

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.

CLAIMANT **NATIONAL BANK OF CANADA**

RESPONDENTS **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., RAY PRICE, DEBBIE UFFELMAN and CRAIG THOMPSON**

DOCUMENT **CLAIM OF NATIONAL BANK OF CANADA**

PARTY FILING THIS DOCUMENT **NATIONAL BANK OF CANADA**

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I. Introduction

1. This is the Claim of National Bank of Canada ("**NBC**"), filed herein pursuant to the Consent Order (Scheduling) granted by the Honourable Justice Lema herein on July 24, 2025 (the "**Consent Procedural Order**"), as may be amended, pursuant to which NBC was directed to "file and serve the NBC v. Sunterra Claim upon counsel to the Sunterra Parties with a copy to counsel to Compeer", all capitalized terms in the foregoing bearing the meanings given to those terms in the Consent Procedural Order.

2. This Claim sets forth the claims of NBC against the Respondents for:

(a) contribution and indemnity arising or in any way connected to the "**Compeer v. NBC Claim**" as defined in the Consent Procedural Order; and

(b) damages;

but excludes any claim for the "**NBC Indebtedness**" as defined, and partially quantified, in the Consent Procedural Order.

3. Insofar as NBC's claim for contribution and indemnity is concerned, NBC denies any and all liability to any third party and, in particular, to Compeer Financial, PCA ("**Compeer**"). However, in the event that NBC is found to be liable to Compeer for any judgment, including any award of interest and costs, NBC claims contribution and indemnity from each of the Respondents including because:

(a) The Respondents are legally and equitably obligated to indemnify NBC as the result of the relationship that existed between them and as a result of the conduct of the Respondents;

(b) Separately, the Respondents breached duties and obligations owed by each of them to NBC and its predecessor, Canadian Western Bank ("**CWB**"), as set forth herein; and

(c) Separately, the Respondents breached duties and obligations owed by each of them to Compeer including as set forth in the Compeer v. NBC Claim for which they are wholly and solely liable.

4. Insofar as NBC's claim for damages is concerned, such damages arise from the Respondents' breaches of duties and obligations owed by each of them to NBC and its predecessor, CWB (collectively "**NBC**" unless the context requires).

II. The Parties

5. NBC is a Schedule I bank incorporated under the *Bank Act*, S.C. 1991, c. 46, as amended, with its head office in Montreal, Quebec. Until March 1, 2025, CWB was also a Schedule I bank incorporated under the *Bank Act*. On March 1, 2025, CWB and NBC amalgamated and continued under the name “National Bank of Canada”. Until March 1, 2025, the dealings between NBC and the Respondents that are the subject of this Claim were between the Respondents and NBC’s predecessor, CWB, and thereafter were between the Respondents and NBC. References in this Claim to NBC include, as and where applicable, matters including CWB prior to amalgamation.

6. The Respondents, Sunterra Food Corporation (“**Sunterra Food**”), Trochu Meat Processors Ltd. (“**Trochu Meat**”), Sunterra Quality Food Markets Inc. (“**Sunterra Markets**”), Sunterra Farms Ltd. (“**Sunterra Canada**”), Sunwold Farms Limited (“**Sunwold Canada**”), Sunterra Beef Ltd. (“**Sunterra Beef**”), Sunterra Enterprises Inc. (“**Sunterra Enterprises**”), Sunterra Farm Enterprises Ltd. (“**Sunterra Farm Enterprises**”), and Lariagra Farms Ltd. (“**Lariagra Canada**”) (collectively, the “**Canadian Sunterra Entities**”), are, to the best knowledge of NBC, each a body corporate, incorporated pursuant to the laws of the Province of Alberta which carry on business in the City of Calgary and elsewhere.

7. Sunterra Farms Iowa, Inc. (“**Sunterra Iowa**”) is, to the best knowledge of NBC, a body corporate, incorporated pursuant to the laws of the State of Iowa.

8. Sunwold Farms Inc. (“**Sunwold US**”, Sunterra Iowa and Sunwold US are collectively referred to as, the “**US Impugned Entities**”) and Lariagra Farms South, Inc. (“**Lariagra US**” and collectively with Sunwold US and Sunterra Iowa the “**US Sunterra Entities**”) are, to the best knowledge of NBC, each a body corporate, incorporated pursuant to the laws of the State of South Dakota.

9. The Respondent, Ray Price (“**Price**”) is, to the best knowledge of NBC, an individual who resides primarily in the Province of Alberta.

10. The Respondent, Debbie Uffelman (“**Uffelman**”) is, to the best knowledge of NBC, an individual who resides primarily in the Province of Alberta.

11. The Respondent, Craig Thompson (“**Thompson**”) is, to the best knowledge of NBC, an individual who resides primarily in the Province of Alberta.

III. Relationships Among the Respondents

12. Each of the corporate Respondents are affiliates.

13. Price is a prominent business person in Alberta and has, and exerts, influence as a result of his prominence in the Alberta business community. His association with the corporate Respondents, and his prominence in the Alberta business community, influenced the relationship that NBC had with the corporate Respondents.

14. At all relevant times, to the best knowledge of NBC, Price was the President, a director and one of the ultimate beneficial owners, of each of the Canadian Sunterra Entities.

15. At all relevant times, to the best knowledge of NBC, Price was also an officer, or director or both, and one of the ultimate beneficial owners, of each of the US Sunterra Entities.

16. At all relevant times, to the best knowledge of NBC, Price had knowledge and direct oversight of, and responsibility for, the management of the Canadian Sunterra Entities and the US Sunterra Entities including in respect of the management of each of their finances, credit facilities, deposit accounts and bank accounts.

17. At all relevant times, to the best knowledge of NBC, Uffelman was a director of Lariagra Canada, and also an officer of the Canadian Sunterra Entities holding such titles as Vice President, Corporate Finance, or Chief Financial Officer or both, and had knowledge and direct oversight of, and responsibility for, the management of the Canadian Sunterra Entities' finances, credit facilities, deposit accounts and bank accounts.

18. At all relevant times to the best knowledge of NBC, Uffelman was an officer of the US Sunterra Entities. Further, and in the alternative, if Uffelman was not a *de jure* officer of the US Sunterra Entities, she was nevertheless intimately knowledgeable, and had and exercised oversight and responsibility for, the management of the US Sunterra Entities' finances, credit facilities, deposit account and bank accounts as a *de facto* officer.

19. At all relevant times, Thompson was the Financial Controller of the Canadian Sunterra Entities, a signing officer in respect of the Canadian Sunterra Entities, and to the extent Thompson was not a *de jure* officer of the Canadian Sunterra Entities, he was nevertheless intimately knowledgeable, and had and exercised oversight and responsibility for, the management of the Canadian Sunterra Entities' finances, credit facilities, deposit account and bank accounts as a *de facto* officer.

IV. Relationships Between Respondents and CWB/NBC

20. The relationships between the Respondents and NBC, and its predecessor, CWB, which give rise to the within Claim were long-standing and multi-faceted. One result of the long-standing

and multi-faceted relationship, coupled with the prominence of Price in the Alberta business community, was that NBC came to trust the Respondents in their business dealings and the Respondents' explanations for the way in which they conducted business and operated the various credit facilities granted to the corporate Respondents and bank accounts held by the corporate Respondents with NBC.

1. Relationships Specific to Operation of Bank Accounts

21. Sunterra Canada and Sunwold Canada operated bank accounts with NBC (the “**NBC Accounts**”). So far as NBC is aware, the NBC Accounts were the primary or only bank accounts operated by these corporate Respondents.

