



FORCE FILED

NO. S - 245121
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED

AND

IN THE MATTER OF ELEVATION GOLD MINING CORPORATION, ECLIPSE GOLD
MINING CORPORATION, ALCMENE MINING INC., GOLDEN VERTEX CORP.,
GOLDEN VERTEX (IDAHO) CORP., and HERCULES GOLD USA, LLC

PETITIONERS

NOTICE OF APPLICATION

Name of Applicants: Elevation Gold Mining Corporation, Eclipse Gold Mining Corporation, Alcmene Mining Inc., Golden Vertex Corp., Golden Vertex (Idaho) Corp., And Hercules Gold USA, LLC (collectively, the "**Petitioners**")

To: The Service List

TAKE NOTICE that an application will be made by the Petitioners to the Honourable Justice Milman at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on September 26, 2024 at 10:00 a.m. for the orders set out in Part 1 below.

The Petitioners estimate that the application will take 2 hours.

- This matter is within the jurisdiction of an Associate Judge.
- This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. The Petitioners seek:

- (a) an order substantially in the form attached hereto as **Schedule “A”**, amongst other things:
 - (i) approving an interim financing facility (the “**Interim Financing Facility**”) in the maximum principal amount of \$2,000,000 USD to be made available to Elevation Gold Mining Corporation (“**Elevation Gold**”), Golden Vertex Corp. (“**Golden Vertex**”), and Golden Vertex (Idaho) Corp. (collectively, the “**Borrowers**”), by KIA II LLC in its capacity as an interim lender to the Petitioners (in such capacity, the “**Interim Lender**”) pursuant to an interim lending term sheet (the “**Interim Financing Term Sheet**”);
 - (ii) granting an “**Interim Lender’s Charge**” as security for the Borrowers’ obligations to the Interim Lender pursuant to the Interim Financing Term Sheet;
 - (iii) approving a key employee retention program (the “**KERP**”);
 - (iv) granting a “**KERP Charge**” over the Property to secure the Petitioners’ obligations under the KERP;
 - (v) providing for the relative priority of the Interim Lender’s Charge and KERP Charge in relation to the court-ordered priority charges set out defined in the ARIO (as defined herein); and
 - (vi) removing Alcmene Mining Inc. (“**Alcmene Mining**”) and Hercules Gold USA, LLC (“**Hercules Gold**”) as Petitioners in these proceedings, terminating these proceedings as against those entities, and amending the style of cause in these proceedings accordingly; and
- (b) an order in the form attached hereto as **Schedule “B”**, sealing the Confidential 4th Affidavit of Tim Swendseid sworn on September 19, 2024 (the “**Confidential Swendseid Affidavit**”) on the Court file; and
- (c) such further and other relief as counsel may request and this Honourable Court may deem just.

Part 2: FACTUAL BASIS

2. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the 1st Affidavit of Tim Swendseid sworn July 29, 2024 (the “**First Swendseid Affidavit**”), the 2nd Affidavit of Tim Swendseid sworn August 8, 2024 (the “**Second Swendseid Affidavit**”) or the 3rd Affidavit of Tim Swendseid sworn September 19, 2024 (the “**Third Swendseid Affidavit**”).

I. BACKGROUND

3. On August 1, 2024 (the “**Filing Date**”), the Petitioners applied for and obtained an initial order (the “**Initial Order**”), among other things, providing them protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and appointing KSV Restructuring Inc. as monitor of the Petitioners (in such capacity, the “**Monitor**”).
4. On August 12, 2024, in furtherance of their restructuring efforts, the Petitioners applied for and obtained an order amending and restating the Initial Order (the “**ARIO**”) and an order (the “**SISP Order**”) approving a sales and investment solicitation process (the “**SISP**”) in respect of all the assets, undertakings, and properties of the Petitioners.

