Court File No. CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.
(each, an "**Applicant",** and collectively, the "**Applicants")**

FACTUM OF THE MOVING PARTIES, U.S. CLASS COUNSEL

(Motion and Cross-Motion returnable February 9, 2022)

February 4, 2022

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TO: THE SERVICE LIST

Court File No. CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.
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FACTUM OF THE MOVING PARTIES, U.S. CLASS COUNSEL

(Motion and Cross-Motion returnable February 9, 2022)

PART I - INTRODUCTION

1. The moving parties are U.S. counsel ("**U.S. Class Counsel**") to millions of U.S. customers of the Applicants (the "**Class Claimants**") in two U.S. class actions: *Donin v. Just Energy Group*

Inc. et al. (the "**Donin Action**") and *Trevor Jordet v. Just Energy Solutions, Inc.* (the "**Jordet Action**", together with the Donin Action, or the "**U.S. Class Actions**").

2. On this motion, Class Counsel seeks a determination that the Class Claimants' claims (which total approximately $4 billion) (the "**Donin and Jordet Claims**") will either be: (i) unaffected by this CCAA Proceeding so that they may continue to pursue the U.S. Class Actions in the U.S. courts; or (ii) adjudicated in the CCAA Proceeding in a timely manner that ensures that the Class Claimants can meaningfully participate in the restructuring process and vote at any meeting of creditors to consider a plan.

3. In order to ensure a fair and timely adjudication process, the Class Claimants propose a framework that will result in the final adjudication of these claims by no later than May 13, 2022 (the "**Expedited Adjudication Framework**"). Specifically, the Expedited Adjudication Framework contemplates:

(a) the adjudication of the Donin and Jordet Claims by a panel of three Claims Officers pursuant to the JAMS US expedited arbitration rules;

(b) the Honourable Dennis O'Connor be appointed as one of the three Claims Officers to ensure that the requisite expertise in US class action law and procedure is balanced with experience in Canadian procedure generally and CCAA proceedings specifically; and

(c) the Claims Officers will determine all substantive and procedural issues in connection with the proceeding subject only to an outside deadline for the release of a decision on the merits three days prior to the meeting of creditors (implying an

outside date of March 27, 2022, as it appears as though the DIP lenders are requesting a timeline that would have a vote on March 30, 2022). The outside deadline may be extended by the CCAA court on a motion for directions on notice to the parties and the service list. Any appeal would be to the CCAA court.

4. By contrast, the Applicants propose an adjudication process that will result in the final determination of the Donin and Jordet Claims over 1-4 years. This risks disenfranchising the Class Claimants by denying them a fully representative vote on a plan or a role in the restructuring process.

5. Ultimately, the Applicants cannot have it both ways. If this Court believes that there is insufficient time to adjudicate the claim within the CCAA proceeding, then the Donin and Jordet Claims should be unaffected by the CCAA proceeding.

6. Alternatively, if the claims are at risk of being compromised or prejudiced by the CCAA proceeding, then this Court should ensure that the claims are adjudicated in a manner that takes account of the Class Claimants' procedural and substantive rights: indeed, given the number of claimants and the size of the Donin and Jordet Claims, the fair treatment and assessment of these claims is critical to the outcome of these proceedings.

7. Finally, the Class Claimants also propose an information sharing protocol to facilitate information and document sharing and ensure a fair and efficient process (the "**Proposed Information Sharing Protocol**").

PART II - SUMMARY OF FACTS

Background

1. The U.S. Class Actions

8. On October 3, 2017, Fira Donin and Inna Golovan filed a proposed class action lawsuit on behalf of themselves and all other U.S. customers alleging, among other things, that the Applicants named as defendants (the "**Just Energy Defendants**") breached their contractual obligations and implied covenant of duty of good faith and fair dealing (the Donin Action).[1]

9. On April 6, 2018, Trevor Jordet filed class action claims on behalf of himself and all other U.S. customers in which he made similar allegations to the plaintiffs in the Donin Action (the Jordet Action).[2]

10. The Donin Action and the Jordet Action encompass 11 states in which the Just Energy Defendants do business.[3]

11. The Just Energy Defendants sought to have the U.S. Class Actions dismissed. They were unsuccessful. In each case, the court ruled that key claims in the Plaintiffs' Complaints were plausible. Both of the U.S. Class Actions remain stayed in the United States.[4]

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[1] Affidavit of Robert Tannor, affirmed on January 17, 2022 ["Tannor Affidavit"], para. 4, Motion Record, Tab 2, p. 31; Exhibit "B" to the Tannor Affidavit – October 3, 2017 Complaint in the Donin Action, Motion Record, Tab 2-B, p. 50.

[2] Tannor Affidavit, para. 6, Motion Record, Tab 2, p. 32; Exhibit "D" to the Tannor Affidavit – April 6, 2018 Jordet Complaint, Motion Record, Tab 2-D, p. 141.

[3] Tannor Affidavit, para. 10, Motion Record, Tab 2, p. 33; Exhibit "H" to the Tannor Affidavit – Claim Documentation filed November 1, 2021, Motion Record, Tab 2-H, p. 206.

[4] Tannor Affidavit, paras. 5, 7, Motion Record, Tab 2, pp. 31-32; Exhibit "C" to the Tannor Affidavit – Decision & Order of Judge Kuntz dated September 24, 2021, Motion Record, Tab 2-C, p. 124; Exhibit "E" to the Tannor Affidavit – Decision & Order of Judge Skrenty dated December 7, 2020, Motion Record, Tab 2-E, p. 163.

2. The **CCAA** Proceeding

12. On March 9, 2021, the Court issued an Initial Order granting *CCAA* protection to the Applicants.[5]

13. The *CCAA* proceedings were commenced only six months after the Court ordered the approval of a Plan of Arrangement in a s. 192 *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 proceeding, in which the Class Claimants were unaffected.[6]

14. On September 15, 2021, the Applicants proposed and the Court issued a "**Claims Procedure Order**" which, among other things, established a "**Claims Bar Date**" of 5:00 p.m. on November 1, 2021 in respect of Pre-Filing Claims (as defined in the Claims Procedure Order).[7]

15. On November 1, 2021, prior to the expiry of the Claims Bar Date, Class Counsel filed Proof of Claim forms in respect of the Donin Action and the Jordet Action in the aggregate, unsecured amount of approximately $3.66 billion (reflecting a joint, composite damages claim encompassing both lawsuits).[8]

16. In each case, Class Counsel provided Claim Documentation setting out the relevant background and merits of the respective U.S. Class Action.[9]

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[5] Tannor Affidavit, para. 9, Motion Record, Tab 2, p. 32.

[6] *Just Energy*, Final Order of Justice Hainey, dated September 2, 2022, BoA Tab 25 (s. 192 CBCA proceedings), BoA Tab 21.

[7] Tannor Affidavit, para. 9, Motion Record, Tab 2, p. 32.

[8] Tannor Affidavit, para. 10, Motion Record, Tab 2, p. 33.

[9] Tannor Affidavit, para. 10, Motion Record, Tab 2, p. 33; Exhibit "F" to the Tannor Affidavit – Donin/Golovan Proof of Claim, Motion Record, Tab 2-F, p. 196; Exhibit "G" to the Tannor Affidavit – Jordet Proof of Claim, Motion Record, Tab 2-G, p. 201; Exhibit "H" to the Tannor Affidavit – Claim Documentation filed November 1, 2021, Motion Record, Tab 2-H, p. 206.

3. Class Counsel's Proposed Claims Adjudication Plan

(a) The Notice of Disallowance

17. On January 11, 2022, the Applicants served a Notice of Revision or Disallowance with respect to both the Donin and Jordet Proofs of Claim (the "**Notice of Disallowance**").[10] The Notice of Disallowance disallowed the Donin and Jordet Claims in their entirety.[11]

18. The Notice of Disallowance largely repeats the failed legal arguments that the Applicants made in their unsuccessful attempts to have the Donin Action and the Jordet Action dismissed.[12]

19. The Notice of Disallowance takes issue with the alleged size of the Class and quantum of the alleged claim, yet the Applicants continue to refuse to provide Class Counsel with the necessary data and information to more precisely determine these issues or to verify the Applicants' unsupported assertions related to class size and damages.[13]

20. The Notice of Disallowance also rejects the alleged class size and quantum without any evidence and without even addressing the comprehensive expert report prepared by Serhan Ogur for the U.S. Class Actions.[14]

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[10] Tannor Affidavit, para. 38, Motion Record, Tab 2, p. 42; Exhibit "Q" to the Tannor Affidavit – Notice of Revision or Disallowance (Donin/Golovan), dated January 11, 2022, Motion Record, Tab 2-Q, p. 303; Exhibit "R" to the Tannor Affidavit – Notice of Revision or Disallowance (Jordet), dated January 11, 2022, Motion Record, Tab 2-R, p. 314.

[11] Tannor Affidavit, para. 38, Motion Record, Tab 2, p. 42; Exhibit "Q" to the Tannor Affidavit – Notice of Revision or Disallowance (Donin/Golovan), dated January 11, 2022, Motion Record, Tab 2-Q, p. 306; Exhibit "R" to the Tannor Affidavit – Notice of Revision or Disallowance (Jordet), dated January 11, 2022, Motion Record, Tab 2-R, p. 317.

[12] Tannor Affidavit, para. 38, Motion Record, Tab 2, p. 42.

[13] Tannor Affidavit, para. 39, Motion Record, Tab 2, p. 43.

[14] Tannor Affidavit, para. 39, Motion Record, Tab 2, p. 43; Exhibit "H" to the Tannor Affidavit – Claim Documentation filed November 1, 2021, Motion Record, Tab 2-H, p. 206.

21. The Class Claimants will be filing a Notice of Dispute of Revision or Disallowance by the upcoming deadline of February 10, 2022.[15]

(b) The Class Claimants are Unaffected Creditors

22. Class Counsel seeks an Order that the Class Claimants are unaffected in this CCAA proceeding so that the claims can continue in the U.S. courts.

23. If the claims are not unaffected, then Class Counsel seeks the prompt and efficient adjudication of the claims within this CCAA proceeding so that the Class Claimants are not effectively disenfranchised.

24. In response to a request from Counsel to the Applicants, and in anticipation of the disallowance of the Proofs of Claim, on December 13, 2021, Class Counsel proposed an adjudication plan for the Donin and Jordet Claims.[16]

25. The proposed adjudication plan was an attempt to put in place a mutually-agreeable process for the adjudication of the Donin and Jordet Claims within the CCAA Proceeding.[17]

26. The proposal contemplated the appointment of 3 arbitrators from JAMS (US) (with consumer class action experience) to sit as Claims Officers in this CCAA Proceeding; the use of the "Expedited Procedures" in the JAMS Comprehensive Arbitration Rules; a process for

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[15] Tannor Affidavit, para. 40, Motion Record, Tab 2, p. 43.

[16] Tannor Affidavit, para. 41, Motion Record, Tab 2, pp. 43-44; Exhibit "S" to the Tannor Affidavit – Proposed Adjudication Plan, dated December 13, 2021, Motion Record, Tab 2-S, p. 325.

[17] Tannor Affidavit, para. 41, Motion Record, Tab 2, p. 43.

exchanging documents, subject to the oversight of the Claims Officers; and a hearing lasting 5-7 days in February 2022.[18]

27. On December 15, 2021, the Applicants, through counsel, advised that "the Just Energy Entities anticipate further discussions with your group concerning a fair and reasonable method of adjudicating your clients' claims at the appropriate time".[19]

28. On February 1, 2022, the Applicants finally sent a with prejudice alternative adjudication process that would see the Donin and Jordet Claims determined on a schedule of anywhere from 1-4 years.[20]

29. On February 4, 2022, Class Counsel wrote to the Applicants and advised that its proposal was not accepted because the timelines proposed by the Applicants are not sufficiently expedited to ensure that the Class Claimants can meaningfully participate in the CCAA process.

