

COURT FILE NO. **2501-06120**

Clerk's Stamp

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., and 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

**WRITTEN ARGUMENT OF NATIONAL BANK OF CANADA
FOR HEARING BEFORE JUSTICE LEMA ON DECEMBER 4 AND 5, 2025
COMMENCING AT 10:00 AM ON DECEMBER 4, 2025**

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I. INTRODUCTION

1. The Respondents, Sunterra Farms Ltd. ("**Sunterra Canada**") and Sunwold Farms Limited ("**Sunwold Canada**") (collectively the "**Canadian Kiting Entities**"), were engaged in a cross-border kiting scheme (the "**Kiting Scheme**") with their US-based affiliates, Sunterra Farms Iowa, Inc. ("**Sunterra US**") and Sunwold Farms Inc. ("**Sunwold US**") (collectively, the "**US Kiting Entities**"). As detailed below, this is a plain and obvious fact. The Respondents do not deny the conduct, but instead offer the excuse that National Bank of Canada ("**NBC**") and Compeer Financial, PCA ("**Compeer**") should have discovered the Kiting Scheme earlier. They go so far as to say that NBC and Compeer authorized the conduct. These excuses are factually incorrect and completely ineffective as defences.

2. Kiting is a fraud. In this case the fraud was perpetrated thousands of times between 2023 and the first six weeks of 2025 by the Canadian Kiting Entities and the US Kiting Entities (collectively, the "**Kiting Entities**"). The Kiting Scheme:

- (a) was undiscovered by NBC until it collapsed in February 2025, and was also undiscovered by Compeer until days before the discovery by NBC, allegedly by other directors of the Respondents until around the same time as NBC, and even the Respondents' auditor (KPMG);
- (b) involved thousands of cheques by which billions of dollars were circulated between the Canadian Kiting Entities and the US Kiting Entities;
- (c) was the product of thousands of misrepresentations to NBC of matters implied under the *Bills of Exchange Act* (Canada) when cheques are drawn and endorsed and other obfuscations and misrepresentations by half-truths;
- (d) resulted in the Kiting Entities obtaining millions of dollars of credit from NBC (and Compeer) without authority and without paying interest throughout the duration of the Kiting Scheme;
- (e) resulted in Compeer sustaining a loss in the range of USD\$20 million that is the subject of a separate, conjoined proceeding in which Compeer seeks a determination of its claims against certain of the Respondents (the "**Compeer Claim**"); and
- (f) which has exposed NBC to potential claims by Compeer.

3. Apart from its fraudulent nature, the Kiting Scheme also resulted in breaches of the “**Business Account Agreements**”¹ that governed the operation of Canadian Kiting Entities’ NBC bank accounts and the commission of several other torts and legal and equitable breaches.

4. The Kiting Scheme was designed and implemented by Ray Price, Debbie Uffelman (“**Uffelman**”) and Craig Thompson (“**Thompson**”), the personal Respondents in this proceeding. They are just as liable as the Canadian Kiting Entities. They knowingly or recklessly assisted in the Kiting Scheme or, at the very least, were willfully blind. Further, they are co-conspirators together with the Kiting Entities, their conduct induced the Canadian Kiting Entities to breach contractual covenants owed to NBC, and their conduct was oppressive.

5. The remaining Respondents, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc., Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm Enterprises Ltd. and Sunterra Enterprises Inc. and also the Canadian Kiting Entities (collectively, the “**Guarantors**”) each guaranteed all debts, liabilities, obligations and indebtedness due and owing by each of the Canadian Kiting Entities (and other borrowers) to NBC (the “**Guarantees**”).² As such, they are each liable for the obligations of Sunterra Canada and Sunwold Canada under the Guarantees.

6. The Guarantors (including the Canadian Kiting Entities) and the US Kiting Entities also granted security to NBC for all indebtedness, liabilities and obligations owed by them to NBC including in the form of several General Security Agreements and other additional security documents (collectively, the “**Security Agreements**”).³

7. With respect to NBC’s separate claims against the corporate Respondents for monies that were legitimately borrowed from NBC pursuant the Commitment Letter dated November 15, 2022 (the “**Commitment Letter**”),⁴ this Court has already ordered:

“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

¹ Affidavit #2 of Raymond Pai, sworn August 29, 2025, filed in Court File No. 2501-06120 (the “**NBC Claims Proceedings**”) (“**Pai Affidavit #2**”), at para. 35 and Exhibit “R”.

² Pai Affidavit #2, at Exhibits “V” through “CC”.

³ Pai Affidavit #2, at Exhibits “DD” through “TT”.

⁴ Pai Affidavit #2, at Exhibit “S”.

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.”⁵

8. While the amount that is the subject of the foregoing order remains unpaid, and the amount of accruing interest, fees, costs and expenses that have been declared to be recoverable by NBC remains unquantified and unpaid, NBC also faces the prospect of further claims by Compeer that are directly related to, and inextricably linked with, the Kiting Scheme. Compeer has asserted that it may have a claim against NBC and has purported to reserve “its right to do so outside of the CCAA Proceedings in the ordinary course.”⁶ As this Court recognized in its Endorsement, granted in these proceedings and dated October 14, 2025:

“[44] I also infer, given the narrow information sought on this aspect in the proposed order (“a range of quantum of such claims(s)”), that, if obliged to provide such information via the proposed order, Compeer would not provide a range that would or could impair its position i.e. would not see any need to cap its own claim i.e. would in all likelihood provide a range like “while lacking full information at present, it may be that, via the cheque dishonouring in question, NBC became liable to us for some or even all of our cheque-related losses i.e. \$35 million (USD), of which we have recovered \$15 million (USD). Accordingly, we currently provide a range of possible recovery against NBC of up to \$20 million (USD), plus a further \$X million (USD) in consequential losses, interest, costs, and other amounts, for a grand total range of up to \$20 + X million i.e. if it turns out that we do not recover any material amounts on other fronts or, alternatively, if we are not obliged at law to exhaust or factor in other recoveries when pursuing NBC.”

[45] In other words, I cannot foresee that Compeer, acting rationally, would, in the present circumstances, answer “no” to the pursuit-of-NBC election, do anything other than list the already implicitly-asserted tracing recourse and all known-to-law liabilities triggered by cheque-dishonouring, or limit its range estimate to below the absolute maximum of its conceivable claims(s) against NBC.”⁷

9. Accordingly, pursuant to the same order that declared NBC’s entitlement to recover approximately \$9.9 million plus accruing interest, fees, costs and expenses,⁸ NBC has advanced a further claim for contribution and indemnification against the Respondents in respect of Compeer’s potential claim. NBC seeks, among other things:⁹

(a) a declaration that the Kiting Scheme was fraudulent;

⁵ Consent Order (Scheduling), granted July 24, 2025, in NBC Claims Proceedings, at para. 2.

⁶ Affidavit #1 of Raymond Pai, sworn August 25, 2025, filed in NBC Claims Proceedings (“**Pai Affidavit #1**”), at para. 12 and Exhibit “B”.

⁷ *National Bank of Canada v. Sunterra Food Corporation*, 2025 ABKB 599, at paras. 44 and 45 [**Book of Authorities “BOA” TAB 50**].

⁸ Consent Order (Scheduling), granted July 24, 2025, at para. 2.

⁹ Claim of National Bank of Canada, filed October 10, 2025 in NBC Claims Proceedings.

- (b) a declaration that the Canadian Kiting Entities and US Kiting Entities have committed fraud;
- (c) a declaration that the Canadian Kiting Entities, Ray Price, Uffelman, and Thompson are required to indemnify and save NBC harmless, or alternatively contribute 100% of the loss, in respect of the Compeer v. NBC Claim;
- (d) a declaration that NBC's contingent claim is a provable claim;
- (e) that NBC's contingent claim be valued in the same amount as Compeer's expected shortfall;
- (f) a declaration that the conduct of the Canadian Kiting Entities, and that of Price, 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;
- (g) a declaration that, pursuant to the Guarantees, the corporate 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;
- (h) a declaration that all indebtedness, damages, and obligations due and owing to NBC, by any or all of the Canadian Kiting Entities and the corporate Respondents, are duly secured by the applicable Security Agreements;
- (i) costs on an indemnity basis; and,
- (j) punitive and exemplary damages as against the Canadian Kiting Entities, Ray Price, Uffelman, and Thompson in an amount of \$1,000,000.00 or such other amount as this Court may determine to be appropriate in the circumstances.

II. FACTS

1. The Parties

a) NBC

10. 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, Canadian Western Bank (“**CWB**”) was also a Schedule I bank incorporated under the *Bank Act*. On February 3, 2025, NBC acquired all of the issued and outstanding shares of CWB it did not already own and on March 1, 2025, NBC and CWB amalgamated and continued under the name “National Bank of Canada”. Until March 1, 2025, the dealings between NBC and the Respondents were with NBC’s predecessor, CWB. References herein to NBC include, as and where applicable, CWB prior to amalgamation.

b) Corporate Respondents

11. The corporate Respondents are all entities within the “**Sunterra Group of Companies**” or “**Sunterra Group**”. The Sunterra Group consists of 3 holding companies, under common control of the Price family, and the several wholly-owned subsidiaries and partially-owned affiliates of the holding companies, as follows:

(a) Sunterra Farm Enterprises Ltd.:

Wholly-owned subsidiaries: Sunterra Farms Ltd. (aka **Sunterra Canada**), Sunwold Farms Limited (aka **Sunwold Canada**), Sunterra Farms Greenhouse Ltd., Lariagra Farms Ltd.

Partially-owned affiliate: Sunterra Beef Ltd. (as to 90%)

(b) Sunterra Food Corporation:

Wholly-owned subsidiaries: Sunterra Quality Food Markets Inc., Sunterra Wine Markets Inc., Trochu Meat Processors Ltd.

Partially-owned affiliate: Soleterra D’Italia Ltd. (as to 50%)

(c) Sunterra Enterprises Inc.:

Wholly-owned subsidiaries: Sunwold Farms Inc. (aka **Sunwold US**), Sunterra Farms Iowa Ltd. (aka **Sunterra US** or **Sunterra Iowa**), Lariagra Farms South Inc.

Partially-owned affiliate: West Market Square Inc. (as to 50%).

c) Relationships between Corporate Respondents and NBC

12. There are several relevant relationships among the various members of the Sunterra Group which are described below and summarized in the following table:

Table of Relationships between Entities in Sunterra Group and NBC							
Parent	Subsidiaries (100% unless noted)	Respondent	Canadian Cheque Kiter	US Cheque Kiter	Borrower	Guarantor	Granted Security
Sunterra Farm Enterprises Ltd.		✓				✓	✓
	Sunterra Farms Ltd. (aka Sunterra Canada)	✓	✓		✓	✓	✓
	Sunwold Farms Limited (aka Sunwold Canada)	✓	✓		✓	✓	✓
	Sunterra Farms Greenhouse Ltd.						
	Lariagra Farms Ltd.	✓				✓	✓
	Sunterra Beef Ltd. (as to 90%)	✓				✓	✓
Sunterra Food Corporation		✓			✓	✓	✓
	Sunterra Quality Food Markets Inc.	✓			✓	✓	✓
	Sunterra Wine Markets Inc.						
	Trochu Meat Processors Ltd.	✓			✓	✓	✓
	Soleterra D'Italia Ltd. (as to 50%)						
Sunterra Enterprises Inc.		✓				✓	✓
	Sunwold Farms Inc. (aka Sunwold US)			✓			✓
	Sunterra Farms Iowa Ltd. (aka Sunterra US or Sunterra Iowa)			✓			✓
	Lariagra Farms South Inc.						
	West Market Square Inc. (as to 50%).						

i. Terms Governing Cheques and NBC Bank Accounts

13. The main allegation in NBC's claim against the Respondents is that the Canadian Kiting Entities (Sunterra Canada and Sunwold Canada) were engaged in the cross-border Kiting Scheme with their US affiliates, the US Kiting Entities (Sunterra US and Sunwold US) which is a fraud. However, there are other elements of the relationship that are important, including the statutory and contractual terms that govern the drawing and negotiation of cheques and operation of the Canadian Kiting Entities' NBC bank accounts.

A. Terms Implied by Statute

14. Without descending into argument, for present purposes NBC submits that it is a fact that there are implied representations that are made by the drawers and endorsers of cheques whenever cheques are drawn and negotiated. In particular:

- (a) pursuant to sections 129 and 165 of the *Bills of Exchange Act*,¹⁰ the drawer of a cheque "engages that on due presentment the cheque shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder

¹⁰ *Bills of Exchange Act*, RSC 1985, c. B-4 ("**Bills of Exchange Act**") [BOA TAB 3].

or any endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken”;¹¹ and

- (b) pursuant to section 132 and 165 of the *Bills of Exchange Act*, the endorser of a cheque for deposit to an account “engages that on due presentment the cheque shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken”.¹²

15. The statutory terms that govern the drawing and negotiation of cheques will be discussed below further in argument.

B. Contractual Terms Governing NBC Bank Accounts

16. Sunterra Canada and Sunwold Canada held bank accounts with NBC which were governed by Business Account Agreements.

17. The agreements between NBC and Sunterra Canada and Sunwold Canada (defined in the Business Account Agreements as the “**Business**”) are comprised of a “Business Account Application”¹³ and terms and conditions set out in a “Business Account Agreement”.¹⁴ In each case the Business Account Agreement was attached to, or incorporated by reference, into the agreement by the terms of the Business Account Application. In addition, each “Business Account Application” specifically included a representation that, “The Business acknowledges receipt of the Business Account Agreement attached to this Application. The Business shall be bound by the terms of the Business Account Agreement, and any changes or amendments made to it by [NBC] from time to time...”¹⁵

18. Each of the Respondents had knowledge of the terms of the Business Account Agreements, including each of the personal Respondents:

¹¹ *Bills of Exchange Act*, s. 129 [BOA TAB 3].

¹² *Bills of Exchange Act*, s. 132 [BOA TAB 3].

¹³ Pai Affidavit #2, at Exhibit “R”, Business Account Application. Sunterra Canada’s applications are dated August 11, 2010 [Bates Nos. 2007-2009]; November 17, 2011 [Bates Nos. 2048-2052]; and March 29, 2023 [Bates Nos. 2034-2038]. Sunwold Canada’s application is dated May 4, 2020 [Bates Nos. 2077-2081].

¹⁴ Pai Affidavit #2, at Exhibit “R”, Business Account Agreements, dated 05/22 [Bates Nos. 2027-2033], 04/20 [Bates Nos. 2020-2025] and 08/10 [Bates Nos. 2013-2019].

¹⁵ Pai Affidavit #2, at Exhibit “R”, Business Account Agreement, Sunterra Canada [Bates No. 2037] and Sunwold Canada [Bates No. 2080].

- (a) Directors and senior officers of the Respondents including Ray Price¹⁶ (and also Arthur Price, Glen Price, and David Price) signed “Business Account Applications” with NBC, including one dated August 11, 2010,¹⁷ at the beginning of the banking relationship between Sunterra and NBC.
- (b) Uffelman and Thompson have each, at various times, signed a Business Account Application with NBC.¹⁸
- (c) Furthermore, Ray Price, Uffelman, and Thompson are listed as “**Authorized Signing Officers**” on numerous signature cards attached to the various application materials concerning the Business Account Agreements,¹⁹ and were otherwise authorized in the banking resolutions signed by various Sunterra parties, including Sunterra Canada.²⁰

19. Pursuant to the Business Account Agreements,²¹ Sunterra Canada and Sunwold Canada, understood and agreed that:

- (a) “Account” means “any and all deposits accounts that the Business has with [NBC]”;²²
- (b) “Instrument” means “any bill of exchange...cheque, draft, payment instruction...order for payment of money (including any wire transfer or electronic payment or transfer)...or other item, whether a negotiable or non-negotiable instrument...”²³

¹⁶ Ray Price details his knowledge of the relevant agreements and their terms in his Affidavit sworn September 21, 2025, filed in NBC Claims Proceedings (“**Ray Price Affidavit**”), and confirmed during cross-examination that he was aware of the Business Account Agreements with NBC (Transcript of Questioning of Ray Price, October 7, 2025 (Questioning by Compeer) (“**Questioning of Ray Price by Compeer**”), at 23:9-23:20).

¹⁷ Pai Affidavit #2, at Exhibit “R”, Business Account Application dated August 11, 2010 [Bates Nos. 2007-2009].

¹⁸ Pai Affidavit #2, at Exhibit “R”.

¹⁹ Pai Affidavit #2, at Exhibit “R” [Bates Nos. 2036, 2037, 2038, 2041, 2047, 2051, 2055, 2058, 2068, 2074, 2075, 2076, 2079, 2081, 2088].

²⁰ Pai Affidavit #2, at Exhibit “R” [Bates Nos. 2036, 2037, 2038, 2041, 2047, 2051, 2055, 2058, 2068, 2074, 2075, 2076, 2079, 2081, 2088].

²¹ Pai Affidavit #2, at Exhibit “R”, [Bates Nos. 2020-2025 and 2027-2033].

²² Pai Affidavit #2, at Exhibit “R”, s. 1(a) [Bates No. 2027].

²³ Pai Affidavit #2, at Exhibit “R”, s. 1(e) [Bates No. 2027].

- (c) NBC is “authorized to debit the Account with ... the amount of any Instrument payable by the Business”, and “the amount of any Instrument cashed or negotiated by [NBC] for the Business or credited to the Account for which payment is not received by [NBC] on a final irrevocable basis, or is reversed, in whole or in part, and whether or not such nonpayment or reversal complies with the rules of the Canadian Payments Association or other clearing organization for any reason, and with the amount of any other of the indebtedness or liability of the Business to [NBC] and with any expenses incurred by [NBC] in connection with paying of a dishonoured or unpaid Instrument”;²⁴
- (d) “The Business authorizes [NBC], without enquiry, to honour and pay all cheques and Instruments drawn on the Account, if the cheques or Instruments are signed by one or more Authorized Signing Officers and the signatures are consistent with the specimen signatures provided by the Business to [NBC] ...”;²⁵
- (e) NBC “shall not be liable in any circumstances for any loss, costs or damages whatsoever arising from the wrongful acceptance of a cheque or from the wrongful refusal of [NBC] to honour a cheque which is drawn by the Business...”;²⁶
- (f) 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 Account”;²⁷
- (g) If the account of the Business becomes overdrawn for any reason, “the Business will pay to [NBC], on demand, the amount by which the Account is overdrawn, together with interest at the rate indicated in [NBC’s] Banking Charges Guide for Business Accounts and Related Services, as amended from time to time. Interest will be calculated daily.”;²⁸
- (h) Sunterra Canada and Sunwold Canada would each “be responsible for all use of its cheques, instruments and other debits to the Account and that [NBC] will have no responsibility for forged cheques, instruments or unauthorized transactions unless the Business can show that it took reasonable precautions to

²⁴ Pai Affidavit #2, at Exhibit “R”, s. 2 [Bates Nos. 2020 and 2027].

²⁵ Pai Affidavit #2, at Exhibit “R”, s. 2 [Bates Nos. 2020 and 2027].

²⁶ Pai Affidavit #2, at Exhibit “R”, s. 2 [Bates Nos. 2020 and 2027].

²⁷ Pai Affidavit #2, at Exhibit “R”, s. 3 [Bates Nos. 2021 and 2027-28].

²⁸ Pai Affidavit #2, at Exhibit “R”, s. 3 [Bates Nos. 2021 and 2027-28].

protect such cheques, instruments and transactions and that it took reasonable care to examine its statements of Account and transaction information”;²⁹

- (i) NBC “shall not be liable for any loss or claim arising from any breach by the Business or any third party of any fiduciary duty or trust in in respect of the sums or dealings noted in the statements.”;³⁰
- (j) “Those persons named in the Application 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 is/are authorized to undertake the following activities, subject to the conditions herein:”
 - (i) “to sign, endorse, make, draw, and/or accept all Instruments 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”;³¹
- (k) 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;³²
- (l) 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.”;³³

²⁹ Pai Affidavit #2, at Exhibit “R”, s. 6 [Bates Nos. 2021-22 and 2028-9].

³⁰ Pai Affidavit #2, at Exhibit “R”, s. 6 [Bates Nos. 2021-22 and 2028-9].

³¹ Pai Affidavit #2, at Exhibit “R”, s. 19(a) and (c) [Bates Nos. 2024 and 2031].

³² Pai Affidavit #2, at Exhibit “R”, s. 19 [Bates Nos. 2024 and 2031].

³³ Pai Affidavit #2, at Exhibit “R”, s. 19 [Bates Nos. 2024 and 2031].

- (m) NBC “shall not in any way be liable or 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”;³⁴
- (n) 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”;³⁵
- (o) NBC would “have no responsibility or liability whatsoever for any loss due to a forged or unauthorized signature” unless the applicable corporation could show that:
 - (i) the forged or unauthorized signature was made by a person who was at no time an agent, employee or Authorized Signing Officer of the Business;
 - (ii) the loss was unavoidable despite the Business having taken all feasible steps to prevent loss arising from forgery or unauthorized signatures;
 - (iii) the loss was unavoidable despite the Business having in place the procedures and controls to supervise and monitor its agents, employees and Authorized Signing Officers; **and**
 - (iv) the loss was caused solely by the negligence or wilful misconduct of [NBC].”³⁶

ii. Borrowers and Guarantors

20. Certain of the Respondents were borrowers from NBC pursuant to the Commitment Letter, namely, the Canadian Kiting Entities, Sunterra Food Corporation, Sunterra Quality Food Markets Inc. and Trochu Meat Processors Ltd. (the “**Borrowers**”).

21. Each of the Borrowers, including the Canadian Kiting Entities, and all of the remaining corporate Respondents, namely, Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm

³⁴ Pai Affidavit #2, at Exhibit “R”, s. 21 [Bates Nos. 2025 and 2032].

³⁵ Pai Affidavit #2, at Exhibit “R”, s. 21 [Bates Nos. 2025 and 2032].

³⁶ Pai Affidavit #2, at Exhibit “R”, s. 21 [Bates Nos. 2025 and 2032].

Enterprises Ltd., and Sunterra Enterprises Inc. (collectively, the “**Guarantors**”) provided the Guarantees to NBC.³⁷

22. For example, pursuant to a Borrowers’ Cross Guarantee dated January 23, 2023,³⁸ Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc. and the Canadian Kiting Entities each “jointly and severally unconditionally guarantee(s) payment to the Bank of all present and future debts and liabilities direct or indirect, absolute or contingent, now or at any time and from time to time hereafter due or owing to the Bank from or by the other Guarantors”.

23. In several Full Liability Guarantees each dated January 23, 2023,³⁹ each of the Canadian Kiting Entities and every other corporate Respondent guaranteed to NBC “payment, forthwith after demand made therefore as hereinafter provided, of all indebtedness and liability (present and future, direct or indirect, absolute or contingent, matured or not)” of the Canadian Kiting Entities and Sunterra Food Corporation, Trochu Meat Processors Ltd. and Sunterra Quality Food Markets Inc. to NBC, “whether arising from agreement or dealings between the Bank and the Customer or from agreement or dealings between the Bank and any third person by which the Customer now is or hereafter may become indebted or liable to the Bank or however otherwise arising and whether the Customer be bound alone or with another or others and whether as principal or surety or guarantor”.

d) Personal Respondents

24. Ray Price testified that during the relevant times, he was a director and principal officer of the Kiting Entities.⁴⁰ He explained that as “principal officer”, he was the senior-most officer as well as the president of those companies.⁴¹ He was also an Authorized Signing Officer with respect to the Business Account Agreements. Ray Price owed fiduciary duties to the Sunterra Group as a result of his position.

25. Ray Price’s evidence is that he provided instructions to Uffelman regarding the management of the “[a]ccount [c]overage practice on a daily basis to ensure that none of the Canadian Kiting

³⁷ Pai Affidavit #2, Exhibits “V” through “CC”.

³⁸ Pai Affidavit #2, Exhibit “V”.

³⁹ Pai Affidavit #2, Exhibits “Z” through “CC”.

⁴⁰ Ray Price Affidavit, at para. 1.

⁴¹ Questioning of Ray Price by Compeer, at 14:1-24.

Entities' NBC accounts were overdrawn."⁴² In other words, Ray Price instructed Uffelman to carry out the Kiting Scheme.

26. Uffelman is Vice President, Corporate Finance of the Sunterra Group.⁴³ She is also expressly identified as an Authorized Signing Officer in the Business Account Agreements,⁴⁴ and testified that she in fact signed cheques involved in the Kiting Scheme on a more or less daily basis.⁴⁵ Uffelman is therefore an officer with respect to the Sunterra Group, and owed fiduciary duties to the Sunterra Group.

27. Uffelman provided evidence detailing the operation of the Kiting Scheme on a daily basis, as instructed by Ray Price, to whom she directly reported. She and Thompson worked together to ensure that the necessary funds were moved between the relevant accounts to prevent the occurrence of shortfalls.⁴⁶ Uffelman was the individual who determined "what amounts needed to be written so the overall cash position remained positive," based on information that she received from Thompson with respect to the account balances and daily credit limits.⁴⁷

28. Thompson's affidavit evidence is that his job title is "Accounting" and/or "Controller" of the Canadian Kiting Entities.⁴⁸ During cross-examination, Thompson attempted to resile from his own evidence, and stated that he does not consider himself to be a "controller" nor is he considered a "controller" by the Sunterra Group. Ray Price stated that Thompson "was in accounts but was not a Financial controller".⁴⁹

29. Thompson explained that "[t]he only reason the word "controller" is [used in his affidavit] is because they needed a title to give me signature authorization" and that "National Bank of Canada may have documentation on a signature card for me stating controller."⁵⁰ He is in fact an Authorized

⁴² Ray Price Affidavit, at para. 52.

⁴³ Affidavit of Debbie Uffelman, sworn September 19, 2025, filed in NBC Claims Proceedings ("**Uffelman Affidavit**"), at para. 5; Transcript of Questioning of Debbie Uffelman, October 7, 2025 (Questioning by NBC) ("**Questioning of Uffelman by NBC**"), at 12:7-17.

⁴⁴ Pai Affidavit #2, at Exhibit "R", [Bates Nos. 2041 (Sunterra Canada) and 2075 (Sunwold Canada)].

⁴⁵ Transcript of Questioning of Debbie Uffelman, October 6, 2025 (Questioning by Compeer) ("**Questioning of Uffelman by Compeer**"), at 42:1-7.

⁴⁶ Uffelman Affidavit, at paras. 8-19.

⁴⁷ Uffelman Affidavit, at para. 13; Affidavit of Craig Thompson, sworn September 19, 2025, filed in NBC Claims Proceedings ("**Thompson Affidavit**"), at paras. 16-17.

⁴⁸ Thompson Affidavit, at para. 5.

⁴⁹ Ray Price Affidavit, at para. 47.

⁵⁰ Transcript of Questioning of Craig Thompson, October 6, 2025 (Questioning by Compeer) ("**Questioning of Thompson by Compeer**"), at 7:25-9:10.

Signing Officer under the Business Account Agreements,⁵¹ and regardless of his formal title, was held out to be an officer within the Sunterra Group.

30. Thompson, like Uffelman, was directly involved in the daily operation of the Kiting Scheme. Thompson would report to Uffelman daily regarding the amounts required to ensure that the relevant accounts “were within their daily credit limits and/or not overdrawn.”⁵² Upon instructions from Uffelman, Thompson would then provide directions to office personnel to generate the kited cheques.⁵³

2. US Kiting Entities and the Compeer Accounts

31. The US Kiting Entities did not have bank accounts with NBC. Sunterra US and Sunwold US held accounts with Compeer.⁵⁴

32. Compeer is an instrumentality under the laws of the United States that is a member-owned farm credit cooperative which provides loans, leases, risk management and other financial services.⁵⁵

33. The characteristics of the Compeer accounts, as far as they are known to NBC, are:

- (a) The accounts held by Sunterra US and Sunwold US at Compeer included revolving lines of credit (“**RLOCs**”) and associated deposit accounts, which Compeer refers to as “Farm Cash Management” accounts or “**FCM Accounts**”,⁵⁶
- (b) A feature of the RLOCs was that the US Kiting Entities could borrow certain amounts from Compeer, on a revolving basis;⁵⁷
- (c) A feature of the FCM Accounts was that the US Kiting Entities could deposit money and earn interest on the money deposited into the FCM Accounts,⁵⁸ and

⁵¹ Thompson Affidavit, at para. 7. See also Pai Affidavit #2, at Exhibit. “R” [Bates Nos. 2036, 2037, 2038, 2041, 2047, 2051, 2055, 2058, 2068, 2074, 2075, 2076, 2079, 2081, 2088].

⁵² Thompson Affidavit, at para. 16.

⁵³ Thompson Affidavit, at para. 17-19.

⁵⁴ Affidavit of Nicholas Rue, sworn June 19, 2025, filed in Court File No. 2501-06120 (the “**Compeer Action**”) (“**Rue Affidavit #1**”) at paras. 5-6.

⁵⁵ Rue Affidavit #1, at para. 3.

⁵⁶ Rue Affidavit #1, at para. 15.

⁵⁷ Rue Affidavit #1, at para. 16.

⁵⁸ Rue Affidavit #1, at para. 16.

- (d) 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 particular Sunterra Group entity that held the associated RLOC and FCM Account (collectively, “**Compeer Accounts**”).

34. Another feature of each of the pairs of combined Compeer Accounts was that cheques could be drawn up to the aggregate value of all deposits in each FCM Account and the amount of credit afforded to the US Kiting Entities under its RLOC.⁵⁹

3. Explanations About The Nature and Complexity of Sunterra’s Operations

35. The Sunterra Group maintained credit relationships with CWB beginning in at least 2010⁶⁰ and with Compeer since at least 2005.⁶¹

36. The Sunterra Group was recognized within the industry for its farming and business practices, and this recognition was known to relevant employees of NBC and Compeer.⁶²

37. As the Respondents’ evidence in these proceedings discloses,⁶³ throughout the relationship between the Sunterra Group and NBC, the Sunterra Group and the Respondents in particular stressed the complications and complexities of their intertwined, cross-border business operations and how differential tax treatment in the US and Canada gave rise to complicated accounting and cash management issues.

