

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
16323715 CANADA INC.**

**(Applicant)**

**FACTUM OF THE APPLICANT  
(Re: CCAA Termination Order)  
(Returnable October 7, 2024)**

October 4, 2024

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**TO: SERVICE LIST**

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**PART I - OVERVIEW<sup>1</sup>**

1. On October 10, 2023, Tacora commenced these CCAA Proceedings to stabilize its business operations and to secure a going-concern solution for the benefit of the Company's employees, suppliers and other stakeholders.
2. These CCAA Proceedings have achieved their purpose. Tacora's extensive solicitation efforts prior to and during the CCAA Proceedings ultimately resulted in Tacora entering into the Subscription Agreement and Transactions with the Investors, which closed on September 19, 2024.
3. The Applicant seeks the CCAA Termination Order, among other things:
  - (a) terminating the CCAA Proceedings effective upon service by the Monitor of the Monitor's Termination Certificate;
  - (b) approving the Twelfth Report and the activities of the Monitor referred to therein;
  - (c) approving the fees of the Monitor and its counsel incurred after July 7, 2024, and the anticipated further fees and disbursements of the Monitor and its counsel required to complete the administration of the CCAA Proceedings;
  - (d) terminating, releasing and discharging all of the Court-ordered charges granted in these CCAA Proceedings upon the CCAA Termination Time;

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<sup>1</sup> Capitalized terms used and not defined herein have the meanings ascribed to them in the Affidavit of Heng Vuong sworn September 30, 2024 (the "**Vuong Affidavit**").

- (e) discharging and releasing FTI in its capacity as Monitor in the CCAA Proceedings effective as at the CCAA Termination Time;
- (f) enhancing the Monitor's powers as they relate to ResidualCo; and
- (g) extending the Stay Period until the CCAA Termination Time or such later date as the Court may order.

4. The relief sought in the CCAA Termination Order is appropriate in the circumstances to enable the Applicant and the Monitor to complete the remaining matters in these CCAA Proceedings in an efficient and cost-effective manner, and to bring these CCAA Proceedings to an orderly conclusion.

## **PART II - FACTS**

5. The facts with respect to this motion and the CCAA Proceedings are more fully set out in the Vuong Affidavit.

### **A. The Transactions<sup>2</sup>**

6. Tacora's extensive solicitation efforts prior to and during the CCAA Proceedings ultimately resulted in Tacora entering into the Subscription Agreement with the Investors, which was approved by this Court on July 26, 2024, pursuant to the Approval and Reverse Vesting Order.<sup>3</sup>

7. The Transactions were structured as a "reverse vesting" share transaction whereby:

- (a) the Investors and the Other New Equity Investor subscribed for and purchased various securities of Tacora and all existing equity securities in Tacora were cancelled and terminated. As a result, post-closing, the Investors and the Other New Equity Investor became the sole shareholders of Tacora; and

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<sup>2</sup> The Subscription Agreement and the Transactions are described further in the Affidavit of Heng Vuong sworn July 21, 2024.

<sup>3</sup> Vuong Affidavit at [para. 17](#).

- (b) all Excluded Assets, Excluded Contracts, and Excluded Liabilities were transferred and “vested out” to ResidualCo, a corporation incorporated by Tacora, to allow the Investors and the Other New Equity Investor to acquire Tacora’s business and assets on a “free and clear basis”.<sup>4</sup>
8. The Transactions closed on September 19, 2024.<sup>5</sup>
9. Among other things, the following occurred upon closing of the Transactions:
- (a) the Excluded Assets, Excluded Contracts and Excluded Liabilities were transferred to, assumed by and vested in ResidualCo;
  - (b) any Claims in respect of any Senior Priority Notes and Senior Secured Notes and any Claims remaining under the APF that were not otherwise satisfied were transferred to, assumed by and vested in ResidualCo;
  - (c) all of the right, title and interest in and to the Subscribed Shares were vested in the Investors and the Other New Equity Investor free and clear of and from all Claims and Encumbrances;
  - (d) all of the right, title and interest in and to the New Common Shares, New Secured Priority Notes, New Warrants and Unsecured Takeback Notes were vested in the Investors free and clear of any Encumbrances;
  - (e) the Monitor released to the Applicant the New Equity Offering Retained Cash Consideration; and
  - (f) Tacora was deemed to cease being an Applicant in these CCAA Proceedings, with ResidualCo becoming an Applicant in these CCAA Proceedings.<sup>6</sup>

**B. Remaining Activities in the CCAA Proceedings**

10. The following remaining activities are required to complete the CCAA Proceedings:

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<sup>4</sup> Vuong Affidavit at [para. 18](#).