22. The operation of the NBC Accounts was governed by, among other things, common law obligations, statutory obligations and representations including those set forth in the *Bills of Exchange Act*, RSC 1985, c. B-4 and certain Account Application Agreements together with a standard form of Business Account Agreement that was then in force and as was updated from time to time.

a) Common Law Obligations

23. The common law obligations of the Respondents to NBC concerning the operation of their respective NBC Accounts included duties:

- (a) not to operate the NBC Accounts in a fraudulent manner, for example, by undertaking cheque kiting activities; and
- (b) to be truthful, without deceit, in responding to inquiries from bank officials as to the financial circumstances of the corporate Respondents and as to the business purposes for drawing cheques on, and depositing cheques into, the NBC Accounts.

b) Statutory Obligations and Representations

24. The statutory obligations and representations of the corporate Respondents included that:

- (a) pursuant to sections 129 and 165 of the *Bills of Exchange Act*, on each occasion that the corporate Respondents drew a cheque on their NBC Account (which, on each occasion, was caused by one or more of the individual Respondents), such corporate Respondent engaged that on due presentment the cheque shall be accepted and paid according to its tenor and that, if it was dishonoured, the drawer would compensate the holder or any endorser who is compelled to pay it, if the requisite proceedings on dishonour were duly taken; and

(b) pursuant to section 132 and 165 of the *Bills of Exchange Act*, by endorsing a cheque for deposit to its account (which, on most if not all occasions was caused by one or more of the individual Respondents), such corporate Respondent engaged that on due presentment the cheque shall be accepted and paid according to its tenor and that, if it was dishonoured, the endorser would compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceedings on dishonour were duly taken.

c) Business Account Agreements

25. Each of the corporate Respondents' NBC Bank Accounts was governed by a Business Account Agreement made between that corporate Respondent and NBC. Pursuant to the Business Account Agreements, each of the corporate Respondents (defined in the Business Account Agreements as the "**Business**"), understood and agreed that:

(a) NBC would have no obligation to honour and NBC may, in its sole discretion, refuse to honour, any instrument, cheque or transaction which, if honoured, may overdraw the NBC Account or increase the overdraft of the NBC Account;

(b) each corporate Respondent would be responsible for all use of its cheques, instruments and other debits to the NBC Account and that NBC would have no responsibility for forged cheques, instruments or unauthorized transactions unless the corporate Respondent could show that it took reasonable precautions to protect such cheques, instruments and transactions and that it took reasonable care to examine its statements of Account and transaction information;

(c) those persons named in the application for the NBC Account as Authorized Signing Officers or those persons designated in the corporate resolutions, authorizing certificates or other written instructions provided to NBC at any time by the Business were authorized to undertake the following activities, subject to the conditions set out in the Business Account Agreement:

(i) to sign, endorse, make, draw, and/or accept all Instruments (as defined in the Business Account Agreement which includes "cheques") and generally all documents for the purpose of binding or obligating the Business in any way in connection with the Account and transactions with NBC whether or not an overdraft was thereby created and, Instruments and documents so signed shall be binding upon the Business; and

(ii) to negotiate with, deposit or transfer to NBC (but for the credit of the Account only) any and all money, cheques, promissory notes, bills of exchange or other negotiable instruments, and orders for the payment of money and for the said purpose to draw, make, sign, endorse (by rubber stamp or otherwise) any and all of the foregoing, and every such signature or stamping shall be binding on the Business;

(d) the Business was responsible for determining the suitability of individuals appointed as Authorized Signing Officers and that NBC shall not in any way be liable or held responsible for any loss suffered by the Business caused by any act or omission, or wrongful conduct of any Authorized Signing Officer appointed by the Business;

(e) the Business would diligently supervise and monitor the conduct and work of all Authorized Signing Officers and all agents and employees having a role in the preparation of Instruments and the Business's bank statement reconciliation or other banking functions; and

(f) the Business shall provide a copy of this Agreement to its Authorized Signing Officers and shall require that they agree to and abide by its terms.

26. Each of Price, Uffelman and Thompson were Authorized Signing Officers within the meaning of the Business Account Agreement applicable to the respective NBC Accounts held by each of the corporate Respondents and had actual knowledge of the terms of the Business Account Agreements applicable to each of the NBC Accounts held by the corporate Respondents. In the alternative, if Price, Uffelman and Thompson did not have actual knowledge of the terms of the Business Account Agreements, they ought to have known of such terms and their ignorance of such terms is a product of recklessness or willful blindness.

27. On or around June 17, 2020, at the request of the Canadian Sunterra Entities, various holds associated with the Canadian Sunterra Entities' NBC Accounts was increased from \$250,000 to \$1,000,000, on the basis that the head office of the Canadian Sunterra Entities was located out of town and that numerous deposits would be made, at once.

2. Debtor/Creditor Relationships

28. In addition to their relationship with NBC as account holders, Sunwold Canada, Sunterra Canada, Sunterra Markets, Trochu Meat, and Sunterra Food (collectively, the "**Borrowers**") were also borrowers from NBC pursuant to that certain Amended and Restated Commitment Letter

dated November 15, 2022, between NBC as lender and the Borrowers as borrowers (the **“Commitment Letter”**).

29. The Borrowers’ reporting requirements were set out at Schedule “C” to the Commitment Letter, including their obligations to provide monthly, quarterly, and annual reporting. The Borrowers were obligated to, among other things:

- (a) provide combined internally prepared financial statements (balance sheet and profit and loss) on a monthly basis;
 - (b) provide an Officer’s Compliance Certificate certifying that all lending conditions and requirements are being complied with, including the calculation of applicable financial covenants and supporting documents, on a quarterly and annual basis; and,
 - (c) provide audited, consolidated financial statements together with a business plan including projected balance sheets with profit and loss and cash flow statements as well as capital expenditure forecasts for the upcoming fiscal year, on an annual basis
- (collectively, the **“Commitment Letter Reporting Requirements”**).

30. Despite the requirement of the Borrowers to provide audited statements on an annual basis, the Borrowers did not provide annual financial statements following the provision of audited financial statements for the year ended December 31, 2022. Specifically, for the year ended December 31, 2023, the only financial statements provided were prepared to the “compilation engagement” assurance standard, and not audited or the subject of a review engagement.

31. The Commitment Letter Reporting Requirements were in addition to general requirements under the GSAs to, among other things:

- (a) carry on and conduct business in an efficient and proper manner;
 - (b) keep proper books of account and records of all transactions; and
 - (c) observe and conform to all valid requirements of law and of any governmental or municipal authority
- (collectively, the **“Commitment Letter Operational Requirements”**).

32. The Commitment Letter is only the most recent iteration of a long-standing debtor-creditor relationship between NBC and the Borrowers (and other Respondents). Most recently, pursuant to the Commitment Letter, NBC made the following availments to the Borrowers:

- (a) a demand operating loan, in the maximum amount of \$12,000,000;

- (b) a demand non-revolving loan, in the maximum amount outstanding of \$982,272; and,
 - (c) a demand collateral mortgage, in the maximum amount of \$7,000,000
- (collectively, the “**Credit Facilities**”).

33. It has already been determined pursuant to the Consent Procedural Order that:

2. As at July 24, 2025, the outstanding balance for all amounts advanced by NBC under the Amended and Restated Commitment Letter, dated November 15, 2022, between NBC, as lender, and Sunterra Food Corporation, Trochu Meats Processors Ltd., Sunterra Quality Food Markets Inc., Sunterra Farms Ltd., and Sunwold Farms Limited, as borrowers, exclusive of all accruing interest, fees, costs and expenses (all of which are recoverable by NBC), which outstanding balance, for clarity, also excludes the amounts claimed or to be claimed by NBC in respect of the NBC v. Sunterra Claim (as such term is defined in the attached Schedule “A”), is \$9,932,732.20.

(the “**Credit Facility Indebtedness**”).

3. Guarantees

34. In addition to their relationship with NBC as bank account holders and borrowers as set out above, the Borrowers, Lariagra, Sunterra Farm Enterprises, Sunterra Enterprises, and Sunterra Beef (collectively, the “**Guarantors**”), are also guarantors of some or all of the Borrowers’ Credit Facility Indebtedness and all other debts, liabilities, obligations and indebtedness due and owing by the Borrowers to NBC.

35. The Credit Facility Indebtedness and all other debts, liabilities, obligations, and indebtedness, due and owing by the Borrowers to NBC are guaranteed pursuant to the following:

- (a) a Multiple Entity Cross Guarantee, dated January 23, 2023, granted by Sunterra Food, Trochu Meat, Sunterra Markets, Sunterra Canada, and Sunwold Canada, to and in favour of NBC;
- (b) Full Liability Guarantee, dated December 6, 2013, granted by Sunterra Beef, to and in favour of NBC;
- (c) Full Liability Guarantee, dated December 31, 2020, granted by Sunterra Enterprises, Sunterra Iowa, and Sunwold US, to and in favour of NBC;
- (d) Full Liability Guarantee, dated December 31, 2020, granted by Sunterra Farm Enterprises, Sunterra Canada, and Sunwold Canada, to and in favour of NBC;

- (e) Full Liability Guarantee, dated January 23, 2023, granted by Lariagra, to and in favour of NBC;
 - (f) Full Liability Guarantee, dated January 23, 2023, granted by Sunterra Beef, to and in favour of NBC;
 - (g) Full Liability Guarantee, dated January 23, 2023, granted by Sunterra Enterprises, to and in favour of NBC; and,
 - (h) Full Liability Guarantee, dated January 23, 2023, granted by Sunterra Farm Enterprises, to and in favour of NBC,
- (collectively, the “**Guarantees**”).