30. Class Counsel also enclosed its with prejudice Expedited Adjudication Framework. A copy of Class Counsels' letter and proposed Expedited Adjudication Framework are attached to this factum as Schedule "C".

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[18] Tannor Affidavit, para. 41, Motion Record, Tab 2, pp. 43-44.

[19] Tannor Affidavit, para. 42, Motion Record, Tab 2, p. 44; Exhibit "N" to the Tannor Affidavit – Email correspondence between Class Counsel and counsel for the Applicants, dated December 13-15, 2021, Motion Record, Tab 2-N, p. 278.

[20] Affidavit of Michael Carter, affirmed on February 2, 2022 ["Carter Affidavit"], para. 58, Responding Motion Record, Tab 2, p. 35; Exhibit "M" to the Carter Affidavit – Correspondence, dated February 1, 2022 and Applicants' Proposed Schedule, Responding Motion Record, Tab 2-M, p. 365.

31. To accommodate concerns that have been raised with Class Counsel, the Expedited Adjudication Framework contemplates a more extensive and lengthier adjudication process than Class Counsel's initial proposal. Specifically, the Expedited Adjudication Framework proposes:

(a) adjudication by a tripartite panel of two US arbitrators and one Canadian arbitrator (collectively, the "**Claims Officers**");

(b) the Honourable Mr. Dennis O'Connor will sit as the Canadian arbitrator and each side will have the right to appoint one Claims Officer from the extensive list of US JAMS arbitrators with class action experience;

(c) the Claims Officers will have complete jurisdiction and discretion to determine the appropriate process for the proceeding within the JAMS US expedited rules and with consideration to an endorsement from the CCAA court that the deadline for the release of a decision on the merits shall be three days prior to the meeting of creditors (implying an outside date of March 27, 2022, as it appears as though the DIP lenders are requesting a timeline that would have a vote on March 30, 2022). This deadline may be extended by the *CCAA* court on a motion for directions on notice to the parties and the service list.; and

(d) any appeal will be to the *CCAA* court.[21]

32. Class Counsel was prepared to send a proposal for a process that resulted in a decision of the merits in May, 2022, but it modified its proposed timing according to the information in the

[21] See Schedule "C".

Monitor's Fifth Report (which was received at approximately 3:20 pm on February 4, 2022, before Class Counsel had an opportunity to send the earlier version of their proposed Expedited Adjudication Framework).

33. The Monitor's Fifth Report states that the DIP lender has demanded a timeline that would require a vote no later than March 30, 2022.[22]

34. In order for the Court to accommodate the DIP lenders' request, the Class Claimants require a determination of their Claims pursuant to the Expedited Adjudication Framework on the earlier of three days before the meeting of creditors and March 27, 2022.

35. Neither the Monitor's Fifth Report nor the other materials filed on this motion disclose a commercial basis for the DIP lenders' timeline, but Class Counsel have nevertheless modified their proposed schedule to consider the DIP lenders' position.[23]

36. If there is information that shows a commercial basis for the DIP lenders' timeline, Class Counsel has not been provided with access to that information.

37. The Expedited Adjudication Framework establishes a time-sensitive process that addresses and protects the rights and interests of the parties and ensures that all questions about scope, jurisdiction, discovery or any other matter will be dealt with efficiently by the very panel that will hear the case.[24]

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[22] Fifth Report of FTI Consulting Canada Inc., in its capacity as Court-Appointed Monitor, February 4, 2022, para. 26(d), PDF page 12.

[23] Fifth Report of FTI Consulting Canada Inc., in its capacity as Court-Appointed Monitor, February 4, 2022; Motion Record of the Applicants (Confidential Exhibits Omitted), Stay Extension and Response to Motion for Directions, February 2, 2022.

[24] See Schedule "C".

38. Given the potential significance of the Donin and Jordet Claims to the approval of any Plan, there is a need to establish a process for the valuation of these claims in advance of any meeting of creditors and sanction hearing (or any other exit from this CCAA Proceeding).

4. **Class** Counsel's **Efforts to Obtain Information in Connection with this CCAA**

39. Class Counsel has repeatedly requested that the Applicants and the Monitor provide them with access to information in connection with the CCAA Proceeding.[25]

40. Class Counsel's requests are consistent with the type and character of information that is commonly requested and provided as between creditors and debtors in restructuring proceedings.[26]

41. The information that Class Counsel has requested is necessary to properly evaluate and consider the Applicants' restructuring plan formation and resulting plan proposal in this ongoing CCAA Proceeding.[27]

42. Notwithstanding repeated requests, the Applicants have largely resisted Class Counsel's requests. As a result, the flow of information has been deficient and contrary to a consensual CCAA restructuring.[28]

43. On November 11, 2021, Class Counsel requested a meeting with counsel for the Monitor to discuss access to certain financial information of the Applicants.

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[25] Tannor Affidavit, para. 12, Motion Record, Tab 2, p. 33.
[26] Tannor Affidavit, para. 12, Motion Record, Tab 2, p. 33.
[27] Tannor Affidavit, para. 12, Motion Record, Tab 2, p. 33.
[28] Tannor Affidavit, para. 13, Motion Record, Tab 2, p. 34.

44. On November 12, 2021, counsel for the Monitor suggested that Class Counsel direct their request to the Applicants.

45. On November 24, 2021, Class Counsel had a phone meeting with the Monitor in which Class Counsel and Tannor Capital (Class Counsel's financial advisor), requested information regarding, among other things:

(a) the proposed capital structure of the Applicants;

(b) creditor priorities and amounts;

(c) a copy of the DIP Facility, along with milestones and covenants;

(d) a potential claims adjudication process in connection with the claims of the Class Claimants; and

(e) the Plan Term Sheet.[29]

46. At this time, with the exception of the DIP Term Sheet and its 15th amendment, Class Counsel has still not received from the Applicants any substantive information which is useful to evaluate any plan proposal.[30]

[29] Tannor Affidavit, para. 17, Motion Record, Tab 2, pp. 34-35.
[30] Tannor Affidavit, para. 18, Motion Record, Tab 2, p. 35.

5. Class Counsel, Paliare Roland, Tannor Capital and the Applicants enter into an NDA

47. On November 30, 2021, Just Energy Group Inc., Class Counsel, Tannor Capital and Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") entered into a Confidentiality, Non-Disclosure and Non-Use Agreement (the "**NDA**").[31]

48. Despite the execution of the NDA, the Applicants have continued to delay and resist Class Counsel's requests for information.[32]

49. On November 30, 2021, in response to Class Counsel's request for a further phone meeting, counsel for the Applicants requested that Class Counsel first provide a list of questions it sought to have answered.[33]

50. On December 2, 2021, Class Counsel provided the requested list to the Applicants.[34]

51. On December 8, 2021, following nearly a week of delay by the Applicants, the parties had a virtual meeting. Only one hour before the meeting, the Applicants provided Class Counsel with the Applicants' May 2021 Business Plan (which in the Tannor Affidavit explains why it is materially outdated), DIP Term Sheet (together with one amendment), and written answers to Class Counsels' December 2, 2021 question list.[35]

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[31] Tannor Affidavit, para. 19, Motion Record, Tab 2, p. 35.

[32] Tannor Affidavit, para. 19, Motion Record, Tab 2, p. 35.

[33] Tannor Affidavit, para. 21, Motion Record, Tab 2, p. 35.

[34] Tannor Affidavit, para. 21, Motion Record, Tab 2, p. 35; Exhibit "J" to the Tannor Affidavit – List of Questions dated December 2, 2021, Motion Record, Tab 2-J, p. 261.

[35] Tannor Affidavit, para. 22, Motion Record, Tab 2, p. 36; Exhibit "K" to the Tannor Affidavit – Email correspondence between Class Counsel and counsel for the Applicants dated November 30, 2021 - December 8, 2021, Motion Record, Tab 2-K, p. 264.

52. Most of the substantive information requests contained in Class Counsel's December 2, 2021 question list remain outstanding.

53. The Business Plan provided to Class Counsel is dated May 2021. Since that time,

(a) the Applicants have publicly filed subsequent financial statements;

(b) the Applicants have sold assets, including an 8% equity interest in ecobee Inc. (the "**ecobee Shares**"), which sale was authorized by the Court in its order dated November 10, 2021;

(c) the State of Texas governor signed House Bill 4492, which provides recovery of costs by energy market participants, and pursuant to which the Applicants have filed for their recovery amounts. On December 9, 2021, Just Energy issued a news release announcing the expected recovery of approximately USD $147.5 million from Electric Reliability Council of Texas, Inc. ("ERCOT") as a result ofthe extreme weather event in Texas in February 2021 (the "Weather Event");[36] and

(d) Just Energy is pursuing an adversary complaint in the US Chapter 15 case[37] where it is seeking almost full recovery of amounts it believes were invoiced by ERCOT

[36] Tannor Affidavit, para. 24, Motion Record, Tab 2, pp. 36-37; Exhibit "L" to the Tannor Affidavit – Just Energy News Release dated December 9, 2021, Motion Record, Tab 2-L, p. 271.

[37] *Just Energy et al. v. Electric Reliability Council of Texas Inc. and the Public Utility Commissions of Texas, Inc.*, Chapter 15 Complaint of the Plaintiff in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, Case No. 21-30823 (MI), BoA, Tab 1.

in the Weather Event, which was the cause of the liquidity crisis triggering the CCAA insolvency proceeding.[38]

54. On December 13, 2021, Class Counsel sent counsel to the Applicants an email enclosing a further list of questions regarding the Applicants' Business Plan.[39]

55. On December 15, 2021, the Applicants advised they were not in a position to "devote additional resources" to answering Class Counsel's questions and inquiries.[40]

6. The Monitor's Involvement

56. On December 17, 2021, Class Counsel advised counsel for the Monitor of the difficulties it was encountering in obtaining information from the Applicants, and requested a meeting to discuss the company's financial condition, restructuring plans, and a suitable claims resolution process for the claims of the Class Claimants.[41]

57. On December 22, 2021, Class Counsel and counsel to the Monitor had a virtual meeting to discuss Class Counsel's information requests.[42]

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[38] *Just Energy et al. v. Electric Reliability Council of Texas Inc. and the Public Utility Commissions of Texas, Inc.*, Chapter 15 Complaint of the Plaintiff in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, Case No. 21-30823 (MI), BoA, Tab 1.

[39] Tannor Affidavit, para. 25, Motion Record, Tab 2, p. 37; Exhibit "M" to the Tannor Affidavit – List of questions re: May 2021 Business Plan, dated December 13, 2021, Motion Record, Tab 2-M, p. 274.

[40] Tannor Affidavit, para. 26, Motion Record, Tab 2, p. 37; Exhibit "N" to the Tannor Affidavit – Email correspondence between Class Counsel and counsel for the Applicants, dated December 13-15, 2021, Motion Record, Tab 2-N, p. 278.

[41] Tannor Affidavit, para. 27, Motion Record, Tab 2, pp. 37-38; Exhibit "O" to the Tannor Affidavit – Email from Class Counsel to counsel for the Monitor, dated December 17, 2021, Motion Record, Tab 2-O, p. 287.

[42] Tannor Affidavit, para. 28, Motion Record, Tab 2, p. 38.