<sup>5</sup> Vuong Affidavit at [para. 21](#).

<sup>6</sup> Vuong Affidavit at [para. 26](#).

- (a) certain necessary statutory and administrative steps for terminating the CCAA Proceedings, including finalizing dissolution of ResidualCo's subsidiaries;
- (b) bankrupting and administering ResidualCo; and
- (c) returning to Tacora any unused portion of the Administrative Expense Reserve pursuant to the terms of the Approval and Reverse Vesting Order following completion of the remaining activities and the bankruptcy of ResidualCo.<sup>7</sup>

11. The proposed CCAA Termination Order grants the Monitor expanded powers to exercise any powers (the “**Expanded Powers**”) which may be properly exercised by any board of directors of ResidualCo, including, but not limited to, assigning ResidualCo into bankruptcy and acting as Bankruptcy Trustee in the ResidualCo Bankruptcy.<sup>8</sup>

### **C. Approval of the Fees and Activities of the Monitor and its Counsel**

12. The proposed CCAA Termination Order seeks approval of: (a) the activities of the Monitor as set out in the Twelfth Report; and (b) approval of the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”).

13. Pursuant to paragraph 33 of the ARIO, the Monitor and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges as part of the costs of the CCAA Proceedings. Pursuant to paragraph 34 of the ARIO, the Monitor and its counsel are directed to pass their accounts from time to time.<sup>9</sup>

14. Pursuant to the Approval and Reverse Vesting Order granted July 26, 2024, the Court previously approved the fees and disbursements of the Monitor and its counsel for the period from October 10, 2023 to July 7, 2024.<sup>10</sup>

15. The activities of the Monitor are set out in the Twelfth Report.

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<sup>7</sup> Vuong Affidavit at [para. 41](#); Twelfth Report at [para. 25](#).

<sup>8</sup> Twelfth Report at [para. 26](#).

<sup>9</sup> *Tacora Resources Inc (Re)* (October 30, 2023), Toronto, CV-23-00707394-00CL ([Amended and Restated Initial Order](#)) (ON SC).

<sup>10</sup> Twelfth Report at [para. 41](#).

16. Details of the total fees and disbursements incurred by the Monitor and Cassels are set out in the Affidavit of Jodi Porepa sworn October 1, 2024, and the Affidavit of Ryan Jacobs sworn October 1, 2024 (the “**Fee Affidavits**”), respectively, attached as Appendices “F” and “G” to the Twelfth Report. The Fee Affidavits contain redactions to certain of the invoices to address privilege and confidentiality concerns.<sup>11</sup>

#### **D. Releases**

17. The proposed CCAA Termination Order seeks additional releases (the “**Additional Releases**”) in favour of the Monitor Released Parties, the ResidualCo D&O and the Trustee and Notes Collateral Agent (collectively, the “**Additional Released Parties**”).

18. The Applicant is seeking a release of the Monitor Released Parties for any and all claims that any Person may have or be entitled to assert against any of the Monitor Released Parties based in whole or in part on any act or omission, transaction, dealing or other occurrence in any way relating to, arising out of, or in respect of, these CCAA Proceedings or with respect to their respective conduct in these CCAA Proceedings.<sup>12</sup>

19. As the director of ResidualCo was not a director at the time of the Approval and Reverse Vesting Order, the Applicant is seeking to confirm that the release granted in such order applies to the ResidualCo D&O and the ResidualCo director from any and all present and future liabilities or claims of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) which may be incurred as a result of acting as a director or officer of ResidualCo.<sup>13</sup>

20. The Trustee and Notes Collateral Agent has requested that the Applicant seek relief permanently discharging and releasing the Trustee and Notes Collateral Agent from any duties and liabilities in acting in such capacity under the Indenture with respect to any Notes vested in ResidualCo.

