Court File No. CV-23-00710413-00CL

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

NINTH INTERIM REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER
(Subsection 246(2) of the *Bankruptcy and Insolvency Act*)

June 10, 2025

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

v.

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

NINTH INTERIM REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER
(Subsection 246(2) of the *Bankruptcy and Insolvency Act*)

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A. INTRODUCTION AND PURPOSE

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 22, 2023 (the "**Receivership Order**"), FTI Consulting Canada Inc. ("**FTI Consulting**") was appointed as receiver and manager (in such capacity, the "**Receiver**"), without security, of the following property (collectively the "**Property**") of Trade X Group of Companies Inc. ("**Trade X Parent**"), 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX Ops Canada Corporation ("**TX Canada**") (collectively, "**Trade X**" or the "**Debtors**"):

   (a) the assets, undertakings and properties of the Debtors (other than Trade X Parent and TX Canada) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

   (b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc. ("**Wholesale Express**")) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

   (c) certain assets, undertakings and properties of TX Canada defined as the "TX Canada Collateral" in the Affidavit of Westin Lovy sworn December 4, 2023.

2. The application was brought by MBL Administrative Agent II LLC (the "**Agent**" or the "**Applicant**") as agent for Post Road Specialty Lending Fund II LP (f/k/a Man Bridge Lane Specialty Lending Fund II (US) LP), and Post Road Specialty Lending Fund (UMINN) LP (f/k/a Man Bridge Lane Specialty Lending Fund (UMINN) LP) (together, the "**Lenders**") pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended, and shall be referred to herein as the "**Receivership**".

3. This report is the Ninth Interim Report of the Receiver (the "**Ninth Report**") prepared pursuant to section 246(2) of the BIA for the period to June 10, 2025. The purpose of this Ninth Report is to provide information to the Court on the following:

(a) the activities of the Receiver since the Eighth Report of the Receiver dated December 16, 2024 (the "**Eighth Report**"); and

(b) information about the anticipated next steps and activities of the Receiver in connection with the Receivership.

B. TERMS OF REFERENCE

4. In preparing this Ninth Report and making the comments herein, the Receiver has been provided with and has relied upon certain unaudited, draft and/or internal financial information, the motion materials filed in respect of this proceeding, the Debtors' books and records, and discussions with certain former employees of the Debtors (collectively, the "**Information**"). Future oriented financial information relied upon in the Ninth Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.

5. The Receiver has not audited or otherwise verified the accuracy or completeness of the Information in a manner that would, wholly or partially, comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

6. The Receiver has prepared this Ninth Report solely for the use of the Court and the stakeholders in these proceedings and will make a copy of the Ninth Report, and related documents, available on the Receiver's website at http://cfcanada.fticonsulting.com/TradeX/ (the "**Receiver's Website**").

7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

8. Unless otherwise stated herein, capitalized terms not defined in this Ninth Report have the meaning ascribed to them in the Receivership Order.

C. SUMMARY OF THE RECEIVER'S ACTIVITIES

9. A summary of the Receiver's activities for the period from December 22, 2023 (the "**Receivership Date**") to June 18, 2024 is included in the Fourth Report of the Receiver dated June 18, 2024 (the "**Fourth Report**"), a summary of the Receiver's activities for the period from June 19, 2024 to September 20, 2024 is included in the Sixth Report dated September 20, 2024 (the "**Sixth Report**"), and a summary of the Receiver's activities for the period from September 21, 2024 to December 16, 2024 is included in the Eighth Report. Set out below is a summary of the Receiver's activities for the period since the date of the Eighth Report.

Control of and Realization on the Property

10. From and after the Receivership Date, the Receiver took steps to secure possession and control over the Property, including the proceeds, receipts and disbursements arising out of or from the Property. Since the date of the Eighth Report, these steps included, but were not limited to, the following:

(a) Tax Refunds: The Receiver is continuing to work with the Canada Revenue Agency (the "**CRA**") with regards to the filing of HST returns and the collection of applicable HST refunds.

(b) Operating Costs: The Receiver has continued to pay, on behalf of the Debtors, for certain operating costs relating to the Debtors for services that are required to wind down the estate. These services include technology and cloud hosting services, storage fees for certain physical assets, books and records, and certain other costs.

(c) Office Equipment: On January 28, 2025, the Receiver disposed of certain of the Debtors' IT equipment, the proceeds of which were not a material amount. The Receiver is continuing to maintain one remaining storage space that holds physical books and records of the Debtors.

Stakeholder Inquiries and Communications

11. The Receiver has and continues to respond to various stakeholder inquiries in connection with the Receivership. The Receiver has also continued regular communications with the Applicant in connection with matters relating to the Receivership.

Receiver's Investigations, Forensic Review, and Litigation Matters

12. The investigations, forensic review and litigation matters that have been advanced by the Receiver since the commencement of the Receivership are discussed in detail in the First Report of the Receiver dated February 1, 2024 (the "**First Report**"), the First Supplemental Report to the First Report of the Receiver dated April 3, 2024, the Second Report of the Receiver dated March 27, 2024 (the "**Second Report**"), the Third Report of the Receiver dated May 17, 2024 (the "**Third Report**"), the Fourth Report, the Fifth Report of the Receiver dated August 26, 2024 (the "**Fifth Report**"), the Sixth Report, the Seventh Report of the Receiver dated October 22, 2024 (the "**Seventh Report**") and the Eighth Report. Copies of such reports (the "**Prior Reports**") are available on the Receiver's Website. Certain of such activities are briefly set out below and otherwise the activities of the Receiver described in such Prior Reports are not repeated herein. This section of the Ninth Report should be read in conjunction with the Prior Reports. In this section, unless otherwise stated, capitalized terms not defined in this section have the meaning ascribed to them in the Prior Reports.

Expanded Investigative Powers

13. As discussed in further detail in Prior Reports, the Receiver encountered a number of challenges in connection with the state of the Debtors' books and records. The Receiver made efforts to engage with certain of the Debtors' former directors, officers, employees and consultants to understand various transactions and issues relating to the Debtors; however, several such individuals refused to meet with the Receiver, or refused to meet with the Receiver unless the Receiver paid for them to hire counsel. The Receiver also tried to obtain information from third parties (including potential related parties) that had

engaged in transactions with the Debtors in order to understand those transactions. The Receiver received incomplete responses and, in some cases, no response at all.

14. As a result, the Receiver sought and obtained the Investigative Powers Orders, which were granted on April 3, 2024, and November 1, 2024, respectively, granting the Receiver the right to examine under oath the individuals specified in such Investigative Powers Orders.

15. The Receiver has to date examined nine of the individuals set forth in the Investigative Powers Orders and met with one of the other individuals set out in the Initial Investigative Powers Order (without prejudice to the right to conduct an examination under oath at a later date).

16. Certain individuals have not been responsive to the Receiver's requests to schedule examinations, and it is possible that the Receiver may need to seek additional relief from the Court in respect thereof in due course.

Commencement of Trade X Claims

17. Based on the Receiver's review and investigation, and conduct of the examinations discussed above, the Receiver, in consultation with the Applicant, determined to commence a legal action on behalf of the Debtors in respect of claims (the "**Trade X Claim**") against the following defendants (collectively, the "**Defendants**"):

    (a) Ryan Davidson for damages or disgorgement of profits for breach of fiduciary duty and damages for negligence;

    (b) Eric Gosselin for damages for breach of fiduciary duty and negligence;

    (c) Patrick Leung for damages for breach of fiduciary duty and negligence;

    (d) CFO Centre Inc. for damages for vicarious liability for the actions of Brent Sawadsky;

    (e) Luciano Butera for damages or disgorgement of profits for breach of fiduciary duty and negligence; and

(f) Eric Van Essen for damages or disgorgement of profits for breach of fiduciary duty and negligence,

in each case, in respect of the facts set out in the Statement of Claim dated April 4, 2025, filed by the Receiver on behalf of the Debtors, a copy of which is attached hereto as Appendix "A" (the "**Trade X Statement of Claim**"). The Trade X Claim against the Defendants is in the amount of $20,000,000, or an amount to be proven at trial. The Defendants were former officers and/or directors of one or more of the Debtors. Each of the Defendants has been served with the Trade X Statement of Claim.

18. In addition, the Applicant filed a statement of claim dated April 30, 2025, with respect to claims by the Agent and the Lenders against the Defendants, among others, a copy of which is attached hereto as Appendix "B" (the "**Secured Lenders Statement of Claim**"). The Secured Lenders Statement of Claim sets out claims (the "**Secured Lenders Claim**") for USD $17,000,000, or an amount to be proven at trial. The Receiver understands from the Applicant that the Secured Lenders Statement of Claim has been served on all relevant parties.

19. The Receiver and the Applicant each sought permission from Justices Kimmel and Osborne, in their capacity as Team Leads of the Commercial List, to transfer the Trade X Claim and the Secured Lenders Claim, respectively, to the Commercial List, which requests have been approved. The Receiver and the Applicant intend to ask that the Trade X Claim and the Secured Lenders Claim be tried together, or immediately after each other, with appropriate arrangements at the discovery stage in order to avoid unnecessary duplication and maximize efficiency.

Review of Additional Potential Claims

20. The Receiver is continuing to advance its work relating to additional potential claims the Receiver may seek to assert on behalf of the Debtors for the benefit of their stakeholders (the "**Additional Potential Claims**"), including, without limitation, obtaining and considering the information obtained by way of the examinations conducted pursuant to

the Investigative Powers Orders. The Receiver will provide further updates in due course, as appropriate, in future reports of the Receiver.

Groupe Grégor Claim

21. As discussed in further detail in the Eighth Report, the Receiver (in consultation with and with the support of the Applicant) reached a settlement with the Wholesale Express Monitor with regards to the Groupe Grégor Claim Assignment (the "**Groupe Grégor Settlement**"). The key terms of the Groupe Grégor Settlement are described in the Eighth Report and a copy of the Groupe Grégor Settlement Agreement is attached as Appendix "A" to the Eighth Report.

22. The Groupe Grégor Settlement was approved by Order of the Quebec Court on December 10, 2024, and approved by Order of this Court in the Receivership proceedings on January 16, 2025.

23. Since the approval of the Groupe Grégor Settlement by the Quebec Court and this Court, the Receiver and its counsel have consulted with the Wholesale Express Monitor and its counsel in connection with advancing the Groupe Grégor Claim.

24. On May 2, 2025, the Quebec Court approved the following schedule with respect to the Groupe Grégor Proceedings:

Step	Deadline
Communication of pre-undertakings by Groupe Grégor	May 2, 2025
Communication of any remaining pre-undertakings not communicated by the May 2, 2025 deadline	May 23, 2025
Filing of the Wholesale Express Monitor's counterclaim and forensic report	August 29, 2025
Transmission of a request for pre-undertakings by Groupe Grégor	September 12, 2025

Communication of pre-undertakings by Wholesale Express Monitor	September 30, 2025
Out-of-court examinations (oral and or written, as appropriate)	By no later than October 31, 2025
Communication of the undertakings following the out-of-court examinations	By no later than November 28, 2025
Filing of Groupe Grégor's counter forensic report and/or accounting expert report, if applicable	By no later than January 30, 2026, and, in any event, no less than 30 days prior to the trial
Readiness for trial and setting down for trial and judgment	By no later than December 19, 2025
Trial	TBD

D. RECEIPTS & DISBURSEMENTS FOR THE PERIOD TO MAY 31, 2025

25. The Receiver's receipts and disbursements (a) for the period from December 22, 2023 (the Receivership Date) to May 31, 2024 are discussed in the Fourth Report, (b) for the period from June 1, 2024 to August 31, 2024 are discussed in the Sixth Report, and (c) for the period from September 1, 2024 to November 30, 2024 are discussed in the Eighth Report. The Receiver's receipts and disbursements for the period from December 1, 2024 to May 31, 2025, are summarized in the table below (and further discussed in Section C above):

Cash Flows from December 1, 2024 to May 31, 2025 **in $CAD**		**Total**
Receipts	**$**	**83,241**
14157 - HST Refund		63,922
33160 - Bank interest		18,718
68238 - Misc Other Receipts		600
Disbursements		**(562,519)**
64080 - Receiver's fees and costs		(56,296)
65127 - Legal fees/disbursements		(366,691)
68870 - HST Paid		(61,935)
80010 - Professional Fees		(31,431)
81155 - Operating Expense		(46,167)
Net Cash Flows	**$**	**(479,279)**
Opening Cash - December 1, 2024		1,386,850
Net Cash Flows		(479,279)
FX Gains/Losses		61,268
Ending Cash - May 31, 2025	**$**	**968,839**

26. Receipts include the collection of sales tax refunds, interest earned on cash held in the Receiver's accounts, and miscellaneous receipts from the disposal of IT equipment.

27. Disbursements include the payment of the fees and disbursements incurred by the Receiver and its counsel in the course of performing its duties in the Receivership, professional fees incurred for the cloud hosting services provided by the forensics team at FTI Consulting as part of the Receiver's investigations, and operating expenses relating to technology and cloud hosting services, storage fees for certain physical assets, books and records, and certain other costs.

E. ONGOING ACTIVITIES IN THE RECEIVERSHIP

28. The Receiver is continuing to advance its mandate pursuant to the Receivership Order. Remaining outstanding matters in the Receivership include:

(a) realization on remaining Property, including the collection of receivables and tax refunds, and the sale of sundry assets;

(b) finalizing the wind-down of the Debtors;

(c) addressing certain remaining tax matters with the CRA;

(d) working with the Wholesale Express Monitor with regards to the Groupe Grégor Claim pursuant to the terms of the Groupe Grégor Settlement;

(e) advancing and pursuing the Trade X Claim; and

(f) continuing to advance the Receiver's ongoing investigation and review efforts, and based on the results of the Receiver's ongoing investigation and review, assessing whether any Additional Potential Claims ought to be advanced by the Receiver on behalf of the Debtors for the benefit of stakeholders.

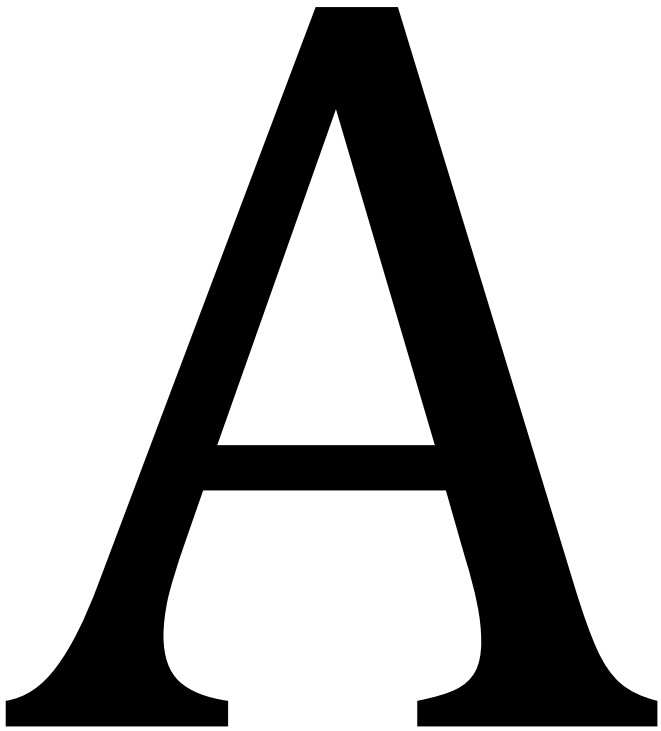
29. The Receiver respectfully submits this Ninth Report to the Court.