58. On December 28, 2021, Paliare Roland emailed counsel for the Monitor to request the Monitor's assistance in scheduling a Case Conference with the presiding Judge in the first week of January 2022, for the purpose of setting a timetable for the bringing of this motion.[43]

59. On December 31, 2021, counsel to the Applicants advised Paliare Roland that they had asked the Monitor to inquire for a date in the latter half of the second week of January 2022.[44]

60. On January 4, 2022, Paliare Roland advised that it was not consenting to a further 7 - 10 day delay in obtaining a Case Conference date to schedule a date for a motion, and reiterated that it had not received a response from the Company regarding its substantive, timeline, process, transparency and information requests.[45]

61. On January 4, 2022, Class Counsel again met with counsel to the Monitor to discuss the process proposed by Class Counsel for the adjudication of the claims of the Class Claimants.[46]

62. For well over a month, Class Counsel has been ready, and has repeatedly requested, to become deeply involved as a key stakeholder in this CCAA Proceeding. Unfortunately, the Applicants appear to be unwilling to engage with Class Counsel in any substantive way.[47]

63. To date, despite requests from Class Counsel to the Monitor and the Applicants, Class Counsel has not received substantive information regarding:

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[43] Tannor Affidavit, para. 29, Motion Record, Tab 2, p. 38.
[44] Tannor Affidavit, para. 30, Motion Record, Tab 2, p. 38.
[45] Tannor Affidavit, para. 31, Motion Record, Tab 2, p. 38; Exhibit "P" to the Tannor Affidavit – Email correspondence between Paliare Roland and counsel for the Applicants dated December 28, 2021 - January 4, 2022, Motion Record, Tab 2-P, p. 297.
[46] Tannor Affidavit, para. 32, Motion Record, Tab 2, p. 38.
[47] Tannor Affidavit, para. 33, Motion Record, Tab 2, p. 39.

(a) the Plan Term Sheet, and the details of the creditor pool and further information on the quantum of claims in this CCAA Proceeding;

(b) whether there are any professionals representing unsecured creditors and the Class Claims in the ongoing realization discussions, given that it now appears the Applicants have equity on the balance sheet (as discussed below);

(c) the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' and/or financiers' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval; and

(d) how and when the Class Claimants' claims will be adjudicated and/or be treated within a vote.[48]

64. The Applicants would ordinarily have established a data room through which stakeholders can access non-public information material to the restructuring effort. If such a data room exists, then Class Counsel have not received access to it.[49]

65. Class Counsel and its advisors need access to this type of information in order to meaningfully participate in any restructuring file, including this CCAA Proceeding.

66. Without this information, Class Counsel is hampered in its ability to consider and discuss the Applicant's intended course of conduct, and to develop and propose alternatives that may be attractive to and preserve value for the general body of unsecured creditors.

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[48] Tannor Affidavit, para. 34, Motion Record, Tab 2, p. 39.
[49] Tannor Affidavit, para. 35, Motion Record, Tab 2, pp. 39-40.

7. There is Equity in the Just Energy Entities

67. Just Energy Group Inc.'s September 30, 2021 public financial statements indicate that Just Energy Group Inc. had approximately $12.6 million CAD in equity on its balance sheet.[50]

68. Just Energy's shares are listed for trading on the TSX Venture Exchange under the symbol (TSX: JE) and in the United States on the OTC Pink Exchange under the symbol (OTC: JENGQ).[51]

69. As of January 10, 2021, Just Energy's equity market capitalization was approximately $55.8 million CAD.[52]

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

70. Class Counsel's motion raises two issues:

(a) First, should the Donin and Jordet Claims be unaffected claims in this CCAA Proceeding. If the Court makes such a direction, then there are no further issues for the Court to decide.

(b) Alternatively, if the Donin and Jordet Claims remain at risk of being compromised or otherwise affected by these proceedings, then the Court must decide on a process to adjudicate these claims. In this case, the Class Claimants submit that the Expedited Adjudication Framework and/or the Proposed Information Sharing Protocol (or some version thereof) will achieve the necessary balance between their

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[50] Tannor Affidavit, para. 45, Motion Record, Tab 2, p. 45; Exhibit "T" to the Tannor Affidavit – September 30, 2021 financial statements of Just Energy Group Inc., Motion Record, Tab 2-T, p. 329.

[51] Tannor Affidavit, para. 46, Motion Record, Tab 2, p. 45.

[52] Tannor Affidavit, para. 46, Motion Record, Tab 2, p. 45.

procedural and substantive rights and overarching objectives of the CCAA restructuring.

1. Jurisdiction to make the Order

71. This Court has the jurisdiction to grant the relief proposed by the Class Claimants. The language of section 11 of the *Companies' Creditors Arrangement Act* (R.S.C., 1985, c. C-36) (the "***CCAA***") provides the court with broad powers to make "any order that it considers appropriate in the circumstances", and that has formed the basis for relief consistent with the proposed Order, as discussed further below.

2. The Class Claimants Should be Unaffected Creditors

72. The ability of creditors to vote on a restructuring plan is central to the scheme of the *CCAA*. Furthermore, the likelihood of a successful restructuring and the quality of decision making is enhanced when creditors are allowed engagement and access to financial and other assumptions underpinning the plan.

73. In this case, the Applicants have put forward a process that will effectively disenfranchise the Class Claimants. Accordingly, it is appropriate for the court to exercise its discretion to exclude the Donin and Jordet Claims from these proceedings and direct that they not be affected.

74. Notably, while the Applicants resist the request to treat the claims as unaffected, they also continue to characterize the claims as "speculative" and "meritless" (despite the claims having survived motions to strike in the US).[53]

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[53] Tannor Affidavit, para. 38, Motion Record, Tab 2, p. 42; Exhibit "Q" to the Tannor Affidavit – Notice of Revision or Disallowance (Donin/Golovan), dated January 11, 2022, Motion Record, Tab 2-Q, p. 307; Exhibit "R" to the

75. The Applicants cannot have it both ways. Either the Class Claimants are frivolous and not worthy of consideration in this process and should be let out, or the claims must be properly adjudicated within the CCAA Proceeding in a manner consistent with the Class Claimants' procedural and substantive rights.

3. Principles Informing the Court's exercise of Discretion to Order the Expedited Adjudication Framework and the Proposed Information Sharing Protocol

76. The *CCAA* is a court-supervised process precisely to ensure that the fundamental principles of fairness, transparency and openness are respected. In *Mecachrome,* the Court emphasized that while *CCAA* proceedings give a debtor company privileges, there are also corresponding responsibilities.[54]

77. Similarly, in *Calpine Canada Energy Ltd*. the Court criticized the lack of transparency in settlement negotiations in the course of *CCAA* proceedings, emphasizing that what "may be commercially reasonable and even advantageous" outside the litigation process, may be "restricted by the requirement that fairness be done and seen to be done, when the process is supervised by the Court". [55]

78. The *CCAA* process must be conducted fairly with a view to balancing the interests of all stakeholders, not merely the Applicant's creditors. Recently, the Supreme Court of Canada in *Century Services* expressed the CCAA court's mandate this way:

Tannor Affidavit – Notice of Revision or Disallowance (Jordet), dated January 11, 2022, Motion Record, Tab 2-R, p. 318.

[54] *Mecachrome Canada Inc., Re*, 2009 CarswellQue 9963 (S.C.) at para. 48, BoA Tab 2 (emphasis added); also see paras. 33, 36 where the Court dismissed the motion to approve a plan funding agreement because, among other things, the debtor and monitor did not include ad hoc committee of unsecured creditors in negotiation process and did not proceed in a manner where transparency, integrity, credibility and fairness were beyond reproach.

[55] *Calpine Canada Energy Ltd., Re*, 2007 CarswellAlta 156 (Q.B.) at para. 31, BoA Tab 3 (emphasis added).

> The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* – avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.[56]

79. Even more recently, the Supreme Court of Canada expressed the importance of finding a constructive solution for all stakeholders:

> First, it is important to remember that **the purpose of *CCAA* proceedings is not to disadvantage creditors but rather to try to provide a constructive solution for all stakeholders** when a company has become insolvent.[57]

80. The principles of inclusiveness and procedural fairness are especially important concerns in this case, considering that the Class Claimants are U.S. citizens, and the Applicants have significant operations in the United States. If asked to recognize a restructuring plan, the U.S. Bankruptcy Court will need to consider whether these proceedings adequately recognized the Class Claimants' and perhaps other creditors' constitutional right not to be deprived of property without due process.[58] In the case of *In re Adelphia Comm. Corp.*, the U.S. Bankruptcy Court described the ability to vote on a reorganization plan as "one of the most sacred entitlements that a creditor has in a chapter 11 case."[59]

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[56] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70, BoA Tab 4 (emphasis added).

[57] *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at para. 205, BoA Tab 5 (emphasis added).

[58] *In re Vitro, S.A.B. de C.V.*, 473 B.R. 117 (2012) at pp. 4-5, 11-12, BoA Tab 6; *In re Toft*, 453 B.R. 186 (2011) at p. 9, BoA Tab 7, where failure to give the debtor notice of the Chapter 15 proceedings was relevant to the court's refusal to recognize the foreign proceeding; *In re Ephedra Prods. Liability Litig.*, 349 B.R. 333 (2006) at p. 2, BoA Tab 8, where the court acknowledged that a failure to afford stakeholders due process in the claims process *can* result in a refusal to recognize the foreign proceeding as a violation of public policy.

[59] *In re Adelphia Communications Corp.*, 359 B.R. 54 (2006) at p. 2, BoA Tab 9.

4. The Class Claimants' Expedited Adjudication Framework is consistent with orders made by the Court in other cases

81. If the Donin and Jordet Claims remain subject to compromise in these proceedings, then Class Counsel request that the Court order the Expedited Adjudication Framework so that the Donin and Jordet claims can be determined efficiently and the Class Claimants can meaningfully participate in the CCAA process.

82. Orders implementing streamlined or bespoke procedures for expediting litigation and determining claims are common in complex restructuring proceedings. For example:

(a) in *Essar Steel Algoma Inc.*, the Court directed the resolution of approximately 3,000 outstanding grievances within a period of 6 months.[60] In the same case, the Court approved an expedited process to resolve a complex oppression claim. The order authorizing the Monitor to bring the action was made on September 26, 2016. The trial took the form of a hybrid hearing that commenced just over four months later on January 31, 2017, and was concluded on February 5, 2017. The court delivered its reasons one month after that;[61] and

[60] *Essar Steel Algoma (Re)*, Order of Justice Newbould (Grievance Claims Procedure) dated March 14, 2016, BoA Tab 10; *Essar Steel Algoma Inc. (Re)*, 2016 ONSC 1802 (Commercial List) ref'g leave to appeal 2016 ONCA 274, BoA Tab 11.

[61] *Essar Steel Algoma Inc. (Re)*, Order of Justice Newbould dated September 26, 2016, BoA Tab 12; *Ernst & Young Inc. v. Essar Global Fund Ltd et al*, 2017 ONSC 1366 (Commercial List), aff'd 2017 ONCA 1014, BoA Tab 13.

(b) in *Covia Canada Partnership Corp.*[62] , four related actions proceeded by way of multi-stage expedited litigation. Judgment was rendered by the Court within 6 months.[63]

5. The Class Claimants' Proposed Information Sharing Protocol is consistent with orders made by this Court in other cases

83. If the Class Claimants are affected creditors, they also require access to information to be able to meaningfully participate in the CCAA process. The Class Claimants are requesting access to the Applicants' data room and for the Court to appoint a mediator/arbitrator to facilitate the information and document sharing process and to address any issues that may arise.