II. THE INTERIM FINANCING FACILITY

5. Before the Filing Date, Maverix Metals Inc. (“**Maverix**”), the Petitioners’ senior secured creditor, advised the Petitioners that it would not provide additional funding by way of an interim financing facility or otherwise. INFOR Financial Group Inc. (“**INFOR**”), in its capacity as the Petitioners’ financial advisor, also contacted more than 10 parties who were believed to have the expertise and resources necessary to provide interim financing. These parties all declined to provide such financing.
6. As such, at the outset of these proceedings, the Petitioners ceased active mining operations and have since relied on the continued beneficiation of gold and silver held in the leach pads at the Moss gold mine (the “**Moss Mine**”) in order to remain cash flow positive throughout these proceedings, without the need for interim financing.
7. The Petitioners’ most recent cash flow forecast indicates that they should have sufficient liquidity to continue to operate until at least the end of November 2024.
8. However, the current cash flow forecast assumes the continued interim cessation of active mining at the Moss Mine. If the Petitioners were to re-start active mining operations, or if they were to encounter operational issues, additional capital may be required.
9. In addition, the Petitioners’ cash flow forecast is based on certain assumptions, including certain revenue and cost assumptions. To the extent revenue is lower than forecast, or costs are higher than forecast, the Petitioners may need additional capital in order to maintain positive cash flow and fund working capital and general corporate needs of the Petitioners, as well as professional fees and costs associated with these CCAA proceedings.
10. For the foregoing reasons, the Petitioners seek this Court’s approval to enter into the Interim Financing Term Sheet on a contingency basis, to ensure adequate cash flow is available to the Petitioners if they require it.
11. The terms of the proposed Interim Financing Facility, which are more fully set out in the Interim Financing Term Sheet are summarized in the Second Report of the Monitor dated September 20, 2024 (the “**Second Report**”).

12. The Interim Financing Term Sheet has been approved by the Board of Directors of Elevation Gold, and the Monitor believes that the Interim Financing Facility and the Interim Lender's Charge are in the best interests of the Petitioners and their stakeholders.

II. THE KERP

13. Since the Filing Date, the Petitioners' employees and officers have been working diligently to consider and implement the steps required to stabilize and restructure their business.
14. The circumstances facing the Petitioners, including their financial challenges, work demands, and restructuring objectives, and the resignation of several key employees since the Filing Date, have emphasized the importance of the Petitioners retaining certain key employees, in furtherance of their restructuring efforts, including the prospect of completing a transaction pursuant to the SISF, and to facilitate the continuous operations of the Petitioners' business during the course of these CCAA proceedings.
15. It is difficult for the Petitioners to attract and retain employees for the Moss Mine, given, among other things, the remote location of the mine, and a current labour shortage in the gold mining industry due to the high price of gold and associated increase in mining activity, which has resulted in a highly competitive labour market. Thus, replacing employees who are integral to the stable operation of the Moss Mine could be difficult in the circumstances.
16. Considering these circumstances, the Petitioners, in consultation with the Monitor, have determined that it is in the Petitioners' and their stakeholders' best interests to take steps to facilitate the continued retention of certain key employees (collectively, the "**Key Employees**") and their ongoing commitment to the Petitioners' business as they pursue restructuring efforts and, ultimately, the opportunity to maximize value for stakeholders.
17. Given their roles within the Petitioners' business operations, the continued employment of the Key Employees is critical to the ongoing operations of the Petitioners. If any of the Key Employees were to resign, it would have a significant detrimental effect on the Petitioners' business operations, and would likely also result in increased professional costs due to the Monitor having to become more involved in operational matters.
18. The payments made to each Key Employee under the KERP will be in the form of a retention bonus (the "**Retention Bonus**"), to be paid in two parts, upon the occurrence of the following events (each, a "**Completion Event**"):
 - (a) 20% of the Retention Bonus will be paid on November 15, 2024; and
 - (b) 80% of the Retention Bonus will be paid no later than 60 days following the completion of a transaction or concurrently with the termination of these CCAA proceedings.
19. A Key Employee's entitlement to receive the Retention Bonus is contingent on each Key Employee meeting certain eligibility and payment criteria, namely:

