



No. S-228723  
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 THE PLAN OF COMPROMISE AND ARRANGEMENT OF  
PURE GOLD MINING INC.

PETITIONER

### NOTICE OF APPLICATION

**Name of applicant: Pure Gold Mining Inc. (the "Applicant" or "Pure Gold")**

To: The Service List

TAKE NOTICE that an application will be made by the Applicant to the Honourable Justice Walker at the courthouse at 800 Smithe Street, Vancouver, British Columbia on March 30, 2023 at 9:00 AM for the orders set out in Part 1 below.

#### **Part 1: ORDERS SOUGHT**

1. An order (the "**SERP Order**"), substantially in the form attached hereto as **Schedule "A"**, approving a Site Employee Retention Plan (the "**SERP**") and a corresponding priority charge (the "**SERP Charge**") in an amount not to exceed \$2.2 million to secure amounts payable under the SERP.
2. An order (the "**CAO Order**"), substantially in the form attached hereto as **Schedule "B"**, approving the Consulting Agreement (the "**Consulting Agreement**") between Pure Gold and Jonathan Singh, appointing Mr. Singh as Chief Administrative Officer ("**CAO**") of Pure Gold.
3. Pure Gold also seeks such further and other relief as counsel may advise and as this Court may deem appropriate.

#### **Part 2: FACTUAL BASIS**

##### **Introduction**

4. Pure Gold was granted protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") on October 31, 2022. Since that time, it has been working diligently towards its

restructuring goals, including in consultation with its senior secured creditor and interim lender, members of the Spratt group ("**Spratt**") and KSV Restructuring Inc., the court-appointed "**Monitor**".

5. Days before Pure Gold filed for CCAA protection, it decided to place the Mine, its main asset, in a care and maintenance status. It also significantly reduced its workforce from approximately 275 employees to 50 employees and has been operating with a limited number of employees since.

6. Given that Pure Gold remains in CCAA protection, there is significant uncertainty surrounding the future employment of Pure Gold's remaining on-site employees at the Mine. These employees, whose experience and knowledge would make them difficult and expensive to replace, are necessary to the Mine's operations in care and maintenance and to the preservation of its value.

7. In consultation with and the support of Spratt and the Monitor, Pure Gold has determined that it is in its and its stakeholders' best interests that steps be taken to retain all remaining on-site Mine employees (the "**Key Site Employees**") and seeks approval of the SERP and the SERP Charge to encourage their continued employment.

8. In alignment with a number of recent resignations and terminations at the management level at Pure Gold, Pure Gold also seeks the CAO Order to appoint Mr. Singh as the CAO of Pure Gold.

9. Approval of the SERP and appointment of the CAO are parts of a coordinated path forward reflecting both Pure Gold's current resources and its operational needs as it continues to work towards its restructuring goals. The relief sought in both the SERP Order and the CAO Order has been developed in consultation with, and with the support of, the Monitor and Spratt.

10. The SERP Order and the CAO Order are appropriate and necessary in the circumstances.

### ***The SERP***

11. In consultation with the Monitor and Spratt, Pure Gold has developed the SERP to encourage the continued employment of 38 Key Site Employees.

12. As mentioned above, these Key Site Employees are necessary to keeping the Mine in a safe and stable state while preserving its value. The Key Site Employees include employees in the fields of geology, environmental management, safety, human resources, mill operation, water treatment plant operation, administration, finance, and management of the Mine.

13. The SERP contemplates three "**Bonus Payments**" will be made to most of Key Site Employees in April, September, and December 2023 (with certain exceptions for a limited number of the Key Site Employees). The Bonus Payments will be comprised of both a "Retention Bonus", which is a percentage of the Key Site Employee's annual salary payable regardless of performance, and a "Performance Bonus", which is a second bonus payable if certain performance criteria are met. The maximum amount of all Bonus Payments will be an amount equal to 50% of the Key Site Employees' annual salary.

14. To ensure that the SERP participants receive reasonable assurance that their entitlements under the SERP are secure, Pure Gold is also seeking the SERP Charge on the Property in an amount not to exceed \$2.2 million.