36. Pursuant to the Guarantees, each Guarantor thereunder, jointly and severally, unconditionally guaranteed payment, to NBC, of all present and future debts and liabilities, direct or indirect, absolute or contingent, now or at any time and from time to time due or owing to NBC, by the applicable Borrower(s), whether as principal or surety, and whether incurred by one or more of the Borrower(s) alone or jointly with any other person or persons, or otherwise howsoever, together with all costs, charges, and expenses (including legal fees on a solicitor and client basis), as incurred by NBC.

4. NBC Security

a) General Security Agreements

37. As continuing security for all indebtedness, liabilities, and obligations, owed to NBC, the Canadian Sunterra Entities executed and delivered, among others, the following general security agreements, to and in favour of NBC:

- (a) General Security Agreement, dated September 20, 2010, granted by Sunterra Food;
- (b) General Security Agreement, dated September 20, 2010, granted by Sunterra Markets;
- (c) General Security Agreement, dated September 20, 2010, granted by Trochu Meat;
- (d) General Security Agreement, dated December 6, 2013, granted by Sunterra Beef;
- (e) General Security Agreement, dated January 23, 2023, granted by Sunterra Canada; and,

(f) General Security Agreement, dated January 23, 2023, granted by Sunwold Canada,

(collectively, the “**GSAs**”).

38. Pursuant to the GSAs, as general continuing collateral security for the payment and performance of any and all obligations, indebtedness, and liability (including but not limited to principal, interest, and all costs on a full indemnity basis) present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wherever and however incurred, together with any ultimate unpaid balance thereof, whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again, the applicable Canadian Sunterra Entities each:

(a) granted, assigned, conveyed, mortgaged, pledged, and charged, as and by way of a specific mortgage, pledge, and charge, and granted a continuing security interest, in all their present and after-acquired personal property; and,

(b) charged, as and by way of a floating charge, all of the their right, title and interest, in and to all of their presently owned or held and after acquired or held, real, immovable and leasehold property and all interests therein, and all easements, rights-of-way, privileges, benefits, licenses, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held, including all structures and fixtures,

(collectively, the “**GSA Collateral**”).

b) Other Personal Property Security

39. As continuing security for the Indebtedness and other obligations and liabilities owed to NBC, the Canadian Sunterra Entities and US Sunterra Entities executed and delivered, among others, the following security agreements:

(a) Assignment and Postponement of Creditor’s Claims, dated September 20, 2010, granted by Sunterra Beef, to and in favour of NBC;

(b) Assignment and Postponement of Creditor’s Claims, dated December 6, 2013, granted by Sunterra Farm Enterprises, to and in favour of NBC;

(c) Assignment and Postponement of Creditor’s Claims, dated December 31, 2020, granted by Sunterra Enterprises, to and in favour of NBC;

(d) Assignment and Postponement of Creditor’s Claims, dated December 31, 2020, granted by Sunterra Iowa, to and in favour of NBC;

- (e) Assignment and Postponement of Creditor's Claims, dated December 31, 2020, granted by Sunterra Canada, to and in favour of NBC;
 - (f) Assignment and Postponement of Creditor's Claims, dated December 31, 2020, granted by Sunwold Canada, to and in favour of NBC;
 - (g) Assignment and Postponement of Creditor's Claims, dated December 31, 2020, granted by Sunwold US, to and in favour of NBC;
 - (h) Assignment and Postponement of Creditor's Claims, dated January 23, 2023, granted by Lariagra, to and in favour of NBC;
 - (i) Assignment and Postponement of Creditor's Claims, dated January 23, 2023, granted by Sunterra Beef, to and in favour of NBC;
 - (j) Assignment and Postponement of Creditor's Claims, dated January 23, 2023, granted by Sunterra Enterprises, to and in favour of NBC; and,
 - (k) Assignment and Postponement of Creditor's Claims, dated January 23, 2023, granted by Sunterra Farm Enterprises, to and in favour of NBC,
- (collectively, the **"Additional Security"**, and with the GSAs collectively the **"Personal Property Security"**).

c) Real Property Security

40. As continuing security for the Borrowers' obligations to NBC, Trochu Meat executed and delivered, to NBC, a Land Mortgage, dated January 23, 2023 (the **"Trochu Mortgage"**, and together with the Trochu Mortgage and the Personal Property Security, collectively the **"Security"**), in the principal amount of \$13,000,000.

41. Pursuant to the Trochu Mortgage, as additional and continuing collateral security, Trochu Meat, as mortgagor, mortgaged, encumbered, and charged, to and in favour of NBC, as mortgagee, all of its estate and interest in and to the lands and premises municipally described as 233 North Road, Trochu, Alberta and legally described as PLAN 7711418, BLOCK A, EXCEPTING THE ROAD ON SUBDIVISION PLAN 8310022 CONTAINING 0.188 HECTARES (0.465 ACRES) MORE OR LESS, EXCEPTING THEREOUT ALL MINES AND MINERALS (the **"Real Property Collateral"** and, together with the GSA Collateral, the **"Collateral"**).

d) Perfection and Registration

42. NBC perfected its security interests, as and against all of the Collateral, by registering:

- (a) financing statements, in the personal property registry of Alberta (the “**PPR**”), as and against the applicable Canadian Sunterra Entities;
- (b) a land charge, in the PPR, as and against the Borrowers and Sunterra Beef; and,
- (c) the Trochu Mortgage, against the Certificate of Title concerning the Real Property Collateral.

V. Relationships Between Respondents and Compeer

43. The relationships between the Respondents and Compeer are not within the personal knowledge of NBC. However, it is the general understanding of NBC, gained primarily from these proceedings, that:

- (a) Compeer is an entity formed under the laws of the United States that is a member-owned cooperative which provides loans, leases, risk management and other financial services;
- (b) The US Sunterra Entities were customers of Compeer including in respect of revolving lines of credit (“**RLOCs**”) which the US Sunterra Entities were to use to fund their operations and associated deposit accounts, which Compeer refers to as “Farm Cash Management” accounts or “**FCM Accounts**”;
- (c) A feature of the RLOCs was that the US Sunterra Entities could borrow certain amounts from Compeer, on a revolving basis;
- (d) A feature of the FCM Accounts was that the US Sunterra Entities could deposit money and earn interest on the money deposited into the FCM Accounts;
- (e) Compeer treated the RLOCs and FCM Accounts as off-setting one another such that the net aggregate balance of a particular RLOC and a particular FCM Account taken together determined whether Compeer was a creditor of, or debtor to, the US Sunterra Entity that held the associated RLOC and FCM Account (collectively, “**Compeer Accounts**”); and
- (f) Another feature of each of the pairs of combined Compeer Accounts was that cheques could be drawn on the accounts which could be up to the aggregate value of all deposits into its FCM Account and the amount of credit afforded to the US Sunterra Entity under its RLOC.

VI. Livestock Operation Details

44. The operations of Sunterra Canada, Sunwold Canada, Lariagra, and the US Sunterra Entities included the husbandry, raising, management, and selling of pigs (collectively, the “**Livestock**”). Specifically:

(a) Sunterra Canada owned and operated two (2) livestock facilities in Alberta and approximately 11 other facilities, including barns for nurseries and sow isolation;

(b) Sunterra Canada would, at any time during the period from January 2023 to December 2024, own approximately 12,500 market Livestock and approximately 2,300 breeding Livestock;

(c) Sunwold Canada owned and operated 1 Livestock facility in Alberta and 9 other facilities, and would, at any time during the period from January 2023 to December 2024, own approximately 25,500 market Livestock and approximately 3,100 breeding Livestock; and,

(d) Lariagra owned 3 facilities in Alberta and housed approximately 2,400 pigs, (collectively, the “**Livestock Operations**”).

45. The Livestock Operations involved cross-border transactions. Specifically, Sunterra Canada, Lariagra, and Sunwold Canada initially bred and weaned Livestock in Canada, the majority of which was then exported, to the United States of America, for finishing and ultimate sale, by Sunwold US and Lariagra US.

46. On average, as part of the Livestock Operations, approximately 5,000 thousand Livestock were sold, by Sunterra Canada and Sunwold Canada, to Lariagra US and Sunwold US, every week, generally at market pricing. Generally, Livestock was delivered by Sunterra Canada and Sunwold Canada to Sunwold US and/or Lariagra US. Upon receiving delivery of Livestock, from Sunterra Canada or Sunwold Canada, as applicable, Lariagra US or Sunwold US, would become indebted to Sunterra Canada or Sunwold Canada (“**Livestock Receivable**”) for the purchase of the applicable Livestock, to the exporting Canadian entity.

47. The Livestock Receivable was typically held by Sunterra Canada or Sunwold Canada, as applicable, for a period of up to two (2) years before payment was received.

