

**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
(Third Supplemental Order)**

BLAKE, CASSELS & GRAYDON LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Linc Rogers, LSO#: 43562N
Tel: (416) 863-4168
Email: linc.rogers@blakes.com

Caitlin McIntyre, LSO#: 72306R
Tel: (416) 863-4174
Email: caitlin.mcintyre@blakes.com

Jake Harris, LSO#: 85481T
Tel: (416) 863-2523
Email: jake.harris@blakes.com

Lawyers for the Foreign Representative

**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
(Third Supplemental Order)**

PART 1 – OVERVIEW

1. This factum is filed in support of a motion 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 an order, among other things:

(a) recognizing and giving full force and effect to the following orders of the United States Bankruptcy Court for the Middle District of Florida, Orlando Division (the “**US Court**”) in the Chapter 11 Cases (defined below):

i. Findings of Fact, Conclusions of Law, and Order (I) Approving the Adequacy of the Disclosure Statement on a Final Basis and (II) Confirming

the Joint Chapter 11 Plan of Red Lobster Management LLC and its Debtor Affiliates¹ (the “**Confirmation Order**”);

- ii. Order Granting Debtors’ Emergency Motion for Approval of Form of Notice of Commencement and Proof of Claim (the “**Bar Date Order**”); and
 - iii. Order Granting Debtors’ Motion for Entry of an Order (I) Approving Claims Objection Procedures and (II) Authorizing Additional Claim Objection Categories for Omnibus Claim Objections (the “**Claim Objection Order**”);
- (b) ordering that the compromises, arrangements, releases, discharges and injunctions contained and referenced in the Plan and as approved by the Confirmation Order are valid and that, effective on the Plan Effective Date, all such releases, discharges and injunctions are recognized and given full force and effect in all provinces and territories of Canada;
 - (c) authorizing the Canadian Debtors to take such steps and execute such additional documents as may be necessary or desirable for the implementation of the Plan;
 - (d) permanently staying and dismissing all court actions and proceedings commenced against the Canadian Debtors in Canada on a with prejudice and without costs basis as of the Plan Effective Date; and
 - (e) terminating the stay of proceedings and other restrictions on the business of the Canadian Debtors set out in the Supplemental Order (Foreign Main Proceeding)

¹ The Joint Chapter 11 Plan for Red Lobster Management LLC and its Debtor Affiliates dated July 29, 2024 was confirmed as amended pursuant to the Amended Joint Chapter 11 Plan for Red Lobster Management LLC and Its Debtors Affiliates dated as of August 22, 2024 and as further amended by the Second Amended Joint Chapter 11 Plan for Red Lobster Management LLC and Its Debtor Affiliates dated September 4, 2024, and as further amended, supplemented or otherwise modified from time to time in accordance with the terms thereof (the “**Plan**”).

dated May 28, 2024 (the “**Supplemental Order**”) and Initial Recognition Order (Foreign Main Proceeding) dated May 28, 2024 (the “**Initial Recognition Order**”).

2. The Plan confirmed by the Confirmation Order is the successful culmination of the Chapter 11 Cases (defined below). From the outset of the Chapter 11 Cases, the Debtors have worked to devise a going-concern solution for their business. The Plan, when effective, will implement that going concern solution. The Plan effects the sale of the Debtors’ business and will continue the operation of all 27 Red Lobster restaurants in Canada. The transaction contemplated by the Plan will continue the employment of RL Canada’s employees and maintain the value of RL Canada’s business (the “**Canadian Business**”) for the benefit of its broad cross-section of stakeholders, including, without limitation, landlords, suppliers and customers. The Plan also provides a potential path to recovery for unsecured creditors, including Canadian unsecured creditors, through the establishment of the GUC Trust (defined below).

3. Recognition of the Confirmation Order is a condition precedent to implementation of the Plan. The Foreign Representative believes that the Plan and Confirmation Order represents the best possible outcome in the circumstances for Canadian stakeholders. The Information Officer supports the granting of the Third Supplemental Order and the relief provided for therein.

