

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF RED LOBSTER MANAGEMENT LLC, RED LOBSTER
HOSPITALITY LLC and RED LOBSTER CANADA, INC.**

APPLICATION OF RED LOBSTER MANAGEMENT LLC
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

**FACTUM OF THE FOREIGN REPRESENTATIVE
(Recognition of Second Day Orders and Sale Procedure Order)**

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**FACTUM OF THE FOREIGN REPRESENTATIVE
(Recognition of Foreign Main Proceeding)**

PART 1 – OVERVIEW¹

1. This factum is filed in support of an application under Part IV of the *Companies' Creditors Arrangement Act* (Canada) (the “**CCAA**”) by Red Lobster Management LLC (“**RL Management**”) in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”) of itself, Red Lobster Hospitality LLC (“**RL Hospitality**”) and Red Lobster Canada, Inc. (“**RL Canada**” and, together with RL Management and RL Hospitality, the “**Canadian Debtors**”), for, among other things, recognition of certain orders entered by the United States Bankruptcy Court for the Middle District of Florida, Orlando Division (the “**US Court**”), in proceedings commenced by the Canadian Debtors and certain of their affiliates (the “**Debtors**”) in the United States of America (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Affidavit of John Tibus sworn June 11, 2024 (the “**Tibus Affidavit**”). Unless otherwise indicated, references to dollar amounts herein are to USD.

PART II – SUMMARY OF THE FACTS

A. BACKGROUND

2. Red Lobster was founded in 1968 in the United States. In 1983 Red Lobster expanded north into Canada. Today, Red Lobster is an iconic seafood restaurant chain with approximately 550 locations in operation in 44 states, and 27 locations in Canada across 4 provinces: Ontario, Manitoba, Saskatchewan and Alberta.²

3. Red Lobster's Canadian restaurants are all operated by RL Canada, a Delaware corporation that, like certain of the other Debtors, is a wholly-owned subsidiary of RL Management. RL Canada has approximately 2,000 employees in Canada.³

4. Prior to the Petition Date (defined below), the Debtors worked to evaluate paths forward in response to the challenging macroeconomic environment, demand difficulties, competition in the restaurant space, operational issues, inconsistent leadership, outsized geographic footprint and broader staffing problems – all of which were compounded by the COVID-19 pandemic. Despite their best efforts, the Debtors encountered difficulty regaining their market share in the post-pandemic world. Nevertheless, the Debtors enjoy significant brand strength.⁴

5. In March, when it became clear that an out-of-court solution to recapitalize Red Lobster was not feasible, Red Lobster retained Hilco Corporate Finance, LLC, an investment banker, to formally initiate a marketing and sales process for the Debtors' assets. Hilco commenced an extensive marketing effort and solicited indications of interest from strategic and financial buyers with the financial and operational wherewithal to complete a transaction with the Debtors.⁵

² Tibus Affidavit at para 8.

³ Tibus Affidavit at para 9.

⁴ Tibus Affidavit at paras 18-19.

⁵ Tibus Affidavit at para 20.

6. In May 2024, the Prepetition Term Loan Lenders provided the Debtors with a proposal, the terms of which were memorialized in a restructuring support agreement (“**RSA**”), comprised of two components, (i) the provision of DIP financing to fund the Chapter 11 Cases, and (ii) an agreement to serve as the stalking-horse bidder and to credit-bid for substantially all the assets of the Debtors. The RSA contemplated recognition of the Chapter 11 Cases in Canada.⁶

B. CROSS-BORDER RESTRUCTURING PROCEEDINGS

7. On May 19, 2024 (the “**Petition Date**”) the Debtors commenced the Chapter 11 Cases by filing voluntary petitions (the “**Petitions**”) for relief pursuant to the Bankruptcy Code. The Debtors commenced the Chapter 11 Cases to provide a protective platform for a comprehensive operational restructuring and value maximizing going-concern sale of the business as a whole, including the Canadian Business.⁷

8. On May 21, 2024, RL Management, in its capacity as the proposed foreign representative of the Canadian Debtors, sought and obtained an order for an interim stay of proceedings (the “**Interim Stay Order**”) from this Court in respect of the Canadian Debtors, as well as their respective directors and officers, in Canada.⁸

9. Also on May 21, following a hearing in respect of certain “First Day Pleadings” in the Chapter 11 Cases, the US Court entered a number of First Day Orders, including an order (the “**Foreign Representative Order**”) authorizing RL Management to act as Foreign Representative in respect of the Debtors and the Chapter 11 Cases.⁹

⁶ Tibus Affidavit at paras 22-23.

