

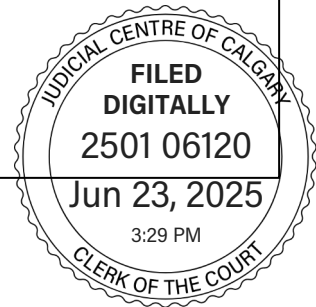
FORM 27
[RULE 6.3]

CLERK'S STAMP

COURT FILE NO. 2501 – 06120

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



**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
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.**

DOCUMENT

**NOTICE OF APPLICATION OF COMPEER
FINANCIAL, PCA**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500, 855 – 2nd Street S.W.
Calgary, AB T2P 4K7

Attention:
Lincoln Caylor
Nathan J. Shaheen
Keely Cameron
Mathieu LaFleche

Telephone No.: 403-298-3100
Fax No.: 403-265-7219

NOTICE TO RESPONDENTS: SUNTERRA FARMS LTD., SUNWOLD FARMS LIMITED, SUNTERRA ENTERPRISES INC., RAY PRICE AND DEBBIE UFFELMAN

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: July 24, 2025
Time: 10:00 AM
Where: Calgary Court's Centre
Before Whom: Justice Lema of the Court of King's Bench of Alberta
<https://albertacourts.webex.com/meet/virtual.courtroom86>

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Plaintiff/Applicant, Compeer Financial, PCA ("**Compeer**"), seeks an Order substantially in the form attached as Schedule "A":
 - (a) Lifting the stay of proceedings granted pursuant to the terms of the Court's Order in the within Action on April 28, 2025 (the "**CCAA Order**") in relation to Sunterra Farms Ltd. ("**Sunterra Canada**"), Sunwold Farms Limited ("**Sunwold Canada**"), and Sunterra Enterprises Inc., (collectively the "**Corporate Lift Stay Defendants**") and Ray Price and Debbie Uffelman (the "**Individual Defendants**") to permit Compeer to advance its claim filed in Court of King's Bench Action 2503 10998 (the "**Fraud Action**");
 - (b) For advice and direction establishing and approving a procedure and litigation plan to adjourn and permit the timely adjudication prior to the conclusion of the within CCAA proceedings of the relief sought in Paragraph 1(c), below;
 - (c) Granting:
 - (i) A declaration that the claims of Compeer, as set out in the Fraud Action, are debts or liabilities resulting from obtaining property or services by false pretenses or fraudulent misrepresentations and so are exempt from any

compromise or arrangement pursuant to Section 19(2) of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**");

- (ii) A declaration that the claims of Compeer, as set out in the Fraud Action, are claims arising from misrepresentations made by the Individual Defendants or the wrongful or oppressive conduct of the Individual Defendants and so are exempt from being released in connection with any compromise or arrangement pursuant to Section 5.1(2)(b) of the CCAA;
- (iii) Summary judgment in the Fraud Action against the Corporate Lift Stay Defendants and the Individual Defendants in the amount of \$36,500,103.19 USD or such further and other amount as may be assessed.
- (d) In the alternative to lifting the stay, an order directing the adjudication of the Fraud Claim within these proceedings in accordance with the proposed litigation plan;
- (e) Costs of this Application as against the Respondents; and
- (f) Such further and other relief as may be required.

Grounds for making this application:

1. In this Action, various Canadian members of the Sunterra Group of companies (the "**Sunterra Group**") have sought protection under the *CCAA*. This includes the Corporate Lift Stay Defendants.
2. The Applicant, Compeer, is a farm credit cooperative that provided loans and other financial services to several members of the Sunterra Group who are based in the United

States and are not subject to these *CCAA* proceedings, specifically, Sunterra Farms Iowa, Inc. and Sunwold Farms, Inc. (the "**U.S. Sunterra Entities**").

3. The U.S. Sunterra Entities are wholly-owned subsidiaries of Sunterra Enterprises Inc., one of the Corporate Lift Stay Defendants. The U.S. Sunterra Entities are currently in receivership in the United States.
4. In the Fraud Action, Compeer has sought recovery as against the Corporate Lift Stay Defendants and the Individual Defendants arising from a cheque-kiting fraud that they committed against Compeer. The cheque-kiting fraud was carried out under the direction of the Individual Defendants and involved cycling funds between the accounts that Sunterra Farms Ltd. and Sunwold Farms Limited (the "**Canadian Sunterra Entities**") held with the National Bank of Canada (formerly Canadian Western Bank) and the accounts that the U.S. Sunterra Entities held with Compeer. As a direct result of the cheque-kiting fraud, Compeer suffered at least \$36,500,103.19 USD in losses.