FTI Consulting Canada Inc.,
solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd., and TX OPS Canada Corporation, and not in its personal or corporate capacity

Paul Bishop
Senior Managing Director

Kamran Hamidi
Senior Managing Director

1379-6014-6966



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION, BY ITS RECEIVER AND MANAGER, FTI CONSULTING CANADA

Plaintiffs

- and -

RYAN DAVIDSON, ERIC GOSSELIN, ERIC VAN ESSEN, LUCIANO BUTERA, PATRICK LEUNG, BRENT SAWADSKY AND CFO CENTRE INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and $3000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and $400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date April 4, 2025 Issued by

Local registrar

Address of court office

Superior Court of Justice
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TO: **Ryan Davidson**

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AND TO: **Brent Sawadsky and CFO Centre Inc.**

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CLAIM

1. FTI Consulting Canada Inc. (**"FTI"**), in its capacity as the Court-appointed receiver and manager (the **"Receiver"**), without security, of substantially all of the assets, undertakings and properties of the Plaintiffs, Trade X Group of Companies Inc. (**"Trade X Parent"**), 12771888 Canada Inc., Techlantic Ltd. (**"Techlantic"**), TX Ops Canada Corporation (**"TX Ops Canada"**), TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., and TX Capital Corp., (each, a **"Trade X Entity"** and collectively, **"Trade X"**), as further set forth in the Receivership Order granted on December 22, 2023, claim against the Defendants, jointly and severally, for $20,000,000, or an amount to be proven at trial, with respect to the following causes of action:

(a) As against the Defendant, Ryan Davidson, damages or disgorgement of profits for breach of fiduciary duty and damages for negligence in respect of the facts set out at sections III(A) – III(D) below;

(b) As against the Defendant, Eric Gosselin, damages for breach of fiduciary duty and negligence in respect of the facts set out a sections III(A)(i) – (iii) and (v), III(B)(i), III(C)(ii) – (v), and III(D) below;

(c) As against the Defendant, Patrick Leung, damages for breach of fiduciary duty and negligence in respect of the facts set out a section III(A), III(B)(i) and (iii), III(C)(ii) –(v) and III(D) below;

(d) As against the Defendant, Brent Sawadsky, damages for breach of fiduciary duty and negligence in respect of the facts set out at sections III(A)(i)-(iii) and (v), III(B)(i), III(C)(ii) –(v) and III(D) below;

(e) As against the Defendant, CFO Centre Inc. (**"CFO Centre"**), damages for vicarious liability for the actions of Brent Sawadsky in respect of the facts set out at sections III(A)(i)-(iii), III(B)(i), III(C)(ii) –(v) and III(D) below;

(f) As against the Defendant, Luciano Butera damages or disgorgement of profits for breach of fiduciary duty and negligence in respect of the facts set out at sections III(A)(i)-(iv), III(B), III(C)(ii)-(v) and III(D) below, including arising from conflicts of interest and self-dealing transactions with 1254382 Ontario Ltd. d/b/a Auto Credit Canada (**"ACC"**); and

(g) As against the Defendant, Eric Van Essen damages or disgorgement of profits for breach of fiduciary duty in respect of the facts set out at sections III(A)(i)-(iii) and (v), III(B)(i), III(C)(ii)-(v) and III(D) below, including arising from conflicts of interest and self-dealing transactions with 1309767 Ontario Ltd. (**"130"**) and 2601658 Ontario Ltd. (**"260"** and collectively with 130, the **"Van Essen Companies"**);

(h) Punitive and exemplary damages;

(i) Pre and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

(j) The costs of this action on a full indemnity scale; and

(k) Such other relief as to this Honourable Court may seem just.

I. OVERVIEW

2. Trade X[1] was founded by the Defendant, Ryan Davidson. Mr. Davidson told lenders that Trade X operated a successful business buying and selling vehicles internationally. Mr. Davidson also claimed that Trade X was a technology company developing a powerful new platform that would facilitate international vehicle transactions between third party buyers and sellers.

3. Mr. Davidson's story was compelling. He was able to raise debt and equity in excess of US$100 million to fund Trade X's operations and ambitions.[2] But Mr. Davidson's story was also, in many critical respects, a work of fiction.

4. Trade X was not a technology company. Its technology did not function effectively, and there was no real demand for it. Trade X was in the business of buying and selling vehicles internationally, but that business was plagued by operational deficiencies, cash flow problems (despite all of the money that Trade X raised) and the absence of basic internal controls and management systems.

5. Instead of solving Trade X's problems, Mr. Davidson—with the active assistance of the other Defendants—focused on making Trade X *appear* profitable so that it could attract more investment. That investment allowed Mr. Davidson to enrich himself by selling his own shares at inflated valuations.

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[1] In this Statement of Claim, the Trade X Entities are referred to as "Trade X" unless the context requires reference to a specific Trade X Entity.

[2] Unless otherwise noted, all figures are expressed in Canadian dollars.

6. Between 2021 and 2023, Mr. Davidson exacerbated Trade X's already significant cash flow problems by causing Trade X to pay him millions of dollars, ostensibly to "repay" shareholder loans that he claimed to have advanced years earlier.

7. The other Defendants were all senior officers and/or directors of one or more of the Trade X Entities. All of the Defendants owed a duty to exercise the care, skill and diligence that a reasonably prudent person would exercise in comparable circumstances. They did not discharge that duty. As described below, Trade X careened from one crisis to the next. The Defendants did not take adequate steps to meet the challenges facing Trade X. Instead, they privileged their own interests over those of the lenders of Trade X.

8. As Trade X spiralled toward insolvency, certain Defendants diverted funds, which Trade X had agreed to hold in trust for its lenders, to pay Trade X's operating costs and other creditors, including companies with family ties to certain of the Defendants. Trade X ultimately diverted more than US$7 million that ought to have been held in trust and used to repay lenders. The diversion of funds caused an irreparable breakdown in the relationship with the lenders that Trade X relied on for working capital, which breakdown ultimately resulted in Trade X's insolvency.

II. BACKGROUND

A. THE PARTIES

(i) The Receiver

9. FTI was appointed as Receiver by Order of the Ontario Superior Court of Justice (Commercial List) dated December 22, 2023 (the **"Receivership Order"**). Among other things,

the Receivership Order authorizes the Receiver to advance legal claims on behalf of the Trade X Entities.

10. The Receivership Order was obtained by application of Trade X's senior secured creditor, MBL Administrative Agent II LLC (**"MBL"**) as agent for the Trade X Entities' senior secured lenders (the **"MBL Lenders"**).[3]

(ii) Trade X and its Business

11. Before the Receiver was appointed, Trade X's primary business was the purchase and sale of vehicles internationally. It sought to acquire vehicles at a lower cost in one jurisdiction and subsequently sell them at a higher price in another. In theory, this approach allowed Trade X to capitalize on price differences between international markets.

12. As described further below, Trade X also marketed itself to certain lenders and investors as a technology company developing an innovative platform to facilitate business-to-business vehicle sale transactions internationally (the **"Trade X Platform"**). In practice, however, the Trade X Platform was never fully developed and never generated revenue for Trade X. It did, however, help Trade X raise money from investors.

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[3] The MBL Lenders are Post Road Specialty Lending Fund II LP (f/k/a Man Bridge Lane Specialty Lending Fund II (US) LP), and Post Road Specialty Lending Fund (UMINN) LP (f/k/a Man Bridge Lane Specialty Lending Fund (UMINN) LP).

(iii) Ryan Davidson

13. The Defendant, Ryan Davidson, is the founder of Trade X. He was the company's CEO from its inception in or around July 2018 until June 2023. At all relevant times, Mr. Davidson was a director and the chair of the board of directors of Trade X Parent (the "**Board**").[4]

14. After being replaced as CEO, Mr. Davidson remained chair of the Board and continued to be actively involved in Trade X's business and the wrongdoing described below. Mr. Davidson participated in substantially all of the wrongdoing that caused Trade X's losses.

(iv) Luciano Butera

15. The Defendant, Luciano Butera, was a senior officer of Trade X from its inception until he left the company in April 2023. During his time at Trade X, Mr. Butera acted as COO, EVP and President of Trade X. Mr. Butera was a director of Trade X Parent throughout his tenure with Trade X.

16. Mr. Butera was Mr. Davidson's second in command until Mr. Butera resigned in April 2023. He directed—or failed to prevent—the wrongdoing that is described below. Mr. Butera also caused Trade X to pay significant sums to a company owned by his family.

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[4] Mr. Davidson was also a director of numerous other Trade X Entities, including TX Capital Corp., Trade X Fund GP Inc., TX Ops Canada, TVAS Inc., Trade X Continental Inc., and 12771888 Canada Inc.

(v) Eric Gosselin

17. The Defendant, Eric Gosselin, is the co-founder of Wholesale Express, a business acquired by Trade X in December 2021.[5] Mr. Gosselin joined Trade X in connection with Trade X's acquisition of Wholesale Express, and he held a series of senior executive roles before being appointed CEO in June 2023.

18. When Mr. Gosselin was appointed CEO in June 2023, Trade X faced significant issues with its lenders. These issues posed an existential threat to Trade X, but Mr. Gosselin took no steps to understand and address Trade X's financing issues.

(vi) Patrick Leung

19. The Defendant, Patrick Leung, was a senior officer of Trade X from 2020 until the Receiver was appointed in December 2023. During his time at Trade X, Mr. Leung acted as CFO, VP Finance, and Global Managing Director of Corporate Development.

20. Mr. Leung facilitated significant wrongdoing, including diverting assets that were supposed to be held by Trade X as collateral securing Trade X's obligations to its lenders. Mr. Leung also failed to implement adequate (or any) internal controls in his role as CFO and VP Finance.

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[5] Trade X acquired Wholesale Express through a wholly-owned subsidiary 13517985 Canada Inc. Separate proceedings under the *Companies' Creditors Arrangement Act* were commenced in Quebec in respect of Wholesale Express. Wholesale Express is, accordingly, not subject to Trade X's receivership proceedings.

(vii) Eric Van Essen

21. The Defendant, Eric Van Essen, stayed on as an officer and director of Techlantic after Trade X acquired it from Mr. Van Essen's family in August 2021. Mr. Van Essen served as the Managing Director of Techlantic and directed Techlantic's day-to-day operations both before and after the acquisition. Mr. Van Essen caused Techlantic to effectively borrow significant funds from the Van Essen Companies by obtaining cars from them on credit and submitting them for funding prior to repaying the Van Essen Companies. These loans, and Mr. Van Essen's failure to manage them appropriately, contributed significantly to Trade X's breach of its key loan commitments and resulting insolvency. They also created a hopeless conflict of interest for Mr. Van Essen.

22. Mr. Van Essen became VP Finance of Trade X in February 2023. He was appointed to improve Trade X's financial reporting and compliance with its loan obligations, but he accomplished no such thing.

(viii) Brent Sawadsky and CFO Centre Inc.

23. The Defendant, Brent Sawadsky, is the former Interim CFO of Trade X. Mr. Sawadsky was employed by CFO Center, a company that provides part-time CFO services to businesses. Mr. Sawadsky acted as interim CFO on a part-time basis pursuant to a contract between Trade X and the CFO Centre from approximately October 2022 until December 2023.

24. Mr. Sawadsky was hired to help manage and improve Trade X's financial systems and reporting, but he did not make any such improvements. To the contrary, Mr. Sawadsky actively participated in significant wrongdoing by Trade X including the misuse of trust funds.

25. CFO Center is vicariously liable for Mr. Sawadsky's actions.

B. THE TRADE X ENTITIES

(i) Trade X Parent

26. Trade X Parent is a privately held corporation formed under the laws of Canada. Trade X Parent is a holding company and is the direct and indirect parent of the other Trade X Entities.

27. Beginning in August 2021, the Board of Trade X Parent was compromised of Ryan Davidson and Luciano Butera (together, the **"Management Directors"**), and Philip Mittleman and Norman Koenigsberg (together, the **"Non-Management Directors"**). On April 4, 2023, Eric Gosselin replaced Luciano Butera on the Board (also referred to herein as one of the "Management Directors", as the context requires).

28. As described below, Trade X's operations in Canada were predominantly conducted by three companies: (a) TX Ops Canada; (b) Techlantic; and (c) Wholesale Express.

(ii) TX Ops Canada

29. TX Ops Canada is a corporation governed by the federal laws of Canada. Tx Ops Canada (and the other Trade X Entities) bought vehicles in Canada and sold them (whether to other Trade X companies or to third-party purchasers) in either the United States or internationally.

30. TX Ops Canada claimed to operate the Trade X Platform, which Trade X claimed was an automotive trading hub connecting vehicle dealerships in the United States with sellers in Canada through a secure marketplace offering end-to-end service that handled procurement, foreign exchange, logistics and duties for vehicle acquisitions between Canada and the United States. In practice, however, the Trade X Platform was not fully functional and there was no meaningful

demand for it. The Trade X Platform did not generate meaningful revenue for TX Ops Canada and cost Trade X millions of dollars.

(iii) Techlantic

31. Techlantic is a corporation governed by the provincial laws of Ontario that was based in Oakville, Ontario. Techlantic was primarily focused on purchasing vehicles in Canada and selling them to customers in international markets.

32. As described below, Techlantic was founded by Wouter Van Essen and operated by Wouter and the Defendant, Eric Van Essen. Trade X purchased Techlantic pursuant to a share purchase agreement in August 2021.

(iv) Wholesale Express

33. Wholesale Express is a corporation governed by the federal laws of Canada that operated out of Saint-Madeleine, Quebec. Wholesale Express operated an online dealer-to-dealer auction platform (the "**Wholesale Express Platform**") for vehicles, whereby it acquired and sold pre-owned vehicles to registered dealers. The Wholesale Express Platform facilitated transactions between businesses that were primarily located in Quebec. Unlike the Trade X Platform, there was customer demand for the Wholesale Express Platform. It operated successfully before and after Trade X acquired it.

34. Trade X acquired Wholesale Express in December 2021 pursuant to an asset purchase agreement, whereby the former owner transferred the purchased assets into Wholesale Express, a new entity created for the sole purpose of the acquisition.[6]

35. Wholesale Express was the subject of a separate filing pursuant to the *Companies' Creditors Arrangement Act* and is not subject to the Trade X receivership proceedings, nor is it a plaintiff in this action. Events relating to Wholesale Express are, however, described in this claim to the extent they are relevant.

C. THE PRIMARY LENDERS AND THE KEY FACILITIES

36. To buy and sell vehicles internationally, Trade X required significant capital. It secured most of this capital from its credit facilities with two primary lenders, the MBL Lenders and Highcrest Lending Inc. (**"Highcrest"** and, together with the MBL Lenders, the **"Primary Lenders"**).

37. Trade X's credit facilities with the Primary Lenders were essential to its survival, as they provided Trade X with the necessary capital to fund the company's core business of buying and selling vehicles internationally. Trade X operated a relatively low margin business and, to earn profits, it had to buy and sell a large volume of vehicles. This, in turn, required that Trade X have access to significant amounts of capital. The Key Facilities (as defined below) were the primary source of that capital and, as a result, the lifeblood of Trade X's business.

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[6] Pursuant to the Wholesale Express CCAA Proceedings, Wholesale Express completed a reverse vesting sale transaction, whereby a new investor, 15449189 Canada Inc., became the sole shareholder of Wholesale Express. The reverse vesting transaction was approved by the Superior Court of Quebec by way of order dated January 12, 2024.

38. The structure of the Key Facilities is described below.

(i) The MBL Facilities

39. The outstanding indebtedness owing to Trade X's senior secured creditors, the MBL Lenders, arises pursuant to two separate credit agreements:

(a) **Domestic Facility**: A US$30 million credit facility made available pursuant to a senior secured revolving credit agreement dated February 5, 2021[7] for the purchase of vehicles in the United States (the "**MBL Domestic Facility**"); and

(b) **Global Facility**: A US$30 million credit facility made available pursuant to a senior secured revolving credit agreement dated September 27, 2021[8] for the purchase of vehicles internationally in jurisdictions approved by the MBL Lenders (the "**MBL Global Facility**" and together with the MBL Domestic Facility, the "**MBL Facilities**").

40. Pursuant to the MBL Facilities, the MBL Lenders extended advances to Trade X to facilitate the purchase of vehicles for sale between Canada and the United States (in the case of the MBL Domestic Facility) or globally (in the case of the MBL Global Facility).

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[7] As amended by Amendment No. 1 dated as of June 8, 2021, Amendment No. 2 dated as of September 10, 2021, Amendment No. 3 dated as of December 20, 2021, Amendment No. 4 dated as of July 15, 2022 and as further amended under the Amendment No. 5 and Limited Waiver to Senior Secured Revolving Credit Agreement dated June 30, 2023.

[8] As amended by Amendment No. 1 dated as of December 30, 2021, Amendment No. 2 dated as of September 6, 2022 and further amended by the Amendment No. 3 and Limited Waiver to Senior Secured Revolving Credit Agreement dated December 23, 2022.