38. For example, Ray Price deposed in his affidavit evidence that he “had many detailed discussions over the years of our relationship with NBC about the business of Sunwold Canada, Sunterra Canada, and Lariagra Farms Ltd. (“**Lariagra Canada**”) (together the “**Canadian Hog Farm Entities**” or “**Canadian Hog Farms**”) and their commercial relationship with [Sunterra US], [Sunwold US] and Lariagra Farms Inc (“**Lariagra US**”) (together, the “**US Hog Farm Entities**” or “**US Hog Farms**”).⁶⁴ Ray Price also deposed that, “Our relationship manager for many years was

⁵⁹ Rue Affidavit #1, at para. 17.

⁶⁰ Pai Affidavit #2, at Exhibit “R” [Bates No. 2008]. For clarity, the Sunterra Group’s relationship with CWB began in 2010, but the Sunterra Group had previously, prior to 2010, banked with NBC.

⁶¹ Affidavit #1 of Steve Grosland, filed in the Compeer Action (“**Grosland Affidavit**”) at para. 19.

⁶² Rue Affidavit #1, at paras. 10 and 47; Pai Affidavit #2, at para. 33..

⁶³ Ray Price Affidavit, at paras. 6, 7, 42-44, 53 and 54; Affidavit of Arthur Price, sworn September 18, 2025, filed in NBC Claims Proceedings (“**Art Price Affidavit**”), at paras. 5, 11, 14, 25 and 26

⁶⁴ Ray Price Affidavit, at para. 6.

Depoe. She was very familiar with the business of the Sunterra Group and would take an interest in commercial and market factors affecting the businesses.”⁶⁵ Ray Price also claimed to have many conversations with other representatives of NBC over the years “about the commercial operations and financial needs of the businesses of the Sunterra Group.”⁶⁶

39. Ray Price deposed that, from such discussions:

- (a) “NBC were and are well aware of the NAE system and the premium.”⁶⁷
- (b) “NBC knew that prior to the Account Freeze (see below), Sunwold Canada and Sunterra Canada sold the vast majority of their piglets to Sunwold US and Lariagra US.”⁶⁸
- (c) “NBC also knew that Sunterra Canada’s going concern business included pig services management for Sunwold Canada as well as its own pig production business.”⁶⁹
- (d) “They [NBC] knew that a major portion of the Sunterra US going concern business was the management of the pig farms for Sunwold US and Lariagra US.”⁷⁰
- (e) NBC knew that “...the Canadian Hog Farm Entities were the sole supplier of piglets to the US Hog Farm Entities, and that the US Hog Farm Entities purchased the vast majority of the pigs from the Canadian Hog Farm Entities;”⁷¹
- (f) NBC knew that “Sunterra Canada shares its expertise and other operational requirements with Sunterra US for the pig farm management businesses;”⁷²
- (g) NBC knew “the nature of the hog farms in the US and Canada as a going concern and specialised business in the NAE market and the significant going concern value of them.”⁷³

⁶⁵ Ray Price Affidavit, at para. 42.

⁶⁶ Ray Price Affidavit, at para. 43.

⁶⁷ Ray Price Affidavit, at para. 6.

⁶⁸ Ray Price Affidavit, at para. 7.

⁶⁹ Ray Price Affidavit, at para. 7.

⁷⁰ Ray Price Affidavit, at para. 7.

⁷¹ Ray Price Affidavit, at para. 44(a).

⁷² Ray Price Affidavit, at para. 44(b).

⁷³ Ray Price Affidavit, at para. 44(c).

- (h) NBC was “therefore fully aware of the importance of the long standing and continuing interdependence of the businesses of the US Hog Farms and the Canadian Hog Farms.”⁷⁴

40. Ray Price also deposed that, “There has always been a substantial amount of activity across the border between the Canadian companies and the US companies, such as, for example, isoweans and feeder hogs management support and swine expertise from Canada to the US, as well as the purchase and sale of the isowean and feeder pigs, between the companies in the Sunterra Group.”⁷⁵ He further deposed that “The Sunterra Group involves a complex array of commercial arrangements and transactions between the related companies in the Group. These arrangements give rise to the constant flow of revenue between entities”⁷⁶ including in respect of:

- (a) “the flow of funds” to pay for “the flow of piglets” between the Canadian Kiting Entities and “the two “wean to finish” entities in the US”, the US Kiting Entities;⁷⁷
- (b) “the flow of funds” for “all aspect of pig management, including for example, rent, feed, medications, plant and equipment, employees, third party suppliers of goods and services of various kinds”;⁷⁸
- (c) “transportation of pigs to the US”;⁷⁹
- (d) “accounting, insurance and other business requirements...requiring a flow of funds between them.”⁸⁰

41. Other explanations given in Ray Price’s evidence for the “flow of funds between the companies in the US and Canada” included “the difference between cash accounting used in respect of taxation of the Canadian Hog Farm Entities, and accrual accounting which is required to be used in the US for the US Hog Farm Entities”.⁸¹

⁷⁴ Ray Price Affidavit, at para. 7.

⁷⁵ Ray Price Affidavit, at para. 53

⁷⁶ Ray Price Affidavit, at para. 54

⁷⁷ Ray Price Affidavit, at para. 54(a)

⁷⁸ Ray Price Affidavit, at para. 54(a)

⁷⁹ Ray Price Affidavit, at para. 54(a)

⁸⁰ Ray Price Affidavit, at para. 54(a)

⁸¹ Ray Price Affidavit, at para. 55.

42. Some of the evidence given by Arthur Price (“**Art Price**”) was to substantially similar effect – “The Sunterra business is very complicated”⁸² and there were a great number of transactions between the Canadian Kiting Entities and the US Kiting Entities concerning pig sales, pig services and pig management.⁸³

43. All of these explanations provided to NBC during the course of their relationship with the Sunterra Group, and now in the evidence before this Court, support the notion that there should be a great number of cheques passing between the Kiting Entities. The problem is that none of these explanations actually account for the volume of cheques or the billions of dollars exchanged between the Canadian Kiting Entities and the US Kiting Entities.

4. The Respondents’ “Account Coverage Practice”

44. The “account coverage practice”, as the Respondents call it, *may* have started innocently as a process of moving money from one account to another to cover upcoming anticipated shortfalls. But it “grew beyond what it was meant to be”⁸⁴ into the Kiting Scheme between the NBC accounts held by the Canadian Kiting Entities, to the Compeer accounts held by the US Kiting Entities, and back again.

45. Ray Price directed Uffelman and Thompson to manage these transactions.⁸⁵ Uffelman handled operations until February 11, 2025,⁸⁶ authorizing cheques based on input from Thompson.⁸⁷ Thompson was responsible for ensuring that the US Kiting Entities stayed within credit lines and that the Canadian Kiting Entities did not go into overdraft,⁸⁸ writing daily cheques between related accounts.⁸⁹ He coordinated account balances with Uffelman via email for any necessary adjustments to transfers.⁹⁰

⁸² Art Price Affidavit, at para. 5.

⁸³ Art Price Affidavit, at paras. 11, 14, 25 and 26.

⁸⁴ Pai Affidavit #2, Exhibit “CCC” (Email from Ray Price to Raymond Pai and others, dated February 14, 2025).

⁸⁵ Ray Price Affidavit, at para. 52; Questioning of Ray Price by Compeer, at 34:6-17.

⁸⁶ Uffelman Affidavit, at para. 8.

⁸⁷ Uffelman Affidavit, at paras. 13 and 15.

⁸⁸ Thompson Affidavit, at para. 9; Questioning of Thompson by Compeer, at 13:25-14:7 and 27:25-28:7.

⁸⁹ Thompson Affidavit, at para. 10; Questioning of Thompson by Compeer, at 28:14-20.

⁹⁰ Thompson Affidavit, at para. 17; Transcript of Questioning of Craig Thompson on October 6, 2025 (Questioning by NBC) (“**Questioning of Thompson by NBC**”), at 22:24-24:4.

46. Following email exchanges with Uffelman, Thompson coordinated with staff in both the US and Canadian Sunterra offices to generate cheques under \$1 million each for the Kiting Entities' accounts.⁹¹ On January 28, 2025, Thompson's instructions did not match his reported required balances for Sunterra Canada and Sunwold Canada, with no explanation for the discrepancy.⁹²

47. On that day, multiple cheques were written and deposited between the US and Canadian entities, with delays in clearance resulting in conditional credits. The amounts transferred aligned with Thompson's payment instructions but not with the stated required deposits.⁹³

48. Thompson, an authorized signatory, stated that senior management (Ray Price and Uffelman) signed the cheques. Uffelman claimed she pre-signed blank cheques from the Canadian entities and signed US entity cheques daily, though the cheques attached to the Pai #2 and Pai #3 affidavits indicate Thompson also signed several impugned cheques.⁹⁴

49. Both Thompson and Uffelman asserted that NBC and Compeer were aware of the "account coverage practice" based on account statement access, though no direct communications confirmed this. Cheques were intentionally kept below \$1 million⁹⁵ to avoid processing delays or further scrutiny.⁹⁶ The practice led to frequent multimillion-dollar transfers—well beyond the business's actual needs.

⁹¹ Thompson Affidavit, at paras. 18 and 20; Questioning of Thompson by NBC, at 18:14-19:15 and 24:12-16.

⁹² Thompson Affidavit, at Exhibit "A" [Bates No. CT007].

⁹³ See Thompson Affidavit, at Exhibit "A" [Bates No. CT007], email dated January 28, 2025 in which Thompson advises Sunterra Canada requires a balance of \$291,000; and Exhibit "C" [Bates Nos. CT014-CT015], email from Thompson to Sunterra Canada employees requesting \$8,003,000 of cheques be deposited into Sunterra Canada's NBC account.

⁹⁴ See Pai Affidavit #2, at Exhibit "WW" [Bates Nos. 2458-2459]; Exhibit "YY", [Bates Nos. 2492-2495]; Exhibit "ZZ", [Bates Nos. 2497-2500]; Exhibit "BBB", [Bates Nos. 2551-2555]. See also Affidavit #3 of Raymond Pai, sworn September 29, 2025, filed in NBC Claims Proceedings ("**Pai Affidavit #3**"), at Exhibits "C"- "F" [Bates Nos. 142-212].

⁹⁵ Questioning of Thompson by Compeer, at 33:6-23.

⁹⁶ Thompson Affidavit, at paras. 25-26; Questioning of Thompson by Compeer, at 54:7-12; Questioning of Thompson by NBC, at 43:25-44:7; Uffelman Affidavit, at para. 16; Questioning of Uffelman by Compeer, at 52:20-54:2; Ray Price Affidavit, at para. 84. On cross-examination, Ray Price clarified that the "processing delays" ostensibly refers to delays in having a courier wait at the bank branch if one cheque, in a denomination over \$1 million, was deposited, although Ray Price later confirmed, on cross-examination, that there would be no such delay when cheques were left in a deposit box, and yet those cheques were still written in amounts under \$1 million each (Questioning of Ray Price by Compeer, at 42:5-43:15).

50. Cheques were regularly exchanged to create conditional credits and prevent overdrafts. The volume and pattern of these transfers far exceeded reported revenues and asset levels.

51. The situation escalated until the US Kiting Entities and Canadian Kiting Entities were transferring millions of dollars to each other, nearly every day, totalling billions of dollars between January 2023 and February 2025.⁹⁷ There was no legitimate business purpose in these exchanges – the funds exchanged in this manner were many multiples in excess of the legitimate revenues and expenses of the entire Sunterra Group. At least one effect of the perpetual, nearly daily exchange of millions of dollars, was that the Canadian Kiting Entities and the US Kiting Entities had to keep perpetuating the cheque kiting scheme that had been implemented.⁹⁸

52. When accounts were frozen, Ray Price conceded the scheme had grown beyond its intended purpose.⁹⁹ Ray Price initially explained that the practice was necessary due to differing accounting standards,¹⁰⁰ but later admitted it was to manage cash flow and prevent overdrafts.¹⁰¹ The only rationale provided was reliance on conditional credit until additional funds became available.¹⁰²

53. The end result, in February 2025, was that there was:

- (a) a USD\$36 million deficit / overdraft in the Compeer Accounts of Sunterra US and Sunwold US;
- (b) no offsetting amount, or even a significant amount, in the NBC bank accounts of Sunterra Canada and Sunwold Canada; and
- (c) no ability to pay the USD\$36 million overdraft in the Compeer Accounts of Sunterra US and Sunwold US.

54. Not only did Sunterra US and Sunwold US have no ability to re-pay the USD\$36 million overdraft, the Sunterra Group as a whole had no such ability. This led the group Chairman, Arthur Price, to propose to pay Compeer “over time through a transparent, ring-fenced, auditable shares

⁹⁷ Pai Affidavit #2, at para. 11.

⁹⁸ Questioning of Thompson by NBC, at 42:4-43:3.

⁹⁹ Ray Price Affidavit, at para. 105 and Exhibit “HH”.

¹⁰⁰ Ray Price Affidavit, at Exhibit “HH”.

¹⁰¹ Questioning of Uffelman by Compeer, at 42:14-43:3; Questioning of Thompson by Compeer, at 27:21-28:7 and 32:18-33:4; Questioning of Ray Price by Compeer, at 34:16-19.

¹⁰² Questioning of Ray Price by Compeer, at 60:3-18.

of 75% of EBITDA”, starting with a proposed payment after the first year of \$7,660,406.¹⁰³ When Arthur Price was asked how long it would take to pay Compeer fully, he said “until it was paid off.”¹⁰⁴

5. Discovery of the Kiting Scheme by Compeer

55. Nicholas Rue (“**Rue**”), Compeer’s Vice President of Animal Agricultural Lending-Swine, managed banking arrangements for the US Kiting Entities since 2022.¹⁰⁵

56. On February 3, 2025, Rue was informed that approximately USD\$80 million in cheques had been exchanged between the Kiting Entities within days. Internal discussions and conversations with Ray Price followed due to the cheque volume and value.¹⁰⁶

57. By February 10, 2025, the matter was escalated to Steve Grosland, Compeer’s Principal Credit Risk Officer.¹⁰⁷ An investigation into the matter revealed that between January 27 and February 10, 2025, Compeer received cheques totaling US\$148,104,000 from the Canadian Kiting Entities, though not all cheques had cleared by February 11, 2025.¹⁰⁸

58. On February 11, 2025, Compeer suspended cheque writing privileges for the US Kiting Entities due to concerns about excessive cheque activity.¹⁰⁹

59. Rue reported that Ray Price admitted on February 12, 2025 that the Canadian Kiting Entities’ NBC accounts lacked funds to cover cheques issued to the US Kiting Entities.¹¹⁰

60. On February 13, 2025, Ray Price requested reinstatement of cheque writing privileges, which Compeer refused, and he offered to return interest earned.¹¹¹

¹⁰³ Art Price Affidavit, at para. 75 and Exhibit “O”; Transcript of Questioning of Arthur Price, October 8, 2025 (Questioning by NBC) (“**Questioning of Art Price by NBC**”), at 40:2-42:25.

¹⁰⁴ Questioning of Art Price by NBC, at 42:15.

¹⁰⁵ Rue Affidavit #1, at para. 5.

¹⁰⁶ Rue Affidavit #1, at para. 56.

¹⁰⁷ Grosland Affidavit, at para. 4.

¹⁰⁸ Grosland Affidavit, at para. 24.

¹⁰⁹ Rue Affidavit #1, at para. 59 and Exhibit “28”; Grosland Affidavit, at para. 23.

¹¹⁰ Rue Affidavit #1, at para. 60.

¹¹¹ Rue Affidavit #1, at para. 63.

61. Neither Ray Price nor the US Kiting Entities allowed Compeer to discuss matters with NBC, despite requests by Compeer.¹¹²

6. Consequences of Compeer's Cheque-Writing Suspension

62. Compeer's decision to suspend the cheque-writing ability of the US Kiting Entities immediately affected the NBC bank accounts of the Canadian Kiting Entities.

63. On Friday, February 14, 2025, Richard Dean Chan ("**Chan**") (NBC's Vice President, Special Asset Management Unit ("**SAMU**"))¹¹³ was made aware of the USD\$43 million overdraft in the NBC bank accounts of Sunterra Canada and Sunwold Canada.¹¹⁴

64. The overdraft in the Canadian Kiting Entities' NBC accounts led to several actions:

- (a) Chan immediately contacted NBC's internal and external legal counsel.¹¹⁵
- (b) Chan then immediately involved Raymond Pai ("**Pai**") (NBC's Assistant Vice President, SAMU) to investigate and analyze the causes of the overdraft,¹¹⁶ and together Pai and Chan became involved in managing the Canadian Sunterra Entities' accounts under the supervision of Alexandre LeBlanc ("**LeBlanc**") (NBC's Vice President, Special Loans).¹¹⁷
- (c) Pai's review of the Canadian Kiting Entities' NBC accounts on February 14, 2025, found that the overdraft occurred because cheques from the US Kiting Entities' Compeer accounts that had been deposited into the Canadian Kiting Entities' NBC accounts has been dishonoured by Compeer.¹¹⁸

¹¹² Grosland Affidavit, at paras. 29(b) and 50.

¹¹³ Prior to Compeer's discovery of the Kiting Scheme, the Sunterra accounts with NBC were transferred, in September 2023, to NBC's SAMU division, which manages troubled loans after the Borrowers had defaulted in their financial covenants under the loan agreements (Affidavit #1 of Richard Dean Chan, sworn on August 29, 2025, filed in NBC Claims Proceedings ("**Chan Affidavit #1**"), at paras. 2-3).

¹¹⁴ Transcript of Questioning of Richard Dean Chan, October 17, 2025 (Questioning by Sunterra) ("**Questioning of Chan by Sunterra**"), at 46:19-21 and 47:19-23.

¹¹⁵ Questioning of Chan by Sunterra, at 49:18-50:11.

¹¹⁶ Questioning of Pai by Sunterra, at 60:18-22; Questioning of Chan by Sunterra, at 47:9-18.

¹¹⁷ Affidavit #2 of Richard Dean Chan, sworn September 29, 2025, NBC Claims Proceedings ("**Chan Affidavit #2**"), at para. 13(d)-(f), and (h); Questioning of Chan by Sunterra, at 47:9-18.

¹¹⁸ Questioning of Pai by Sunterra, at 62:10-12 and 63:22-25.

- (d) NBC contacted Ray Price by email to seek an explanation.¹¹⁹
- (e) Ray Price replied to NBC, in the February 14, 2025 email mentioned above, stating that the overdrafts were due to the Canadian Kiting Entities operating on a cash tax basis while the US Kiting Entities operated on an accrual basis. As mentioned above, Ray Price also indicated that funds were transferred from the Compeer Accounts to the NBC accounts, and subsequently moved back to the Compeer Accounts as advances to maintain necessary cash balances. Price noted that these intercompany “grew beyond what it was meant to be”.¹²⁰
- (f) NBC, like Compeer, froze the accounts of the Canadian Kiting Entities (and the accounts of the other corporate Respondents) and also began to dishonour outgoing cheques.¹²¹

7. Consequences of NBC’s Account Freeze and Cheque Dishonouring

65. Just as Compeer’s decision to suspend the cheque-writing ability of US Kiting Entities had immediate consequences on the Canadian Kiting Entities and their NBC bank accounts, NBC’s decision to freeze the NBC bank accounts of Canadian Kiting Entities and dishonour outgoing cheques had immediate consequences on the Compeer accounts held by the US Kiting Entities.

66. In particular, over the course of some days, the overdraft in NBC accounts of the Canadian Kiting Entities was reversed leaving a small positive balance, but the overdraft in the Compeer Accounts of US Kiting Entities increased to approximately USD\$36 million.

8. NBC’s Investigations into the Kiting Scheme

67. Another consequence of the discovery of the Kiting Scheme was that NBC undertook a historic review of its relationship with the Sunterra Group.

68. The principal elements of the Kiting Scheme identified thus far, along with the Respondents’ explanations, are outlined in detail below. In light of substantial evidence indicating fraudulent

¹¹⁹ Pai Affidavit #2, at paras. 63-64 and Exhibit “CCC” (Email from Ray Price to Raymond Pai and others, February 14, 2025).

¹²⁰ Chan Affidavit #1, at para. 14; Pai Affidavit #2, at Exhibit “CCC” (Email from Ray Price to Raymond Pai and others, February 14, 2025).

¹²¹ Questioning of Pai by Sunterra, at 64:15-18; Ray Pai Response to Undertaking 3 given at questioning held October 16, 2025; Transcript of Questioning of Alexandre LeBlanc on October 23, 2025 (Questioning by Sunterra) (“**Questioning of LeBlanc by Sunterra**”), at 68:17-22; 69:15-17; Questioning of Chan by Sunterra, at 68:8-12.

activity, the sole defence presented by the Respondents is the assertion that NBC and Compeer were, or ought to have been, aware of the Kiting Scheme, and either tacitly or expressly accepted the conduct by not intervening sooner.¹²²

69. It was acknowledged on cross-examination that no one from NBC or Compeer stated the practice was authorized.¹²³

a) Kiting Scheme Mechanics

70. To engage in the Kiting Scheme, the Sunterra Group employees performed a series of tasks on a daily or near-daily basis. These activities included:

- (a) reviewing the bank balances for each account held by the Kiting Entities;¹²⁴
- (b) reconciling the balances in each account by calculating the opening balances after all anticipated deposits and withdrawals, as well as outstanding cheques expected to clear;¹²⁵
- (c) updating spreadsheets to reflect new cheques issued from the Kiting Accounts each day;¹²⁶
- (d) determining the total required deposits into each account to ensure that no account ended the day with a shortfall or overdraft;¹²⁷
- (e) Thompson, a member of the Sunterra Group's accounting team who held himself out to NBC and Compeer as being the "controller" of the various Sunterra parties,¹²⁸ would then write an email to Uffelman, the Vice President, Corporate

¹²² Ray Price Affidavit, at paras. 62 and 100.

¹²³ Questioning of Thompson by NBC, at 43:20-44:13; Questioning of Uffelman by Compeer, at 52:20-54:2.

¹²⁴ Thompson Affidavit, at paras. 12 and 14; Questioning of Thompson by Compeer, at 17:10-15; Uffelman Affidavit, at para. 9.

¹²⁵ Questioning of Thompson by Compeer, at 18:3-19:6.

¹²⁶ Questioning of Thompson by Compeer, at 20:3-12.

¹²⁷ Questioning of Thompson by Compeer, at 27:21-28:7.

¹²⁸ As described above, Thompson has since denied that he is the controller of the Kiting Entities, the Canadian Kiting Entities, or any other Sunterra Group party, indicating that this title was used because the LinkedIn professional networking site requires individuals to provide a job title (Questioning of Thompson by Compeer, at 8:19-9:10). For clarity, in his own affidavit evidence provided in these proceedings, Thompson has continued to identify himself as being the "controller" (Thompson Affidavit, at para. 5).

Finance,¹²⁹ to confirm total value of the cheques that were to be generated each day, for deposit into the accounts;¹³⁰

- (f) upon determining the necessary deposit amounts, Thompson would allocate values across individual cheques in such a way that no cheque exceeded \$1 million and duplicate amounts were avoided;¹³¹
- (g) Thompson would then issue directions to, as applicable, employees in the Canadian Sunterra Group's offices or the US Sunterra Group's offices, to create the cheques;¹³²
- (h) for cheques drawn from US Kiting Entities and deposited to Canadian Kiting Entities' NBC accounts, this process entailed daily signing of the kited cheques;¹³³
- (i) for cheques issued by Canadian Kiting Entities from their NBC accounts and deposited to US Kiting Entities' Compeer Account, Uffelman would pre-sign sets of blank cheques, which were then sent to the Sunterra Group's US offices (located in Iowa and South Dakota) to be completed by US-based employees and subsequently used as part of the Kiting Scheme;¹³⁴ and
- (j) each cheque was deposited under a separate deposit slip, instead of bulk depositing the cheques—millions of dollars were being deposited in concert.¹³⁵

71. Ray Price, Uffelman, and Thompson admitted the kited cheques served no business purpose.¹³⁶

72. As noted above, as contrasted with the explanations given by Ray Price and Art Price in their affidavit evidence about the complexity of the cross-border business, the Kiting Scheme was itself the primary driver of the volume and value of the cheques in question.¹³⁷ The sheer magnitude of

¹²⁹ Thompson Affidavit, at para. 16. Uffelman has confirmed, on cross-examination, that she has had no accounting training (Questioning of Uffelman by NBC, at 7:11-15).

¹³⁰ Thompson Affidavit, at para. 16; Questioning of Thompson by Compeer, at 28:8-29:1.

¹³¹ Questioning of Thompson by Compeer, at 40:9-41:17 and 43:14-23.

¹³² Thompson Affidavit, at paras. 18 and 20.

¹³³ Questioning of Uffelman by Compeer, at 29:14-18.

¹³⁴ Questioning of Uffelman by Compeer, at 30:22-31:7.

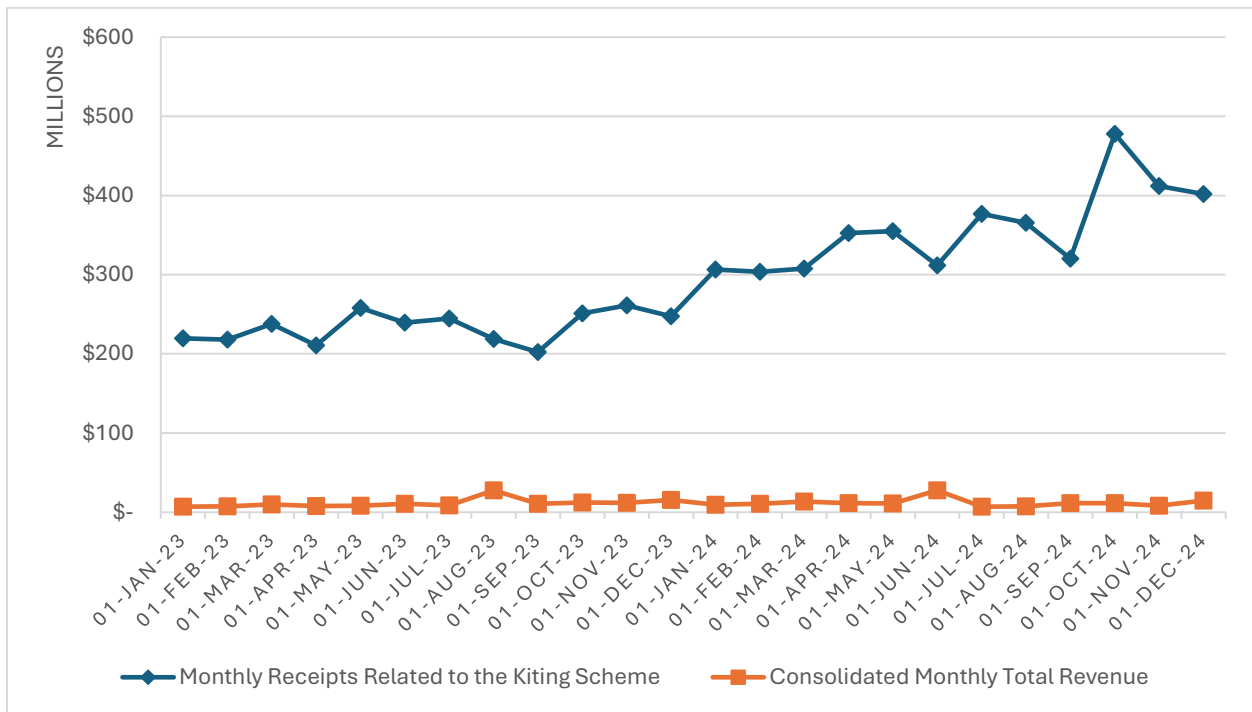
¹³⁵ Questioning of Thompson by NBC, at 31:25-32:4; Craig Thompson Response to Undertaking 1 (NBC) [Bates Nos. UR000005 – UR000036].

¹³⁶ Questioning of Thompson by Compeer, at 43:14-19; Questioning of Uffelman by NBC, at 31:18-19; Questioning of Ray Price by Compeer, at 20:21-21:5.

¹³⁷ Pai Affidavit #2, at para. 12.

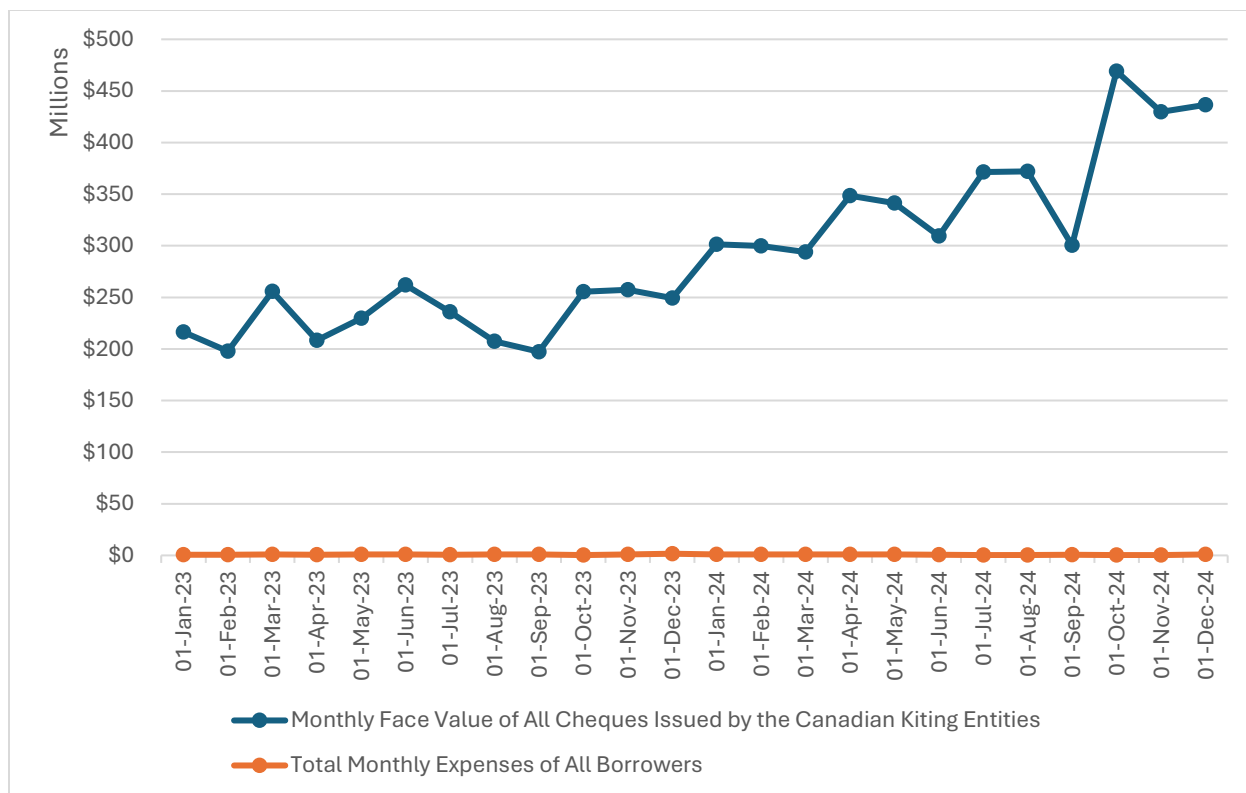
kited cheques, both in terms of volume and value, vastly exceeded any potential business needs of the Kiting Entities by many multiples:

- (a) the consolidated monthly gross revenue of the Borrowers. As set out in the graph below comparing the total monthly gross revenue of all Borrowers (which includes the Canadian Kiting Entities), on a consolidated basis, as reported in the Sunterra Group's monthly year to date income statements and balance sheets provided to NBC, against the value of all cheques deposited by the Canadian Kiting Entities, during the period of August 1, 2023 to December 31, 2024:¹³⁸



¹³⁸ Pai Affidavit #2, at para. 12(a).