⁷ Tibus Affidavit at paras 10-11.

⁸ Tibus Affidavit at para 13.

⁹ Tibus Affidavit at para 12.

10. On May 28, 2024, this Court granted an Initial Recognition Order and Supplemental Order, among other things, (i) declaring that RL Management is a “foreign representative” as defined in the CCAA, (ii) recognizing the Chapter 11 Cases as foreign main proceedings in respect of the Canadian Debtors, (iii) recognizing certain orders of the US Court, (iv) granting a stay of proceedings in respect of the Canadian Debtors and their respective directors and officers in Canada, and (v) granting certain court-ordered charges, including a DIP Charge, on the Canadian Debtors’ collateral in favour of the DIP Lenders.¹⁰

11. Since commencement of these recognition proceedings, all Canadian restaurants have continued to operate in the ordinary course. The Debtors, either directly or through counsel, have continued to engage with Canadian stakeholders, including suppliers, landlords and litigation claimants, with the assistance of the Information Officer. The Debtors have also continued their discussions with landlords regarding go-forward rental arrangements.¹¹

12. On June 14, 2024, the US Court conducted a second day hearing (the “**Second Day Hearing**”). At the Second Day Hearing, the US Court heard, among other things, a motion for entry of an order (i) approving the Bidding Procedures for substantially all of the Debtors’ assets, (ii) authorizing the Debtors to enter into a stalking horse agreement and to provide bidding protections thereunder, (iii) scheduling an auction and approving the form and manner of notice thereof, (iv) approving assumption and assignment procedures, and (v) scheduling a sale hearing and approving the form and manner of notice thereof, and (vi) granting related relief (the “**Sale Procedures Order**”).¹²

¹⁰ Tibus Affidavit at para 14.

¹¹ Tibus Affidavit at para 4.

¹² Tibus Affidavit at para 15.

13. RL Management, in its capacity as Foreign Representative, now seeks an order (the “**Second Supplemental Order**”), among other things, recognizing the following final orders entered by the US Court following the Second Day Hearing:

- (i) Sale Procedures Order;
- (ii) Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief (the “**Final DIP Order**”);
- (iii) Final Order Granting Debtors’ Emergency Motion for Interim and Final Orders Authorizing Debtors to (I) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Employee Obligations, (II) Maintain Employee Benefit Programs, and (III) For Related Relief (the “**Final Wages and Benefits Order**”);
- (iv) the Final Order Granting Debtors’ Emergency Motion for Interim and Final Orders (A) Authorizing the Debtors to (I) Continue to Use Existing Cash Management System, (II) Maintain Bank Accounts and Continue Use of Existing Business Forms and Checks, (III) Honor Certain Related Prepetition and Postpetition Obligations, and (IV) Perform Intercompany Transactions, (B) Granting a Waiver of Certain Investment and Deposit Guidelines, and (C) Granting Related Relief (the “**Final Cash Management Order**”); and
- (v) Final Order Granting Debtors’ Emergency Motion for Interim and Final Orders Authorizing Debtors to Pay Prepetition Sales, Use, Trust Fund, Property, Foreign and Other Taxes and Similar Obligations (the “**Final Tax Order**”, together with the Final

DIP Order, Final Wages and Benefits Order and Final Cash Management Order, the “**Second Day Orders**”).

C. SALE PROCEDURES ORDER¹³

i. The Sale Procedures

14. The Sale Procedures are underpinned by a stalking horse bid (the “**Stalking Horse Bid**”) from RL Purchaser LLC (the “**Stalking Horse Bidder**”), a newly formed entity created by the Prepetition Term Loan Lenders for the purpose of acquiring the Debtors’ assets pursuant to a sale transaction.¹⁴

15. The Stalking Horse APA contemplates that the Stalking Horse Bidder will, in addition to assuming certain liabilities and leaving certain cash (the “**Excluded Cash**”) with the Sellers, credit bid 100% of the obligations of the Debtors under the DIP Facility in order to satisfy the Purchase Price for substantially all of the assets of the Debtors, including the Canadian Business. The Stalking Horse APA does not contain any break fee in respect of the Stalking Horse Bidder.¹⁵

16. The Sale Procedures Order is procedural in nature. The Stalking Horse Bid is not approved under the Sale Procedures Order as the ultimate transaction to be entered into by the Debtors. Through the Sale Procedures, the Stalking Horse Bid will be market-tested to ensure that the Debtors obtain the highest or otherwise best offer, or combination of offers, for the Red Lobster business, or some or all of the Debtors’ assets.¹⁶

¹³ Capitalized terms not otherwise defined in this section have the meanings given to them in the Sale Procedures Order.

