



No. B-200596  
Estate No. 11-2686731  
Division No. 03 - Vancouver  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, C. B-3, AS AMENDED**

**AND**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
AVENUEHQ TECHNOLOGY INC.**

**NOTICE OF APPLICATION**

**NAME OF APPLICANT:** AvenueHQ Technology Inc. ("**AvenueHQ**")

**TO:** Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by AvenueHQ to the presiding judge at Vancouver, British Columbia, on **November 18, 2020 at 9:45 a.m.** by telephone for the orders set out in Part 1 below.

**Part 1: ORDER SOUGHT**

1. An order substantially in the form attached hereto as **Schedule "B"** sealing the Second Affidavit of Steven Mulcahy, dated November 12, 2020 (the "**Second Mulcahy Affidavit**"), which attaches, as Exhibit "A" thereto, an unredacted copy of the asset purchase agreement (the "**APA**") dated November 5, 2020, between AvenueHQ and 1264038 B.C. Ltd.

**Part 2: FACTUAL BASIS**

**A. Background**

1. On November 5, 2020, AvenueHQ filed a Notice of Intention to Make a Proposal (the "**NOI**").
2. On November 6, 2020, AvenueHQ filed a Notice of Application seeking, among other things, an order approving the APA (the "**Approval Application**").
3. A copy of the APA (the "**Redacted APA**") is attached as Exhibit "A" to the First Affidavit of Steven Mulcahy, dated November 10, 2020, which has been redacted to remove

certain confidential and commercially sensitive schedules pertaining to the various loan agreements and between AvenueHQ, NewCo, and certain of its secured creditors (the "**Confidential Schedules**").

4. The Redacted APA has been served on the Service List.
5. As detailed further below, the Confidential Schedules contain confidential and commercially sensitive information pertaining to the lending arrangements, terms, conditions, etc.
6. In order to protect this commercially sensitive and confidential information while providing a complete record to the Court in connection with the Approval Application, AvenueHQ seeks to file an unredacted copy of the APA under seal.
7. If the Confidential Schedules were made publicly available, such disclosure could materially harm the commercial interests of AvenueHQ and/or NewCo, as it would result in the public disclosure of certain lending and financing arrangements, and:
  - (a) the terms and conditions that NewCo is willing to accept to obtain financing; and
  - (b) the terms and conditions upon which certain of the secured creditors are willing to make such financing available.
8. Accordingly, AvenueHQ seeks to file the Second Mulcahy Affidavit under seal.
9. However, and as noted above, in order to ensure that all parties in these proceedings have access to the relevant information, AvenueHQ does not seek a sealing order in respect of the entire APA and has served a copy of the Redacted APA (i.e., without the Confidential Schedules) on the Service List.

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

#### **Sealing Documents**

1. AvenueHQ requires a sealing order in order to authorize it to file the Second Mulcahy Affidavit under seal for the purposes of, among other things:
  - (a) protecting the commercially-sensitive and confidential information contained in the Confidential Schedules;
  - (b) preserving the overall efficacy of these proceedings; and
  - (c) ensuring that no party to the APA and/or the ancillary agreements is prejudiced by the public disclosure of the lending arrangements between AvenueHQ, NewCo and certain of the secured creditors.
2. The following two-part test applies when determining whether public access to a court document may be restricted:
  - (a) is the order 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) do the salutary effects of the sealing 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 in this context 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  
*Sahlin v Nature Trust of British Columbia, Inc.*, 2010 BCCA 516, at para 6

3. The Second Mulcahy Affidavit meets this two-part test because:

- (a) the Confidential Schedules contain sensitive information that, if released publicly at this time, could materially AvenueHQ's and/or NewCo's commercial interests and restructuring efforts; and
- (b) the salutary effects of the requested sealing order outweigh any potential deleterious effects, as none of the parties with a commercial interest in these proceedings would be prejudiced by the granting of the order sought because a copy of the APA (excluding the Confidential Schedules) has been provided to the Service List.

*Re Essar Steel Algoma Inc*, 2015 ONSC 7656, at para 22  
*Walter Energy Canada Holdings, Inc (Re)*, 2016 BCSC 107, at paras 50-51  
*Walter Energy Canada Holdings, Inc (Re)*, 2016 BCSC 1746, at para 9  
*Target Canada Co (Re)*, 2015 ONSC 1487, at para 28

4. In further support of the relief sought in this application, AvenueHQ relies on the following:

- (a) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, and in particular section 65.13 thereof;
- (b) the inherent and equitable jurisdiction of this Honourable Court; and
- (c) Such further and other grounds as counsel may advise and this Honourable Court may deem just.

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

1. Affidavit #1 of Steven Mulcahy, dated November 12, 2020;
2. Affidavit #2 of Steven Mulcahy, dated November 12, 2020 (to be sealed);
3. First Report of the Proposal Trustee, to be filed; and
4. Such further and other materials as counsel may advise and this Honourable Court may permit.

The applicant estimates that the Application will take 10 minutes.

This matter is within the jurisdiction of a Master.

This matter is not within the jurisdiction of a Master.