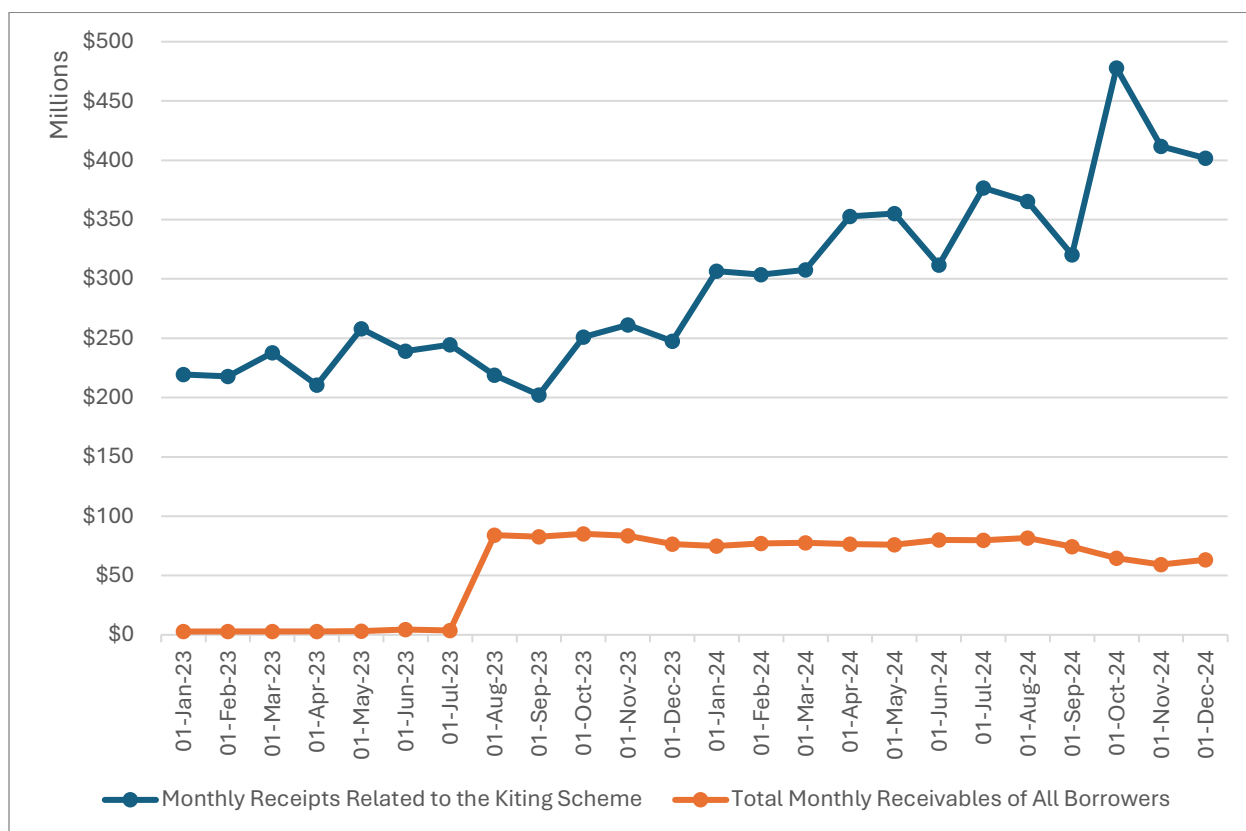
- (b) the value of all expenses (whether paid by cheque or otherwise), of all Borrowers, on a consolidated monthly basis. The following graph compares the total monthly expenses of all Borrowers, as reported to NBC, on a consolidated basis, against the monthly face value of all cheques issued by the Canadian Kiting Entities, during the period of August 1, 2023 to December 31, 2024:¹³⁹



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Pai Affidavit #2, at para. 12(b).

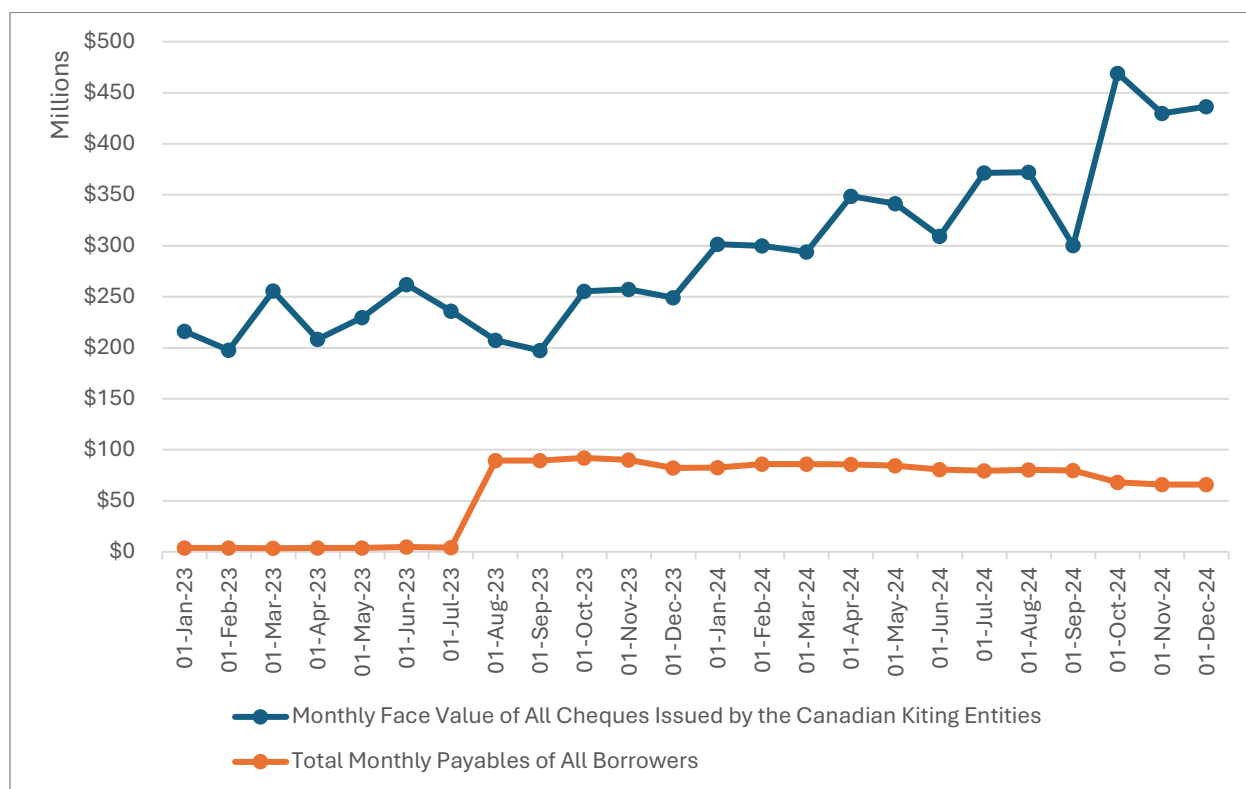
- (c) the total receivables (associated intercompany or otherwise), of all Borrowers, as reported to NBC, on a consolidated basis, as compared to the total value of all cheques deposited by the Canadian Kiting Entities, during the period of August 1, 2023 to December 31, 2024.¹⁴⁰



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Pai Affidavit #2, at para. 12(c).

- (d) the total payables (associated intercompany or otherwise), of all Borrowers, as reported to NBC, on a consolidated monthly basis, as compared to the total value of all cheques deposited by the Canadian Kiting Entities during the period of August 1, 2023 to December 31, 2024.¹⁴¹



73. The above is a global analysis of the Kiting Scheme. Particular examples on particular days are given in the Affidavit #3 of Raymond Pai, sworn September 29, 2025, and one specific example set out therein is included at Appendix “A” to this Brief.

b) COVID-19 Pandemic Impact and Cash Management Matters

74. From June 2019 to September 2023, Erin Depoe (“**Depoe**”) served as the NBC employee managing the banking and lending relationship between NBC and the Sunterra Group except for a maternity leave from November 2020 to January 2022. She is no longer employed at NBC, having left the bank in July 2025 to work at TD Bank where she is currently employed. She does not have a personal or professional interest in these proceedings.¹⁴²

¹⁴¹ Pai Affidavit #2, at para. 12(d).

¹⁴² Affidavit #1 of Erin Depoe, sworn September 29, 2025, filed in NBC Claims Proceedings (“**Depoe Affidavit**”), at paras. 2 and 5.

75. The Sunterra Group experienced adverse effects from the COVID-19 pandemic beginning in March 2020, which increased pressure on the businesses, particularly regarding working capital.¹⁴³ During this period, Depoe's interactions with Ray Price increased.

76. In June 2020, Uffelman contacted Depoe concerning issues related to day-to-day money movements through the accounts. Uffelman stated that urgent remittances of non-discretionary payments to the government were being hindered by the then-existing hold limits on deposited cheques set by NBC. At that time, the Canadian Sunterra Entities' account hold limit was \$200,000.¹⁴⁴

77. Depoe consulted with a colleague responsible for cash management, who recommended raising the transaction limit for the Canadian Sunterra Entities' accounts to \$1,000,000. The branch manager approved this increase for the relevant accounts.¹⁴⁵

78. Despite the increase, the adjustment did not address the ongoing need for frequent inter-account transfers to cover shortfalls. Throughout Depoe's involvement, Sunterra Group's NBC accounts, including but not limited to the Canadian Kiting Entities' NBC accounts, were regularly listed on NBC's daily overdraft report. At the time, according to Uffelman, although the Canadian Sunterra Entities collectively possessed sufficient funds, multiple accounts sometimes led to delays in transferring money, resulting in uncovered overdrafts and associated charges.¹⁴⁶

79. In response, Depoe initiated discussions with Uffelman and Price in 2022 about whether NBC could establish a formal "mirror netting" arrangement for all Canadian Sunterra Entities' accounts. This arrangement would enable global monitoring of account balances without merging accounts or moving funds physically or electronically. A cash netting arrangement was subsequently approved in 2022.¹⁴⁷

80. Shortly after implementation, Uffelman reported concerns that the system was too restrictive and limited her ability to self-manage draws on the Borrowers' borrowing base loan. Following a request from the Sunterra Group, the agreement was terminated. On April 4, 2023, Depoe confirmed via email to Uffelman that the mirror netting arrangement would not be maintained, and

¹⁴³ Depoe Affidavit, at para. 21.

¹⁴⁴ Depoe Affidavit, at para. 23.

¹⁴⁵ Depoe Affidavit, at para. 24-25.

¹⁴⁶ Depoe Affidavit, at para. 31.

¹⁴⁷ Depoe Affidavit, at paras. 32-33.

that the account types would revert to their previous setup.¹⁴⁸ Uffelman responded the same day, expressing thanks to Depoe.

81. During cross-examination, Uffelman disagreed with the characterization that the cash netting agreement was ended at her direction but acknowledged: (i) she had stopped using the system; (ii) she received Depoe's April 4, 2023 email; and (iii) she understood the arrangement would be terminated.¹⁴⁹

82. Upon termination of the cash netting arrangement, the Canadian Kiting Entities resumed their prior method of physically or electronically transferring cash between NBC accounts to address shortfalls.¹⁵⁰

83. Depoe had no responsibility for managing, and the cash netting arrangement had nothing to do with, the intercompany transfers between the Canadian Kiting Entities and the US Kiting Entities. The cash netting arrangement concerned only the Sunterra Group's NBC bank accounts and had nothing to do with netting any Compeer Account.¹⁵¹

84. In these events, NBC suggested a facilitated approach for the Canadian Kiting Entities to manage their liquidity. Very quickly, the Canadian Kiting Entities, and Uffelman in particular, rejected the process as it was too restrictive.¹⁵²

c) Compeer Inquiries – 2022 to 2024

85. Rue became aware in late August 2022 that the Kiting Entities were conducting intercompany funds transfers using physical cheques. At the time, Rue did not know the extent of these transactions.¹⁵³ Ray Price explained to Rue on several occasions the volume and use of cheques between the Kiting Entities, referencing tax advantages.¹⁵⁴

86. In March 2023, Rue and a colleague contacted Uffelman and Thompson to discuss alternative methods for the Kiting Entities to transfer funds, especially to improve efficiency for the US Kiting

¹⁴⁸ Depoe Affidavit, at Exhibit "1" [Bates No. 2].

¹⁴⁹ Questioning of Uffelman by NBC, at 41:12-43:14.

¹⁵⁰ Depoe Affidavit, at para. 35.

¹⁵¹ Questioning of Ray Price by Compeer, at 25:12-24.

¹⁵² Depoe Affidavit, at para. 34; Questioning of Uffelman by NBC, at 41:5-11.

¹⁵³ Rue Affidavit #1, at para. 24; Transcript of Questioning of Nicholas Rue on October 21, 2025 (Questioning by Sunterra) ("**Questioning of Rue by Sunterra**"), at 47:16-21 and 52:16-53:1.

¹⁵⁴ Rue Affidavit #1, at paras. 30 and 32; Questioning of Rue by Sunterra, at 125:10-25.

Entities and reduce the risk of fraudulent transactions.¹⁵⁵ By late March 2023, Ray Price provided Rue with several reasons for using cheques instead of wire or electronic transfers:

- (a) Ray Price engaged in frequent international travel, making it challenging to provide the dual authorization required to wire transfer funds from NBC to Compeer;
- (b) electronic fund transfers through an automated clearing house were not possible because CWB could not issue such transfers to a financial institution in the United States;
- (c) Sunwold US and Lariagra US hired Sunterra US for management services, resulting in daily fees being sent to Canada;
- (d) the transaction volume would incur significant wiring fees;
- (e) Different accounting rules applied in Canada (cash accounting) compared to the United States (accrual accounting), and Sunterra Group could benefit from this difference from a tax perspective by transferring funds as described.¹⁵⁶

87. Rue accepted the explanations provided by Ray Price. At no point did Ray Price, Uffelman, or any other Sunterra Group representative suggest to Rue that another reason, and likely the main reason, that the Canadian Kiting Entities could not engage in near-instantaneous wire transfers was that they were dependent on the exchange of slower-clearing cheques for the Kiting Scheme to work.¹⁵⁷

88. From March 2023 to August 2024, Rue continued discussions with Ray Price and Uffelman, encouraging them to adopt alternatives to cheque-based transfers due to the administrative workload imposed on Compeer.¹⁵⁸ Despite assurances from Ray Price between June 2023 and at least August 2024 that a corporate amalgamation was underway to simplify cash flow, no changes were made to Sunterra Group's business structure.¹⁵⁹

¹⁵⁵ Rue Affidavit #1, at para. 28 and Exhibit "18"; Questioning of Rue by Sunterra, at 53:11-17.

¹⁵⁶ Rue Affidavit #1, at para. 30.

¹⁵⁷ Rue Affidavit #1, at para. 31.

¹⁵⁸ Rue Affidavit #1, at paras. 35-47 and Exhibits "19"- "25"; Questioning of Rue by Sunterra, 127:3-128:10.

¹⁵⁹ Rue Affidavit #1, at paras. 37-46.

89. Rue, serving as the contact between the US Kiting Entities and Compeer, relied on the information provided by Ray Price and Uffelman regarding the necessity and rationale for issuing cheques. Rue stated:

“I continued to believe, based on my interactions with Ray Price and Debbie Uffelman, that the fund transfers themselves were being done for legitimate business purposes, even if I did not fully understand why the Sunterra Group had insisted on using cheques up until this point. I always believed (during all my dealings with Ray Price and Debbie Uffelman) that the cheques that the Canadian Sunterra Entities were issuing to send money to the U.S. Sunterra Entities would be honoured. The Sunterra Group always seemed to me to be on a solid financial footing and Ray Price and Debbie Uffelman spoke positively about how the business was doing. The reason that I had pushed the Sunterra Group to move away from cheques was because of the administrative burden it placed on Compeer’s staff without there being a clear business reason on the Sunterra Group’s part for needing to do so.”¹⁶⁰

d) NBC Inquiry – July 2023

90. A particular series of cheques later connected to the Kiting Scheme was the subject of an inquiry from NBC’s Anti-Money Laundering group (“**AML**”) in July 2023.

91. In July 2023, Depoe was contacted by Nicole Sy from NBC’s AML group concerning an inquiry made to NBC by Fifth Third Bank, the U.S. clearing bank for NBC, about a particular series of sequentially-numbered large-value cheques issued by the US Kiting Entities and deposited into the Canadian Kiting Entities’ NBC Accounts.¹⁶¹

92. At Ms. Sy’s request, on July 23, 2023, Depoe inquired of Uffelman (who was then unavailable) and then Ray Price regarding the purpose of the sequential USD cheques, three for amounts greater than \$1,000,000 and one for less than \$1,000,000, which were immediately used for outgoing cheques payable to the US Kiting Entities’ Compeer Accounts.¹⁶²

93. Ray Price initially indicated he would consult with Uffelman and Thompson for clarification.¹⁶³ On July 25, 2023, he replied by email:

“With no U.S. operating line in Canada and no Canadian operating line in the U.S. to manage both as best we can without doing CDN to USD and USD to CDN dollar exchanges.”¹⁶⁴

¹⁶⁰ Rue Affidavit #1, at para. 47.

¹⁶¹ Depoe Affidavit, at para. 36 and Exhibit “2”.

¹⁶² Depoe Affidavit, at paras. 37-39 and Exhibit “2”.

¹⁶³ Depoe Affidavit, Exhibit “3”.

¹⁶⁴ Depoe Affidavit, Exhibit “3”.

94. Depoe requested additional context from Ray Price about the issuance of separate cheques, simultaneously to and from the same entities, specifically regarding what determines their amounts and purposes, but did not receive further information.¹⁶⁵

95. Following the email exchange, Depoe set up a meeting with Ray Price. Her evidence regarding the purpose and subject matter of that meeting is that:

- (a) The Sunterra Group was then still experiencing financial challenges following the COVID-19 pandemic. Concurrently with Ms. Sy's inquiry, the Sunterra Group was not meeting its financial covenants under the loan agreements with NBC, which Depoe, as credit relationship manager, identified as a critical issue.¹⁶⁶
- (b) She, Al Cavanaugh (another NBC employee), and Ray Price met on July 27, 2023, primarily to discuss information about the individual Borrowers, with minimal focus on Ms. Sy's inquiry regarding large-value sequential cheques.¹⁶⁷ Depoe provided written notes from the meeting centered on Sunterra Group's business prospects¹⁶⁸ and confirmed these facts during cross-examination.¹⁶⁹
- (c) The financial statements to be issued by KPMG could not be finalized until NBC provided a waiver in respect of the covenant breaches.¹⁷⁰
- (d) Depoe was not authorized to provide such a waiver, leading to the need for escalation within NBC for the Canadian Sunterra Entities' file.¹⁷¹
- (e) In September 2023, due to the covenant breaches, NBC transferred the Canadian Sunterra Entities' file to SAMU, ending Depoe's involvement with these entities.¹⁷²

¹⁶⁵ Depoe Affidavit, at paras. 40-41 and Exhibit "3".

¹⁶⁶ Depoe Affidavit, at para. 43; Transcript of Questioning of Erin Depoe, October 17, 2025 (Questioning by Sunterra) ("**Questioning of Depoe by Sunterra**"), at 28:14-29:1.

¹⁶⁷ Questioning of Depoe by Sunterra, at 23:17-27:10.

¹⁶⁸ Depoe Affidavit, at para. 49 and Exhibit "4".

¹⁶⁹ Questioning of Depoe by Sunterra, at 24:4-25:19.

¹⁷⁰ Depoe Affidavit, at para. 49.

¹⁷¹ Depoe Affidavit, at para. 49.

¹⁷² Depoe Affidavit, at paras. 50-52.

e) Financial Reporting Issues and Transfer to SAMU

96. During Depoe's work on the Sunterra file, the Borrowers routinely submitted late or inaccurate financial reports,¹⁷³ requiring Depoe to follow up. NBC frequently could not validate the Borrowers' monthly borrowing base and covenant calculations.¹⁷⁴

97. By the summer of 2023, the Borrowers had not yet provided the 2022 audited financial statements of the Sunterra Group as a whole. These were required under the Commitment Letter to be delivered within 120 days of the fiscal year end, and were therefore long overdue by July 2023.¹⁷⁵ As mentioned above, part of the delay in delivering the financial statements was because KPMG, the Sunterra Group's auditor, could not issue its reports to accompany the financial statements as the Borrowers were in default of covenants under the Commitment Letter.

98. The process of transferring a file to SAMU varies based upon the issues identified by the account management team prior to the transfer. A detailed review of bank account transactions would only be undertaken if warranted by some specific event or circumstance. The account management did not raise any concerns regarding AML matters or fraudulent cheques at the time the Canadian Sunterra Entities' file was transferred to SAMU and, as a result, SAMU did not undertake a specific review of the Canadian Kiting Entities' NBC accounts, or other accounts held by the Canadian Sunterra Entities, at any point prior to February 14, 2025.¹⁷⁶

f) 2022 Financial Statements, Audit and Review by KPMG

99. The financial statements for the fiscal year ended December 31, 2022, which were required under the Commitment Letter to be delivered within 120 days of year end, were ultimately provided by Ray Price to NBC in October 2023,¹⁷⁷ only after the transfer of the relationship from Depoe to SAMU and only after NBC agreed to waive certain breaches of the Borrowers' covenants under the Commitment Letter.¹⁷⁸

¹⁷³ Depoe Affidavit, at para. 19; Questioning of Depoe by Sunterra, at 10:13-25.

¹⁷⁴ Depoe Affidavit, at para. 20.

¹⁷⁵ Depoe Affidavit, at para. 44-45.

¹⁷⁶ Questioning of LeBlanc by Sunterra, at 51:7-52:13; Questioning of Chan by Sunterra, at 28:10-16, 94:18-95:11 and 100:14-19.

¹⁷⁷ Transcript of Questioning of Ray Price on October 7, 2025 (Questioning by NBC) ("**Questioning of Ray Price by NBC**"), at 36:2-39:16.

¹⁷⁸ Ray Price Affidavit, Exhibit "AA".

100. The 2022 financial statements included:

- (a) Financial statements for the Sunterra Group as a whole that were audited by KPMG;¹⁷⁹ and
- (b) Financial statements for each of the holding companies that were the subject of a review engagement by KPMG.¹⁸⁰

101. In its audit and review engagements, KPMG did not uncover any fraud or evidence of cheque kiting¹⁸¹ and provided customary letters for each of the financial statements according to the level of the assurance engagements.¹⁸²

102. As the responsible audit partner from KPMG testified, audits are designed to provide reasonable assurance that financial statements are free from material misstatement due to error or fraud, but they do not guarantee the detection of fraud. Canadian Auditing Standards require auditors to consider fraud risk factors,¹⁸³ but acknowledge that fraud, especially schemes like cheque kiting, is inherently difficult to detect due to concealment.¹⁸⁴

103. KPMG identified and reported a significant deficiency in internal controls in respect of the 2022 audited financial statements, specifically a lack of segregation of duties in the journal entry process.¹⁸⁵ However, this deficiency did not extend to cheque signing or bank reconciliation responsibilities.¹⁸⁶

104. KPMG did not look at every transaction or bank statement, relying instead on sampling and other audit methodologies as permitted by standards.¹⁸⁷ Bank statements are a key source of audit evidence, but not every transaction is reviewed.¹⁸⁸

¹⁷⁹ Affidavit #4 of Raymond Pai, sworn October 6, 2025 ("**Pai Affidavit #4**"), Exhibit "B".

¹⁸⁰ Pai Affidavit #4, Exhibits "C", "D", and "E".

¹⁸¹ Transcript of Questioning of Natascha Susanna Nel on November 7, 2025 (Questioning by NBC) ("**Questioning of Nel by NBC**"), at 49:1-20 and 63:8-14.

¹⁸² Questioning of Nel by NBC, at 22:20-23:2.

¹⁸³ Questioning of Nel by NBC, at 15:3-22.

¹⁸⁴ Questioning of Nel by NBC, at 59:8-60:8.

¹⁸⁵ Questioning of Nel by NBC, at 46:13-47:7.

¹⁸⁶ Questioning of Nel by NBC, at 48:6-18.

¹⁸⁷ Questioning of Nel by NBC, at 44:12-45:22.

¹⁸⁸ Questioning of Nel by NBC, at 43:17-44:11.

105. The audit partner was familiar with and trained in cheque kiting¹⁸⁹ and agreed it is a form of fraud.¹⁹⁰ While certain line items could indicate cheque kiting, they could also result from other factors.¹⁹¹ KPMG performed procedures on these line items and concluded they were fairly presented, with no indication of fraud or cheque kiting.¹⁹² The partner confirmed that neither she nor her team identified or were made aware of any evidence of cheque kiting during the 2022 audit.¹⁹³

106. KPMG conducted a fraud risk assessment which considers incentive, opportunity, and rationalization. The control deficiency identified presented an opportunity and the KPMG audit party always presumed rationalization (as that factor could not actually be audited),¹⁹⁴ but there was no evidence of incentive, and no fraud was detected in the 2022 financial statements.¹⁹⁵

g) 2023 Financial Statements

107. Some of the financial statements for the fiscal year ended December 31, 2023, which were required under the Commitment Letter to be delivered within a 120 days of year end, were ultimately provided by Ray Price to NBC in October 2024.¹⁹⁶

108. The financial statements that were disclosed contemporaneously (i.e., financial statements for two of the three holding companies subject to review engagements by KPMG¹⁹⁷) indicated that those entities were the subject of a “going concern” note from KPMG. Concerning:

- (a) Sunterra Farm Enterprises Ltd., KPMG drew attention to the fact that it had “generated a net loss of \$13.8 million during the year” and “had a working capital deficiency before callable debt of \$13.7 million”;¹⁹⁸

¹⁸⁹ Questioning of Nel by NBC, at 15:23-25 and 17:4-8.

¹⁹⁰ Questioning of Nel by NBC, at 16:1-2.

¹⁹¹ Questioning of Nel by NBC, at 52:10-17.

¹⁹² Questioning of Nel by NBC, at 53:24-54:18.

¹⁹³ Questioning of Nel by NBC, at 49:1-20.

¹⁹⁴ Questioning of Nel by NBC, at 66:17-67:3.

¹⁹⁵ Questioning of Nel by NBC, at 48:19-25 and 65:1-17.

¹⁹⁶ Pai Affidavit #4, Exhibits “O” and “P”; Questioning of Ray Price by NBC, at 39:14-16.

¹⁹⁷ Pai Affidavit #4, Exhibits “O” and “P”; Questioning of Ray Price by NBC, at 39:14-16.

¹⁹⁸ Pai Affidavit #4, Exhibit “O”, [Bates No. 213].

- (b) Sunterra Food Corporation, KPMG drew attention to the fact that it had “generated a net loss of \$9.8 million during the year”, “had a working capital deficiency of \$83.5 million and negative equity of \$40.9 million”;¹⁹⁹ and
- (c) that, in respect of both entities, there was “material uncertainty that may cast significant doubt about the Entity’s ability to continue as a going concern”.²⁰⁰

109. However, when the 2023 financial statements were delivered there were critical financial statements missing, namely:

- (a) audited financial statements for the Sunterra Group as a whole; and
- (b) the financial statements for one of the three holding companies (Sunterra Enterprises Inc., the parent company of the US Kiting Entities) that were to be the subject of a review engagement by KPMG.

110. Until the cross-examinations in this proceeding, NBC had assumed that KPMG had been instructed not to prepare the missing financial statements, particularly in light of the events that transpired a few months later in February 2025. However, during the cross-examination of Ray Price, it was revealed that the missing financial statements had in fact been completed for fiscal year 2023 and that he did not provide them to NBC with the other financial statements for the same period. The aforementioned financial statements would not have been provided to NBC but for questioning in this matter.²⁰¹

111. These missing financial statements also contained “going concern” notes:

- (a) concerning Sunterra Enterprises Inc., KPMG drew attention to the fact that it had “generated a net loss of \$3.6 million during the year”, “had a working capital deficiency of \$13.4 million and negative equity of \$11.4 million”;²⁰²
- (b) concerning the Sunterra Group of Companies as a whole, KPMG drew attention to the fact that it had “generated a net loss of \$27.2 million during the year”,²⁰³ “had

¹⁹⁹ Pai Affidavit #4, Exhibit “P”, [Bates No. 240].

²⁰⁰ Ray Price Response to Undertaking 3 (NBC) [Bates No. UR000523] and Undertaking 4 (NBC) [Bates No. UR000563].

²⁰¹ Ray Price Responses to Undertakings 3 and 4 (NBC).

²⁰² Ray Price Response to Undertaking 4 (NBC) [Bates No. UR000563].