41. The MBL Facilities were complex. Trade X agreed to a comprehensive set of covenants designed to ensure that the value of the collateral pledged to the MBL Lenders always exceeded the amounts advanced by the MBL Lenders. In very simple terms:

(a) A designated Trade X Entity (a "**Borrower**") purchased a vehicle. Techlantic and Tx Ops Canada were each Borrowers under the MBL Facilities[9];

(b) The Borrower granted the MBL Lenders a first-ranking security interest in the acquired vehicle, making it a "**Financed Vehicle**" under the terms of the MBL Facilities. The Financed Vehicle was listed in the borrowing base (the **"MBL Borrowing Base"**), which determined how much the MBL Lenders would advance to the Borrower;

(c) The MBL Lenders advanced up to 90% of the value of the Financed Vehicle;

(d) When the Financed Vehicle was sold, the sales proceeds (the **"End Buyer Payments"**) were held in trust for the MBL Lenders and deposited into a specified account (a **"Collection Account"**) within 72 hours. The MBL Lenders had security over the Collection Accounts, and the right to withdraw funds from the Collection Accounts to repay the debts.

[9] This is a simplification of the process outlined in the MBL Credit Facilities. Under the MBL Credit Facilities, the legal borrower under the Domestic Facility was TX OPS Funding II, LLC, and the legal borrowers under the Global Facilities were Techlantic and TX OPS Global Funding I, LLC. Pursuant to a series of complex inter-company agreements, legal ownership was transferred from the Trade X Entity that purchased the car to the legal borrower for submitting the vehicle for funding. However, for the purposes of simplifying this statement of claim, the operating company responsible for the purchase and sale of the vehicle is referred to as the "Borrower" throughout.

42. The MBL Facilities were structured as a closed loop. The funds the MBL Lenders advanced were to be secured by either a vehicle or the proceeds of that vehicle in a Collection Account.

(ii) The Highcrest Facility

43. In addition to the MBL Facilities, Trade X relied upon a credit facility with Highcrest dated August 18, 2020 (the **"Highcrest Facility"** and collectively with the MBL Facilities, the **"Key Facilities"**).[10]

44. The Highcrest Facility operated in functionally the same manner as the MBL Facilities. Like the MBL Facilities, the Highcrest Facility was structured as a "closed-loop" of secured funding, whereby Highcrest's funding advances were secured at all times against specific vehicle collateral or the sale proceeds relating to that collateral. Highcrest's collateral was also tracked through a revolving borrowing base maintained by Trade X (the "**Highcrest Borrowing Base**" and, together with the MBL Borrowing Base, the "**Borrowing Bases**").

D. EQUITY FUNDING

(i) Aimia Inc.

45. In addition to the Key Facilities, Trade X Parent also obtained substantial equity investments from Aimia Inc. ("**Aimia**"). In July 2021, Aimia invested US$35 million into Trade X Parent. In December 2021, Aimia invested an additional US$25 million through a convertible note,

[10] As amended pursuant to a Master Amended and Restated Loan and Security Agreement dated December 23, 2022.

which was amended and restated on December 23, 2022 (as amended, the "**Aimia Convertible Note**").

46. The maturity date of the Aimia Convertible Note was December 8, 2023. As security for the Aimia Convertible Note, Trade X Parent granted a subordinated security interest to Aimia in all of its property.

47. After its investment in Trade X Parent, Aimia's then President, Philip Mittleman, joined the Board.

(ii) EchoVC Partners

48. Shortly after closing its funding round with Aimia, Trade X Parent reported that it had raised an additional US$10 million in equity from a group of other investors. The round was ostensibly led by EchoVC Partners (**"Echo"**), a venture capital firm based in Lagos, Nigeria.

49. Although Echo was purportedly an independent third-party fund, Echo's investment was actually funded by Mr. Davidson using funds that had previously been invested in Trade X by various investors. This arrangement was never disclosed to the investors or approved by the Board.

(iii) Ryan Davidson's Secondary Share Sales

50. Mr. Davidson also solicited numerous investments from small, unsophisticated investors. Although most of these investors believed that they were "investing" directly in Trade X, in reality, these funds were used to purchase shares from either Mr. Davidson or his holding company, 2653638 Ontario Inc., or to purchase shares in 2648435 Ontario Inc., a company controlled by Mr. Davidson which held Trade X shares. These sales yielded approximately CAD$10 million for Mr. Davidson.

E. THE 2022 LOAN RESTRUCTURING

51. As described further below, the 2022 Loan Restructuring occurred in response to demands from Highcrest. In or around June 2022, Highcrest threatened to declare Trade X in default of the Highcrest Facility due to its discovery that the Borrowing Base was inaccurate and Highcrest's collateral had eroded (the **"First Highcrest Default"**). A declaration of default would have triggered cross-defaults with other lenders, and given the lack of available cash, would have likely resulted in the immediate insolvency of Trade X.

52. In response to demands made by Highcrest following the First Highcrest Default, Trade X's primary creditors, Aimia, MBL and Highcrest, negotiated a loan restructuring agreement transaction that was executed in December 2022 (the "**2022 Loan Restructuring**"). The 2022 Loan Restructuring amended and restated all loan documents and provided additional capital to Trade X Parent, and was effected through amended agreements with each of Trade X's primary creditors, as well as an intercreditor agreement executed by Aimia, Highcrest, MBL, the Borrowers (with the exception of Techlantic), TX Indiana, TX Canada and TX Parent dated December 23, 2022.

53. As part of the 2022 Loan Restructuring, Trade X Parent agreed to sell Wholesale Express, and use those proceeds as working capital in the Trade X Group and to repay Highcrest. The parties also agreed that: (i) Highcrest would have a priority security interest in Wholesale Express and its shares; (ii) MBL would have a priority security interest over all of the assets of Trade X Parent and its subsidiaries (other than Wholesale Express and its shares) and (iii) Aimia would subordinate its interest for so long as any obligations to Highcrest or MBL remained outstanding.

54. In addition, Trade X agreed to decrease its operating expenses and adopt a more rigorous and disciplined approach to its vehicle acquisition and sales practices in order to improve margins.

55. As described further below, this did not occur. Trade X's vehicle acquisition practice continued to be mismanaged, leading to further losses on vehicles, the diversion of the Primary Lenders' collateral, and errors and misstatements in the Borrowing Base reports.

III. THE DEFENDANTS' NEGLIGENT MANAGEMENT OF TRADE X AND ITS BUSINESS

56. The Defendants engaged in a variety of wrongful conduct with respect to their management of Trade X. The wrongful acts described below caused substantial losses to the company, and eventually culminated in Trade X's insolvency, and the appointment of the Receiver in December 2023.

57. Specifically, each of the Defendants failed to exercise the care, diligence and skill that a reasonably prudent person in the same position would exercise. Further, they jeopardized the ongoing viability of the company by causing Trade X to knowingly, wilfully and repeatedly breach the terms of the Key Facilities that Trade X relied upon to survive. These actions, which are described further below, breached the Defendants' duties to Trade X.

A. THE DEFENDANTS' MISMANAGEMENT OF THE KEY FACILITIES

(i) The Defendants knew, or ought to have known, that the Key Facilities were essential to Trade X

58. As described above, the Key Facilities were essential to Trade X's ability to operate. The Defendants knew, or ought to have known, that Trade X had to comply with the terms of the Key

Facilities in order to preserve its access to capital. Any reasonably prudent executive or director, in the Defendants' circumstances, would have taken the steps required to ensure that Trade X had the systems in place in order to ensure (among other things) that the Borrowing Bases were accurate and that vehicles and funds were handled in accordance with the terms of the Key Facilities. This is not what happened.

59. As described below, both Key Facilities were badly mismanaged. The Defendants failed to implement adequate (or any) controls to ensure that Trade X complied with its obligations. The Defendants knowingly and repeatedly caused Trade X to breach (or failed to prevent Trade X from breaching) the terms of the Key Facilities. These actions were both negligent and a breach of the Defendants' fiduciary obligations to act in the company's best interest.

(ii) Failure to Accurately Maintain the Borrowing Bases

60. The Key Facilities required that Trade X maintain the Borrowing Bases that tracked the status of vehicles pledged to the Primary Lenders. The purpose of the Borrowing Bases was to allow the Primary Lenders to evaluate the amount of funding that could be extended to Trade X, based on Trade X's available collateral, and ensure that the Key Facilities were fully secured. As such, Trade X was required to regularly provide reports about the status of the Borrowing Base to the Primary Lenders (the **"Borrowing Base Reports"**).

61. Prudent officers and directors in the Defendants' positions would have implemented appropriate internal procedures and controls to ensure that the Borrowing Bases were complete and accurate in order to comply with the terms of the Key Facilities. The Defendants did not take these steps. As a result, both of the Borrowing Bases were replete with falsehoods and inaccuracies that misrepresented the state of Trade X's available assets and liabilities.

62. By submitting the Borrowing Base Reports with significant inaccuracies, Trade X misled the Primary Lenders with respect to their respective security positions. A deficit existed between the value of the Primary Lenders' security on paper and as required pursuant to the Key Facilities, and what existed in reality (the **"Deficit"**). In essence, both the Primary Lenders believed that the funds that they had advanced to Trade X were secured against collateral; but that collateral did not exist. This was a breach of the Key Facilities that (together with the Defendants' other wrongdoing) ultimately precipitated Trade X's insolvency. That breach would not have occurred if Trade X had been managed competently.

(iii) The Defendants failed to secure the funds required to operate the Key Facilities properly

63. The Key Facilities required that a Borrower own a vehicle (free and clear of any debt) before listing that vehicle on a Borrowing Base and obtaining an advance in respect of that vehicle. This was an essential element of the Key Facilities because, if the Borrower did not have title to a vehicle, then it could not grant a security interest over that vehicle to secure an advance. As a result, Trade X required its own capital to purchase vehicles that could be pledged to secure advances under the Key Facilities.

64. As noted above, Trade X was able to obtain significant equity investments. But it still faced chronic cash shortages in its core business. Trade X entered into certain undocumented financing arrangements with related companies owned and operated by the families of Luciano Butera and Eric Van Essen (collectively, the "**Family Companies**"). These arrangements breached the terms of the Key Facilities and exacerbated Trade X's already critical cash flow issues.

(iv) The ACC Financing Arrangement

65. ACC is an Ontario corporation owned and operated by Luciano Butera's family. Luciano has been an officer of ACC since March 2007.

66. To assist Trade X with purchasing vehicles, ACC provided Trade X with access to a line of credit it held with Next Gear Capital (**"NGC"**). At a high level, Trade X's arrangement with ACC functioned as follows:

(a) ACC would buy vehicles (each, an "**ACC Vehicle**") using its line of credit with NGC, following which NGC would take security on the vehicle;

(b) ACC would transfer the ACC Vehicle to an entity called Xpress Financial, which was controlled by Trade X, which would then transfer the vehicle to one of the Trade X Entities;

(c) such Trade X Entity would submit the vehicle for funding to one of the Primary Lenders under the applicable Key Facility, and pledge the vehicle as collateral; and

(d) the applicable Trade X Entity would sell the vehicle to the end buyer and remit payment to the Primary Lender that had funded the advance, in accordance with the applicable Key Facility.

67. The key issue with the above-noted arrangement was that ACC would not be paid by Xpress Financial/Trade X until *after* Xpress Financial/Trade X had received funding for the vehicle from one of the Primary Lenders. The necessary result of this structure was that, for a period of time (specifically, for the period from when the Primary Lender advanced funds to Trade X, to when Trade X/Xpress Financial repaid ACC and ultimately NGC**)**, each ACC Vehicle was

pledged to both NGC and a Primary Lender at the same time. This was a breach of the relevant Key Facility.

68. In some instances, funds advanced by a Primary Lender in respect of an ACC Vehicle were immediately paid to ACC, so the vehicle was only "double-pledged" for a short period. But Trade X was plagued by poor management, near-constant cash flow issues and woefully inadequate vehicle tracking. As a result, on many occasions, the funds advanced by the Primary Lender in respect of ACC Vehicles were not immediately paid back up the chain to ACC, leaving the vehicle double-pledged for an extended period.

69. In these circumstances, when Trade X received payment from the end-buyer for the double-pledged vehicle, it was legally obligated to remit payment to *both* ACC and the Primary Lender that had funded the vehicle. This was impossible, and so Trade X had to decide between repaying the Primary Lender or repaying ACC.

70. The ACC financing arrangement violated the terms of the Key Facilities. In addition, it put Mr. Butera, one of Trade X's senior officers, in an irreconcilable conflict of interest. Trade X needed to maintain the Key Facilities in order to continue its business. But Mr. Butera had an interest in ensuring that ACC was repaid. To make matters worse, the Board never approved (or was aware of) the ACC financing.

71. ACC was, ultimately, repaid in full with interest and ended its financing relationship with Trade X in the winter of 2023. The Primary Lenders were not repaid in accordance with the terms of the Key Facilities.

72. ACC was repaid in full because Mr. Butera prioritized his interests over Trade X's interests. This was a breach of Mr. Butera's fiduciary duties to Trade X Parent.

73. Trade X also paid significant fees to ACC in connection with this arrangement. In total, it paid ACC fees in excess of CAD$1.5 million. These payments further exacerbated Trade X's liquidity issues and were a further breach of the Key Facilities. This too was a breach of Mr. Butera's fiduciary duties.

74. Mr. Davidson and Mr. Leung were both actively involved in the ACC financing. Neither Mr. Davidson nor Mr. Leung took adequate steps to protect Trade X's interests or impose adequate internal control or supervision of transactions with ACC. They are liable for negligence.

(v) The Van Essen Companies' Financing Arrangement

75. Techlantic was founded in 1983 by Eric Van Essen's father, Wouter Van Essen. Wouter's twin brother, Tom Van Essen, joined Techlantic in 1986. Like Trade X, Techlantic's core business was the export of vehicles to foreign markets.

76. In August 2019, Eric Van Essen became a major Techlantic shareholder. In December 2021, Wouter and Tom sold Techlantic to Trade X. After the sale, Eric stayed on as Techlantic's managing director and was appointed to Techlantic's board. Wouter was formally a consultant to Techlantic but, in practice, he operated as a senior officer of Techlantic.

77. Under Eric and Wouter's direction, Techlantic entered into certain financing arrangements with the Van Essen Companies, two companies beneficially owned by Eric and members of his family. As with the ACC financing arrangements, the arrangements with the Van Essen Companies

resulted in the double-pledging of vehicles and the improper diversion of sale proceeds, interest and fees to the Van Essen Companies in preference to MBL.

78. At a high level, the Van Essen Companies' financing arrangement with Techlantic (the "**VEC Loans**") functioned as follows:

(a) the Van Essen Companies would acquire a vehicle and sell the vehicle to Techlantic;

(b) the Van Essen Companies would transfer the vehicle to Techlantic. The Van Essen Companies claimed that title to these vehicles did not transfer to Techlantic until they received payment in full;

(c) Techlantic would submit the vehicle for funding under the MBL Global Facility, despite the Van Essen Companies' position that Techlantic did not own the vehicle; and

(d) Techlantic would export the vehicle to a third-party purchaser and collect payment.

79. The VEC Loans were specifically prohibited by the terms of the MBL Global Facility, in which Techlantic (and the other Borrowers) agreed that they would not borrow money from anyone other than the MBL Lenders.

80. More broadly, the VEC Loans, and the associated claim by the Van Essen Companies that Techlantic did not actually own vehicles until it paid for the vehicles in full, were completely inconsistent with the terms of the MBL Global Facility. Techlantic could only secure funding by

pledging vehicles that it owned. But it borrowed significant sums from the MBL Lenders by pledging vehicles the Van Essen Companies claimed to own.

81. To make matters worse, Eric and Wouter Van Essen were left with essentially unfettered discretion over Techlantic's business and the VEC Loans. Apart from one e-mail sent in November 2021, Trade X did not take any steps to negotiate the terms of the VEC Loans, monitor how much the Van Essen Companies were charging Techlantic or whether the VEC Loans were being used appropriately.

82. In the period from 2021 to 2023, the Van Essen Companies charged Techlantic interest and fees totalling CAD$3.1 million in respect of the VEC Loans. These amounts were charged as "consulting fees", although the payments were not related to any consulting services that were actually provided. These payments were all made unlawfully and in breach of Eric Van Essen's duties to Trade X.

