



This is the 5th affidavit of
Brendan Creaney in this case and was
made on September 29, 2022

No. S-226670
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 THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS
CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

AFFIDAVIT

I, Brendan Creaney, of 1900 – 999 West Hastings Street, Vancouver, British Columbia, AFFIRM
THAT:

I. INTRODUCTION

1. I am the Chief Financial Officer of Trevali Mining Corporation ("**Trevali Corp.**"), a
petitioner in this proceeding and the one hundred (100) percent owner of the other petitioner in
this proceeding, Trevali Mining (New Brunswick) Ltd. ("**Trevali NB**", together with Trevali Corp.,

the “**Applicants**”). As such, I have personal knowledge of the matters deposed to in this affidavit except where I depose to a matter based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

2. I have previously sworn affidavits in these CCAA proceedings that provide additional background on the Applicants’ business and ongoing restructuring efforts and objectives. Capitalized terms that are not defined in this affidavit shall have the meaning given to them in my first affidavit in these proceedings made August 19, 2022 (my “**First Affidavit**”). As with my other affidavits, all references to monetary amounts in this Affidavit are in United States dollars, the Applicants’ functional currency, unless otherwise indicated.

3. This Affidavit is sworn in support of an order (the “**Non-Applicant Stay Order**”) extending a limited stay of proceedings in respect of Rosh Pinah Zinc Corporation (“**RPZC**”) to prevent any person who has a claim against the Applicants or any other member of the Trevali group of companies from setting off those claims against RPZC. More particularly, the Applicants seek the Non-Applicant Stay Order to prevent the exercise of “global” set-off rights against RPZC, where obligations owed in relation to either the Caribou or Perkoa Mines are set-off against amounts payable to RPZC for ongoing production from the Rosh Pinah Mine.

II. RPZC’S OPERATIONS

4. RPZC is a Namibian company that owns and operates the Rosh Pinah Mine, the Applicants’ sole operating mine and source of revenue. Further details with respect to the Rosh Pinah Mine and its importance to the Applicants’ business and various stakeholders, including the surrounding community in Namibia, are discussed in my First Affidavit.

5. While Trevali’s business in each of New Brunswick, Burkina Faso, and Namibia is in part carried out through locally based subsidiaries of Trevali Corp., primarily for reasons having to do with local laws, and relies on a local operations team, Trevali generally operates its business on an integrated basis with Trevali Corp., the Trevali group’s parent company, which serves as the “nerve centre” for Trevali’s corporate functions. In particular, Trevali Corp. is operationally responsible for the management of RPZC, and the business operations of RPZC and Trevali Corp. are integrated and intertwined. As noted below, in the context of these CCAA proceedings Trevali Corp., a CCAA Applicant, has made intercompany advances to RPZC and will need to make more to preserve the value of the Rosh Pinah Mine for the benefit of stakeholders (including Glencore).

6. Trevali's integrated business model includes the utilization of a Canadian-based centralized Cash Management System to address the Trevali group's intertwined cash management, collections, disbursements, and intercompany payments and receipts. While the Trevali subsidiaries operating the Perkoa and Rosh Pinah Mines hold their own bank accounts, they have historically at times when possible and appropriate repatriated funds back to Canada as excess cash flow that would then be available through the Cash Management System to service intercompany loans and related party management fees.

7. The Rosh Pinah Mine has historically been profitable and its performance has remained consistent as of the commencement of these CCAA proceedings. The Second Report of the Monitor dated September 12, 2022 (the "**Second Monitor's Report**") forecasted receivables from the operation of the Rosh Pinah Mine for the 24-week period ending January 31, 2023 (the "**Forecast Period**") to be approximately \$28 million (the "**Forecasted RP Receivables**") as of the date of that report. The Forecasted RP Receivables are currently the Applicants' only anticipated source of revenue, with the next set of payments due in October for recent zinc concentrate production (the vast majority of which is from the month of September).

8. The sole source of the Forecasted RP Receivables (and all receivables from the Rosh Pinah Mine) is Glencore International AG ("**Glencore AG**") which holds the right to purchase one hundred (100) percent of the lead and zinc concentrate produced at the Rosh Pinah Mine pursuant to two "offtake" agreements including:

- (a) an Amended and Restated Agreement to Contract No. 180-13-11417-P dated November 16, 2020, and being effective retroactively as of January 1, 2020, between RPZC, as seller, and Glencore AG, as buyer, as amended, pursuant to which RPZC agreed to sell one hundred (100) percent of the lead concentrates produced at the Rosh Pinah Mine to Glencore AG; and
- (b) an Amended and Restated Agreement to Contract No. 062-12-12076-P dated November 16, 2020, and being effective retroactively as of January 1, 2020, between RPZC, as seller, and Glencore AG, as buyer, as amended, pursuant to which RPZC agreed to sell one hundred (100) percent of the zinc concentrates produced at the Rosh Pinah Mine to Glencore AG.