²⁰³ Ray Price Response to Undertaking 3 (NBC) [Bates No. UR000523].

negative equity of \$20.2 million and a working capital deficiency of \$103.3 million”;²⁰⁴ and

- (c) stated that, in respect of both entities, there was “material uncertainty that may cast significant doubt about the Entity’s ability to continue as a going concern”.²⁰⁵

112. These additional financial statements also disclosed that:

- (a) as detailed in the 2023 audited financial statements for the Sunterra Group,²⁰⁶ there was a liability included on the balance sheet item for “Accounts payable and accrued liabilities” of \$51,679,000 for “Cheques issued in excess of funds on deposit”; and
- (b) as detailed in the review engagement statements for Sunterra Enterprises Inc. for 2023,²⁰⁷ there was a liability included on the balance sheet item for “Accounts payable and accrued liabilities” of \$20,486,000, for “Cheques issued in excess of funds on deposit”. This information is described in note 4 to the review engagement statements for Sunterra Enterprises Inc. for 2023, and, as set out in note 15, represents a year-over-year change of \$22,430,000.²⁰⁸

113. In its audit and review engagements, KPMG did not uncover any fraud or evidence of cheque kiting and provided customary letters for each of the financial statements according to the level of the assurance engagements, subject to the going-concern notes.²⁰⁹

114. KPMG identified and reported the same significant deficiency in internal controls in respect of the 2023 audited financial statements as it had in respect of the 2022 audited financial

²⁰⁴ Ray Price Response to Undertaking 3 (NBC) [Bates No. UR000523].

²⁰⁵ Ray Price Response to Undertaking 3 (NBC) [Bates No. UR000523] and Undertaking 4 (NBC) [Bates No. UR000563].

²⁰⁶ Ray Price Response to Undertaking 4 (NBC) [Bates No. UR000538].

²⁰⁷ Ray Price, Response to Undertaking 4 (NBC) [Bates No. UR000574].

²⁰⁸ Pai Affidavit #4, at Exhibits “O” and “P”. The remainder of the \$51,679,000 for “Cheques issued in excess of funds on deposit” which is shown in the 2023 audited financial statements for the Sunterra Group, as a whole, is shown on the 2023 financial statements for Sunterra Farm Enterprises (at note 6, in the amount of \$29,886,000) and Sunterra Food (at note 2, in the amount of \$1,327,000), which were provided to NBC.

²⁰⁹ Questioning of Nel by NBC, at 48:19-25, 63:8-13, 67:4-68:19 and 22:20-23:2.

statements, specifically a lack of segregation of duties in the journal entry process. However, this deficiency did not extend to cheque signing or bank reconciliation responsibilities.²¹⁰

115. As with the 2022 audit, KPMG did not look at every transaction or bank statement in conducting the 2023 audit, relying instead on sampling and other audit methodologies as permitted by audit standards. Bank statements are a key source of audit evidence, but not every transaction is reviewed.²¹¹ KPMG performed procedures on these line items and concluded they were fairly presented, with no indication of fraud. The audit partner confirmed that neither she nor her team identified or were made aware of any evidence of cheque kiting during the 2023 audit.²¹²

116. KPMG conducted a fraud risk assessment which considers incentive, opportunity, and rationalization. KPMG concluded that the control deficiency identified presented an opportunity, and as mentioned above, the KPMG audit partner always presumed rationalization. However, she did not identify evidence of incentive, and no fraud was detected in the 2022 financial statements.²¹³ However, on cross-examination she did acknowledge that the fact that the entities were now subject to a going-concern note provided incentive to commit fraud.²¹⁴

h) Failure of Sunterra Group Directors to Detect the Kiting Scheme

117. According to the evidence of Art Price and Glen Price, Sunterra Group's board also failed to detect the fraud. While acknowledging their statutory and fiduciary duties to the Sunterra Group as directors, and despite having unfettered access to Ray Price, account information, and being in a better position than NBC or Compeer to uncover the fraud, Director Glen Price²¹⁵ and Chairman Art Price²¹⁶ testified that they allegedly only learned of the Kiting Scheme around February 14, 2025, the same time as NBC, after being alerted to the fact by Ray Price when Compeer froze the US Kiting Entities' accounts.²¹⁷

²¹⁰ Questioning of Nel by NBC, at 46:13-47:7 and 48:6-18.

²¹¹ Questioning of Nel by NBC, at 44:12-45:22 and 43:17-44:11.

²¹² Questioning of Nel by NBC, at 49:1-20 and 53:24-54:18..

²¹³ Questioning of Nel by NBC, at 63:8-13.

²¹⁴ Questioning of Nel by NBC, at 69:24-71:6.

²¹⁵ Glen Price is the director of Sunterra Food Corporation, Trochu Meat Processors, Sunterra Quality Food Markets: see Art Price Affidavit, at para. 9.

²¹⁶ Art Price confirmed he is the chairman of the board: Questioning of Art Price by NBC, at 18:5-7.

²¹⁷ Affidavit of Glen Price, sworn September 29, 2025, filed in NBC Claims Proceedings, at para. 5; Affidavit of Arthur Price, sworn September 5, 2025, filed in Compeer Action, at para. 46; Art Price Affidavit, at para. 29.

118. Sunterra also restricted NBC and Compeer from sharing account details and transactions, even after the fraud was discovered.²¹⁸

III. ISSUES

119. Broadly stated, the issues to be determined on this application include:

- (a) whether NBC is entitled to indemnity or contribution from the Respondents by reason of:
 - (i) statute;
 - (ii) contract; and
 - (iii) common law and equity;
- (b) whether the Canadian Kiting Entities committed fraud;
- (c) whether NBC is entitled to a declaration that the Kiting Scheme constitutes a fraud;
- (d) whether the Respondents, or some of them, engaged in conspiracy;
- (e) whether the Respondents, or some of them, engaged in conduct that was oppressive;
- (f) whether the Personal Respondents engaged in:
 - (i) conspiracy;
 - (ii) inducing breach of contract;
 - (iii) breach of fiduciary and statutory duties; and
 - (iv) knowing assistance
- (g) whether any amounts owing to NBC, in relation to the contribution and indemnity claims, are guaranteed pursuant to the Guarantees and secured under the Security Agreements; and
- (h) whether NBC's contingent claims for contribution and indemnification are provable claims and capable of being valued within the CCAA Proceedings.

²¹⁸ Grosland Affidavit, at para. 29(b) and 50.

IV. LAW AND ARGUMENT

1. Contribution and Indemnity

120. Broadly stated, the grounds upon which NBC seeks contribution and indemnification from the Canadian Sunterra Entities, Ray Price, Uffelman, Thompson, and any other director or officer of the Canadian Sunterra Entities (collectively, the “**Sunterra Parties**”), are that:

- (a) the Sunterra Parties 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;
- (b) separately, the Sunterra Parties are legally and equitably obligated to indemnify NBC because of their relationship and as a result of the conduct of the Sunterra Parties;
- (c) separately, the Sunterra Parties breached duties and obligations owed by each of them to NBC and its predecessor, CWB; and
- (d) the aforementioned grounds for indemnification arise under statute, in contract, at law, and in equity.

121. The fact that Compeer has not yet brought a claim against NBC does not prevent NBC from advancing a claim for indemnification. A claim for indemnification may succeed where the claimant “has incurred or suffered or will incur or suffer” a loss.²¹⁹ In a CCAA proceeding, as described below, this is further buttressed by the inclusion in the statute of a specific mechanism for adjudicating, proving, and valuing contingent claims.

a) Statutory Basis for Contribution and Indemnity

122. Compeer has not yet asserted the Compeer v. NBC Claims. If Compeer asserts a claim against NBC, such claim will be subject to statutory indemnification provisions, as follows.

i. *Tort-Feasors Act* (Alberta)

123. Pursuant to Section 3(1)(c) of the *Tort-Feasors Act*, when “damage is suffered by any person as a result of a tort”, “any tort-feasor liable in respect of that damage may recover

²¹⁹ *Ryan v Dew Enterprises Ltd.*, 2014 NLCA 11 at para. 54 [BOA TAB 65].

contribution from any other tort-feasor who is or would, if sued, have been liable in respect of the same damage, whether as a joint tort-feasor or otherwise”.²²⁰

124. The operation of this section has been described as establishing a “derivative” claim against third parties:

“A claim for contribution may be established by statute, such as under the *Tort-Feasors Act*, RSA 2000, c T-5, where a defendant may seek contribution from a third party in any amount that the plaintiff could have sought from the third party: *Tort-Feasors Act*, s 3(1); *Canada Deposit Insurance Corp. v Prisco* (1996), 1996 CanLII 17968 (AB CA), 181 AR 161 (CA) at para 10. Claims under the *Tort-Feasors Act* are derivative in nature, in that the defendant’s claim against a third party is derivative of the plaintiff’s claim against that third party: *Dean v Kociniak*, 2001 ABQB 412, 289 AR 201 at para 19.”²²¹

125. This is a modification of the common law rules concerning contribution for torts, which provided that a plaintiff could recover 100% of their claim from any tort-feasor who was only partially liable for the underlying injury.²²² Under the *Tort-Feasors Act*, joint tortfeasors (including both “joint tortfeasors who act together to cause the same damage” and “several tortfeasors whose separate acts combine to cause the same damage”)²²³ may seek contribution in accordance with their respective responsibility for the underlying torts.

126. Pursuant to section 3(3) of the *Tort-Feasors Act*, the court has power “to exempt any person from liability to make contribution” or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.”²²⁴

127. To the extent that Compeer suffered any damages as a result of NBC’s reversal of the kited cheques (liability for which is denied), such damages would not have occurred but for the Kiting Scheme. NBC is thus entitled to seek statutory indemnification or contribution from the Respondents.

128. The *Tort-Feasors Act* contemplates a claim having been brought before contribution or indemnity is sought from the third party, although that requirement does not operate to restrict the

²²⁰ *Tort-Feasors Act*, RSA 2000, c T-5, s. 3(1)(c) (“***Tort-Feasors Act***”) [BOA TAB 10].

²²¹ *Addison & Leyen Ltd. v Fraser Milner Casgrain LLP*, 2013 ABQB 473 at para. 34 [BOA TAB 12], aff’d 2014 ABCA 230 [BOA TAB 13].

²²² *Dean v. Kociniak*, 2001 ABQB 412, at paras. 16-18 [BOA TAB 36].

²²³ See *Wekerle v. Arbour*, 2025 ONSC 1456 at paras. 27-29 [BOA TAB 71], discussing the categories of tortfeasors in the context of Ontario’s *Negligence Act*, which is analogous to the Alberta *Tort-Feasors Act*.

²²⁴ *Tort-Feasors Act*, at s. 3(3) [BOA TAB 10].

assessment or valuation of a contingent claim in CCAA proceedings. As set out below, the CCAA specifically contemplates addressing claims based on facts which have not yet occurred but might occur. As a result, NBC's potential future rights under the *Tort-Feasors Act* can (and indeed must) be factored into the analysis.

ii. Contributory Negligence Act (Alberta)

129. The *Contributory Negligence Act*²²⁵ refers to damage or loss caused “by fault of 2 or more persons”. It is not restricted to claims based in negligence, although as discussed below negligence is one basis on one the Canadian Kiting Entities may be found liable to indemnify NBC.

130. Pursuant to section 1(1) of the *Contributory Negligence Act*:

1(1) When by fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree in which each person was at fault but if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.²²⁶

131. Pursuant to section 2(2) of the *Contributory Negligence Act*:

2(2) When 2 or more persons are found at fault, they are jointly and severally liable to the person suffering the damage or loss, but as between themselves, in the absence of a contract express or implied, they are liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault.²²⁷

132. Pursuant to section 3.1 of the *Contributory Negligence Act*:

3.1 This Act applies if damage is caused or contributed to by the act or omission of a person, whether or not another person had the opportunity of avoiding the consequences of that act or omission and failed to do so.²²⁸

iii. Alberta Rules of Court

133. The Alberta Rules of Court, Part 3 (Court Actions), Subdivision 6 (Third Party Claims) makes it clear that a third party claim can be brought against:

- (a) A party that might be liable to a defendant in respect of the claim brought by the plaintiff; or

²²⁵ *Contributory Negligence Act*, RSA 2000, c C-27, (“**Contributory Negligence Act**”) [BOA TAB 7].

²²⁶ *Contributory Negligence Act*, at s. 1(1) [BOA TAB 7].

²²⁷ *Contributory Negligence Act*, at s. 2(2) [BOA TAB 7].

²²⁸ *Contributory Negligence Act*, at s. 3.1 [BOA TAB 7].

- (b) A party that might be liable to a defendant independently of any claim brought by the plaintiff:

When third party claim may be filed

3.44 A defendant or third party defendant may file a third party claim against another person who

- (a) is or might be liable to the party filing the third party claim for all or part of the claim against that party,

- (b) is or might be liable to the party filing the third party claim for an independent claim arising out of

- (i) a transaction or occurrence or series of transactions or occurrences involved in the action between the plaintiff and the defendant, or

- (ii) a related transaction or occurrence or series of related transactions or occurrences,

or

- (c) should be bound by a decision about an issue between the plaintiff and the defendant.²²⁹

134. This echoes the law that a claim for indemnity or contribution can be brought based on:

- (a) A duty alleged to be owed by the third party (in this case the Respondents) to the claimant (in this case Compeer) which is addressed by Rule 3.44(a); or
- (b) An independent duty or obligation owed by the third party (Respondents) to the defendant (in this case NBC) whether in contract, at law or in equity which is addressed by Rule 3.44(b).

b) Contractual Basis for Contribution and Indemnity

135. Another basis on which NBC grounds its claim for contribution and indemnity is the express contractual terms agreed to between NBC and the Canadian Kiting Entities, in particular in the Business Account Agreements.

136. Such terms apply to unauthorized use of the Canadian Kiting Entities' NBC accounts, such as the Kiting Scheme and losses resulting therefrom, and obligate the Canadian Kiting Entities to reimburse NBC for the same.

²²⁹

Alberta Rules of Court, AR 124/2020, at Rule 3.44 [BOA TAB 1].

137. This issue is discussed below in greater detail based on the terms of the Business Account Agreements which are set out above.

c) Common Law and Equity Basis for Contribution and Indemnity

138. The Canadian Kiting Entities are also obligated, at law and in equity, to indemnify NBC for any losses suffered by NBC as a result of the Kiting Scheme, including under the *Compeer v. NBC Claims*.

139. Fundamentally, all non-contractual indemnification obligations applicable to the Kiting Entities flow from the fraud conducted pursuant to the Kiting Scheme, which is discussed in greater detail below. Accordingly, any claims in favour of *Compeer* would result from the occurrence of the Kiting Scheme, and but for the Kiting Scheme, no such claims would exist.

140. The Alberta Court of Appeal described common law and equitable contribution and indemnity rights in *Addison & Leyen Ltd v Fraser Milner Casgrain LLP* (“**Addison & Leyen ABCA**”) as follows:

“[22] The leading authority on the common law of contribution and indemnity is *Birmingham and District Land Co v London and Northwestern Railway Co* (1886), 34 Ch D 261 (CA). In that early decision, the English Court of Appeal broadly defined the right to indemnity under the common law as a **direct right to reimbursement which may arise:** (1) by express contract, if provided in the terms of a contract between the parties; (2) **by implied contract, if the parties intended such indemnity;** or (3) **by implication, if the circumstances demand a legal or equitable duty to indemnify, by which the law recognizes an assumed promise by a person to do what, under the circumstances, he ought to do** (at 274). The court identified certain circumstances where the law may imply a contract to indemnify, such as relationships of principal and agent and of co- trustees.”²³⁰

141. Legal and equitable indemnification are different, in that legal indemnification applies to circumstances where the claimant and respondent have direct liability to the same third party,²³¹ whereas equitable indemnification applies where there is an express or implied understanding that

²³⁰ *Addison & Leyen Ltd v Fraser Milner Casgrain LLP*, 2014 ABCA 230 at para. 22 [emphasis added] [BOA TAB 12]; *Contributory Negligence Act*, RSA 2000, c C-27, at section 1(1) [BOA TAB 7].

²³¹ *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 (CanLII), [2011] 3 SCR 45 at paras. 138-139 [BOA TAB 57], citing *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, 1997 CanLII 307 (SCC), [1997] 3 SCR 1210 [BOA TAB 22] and *Blackwater v. Plint*, 2005 SCC 58 (CanLII), [2005] 3 SCR 3 [BOA TAB 20].

a principal will indemnify its agent for acting on the instructions given, regardless of whether the principal has any direct liability to the third-party claimant.²³²

142. If NBC is liable to Compeer, which is denied, the Canadian Kiting Entities are subject to a legal obligation to indemnify NBC in respect of the Compeer v. NBC Claims, because:

- (a) the source of NBC's liability would, in that circumstance, arise entirely from the same transactions and series of events as Compeer's claims against the Sunterra Parties;
- (b) the Canadian Kiting Entities will be directly liable to Compeer in respect of the same amount (or a greater amount, inclusive of additional damages beyond the value of the kited cheques) because the reversal of the kited cheques arose directly out of the Kiting Entities' conduct – while Compeer may have *additional* claims against the Canadian Kiting Entities which cannot be asserted against NBC, any recoveries obtained by Compeer from NBC would reduce the Kiting Entities' liabilities to Compeer on a dollar-for-dollar basis in respect of Compeer's debt claims; and
- (c) the Canadian Kiting Entities would have a direct interest in, and benefit from, any recoveries obtained by Compeer from NBC.

143. The Canadian Kiting Entities are also subject to an equitable obligation to indemnify NBC because:

- (a) pursuant to the Business Account Agreements, discussed in greater detail below, the Canadian Kiting Entities expressly authorized NBC to act on instructions given concerning cheques by the Canadian Kiting Entities' Authorized Signing Officers, "without inquiry" by NBC. If the terms of the Business Account Agreements do not expressly indemnify NBC in respect of the Compeer v. NBC Claims (which, as discussed below, NBC asserts that they do), then an equitable obligation applies because: (i) the depositing and issuance of cheques from the Canadian Kiting

²³² *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 (CanLII), [2011] 3 SCR 45 at paras. 147-148 [BOA TAB 57]; *Bonner v. Tottenham and Edmonton Permanent Investment Building Society*, [1899] 1 Q.B. 161 (C.A.), at p. 174 [BOA TAB 21], cited in *FBI Foods Ltd. v. Glassner*, 2001 BCSC 151, at para. 13 [BOA TAB 40]; *Peninsular and Oriental Steam Navigation Company v. Eastern Shipping Company*, 1923 CanLII 676 (UK JCPC) pages 99-100 [BOA TAB 53], cited in *Addison & Leyen Ltd v Fraser Milner Casgrain LLP*, 2014 ABCA 230 at para. 25 [BOA TAB 13]; *Addison & Leyen Ltd v Fraser Milner Casgrain LLP*, 2014 ABCA 230 at paras. 36-37 and 40 [BOA TAB 13].

Entities' NBC accounts was undertaken by NBC on the Kiting Entities' instructions; and, (ii) if NBC has any liability to Compeer (which is denied), that liability arose solely because NBC followed the Kiting Entities' instructions in issuing cheques for payment (i.e. in the absence of the instructions given by the Kiting Entities, no such liability would have arisen);

- (b) responsibility for the consequences of the Kiting Entities' fraud should, in equity, rest with the Kiting Entities (as the parties conducting the fraud) rather than a third party (i.e. NBC); and
- (c) the terms of the Business Account Agreements place responsibility for fraud and unauthorized transactions for the same on the Kiting Entities.

2. The Canadian Kiting Entities Committed Fraud

a) Cheque kiting generally

144. Cheque kiting takes advantage of conditional credit provided by banks, to their customers, in connection with cheque deposits. Generally, when depositing cheques, conditional 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 or the United States Bulk Exchange, as applicable.²³³

145. Cheque kiting is a form of fraud. The mechanics of a cheque kiting scheme, and the results when the scheme is inevitably discovered, were succinctly described in the decision of the Superior Court of Quebec in *Royal Bank of Canada c. Capital Factors Inc.* as follows:

"Kiting is a form of check fraud. A true kite requires the fraudulent drawing and depositing of checks in reciprocal deposit accounts (normally at two different banks) such that both banks assume the credit risk of paying checks drawn on uncollected funds. In a check kite, both banks give immediate credit for deposited checks, even though the deposited checks are not drawn on sufficient cleared funds and in fact are worthless. Based on the clearing time between the two banks (the "float"), artificial ledger balances are created at both banks. In other words, a kite is supported by the appearance of good funds in both accounts based on both banks' providing immediate credit for the deposited checks, yet there are no good funds represented by the checks themselves. Typically, the fictional balances at each bank involved in the kiting scheme continue to grow while the fraudster diverts funds from the accounts. At some point,

²³³

Pai Affidavit #2, at para. 49.

the kite crashes when one of the banks decides to dishonor and return checks drawn on it to the other bank. The first bank to dishonor and return checks drawn on it before its midnight deadline will avoid any loss and the other bank, which has provided immediate credit on items deposited with it, will sustain the loss due to its credit decision to provide immediate credit to its customer's account on deposited items. The loss is reflected by the true overdraft that is created in the account of the depositary bank when the other bank (the payor bank) dishonors and returns checks drawn on it.”²³⁴

146. Carrying out a cheque kiting scheme therefore necessitates both: (i) knowledge of the delay of the banking system in clearing cheques and (ii) a high level of organization to ensure that the kitters are always one step ahead of the clearing system, to avoid overdrafts and, therefore, detection by the banks that are being defrauded.²³⁵

147. Cheque kiting depends on the constant circulation of cheques, which are known to be made while there are insufficient funds in the source bank account, and which would be returned for insufficient funds but for the existence of conditional credit that exists as a result of the deposit of the first (earlier-in-time) cheque(s). In *CIBC v. Millard*, the BC Supreme Court described a cheque kiting scheme as follows:

“[3] The CIBC's Director of Corporate Security, Jay Stark, described a kiting scheme in his report, the admissibility of which was challenged, properly so in my view, but his description of the scheme is not controversial and I will reproduce it:

...

A simple act of kiting may comprise a cheque drawn against insufficient funds on deposit. The scheme becomes more elaborate when the objective is to obtain unauthorized funds and maintain balances within credit or overdraft limits (sustain credit). The scheme continuously misstates account balances by showing the same amount on deposit simultaneously in two bank accounts, made possible by exploiting the time required for a cheque to clear through the banking system. Such a scheme may be accomplished as follows.

²³⁴ *Royal Bank of Canada c. Capital Factors Inc.*, 2013 QCCS 2214, at para. 82 [emphasis added] **[BOA TAB 63]**.

²³⁵ See e.g. *Dhaliwal v Canada (Public Safety and Emergency Preparedness)*, 2025 CanLII 49485 (CA IRB) **[BOA TAB 37]**, an immigration board decision in which Mr. Dhaliwal was accused of being involved in a cheque kiting scheme. The police detective (who was knowledgeable about fraud) testified that “this type of fraud requires planning and organization” and that, “organization and knowledge certainly go hand in hand in a fraud of this type. You need to know how the banking system works and organize the funds in such a way that it is not going to be immediately detected” (at para. 31).

A cheque, drawn against insufficient funds on deposit, is deposited to a second account. Until the outstanding cheque is cleared, the same amount is on deposit simultaneously in two accounts. During the period that amounts are on simultaneous deposit, a kiter may be able to withdraw funds from the second account, although the balance is represented by a NSF cheque. To continue the scheme, the kiter would deposit a cheque, drawn on the second account, to the first account. The amount of the cheque would be equal to or greater than the amount of the first cheque. A series of similar parallel deposits must be continuously generated to continue the scheme.

The simultaneous deposits last only as long as the time required for a cheque to clear through the banking system. Because domestic cheques written against Schedule A banks clear quickly, the kiter must often write cheques on a daily basis to maintain the inflated balances. The kiter benefits from any increase in the amount of time it takes to clear funds. Therefore, some schemes involve Schedule B and foreign banks and the use of altered or mutilated cheques, each of which increases the time for the outstanding cheques to clear.”²³⁶

b) The Sunterra Kiting Scheme

148. No more proof of the Kiting Scheme is needed than what happened when it was brought to an abrupt conclusion in February 2025. Recall the end result was:

- (a) a USD\$36 million overdraft in the Compeer Accounts of Sunterra US and Sunwold US;
- (b) no substantial or offsetting amount in the NBC bank accounts of the Canadian Kiting Entities; and
- (c) no other ability to pay the USD\$36 million overdraft in the Compeer Accounts of the US Kiting Entities, as evidenced by Arthur Price’s proposal to pay Compeer “over time through a transparent, ring-fenced, auditable shares of 75% of EBITDA”, starting with a proposed payment after the first year of \$7,660,406.”²³⁷

149. If the “account coverage practice” was not a Kiting Scheme, when Compeer froze the US Kiting Entities’ accounts, and NBC froze the Canadian Kiting Entities’ accounts:

²³⁶ *CIBC v. Millard*, 2001 BCSC 982, at para. 3 [BOA TAB 27].

²³⁷ Art Price Affidavit, at para. 75 and Exhibit “O”; Questioning of Art Price by NBC, at 40:2-42:25.

- (a) the aggregate balances in the NBC accounts and the Compeer accounts should have been positive, not a USD\$36 million overdraft in the Compeer accounts and a negligible balance in the NBC accounts; and
- (b) the Kiting Entities should have been able to immediately pay the US\$36 million overdraft.

150. The general structure of one of the thousands of cycles of the Kiting Scheme is illustrated as follows:

- (a) **Step 1:** A US Kiting Entity would issue a cheque ("**Cheque #1**"), from one of the US Kiting Entities' Compeer Accounts, for an amount under \$1 million, to be deposited into one of the Canadian Kiting Entities' NBC accounts;
- (b) **Step 2:** NBC would "conditionally credit" the applicable Canadian Kiting Entities' 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 Kiting Entity, even though NBC had not yet received final settlement of Cheque #1;
- (c) **Step 3:** The Canadian Kiting 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 Kiting Entities or Compeer itself, from the corresponding Canadian Kiting Entities' 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 a US Kiting Entities' Compeer Account and Compeer would then "conditionally credit" the applicable US Kiting Entities' 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 account holder, to cover the US Kiting Entities' liquidity needs and the obligations arising in connection with Cheque #1;
- (e) **Step 5:** The US Kiting 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 Kiting Entities, from the corresponding US Kiting Entities' NBC Account, utilizing the conditional credit provided in connection with Cheque #2; and

- (f) **Step 6:** NBC would then "conditionally credit" the applicable Canadian Kiting Entities' 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 Kiting Entities' liquidity needs and the obligations arising in connection with Cheque #2.²³⁸

151. In its investigation of transactions from January 1, 2023 to February 14, 2025, NBC determined that Sunterra Canada and Sunterra US circulated cheques, largely between themselves, in the amount of approximately \$15 billion, and Sunwold Canada and Sunwold US circulated cheques, largely between themselves, in the amount of approximately \$5.5 billion.²³⁹ The total amount of funds circulated between the Kiting Entities vastly exceeds the consolidated monthly gross revenue, total receivables, total payables, and total revenue, of the Borrowers,²⁴⁰ and the estimated annual revenue of the US Kiting Entities.²⁴¹

152. Numerous general characteristics, held in past cases to be indicative of cheque kiting, are present in this case. They are as follows:

- (a) **The circulation of cheques between various accounts is jointly controlled:**²⁴²
The same individuals, Ray Price, Uffelman, and Thompson, controlled all of the Kiting Entities' bank accounts and directed the issuance and deposit of all cheques at issue. The Respondents admit that they engaged in the "account coverage practice", on a daily basis, for years.²⁴³
- (b) **Cheques are circulated from one bank to another and from one account to another, in a manner that maintains fictitious bank balances in some accounts while depositing the very same amounts in other accounts:**²⁴⁴
There are numerous examples given in the evidence of particular days in which

²³⁸ Pai Affidavit #2 at para. 56; Pai Affidavit #3, at para. 7.

²³⁹ Pai Affidavit #2, at para. 11.

²⁴⁰ Pai Affidavit #2, at para. 12.

²⁴¹ Affidavit of Arthur Price, sworn September 5, 2025, filed in Compeer Action, at Exhibit "R" [Bates No. APAFF000475].

²⁴² *Location Bristar Idealease Inc. (Syndic de)*, 2012 QCCS 211, at para. 7 [BOA TAB 44].

²⁴³ Uffelman Affidavit, at paras. 8-16; Thompson Affidavit, at paras. 9-10; Ray Price Affidavit, at paras. 52-55.

²⁴⁴ *Location Bristar Idealease Inc. (Syndic de)*, 2012 QCCS 211, at para. 8 [BOA TAB 44].

conditional credit was the only means by which the fictitious bank balance in one account was used to deposit money into another:

- (i) See Affidavit #3 of Raymond Pai, sworn September 29, 2025;²⁴⁵
- (ii) Thompson himself gives clear examples in Exhibits C, B and A (in that order) to his Affidavit.²⁴⁶ In some cases, when the account of a US Kiting Entity was expected to be overdrawn, it was replenished with funds from a Canadian Kiting Entity and then the very next day such funds were re-cycled back to the Canadian Kiting Entity.
- (iii) Very clear evidence of this conduct arose when Compeer froze the accounts of the US Kiting Entities, when USD\$80 million in outstanding cheques had been exchanged between those accounts – the initial result was an immediate overdraft of USD\$40 million in the NBC accounts of the Canadian Kiting Entities and when that overdraft was reduced, the net result was a USD\$36 million overdraft in the Compeer accounts of the US Kiting Entities and no ability to repay that amount except over several years using the EBITDA of the enterprises.
- (iv) Ray Price admitted that the “account coverage practice” not only created conditional credit, but that the Kiting Entities used the conditional credit to satisfy further cheques:

- 9 Q. And those funds, based on conditional credit, were used
- 10 to ensure that an account was not in overdraft or that
- 11 there was no shortfalls; right?
- 12 A. Deposits were made and cheques were written to ensure
- 13 there was no overdrafts, yes.
- 14 Q. And the use of cheques, though, Mr. Price, the result
- 15 of using cheques to send the funds was conditional
- 16 credit, as you've told us, and it was that conditional
- 17 credit that was covering what otherwise would have been
- 18 a shortfall or an overdraft position; right?
- 19 A. At times that would be correct, yes.²⁴⁷

- (c) **The simultaneous presence of duplicate amounts in two different bank accounts at the same time creates what is referred to as "float":**²⁴⁸ The

²⁴⁵ Pai Affidavit #3.

²⁴⁶ Thompson Affidavit, at Exhibits “C”, “B”, and “A”.

²⁴⁷ Questioning of Ray Price by Compeer, at 49:9-19.

²⁴⁸ *Location Bristar Idealease Inc. (Syndic de)*, 2012 QCCS 211, at para. 14 [BOA TAB 44].