PART II – SUMMARY OF THE FACTS

4. The relevant facts in connection with this motion are briefly set out below and more fully described in the affidavit of Nicholas Haughey, Red Lobster’s Chief Restructuring Officer, sworn September 3, 2024 (the “**Haughey Affidavit**”). Capitalized terms used in this factum but not otherwise defined herein have the meanings ascribed to them in the Haughey Affidavit. Unless otherwise indicated, all dollar amounts referenced herein are in United States Dollars.

A. BACKGROUND

(i) *The Debtors*

5. Red Lobster is an iconic seafood restaurant chain with approximately 545 locations in operation across the United States and Canada. There are 27 locations in Canada across 4 provinces: Ontario, Manitoba, Saskatchewan and Alberta. Red Lobster's Canadian restaurants are all operated by the Canadian Debtor, RL Canada. RL Canada has approximately 2000 employees in Canada. The other Canadian Debtors are RL Management and RL Hospitality. RL Management wholly owns RL Canada and RL Hospitality has certain registered trademarks in Canada. All three of the Canadian Debtors are corporations or limited liability companies formed in Delaware.²

(ii) *The Chapter 11 Cases*

6. On May 19, 2024 (the "**Petition Date**"), the Debtors filed voluntary petitions (the "**Petitions**") for relief with the US Court, thereby commencing cases (the "**Chapter 11 Cases**") pursuant to chapter 11 of title 11 of the United States Code (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.³

7. On May 21, 2024, following a hearing in respect of certain "First Day Pleadings" in the Chapter 11 Cases that sought various relief, the US Court entered a number of orders (the "**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 (in such capacity, the "**Foreign Representative**").⁴

² Haughey Affidavit at paras 7 and 8.

³ Haughey Affidavit at paras 9 and 10.

⁴ Haughey Affidavit at para 11.

8. On May 24, 2024, the US Court entered the Notice of Chapter 11 Bankruptcy Case (the “**Bar Date Notice**”) setting (i) July 28, 2024 as the deadline for non-governmental creditors to file proofs of claim (the “**General Bar Date**”) and (ii) November 15, 2024 as the deadline for Governmental Units (as defined therein) to file proofs of claim. The Bar Date Notice was approved by the US Court by way of the Bar Date Order.⁵

9. All creditors identified in the books and records of the Debtors, including creditors of RL Canada, were sent a copy of the Bar Date Notice and provided with information regarding the General Bar Date and process for filing proofs of claim.⁶

10. An Official Committee of Unsecured Creditors (the “**Committee**”) was also appointed in the Chapter 11 Cases by the United States Trustee on May 31, 2024 to represent the interests of unsecured creditors. The Committee includes one Canadian creditor, Gordon Food Service Canada Ltd.⁷

11. On August 1, 2024, the US Court entered the Claims Objection Order. The Claims Objection Order established a comprehensive process whereby the Debtors were able to file omnibus objections to claims on certain grounds, including that such claims were inconsistent with the Debtors’ books and records and for adjudication and resolution of such claims.⁸ Omnibus objections are supported by documentation provided by the Debtors. Each omnibus objection is accompanied by a notice sent directly to each creditor holding a claim to which the Debtors’

⁵ Haughey Affidavit at para 15.

⁶ Haughey Affidavit at para 16.

⁷ Haughey Affidavit at para 12.

⁸ Haughey Affidavit at para 18.

objected describing the nature of the objection and the procedure for filing a written response to such objection. Objections are then either resolved consensually or adjudicated by the US Court.⁹

(iii) *The Recognition Proceeding*

12. On May 21, 2024, RL Management, in its capacity as the then-proposed foreign representative of the Debtors, brought an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order (the “**Interim Stay Order**”) granting an interim stay of proceedings in respect of the Canadian Debtors as well as their respective directors and officers in Canada. Pending the formal appointment of RL Management as the Foreign Representative in the Chapter 11 Cases, the Interim Stay Order was necessary to give effect in Canada to the automatic stay of proceedings arising under the Bankruptcy Code upon filing of the Petitions.¹⁰

13. On May 28, 2024, the Interim Stay Order was superseded and the Court granted an Initial Recognition 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” as defined in the CCAA in respect of the Canadian Debtors, (iii) recognizing certain First Day 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.¹¹

⁹ Second Report of the Information Officer dated September 9, 2024, at para 47 and Appendix “C”.