¹⁴ Tibus Affidavit at para 6.

¹⁵ Tibus Affidavit at para 25.

¹⁶ Tibus Affidavit at para 7.

17. Pursuant to the Sale Procedures, the Debtors will solicit any higher or otherwise better proposals, as compared to the Stalking Horse APA, according to the following proposed schedule¹⁷:

<u>Date</u>	<u>Event</u>
Five (5) business days after the entry of the Sale Procedures Order	Deadline for the Debtors to publish the Publication Notice
June 28, 2024	Deadline for Debtors to (i) provide Adequate Assurance Information with respect to Stalking Horse Bidder ¹⁸ and (ii) file and serve the Assumption and Assignment Notice
July 12, 2024, at 5 p.m. (prevailing Eastern Time)	Sale Objection Deadline
July 18, 2024, at 5 p.m. (prevailing Eastern Time)	Bid Deadline
July 19, 2024	Deadline for Debtors to provide Adequate Assurance Information with respect to each Bidder other than the Stalking Horse Bidder that the Debtors believe in their business judgment, following consultation with the Consultation Parties, will constitute a Qualified Bidder ¹⁹
July 22, 2024, at 5 p.m. (prevailing Eastern Time)	Deadline for Debtors to Notify Bidders of Status as Qualified Bidders
July 23, 2024, at 5 p.m. (prevailing Eastern Time)	Auction (if any)

¹⁷ Tibus Affidavit at para 29; Affidavit of Nancy Thompson sworn June 17, 2024 (“**Thompson Affidavit**”) at Exhibit “G”.

¹⁸ The Debtors shall provide the Adequate Assurance Information (information showing the ability of the purchaser to satisfy the terms of a contract proposed to be assigned) with respect to the Stalking Horse Bidder in accordance with paragraph 34 of the Sale Procedures Order.

¹⁹ The Debtors shall provide the Adequate Assurance Information with respect to each Bidder that the Debtors believe in their business judgment, following consultation with the Consultation Parties, will constitute a Qualified Bidder in accordance with paragraph 35 of the Sale Procedures Order.

The later of (i) July 24, 2024 at 12 p.m. (prevailing Eastern Time) and (ii) twelve (12) hours after the conclusion of the Auction	Deadline for Debtors to file Notice of Auction Results
July 26, 2024, at 11:59 p.m. (prevailing Eastern Time)	Post-Auction Objection Deadline
July 29, 2024, at 1:30 p.m. (prevailing Eastern Time) ²⁰	Sale Hearing
July 30, 2024	Deadline for Court to enter Sale Order
August 3, 2024 ²¹	Deadline to consummate approved Sale Transactions

18. The foregoing timeline is consistent with the milestone requirements of the DIP Credit Agreement and is, therefore, necessary to maintain access to postpetition financing. The Debtors believe that this timeline provides them with an opportunity to conduct a thorough marketing process for their assets and is in the best interests of the Debtors' estates.²²

19. Any bid submitted pursuant to the Sale Procedures for the assets that is the subject of the Stalking Horse Bid (being substantially all of the assets of the Debtors) must either: (a) (i) be a Bid for all of the Stalking Horse Assets, (ii) include cash consideration of not less than the sum of the purchase price set forth in the Stalking Horse APA (excluding, for the avoidance of doubt, any "Assumed Liabilities" to be assumed by the Stalking Horse Bidder pursuant to the Stalking Horse APA) *plus* (A) all "Obligations" outstanding under the DIP Facility which are not included in the

²⁰ The RSA requires a Sale Hearing to be conducted by no later than 70 days after the Petition Date. However, the Prepetition Term Secured Parties under the RSA have consented to the Sale Hearing being conducted on July 29, 2024, which is 71 days after the Petition Date.

²¹ The RSA provides that if the Sale Order is entered within 70 days after the Petition Date, such deadline shall be extended to 90 days after the Petition Date solely for the purpose of obtaining the regulatory approvals necessary to consummate the Sale. However, the Prepetition Term Secured Parties under the RSA have consented to provide such 90 day extension if the Sale Order is entered within 71 days after the Petition Date.