Respondents knew that the “account coverage process” was creating artificial balances that were reflected in multiple bank accounts, at the same time:

- 14 Q. So I take it you generally had an understanding that
15 when a cheque would be deposited into an account, that
16 the account into which it was deposited would be
17 credited with those funds before the account from which
18 it originated would be debited; right?
19 A. Yes.²⁴⁹

- (d) **The “float time” (i.e., the time between the moment a cheque is deposited into a first bank account and the moment that same cheque is recorded in, or deducted from, the bank account from which it is drawn) permits a depositor to withdraw the money deposited before the cheque is cleared by the bank from which the money was drawn.**²⁵⁰ The Kiting Entities drew cheques from their respective bank accounts, by issuing cheques to the corresponding Kiting Entity, using the same conditional credit that they were granted as a result of the “float time”. As explained by Mr. Thompson, this required a daily accounting exercise to monitor the running balance in each account:

- 13 Q. What do you do to ensure that there's sufficient money
14 in the Sunwold Canada account?
15 A. The Sunwold Canada cheque that we are writing isn't
16 going to clear the same day so, therefore, I know that
17 that account will not go overdrawn.²⁵¹

- (e) **There is no commercial reason for the transactions:** The Respondents confirmed that the kited cheques were not related to any commercial transactions:

- 22 Q. So the amount of the cheques that you're writing to
23 cover the shortfall, that amount isn't specifically
24 referenced or related to any particular commercial
25 activity in the farming companies; right? Like, it's
1 not an amount that this is a particular sale of
2 something or a particular payment of management fees or
3 any other specific commercial activity; right?
4 A. Generally not.²⁵²

²⁴⁹ Questioning of Uffelman by Compeer, at 43:14-19.

²⁵⁰ *Location Bristar Idealease Inc. (Syndic de)*, 2012 QCCS 211, at paras. 12-13 [BOA TAB 44].

²⁵¹ Questioning of Thompson by NBC, at 17:13-17.

²⁵² Questioning of Thompson by Compeer, at 32:22-33:4.

- (f) **The amounts of the daily multiple individual cheques were chosen arbitrarily, so as to equal the amount that needed to be deposited in the account:** The amounts of the individual cheques were chosen arbitrarily. From the perspective of the Sunterra Group employees who were responsible for issuing the cheques, all that mattered was that the total amount of all cheques deposited equalled the amount of funds required to ensure there was no overdraft or shortfall in the accounts, as:

(i) described by Uffelman:

18 A. There was a total amount that needed to be covered, and
19 he [Craig Thompson] would arbitrarily come up with the
amounts to cover.²⁵³

(ii) and confirmed by Thompson:

19 A. There's no rhyme or reason to how I arrived at those
20 totals. I would have said to myself -- I forget what
21 you said. You said 10 million? 9. -- I forget what
22 you said the total was of the cheques.

23 Q. So by my tally, these particular cheques tally up to
24 8,980,000.

25 A. So my rule of thumb would be, okay, I'm going to divide
1 that into ten cheques. And I would just start with
2 900,000 and change, and then the last cheque would
3 generally be a lower amount, but there's no specific
4 reason or calculation around how I would divide what
5 amount each cheque is written for.²⁵⁴

...

14 Q. Sure. And as you told me, there's no rhyme or reason
15 for any of it. In terms of what the amounts were, they
16 could have been anything, as far as you were concerned,
17 as long as they added up to the total dollar value;
18 right?

19 A. Yes.²⁵⁵

- (g) **The delay in cheques being cleared caused misstated account balances by showing the same amount on deposit simultaneously in multiple bank**

²⁵³ Questioning of Uffelman by NBC, at 31:18-19.

²⁵⁴ Questioning of Thompson by Compeer, at 40:19-41:5.

²⁵⁵ Questioning of Thompson by Compeer, at 43:14-19.

accounts:²⁵⁶ The bank account statements for the Kiting Entities' respective accounts, and NBC's analysis thereof, show that there was typically a delay of:

- (i) in the case of cheques deposited in the US Kiting Entities' Compeer accounts and withdrawn from the Canadian Kiting Entities' NBC accounts, 4-8 days between the day the cheque was credited to the applicable US Kiting Entities' Compeer account and the day the funds were withdrawn from the Canadian Kiting Entities' NBC account;²⁵⁷ and
- (ii) in the case of cheques deposited in the Canadian Kiting Entities' NBC accounts and withdrawn from the US Kiting Entities' Compeer accounts, 1-3 business days between the day the cheque was credited to the Canadian Kiting Entities' NBC account and the day the funds were withdrawn from the US Kiting Entity's Compeer account.²⁵⁸

As a result, funds were entering and leaving the Kiting Entities' accounts on a daily or near daily basis, with the source of such funds being the corresponding Kiting Entities' accounts on the other side of the international border.²⁵⁹ This reciprocal circulation of cheques was continuous and was present on all illustrative dates for which NBC has provided a detailed analysis.²⁶⁰

- (h) **Over time, the false increase in bank balances varies from one bank to another, until one of the banks involved realizes that it is part of a kiting scheme and denounces the fraud. The system then collapses and any amounts credited are frozen:**²⁶¹ When Compeer discovered the Kiting Scheme, it froze the US Kiting Entities' Compeer accounts.²⁶² This account freeze resulted in dishonoured cheques, which had been written on the US Kiting Entities' Compeer accounts in favour of the Canadian Kiting Entities' NBC accounts.²⁶³ The

²⁵⁶ *CIBC v. Millard*, 2001 BCSC 982, at para. 3 [BOA TAB 27].

²⁵⁷ Pai Affidavit #3, at para. 40.

²⁵⁸ Pai Affidavit #3, at para. 41.

²⁵⁹ Questioning of Thompson by NBC, at 42:14-43:3; Questioning of Ray Price by NBC, at 18:21-19:4.

²⁶⁰ August 19 - 20, 2024, October 31, 2024, December 19, 2024, December 27, 2024, December 31, 2024, January 7, 2025, January 27 - 30, 2025, and February 6, 2025. See Pai Affidavit #3, at paras. 8, 11, 15-39, 51, and Exhibit "A".

²⁶¹ *Location Bristar Idealease Inc. (Syndic de)*, 2012 QCCS 211, at para. 10 [BOA TAB 44].

²⁶² Rue Affidavit #1, at paras. 56-60.

²⁶³ Grosland Affidavit, at para.30.

effect was a USD\$43 million overdraft in the Canadian Kiting Entities' NBC accounts,²⁶⁴ which, in turn, resulted in NBC freezing the Canadian Kiting Entities' NBC accounts,²⁶⁵ and cheques written on the Canadian Kiting Entities' NBC accounts were dishonoured because the Canadian Kiting Entities did not have sufficient funds in their accounts.²⁶⁶ The end result of NBC's and Compeer's discovery of the Kiting Scheme was the approximately USD\$36 million overdraft accrued in the US Kiting Entities' Compeer accounts.²⁶⁷

153. In this way, in executing the Kiting Scheme, the Respondents utilized:

- (a) their knowledge of the delay of the banking system in clearing cheques to exploit the conditional credit they received from both NBC and Compeer, and used the conditional credit to continue to perpetuate the Kiting Scheme:

2 Q. I gather as part of your instruction to Ms. Uffelman,
3 you would have had discussions with her about the way
4 that the account coverage practice was undertaken?
5 A. We would have had conversations around making sure that
6 the bank accounts were not in overdraft.
7 Q. Including not just that that was the goal, but also how
8 to do it; right?
9 A. How to do it would be making sure that the cheques and
10 deposits are going into the banks to make sure there
11 was no overdraft.
12 Q. All right. And that includes sending cheques back and
13 forth between Compeer and CWB?
14 A. Yes, it would.
15 Q. And that would include making use of the conditional
16 credit that resulted from sending the cheques back and
17 forth?
18 A. Yes.²⁶⁸

- (b) a high level of organization to ensure that they were, for the most part, ahead of the clearing system, to avoid overdrafts and, therefore, detection by NBC and Compeer. Specifically, the Respondents tracked cheques which had been deposited in one account but had not yet cleared the source account, to ensure

²⁶⁴ Pai Affidavit #2, at para. 7.

²⁶⁵ Chan Affidavit #2, at para. 13(e).

²⁶⁶ Grosland Affidavit, at para.33.

²⁶⁷ Grosland Affidavit, at para.34.

²⁶⁸ Questioning of Ray Price by Compeer, at 51:2-18.

that there always appeared to be sufficient funds in the Kiting Entities' accounts.
As explained by Thompson:

- 7 Q. And then you reconcile what's stated in the bank
8 account for each of those companies, firstly by taking
9 away from those amounts or adding to those amounts
10 things that you know are coming into those accounts by
11 way of the spreadsheet you spoke about during your
12 questioning by Mr. LaFleche; right?
13 A. Yes.
14 Q. That's part of the reconciliation process that you're
15 speaking about?
16 A. Correct.
17 Q. One of the work products that comes out of this
18 exercise is a revision to the spreadsheet. You take
19 off things that have been accounted for in the bank
20 account statement and you create a new spreadsheet or
21 revise the spreadsheet. Am I right?
22 A. The spreadsheet is a living document, so yes.²⁶⁹

...

- 10 Q. And then you come up with a figure as to what amount is
11 actually in the bank account, having reconciled it for
12 matters such as cheques that have been issued and
13 expenses that are to be paid and revenues that are to
14 come in; right?
15 A. Yes.
16 Q. From there you determine whether or not some additional
17 funds have to be contributed to a particular bank
18 account in order to ensure that it is more than a nil
19 balance or at least in excess of its overdraft;
20 correct?
21 A. Yes.
22 Q. The next step in the process is that you, having
23 determined the amount that is required, you instruct
24 that cheques equalling that amount be deposited to the
25 account; right?
1 A. That is our accounting practice.²⁷⁰

154. It is clear from the evidence that the Respondents knew, when writing the kited cheques, that they did not have sufficient funds to cover the cheques. The evidence is that they hoped to have sufficient funds, in the future, to reduce the need to engage in the Kiting Scheme:

²⁶⁹ Questioning of Thompson by NBC, at 14:7-22.

²⁷⁰ Questioning of Thompson by NBC, at 15:10-16:1; see spreadsheet produced in Craig Thompson Response to Undertaking 1 (Compeer).

- 8 Q. But you didn't tell anyone at Compeer that the Sunterra
9 Group didn't actually have the funds required to back
10 the cheques that were being deposited; did you?
11 A. I wasn't aware whether we would or would not at any
12 point in time. I always felt that we would be able to
13 cover the cheque coverage -- or the account coverage
14 practice over time. We'd always have enough to be able
15 to do that.
16 Q. You say "over time." You don't mean at the particular
17 moment, but eventually?
18 A. Yes, we would use the conditional credit until we
19 generated enough cash to not have what happened.
20 Q. Right. So your hope in what you were really telling
21 him or what you were thinking when you told him that,
22 was that your hope or your plan for the future was to
23 develop enough legitimate commercial revenue to cover
24 those amounts; right?
25 A. Our expectation was that we knew that we had Trochu
1 fire insurance coming, that we had some other asset
2 sales coming, and that that would increase our working
3 capital. And with that increased working capital, the
4 amount of cheques that we would have to move back and
5 forth would reduce.
6 Q. Until that time, you had to keep sending the cheques
7 back and forth; right?
8 A. As we had done for several years.
9 Q. And until that time, the cheques were clearing based on
10 conditional credit; right?
11 A. The cheques generated -- the account coverage practice
12 generated some conditional credit.²⁷¹
- ...
- 3 A. Or that we had other deposits that would cover in the
4 short-term, but in the longer term, yes, the
5 expectation was that we would have more working capital
6 available to us.
7 Q. Right. At some point in the future?
8 A. Yes.
9 Q. And until then, you lacked the funds, and so the
10 cheques that were being transacted were backed by this
11 conditional credit. And you agree with me, sir, that
12 at no point did you explain that to Compeer?
13 A. We had used the conditional credit for many years. We
14 had open discussions -- I had open discussions with
15 Nick. They were aware that cheques were being
16 deposited to cover overdrafts and that cheques from

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Questioning of Ray Price by Compeer, at 58:8-59:12.

17 Compeer were going to CWB to cover the bank accounts
18 there.²⁷²

c) What is fraud?

155. NBC is seeking, among other relief, declarations that the Kiting Scheme was fraudulent and that the Kiting Entities have committed fraud. The record provides sufficient grounds to establish the liability of the Canadian Kiting Entities under the tort of civil fraud. However, the concept of fraud in civil law is not limited to the synonymous tort, nor is it necessary to find that the Canadian Kiting Entities are liable under that tort to issue the requested declarations. There are multiple paths by which a party may establish that certain conduct is “fraudulent”, which apply on the facts of this case.

156. While the term “fraud” is used in various statutes, including the *Bankruptcy and Insolvency Act* (“**BIA**”)²⁷³ and the *Criminal Code*,²⁷⁴ fraud is not confined to a specific, universally-applicable definition:

“[365] Fraud and deceit are related actions. **Fraud is so infinite in its varieties that courts have not attempted to define it with precision.** McDonnell, Monroe, *Kerr on the Law of Fraud and Mistake*, 7th ed. (London: Sweet & Maxwell Limited, 1952), at p. 1 states:

It is not easy to give a definition of what constitutes fraud in the extensive signification in which that term is understood by Civil Courts of Justice. The Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. **Fraud is infinite in variety.** The fertility of man's invention in devising new schemes of fraud is so great, that the Courts have always declined to define it ... Fraud, in the contemplation of a Civil Court of Justice, may be said to **include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another.** All surprise, trick, cunning, dissembling and other unfair way that is used to cheat any one is considered as fraud. Fraud in all cases implies a wilful act on the part of any one, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to.”²⁷⁵

²⁷² Questioning of Ray Price by Compeer, at 60:3-18.

²⁷³ See s. 178(1)(d) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”) [**BOA TAB 2**].

²⁷⁴ See s. 380(1) of the *Criminal Code*, RSC 1985, c C-46 [**BOA TAB 8**], which has been applied in criminal cases involving cheque kiting.

²⁷⁵ *Colborne Capital Corporation v. 542775 Alberta Ltd.*, 1995 CanLII 9100 (AB KB), at para. 365 [**BOA TAB 29**], emphasis added (var. on other points, 1999 ABCA 14 [**BOA TAB 30**]).

157. “Fraud” also sometimes refers to the torts of civil fraud and fraudulent misrepresentation, the elements of which are as follows:

“(1) a false representation made by the defendant; (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness); (3) the false representation caused the plaintiff to act; and (4) the plaintiff’s actions resulted in a loss.”²⁷⁶

158. Starting in or around 2011, or perhaps even earlier,²⁷⁷ Sunterra Canada and Sunwold Canada began engaging in what they call an “account coverage practice” with Sunterra US and Sunwold US respectively, which involved a “practice of moving funds between accounts to cover shortfalls.”²⁷⁸

159. It is seemingly innocuous explanations such as these and others discussed below that hid the wrongful aspects of the Respondents’ conduct in this matter. There is nothing wrong *per se* with moving funds between accounts to cover shortfalls. Moving funds from one bank account (e.g., a savings account or line of credit, referred to as “**Account “A”**”) to another (e.g., a chequing account, referred to as “**Account “B”**”) when Account “B” will become overdrawn is perfectly acceptable PROVIDED THAT there are sufficient funds in Account “A”, from which the funds are drawn to cover the deposit to Account “B”. This is also perfectly acceptable whether the funds are coming from another account at the same institution or an account at another institution such as Compeer. However, the key is the proviso - there must be sufficient funds in the account from which the funds are drawn to cover the deposit to the other account. To be clear, conditional credit is not sufficient funds.

160. A problem arises when there are not sufficient funds in Account “A” to cover the deposit to Account “B” AND then to cover the shortfall in Account “A”, one writes another cheque from Account “B” to cover the upcoming shortfall in Account “A”. There are obviously insufficient funds in Account “B”, because one had to write a cheque to cover the initial shortfall in the first place. But the cheque writer knows that it will take some time for each cheque to clear and, in the meantime, both accounts will appear to have the same money in them because the financial institutions will conditionally credit the account into which the deposit is made until the cheque clears. If the

²⁷⁶ *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, at para. 21 [**BOA TAB 23**]; *Precision Drilling Canada Limited Partnership v Yangarra Resources Ltd*, 2017 ABCA 378, at para. 21 [**BOA TAB 55**].

²⁷⁷ Questioning of Thompson by Compeer, at 14:1-7; Questioning of Uffelman by Compeer, at 25:22-26:3.

²⁷⁸ Uffelman Affidavit, at para. 16.

accounts are at different financial institutions in different countries (as was the case here), it may take days before the cheque clears. If timed correctly, the exchange of cheques from one account to another and back again can go on unnoticed forever. That is unless there is a slip and one group of cheques is not deposited in time - then the whole scheme collapses. That is cheque kiting and that is what happened in this case.

161. In the words of Ray Price to NBC when the Kiting Scheme was exposed:

“...We would pay from the U.S. to Canada, but in order to keep the U.S. entities with the appropriate cash, we would move money back down to the U.S. on an “advance” basis. It obviously grew beyond what it was meant to be as we continued to make sure that both entities had the money they needed. I apologize for what is ended up happening.”²⁷⁹

d) Cheque kiting is inherently fraudulent

162. Courts have consistently held that cheque kiting, wherein an individual knowingly writes a cheque with insufficient funds to cover the funds withdrawn, is an inherently fraudulent activity.²⁸⁰ This results from the impugned parties’ knowledge that there are insufficient funds available to satisfy a cheque when it is written, combined with the use of conditional credit which arises when the cheque is deposited; in essence, a representation is made that sufficient funds exist to satisfy the cheque despite the representor knowing that this is not the case. In fact, as described below, the *Bills of Exchange Act* confirms that this representation is made.

e) The Kiting Scheme is fraudulent

163. The evidence, as a whole, shows that:

- (a) the Sunterra Group, Ray Price, Uffelman, and Thompson consistently represented to NBC that they had sufficient funds to cover each cheque that was drawn on, and deposited into, the Canadian Kiting Entities’ NBC accounts, including:
 - (i) in July 2023, before the Kiting Scheme unravelled in February 2025, when explaining to Depoe that the reason for the kited cheques was because “with no U.S. operating line in Canada and no Canadian operating line in

²⁷⁹ Pai Affidavit #2, at Exhibit “CCC” – Email from Ray Price to Raymond Pai and others, February 14, 2025.

²⁸⁰ *Royal Bank of Canada v. Hejna*, 2013 ONSC 1719 (CanLII) at paras. 86-92 [BOA TAB 64]; *Location Bristar Idealease Inc. (Syndic de)*, 2012 QCCS 211 (CanLII) at paras. 3, 5, 7-9 [BOA TAB 44].

the U.S. we are trying to manage both as best we can without doing CDN to USD and USD to CDN dollar exchanges”;²⁸¹ and

(ii) in February 2025, after the Kiting Scheme was uncovered, when explaining to NBC that, for tax reasons, the US Kiting Entities would pay the Canadian Kiting Entities, who would then move funds back to the US Kiting Entities on an “advance” basis, to ensure all of the Kiting Entities “had the cash they needed”;²⁸² and

(iii) implicitly, by virtue of the applicable *Bill of Exchange Act* provisions, as discussed in more detail below;

- (b) the Respondents actually knew they did not have sufficient funds to cover each Kited Cheque;²⁸³
- (c) on the basis of the Respondents’ representations that the Canadian Kiting Entities’ NBC accounts had sufficient funds, and as part of its duty as a bank to honour cheques, NBC acted by cashing the cheques and providing conditional credit; and
- (d) as a result, NBC suffered losses, and faces the prospect of additional claims by Compeer, as detailed further below.

164. The record contains clear evidence, capable of only one interpretation, that shows beyond a doubt that the Canadian Kiting Entities engaged in cheque kiting.²⁸⁴ The evidence is that:

- (a) Uffelman and Thompson would review daily account statements and determine which of the Kiting Entities’ accounts required funds to stay within their account limits, and the amount required to do so;²⁸⁵

²⁸¹ Depoe Affidavit, at Exhibit “3”.

²⁸² Ray Price Affidavit, at Exhibit “HH”.

²⁸³ Questioning of Ray Price by Compeer, at 49:9-19, 57:22-59:8, 60:3-61:6; Questioning of Thompson by Compeer, at 16:1-17:9; Questioning of Uffelman by Compeer, at 27:11-17; Uffelman Affidavit, at Exhibit “C” [Bates No. DU0012].

²⁸⁴ The standard of proof, in all civil cases, is proof on a balance of probabilities (see *F.H. v. McDougall*, 2008 SCC 53, at para. 49 [**BOA TAB 39**]).

²⁸⁵ Questioning of Thompson by Compeer, at 19:7-17, 27:14-24 and 27:25-28:7; Questioning of Thompson by NBC, at 13:1-10.

- (b) Uffelman and Thompson, at the direction of Ray Price, would arrange for cheques to be written to each Kiting Entities' account that required funds to ensure there were no shortfalls or overdrafts in any account;²⁸⁶
- (c) at times, each Kiting Entities' account would require funds on the same day, necessarily implying that there were not sufficient funds to satisfy the cheques that were written between them;²⁸⁷
- (d) the Kiting Entities purposefully drew cheques in amounts under \$1 million, to avoid any delay in clearing the cheques or additional scrutiny;²⁸⁸
- (e) the Kiting Entities purposefully deposited each cheque on an individual deposit slip;²⁸⁹
- (f) although wire transfers were available,²⁹⁰ and were used by the Kiting Entities for other transactions, the Kiting Entities continued to use physical cheques to circulate funds between the Kiting Accounts;²⁹¹
- (g) there was a known delay between when the cheques were conditionally credited to the accounts and when the funds cleared, creating conditional credit;²⁹²
- (h) if the "account coverage practice" did not continue, the Kiting Entities would be in a shortfall or overdraft position, as applicable;²⁹³
- (i) when there were any additional delays in clearing or delivering the cheques, the accounts would actually go into overdraft;²⁹⁴ and

²⁸⁶ Questioning of Thompson by Compeer, at 28:14-20, 32:5-17; Questioning of Thompson by NBC, at 16:19-17:12.

²⁸⁷ Uffelman Affidavit, Exhibit "C" [Bates No DU0012]; Thompson Affidavit, at Exhibits "A", "B", and "C".

²⁸⁸ Ray Price Affidavit, at para. 84; Questioning of Ray Price by Compeer, at 42:5-19 and 43:10-19.

²⁸⁹ Thompson Affidavit, at Exhibit "B"; Craig Thompson Response to Undertaking 1 (NBC) [Bates Nos. UR000005 – UR000036].

²⁹⁰ Chan Affidavit #2, at paras. 9, 10(d)-(e).

²⁹¹ Questioning of Thompson by Compeer, at 36:16-37:4; Questioning of Uffelman by Compeer, at 44:12-19 and 45:8-21.

²⁹² Questioning of Thompson by NBC, at 17:13-17; Questioning of Thompson by Compeer, at 18:25-19:6; Questioning of Uffelman by Compeer, at 43:14-19; Questioning of Ray Price by Compeer, at 38:24-39:21, 40:17-41:3.

²⁹³ Questioning of Thompson by Compeer, at 16:1-7, 16:14-17:9; Questioning of Uffelman by Compeer, at 27:11-17.

²⁹⁴ Questioning of Ray Price by Compeer, at 37:18-38:2.

- (j) the Kiting Entities used the conditional credit to ensure there was a sufficient balance in each account.²⁹⁵

165. When questioned by Compeer and NBC as to the reason for the cheques, the Respondents' explanation based on alleged accounting purposes does not withstand scrutiny. Specifically:

- (a) Uffelman and Thompson confirmed that the amounts of the kited cheques are not related to any particular commercial activity or transaction;²⁹⁶
- (b) Thompson would, on a daily basis, starting from the total value required to be deposited into each Kiting Account, determine the amounts and values of each of the kited cheques, each for under \$1 million and none of which were duplicate amounts, that would add up to the total amount required to be deposited into each Kiting Account to avoid a shortfall or overdraft, and which amounts were not tied to any commercial transaction or chosen for any specific purpose;²⁹⁷
- (c) Uffelman, Thompson and Ray Price have confirmed that the purpose of the Kiting Scheme (or "account coverage practice") was to avoid overdrafts or shortfalls in each Kiting Account,²⁹⁸ not tax reasons, as previously repeatedly represented;²⁹⁹
- (d) the Respondents employed tactics to keep NBC unaware of the Kiting Scheme, including by: (i) giving incomplete or misleading answers to a particular inquiry raised by NBC's AML department in July 2023;³⁰⁰ (ii) withholding financial statements or submitting them late and in an incomplete fashion to NBC;³⁰¹ and (iii) deliberately using physical cheques and strategically organizing the size,

²⁹⁵ Questioning of Ray Price by Compeer, at 49:14-22, and 51:15-18.

²⁹⁶ Questioning of Thompson by Compeer, at 32:22-33:4; Questioning of Uffelman by NBC, at 21:1-8, 30:15-31:3, 31:18-19.

²⁹⁷ Questioning of Thompson by Compeer, at 32:22-33:4, 40:9-41:17.

²⁹⁸ Questioning of Thompson by Compeer, at 28:14-20; Questioning of Thompson by NBC, at 16:19-17:7; Questioning of Uffelman by Compeer, at 42:8-43:3; Questioning of Ray Price by Compeer, at 35:22-36:5.

²⁹⁹ Ray Price Affidavit, at para. 55 and 83(b); Questioning of Rue by Sunterra, at 125:10-19; Rue Affidavit #1, at para. 30(d); Depoe Affidavit, at paras. 40(c), 42 and Exhibit "3"; Pai Affidavit #2, at para. 64 and Exhibit "CCC" (Email from Ray Price to Raymond Pai and others, February 14, 2025).

³⁰⁰ Depoe Affidavit, at paras. 40(c), 42 and Exhibit "3".

³⁰¹ Depoe Affidavit, at para. 19, 20, and 45; Questioning of Ray Price by NBC, at 39:14-16, 42:10-16, and 42:23-43:18; Questioning of Depoe by Sunterra, at 10:13-25.

number, and deposit methods of these cheques to limit scrutiny and obscure the absence of legitimate business purpose behind the kiting activity;³⁰²

- (e) the amount and volume of the kited cheques does not match with the volume of livestock that was expected to be sold, from the Canadian Kiting Entities, to the US Kiting Entities, or with the total value of the business, as demonstrated by:
 - (i) the Sunterra Group confirming that Sunwold US purchased approximately 5,500 to 6,000 piglets each week, from Lariagra Canada and Sunwold Canada;³⁰³
 - (ii) the total annual US division gross revenue for the US Kiting Entities, which was estimated was estimated, by the Sunterra Group, to be approximately \$64 million, and estimated EBITDA was \$11.4 million, in 2025,³⁰⁴ and
- (f) although the Sunterra Group could have used, for example, wire transfers or single cheques in the actual denomination required for inter-company transfers, either of which would have involved less administrative effort for both the Sunterra Group, and NBC and Compeer, they chose to continue to circulate funds through the Kiting Accounts by way of individual cheques, in amounts under \$1 million. This lowered the amount of scrutiny applied to the kited cheques. In addition, wire transfers require that the actual amount of the funds be available in the source account (i.e., conditional credit cannot be used to satisfy the transfer of funds). As wire requires immediately available funds, and cheques in excess of \$1 million are both subject to additional scrutiny and to holds, the use of smaller cheques is the only way the Kiting Scheme can be carried out and concealed.

166. The Sunterra Group has maintained its position in these proceedings, including by:

- (a) attributing to NBC (and Compeer) responsibility for not identifying the fraud at an earlier stage, and for accepting explanations provided by the Sunterra Group's senior executives during initial inquiries; and

³⁰² Thompson Affidavit, at paras. 10, 18, 20; Questioning of Thompson by Compeer, at 28:14-20, 36:1-7, 37:5-17, 40:9-41:17, and 42:3-43:23; Questioning of Thompson by NBC, at 18:14-19:15, 24:12-16, 33:6-22 and 35:1-5.

³⁰³ Art Price Affidavit, at para. 12; Ray Price Affidavit, at Exhibit "II" [Bates No. RP0555].

³⁰⁴ Art Price Affidavit, at Exhibit "O" [Bates No. AFFAP000245].

- (b) suggesting that NBC and Compeer did not oppose the Kiting Scheme, and further contending that NBC and Compeer implicitly agreed to extend conditional credit (beyond the explicitly extended credit from the Commitment Letter) to the Sunterra Group — exceeding at one point USD\$57,000,000³⁰⁵ — without undertaking due diligence, securing collateral, or charging interest on this conditional credit. In Compeer's instance, the operation of the Kiting Scheme led to Compeer paying interest to the Sunterra Group on the apparent positive balances in the US Kiting Entities Compeer Accounts created by the scheme.³⁰⁶

167. The Sunterra Group claims to have always been transparent, yet in every affidavit, its representatives invoke section 5(2) of the *Canada Evidence Act*.³⁰⁷

168. The Sunterra Group, directed by Ray Price, carried out a fraudulent Kiting Scheme and concealed it from NBC and Compeer for years. Neither Uffelman nor Thompson deny the scheme, but claim they followed Ray Price's orders.³⁰⁸

169. The express and deemed representations and warranties under the Business Account Agreements, corporate authorizations, and *Bills of Exchange Act* (Canada) could only be accurate because of the Kiting Scheme.

f) Implicit Representations under the *Bills of Exchange Act* were False

170. As detailed above, the Kiting Scheme was premised on the availability of conditional credit or float provided by the banks in response to the deposit of a cheque, available for use by the Kiting Entities prior to final settlement of that cheque – which would otherwise be returned for

³⁰⁵ Rue Affidavit #1, at para. 56; Questioning of Rue by Sunterra, at 82:3-13, 84:5-7, 84:19-24; Grosland Affidavit, at paras. 27-28, and 34.

³⁰⁶ Ray Price Affidavit, at para. 103; Questioning of Ray Price by Compeer, at 52:13-54:21.

³⁰⁷ *Canada Evidence Act*, R.S.C. 1985, c. C-5 at s. 5(2):

“Answer not admissible against witness

(2) Where with respect to any question a witness objects to answer on the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if but for this Act, or the Act of any provincial legislature, the witness would therefore have been excused from answering the question, then although the witness is by reason of this Act or the provincial Act compelled to answer, the answer so given shall not be used or admissible in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of that evidence or for the giving of contradictory evidence.” **[BOA TAB 5]**

³⁰⁸ Questioning of Thompson by Compeer, at 14:8-24; Questioning of Uffelman by Compeer, at 51:8-21; Questioning of Uffelman by NBC, at 24:11-25:16.

insufficient funds. The Kiting Entities circulated cheques between their accounts with NBC and Compeer in a purported “account coverage practice” which maintained artificial account balances to cover what otherwise would have been a shortfall or overdraft position in the accounts.³⁰⁹ The fact that the Kiting Entities were at all times aware of the reality of insufficient funds in the NBC Accounts, and engaged in drawing and endorsing cheques in any event, amounts to a breach of the implicit representations under sections 129 and 132 of the *Bills of Exchange Act*.