- (a) the Petitioners have determined that such employee is essential to the stability of the Petitioners' business and/or will enhance the effectiveness of the SISP;
 - (b) the Monitor has consented to such employee participating in the KERP and to the terms on which such employee may receive payment under the KERP; and
 - (c) Key Employees must be actively employed with the Petitioners until the applicable bonus payment date, must be performing their duties and responsibilities through to such payment date; or are terminated without cause before the applicable bonus is due and payable.
20. Further, if a Key Employee is terminated for cause or if they resign before a Completion Event, they are no longer entitled to participate in the KERP.
21. The proposed KERP Charge (in the maximum amount of \$870,417 USD) is intended to provide the Key Employees with a reasonable level of assurance that the Retention Bonuses will be paid.
22. Maverix consents to the terms of the KERP and the identity of the Key Employees, and the Interim Lender is also supportive of the KERP. The Interim Lender's support is relevant, because an entity related to the Interim Lender is a prospective purchaser in the SISP, and believes the KERP will improve the likelihood of retaining key employees following the completion of a purchase and sale transaction.
23. Finally, Elevation Gold's Board of Directors has approved the proposed KERP.

III. REMOVAL OF PETITIONERS

24. Pursuant to a share purchase agreement dated August 29, 2024, Eclipse Gold Mining Corporation ("**Eclipse Gold**") sold 100% of the shares of Alcmene Mining to Strikepoint Gold Inc. ("**Strikepoint**") for \$250,000 CAD (the "**Hercules Transaction**"), which is below the threshold for Court approval under the ARIO. Alcmene Mining owns 100% of the shares of Hercules Gold, which is the sole owner of 100 square kilometers of exploration land that sits in Lyon County, Nevada, about 40 kilometers to the southeast of Reno, Nevada (the "**Hercules Property**").
25. Elevation Gold's Board of Directors approved the Hercules Transaction on August 27, 2024. As a result of the sale of Alcmene Mining's shares to Strikepoint, Strikepoint assumed Hercules Gold's obligation to pay approximately \$258,000 USD for annual fees to the US Bureau of Land Management to preserve various unpatented mining claims with respect to the Hercules Property.
26. INFOR advised that the Hercules Transaction would not affect the marketability of the Moss Mine and related business and assets and further, would not materially affect the SISP. INFOR also advised that during its pre-CCAA marketing process, there was limited interest in Hercules Gold, and that continued to be the case during the CCAA proceedings.

27. In light of the circumstances described above, the Petitioners are of the view that the Hercules Transaction was commercially reasonable.
28. As Strikepoint now owns the shares of Alcmene Mining, and therefore, Hercules Gold, these entities should no longer be Petitioners in these proceedings.

Part 3 LEGAL BASIS

29. The Petitioners plead and rely on:
 - (a) The CCAA;
 - (b) The *Business Corporations Act*, S.B.C. 2002, c. 57 (the “BCBCA”);
 - (c) The *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the “Rules”) in particular, and without limitation, Rules 2-1(2), 8-1, 8-2, 8-5, 16-1, 22-1, and 22-4;
 - (d) The inherent and equitable jurisdiction of this Honourable Court; and
 - (e) Such further and other legal basis as counsel may advise and this Honourable Court may allow.

I. THE INTERIM FINANCING FACILITY AND INTERIM LENDER’S CHARGE ARE NECESSARY AND APPROPRIATE

30. Interim financing protects the going-concern value of the debtor company while it develops a workable solution to its insolvency issues, enabling the preservation and realization of the value of the debtor’s assets.

9354-9186 Quebec Inc. v. Callidus Capital Corp., 2020 SCC 10 at para. 85 [*Callidus*].

31. The Court has the authority to approve the Interim Financing Term Sheet and the Interim Lender’s Charge pursuant to s. 11.2 of the CCAA. Section 11.2(4) of the CCAA sets out the following list of non-exhaustive factors to be considered by the Court:
 - (a) the period during which the company is expected to be subject to CCAA proceedings;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or the charge; and

- (g) the views of the monitor.

CCAA, s. 11.2.

32. No one factor set out in s. 11.2(4) governs or limits the Court's consideration, and not every factor needs to be mechanically applied or individually reviewed by the supervising judge. Not all of the factors will be significant in every case. The exercise is necessarily one of balancing the respective interests of the debtor and its stakeholders towards ensuring, if appropriate, that the financing will assist the debtor company to obtain the "breathing room" said to be needed to hopefully achieve a restructuring acceptable to the creditors and the court.

