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: Gregory Norman Crosby

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 **10:00 a.m. on November 3, 2021, via Microsoft Teams videoconference**, for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An order affirming the Crosby NORD (as that term is defined below) substantially in the form attached hereto as **Schedule "A"**.

2. An order substantially in the form attached hereto as **Schedule "B"** sealing the Confidential Tenth Report of the Monitor dated October 25, 2021 (the "**Confidential Tenth Report**").

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 (as defined in the Confidential Tenth Report) 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 Mutuals Canada (the "**Public Intervenors' Application**").

6. On October 2, 2020, this Court dismissed the Landlords' Application, the Members' Application, and the Public Intervenors' 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 November 27, 2020, this Court granted an order enhancing the powers of the Monitor 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**").

8. The Stay Period has been extended from time-to-time, and was most recently extended to December 10, 2021.

B. Overview of the Claims Process

9. Capitalized terms used but not defined in this section have the meaning ascribed to them in the Claims Process Order.

10. 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.

11. On December 14 and 18, 2020, a notice to creditors was published in the Globe and Mail (National Edition) and the Vancouver Sun.

12. Since the commencement of the Claims Process, the Monitor has received 95 Proofs of Claim with a total claim value of approximately $82.5 million and has responded to 87 Claimants through NORDs, except where the Proof of Claim had been withdrawn by the Claimant or accepted in its entirety by the Monitor.

C. Overview of the Claims Process Applicable to Employee Claimants

13. Paragraph 23 of the Claims Process Order provides for a "negative claims process", in which Employee Claimants were provided with an Employee Claims Package setting out an assessment of the amount and classification of their respective Employee Claims, as reflected in the Books and Records of the Petitioners.

14. Pursuant to paragraph 24 of the Claims Process Order, in the event an Employee Claimant disagreed with the assessment of the amount and/or classification of their Employee Claim, they were required to deliver an Employee Claim, by the Claims Bar Date, setting out their Employee Claim.

15. Paragraphs 26-28 and 30 of the Claims Process Order set out the following process for the resolution and adjudication of Claims:

    (a) the Monitor would review all Proofs of Claim, including those submitted by Employee Claimants and, in consultation with the Petitioners, determine whether to accept, revise or reject any of the Claims;

    (b) in the event that the Monitor determined to revise or reject any of the Claims, the Monitor send the Employee Claimant a Notice of Revision or Disallowance by no later than March 22, 2021, setting out the reasons for such revision or rejection;

    (c) any Employee Claimant who intended to dispute a Notice of Revision or Disallowance would then submit a Notice of Dispute of Revision or Disallowance, along with the reasons for dispute, to the Monitor no later than thirty (30) days after the date on which they were deemed to have received the Notice of Revision or Disallowance; and

    (d) in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance was not settled in a time period or in a manner satisfactory to the Monitor, the Monitor shall, at its election, refer the dispute to either the Claims Officer or the Court for adjudication.

16. As detailed further below, there is an Employee Claimant with a disputed Claim (the "**Disputed Employee Claim**"). To date, the Monitor has not been able to resolve this Claim in a satisfactory manner or time period.

17. Accordingly, and pursuant to paragraphs 28(b) and 30 of the Claims Process Order, the Monitor hereby refers the Disputed Employee Claim, the details of which are provided below and in the Confidential Tenth Report, to this Court for adjudication.

D. The Disputed Employee Claim

18. Mr. Crosby's employment was terminated by the Petitioners effective October 8, 2020. At the time of termination, Mr. Crosby was employed as a Team Leader of the Petitioners' retail store located in Vancouver, British Columbia.

19. On December 11, 2020, an Employee Claims Package was sent to Mr. Crosby, which included an Employee Letter setting out the assessment of the amount and classification of his Employee Claim based on the books and records, and other relevant information in the Petitioners' possession.

20. As detailed further in the Confidential Tenth Report, Mr. Crosby's unsecured pre-filing claim was assessed based on the following:

    (a) eight weeks of compensation for length of service (otherwise referred to herein as "statutory termination pay") under the *Employment Standards Act*, RSBC 1996, c 113 (the "***ESA***"), pursuant to the terms of his employment agreement (the "**Employment Agreement**"), which expressly limit Mr. Crosby's entitlements on termination to the minimums under provincial employment standards legislation. The Employment Agreement is attached as appendix C to the Confidential Tenth Report;

    (b) vacation entitlement at 10%, calculated on the statutory termination pay; and

    (c) a nominal deduction for an employee loan due from Mr. Crosby to the Petitioners.