83. Techlantic's use of the VEC Loans contributed significantly to Trade X's breach of the MBL Global Facility, the MBL Lenders' demand for repayment and Trade X's ultimate demise.

84. When Techlantic acquired a vehicle using the VEC Loans (a "**VEC Vehicle**") and then "pledged" that vehicle to the MBL Lenders in respect of the MBL Global Facility, that vehicle was double pledged. When Techlantic received payment for a VEC Vehicle from the end buyer, it had to decide whether to pay the MBL Lenders or the Van Essen Companies. The individuals making this decision, Eric and Wouter Van Essen, had a direct interest in the Van Essen Companies being repaid.

85. Eric was fully aware that vehicles were being double-pledged. He also communicated with other Defendants, including Mr. Davidson, about these issues.

86. The VEC Loans and the corresponding double-pledging of vehicles were a fundamental breach of the MBL Facilities and a significant part of the spiral that ultimately led to Trade X's insolvency.

87. Eric Van Essen is liable to Techlantic for breach of his fiduciary duty in connection with the VEC Loans. The remaining Defendants are liable in negligence for their failure to impose adequate (or any) internal control and supervision of the VEC Loans and related transactions.

B. THE DEFENDANTS' MISMANAGEMENT OF TRADE X'S BUSINESS

88. The Defendants' mismanagement was not limited to the Key Facilities. They also caused Trade X to pursue a large number of transactions and business ventures that no reasonably prudent officer would authorize**.** These transactions are described further below.

(i) Trade X's Nigerian business

89. Trade X sold a high volume of vehicles in Nigeria. However, Trade X's business in Nigeria was subject to enormous risks. These risks stemmed primarily from two factors: (i) the volatility of the Nigerian currency, the Naira; and, (ii) Trade X's inability to repatriate its Nigerian revenue to banks in the United States or Canada.

90. Trade X accepted payment for vehicles that it sold in Nigeria in local currency, the Naira. But the Naira is a volatile currency that frequently shifted significantly in the time between the agreement to sell a vehicle and the delivery of (and payment for) that vehicle. As a result, sales

that appeared to be profitable when Trade X entered into them were often unprofitable by the time the vehicle was delivered and paid for as a result of the Naira losing value during the intervening period.

91. Worse still, Trade X had no reliable way to convert Naira to USD so that it could repay the Primary Lenders amounts advanced in respect of vehicles sold in Nigeria. There was insufficient liquidity in the Naira market to convert Naira to USD.

92. The risks relating to Trade X's Nigerian business were not disclosed to or approved by the Board. Indeed, following the First Highcrest Default, the Management Directors led the Non-Management Directors to believe that Trade X was winding-down its Nigerian business, after Highcrest raised concerns regarding the associated risks.

93. In reality, the opposite happened. Instead of decreasing its exposure to Nigeria, or limiting its business so that funds could be reliably converted, Trade X increased the use of the MBL Global Facility to fund the sale of vehicles in Nigeria. To do so, it used black market currency transactions to convert Naira to USD. It funnelled the proceeds earned in Nigeria through non-bank entities, including a canola oil company called Ganic Foods Inc. and a cryptocurrency company called Yellow Card to convert the sales proceeds from Naira to USD.

94. Trade X's use of Ganic Foods Inc. and Yellow Card to convert Naira to USD breached the MBL Facilities in two ways: (i) it risked the MBL Lenders' security over the payments by cycling them through unsanctioned and unregulated currency conversion processes; and (ii) it caused Trade X to breach the requirement in the MBL Facilities that the payments be deposited into the Collections Account within three business days of being received. Both of these breaches were material defaults under the MBL Facilities and the Highcrest Facility.

95. By the fall of 2023, Trade X's business in Nigeria accounted for approximately 50% of the company's total vehicle sales, exposing the company to significant risk.

96. Mr. Davidson was the driving force behind Trade X's Nigerian business. The remaining Defendants were aware of and assisted Mr. Davidson in carrying out the negligent acts relating to the Nigerian business. They are liable for the losses caused by their negligence.

(ii) The Defendants wasted millions of dollars on the Trade X Platform

97. Trade X's primary business was buying and selling vehicles internationally. However, to obtain the equity investments described above, it marketed itself as a technology company. To do so, Trade X represented to investors and lenders that it was developing the Trade X Platform to facilitate business-to-business vehicle transactions internationally.

98. Trade X's vision for the Trade X Platform was to develop an AI-based technology that would identify arbitrage opportunities in the global vehicle market by accounting for various inputs, such as currency conversion rates, import/export duty fees and various other operational and regulatory costs. It was also intended to streamline the burdensome regulatory requirements associated with the international import/export of vehicles by automating the submission of certain required documentation.

99. However, the Trade X Platform was never fully functional or revenue-generating. While attempting to develop the Trade X Platform, Trade X hired a bloated staff of over 150 people, many of whom were computer programmers and software engineers. The company also incurred large monthly expenses to contract with third-party developers and service providers with respect to the development of the Trade X Platform.

100. The investments in the Trade X Platform were primarily made at the direction of Mr. Davidson and Mr. Butera. Ultimately, they directed that Trade X invest approximately CAD$17.2 million in its efforts to develop the Trade X Platform. Despite the substantial investment, Mr. Davidson and Mr. Butera provided little to no meaningful supervision, guidance, or strategic input with respect to the Trade X Platform's development. This was an enormous drag on Trade X's cash flow that continued long after development of the Trade X Platform should have been abandoned. It light of Trade X's constant and ongoing cash flow issues, Trade X's continued investments in the Trade X Platform were not prudent. Mr. Davidson and Mr. Butera failed to meet the requisite standard of care by continuing to invest in the Trade X Platform.

(iii) The Defendants failed to notice and address the diversion of $8 million of Trade X's funds

101. Following Aimia's equity injection in July 2021, Trade X engaged in an aggressive expansion strategy that involved the purchase of several companies. On August 30, 2021, Trade X executed a share purchase agreement to purchase Techlantic. On December 17, 2021, Trade X executed an asset purchase agreement (the **"WE Purchase Agreement"**) whereby it purchased (via its newly formed entity, Wholesale Express) the technology, IP and book of business relating to the Wholesale Express Platform from Groupe Grégor Inc. ("**Grégor**").

102. Almost a year after purchasing Wholesale Express, Trade X discovered that it had, in essence, not noticed that approximately CAD$8 million owed to it as part of the purchase of Wholesale Express (the **"Grégor Debt"**) had gone missing.

103. The Grégor Debt stemmed from the structure of the WE Purchase Agreement. In order to fully transfer the Wholesale Express Platform to the new Wholesale Express entity, Trade X

needed to obtain certain regulatory approvals. As such, the WE Purchase Agreement stipulated that from execution of the WE Purchase Agreement until Trade X obtained the regulatory approvals (the **"Interim Period"**), Grégor would continue to operate the Wholesale Express Platform for the benefit of Trade X by, among other things, collecting payments for vehicles sold on the Wholesale Express Platform in Grégor's bank account. Pursuant to the terms of the WE Purchase Agreement, the proceeds collected in the Grégor bank account in the Interim Period were to be remitted to Trade X.

104. Trade X obtained the necessary regulatory approvals to fully effect the transfer of the Wholesale Express Platform in or around June, 2022. However, Grégor never remitted the funds collected in the Grégor bank account to Trade X.

105. Trade X did not initially notice that it had not received these funds, which totaled approximately CAD$8 million. Instead, the Grégor Debt only came to light in mid-2023, following an investigation by the Defendant, Brent Sawadsky, and the controller of Wholesale Express.

106. Despite facing almost constant cash flow problems, Mr. Davidson, Mr. Butera, and Mr. Leung (who was Trade X's CFO at the time Trade X purchased Wholesale Express), did not implement adequate procedures to monitor cash that ought to have been paid to Trade X. This fell well below the applicable standard of care.

(iv) Trade X lost €2.5 million on a transaction that it could not close

107. In August 2021, Trade X executed a non-binding Letter of Intent (**"LOI"**) for the acquisition of Global Dealer Exchange B.V, SCL Rotterdam B.V, Global Dealer Supply B.V (collectively, **"SCL/GDE"**), a group of Netherland-based automotive trading and logistic

companies. The SCL/GDE LOI was executed without the approval, or even knowledge, of the Board. Trade X provided a non-refundable deposit when Mr. Davidson and Mr. Butera knew, or ought to have known, that Trade X could only close the SCL/GDE transaction if it raised more money. Although Mr. Davidson and Mr. Butera suggested to SCL/GDE that Trade X's ability to raise these was funds was basically assured, in reality, its ability to do so was uncertain.

108. Ultimately, Trade X failed to raise sufficient funds to finance the acquisition and failed to close the SCL/GDE transaction. This failure to close came at significant expense to Trade X, including Trade X's loss of the non-recoverable deposit of €2.5 million. Mr. Davidson and Mr. Butera, who led the negotiations with respect to the transaction, should have known that Trade X's ability to raise sufficient funds to close was uncertain. They are liable for the resulting losses.

109. In addition, SCL/GDE sued Trade X for its failure to close. Although Trade X was ultimately successful in defending this litigation, it expended a significant amount of money on legal fees. Mr. Davidson and Mr. Butera's negligence caused these losses.

(v) Illegal sale of Dodge Chargers

110. In or around May 2022, Trade X discovered that it had sold a significant volume of 2020 Dodge Chargers (the **"Chargers"**) to customers in the United States that failed to meet U.S. regulatory standards and were thus illegal for road-use. Mr. Davidson had directed the purchase of the vehicles after a planned sale to a Mexican police force fell through, but failed to check whether the Chargers could be legally sold in the intended target jurisdiction. As a result, Trade X was required to engage in a costly "buy-back" program to recover the illegal vehicles.

111. At the direction of Mr. Davidson and Mr. Butera, Trade X later resold the Chargers to customers in Canada. However, as Trade X later learned, these sales were also illegal.

112. Mr. Davidson and Mr. Butera's negligence caused financial losses, and even exposed Trade X to quasi-criminal prosecution. The sale of the Chargers not only resulted on losses on the illegal vehicles, but has also triggered lawsuits by dealerships that purchased the illegal vehicles, as well as a criminal investigation by the RCMP. In addition to the significant monetary loss suffered by Trade X on these vehicles, the incident also damaged Trade X's relationship with a number of its key customers.

C. THE DEFENDANTS REFUSED TO ADDRESS ISSUES WITH THE KEY FACILITIES

(i) Mr. Davidson withdrew significant funds from the company, which funds the company desperately needed

113. In April and May 2022, shortly before the First Highcrest Default, while Trade X was facing a significant cash shortfall, Mr. Davidson withdrew approximately CAD$4.4 million from Trade X. Mr. Davidson asserted that these funds were a repayment of his shareholder loan.

114. Mr. Davidson's withdrawal of these funds during the lead-up to the First Highcrest Default, at the time the very existence of the company was threatened due to cash flow problems, was not in the best interests of the company. Mr. Davidson did not disclose these withdrawals to the Board.

115. However, Mr. Davidson subsequently returned approximately CAD$5.6 million to the company in the period from late June 2022 until October 2022, when it became clear that a forbearance agreement with Highcrest was likely to be concluded.

116. The above-noted shareholder loan transactions were not approved by the Board. In the fall of 2022, Mr. Davidson approached the Board seeking an additional repayment of CAD$1.6 million of his shareholder loan. In the context of seeking this approval, Mr. Davidson informed the Board that he had advanced the CAD$5.6 million to the company over the summer, but failed to disclose the CAD$4.4 million that he had withdrawn in the spring.

117. Throughout his time at Trade X, Mr. Davidson used his alleged shareholder loans as a source of personal funds, withdrawing money as needed without adequate (or any) controls. By way of example, Mr. Davidson accepted a luxury watch as "repayment" for a CAD$190,500 receivable owed to Trade X. While Mr. Davidson later directed Trade X's financial controller to make an equivalent reduction to Mr. Davidson's shareholder loan, this transaction was never approved by the Board or anyone else at Trade X.

118. The foregoing activities breached Mr. Davidson's fiduciary duties. He preferred his own interests to Trade X's need for cash.

(ii) The First Highcrest Default

119. By the spring of 2022, Trade X had breached the terms of the Key Facilities, and specifically, the Highcrest Facility. Although the US$31 million Highcrest facility was fully drawn, actual eligible inventory pledged to the facility was worth far less than US$31 million.

120. Given the above-noted issues, in or around June 2022, Highcrest threatened to declare Trade X in default under the Highcrest Facility. A declaration of default would have triggered cross-defaults with other lenders, and given the lack of available cash, would have likely resulted in the insolvency of Trade X.

121. In light of the threat that a formal declaration of default would pose to Trade X, Trade X negotiated a forbearance agreement with Highcrest. In the context of these negotiations, Highcrest informed Trade X that it had discovered a number of serious reliability issues with the Highcrest collateral list prepared by Trade X. Among other issues, these included the following:

(a) Trade X had misreported collateral positions in the weekly reports prepared in respect of the Highcrest Borrowing Base;

(b) certain vehicles pledged under the Highcrest Facility, which were listed as being located in Ontario, had in fact been sold and were no longer in Canada;

(c) contrary to the requirements of the Highcrest Facility, the funds from the sale of these vehicles were never applied against the amounts owing to Highcrest, nor were these sales properly reflected in the Highcrest Borrowing Base.

(d) Trade X misrepresented the amount of cash held within Trade X's bank account, continuing to include HST tax credit value amounts in the computation of the Highcrest Borrowing Base during periods when the Canada Revenue Agency was not paying these amounts to Trade X; and

(e) Trade X had double-pledged HST tax credit values to both MBL and Highcrest.

122. In exchange for additional forbearance under the Highcrest Facility, Highcrest demanded additional security for its loans. In response, to save Trade X, Trade X's primary creditors, Aimia, the MBL Lenders and Highcrest began the process of renegotiating their agreements with Trade X.

123. The First Highcrest Default should have been a dire warning to Trade X. The issues raised by Highcrest laid bare serious issues with Trade X's management, including potential financial malfeasance, the inaccuracy of financial data, the lack of financial controls, process and oversight, lack of budgeting or monitoring, and the lack of segregation of duties. These fundamental acts and omissions were symptomatic of a business that was without any control and bounced from one daily crisis to another.

124. Following the First Highcrest Default and throughout the fall of 2022, the Non-Management Directors urged Trade X to retain Portage Point Partners, a business advisory firm with expertise in insolvency and restructuring, to advise the company on a turn-around plan. The Board initially approved this retainer, but the Management Directors later withdrew their support, purportedly due to costs associated with the retainer. Two additional advisory firms were considered to take on the mandate, but the work was never completed. Ultimately, the Board failed to complete any meaningful review of the events that led to the First Highcrest Default.

(iii) The Defendants did not change their ways after the Highcrest defaults

125. Trade X's default on the Highcrest Facility ought to have been a significant wake-up call. The Defendants' failure to abide by the terms of the Highcrest Facility resulted in a breach of that loan and Trade X losing access to one of its two Key Facilities. Although Trade X was able to negotiate an arrangement that allowed it to live another day, the Defendants did not change their ways.

126. Most critically, the MBL Facilities were the only substantial source of credit available to Trade X after the 2022 Loan Restructuring. The MBL Facilities were similar, in many respects, to the Highcrest Facility. Any reasonably prudent officer or director in the Defendants' circumstances

would have recognized the critical importance of establishing appropriate internal controls, budgets and compliance measures to ensure that Trade X complied with – and maintained access to – the MBL Facilities. The Defendants did not.

(iv) Efforts to Sell Wholesale Express

127. As part of the 2022 Loan Restructuring, Trade X agreed to repay the principal amount of Highcrest's loan in full by June 23, 2023. The funds for this repayment were expected to come from the sale of Wholesale Express. Wholesale Express was profitable and valuable but Trade X was forced to pursue a sale because the Defendants had so badly mismanaged its business that a potential Wholesale Express sale was the only realistic way to recover its losses.

128. In January 2023, Trade X engaged Canaccord Genuity (**"Canaccord"**), a well-known investment banker, to assist with the sale of Wholesale Express. Although Canaccord ran a sales process, only one potential purchaser emerged that was prepared to close the transaction.