²² Tibus Affidavit at para 30.

purchase price set forth in the applicable Stalking Horse APA, *plus* (B) an Initial Bid Increment (as defined below), and (iii) assume the Assumed Liabilities (as defined in the applicable Stalking Horse APA) or (b) propose an alternative transaction that, in the Debtors' business judgment and in consultation with the Consultation Parties (as defined in the Sales Procedures), provides higher value or better terms than the Stalking Horse APA, including by exceeding the purchase price of such Stalking Horse APA *plus* any applicable Initial Bid Increment, and after taking into account, among other things, in light of all the bids submitted for the assets or any combination of assets, whether there is sufficient cash to pay (i) Wind-Down Expenses and (ii) the DIP Obligations.²³

20. If the Debtors receive more than one Qualified Bid (including the Stalking Horse Bid) for an asset or combination of assets, the Debtors will conduct an auction for such assets. In the event that the Debtors determine not to hold an auction for some or all of the assets, the Debtors will file with the Court, serve on applicable notice parties and cause to be published on the claim agent's website, a notice setting out that the auction has been cancelled, the identity of the Successful Bidder, a copy of the Successful Bid or summary of its material terms, including any assumption and assignment of contracts contemplated thereby, and the date, time and location of the hearing to approve the sale pursuant to a sale approval order (the "**Sale Approval Order**").²⁴

21. Once a Successful Bid is identified, including if such Successful Bid is the Stalking Horse Bid, the Debtors will return to the US Court to seek entry of the Sale Approval Order. The Foreign Representative also intends to seek recognition of the Sale Approval Order and approval of the sale from this Court.²⁵

²³ Tibus Affidavit at para 31; Thompson Affidavit, Exhibit "G".

²⁴ Tibus Affidavit at Exhibit "A".

²⁵ Tibus Affidavit at para 43.

22. When consummated, a sale transaction will preserve the value of the Canadian Business as a going concern and will maximize the value of the Canadian Business.²⁶

ii. The Assignment and Assumption Procedure

23. The Sale Procedures Order also provides a mechanism for the assumption and assignment of contracts and leases (the “**Assignment and Assumption Procedure**”), in the event that a sale transaction is approved and consummated. Under the Assignment and Assumption Procedure, the Assumption and Assignment Notice (as defined in the Sale Procedures Order) shall (i) identify the relevant contracts that may be assumed and assigned or rejected pursuant to the Bankruptcy Code, (ii) set forth a good faith estimate of the Cure Amount(s) (as defined in the Sale Procedures Order), (iii) include a statement that assumption and assignment of each such contract is not required nor guaranteed, and (iv) inform such Counterparty (as defined in the Sale Procedures Order) of the requirement to file any Contract Objection(s) by the Contract Objection Deadline (as such terms are defined in the Sale Procedures Order).²⁷

24. Any objection to the proposed Cure Amounts or assumption and assignment on any basis (except objections solely related to adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder) shall (a) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, (b) be filed with the U.S. Court; and (c) be served on the Objection Notice Parties (as defined in the Sale Procedures Order) by no later than the date that is 14 calendar days after service of the applicable Assumption and Assignment Notice.²⁸

²⁶ Tibus Affidavit at para 7.

²⁷ Thompson Affidavit at Exhibit “G”.

²⁸ Thompson Affidavit at Exhibit “G”.

25. If a Contract Objection is received, the Debtors and the objecting counterparty will confer in good faith to attempt to resolve the objection consensually. If the parties are unable to consensually resolve the Contract Objection prior to the commencement of the Sale Hearing, then the Court shall make all necessary determinations relating to the applicable Cure Amounts or assumption and assignment and the Contract Objection (each such Contract Objection, an “**Adjourned Contract Objection**”) at a hearing to be held beginning on August 8, 2024, at 9:30 a.m. (prevailing Eastern Time); *provided, however*, that the Adjourned Contract Objection may, at the Debtors’ option and with the consent of the applicable Successful Bidder, be adjourned to a subsequent hearing; *provided, further*, that the Debtors shall confer in good faith with each Counterparty with respect to the timing of any subsequent hearing on an Adjourned Contract Objection.²⁹

26. The above procedures apply to the Canadian Business and are relevant to the extent of an asset sale by RL Canada. If the Stalking Horse Bidder is the Successful Bidder, it may elect to acquire the Canadian Business by way of a share sale.³⁰

D. SECOND DAY ORDERS

27. As set out above, in addition to the Sale Procedures Order, the US Court has entered a number of First Day Orders on a final basis following the Second Day Hearing, including:

- (a) The Final DIP Order;
- (b) The Final Wages and Benefits Order;
- (c) The Final Cash Management Order; and
- (d) The Final Tax Order.³¹

²⁹ Thompson Affidavit at Exhibit “G”.

