



NO. S-209201
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF 1077 HOLDINGS CO-OPERATIVE
AND 1314625 ONTARIO LIMITED**

PETITIONERS

NOTICE OF APPLICATION

NAME OF APPLICANTS: Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as the court-appointed monitor (and, in such capacity, the "**Monitor**") of 1077 Holdings Co-operative (formerly, Mountain Equipment Co-operative) ("**1077**") and 1314625 Ontario Limited (together with 1077, the "**Petitioners**")

TO: Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the Monitor to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia, at **2:00 p.m. on April 1, 2022, via Microsoft Teams videoconference**, for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An order (the "**Sealing Order**"), substantially in the form attached hereto as **Schedule "B"**, sealing Appendix "A" (the "**Confidential Appendix**") to the Twelfth Report of the Monitor, dated March 23, 2022 (the "**Twelfth Report**").
2. An order (the "**Distribution Order**"), substantially in the form attached hereto as **Schedule "C"**, to *inter alia*:
 - (a) approve the Proposed Distribution Methodology (as such term is defined below);
 - (b) authorize and empower the Monitor to make an interim distribution in the aggregate amount of no more than \$23.3 million to Claimants and Employee Claimants holding Accepted Claims (as such terms are defined below) and to, in its sole discretion, make further *pro rata* distributions out of the remaining funds, in accordance with the Proposed Distribution Methodology, without further order of this Court.

Part 2: FACTUAL BASIS

A. Background

1. On September 14, 2020, the Petitioners were granted an Initial Order by this Court (the “**Initial Order**”), pursuant to which these proceedings (these “**CCAA Proceedings**”) were commenced under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
2. Among other things, the Initial Order afforded the Petitioners an initial stay of proceedings up to and including September 24, 2020 (the “**Stay Period**”) and appointed A&M as the Monitor in these CCAA Proceedings.
3. On September 22, 2020, the Petitioners brought an application (the “**Comeback Application**”) to seek approval of the amended and restated initial order (the “**ARIO**”) to, *inter alia*:
 - (a) seek an extension of the Stay Period through to October 31, 2020;
 - (b) authorize an increased maximum amount of borrowing under the Interim Financing Facility (as defined in the First Report of the Monitor, dated September 24, 2020 (the “**First Report**”) to \$100,000,000;
 - (c) grant a key employee retention plan charge against the assets of the Petitioners in an amount not to exceed \$778,000; and
 - (d) seek approval of the sale approval and vesting order (the “**SAVO**”) to approve the sale transaction (the “**Transaction**”) contemplated by the asset purchase and sale agreement between the Petitioners and 1264686 B.C. Ltd. dated September 11, 2020 for the sale of the Purchased Assets and the vesting of all of the Purchased Assets in the Purchaser (defined below) free and clear of any Encumbrances other than Permitted Encumbrances (as such terms are defined in the SAVO).
4. On September 24, 2020, this Court granted an extension of the Stay Period from September 24, 2020 to September 28, 2020 to allow for the Comeback Application to be heard on September 28, 2020.
5. During the period from September 28, 2020 through to October 1, 2020, in addition to hearing the Comeback Application of the Petitioners, this Court heard several applications, including, *inter alia*, by Plateau Village Properties Inc and Midtown Plaza Inc (together, the “**Landlords’ Application**”), Kevin Harding and Save MEC (together, the “**Members’ Application**”), and the BC Co-op Association and Mutuels Canada (the “**Public Intervenor’s Application**”).
6. On October 2, 2020, this Court dismissed the Landlords’ Application, the Members’ Application, and the Public Intervenor’s Application and granted the ARIO, which included, *inter alia*, an extension of the Stay Period to November 3, 2020, and the SAVO sought by the Petitioners.

7. On October 21, 2020, this Court granted an assignment order to assign all of the rights and obligations of the Petitioners under certain remaining contracts to 1266524 B.C. Ltd. (recently renamed MEC Canada Inc. and referred to herein as the “**Purchaser**”).
8. On October 28, 2020, this Court granted a further extension of the Stay Period to January 20, 2021 to, *inter alia*, provide the Petitioners with sufficient time to complete post-closing matters related to the Transaction and seek an order to expand the powers of the Monitor provided for in the ARIO.
9. On November 12, 2020, an application was filed by a former employee on behalf of certain other former employees of 1077, to be heard on November 24, 2020 (the “**Former Employees’ Application**”), seeking an order from this Court, *inter alia*, approving the appointment of Victory Square Law Office (“**VSLO**”) as representative counsel to former employees of 1077 in these CCAA Proceedings and granting a charge of \$85,000 over the property of the Petitioners in respect of VSLO’s anticipated fees.
10. On November 27, 2020, this Court granted an order enhancing the powers of the Monitor (the “**EMP Order**”) and an order (the “**Claims Process Order**”) establishing a claims process (the “**Claims Process**”) by which creditors may confirm or prove their claims against 1077 arising prior to the filing date of September 14, 2020 (“**Claims**” and each a “**Claim**”) by submitting proofs of their Claims in the prescribed form (“**Proofs of Claim**” and each a “**Proof of Claim**”).
11. On December 21, 2020, the Former Employees’ Application was dismissed.
12. On April 9, 2021, this Court pronounced an order approving the following reports of the Monitor and the activities contained therein:
 - (a) the Proposed Monitor’s Report, dated September 13, 2020;
 - (b) the First Report;
 - (c) the Second Report of the Monitor, dated October 19, 2021;
 - (d) the Third Report of the Monitor, dated October 27, 2020;
 - (e) the Fourth Report of the Monitor, dated November 23, 2020;
 - (f) the Fifth Report of the Monitor, dated January 12, 2021; and
 - (g) the Sixth Report of the Monitor, dated April 1, 2021.
13. On April 29, 2021, the Monitor submitted the seventh report of the Monitor to this Court, which was a special purpose report providing this Court with an update of the Claims Process as well as disclosure of the number and quantum of claims received by the Monitor pursuant to paragraph 32 of the Claims Process Order.
14. This Court has granted the following extensions of the Stay Period to, *inter alia*, provide the Petitioners with sufficient time to complete the Claims Process:
 - (a) on January 15, 2021 to April 9, 2021;