129. The sale transaction with the potential purchaser was originally intended to close in June 2023. However, closing was postponed to September 2023, and later, to October 2023. To accommodate the delayed closing, Highcrest agreed to enter into a forbearance agreement forbearing its enforcement of remedies until September 2023, and later, to October 2023.

130. Throughout this period, Trade X continued to suffer from crippling cash flow issues. The Defendants pinned all hopes of Trade X regaining solvency entirely on the successful sale of Wholesale Express.

(v) Wilful Diversion of MBL's Security

131. Instead of prudently managing the company while it negotiated the sale of Wholesale Express, the Defendants began to repeatedly and deliberately misappropriate MBL's security to pay Trade X's costs and operating expenses.

132. On multiple occasions, the Defendants directed that payments that should have been deposited in the Collections Accounts and held in trust for MBL be diverted to pay Trade X' s operating expenses, such as payroll. The Defendants began diverting the MBL Lenders' security for operational purposes at least as early as spring 2023 and continued until Trade X's insolvency.

133. The decision to divert the trust funds was made collectively by the Defendants. Moreover, the Defendants knew that using the End Buyer Payments in this manner contravened the terms of the MBL Facilities, and attempted to conceal this information from the MBL Lenders, including, without limitation, by continuing to report the vehicles as unsold on the MBL Borrowing Base Reports, despite the fact such vehicles had, in fact, been sold.

134. When MBL inquired about the status of these vehicles as part of regular collateral reporting on September 15, 2023, Trade X misrepresented to the MBL Lenders that the applicable vehicles had not been sold and requested additional advances under the MBL Global Facility, in part, on the basis of vehicles it no longer owned. These misrepresentations were made with the intent to avoid the required pay down of advances that were made under the MBL Facilities.

135. During this period, the Defendants also solicited several "Bridge Loans" to Wholesale Express in amounts ranging from $150,000 to $2,000,000 from various parties. The Bridge Loans

increased Trade X's total indebtedness and violated the requirements of the Intercreditor Agreement.

136. The Defendants gambled that the eventual sale of Wholesale Express would be sufficient to make-up the growing Deficit and to repay the Primary Lenders and Bridge Lenders. This did not occur. Instead, the Defendants' actions during this period increased the debts owed to the Primary Lenders, created new debts in violation of Trade X's existing agreements, and ultimately culminated in the company's insolvency.

D. DISCOVERY OF TRADE X'S DEFAULTS ON THE MBL FACILITIES

137. The Defendants successfully concealed the diversion of the MBL Lenders' security for a number of months. However, on or about October 9, 2023, the MBL Lenders learned that Trade X had diverted End Buyer Payments meant to be held in trust for the MBL Lenders, as described above.

138. In total, the Defendants caused Trade X to divert approximately US$7 million of End Buyer Payments arising from vehicle sales in the period between June and September 2023.

139. The Defendants' intentional and wrongful diversion of the End Buyer Payments resulted in a series of material defaults (the "**MBL Defaults**") under the MBL Facilities, which included the following:

(a) the failure of Trade X to deposit the End Buyer Payments into the Collection Account or hold such amounts in trust (subsections 8.01(b)(i) and (ii) of the MBL Facilities;

(b) certain financed vehicles failing to qualify as "Eligible Assets" resulting in them being characterized as "Ineligible Assets" due to, among other reasons, the Borrower's failure to deposit the End Buyer Payments for such vehicles into the Collection Account within the period prescribed under the MBL Facilities (sections 2.01(d) and Article IX(c) of the MBL Facilities); and

(c) the inability of the Borrower to deliver an accurate certification in respect of the borrowing base under the MBL Facilities owing to certain vehicles failing to meet the definition of "Eligible Assets" (section 5.11(h) and Article IX(e) of the MBL Facilities).

140. The MBL Defaults trigged MBL's application to appoint the Receiver, which was filed December 5, 2023. The Receiver was ultimately appointed on December 22, 2023.

E. CAUSES OF ACTION

141. The Plaintiffs make the following allegations and plead the following causes of action against the Defendants:

(i) Breach of Fiduciary Duty

142. The Defendants, as directors and/or officers of Trade X, owed fiduciary duties to the company to:

(a) act at all times in good faith and in the best interest of Trade X;

(b) not allow their self-interest to conflict with their fiduciary duty; and

(c) not retain any unauthorized profit or benefit from their office.

143. The Plaintiffs state that the Defendants breached these duties, resulting in damages to Trade X. The breaches include but are not limited to:

(a) causing Trade X to wilfully and repeatedly breach its credit facilities with the Primary Lenders;

(b) causing Trade X to misappropriate the Primary Lenders' collateral and divert funds held in trust for the Primary Lenders for operational or other purposes;

(c) causing Trade X to misreport, wilfully or through negligence, the information provided to the Primary Lenders on their respective Borrowing Bases, thereby misrepresenting the status of their collateral;

(d) causing Trade X to improperly conceal these breaches from the Primary Lenders for several months;

(e) allowing the Deficit between the amounts owed to the MBL Lenders and the collateral pledged to it to grow to several million dollars; and

(f) jeopardizing the continued funding provided by the Primary Lenders under the Key Facilities that Trade X required to operate.

144. The Defendants took the above-noted actions with full knowledge that the Primary Lenders would cease to advance funding to Trade X upon discovering these described breaches. These breaches and the Defendants' attempts to conceal them jeopardized Trade X's ongoing viability as a company and were accordingly contrary to the best interests of the company.

145. The Plaintiffs further plead that the Defendants, Eric Van Essen and Luciano Butera breached their fiduciary duties by:

(a) placing themselves in a conflict of interest with respect to the financing arrangements with the Family Companies that were not disclosed to or approved by the Board; and

(b) engaging in self-dealing transactions by causing Trade X entities to enter into transactions with the Family Companies that were not disclosed to or approved by the Board.

146. The Plaintiffs further plead that the Defendant, Ryan Davidson, breached his fiduciary duty by taking payments, ostensibly in repayment of his shareholder loans, without adequate (or any) consideration of Trade X's cash needs and without fully informed (or any) consent from Trade X's Board.

(ii) Breaches of the Duty of Care

147. The Defendants, as directors and/or officers of Trade X, owed a duty of care to the company to:

(a) discharge the duties of their office honestly, in good faith, and in the best interests of the company;

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

(c) establish and/or maintain proper internal controls to ensure that collateral pledged to the Primary Lenders was not misallocated to other purposes;

(d) disseminate accurate and truthful information to the Primary Lenders regarding the status of their collateral;

(e) take reasonable steps to minimize Trade X's risk of defaulting on the Key Facilities.

148. The Plaintiffs state that the Defendants breached these duties and that Trade X suffered damages as a result of these breaches. These breaches include but are not limited to:

(a) failing to establish proper financial controls and record-keeping practices with respect to Key Facilities, the status of the Primary Lenders' collateral, and specifically the reporting required with respect to the Borrowing Bases;

(b) failing to properly monitor and review transactions between Trade X and parties owned/operated by the families of key officers and directors, such as ACC and the Van Essen Companies; and

(c) failing to disseminate accurate and truthful information to the Primary Lenders regarding same;

(d) jeopardizing the continued funding provided by the Primary Lenders under the Key Facilities that Trade X required to operate;

(e) failing to notice the CAD$8 million Grégor Debt had not been remitted to Trade X, as required by the WE Purchase Agreement;

(f) losing the non-recoverable deposit of €2.5 million in the SCL/GDE transaction;

(g) engaging in high-risk transactions in Nigeria;

(h) making inflated investments in the Trade X Platform with little to no oversight from management; and

(i) failing to conduct proper diligence on vehicle transactions, resulting in the illegal sale of the Chargers.

F. DAMAGES

149. The Defendants' breaches of fiduciary and other duties owed to Trade X have caused significant financial harm to the company. The Plaintiffs seek compensatory damages for this financial harm, in the amount of $20,000,000 or an amount to be proven at trial.

150. The Plaintiffs further claim an entitlement to a disgorgement of all proceeds, fees, bonuses and/or commissions earned by the Defendants in connection with the activities pleaded above.

151. The Plaintiffs state that the conduct of the Defendants was of such a high handed and wanton nature and was pursued with a complete disregard for the best interest of the company, to whom the Defendants owe fiduciary and other duties, as to warrant an award of punitive and exemplary damages, such damages to be proven at trial.

152. There is a real and substantial connection between the subject matter of this action and the Province of Ontario as Trade X's business was conducted from Ontario.

153. The Plaintiffs plead and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, the *Ontario Business Corporations Act*, R.S.O, 1990, c. B.16, the *Canadian Business Corporations Act*, RSC, 1985, c. C-44, the *Bankruptcy and Insolvency Act,* R.S.C., 1985, c. B-3, the *Courts of*

Justice Act, R.S.O. 1990 c. C.43 and the *Rules of Civil Procedure,* R.R.O. 1990, Reg 194, all as amended.

154. The Plaintiffs submit this action should be tried in Toronto.

April 4, 2025

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Electronically issued / Délivré par voie électronique : 07-Apr-2025
Toronto Superior Court of Justice / Cour supérieure de justice

TRADE X GROUP OF COMPANIES et al.	- and -	RYAN DAVIDSON et al.	Court File No.
Plaintiffs		Defendants	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

B

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MBL ADMINISTRATIVE AGENT II LLC, POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Plaintiffs

and

RYAN DAVIDSON, LUCIANO BUTERA, 1254382 ONTARIO LTD., ERIC GOSSELIN, PATRICK LEUNG, ERIC VAN ESSEN, WOUTER VAN ESSEN, 1309767 ONTARIO LTD., 2601658 ONTARIO LTD., PHILIP MITTLEMAN, BRENT SAWADSKY, THE CFO CENTRE INC., AND LAKSHMI SURESH

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL

FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Ontario Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R8

TO:	**Ryan Davidson**
AND TO:	**Luciano Butera**
AND TO:	**1254382 Ontario Ltd.**
AND TO:	**Eric Gosselin**
AND TO:	**Patrick Leung**
AND TO:	**Eric van Essen**
AND TO:	**Wouter van Essen**
AND TO:	**1309767 Ontario Ltd.**
AND TO:	**2601658 Ontario Ltd.**
AND TO:	**Philip Mittleman**
AND TO:	**Brent Sawadsky**
AND TO:	**The CFO Centre Inc.**
AND TO:	**Lakshmi Suresh**

CLAIM

1. The Plaintiffs, MBL Administrative Agent II LLC ("**MBL**"), and the Lenders (defined below), claim against the Defendants, jointly and severally, for USD $17,000,000 or an amount to be proven at trial, with respect to the following causes of action:

(a) Knowing assistance in breach of trust against:

(i) The Defendants, Ryan Davidson, Luciano Butera, Patrick Leung, Eric Gosselin, Brent Sawadsky, the CFO Centre Inc., and Lakshmi Suresh for facilitating an alternative financing arrangement with a company controlled by Mr. Butera's family and the resulting payment of trust funds in preference to the Plaintiffs pursuant to such arrangement;

(ii) The Defendants, Eric van Essen, Wouter van Essen, and Ryan Davidson for facilitating an alternative financing arrangement with companies controlled by the Van Essen family and the resulting payment of trust funds in preference to the Plaintiffs pursuant to such arrangement;

(iii) The Defendants, Ryan Davidson, Luciano Butera, Patrick Leung, Eric Gosselin, Philip Mittleman, Brent Sawadsky, the CFO Centre Inc., and Lakshmi Suresh for facilitating a currency conversion scheme in Nigeria and the resulting payment of trust funds in preference to the Plaintiffs pursuant to such scheme;

(iv) The Defendants, Ryan Davidson, Eric Gosselin, Patrick Leung, Eric van Essen, Brent Sawadsky, the CFO Centre Inc., and Lakshmi Suresh for orchestrating the diversion of trust funds to pay operating expenses for their own benefit and in preference to the Plaintiffs;

(v) The Defendant, Philip Mittleman, for facilitating a bridge loan from Aimia Inc. to Wholesale Express (defined below) in violation of Aimia Inc.'s and Trade X Parent's (defined below) obligations to MBL pursuant to an intercreditor agreement.

(b) Knowing receipt in breach of trust against:

(i) The Defendant, 1254382 Ontario Ltd., for knowingly receiving trust funds pursuant to the financing arrangement referred to in paragraph 1(a)(i) above;

(ii) The Defendants, 1309767 Ontario Ltd. and 2601658 Ontario Ltd., for knowingly receiving trust funds pursuant to the financing arrangement referred to in paragraph 1(a)(ii) above;

(iii) The Defendants, Ryan Davidson and Eric Gosselin, for knowingly using funds that were held in trust for the Lenders to make payroll obligations. Had these payroll obligations not been met, Mr. Davidson and Mr. Gosselin would have faced personal liability under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, the *Canada*

Business Corporations Act R.S.C. 1985, c. C-44, and Ontario's *Business Corporations Act*, R.S.O. 1990, c. B.16.

(c) Misrepresentation against:

(i) The Defendants Ryan Davidson, Luciano Butera, Eric Gosselin, Eric van Essen, Brent Sawadsky and Lakshmi Suresh for making false statements to MBL, which induced the Lenders to loan money to Trade X (defined below) which was not repaid.

(d) Inducing breach of contract against:

(i) The Defendants, 1254382 Ontario Ltd., Ryan Davidson, Luciano Butera, Patrick Leung, Eric Gosselin, Brent Sawadsky and Lakshmi Suresh for inducing Trade X to enter into and use the financing arrangement referenced in paragraph 1(a)(i) above in breach of its agreements with the Plaintiffs; and

(ii) The Defendants, 1309767 Ontario Ltd., 2601658 Ontario Ltd., Eric van Essen, Wouter van Essen, and Ryan Davidson for inducing Techlantic (as defined below) to enter into and use the financing arrangement referenced in paragraph 1(a)(ii) above in breach of its agreements with the Plaintiffs.

(iii) The Defendant, Philip Mittleman, for inducing Aimia Inc. and Trade X Parent to breach their obligations under an intercreditor agreement

among Aimia Inc., MBL, Wholesale Express, Trade X Parent and others, by causing Aimia Inc. to advance a bridge loan to Wholesale Express.

(e) Unlawful means conspiracy against:

(i) The Defendants, 1254382 Ontario Ltd., Ryan Davidson, Luciano Butera, Patrick Leung, Eric Gosselin, Brent Sawadsky and Lakshmi Suresh for conspiring against the Plaintiffs pursuant to the financing arrangement referenced in paragraph 1(a)(i) above; and

(ii) The Defendants, 1309767 Ontario Ltd., 2601658 Ontario Ltd., Eric van Essen, Wouter van Essen, and Ryan Davidson for conspiring against the Plaintiffs pursuant to the financing arrangement referenced in paragraph 1(a)(ii) above;

(f) Oppression against:

(i) The Defendants, Ryan Davidson, Luciano Butera, Eric Gosselin, Patrick Leung, Eric van Essen, Wouter van Essen, Philip Mittleman, Brent Sawadsky, and Lakshmi Suresh for engaging in conduct that prioritized their own interests and those of companies they controlled (as applicable) in disregard of the Plaintiffs' reasonable expectations.

(g) Punitive and exemplary damages in amounts to be determined prior to trial;

(h) Pre and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c., C.43;

(i) The costs of this action on a full indemnity scale; and

(j) Such other relief as this Honourable Court may seem just.

A. OVERVIEW

2. MBL was the administrative agent for a syndicate of Lenders that provided secured Credit Facilities (defined below) to certain members of a group of companies collectively referred to as Trade X.

3. Trade X bought and sold cars in Canada and overseas. The Defendants were, at all material times, either senior officers and/or directors of one or more of the Trade X companies, or third parties controlled by the Defendants or their families.

4. While the Credit Facilities between the Plaintiffs and Trade X involved complex elements, the core of the relationship was that the Lenders loaned Trade X funds to purchase cars. In return, Trade X agreed to hold the cars and any proceeds from their sale in trust for the Lenders until the loans, along with the agreed-upon interest, were fully repaid.

5. In breach of these Credit Facilities, the Defendants caused Trade X to pledge cars to the Lenders that Trade X did not own, and diverted proceeds from the sale of these cars for their own benefit. The Defendants concealed these actions from the Plaintiffs. They made misrepresentations to MBL to induce the Lenders to continue advancing funds

to Trade X under the Credit Facilities and to allow Trade X to avoid repaying amounts outstanding thereunder. The Defendants also caused Trade X to engage in a large number of transactions with companies owned or controlled by the Defendants and/or members of their families. These transactions placed the Defendants in an untenable conflict of interest vis-a-vis Trade X.