### ***The Consulting Agreement***

15. In addition to approval of the SERP, Pure Gold seeks approval of the Consulting Agreement and the appointment of Mr. Singh as CAO.

16. Mr. Singh's appointment as CAO aligns with the recent resignations and terminations at the management level, which are set out in greater detail in the Sixth Affidavit of Chris Haubrich, made March 24, 2023, and include Pure Gold's President and Chief Executive Officer, Chief Operating Officer, Vice President Financing & Corporate Secretary, and Vice President of Business Development and Chief Financial Officer.

17. In light of these departures and the need to maintain operational integrity while minimizing costs, Pure Gold, in consultation and with the support of Sprott and the Monitor, has entered into the Consulting Agreement with Mr. Singh to provide for his appointment as CAO.

18. It is proposed that the amounts payable under the Consulting Agreement be secured by the existing Administration Charge (as defined in the ARIO).

19. Both the Monitor and Sprott support the approval of the Consulting Agreement and the ancillary relief sought in the CAO Order.

### **Part 3: LEGAL BASIS**

#### **The SERP Order should be Approved**

20. Courts regularly approve employee retention 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) [Walter Energy], 2016 BCSC 107 at paras. 49-61; 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].***

21. This Court's jurisdiction to approve the SERP and the SERP Charge is grounded in section 11 of the CCAA, which grants the court a broad discretionary power to make any order it considers appropriate in the circumstances.

***MEC at para. 66.***

22. Factors to be considered by the Court in approving an employee retention plan will vary from case to case, but previous considerations have included the following: (a) are the employees important to the restructuring process? (b) Do the employees have specialized knowledge that cannot be easily replaced? (c) Will the employees consider other employment options if the retention plan is not approved? (d) Was the retention plan developed through a consultative

process involving the monitor and other professionals? and (e) Does the monitor support the KERP and a charge?

***Walter Energy at para. 59, citing Grant Forest Products (2009), 57 C.B.R. (5th) 128 (Ont. S.C.J.).***

23. Pure Gold submits that approval of the SERP and the SERP Charge is appropriate for the following reasons:

- (a) the Key Site Employees are necessary to keeping the Mine in a safe and stable state and preserving its value as an asset, which is an important part of Pure Gold's restructuring and ability to maximize value for its stakeholders;
- (b) the Key Site Employees have specific knowledge and training that will be difficult and costly to replace, including a detailed knowledge of the Mine site and its operation;
- (c) Pure Gold is concerned that the Key Site Employees may have other employment opportunities available to them which they might be inclined to accept unless granted the benefit of the SERP; and
- (d) the SERP was developed in consultation with the Monitor and Spratt, each of whom supports its approval.

#### **The CAO Order Should be Approved**

24. This Court has jurisdiction to grant the CAO Order pursuant to its general power under section 11 of the CCAA.

25. Restructuring and other financial professionals are frequently engaged in CCAA proceedings to advance the restructuring where the existing management is either unable or unwilling to bring the required expertise to bear. In such circumstances, courts have granted enhanced powers to the monitor; otherwise, the appointment of a CRO and/or financial advisor can be considered.

#### ***Walter Energy at para. 27***

26. In *Walter Energy*, Justice Fitzpatrick identified the following factors to consider in approving the appointment of a CRO (or in this case a CAO):

- (a) whether there are significant high-level employees in the province that are knowledgeable about financial or restructuring matters;
- (b) whether there is a legitimate risk that without a CRO the debtor could become rudderless in the proceedings;
- (c) whether professional advisors are desirable or potentially necessary for a successful restructuring;
- (d) whether the CRO is qualified;

- (e) whether the expertise of the CRO will assist the debtor in achieving the objectives of the CCAA;
- (f) whether the debtor's assets and operations are significantly complex so as to justify the appointment and proposed compensation of the CRO;
- (g) whether there will be an unwarranted duplication of effort;
- (h) whether the secured creditors likely to be affected by the CRO's fees have been given notice and do not oppose the relief; and
- (i) whether the Monitor is of the view that the CRO's fees and charges are appropriate.