(the "**RP Offtake Agreements**").

9. Despite its historical profitability, since the commencement of these proceedings RPZC has required intercompany funding from Trevali Corp. to meet certain obligations and preserve the value of the Rosh Pinah Mine due to restricted access to Namibian credit facilities. To date this funding has included an intercompany funding transfer from Trevali Corp. to RPZC

in the amount of approximately \$4.6 million, which was approved by the Monitor on August 29, 2022.

10. As is set out in the Second Monitor's Report, Trevali Corp. is currently in a position where it needs to provide RPZC with significant intercompany funding in order to implement the SISF and to preserve the value of the Rosh Pinah Mine for the duration of the SISF.

11. It is critical that RPZC continues to receive the Forecasted RP Receivables and that Trevali Corp. be able to make the requisite intercompany transfers to RPZC to fund the ongoing operation of the Rosh Pinah Mine for the duration of the SISF. An inability to do so would be of significant detriment to the Applicants' ongoing business and restructuring efforts.

III. GLENCORE'S ALLEGED RIGHTS OF SET-OFF

12. The receipt of the Forecasted RP Receivables has been jeopardized by Glencore's claim that it may seek to set-off Forecasted RP Receivables payable to RPZC against unknown amounts purportedly owing to Glencore AG with respect to the Caribou and Perkoa Mines.

13. Glencore AG and Glencore Canada Corporation ("**Glencore Canada**") collectively hold the right to purchase one hundred (100) percent of the lead and zinc concentrate produced at the Caribou Mine pursuant to two "offtake" agreements, including:

- (a) Contract No. 180-13-27002-P dated October 15, 2012, between Trevali Corp., as seller, and Glencore AG (subsequently assigned to Glencore Canada), as buyer, as amended, pursuant to which Trevali Corp. agreed to sell one hundred (100) percent of the lead concentrates produced at the Caribou Mine to Glencore Canada; and
- (b) Contract No. 062-13-10051-P dated October 15, 2012, between Trevali Corp., as seller, and Glencore AG (subsequently assigned to Glencore Canada), as buyer, as amended, pursuant to which Trevali Corp. agreed to sell one hundred (100) of the zinc concentrates produced at the Caribou Mine to Glencore AG (now Glencore Canada).

(the "**Caribou Offtake Agreements**")

14. Glencore AG also holds the right to purchase one hundred (100) percent of the zinc concentrate produced at the Perkoa Mine pursuant to an Amended and Restated Agreement to Contract No. 062-1012611-P dated November 16, 2020, and being effective retroactively as of January 1, 2020, between Nantou Mining Burkina Faso SA ("**Nantou Mining**"), as seller, and Glencore AG, as buyer, as amended, pursuant to which Nantou Mining agreed to sell one hundred

(100) percent of the zinc concentrates produced at the Perkoa Mine to Glencore AG (the "**Perkoa Offtake Agreement**").

15. As is discussed in the Second Monitor's Report, the amount of the Forecasted RP Receivables for the entirety of the Forecast Period (which coincides generally with the intended duration of the SISF) is currently assumed to be collected in cash payments under normal course trade settlement terms with Glencore AG in accordance with the contractual arrangement as between these two parties, subject only to those adjustments and set-off rights provided for in the RP Offtake Agreements between RPZC and Glencore AG. There is no allowance made for in the Applicants' cash flow projections for the Forecasted RP Receivables being set-off against other obligations to Glencore AG that may be owing by Trevali Corp. and its subsidiaries pursuant to the Caribou and Perkoa Offtake Agreements.

16. However, in the context of these CCAA proceedings Glencore has indicated that it is contemplating and/or asserting "global" set-off claims on an unspecified legal basis that would seek to net amounts that may be owing to members of the Glencore group of companies by members of the Trevali group of companies including amounts that may be owing to Glencore entities (a) for obligations incurred prior to the Applicants' filing for CCAA protection and/or (b) pursuant to offtake agreements to which RPZC is not a party. These CCAA proceedings are the first time Glencore has ever raised or sought to assert such "global" set-off rights as between each of Rosh Pinah, Caribou and Perkoa.

17. Both the Monitor and the Applicants have attempted to seek clarity on this issue. However, as is set out in the Monitor's Second Report and as was raised before this Court by counsel for the Applicants and Glencore, on both August 29, 2022 and September 14, 2022, Glencore AG has not declared the nature and legal basis of any purported set-off entitlements it may seek to assert as against the Forecasted RP Receivables. There currently remains significant uncertainty surrounding Glencore AG's set-off rights and whether the Forecasted RP Receivables will be paid.