48. Upon receipt of the Livestock, Lariagra US and Sunwold US engaged the services of Sunterra Iowa to operate, raise, and manage the Livestock. In return for providing these services,

Sunterra Iowa received payments, in connection with the operation and management of such Livestock, from Lariagra US and Sunwold US.

49. In connection with the foregoing, some exchange of cheques between the Canadian Sunterra Entities and the US Sunterra Entities was expected. However, the Respondents and the US Sunterra Entities were discovered to be engaging in a scheme that went well beyond the ordinary and expected exchange of cheques.

VII. The Fraudulent Kiting Scheme

50. Cheque kiting takes advantage of conditional liquidity provided by banks, to their customers, in connection with cheque deposits. Generally, when depositing cheques, provisional credit (often referred to as “float”) is provided to the depositing customer, due to the sequencing between: (i) the deposit of the cheque; (ii) the customer having access to those funds; and, (iii) the clearing and settlement process of a cheque, through the Automated Clearing Settlement System (“**ACSS**”) or the United States Bulk Exchange (“**USBE**”), as applicable.

51. NBC, like most banks, “conditionally credits” cheque deposits to recipients’ accounts as float, before final settlement occurs through ACSS or USBE.

52. The Canadian Sunterra Entities, like many commercial banking customers, were not subject to holds on cheque funds, for amounts under \$1,000,000 following the Canadian Sunterra Entities’ request to increase the hold limit on the NBC Accounts in or around June 2020.

53. Any cheques deposited, into the Canadian Sunterra Entities’ NBC Accounts, for an amount under \$1,000,000, were immediately available for use by the depositor, in the amount of their face value, by way of conditional credit or float, before underlying funds were settled through ACSS or USBE (as applicable).

54. It is NBC’s understanding that Compeer likewise “conditionally credited” the US Sunterra Entities’ Compeer Accounts when a cheque was deposited either to pay down an RLOC or to increase the balance of an FCM Account.

55. The Canadian Sunterra Entities, specifically Sunterra Canada and Sunwold Canada, and the US Impugned Entities, fraudulently utilized the conditional credit or float provided by NBC and Compeer to conduct a highly sophisticated cheque kiting scheme (the “**Kiting Scheme**”) by utilizing the NBC Accounts in Canada and the Compeer Accounts in the United States.

VIII. General Mechanics of the Kiting Scheme

56. The Kiting Scheme exploited the availability of conditional credit to the applicable Canadian Sunterra Entities' and US Sunterra Entities' benefit. The US Impugned Entities continuously issued new and additional cheques from the Compeer Accounts and requested that NBC, on behalf of either Sunterra Canada and Sunwold Canada (together, the "**Canadian Impugned Entities**"), issue new and additional cheques from the NBC Accounts, in increasing numbers over time, to create existing and outstanding conditional credit, to be satisfied by new conditional credit (accruing with the issuance of new cheques) on an ongoing basis.

57. The following describes the basic mechanics of one cycle of the Kiting Scheme:

- (a) Step 1: A US Impugned Entity would issue a cheque ("**Cheque #1**"), from one of the US Impugned Entities' Compeer Accounts, for an amount under \$1 million, to be deposited into one of the Canadian Impugned Entities' NBC Accounts;
- (b) Step 2: NBC would "conditionally credit" the applicable NBC Account, for the face value of Cheque #1, upon deposit. As a result, the face value of Cheque #1 would be available for use, by the applicable Canadian Impugned Entity, even though NBC had not yet received final settlement of Cheque #1;
- (c) Step 3: The Canadian Impugned Entity would then, prior to Cheque #1 being returned by Compeer due to there being insufficient funds on deposit to clear Cheque #1, issue one or more new cheques, each under \$1 million (collectively, "**Cheque #2**") to one or both of the US Impugned Entities, from the corresponding NBC Account, by utilizing the conditional credit or float provided by NBC in connection with Cheque #1;
- (d) Step 4: Cheque #2 would be deposited into the Compeer Accounts, Compeer would then "conditionally credit" the applicable US Impugned Entity's Compeer Account, for the face value of Cheque #2. As a result, the face value of Cheque #2 would be available for use by the applicable accountholder, to cover the US Impugned Entities' liquidity needs and the obligations arising in connection with Cheque #1.
- (e) Step 5: The US Sunterra Entity would then proceed to issue one or more new cheques, each under \$1 million (collectively, "**Cheque #3**"), to one or both of the Canadian Impugned Entities, from the corresponding US Impugned Entities' Compeer Account, utilizing the conditional credit provided in connection with Cheque #2; and,

(f) Step 6: NBC would then “conditionally credit” the applicable Canadian Impugned Entity’s NBC Account, for the face value of Cheque #3, upon deposit. As a result, the face value of Cheque #3 would be available for use by the applicable NBC accountholder, to cover the Canadian Impugned Entities’ liquidity needs and the obligations arising in connection with Cheque #2.

58. Sunterra Canada, Sunwold Canada and the US Impugned Entities undertook this elaborate scheme, on an almost daily basis, so as to ensure that there was always sufficient conditional credit available to cover the outstanding Impugned Cheque obligations and to create the illusion that fresh funds were being deposited.

59. Specifically, for the period between January 1, 2023 up to and including February 28, 2025 (the “**Updated Review Period**”):

(a) Sunterra Canada received incoming cheques, mainly from the US Impugned Entities’ Compeer Accounts, in the aggregate amount of approximately \$7.78 billion, and issued outgoing cheques, mainly to the U.S. Impugned Entities’ Compeer Accounts, in the aggregate amount of approximately \$7.73 billion; and,

(b) Sunwold Canada received incoming cheques, mainly from the US Impugned Entities’ Compeer Accounts, in the aggregate amount of approximately \$2.77 billion, and issued outgoing cheques, mainly to the US Impugned Entities’ Compeer Accounts, in the aggregate amount of approximately \$2.76 billion.

60. Each of these cheques issued by the US Sunterra Entities and deposited into the NBC Accounts were under \$1,000,000, being the hold limit of the NBC Accounts and the threshold at which such cheques would undergo additional scrutiny by applicable clearing banks, namely ACSS or USBE. Similarly, all cheques issued by Sunterra Canada and Sunwold Canada to be deposited into the Compeer Accounts were also under \$1,000,000.

61. The vast majority of the cheques at issue were signed by the individual Respondents.

62. All of the cheques at issue were drawn by Sunterra Canada and Sunwold Canada at the instigation of the individual Respondents.

63. At no time did the respective drawer of such cheques have sufficient funds in its NBC Account to cover such cheques except as the result of depositing cheques to its NBC Account for a similar amount drawn on its Compeer Accounts in a perpetual cycle. Correspondingly, the drawer of the cheques drawn on the Compeer Accounts for deposit to the NBC Accounts did not

have sufficient funds in its Compeer Account to cover such cheques except as the result of previously depositing cheques for a similar amount drawn on its NBC Account in a perpetual cycle.

64. At all relevant times, the drawers of such cheques and the individual Respondents that prepared and signed such cheques, or caused such cheques to be prepared and signed, knew that there were insufficient funds in the drawer's account to cover such cheques but for the perpetual cycle of drawing and depositing cheques. The corporate Respondents utilized a unified accounting system that integrated all financial activities of the US Sunterra Entities and the Canadian Sunterra Entities and, as a result, the individual Respondents and others with access to, knowledge of and responsibility for the financial activities of the Canadian Sunterra Entities – including Price, Uffelman, and Thompson – knew that there were insufficient funds to cover the cheques used to perpetrate the Kiting Scheme.

65. Further, and in the alternative, if the drawers of such cheques or the individual Respondents that prepared and signed such cheques, or caused such cheques to be prepared and signed, did not have actual knowledge that there were insufficient funds in the drawer's account to cover such cheques but for the perpetual cycle of drawing and depositing cheques, that lack of knowledge was the result of willful blindness or recklessness.

66. There was no legitimate or lawful commercial purpose for the Kiting Scheme. The volume and frequency of the Impugned Transactions is not consistent with the cash requirements, operations, or enterprise value of the drawer's business.

67. The Kiting Scheme also included the following commonalities indicative of fraud:

- (a) the vast majority of issued cheques were in an amount ranging from \$800,000 to \$999,000 and all were less than the \$1 million threshold (including after conversion of any USD cheques to CAD), over which threshold such cheques would undergo additional scrutiny by applicable clearing banks and would be subject to a further hold, with respect to transactions taking place in the NBC Accounts;
- (b) the transactions were all undertaken by way of physical cheques, rather than by EFT or wire transfer, which is far more convenient and common, especially in cross-border related entity transactions;
- (c) each of the cheques, were deposited individually, as multiple individual deposits, rather than one deposit, at the specific request and direction of the applicable Canadian Sunterra Entity, to circumvent the holds and availability limits placed on the applicable

NBC Accounts and allow immediate access to funds for the full face value of all deposited cheques in contravention of NBC's policies; and

(d) the cheques had no memo line or reference to any existing invoice or ledger.