- (b) on April 9, 2021 to June 25, 2021;
 - (c) on June 23, 2021 to September 28, 2021;
 - (d) September 28, 2021, to December 10, 2021; and
 - (e) December 10, 2021, to June 10, 2022.
15. As detailed further herein and in the Twelfth Report, the Monitor has made, and continues to make, significant progress in advancing the Claims Process, and now seeks the Distribution Order to, *inter alia*:
- (a) approve the Proposed Distribution Methodology (as defined below), which methodology includes a “top-up” for certain of the Employee Claimants whose recovery would otherwise be slightly higher in the event a determination is made under section 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“**WEPPA**”); and
 - (b) authorize and empower the Monitor to make an interim distribution in an aggregate amount not exceeding \$23.3 million to Claimants and Employee Claimants holding Accepted Claims (as such terms are defined below) and to, in its sole discretion, make further *pro rata* distributions out of the remaining funds in accordance with the Proposed Distribution Methodology without further order of this Court.
16. In the alternative, and as detailed further below, the Monitor is seeking advice and direction from this Court as to the applicability of the WEPPA Amendments to these proceedings.
- B. The Claims Process**
- i. Condensed Background on the Claims Process***
17. Capitalized terms used but not defined in this section have the meaning ascribed to them in the Claims Process Order.
18. Pursuant to the Claims Process Order, the Monitor commenced the Claims Process on December 11, 2020 by mailing packages containing relevant information and materials necessary to submit Proofs of Claim in the Claims Process (the “**Claims Package**”) to all known employees with a Claim (the “**Employee Claimants**”) and all known other persons with a Claim (the “**Claimants**”). The Monitor also posted a copy of the Claims Package and the Claims Process Order on the Monitor’s Website.
19. On December 14 and 18, 2020, a notice to creditors was published in the Globe and Mail (National Edition) and the Vancouver Sun.
20. Pursuant to the Claims Process Order, the Monitor commenced the Claims Process by mailing 330 Claims Packages to all known potential Claimants and Employee Claimants.

ii. Update on the Claims Process

21. As detailed further in the Twelfth Report, since the commencement of the Claims Process, the Monitor has received 97 Proofs of Claim with a total claim value of approximately \$82.5 million and has responded to 87 Claimants through Notices of Revision or Disallowance (“**NORDs**”), except where the Proofs of Claim had been withdrawn by the Claimant or accepted in its entirety by the Monitor.
22. By way of update, and subsequent to the filing of the Eleventh Report, dated December 1, 2021, the total Accepted Claims have decreased by \$90,000 as a result of the following:
- (a) the Monitor issued an amended NORD to revise a Claim downwards by \$42,000, following its review of additional information. This amended NORD was accepted by the Claimant;
 - (b) the Monitor accepted two additional Proofs of Claims from trade and other creditors totaling \$44,000;
 - (c) the Monitor reclassified an Accepted Claim in the amount of \$150,000 from “trade and other” to “employee”, following a further review of this Claim; and
 - (d) the Monitor removed the previously allowed portion of a Disputed Claim, which amount totals \$91,000, pending a resolution between the parties involved (the details of which are provided below and in sections 5.5 to 5.8 of the Twelfth Report).
23. The following table provides an updated summary of the number and quantum of Claims submitted by Claimants and Employee Claimants, NORDs issued by the Monitor, Accepted Claims, and Disputed Claims:

1077 Holdings Co-operative and 1314625 Ontario Limited								
Summary of Claims								
as at March 13, 2022								
(in CAD 000's)								
	Proofs of Claim		Notice of Revision or Disallowance		Accepted Claims		Disputed Claims	
	No.	Claim Amount (\$)	No.	Disallowed Amount (\$)	No.	Accepted Amount (\$)	No.	Disputed Amount (\$)
Landlord	8	\$ 68,829	8	\$ 72,855	5	\$ 19,901	2	\$ 983
Employee	48	4,030	46	2,385	228	8,980	-	-
Trade and other	39	9,672	31	7,599	15	2,151	-	-
Equity	2	1	2	1	-	-	-	-
Total	97	\$ 82,532	87	\$ 82,839	248	\$ 31,031	2	\$ 983

24. Accordingly, and as at the date of the Twelfth Report, there are 248 Accepted Claims totaling \$31.0 million that the Monitor has or is deemed to have accepted.

iii. Update on the Disputed Claims

25. At present there are two Disputed Claims, totaling \$983,000, that remain unresolved. These Disputed Claims are duplicative, and pertain to the retail store previously located in St. Denis, Quebec (the “**St. Denis Property**”).
26. As detailed in the Monitor’s Eleventh Report, the lease in respect of the St. Denis Property was disclaimed effective October 16, 2020. Thereafter, two Proofs of Claim (collectively, the “**St. Denis Claim**”) were submitted: one was submitted by the previous landlord, 169159 Canada Inc. (“**169**”), and the second was submitted by Argo Partners (“**Argo**”), a party claiming to have been assigned the St. Denis Claim.
27. The Monitor has engaged in discussions with both 169 and Argo in an effort to resolve the dispute between 169 and Argo as to which party is entitled to assert the St. Denis Claim, as well as the quantum of the claim. However, as at the date of the Twelfth Report, 169 and Argo have been unable to reach a resolution of these issues.
28. Accordingly, and to avoid further delay in making a distribution to creditors with Accepted Claims, the Monitor intends to create a reserve fund of \$733,000 (the “**St. Denis Claim Reserve**”), which is the amount equivalent to the larger of the two St. Denis Claims, and to make a *pro rata* distribution to the holder of the St. Denis Claim out of the St. Denis Claim Reserve, after a determination has been made regarding both entitlement to and quantum of the St. Denis Claim.
29. Any surplus remaining in the St. Denis Claim Reserve following this distribution would then form part of the remaining reserve fund available to all Claimants and Employee Claimants holding Accepted Claims.

C. Amendments to WEPPA and Potential Application to these Proceedings

i. Introduction

30. On November 20, 2021, amendments to WEPPA and WEPP Regulations came into force which now authorize the court to make a determination that former employees are entitled to WEPPA payments in the context of CCAA proceedings if the following criteria (set out in section 5(1) of WEPPA) are established:
 - (a) the individual’s employment ended for a reason prescribed by regulation which includes termination or expiry of the individual’s employment;
 - (b) the former employer is subject to proceedings under the CCAA;
 - (c) the individual is owed eligible wages by the former employer; and
 - (d) a court determines under subsection 5(5) that criteria prescribed by regulation are met [emphasis added].
31. Under subsection 5(5) of WEPPA, “any person” may bring an application before the supervising CCAA court for a determination that a former employee satisfies the criteria prescribed by regulation. In turn, section 3.2 of the WEPP Regulations now provides that “for the purposes of subsection 5(5) of [WEPPA], a court may determine whether the

former employer is the former employer of all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