It is Appropriate to Lift the Stay

5. On April 22, 2025, a stay of proceedings was granted pursuant to the *CCAA* in favour of the Corporate Lift Stay Defendants and the Individual Defendants, which was continued pursuant to an amended and restated initial order granted on April 28, 2025. With respect to directors and officers, Section 19 of the Amended and Restated Initial Order provided that:

During the Stay Period, and except as permitted by subsection 11.03(2) of the *CCAA* and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers that arose before the date of the Initial Order and that relates to any obligations of the Applicants, or any of them, whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, or any of them as applicable, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants, as relevant, or this Court.

6. On June 2, 2025, Compeer filed the Fraud Action.
7. The claims advanced by Compeer in the Fraud Action fall within the scope of claims that cannot be compromised pursuant to Section 19(2) of the *CCAA*:
 - (a) By issuing cheques to Compeer, the Canadian Sunterra Entities were representing that they had funds in their account to satisfy those cheques. Compeer relied on the strength of that representation to credit the accounts of the U.S. Sunterra Entities with the value of cheques before those cheques had cleared.
 - (b) That representation was false, as the Canadian Sunterra Entities did not have funds to honour the cheques that had been issued. This came to light once the cheque-kiting fraud unraveled in February of 2025 and approximately \$59,000,000 in cheques from the Canadian Sunterra Entities (which had been credited by Compeer to the accounts of the U.S. Sunterra Entities) were dishonoured for lack of funds.
 - (c) The representation was known to be false as the Canadian Sunterra Entities deliberately pursued the cheque-kiting fraud for an extended period of time and acknowledged that the conduct was improper when confronted by Compeer.
 - (d) The false representation was made to obtain a property or service, specifically, the conditional crediting of funds into the U.S. Sunterra Entities' accounts which, ultimately, was for the benefit of the Canadian Sunterra Entities as those funds were transferred back to the Canadian Sunterra Entities.
8. The claims against the Individual Defendants fall within the scope of claims that cannot be released in the course of a compromise or plan of arrangement pursuant to Section 5.1(2)(b) of the *CCAA* as
 - (a) Ray Price was, at all material times, the CEO/President of the Canadian Sunterra Entities and the U.S. Sunterra Entities. Ray Price repeatedly and deliberately misled Compeer as to the reason why cheques were being issued so as to conceal the existence of the cheque kiting fraud. As a result of Compeer's reliance on these misrepresentations, Compeer continued to accept cheques from the Canadian

Sunterra Entities and conditionally credit the accounts of the U.S. Sunterra Entities with funds that were then transferred back to the Canadian Sunterra Entities.

- (b) Debbie Uffelman was, at all material times, the CFO of the Canadian Sunterra Entities and the U.S. Sunterra Entities. Debbie Uffelman was aware of the true financial position of the Canadian Sunterra Entities and signed and issued the cheques associated with the cheque kiting fraud. As a result of Compeer's reliance on the cheques issued by the Canadian Sunterra Entities, Compeer continued to conditionally credit the accounts of the U.S. Sunterra Entities with funds that were then transferred back to the Canadian Sunterra Entities.

9. Lifting the stay of proceedings is warranted as:

- (a) A determination of the Compeer Fraud Action is material to these proceedings, as it impacts any refinancing, the ability to proceed as a going concern and will also be material in respect of any releases sought in these proceedings.
- (b) Even separate and apart from the fraud claims, Compeer is being prejudiced, and will continue to be prejudiced, by the operation of the stay as it is impeding the ability of Compeer to advance its claim and seek recovery even against the Individual Defendants who are not debtors in the CCAA proceedings. The stay is further impeding the ability of Compeer to gather information relating to the fraud which could uncover further participants
- (c) If the stay is not lifted, Compeer will be impeded in its ability to participate in these proceedings and to assert equitable arguments in respect of the allocation of funds or otherwise advance tracing remedies sought in the Fraud Action.
- (d) Clarity regarding Compeer's claims is required to ensure its rights are not extinguished before Compeer can enforce them.
- (e) There is no prejudice to Sunterra Entities in lifting the stay as Compeer intends to proceed expeditiously and all parties require certainty. Compeer's claim is meritorious.

- (f) Compeer will be prejudiced if they cannot seek to advance their claim as evidence could be lost, their ability to participate in the CCAA proceedings will be impaired and their ability to recover impeded. Further, additional costs and inefficiencies will result if required to participate in a summary claims process now before advancing its action. In contrast, there would be no prejudice to the Lift Stay Defendants, who would similarly benefit from a determination of the extent of Compeer's claim and whether it can be compromised.