171. Sections 129 and 132 of the *Bills of Exchange Act* (Canada) impose certain duties on the drawer and endorser of a “bill”, as follows:

Drawer	Obligation du tireur
129 The drawer of a bill ³¹⁰ by drawing it	129 La personne qui tire une lettre, ce faisant :
(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken; and	(a) promet que, sur présentation en bonne et due forme, elle sera acceptée et payée à sa valeur, et s’engage, en cas de refus, à indemniser le détenteur ou tout endosseur forcé de l’acquitter, si les formalités obligatoires à la suite d’un refus ont été dûment remplies;
(b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.	(b) ne peut opposer au détenteur régulier l’existence du preneur et sa capacité, à ce moment-là, d’endosser.
Endorser	Obligations de l’endosseur
132 The endorser of a bill by endorsing it, subject to the effect of any express stipulation authorized by this Act,	132 Sous réserve des stipulations expresses autorisées par la présente loi, la personne qui endosse une lettre :
(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;	a) promet que, sur présentation en bonne et due forme, elle sera acceptée et payée à sa valeur, et s’engage, en cas de refus, à indemniser le détenteur ou l’endosseur postérieur forcé de l’acquitter, si les formalités obligatoires à la suite d’un refus ont été dûment remplies;
(b) is precluded from denying to a holder in due course the genuineness and regularity in	b) ne peut opposer au détenteur régulier l’authenticité et la régularité, à tous égards, de

³⁰⁹ Questioning of Ray Price by Compeer, at 49:9-19; Questioning of Thompson by Compeer, at 16:1-7, 16:14-17:9; Questioning of Uffelman by Compeer, at 27:11-17.

³¹⁰ Section 165 of the *Bills of Exchange Act* provides that the sections concerning bills payable on demand also apply to cheques [BOA TAB 3].

all respects of the drawer's signature and all previous endorsements; and	la signature du tireur et de tous les endossements antérieurs;
---	--

(c) is precluded from denying to his immediate or a subsequent endorsee that the bill was, at the time of his endorsement, a valid and subsisting bill, and that he had then a good title thereto.	c) ne peut opposer à son endossataire immédiat ou à un endossataire postérieur le fait que la lettre, au moment de son endossement, était valide et avait une existence légale, et qu'il avait alors un titre valable. ³¹¹
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172. The implicit representation, or promise, included in both sections 129 and 132 is that the drawer and endorser of the cheques has funds available such that the cheque will be accepted, or that the drawer or endorser will otherwise compensate the holder in the event of dishonour.

173. The fact that there were, at all material times, insufficient funds to cover the amounts that the Kiting Entities were moving between their NBC and Compeer bank accounts constitutes a breach of these implicit representations by the Kiting Entities. The cheques were only able to clear because of the maintenance of an artificial balance in the relevant accounts of the Kiting Entities. Indeed, but for the Kiting Scheme, at no time could an Kiting Entity, upon drawing and endorsing a cheque from its NBC Account, guarantee that the cheque would be accepted and paid to the holder. Further, at no time could a Canadian Kiting Entity, upon drawing or endorsing a cheque from its NBC Account, guarantee that if the cheque were dishonoured, it could pay the dishonoured amount as required.

174. The Kiting Entities knew or ought to have known that they were in breach of these implicit representations during each cycle of the Kiting Scheme, as the Kiting Scheme is premised upon the fact of insufficient funds to cover the face value of the issued cheques. The entire purpose of the Kiting Scheme was to maintain a fictitious bank balance to ensure that the fact of insufficient funds did not result in an overdraft or shortfall in the accounts.

g) Punitive and Exemplary Damages

175. Punitive damages should be awarded in favour of NBC. In discussing awards of punitive damages, courts have held that:

“...an assessment of punitive damages requires an appreciation of: (a) the degree of misconduct; (b) the amount of harm caused; (c) the availability of other remedies; (d) the quantification of compensatory damages; and (e) the adequacy of compensatory damages to achieve the objectives of retribution, deterrence, and denunciation. These factors must

³¹¹ *Bills of Exchange Act*, ss. 129 and 132 [BOA TAB 3].

be known to ensure that punitive damages are rational and to ensure that the amount of punitive damages is not greater than necessary to accomplish their purposes.”³¹²

176. The Kiting Scheme:

- (a) was planned and deliberately executed by the Kiting Entities, Ray Price, Uffelman, and Thompson;
- (b) occurred over a long period of time;
- (c) was intentionally concealed by Ray Price, Uffelman, Thompson, and the corporate Respondents; and,
- (d) was fraudulent conduct, from which the Kiting Entities, and the Sunterra Parties as a whole, benefitted.

177. As a result of the fraudulent and high-handed conduct of the Sunterra Entities, NBC is entitled to recover punitive and exemplary damages.

178. The scope of the Kiting Scheme is such that the goals of deterrence and denunciation must be considered when determining an award of punitive damages against the Respondents. An appropriate award of punitive damages, meeting these goals, should motivate better behaviour in the future. In the circumstances, an award of \$1,000,000 in punitive damages is appropriate.

h) The Canadian Kiting Entities have no defence

i. A “belief that it will all work out” is not a defence to fraud

179. A belief that the victim of the fraud will not suffer a loss is not a defence to fraud:

“[22] A sincere belief or hope that no risk or deprivation would ultimately materialize does not establish an absence of fraud:

“A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or personal code, he or she was doing nothing wrong or because of a sanguine belief that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people’s property at risk will not ultimately result in actual loss to those persons. If the offence of

³¹²

Midwest Amusement Park, LLC v. Cameron Motorsports Inc., 2018 ONSC 4549, at para. 103 [BOA TAB 47].

fraud is to catch those who actually practise fraud, its mens rea cannot be cast so narrowly as this.”³¹³

180. Ray Price testified that his belief was that the Kiting Scheme would be resolved and no longer necessary as a result of, among other things, increasing legitimate revenues and applying insurance proceeds which were paid in respect of the Trochu meat processing plant.³¹⁴ This belief, no matter how sincerely held, does not militate against a finding of fraud.

ii. **“You should have caught me earlier” is not a defence to fraud**

181. There is no one-size-fits-all definition or approach to cheque kiting or identifying kiting schemes. Cheque kiting can occur on vastly different scales, over a number of time periods, by numerous different actors. Some cheque kiting schemes unravel within a few months,³¹⁵ while others occur over a number of years.³¹⁶

182. The Respondents have alleged that NBC either knew about the Kiting Scheme and accepted it, or should have detected it. As stated in *Royal Bank of Canada v. Hejna*:

“[t]he defendant's defence boils down to this: they failed to catch me, and therefore my conduct should be excused”.³¹⁷

183. A party cannot consent or acquiesce to fraud, even in the case of negligence by that party:

“[89] Although there may be some rare circumstances in which persons found liable in fraud may take advantage of and rely upon the provisions of the *Negligence Act*³¹⁸ or any common law right to seek contribution and indemnity from other parties, in my opinion the preponderance of authority supports the proposition that want of care is no defence to fraud (see: *United Services Fund v. Richardson Greenshields Canada Limited* (1988), 1988 CanLII 2955 (BC SC), 22 BCLR 322 (BCSC); *Ambico Ltd. v. Loeb Inc. et al.*, 1993 CanLII 8550 (ON CA), 13 O.R. (3d) 423 (Ont. C.A.)). It would be wholly unjust and highly inappropriate in this case to allow these Defendants to shift any portion of liability for their fraudulent conduct onto the Plaintiffs or any of the other

³¹³ *Siegel et al v. Hibbert et al*, 2012 ONSC 2767, at para. 22 [BOA TAB 68], quoting *R. v Thérout*, [1993] 2 S.C.R. 5 [BOA TAB 60].

³¹⁴ To be clear, NBC was the first-loss payee on the Trochu insurance policy.

³¹⁵ See, e.g., *R. v. Kodimiyala*, 2020 BCCA 275 [BOA TAB 58], where the cheque kiting scheme occurred during the period of one month (November 2014) and involved the deposit of four cheques.

³¹⁶ See, e.g., *Peek v. The Queen*, 2007 TCC 152 (CanLII) [BOA TAB 52], where the cheque kiting went undetected for seven years, and *McBride's Limited v. Rooke*, 1941 CanLII 198 (SK KB) [BOA TAB 45] where the kiting occurred over a period of three years and was undetected by auditors.

³¹⁷ *Royal Bank of Canada v. Hejna*, 2013 ONSC 1719 at para. 54 [BOA TAB 64].

³¹⁸ *Negligence Act*, R.S.O. 1990, c. N.1 [BOA TAB 9]. The statute is the Ontario equivalent of the *Tort-Feasors Act* (Alberta).

Defendants. Their culpability for the Plaintiffs' losses is of such magnitude that it wholly extinguishes any argument that some want of care on the part of the Plaintiffs or any of their co-Defendants should give rise to contribution. Accordingly, the Pierringer Agreement will have no bearing upon the liability of those remaining Defendants other than to reduce the amount of the judgment to reflect the rule against any double recovery by the Plaintiffs of their losses and damages."³¹⁹

iii. NBC could not have caught the Canadian Kiting Entities earlier

184. It simply does not lie in the Canadian Kiting Entities' mouths to assert that NBC should have caught them earlier. In addition, the facts of this case entirely undermine the Respondents' proposition.

185. The Sunterra Group directors (Art Price and Glen Price) testified that they knew nothing of the Kiting Scheme, or what they call the account coverage practice, until February 2025, when they were alerted due to the Compeer and NBC account freezes.³²⁰ This is even though these individuals owed statutory and fiduciary duties to the corporations.

186. Compeer did not know about the Kiting Scheme until the scheme collapsed and a massive USD\$80 million overdraft was recorded in the US Kiting Entities' Compeer Accounts.

187. The Sunterra Group's auditor, KPMG, did not know about the Kiting Scheme despite undertaking at least two audits of the Group.

188. The Kiting Scheme was obfuscated, including by the various explanations that were given by Ray Price to NBC (and to Compeer).

189. As discussed in this Brief in Part 2 (Facts), Section 3 (Explanations About The Nature and Complexity of Sunterra's Operations):

- (a) The relationship between the Sunterra Group and NBC began in 2010 and with Compeer since at least 2005.³²¹

³¹⁹ *Century v New World Eng. Corp.*, 2013 ONSC 2140 (CanLII) at para. 89 [BOA TAB 25].

³²⁰ Affidavit of Glen Price, sworn September 29, 2025, filed in NBC Claims Proceedings, at para. 5; Affidavit of Arthur Price, sworn September 5, 2025, filed in Compeer Action, at para. 46; Art Price Affidavit, at para. 29; Questioning of Art Price by NBC, at 19:7-21:11.

³²¹ Grosland Affidavit, at para. 19.

- (b) The Sunterra Group was recognized within the industry for its farming and business practices, and this recognition was known to relevant employees of NBC and Compeer.³²²
- (c) Ray Price and Art Price were prominent business people and directors of major Alberta business corporations including Husky and Fortis.
- (d) The Respondents' evidence in these proceedings discloses,³²³ throughout the relationship between the Sunterra Group and NBC, the Respondents stressed the complications and complexities of their intertwined, cross-border business operations and how differential tax treatment in the US and Canada gave rise to complicated accounting and cash management issues.
- (e) Ray Price deposed that in many conversations he personally informed NBC of the complex business and that "There has always been a substantial amount of activity across the border between the Canadian companies and the US companies, such as, for example, isoweans and feeder hogs management support and swine expertise from Canada to the US, as well as the purchase and sale of the isowean and feeder pigs, between the companies in the Sunterra Group."³²⁴ He also deposed that "The Sunterra Group involves a complex array of commercial arrangements and transactions between the related companies in the Group. These arrangements give rise to the constant flow of revenue between entities"³²⁵ including in respect of:
 - (i) "the flow of funds" to pay for "the flow of piglets" between the Canadian Kiting Entities and "the two "wean to finish" entities in the US", the US Kiting Entities;³²⁶
 - (ii) "the flow of funds" for "all aspect of pig management, including for example, rent, feed, medications, plant and equipment, employees, third party suppliers of goods and services of various kinds";³²⁷

³²² Rue Affidavit #1, at paras. 10 and 47.

³²³ Ray Price Affidavit, at paras. 6, 7, 42-44, 53 and 54; Art Price Affidavit, at paras. 5, 11, 14, 25 and 26.

³²⁴ Ray Price Affidavit, at para. 53.

³²⁵ Ray Price Affidavit, at para. 54.

³²⁶ Ray Price Affidavit, at para. 54(a).

³²⁷ Ray Price Affidavit, at para. 54(a).

(iii) “transportation of pigs to the US”;³²⁸

(iv) “accounting, insurance and other business requirements...requiring a flow of funds between them.”³²⁹

(f) Other explanations given in Ray Price’s evidence for the “flow of funds between the companies in the US and Canada” included “the difference between cash accounting used in respect of taxation of the Canadian Hog Farm Entities, and accrual accounting which is required to be used in the US for the US Hog Farm Entities”.³³⁰

190. Some of the evidence given by Art Price was to substantially similar effect – “The Sunterra business is very complicated”³³¹ and there were a great number of transactions between the Canadian Kiting Entities and the US Kiting Entities concerning pig sales, pig services and pig management.³³²

191. All of these explanations provided to NBC during the course of their relationship with the Sunterra Group, and now in the evidence before this Court, support the notion that there should be a great number of cheques passing between the Kiting Entities.

192. The problem is that none of these explanations actually account for the volume of cheques or the billions of dollars exchanged between the Canadian Kiting Entities and the US Kiting Entities.

193. Even the title that the Respondents give to their conduct – the “account coverage practice” – is a deflection. As noted above, it is seemingly innocuous explanations such as these and others discussed below that hid the wrongful aspects of the Respondents’ conduct in this matter.

194. It is well-known that fraud can be committed by omitting critical information that makes otherwise true statements false and misleading.³³³

³²⁸ Ray Price Affidavit, at para. 54(a).

³²⁹ Ray Price Affidavit, at para. 54(a).

³³⁰ Ray Price Affidavit, at para. 55.

³³¹ Art Price Affidavit, at para. 5.

³³² Art Price Affidavit, at paras. 11, 14, 25 and 26.

³³³ *R. v. Olan*, 1978 CanLII 9 (SCC) [**BOA TAB 59**]; *R. v. Thérout*, 1993 CanLII 134 (SCC) [**BOA TAB 60**]. Fraud can be committed by providing information that, while technically true, omits material facts, thereby creating a false impression.

iv. “You should not have believed me” is not a defence to fraud

195. Similarly, it is not a defence to suggest that the victim of the fraud should not have believed the misrepresentations of the fraudster:

“[16] The gullibility of the plaintiffs in believing the misrepresentations of the defendant, or lack of care on their part in failing to make an independent investigation, is no defence to an action based on fraud. It does not lie in the mouth of one who makes a statement on which another relies to say that the other was careless in believing him.”³³⁴

196. This is a long established principle:

“When once it is established that there has been any fraudulent misrepresentation or wilful concealment by which a person has been induced to enter into a contract, it is no answer to his claim to be relieved from it to tell him that he might have known the truth by proper inquiry. He has a right to retort upon his objector, ‘You, at least, who have stated what is untrue, or have concealed the truth, for the purpose of drawing me into a contract, cannot accuse me of want of caution because I relied implicitly upon your fairness and honesty’.”³³⁵

197. When questioned in 2023 by both NBC and Compeer as to the reason for the volume and amount of the kited cheques, Ray Price provided explanations.

198. Previously, concerns about inter-company transfers among the Kiting Entities were raised, but explanations from Ray Price on behalf of the Sunterra Group were accepted by staff at Compeer and NBC. The context for these prior enquiries included:

- (a) explanations, given primarily by Ray Price to NBC staff, about the nature and complexity of the Sunterra Group’s business operations;
- (b) the Sunterra Group's worsening financial situation during and after COVID-19, calling for prioritization of other urgent issues when concerns over cheques emerged; and
- (c) ongoing explanations from Ray Price and senior Sunterra management that seemed credible and were accepted by NBC and Compeer.

³³⁴ *Siegel et al v. Hibbert et al*, 2012 ONSC 2767, at para. 16 [BOA TAB 68], citing *Mikealice Management Corp. and Dr. Michael Laiv. De Thomas Financial Corp. et al*, 2003 CanLII 43753 (ON SC) [BOA TAB 48].

³³⁵ *Central R. Co. of Venezuela v. Kisch (1867)*, L.R. 2 H.L. 99, at pp. 120-21 [BOA TAB 24], as cited in *MikeAlice Management Corp. v. De Thomas Financial Corp.*, 2003 CanLII 43753 (ON SC), at para. 80 [BOA TAB 48].

199. The Sunterra Group and the Price family were known and respected in the local business and farming community on both sides of the border.³³⁶ The Price family members held additional respectable positions in the community. For example, in addition to being the president and chief officer of the Kiting Entities, Ray Price sat on the Fortis Alberta Board,³³⁷ and in addition to his position as chairman of the Sunterra Group, Arthur Price has been a corporate officer of various entities, including but not limited to, Husky Oil Ltd.³³⁸ The Sunterra Group's operations have a "long and respected history in Canada".³³⁹ In the Sunterra Group's own description:

"the Price family has built and maintained significant goodwill with suppliers, employees, and customers alike, cultivating a brand that is synonymous with high quality and reliability."³⁴⁰

3. Business Account Agreements

a) Express Terms

200. As set out in the Facts section of this Brief, commencing at paragraph 16:

- (a) the Canadian Kiting Entities each agreed to particular terms and conditions set out in the Business Account Agreements that governed the operation of their bank accounts at NBC; and
- (b) all of the Respondents, including the personal Respondents were aware of such terms including because each of the personal Respondents were Authorized Signing Officers appointed under the Business Account Agreements.

201. The scope of the Authorized Signing Officers was set out in the Business Account Agreements:

- (a) "Those persons named in the Application 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 is/are authorized to undertake the following activities, subject to the conditions herein:"

³³⁶ Rue Affidavit #1, at paras. 10, 33; Responses to Undertakings Given by Alexandre LeBlanc at Questioning Held On October 23, 2025, at Undertaking No. 8.

³³⁷ Depoe Affidavit, at Exhibit "3" [Bates No. 14].

³³⁸ Affidavit of Arthur Price, sworn October 8, 2025, filed in NBC Claims Proceedings, at para. 4.

³³⁹ Art Price Affidavit, at para. 4.

³⁴⁰ Art Price Affidavit, at para. 6.

- (i) “to sign, endorse, make, draw, and/or accept all Instruments 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”.³⁴¹

202. There is no authority provided in the foregoing to undertake a fraudulent Kiting Scheme. Prior cases concerning cheque kiting that are binding on this Court have expressly held that corporate officers engaging in this wrongful behaviour were not authorized to do so.³⁴²

203. A further point to note about the terms of the Business Account Agreements is that NBC was expressly authorized to dishonour cheques and when cheques were dishonoured, the Canadian Kiting Entities were required to pay NBC with interest:

- (a) NBC is “authorized to debit the Account with ... the amount of any Instrument payable by the Business”, and “the amount of any Instrument cashed or negotiated by [NBC] for the Business or credited to the Account for which payment is not received by [NBC] on a final irrevocable basis, or is reversed, in whole or in part, and whether or not such nonpayment or reversal complies with the rules of the Canadian Payments Association or other clearing organization for any reason, and with the amount of any other of the indebtedness or liability of the Business to [NBC] and with any expenses incurred by [NBC] in connection with paying of a dishonoured or unpaid Instrument”;³⁴³

³⁴¹ Pai Affidavit #2, at Exhibit “R”, ss. 19(a) and (c) [Bates Nos. 2024 and 2031].

³⁴² *Corporation Agencies, Limited v. Home Bank of Canada*, 1927 CanLII 471 (UK JCPC) **[BOA TAB 35]**.

³⁴³ Pai Affidavit #2, at Exhibit “R”, s. 2 [Bates Nos. 2020 and 2027].

- (b) 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 Account”,³⁴⁴
- (c) If the account of the Business becomes overdrawn for any reason, “the Business will pay to [NBC], on demand, the amount by which the Account is overdrawn, together with interest at the rate indicated in [NBC’s] Banking Charges Guide for Business Accounts and Related Services, as amended from time to time. Interest will be calculated daily.”³⁴⁵

204. It should be noted also that the Canadian Kiting Entities breached the terms of the Business Account Agreements including because they failed to diligently monitor and supervise the Authorized Signing Officers at issue (Ray Price, Uffelman and Thompson):

- (a) Sunterra Canada and Sunwold Canada (defined as the “**Business**” in their respective Business Account Agreements) 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”,³⁴⁶
- (b) 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.”,³⁴⁷
- (c) 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”.³⁴⁸

205. Arthur Price (Chairman) and Glen Price (a director) testified that they did not even know about the Kiting Scheme (or “account coverage practice” as they called it) until it was brought to their attention in early February 2025, in the case of Arthur Price, when Compeer froze the US

³⁴⁴ Pai Affidavit #2, at Exhibit "R", s. 3 [Bates Nos. 2021 and 2027-28].

³⁴⁵ Pai Affidavit #2, at Exhibit "R", s. 3 [Bates Nos. 2021 and 2027-28].

³⁴⁶ Pai Affidavit #2, at Exhibit "R", s. 19 [Bates Nos. 2024 and 2031].

³⁴⁷ Pai Affidavit #2, at Exhibit "R", s. 19 [Bates Nos. 2024 and 2031].

³⁴⁸ Pai Affidavit #2, at Exhibit "R", s. 121 [Bates Nos. 2025 and 2032].

Kiting Entities' Compeer Accounts, and in mid-February 2025 in the case of Glen Price, when NBC froze the Canadian Kiting Entities' NBC accounts.³⁴⁹

206. The failure of the Canadian Kiting Entities to diligently monitor and supervise the conduct and work of all Authorized Signing Officers enabled them to undertake the Kiting Scheme. This is example of another wrongful act that leads to statutory and legal and equitable indemnity.

207. But separately in terms of the Canadian Kiting Entities' obligations to indemnify NBC on a legal or equitable basis as set forth in cases such as *Addison & Leyen ABCA*³⁵⁰, the net effect of the provisions of the Business Account Agreements is that the Canadian Kiting Entities agreed that NBC would have no responsibility for, losses caused by misuse of the Canadian Kiting Entities' NBC Accounts and for the deposit of dishonoured cheques, whether or not the applicable authorized signing officer who signed each cheque was acting with authorization from the applicable Canadian Kiting Entity. The foregoing terms and the following terms are thus directly applicable to NBC's claims for indemnification:

- (a) NBC "shall not be liable in any circumstances for any loss, costs or damages whatsoever arising from the wrongful acceptance of a cheque or from the wrongful refusal of [NBC] to honour a cheque which is drawn by the Business...",³⁵¹
- (b) Sunterra Canada and Sunwold Canada would each "be responsible for all use of its cheques, instruments and other debits to the Account and [NBC] will have no responsibility for forged cheques, instruments or unauthorized transactions unless the Business can 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",³⁵²

³⁴⁹ Affidavit of Glen Price, sworn September 29, 2025, filed in NBC Claims Proceedings, at para. 5; Affidavit of Art Price, sworn September 5, 2025, filed in Compeer Action, at para. 46; Art Price Affidavit, at para. 29; Questioning of Art Price by NBC, at 19:7-21:11.

³⁵⁰ *Addison & Leyen Ltd v Fraser Milner Casgrain LLP*, 2014 ABCA 230 at paras. 22-30 [**BOA TAB 13**].

³⁵¹ Pai Affidavit #2, at Exhibit "R", s. 2 [Bates Nos. 2020 and 2027].

³⁵² Pai Affidavit #2, at Exhibit "R", s. 6 [Bates Nos. 2022 and 2029].

- (c) NBC “shall not be liable for any loss or claim arising from any breach by the Business or any third party of any fiduciary duty or trust in in respect of the sums or dealings noted in the statements.”;³⁵³
- (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”;³⁵⁴ and
- (e) NBC would “have no responsibility or liability whatsoever for any loss due to a forged or unauthorized signature” unless the applicable corporation could show that:
 - (i) the forged or unauthorized signature was made by a person who was at no time an agent, employee or Authorized Signing Officer of the Business;
 - (ii) the loss was unavoidable despite the Business having taken all feasible steps to prevent loss arising from forgery or unauthorized signatures;
 - (iii) the loss was unavoidable despite the Business having in place the procedures and controls to supervise and monitor its agents, employees and Authorized Signing Officers; and
 - (iv) the loss was caused solely by the negligence or wilful misconduct of [NBC].”³⁵⁵

b) Implied Terms

208. It is well established that, even where no express term of a contract applies, an indemnification obligation may arise by implied terms if “the parties intended such indemnity”.³⁵⁶

209. The Business Account Agreements evidence an unambiguous intention that NBC, in permitting the authorization of the Canadian Kiting Entities’ NBC accounts, required the Canadian

³⁵³ Pai Affidavit #2, at Exhibit "R", s. 6 [Bates Nos. 2022 and 2029].

³⁵⁴ Pai Affidavit #2, at Exhibit "R", s. 19 [Bates Nos. 2024 and 2031].

³⁵⁵ Pai Affidavit #2, at Exhibit "R", s. 21 [Bates Nos. 2025 and 2032].

³⁵⁶ *Addison & Leyen Ltd v Fraser Milner Casgrain LLP*, 2014 ABCA 230 at para. 22 [**BOA TAB 13**].

Kiting Entities to be responsible for any resulting losses arising from fraud or unauthorized use of cheques.

210. The Respondents failed to comply with their common law duties to NBC, and Compeer, including by:

- (a) intentionally drawing cheques as part of the Kiting Scheme and, as set out above, undertaking significant efforts to avoid the detection of the Kiting Scheme;
- (b) misleading NBC and Compeer as to whether there were sufficient funds available, within the Sunterra Group as a whole, to cover the kited cheques drawn on the Kiting Accounts; and
- (c) in response to direct inquiries concerning the kited cheques, providing misleading or half-true information as to the reason such cheques were issued and concealing the true nature of the Kiting Scheme from NBC and Compeer.

211. Furthermore, NBC's reversal of the kited cheques does not limit or lessen the liability of the Canadian Kiting Entities in relation to the kited cheques; NBC was entitled to reverse the kited cheques in the circumstances, upon discovering that there were insufficient funds to satisfy the cheques drawn. Apart from the express terms of the Business Account Agreements, the common law has long recognized that a bank is entitled both to provide and reverse conditional credit, and upon such reversal to collect any resulting claim from the draw of the cheque, from its own customer, or other parties liable on the cheque. As stated in *National Bank of Canada v Tanev*, a 2004 decision of the Ontario Superior Court of Justice:

“[25] The law in relation to this topic is summarized by M.H. Ogilvie in *Canadian Banking Law*, 2nd ed. (Toronto: Carswell, 1998) as follows (at pp. 631-632):

Once a cheque has been dishonoured, the collecting bank is entitled to reverse the provisional credit in its customer's account. Today, provision for reversal of a provisional credit is normally made in the banker and customer contract; this common law right has long been established in England although, quite remarkably, less well so in Canada where it has only been clearly accepted since the mid-1970s. Normally, the bank will have recourse to reversal of a provisional credit where the account of a customer has sufficient funds, but **where the account is in overdraft or reversal of the provisional credit does not yield the full amount of the dishonoured cheque, the bank still has enforceable rights in relation to the cheque. The bank may either enforce such rights against the drawer of the cheque or other parties liable on it or against its own customer.**

[26] In the present case, the line of credit agreements are silent on the subject of reversal of a provisional credit arising from the deposit of a cheque in the customer's account and the subsequent dishonouring of the cheque. It may be that this subject is addressed in the Agreement Governing Personal Deposit Accounts but, as I have noted, that document was not proved at trial. As Professor Ogilvie notes, however, the right to reverse a provisional credit is a common law right that is clearly accepted in Canada. See, for example, *Bank of Nova Scotia v. Sharpe* (1975), 57. D.L.R. (3d) 260 (B.C.C.A.) at 264.

[27] Counsel for the defendant submitted that the plaintiff had a duty to verify the validity of the cheques that were being deposited before it paid further cheques on the line of credit account that would exceed the credit limit if the deposited cheques were dishonoured. He was unable to cite any authority in support of that proposition. With the greatest of respect, it seems to me that this proposition is at odds with the law that I have summarized above, which expressly contemplates a bank providing a provisional credit to its customer's account when a third party's cheque is deposited. The effect of this submission would be to preclude banks from extending any provisional credit for deposited cheques before taking steps to confirm those cheques would be honoured. The imposition of such a requirement would, it seems to me, cause considerable inconvenience to both customer and bank. The current regime benefits the customer by making funds available at the time of the deposit, it being understood that a dishonoured deposit would be charged back to the customer.³⁵⁷

212. Furthermore, the Canadian Kiting Entities are directly responsible for any acts of the individual Respondents in relation to the issuance of kited cheques. Both Thompson and Uffelman were held out by the Sunterra Group to be authorized signing authorities, and officers titled "controller" and "VP, Corporate Finance", respectively, in the Canadian Sunterra Entities' banking applications submitted to NBC. The Sunterra Group is statutorily estopped from asserting that those persons did not have authority to exercise a power or perform a duty that a director, officer, or agent might reasonably be expected to authorize or perform.³⁵⁸

c) Summary

213. Accordingly, whether by the express or implied terms, the Business Account Agreements impose an obligation on the Canadian Kiting Entities to indemnify, or at least contribute to, NBC for, any losses resulting from the Compeer v. NBC Claims.

³⁵⁷ *National Bank of Canada v Tanev*, 2004 CanLII 8031 (ONSC), at paras. 25-27 [BOA TAB 51], citing M.H. Ogilvie, *Canadian Banking Law*, 2nd ed. (Toronto: Caswell, 1998), at pp. 631-632 [BOA TAB 72] and *Bank of Nova Scotia v. Sharp* (1975), 57. D.L.R. (3d) 260 (B.C.C.A.), at para. 8 [BOA TAB 19].