21. On February 10, 2021, Mr. Crosby submitted a Proof of Claim asserting an unsecured Claim (the "**Crosby Claim**") for, *inter alia*, the following:

    (a) common law notice, inclusive of the statutory termination pay (8 weeks);

    (b) an increase in the average hours worked per week;

    (c) vacation entitlement, calculated on his asserted common law notice entitlement;

    (d) benefits, calculated on his asserted common law notice entitlement;

    (e) losses incurred due to the Petitioners instructing him to apply for the Canada Emergency Response Benefit (the "**CERB**") as opposed to the Canada Emergency Wage Subsidy (the "**CEWS**"); and

    (f) damages in relation to wrongful dismissal and a BC Human Rights Tribunal (the "**Tribunal**") complaint (the "**BCHRT Complaint**"), that was filed by Mr. Crosby on September 4, 2020 (and apparently accepted for filing by the Tribunal on or about February 10, 2021).

22. On March 22, 2021, the Monitor issued a Notice of Revision or Disallowance (the "**Crosby NORD**"), pursuant to which the Crosby Claim was disallowed and/or revised for the following reasons:

(a) Mr. Crosby's Employment Agreement expressly limits his entitlements on termination to eight weeks of statutory termination pay under the *ESA* and he is therefore not entitled to pay in lieu of notice of termination at common law;

(b) the Monitor increased Mr. Crosby's claim of average hours worked based on the information he provided, for the purposes of calculating his statutory termination pay entitlement;

(c) Mr. Crosby had not provided supporting documentation for an entitlement to the benefits, as claimed, which amount was not supported by the Petitioners' records or Mr. Crosby's employment agreement;

(d) the CEWS is only applicable to employers, not to employees;

(e) there was no *prima facie* case of discrimination pled in the BCHRT Complaint, and so the contingent claim was valued at $0;

(f) effective October 30, 2020 (the "**Closing Date**"), substantially all assets and business of the Petitioners were sold to a third party (the "**Purchaser**") and the Petitioners ceased all operations and no longer had any employees at that time. Therefore, any job postings were made by the Purchaser; the Petitioners did not post the job postings referenced by Mr. Crosby. Furthermore, the Purchaser and Petitioners are separate legal entities and there is no contractual or statutory obligation under the Employment Agreement or the *ESA* that would have entitled Mr. Crosby to be recalled on the basis of seniority or otherwise; and

(g) upon further review, the Monitor excluded the employee loan owing from Mr. Crosby to the Petitioners in its calculation of the allowed claim.

23. On April 21, 2021, Mr. Crosby submitted a Notice of Dispute (the "**Crosby NOD**"), disputing the Monitor's reasons and calculation of his claim, as set out in the Crosby NORD.

24. A copy of the Crosby NOD is attached as appendix E to the Confidential Tenth Report. As detailed further therein:

(a) the basis for disputing the Crosby NORD is similar to the rationale provided in support of his Claim; and

(b) Mr. Crosby acknowledges that although there is no obligation to recall employees in order of seniority, he is requesting special consideration when reviewing his claim for damages related to wrongful dismissal.

25. On July 9, 2021, the Monitor emailed to Mr. Crosby a letter in response to the NOD disallowing the NOD amount and reiterating the Monitor's reasons for disallowing his Claim (as set out in the Crosby NORD). The Monitor then requested that Mr. Crosby withdraw the NOD by July 16, 2021, failing which the Monitor would be referring the matter for adjudication pursuant to the Claims Process Order.

26. On October 8, 2021, the Monitor notified Mr. Crosby that his disputed claim would be referred to the Court for adjudication and/or determination pursuant to paragraph 30 of the Claims Process Order, and that November 3, 2021, had been reserved to hear this matter.

27. On November 14, 2021, Mr. Crosby confirmed his availability to proceed on November 3, 2021. Though there were subsequent discussions, the Monitor was not able to resolve Mr. Crosby's claim and, on October 22, 2021, confirmed it would be proceeding with a hearing on November 3, 2021.

28. The components of the claim that remain subject to dispute between the Monitor and Mr. Crosby include:

    (a) whether Mr. Crosby's termination entitlements are limited by the Employment Agreement to the statutory termination pay required by the *ESA*, or whether he is entitled to pay in lieu of notice of termination at common law;

    (b) the quantum of benefits;

    (c) losses related to the CEWS federal program; and

    (d) damages related to the Tribunal complaint and wrongful dismissal.

