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

C100520



AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SUNTERRA FOOD CORPORATION,
TROCHU MEAT PROCESSORS LTD., SUNTERRA
QUALITY FOOD MARKETS INC., SUNTERRA FARMS
LTD., SUNWOLD FARMS LIMITED, SUNTERRA BEEF
LTD., LARIAGRA FARMS LTD., SUNTERRA FARM
ENTERPRISES LTD., SUNTERRA ENTERPRISES INC

PLAINTIFF

NATIONAL BANK OF CANADA

DEFENDANTS

JS
Oct. 15, 2025
J. Lema

SUNTERRA FOOD CORPORATION, TROCHU MEAT
PROCESSORS LTD., SUNTERRA QUALITY FOOD
MARKETS INC., SUNTERRA FARMS LTD., SUNWOLD
FARMS LIMITED, SUNTERRA BEEF LTD., LARIAGRA
FARMS LTD., SUNTERRA FARM ENTERPRISES INC.,
SUNTERRA ENTERPRISES INC., RAY PRICE, DEBBIE
UFFELMAN and CRAIG THOMPSON

DOCUMENT

BRIEF OF THE APPLICANT

PARTY FILING THIS DOCUMENT

SUNTERRA FOOD CORPORATION, TROCHU MEAT
PROCESSORS LTD., SUNTERRA QUALITY FOOD
MARKETS INC., SUNTERRA FARMS LTD., SUNWOLD
FARMS LIMITED, SUNTERRA BEEF LTD., LARIAGRA
FARMS LTD., SUNTERRA FARM ENTERPRISES INC.,
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**BRIEF OF THE APPLICANT REGARDING THE APPLICATION TO BE HEARD BY THE
HONOURABLE JUSTICE LEMA ON OCTOBER 15, 2025**

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	FACTS.....	4
	A. NBC Consent Order	4
	B. Compeer Consent Order	5
III.	ISSUES	6
IV.	LAW.....	6
V.	Argument.....	7
	C. NBC Consent Order	7
	D. Compeer Consent Order	7
	E. The Officers fall within Rule 5.17 per Sunterra's determination	8
	a. The Officers is a current officer or employee	8
	b. The Officers have or appear to have relevant and material information.....	9
	F. Alleged lack of knowledge	10
	G. Sunterra's right is generally supported	10
	H. Hearsay	10
	I. The Terms of the Witness order are fair and reasonable	10
VI.	Conclusion/ Relief Requested.....	11
VII.	Authorities	12

I. INTRODUCTION

1. On October 15, 2025, the Court will be asked to consider two separate requests made by the defendants in this action (herein referred to as “Sunterra”) with respect to two separate Consent Orders made in:

- (a) Action No. 2501-0621: (the “NBC Action”); and

- (b) Action No. 2503-10996 (the “Compeer Action”)

2. With respect to the NBC Action, the Court will be asked to consider the request of Sunterra (the “NBC Request”) to question:

- (a) Laurent Ferreira, Chief Executive Officer

- (b) Alexandre Leblanc, Vice President Special Loans

- (Collectively, the “NBC Officers”)

3. With respect to the Compeer Action, the court will be asked to consider the request of Sunterra (the “Compeer Request”) with respect to:

- (a) Jase Wagner, Chief Financial Officer

- (b) Bill Moore, Chief Risk Officer

- (Collectively, the “Compeer Officers”)

4. The four individuals above named being hereto collectively referred to as “the Officers”.

5. The NBC Request and the Compeer Request are the subject of a claims process made pursuant to two separate Consent Orders. These must be considered individually. However, this brief is intended to encompass the argument to be applied to both applications.

6. In addition to those requests being made by Sunterra, the following request is being made on October 15, 2025 by NBC:

- (a) NBC’s application to request the questioning of Sunterra’s auditor, KPMG.

7. This brief is a joint brief for Sunterra's requests concerning both the NBC Action and the Compeer action and will focus on Sunterra's claims with respect to both the NBC Action and the Compeer Action.

