"), and on reading the sixth report (the "**Sixth Report**") of Deloitte Restructuring Inc. in its capacity as court-appointed monitor (in such capacity, the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, the Monitor, and such other counsel as were present as may be indicated on the counsel slip, no one else appearing despite being served as appears from the affidavit of service, filed:

I. SERVICE

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

II. EXTENSION

2. THIS COURT ORDERS that the “Stay Period” as defined in the second amended and restated initial order made by this court on October 27, 2020 in this proceeding is hereby extended to and including December 10, 2021.

III. APPROVAL OF FEES AND ACTIVITIES

3. THIS COURT ORDERS that the Sixth Report, together with the fourth report of the Monitor dated May 19, 2021 and the fifth report of the Monitor dated June 3, 2021, as well as the activities described therein, are hereby approved, provided, however, that only the Monitor in its personal capacity and with respect to its personal liability shall be entitled to rely upon or utilize in any way such approval.

4. THIS COURT ORDERS that the professional fees and disbursements of the Monitor and its independent legal counsel, Dentons Canada LLP, as set out in the Fee Affidavits (as defined in the Sixth Report), are hereby approved.

5. THIS COURT ORDERS that the Applicant pay all such fees and disbursements from available funds.

6. This order is effective as of its date at 12:01 am and does not need to be entered.

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced in TORONTO

ORDER
**(extension of stay period,
approval of monitor's fees and activities)**

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Lawyers for the Applicant, Express Gold Refining Ltd.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

MOTION RECORD
(extension of stay period, approval of monitor's fees and
activities)
(returnable September 7, 2021)

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