ii. Potential Application of WEPPA to these CCAA Proceedings

32. At the commencement of the CCAA Proceedings, the Petitioners had approximately 1,500 employees located in Canada, of which 210 employees were terminated on or prior to the Closing Date and a further 16 employees were terminated prior to the CCAA Proceedings with a salary continuance arrangement pursuant to an employment termination agreement (together, the “**Terminated Employees**”). The remaining 1,290 employees (or 86% of total employees) were transferred to the Purchaser upon the Closing Date pursuant to the terms of the APA (the “**Transferred Employees**”).
33. A determination of whether the Transferred Employees would be considered “terminated” for the purposes of section 3.2 of the WEPP Regulations is complicated by the following:
- (a) the APA required the Purchaser to offer employment to all non-unionized employees of the Petitioners (except for those specifically excluded) on terms and conditions that are no less favourable than those they enjoyed with the Petitioners effective on the Closing Date;
 - (b) all employees who accepted the Purchaser’s offer were to become employees of the Purchaser on the closing, with their prior service recognized and benefits entitlements continued; and
 - (c) the APA further provides that the Purchaser is responsible for the vacation pay and severance pay owed to these employees (whether accruing or arising prior to closing) and liability for other employment-related liabilities arising on or after closing.
34. However, despite these provisions of the APA, and for the purposes of determining whether the WEPPA Amendments and WEPP Regulations apply to these proceedings, the Monitor is of the view that the Petitioners’ employment relationship with the Transferred Employees ended on the Closing Date (being the effective date that their employment was transferred to the Purchaser under the provisions of the APA).
35. The analysis in respect of the Terminated Employees is more straightforward, as substantially all the Terminated Employees are entitled to statutory termination and severance pay, vacation pay, and/or salary continuance pursuant to the employment standards legislation in their respective provinces of employment, contractual entitlement, common law entitlement, and/or an employment termination agreement. Accordingly, the Terminated Employees would have “eligible wages” for the purposes of WEPPA, subject to any further review by Service Canada.
36. Therefore, and based on all of the foregoing, the Monitor is of the view that a court would likely determine that “the criteria prescribed by regulation are met”, as all former employees (including the Terminated Employees and the Transferred Employees) may, subject to a determination by this Court, be considered “terminated” for the purposes of determining whether section 3.2 of the WEPP Regulations is satisfied.

iii. Overview of the WEPP Alternative

37. Notwithstanding the apparent applicability of WEPP to these CCAA Proceedings, the Monitor is seeking approval of an alternative distribution method that would effectively achieve the same result as WEPP (the "**WEPP Alternative**").
38. As detailed further below, under the WEPP Alternative, each of the Employee Claimants who would have otherwise benefited by a determination under subsection 5(5) of WEPPA will receive a "top-up" payment (which, in aggregate, is not expected to exceed \$10,000), which would be allocated, on a *pro rata* basis to the other Claimants.
39. On balance, this "top-up" payment would have a *de minimus* impact on the other Claimants, representing \$0.0003 on the dollar of their Accepted Claims, while ensuring that the 48 Employee Claimants are not prejudiced by the WEPP Alternative.

iv. The Labour Program is not Opposed to the WEPP Alternative

40. As detailed further in the Twelfth Report, the Monitor has had extensive discussions with representatives of the Labour Program, as administered by Employment and Social Development Canada, the federal agency responsible for assessing and administering the Wage Earner Protection Program ("**WEPP**").
41. In the course of these discussions, the Monitor provided the Labour Program with an update on the status of the Claims Process, including the estimated potential recovery to creditors (which is in the range of \$0.90 on the dollar of their Accepted Claim), and advised the Labour Program of its intention to make an interim distribution some time prior to June 2022.
42. With respect to the application of the WEPPA Amendments, the Monitor further advised the Labour Program representatives that it had prepared preliminary analyses demonstrating that, if WEPP was found to be applicable in these CCAA Proceedings:
 - (a) the majority of the Employee Claimants would receive the same amount under WEPP as they would through the Claims Process as, pursuant to section 36.1(1) of WEPPA, Her Majesty in right of Canada would have a subrogated claim for the amount paid under WEPP – which subrogated claim must be paid in priority prior to making any distributions to the Employee Claimants; and
 - (b) of the 228 Employee Claimants, approximately 48 would likely receive a higher amount under WEPP than they would under the Claims Process, based on the assumption that these Employee Claimants would receive the lower of the maximum 2022 WEPP payment of \$8,117.34 and its Accepted Claim amount. These 48 Employee Claimants would each, on average, receive \$115 or in aggregate, \$5,500 more under WEPP than the Claims Process.¹
43. As the cost to administer WEPP would likely far exceed the recovery to these 48 Employee Claimants, and since the remaining Employee Claimants would receive the same amount

¹ This amount is subject to change based on the resolution of the Disputed Claim and recovery of additional amounts; however, based on the Monitor's analyses, it is unlikely that the total payable to these 48 Employee Claimants will exceed \$10,000.

under both WEPP and through the Claims Process, the Monitor advised the Labour Program of its intention to seek approval of the WEPP Alternative.

44. In the course of these discussions, the Labour Program has advised the Monitor that: (i) it is generally supportive of the WEPP Alternative; (ii) should a determination be made that WEPPA applies to these proceedings, it would likely take until July 2022 before WEPP payments were processed and made payable to the eligible Employee Claimants; and (iii) there may be additional delays in processing WEPP payments, as any disputes between the Labour Program and Employee Claimants would need to be resolved before processing and issuing WEPP payments to the eligible Employee Claimants.

v. Recommendation of the Monitor

45. Accordingly, in the event a determination under section 5(5) of WEPPA is made by this Court, the Monitor is concerned that such a determination would: (i) result in a further delay of distributions being made to creditors (including the non-Employee Claimants) with Accepted Claims; and (ii) increase administration costs to the Petitioners' estate.
46. Thus, while the Monitor would be supportive of a determination under section 5(5) of WEPPA, it is the Monitor's view that it would be more expeditious and cost effective for this court to approve the Distribution Order and the WEPP Alternative (which, as noted above, would result in a "top-up" in favour of the 48 Employee Claimants whose recovery would increase under WEPPA), in lieu of such a determination.

vi. The Davies Application and Position of the Monitor

47. On February 7, 2022, a notice of application was filed by Aerin Kristjaan Bonnell Davies (the "**Davies Application**") to be heard on February 17, 2022, in general chambers. The Davies Application was subsequently rescheduled to proceed before the Honourable Madam Justice Fitzpatrick, who is seized of these CCAA Proceedings, on April 1, 2022,
48. In essence, the Davies Application requests that this Court make a determination as to whether the Petitioners and its former employees met the criteria under the WEPPA Amendments.
49. On March 7, 2022, the Monitor corresponded with the applicant to discuss an overview of the Proposed Distribution Methodology and the WEPP Alternative. At that time, Ms. Davies indicated that she was not opposed to the WEPP Alternative.
50. The Monitor is of the view that the relief it is seeking in the April 1 Application fully addresses the substance of the Davies Application, as the Monitor is seeking either: (i) approval of the WEPP Alternative; or (ii) advice and direction from this Honourable Court as to the applicability of the WEPPA Amendments to these CCAA Proceedings.

D. Approval of the Distribution Order

51. As detailed further in section 7.0 of the Twelfth Report, the Monitor anticipates that approximately \$29.1 million will be available for distribution, representing a recovery to Claimants/Employee Claimants in the range of 90% of their Accepted Claims.