³⁰ Tibus Affidavit at para 26.

³¹ Tibus Affidavit at para 16.

28. The interim versions of the Second Day Orders were recognized by this Court on May 28, 2024 as part of the Supplemental Order.³² As set out above, the Second Day Orders are in substantially the same form as their interim counterparts under the First Day Orders.

i. Final DIP Order

29. The Final DIP Order provides the Debtors with authorization, on a final basis, to obtain senior secured postpetition financing on a superpriority basis pursuant to the terms of the DIP Credit Agreement. It is a requirement of the DIP Credit Agreement that the Final DIP Order be recognized in Canada within 7 days of entry of the Final DIP Order.³³

30. The total DIP Facility is in the principal amount of \$275,000,000, \$100,000,000 of which is new money and \$175,000,000 of which represents a roll-up of the Prepetition Term Loan Obligations. The Prepetition Term Loan Obligations are deemed to be funded at a ratio of \$1.75 for every \$1.00 of new money advanced. On entry of the Interim DIP Order, \$40,000,000 of new money was made available and \$70,000,000 of Prepetition Term Loan Obligations were deemed funded.³⁴

31. The entry of the Final DIP Order by the US Court caused the second \$60,000,000 of new money being provided under the DIP Facility to be made available by the DIP Lenders. A further \$105,000,000 of Prepetition Term Loan Obligations shall also be deemed funded upon entry of the Final DIP Order and upon funding of the remaining amounts under the DIP Facility.³⁵

32. Entry of the Final DIP Order was initially objected to by the Unsecured Creditors' Committee ("UCC") appointed in the Chapter 11 Cases. To resolve the UCC's objections, the

³² [Supplemental Recognition Order dated May 28, 2024 \(CV-24-00720657-00CL\)](#).

³³ Tibus Affidavit at paras 35 and 38

³⁴ Thompson Affidavit at Exhibit "A".

³⁵ Tibus Affidavit at para 36.

Debtors, the UCC, the Prepetition Term Loan Lenders and the DIP Lenders agreed to material terms of a global resolution as set forth in Exhibit “C” of the Final DIP Order (the “**Resolution Term Sheet**”). As set out in the Resolution Term Sheet, the parties will work cooperatively to draft a combined plan and disclosure statement which shall be funded by \$2.5 million, taken from the Excluded Cash, DIP Proceeds (as defined therein) or, in the event that the Stalking Horse Bidder is not the Successful Bidder, cash proceeds from the sale to the Successful Bidder. Such funding shall be used, by a plan trustee selected by the UCC that is reasonably acceptable to the DIP Lenders and the Debtors, (i) first to pay certain priority claims, and (ii) second to administer the plan and general unsecured creditor (“**GUC**”) trust, and to litigate certain equityholder actions. Proceeds from the equityholder actions (if any) shall be shared by the DIP Lenders (60%) and GUC trust (40%).³⁶

ii. Final Wages and Benefits Order

33. The Final Wages and Benefits Order provides the Debtors with the same relief as the interim Wages and Benefits Order on a final basis. Such relief includes the authority to (a) pay prepetition wages, salaries, reimbursable expenses and other obligations on account of the compensation and benefits programs provided by Red Lobster in the ordinary course of business and (b) continue the compensation and benefits programs.³⁷

iii. Final Cash Management Order

34. The Final Cash Management Order gives the Debtors the authority for the duration of the Chapter 11 Cases to, among other things, (i) subject to the requirements of the Final Cash Management Order, continue to maintain their existing cash management system, (ii) honour

³⁶ Thompson Affidavit at Exhibit “A”.