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<sup>11</sup> Twelfth Report at [Appendices “F” and “G”](#).

<sup>12</sup> Vuong Affidavit at [para. 45](#).

<sup>13</sup> Vuong Affidavit at [para. 49](#).

21. After service of the Applicant's Motion Record and prior to the hearing of this motion, a specific carve out was negotiated for one aspect of the release in favour of the Trustee and Notes Collateral Agent for CrossingBridge Advisors, LLC ("**CrossingBridge**"), in respect of certain claims it seeks to preserve under the Intercreditor Agreement. A similar carve out for CrossingBridge was allowed by this Court as part of the releases granted by the Approval and Reverse Vesting Order. The proposed language for the carve out in the CCAA Termination Order is substantially the same as that contained in the Approval and Reverse Vesting Order.

#### **E. Stay Extension**

22. The Stay Period currently expires on October 7, 2024. Tacora is seeking an extension of the Stay Period until and including the CCAA Termination Time or such later date as the Court may order.

23. Prior to the CCAA Termination Time, ResidualCo and/or the Monitor are required to take various steps such as:

- (a) completing the necessary statutory and administrative steps for terminating the CCAA Proceedings and discharging the Monitor;
- (b) distributing the Remaining Fees and Disbursements of the Monitor and its counsel in connection with completion by the Monitor of its remaining duties and administration of the CCAA Proceedings;
- (c) bankrupting and administering ResidualCo; and
- (d) returning any unused portion of the Administrative Expense Reserve to Tacora pursuant to the terms of the Approval and Reserve Vesting Order after completion of the remaining activities.<sup>14</sup>

### **PART II - ISSUES**

24. The issue on this motion is whether this Court should grant the CCAA Termination Order.

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<sup>14</sup> Vuong Affidavit at [para. 41](#).

### PART III - LAW AND ANALYSIS

#### A. The Stay Period should be Extended

25. The Applicant is seeking an extension of the Stay Period from October 7, 2024, until and including the CCAA Termination Time or such later date as the Court may order.

26. The Court may grant an extension of the Stay Period “for any period that the court considers necessary” where: (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and (b) the applicant satisfies the court that it has acted, and is acting, in good faith and with due diligence.<sup>15</sup>

27. The extension of the Stay Period is necessary and appropriate in the circumstances to allow time for the Applicant and the Monitor to complete the outstanding activities required to complete the CCAA Proceedings in an efficient manner.<sup>16</sup> The extension of the Stay Period to the CCAA Termination Time would also obviate the need for a further attendance before the Court and avoid the parties incurring unnecessary costs.<sup>17</sup>

28. The Monitor is supportive of the proposed extension of the Stay Period and does not believe that it will materially prejudice any stakeholders.<sup>18</sup> Further, the Monitor expects that there will be sufficient funds in the Administrative Expense Reserve to pay any expenses of the CCAA Proceedings to the CCAA Termination Time.<sup>19</sup>

29. The Applicant has acted in good faith and with due diligence to complete the CCAA Proceedings.<sup>20</sup>

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<sup>15</sup> CCAA, [s. 11.02\(2\)-\(3\)](#).

<sup>16</sup> Vuong Affidavit at [para. 42](#); Twelfth Report at [para. 38](#).

<sup>17</sup> Vuong Affidavit at [para. 42](#); Twelfth Report at [para 38](#).

<sup>18</sup> Vuong Affidavit at [para. 43](#).

<sup>19</sup> Twelfth Report at [para. 39](#).

<sup>20</sup> Vuong Affidavit at [para. 44](#); Twelfth Report at [para. 39](#).



**B. The Monitor Should be Granted Expanded Powers**

30. The proposed CCAA Termination Order grants the Monitor the Expanded Powers and further authorizes the ResidualCo D&O to sign such documents and take such steps as are necessary to effectuate the efficient administration of the ResidualCo Bankruptcy.<sup>21</sup>

**C. The Monitor's Reports, Activities, Fees and Disbursements Should be Approved**

**1. The Monitor's Reports and Activities Should be Approved**

31. A request to approve a monitor's report "is not unusual" and "there are good policy and practical reasons for the court to approve of the Monitor's activities and providing a level of protection for monitors during the CCAA process...".<sup>22</sup> Specifically, Court approval:

- (a) allows the Monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the stakeholders from the delay that would be caused by:
  - (i) re-litigation of steps taken to date, and
  - (ii) potential indemnity claims by the Monitor.<sup>23</sup>

32. In this case, the Monitor's activities and conduct are described in detail in the Twelfth Report and should be approved. The Monitor carried out its activities, in good faith, in a manner

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<sup>21</sup> Twelfth Report at [para. 26](#).