IX. The Unauthorized Overdrafts and the Respondents' Admissions

68. NBC discovered an issue with the NBC Accounts in February 2025. By February 14, 2025, Sunterra Canada's and Sunwold Canada's NBC Accounts had accumulated unauthorized overdrafts in excess of US\$43 million (the "**Unauthorized Overdrafts**").

69. Immediately upon discovering the Unauthorized Overdrafts, NBC contacted Price.

70. On Friday, February 14, 2025, Price advised NBC, by email (the "**February 14 Email**"), that, among other things, the Unauthorized Overdrafts were caused as a result of Sunterra Canada and Sunwold Canada operating on a cash tax basis, while the US Sunterra Entities operated on an accrual basis. Price further advised that as a result, Sunterra Canada, Sunwold Canada, and the US Sunterra Entities would move cash from the US Sunterra Entities to Sunterra Canada and Sunwold Canada, but in order to keep the US Sunterra Entities with the appropriate cash, they would move money back down to the US Sunterra Entities on an "advance" basis.

71. Furthermore, in the February 14 Email, Price admitted that these intercompany transfers "grew beyond what they were meant to be", as Sunterra Canada, Sunwold Canada, and the US Sunterra Entities continued to make sure that they had the money they needed.

72. Based on the above, NBC immediately requested and attended two separate meetings with the senior most members of the Price family, including Arthur and Glenn Price, as follows:

(a) On Monday, February 17, 2025, a virtual meeting was held among Raymond Pai, Dean Chan, Price, and his brother, Arthur Price. At the time, Arthur Price advised that he was retired from active management of the Sunterra Group but continues as the Chairman of the Board of Directors. The virtual meeting was in the nature of an introductory call and an outline of preliminary information requests and discussions surrounding the path forward. During this preliminary call, Price did not speak; and,

(b) On Monday, February 24, 2025, an in person meeting was held among Arthur Price, Glen Price, Raymond Pai, Dean Chan, and Dustin Olver of FTI Consulting Canada Inc. (who was then acting in the capacity as consultant to NBC's counsel). In the meeting, among other things, Arthur Price advised:

- (i) the Impugned Transactions and Unauthorized Overdrafts were caused by Price;
- (ii) they were unaware of the Impugned Transactions undertaken by Price, and were upset and disappointed with Price for having undertaken the Impugned Transactions;
- (iii) the Impugned Transactions were a mistake;
- (iv) that in order to ensure that the Canadian Impugned Entities' NBC Accounts and the US Impugned Entities' Compeer Accounts had sufficient conditional credit to satisfy their respective obligations, the Impugned Entities maintained an active log of all available conditional credit, under the Impugned Cheques on a rolling three (3) day basis;
- (v) Price would be removed as a signatory on all Sunterra Group banking transactions;
- (vi) the Sunterra Group would fully cooperate with FTI Consulting Canada Inc., including by providing timely responses for requests for information;
- (vii) the Sunterra Group would provide written consent to NBC and Compeer, being the holder of the Compeer Accounts, to facilitate and allow Compeer and NBC to discuss all aspects of the Impugned Transactions; and,
- (viii) the Sunterra Group would provide information to NBC relating to the Impugned Transactions, including, without limitation, by providing up to date account statements for the Compeer Accounts.

73. The Kiting Scheme was stopped by Compeer and NBC. The Compeer Accounts of the US Sunterra Entities became immediately overdrawn and the Respondents were unable to provide any cash to reduce or eliminate such overdrafts.

X. Compeer Commences US Receivership Proceedings

74. On March 18, 2025, Compeer filed a verified complaint (the "**Complaint**") in the United States District Court, District of South Dakota, Southern Division (the "**US District Court**") against the US Sunterra Entities.

75. Compeer's Complaint alleged breach of contract and fraud claims, among others, against the US Sunterra Entities, stemming from the US Sunterra Entities' alleged Kiting Scheme and subsequent defaults with Compeer.

76. On March 28, 2025, the US District Court granted Compeer's motion to appoint a receiver (the "**US Receivership Order**") in the proceedings (the "**US Receivership Proceedings**") and appointed Pipestone Management II, LLC as the receiver (the "**US Receiver**") of the US Sunterra Entities, with duties that included investigating the Kiting Scheme.

XI. Borrowers Commence NOI & CCAA Proceedings

77. On the eve of the granting of the US Receivership Order, on March 24, 2025, each of the Borrowers filed Notices of Intention to File a Proposal, pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "**BIA**") commencing proceedings under the BIA (the "**NOI Proceedings**").

78. On April 15, 2025, the Borrowers, Sunterra Beef, Lariagra, Sunterra Farm Enterprises, and Sunterra Enterprises (collectively, the "**CCAA Entities**"), applied to this Honourable Court for an initial order (the "**Initial Order**") to commence proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (the "**CCAA**").

79. The Initial Order was granted on April 22, 2025, which, among other things, converted and continued the NOI Proceedings into the CCAA Proceedings, under the CCAA

80. On April 28, 2025, an Amended and Restated Initial Order (the "**ARIO**") was granted in the CCAA Proceedings.

XII. Sale of US Sunterra under US Receivership Proceedings

81. On May 14, 2025, the US Receiver filed a motion, supporting memorandum, affidavit, and proposed order, requesting the US District Court to set an expedited hearing to approve a sale to The Pork Group, Inc. ("**TPG**"), of pigs, rolling stock, and an assignment of all the current barn leases, owned or held by various US Sunterra Entities, for a purchase price of approximately \$15,000,000 (the "**US Sunterra Sale**").

82. On May 30, 2025, the US District Court granted the Order approving the US Receiver's Motion to Authorize Private Sale, which, among other things, approved the US Sunterra Sale.

XIII. Compeer Claims Against Sunterra

83. The proceeds from the US Sunterra Sale are insufficient to repay the indebtedness, liabilities, and obligations owed by the US Sunterra Entities to Compeer (the "**Compeer Indebtedness**"), including those resulting from the Kiting Scheme.

84. On June 2, 2025, Compeer filed a Statement of Claim in this Honourable Court, Judicial Centre Edmonton, in Action No. 2503-10998, against Sunterra Canada, Sunwold Canada, Sunterra Enterprises, Price, and Uffelman, seeking, among other relief:

- (a) a declaration that Sunterra Canada, Sunwold Canda, Price, and Uffelman committed fraud;
 - (b) damages in the amount of at least USD \$36,500,103.19 and such further or other amount as may be determined, from Sunterra Canada, Sunwold Canada, Price, and Uffelman, arising from their fraudulent and oppressive conduct, namely their perpetuation of the Kiting Scheme (as defined below), and in respect of Compeer's resulting expenses;
 - (c) damages in the amount of at least USD \$25,729,079.67 and such further or other amount as may be determined, from Sunterra Enterprises for its breach of guarantees, or owing under such guarantees, granted by Sunterra Enterprises to Compeer;
 - (d) punitive damages, in the amount of at least CAD \$1,000,000;
 - (e) a declaration that Compeer is entitled to trace the funds advanced as a result of the Kiting Scheme and a declaration that those funds are held in trust as a constructive trustee for Compeer;
 - (f) an order for an accounting of any profits or benefits by Sunterra Canada, Sunwold Canada, Price, and Uffelman, from the funds obtained as a result of the Kiting Scheme and the disgorgement of same; and,
 - (g) an order, to the extent necessary, declaring that Compeer is entitled to pierce the corporate veil of Sunterra Canada and Sunwold Canada, to enforce their claims and seek damages against Price and/or Uffelman,
- (collectively, the "**Compeer v Sunterra Fraud Claims**").

85. On or about June 23, 2025, Compeer filed an Application for declaratory relief and summary judgment of its claims against the noted Sunterra parties in this Action which is the subject of a further procedural order granted by the Honourable Justice Lema on July 24, 2025 granted at the same time as the Consent Procedural Order referenced herein.

XIV. Compeer Claims Against NBC

86. NBC reasonably expects that if Compeer is unable to fully recover the amount of the Compeer Indebtedness, less the amount by which the Compeer Indebtedness was satisfied from the proceeds of the US Sunterra Sale (the net amount being the "**Compeer Shortfall**") which is

estimated to be the range of USD\$15 million), Compeer will seek to recover the Compeer Shortfall from NBC.