II. FACTS

A. *NBC Consent Order*

8. The Consent Order with respect to the claim by NBC was filed by Justice Lema on September 11, 2025 (the "NBC Consent Order"). Within Schedule A of the NBC Consent Order, Justice Lema ordered the following:

"On or before September 5, 2025, the Sunterra Parties shall advise NBC of the names of any two additional individuals who are current or former NBC employees, officers or directors within the scope of Rules 5.17 and 5.18 associated with NBC (apart from the deponents of affidavits filed by NBC and Listed Witnesses) and associated with NBC (apart from the deponents of affidavits filed by NBC), if any, it wishes to question under Rule 6.6 if they subsequently file affidavits and Rule 6.8 if they do not file affidavits in relation to the Claim."

(...)

"Each deponent of an affidavit filed by NBC and **each individual who is identified by the Sunterra Parties as falling within the scope of Rules 5.17 and 5.18 as they relate to NBC** (collectively, the "NBC Witnesses") **shall be made available** for questioning by no later than October 24, 2025. Such question¹ing shall be limited to 3 days by the Sunterra Parties." (emphasis added)

9. With "listed witnesses" defined in the consent order as:

"2 additional listed witnesses beyond the 2 or more NBC affiants by September 5, 2025."²

10. On September 5, 2025, pursuant to the Compeer Consent Order, Sunterra sent a letter to Compeer requesting the production of:

(a) Laurent Ferriera, Chief Executive Officer of NBC

(b) Nizar Araj, Chief Compliance Officer of NBC

¹ Affidavit of Arthur Price in the NBC Action, sworn October 8, 2025 [Price NBC Affidavit], at Exhibit "A"

² *Ibid*

... as the two individuals named by Sunterra, in accordance with Schedule "A" of the NBC Consent Order.³

11. On September 11, 2025, NBC (by way of counsel) provided a reply to Sunterra's claim, stating that "We are informed that neither of Messrs. Ferreira nor Arají have relevant and material information with respect to the matters in issue. On this basis, National Bank of Canada will not be producing either of Messrs. Ferreira or Arají for questioning"⁴

B. Compeer Consent Order

12. On July 24, 2025, a consent order was signed by Justice Lema with respect to the Compeer Action (the "Compeer Consent Order"). Attached to the order as Schedule "A" is a litigation plan which states as follows:

"The Defendants in the Action shall file and serve their defences to the Statement of Claim filed in the Action and any (...) by September 5 2025, and [**Sunterra**] **shall advise Compeer** Financial, PCA("Compeer") **what two additional current employees of Compeer, if any, it wishes to examine.** Such examinations shall occur pursuant to Rule 6.8 of the Alberta Rules of Court unless the additional witnesses file Affidavits."⁵

13. On September 5 2025, pursuant to the Compeer Consent Order, Sunterra sent a letter to Compeer requesting the production of:

(c) Jase Wagner, Chief Executive Officer of Compeer Financial PCA

(d) Bill Moore, Chief Risk Officer of Compeer Financial PCA

As the two individuals named by Sunterra, in accordance with Schedule "A" of the Compeer Consent Order. ⁶

14. On September 15, 2025, Sunterra received a response from Compeer, by way of Compeer's counsel, stating that "or the reasons that "Compeer will not make either of Messrs. Wagner or Moore available for questioning" as they have "have no

³ Price NBC Affidavit at Exhibit "B"

⁴ Price NBC Affidavit at Exhibit "C"

⁵ Affidavit of Art Price within the Compeer Action, sworn October 8, 2025 [Price Compeer Affidavit] at Exhibit "A"

⁶ Price Compeer Affidavit at Exhibit "B"

relevant evidence to give at any questioning in the Compeer Action.” And “Such a purpose is contrary to Rule 6.8 of the Rules of Court and is otherwise improper”.⁷

III. ISSUES

15. The primary issue in this Application is whether it would be appropriate to designate the Officers as additional witnesses in these matters and authorize their questioning under Rule 6.8 considering:

- (a) The terms of the NBC Consent Order;;
- (b) The terms of the Compeer Consent Order;;
- (c) The relevance and materiality of the potential evidence of the Officers;
- (d) The roles and responsibilities of the Officers with respect to their position as an officer of the corporation and therefore with respect to their capacity to provide material and relevant information;
- (e) the principles of fairness and proportionality; and
- (f) the appropriate terms of the proposed order.