<sup>22</sup> *Target Canada Co (Re)*, [2015 ONSC 7574](#) at [paras. 2](#) and [22](#) [*Target Canada*].

<sup>23</sup> *Target Canada* at [para. 23](#).

consistent with the provisions of the CCAA and in compliance with the Orders of the Court issued in these CCAA Proceedings.

## 2. Fees of the Monitor and the Monitor's Counsel Should be Approved

33. In approving the fees and disbursements of the Monitor and its counsel, the Court must consider the overriding principle of reasonableness and whether those fees were "fair and reasonable in all of the circumstances".<sup>24</sup>

34. The Court does not undertake a line-by-line analysis of the Monitor's invoices; rather, "[t]he focus of the fair and reasonable assessment should be on what was accomplished, not how much time it took".<sup>25</sup> The guiding principle is whether the fees are fair, reasonable and proportionate given the value of the Applicant's assets and liabilities, as well as the complexity of the Applicant's business and the CCAA proceedings. The Ontario Court of Appeal has provided guidance as to how to evaluate the quantum of requested fees, including assessing various factors including, but not limited to, (a) the time spent; (b) the Monitor's knowledge, experience and skill; (c) the responsibilities assumed; (d) the complications and difficulties encountered; (e) the results achieved; and (f) the cost of comparable services when performed in a prudent and economical manner.<sup>26</sup>

35. The Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings and the activities of the Monitor have been carried out in good faith and in accordance with the provisions of the Orders issued in the CCAA Proceedings.<sup>27</sup>

36. Provided that this Court grants the proposed CCAA Termination Order, all the matters to be addressed in the CCAA Proceedings, aside from any other additional minor matters required to wind-down these CCAA Proceedings, will have been accomplished. The Administrative Expense Reserve was established in the Subscription Agreement, and approved in the Approval and Reverse Vesting Order, to fund against, among other things, any remaining fees and disbursements to be incurred by: (a) the Monitor and Cassels in these CCAA Proceedings; and (b) the Bankruptcy Trustee and its counsel in the ResidualCo Bankruptcy (collectively, the "**Remaining Fees and Disbursements**"). The Monitor anticipates that the remaining amounts

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<sup>24</sup> *Nortel Networks Corp et al (Re)*, [2017 ONSC 673](#) at [para. 13](#) citing *Winalta Inc (Re)*, [2011 ABQB 399](#) at [para. 30](#).

<sup>25</sup> *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at [para. 45](#) [*Diemer*].

<sup>26</sup> *Confectionately Yours Inc (Re)*, [2002 CanLII 45059](#) (ONCA) at [paras. 42-54](#); *Diemer* at [para. 33](#).

<sup>27</sup> Twelfth Report at [para. 42](#).

held in the Administrative Expense Reserve will be sufficient to satisfy the Remaining Fees and Disbursements and any amounts remaining in the Administrative Expense Reserve will be returned to Tacora in accordance with the Approval and Reverse Vesting Order and the Subscription Agreement.<sup>28</sup>

37. The payment of the Remaining Fees and Disbursements is appropriate in the circumstances, as the use of the Administrative Expense Reserve for this purpose was previously approved in the Subscription Agreement and the Approval and Reverse Vesting Order, and it will avoid the need for the parties to return for another court hearing and incur additional unnecessary costs related thereto.<sup>29</sup>

38. Accordingly, the Applicant requests this Court approve the fees and disbursements of the Monitor and its counsel set out in the Fee Affidavits and the Monitor's use of the Administration Expense Reserve to satisfy the Remaining Fees and Disbursements, as: (a) the hourly rates charged by Cassels are consistent with the rates charged by large corporate law firms practicing in the area of corporate insolvency and restructuring; (b) Cassels' billing reflects work performed consistent with the Monitor's instructions; and (c) the overall fees charged by Cassels and the Monitor are reasonable and appropriate in the circumstances and were incurred validly in accordance with the provisions of the ARIO.<sup>30</sup>