6. These were "collective decisions" taken by management of certain Trade X entities, with the knowledge, approval and assistance of the Defendants, Ryan Davidson (former Chief Executive Officer and material shareholder), Luciano Butera (former Chief Operating Officer, Executive Vice President and President), Patrick Leung (former Chief Financial Officer, Vice President Finance, and Global Management Director of Corporate Development), Eric Gosselin (former Chief Executive Officer), Philip Mittleman (former board member), Brent Sawadsky (former interim Chief Financial Officer), Lakshmi Suresh (former Director of Finance), Eric van Essen (former Vice President of Funding & Financial Services for Techlantic), and Wouter van Essen (former Consultant for Techlantic), among other personnel.

7. These actions have caused significant financial loss and harm to the Plaintiffs. Due to the significant erosion of its collateral, on December 22, 2023, pursuant to an order of the Ontario Superior Court of Justice (Commercial List), the Plaintiffs appointed FTI Consulting Canada Inc. (the "**Receiver**") as the receiver and manager of the following Trade X entities: Trade X Group of Companies Inc.; 12771888 Canada Inc.; TVAS Inc.; Tradexpress Auto Canada Inc.; Trade X Fund GP Inc.; Trade X LP Fund I; Trade X

Continental Inc.; TX Capital Corp.; Techlantic Ltd.; and TX Ops Canada Corporation (the "**Receivership**").

8. Separate proceedings were commenced in Quebec under the *Companies' Creditors Arrangement Act* in respect of 13517985 Canada Inc. ("**Wholesale Express**"). Accordingly, Wholesale Express is not subject to the Receivership. For the purposes of this Statement of Claim, each entity subject to the Receivership, along with Wholesale Express, will be referred to individually as a "**Trade X Entity**" and collectively as "**Trade X**."

9. During the course of the Receivership, the Receiver investigated the accounting records and financial affairs of Trade X and uncovered a large number of self-dealing transactions between Trade X and companies owned or controlled by the Defendants. As a result, the Receiver has also commenced proceedings against a number of the Defendants. The Plaintiffs agree to be bound by the results of that proceeding and to ensure there is no double-recovery.

10. As detailed below, the Defendants are liable to the Plaintiffs for knowing assistance, knowing receipt, misrepresentation, inducing breach of contract, unlawful means conspiracy, and oppression.

B. THE PARTIES

(i) The Plaintiffs

(a) MBL

11. MBL is a Delaware limited liability company that was the administrative agent to the Lenders under the two separate secured Credit Facilities in which certain Trade X entities were the borrowers.

12. MBL is a direct subsidiary of Post Road Group LP ("**PRG**"). PRG is an alternative investment advisory firm based in Stamford Connecticut, specializing in private credit and private equity investments across various sectors, including digital infrastructure, telecommunications, media, business services, real estate and specialty finance.

(b) The Lenders

13. The Lenders are each private investment funds managed by PRG. The "**Lenders**" are, collectively, Post Road Specialty Lending Fund II LP (formerly known as Man Bridge Lane Specialty Lending Fund II (US) LP), and Post Road Specialty Lending Fund (UMINN) LP (formerly known as Man Bridge Lane Specialty Lending Fund (UMINN) LP).

(ii) The Defendants

14. Despite the existence of numerous separate corporate entities, Trade X generally operated as a single entity under common ownership and control, with centralized decision-making, management, and financial affairs. Many of the Defendant directors and officers held or claimed titles in "Trade X", which is a generic name that encompassed all of their related businesses, without specifying any specific corporate entity.

(a) Ryan Davidson

15. The Defendant, Ryan Davidson, is the founder of Trade X. Mr. Davidson was the Chief Executive Officer of Trade X's parent company, the Trade X Group of Companies Inc. ("**Trade X Parent**") from its inception, in or about July 2018, until June 2023. At all relevant times, including after his resignation as CEO, Mr. Davidson was a director and chair of the board of directors of Trade X Parent. He was also a director of numerous other Trade X entities, including TX OPS Canada Corporation ("**TX Canada**"), TX Capital Corp., Trade X Fund GP Inc., TVAS Inc., Trade X Continental Inc., and 12771888 Canada Inc.

16. Mr. Davidson exerted significant influence and control over Trade X's business and was the architect of the misconduct described herein. As such, Mr. Davidson is liable to the Plaintiffs for knowing assistance, knowing receipt, misrepresentation, inducing breach of contract, unlawful means conspiracy, and oppression.

(b) Luciano Butera

17. The Defendant, Luciano Butera, was a senior officer of Trade X from its inception in 2018 until his departure in April 2023. During his time at Trade X, Mr. Butera was at various points its Chief Operating Officer, Executive Vice President, and President. He was also a director of Trade X Parent throughout his time at Trade X.

18. Mr. Butera was Mr. Davidson's second-in-command until Mr. Butera resigned in April 2023. As such, Mr. Butera exerted significant influence over the misconduct described herein, including, but not limited to, facilitating Trade X's entry into an alternative financing arrangement with a company controlled by his family, ACC (defined

below) in breach of its Credit Facilities with the Plaintiffs. Through this alternative financing arrangement, Mr. Butera caused Trade X to pay substantial sums to ACC.

19. As a result of his actions, Mr. Butera is liable to the Plaintiffs for knowing assistance in breach of trust, misrepresentation, inducing breach of contract, unlawful means conspiracy, and oppression.

(c) Auto Credit Canada

20. 1254382 Ontario Ltd. (operating as Auto Credit Canada) ("**ACC**") is an Ontario corporation owned and operated by Mr. Butera's family. Mr. Butera has been an officer of ACC since March 2007.

21. As mentioned above, ACC entered into an undocumented alternative financing arrangement with Trade X, pursuant to which ACC provided funds to Trade X for the acquisition of vehicles. In preference to the Plaintiffs, ACC wrongly received payments of principal, interest and fees in respect of collateral pledged to the Lenders.

22. As a result of its actions, ACC is liable to the Plaintiffs for knowing receipt in breach of trust, inducing breach of contract, and unlawful means conspiracy.

(d) Eric Gosselin

23. The Defendant, Eric Gosselin, is the co-founder of Wholesale Express. Mr. Gosselin joined Trade X in December 2021, when Trade X acquired Wholesale Express. In June 2023, Mr. Gosselin became the CEO of Trade X Parent, succeeding Mr. Davidson in that role. Mr. Gosselin resigned as CEO in November 2023, approximately one month prior to the commencement of the Receivership.

24. Prior to becoming CEO, Mr. Gosselin was the Chief Operating Officer of TX Canada, and was also its President and Secretary. At all relevant times, Mr. Gosselin was actively involved in Trade X's operational and financial decision-making.

25. As a result of his actions, Mr. Gosselin is liable for knowing assistance in breach of trust, knowing receipt in breach of trust, misrepresentation, and oppression.

(e) Patrick Leung

26. The Defendant, Patrick Leung, was a senior officer at Trade X from 2020 until the commencement of the Receivership. During his time at Trade X, Mr. Leung was Chief Financial Officer, VP Finance, and Global Managing Director of Corporate Development. Through these roles, Mr. Leung facilitated significant misconduct, including the diversion of funds that were supposed to be held by Trade X as collateral to secure Trade X's obligations to the Plaintiffs.

27. As a result of his actions, Mr. Leung is liable to the Plaintiffs for knowing assistance in breach of trust, inducing breach of contract, unlawful means conspiracy and oppression.

(f) Eric van Essen

28. Trade X Parent acquired Techlantic Ltd. ("**Techlantic**") from Eric van Essen's family in August 2021. After its acquisition, Eric van Essen ("**Eric**") became the Managing Director of Techlantic, and oversaw its daily operations. He was also a director of Techlantic both prior to and after its acquisition.

29. Eric was appointed VP Finance of TX Canada in February 2023, purportedly to address financial management issues under Trade X's agreements with the Plaintiffs. Instead, under Eric's direction, Trade X deprived the Plaintiffs of millions of dollars.

30. Eric, together with his father, the Defendant Wouter van Essen ("**Wouter**"), caused Techlantic to borrow substantial amounts from companies controlled by their family in breach of Techlantic's obligations under the Credit Facilities. Under the guise of "consulting fees", these companies charged Techlantic at least CAD $3.1 million in interest and fees on these unlawful loans. Further, in breach of the Credit Facilities, Eric caused Techlantic to pledge vehicles as collateral to the companies he and Wouter controlled, even though those vehicles had already been pledged as collateral to the Lenders. As a result, companies controlled by the Van Essen family were repaid loans in preference to the Plaintiffs.

31. As a result of his actions, Eric is liable to the Plaintiffs for knowing assistance in breach of trust, misrepresentation, inducing breach of contract, unlawful means conspiracy, and oppression.

(g) Wouter van Essen

32. The Defendant, Wouter van Essen, founded Techlantic. Following the sale of Techlantic to Trade X, Wouter was described as a consultant to Trade X, but in practice, Wouter acted as a senior officer of Techlantic and exerted significant control over the company. Wouter was also a director at all material times of the defendant Van Essen Companies (defined below).

33. As a result of his actions, Wouter is liable to the Plaintiffs for knowing assistance in breach of trust, inducing breach of contract, and unlawful means conspiracy.

(h) 1309767 Ontario Ltd. and 2601658 Ontario Ltd.

34. 1309767 Ontario Ltd. and 2601658 Ontario Ltd. (together, the "**Van Essen Companies**") are Ontario-based corporations which are owned and managed by Eric and Wouter. The Van Essen Companies, like ACC, entered into an alternative financing arrangement with Trade X, specifically with Techlantic. Under this arrangement, the Van Essen Companies acquired vehicles and then "sold" those vehicles to Techlantic without requiring immediate payment. The Van Essen Companies purported to retain title to these vehicles until they received payment. Many of these vehicles were pledged to the Lenders and to Techlantic when Techlantic still owed the purchase price to the Van Essen Companies. This was significant breach of Techlantic's obligations to the Plaintiffs, because Techlantic could not pledge vehicles it did not own. It also put Wouter and Eric in a hopeless conflict of interest, because when Techlantic received payment for these "double-pledged" vehicles they had to decide whether to pay the Plaintiffs or the Van Essen Companies. Eric and Wouter also caused the Van Essen Companies to wrongly receive interest and fees, and the repayment of principal, as a result of this arrangement.

35. As a result of its actions, the Van Essen Companies are liable to the Plaintiffs for knowing receipt in breach of trust, inducing breach of contract, and unlawful means conspiracy.

(i) Philip Mittleman

36. The Defendant, Philip Mittleman is the former Chief Executive Officer of Aimia Inc. ("**Aimia**"), a Canadian investment holding company. Mr. Mittleman joined the board of Trade X Parent in July 2021, while Mr. Mittleman was CEO of Aimia. Mr. Mittleman remained on the board of Trade X Parent until at least 2023. He also remained the CEO of Aimia until after the commencement of the Receivership.

37. Mr. Mittleman was aware of and approved certain misconduct pleaded in this Claim. As a result, Mr. Mittleman is liable for knowing assistance in breach of trust and oppression. Furthermore, as the former CEO of Aimia, Mr. Mittleman induced Aimia and Trade X Parent to breach their obligations under an intercreditor agreement to which MBL, Wholesale Express, Aimia, and Trade X Parent were parties. His actions in inducing this breach of contact also amount to knowing assistance in breach of trust and oppression towards the Plaintiff, for which he is liable.

(j) Brent Sawadsky and the CFO Centre Inc.

38. The Defendant, Brent Sawadsky, is the former interim Chief Financial Officer of TX Canada. Mr. Sawadsky was employed by the CFO Centre Inc. (the "**CFO Centre**"), which is a company that provides CFO services to small and medium-sized businesses. Mr. Sawadsky acted as interim CFO on a part-time basis from approximately October 2022 until December 2023 pursuant to a contract between TX Canada and the CFO Centre.

39. Although Mr. Sawadsky was hired to help manage Trade X's financial systems and reporting, he instead actively participated in some of the significant misconduct described

in this Statement of Claim. In particular, among other matters, Mr. Sawadsky supervised Trade X personnel who were directed to divert proceeds from the sale of collateral pledged to the Plaintiffs for their own purposes, and he oversaw Trade X's diversion of over $7 million from the Plaintiffs.

40. As a result of his actions, Mr. Sawadsky is liable for knowing assistance in breach of trust, misrepresentation, and oppression. The CFO Centre is vicariously liable for Mr. Sawadsky's actions.

(k) Lakshmi Suresh

41. Lakshmi Suresh was the Director of Finance of TX Canada from at least October 2021 until the commencement of the Receivership. In this position, Mr. Suresh was responsible for the financial management of Trade X. Mr. Suresh orchestrated the improper diversion of funds that were held in trust for the Lenders for his own benefit.

42. As a result of his actions, Mr. Suresh is liable for knowing assistance in breach of trust, misrepresentation, unlawful means conspiracy, and oppression.

C. TRADE X AND ITS BUSINESS

43. Prior to the appointment of the Receiver, Trade X's primary business was the purchase and sale of vehicles. Trade X sourced used cars from importers, brand trade groups and leasing companies for resale. Trade X aimed to purchase vehicles at a lower cost in one jurisdiction and sell them at a higher price in another. In theory, this would allow Trade X to profit from price differences between international markets.

44. Trade X operated in various jurisdictions globally, including Canada, the United States, Nigeria, Kenya, Japan, Germany, and France. Trade X's operations were predominantly conducted through three companies: (a) TX Canada, (b) Techlantic, and (c) Wholesale Express.

(i) TX Canada

45. TX Canada operated an automotive trading platform that connected car dealerships in the United States with sellers in Canada. This marketplace offered a comprehensive service that handled procurement, foreign exchange, logistics and duties management for vehicle purchases between Canada and the United States. Although TX Canada was not a borrower under either of the Credit Facilities with MBL, it was a guarantor.

(ii) Techlantic

46. Techlantic was acquired by Trade X in August 2021. Techlantic is a borrower under the Global Facility (defined below) with MBL. The company was primarily involved in the export of vehicles to foreign markets. It supported a network of automobile exporters and provided similar services to TX Canada, although, Techlantic supported the global sales and acquisitions of vehicles by car dealerships.

(iii) Wholesale Express

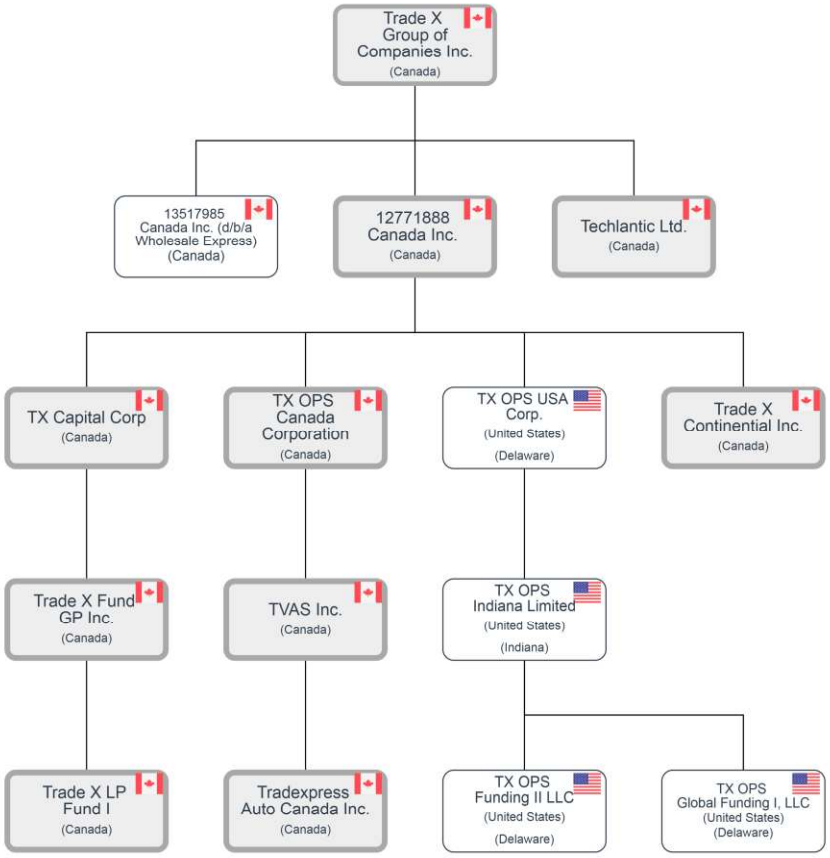
47. Wholesale Express was acquired by Trade X in December 2021. Wholesale Express operated an online dealer-to-dealer auction platform for vehicles, whereby it acquired and sold pre-owned cars to registered dealers.