87. NBC has sought confirmation of Compeer's intention to commence an action against NBC arising from, or related to, the Compeer Shortfall. By email date July 23, 2025, counsel for Compeer advised, among other things:

We can further advise that while Compeer agrees with National and Sunterra that it may have a claim against National, it is simply not in a position to advance one at this time. It has been focusing its efforts on the issues as they relate to the Sunterra Entities and their directors and officers which are clearly relevant to these proceedings and has had inadequate time and information to consider or advance a claim in respect of National and it reserves its right to do so outside of the CCAA Proceedings in the ordinary course.

88. By Application filed on August 25, 2025, NBC has sought an order requiring Compeer to file an election, on or before September 30, 2025, in which Compeer: (i) indicates whether it intends to advance a claim against NBC in respect of any facts, circumstances or matters that give rise to the Compeer v. NBC Claim, as defined in the Consent Procedural Order; and, (ii) if so, requiring Compeer to (a) outline the bases of such claim; and (b) provide a range of the quantum of such claim.

XV. NBC Claims Against Respondents

1. Fraud, Deceit and Fraudulent Misrepresentation

89. Cheque kiting is an unauthorized and fraudulent activity. By its nature, cheque kiting has the effect of overstating the amount of money that is available in a depositor's bank account by taking advantage of conditional credit provided by the bank and the delay between depositing a cheque and the time it is cleared.

90. By engaging in the Kiting Scheme, each of Sunterra Canada, Sunwold Canada and the US Sunterra Entities engaged in fraud. On each occasion or cycle in which Sunterra Canada and Sunwold Canada drew a cheque on their NBC Account for deposit to the Compeer Accounts of the US Sunterra Entities, and deposited a cheque drawn on the Compeer Accounts of the US Sunterra Entities into its NBC Account, knowing (or being willfully blind or being reckless to the fact) that Sunterra Canada and Sunwold Canada did not have sufficient funds to cover such cheque but for the perpetration of a corresponding fraud regarding the US Sunterra Entities' operation of their Compeer Accounts (each a "**Cycle**"), Sunterra Canada, Sunwold Canada the US Sunterra Entities committed a fraudulent act. Such fraudulent acts caused damage to NBC.

91. By means of the Kiting Scheme, and in each Cycle, Sunterra Canada, Sunwold Canada, the US Sunterra Entities, Price, Uffelman, and Thompson:

- (a) knowingly misrepresented the ability of Sunterra Canada, Sunwold Canada and the US Sunterra Entities, to honour their obligations, or in the alternative, were reckless or willfully blind;
- (b) deposited cheques, which they knew or ought to have known that the drawing entity did not have the necessary liquidity or cash to honour; and,
- (c) utilized the conditional credit provided by NBC and Compeer, to create Unauthorized Overdrafts, and, on an ongoing and ever-increasing basis, overstated the balance in the respective NBC Accounts and Compeer Accounts, for their use and benefit and to the corresponding deprivation of NBC.

92. At all relevant times, the drawers of such cheques and the individual Respondents that prepared and signed such cheques, or caused such cheques to be prepared and signed, knew that there were insufficient funds in the drawer's account to cover such cheques but for the perpetual cycle of drawing and depositing cheques.

93. Further, and in the alternative, if the drawers of such cheques or the individual Respondents that prepared and signed such cheques, or caused such cheques to be prepared and signed, did not have actual knowledge that there were insufficient funds in the drawer's account to cover such cheques but for the perpetual cycle of drawing and depositing cheques, that lack of knowledge was the result of willful blindness or recklessness.

94. Sunterra Canada, Sunwold Canada, the US Sunterra Entities, Price, Uffelman, and Thompson continued and attempted to cover and conceal their numerous fraudulent transactions by:

- (a) providing false and knowingly misleading information when providing information in purported satisfaction of the Commitment Letter Reporting Requirements;
- (b) breaching the Commitment Letter Operational Requirements;
- (c) failing to report:
 - (i) the inability of Sunterra Canada, Sunwold Canada and the US Sunterra Entities to honour the face value of the cheques being drawn and deposited; or
 - (ii) the Kiting Scheme and liquidity issues of these entities;

contrary to their obligations under the Commitment Letter and the GSAs;

(d) providing (or causing to be provided) financial information and records to NBC, which failed to disclose the Kiting Scheme and were false or contained misrepresentations as to the status and transactions taking place; and

(e) misrepresenting the quantum of the inter-company receivables as between Sunterra Canada, Sunwold Canda and the US Sunterra Entities;

all in order to actively maintain and conceal the Kiting Scheme, while knowing they were being deceitful about the truth of such matters, or being willfully blind, or being reckless, as to the truth of such matters.

95. As a result of the perpetration of the Kiting Scheme, the Sunterra Parties are liable to NBC in fraud, deceit, and fraudulent misrepresentation.

96. The conduct of the Sunterra Parties, includes representations and omissions made to NBC that constitute fraud, dishonest dealings, knowingly false representations, including by the non-disclosure of facts. All such conduct was undertaken with knowledge of its falsehood, with intention that NBC act upon same; which NBC did.

97. NBC relied upon false representations and fraudulent misrepresentation to its detriment, and permitted: (i) the Borrowers continued access to the Credit Facilities; and, (ii) access to the NBC Accounts, cheque writing privileges, overdraft availability, and the conditional credit that resulted from the Canadian Sunterra Entities' and the US Sunterra Entities' use of cheques in perpetuating the Kiting Scheme.

98. The result of NBC's detrimental reliance on such fraudulent and deceitful conduct is that NBC suffered losses and damages caused by Sunterra Canada, Sunwold Canada, the US Sunterra Entities, Price, Uffelman, and Thompson.

2. Breach of Implicit Representations under *Bills of Exchange Act*

99. In each Cycle, Sunterra Canada and Sunwold Canada also breached the implicit representations in set forth in the *Bills of Exchange Act* mentioned above:

(a) pursuant to sections 129 and 165 of the *Bills of Exchange Act*, on each occasion that Sunterra Canada and Sunwold Canada drew a cheque on their NBC Account (which, on each occasion, was caused by one or more of the individual Respondents), such corporate Respondent engaged that on due presentment the cheque shall be accepted and paid according to its tenor, and that if it was dishonoured it would compensate the

holder or any endorser who is compelled to pay it, if the requisite proceeding on dishonour were duly taken; and

(b) pursuant to section 132 and 165 of the *Bills of Exchange Act*, by endorsing a cheque for deposit to its account (which, on most if not all occasions was caused by one or more of the individual Respondents), such corporate Respondent engaged that on due presentment the cheque shall be accepted and paid according to its tenor, and that if it was dishonoured it would compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceeding on dishonour were duly taken.

100. As a result of the foregoing breaches of the representations implied by the *Bills of Exchange Act*, Sunterra Canada and Sunwold Canada caused damage to NBC for which NBC claims herein.

101. Further, and in the alternative, Sunterra Canada and Sunwold Canada are bound to honour their obligations arising from such implicit representations to compensate the holders of such cheques, including NBC.

3. Breach of Business Account Agreements

102. In each Cycle, Sunterra Canada and Sunwold Canada also breached the terms of their Business Account Agreement. In particular:

(a) Sunterra Canada and Sunwold Canada each agreed that it would be responsible for all use of its cheques, instruments and other debits to the NBC Account and that NBC would have no responsibility for forged cheques, instruments or unauthorized transactions unless the corporate Respondent could show that it took reasonable precautions to protect such cheques, instruments and transactions and that it took reasonable care to examine its statements of Account and transaction information, which Sunterra Canada and Sunwold Canada cannot demonstrate;

(b) Sunterra Canada and Sunwold Canada each agreed that they were responsible for determining the suitability of individuals appointed as Authorized Signing Officers which they were not, given their participating in the Kiting Scheme, and that NBC shall not in any way be liable or held responsible for any loss suffered by the Business caused by any act or omission, or wrongful conduct of any Authorized Signing Officer appointed by the Business, which they have failed to do; and

(c) Sunterra Canada and Sunwold Canada each agreed that they would diligently supervise and monitor the conduct and work of all Authorized Signing Officers and all agents and employees having a role in the preparation of Instruments and the Business's bank statement reconciliation or other banking functions, which they failed to do.

103. As a result of the foregoing breaches of the Business Account Agreements, Sunterra Canada and Sunwold Canada caused damage to NBC for which NBC claims herein.

4. Breach of Commitment Letter Operational Requirements

104. In each Cycle, Sunterra Canada and Sunwold Canada also breached the terms of the Commitment Letter Operational Requirements. In particular, they did not:

- (a) carry on and conduct business in an efficient and proper manner;
- (b) keep proper books of account and records of all transactions

105. As a result of the foregoing breaches of the Commitment Letter Operational Requirements, Sunterra Canada and Sunwold Canada caused damage to NBC for which NBC claims herein..