#### **D. CCAA Termination Should be Approved**

39. The proposed CCAA Termination Order provides that the CCAA Proceedings shall be terminated upon service by the Monitor of an executed Termination Certificate on the service list in these CCAA Proceedings, certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with the CCAA Proceedings have been completed, including the ResidualCo Bankruptcy.<sup>31</sup>

40. Upon filing the Monitor's Termination Certificate, these CCAA Proceedings and the stay of proceedings will be terminated, and FTI will be released and discharged as Monitor.<sup>32</sup>

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<sup>28</sup> Twelfth Report at [para. 47](#).

<sup>29</sup> Twelfth Report at [para. 48](#).

<sup>30</sup> Twelfth Report at [paras. 49-50](#).

<sup>31</sup> Twelfth Report at [para. 29](#).

<sup>32</sup> Twelfth Report at [para. 30](#).

41. Section 11 of the CCAA provides this Court with broad discretion to make “any order that it considers appropriate in the circumstances.”<sup>33</sup> The discretion conferred by section 11 of the CCAA is not boundless. Rather, it must be exercised in furtherance of the CCAA’s remedial objectives, having regard to whether (a) the order sought is appropriate in the circumstances; (b) the debtor company is acting in good faith; and (c) the debtor company is acting with due diligence.<sup>34</sup>

42. In furtherance of the remedial objectives of the CCAA, this Court has routinely granted orders akin to the proposed CCAA Termination Order to terminate CCAA proceedings and discharge the court-appointed monitor.<sup>35</sup> Prior CCAA Termination Orders have also provided for a variety of additional relief to assist in the interim and subsequent periods surrounding the termination of the CCAA proceedings.

43. The Applicant submits that it is appropriate for this Court to terminate the CCAA Proceedings in the manner contemplated by the CCAA Termination Order, as:

- (a) Tacora and the Applicant have acted in good faith and with due diligence throughout these CCAA Proceedings;
- (b) all matters requiring resolution within the ambit of the CCAA Proceedings will have been completed by the CCAA Termination Time; and
- (c) the Monitor supports the termination of the CCAA Proceedings on the terms set out in the proposed CCAA Termination Order.

#### **E. The Additional Releases Should be Granted**

44. The proposed CCAA Termination Order seeks approval of the Additional Releases in favour of the Additional Released Parties. The Additional Releases are confirmatory and akin to the releases granted by this Court in the Approval and Reverse Vesting Order.

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<sup>33</sup> CCAA, [s. 11](#).

<sup>34</sup> *9354-9186 Quebec Inc v Callidus Capital Corp*, [2020 SCC 10](#) [*Callidus*] at [para. 49](#).

<sup>35</sup> *Golf Town Canada Holdings Inc (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL ([CCAA Termination Order](#)) (ON SC); *Old API Wind-Down Ltd (Re)* (May 17, 2019), Toronto, CV-18-603053-00CL ([CCAA Termination Order](#)) (ON SC); *Harte Gold Corp (Re)* (February 15, 2022), Toronto, CV-21-00673304-00CL ([CCAA Termination Order](#)).

## 1. This Court has Jurisdiction to Approve the Releases

45. It is now common practice for third party releases in favour of the parties to a restructuring, their professional advisors, their directors and officers, and the Monitor to be approved outside of a CCAA plan in the context of a transaction, including in the context of RVO transactions.<sup>36</sup> In approving releases in *Harte Gold*, Justice Penny, citing Chief Justice Morawetz in *Lydian*, applied the following criteria ordinarily considered with respect to third-party releases provided for under a plan:

- (a) whether the claims to be released are rationally connected to the purpose of the restructuring;
- (b) whether the release contributed to the restructuring;
- (c) whether the release is fair, reasonable and not overly broad;
- (d) whether the restructuring could succeed without the release;
- (e) whether the release benefits the debtor as well as the creditors generally; and
- (f) creditors' knowledge of the nature and the effect of the releases.<sup>37</sup>