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: November 12, 2020



\_\_\_\_\_  
Signature of Lawyer for the Applicant  
Cassels Brock & Blackwell LLP  
(H. Lance Williams and Jared Enns)

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
- 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
- other

**SCHEDULE "A"**

No. B-200596  
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Division No. 03 - Vancouver  
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**SERVICE LIST**

[Current to: November 10, 2020]

<p><b>Cassels Brock &amp; Blackwell LLP</b> 2200 – 885 West Georgia Street Vancouver, BC V6C 3E8</p> <p><b>Attention: H. Lance Williams Mary I.A. Buttery, Q.C Jared Enns</b></p> <p>Email: lwilliams@cassels.com mbuttery@cassels.com jenns@cassels.com sdanielisz@cassels.com</p> <p>Tel: 604-691-6100</p> <p><i>Counsel for AvenueHQ Technology Inc.</i></p>	<p><b>Fasken Martineau DuMoulin LLP</b> 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p><b>Attention: Kibben Jackson</b></p> <p>Email: kjackson@fasken.com</p> <p>Tel: 604-631-3131</p> <p><i>Counsel for Proposal Trustee</i></p>
<p><b>Blake Cassels &amp; Graydon LLP</b> Suite 2600 – 595 Burrard Street Vancouver, BC V7X 1L3</p> <p><b>Attention: Jake Switzer Daniel Rosario</b></p> <p>Email: jake.switzer@blakes.com daniel.rosario@blakes.com</p> <p>Tel: 604-631-3300</p> <p><i>Counsel for TIMIA Capital Corp.</i></p>	<p><b>Gowling WLG</b> Suite 2300 – 550 Burrard Street Vancouver, BC V6C 2B5</p> <p><b>Attention: John McLean Jonathan Ross Tara Amiri Chris Colonval</b></p> <p>Email: john.mclean@gowlingwlg.com jonathan.ross@gowlingwlg.com tara.amiri@gowlingwlg.com chris.colonval@gowlingwlg.com</p> <p>Tel: 604-683-6498</p> <p><i>Counsel for Ehsan Khorasani</i></p>

<p><b>blue HF Legal LLP</b> 500 St-Jacques, Suite 410 Montreal, QC H2Y 1S1</p> <p><b>Attention: Sylvie Bordet</b></p> <p>Email: sbordet@blue-hf.com</p> <p>Tel: 514-667-7010</p> <p><i>Counsel for BDC Capital Inc.</i></p>	<p><b>Lawson Lundell LLP</b> Suite 1600 – 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p><b>Attention: William Roberts Chat Ortvad</b></p> <p>Email: wroberts@lawsonlundell.com cortved@lawlundell.com</p> <p>Tel: 604-685-3456</p> <p><i>Counsel for Pallasite Ventures Inc.</i></p>
<p><b>Dell Financial Services Canada Limited</b> 155 Gordon Baker Road, Suite 501 North York, ON M2H 3N5</p> <p><i>Secured Creditor</i></p>	<p><b>CWB National Leasing Inc.</b> 1525 Buffalo Place Winnipeg, MB R3T 1L9</p> <p><i>Secured Creditor</i></p>
<p><b>Royal Bank of Canada</b> 36 York Mills Road, 4<sup>th</sup> Floor Toronto, ON M2P 0A4</p> <p><i>Secured Creditor</i></p>	<p><b>Vault Credit Corporation</b> 41 Scarsdale Road, Unit 5 Toronto, ON M3B 2R2</p> <p><i>Secured Creditor</i></p>
<p><b>Office of the Superintendent of Bankruptcy</b> 2000 - 300 West Georgia Street Vancouver, BC V6B 6E1</p> <p>Email: ic.osbservice-bsfbservice.ic@canada.ca</p>	

**SCHEDULE "B"**

No. B-200596  
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AVENUEHQ TECHNOLOGY INC.

**SEALING ORDER**

BEFORE THE HONOURABLE

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WEDNESDAY, THE 18<sup>TH</sup> DAY  
OF NOVEMBER, 2020

ON THE APPLICATION of AvenueHQ Technology Inc. ("**AvenueHQ**") coming on for hearing at Vancouver, British Columbia, on the 18<sup>th</sup> day of November, 2020; AND ON HEARING H. Lance Williams, counsel for AvenueHQ, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein, including the First Report of the Proposal Trustee, dated November 13, 2020, Affidavit #1 of Steven Mulcahy made November 12, 2020, and Affidavit #2 of Steven Mulcahy made November 12, 2020;

THIS COURT ORDERS AND DECLARES THAT

1. Access to sealed items permitted by:
- Counsel of Record
  - Parties on Record
  - Further Court Order
  - Others



**Items to be Sealed**

Document Name	Date Filed (Date on Court Stamp)	Number of copies filed, including any extra copies for the judge	Duration of sealing order	Sought	Granted	
					Yes	No
<b>Entire File</b>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Specific Documents</b>  Affidavit #2 of Steven Mulcahy made November 12, 2020.	To be filed	1	Until further order	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Clerk's Notes</b>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Order</b>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Endorsement of this Order by counsel appearing, other than counsel for AvenueHQ 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:

\_\_\_\_\_  
Signature of Lawyer for the Applicant  
Cassels Brock & Blackwell LLP  
(H. Lance Williams and Jared Enns)

BY THE COURT

\_\_\_\_\_  
REGISTRAR

## Schedule "A"

### List of Counsel

Name of Counsel	Party Represented