³⁵⁸ *Business Corporations Act*, R.S.A. 2000, c. B-9, at s. 19 [BOA TAB 4].

4. Negligence

214. As set out above in the argument regarding the terms of the Business Account Agreements, one term of the Business Account Agreements required that 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”.³⁵⁹

215. This contractual provision also gives rise to a claim against the Canadian Kiting Entities in the tort of negligence. The contractual provision sets the agreed upon standard of care owed by the Canadian Kiting Entities to NBC – diligent supervision and monitoring of the conduct and work of the Authorized Signing Officers and all agents and employees having a role in the preparation of Instruments (as defined in the Business Account Agreements to include cheques) and the Canadian Kiting Entities bank statement reconciliations.

216. Further, even in the absence of the express contractual promise, it is submitted that the applicable standard of care would include diligent monitoring of the cheque-writing and reconciliation function within the Canadian Kiting Entities.

217. NBC was in a proximate relationship with the Canadian Kiting Entities and Compeer was in a proximate relationship with the US Kiting Entities. They owed duties of care, respectively, to each of NBC and Compeer, breached the agreed-upon standard of care set out in the Business Account Agreement and caused damage as discussed above in the argument concerning fraud.

5. Negligent Misrepresentation

218. The pleas of fraud and fraudulent misrepresentation discussed above also subsume and include the tort of negligent misrepresentation. If the conduct of the Canadian Kiting Entities did not constitute fraud or fraudulent misrepresentation (which is denied), at the very least it included and constituted statements that were negligently made.

219. Applying the well-known test for the tort of negligent misrepresentation:³⁶⁰

- (a) The Canadian Kiting Entities owed a duty of care to NBC. The Canadian Kiting Entities and the personal Respondents who were responsible for drawing the

³⁵⁹ Pai Affidavit #2, at Exhibit "R", s. 21 [Bates Nos. 2025 and 2032].

³⁶⁰ *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 [BOA TAB 56].

cheques and reconciling the bank accounts daily had special knowledge and were uniquely positioned to know both the Compeer and NBC-sides of the Kiting Scheme – Compeer had no visibility into the NBC accounts of the Canadian Kiting Entities and NBC had no visibility in the Compeer accounts of the US Kiting Entities.

- (b) There were numerous representations made to NBC (and Compeer). Each time a cheque was drawn there was an implicit representation made both at common-law and pursuant to the *Bills of Exchange Act* that there were sufficient funds to cover the cheques. These statements were untrue, or only true because of the Kiting Scheme itself, and were made (at least) carelessly.
- (c) It was reasonable for NBC (and Compeer) to rely on these statements for all of the reasons set out above including:
 - (i) the Kiting Entities' superior knowledge of their own bank accounts and their unique visibility into both the NBC accounts and Compeer accounts;
 - (ii) the contractual agreement that the Canadian Kiting Entities would be diligently supervising this exact conduct;
 - (iii) the numerous additional representations that concealed, obfuscated and supported the conduct; and
 - (iv) the reputation of the principals of the Canadian Kiting Entities.
- (d) The reasonable reliance on the negligent statements was the direct and proximate cause of damage to NBC and Compeer as discussed above in the arguments concerning fraud and fraudulent misrepresentation.

6. Oppression

220. NBC is properly considered a “complainant” under section 239(b)(iii) of the *Alberta Business Corporations Act* (the “**ABCA**”) as a creditor of the Sunterra Entities, and a “proper person” to bring the within claims, given that it has established the existence of the fraudulent Kiting Scheme and that it has been the victim of same.³⁶¹ NBC accordingly has standing to seek remedy for oppressive conduct under section 242.³⁶²

³⁶¹ *Business Corporations Act*, RSA 2000, c B-9, s. 239(b)(iii)(B) and 239(b)(iv) [BOA TAB 4].

³⁶² *Business Corporations Act*, RSA 2000, c B-9, s. 242(1) [BOA TAB 4].

221. Section 242 of the ABCA allows the Court to make orders to remedy oppressive conduct where it is satisfied that, in respect of a corporation or any of its affiliates:

- (a) any act or omission of the corporation or any of its affiliates effects a result,
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
- (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner
- (d) that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer.

222. Such remedy by the Court is available to a claimant who establishes: (1) a reasonable expectation held by it with respect to the defendant, and (2) the violation of that expectation by conduct that was oppressive, unfairly prejudicial, or that unfairly disregarded a relevant interest of the claimant.³⁶³

223. NBC, as a creditor, held a reasonable expectation as to how the Kiting Entities would conduct themselves with respect to NBC, including with respect to all agreements between them. Those reasonable expectations included the expectations that the Kiting Entities would:

- (a) conduct themselves in accordance with their contractual, statutory and common law obligations; and
- (b) not engage in any manner of fraudulent activity.

224. In their perpetration of the Kiting Scheme, the Kiting Entities have clearly engaged in conduct that unfairly disregards or prejudices the interests of NBC by violating NBC's reasonable expectations as set out above, including by:

- (a) breaching their statutory obligations, including by breaching the implicit representations under the *Bills of Exchange Act* by consistently misrepresenting that there were sufficient funds in the accounts to cover the drawing and depositing of the kited cheques;

³⁶³ *JBRO Holdings Inc v Dynasty Power Inc*, 2022 ABCA 140 (CanLII) at para. 58 [BOA TAB 43]; *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at paras. 53-94 [BOA TAB 18], summarized in *Mennillo v. Intramodal inc.*, 2016 SCC 51 (CanLII), [2016] 2 SCR 438 at paras. 8-9 [BOA TAB 46].

- (b) breaching their contractual obligations, including by breaching the Business Account Agreements;
- (c) breaching their common law obligations, including by failing to draw cheques in a manner which would not facilitate fraud, failing to exercise the reasonable care required to avoid the misleading of the bank; and
- (d) engaging in the Kiting Scheme, an inherently fraudulent activity.

225. This Court has the power, under section 242 of the ABCA, to make an order to rectify the oppressive conduct, including, but not limited to:

- (a) an order compensating NBC as an aggrieved party; and
- (b) 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.

7. Wrongful Acts of the Personal Respondents

a) Concurrent Liability as Opposed to Piercing the Corporation Veil

226. In seeking to attach liability to the personal Respondents, NBC does not rely upon the doctrine of “piercing the corporate veil”.

227. The Alberta Court of Appeal recently reviewed the concept of piercing the corporate veil in *Driving Force Inc v I Spy-Eagle Eyes Safety Inc*³⁶⁴ and held at paragraph 53 that, in addition to control and domination, “There must additionally be some element of fraud, improper purpose, or improper activity which caused the plaintiff’s loss: see *Aubin v Petrone*, 2020 ABCA 13 at paras. 23-26, 100 Alta LR (6th) 10; *Yaiguaje v Chevron Corporation*, 2018 ONCA 472 at paras. 67, 70, 141 OR (3d) 1, leave refused April 4, 2019, SCC #38183.”

228. So while fraud is often an example in which separate corporate personality will be disregarded, and is present here, it is not this concept on which NBC relies. NBC instead relies on concurrent liability. These closely related, but different concepts were discussed in *Driving Force* paragraphs 48 and 49 and later by the Court of Appeal in *Swanby v Tru-Square Homes Ltd*, 2023 ABCA 224 at paragraph 36:

³⁶⁴ *Driving Force Inc v I Spy-Eagle Eyes Safety Inc*, 2022 ABCA 25 [BOA TAB 38].

“[48] Liability in tort is primarily personal; a tort arises when the tortfeasor breaches a duty imposed on him or her by the law of tort. Corporations are considered to be separate legal persons, with their own rights and obligations; their shareholders and directors are not personally liable for the corporation’s obligations. Corporations, however, can only act through human agents, and any corporate tort generally involves concurrent human actions. There is thus a conflict between these two basic principles: personal liability in tort, and the separate legal personality of corporations.

[49] This engages two separate but overlapping concepts. There are some occasions where the law will “lift the corporate veil”, and find the directing minds behind the corporation responsible for the liabilities and obligations of the corporation. These situations are, however, an exception to the general rule that there is no personal liability for corporate obligations. The related concept is when the corporation and its human agents are concurrently liable in tort. When an individual is found to be concurrently liable for a tort committed in the name of a corporation, this is not truly an instance of “lifting the corporate veil”. The liability of the individual is based on his or her breach of an individual duty owed in tort, not by lifting the corporate veil to impose the corporation’s duty or liability on the individual. The arguments in this appeal did not always distinguish these two different concepts.”³⁶⁵

229. After reviewing the foregoing, the Court of Appeal in *Swanby v Tru-Square Homes Ltd*, held at paragraph 37:

“[37] As set out in *Hogarth v Rocky Mountain Slate Inc*, 2013 ABCA 57, para 110, 542 AR 289 and *Hall v Stewart*, 2019 ABCA 98, para 18, 82 Alta LR (6th) 233, there are a number of factors to be considered in determining whether concurrent personal liability should be imposed for corporate torts:

- (a) Whether the negligent act was committed while engaged in the business of the corporation, and whether the negligence of the employee was contemporaneous with that of the corporation;
- (b) Whether the individual was pursuing any personal interest beyond the corporate interest;
- (c) Whether the director or corporate representative owed a separate and distinct duty of care towards the injured party;
- (d) Whether the conduct was “in the best interests of the company”;
- (e) Whether the plaintiff voluntarily dealt with the limited liability corporation, or had the corporate relationship “imposed” on it;
- (f) The expectations of the parties;
- (g) Whether the tort was “independent”;

³⁶⁵

Driving Force Inc v I Spy-Eagle Eyes Safety Inc, 2022 ABCA 25, at paras. 48-49 [BOA TAB 38], as quoted in *Swanby v Tru Square Homes Ltd.*, 2023 ABCA 224 at para. 36 [BOA TAB 70].

(h) The exception in *Said v Butt*, [1920] 3 KB 497 [where the director or servant actually takes part in or authorizes such torts as assault, trespass to property, nuisance, or inducing breach of contract];

(i) The nature of the tort, and particularly whether it was an intentional tort;

(j) Whether the damage was physical or economic.

See also *Driving Force*, paras 64-66; *Parks v McAvoy*, 2023 ABCA 211, paras 45, 51; and *Blacklaws v Morrow*, 2000 ABCA 175, paras 48, 50, 51, 66, 81, 187 DLR (4th) 614, leave ref'd [2001] 1 SCR vii.³⁶⁶

b) Inducing Breach of Contract

230. One exception expressly noted by the Court of Appeal in the above-referenced cases, is the exception in *Said v. Butt*³⁶⁷ including the independent tort of inducing breach of contract.

231. There are seven elements to the tort of inducing breach of contract:

- (a) the existence of a contract;
- (b) knowledge or awareness by the defendant of the contract;
- (c) a breach of the contract by a contracting party;
- (d) the defendant induced the breach;
- (e) the defendant, by his conduct, intended to cause the breach;
- (f) the defendant acted without justification; and
- (g) the plaintiff suffered damages.³⁶⁸

232. Each of Ray Price, Uffelman and Thompson were Authorized Signing Officers within the meaning of the Business Account Agreements applicable to the NBC accounts.³⁶⁹ Ray Price, Uffelman and Thompson were each aware of the Business Account Agreements and had actual knowledge of the relevant terms as a result of their positions within the Sunterra Group and the

³⁶⁶ *Swanby v Tru-Square Homes Ltd*, 2023 ABCA 224, at para. 37 [BOA TAB 70].

³⁶⁷ *Swanby v Tru-Square Homes Ltd*, 2023 ABCA 224, at para. 37(h) [BOA TAB 70], citing *Said v Butt*, [1920] 3 KB 497 [BOA TAB 66]; *Driving Force Inc v I Spy-Eagle Eyes Safety Inc*, 2022 ABCA 25 [BOA TAB 38], citing *Said v Butt*, [1920] 3 KB 497 [BOA TAB 66].

³⁶⁸ *369413 Alberta Ltd. v. Pocklington*, 2000 ABCA 307 (CanLII), at para. 13 [BOA TAB 11].

³⁶⁹ Thompson Affidavit, at para. 7; Uffelman Affidavit, at para. 13; Pai Affidavit #2, at Exhibit "R", signature cards [Bates Nos. 2036, 2038, 2041, 2047, 2051, 2074-76, 2079, 2081].

daily activities they engaged in to maintain the operation of the Kiting Scheme as described in detail above.

233. Each cycle of the Kiting Scheme was a breach of the Business Account Agreements. The conduct of Ray Price, Uffelman, and Thompson was necessary for the occurrence of each breach, and in fact, the breaches could not have occurred but for their participation. Accordingly, Ray Price, Uffelman, and Thompson induced the Kiting Entities to commit these breaches.

234. Each of Ray Price, Uffelman and Thompson further acted with the requisite intention to breach the Business Account Agreements, as they each acted with the intention to move funds between their accounts to prevent shortfalls and overdrafts while knowing that there was not sufficient funds in the accounts of the Kiting Entities to satisfy the quantum of the cheques.³⁷⁰ In other words, they at all times acted with intention perpetuate the fraudulent Kiting Scheme, and breached the Business Account Agreements in the course of doing so.

235. Because each of Ray Price, Uffelman, and Thompson possessed the knowledge that, at all material times, insufficient funds to cover the cheques being drawn on the NBC Accounts,³⁷¹ there is no justification for their perpetuation of the Kiting Scheme that would absolve any of these individuals from liability. The Kiting Scheme was the sole purpose for the volume and value of the kited cheques – there was no other business purpose.³⁷² Indeed, despite the various half-truths and misleading explanations provided by the Kiting Entities when NBC raised concerns regarding the kited cheques, there ultimately was no business reason for the transfers of cash between and among the Kiting Entities, averaging USD\$15 million per day.³⁷³ The reason for the conduct of Ray Price, Uffelman, and Thompson was at all times to maintain a fictional balance in the relevant accounts to avoid detection of the fraud. They accordingly acted without justification. This conduct led NBC to sustain damages, and/or led Compeer to sustain damages for which the Sunterra Group must indemnify NBC against.

³⁷⁰ Questioning of Ray Price by Compeer, at 57:22-59:8, 60:3-61:6; Uffelman Affidavit, at Exhibit “C” [Bates No. DU0012].

³⁷¹ Questioning of Ray Price by Compeer, at 49:9-19, 57:22-59:8, 60:3-61:6; Questioning of Thompson by Compeer, at 16:1-7, 16:14-17:9; Questioning of Uffelman by Compeer, at 27:11-17; Uffelman Affidavit, at Exhibit “C” [Bates No. DU0012].

³⁷² Questioning of Thompson by Compeer, at 43:14-19; Questioning of Uffelman by NBC, at 31:18-19; Questioning of Ray Price by Compeer, at 20:21-21:5.

³⁷³ Transcript of Questioning of Steven Grosland, October 22, 2025 (Questioning by Sunterra), at 44:5-44:12.

c) Breach of Fiduciary and Statutory Duties

236. Each of Ray Price, Uffelman and Thompson owed fiduciary and statutory duties to the Kiting Entities as authorized signing authorities and by virtue of their positions as director and principal officer of the Kiting Entities,³⁷⁴ Vice President, Corporate Finance of the Sunterra Group,³⁷⁵ and controller,³⁷⁶ respectively.

237. With respect to Uffelman and Thompson, each was held out by the Sunterra Group to be a corporate officer. Each was an authorized signing authority of the Kiting Entities, as evidenced by signature cards and banking authorization resolutions,³⁷⁷ and each signed some of the kited cheques. The Sunterra Group is statutorily estopped as per section 19 of the ABCA from asserting that Uffelman and Thompson did not have authority to exercise a power or perform a duty that a director, officer, or agent might reasonably be expected to authorize or perform as a result of the Sunterra Group holding these individuals out as such. Uffelman and Thompson are properly considered fiduciaries as a result.

238. Each of Ray Price, Uffelman, and Thompson under the common law, directors and officers owe a fiduciary duty to act in the best interests of the corporation.³⁷⁸ This duty is codified under the ABCA, and each of Ray Price, Uffelman, and Thompson also owed statutory duties of care to the corporation in the exercise of their powers and duties, including to:

³⁷⁴ Questioning of Ray Price by NBC, 7:23-8:5; Questioning of Ray Price by Compeer, 14:3-11.

³⁷⁵ Uffelman was a director of Lariagra Canada until March 4, 2025 as confirmed by corporate registry search results appended to the Pai Affidavit #2 as Exhibit "N" [Bates No. 1989]. Her job title was Vice President, Corporate Finance of the Sunterra Group, which included the Kiting Entities, as well as Sunterra Farm Enterprises, Sunterra Food, Sunterra Enterprises, Sunterra Farms Greenhouse Ltd., Lariagra Canada, Sunterra Markets, Trochu Meat, and Sunterra Wine Markets Inc.: Questioning of Uffelman by Compeer at 6:10-18; Questioning of Uffelman by NBC, at 7:1-5 and 8:11-10:11.

³⁷⁶ Despite holding himself out to be the "controller" of the Sunterra Group in documents provided to NBC, including compliance certificates and account agreement applications, Thompson advised during cross-examination that he only listed himself as "controller" because he "had to give [himself] a title" on LinkedIn and on the signature cards provided to NBC: Questioning of Thompson by Compeer, 8:7-13, 9:5-10. Thompson also swore that he was the "controller" of the Sunterra parties in his affidavit of September 19, 2025, (at para. 5), but on cross-examination stated that he did this because he knew NBC had signature cards where he had described himself as being the controller: Questioning of Thompson by Compeer, 10:8-11:16.

³⁷⁷ See e.g. Pai Affidavit #2, at Exhibit "R" [Bates Nos. 2037, 2041, 2047, 2051-52].

³⁷⁸ *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 37-38 [BOA TAB 18].

- (a) act honestly and in good faith with a view to the best interests of the corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.³⁷⁹

239. By perpetuating the Kiting Scheme and therefore engaging in fraudulent and dishonest conduct, each of Ray Price, Uffelman, and Thompson breached their fiduciary and statutory duties to the Sunterra Entities. Each failed to act honestly and in good faith with a view to the best interests of the corporation, and each failed to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

240. The actions of Ray Price, Uffelman, and Thompson in perpetuating the Kiting Scheme were inherently dishonest, including by their intentional perpetuation of the falsehood that there were sufficient funds to cover the cheques drawn on and deposited into the NBC Accounts. As described in detail above, they each made daily efforts to conceal the reality of insufficient funds from NBC. This conduct also concealed the reality of the Kiting Scheme from the Sunterra Group's management and board, who, like the banks, failed to detect the fraud for years.³⁸⁰

241. Participation in the Kiting Scheme was clearly not conduct undertaken with a view to the best interests of the Sunterra Group.

242. Each of Ray Price, Uffelman, and Thompson similarly failed to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, as they each failed to put an end to the fraud.

d) Knowing Assistance

243. In addition to committing their own breaches of fiduciary and statutory duties to the Sunterra Group, Ray Price, Uffelman, and Thompson also knowingly assisted in the breach of *one another's* fiduciary and statutory duties. For a claimant to establish knowing assistance, it must establish the existence of:

- (a) a fiduciary duty;

³⁷⁹ *Business Corporations Act*, RSA 2000, c B-9, s. 122 [BOA TAB 4].

³⁸⁰ Affidavit of Glen Price, sworn September 29, 2025, filed in NBC Claims Proceedings, at para. 5; Affidavit of Art Price, sworn September 5, 2025, filed in Compeer Action, at para. 46; Art Price Affidavit, at para. 29; Questioning of Art Price by NBC, at 19:7-21:11.

- (b) a fraudulent and dishonest breach of that fiduciary duty;
- (c) a stranger to the fiduciary relationship having had actual knowledge of both the fiduciary relationship and the fiduciary's fraudulent and dishonest conduct; and
- (d) the stranger's participation or assistance in the fraudulent and dishonest conduct.³⁸¹

244. Thompson knowingly assisted both Ray Price and Uffelman in breaching their respective fiduciary duties to the Sunterra Entities:

- (a) with respect to Uffelman, Thompson knowingly assisted by providing daily emails setting out the transfers that would be required to balance the accounts. Upon receiving instructions from Uffelman with respect to variations or additions to the required transfers, Thompson would coordinate with office personnel in the Canada and US Sunterra offices to generate cheques for each account for deposit; and
- (b) with respect to Ray Price, Thompson knowingly assisted by assisting Uffelman in her carrying out of Ray Price's directions with respect to the Kiting Scheme.

245. Thompson knew that both Ray Price and Uffelman owed fiduciary obligations to the Sunterra Entities by virtue of their positions as directors and officers, and further knew that Ray Price and Uffelman, by perpetuating the Kiting Scheme, were participating in fraudulent and dishonest conduct.

246. In the alternative, if it is determined that Uffelman did not in fact owe fiduciary duties to the Sunterra Entities, it is clear that Thompson knowingly assisted Ray Price in breaching his fiduciaries for reasons set out above.

247. Uffelman knowingly assisted both Ray Price and Thompson in breaching their respective fiduciary duties to the Sunterra Entities:

³⁸¹ *Condominium Corporation No. 0321365 v MCAP Financial Corporation*, 2012 ABCA 26, at paras. 93-94 **[BOA TAB 31]**, citing *Citadel General Assurance Co v Lloyds Bank Canada*, 1997 CanLII 334 (SCC), [1997] 3 SCR 80 **[BOA TAB 28]** and *Air Canada v M & L Travel Ltd.*, 1993 CanLII 33 (SCC), [1993] 3 SCR 787 at para. 39 **[BOA TAB 16]**; *Sorrel 1985 Limited Partnership v. Sorrel Resources Ltd.*, 2000 ABCA 256, at paras. 41-50 **[BOA TAB 69]**.

- (a) with respect to Ray Price, Uffelman knowingly assisted by carrying out the cash management and cheque writing practices as instructed by Ray Price, including signing the impugned cheques; and
- (b) with respect to Thompson, Uffelman knowingly assisted by providing instructions regarding variations or additions to the required transfers between accounts, understanding that Thompson would then carry out the transfers.

248. Uffelman knew that both Ray Price and Thompson owed fiduciary obligations to the Sunterra Entities by virtue of their positions as directors and officers respectively, and further knew that Price and Thompson, by perpetuating the Kiting Scheme, were participating in fraudulent and dishonest conduct.

249. In the alternative, if it is determined that Thompson did not in fact owe fiduciary duties to the Sunterra Entities, it is clear that Uffelman knowingly assisted Ray Price in breaching his fiduciaries for the reasons set out above.

250. Ray Price knowingly assisted both Uffelman and Thompson in breaching their respective fiduciary duties to the Sunterra Entities. He knowingly assisted both Uffelman and Thompson by providing instructions and directions regarding how to carry out the Kiting Scheme, and therefore how to carry out the breaches.

e) Wrongful Means Conspiracy

251. The Kiting Scheme was, in substance and effect, a wrongful means conspiracy perpetrated against NBC by Ray Price, Uffelman, and Thompson, acting jointly and in concert with the Kiting Entities. The Alberta Court of Appeal has held that the tort of wrongful means conspiracy has the following elements:

- (a) the defendants act in combination, that is, in concert, by agreement or with a common design;
- (b) their conduct is unlawful;
- (c) their conduct is directed towards the plaintiffs;
- (d) the defendants should know that, in the circumstances, injury to the plaintiffs is likely to result; and

(e) their conduct causes injury to the plaintiffs.³⁸²

252. As explained in detail above, the Kiting Scheme required a combination of actions carried out on behalf of the Kiting Entities by Ray Price, Uffelman, and Thompson. These three individuals worked together, on a daily basis, towards their common goal of ensuring that the Kiting Accounts were maintained within credit line limits, and that none of the Kiting Accounts were overdrawn.³⁸³ Their conduct in pursuit of this common goal was fraudulent and therefore unlawful.

253. The Kiting Scheme was directed towards NBC because the Kiting Scheme required consistent misrepresentations (including breaches of the implicit representations under the *Bills of Exchange Act*) to NBC by the Kiting Entities that there were sufficient funds in the accounts to cover the cheques being drawn and deposited.

254. Ray Price, Uffelman, Thompson, and the Kiting Entities knew or ought to have known that the perpetration of the Kiting Scheme would result in injury to NBC. Indeed, their maintenance of the “account coverage practice” included inducing NBC to provide conditional credit and advance funds, based on false and misleading representations regarding the financial status of the companies, all while knowing that there were insufficient funds to honour the face value of the cheques drawn on the accounts. This conduct caused damages to both NBC and Compeer, with an ultimate shortfall resulting to Compeer, for which the Sunterra Entities are required to indemnify NBC.

255. As to injury, see the discussion of damages, above.

8. The Guarantees Apply to All Liabilities and Obligations of the Borrowers In Relation to the Kiting Scheme

256. Each of the Guarantors (namely, the Canadian Kiting Entities, Sunterra Food Corporation, Sunterra Quality Food Markets Inc., Trochu Meat Processors Ltd., Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm Enterprises Ltd., and Sunterra Enterprises Inc.) provided the Guarantees to NBC.³⁸⁴

³⁸² *HSBC Bank Canada v. Fuss*, 2013 ABCA 235 (CanLII), at paras. 26-27, 29, and 33-36 [**BOA TAB 42**], citing *Agribrands Purina Canada Inc v Kasamekas*, 2011 ONCA 460, 106 OR (3d) 427, at para. 26 [**BOA TAB 14**].

³⁸³ Ray Price Affidavit, at para. 52; Questioning of Uffelman by Compeer, at 10:12-11:1, 11:20-12:14, 34:10-34:17, 36:1-36:13, 42:14-43:3; Questioning of Thompson by Compeer, at 27:25-29:15.

³⁸⁴ Pai Affidavit #2, at Exhibits “C” – “CC”.

257. The Guarantees engage to make each of the Guarantors liable for the obligations incurred by the Canadian Kiting Entities.

258. Pursuant to a Borrowers' Cross Guarantee dated January 23, 2023,³⁸⁵ Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc. and the Canadian Kiting Entities each "jointly and severally unconditionally guarantee(s) payment to the Bank of all present and future debts and liabilities direct or indirect, absolute or contingent, now or at any time and from time to time hereafter due or owing to the Bank from or by the other Guarantors".

259. In several Full Liability Guarantees each dated January 23, 2023,³⁸⁶ each of the Canadian Kiting Entities and every other corporate Respondent guaranteed to NBC "payment, forthwith after demand made therefore as hereinafter provided, of all indebtedness and liability (present and future, direct or indirect, absolute or contingent, matured or not "of the [Canadian Kiting Entities] and Sunterra Food Corporation, Trochu Meat Processors Ltd. and Sunterra Quality Food Markets Inc. to NBC, "whether arising from agreement or dealings between the Bank and the Customer or from agreement or dealings between the Bank and any third person by which the Customer now is or hereafter may become indebted or liable to the Bank or however otherwise arising and whether the Customer be bound alone or with another o others and whether as principal or surety or guarantor".

260. 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. Specifically, the GSAs apply to secure the "Indebtedness" of each signatory, defined as follows:

““Indebtedness” means and includes any and all obligations, indebtedness and liability of the Debtor to the Bank, (including but not limited to principal, interests 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, and whether the Debtor is bound alone or with another or others and whether as principal or surety;”³⁸⁷

³⁸⁵ Pai Affidavit #2, at Exhibit “V”.

³⁸⁶ Pai Affidavit #2, at Exhibits “Z” – “CC”.

³⁸⁷ Pai Affidavit #2, at Exhibits “DD”, “EE”, “FF”, “GG”, “HH”, and “II” [Bates Nos. 2206, 2226, 2247, 2267, 2287, and 2308].

9. NBC's Claims for Contribution and Indemnity

a) Background

261. This Court has recognized in these proceedings that the CCAA provides a mechanism for proving and valuing claims:

“[16] The CCAA provides a mechanism for proving and (if proved) valuing claims: ss 19 and 20 CCAA. That mechanism has apparently been adequate for proving and valuing claims even where the claims are for contribution and indemnity i.e. turn in part on separate claims involving the claimant and one or more third parties. Even where those claims are contingent, as appears to be the case here, with the existence of NBC's (possible) claim-over against the Canadian Sunterra entities depending on whether Compeer decides to pursue NBC on the dishonoured cheques and, in turn, whether NBC's indemnification rights extending to such claim(s). On the suitability of the CCAA claims process for proving and valuing such claims, see *Conforti Holdings Ltd* (In the matter of the proposal to creditors of), 2022 ONSC 3264 (Canagh J.) (paras 42-51).³⁸⁸

[17] See also *SemCanada Crude Company (Celtic Exploration Ltd #2, Re)*, 2012 ABQB 489 (Romaine J.):³⁸⁹

It may well have been difficult to value a contingent claim for future suspension damages that was filed before the Claims Bar Date, but that is often the nature of a contingent or future claim. In particular, there may have been issues relating to when the IGPA could reasonably be reinstated. As noted by SemCAMS, contingent claims are routinely filed in CCAA proceedings and in proceedings under the BIA. [para 27]”³⁹⁰

b) CCAA Process for Determination of Contingent Claims

262. The CCAA contains a mechanism for determining claims that may be dealt with by a compromise or arrangement in a summary fashion in recognition of the need for insolvent enterprises to attempt to find a commercial solution to their insolvency quickly and efficiently. The solution may entail a compromise or arrangement, sale, liquidation or any combination of the foregoing. An efficient process for the summary determination of claims for the dual purposes of voting and distribution is a hallmark of CCAA restructurings.

263. Section 19 of the CCAA provides:

³⁸⁸ *In the Matter of the Proposal to Creditors of Conforti Holdings Limited*, 2022 ONSC 3264 (CanLII) **[BOA TAB 34]**.

³⁸⁹ *SemCanada Crude Company (Celtic Exploration Ltd. #2)*, 2012 ABQB 489 (CanLII) **[BOA TAB 67]**.

³⁹⁰ *National Bank of Canada v Sunterra Food Corporation*, 2025 ABKB 599, at paras. 16-17 **[BOA TAB 50]**.

Claims that may be dealt with by a compromise or arrangement

19(1)[...] the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

(i) the day on which proceedings commenced under this Act, and

(ii) if the company filed a notice of intention under section 50.4 of the Bankruptcy and Insolvency Act or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the Bankruptcy and Insolvency Act, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).³⁹¹

264. Section 20(1)(b) of the CCAA requires the mandatory proof and valuation of secured claims against a debtor company. It states:

Determination of amount of claims

20(1) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor **is to be determined** as follows:

[...] (b) **the amount of a secured claim is the amount, proof of which might be made under the Bankruptcy and Insolvency Act if the claim were unsecured, but the amount if not admitted by the company is**, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, to be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and, in the case of any other company, the amount is **to be determined by the court on summary application by the company or the creditor.**³⁹²

³⁹¹ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA"), s. 19(1) [BOA TAB 6]. Note exceptions per s. 19(2)(c): any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others; and 19(2)(d): any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim.