¹⁰ Haughey Affidavit at para 13.

¹¹ Haughey Affidavit at para 14.

(iv) *Sale Procedures and Second Supplemental Order*

14. Prior to the Petition Date, 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. Red Lobster retained Hilco Corporate Finance, LLC as an investment banker to formally initiate a marketing and sales process in respect of the Debtors’ assets.¹²

15. On May 9, 2024, following extensive arm’s-length negotiations to secure necessary financing for the Chapter 11 Cases and memorialize the terms of the Prepetition Term Loan Lender’s proposal, the Debtors entered into a restructuring support agreement (“**RSA**”) with their Prepetition Term Loan Lenders. The RSA set forth (i) the terms upon which the Prepetition Term Loan Lenders would provide necessary DIP financing to the Debtors, (ii) the terms upon which the Prepetition Term Loan Lenders would serve as a stalking horse bidder for the sale of substantially all of the Debtors’ assets, and (iii) an agreed upon timeline for commencement and continuation of the Chapter 11 Cases. The RSA also contemplated these recognition proceedings.¹³

16. Following execution of the RSA, the Debtors entered into an Asset Purchase Agreement with 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 (“**Stalking Horse Bid**”).¹⁴

17. The Stalking Horse Bid contemplated that the Stalking Horse Bidder would, in addition to assuming certain liabilities and leaving certain cash with the Sellers, credit bid 100% of the

¹² Haughey Affidavit at paras 19-20.

¹³ Haughey Affidavit at para 22.

¹⁴ Haughey Affidavit at para 23.

obligations of the Debtors under the DIP Facility (which was provided by the Prepetition Term Loan Lenders) in order to satisfy the Purchase Price for substantially all of the assets of the Debtors, including the Canadian Business. The Stalking Horse Bid contemplated that the Stalking Horse Bidder could elect to purchase the shares of any Debtor owned by RL Management, instead of its assets.¹⁵

18. On June 14, 2024, the US Court entered an order (the “**Sale Procedures Order**”) approving a marketing and sale process (the “**Sales Procedures**”) for the Debtors’ business and assets, including the Canadian Business and the assets of the Canadian Debtors in Canada. The Sales Procedures were underpinned by the Stalking Horse Bid. The Sale Procedures Order was recognized by this Court on June 18, 2024.¹⁶

19. After the Sale Procedures Order was granted, the Debtors carried out the Sale Procedures contemplated in the Sale Procedures Order to determine whether a superior bid to the Stalking Horse Bid could be identified.

20. On July 22, 2024, the Debtors published a Notice of (I) Cancellation of Auction and (II) Designation of Successful Bidder (the “**Sale Notice**”). In the Sale Notice, the Debtors disclosed that except for the Stalking Horse Bid, no Qualified Bids were received by the Bid Deadline (as such terms are defined in the Sale Procedures). The Debtors therefore cancelled the auction contemplated by the Sale Procedures and designated the Stalking Horse Bidder as the Successful Bidder (as defined in the Sale Procedures).¹⁷

¹⁵ Haughey Affidavit at para 24.

¹⁶ Haughey Affidavit at paras 25-28.

¹⁷ Haughey Affidavit at paras 29-30.