³⁷ Tibus Affidavit at para 39.

certain prepetition and postpetition obligations related thereto, (iii) continue to perform intercompany transactions in the ordinary course of business.³⁸

35. The U.S. Trustee objected to entry of the Final Cash Management Order. In order to resolve the U.S. Trustee's objection, the Debtors agreed to revise the Final Cash Management Order to, among other things, provide that, if the balance in the Canada Master Concentration Account (as defined in the Final Cash Management Order) exceeds \$5,000,000 for seven (7) consecutive days, then the Debtors shall, on or prior to two (2) business days following such occurrence, transfer all amounts in excess of \$5,000,000 to a bank account held at Wells Fargo N.A. in the U.S. This is consistent with the pre-Petition practices of the Debtors. The reason for this change is that, unlike Wells Fargo N.A., Royal Bank of Canada, the bank used by RL Canada in Canada, is not an FDIC insured institution.³⁹

iv. Final Tax Order

36. RL Canada is liable for certain sales, property, income and other taxes in Canada. The Final Tax Order gives the Debtors, including RL Canada, the authority to pay, in the Debtors' sole discretion, sales, use, trust fund, property, foreign and other taxes and similar obligations in the ordinary course of the Debtors' business, without regard to whether such obligations accrued or arose before or after the Petition Date.⁴⁰

PART III – ISSUES AND THE LAW

37. The sole issue addressed by this factum is whether this Court should grant the Second Supplemental Order recognizing the Sale Procedures Order and the Second Day Orders.

³⁸ Tibus Affidavit at para 40; Thompson Affidavit at Exhibit "D".

³⁹ Thompson Affidavit at Exhibit "D"; First Report of the Information Officer dated June 17, 2024 at para 24(c).

⁴⁰ Tibus Affidavit at para 42.

38. For the reasons set out herein, the Foreign Representative submits that the Second Supplemental Order should be granted.

PART IV – THE LAW AND ARGUMENT

A. THIS COURT HAS THE JURISDICTION TO GRANT THE REQUESTED RELIEF

39. The Foreign Representative is seeking the Second Supplemental Order pursuant to section 49 of the CCAA. In the Initial Recognition Order, this Court recognized the Chapter 11 Cases as “foreign main proceedings” in respect of the Canadian Debtors.⁴¹ Section 49 of the CCAA provides that, if an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative, make any order that it considers appropriate if the court is satisfied that such order is necessary for the protection of the debtor companies’ property or the interests of a creditor or creditors.⁴²

40. More broadly, a stated purpose of Part IV of the CCAA is to promote cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in the case of cross-border insolvencies.⁴³ If an order recognizing a foreign proceeding is made, the Canadian court is required to cooperate, to the maximum extent possible, with the foreign representative and the foreign court in the foreign proceeding.⁴⁴

41. The principles of comity, cooperation and accommodation with foreign courts guide the CCAA courts in the exercise of their discretion in cross-border insolvency cases.⁴⁵ Comity mandates that the Canadian court should recognize and enforce the judicial acts of other

⁴¹ [Initial Recognition Order dated May 28, 2024 \(CV-24-00720657-00CL\)](#).

⁴² CCAA, section 49.

⁴³ CCAA, section 44(a).

⁴⁴ CCAA, s. 52(1).

⁴⁵ *Purdue Pharma L.P., Re*, [2019 ONSC 7042](#) [*Purdue*] at para. 21; *Morguard Investments Ltd. v. De Savoye*, [1990 CanLII 29, 76 D.L.R. \(4th\) 256](#) (SCC).

jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.⁴⁶

42. Typically, a Canadian court will only refuse to recognize an order granted in the primary jurisdiction of a cross-border insolvency proceeding where such order is contrary to Canadian public policy.⁴⁷ Canadian courts have held that the public policy exception should be interpreted narrowly.⁴⁸

43. Accordingly, this Court has the jurisdiction to grant the requested relief.

B. THE RELIEF SOUGHT SHOULD BE GRANTED

(i) Recognition of the Sale Procedures Order is necessary and appropriate

44. The Sale Procedures Order was granted by the US Court following a full hearing on notice to interested parties. The Sale Procedures Order will enable the Debtors to undertake a comprehensive marketing process for substantially all of the Debtor's assets, including the Canadian Business.⁴⁹ When consummated, a sale transaction will preserve the value of the Canadian Business as a going concern and will maximize the value of the Canadian Business.⁵⁰

45. As set out above, the Sale Procedures are underpinned by the Stalking Horse Bid. The Stalking Horse Bid provides a baseline transaction and certainty to stakeholders regarding the go-forward operations of the Debtors' business, including the Canadian Business. Through the Sale Procedures, the Stalking Horse Bid will be market-tested to determine if a higher or otherwise

⁴⁶ *Hollander Sleep Products, LLC (Re)*, [2019 ONSC 3238](#) [*Hollander*] at para. 41.