³⁹² CCAA, at s. 20 [emphasis added] [BOA TAB 6].

265. Section 135(1.1) of the BIA provides a process by which proof of the amount of a contingent claim may be made:

Trustee shall examine proof

135 (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.

Determination of provable claims

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.³⁹³

266. The BIA defines “provable claim” as follows:

claim provable in bankruptcy, provable claim or claim provable includes any claim or liability provable in proceedings under this Act by a creditor³⁹⁴

c) NBC’s Claim is a Contingent Claim

267. A succinct description of contingent claims is set forth by the Manitoba Court of King’s Bench in *Gardner v Newton*, which has been frequently cited in Alberta:

“A contingent claim is “a claim which may or may not ever ripen into a debt, according as some future event does or does not happen” [...].”³⁹⁵

268. NBC’s contribution and indemnity claims fall squarely within this description: the Canadian Kiting Entities’ obligation to provide contribution or indemnification depends upon whether a future event, namely, Compeer seeking by action to recover all or a portion of its losses from NBC, does or does not happen.

³⁹³ BIA, at s. 135(1.1) [emphasis added] [BOA TAB 2].

³⁹⁴ BIA, at s. 2 [BOA TAB 2].

³⁹⁵ *Chartered Professional Accountants of Alberta v Neilson*, 2018 ABQB 170 at para. 34 [BOA TAB 26], quoting *Peters v Remington*, 2004 ABCA 5 at para. 25 [BOA TAB 54] (quoting *Gardner v. Newton* (1916), 29 D.L.R. 276, 10 WWR 51 (Man. K.B.) [BOA TAB 41]); *Re SemCanada Crude Company (Orleans Energy Ltd.)*, 2012 ABQB 495 at para. 67 [BOA TAB 62], (quoting *Gardner v. Newton* (1916), 29 D.L.R. 276, 10 WWR 51 (Man. K.B.) [BOA TAB 41]).

269. To establish that a contingent claim is a provable claim, there is no requirement that the claimant establish the *probability* of liability arising. Rather, the requirement is simply that the claim “must not be too remote or speculative in nature”.³⁹⁶

270. In *Merit Energy*, Justice LoVecchio considered a claim by the underwriters, directors and officers, and shareholders of a share offering undertaken by Merit Energy (“**Merit**”) for indemnification under the terms of an indemnity granted by Merit for claims made against the underwriters and the directors and officers in connection with misrepresentations made by Merit in a prospectus. The Court denied the shareholders’ claim for indemnification on the basis of the fact that such claims were, in substance, equity claims. The Court, however, allowed the indemnification claim of the underwriters and the directors and officers.

271. Merit’s Trustee also advanced the argument that the underwriters’ and directors and officers’ claims were too contingent and thus could not constitute provable claims. In holding that the indemnification claims were not too remote, the Court wrote, at paragraphs 75 through 77:

“[75] The Trustee submitted that there is no evidence as to the potential success of the Flow-Through Shareholders’ claims against the Underwriters and/or the Directors and Officers, nor was it possible prior to judgment in those actions, to determine whether any liability of the Underwriters and/or the Directors and Officers to the Flow-Through Shareholders would qualify for indemnification.

[76] The fact that a claim is contingent does not mean it is not “provable”. Provable claims include contingent claims as long as they are not too speculative: *Negus v. Oakley’s General Contracting*. Section 121 defines provable claims to include “all debts and liabilities, present or future,...to which the bankrupt may become subject...”.

[77] Section 121 does not specify the degree of certainty required to make a claim provable, other than to include as provable all debts or liabilities to which the bankrupt may become subject. As stated, the Ontario Court of Appeal addressed this in *Re Confederation Treasury Services Ltd.* and held that the test of probable liability set out in *Claude Resources (Trustee of) v. Dutton* and *Re Wiebe* (also relied on by the Trustee) imposed too high of a threshold to establish a valid contingent claim. Rather, the Ontario Court of Appeal expressed that contingent claims must simply be not too “remote or speculative in nature”. I agree with the Ontario Court of Appeal’s view of the test.”³⁹⁷

272. The Court in *Merit Energy* also noted, at paragraph 78:

³⁹⁶ *Confederation Treasury Services Ltd. (Re) (In Bankruptcy)*, 1997 CanLII 3544 (ONCA) [BOA TAB 33], leave to appeal to SCC refused, 1997WL1930278 [BOA TAB 32]; *National Bank of Canada v Merit Energy Ltd.*, 2001 ABQB 583 (CanLII) at para. 77 (“*Merit Energy*”) [BOA TAB 49].

³⁹⁷ *Merit Energy*, at paras. 75-77 [BOA TAB 49].

“[78] On a plain reading of the Underwriting Agreement, the indemnity appears to be engaged by the Flow-Through Shareholders’ actions. The actions are under case management and are proceeding through discoveries at this time. Further, there are several authorities that suggest an indemnity becomes enforceable as soon as a claim of the type indemnified is alleged. Finally, at least one part of the Underwriters’ claim is not contingent - they have incurred costs and disbursements in defence of the Flow-Through Shareholders’ claims and according to the terms of the indemnity are currently entitled to reimbursement for those costs, regardless of the outcome of the litigation.”³⁹⁸

273. In *Air Canada, Re*,³⁹⁹ Justice Farley presided over an appeal of a Claims Officer in the Air Canada CCAA proceedings wherein the Claims Officer, Geoffrey Morawetz (as he then was), disallowed a claim by CUPE for pay equity. In dismissing the appeal, the learned Justice Farley noted that CUPE submitted no evidence in the claims process. The Court cited the decision of the Claims Officer including the Claims Officer’s recitation of the applicable test that:

“[5] ... CUPE must demonstrate that its claim is not too speculative or remote, but it need not establish that success is probable.” He went on to say at paragraph 39:

39) In the present case, I am satisfied for the reasons set out below that CUPE’s claim has not been proven. The claim is remote and speculative as there is no evidence to substantiate that the claim has any merit. To be clear, this is not a situation in which CUPE has a valid claim, the value of which is simply uncertain or difficult to compute; rather, I find that CUPE has not proved that it has any claim at all.”⁴⁰⁰

The Court concluded, at paragraph 6, by holding:

“[6] ... Contingent unliquidated claims are determined under the CCAA claims process even in the most complicated of litigation and ***even though a claim may not have been actually initiated in a court or otherwise***. I do not wish or intend to minimize the hurdles and hoops which may be involved in the payment equity litigation in the established “ordinary course”, but I would observe that if CUPE had provided an acceptable expert report on job evaluation, even if in “simplified form” (as opposed to no evidence), then Air Canada would have had to respond to that evidence. Would that report have had to be precise (apparently to the degree envisaged by parties in pay equity disputes)? ***The simple answer to that is that is not necessary in a CCAA claims process.***”⁴⁰¹

274. In *Auctioneers’ Assn of Alberta v. Hunter*, 2002 ABQB 28,⁴⁰² the Court addressed whether a contingent claim by a surety in relation to a bond posted by the surety on behalf of an auction

³⁹⁸ *Merit Energy*, at para. 78 [BOA TAB 49]. See also the case referred to by the Court on this point, *Re Froment; Alta. Lumber Co. v. Department of Agriculture*, 1925 CanLII 313 (AB KB), [1925] 2 W.W.R. 415 (Alta. S.C.) [BOA TAB 61].

³⁹⁹ *Air Canada, Re*, 2004 CanLII 6674 (ON SC) [BOA TAB 15].

⁴⁰⁰ *Air Canada, Re*, 2004 CanLII 6674 (ON SC), at para. 5 [BOA TAB 15].

⁴⁰¹ *Air Canada, Re*, 2004 CanLII 6674 (ON SC), at para. 6 [BOA TAB 15].

⁴⁰² *Auctioneers’ Assn of Alberta v. Hunter*, 2002 ABQB 28 [BOA TAB 17].

house, of which the bankrupt was the principal and in which the bankrupt had personally guaranteed the amount of the surety bond and whether the contingencies, in effect, were too remote and speculative. The Court compared the typical contingences of a guarantee to the circumstances in which the surety could become liable to pay on the underlying bond thus triggering the guarantee:

“In the present lawsuit the uncertainties, for the Defendant as guarantor, are greater: (a) will the company commit acts of default which would give claimants access to the bond, (b) will claimants sue the company and get judgments against it, (c) will claimants then give notice to the Director [of Public Auctions], (d) will the Director forfeit the bond, (e) what will the claims total, (f) will the company reimburse the Plaintiff. If facts (a) and (b) do exist fact (c) will probably exist and facts (d) and (e) will then certainly exist. But facts (a) to (c) are sequential. Facts (a) and (b) must exist before facts (c) exists. If facts (a) and (b) do exist fact (c) is a high probability and fact (d) is a certainty because the legislation requires the Director to forfeit the bond. The point of all this is that the uncertainties for the Defendant, as guarantor, are greater than in the usual situation. The contingencies are greater.”⁴⁰³

275. Following an extensive review of the authorities, Master Funduk, determined that the sureties’ claim was a contingent claim. There are fewer hurdles for NBC to overcome in this case than in *Auctioneers’ Assn of Alberta v. Hunter*.

d) Argument – NBC has a Contingent Claim

276. The within claims process was designed and consented to by the parties in recognition of the aforementioned mandatory requirements that the determination and valuation of NBC’s secured, contingent claims be determined on a summary basis.

277. Compeer’s stated position within these proceedings clearly evidences that NBC’s claim is far from being too remote or speculative to satisfy the legal requirements for having its contingent claim determined to be a provable claim and valued. In an e-mail dated July 23, 2025, counsel for Compeer advised counsel to NBC as follows:

“While Compeer takes no position on the advancement of an indemnity claim by National against Sunterra, Compeer opposes the amendments proposed by National to the Claims Procedure Order. [...]

Not only is what is being proposed highly prejudicial to Compeer but it is also unnecessary. **We note that both National and Sunterra seem to be of the view that National may have liability to Compeer, however, there is no reason why National cannot proceed in the normal course to advance its claim for indemnity as against Sunterra.** Should

⁴⁰³ *Auctioneers’ Assn of Alberta v. Hunter*, 2002 ABQB 28, at paras. 26-27 [BOA TAB 17].

that claim be successful, then a further procedure could be established to determine the quantum of that claim if necessary.

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.**⁴⁰⁴

278. NBC has already sustained losses and damages including:

- (a) the requirement to pay Compeer its costs in connection with the NBC's application to compel Compeer to make an election heard and determined by this Court;⁴⁰⁵ and
- (b) a requirement to pay KPMG its fees and disbursements relating to the attendance of the audit partner responsible for the Sunterra Group at questioning.⁴⁰⁶

279. In this case, as was the case in *Merit Energy*, there is no evidence as to potential success of the Compeer v. NBC claim. *Merit Energy* clearly articulates the law on this point which recognizes that section 121 of the BIA does not specify the degree of certainty required to make a claim provable, other than to include all debts or liabilities present or future to which the bankrupt may become subject.

280. If the Court grants NBC's request for a declaration that the Respondents must indemnify NBC, then NBC submits that it meets the requirement to have its claim declared to be a contingent claim.

e) Argument – NBC's Contingent Claim is Capable of Valuation

281. The financial information that the Court requires to value of NBC's contingent claim is before the Court. To the extent the valuation is dependent upon the Compeer v. Sunterra Claim, then those matters are before the Court for concurrent determination. It is not in dispute that:

⁴⁰⁴ Pai Affidavit #1 at Exhibit "B" [emphasis added] [Bates No. 65].

⁴⁰⁵ Order to be filed arising from Endorsement issued October 14, 2025, *National Bank of Canada v. Sunterra Food Corporation*, 2025 ABKB 599.

⁴⁰⁶ Order to Compel the Production of a Witness (re: KPMG), granted October 17, 2025, filed November 18, 2025, para. 10.

- (a) the end result of the inevitable collapse of the Kiting Scheme is that Compeer's overdraft was USD\$35,924,307.05 as at February 28, 2025;⁴⁰⁷
- (b) according to the US Receiver's Sixth Monthly Operating Report, the Receiver is holding USD \$13,102,233.70 in the US receivership proceedings in respect of the US Kiting Entities,⁴⁰⁸
- (c) the unsatisfied part of Compeer's claim,⁴⁰⁹ which is the subject of the concurrent proceedings before this Court commenced by Compeer against the Canadian Kiting Entities, would therefore amount to approximately USD\$22,822,073.74 being the difference between Compeer's overdraft and the amounts recovered in the US receivership proceedings;⁴¹⁰
- (d) in addition, Compeer claims interest and costs;⁴¹¹ and
- (e) Compeer also alleges that credit extended to Lariagra U.S. would not have been extended "if not for the conduct of undertaking and concealing the Cheque Kiting Scheme."⁴¹²

282. NBC's contingent claim should be valued in the same amount as Compeer's claim, together with all fees, costs, and expenses that NBC has or will incur in responding to or otherwise dealing with the Compeer v. NBC Claim.

283. It might be argued that, in so doing, that Compeer may obtain some recovery from the Canadian Kiting Entities before other unsecured creditors. Indeed, it might even be suggested that it may ultimately allow Compeer to achieve indirectly what it cannot achieve directly based on the insolvency of the Canadian Kiting Entities.

⁴⁰⁷ Grosland Affidavit, at para. 34.

⁴⁰⁸ Affidavit of Katie Hynne, sworn November 19, 2025 ("**Hynne Affidavit**"), at Exhibit "B".

⁴⁰⁹ Excluding claims advanced by Compeer against the Sunterra Parties in relation to fraud, conspiracy, or oppression, as Compeer has acknowledged that any claims it may have against NBC would "presumably" not be advanced on those grounds: *National Bank of Canada v Sunterra Food Corporation*, 2025 ABKB 599 at para. 37 [**BOA TAB 50**].

⁴¹⁰ As at April 11, 2025, Compeer asserted that: (i) Sunterra US owed it \$19,833,1114.46; (ii) Sunwold US owed it \$13,771,023.53; and, (iii) Lariagra US owed it \$2,895,965.20. See Grosland Affidavit, at Exhibit "32".

⁴¹¹ Hynne Affidavit, at Exhibit "A".

⁴¹² Hynne Affidavit, at Exhibit "A".

284. Justice LoVecchio did not consider such an outcome to be a bar to the proof of claim in *Merit Energy*:

“[70] However, success by the Flow-Through Shareholders against the Underwriters is not contingent upon success by the Underwriters against Merit nor does it automatically follow that success by the Flow-Through Shareholders against the Underwriters must inevitably lead to success by the Underwriters against Merit. A successful claim by the Underwriters against Merit will be determined on the basis of the provisions of the indemnity and the result of the claim against the Underwriters will be one of the factors in that analysis.

[71] As the possible economic result described in paragraph 69 does not flow from a continuous chain of interdependent events, the possibility that the Flow-Through Shareholders may indirectly recover some of their equity investment from others prior to Merit’s unsecured creditors being paid in full would not be a sufficient reason to decide this application differently.”⁴¹³

NBC submits that the prospect of Compeer receiving payment before other creditors of Sunterra is not a sufficient reason to deny NBC the relief it seeks.

285. Moreover, in order to protect against NBC receiving payment in an amount that may ultimately represent less than NBC’s liability to Compeer, the Court should order that any amounts received by NBC on account of its contingent claim will be accounted for by NBC upon the earlier of:

- (a) The limitation period for Compeer to commence a claim against NBC shall have expired and any court or courts having jurisdiction having issued a declaration that any claim that Compeer may have had against NBC arising out of the Kiting Scheme is statute barred;
- (b) NBC and Compeer settling the Compeer v NBC Claim provided that any such settlement be approved by this Court;
- (c) Compeer obtaining a final, non appealable judgment against NBC for anything arising out of the Kiting Scheme; and
- (d) Compeer’s claim being dismissed pursuant to a final and non appealable judgment of a court having jurisdiction.

286. Such accounting would include a statement setting out in reasonable detail the amounts NBC incurred and paid in connection with all costs related to the aforementioned steps in addition

⁴¹³ *Merit Energy*, at paras. 70-71 [BOA TAB 49].

to any amounts paid to Compeer, with the balance, if any, to be paid into Court. Any interested party would be at liberty to make application for an order paying the funds out of Court.

V. CONCLUSION / ORDER REQUESTED

287. Accordingly, generally and in respect of Compeer's contingent claim and leaving aside the Court's determinations already made in the Consent Order (Scheduling), NBC seeks, among other things:⁴¹⁴

- (a) a declaration that the Kiting Scheme was fraudulent;
- (b) a declaration that the Canadian Kiting Entities and the US Kiting Entities have committed fraud;
- (c) a declaration that the Canadian Kiting Entities, Price, Uffelman, and Thompson are required to indemnify and save NBC harmless, or alternatively contribute 100% of the loss, in respect of the Compeer v. NBC Claim;
- (d) a declaration that NBC's contingent claim is a provable claim;
- (e) that NBC's contingent claim be valued in the same amount as Compeer's expected shortfall, less a deduction, reserve or discount as the Court may deem appropriate;
- (f) a declaration that the conduct of the Canadian Kiting Entities, and that of Price, 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;
- (g) a declaration that, pursuant to the Guarantees, the corporate 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;
- (h) a declaration that all indebtedness, damages, and obligations due and owing to NBC, by any or all of the Canadian Kiting Entities and the corporate Respondents, are properly secured by the applicable Security Agreements;
- (i) costs on an indemnity basis;

⁴¹⁴ Claim of National Bank of Canada, filed October 10, 2025, at para. 137.

- (j) punitive and exemplary damages as against the Canadian Kiting Entities, Ray Price, Uffelman, and Thompson in an amount of \$1,000,000.00 or such other amount as this Court may determine to be appropriate in the circumstances; and
- (k) such other relief as this Honourable Court deems just in the circumstances.

288. This relief is appropriate and warranted because:

- (a) NBC has a provable claim, jointly and severally, as against the Canadian Kiting Entities, Ray Price, Uffelman, and Thompson including in respect of any and all amounts as may be awarded against NBC in favour of Compeer arising out of, or relating to, the Kiting Scheme.
- (b) The Kiting Scheme was fraudulent and the Kiting Entities have committed fraud.
- (c) The Canadian Kiting Entities, Price, Uffelman, and Thompson should be required to indemnify and save NBC harmless, or contribute 100% of the loss, in respect of the Compeer v. NBC Claim, because:
 - (i) they are the parties that committed the fundamental and only wrongdoing;
 - (ii) any harm suffered by Compeer was precipitated at first instance by them;
 - (iii) pursuant to statute (*Tort-Feasors Act* and *Contributory Negligence Act*), common law and equity, they are liable to indemnify NBC and contribute to any loss sustained by NBC up to 100%; and
 - (iv) pursuant to the Business Account Agreements, the Canadian Kiting Entities are “responsible for all use of its cheques”, “NBC would have no responsibility for...unauthorized transactions” and “NBC shall not in any way be liable or held responsible for any loss suffered by the Business...or wrongful conduct of any Authorized Signing Officer appointed by the Business” and indemnity is the means to give effect to these contractual promises.
- (d) The wrongdoing committed by the Canadian Kiting Entities, and by Ray Price, Uffelman, and Thompson as officers and directors of the Canadian Kiting Entities, 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.

- (e) All indebtedness, damages, and obligations due and owing to NBC are guaranteed by all of the corporate Respondents and properly secured by the applicable Security Agreements.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Calgary, Alberta
November 19, 2025

McCarthy Tétrault LLP

Sean F. Collins, KC



Sean S. Smyth, KC

**Counsel for the Claimant,
National Bank of Canada**

VI. LIST OF AUTHORITIES

Statutes

1. *Alberta Rules of Court*, AR 124/2010, at section 3.44;
2. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, at sections 2, 135(1.1), and 178(d);
3. *Bills of Exchange Act*, RSC 1985, c B-4, at sections 129, 132, and 165;
4. *Business Corporations Act*, RSA 2000, c B-9, at sections 19, 122, 239(b)(iii)(B), 239(b)(iv), and 242(1);
5. *Canada Evidence Act*, RSC 1985, c C-5; at section 5(2);
6. *Companies Creditors' Arrangement Act*, RSC 1985, c C-36, at sections 19(1) and 20(1);
7. *Contributory Negligence Act*, RSA 2000, c C-27, at sections 1(1), 2(2), and 3.1;
8. *Criminal Code*, RSC 1985, c C-46, at section 380(1);
9. *Negligence Act*, RSO 1990, c N.1;
10. *Tort-Feasors Act*, RSA 2000, c T-5, at section 3(3);

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11. *369413 Alberta Ltd. v. Pocklington*, 2000 ABCA 307 (CanLII);
12. *Addison & Leyen Ltd. v Fraser Milner Casgrain LLP*, 2013 ABQB 473;
13. *Addison & Leyen Ltd v Fraser Milner Casgrain LLP*, 2014 ABCA 230;
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15. *Air Canada, Re*, 2004 CanLII 6674 (ON SC);
16. *Air Canada v M & L Travel Ltd.*, 1993 CanLII 33 (SCC), [1993] 3 SCR 787;
17. *Auctioneers' Assn of Alberta v. Hunter*, 2002 ABQB 28;
18. *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560;
19. *Bank of Nova Scotia v. Sharp (1975)*, 57. D.L.R. (3d) 260 (B.C.C.A.);
20. *Blackwater v. Plint*, 2005 SCC 58 (CanLII), [2005] 3 SCR 3;
21. *Bonner v. Tottenham and Edmonton Permanent Investment Building Society*, [1899] 1 Q.B. 161 (C.A.);

22. *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, 1997 CanLII 307 (SCC), [1997] 3 SCR 1210;
23. *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8;
24. *Central R. Co. of Venezuela v. Kisch (1867)*, L.R. 2 H.L. 99;
25. *Century v New World Eng. Corp.*, 2013 ONSC 2140 (CanLII);
26. *Chartered Professional Accountants of Alberta v Neilson*, 2018 ABQB 170;
27. *CIBC v. Millard*, 2001 BCSC 982;
28. *Citadel General Assurance Co v Lloyds Bank Canada*, 1997 CanLII 334 (SCC), [1997] 3 SCR 80;
29. *Colborne Capital Corporation v. 542775 Alberta Ltd.*, 1995 CanLII 9100 (AB KB);
30. *Colborne Capital Corporation v. 542775 Alberta Ltd.*, 1999 ABCA 14;
31. *Condominium Corporation No. 0321365 v MCAP Financial Corporation*, 2012 ABCA 26;
32. *Confederation Treasury Services Ltd. (Re)*, [1997] SCCA No. 229;
33. *Confederation Treasury Services Ltd. (Re) (In Bankruptcy)*, 1997 CanLII 3544 (ONCA);
34. *Conforti Holdings Ltd. (In the matter of the proposal to creditors of)*, 2022 ONSC 3264;
35. *Corporation Agencies, Limited v. Home Bank of Canada*, 1927 CanLII 471 (UK JCPC);
36. *Dean v. Kociniak*, 2001 ABQB 412;
37. *Dhaliwal v Canada (Public Safety and Emergency Preparedness)*, 2025 CanLII 49485 (CA IRB);
38. *Driving Force Inc v I Spy-Eagle Eyes Safety Inc*, 2022 ABCA 25;
39. *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 SCR 41;
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41. *Gardner v. Newton (1916)*, 29 D.L.R. 276, 10 WWR 51 (Man. K.B.);
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43. *JBRO Holdings Inc v Dynasty Power Inc*, 2022 ABCA 140 (CanLII);
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48. *Mikealice Management Corp. and Dr. Michael Laiv. De Thomas Financial Corp. et al*, 2003 CanLII 43753 (ON SC);
49. *National Bank of Canada v Merit Energy Ltd.*, 2001 ABQB 583 (CanLII);
50. *National Bank of Canada v Sunterra Food Corporation*, 2025 ABKB 599;
51. *National Bank of Canada v Tanev*, 2004 CanLII 8031 (ONSC);
52. *Peek v. The Queen*, 2007 TCC 152 (CanLII);
53. *Peninsular and Oriental Steam Navigation Company v. Eastern Shipping Company*, 1923 CanLII 676 (UK JCPC);
54. *Peters v Remington*, 2004 ABCA 5;
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56. *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87;
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59. *R. v. Olan*, 1978 CanLII 9 (SCC);
60. *R. v Théroux*, [1993] 2 S.C.R. 5;
61. *Re Froment; Alta. Lumber Co. v. Department of Agriculture*, 1925 CanLII 313 (AB KB), [1925] 2 W.W.R. 415 (Alta. S.C.);
62. *Re SemCanada Crude Company (Orleans Energy Ltd.)*, 2012 ABQB 495;
63. *Royal Bank of Canada c. Capital Factors Inc.*, 2013 QCCS 2214;
64. *Royal Bank of Canada v. Hejna*, 2013 ONSC 1719 (CanLII);
65. *Ryan v Dew Enterprises Ltd.*, 2014 NLCA 11;
66. *Said v Butt*, [1920] 3 KB 497;
67. *SemCanada Crude Company (Celtic Exploration Ltd. #2, Re)*, 2012 ABQB 489;
68. *Siegel et al v. Hibbert et al*, 2012 ONSC 2767;
69. *Sorrel 1985 Limited Partnership v. Sorrel Resources Ltd.*, 2000 ABCA 256;
70. *Swanby v Tru Square Homes Ltd.*, 2023 ABCA 224;

71. *Wekerle v. Arbour*, 2025 ONSC 1456; and,

Other Authorities

72. M.H. Ogilvie, *Canadian Banking Law*, 2nd ed. (Toronto: Caswell, 199

APPENDIX A
SPECIFIC EXAMPLE OF AN INSTANCE OF KITING (JANUARY 27, 2025)

Artificial Account Balances (Reflecting Conditional Credit)

1. On January 27, 2025, the closing bank account balances of the Canadian Kiting Entities' NBC accounts, and the US Kiting Entities' Compeer accounts, inclusive of conditional credit and exclusive of written but unprocessed cheques, were as follows:⁴¹⁵

Account	Balance as of January 27, 2025 (as shown on account statements)
Sunterra Canada	\$2,909,904.07
Sunwold Canada	\$6,232,371.57
Sunterra US	\$11,382,166.52
Sunwold US	\$6,586,501.21
Total	\$27,110,943.37

Written but Unprocessed Cheques Dated January 22, 2025 to January 27, 2025 (Not Reflected in Account Statements on January 27, 2025)

2. The unprocessed cheques, written from the Canadian Kiting Entities' NBC accounts, dated up to and including January 27, 2025, were actually withdrawn from the Canadian Kiting Entities' NBC accounts, on January 28 to January 30, 2025, as follows:⁴¹⁶

⁴¹⁵ Affidavit #3 of Raymond Pai, sworn September 29, 2025, filed in NBC Claims Proceedings ("Pai Affidavit #3"), at paras. 19 and 50, and Exhibit "B"; Affidavit of Steve Grosland, sworn June 20, 2025 filed in Compeer Claims Proceedings, at Exhibits "1" and "2".

⁴¹⁶ Pai Affidavit #3, at para. 46.

Canadian Accounts				Compeer Accounts
Face Date of Cheques	Date of Withdrawal from Canadian Account	Total Amount Withdrawn (Sunterra Canada)	Total Amount Withdrawn (Sunwold Canada)	Date Funds Conditionally Credited in Corresponding Compeer Account
January 22, 2025	January 28, 2025	\$10,300,000	\$7,000,000	January 23, 2025
January 23, 2025	January 29, 2025	\$9,600,000	\$9,000,000	January 24, 2025
January 24, 2025	January 30, 2025	\$6,500,000	\$7,000,000	January 27, 2025
January 27, 2025	January 31, 2025	\$7,600,000	\$9,000,000	January 28, 2025
Total amount withdrawn after January 27, 2025 (cheques dated January 22, 2025 to January 27, 2025)		\$34,000,000	\$32,000,000	By January 28, 2025

3. The cheques written to and from the US Kiting Entities' Compeer Accounts, dated up to and including January 27, 2025, were credited and debited to the US Kiting Entities' Compeer Accounts by January 28, 2025, as follows:⁴¹⁷

US Accounts				NBC Accounts
Face Date of Cheques Drawn on Compeer Account	Date of Withdrawal from Compeer Account	Total Amount Withdrawn (Sunterra US)	Total Amount Withdrawn (Sunwold US)	Date Funds Conditionally Credited in Corresponding NBC Account
January 27, 2025	January 28, 2025	\$6,400,000	\$7,000,000	January 27, 2025
Face Date of Cheques Deposited to Compeer Account	Date of Deposit in Compeer Account	Total Amount Deposited (Sunterra US)	Total Amount Deposited (Sunwold US)	Date Funds Actually Withdrawn From Corresponding NBC Account
January 27, 2025	January 28, 2025	\$7,600,000	\$9,000,000	January 31, 2025

⁴¹⁷ Pai Affidavit #3, at para. 51.

Actual Account Balances (Reflecting Cheques From January 22, 2025 to January 27, 2025)

4. An accurate view of the Canadian Kiting Entities' NBC accounts, and the US Kiting Entities' Compeer Accounts, as at January 27, 2025, had the withdrawals and deposits of all cheques written and dated, up to January 27, 2025 (which were actually processed on January 28, 2025 through January 31, 2025) been processed on the dates the cheques were issued without further processing delay, is as follows:⁴¹⁸

Account	Balance at Jan. 27, 2025 (inclusive of conditional credit)	Total unprocessed withdrawals (cheques dated up to Jan. 27, 2025)	Total unprocessed deposits (cheques dated up to Jan. 27, 2025)	Actual balance
Sunterra Canada	\$2,909,904.07	-\$34,000,000	\$0	-\$31,090,095.93
Sunwold Canada	\$6,232,371.57	-\$32,000,000	\$0	-\$25,767,628.43
Sunterra US	\$11,382,166.52	-\$6,400,000	\$7,600,000	\$12,582,166.52
Sunwold US	\$6,586,501.21	-\$7,000,000	\$9,000,000	\$8,586,501.21
Total	\$27,110,943.37	-\$79,400,000	\$16,600,000	-\$35,689,056.63

⁴¹⁸ Pai Affidavit #3, at paras. 46-53.