48. Although Wholesale Express is not a borrower under the Credit Facilities with MBL, its shares were pledged to MBL as security for the obligations under the Credit Facilities. While Wholesale Express is not subject to the Receivership, it is subject to separate *Companies' Creditors Arrangement Act* proceedings in Quebec. MBL is a creditor in those proceedings.

(iv) Trade X Parent

49. Trade X Parent is a holding company and is the direct and indirect parent company of the Trade X Entities.

50. Below is a simplified organizational chart showing the structure of Trade X as of the date of the Receivership. The Trade X Entities subject to the Receivership are shaded in grey.



D. THE CREDIT FACILITIES

51. Trade X's outstanding indebtedness owing to the Plaintiffs arises pursuant to two separate Credit Facilities (each a "**Credit Facility**", and together, the "**Credit Facilities**") under which MBL was administrative agent.

52. The Credit Facilities are:

(a) A USD $ 30 million Credit Facility made available pursuant to a senior secured revolving credit agreement dated February 5, 2021[1] between the

[1] As amended by Amendment No. 1 dated as of June 8, 2021, Amendment No. 2 dated as of September 10, 2021, Amendment No. 3 dated as of December 20, 2021, Amendment No. 4 dated as of July 15, 2022 and as further

Lenders and TX OPS Funding II, LLC, as borrower (the "**Domestic Facility**"). The Domestic Facility was for the purchase and sale of vehicles between Canada and the United States;

(b) A USD $ 30 million Credit Facility made available pursuant to a senior secured revolving credit agreement dated September 27, 2021[2] between the Lenders and Techlantic and TX OPS Global Funding I, LLC, as borrowers (the "**Global Facility**"). The Global Facility was for the purchase and sale of vehicles involving countries outside of Canada and the United States.

53. The obligations of the borrowers under the Credit Facilities were guaranteed on a secured basis by each of the Trade X Entities, with the exception of Wholesale Express, whose shares were pledged to secure the obligations of the Borrower, as previously described.[3]

54. The Credit Facilities are complex agreements involving a number of Trade X Entities. However, they were highly negotiated by Trade X, which was represented during these negotiations by able counsel.

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amended under the Amendment No. 5 and Limited Waiver to dated Senior Secured Revolving Credit Agreement dated June 30, 2023.

[2] As amended by Amendment No. 1 dated as of December 30, 2021, Amendment No. 2 dated as of September 6, 2022 and further amended by the Amendment No. 3 and Limited Waiver to Senior Secured Revolving Credit Agreement dated December 23, 2022.

[3] Techlantic is borrower under the Global Facility and a guarantor of the Domestic Facility.

55. In simple terms, the Lenders advanced funds to Trade X, which used those funds to buy specific vehicles. The Lenders took security over those vehicles or the proceeds earned by selling them. A high level summary of the steps involved in connection with each advance under each of the Credit Facilities is as follows:

(a) An affiliate of the Trade X borrower (such borrower, the "**Borrower**"), purchased a vehicle for sale to an end buyer (the "**End Buyer**");[4]

(b) the affiliate of the Borrower would convey the vehicle to the Borrower;

(c) the Borrower requested MBL advance funds to finance the purchase price for the vehicle (each, an "**Advance**") to pay back its affiliate. As a condition to the Lenders granting the Advance, the affiliate had to convey clear title to the vehicle to the Borrower and the Borrower had to give MBL a first-ranking security interest in the vehicle;

(d) the Lenders made an Advance to the Borrower for up to 90% of the value of the vehicle, making the vehicle a "**Financed Vehicle**" under the terms of the Credit Facility; and

(e) when the Financed Vehicle was sold to an End Buyer, the purchase price paid by the End Buyer was (or should have been) held in trust for the

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[4] This is a simplification of the process outlined in the Credit Facilities. The legal borrower under the Domestic Facility was TX OPS Funding II, LLC, and the legal borrowers under the Global Facility were Techlantic and TX OPS Global Funding I, LLC. Pursuant to a series of complex inter-company agreements, legal ownership was transferred from the Trade X entity that purchased the car to the legal borrower for submitting the vehicle for funding. However, for the purposes of simplifying this statement of claim, the operating company responsible for the purchase and sale of the vehicle is referred to as the "Borrower" throughout.

Lenders and deposited into a dedicated account over which the Lenders had security (the "**Collections Account**") within a prescribed period of time.

56. The Plaintiffs had reasonable expectations that the Defendants would perform their obligations under the Credit Facilities in good faith, including acting honestly and in accordance with the terms of the agreements. The Plaintiffs relied on these reasonable expectations in making Advances and continuing the lending relationship with Trade X.

(i) Protections for the Lenders Under the Terms of the Credit Facilities

57. MBL and the Lenders designed the Credit Facilities to mitigate their risk. The Credit Facilities were borrowing base facilities, meaning that they contained covenants to ensure that the amount borrowed did not exceed the value of the collateral pledged to MBL. This structure allowed the Borrowers to draw and repay funds as needed, but the borrowing limit was always tied to, and secured by, the value of the Financed Vehicles or their sale proceeds, which were to be held in the Collections Account.

58. Trade X was required to deposit sale proceeds into the Collections Account within 72-hours of receipt. This structure protected the Lenders, because the Advances were supposed to be backed by tangible assets, enabling recovery if the Borrowers defaulted. Additionally, the Lenders would only finance 90% of the purchase price of the Financed Vehicle, which further reduced the Lenders' risk of loss and protected it against fluctuations in the value of the Financed Vehicle.

59. To obtain an Advance under a Credit Facility, the Borrower was required to submit to MBL, a request (an "**Advance Request**") and a certificate calculating the value of the

collateral pledged (a "**Borrowing Base Certificate**"). The forms of Advance Request and Borrowing Base Certificate were appended as schedules to the credit agreements for each Credit Facility.

60. The Advance Request and Borrowing Base Certificate contained representations for the protection of the Plaintiffs. The Advance Request included a certification by the Borrower that, once the Financed Vehicle was conveyed to the Borrower by its affiliate:

(a) the Financed Vehicle will be owned outright by the Borrower;

(b) no person, other than the Borrower, will own or claim any legal or equitable interest in the Financed Vehicle;

(c) the Borrower will grant MBL a valid and perfected first-priority security interest in the Financed Vehicle; and

(d) the Financed Vehicle will be clear of any lien, other than permitted liens.

61. The Borrowing Base Certificate contained further representations to MBL that:

(a) the Borrowing Base Certificate accurately reflected the value of all Financed Vehicles pledged to MBL as collateral;

(b) all representations and warranties in the applicable credit agreement were true, including:

(i) representations that MBL held a first-priority perfected security interest in each Financed Vehicle, free and clear of any other lien; and

(ii) that the Borrower had not entered into any alternative borrowing arrangements;

(c) the Borrower, Trade X Parent and the other Trade X Entities had complied with all the material terms and conditions of the applicable credit agreement and related security agreements.

62. The Lenders also required regular reporting and monitoring to ensure that a vehicle was not included in the borrowing base unless the Borrower owned the vehicle free and clear of any liens. Finally, each Borrower was required to deliver a monthly compliance certificate (a "**Compliance Certificate**", and together with the Borrowing Base Certificate and the Advance Request, the "**Borrower Certifications**") certifying that the Borrower, Trade X Parent and the other Trade X Entities had complied with all provisions and terms of the applicable Credit Facility and related security documents to which they were a party. The Borrower Certifications were signed by Ryan Davidson, after preparation and review by, or with the knowledge of, Mr. Gosselin, Mr. Leung, Mr. Sawadsky, Mr. Suresh and Eric.

63. The aforementioned risk mitigation measures were intended to protect the Plaintiffs, however they assumed that Trade X would perform its duties under the Credit Facilities in good faith. Trade X failed to do so. As detailed below, the Defendants caused

Trade X to repeatedly and intentionally breach the terms of the Credit Facilities and related security agreements, which caused the Plaintiffs substantial loss and harm. Specifically, the Defendants:

(a) entered into alternative financing arrangements with related parties thereby breaching the Credit Facilities and prioritizing the interests of the Defendants over those of the Plaintiffs;

(b) as part of these alternative financing arrangements, caused Trade X to double-pledge Financed Vehicles as collateral to both the Lenders and other parties;

(c) misrepresented that Trade X owned vehicles that it did not own to induce the Lenders to make further Advances;

(d) misled MBL with respect to the value of the collateral pledged to the Lenders;

(e) engaged in unlawful currency transactions with respect to pledged collateral; and

(f) breached the trust established in favour of the Lenders by diverting sale proceeds from the Collections Account for their own benefit and by failing to deposit payments into the Collections Account.

E. BREACHES OF THE CREDIT FACILITIES

(i) The Alternative Financing Arrangements

64. Mr. Davidson, Mr. Butera, Mr. Leung, Mr. Gosselin, Eric and Wouter, caused Trade X to enter into undocumented alternative financing arrangements with companies owned and operated by the families of Mr. Butera, and of Eric and Wouter, specifically ACC and the Van Essen Companies (collectively, the "**Alternative Financing Arrangements**").

65. As explained above, under the Credit Facilities, Trade X was required to use its own funds to purchase vehicles. Once title to those vehicles was transferred to the Borrower, the Lenders would provide an Advance equal to 90% of the purchase price of the vehicle.

66. The Alternative Financing Arrangements breached the Credit Facilities, which prohibited the issuance of additional indebtedness, and they allowed Trade X to avoid using its own funds to purchase vehicles. This created a situation where Trade X borrowed under both the Alternative Financing Arrangements and the Credit Facilities, but (unbeknownst to the Plaintiffs) ACC and the Van Essen Companies received payment in preference to the Plaintiffs. As a result, the Plaintiffs assumed all the risk in Trade X's business operations.

67. Moreover, the Alternative Financing Arrangements prevented MBL from obtaining a first-priority lien over the vehicle collateral, as required by the Credit Facilities.

68. The Defendants prioritized repayment of the Alternative Financing Arrangements using proceeds from the sale of collateral that had been pledged to the Lenders, in

violations of the Credit Facilities and related agreements. In doing so, they favored the interests of their own family companies and themselves, resulting in substantial financial loss for the Plaintiffs. The Alternative Financing Arrangements risked the Plaintiff's collateral and diluted its value.

(a) The ACC Financing Arrangement

69. Unbeknownst to the Plaintiffs, Mr. Butera, Mr. Davidson, Mr. Leung and Mr. Gosselin caused Trade X to enter into a financing arrangement with ACC (the "**ACC Financing Arrangement**") for the initial acquisition of vehicles by an affiliate before it was conveyed to the Borrower. Mr. Sawadsky and Mr. Suresh were aware of and participated in the use of the ACC Financing Arrangement.

70. The main issues with the ACC Financing Arrangement were twofold. First, the arrangement resulted in the double-pledging of vehicles as collateral to both ACC and the Lenders, in breach of the Credit Facilities' requirement that MBL hold a first-priority security interest in all Financed Vehicles. Second, the arrangement led to the payment of trust funds to ACC in preference to MBL, with ACC being repaid in full (including interest and fees) from proceeds that should have been held in trust for MBL and the Lenders. These actions not only violated the express terms of the Credit Facilities but also undermined the Lenders' security and resulted in significant financial loss.

71. The ACC Financing Arrangement operated as follows:

(a) ACC would purchase vehicles (each, an "**ACC Vehicle**") using its lines of credit or its own funds and take security over the vehicle;

(b) ACC would transfer the ACC Vehicle to Xpress Financial. Although Xpress Financial was not a direct subsidiary of Trade X, it was controlled by Trade X;

(c) Xpress Financial would then transfer the vehicle to one of the Borrowers;

(d) the applicable Borrower would submit an Advance Request and pledge the vehicle to MBL and the Lenders as collateral. The proceeds from the Advance Request would be used by Trade X to repay ACC; and

(e) the Borrower would sell the vehicle to the End Buyer and should have remitted the End Buyer payment to the Lenders in repayment of the Advance.

72. The problem with the ACC Financing Arrangement, was that ACC would not be paid by Xpress Financial/Trade X until after Xpress Financial/Trade X had received an Advance from the Lenders. This created a period of time, specifically from when the Lenders advanced funds to Trade X to when Trade X/Xpress Financial repaid ACC, during which an ACC Vehicle was pledged to both the lenders under the ACC Financing Arrangement and the Lenders simultaneously. This double-pledge was a breach of Credit Facilities. The Credit Facilities required that, to obtain an Advance, Trade X must have sole ownership of the collateral, free from any party's legal or equitable interest, and unencumbered by any lien, except a permitted lien.

73. In some instances, funds advanced by a Lender for an ACC Vehicle were immediately paid to ACC, resulting in the vehicle being double-pledged for only a short

period. However, Trade X suffered from poor management, persistent cash flow issues, and inadequate vehicle tracking practices. Consequently, there were numerous occasions when the funds advanced by the Lenders for ACC Vehicles were not immediately paid back up the chain to ACC, and were used for other purposes within Trade X, leaving the vehicle double-pledged for an extended period.

74. In these circumstances, when Trade X received payment from the End Buyer for the double-pledged vehicle, it was legally obligated to remit payment to both ACC and the Lender that had funded the vehicle. This situation created a dilemma for Trade X, as it was impossible to fulfill both obligations simultaneously. Consequently, Trade X had to decide between repaying ACC or the Lenders.

75. Since the ACC Financing Arrangement was not made at arm's length, ACC received preferential treatment, to the detriment of the Lenders. Ultimately, ACC was repaid in full, with interest, using funds that should have been deposited into the Collections Account for the benefit of the Lenders. ACC ended its financing relationship with Trade X in the winter of 2023, prior to the appointment of the Receiver and at a time when the Credit Facilities were in default.

76. In total, the Defendants caused Trade X to pay ACC more than CAD $20,000,000 as part of the ACC Financing Arrangement. Inclusive of this amount were fees in excess of CAD $1.5 million. These payments further exacerbated Trade X's liquidity issues and were in breach of the Credit Facilities. In contrast, the Lenders were not repaid in accordance with the terms of the Credit Facilities.

77. As a result of the ACC Financing Arrangement, ACC is liable for knowing receipt of funds held in trust for the Plaintiffs, and for inducing Trade X to breach the Domestic Facility. Further, Mr. Davidson, Mr. Butera, Mr. Leung, Mr. Gosselin, Mr. Sawadsky, and Mr. Suresh are liable to the Plaintiffs for knowing assistance in breach of trust, inducing breach of contract, unlawful means conspiracy, and oppression.

(b) The Van Essen Companies' Financing Arrangement

78. At the direction of Eric and Wouter, Techlantic, a Borrower under the Global Facility, entered into an Alternative Financing Arrangement with the Van Essen Companies (the "**VEC Financing Arrangement**"). Like the ACC Financing Arrangement, the VEC Financing Arrangement resulted in the double-pledging of vehicles. Additionally, there was an improper diversion of sale proceeds, interest and fees to the Van Essen Companies, in preference to the Plaintiffs.

79. The VEC Financing Arrangement operated as follows:

(a) the Van Essen Companies would acquire a vehicle and then sell it to Techlantic;

(b) Techlantic would submit the vehicle for funding under the Global Facility; and

(c) Techlantic would export the vehicle to an End Buyer and collect payment from the End Buyer.

80. The VEC Financing Arrangement was specifically prohibited by the terms of the Global Facility. Under the Global Facility, Techlantic (and the other Borrowers) agreed not to borrow money from anyone other than the Lenders so long as there was outstanding indebtedness to the Lenders.