⁴⁷ CCAA, section 61(2).

⁴⁸ *Hartford Computer Hardware Inc., Re*, [2012 ONSC 964](#) at para 17.

⁴⁹ Tibus Affidavit at para 6.

⁵⁰ Tibus Affidavit at para 7.

better bid or combination of bids can be identified, for the Red Lobster business (or some or all of the Debtors' assets).⁵¹

46. In the Part IV recognition proceeding of Paladin Labs Inc., when asked to recognize a bidding procedures order that, like the Sale Procedures Order was underpinned by a stalking horse bid, Chief Justice Morawetz found that “approval of the Bidding Procedures is not against Canadian public policy, and in fact is consistent with similar relief typically granted in Canadian restructuring proceedings.”⁵²

47. The Foreign Representative submits that, as was the case in *Paladin*, recognition of the Sale Procedures Order is not contrary to Canadian public policy and, in fact, is consistent with similar relief frequently granted in Canadian restructuring proceedings. Canadian courts regularly approve sales processes, including sales processes that incorporate a stalking horse bid and have, in fact, found that “the use of a sale process that includes a stalking horse agreement maximizes the value of a business for the benefit of its stakeholders and enhances the fairness of the sale process”.⁵³

48. Likewise, Canadian courts have frequently recognized sales or bidding procedures approved by U.S. bankruptcy courts in chapter 11 cases.⁵⁴

⁵¹ Tibus Affidavit at para 7.

⁵² *Paladin Labs Canadian Holding Inc.*, [2023 ONSC 2516](#) [*Paladin*] at para 12.

⁵³ *Re Danier Leather Inc.*, [2016 ONSC 1044](#) at para 20; See also *Cannapiece Group Inc. v Carmela Marzili*, [2022 ONSC 6379](#) at paras 4 and 8.

⁵⁴ See, for example, [Voyager Digital Ltd., Order of The Honourable Justice Cavanagh \(Recognition of Foreign Orders\) dated August 11, 2022, Court File No. CV-22-00683820-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#) at para 3(i); [Knotel Canada Inc. Supplemental Order \(Foreign Main Proceeding\) of The Honourable Justice Cavanagh granted March 12, 2021, Court File No. CV-21-00658434-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#) at para 4(j); [Sunguard Availability Services \(Canada\) Ltd., Order \(Recognition of Foreign Orders\) of Honourable Madam Justice Conway granted May 16, 2022, Court File No. CV-22-00679628-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#) at para 3(c); [Paladin Labs Canadian Holdings Inc. and Paladin Labs Inc., Order \(Fourth Supplemental Order\) of Honourable Chief Justice Morawetz dated April 25, 2023, Court File No. CV-22-00685631-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#) at para 3(a).

49. The Sale Procedures Order is procedural in nature and does not constitute final approval of the Successful Bid (as defined in the Sale Procedure Order). Rather, the Sale Procedure Order is intended to establish a process through which the Debtors will determine whether there are any superior offers to the Stalking Horse Bid for the sale of substantially all of their business and assets. The Successful Bid will be subject to a further hearing by the US Court for approval of the sale.

50. Likewise, recognition of the Sale Procedures Order by this Court does not constitute final approval of the Successful Bid. If an order is entered by the US Court approving the Successful Bid, the Foreign Representative intends to return to this Court to seek recognition of such order and approval from this Court, as required under the Initial Recognition Order.

51. The Foreign Representative submits that recognition of the Sale Procedures Order by this Court is consistent with Part IV of the CCAA, including its underlying purpose, the principles of comity, and with Canadian public policy. Recognition of the Sale Procedures Order will enable the Debtors to proceed with the value-maximizing Sale Procedures approved by the US Court for the benefit of all stakeholders, including Canadian stakeholders.

(ii) Recognition of the Second Day Orders is necessary and appropriate

52. The Second Day Orders are comprised of the following Orders: (i) The Final DIP Order, (ii) The Final Wages and Benefits Order, (iii) The Final Cash Management Order, and (iv) The Final Tax Order.

53. As set out above, this Court recognized the prior interim versions of the Second Day Orders on May 28, 2024 as part of the relief granted in the Supplemental Recognition Order. The Second Day Orders provide substantially the same relief to the Debtors as their interim counterparts and recognition thereof is consistent with the relief previously granted by this Court. As was the case with their interim counterparts, the recognition of the Second Day Orders will further evidence

and enable RL Canada, in particular, to make timely permitted payments and remittances and will protect and preserve the value of the Canadian Business.