***Walter Energy at paras. 29-35 and 43-47***

27. Appointment of Mr. Singh as the CAO will reduce operational costs on a go-forward basis while ensuring that Pure Gold has the requisite leadership and oversight of operations at the Mine.

28. As will be further set out in the Monitor's Fourth Report, appointment of Mr. Singh as the CAO and approval of the Consulting Agreement is appropriate and necessary in the circumstances.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #6 of Chris Haubrich, made March 24, 2023;
2. Fourth Report of the Monitor, to be filed; and
3. Such further and other materials as counsel for the Applicant may advise.

The Applicant estimates that the application will take one hour.

This matter is not within the jurisdiction of a master. Justice Walker is seized of this matter.

**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 of 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).

Date: 24/Mar/2023



Signature of Peter L. Rubin  
Lawyer of Pure Gold Mining Inc.

Blake, Cassels & Graydon LLP  
Barristers and Solicitors  
Suite 2600, Three Bentall Centre  
595 Burrard Street PO Box 49314  
Vancouver, BC V7X 1L3  
Email: peter.rubin@blakes.com  
Telephone: 604-631-3315

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  Master

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- 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

Schedule "A" to Notice of Application

No. S-228723  
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**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.  
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PURE GOLD MINING INC.

PETITIONER

**ORDER MADE AFTER APPLICATION**  
**(SITE EMPLOYEE RETENTION PLAN APPROVAL)**

BEFORE THE HONOURABLE JUSTICE )  
WALKER )

March 30, 2023

ON THE APPLICATION of the Petitioner, Pure Gold Mining Inc., coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on the 30<sup>th</sup> day of March, 2023; AND ON HEARING Peter L. Rubin and Claire Hildebrand, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including Affidavit #6 of Chris Haubrich, affirmed March 24, 2023 (the "**Sixth Haubrich Affidavit**") and the Fourth Report of KSV Restructuring Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**") dated March 24, 2023; 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*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES that:

1. The Site Employee Retention Plan (the "**SERP**") as described in the Sixth Haubrich Affidavit, including the exhibits thereto, is hereby approved and the Petitioner is hereby authorized to enter into the SERP and make the payments payable thereunder to the Key Site Employees (as defined in the Haubrich Affidavit).



2. The Key Site Employees shall be entitled to the benefit of and are hereby granted a charge (the "**SERP Charge**") on the Property (as defined in the Amended and Restated Initial Order granted in this proceeding on November 9, 2022 (the "**ARIO**")) as security for the amounts payable to the Key Site Employees pursuant to the SERP, which charge shall not exceed an aggregate amount of \$2.2 million. The SERP Charge shall rank as follows:

- (a) subsequent in priority to the Administration Charge, the D&O Charge, the Interim Lender's Charge (each as defined in the ARIO);
- (b) *pari passu* with the KERP Charge (as defined in the Order (Key Employee Retention Plan Approval) of this Court dated November 9, 2022); and
- (c) prior to the Sales Agent Charge (as defined in the Order (SISP and Sales Agent Approval) of this Court dated November 9, 2022).

3. The SERP Charge shall have such priority and protections as are set out in the ARIO.

4. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner 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:

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Signature of Peter L. Rubin  
Lawyer for the Petitioner

BY THE COURT.

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Registrar

Schedule "A" to SERP Order

COUNSEL NAME	PARTY REPRESENTED

Schedule "B" to Notice of Application

No. S-228723  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.  
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IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF  
PURE GOLD MINING INC.

PETITIONER

**ORDER MADE AFTER APPLICATION**  
**(APPOINTMENT OF CHIEF ADMINISTRATIVE OFFICER)**

BEFORE THE HONOURABLE JUSTICE )  
WALKER )

March 30, 2023

ON THE APPLICATION of the Petitioner coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on the 30<sup>th</sup> day of March, 2023; AND ON HEARING Peter L. Rubin and Claire Hildebrand, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including Affidavit #6 of Chris Haubrich, affirmed March 24, 2023 (the "**Sixth Haubrich Affidavit**") and the Fourth Report of KSV Restructuring Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**") dated March 24, 2023 (the "**Fourth 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*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

***Capitalized Terms***

1. Capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Amended and Restated Initial Order of this Court dated November 9, 2022 (the "**ARIO**").