84. Although debtor companies sometimes resist applications for production of information, the Courts, having regard to the principles underlying the CCAA process, regularly order production of such information:

(a) in the Nortel CCAA case: all stakeholders having a significant interest were provided access to Nortel's various confidential data-rooms, without an order;

(b) in the Sino-Forest CCAA case: class action plaintiffs and other purchasers of Sino-Forest securities having a common interest received access to the confidential data-room, which included, on the insistence of the class action plaintiffs, a wide series

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[62] *Covia Canada Partnership Corp. v. PWA Corp.*, 1993 CanLII 9429 (ON SC), aff'd 1993 CanLII 815 (ON CA), BoA Tab 14.

[63] *Covia Canada Partnership Corp. v. PWA Corp.*, 1993 CanLII 9429 (ON SC) at para. 5, BoA Tab 14.

of non-public documents pertaining to the audit of Sino-Forest's financial statements;[64]

(c) in the Collins & Aikman CCAA case: the union representing former employees received complete access to the company's financial records, including sale documents;[65] and

(d) in the Poseidon CCAA case: representative counsel for the class action plaintiffs received access to the contents of the company's data room, including access to replies made by the company generally to all bidders at the relevant time.[66]

85. The proposed information and document sharing protocol is consistent with prior Orders of this court and the principles underlying CCAA proceedings. In addition, the mediator/arbitrator's proposed powers are consistent with precedent and appropriate to ensure an efficient process.[67]

86. Given that the Class Claimants have a real claim that they are creditors of the Applicants, their meaningful participation in the process will only enhance the restructuring process and make it more likely that it will be successful.[68]

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[64] *Sino-Forest Corp., Re* (30 July 2012), Toronto, CV-12-9667-00CL (Ont. S.C.J.) (Document Production Order), BoA Tab 15.

[65] *Collins & Aikman Automotive Canada Inc., Re* (20 February 2008), Toronto, 07-CL7105 (Ont. S.C.J.) (Document Production Order), BoA Tab 16.

[66] *Poseidon Concepts Corp., Re* (31 May 2013), Calgary, 1301-04364 (ABQB) (Access Order), BoA Tab 17.

[67] *Rothmans, Benson & Hedges Inc. (Re)*, Order of Justice McEwen (Second Amended and Restated Initial Order) dated April 25, 2019, BoA, Tab 18; *Rothmans, Benson & Hedges Inc. (Re)*, Endorsement of Justice McEwen (Court-Appointed Mediator Communication and Confidentiality Protocol) dated May 24, 2019, BoA Tab 19.

[68] *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 5482 (CanLII), BoA Tab 20: although the Court did not grant the province of Newfoundland and Labrador access to the data rooms set up by the debtors in this case it lays out a number of considerations for the Court. The Class Claimants are in a different position than the Province in

PART IV - ORDER REQUESTED

87. The moving parties respectfully request that the Court order that:

(a) the Class Claimants are unaffected by this *CCAA* proceeding; or, in the alternative

(b) the adjudication of the Donin and Jordet Claims proceed in accordance with the Expedited Adjudication Framework and the Proposed Information Sharing Protocol.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4 day of February, 2022.

Ken Rosenberg/Jeff Larry

Abitibi who the Court found was improperly seeking information in respect of undetermined and potential environment claims.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Just Energy et al. v. Electric Reliability Council of Texas Inc. and the Public Utility Commissions of Texas, Inc.*, Chapter 15 Complaint of the Plaintiff in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, Case No. 21-30823 (MI)
2. *Mecachrome Canada Inc., Re*, 2009 CarswellQue 9963 (S.C.)
3. *Calpine Canada Energy Ltd., Re*, 2007 CarswellAlta 156 (Q.B.)
4. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
5. *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6
6. *In re Vitro, S.A.B. de C.V.*, 473 B.R. 117 (2012)
7. *In re Toft*, 453 B.R. 186 (2011)
8. *In re Ephedra Prods. Liability Litig.*, 349 B.R. 333 (2006)
9. *In re Adelphia Communications Corp.*, 359 B.R. 54 (2006)
10. *Essar Steel Algoma (Re)*, Order of Justice Newbould (Grievance Claims Procedure) dated March 14, 2016
11. *Essar Steel Algoma Inc. (Re)*, 2016 ONSC 1802 (Commercial List) ref'g leave to appeal 2016 ONCA 274
12. *Essar Steel Algoma Inc. (Re)*, Order of Justice Newbould dated September 26, 2016
13. *Ernst & Young Inc. v. Essar Global Fund Ltd et al*, 2017 ONSC 1366 (Commercial List), aff'd 2017 ONCA 1014
14. *Covia Canada Partnership Corp. v. PWA Corp.*, 1993 CanLII 9429 (ON SC), aff'd 1993 CanLII 815 (ON CA)
15. *Sino-Forest Corp., Re* (30 July 2012), Toronto, CV-12-9667-00CL (Ont. S.C.J.) (Document Production Order)
16. *Collins & Aikman Automotive Canada Inc., Re* (20 February 2008), Toronto, 07-CL7105 (Ont. S.C.J.) (Document Production Order)
17. *Poseidon Concepts Corp., Re* (31 May 2013), Calgary, 1301-04364 (ABQB) (Access Order)
18. *Rothmans, Benson & Hedges Inc. (Re)*, Order of Justice McEwen (Second Amended and Restated Initial Order) dated April 25, 2019

19. *Rothmans, Benson & Hedges Inc. (Re)*, Endorsement of Justice McEwen (Court-Appointed Mediator Communication and Confidentiality Protocol) dated May 24, 2019

20. *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 5482 (CanLII)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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.

Schedule "C"

PALIARE ROLAND
BARRISTERS

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File 99380

February 4, 2022

VIA EMAIL **WITH PREJUDICE**

Marc Wasserman, Michael De Lellis
Jeremy Dacks, Shawn Irving

Osler Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
100 King Street West, Suite 6200
Toronto, ON M5X 1B8

Dear Counsel:

Re: Just Energy Group Inc.
Court File No. CV-21-00658423-00CL

We write further to the Applicants' proposal for a process for the adjudication of the *Donin* and *Jordet* claims together in the *CCAA* proceeding forwarded to us by you on February 1, 2022.

The Applicants' proposal is not accepted. The timelines proposed are not sufficiently expedited to ensure that the Class Claimants can meaningfully participate in the *CCAA* process.

The enclosed table sets forth a counter proposal in respect of the adjudication of the *Donin* and *Jordet* claims (the "**Claims**"), which has the Claims heard together pursuant to the JAMS US Expedited Procedures arbitration rules (the "**Expedited Adjudication Framework**") by a tripartite panel of two US arbitrators and one Canadian arbitrator (the "**Claims Officers**"). The Class Claimants propose that the Honourable Mr. Dennis O'Connor sit as the Canadian arbitrator.

The Expedited Adjudication Framework contemplates that the Claims Officers will have complete jurisdiction and discretion to determine the appropriate process within the JAMS US expedited rules and with consideration to an endorsement from the *CCAA* court that the deadline for the release of a decision on the merits shall be three days prior to the meeting of creditors (implying an outside date of March 27, 2022, as it appears as though the DIP lender is requesting a timeline that would have a vote on March 30, 2022). This deadline may be extended by the *CCAA* court on a motion for directions on notice to the parties and the service list. Any appeal would be to the *CCAA* court.

Class Counsel was prepared to send a proposal for a process that resulted in a decision of the merits in May, 2022, but it has modified its proposed timing according to the information in the Monitor's Fifth Report (which we received at approximately 3:20 pm this afternoon, before we had an opportunity to send the earlier version of our proposed Expedited Adjudication Framework). The report states that the DIP lender has demanded a timeline that would require a vote no later than March 30, 2022.

In order for the Court to accommodate the DIP lenders' request, the Class Claimants require a determination of their Claims pursuant to the Expedited Adjudication Framework on the earlier of three days before the meeting of creditors and March 27, 2022.

Neither the Monitor's Fifth Report nor the other materials filed on this motion disclose a commercial basis for the DIP lenders' timeline, but our clients have nevertheless modified their proposed schedule to consider the DIP lenders' position. If there is information that shows a commercial basis for the DIP lenders' timeline, our clients have not been provided with access to that information.

The Expedited Adjudication Framework establishes a time-sensitive process that addresses and protects the rights and interests of the parties and ensures that all questions about scope, jurisdiction, discovery or any other matter will be dealt with efficiently by the very panel that will hear the case. This process will provide a comprehensive resolution of the Class Claimants' claims in a flexible, expeditious and efficient manner.

The Expedited Adjudication Framework is conditional on the necessary parties supporting the plan confirming that the adoption of this timetable will result in the Claims being adjudicated in the first instance in time for the Class Claimants to participate in the *CCAA* exit plan and vote in accordance with the amount of their Claims determined at the end of the proposed adjudication.

We look forward to the Applicants' response to our proposal. We would like to work together to see if we can come to an agreement before the hearing on February 9, 2022.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Ken Rosenberg
KR:DG

c: Jeff Larry, Danielle Glatt – Paliare Roland LLP
Robert Thornton, Rebecca Kennedy, Puya Fesharaki – TGF LLP
Clients

Step	Description	Proposed Schedule
Claims Officers selection and authority	The parties will agree on a tripartite panel of arbitrators to act as the Claims Officers. The chair of the panel shall be the Honourable Mr. Dennis O'Connor (subject to availability). If the chair of the panel is not the Honourable Mr. Dennis O'Connor, the parties will agree to another Canadian arbitrator, with prior CCAA experience Each party will then select one arbitrator from the JAMS (U.S.) pool of neutrals with both: (i) prior arbitration experience; and (ii) experience with class action cases. Pre-hearing discovery and the hearing will be conducted in accordance with the expedited procedures of the JAMS Comprehensive Arbitration Rules and Procedures governing binding Arbitrations of claims. *See* https://www.jamsadr.com/rules-comprehensive-arbitration/ and "Expedited Procedures" -- Rule 16.1 (hereafter the "**Expedited Procedures**" attached hereto).	February 14, 2022
Procedure	Any determinations in respect of the scope of the Class Claimants' claims (for example, what states and customers they cover and what entities it includes) will be determined by the Claims Officers in accordance with the Expedited Procedures -- Rule 16.1 and the endorsement of the Court that the Class Claimants' claims be determined three days prior to the meeting of creditors. All issues related to discovery, including both productions and depositions, and the determination of when and how class certification will be briefed and argued, shall also be determined	

	by the Claims Officers in accordance with the Expedited Procedures and the endorsement of the Court that the Class Claimants' claims be determined three days prior to the meeting of creditors.	
Hearing	Hearing dates shall be determined by the Claims Officers in accordance with the Expedited Rules and the endorsement of the Court that this matter be determined three days prior to the meeting of creditors.	
Decision	The Court will endorse that the Claims Officers shall provide an expedited written ruling, which decision will be binding on all parties for purposes of the *CCAA* proceeding, three days prior to the meeting of creditors (implying an outside date of March 27, 2022, as it appears as though the DIP lender is requesting a timeline that would have a vote on March 30, 2022). This deadline may be extended by the CCAA court on a motion for directions on notice to the parties and the service list	Three days prior to the meeting of creditors (implying an outside date of March 27, 2022)
Appeals	Either party may file an appeal to the *CCAA* court within five (5) days of the written ruling.	Appeal to be filed within five (5) days of judgment.