52. The Distribution Order sought by the Monitor would authorize the Monitor to make an interim distribution (the “**Interim Distribution**”) in an aggregate amount not exceeding \$23.3 million to Claimants and Employee Claimants holding Accepted Claims using the following proposed distribution methodology (the “**Proposed Distribution Methodology**”):
- (a) each Claimant holding an Accepted Claim will receive a pro rata distribution up to the maximum amount of their Accepted Claim amount. For greater certainty, Accepted Claims shall include all Claims that have been finally determined in accordance with the Claims Process Order. Any person who was required to but did not assert an Accepted Claim in accordance with the Claims Process Order shall not be entitled to a distribution and shall be forever barred and each claim extinguished;
 - (b) each Employee Claimant holding an Accepted Claim will receive a pro rata distribution up to the maximum amount of their Accepted Claim amount, net of applicable withholding taxes, EI overpayments, and other statutory deductions, if any;
 - (c) all distributions will be made in Canadian dollars, and any Accepted Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate as at the Filing Date;
 - (d) no secured claims or priority claims remain, and all unsecured claims (with the exception of the affected Employee Claimants) will therefore be paid *pari passu*;
 - (e) no distributions will be made to the holders of the disputed St. Denis Claim, and the Monitor shall create the St. Denis Reserve pending the resolution of entitlement to and quantum of the St. Denis Claim. Following a determination of these issues, the Monitor shall make a pro rata distribution to the holder of the St. Denis Claim using the funds in the St. Denis Reserve;
 - (f) any surplus funds remaining in the St. Denis Claim Reserve after payment of the holder's *pro rata* distribution, shall be distributed to the holders of Accepted Claims on a *pro rata* basis;
 - (g) a “top-up” amount will be distributed to those Employee Claimants who would have been positively affected by a determination that WEPP was applicable in these CCAA Proceedings. The total “top-up” amounts will be allocated on a *pro rata* basis to the other Employee Claimants and Claimants;
 - (h) the distributions made to Employee Claimants in accordance with and pursuant to the Distribution Order shall be in lieu of any and all amounts they might have otherwise received from Service Canada, had a determination been made under subsection 5(5) of WEPPA;
 - (i) sufficient funds will be withheld from any interim distributions to cover the anticipated administration costs to the completion of the CCAA Proceedings;

- (j) the Monitor will, upon the filing of a Monitor's Certificate in substantially the same form attached as Schedule "B" to the Distribution Order, be entitled to make further distributions without further Order of this Court; and
 - (k) given the costs of preparing and distributing cheques to creditors and following up on uncashed cheques, the Monitor proposes that the final distribution be made only to those Claimants who would be entitled to distributions of \$10 or more, which is consistent Directive 18 as issued by the Office of Superintendent of Bankruptcy.
53. If the Distribution Order is granted, and barring any unforeseen issues, the Monitor anticipates making the Interim Distribution in mid to late May 2022.
54. The Monitor is of the view that the Proposed Distribution Methodology is fair and allows for distributions to be made on an expedited basis and in a cost-effective manner. Accordingly, the Monitor is seeking the approval of this Court of the Proposed Distribution Methodology as described herein.

E. Advice and Direction – Applicability of the WEPPA Amendments

55. In the alternative, and should this Court have concerns regarding the WEPP Alternative, the Monitor respectfully seeks advice and direction from this Honourable Court regarding the applicability of the WEPPA Amendments to these CCAA Proceedings.

Part 3: LEGAL BASIS

A. Sealing Order

1. The Monitor requests an order sealing the Confidential Appendix.
 2. The following two-part test (the "**Sierra Test**") applies when determining whether public access to a court document may be restricted:
 - (a) Is the order necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk?; and
 - (b) Do the salutary effects of the sealing order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?
- Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41
Sahlin v Nature Trust of British Columbia, Inc., 2010 BCCA 516
3. In *Sherman Estate*, the Supreme Court of Canada held that the Sierra Test, which "continues to be an appropriate guide for judicial discretion" was predicated "upon three core prerequisites" around which the test should be recast:
 - (a) court openness poses a serious risk to an important public interest;
 - (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sherman Estate v Donovan, 2021 SCC 25 [**Sherman Estate**], at paras 38 and 43

- 4. In circumstances in which “all three of these prerequisites have been met”, the court has discretion to limit court openness by, *inter alia*, granting a sealing order.

Sherman Estate, at para 38

- 5. In *Sherman Estate* the Supreme Court of Canada recognized that aspects of privacy are “an important public interest for the purpose of the relevant test from *Sierra Club*” as proceedings in open court may:

- (a) lead to the dissemination of highly sensitive personal information that would result not just in discomfort or embarrassment, but in an affront to the affected person’s dignity; and
- (b) where the public interest in protecting human dignity is shown to be at serious risk, an exception to the open court principle may be justified.

Sherman Estate, at paras 7, 33 and 87

- 6. The Confidential Appendix contains sensitive, personal, and confidential information regarding the Employee Claimants, including their names of and information regarding the quantum of their respective distributions.
- 7. Should the Confidential Appendix not be sealed, it would result in the public disclosure of information which the Employee Claimants would reasonably expect to be kept confidential and which may pose a serious risk to their individual dignity.
- 8. The salutary effects of the Sealing Order therefore outweigh any potential deleterious effects, as none of the parties with a commercial interest in these proceedings would be prejudiced by the granting of the order sought.

B. Authority to Grant the Distribution Order

i. General Principles

- 9. The broad remedial objective of the CCAA is to facilitate a restructuring of a debtor company, rather than a liquidation of assets. Section 11 of the CCAA provides the supervising CCAA judge with the broad statutory authority to make such orders that are necessary to achieve this objective.

Bul River Mineral Corporation (Re), 2014 BCSC 1732 at para 36

Century Services Inc v Canada (Attorney General), 2010 SCC 60 at paras 15-19, 57-66

Canada v Canada North Group Inc, 2021 SCC 30, at para 21
CCAA, s 11

- 10. This broad jurisdiction provides a supervising CCAA court with the authority to approve distributions to creditors during CCAA proceedings, even where such distributions occur outside of a Plan of Compromise or Arrangement.

Re Nortel Networks Corporation et al, 2014 ONSC 477 [**Nortel**], at para 55

11. In this respect, Justice Newbould noted the following in *Nortel*:

[53] I first note that the CCAA makes no provision as to how money is to be distributed to creditors. This is not surprising taken that plans of reorganization do not necessarily provide for payments to creditors and taken that the CCAA does not expressly provide for a liquidating CCAA process. There is no provision that requires distributions to be made under a plan of arrangement.

[54] A court has wide powers in a CCAA proceeding to do what is just in the circumstances. Section 11(1) provided that a court may make any order it considers appropriate in the circumstances..

[55] I also note that payments to creditors without plans of arrangement or compromises are often ordered.

Nortel, at paras 53-55 [emphasis added]

12. There is nothing in the CCAA that precludes a distribution of cash to unsecured creditors of the debtor during the pendency of CCAA proceedings. Thus, in *Nortel*, Justice Newbould went to state the following:

[58] I see no difference between an interim distribution, as in the case of *AbitibiBowater*, or a final distribution, as in the case of *Timminco*, or a distribution to an unsecured or secured creditor, so far as a jurisdiction to make the order is concerned without any plan of arrangement.