B. THE PLAN

21. After the Debtors determined that no Qualified Bids were likely to be received by the Bid Deadline, the Debtors concluded that the optimal method of effectuating the going-concern sale of the Debtors' business was through a plan of reorganization. This determination was made, in part, because of a resolution entered into with the Committee to resolve certain objections to entry of the Interim DIP Order on a final basis.¹⁸

22. Under the Plan, a sale of the Debtors' business could be pursued, at the election of the Purchaser, by way of: (i) an asset sale pursuant to section 363 of the Bankruptcy Code, or (ii) a sale of (a) all or substantially all of the assets of RLSV, Inc., a Florida corporation ("**RLSV**") and Red Lobster International Holdings, LLC ("**RL International**"), (b) certain assets of RL Management, and (c) the reorganized equity (the "**Reorganized Equity**") in the remaining Debtors (specifically excluding RL Management, RLSV and RL International) (the "**Reorganized Debtors**"), including the Reorganized Equity of RL Canada and RL Hospitality (collectively, the "**Reorganized Equity Sale**"). RL Canada and RL Hospitality will constitute Reorganized Debtors.¹⁹

23. On August 30, 2024, the Debtors filed the Debtors' Notice of Intent to Proceed with Reorganized Equity Sale, thereby providing notice to the US Court and other parties in interest of the Debtors' and Purchaser's intent to proceed with the Reorganized Equity Sale.²⁰

24. As a result, on the Plan Effective Date, the Reorganized Debtors will issue new Reorganized Equity to the Purchaser without the need for any further corporate action or further notice to the US Court. The existing equity of the Reorganized Debtors owned by RL Management

¹⁸ Haughey Affidavit at paras 31-32.

¹⁹ Haughey Affidavit at para 33.

²⁰ Haughey Affidavit at para 35.

will be cancelled for no consideration. The current equity in RL Management will be cancelled and the reorganized equity in RL Management will be issued to the Plan Administrator or its designee. The Plan Administrator will cause the reorganized RL Management to conduct its business consistent with the Plan, Purchase Agreement and Transition Services Agreement.²¹

25. The Plan establishes a comprehensive classification of Claims and Interests. The Plan does not distinguish between Canadian and US creditors. Canadian creditors are entitled to and will receive the same treatment as their US counterparts. The Plan also contemplates the establishment of a general unsecured creditor trust (the “**GUC Trust**”). On the Plan Effective Date, the GUC Trust shall be established to receive the GUC Fund and Equityholder Litigation Claims after adequate reserve for the payment of all (i) Allowed Priority Tax Claims, (ii) Allowed Other Priority Claims, and (iii) Allowed Administrative Expense Claims that are not Assumed Liabilities.²²

26. The Purchaser has designated certain Executory Contracts and Unexpired Leases for assumption by the Reorganized Debtors or assumption and assignment to the Purchaser. To the extent that an Executory Contract or Unexpired Lease has been designated for assumption or assumption and assignment, the Debtors or the Purchaser shall pay all cure costs in respect thereof on emergence from the Chapter 11 Cases. At this time, the Debtors anticipate that all Canadian leases will be designated for assumption by RL Canada as a Reorganized Debtor. Similarly, the Debtors anticipate that Canadian contractual arrangements in relation to key food and beverage suppliers, distributors, employee benefit plan providers, gift card services, financial services and IT vendors will be assumed.²³

²¹ Haughey Affidavit at para 36.

²² Haughey Affidavit at paras 40-43.

²³ Haughey Affidavit at paras 37-39.

27. It is anticipated that litigation claims and certain employee amounts will not be assumed by the Purchaser and will form part of the general unsecured creditor class under the Plan. Certain service providers in Canada, will likewise not have their contractual arrangements assumed. Claimants whose executory contracts are not assumed may have a claim for rejection damages that forms part of the general unsecured creditor class under the Plan. Pursuant to the Plan, after the Plan Effective Date, the general unsecured creditor class will have recourse only to the GUC Trust.²⁴

C. VOTE AND PLAN CONFIRMATION

28. On July 29, 2024, the US Court entered an Order (I) Conditionally Approving Disclosure Statement for the Proposed Joint Chapter 11 Plan of Red Lobster Management LLC and its Debtor Affiliates, (II) Approving the Solicitation and Voting Procedures with Respect to Confirmation of the Proposed Joint Chapter 11 Plan of Red Lobster Management LLC and Its Debtor Affiliates, and (III) Granting Related Relief (the “**Conditional Disclosure Statement Order**”). The Conditional Disclosure Statement Order approved the Disclosure Statement which provides creditors and the US Court with a summary of the Plan and key dates and deadlines in respect of the Plan.²⁵

29. In addition, the Conditional Disclosure Statement Order set out a procedure for (i) soliciting votes on the Plan, (ii) providing notice of the Plan and voting procedures to creditors, and (iii) obtaining confirmation of the Plan from the US Court.²⁶

²⁴ Haughey Affidavit at para 46.