1057863 B.C. Ltd. (Re), 2020 BCSC 1369 at para. 35

Callidus, at para 97.

33. In addition to the statutory factors set out above, courts have determined that several additional factors are relevant to an application under section 11.2. These include whether:

- (a) the petitioner would be forced to stop operating without interim financing and whether bankruptcy would be in the interest of the petitioner's stakeholders;
- (b) the proposed interim financing will support the petitioner's restructuring plans, including implementation of a sales process;
- (c) the proposed interim lender would have provided the proposed interim financing without an interim lender's charge; and
- (d) the proposed facility has been approved by the petitioner's management.

North American Tungsten Corp. (Re), 2015 BCSC 1376 at paras. 33-35;

8440522 Canada Inc. (Re), 2013 ONSC 6167 at para. 32.

34. The proposed Interim Financing Facility and corresponding Interim Lender's Charge are necessary and appropriate for the following reasons, among others:

- (a) the Interim Financing Facility will give the Petitioners an additional source of funding should they recommence active mining, face unforeseen operational challenges, or experience lower than forecast revenues during these proceedings;
- (b) in the event the Interim Financing Facility is needed to fund professional fees and costs or ensure the stability and existence of ongoing operations, it will also enhance the prospects of a viable restructuring by allowing the Petitioners to implement the SISP in the interest of their stakeholders;
- (c) the amount of the Interim Financing Facility and terms of the Interim Financing Term Sheet are appropriate having regard to how the Petitioners' affairs will be managed during these CCAA proceedings and the period during which the

Petitioners expect to be under CCAA protection, including with respect to the Petitioners' projected cash flow needs and the timelines under the SISP;

- (d) the Monitor has compared the terms of the Interim Financing Facility to other interim financing facilities approved by Canadian courts in CCAA proceedings and other restructuring matters commenced over the past four years and has concluded that the cost of the Interim Financing Facility is within the range of similar facilities approved by this and other Canadian courts;
 - (e) the Monitor believes approval of the Interim Financing Facility is in the best interests of the Petitioners' stakeholders, and that it will advance the Petitioners' restructuring efforts by providing a source of financing, if required;
 - (f) the Monitor is of the view that having a contingent source of capital is prudent to address unforeseen circumstances that could disrupt completion of the SISP and/or impair the Petitioners business during these proceedings; and
 - (g) Maverix, the Petitioners' senior ranking and largest secured creditor, has consented to the Interim Financing Facility and Interim Lender's Charge.
35. In summary, the Interim Financing Facility is appropriate and is in the best interests of the Petitioners and their stakeholders given (a) the Petitioners' potential need for an additional source of funding to implement their restructuring efforts if they were to recommence active mining, encounter operational issues, or experience material negative cash flow variances; (b) the views of the Monitor and the approval of Elevation's Board of Directors; and (c) Maverix's consent to the Interim Financing Facility and Interim Lender's Charge.
36. No creditor will be materially prejudiced by the approval of the Interim Financing Facility or the granting of the Interim Financing Charge, and the Petitioners' senior secured creditor, Maverix, has consented to the same.

II. THE KERP IS NECESSARY AND APPROPRIATE

37. Courts regularly approve key employee restructuring plans in furtherance of a debtor company's restructuring on the grounds that the possibility that key employees will seek alternative employment due to the uncertainty associated with a CCAA restructuring is detrimental to the debtor company and its ability to restructure.

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 107 at paras 49-61 [*Walter Energy*]

1057863 B.C. Ltd. (Re), 2020 BCSC 1359, at paras 99-112 [*Northern Pulp*]

Mountain Equipment Co-Operative (Re), 2020 BCSC 1586, at paras 62-71 [*MEC*]

38. This Court's jurisdiction to approve the KERP and the KERP Charge is grounded in its authority, under s. 11 of the CCAA, to grant relief it deems appropriate.

CCAA, s. 11

MEC, at para 66 [*MEC*]

39. Factors to be considered by the Court in approving a KERP will vary from case to case, but previous considerations have included whether:
- (a) the employee is important to the restructuring process;
 - (b) the employee has specialized knowledge that cannot be easily replaced;
 - (c) the employee will consider other employment options if the KERP is not approved;
 - (d) the KERP was developed through a consultative process involving the monitor and other professionals; and
 - (e) the monitor supports the KERP and associated charge.