5. Oppression

106. The perpetration of the Kiting Scheme by Sunterra Canada, Sunwold Canada, the US Sunterra Entities, Price, Uffelman, and Thompson amounted to oppressive conduct that unfairly disregarded or prejudiced the interests of NBC. As a result, NBC is entitled to compensation and relief under section 242 as a “complainant” within the meaning of the Alberta *Business Corporations Act*, as amended (the “**ABCA**”).

6. Inducing Fraud, Statutory Misrepresentations, and Breach of Contract

107. In each Cycle, each of Price, Uffelman, and Thompson induced Sunterra Canada, Sunwold Canada and the US Sunterra Entities:

- (a) to commit the fraudulent acts mentioned above;
- (b) to misrepresent the matters under the *Bills of Exchange Act* mentioned above;
- (c) to breach the Business Account Agreements;
- (d) to make misrepresentations in respect of the Commitment Letter Reporting Requirements; and
- (e) to breach the Commitment Letter Operational Requirements.

108. In the case of the Business Account Agreements:

- (a) Price, Uffelman, and Thompson were Authorized Signing Officers within the meaning of the Business Account Agreement applicable to the respective NBC Accounts held by Sunterra Canada and Sunwold Canada, and had actual knowledge of the terms of the Business Account Agreements applicable to each of the NBC Accounts held by the corporate Respondents;
- (b) In the alternative, if Price, Uffelman, and Thompson did not have actual knowledge of the terms of the Business Account Agreements, they ought to have known of such terms and their ignorance of such terms is a product of recklessness or willful blindness;
- (c) In each Cycle, Price, Uffelman, and Thompson intended to cause Sunterra Canada and Sunwold Canada to breach the Business Account Agreements;
- (d) In each Cycle, Sunterra Canada and Sunwold Canada committed an act of fraud, breached their representations under the Bills of Exchange Act and breached the Business Account Agreements as Price, Uffelman, and Thompson induced them to do; and
- (e) The foregoing caused loss and damage to NBC, and may cause further loss and damage to NBC.

7. Knowing Assistance, Breach of Fiduciary Duty, Breach of Statutory Duty

109. Price, Uffelman, and Thompson each knowingly assisted Sunterra Canada and Sunwold Canada to commit the thousands of fraudulent acts described above.

110. The knowing assistance given by each of Price, Uffelman, and Thompson was in breach of their respective statutory and fiduciary duties to Sunterra Canada, Sunwold Canada and the US Sunterra Entities.

111. The foregoing caused loss and damage to NBC, and may cause further loss and damage to NBC.

8. Wrongful Means Conspiracy

112. The Kiting Scheme was, in effect and substance, an unlawful means conspiracy purported by Sunterra Canada, Sunwold Canada, the US Sunterra Entities, Price, Uffelman, and Thompson acting jointly and in concert.

113. The Sunterra Parties agreed to engage in unlawful conduct that they knew (and in fact intended) or should have known would likely cause injury to NBC. Their unlawful conduct, namely the Kiting Scheme, is actionable. It amounts to fraud, deceit, and fraudulent misrepresentation, directed towards NBC.

114. The Sunterra Parties acted in concert with a common design in pursuing the Kiting Scheme with the intention of inducing NBC to provide conditional credit and advance funds, based on false and misleading representations, while knowing that there was not sufficient cash to honour the face value of the cheques drawn in furtherance of the unlawful conspiracy.

115. By engaging in their conspiracy, the Sunterra Parties caused NBC to suffer losses for which they are jointly and severally liable.

9. Indemnification

116. Sunterra Canada, Sunwold Canada, Price, Uffelman, and Thompson are bound to indemnify, or in the alternative, to contribute to any loss or damage claimed by third parties against NBC, including by Compeer arising from, or related to the Compeer Shortfall or such other amounts as Compeer may claim against NBC arising from, or relating to the Kiting Scheme.

117. While NBC does not admit any liability, whatsoever, Compeer has asserted or threatened, or may in the future assert or threaten, certain claims against NBC that are related to, arise from, or are connected to the Kiting Scheme, including without limitation arising from, or related to, the Compeer v. NBC Claims.

118. NBC may incur or suffer losses or damages as a result of the Compeer v. NBC Claims.

119. The Sunterra Parties, jointly and severally, are liable to make full indemnification, or in the alternative, contribution, to NBC, in respect of any losses or damages NBC may suffer in relation to the Compeer v. NBC Claims as forth below.

a) Contractual Basis

120. Sunterra Canada and Sunwold Canada each agreed in their respective Business Account Agreement that it would be responsible for all use of its cheques, instruments and other debits to the NBC Account and that NBC would have no responsibility for forged cheques, instruments or unauthorized transactions unless the corporate Respondent could show that it took reasonable precautions to protect such cheques, instruments and transactions and that it took reasonable care to examine its statements of Account and transaction information, which Sunterra Canada and Sunwold Canada cannot demonstrate.

121. Sunterra Canada and Sunwold Canada also each agreed in the respective Business Account Agreements that NBC shall not in any way be liable or held responsible for any loss suffered by the Business caused by any act or omission, or wrongful conduct of any Authorized Signing Officer appointed by the Business.

122. As such, it is an express term of the Business Account Agreements that Sunterra Canada and Sunwold Canada would save NBC harmless such that it would have no responsibility for unauthorized transactions, either to them or to any third party, such as those undertaken in connection with the Kiting Scheme.

123. Further, and in the alternative, it is an implied term of the Business Account Agreements that Sunterra Canada and Sunwold Canada would hold NBC harmless from, and indemnify NBC for, any and all losses suffered by NBC as a result of the Sunterra Parties' fraud or any fraudulent instructions given by the Sunterra Parties to NBC.

b) At Common Law and Equity

124. Further, and in the alternative, the Respondents are liable to Compeer in respect of the Compeer v. NBC Claims and have a direct interest in, and will benefit from, any payments made by NBC to Compeer in relation to any Compeer v. NBC Claims. The Sunterra Parties have a legal obligation, to NBC, to indemnify NBC for (or in the alternative, contribute in respect of) any and all losses or damages suffered by NBC in relation to the Compeer v. NBC Claims.

125. Further and in the alternative, if the Sunterra Parties are not directly liable to Compeer in respect of the Compeer v. NBC Claims:

(a) there is a community of interest between NBC and the Sunterra Parties in relation to the Compeer v. NBC Claims, including insofar as the Sunterra Parties will benefit from any payments made by NBC in relation to the Compeer v. NBC Claims, and the Sunterra Parties have an equitable obligation, to NBC, to indemnify NBC for (or in the alternative, contribute in respect of) any and all losses or damages suffered by NBC in relation to the Compeer v. NBC Claims;

(b) any and all liability of NBC in respect of the Compeer v. NBC Claims (which liability is not admitted, and expressly denied) arises from the same occurrences or transactions as NBC's claims against the Sunterra Parties, and furthermore, the Sunterra Parties should be bound by any decision in relation to the Compeer v. NBC Claims;

(c) all losses or damages suffered by Compeer which relate to, arise from, or are connected to the Compeer v. NBC Claims are the direct result of the Sunterra Parties' fraud in carrying out the Kiting Scheme. The Sunterra Parties are solely responsible and liable for any losses or damages suffered as a result thereof, and NBC has a legal or equitable right to reimbursement, from the Sunterra Parties, for any losses or damages suffered by NBC or which relate to the Compeer v. NBC Claims;

(d) the Compeer v. NBC Claims arise from the Kiting Scheme. Any and all steps or acts taken by NBC in connection with the Kiting Scheme were taken on the direction of the Sunterra Parties, or as a direct result of the instructions given by the Sunterra Parties, who knew such acts, directions, or instructions, were based upon fraud, deceit, and fraudulent misrepresentations made by the Sunterra Parties to NBC and to Compeer. The Sunterra Parties agreed, expressly or impliedly, to indemnify NBC for acting on such directions or instructions, and have a legal or equitable obligation to indemnify NBC in relation to the Compeer v. NBC Claims;

(e) NBC is entitled to the benefit of an implied indemnity in relation to any damage caused to any third party by the Sunterra Parties' negligence or misconduct, including, without limitation, in respect of the Compeer v. NBC Claims, including as a result of: (i) the relationship between NBC and the Sunterra Parties; (ii) the express or implied terms of the various agreements between NBC and the Sunterra Parties; (iii) the principles of equity; (iv) due to the various fraud, deceit, and fraudulent misrepresentations of the Sunterra Parties, the known particulars of which are described herein; and, (v) the operation of statutes, including, but not limited to, the *Tort-Feasors Act* (Alberta) and the *Contributory Negligence Act* (Alberta); and,

c) Under Statute

126. Further and in the alternative, in the event that any Compeer v. NBC Claims are asserted successfully against NBC (the validity of such claims not being admitted and being expressly denied by NBC), the Sunterra Parties are, or will be, joint tortfeasors with NBC and will be liable to indemnify NBC under and pursuant to the *Tort-Feasors Act* (Alberta) and/or the *Contributory Negligence Act* (Alberta), and NBC expressly pleads and relies upon the *Tort-Feasors Act* (Alberta) and the *Contributory Negligence Act* (Alberta). Without limiting the generality of the foregoing, in the event that Compeer suffered any loss or damage by the fault of NBC (which is not admitted, and expressly denied), in relation to the Compeer v. NBC Claims, such loss or damage was caused entirely by the fault of the Sunterra Parties;

10. Guarantees

127. As set forth above, the Borrowers, Lariagra, Sunterra Farm Enterprises, Sunterra Enterprises, and Sunterra Beef, are also guarantors of some or all of the Borrowers.