IV. LAW

16. Section 5.17 of the *Alberta Rules of Court* outlines which individuals a given party is entitled to ask questions to under oath:

5.17(1) A party is entitled to ask the following persons questions under oath about relevant and material records and relevant and material information:

if the party adverse in interest is a corporation,

one or more officers or former officers of the corporation who have or appear to have relevant and material information that was acquired because they are or were officers of the corporation

17. The *Alberta Business Corporations Act* outlines the statutory liabilities and imposed responsibilities with respect to the officers of a corporation:

⁷ Price Compeer Affidavit at Exhibit “C”

134 Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall:

act honestly and in good faith with a view to the best interests of the corporation; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances

(...)

(3) Subject to [subsection 108 \(5\)](#), no provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves him or her from liability for a breach thereof.

V. ARGUMENT

C. NBC Consent Order

18. Pursuant to the NBC Consent Order, Sunterra has been expressly granted the right to both (a) name two additional witnesses, and (b) identify who is considered to be a witness providing “relevant and material information” with respect to the claim. The NBC Consent Order not only provides for schedule which was binding upon all parties and which therefore compels them with respect to the production of such witness, upon Sunterra’s determination that such witnesses have relevant and material information, it was further an agreement which had been signed and agreed to by all parties to this litigation, was the subject of multiple drafts between all parties to this litigation (including both Compeer and NBC), and the contents of which, including both Sunterra’s right to identify such witnesses, and Sunterra’s express right to determine whether such witnesses fall within Rules 5.17 and 5.18, were agreed to by all parties.

D. Compeer Consent Order

19. With respect to the Compeer Consent Order, while no explicit mention of Rule 5.17 is made, the instructions provided do not provide Compeer with any discretion with regard to which individuals may be identified by Sunterra pursuant to the litigation plan. In fact, the opposite is true. The litigation plan’s phrasing that “such examinations”- that is, those examinations of the individuals Sunterra has

advised to Compeer it wishes to examine “shall occur pursuant to Rule 6.8” indicates that in fact no discretion is provided to Compeer with respect to the examination of such individuals (within reason and barring public policy or other exclusions, none of which would apply in this case).

20. The denial from both NBC and Compeer on the basis that such officers have no material or relevant information is irrelevant, as such determinations were not within the prevue of NBC or Compeer to determine per the instructions within their respective Consent Orders. Rather, such determinations of relevance and materiality with respect to witnesses fell squarely within the rights of Sunterra exclusively. Therefore, upon Sunterra’s determination, by the time of the communication on September 5, NBC ands Compeer were obligated to agree to the production of such witnesses for discovery.

E. NBC Request

21. In addition to the requests by Sunterra, NBC additionally has requested the production by Sunterra of Sunterra’s auditor, KPMG, for questioning citing the NBC Consent Order. This is despite KPMG not being an employee or otherwise within the control of Sunterra. By contrast, Sunterra has complied with the request of both NBC and Compeer for the production of several Sunterra officers and directors, without objection, for questioning within both the Compeer Action and the NBC Action.

F. The Officers fall within Rule 5.17 per Sunterra's determination

a. The Officers is a current officer or employee

22. As acknowledged in the letters of both Compeer and NBC, the Officers named by Sunterra in both this application and the letter of September 5, 2025, are current or former officers of the respective corporation. Given their identification and the broad nature the definition of “officer” within the Rule, being “[one of the people] best informed of matters which may define and narrow the issues between the parties at the trial”, the Officers named fall within the definition of “officer or employee in s. 5.17: *Cana Construction Co. Ltd. v. Calgary Centre for Performing*

Arts, 1986 ABCA at para 8. [1986 ABCA 175 \(CanLII\) | Cana Construction Co. Ltd. v. Calgary Centre for Performing Arts | CanLII](#)

b. The Officers have or appear to have relevant and material information.