Walter Energy, at paras 58-59

Northern Pulp, at paras 104-105

40. Three criteria underlie the consideration of the appropriateness of employee retention programs in insolvency proceedings:
- (a) arm's length safeguards;
 - (b) necessity; and
 - (c) reasonableness of design.

Northern Pulp, at para 105

Aralez Pharmaceuticals Inc (Re), 2018 ONSC 6980, at para 30.

41. In the present case, the evidence supports each of the factors and criteria for approving a KERP.
42. The KERP is necessary. The Key Employees have significant experience, specialized expertise, and a history with the Petitioners, such that these employees cannot be easily replaced, particularly in the context of these proceedings, and in light of the labour shortage in the gold mining sector. Due to their experience and expertise, the Key Employees will likely have other, more certain employment opportunities, as demonstrated by the resignation of several key employees of Golden Vertex since these proceedings were commenced.
43. Given their knowledge, experience, expertise and history with the Petitioners, the Key Employees are critical to the stability of the Petitioners' ongoing operations, and will enhance the efforts of the other professionals in these proceedings. Specifically, the continued involvement of the Key Employees means that the Monitor can focus its efforts on restructuring matters rather than day-to-day operations, and further, will assist

INFOR, in its capacity as sales agent in the SISP, particularly in the due diligence process and, in the event of a successful transaction, the transition of the business to a purchaser.

Grant Forest Products Inc. (Re), 2009 CanLII 42046 (ONSC)

44. In terms of arm's length safeguards, the KERP was developed in consultation with the Monitor, and was approved by Elevation Gold's Board of Directors. Further, the Petitioners' senior secured creditor, Maverix, has consented to the terms of the KERP and the identity of the Key Employees. The Interim Lender is also supportive of the KERP as a means to enhance the retention of key employees in the event of a successful transaction respecting the Moss Mine, which is relevant given the participation of an affiliate of the Interim Lender in the SISP.
45. As set out in the Second Report, the Monitor supports the KERP and corresponding KERP Charge for various reasons, including that the continued involvement and cooperation of the Key Employees is expected to enhance the prospect of completing a transaction for the Moss Mine; and that the Key Employees have knowledge that will facilitate the operation of the Moss Mine and thus assist in reducing professional fees.
46. The design of the KERP is reasonable; Key Employees will receive their Retention Bonus in two tranches, with the larger tranche payable upon the completion of a transaction pursuant to the SISP or termination of the CCAA proceedings. Furthermore, the Retention Bonus is only payable if each Key Employee meets certain initial eligibility criteria, and certain payment criteria. Further, a Key Employee will lose its entitlement to participate in the KERP if terminated for cause, or if they resign before a Completion Event. These requirements provide procedural safeguards against abuse of the KERP.
47. The factors that support the approval of the KERP equally support the granting of the KERP Charge to provide the Key Employees with a reasonable level of assurance that the Retention Bonuses will be paid.
48. In the above circumstances, the Petitioners believe that the KERP and the KERP Charge are necessary and appropriate in the circumstances.

III. REMOVAL OF PETITIONERS

49. Pursuant to s. 11 of the CCAA, this Court may, subject to any restrictions set out in the CCAA, make any order that it considers appropriate in the circumstances.

CCAA, s. 11

50. As of the closing of the Hercules Transaction, Elevation Gold and Eclipse Gold no longer have an ownership interest in either Alcmena Mining or Hercules Gold. In light of these circumstances, it is appropriate that these parties be removed as Petitioners in the within proceedings, and the style of cause be amended accordingly.

IV. SEALING OF THE CONFIDENTIAL SWENDSEID AFFIDAVIT

51. The Supreme Court of Canada held that a sealing order may be granted where (a) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para. 53 [**Sierra Club**]

52. In addition to the aforementioned requirements, an applicant must establish that (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sherman Estates v. Donovan, 2021 SCC 25 at paras. 38 and 43

53. Canadian courts continue to grant sealing orders in CCAA proceedings including with respect to key employee retention plans such as the KERP.