Nortel, at para 58

AbitibiBowater Inc., 2009 QCCS 6461, at para 71

13. Accordingly, the Monitor submits that this Court has the jurisdiction to approve the Proposed Distribution Methodology and grant the Distribution Order on the terms sought.

ii. The Distribution Order is a Reasonable Alternative to WEPPA

14. As detailed above, the Monitor is of the view that the WEPPA Amendments likely apply to these CCAA Proceedings.
15. However, given the additional cost and delay associated with the administration of WEPP, the Monitor is seeking approval of the Proposed Distribution Methodology as an alternative to WEPPA.
16. In this respect, the language of subsection 5(5) of WEPPA is permissive in nature: it provides that this Court “may, in proceedings...under the [CCAA], determine that the former employer meets the criteria prescribed by regulation.”

WEPPA, s. 5(5)

17. Similarly, the applicable section of the WEPPA Regulations, provides the following:

3.2 For the purposes of subsection 5(5) of [WEPPA], a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

WEPPA Regulations, s. 3.2

18. Neither WEPPA nor the WEPPA Regulations require this Court to make a determination under subsection 5(5), even where the criteria are established.
19. As detailed further above and in the Twelfth Report, the Proposed Distribution Methodology will achieve the same result as WEPPA in a more expeditious and cost-effective manner.
20. The Proposed Distribution Methodology contemplates that the 48 Employee Claimants whose recovery would be greater through WEPP will receive a “top-up” payment in their distribution to ensure that their recovery, through the Distribution Order, will be equal to their recovery under WEPPA.
21. The resulting impact to the remaining Claimants/Employee Claimants is negligible, as the cost of the “top-up” (which is estimated to not exceed \$10,000), will be shared on a *pro rata* basis and represents approximately \$0.0003 on the dollar of the Accepted Claims.

C. In the Alternative, the Monitor Applies for Advice and Direction

22. In the alternative, and should this Court have concerns regarding the WEPP Alternative, the Monitor respectfully seeks advice and direction pursuant to the provisions of the EMP Order regarding the applicability of the WEPPA Amendments to these CCAA Proceedings.

EMP Order, paras 2(s) and 17.

23. In further support of the relief sought herein, the Petitioners rely on the following:
 - (a) *the CCAA*, and in particular section 11 thereof;
 - (b) *Supreme Court Civil Rules* and, in particular, Rules 8-1 and 13-1 thereof;
 - (c) the inherent and equitable jurisdiction of this Court; and
 - (d) such further and other grounds as counsel may advise and this Court may deem just.

Part 4: MATERIAL TO BE RELIED ON

24. Eleventh Report of the Monitor, dated December 1, 2021;
25. Twelfth Report of the Monitor, dated March 23, 2022; and
26. such further and other materials as counsel may advise and this Court may permit.


The applicant estimates that the Application will take 1 hour.

- ☐ This matter is within the jurisdiction of a Master.
- ☒ This matter is not within the jurisdiction of a Master. This matter is scheduled to be heard by the Honourable Madam Justice Fitzpatrick, who is seized of these proceedings.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this Application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every Affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this Application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: March 23, 2022



Signature of Lawyer for the Applicant
Cassels Brock & Blackwell LLP
(Mary I.A. Buttery, Q.C. and Jared Enns)

To be completed by the Court only:

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
- ☐ with the following variations and additional terms:

Date: _____

Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ other

SCHEDULE "A"

NO. S-209201
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF 1077 HOLDINGS CO-OPERATIVE
AND 1314625 ONTARIO LIMITED

PETITIONERS

SERVICE LIST

[Current to: March 23, 2022]

<p>Norton Rose Fulbright Canada LLP 1800 – 510 West Georgia Street Vancouver, BC V6B 0M3</p> <p>Attention: Howard A. Gorman, Q.C. Scott M. Boucher</p> <p>Email: howard.gorman@nortonrosefulbright.com scott.boucher@nortonrosefulbright.com alexander.schmitt@nortonrosefulbright.com krystal.shayler@nortonrosefulbright.com</p> <p>Tel: 604-687-6575</p> <p><i>Counsel for the Petitioners, 1077 Holdings Co-operative (formerly Mountain Equipment Co-operative) and 1314625 Ontario Limited</i></p>	<p>Alvarez & Marsal Canada Inc. 1680 – 400 Burrard Street Vancouver, BC V6C 3A6</p> <p>Attention: Todd Martin Vicki Chan Marianna Lee Nishant Virmani</p> <p>Email: tmartin@alvarezandmarsal.com vchan@alvarezandmarsal.com marianna.lee@alvarezandmarsal.com nvirmani@alvarezandmarsal.com</p> <p>Tel: 1-833-591-1288</p> <p><i>Monitor</i></p>
<p>Cassels Brock & Blackwell LLP 2200 - 885 West Georgia Street Vancouver, BC V6C 3E8</p> <p>Attention: Mary I.A. Buttery, Q.C. Jared Enns</p> <p>Email: mbuttery@cassels.com jenns@cassels.com sdanielisz@cassels.com</p> <p>Tel: 604-691-6100</p> <p><i>Counsel for the Monitor, Alvarez & Marsal Canada Inc.</i></p>	<p>Dentons Canada LLP 2000 – 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention: John R. Sandrelli Valerie Cross</p> <p>Email: john.sandrelli@dentons.com valerie.cross@dentons.com emma.newbery@dentons.com avic.arenas@dentons.com sarah.howes@dentons.com</p> <p>Tel: 604-687-4460</p> <p><i>Counsel for Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement</i></p>

<p>FTI Consulting 1450 – 701 West Georgia Street Vancouver, BC V7Y 1B6</p> <p>Attention: Tom Powell Mike Clark</p> <p>Email: Tom.Powell@fticonsulting.com Mike.Clark@fticonsulting.com</p> <p>Tel: 604-484-9525</p> <p><i>Financial Advisor to the Royal Bank of Canada as administrative agent and collateral agent under the Updated Credit Agreement</i></p>	<p>Fasken Martineau DuMoulin LLP 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attention: Dylan Chochla</p> <p>Email: dchochla@fasken.com</p> <p>Tel: 604-631-3131</p> <p><i>Counsel for Kingswood Capital Management LP and 1264686 B.C. Ltd</i></p>
<p>Camelino Galessiere LLP 6 Adelaide Street East, Suite 220 Toronto, ON M5C 1H6</p> <p>Attention: Linda Galessiere Jessica Wuthmann</p> <p>Email: lgalessiere@cglegal.ca jwuthmann@cglegal.ca</p> <p>Tel: 416-306-3827</p> <p><i>Counsel for RioCan Reit</i></p>	<p>Kirryn Hashmi Legal Counsel First Capital Realty Inc. 85 Hanna Avenue, Suite 400 Toronto, ON M6K 3S3</p> <p>Email: kirryn.hashmi@fcr.ca</p> <p>Tel: 416.216.2083</p> <p><i>Counsel for First Capital Realty Inc.</i></p>
<p>The Cadillac Fairview Corporation Limited 1100 avenue des Canadiens-de-Montréal Bureau 400 Montréal, QC H3B 2S2</p> <p>Attention: Robert Crepin</p> <p>Email: robert.crepin@cadillacfairview.com</p> <p>Tel: 514-353-2241</p> <p><i>The Cadillac Fairview Corporation Limited</i></p>	<p>Gowling WLG (Canada) S.E.N.C.R.L., s.r.l. 1, Place Ville Marie, bureau 3700 Montréal QC H3B 3P4</p> <p>Attention: François Viau</p> <p>Email: francois.viau@gowlingwlg.com</p> <p>Tel: 514-392-9530</p> <p><i>Counsel for Les Galeries de la Capitale Holdings Inc., managed by Oxford Properties Group</i></p>