54. The Foreign Representative submits that consistent with this Court's prior recognition of the interim orders and the factors set out in *Hollander Sleep Products, LLC (Re)*, it is appropriate for this Court to recognize the Second Day Orders because:

- (a) The U.S. Court has appropriately taken jurisdiction over the Chapter 11 Cases. Comity will be furthered by this Court's recognition of and support for the Chapter 11 Cases already underway in the United States;
- (b) Recognition of the Second Day Orders will advance coordination of proceedings in Canada and the United States which will ensure equal and fair treatment of all stakeholders, whether they are in the United States or Canada;
- (c) Given the close connection between the Canadian Business and the business of the RL Group in the United States, it is reasonable and "sensible" for the US Court to have principal control over the insolvency process and for this Court to recognize and give effect to relevant orders of the US Court in Canada. This will produce the most efficient restructuring for the benefit of all stakeholders;
- (d) The Debtors must act quickly because of the expeditious timetable established in the DIP Credit Agreement for their restructuring. Accordingly, it is imperative that there be a centralized and co-ordinated process for these insolvency proceedings to maximize the prospect of a successful restructuring and preserve value for stakeholders. Recognition of the Second Day Orders helps to achieve this centralized effect; and

- (e) The Canadian Business and US operations of Red Lobster are highly intertwined and accordingly, having a common set of orders governing the administration of all Debtors in both relevant jurisdictions will lead to greater efficiency, certainty and fairness.⁵⁵

55. Recognition of the Second Day Orders is thus not contrary to Canadian public policy.

PART V – RELIEF REQUESTED

56. The Foreign Representative requests that the Court grant the Second Supplemental Order in the form included at Tabs 3 Motion Record. The Information Officer supports the requested relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of June, 2024.



Blake, Cassels & Graydon LLP
Lawyers for the Foreign Representative

⁵⁵ *Hollander* at para. 43.

SCHEDULE “A”

LIST OF AUTHORITIES

<u>Cases</u>	
1.	<i>Purdue Pharma L.P., Re</i> , 2019 ONSC 7042
2.	<i>Morguard Investments Ltd. v. De Savoye</i> , 1990 CanLII 29, 76 D.L.R. (4th) 256 (SCC)
3.	<i>Hollander Sleep Products, LLC (Re)</i> , 2019 ONSC 3238
4.	<i>Hartford Computer Hardware Inc., Re</i> , 2012 ONSC 964
5.	<i>Paladin Labs Canadian Holding Inc.</i> , 2023 ONSC 2516
6.	<i>Re Danier Leather Inc.</i> , 2016 ONSC 1044
7.	<i>Cannapiece Group Inc. v Carmela Marzili</i> , 2022 ONSC 6379
8.	Voyager Digital Ltd., Order of The Honourable Justice Cavanagh (Recognition of Foreign Orders) dated August 11, 2022, Court File No. CV-22-00683820-00CL (Ont. Sup. Ct. J. [Commercial List])
9.	Knotel Canada Inc. Supplemental Order (Foreign Main Proceeding) of The Honourable Justice Cavanagh granted March 12, 2021, Court File No. CV-21-00658434-00CL (Ont. Sup. Ct. J. [Commercial List])
10.	Sunguard Availability Services (Canada) Ltd., Order (Recognition of Foreign Orders) of Honourable Madam Justice Conway granted May 16, 2022, Court File No. CV-22-00679628-00CL (Ont. Sup. Ct. J. [Commercial List])
11.	Paladin Labs Canadian Holdings Inc. and Paladin Labs Inc., Order (Fourth Supplemental Order) of Honourable Chief Justice Morawetz dated April 25, 2023, Court File No. CV-22-00685631-00CL (Ont. Sup. Ct. J. [Commercial List])

SCHEDULE “B”

RELEVANT STATUTES AND RULES

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Purpose

44 The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

(a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies

Other orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company’s property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company’s business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding up and Restructuring Act in respect of the debtor company.

Obligations

Cooperation — court

52 (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Court not prevented from applying certain rules

61 (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

Court File No.: CV-24-00720567-00CL

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

AND IN THE MATTER OF RED LOBSTER MANAGEMENT LLC, RED LOBSTER HOSPITALITY LLC; and RED LOBSTER CANADA, INC.

APPLICATION OF RED LOBSTER MANAGEMENT LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

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