### ***Appointment of Chief Administrative Officer***

2. Jonathan Singh (the “**Consultant**”) is hereby appointed as the Petitioner’s Chief Administration Officer (“**CAO**”) pursuant to the terms of this Order and the Consulting Agreement dated March 24, 2023 between the Petitioner and the Consultant, attached as Appendix 1 to the Fourth Report (the “**Consulting Agreement**”).
3. The Consulting Agreement is hereby approved, and the Petitioner is hereby authorized and directed to enter into and carry out the terms of the Consulting Agreement, including, without limitation, making the payments to the Consultant contemplated thereunder.
4. In its role as CAO the Consultant shall perform the functions and duties set out in the Consulting Agreement. The Consultant shall provide timely updates to the Monitor in respect of their activities as CAO.
5. For the purposes of carrying out the functions and duties set out in the Consulting Agreement, the Consultant (i) shall have full and complete access to the records and operations of the Petitioner, including the premises, books, data, and other financial documents of the Petitioner, and (ii) is hereby authorized to meet with any employee, director, representative or agent of the Petitioner. The employees, directors, and representatives and agents of the Petitioner are hereby directed to fully cooperate with the Consultant in connection with the functions and duties of the Consultant set out in the Consulting Agreement.
6. The Consultant shall not take possession of the Petitioner’s Property and shall not, by fulfilling its obligations under the Consulting Agreement or its role as CAO, be deemed to have taken or maintained possession or control of the Petitioner’s Business or the Property, or any part thereof, including without limitation for the purpose of any Environmental Legislation.
7. In addition to the rights and protections afforded to the Consultant as an officer of the Court, no provision of this Order is intended, or shall be deemed, to appoint or otherwise obligate the Consultant to act as a director, *de facto* director, or employee of the Petitioner.
8. Nothing in this Order shall be construed as resulting in the Consultant being an employer, successor employer, a responsible person, operator or any person with apparent authority within the meaning of any statute, regulation or rule of law, or equity (including any Environmental Legislation) for any purpose whatsoever.
9. Neither the Consultant nor any employee or agent of the Consultant shall incur any liability as a result of fulfilment of the Consultant’s duties as CAO of the Petitioner, or, if applicable, by acting as a director of the Petitioner during the pendency of these proceedings, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on their part.
10. If, but for the provisions of this Order, the Consultant would have any liability with respect to any losses, claims, damages or liabilities to his Majesty the King in right of the Province of Ontario or would have incurred an obligation under any enactment of Ontario or Canada (including Environmental Legislation) such liability or obligation shall be deemed to be a liability or obligation of the Petitioner.
11. The Consultant shall be entitled to the benefit of and participate in the Administrative Charge contained in paragraph 31 of the ARIO, to secure the amounts payable by the Petitioner

to the Consultant under the Consulting Agreement. Should the Consultant be appointed a director of the Petitioner, the Consultant shall also be entitled to the benefit of and participate in the D&O Charge contained in paragraph 21 of the ARIO.

12. Until further order of this Court, no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the Consultant or their employees or agents relating to their appointment as CAO, or their conduct pursuant to the Consulting Agreement, and all rights and remedies of any person against or in respect of the Consultant are hereby stayed and suspended, except with leave of this Court, any such application seeking leave of this Court shall be served upon the Consultant, the Monitor and the Petitioner at least seven (7) days prior to the return date of any such application for leave.

13. The obligations of the Petitioner to the Consultant pursuant to the Consulting Agreement are not claims that may be compromised pursuant to any plan of arrangement or compromise filed by the Petitioner under the CCAA, any proposal under the BIA, or any other restructuring and no such plan, proposal or restructuring shall be approved that does not provide for the payment of all amounts owing to the Consultant pursuant to the terms of the Consulting Agreement.

14. Endorsement of this Order by counsel appearing on this application except for counsel for the Petitioner 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:

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Signature of Peter L. Rubin  
Counsel for the Petitioner

BY THE COURT

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REGISTRAR

**Schedule "A" to the CAO Order**

(List of Counsel)

COUNSEL NAME	PARTY REPRESENTED