JAMS Comprehensive Arbitration Rules & Procedures

Effective June 1, 2021

Local Solutions. Global Reach.®

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JAMS Comprehensive Arbitration Rules & Procedures

Founded in 1979, JAMS is the largest private provider of alternative dispute resolution (ADR) services worldwide. Our neutrals resolve some of the world's largest, most complex and contentious disputes, utilizing JAMS Rules & Procedures as well as the rules of other domestic and international arbitral institutions.

JAMS mediators and arbitrators are full-time neutrals who come from the ranks of retired state and federal judges and prominent attorneys. These highly trained, experienced ADR professionals are dedicated to the highest ethical standards of conduct. Whether they are conducting in-person, remote or hybrid hearings, JAMS neutrals are adept at managing the resolution process.

Effective June 1, 2021, these updated Rules reflect the latest developments in arbitration. They make explicit the arbitrator's full authority to conduct hearings in person, virtually or in a combined form, and with participants in more than one geographic location. They also update electronic filing processes to coordinate with **JAMS Access**, our secure, online case management platform.

Summary of Revisions to the Comprehensive Rules

Scan this code with your smartphone for a complete list of all changes.

Additional Arbitration Resources

Arbitration Schedule of Fees and Costs

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Table of Contents

RULE 1
Scope of Rules

(a) The JAMS Comprehensive Arbitration Rules and Procedures ("Rules") govern binding Arbitrations of disputes or claims that are administered by JAMS and in which the Parties agree to use these Rules or, in the absence of such agreement, any disputed claim or counterclaim that exceeds $250,000, not including interest or attorneys' fees, unless other Rules are prescribed.

(b) The Parties shall be deemed to have made these Rules a part of their Arbitration Agreement ("Agreement") whenever they have provided for Arbitration by JAMS under its Comprehensive Rules or for Arbitration by JAMS without specifying any particular JAMS Rules and the disputes or claims meet the criteria of the first paragraph of this Rule.

(c) The authority and duties of JAMS as prescribed in the Agreement of the Parties and in these Rules shall be carried out by the JAMS National Arbitration Committee ("NAC") or the office of JAMS General Counsel or their designees.

(d) JAMS may, in its discretion, assign the administration of an Arbitration to any of its Resolution Centers.

(e) The term "Party" as used in these Rules includes Parties to the Arbitration and their counsel or representatives.

(f) "Electronic filing" (e-filing) means the electronic transmission of documents to JAMS for the purpose of filing via the Internet. "Electronic service" (e-service) means the electronic transmission of documents to a Party, attorney or representative under these Rules.

RULE 2
Party Self-Determination and Emergency Relief Procedures

(a) The Parties may agree on any procedures not specified herein or in lieu of these Rules that are consistent with the applicable law and JAMS policies (including, without limitation, Rules 15(i), 30 and 31). The Parties shall promptly notify JAMS of any such Party-agreed procedures and shall confirm such procedures in writing. The Party-agreed procedures shall be enforceable as if contained in these Rules.

(b) When an Arbitration Agreement provides that the Arbitration will be non-administered or administered by an entity other than JAMS and/or conducted in accordance with rules other than JAMS Rules, the Parties may agree to modify that Agreement to provide that the Arbitration will be administered by JAMS and/or conducted in accordance with JAMS Rules.

(c) Emergency Relief Procedures. These Emergency Relief Procedures are available in Arbitrations filed and served after July 1, 2014, and where not otherwise prohibited by law. Parties may agree to opt out of these Procedures in their Arbitration Agreement or by subsequent written agreement.

(i) A Party in need of emergency relief prior to the appointment of an Arbitrator may notify JAMS and all other Parties in writing of the relief sought and the basis for an Award of such relief. This Notice shall include an explanation of why such relief is needed on an expedited basis. Such Notice shall be given by email or personal delivery. The Notice must include a statement certifying that all other Parties have been notified. If all other Parties have not been notified, the Notice shall include an explanation of the efforts made to notify such Parties.

(ii) JAMS shall promptly appoint an Emergency Arbitrator to rule on the emergency request. In most cases the appointment of an Emergency Arbitrator will be done within 24 hours of receipt of the request. The Emergency Arbitrator shall promptly disclose any circumstance likely, based on information disclosed in the application, to affect the Arbitrator's ability to be impartial or independent. Any challenge to the appointment of the Emergency Arbitrator shall be made within 24 hours of the disclosures by the Emergency Arbitrator. JAMS will promptly review and decide any such challenge. JAMS' decision shall be final.

(iii) Within two business days, or as soon as practicable thereafter, the Emergency Arbitrator shall establish a schedule for the consideration of the request for emergency relief. The schedule shall provide a reasonable opportunity for all Parties to be heard taking into account the nature of the relief sought. The Emergency Arbitrator has the authority to rule on his or her own jurisdiction and shall resolve any disputes with respect to the request for emergency relief.

(iv) The Emergency Arbitrator shall determine whether the Party seeking emergency relief has shown that immediate loss or damage will result in the absence of emergency relief and whether the requesting Party is entitled to such relief. The Emergency Arbitrator shall enter an order or Award granting or denying the relief, as the case may be, and stating the reasons therefor.

(v) Any request to modify the Emergency Arbitrator's order or Award must be based on changed circumstances and may be made to the Emergency Arbitrator until such time as an Arbitrator or Arbitrators are appointed in accordance with the Parties' Agreement and JAMS' usual procedures. Thereafter, any request related to the relief granted or denied by the Emergency Arbitrator shall be determined by the Arbitrator(s) appointed in accordance with the Parties' Agreement and JAMS' usual procedures.

(vi) In the Emergency Arbitrator's discretion, any interim Award of emergency relief may be conditioned on the provision of adequate security by the Party seeking such relief.

RULE 3
Amendment of Rules

JAMS may amend these Rules without notice. The Rules in effect on the date of the commencement of an Arbitration (as defined in Rule 5) shall apply to that Arbitration, unless the Parties have agreed upon another version of the Rules.

RULE 4
Conflict with Law

If any of these Rules, or modification of these Rules agreed to by the Parties, is determined to be in conflict with a provision of applicable law, the provision of law will govern over the Rule in conflict, and no other Rule will be affected.

RULE 5
Commencing an Arbitration

(a) The Arbitration is deemed commenced when JAMS issues a Commencement Letter based upon the existence of one of the following:

(i) A post-dispute Arbitration Agreement fully executed by all Parties specifying JAMS administration or use of any JAMS Rules; or

(ii) A pre-dispute written contractual provision requiring the Parties to arbitrate the dispute or claim and specifying JAMS administration or use of any JAMS Rules or that the Parties agree shall be administered by JAMS; or

(iii) A written confirmation of an oral agreement of all Parties to participate in an Arbitration administered by JAMS or conducted pursuant to any JAMS Rules; or

(iv) The Respondent's failure to timely object to JAMS administration, where the Parties' Arbitration Agreement does not specify JAMS administration or JAMS Rules; or

(v) A copy of a court order compelling Arbitration at JAMS.

(b) The issuance of the Commencement Letter confirms that requirements for commencement have been met, that JAMS has received all payments required under the applicable fee schedule and that the Claimant has provided JAMS with contact information for all Parties together with evidence that the Demand for Arbitration has been served on all Parties.

(c) If a Party that is obligated to arbitrate in accordance with subparagraph (a) of this Rule fails to agree to participate in the Arbitration process, JAMS shall confirm in writing that Party's failure to respond or participate, and, pursuant to Rule 22(j), the Arbitrator, once appointed, shall schedule, and provide appropriate notice of, a Hearing or other opportunity for the Party demanding the Arbitration to demonstrate its entitlement to relief.

(d) The date of commencement of the Arbitration is the date of the Commencement Letter but is not intended to be applicable to any legal requirement, such as the statute of limitations; any contractual limitations period; or any claims notice requirement. The term "commencement," as used in this Rule, is intended only to pertain to the operation of this and other Rules (such as Rules 3, 13(a), 17(a) and 31(a)).

RULE 6
Preliminary and Administrative Matters

(a) JAMS may convene, or the Parties may request, administrative conferences to discuss any procedural matter relating to the administration of the Arbitration.

(b) If no Arbitrator has yet been appointed, at the request of a Party and in the absence of Party agreement, JAMS may determine the location of the Hearing, subject to Arbitrator review. In determining the location of the Hearing, such factors as the subject matter of the dispute, the convenience of the

Parties and witnesses, and the relative resources of the Parties shall be considered.

(c) If, at any time, any Party has failed to pay fees or expenses in full, JAMS may order the suspension or termination of the proceedings. JAMS may so inform the Parties in order that one of them may advance the required payment. If one Party advances the payment owed by a non-paying Party, the Arbitration shall proceed, and the Arbitrator may allocate the non-paying Party's share of such costs, in accordance with Rules 24(f) and 31(c). An administrative suspension shall toll any other time limits contained in these Rules or the Parties' Agreement.

(d) JAMS does not maintain an official record of documents filed in the Arbitration. If the Parties wish to have any documents returned to them, they must advise JAMS in writing within thirty (30) calendar days of the conclusion of the Arbitration. If special arrangements are required regarding file maintenance or document retention, they must be agreed to in writing, and JAMS reserves the right to impose an additional fee for such special arrangements. Documents that are submitted for e-filing are retained for thirty (30) calendar days following the conclusion of the Arbitration.

(e) Unless the Parties' Agreement or applicable law provides otherwise, JAMS, if it determines that the Arbitrations so filed have common issues of fact or law, may consolidate Arbitrations in the following instances:

(i) If a Party files more than one Arbitration with JAMS, JAMS may consolidate two or more of the Arbitrations into a single Arbitration.

(ii) Where a Demand or Demands for Arbitration is or are submitted naming Parties already involved in another Arbitration or Arbitrations pending under these Rules, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

(iii) Where a Demand or Demands for Arbitration is or are submitted naming Parties that are not identical to the Parties in the existing Arbitration or Arbitrations, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

When rendering its decision, JAMS will take into account all circumstances, including the links between the cases and the progress already made in the existing Arbitrations.

Unless applicable law provides otherwise, where JAMS decides to consolidate a proceeding into a pending Arbitration, the Parties to the consolidated case or cases will be deemed to have waived their right to designate an Arbitrator as well as any contractual provision with respect to the site of the Arbitration.

(f) Where a third party seeks to participate in an Arbitration already pending under these Rules or where a Party to an Arbitration under these Rules seeks to compel a third party to participate in a pending Arbitration, the Arbitrator shall determine such request, taking into account all circumstances he or she deems relevant and applicable.

RULE 7
Number and Neutrality of Arbitrators; Appointment and Authority of Chairperson

(a) The Arbitration shall be conducted by one neutral Arbitrator, unless all Parties agree otherwise. In these Rules, the term "Arbitrator" shall mean, as the context requires, the Arbitrator or the panel of Arbitrators in a tripartite Arbitration.

(b) In cases involving more than one Arbitrator, the Parties shall agree on, or, in the absence of agreement, JAMS shall designate, the Chairperson of the Arbitration Panel. If the Parties and the Arbitrators agree, a single member of the Arbitration Panel may, acting alone, decide discovery and procedural matters, including the conduct of hearings to receive documents and testimony from third parties who have been subpoenaed, in advance of the Arbitration Hearing, to produce documents.

(c) Where the Parties have agreed that each Party is to name one Arbitrator, the Arbitrators so named shall be neutral and independent of the appointing Party, unless the Parties have agreed that they shall be non-neutral.

RULE 8
Service

(a) JAMS or the Arbitrator may at any time require electronic filing and service of documents in an Arbitration, including through the JAMS Electronic Filing System. If JAMS or the Arbitrator requires electronic filing and service, the Parties shall maintain and regularly monitor a valid, usable and live email address for the receipt of documents and notifications. Any document filed via the JAMS Electronic Filing System shall

be considered as filed when the transmission to the JAMS Electronic Filing System is complete. Any document e-filed by 11:59 p.m. (of the sender's time zone) shall be deemed filed on that date.