29. In the Monitor's view, and subject to determination and review by this Court:

    (a) The Employment Agreement expressly limits Mr. Crosby's entitlements on termination to eight weeks of statutory termination pay, pursuant to and in accordance with the *ESA*;

    (b) Mr. Crosby has not proven an entitlement to benefits in the amount claimed pursuant to his Employment Agreement or otherwise, and it is not required to be included in the calculation of statutory termination pay;

    (c) in the event that Mr. Crosby is entitled to pay in lieu of notice of termination at common law, vacation pay would still be calculated on the statutory termination pay and not on the entire common law entitlement;

    (d) Mr. Crosby's claim for losses from the CEWS is not applicable to the quantum of his claim;

    (e) the BCHRT Complaint is stayed pursuant to the ARIO and, in any event, does not disclose a *prima facie* case of discrimination, and Mr. Crosby has therefore not discharged his obligation to prove this aspect of his Claim; and

    (f) the Monitor does not view Mr. Crosby's claim for wrongful dismissal as meritorious, as the job postings were posted by the Purchaser, not the Petitioners, following the Closing Date, and there is no contractual or statutory right of recall (which Mr. Crosby has acknowledged in the NOD).

30. Accordingly, and subject to the review and determination of this Court, the Monitor requests that the Crosby NORD be upheld and affirmed.

Part 3: LEGAL BASIS

A. Sealing Order

1. The Monitor requests an order sealing the Confidential Tenth Report.

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 Tenth Report contains sensitive, personal, and confidential information about Mr. Crosby's employment, the termination of his employment, his salary, employment agreement, the calculation and determination of the quantum of his statutory termination pay, and information pertaining the BCHRT Complaint.

7. Should the Confidential Tenth Report not be sealed, it would result in the public disclosure of information which Mr. Crosby would reasonably expect to be kept confidential and which may pose a serious risk to Mr. Crosby's individual dignity.

8. The salutary effects of the requested 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. Order Affirming the Crosby NORD

I. Burden of Proof

9. On this application, the Monitor seeks an order pursuant to section 20(1)(a)(iii) of the *CCAA*, which provides that if a claim "is not admitted by the company, the amount is to be determined by the court on summary application by the company or the creditor."

CCAA, s 20(1)(a)(iii).

10. Similarly, paragraphs 28(b) and 30 of the Claims Process Order provide that, "in the event a dispute raised in a Notice of Dispute of Revision is not settled within a time period or in a manner satisfactory to the Monitor...the Monitor shall refer the dispute...to a Claims Officer or the Court for adjudication at its election."

Claims Process Order, paras 28(b) and 30

11. Section 20 of the *CCAA* dictates that the determination of a disputed claim is to proceed by way of a summary trial "unless to do otherwise would be unjust, or there is some other compelling reason against a summary trial."

Pine Valley Mining Corp Re, 2008 BCSC 356 [***Pine Valley Mining***], at para 16
Walter Energy Canada Holdings, Inc (Re), 2017 BCSC 709, at para 20

12. In this application, Mr. Crosby bears the onus of proving the validity of his Claim, as reflected in the Crosby NOD. Neither the Claims Process, conducted pursuant to the Claims Process Order, nor the provisions of the *CCAA*, alter this principle of substantive law.

Pine Valley Mining, at paras 7 and 13.

13. The function of the Monitor, in administering the Claims Process pursuant to the Claims Process Order, "is to determine the validity and amount of a claim on the basis of the evidence submitted...[its] process in doing so is in no way akin to an adversarial process."

Pine Valley Mining, at para 13

14. In this respect, the Monitor's "findings and opinion should be respectfully considered, [but] he is not entitled to deference in the sense that would alter the burden of proof ordinarily imposed on the claimant."

Pine Valley Mining, at para 13

15. As detailed further herein, Mr. Crosby has not discharged his burden to prove that the quantum of his Employee Claim is different than the amount allowed by the Monitor in the Crosby NORD.

II. The Monitor's Response to the NOD

16. Mr. Crosby's NOD raises a number of disputes with respect to the quantum of his Employee Claim (as reflected in the Crosby NORD). With respect, and in complete answer to Mr. Crosby's assertions in the Crosby NOD, the Monitor notes the following.

a. The Applicable Notice Period

17. Mr. Crosby's Employment Agreement, a copy of which is appended to the Confidential Tenth Report , contains a termination provision (the "**Termination Provision**") that: (i)

expressly limits the amount of notice to the minimum notice required under the *ESA*; and (ii) provides confirmation that "the notice and pay instead of notice provision" are fair and reasonable, and satisfy, *inter alia*, any and all common law and statutory entitlements.