<p>Victory Square Law Office LLP #710 – 777 Hornby Street Vancouver, BC V6Z 1S4</p> <p>Attention: Colin Gusikoski</p> <p>Email: cgusikoski@vslo.ca</p> <p>Tel: 604-602-7984</p> <p>- and -</p> <p>Nathanson Schachter & Thompson LLP Suite 750 - 900 Howe Street Vancouver, BC V6Z 2M4</p> <p>Attention: Peter J. Reardon</p> <p>Email: preardon@nst.bc.ca</p> <p>Tel: 778-328-8940</p> <p><i>Counsel for Kevin Harding and certain other co-operative members</i></p>	<p>WeirFoulds LLP 66 Wellington Street West, Suite 4100 P.O. Box 35, TD Bank Tower Toronto, ON M5K 1B7</p> <p>Attention: Philip Cho</p> <p>Email: pcho@weirfoulds.com</p> <p>Tel: 416-619-6296</p> <p><i>Counsel for Plateau Village Properties Inc.</i></p>
<p>McCarthy Tétrault LLP 66 Wellington Street West Suite 5300, TD Bank Tower Box 48 Toronto, ON M5K 1E6</p> <p>Attention: Alexander Steele</p> <p>Email: asteeler@mccarthy.ca</p> <p>Tel: 416-601-8370</p> <p><i>Counsel for Concert Realty</i></p>	<p>Paine Edmonds LLP Suite 1100 - 510 Burrard Street Vancouver, BC V6C 3A8</p> <p>Attention: Kathryn R. Taylor</p> <p>Email ktaylor@paine-edmonds.com</p> <p>Tel: 604-683-1211</p> <p><i>Counsel for Brandon John Wah Soo</i></p>
	<p>Goodmans LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7</p> <p>Attention: Bradley Wiffen</p> <p>Email: bwiffen@goodmans.ca</p> <p>Tel: 416-979-2211</p> <p><i>Crestpoint Real Estate Investments Ltd., as authorized asset manager on behalf of 0965311 B.C. Ltd.</i></p>

<p>Department of Justice – Nova Scotia 6th floor, 1690 Hollis Street Halifax, NS B3J 3J9</p> <p>Attention: Pamela Branton Senior Solicitor Legal Services Division</p> <p>Email: pamela.branton@novascotia.ca catherine.lunn@novascotia.ca agnes.macneil@novascotia.ca</p> <p>Tel: 902-424-7244</p> <p><i>Counsel for Department of Justice (Nova Scotia)</i></p>	<p>Borden Ladner Gervais LLP 1200 - 200 Burrard Street Vancouver, BC V7X 1T2</p> <p>Attention: Ian Graf</p> <p>Email igrf@blg.com</p> <p>Tel: 604-640-4121</p> <p><i>Counsel for Southern Railway of British Columbia Limited</i></p>
<p>Lax O'Sullivan Lisus Gottlieb LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Attention: Matthew P. Gottlieb Andrew Winton Crawford Smith Sapna Thakker</p> <p>Email: mgottlieb@lolg.ca awinton@lolg.ca csmith@lolg.ca sthakker@lolg.ca</p> <p>Tel: 416-598-1744</p> <p>- and -</p> <p>McEwan Cooper Dennis LLP 900 – 980 Howe Street Vancouver, BC V6Z 0C8</p> <p>Attention: J. Kenneth McEwan, Q.C. William Stransky</p> <p>Email: kmcewan@mcewanpartners.com wstransky@mcewanpartners.com</p> <p>Tel: 604-283-7740</p> <p><i>Counsel for Midtown Plaza Inc.</i></p>	<p>The Tax and Revenue Administration 9811 - 109 Street Edmonton, AB TSK 2L5</p> <p>Attention: Tessi Midiburo, Senior Compliance Officer</p> <p>Email: TBF.SCO@gov.ab.ca</p> <p>Tel: 780-644-4230</p> <p><i>Her Majesty The Queen In Right of The Province of Alberta as represented by The Minister of Finance (Income Tax)</i></p> <p>Elliot H. Bridgewater 3232 Morley Trail NW Calgary, AB T2M 4H2</p> <p>Email: ehb@bridgewaterlaw.ca</p> <p>Tel: 403-703-9821</p> <p><i>Counsel for BC Coop Association and Cooperatives and Mutuels Canada</i></p>

<p>Environment Legal Services Department of Justice – Government of Canada 1869 Upper Water St., Suite AH201 Halifax, NS B3J 1S9</p> <p>Attention: J.G. (Jim) Rossiter, Q.C.</p> <p>Email: jim.rossiter@canada.ca</p> <p>Tel: 902-830-2927</p> <p><i>Counsel for Parks Canada Agency</i></p>	<p>Nite Ize, Inc. 5660 Central Avenue Boulder, CO 80301</p> <p>Attention: Clint Todd, Chief Legal Officer</p> <p>Email: ctodd@niteize.com</p> <p>Tel: 303-962-0532</p> <p><i>Counsel for Nite Ize, Inc.</i></p>
<p>Bison Transport 1001 Sherwin Road Winnipeg, MB R3H 0T8</p> <p>Attention: Scott Griffiths, Senior Credit Specialist</p> <p>Email: sgriffiths@bisontransport.com</p> <p>Tel: 204-833-0277</p> <p><i>Bison Transport</i></p>	<p>Blaney McMurtry LLP 1500 – 2 Queen Street East Toronto, ON M5C 3G5</p> <p>Attention: John C. Wolf Brendan Jones</p> <p>Email: jwolf@blaney.com bjones@blaney.com</p> <p>Tel: 416-593-1221</p> <p><i>Counsel for bcIMC Realty Corporation</i></p>
<p>Field LLP 400 – 444 7 Avenue SW Calgary, AB T2P 0X8</p> <p>Attention: Trevor Batty</p> <p>Email: tbatty@fieldlaw.com</p> <p>Tel: 403-260-8537</p> <p><i>Counsel for Brookfield Residential (Alberta) LP</i></p>	<p>Department of Justice Government of Canada British Columbia Regional Office 900 – 840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Attention: Jason W. Levine Mika Chircoski</p> <p>Email: jason.levine@justice.gc.ca mika.chircoski@justice.gc.ca</p> <p>Tel: 604-666-0632</p> <p><i>Counsel for Her Majesty the Queen</i></p>
<p>Legal Services Branch Ministry of Attorney General PO Box 9280 Stn Prov Govnt Victoria, BC V8W 9J7</p> <p>Attention: Aaron Welch</p> <p>Email: Aaron.Welch@gov.bc.ca AGLSBRevTaxInsolvency@gov.bc.ca</p>	