(b) Every document filed with the JAMS Electronic Filing System shall be deemed to have been signed by the Arbitrator, Case Manager, attorney or declarant who submits the document to the JAMS Electronic Filing System, and shall bear the typed name, address and telephone number of a signing attorney.

(c) Delivery of e-service documents through the JAMS Electronic Filing System shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through the JAMS Electronic Filing System. E-service shall be deemed complete when the Party initiating e-service or JAMS completes the transmission of the electronic document(s) to the JAMS Electronic Filing System for e-filing and/or e-service.

(d) If an electronic filing and/or service via JAMS Electronic Filing System does not occur due to technical error in the transmission of the document, the Arbitrator or JAMS may, for good cause shown, permit the document to be filed and/or served *nunc pro tunc* to the date it was first attempted to be transmitted electronically. In such cases a Party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

(e) For documents that are not filed electronically, service by a Party under these Rules is effected by providing one signed copy of the document to each Party and two copies in the case of a sole Arbitrator and four copies in the case of a tripartite panel to JAMS. Service may be made by hand-delivery, overnight delivery service or U.S. mail. Service by any of these means is considered effective upon the date of deposit of the document.

(f) In computing any period of time prescribed or allowed by these Rules for a Party to do some act within a prescribed period after the service of a notice or other paper on the Party and the notice or paper is served on the Party only by U.S. mail, three (3) calendar days shall be added to the prescribed period. If the last day for the performance of any act that is required by these Rules to be performed within a specific time falls on a Saturday, Sunday or other legal holiday, the period is extended to and includes the next day that is not a holiday.

RULE 9
Notice of Claims

(a) Each Party shall afford all other Parties reasonable and timely notice of its claims, affirmative defenses or counterclaims. Any such notice shall include a short statement of its factual basis. No claim, remedy, counterclaim or affirmative defense will be considered by the Arbitrator in the absence of such prior notice to the other Parties, unless the Arbitrator determines that no Party has been unfairly prejudiced by such lack of formal notice or all Parties agree that such consideration is appropriate notwithstanding the lack of prior notice.

(b) Claimant's notice of claims is the Demand for Arbitration referenced in Rule 5. It shall include a statement of the remedies sought. The Demand for Arbitration may attach and incorporate a copy of a Complaint previously filed with a court. In the latter case, Claimant may accompany the Complaint with a copy of any Answer to that Complaint filed by any Respondent.

(c) Within fourteen (14) calendar days of service of the notice of claim, a Respondent may submit to JAMS and serve on other Parties a response and a statement of any affirmative defenses, including jurisdictional challenges, or counterclaims it may have. JAMS may grant reasonable extensions of time to file a response or counterclaim prior to the appointment of the Arbitrator.

(d) Within fourteen (14) calendar days of service of a counterclaim, a Claimant may submit to JAMS and serve on other Parties a response to such counterclaim and any affirmative defenses, including jurisdictional challenges, it may have.

(e) Any claim or counterclaim to which no response has been served will be deemed denied.

(f) Jurisdictional challenges under Rule 11 shall be deemed waived, unless asserted in a response to a Demand or counterclaim or promptly thereafter, when circumstances first suggest an issue of arbitrability.

RULE 10
Changes of Claims

After the filing of a claim and before the Arbitrator is appointed, any Party may make a new or different claim against a Party or any third party that is subject to Arbitration in the proceeding. Such claim shall be made in writing, filed with JAMS and served

on the other Parties. Any response to the new claim shall be made within fourteen (14) calendar days after service of such claim. After the Arbitrator is appointed, no new or different claim may be submitted, except with the Arbitrator's approval. A Party may request a hearing on this issue. Each Party has the right to respond to any new or amended claim in accordance with Rule 9(c) or (d).

RULE 11
Interpretation of Rules and Jurisdictional Challenges

(a) Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final.

(b) Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.

(c) Disputes concerning the appointment of the Arbitrator shall be resolved by JAMS.

(d) The Arbitrator may, upon a showing of good cause or *sua sponte*, when necessary to facilitate the Arbitration, extend any deadlines established in these Rules, provided that the time for rendering the Award may be altered only in accordance with Rules 22(i) or 24.

RULE 12
Representation

(a) The Parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by counsel or any other person of the Party's choice. Each Party shall give prompt written notice to the Case Manager and the other Parties of the name, address, telephone number and email address of its representative. The representative of a Party may act on the Party's behalf in complying with these Rules.

(b) Changes in Representation. A Party shall give prompt written notice to the Case Manager and the other Parties of any change in its representation, including the name, address, telephone number and email address of the new representative. Such notice shall state that the written consent of the former representative, if any, and of the new representative, has been obtained and shall state the effective date of the new representation.

(c) The Arbitrator may withhold approval of any intended change or addition to a Party's legal representative(s) where such change or addition could compromise the ability of the Arbitrator to continue to serve, the composition of the Panel in the case of a tripartite Arbitration or the finality of any Award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Arbitrator shall have regard to the circumstances, including the general principle that a Party may be represented by a legal representative chosen by that Party, the stage that the Arbitration has reached, the potential prejudice resulting from the possible disqualification of the Arbitrator, the efficiency resulting from maintaining the composition of the Panel (as constituted throughout the Arbitration), the views of the other Party or Parties to the Arbitration and any likely wasted costs or loss of time resulting from such change or addition.

RULE 13
Withdrawal from Arbitration

(a) No Party may terminate or withdraw from an Arbitration after the issuance of the Commencement Letter (see Rule 5), except by written agreement of all Parties to the Arbitration.

(b) A Party that asserts a claim or counterclaim may unilaterally withdraw that claim or counterclaim without prejudice by serving written notice on the other Parties and the Arbitrator. However, the opposing Parties may, within seven (7) calendar days of service of such notice, request that the Arbitrator condition the withdrawal upon such terms as he or she may direct.

RULE 14
Ex Parte Communications

(a) No Party may have any *ex parte* communication with a neutral Arbitrator, except as provided in section (b) of this Rule. The Arbitrator(s) may authorize any Party to communicate directly with the Arbitrator(s) by email or other written means as long as copies are simultaneously forwarded to the JAMS Case Manager and the other Parties.

(b) A Party may have *ex parte* communication with its appointed neutral or non-neutral Arbitrator as necessary to secure the Arbitrator's services and to assure the absence of conflicts, as well as in connection with the selection of the Chairperson of the arbitral panel.

(c) The Parties may agree to permit more extensive *ex parte* communication between a Party and a non-neutral Arbitrator. More extensive communication with a non-neutral Arbitrator may also be permitted by applicable law and rules of ethics.

RULE 15
Arbitrator Selection, Disclosures and Replacement

(a) Unless the Arbitrator has been previously selected by agreement of the Parties, JAMS may attempt to facilitate agreement among the Parties regarding selection of the Arbitrator.

(b) If the Parties do not agree on an Arbitrator, JAMS shall send the Parties a list of at least five (5) Arbitrator candidates in the case of a sole Arbitrator and at least ten (10) Arbitrator candidates in the case of a tripartite panel. JAMS shall also provide each Party with a brief description of the background and experience of each Arbitrator candidate. JAMS may add names to or replace any or all names on the list of Arbitrator candidates for reasonable cause at any time before the Parties have submitted their choice pursuant to subparagraph (c) below.

(c) Within seven (7) calendar days of service upon the Parties of the list of names, each Party may strike two (2) names in the case of a sole Arbitrator and three (3) names in the case of a tripartite panel, and shall rank the remaining Arbitrator candidates in order of preference. The remaining Arbitrator candidate with the highest composite ranking shall be appointed the Arbitrator. JAMS may grant a reasonable extension of the time to strike and rank the Arbitrator candidates to any Party without the consent of the other Parties.

(d) If this process does not yield an Arbitrator or a complete panel, JAMS shall designate the sole Arbitrator or as many members of the tripartite panel as are necessary to complete the panel.

(e) If a Party fails to respond to a list of Arbitrator candidates within seven (7) calendar days after its service, or fails to respond according to the instructions provided by JAMS, JAMS shall deem that Party to have accepted all of the Arbitrator candidates.

(f) Entities or individuals whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of the Arbitrator selection process. JAMS shall determine whether the interests between entities or individuals are adverse for purposes of Arbitrator selection, considering such factors as whether they are represented by the same attorney and whether they are presenting joint or separate positions at the Arbitration.

(g) If, for any reason, the Arbitrator who is selected is unable to fulfill the Arbitrator's duties, a successor Arbitrator shall be chosen in accordance with this Rule. If a member of a panel of Arbitrators becomes unable to fulfill his or her duties after the beginning of a Hearing but before the issuance of an Award, a new Arbitrator will be chosen in accordance with this Rule, unless, in the case of a tripartite panel, the Parties agree to proceed with the remaining two Arbitrators. JAMS will make the final determination as to whether an Arbitrator is unable to fulfill his or her duties, and that decision shall be final.

(h) Any disclosures regarding the selected Arbitrator shall be made as required by law or within ten (10) calendar days from the date of appointment. Such disclosures may be provided in electronic format, provided that JAMS will produce a hard copy to any Party that requests it. The Parties and their representatives shall disclose to JAMS any circumstance likely to give rise to justifiable doubt as to the Arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the Arbitration or any past or present relationship with the Parties or their representatives. The obligation of the Arbitrator, the Parties and their representatives to make all required disclosures continues throughout the Arbitration process.

(i) At any time during the Arbitration process, a Party may challenge the continued service of an Arbitrator for cause. The challenge must be based upon information that was not available to the Parties at the time the Arbitrator was selected. A challenge for cause must be in writing and exchanged with opposing Parties, who may respond within seven (7) calendar days of service of the challenge. JAMS shall make the final determination as to such challenge. Such determination shall take into account the materiality of the facts and any prejudice to the Parties. That decision will be final.

(j) Where the Parties have agreed that a Party-appointed Arbitrator is to be non-neutral, that Party-appointed Arbitrator is not obliged to withdraw if requested to do so only by the Party that did not appoint that Arbitrator.

RULE 16
Preliminary Conference

At the request of any Party or at the direction of the Arbitrator, a Preliminary Conference shall be conducted with the Parties or their counsel or representatives. The Preliminary Conference may address any or all of the following subjects:

(a) The exchange of information in accordance with Rule 17 or otherwise;

(b) The schedule for discovery as permitted by the Rules, as agreed by the Parties or as required or authorized by applicable law;

(c) The pleadings of the Parties and any agreement to clarify or narrow the issues or structure the Arbitration Hearing;

(d) The scheduling of the Hearing and any pre-Hearing exchanges of information, exhibits, motions or briefs;

(e) The attendance of witnesses as contemplated by Rule 21;

(f) The scheduling of any dispositive motion pursuant to Rule 18;

(g) The premarking of exhibits, the preparation of joint exhibit lists and the resolution of the admissibility of exhibits;

(h) The form of the Award; and

(i) Such other matters as may be suggested by the Parties or the Arbitrator.

The Preliminary Conference may be conducted telephonically and may be resumed from time to time as warranted.

RULE 16.1
Application of Expedited Procedures

(a) If these Expedited Procedures are referenced in the Parties' Agreement to arbitrate or are later agreed to by all Parties, they shall be applied by the Arbitrator.