18. It is a well-established legal principle that the presumption of an employee's entitlement to reasonable notice at common law is "rebuttable if the contract of employment clearly specifies some other period of notice, whether expressly or impliedly", so long as it complies with the minimum requirements of applicable provincial employment standards legislation.

Machtinger v HOJ Industries Ltd., 1992 CanLII (SCC) (p. 998)
Bailey v Service Corporation International (Canada) ULC, 2018 BCSC 235, at paras 170-179
Brown v Utopia Day Spas and Salons Ltd, 2014 BCSC 1400, at paras 17-23

19. This requirement "does not mean that the parties must use a specific phrase or particular formula…[i]t suffices that the parties' intention to displace an employee's common law notice rights can be readily gleaned from the language agreed to by the parties."

Nemeth v Hatch Ltd, 2018 ONCA 7 [***Nemeth***], at para 9

20. On a plain reading of the Termination Provision, it is clear that:

(a) it contemplates and provides for all minimum entitlements required by the *ESA* upon termination; and,

(b) the intention of the parties to "displace" Mr. Crosby's common law notice rights is clear and unambiguous.

Accordingly, the Termination Provision is valid and enforceable, and operates to limit Mr. Crosby's entitlements on termination to the statutory minimums required by the *ESA*, being eight weeks of statutory termination pay.

Nemeth, at paras 8-9
ESA, section 63

21. Accordingly, the Monitor respectfully submits that this aspect of the Crosby NOD should be dismissed by this Court, and the Crosby NORD upheld.

b. Damages

22. Mr. Crosby has asserted that he is entitled to "damages", in addition to damages in lieu of reasonable notice (which, as set out above, he has no entitlement to based on the express wording of the Employment Agreement).

23. While it is unclear what additional "damages" Mr. Crosby is asserting, the Monitor notes the following:

(a) to the extent Mr. Crosby's claim may relate to punitive damages:

(i) punitive damages are awarded in the employment context only if the defendant: (i) committed an independent actionable wrong, and (ii) engaged in conduct so malicious oppressive and high-handed that it offends the court's sense of decency;

(ii) punitive damages are reserved for the most egregious of cases and are awarded in exceptional circumstances only, as: (i) their objectives "are retribution, denunciation and deterrence"; and (ii) an award of punitive

damages is "restricted to cases where an employer's conduct is so malicious and outrageous that it is deserving of punishment"; and,

(iii) Mr. Crosby's employment was terminated in accordance with the provisions of the Employment Agreement, and his entitlements on termination have been calculated in accordance therewith and with the relevant provisions of the *ESA*. Mr. Crosby has not provided any evidence that demonstrates the Petitioners: (i) breached its contractual duty to act honestly and in good faith or committed any other independent actionable wrong that would warrant an award of punitive damages; and/or (ii) engaged in reprehensible conduct deserving of condemnation or punishment.

Vorvis v Insurance Corp of British Columbia, 1989 CanLII (SCC), [1989] 1 SCR at para 27
Whiten v Pilot Insurance Co, 2002 SCC 18, at paras 36-37
Deol v Dreyer Davison LLP, 2020 BCSC 771, at paras 142-145

(b) to the extent Mr. Crosby's claim may relate to aggravated damages:

(i) aggravated damages are compensatory and are available only if: (i) an employer is found to have engaged in conduct during the course of dismissal that is considered "unfair or is in bad faith by being... untruthful, misleading or unduly insensitive;" and (ii) the employee establishes that the employer's bad faith conduct caused the employee to suffer actual damages";

(ii) such damages are awarded on the basis that "employers have a duty of good faith and fair dealing in the manner of dismissal", and a breach of this duty can result in an award of aggravated damages;

(iii) ordinary distress and hurt feelings, which have been recognized as "part and parcel of the loss of employment" are not compensable through an award of aggravated damages; and

(iv) in order to claim entitlement to an award of aggravated damages, the employee must establish that: (i) the employer's conduct in effecting the termination was unfair or in bad faith because, for example, it was untruthful, misleading, or unduly insensitive; and (ii) the employee has suffered mental distress as a result of the manner of the dismissal, and not just as a result of the dismissal itself.