128. Pursuant to the Guarantees, each Guarantor thereunder, jointly and severally, unconditionally guaranteed payment, to NBC, of all present and future debts and liabilities, direct or indirect, absolute or contingent, now or at any time and from time to time due or owing to NBC, by the applicable Borrower(s), whether as principal or surety, and whether incurred by one or more of the Borrower(s) alone or jointly with any other person or persons, or otherwise howsoever, together with all costs, charges, and expenses (including legal fees on a solicitor and client basis), as incurred by NBC.

129. As such, the Guarantees also apply to the liability of the Borrowers, or any of them, in respect of the matters claimed herein.

11. Security

130. In accordance with the terms and conditions of the Commitment Letter and Guarantees, all Canadian Sunterra Entities are jointly and severally liable for all losses, obligations, indebtedness, and liabilities, including, among others, damages, owed to NBC. Furthermore, in accordance with the terms and conditions of the Security Agreements, all such obligations and liabilities are properly secured and perfected, to and in favour of NBC, against the Collateral.

XVI. Damages

131. Due to the Kiting Scheme, NBC has suffered, incurred, and/or is reasonably expected to incur, out-of-pocket expenses, fees, disbursements and special damages in its detection, investigation, quantification, and litigation of the Kiting Scheme and losses suffered in its attempt to recover such losses at the hands of the Sunterra Parties, in an amount to be proven.

XVII. Punitive Damages and Exemplary Damages

132. As a result of the fraudulent and high-handed conduct of the Sunterra Parties, NBC pleads that it is entitled to recover punitive and exemplary damages, as a result of the Kiting Scheme.

XVIII. Tracing the Proceeds of the Kiting Scheme and the Impugned Transactions, Accounting and Disgorgement

133. As a result of the wrongful and fraudulent conduct of the Sunterra Parties, NBC is entitled to trace all amounts received or disbursed by the Impugned Entities during the Review Period or as part of or as a result of the Kiting Scheme and to recover the same.

134. Such tracing must include all amounts paid to directors and officers of the Impugned Entities, including, among others, dividends, redemptions or purchases for cancellation of any of the shares of the capital stock of the Impugned Entities, termination pay, severance pay, incentive benefits, or other benefits to a director, officer, or any person who manages or supervises the management of business and affairs of the Impugned Entities. NBC specifically pleads and relies upon section 101 of the BIA and sections 43 and 118 of the ABCA.

135. NBC is also entitled to an accounting of the monies belonging NBC that have come into the possession of the Sunterra Parties and the US Sunterra Entities and to an accounting of any benefit received by the Sunterra Parties and the US Sunterra Entities as a result of the Kiting Scheme described above.

136. The Sunterra Parties, together and each individually, are liable to make restitution to NBC and to disgorge any benefits they have received, as a result of or in connection with the Kiting Scheme.

XIX. Remedy Sought

137. As a result of the foregoing, National Bank of Canada seeks the following relief:

- (a) a declaration that the Kiting Scheme was fraudulent;
- (b) a declaration that Sunterra Canada, Sunwold Canada and the US Sunterra Entities have committed fraud;
- (c) judgment, or an award of damages, jointly and severally, as against Sunterra Canada, Sunwold Canada, Price, Uffelman, and Thompson in such amount as may be proven, including but not limited to
 - (i) special damages and out-of-pocket expenses incurred by NBC arising out of the detection, investigation, quantification, and recovery of the fraud, losses, and consequential losses suffered by NBC in an amount to be established;
 - (ii) legal fees, costs, and expenses incurred by NBC in connection with the Kiting Scheme, this Claim, or the NBC Claim Process, on a solicitor and their own client, full indemnity basis, and judgment, on a joint and several basis, for such amount; and
 - (iii) any and all amounts as may be awarded against NBC in favour of Compeer arising out of, or relating to, the Compeer v NBC Claim;

- (d) a declaration that Sunterra Canada, Sunwold Canada, Price, Uffelman, and Thompson are jointly and severally bound to indemnify and save NBC harmless in respect of the Compeer v. NBC Claim and from any and all amounts claimed by, or awarded to, Compeer against NBC arising from, or related to the Compeer v. NBC Claim, the Compeer Shortfall, the Kiting Scheme or such other amounts as Compeer may claim against NBC;
- (e) further or in the alternative to the relief described in the previous sub-paragraph, a declaration that the Respondents are liable to make contribution, to NBC, in an amount or percentage to be determined by the Court, in respect of any and all losses, damages, or liabilities suffered or incurred by NBC as a result of, arising from, or relating to, the Kiting Scheme or any other Compeer v. NBC Claims;
- (f) a declaration that the conduct of Sunterra Canada and Sunwold Canada, and that of Price, Uffelman, and Thompson as officers and directors of those corporate Respondents, effected a result, or was carried on or conducted, or was exercised in a manner that was oppressive or unfairly prejudicial or that unfairly disregarded the interests of NBC as a creditor and that NBC is entitled to:
 - (i) an order compensating NBC as an aggrieved party;
 - (ii) an order granting permission to NBC to commence an action in the name of and on behalf of those corporate Respondents and Price, Uffelman, and Thompson and such other directors and officers of those corporate Respondents for breach of their statutory, fiduciary and other duties to those corporate Respondents.
- (g) a declaration that all Respondents are liable for all damages and amounts due and owing to NBC by any of the Respondents, whether awarded as damages or as indemnity and contribution:
 - (i) due to their joint liability; and
 - (ii) in relation to the Borrowers and Guarantors under and in accordance with the terms of the Commitment Letter and Guarantees;
- (h) a declaration that all indebtedness, damages, and obligations due and owing to NBC, by any of all of the Canada Sunterra Entities, are properly secured by the applicable Security Agreements;

- (i) a declaration that NBC is entitled to a constructive trust and/or restitution as a result of the Respondents' unjust enrichment, which the quantum of such restitution being no less than the amount of misappropriated funds resulting from the Kiting Scheme;
- (j) a declaration that NBC is entitled trace all amounts received or disbursed by the Respondents as part of or as a result of the Kiting Scheme and to recover the same;
- (k) a declaration that NBC is entitled to trace all amounts paid to directors and officers of the corporate Respondents, including, dividends, redemptions or purchases for cancellation of any of the shares of the capital stock of the corporate Respondents, termination pay, severance pay, incentive benefits, or other benefits to a director, officer, or any person who manages or supervises the management of business and affairs of the corporate Respondents;
- (l) a declaration that NBC is entitled to an accounting of the monies belonging to NBC that have come into the possession of the Respondents and to an account of any benefit received by the Respondents as a result of the Kiting Scheme including interest in any accounts and of all money had or received by the Respondents or any person on their behalf, and an order declaring that NBC is permitted to trace monies fraudulently obtained from the Respondents into and through any financial institution accounts or deposit facilities in the names of the Respondents, respectively, and into any assets purchased by the Sunterra Parties with those monies;
- (m) a declaration that the Respondents, together and each individually, are liable to make restitution to NBC and to disgorge any benefits they have received from the Kiting Scheme;
- (n) a declaration that NBC is entitled to recover punitive and exemplary damages, in the amount of \$1,000,000, from the Respondents, jointly and severally;
- (o) an order, to the extent necessary, declaring that NBC is entitled to pierce the corporate veil of the Canadian Sunterra Entities to enforce their claims and seek damages against Price, Uffelman, and Thompson, and any other directors and officers of the Canadian Sunterra Entities and the US Sunterra Entities;
- (p) pre-judgment and post-judgment interest on all amounts awarded to NBC, at such rate or rates as may be ordered, compounded annually or monthly, pursuant to the *Judgment Interest Act*, R.S.A., c. J-1, as amended; and

(q) such further and other relief as this Honourable Court may deem just.