Walter Energy at para. 51

Ontario Securities Commission v. Bridging Finance Inc., 2021 ONSC 4347 at para. 24

Re Just Energy Corp., 2021 ONSC 1793 at para. 124 [**Just Energy**]

54. In the present case, a sealing order with respect to the Confidential Swendseid Affidavit is necessary and appropriate as its disclosure could be prejudicial to the Petitioners, the Key Employees, and others. Among other issues, disclosure of the information the Confidential Swendseid Affidavit could (a) create privacy concerns in respect of salary and compensation levels, matters that are particularly personal and private, amongst Key Employees and the public; (b) allow the Petitioners' business competitors and others to attempt to induce the Key Employees to depart from their employment for more lucrative opportunities; and (c) make it more difficult for the Petitioners to negotiate employment terms for replacement employees if required.

55. These issues and disruptions would be prejudicial to the Petitioners at a time that it is most in need of stability and continuity. As the information found in the Confidential Swendseid Affidavit is not of a nature that would normally be made public, prejudice (if any) arising from it being sealed from public view would be outweighed by its disclosure.

Part 4: MATERIAL TO BE RELIED ON

56. The First Swendseid Affidavit;
57. The Second Swendseid Affidavit;

58. The Third Swendseid Affidavit
59. The Confidential Swendseid Affidavit;
60. The Pre-Filing report of KSV Restructuring Inc., dated July 30, 2024;
61. The First Report of KSV Restructuring Inc., dated August 7, 2024;
62. The Second Report of KSV Restructuring Inc.; and
63. Such further and other materials as counsel may advise and this Honourable Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 20th day of September, 2024.



Lawson Lundell LLP
Solicitors for the Applicants Elevation Gold Mining Corporation, Eclipse Gold Mining Corporation, Alcmene Mining Inc., Golden Vertex Corp., Golden Vertex (Idaho) Corp., And Hercules Gold USA, LLC

This Notice of Application is filed by William L. Roberts, Alexis Teasdale and Angad Bedi, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: wroberts@lawsonlundell.com; telephone number: 604-631-1620.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____
of Part 1 of this Notice of Application

with the following variations and additional terms:

Date: _____

Signature of Judge Associate Judge

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"
Form of Order Approving
Interim Financing, KERP, and Charges

SCHEDULE "A"

No. S - 245121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF ELEVATION GOLD MINING CORPORATION, ECLIPSE
GOLD MINING CORPORATION, ALCMENE MINING INC., GOLDEN VERTEX
CORP., GOLDEN VERTEX (IDAHO) CORP., and HERCULES GOLD USA, LLC

PETITIONERS

ORDER MADE AFTER APPLICATION

(Approval of Interim Financing and Key Employee Retention Plan and Charges)

BEFORE THE HONOURABLE)
) September 26, 2024
JUSTICE MILMAN)

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on this day; AND ON HEARING Alexis Teasdale of Lawson Lundell LLP, counsel for the Petitioners, and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the First Affidavit of Tim Swendseid, sworn July 29, 2024, the Second Affidavit of Tim Swendseid, sworn August 8, 2024, the Third Affidavit of Tim Swendseid, sworn September 19, 2024, the Fourth Affidavit of Tim Swendseid, sworn September 19, 2024 (the "**Confidential Swendseid Affidavit**"), the Second Report of KSV Restructuring Inc. in its capacity as the Court-appointed monitor of the Petitioners (in such capacity, the "**Monitor**"), dated September 9, 2024 (the "**Second Report**"); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application for this Order and the supporting materials is hereby abridged and this application is properly returnable today, and service upon any interested party other than those parties on the service list maintained in these proceedings is hereby dispensed with.
2. Capitalized terms used but not otherwise defined in this Order shall have the meanings given to them in the Amended and Restated Initial Order granted in these proceedings on August 12, 2024 (the “**ARIO**”).