<p>Sports Industry Credit Association 245 Victoria Avenue, Suite 800 Westmount (Quebec) H3Z 2M6</p> <p>Attention: William Anidjar Brian Dabarno</p> <p>Email: william@sica.ca brian@sica.ca</p> <p>Tel: 514-931-5561 ext: 223</p>	<p>Jean Cloutier Lanctôt Ltée 5290 Boul. Thimens Montréal, QC H4R 2B2</p> <p>Email: jcloutier@rlanctot.com</p> <p>Tel: 514-815-7729</p>
<p>Margaret Watson Ocean Trailer 9076 River Road Delta, BC V4G 1B5</p> <p>Email: margaretw@oceantrailer.com</p> <p>Tel: 604-952-2356</p>	<p>David Harvey Burlington, Ontario</p> <p>Email: dharvey@gmail.com</p>
<p>Labour Program Employment and Social Development Canada 165 de l'Hotel-de-Ville Street Gatineau, Québec J8X 3X2</p> <p>Attention: Adrian Raddatz Johanna Howes Julie Matte</p> <p>Email: adrian.raddatz@labour-travail.gc.ca johannar.howes@labour-travail.gc.ca julie.l.matte@servicecanada.gc.ca</p> <p>Tel: 873-396-2833</p>	

SCHEDULE "B"

NO. S-209201
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF 1077 HOLDINGS CO-OPERATIVE
AND 1314625 ONTARIO LIMITED

PETITIONERS

SEALING ORDER

BEFORE THE HONOURABLE)	FRIDAY, THE 1 ST DAY
)	
MADAM JUSTICE FITZPATRICK)	OF APRIL, 2022

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor (and, in such capacity, the "**Monitor**") of 1077 Holdings Co-operative (formerly, Mountain Equipment Co-operative) and 1314625 Ontario Limited, coming on for hearing at Vancouver, British Columbia, on the 1st day of April, 2022, via Microsoft Teams videoconference; AND ON HEARING Mary I.A. Buttery, Q.C. and Jared Enns, counsel for the Monitor; AND UPON READING the material filed, including the Twelfth Report of the Monitor, dated March 23, 2022;

THIS COURT ORDERS AND DECLARES THAT

- | | | |
|----|--------------------------------------|---|
| 1. | Access to sealed items permitted by: | <input type="checkbox"/> Counsel of Record |
| | | <input type="checkbox"/> Parties on Record |
| | | <input checked="" type="checkbox"/> Further Court Order |
| | | <input type="checkbox"/> Others |

Items to be Sealed

Document Name	Date Filed (<i>Date on Court Stamp</i>)	Number of copies filed, including any extra copies for the judge	Duration of sealing order	Sought	Granted	
					Yes	No
Entire File				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Specific Documents Twelfth Report of the Monitor, dated March 23, 2022, with Confidential Appendix A	To be filed	1	Until further order	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Clerk's Notes				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Order				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Endorsement of this Order by counsel appearing, other than counsel for the Monitor is hereby dispensed with.

BY THE COURT

REGISTRAR

ENDORSEMENT ATTACHED

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyer for the Applicant
Cassels Brock & Blackwell LLP
(Mary I.A. Buttery, Q.C. and Jared Enns)

Schedule "A"

List of Counsel

Name of Counsel	Party Represented

NO. S-209201
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF 1077 HOLDINGS CO-OPERATIVE
AND 1314625 ONTARIO LIMITED

PETITIONERS

SEALING ORDER

CASSELS BROCK & BLACKWELL LLP

Barristers & Solicitors
2200 – 885 West Georgia Street
Vancouver, B.C. V6C 3E8
Telephone: (604) 691-6100
Facsimile: (604) 691-6120

LW/sd

****RETURN VIA FILING AGENT: DYE & DURHAM****

SCHEDULE "C"

NO. S-209201
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF 1077 HOLDINGS CO-OPERATIVE
AND 1314625 ONTARIO LIMITED

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)	FRIDAY, THE 1 ST DAY
MADAM JUSTICE FITZPATRICK)	OF APRIL, 2022

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor (and, in such capacity, the "**Monitor**") of 1077 Holdings Co-operative (formerly, Mountain Equipment Co-operative) and 1314625 Ontario Limited (collectively, the "**Petitioners**"), coming on for hearing at Vancouver, British Columbia, on the 1st day of April, 2022, via Microsoft Teams videoconference; AND ON HEARING Mary I.A. Buttery, Q.C. and Jared Enns, counsel for the Monitor, and those other counsel listed in **Schedule "A"**; AND UPON READING the material filed, including the Eleventh Report of the Monitor, dated December 1, 2021, and the Twelfth Report of the Monitor, dated March 23, 2022 (the "**Twelfth Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. All terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order, pronounced in these proceedings on October 2,

2020 (the “**ARIO**”), the Claims Process Order, pronounced in these proceedings on November 27, 2020 (the “**Claims Process Order**”), or the Twelfth Report, as applicable.

2. All Claims, against the Petitioners, including Pre-filing Claims, Restructuring Period Claims, D&O Claims, and Employee Claims (as such terms are defined in the Claims Process Order), which have been allowed by the Monitor accordance with the Claims Process Order, shall be accepted and valid Claims (the “**Accepted Claims**”) for the purposes of the distributions to be made by the Monitor in accordance with and pursuant to the provisions of this Order.
3. All Claims, except for Disputed Claims, against the Petitioners, which were: (i) not asserted or preserved as required by the Claims Process Order, or (ii) were otherwise disallowed by the Monitor pursuant to the Claims Process Order (and which are not Disputed Claims), shall be forever barred and extinguished (each such claim, a “**Barred and Extinguished Claim**”), and any person who hereafter asserts a Barred and Extinguished Claim shall not be entitled to participate in the distributions provided for in paragraphs 5 and 6 of this Order.
4. The Proposed Distribution Methodology for the distributions to be made by the Monitor under and pursuant to the terms of this Order is hereby approved.
5. The Monitor, on behalf of the Petitioners, is hereby authorized, directed, and empowered to make an interim cash distribution, in accordance with the Proposed Distribution Methodology in the aggregate amount of no more than \$23.3 million, to:
 - (a) each Claimant holding an Accepted Claim for their applicable *pro rata* amount;
 - (b) each Employee Claimant holding an Accepted Claim for their applicable *pro rata* amount; and
 - (c) a “top-up” amount to those Employee Claimants who would have otherwise been positively affected by a determination under subsection 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“**WEPPA**”).
6. Upon the filing of a Monitor’s Certificate in substantially the form attached hereto as **Schedule “B”**, and without further Order of this Court, the Monitor is hereby authorized,

directed, and empowered to, in its sole discretion, make the following distributions in accordance with the Proposed Distribution Methodology:

- (a) further interim distributions to all Claimants and Employee Claimants holding Accepted Claims for their *pro rata* amounts; and
- (b) a final distribution to all Claimants and Employee Claimants, except those whose *pro rata* final distributions are not equal to or greater than \$10.00.