23. Pursuant to the *Alberta Business Corporations Act*, the NBC Officers and the Compeer Officers are under a statutory obligation to remain informed of and exercise reasonable diligence with respect to the operations and information of the corporation with respect to:

- a. Internal decision-making policies relating to fraud and specifically, such allegations as they related to the Sunterra Entities and the matters in this claims process;
- b. The ability of the Officers, to opine on approvals and policies with respect to their respective regulatory obligations;
- c. Internal policies concerning the use and approval of cheques;
- d. The internal reporting structure;
- e. Potential material liabilities
- f. Breaking of regulations
- g. Policies and rules respecting the interactions between NBC and Compeer and other banks, specifically those that apply to retractions involving exchange banks and international banks;
- h. Policies and rules relating to clearing house rules; and
- i. Oversight of NBC/Compeer regarding issues raised between NBC/Compeer and Sunterra in these proceedings.

24. The above would generally be considered by the reasonable person as duties which require significant approval and oversight within any corporation and would additionally otherwise go to the core of the business's operations and policies. As such, these duties would clearly fall within those duties which were within the duty of care of the officers, and information of which they, at minimum, ought to have

been apprised. These are duties and liabilities created by statute and on the basis of public policy and cannot be delegated away from or contracted out of.

Business Corporations Act, RSA 2000, c B-9 at s. 122, 124

It is therefore reasonable for Sunterra to conclude that these individuals appear to have knowledge of such matters pursuant to Rule 5.17.

25. The above issues are vital to a determination of whether;

- a. NBC is entitled to an indemnity as against Sunterra for its own actions and conduct regarding the implementation and execution of the forgoing policies; and
- b. Compeer has a claim as against Sunterra and the applicable defenses to such claim.

G. Alleged lack of knowledge

26. The above determination is sufficient as a demonstration which would compel the production of the Officers with respect to the Consent Orders, as Sunterra has reasonably determined that such individuals would fall within Rules 5.17 and 5.18.

27. In addition to the said determination, the right of Sunterra to call such witnesses is supported by caselaw, and any refusal by Compeer or NBC to provide such individuals, along with additional statements concerning their lack of relevant or material information concerning the claim, would be hearsay evidence without a valid exception.

H. Sunterra's right is generally supported

28. Firstly, the delegation of responsibilities or management within a corporation by its senior officers does not relieve said corporation from the production of documents in a matter with respect to those responsibilities.

Dow Chemical Canada ULC v Nova Chemicals Corporation, 2014 ABCA 244 at para 23

29. Secondly, in the event that such officers hold no personal knowledge (an allegation which is not accepted by Sunterra), the allowance of such officers to be examined in discovery would not be actively harmful towards the claims of NBC in this matter. "Where pragmatic counsel is called upon to produce a document which is arguably irrelevant, or at least not materially relevant, if the document is truly harmless, the pragmatic counsel will produce it rather than fight over it:"

***Brookdale International v Crescent Point Energy*, 2023 ABKB 120 at para 39, quoting *Weatherill (Estate of) v. Weatherill*, 2003 ABQB 69 at para 13**

30. As pragmatic counsel, and in order to accord with the rules of court in an expedient trial, the Officers must be produced.

VI. CONCLUSION/ RELIEF REQUESTED

31. Sunterra respectfully requests that the Court compel both NBC and Compeer to abide by the terms of the Consent Orders that they signed and by extension comply with Sunterra's requests.

RESPECTFULLY SUBMITTED THIS 8 day of October, 2025.

BLUE ROCK LAW LLP

A handwritten signature in black ink, appearing to be 'SC' followed by a long horizontal line.

David Mann, K.C./ Scott Chimuk
Counsel for the Defendants

VII. **AUTHORITIES**

<u>Tab</u>	<u>Authority</u>
1.	<i>Alberta Rules of Court</i> , Alta Reg. 124/2010, rr. 5.1, 5.2, 5.17(1)(a)(ii), 6.8.
2.	<i>Business Corporations Act</i> , RSA 2000, c B-9 at s. 122
3.	<i>Cana Construction Co. Ltd. v. Calgary Centre for Performing Arts</i> , 1986 ABCA at para 8.
4.	<i>Dow Chemical Canada ULC v Nova Chemicals Corporation</i> , 2014 ABCA 244 at para 23
5.	<i>Brookdale International v Crescent Point Energy</i> , 2023 ABKB 120 at para 39
6.	<i>Weatherill (Estate of) v. Weatherill</i> , 2003 ABQB 69 at para 13