INTERIM FINANCING

3. Elevation Gold Mining Corporation, Golden Vertex Corp. and Golden Vertex (Idaho) Corp., (collectively, the “**Borrowers**”) are hereby authorized and empowered to obtain and borrow funds under a credit facility from KIA II LLC (the “**Interim Lender**”), provided that borrowings under such credit facility (the “**Interim Lending Facility**”) shall not exceed USD \$2,000,000 unless permitted by further Order of this Court.
4. The Interim Lending Facility shall be on the terms and subject to the conditions set forth in the Interim Lending Facility Term Sheet made as between the Borrowers and the Interim Lender dated as of ● (the “**Interim Financing Term Sheet**”), attached as Appendix “B” to the Second Report.
5. The Borrowers are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), if any, as may be reasonably required by the Interim Lender pursuant to the terms of the Interim Financing Term Sheet, and the Borrowers are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Interim Financing Term Sheet and the Definitive Documents, if any, as and when the same become due and are to be performed.
6. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Lender’s Charge**”) on the Property. The Interim Lender's Charge shall not secure any obligation of any of the Borrowers to the Interim Lender that existed before this Order is made. The Interim Lender’s Charge shall have the priority set out in paragraphs 14 and 15 hereof.
7. Notwithstanding any other provision of this Order:
 - (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender’s Charge or any charge granted under the Definitive Documents, if any;
 - (b) upon the occurrence of an event of default under the Interim Financing Term Sheet or any of the Definitive Documents, the Interim Lender, upon notice to the

Borrowers and the Monitor, may exercise any and all of its rights and remedies against the Borrowers or the Property under or pursuant to the Interim Financing Term Sheet and any of the Definitive Documents, including without limitation, to terminate the Interim Lending Facility, and, on five (5) days' notice to the Borrowers and the service list in the within proceedings, apply to this Court for the appointment of an interim receiver or a receiver and manager of the Property, or a bankruptcy order in respect of any of the Borrowers, exercise the rights of a secured party under any legislation, and exercise all other rights and remedies under the Definitive Documents, if any, or under any Order of this Court in the within proceedings; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Borrowers or the Property.
8. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Borrowers under the CCAA, or any proposal filed by the Borrowers under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, with respect to any advances made under the Interim Financing Term Sheet or Definitive Documents, if any.

APPROVAL OF THE KERP

9. The Key Employee Retention Plan (the "**KERP**") attached as Exhibit "A" to the Confidential Swendseid Affidavit is hereby approved.
10. The Petitioners are hereby authorized to enter into the KERP with those employees (the "**Key Employees**") listed in Schedule "A" to the KERP.
11. The Petitioners are hereby authorized to pay a retention bonus (the "**Retention Bonus**") to the Key Employees in two tranches, in the total the amount set out in the Confidential Fourth Swendseid Affidavit, payable upon the occurrence of the following events:
- (a) 20% of the Retention Bonus will be paid on November 15, 2024; and
 - (b) 80% of the Retention Bonus will be paid no later than 60 days following the completion of a transaction or concurrently with the termination of the Petitioners proceedings under the CCAA.
12. Payments to the Key Employees under the KERP will only be made if, at the date the relevant payment of the Retention Bonus is due, as described in paragraph 11, the Key Employee has fulfilled his or her employment obligations and has not resigned or been terminated for cause.
13. The Key Employees shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property as security for the amounts payable to the Key Employees pursuant to the KERP, which charge shall not exceed an aggregate amount of USD \$870,417.

PRIORITIES AND PROTECTIONS

14. The priorities of:
- (a) the Administration Charge;
 - (b) the Sales Agent Charge;
 - (c) the Directors' Charge;
 - (d) the Intercompany Advance Charge;
 - (e) the Interim Lender's Charge; and
 - (f) the KERP Charge;

as among them, shall be as follows:

First – ranking *pari passu* the Administration Charge (to the maximum amount of \$500,000) and the Sales Agent Charge;

Second – the Interim Lender's Charge;

Third – the Directors' Charge;

Fourth – the KERP Charge; and

Fifth – the Intercompany Advance Charge.

15. The Interim Lender's Charge and the KERP Charge shall have, *mutatis mutandis*, the same protections and restrictions under the ARIO as the other Charges, including those set out in paragraphs 38-42 of the ARIO.