7. Any distribution and or any payments/deliveries made by the Monitor in accordance with this Order, shall not constitute a "distribution", and the Monitor shall not constitute a "legal representative" or "representative" of the Petitioners or "other person" for the purposes of Section 159 of the *Income Tax Act* (Canada), Section 270 of the *Excise Tax Act* (Canada), Section 46 of the *Employment Insurance Act* (Canada), or any other similar federal, provincial or territorial tax legislation in the Provinces or Territories in which the Petitioners conducted business (collectively, the "**Statutes**"), and the Monitor in making any such payment or deliveries of funds in accordance with this Order is not "distributing", nor shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitor shall not incur any liability under the Statutes for making any payments or deliveries in accordance with this Order or failing to withhold amounts, ordered or permitted hereunder, and the Monitor shall not have any liability for any of the Petitioners' tax liabilities regardless of how or when such liabilities may have arisen, and is hereby forever released, remised and discharged from any claims against the Monitor under or pursuant to the Statutes or otherwise at law, arising as a result of the distributions and deliveries in accordance with this Order, and any claims of such nature are hereby forever barred.
8. The distributions made to Employee Claimants shall be in lieu of any and all amounts they might have otherwise received from Service Canada, through its administration of the Wage Earner Protection Program, had a determination been made under subsection 5(5) of WEPPA.

9. All distributions shall be made in Canadian dollars, regardless of the currency indicated in the Proof of Claim, calculated by the Monitor as at the Filing Date, in accordance with paragraph 4 of the Claims Process Order.
10. All distributions made by the Monitor pursuant to and in accordance with this Order shall be free and clear of the Charges provided for in the ARIO.
11. The Monitor or any other person facilitating distributions pursuant to this Order shall be entitled to deduct and withhold from any such distribution to any Claimant and Employee Claimant, as the case may be, such amounts as may be required to be deducted or withheld under any applicable law including, without limitation, any tax withholdings, statutory deductions and/or any EI overpayments, and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law.
12. Notwithstanding:
 - (a) the pendency of these proceedings or the termination of these proceedings;
 - (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985 c. B-3, as amended (the "**BIA**") in respect of any of the Petitioners and any bankruptcy order issued pursuant to any such application; or
 - (c) any assignment in bankruptcy made in respect of any of the Petitioners,any distributions made pursuant to this Order are final and irreversible and shall be binding upon any trustee in bankruptcy that may be appointed in respect of the Petitioners, and shall not be void or voidable by creditors of the Petitioners, nor shall any such distributions constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers-at-undervalue or other reviewable transactions under the BIA or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the Petitioners.

13. The Monitor shall establish, hold and maintain a reserve fund of in the amount \$733,000 (the "**St. Denis Claim Reserve**"), being the quantum of the larger of the two St. Denis Claims, pending a determination of both entitlement to and quantum of the St. Denis Claim.
14. Upon a resolution of the extant issues regarding entitlement to and quantum of the St. Denis Claim, the Monitor shall make a distribution to the holder of the St. Denis Claim in respect of its *pro rata* amount and any surplus remaining in the St. Denis Claim Reserve shall form part of the remaining funds available for further distributions to the Claimants and Employee Claimants.
15. The Monitor, whether in its personal capacity or in its capacity as the Monitor:
 - (a) shall have all of the protections provided to it as an officer of the Court, including the protections granted pursuant to the CCAA and other orders granted in these CCAA proceedings; and
 - (b) shall incur no liability or obligation as a result of carrying out any duties or work in connection with this Order, save and except for any gross negligence or willful misconduct.
16. The Monitor shall be at liberty, and is hereby authorized and empowered to:
 - (a) apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order; and
 - (b) take any further steps that the Monitor deems necessary or desirable in order to complete the distributions described in and authorized by this Order.

BY THE COURT

REGISTRAR

ENDORSEMENT ATTACHED

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Lawyers for the Applicant
Cassels Brock & Blackwell LLP
(Mary I.A. Buttery, Q.C. and Jared Enns)

Schedule “A”
List of Counsel

Name of Counsel	Party Represented

Schedule “B”
Monitor’s Certificate

NO. S-209201
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF 1077 HOLDINGS CO-OPERATIVE
AND 1314625 ONTARIO LIMITED

PETITIONERS

MONITOR’S CERTIFICATE

RECITALS

- A. On September 14, 2020, 1077 Holdings Co-operative (then known as Mountain Equipment Co-operative) and 1314625 Ontario Limited (collectively, the “**Petitioners**”) obtained an initial order pursuant to which, *inter alia*, the within proceedings were commenced under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, and Alvarez & Marsal Canada Inc. was appointed as the monitor of the Petitioners (and, in such capacity, the “**Monitor**”).
- B. Unless otherwise indicated herein, capitalized terms shall have the meaning ascribed to them in the Distribution Approval Order (as defined below), and the Twelfth Report of the Monitor, dated March 23, 2022.
- C. On April 1, 2022, this Court pronounced an Order (the “**Distribution Approval Order**”) approving the Monitor’s Proposed Distribution Methodology and authorizing the Monitor to, *inter alia*:
 - (i) make an interim distribution to Claimants and Employee Claimants holding Accepted Claims, on a *pro rata* basis, in the aggregate amount of no more than \$23.3 million;
 - (ii) create the St. Denis Claim Reserve; and
 - (iii) in its sole discretion, make further *pro rata* distributions to all Claimants and Employee Claimants holding Accepted Claims without further Order of this Court, upon the filing of a Monitor’s Certificate with this Court.

THE MONITOR HEREBY CERTIFIES the following:

1. The Monitor has completed a further *pro rata* distribution to all Claimants and Employment Claimants holding Accepted Claims in the aggregate amount of \$____.
2. This Certificate was filed by the Monitor on ●, 2022.

Alvarez & Marsal Canada Inc. in its capacity as
the court-appointed Monitor of 1077 Holdings
Co-operative and 1314625 Ontario Limited, and
not in its personal or corporate capacity

Per: _____

Name: Todd M. Martin

Title: Senior Vice President

NO. S-209201
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF 1077 HOLDINGS CO-OPERATIVE
AND 1314625 ONTARIO LIMITED

PETITIONERS

ORDER MADE AFTER APPLICATION

CASSELS BROCK & BLACKWELL LLP

Barristers & Solicitors

2200 – 885 West Georgia Street

Vancouver, B.C. V6C 3E8

Telephone: (604) 691-6100

(Attention: Mary I.A. Buttery, Q.C. and Jared Enns)

JE/sd

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