18. Glencore AG has also not quantified the amounts owing with respect to the Caribou and Perkoa Offtake Agreements it may seek to set-off. The Applicants currently estimate these amounts to be in the range of approximately \$7-8 million with respect to the Caribou Mine and approximately \$6-7 million with respect to the Perkoa Mine, with the vast majority of these amounts having accrued prior to the Applicants' filing for CCAA protection. I note that these

amounts are not final and there will likely be changes to account for, among other things, the fluctuating price of zinc.

IV. THE NEED FOR A LIMITED STAY OF PROCEEDINGS

19. In light of the above, the Applicants require certainty with respect to the receipt of the Forecasted RP Receivables and that any actual or purported set-off rights exercisable by Glencore AG be suspended or stayed pending their determination and/or enforcement. They therefore now ask this Court to grant the Non-Applicant Stay Party Order extending a limited stay of proceedings to RPZC to stay any purported “global” set-off rights. The Applicants require the Non-Applicant Stay Order to ensure the preservation of the status quo in these CCAA proceedings including certainty that forecasted Rosh Pinah Mine receivables payable by Glencore AG will be collected in cash as opposed to by way of some form of set-off entitlement arising from obligations that may be owing to Glencore by members of the Trevali Group other than RPZC. As discussed below, this certainty is needed to (a) determine their liquidity requirements, (b) advance the SISP; and (c) source necessary interim financing,

20. With respect to the Applicants’ liquidity requirements, it is critical that the Applicants are able to accurately forecast their liquidity needs within these CCAA proceedings. The exercise of any “global” set-off rights against the Forecasted RP Receivables will likely significantly increase the Applicants’ liquidity needs in these CCAA proceedings. Certainty that any purported set-off rights held by Glencore AG will be stayed is essential to the Applicants’ ability to plan for and finance the sales and investment (“**SISP**”) approved by this Court on September 14, 2022, continue with their existing business operations, and further their restructuring efforts generally.

21. With respect to the SISP, the Non-Applicant Stay Party Order is also required to preserve the value of the Rosh Pinah Mine, which is the Applicants’ only source of revenue, and to maximize its value through the SISP, to the benefit of all stakeholders. The Applicants have spent significant funds in the context of these CCAA proceedings to preserve the value of the Rosh Pinah Mine for the benefit of their stakeholders and are required to continue to do so for the duration of the SISP. The Applicants view the Rosh Pinah Mine as their more valuable asset in the SISP and their best opportunity to maximize value.

22. With respect to interim financing, as is discussed above, RPZC and the related subsidiaries will require intercompany funding transfers from Trevali Corp. to avoid liquidity shortfalls during the period of the SISP. The only potential source of this revenue is interim financing. If the Applicants are prevented from sourcing and providing required funding to the Rosh Pinah Mine, and/or the operations at the Rosh Pinah Mine are compromised because of lack of required funding, the associated economic, social, and environmental impact could be far reaching and significant.

23. In particular, potential interim lenders may be hesitant to provide interim financing to the Applicants where there is significant uncertainty surrounding the receipt of their only current source of revenue in these CCAA proceedings, being the Forecast RP Receivables. This uncertainty will also make it difficult to predict the amount of interim financing that may be required during these proceedings, which may further deter potential interim lenders.

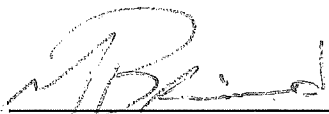
24. To that end, in discussions regarding the potential of interim financing with the RCF Agent (as agent to the RCF Lenders), which remain ongoing, the RCF Agent has advised that its position is that a resolution satisfactory to the RCF Lenders of the dispute between the Applicants and the Glencore entities with respect to a potential exercise of set-off against amounts owing by the Glencore entities pursuant to the various offtake agreements be a condition precedent to the advancement of interim financing by the RCF Lenders.

25. The Non-Applicant Stay Party Order is therefore required to give comfort to potential interim lenders whose funds will be required to fund the SISP and potential bidders in the SISP that enforcement actions against RPZC will be stayed, that there is some level of certainty with respect to the amount of interim financing required, and that value in RPZC will be preserved during the period in which the SISP is conducted.


26. In light of these concerns, the Applicants are of the view that the RPZC Stay Order is necessary and appropriate relief that is required to allow the Applicants to advance their restructuring. The Applicants believe that a SISP that includes the Rosh Pinah Mine is their best opportunity to maximize value and that it is essential that the Applicants are able to maintain the status quo with respect to this important aspect of their business. Without the benefit the Non-Applicant Stay Party Order, the value of this entity (and therefore the Applicants' interest in it) could quickly erode. This would be of significant detriment to the ability of the Applicants to realize

value for their interest in RPZC, through the SISP or otherwise, and to the detriment of their stakeholders.

AFFIRMED BEFORE ME AT)
VANCOUVER, BRITISH COLUMBIA ON)
SEPTEMBER 29, 2022)



A Commissioner for taking Affidavits for)
British Columbia)



Brendan Creaney

MITCH BRINGELAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-4160