Summary Judgment Would Be Appropriate

- 10. Compeer's Fraud Action can be fairly resolved on a summary basis as against the Defendants in the Fraud Action. Summary judgment would be a proportionate procedure that would ensure that the procedural rights of the parties, which would otherwise be lacking in a claims process, would be preserved to ensure a fair outcome.
- 11. The Defendants have carried out a cheque-kiting fraud. The occurrence and quantification of that fraud can be established based largely on the documentary records associated with the Defendants' accounts. Compeer has also provided detailed affidavit evidence establishing all of the elements of its claim in fraud:
 - (a) The Corporate Lift Stay Defendants, under the direction of the Individual Defendants, made false representations to Compeer, including the issuance of millions of dollars of cheques to Compeer, without having funds available to pay the cheques that had been issued.
 - (b) The Defendants knew that they were making false representations. In fact, Ray Price – the President of the Corporate Lift Stay Defendants – admitted to wrongdoing when confronted by Compeer after the fraud was uncovered. The evidence tendered by Compeer also demonstrates the ongoing deception and misrepresentation made by the Defendants to conceal the fraudulent activity.
 - (c) The Defendants benefitted from the fraud. The cheques were issued to Compeer as part of an ongoing cheque-kiting fraud for the purposes of having Compeer conditionally credit the accounts of the U.S. Sunterra Entities so that those

conditional funds could be cycled back to the Corporate Lift Stay Defendants, which in fact occurred.

(d) Compeer has suffered losses as a result of the false representations made by the Defendants.

12. There is no uncertainty in the facts, the record, or the law that creates a genuine issue requiring a trial. There is no meritorious defence to the Fraud Action.

13. Such further and other grounds as counsel may advise and as this Honourable Court may permit.

Material or evidence to be relied on:

14. The pleadings filed in Court of King's Bench Action 2503 10998

15. The Affidavit of Nic Rue, sworn June 19, 2025.

16. The Affidavit of Steve Grosland, sworn June 20, 2025.

17. The Affidavit of Sei Na, sworn on April 21, 2025.

18. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

19. Part 6, and Rule 7.3 of the *Alberta Rules of Court*.

20. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

21. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s. 19

Any irregularity complained of or objection relied on:

22. Not applicable.

How the application is proposed to be heard or considered:

23. Before Justice Lema in commercial chambers or in such other manner as the Honourable Court may direct.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

Clerk's Stamp:

COURT FILE NUMBER
COURT
JUDICIAL CENTRE OF

2501 – 06120
COURT OF KING'S BENCH OF ALBERTA
EDMONTON

**IN THE MATTER OF THE *COMPANIES'*
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LTD., SUNTERRA FARM ENTERPRISES LTD.,
SUNTERRA ENTERPRISES INC.**

DOCUMENT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT:

ORDER (Lifting Stay of Proceedings)

BENNETT JONES LLP
Barristers and Solicitors
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: Lincoln Caylor/Nathan J. Shaheen
Keely Cameron/Mathieu LaFleche

Telephone No.: 403-298-3100
Fax No.: 403-265-7219
Client File No.: 99329.1

DATE ON WHICH ORDER WAS

PRONOUNCED:

Thursday, July 24, 2025

NAME OF JUDGE WHO MADE

THIS ORDER:

The Honourable Justice M. J. Lema

LOCATION OF HEARING:

Edmonton Law Courts
1A Sir Winston Churchill Sq NW, Edmonton, AB

UPON the application of Compeer Financial, PCA. (the "**Applicant**" or "**Compeer**");
AND UPON having read the Application for the Lifting of the Stay and other ancillary relief; the

Amended and Restated Initial Order, granted on April 28, 2025 ("**ARIO**"); the Affidavit of Nic Rue, sworn June 19, 2025; the Affidavit of Steve Grosland, sworn June 20, 2025; the Affidavit of Sei Na, sworn on April 21, 2025; **AND UPON** hearing counsel for the Applicant, and any other interested parties appearing at the application; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") and supporting materials are deemed good and sufficient and this application is properly returnable today.

LIFTING THE STAY

2. The litigation plan attached hereto as Schedule "A" is approved and the steps provided therein may proceed in Court of King's Bench Action No. 2501-06120 notwithstanding the stay of proceedings imposed pursuant to the ARIO.
3. The portions of Compeer's application related to summary judgment and a declaration of fraud are adjourned to October ___, 2025 and to proceed in accordance with Schedule "A" hereto.
4. Costs of this application are in the cause in Action No. 2501-06120.

Justice of the Court of King's Bench of Alberta

Schedule "A"
Litigation Plan

1. This litigation plan may be amended only by written agreement between the parties to Court of King's Bench Action No. 2501-06120 (the "Action"), or by Court Order.
2. The Defendants in the Action shall file their defences and any affidavits in response to Compeer's summary judgment application by August 11, 2025.
3. Ray Price, Art Price, Debbie Uffelman, Craig Thompson and any affiants who file affidavits in response to the Compeer summary judgment application shall attend for questioning and examination, as applicable by no later than September 15, 2025.
4. Compeer's affiants, Nicholas Rue and Steve Grosland have been questioned and any other questioning of Compeer by the Defendants shall be done by no later than September 15, 2025.
5. Any undertaking responses shall be provided by September 30, 2025.
6. Compeer shall file its brief by October 6, 2025 and the Defendants shall file their briefs by October 9, 2025.