REMOVAL OF PETITIONERS

16. Effective as of the date of this Order, Alcmene Mining Inc. ("**Alcmene**") and Hercules Gold USA, LLC ("**Hercules**") shall cease to be Petitioners in this matter, and the CCAA proceedings with respect to those entities shall be terminated without any further act or formality; provided, however, that nothing herein impacts the validity or effect on Alcmene and Hercules of any orders made in these CCAA proceedings or any action or steps taken by any Person pursuant thereto or in connection therewith.
17. Effective as of the date of this Order, the style of cause in these proceedings shall be changed to:

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

**IN THE MATTER OF ELEVATION GOLD MINING CORPORATION,
ECLIPSE GOLD MINING CORPORATION, GOLDEN VERTEX CORP.
and GOLDEN VERTEX (IDAHO) CORP.**

PETITIONERS

GENERAL

- 18. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.
- 19. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign courts, tribunals, and regulatory or administrative bodies having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court overseeing the Petitioners' proceedings under Chapter 15 jointly administered in Case No. 2:24-bk-06359 or in any other foreign jurisdiction, to give effect to this Order and to assist the Petitioners, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Alexis Teasdale

Party Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"**List of Counsel**

Name of Counsel	Party Representing
Kibben Jackson	KSV Restructuring Inc.

SCHEDULE "B"
Form of Sealing Order

SCHEDULE “B”

NO. S - 245121
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED

AND

IN THE MATTER OF ELEVATION GOLD MINING CORPORATION, ECLIPSE GOLD
MINING CORPORATION, ALCMENE MINING INC., GOLDEN VERTEX CORP.,
GOLDEN VERTEX (IDAHO) CORP., and HERCULES GOLD USA, LLC

PETITIONERS

SEALING ORDER

BEFORE THE HONOURABLE
JUSTICE MILMAN

September 26, 2024

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on the 26th day of September, 2024, and on hearing Alexis E. Teasdale, counsel for the Petitioners, and those other counsel listed on **Schedule “A”** hereto; and upon reading the Affidavit #4 of Tim Swendseid made on September 19, 2024;

THIS COURT ORDERS that:

1. The following documents are to be sealed by the Registrar of this Honourable Court for the duration noted:

Items to be sealed

Description	Date Filed, if applicable	Number of copies filed, including any extra copies for the judge.	Duration of seal order:	Sought	Granted	
					YES	NO
1. <u>Entire File</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. <u>Specific Documents</u> Confidential Affidavit #4 of Tim Swendseid, sworn on September 19, 2024		One copy, to be sealed.	Until further Order of the Court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <u>Clerk's Notes</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. <u>Order</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. <u>Reasons for Judgment</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Access to the sealed items is restricted to the following persons:

- Petitioners
- KSV Restructuring Inc., in its capacity as court-appointed monitor
- Such other persons as this Court may allow on further application
- Counsel for the foregoing persons

3. Endorsement of this Order by counsel appearing on this Application, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

ALEXIS TEASDALE
Lawyer for the Petitioners

By the Court

Registrar

Schedule "A"

List of Counsel

Name of Counsel	Party Representing
Kibben Jackson	KSV Restructuring Inc.

NO. S- 245121
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS*
CORPORATIONS ACT, S.B.C. 2002,
C. 57, AS AMENDED

AND

IN THE MATTER OF ELEVATION GOLD
MINING CORPORATION, ECLIPSE GOLD
MINING CORPORATION, ALCMENE MINING
INC., GOLDEN VERTEX CORP., GOLDEN
VERTEX (IDAHO) CORP., and HERCULES
GOLD USA, LLC

SEALING ORDER



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456

Attention: William L. Roberts / Alexis Teasdale / Angad Bedi

NO. S- 245121
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS
CORPORATIONS ACT*, S.B.C. 2002,
C. 57, AS AMENDED

AND

IN THE MATTER OF ELEVATION GOLD
MINING CORPORATION, ECLIPSE GOLD
MINING CORPORATION, ALCMENE MINING
INC., GOLDEN VERTEX CORP., GOLDEN
VERTEX (IDAHO) CORP., and HERCULES
GOLD USA, LLC

NOTICE OF APPLICATION



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456 / 218-7564

Attention: William L. Roberts / Alexis Teasdale / Angad Bedi