(b) The Claimant or Respondent may opt into the Expedited Procedures. The Claimant may do so by indicating the election in the Demand for Arbitration. The Respondent may opt into the Expedited Procedures by so indicating in writing to JAMS with a copy to the Claimant served within fourteen (14) days of receipt of the Demand for Arbitration. If a Party opts into the Expedited Procedures, the other side shall indicate within seven (7) calendar days of notice thereof whether it agrees to the Expedited Procedures.

(c) If one Party elects the Expedited Procedures and any other Party declines to agree to the Expedited Procedures, each Party shall have a client or client representative present at the first Preliminary Conference (which should, if feasible, be an in-person conference), unless excused by the Arbitrator for good cause.

RULE 16.2
Where Expedited Procedures Are Applicable

(a) The Arbitrator shall require compliance with Rule 17(a) prior to conducting the first Preliminary Conference. Each Party shall confirm in writing to the Arbitrator that it has so complied or shall indicate any limitations on full compliance and the reasons therefor.

(b) Document requests shall (1) be limited to documents that are directly relevant to the matters in dispute or to its outcome; (2) be reasonably restricted in terms of time frame, subject matter and persons or entities to which the requests pertain; and (3) not include broad phraseology such as "all documents directly or indirectly related to." The Requests shall not be encumbered with extensive "definitions" or "instructions." The Arbitrator may edit or limit the number of requests.

(c) E-discovery shall be limited as follows:

(i) There shall be production of electronic documents only from sources used in the ordinary course of business. Absent a showing of compelling need, no such documents are required to be produced from backup servers, tapes or other media.

(ii) Absent a showing of compelling need, the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format that is usable by the requesting Party and convenient and economical for the producing Party. Absent a showing of compelling need, the Parties need not produce metadata, with the exception of header fields for email correspondence.

(iii) The description of custodians from whom electronic documents may be collected should be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute.

(iv) Where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the Arbitrator may either deny such requests or order disclosure on the condition that the requesting Party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final Award.

(v) The Arbitrator may vary these Rules after discussion with the Parties at the Preliminary Conference.

(d) Depositions of percipient witnesses shall be limited as follows:

(i) The limitation of one discovery deposition per side (Rule 17(b)) shall be applied by the Arbitrator, unless it is determined, based on all relevant circumstances, that more depositions are warranted. The Arbitrator shall consider the amount in controversy, the complexity of the factual issues, the number of Parties and the diversity of their interests, and whether any or all of the claims appear, on the basis of the pleadings, to have sufficient merit to justify the time and expense associated with the requested discovery.

(ii) The Arbitrator shall also consider the additional factors listed in the JAMS Recommended Arbitration Discovery Protocols for Domestic Commercial Cases.

(e) Expert depositions, if any, shall be limited as follows: Where written expert reports are produced to the other side in advance of the Hearing, expert depositions may be conducted only by agreement of the Parties or by order of the Arbitrator for good cause shown.

(f) Discovery disputes shall be resolved on an expedited basis.

(i) Where there is a panel of three Arbitrators, the Parties are encouraged to agree, by rule or otherwise, that the Chair or another member of the panel be authorized to resolve discovery issues, acting alone.

(ii) Lengthy briefs on discovery matters should be avoided. In most cases, the submission of brief letters will sufficiently inform the Arbitrator with regard to the issues to be decided.

(iii) The Parties should meet and confer in good faith prior to presenting any issues for the Arbitrator's decision.

(iv) If disputes exist with respect to some issues, that should not delay the Parties' discovery on remaining issues.

(g) The Arbitrator shall set a discovery cutoff not to exceed seventy-five (75) calendar days after the Preliminary Conference for percipient discovery and not to exceed one hundred five (105) calendar days for expert discovery (if any). These dates may be extended by the Arbitrator for good cause shown.

(h) Dispositive motions (Rule 18) shall not be permitted, except as set forth in the JAMS Recommended Arbitration Discovery Protocols for Domestic Commercial Cases or unless the Parties agree to that procedure.

(i) The Hearing shall commence within sixty (60) calendar days after the cutoff for percipient discovery. Consecutive Hearing days shall be established unless otherwise agreed by the Parties or ordered by the Arbitrator. These dates may be extended by the Arbitrator for good cause shown.

(j) The Arbitrator may alter any of these Procedures for good cause.

RULE 17
Exchange of Information

(a) The Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information ("ESI")) relevant to the dispute or claim immediately after commencement of the Arbitration. They shall complete an initial exchange of all relevant, non-privileged documents, including, without limitation, copies of all documents in their possession or control on which they rely in support of their positions, and names of individuals whom they may call as witnesses at the Arbitration Hearing, within twenty-one (21) calendar days after all pleadings or notice of claims have been received. The Arbitrator may modify these obligations at the Preliminary Conference.

(b) Each Party may take one deposition of an opposing Party or of one individual under the control of the opposing Party. The Parties shall attempt to agree on the time, location and duration of the deposition. If the Parties do not agree, these issues shall be determined by the Arbitrator. The necessity of additional depositions shall be determined by the

Arbitrator based upon the reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing Parties and the witness.

(c) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties continue to be obligated to provide relevant, non-privileged documents to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that were not previously exchanged, or witnesses and experts that were not previously identified, may not be considered by the Arbitrator at the Hearing, unless agreed by the Parties or upon a showing of good cause.

(d) The Parties shall promptly notify JAMS when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute. With the written consent of all Parties, and in accordance with an agreed written procedure, the Arbitrator may appoint a special master to assist in resolving a discovery dispute.

(e) In a consumer or employment case, the Parties may take discovery of third parties with the approval of the Arbitrator.

RULE 18
Summary Disposition of a Claim or Issue

The Arbitrator may permit any Party to file a Motion for Summary Disposition of a particular claim or issue, either by agreement of all interested Parties or at the request of one Party, provided other interested Parties have reasonable notice to respond to the request. The Request may be granted only if the Arbitrator determines that the requesting Party has shown that the proposed motion is likely to succeed and dispose of or narrow the issues in the case.

RULE 19
Scheduling and Location of Hearing

(a) The Arbitrator, after consulting with the Parties that have appeared, shall determine the date, time and location of the Hearing. The Arbitrator and the Parties shall attempt to schedule consecutive Hearing days if more than one day is necessary.

(b) If a Party has failed to participate in the Arbitration process, and the Arbitrator reasonably believes that the Party will not participate in the Hearing, the Arbitrator may set the Hearing without consulting with that Party. The non-participating Party shall be served with a Notice of Hearing at least thirty (30) calendar days prior to the scheduled date, unless the law of the relevant jurisdiction allows for, or the Parties have agreed to, shorter notice.

(c) The Arbitrator, in order to hear a third-party witness, or for the convenience of the Parties or the witnesses, may conduct the Hearing at any location. Any JAMS Resolution Center may be designated a Hearing location for purposes of the issuance of a subpoena or subpoena *duces tecum* to a third-party witness.

RULE 20
Pre-Hearing Submissions

(a) Except as set forth in any scheduling order that may be adopted, at least fourteen (14) calendar days before the Arbitration Hearing, the Parties shall file with JAMS and serve and exchange (1) a list of the witnesses they intend to call, including any experts; (2) a short description of the anticipated testimony of each such witness and an estimate of the length of the witness' direct testimony; (3) any written expert reports that may be introduced at the Arbitration Hearing; and (4) a list of all exhibits intended to be used at the Hearing. The Parties should exchange with each other copies of any such exhibits to the extent that they have not been previously exchanged. The Parties should pre-mark exhibits and shall attempt to resolve any disputes regarding the admissibility of exhibits prior to the Hearing.

(b) The Arbitrator may require that each Party submit a concise written statement of position, including summaries of the facts and evidence a Party intends to present, discussion of the applicable law and the basis for the requested Award or denial of relief sought. The statements, which may be in the form of a letter, shall be filed with JAMS and served upon the other Parties at least seven (7) calendar days before the Hearing date. Rebuttal statements or other pre-Hearing written submissions may be permitted or required at the discretion of the Arbitrator.

RULE 21
Securing Witnesses and Documents for the Arbitration Hearing

At the written request of a Party, all other Parties shall produce for the Arbitration Hearing all specified witnesses in their employ or under their control without need of subpoena. The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents either prior to or at the Hearing pursuant to this Rule or Rule 19(c). The subpoena or subpoena *duces tecum* shall be issued in accordance with the applicable law. Pre-issued subpoenas may be used in jurisdictions that permit them. In the event a Party or a subpoenaed person objects to the production of a witness or other evidence, the Party or subpoenaed person may file an objection with the Arbitrator, who shall promptly rule on the objection, weighing both the burden on the producing Party and witness and the need of the proponent for the witness or other evidence.

RULE 22
The Arbitration Hearing

(a) The Arbitrator will ordinarily conduct the Arbitration Hearing in the manner set forth in these Rules. The Arbitrator may vary these procedures if it is determined to be reasonable and appropriate to do so.

(b) The Arbitrator shall determine the order of proof, which will generally be similar to that of a court trial.

(c) The Arbitrator shall require witnesses to testify under oath if requested by any Party, or otherwise at the discretion of the Arbitrator.

(d) Strict conformity to the rules of evidence is not required, except that the Arbitrator shall apply applicable law relating to privileges and work product. The Arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The Arbitrator may be guided in that determination by principles contained in the Federal Rules of Evidence or any other applicable rules of evidence. The Arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all Parties are afforded the opportunity to present material and relevant evidence.

(e) The Arbitrator shall receive and consider relevant deposition testimony recorded by transcript or videotape, provided that the other Parties have had the opportunity to attend and cross-examine. The Arbitrator may in his or her discretion consider witness affidavits or other recorded testimony even if the other Parties have not had the opportunity to cross-examine, but will give that evidence only such weight as he or she deems appropriate.

(f) The Parties will not offer as evidence, and the Arbitrator shall neither admit into the record nor consider, prior settlement offers by the Parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated, except to the extent that applicable law permits the admission of such evidence.

(g) The Arbitrator has full authority to determine that the Hearing, or any portion thereof, be conducted in person or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places, or in a combined form. If some or all of the witnesses or other participants are located remotely, the Arbitrator may make such orders and set such procedures as the Arbitrator deems necessary or advisable.

(h) When the Arbitrator determines that all relevant and material evidence and arguments have been presented, and any interim or partial Awards have been issued, the Arbitrator shall declare the Hearing closed. The Arbitrator may defer the closing of the Hearing until a date determined by the Arbitrator in order to permit the Parties to submit post-Hearing briefs, which may be in the form of a letter, and/or to make closing arguments. If post-Hearing briefs are to be submitted or closing arguments are to be made, the Hearing shall be deemed closed upon receipt by the Arbitrator of such briefs or at the conclusion of such closing arguments, whichever is later.

(i) At any time before the Award is rendered, the Arbitrator may, *sua sponte* or on application of a Party for good cause shown, reopen the Hearing. If the Hearing is reopened, the time to render the Award shall be calculated from the date the reopened Hearing is declared closed by the Arbitrator.

(j) The Arbitrator may proceed with the Hearing in the absence of a Party that, after receiving notice of the Hearing pursuant to Rule 19, fails to attend. The Arbitrator may not render an Award solely on the basis of the default or absence of the Party, but shall require any Party seeking relief to submit such evidence as the Arbitrator may require for the rendering of an Award. If the Arbitrator reasonably believes that a Party will not attend the Hearing, the Arbitrator may schedule the Hearing as a telephonic Hearing and may receive the evidence

necessary to render an Award by affidavit. The notice of Hearing shall specify if it will be in person or telephonic.