46. Justice Penny found that it is not necessary for each of the above factors to apply for a release to be approved.<sup>38</sup>

## 2. The Releases Should be Granted in the Circumstances

47. The Additional Releases comply with the *Lydian* factors applied in *Harte Gold* and *Green Relief*, are consistent with releases previously approved by this Court in the Approval and Reverse Vesting Order, are reasonable and appropriate in the circumstances,<sup>39</sup> and should be granted:

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<sup>36</sup> *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#) at [para. 128](#); *Harte Gold Corp (Re)*, [2022 ONSC 653](#) at [para. 79](#); *Green Relief Inc (Re)*, [2020 ONSC 6837](#) [*Green Relief*] at [para. 76](#); *Re Nelson Education Limited*, [2015 ONSC 5557](#) at [para. 49](#); *Golf Town Canada Holdings Inc (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL ([CCAA Termination Order](#)) (ON SC); *Green Growth Brands Inc et al (Re)* (May 19, 2021), Toronto, Court File No. CV-20-00641220-00CL ([Order Terminating CCAA Proceedings](#)) (ON SC); *Fire & Flower Holdings Corp (Re)*, (August 29, 2023), Toronto, Court File No. CV-23-00700581-00CL ([Approval and Reverse Vesting Order](#)) (ON SC).

<sup>37</sup> *Harte Gold* at [paras. 78-86](#); *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at [para. 54](#); **see also** *Green Relief* at [para. 27](#), where Justice Koehnen also cited Chief Justice Morawetz's decision in *Lydian*.

<sup>38</sup> *Harte Gold* at [para. 80](#).

<sup>39</sup> *Harte Gold* at [paras. 78-86](#); *Green Relief* at [paras. 50-57](#).

- (a) **The Additional Releases are rationally connected to the purpose of the restructuring.** The Additional Releases will have the effect of diminishing claims against the Additional Released Parties. Given that a purpose of CCAA proceedings is to maximize creditor recovery, a release that helps achieve this goal is rationally connected to the purpose of the restructuring;
- (b) **The Additional Released Parties made significant and material contributions to the restructuring** in connection with Tacora's efforts to address its financial difficulties, the CCAA Proceedings, and the Transactions, which provide for a going concern solution for Tacora's business and represents the best outcome available to Tacora;<sup>40</sup>
- (c) **The Releases are fair, reasonable and not overly broad.** The scope of the Additional Releases is consistent with the Releases granted by this Court in the Approval and Reverse Vesting Order, along with recognized precedents, including *Harte Gold* and *Just Energy*.<sup>41</sup> Further, the Additional Releases explicitly carve out any claims (a) resulting from fraud or wilful misconduct; or (b) that are not permitted to be released pursuant to section 5.1(2) of the CCAA; and (c) with respect to the Trustee and Notes Collateral Agent, claims CrossingBridge seeks to preserve under the Intercreditor Agreement;<sup>42</sup>
- (d) **The Releases provide certainty and finality.** The Additional Releases will achieve certainty and finality for the Additional Released Parties in the most efficient and appropriate manner given the circumstances. Similar to *Harte Gold*, the Additional Releases are an essential component of the Transactions.<sup>43</sup> The Monitor is of the view that each of the Additional Released Parties facilitated and significantly contributed to the CCAA Proceedings, including the Transactions, which ultimately saw Tacora's business continue for the benefit of its stakeholders;<sup>44</sup>

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<sup>40</sup> Vuong Affidavit at [para. 47](#).

<sup>41</sup> *Harte Gold (Re)* (January 28, 2022), Toronto, CV-21-00673304-00CL ([Approval and Reverse Vesting Order](#)) (ON SC); *Just Energy (Re)* (November 3, 2022), Toronto, CV-21-00658423-00CL ([Approval and Vesting Order](#)) (ON SC).

<sup>42</sup> Twelfth Report at [para. 33](#).

<sup>43</sup> *Harte Gold* at [para. 84](#).

<sup>44</sup> Twelfth Report at [para. 33](#).