Honda Canada Inc. v Keays, 2008 SCC 39, at paras 59-60
Ram v The Michael Lacombe Group Inc, 2017 BCSC 212, at para 115
Deol v Dreyer Davison LLP, 2020 BCSC 771, at paras 120-126

24. Mr. Crosby has not provided any evidence sufficient to prove an entitlement to aggravated damages. Accordingly, the Monitor submits that this portion of Mr. Crosby's Employee Claim should also be dismissed.

c. The Balance of Mr. Crosby's Claim

25. With respect, the balance of Mr. Crosby's claim is unmeritorious. In this respect, the Monitor notes the following:

(a) Mr. Crosby has not provided evidence that he is entitled to benefits in the amount claimed, pursuant to his employment agreement or otherwise, and pay in lieu of benefits is not required on statutory termination pay;

(b) in the event that Mr. Crosby is entitled to pay in lieu of notice of termination at common law, vacation pay would still be calculated on the statutory termination pay and not on the entire common law entitlement;

(c) Mr. Crosby's claim for losses from the CEWS is not applicable to the quantum of his claim, as the CEWS is not available to employees;

(d) the BCHRT Complaint is stayed pursuant to the ARIO and, in any event, does not disclose a *prima facie* case of discrimination; and

(e) to the extent Mr. Crosby has asserted that the Monitor's position is "disingenuous", the Monitor notes that: (i) the job posting referenced in the Crosby NOD was posted by the Purchaser, not the Petitioners, following the Closing Date, and (ii) there is no contractual or statutory right of recall (which Mr. Crosby has expressly acknowledged in the NOD).

III. Conclusion

26. For all of the foregoing reasons, the Monitor respectfully requests that this Court affirm the quantum of Mr. Crosby's Employee Claim, as set out in the Crosby NORD.

Part 4: MATERIAL TO BE RELIED ON

1. Confidential Tenth Report of the Monitor dated October 25, 2021 (to be sealed); and

2. such further and other materials as counsel may advise and this Court may permit.

The applicant estimates that the Application will take 2.5 hours.

☐ 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: October 25, 2021

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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE	)	WEDNESDAY, THE 3RD DAY
	)	
MADAM JUSTICE FITZPATRICK	)	OF NOVEMBER, 2021

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 and 1314625 Ontario Limited, and coming on for hearing at Vancouver, British Columbia, on the 3rd day of November, 2021; AND ON HEARING Mary I.A. Buttery, Q.C. and Jared Enns, counsel for the Monitor, those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein, including the Confidential Tenth Report of the Monitor dated October 25, 2021;

THIS COURT ORDERS AND DECLARES THAT

1. The Notice of Revision or Disallowance (the "**NORD**") issued by the Monitor on March 22, 2021, and in respect of the Proof of Claim filed by Gregory Norman Crosby ("**Crosby**") on February 9, 2021, is hereby affirmed.

2. The Notice of Dispute of Revision or Disallowance filed by Crosby on April 21, 2021, and in respect of the NORD, is hereby disallowed in its entirety.

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

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

BY THE COURT

REGISTRAR

Schedule "A"

List of Counsel

Name of Counsel	Party Represented

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	)	WEDNESDAY, THE 3RD DAY
	)	
MADAM JUSTICE FITZPATRICK	)	OF NOVEMBER, 2021

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 and 1314625 Ontario Limited, and coming on for hearing at Vancouver, British Columbia, on the 3rd day of November, 2021; AND ON HEARING Mary I.A. Buttery, Q.C. and Jared Enns, counsel for the Monitor, those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein, including the Confidential Tenth Report of the Monitor dated October 25, 2021;

THIS COURT ORDERS AND DECLARES THAT

1. Access to sealed items permitted by:

[_] Counsel of Record

[_] Parties on Record

[X] Further Court Order

[_] Others

Items to be Sealed

Document Name	Date Filed (*Date on Court Stamp*)	Number of copies filed, including any extra copies for the judge	Duration of sealing order	Sought	Granted	
					Yes	No
Entire File				☐	☐	☐
Specific Documents Confidential Tenth Report of the Monitor, dated October 25, 2021.	To be filed	1	Until further order	[X]	[X]	☐
Clerk's Notes				☐	☐	☐
Order				☐	☐	☐

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

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)

BY THE COURT

_____
REGISTRAR

Schedule "A"

List of Counsel

Name of Counsel	Party Represented