(k) Any Party may arrange for a stenographic record to be made of the Hearing and shall inform the other Parties in advance of the Hearing. No other means of recording the proceedings shall be permitted absent agreement of the Parties or by direction of the Arbitrator.

(i) The requesting Party shall bear the cost of such stenographic record. If all other Parties agree to share the cost of the stenographic record, it shall be made available to the Arbitrator and may be used in the proceeding.

(ii) If there is no agreement to share the cost of the stenographic record, it may not be provided to the Arbitrator and may not be used in the proceeding, unless the Party arranging for the stenographic record agrees to provide access to the stenographic record either at no charge or on terms that are acceptable to the Parties and the reporting service.

(iii) If the Parties agree to the Optional Arbitration Appeal Procedure (Rule 34), they shall, if possible, ensure that a stenographic or other record is made of the Hearing and shall share the cost of that record.

(iv) The Parties may agree that the cost of the stenographic record shall or shall not be allocated by the Arbitrator in the Award.

RULE 23
Waiver of Hearing

The Parties may agree to waive the oral Hearing and submit the dispute to the Arbitrator for an Award based on written submissions and other evidence as the Parties may agree.

RULE 24
Awards

(a) The Arbitrator shall render a Final Award or a Partial Final Award within thirty (30) calendar days after the date of the close of the Hearing, as defined in Rule 22(h) or (i), or, if a Hearing has been waived, within thirty (30) calendar days after the receipt by the Arbitrator of all materials specified by the Parties, except (1) by the agreement of the Parties; (2) upon good cause for an extension of time to render the Award; or (3) as provided in Rule 22(i). The Arbitrator shall provide the Final Award or the Partial Final Award to JAMS for issuance in accordance with this Rule.

(b) Where a panel of Arbitrators has heard the dispute, the decision and Award of a majority of the panel shall constitute the Arbitration Award.

(c) In determining the merits of the dispute, the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator shall be guided by the rules of law and equity that he or she deems to be most appropriate. The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' Agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy.

(d) In addition to a Final Award or Partial Final Award, the Arbitrator may make other decisions, including interim or partial rulings, orders and Awards.

(e) Interim Measures. The Arbitrator may grant whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods. Such interim measures may take the form of an interim or Partial Final Award, and the Arbitrator may require security for the costs of such measures. Any recourse by a Party to a court for interim or provisional relief shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(f) The Award of the Arbitrator may allocate Arbitration fees and Arbitrator compensation and expenses, unless such an allocation is expressly prohibited by the Parties' Agreement. (Such a prohibition may not limit the power of the Arbitrator to allocate Arbitration fees and Arbitrator compensation and expenses pursuant to Rule 31(c).)

(g) The Award of the Arbitrator may allocate attorneys' fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' Agreement or allowed by applicable law. When the Arbitrator is authorized to award attorneys' fees and must determine the reasonable amount of such fees, he or she may consider whether the failure of a Party to cooperate reasonably in the discovery process and/or comply with the Arbitrator's discovery orders caused delay to the proceeding or additional costs to the other Parties.

(h) The Award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. Unless all Parties agree otherwise, the Award shall also contain a concise written statement of the reasons for the Award.

(i) After the Award has been rendered, and provided the Parties have complied with Rule 31, the Award shall be issued by serving copies on the Parties. Service may be made by U.S. mail. It need not be sent certified or registered.

(j) Within seven (7) calendar days after service of a Partial Final Award or Final Award by JAMS, any Party may serve upon the other Parties and file with JAMS a request that the Arbitrator correct any computational, typographical or other similar error in an Award (including the reallocation of fees pursuant to Rule 31(c) or on account of the effect of an offer to allow judgment), or the Arbitrator may *sua sponte* propose to correct such errors in an Award. A Party opposing such correction shall have seven (7) calendar days thereafter in which to file and serve any objection. The Arbitrator may make any necessary and appropriate corrections to the Award within twenty-one (21) calendar days of receiving a request or fourteen (14) calendar days after his or her proposal to do so. The Arbitrator may extend the time within which to make corrections upon good cause. The corrected Award shall be served upon the Parties in the same manner as the Award.

(k) The Award is considered final, for purposes of either the Optional Arbitration Appeal Procedure pursuant to Rule 34 or a judicial proceeding to enforce, modify or vacate the Award pursuant to Rule 25, fourteen (14) calendar days after service if no request for a correction is made, or as of the effective date of service of a corrected Award.

RULE 25
Enforcement of the Award

Proceedings to enforce, confirm, modify or vacate an Award will be controlled by and conducted in conformity with the Federal Arbitration Act, 9 U.S.C. Sec 1, *et seq.*, or applicable state law. The Parties to an Arbitration under these Rules shall be deemed to have consented that judgment upon the Award may be entered in any court having jurisdiction thereof.

RULE 26
Confidentiality and Privacy

(a) JAMS and the Arbitrator shall maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision.

(b) The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

(c) Subject to the discretion of the Arbitrator or agreement of the Parties, any person having a direct interest in the Arbitration may attend the Arbitration Hearing. The Arbitrator may exclude any non-Party from any part of a Hearing.

RULE 27
Waiver

(a) If a Party becomes aware of a violation of or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the Arbitrator determines that waiver will cause substantial injustice or hardship.

(b) If any Party becomes aware of information that could be the basis of a challenge for cause to the continued service of the Arbitrator, such challenge must be made promptly, in writing, to the Arbitrator or JAMS. Failure to do so shall constitute a waiver of any objection to continued service by the Arbitrator.

RULE 28
Settlement and Consent Award

(a) The Parties may agree, at any stage of the Arbitration process, to submit the case to JAMS for mediation. The JAMS mediator assigned to the case may not be the Arbitrator or a member of the Appeal Panel, unless the Parties so agree, pursuant to Rule 28(b).

(b) The Parties may agree to seek the assistance of the Arbitrator in reaching settlement. By their written agreement to submit the matter to the Arbitrator for settlement assistance, the Parties will be deemed to have agreed that the assistance of the Arbitrator in such settlement efforts will not disqualify the Arbitrator from continuing to serve as Arbitrator if settlement is not reached; nor shall such assistance be argued to a reviewing court as the basis for vacating or modifying an Award.

(c) If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator shall comply with such request, unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed

Consent Award, he or she shall inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

RULE 29
Sanctions

The Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator. These sanctions may include, but are not limited to, assessment of Arbitration fees and Arbitrator compensation and expenses; assessment of any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or, in extreme cases, determining an issue or issues submitted to Arbitration adversely to the Party that has failed to comply.

RULE 30
Disqualification of the Arbitrator as a Witness or Party and Exclusion of Liability

(a) The Parties may not call the Arbitrator, the Case Manager or any other JAMS employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the Parties and relating to the dispute that is the subject of the Arbitration. The Arbitrator, Case Manager and other JAMS employees and agents are also incompetent to testify as witnesses or experts in any such proceeding.

(b) The Parties shall defend and/or pay the cost (including any attorneys' fees) of defending the Arbitrator, Case Manager and/or JAMS from any subpoenas from outside parties arising from the Arbitration.

(c) The Parties agree that neither the Arbitrator, nor the Case Manager, nor JAMS is a necessary Party in any litigation or other proceeding relating to the Arbitration or the subject matter of the Arbitration, and neither the Arbitrator, nor the Case Manager, nor JAMS, including its employees or agents, shall be liable to any Party for any act or omission in connection with any Arbitration conducted under these Rules, including, but not limited to, any disqualification of or recusal by the Arbitrator.

RULE 31
Fees

(a) Each Party shall pay its *pro rata* share of JAMS fees and expenses as set forth in the JAMS fee schedule in effect at the time of the commencement of the Arbitration, unless the Parties agree on a different allocation of fees and expenses. JAMS' agreement to render services is jointly with the Party and the attorney or other representative of the Party in the Arbitration. The non-payment of fees may result in an administrative suspension of the case in accordance with Rule 6(c).

(b) JAMS requires that the Parties deposit the fees and expenses for the Arbitration from time to time during the course of the proceedings and prior to the Hearing. The Arbitrator may preclude a Party that has failed to deposit its *pro rata* or agreed-upon share of the fees and expenses from offering evidence of any affirmative claim at the Hearing.

(c) The Parties are jointly and severally liable for the payment of JAMS Arbitration fees and Arbitrator compensation and expenses. In the event that one Party has paid more than its share of such fees, compensation and expenses, the Arbitrator may award against any other Party any such fees, compensation and expenses that such Party owes with respect to the Arbitration.

(d) Entities or individuals whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of JAMS' assessment of fees. JAMS shall determine whether the interests between entities or individuals are adverse for purpose of fees, considering such factors as whether the entities or individuals are represented by the same attorney and whether the entities or individuals are presenting joint or separate positions at the Arbitration.

RULE 32
Bracketed (or High-Low) Arbitration Option

(a) At any time before the issuance of the Arbitration Award, the Parties may agree, in writing, on minimum and maximum amounts of damages that may be awarded on each claim or on all claims in the aggregate. The Parties shall promptly notify JAMS and provide to JAMS a copy of their written agreement setting forth the agreed-upon minimum and maximum amounts.

(b) JAMS shall not inform the Arbitrator of the agreement to proceed with this option or of the agreed-upon minimum and maximum levels without the consent of the Parties.

(c) The Arbitrator shall render the Award in accordance with Rule 24.

(d) In the event that the Award of the Arbitrator is between the agreed-upon minimum and maximum amounts, the Award shall become final as is. In the event that the Award is below the agreed-upon minimum amount, the final Award issued shall be corrected to reflect the agreed-upon minimum amount. In the event that the Award is above the agreed-upon maximum amount, the final Award issued shall be corrected to reflect the agreed-upon maximum amount.

RULE 33
Final Offer (or Baseball) Arbitration Option

(a) Upon agreement of the Parties to use the option set forth in this Rule, at least seven (7) calendar days before the Arbitration Hearing, the Parties shall exchange and provide to JAMS written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate based on the standard set forth in Rule 24(c). JAMS shall promptly provide copies of the Parties' proposals to the Arbitrator, unless the Parties agree that they should not be provided to the Arbitrator. At any time prior to the close of the Arbitration Hearing, the Parties may exchange revised written proposals or demands, which shall supersede all prior proposals. The revised written proposals shall be provided to JAMS, which shall promptly provide them to the Arbitrator, unless the Parties agree otherwise.

(b) If the Arbitrator has been informed of the written proposals, in rendering the Award, the Arbitrator shall choose between the Parties' last proposals, selecting the proposal that the Arbitrator finds most reasonable and appropriate in light of the standard set forth in Rule 24(c). This provision modifies Rule 24(h) in that no written statement of reasons shall accompany the Award.

(c) If the Arbitrator has not been informed of the written proposals, the Arbitrator shall render the Award as if pursuant to Rule 24, except that the Award shall thereafter be corrected to conform to the closest of the last proposals and the closest of the last proposals will become the Award.

(d) Other than as provided herein, the provisions of Rule 24 shall be applicable.

RULE 34
Optional Arbitration Appeal Procedure

The Parties may agree at any time to the JAMS Optional Arbitration Appeal Procedure. All Parties must agree in writing for such procedure to be effective. Once a Party has agreed to the Optional Arbitration Appeal Procedure, it cannot unilaterally withdraw from it, unless it withdraws, pursuant to Rule 13, from the Arbitration.

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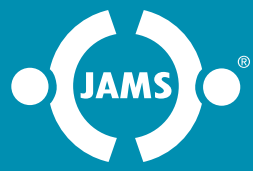

Court File No. CV-21-00658423-00CL

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 **JUST ENERGY GROUP INC. ET AL.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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