81. Moreover, when Techlantic acquired a vehicle using the VEC Financing Arrangement (a "**VEC Vehicle**") and then pledged that vehicle to the Lenders in respect of the Global Facility, that vehicle was double-pledged. Upon receiving payment for a VEC Vehicle from an End Buyer, Techlantic had to decide whether to pay the Lenders or the Van Essen Companies.

82. The individuals making this decision, Eric and Wouter, had a direct interest in ensuring that the Van Essen Companies were repaid using trust funds that were payable to MBL. Eric was fully aware that vehicles were being double-pledged, and he communicated with other Defendants, including Mr. Davidson, about these issues. Through the use of the VEC Financing Arrangement, Eric, Wouter and Mr. Davidson knowingly induced Techlantic to breach the terms of the Global Facility.

83. Moreover, Eric and Wouter exercised unfettered discretion over Techlantic's business and the VEC Financing Arrangement. With the exception of one e-mail sent in November 2021, Trade X took no steps to negotiate the terms of the VEC Financing Arrangement or to monitor the charges imposed by the Van Essen Companies on Techlantic. Between 2021 and 2023, the Van Essen Companies charged Techlantic at

least CAD $3.1 million in interest and fees for purported "consulting fees," despite no consulting services being provided.

84. As a result of the VEC Financing Arrangement, the Van Essen Companies are liable for knowing receipt of funds held in trust for MBL and the Lenders, for inducing Techlantic to breach the Global Facility, and for unlawful means conspiracy. Further, Eric, Wouter, and Mr. Davidson are liable for knowing assistance, inducing breach of contract, and unlawful means conspiracy as a result of facilitating the VEC Financing Arrangement. Eric and Mr. Davidson are also liable for oppression towards the Plaintiffs.

(ii) Misrepresentations in the Borrower Certifications

85. As described above, the Borrower Certifications required the Borrowers to certify that they owned a vehicle free and clear of any liens before they were permitted to include that vehicle in the borrowing base. This requirement was a crucial aspect of the Credit Facilities. Without clear title to a vehicle, (for instance, if another party had placed a lien on such vehicle), the Borrowers could not provide first-ranking security to MBL. The Lenders relied on these representations when making Advances.

86. Between 2021 and the Commencement of the Receivership in December 2023, the Lenders provided the Borrowers with USD $115,558,152.33 through its Advance Requests under the Domestic Facility and USD $118,657,898.04 through its Advance Requests under the Global Facility. Each Advance Request was signed by Mr. Davidson, under the preparation and with the knowledge of Mr. Gosselin, Mr. Sawadsky, Mr. Leung,

Mr. Suresh and Eric. The Borrowers also provided at least twenty Compliance Certificates, which were also signed by Mr. Davidson.

87. Ryan Davidson, with the knowledge, cooperation and assistance of Mr. Gosselin, Mr. Sawadsky, Mr. Leung, Mr. Suresh and Eric, repeatedly misrepresented material facts concerning Trade X's ownership of vehicles in these Borrower Certifications. Specifically, they mispresented that, as described in more detail above:

(a) Trade X did not own the vehicles for which Advances were being made free from any security interest;

(b) Trade X was not providing MBL with first lien security;

(c) Trade X had entered into the Alternative Financing Arrangements, in breach of its covenants under the Credit Facilities; and

(d) Trade X had not complied with the Credit Facilities.

88. The Borrowing Base Certificates consistently misrepresented Trade X's assets and liabilities. The discrepancy between the value of the Lenders' security as represented in the Borrowing Base Certificates, and the actual value of the security, amounted to millions of dollars under both Credit Facilities. The Lenders were led to believe that the funds they had advanced to Trade X had first priority security against collateral that, in a realization scenario, would be sufficient to cover the Advances made by the Lenders. In fact, the collateral had been double pledged, or even sold without repaying MBL. In an attempt to avoid the pay down of Advances that would have been required to reflect the

true value of the collateral, the Defendants attempted to conceal the inaccurate borrowing base information from the Lenders.

89. All of the Defendants, with the exception of ACC and the Van Essen Companies, were aware of the inaccuracies in the Advance Requests, Borrowing Base Certificates, and Compliance Certificates, and are jointly and severally liable for the losses arising to MBL as a result from this misrepresentation and oppressive conduct.

(iii) Misappropriation of Trust Funds

90. As discussed in paragraph 58, an important risk mitigation measure for the Lenders was the requirement for Trade X to deposit End Buyer payments into the Collection Accounts within 72-hours of receipt. This stipulation was a critical feature of the Credit Facilities, which were designed to ensure that the Lenders had recourse in the event of a default.

91. In addition to the trust funds that were improperly paid pursuant to the Alternative Financing Arrangements, discussed above, Mr. Davidson, Mr. Butera, Mr. Gosselin, Mr. Leung, Mr. Mittleman, Mr. Sawadsky, and Mr. Suresh disregarded this requirement in two ways. First, they funneled millions of dollars in End Buyer payments through so-called “black market” currency conversion schemes. Second, they used funds held in trust in the Collection Accounts for Trade X payroll and other operating expenses. As a result of these actions, they diverted at least USD $7 million of End Buyer payments, which are property of the Lenders.

(a) "Black Market" Currency Conversion in Nigeria

92. Trade X conducted significant business in Nigeria, which was its second-largest market in terms of revenue in 2023. As part of its business operations in Nigeria, Trade X received End Buyer payments in the Nigerian currency, the Naira. However, Trade X lacked a reliable method for converting Naira into USD to repay the Lenders for the Advances for the vehicles sold in Nigeria. Consequently, Mr. Davidson caused Trade X to engage in illicit foreign exchange transactions to convert Naira into USD, in breach of the Credit Facilities, which prohibited the sale of vehicles in any currency other than US Dollars.

93. Through the actions of the Defendants, Trade X funnelled millions of dollars of End Buyer payments earned in Nigeria through non-bank entities, including a canola oil company called Ganic Foods Inc. and a cryptocurrency company called Yellow Card, to convert the sales proceeds from Naira to USD. This currency conversion scheme was widely known to the Defendants, with the exception of the ACC and the Van Essen Companies, who acknowledged internally that these currency transactions were "black market" currency transactions.

94. Trade X's use of Ganic Foods Inc. and Yellow Card to convert Naira into USD breached the Credit Facilities in two ways. First, it risked the Lenders' security over the End Buyer payments by routing them through an unsanctioned and unregulated currency conversion process. Second, these "black market" conversions often took weeks to complete, if not longer, and thus Trade X breached the requirement in the Credit Facilities

that End Buyer payments be deposited into the Collection Accounts within 72-hours of receipt. Both of these breaches constituted material defaults under the Credit Facilities.

95. Mr. Davidson was the driving force behind Trade X's Nigerian business, however Mr. Butera, Mr. Leung, Mr. Gosselin, Mr. Mittleman, Mr. Sawadsky, and Mr. Suresh and the other individual Defendants were aware of the "black market" currency conversion scheme in Nigeria and the associated breaches of the Credit Facilities. Their knowing participation in this scheme in breach of Trade X's obligation to hold End Buyer payments in trust for the Lenders, and in breach of the Lenders' reasonable expectations, amounts to knowing assistance in breach of trust and oppression.

(b) Use of Funds for Payroll and Other Operating Expenses

96. On multiple occasions, the individual Defendants used trust funds held in the Collections Accounts to pay Trade X's operating expenses, such as its payroll. The Defendants began diverting the Lenders' security for operational purposes at least as early as spring 2023 and continued this practice until the appointment of the Receiver. A portion of these trust funds was paid directly to the Defendants (except for ACC and the Van Essen Companies) as personal compensation.

97. In addition to receiving these funds personally, the diversion benefitted Mr. Davidson and Mr. Gosselin because, from spring 2023 onwards, Trade X was suffering from a liquidity crisis. If Trade X was unable to satisfy its payroll obligations, that posed a risk of personal liability for Mr. Davidson and Mr. Gosselin in their capacities as directors of Trade X pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41, the

Canada Business Corporations Act R.S.C. 1985, c. C-44, and Ontario's *Business Corporations Act*, R.S.O. 1990, c. B.16.

98. The decision to divert the trust funds was orchestrated by Mr. Suresh and Mr. Sawadsky, but was done with the collective knowledge and agreement of Mr. Davidson, Mr. Gosselin, Mr. Leung, and Eric. These Defendants further knew that using the End Buyer payments in this manner contravened the terms of the Credit Facilities. As a result, they are liable for knowing receipt in breach of trust to the extent they received benefits from the breach of trust. They are also liable for knowing assistance in breach of trust to the extent of their participation in such breach of trust. Further, they are liable for oppression as the use of trust funds for the benefit of Trade X, its officers, and directors was contrary to the reasonable expectation of the Plaintiffs that the trust funds would be held for their exclusive benefit.

(c) Speculating with the Advances

99. The Defendants failed to implement effective operational controls and took a cavalier approach to protecting the Advances from the Lenders. For instance, they implemented a bonus structure for Trade X employees based on the number of vehicles purchased for inventory purposes, regardless of the price paid by the End Buyer or whether the vehicle was later sold at a loss. Essentially, the Defendants, with the exception of ACC and the Van Essen Companies, encouraged gambling with the Lenders' funds. This conduct is oppressive to interests of the Plaintiffs. Unbeknownst to the Plaintiffs, they bore all the risk in Trade X's business operations because of the misconduct detailed in this Statement of Claim. Such reckless behaviour contributed to

the appointment of the Receiver and the losses incurred by the Lenders. As a result, the Defendants, other than ACC and the Van Essen Companies are liable to the Plaintiffs for oppression.

F. BREACHES OF THE INTERCREDITOR AGREEMENT

100. In addition to the Plaintiffs, there were two other significant lenders to Trade X: Highcrest Lending Inc. ("**Highcrest**") and Aimia. Unlike the Alternative Financing Arrangements, MBL was aware of and consented to Trade X's lending arrangements with Highcrest and Aimia, and as a result, each lender had distinct loans and security interests in the assets of Trade X.

101. Similar to MBL, Highcrest provided funding to the Trade X Group to facilitate the purchase of vehicles for resale in Canada. Highcrest's funding was permitted under the Credit Facilities. To secure its funding, Highcrest was granted security on substantially all the assets of Wholesale Express and its shares (the "**Highcrest Collateral**"). As previously discussed, MBL was granted security on substantially all of the assets of Trade X, with the exception of the assets of Wholesale Express (although its shares were pledged to MBL) and TX Canada (which was already a guarantor of the Credit Facilities) (collectively, the "**MBL Collateral**").

102. Aimia was initially an unsecured creditor of Trade X Parent. However, as part of a restructuring that occurred in 2022, Trade X Parent issued an amended and restated secured convertible note in favour of Aimia in the principal amount of USD $25 million

(the "**Aimia Note**") and granted Aimia a subordinated security interest in all of its present and future property (the "**Aimia Collateral**"), including the shares of Wholesale Express.

103. On December 23, 2022, Aimia, Highcrest, MBL, Trade X Parent, Wholesale Express, and other entities within Trade X entered into an amended and restated intercreditor agreement (the "**Intercreditor Agreement**").

104. The Intercreditor Agreement set out the respective rights and priorities of the parties. Highcrest was recognized as having a priority security interest in the Highcrest Collateral, MBL had a priority security interest in the MBL Collateral, and Aimia expressly agreed to subordinate its lien and security interest over the Aimia Collateral to both MBL and Highcrest for so long as any obligations to MBL or Highcrest remained outstanding.

105. The intention behind the Intercreditor Agreement was to subordinate Aimia in all respects in an attempt to ensure that Aimia would not receive any payments or exercise any remedies until both MBL and Highcrest had been paid in full. This subordination was a critical protection for MBL, and was designed so that MBL's security and payment priority would not be diluted or circumvented by actions of Aimia or Trade X Parent. The subordination also reflected Aimia's former status as an unsecured creditor.

106. The Intercreditor Agreement also contained specific restrictions on bridge loans to Wholesale Express. For example, if Wholesale Express entered into a bridge loan with any party, Wholesale Express was required to cause such bridge lender to become a party to the Intercreditor Agreement by way of execution of a joinder agreement (the "**Joinder**"). Wholesale Express was required to give notice and a copy of the proposed

Joinder to MBL at least 10 days prior to the occurrence of any bridge loan. Wholesale Express also undertook to incorporate all revisions to the Joinder and bridge loan documents as MBL recommended. The intention of the parties was that any bridge loans made to Wholesale Express would not be in addition to the loans made by Highcrest, but rather the proceeds from such loans would be used to reduce the indebtedness owing to Highcrest on a dollar-for-dollar basis. These provisions were specifically designed to ensure that MBL had the opportunity to review and provide comments on any bridge loan documents to ensure they reflected this intention or, in the alternative, permit MBL to request clear subordination language in respect of any bridge loans.

107. At the time the Intercreditor Agreement was executed, MBL understood that Wholesale Express had not entered into any bridge loans.

108. Philip Mittleman, as both a director of Aimia and Trade X Parent, was aware of the negotiation of the Intercreditor Agreement, its purpose, and the protections it was intended to provide to MBL. Despite this knowledge, Mittleman disregarded the terms of the Intercreditor Agreement and the subordination and protections in place for MBL.

109. Specifically, in June 2024, MBL learned that between February and April 2023, shortly after the Intercreditor Agreement was signed, Mittleman caused Aimia to enter into a USD $2 million bridge loan to Wholesale Express. Through his actions, Mittleman caused Aimia and Trade X Parent (and, by extension, Wholesale Express) to breach the Intercreditor Agreement by failing to provide the required notice to MBL, and failing to

provide MBL with the opportunity to review and provide recommendations on the documents and security in relation to the bridge loan.

110. By breaching the Intercreditor Agreement, Mittleman enabled Aimia to assert a claim against the sale proceeds from Wholesale Express in its proceeding under the *Companies' Creditors Arrangement Act*. Such a claim should be subordinated to MBL's claim on those proceeds, as required by the Intercreditor Agreement. Had MBL been given the proper notice regarding the bridge loan, it would have taken action to prevent Aimia and Wholesale Express from entering into that agreement, or, alternatively, it would have ensured that the loan and security documents relating to the bridge loan, as well as the Intercreditor Agreement, expressly reflected MBL's priority of payment with respect to any sale of Wholesale Express.

111. In addition to inducing breach of contract, by approving the bridge loan when he knew it violated the Intercreditor Agreement, Mr. Mittleman is also liable to MBL for knowing assistance in breach of trust and oppression.

G. DAMAGES

112. The Defendants' actions have caused significant harm to the Plaintiffs, and the Plaintiffs seek compensatory damages for this financial harm, in the amount of USD $17,000,000 or an amount to be proven at trial.

113. The Plaintiffs further claim an entitlement to a disgorgement of all proceeds, fees, bonuses and/or commissions earned by the Defendants in connection with the activities pleaded above.

114. The Plaintiffs state that the conduct of the Defendants was of a high-handed and wanton nature and was pursued with a complete disregard for the interests of the Plaintiffs. In these circumstances, an award of punitive and exemplary damages, in an amount to be proven at trial, is appropriate.

115. There is a real and substantial connection between the subject matter of this action and the Province of Ontario. This includes, but is not limited to, that Trade X has its registered head office in Ontario, Trade X's business was conducted in Ontario, the events described herein primarily occurred in Ontario, and the Defendants primarily reside in Ontario.

116. The Plaintiffs plead and rely on the provisions of the *Canadian Business Corporations Act*, RSC, 1985, c. C-44, Ontario's *Business Corporations Act*, R.S.O. 1990, c. B.16, the *Employment Standards Act, 2000*, S.O. 2000, c. 41, the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, the *Courts of Justice Act*, R.S.O. 1990 c. C.43 and the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, all as amended.

H. PLACE OF TRIAL

117. The Plaintiffs propose that this action should be tried in Toronto.

April 30, 2025

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MBL ADMINISTRATIVE AGENT II LLC, POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Plaintiffs

-and-

RYAN DAVIDSON, LUCIANO BUTERA, 1254382 ONTARIO LTD., ERIC GOSSELIN, PATRICK LEUNG, ERIC VAN ESSEN, WOUTER VAN ESSEN, 1309767 ONTARIO LTD., 2601658 ONTARIO LTD., PHILIP MITTLEMAN, BRENT SAWADSKY, THE CFO CENTRE INC., AND LAKSHMI SURESH

Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Applicant		Respondents

Court File No. CV-23-00710413-00CL

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