- (e) **The Releases benefit Tacora and ResidualCo as well as their creditors generally** by reducing the potential for claims against the Additional Released Parties and the Additional Released Parties seeking indemnification from Tacora and/or ResidualCo; and
- (f) **All creditors and contractual counterparties have knowledge of the nature and effect of the Additional Releases.** Throughout the CCAA Proceedings, Tacora has issued press releases announcing that it had filed for CCAA protection, commenced the Sale Process, and entered into and closed the Subscription Agreement and the Transactions. Potentially affected stakeholders have been served with this Motion.<sup>45</sup>

48. The Additional Release Parties have played a necessary part in the successful restructuring of the Company and, in the case of the ResidualCo D&O, continued in this role notwithstanding the increase in risk and scrutiny due to the CCAA Proceedings and the ResidualCo Bankruptcy.

49. The Monitor is of the view that the Additional Releases should be granted, as:

- (a) the scope of the Additional Releases are consistent with the releases previously approved by this Court in these CCAA Proceedings and granted in the Approval and Reverse Vesting Order;
- (b) the beneficiaries of the Additional Releases, in each case, have facilitated and significantly contributed to the CCAA Proceedings, including the Transactions, which ultimately saw Tacora's business continue for the benefit of a variety of stakeholders, including many of Tacora's suppliers and employees;
- (c) the Additional Releases are appropriately tailored and limited in scope;
- (d) there is precedent for the scope of the proposed Additional Releases, particularly in instances where no party is opposing the proposed releases; and

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<sup>45</sup> Affidavit of Service of Natasha Rambaran sworn October 1, 2024.

- (e) the Releases will efficiently provide certainty and finality of this CCAA Proceeding.<sup>46</sup>

**PART IV - ORDER SOUGHT**

50. The Applicant respectfully requests that this Court grant the CCAA Termination Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4<sup>th</sup> day of October 2024.



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**STIKEMAN ELLIOTT LLP**  
Counsel for the Applicant

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<sup>46</sup> Twelfth Report at [para. 33](#).



**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *9354-9186 Quebec Inc v Callidus Capital Corp*, [2020 SCC 10](#).
2. *Arrangement relatif à Blackrock Metals Inc*, [2022 QCCS 2828](#).
3. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#).
4. *Confectionately Yours Inc (Re)*, [2002 CanLII 45059](#) (ONCA).
5. *Fire & Flower Holdings Corp (Re)*, (August 29, 2023), Toronto, Court File No. CV-23-00700581-00CL ([Approval and Reverse Vesting Order](#)) (ON SC).
6. *Golf Town Canada Holdings Inc (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL ([CCAA Termination Order](#)) (ON SC).
7. *Green Growth Brands Inc et al (Re)* (May 19, 2021), Toronto, Court File No. CV-20-00641220-00CL ([Order Terminating CCAA Proceedings](#)) (ON SC).
8. *Green Relief Inc (Re)*, [2020 ONSC 6837](#).
9. *Harte Gold (Re)* (January 28, 2022), Toronto, CV-21-00673304-00CL ([Approval and Reverse Vesting Order](#)) (ON SC).
10. *Harte Gold Corp (Re)*, [2022 ONSC 653](#).
11. *Just Energy (Re)* (November 3, 2022), Toronto, CV-21-00658423-00CL ([Approval and Vesting Order](#)) (ON SC).
12. *Old API Wind-Down Ltd (Re)* (May 17, 2019), Toronto, CV-18-603053-00CL ([CCAA Termination Order](#)) (ON SC).
13. *Lydian International Limited (Re)*, [2020 ONSC 4006](#).
14. *Nortel Networks Corp et al (Re)*, [2017 ONSC 673](#).
15. *Re Nelson Education Limited*, [2015 ONSC 5557](#).
16. *Tacora Resources Inc (Re)* (October 30, 2023), Toronto, CV-23-00707394-00CL ([Amended and Restated Initial Order](#)) (ON SC).
17. *Target Canada Co (Re)*, [2015 ONSC 7574](#).
18. *Winalta Inc (Re)*, [2011 ABQB 399](#).

**SCHEDULE “B”  
RELEVANT STATUTES**

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

**General power of court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**Stays, etc. — other than initial application**

**11.02(2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

**11.02(3)** The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT  
(Re: CCAA Termination Order)  
(Returnable October 7, 2024)**

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