²⁵ Haughey Affidavit at paras 49 and 51.

²⁶ Haughey Affidavit at para 51.

30. In accordance with the Conditional Disclosure Statement Order, the deadline for creditors eligible to vote to accept or reject the Plan was August 28, 2024 at 4:00 p.m. (prevailing Eastern time). In accordance with the solicitation procedures, creditors were entitled to vote on the Plan by way of mail, courier or online through an e-ballot portal.²⁷

31. The only classes of creditors entitled to vote on the Plan were Class 3, the holders of Prepetition Term Loan Claims, and Class 4, holders of Allowed General Unsecured Claims. The holders of Claims in Class 3 unanimously voted to approve the Plan. The holders of Claims in Class 4 overwhelmingly voted in support of the Plan by numerosity, but less than two-thirds of the holders of Class 4 Claims by value voted to accept the Plan and, therefore, Class 4 ultimately voted to reject the Plan.²⁸

32. On September 4, 2024, the Debtors filed a further amended version of the Plan which made modifications to the Plan.²⁹

33. On September 5, 2024, the US Court conducted a hearing to consider confirmation of the Plan. Notwithstanding the fact that Class 4 did not vote the accept the Plan, in accordance with the Bankruptcy Code, the US Court elected to confirm the Plan pursuant to the “cramdown” provisions of the Bankruptcy Code.³⁰

34. On September 6, 2024, the US Court entered the Confirmation Order, approving the Disclosure Statement on a final basis and confirming the Plan.³¹

²⁷ Haughey Affidavit at para 53.

²⁸ Haughey Affidavit at para 54; Affidavit of Nancy Thompson sworn September 6, 2024 (“**Thompson Affidavit**”) at Exhibit “E”, “Tabulation of Votes”.

²⁹ Thompson Affidavit at Exhibit “D”, “Redline of Plan”.

³⁰ Thompson Affidavit at Exhibit “A”, “Confirmation Order”.

³¹ Thompson Affidavit at Exhibit “A”, “Confirmation Order”.

PART III – ISSUES

35. The sole issue to be addressed on this motion is whether this Court should grant the Third Supplemental Order. For the reasons set out herein, the Foreign Representative submits that the Third Supplemental Order should be granted.

PART IV – THE LAW AND ARGUMENT

A. THE FOREIGN ORDERS SHOULD BE RECOGNIZED

(i) *This Court has the Jurisdiction to Recognize the Foreign Orders under Part IV of the CCAA*

36. The Foreign Representative is seeking the Third Supplemental Order pursuant to section 49 of the CCAA. As set out above, on May 28, 2024, in the Initial Recognition Order, this Court recognized the Chapter 11 Cases as “foreign main proceedings”.³² 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.³³ Such order may be made on any terms and conditions that the court considers appropriate in the circumstances.³⁴

37. The principles of comity, cooperation and accommodation with foreign courts guide CCAA courts in their exercise of discretion in cross-border insolvency cases.³⁵ In such cases, comity requires that Canadian courts recognize and enforce the judicial acts of other jurisdictions,

³² Haughey Affidavit at para 14.

³³ CCAA, section 49.

³⁴ CCAA, section 50.

³⁵ *Purdue Pharma L.P., Re.*, [2019 ONSC 7042](#) at para 21; *Morguard Investments Ltd. v. De Savoye*, [1990 CanLII 29, 76 D.L.R. \(4th\) 256](#) (SCC).

provided that those other jurisdictions have assumed jurisdiction on a basis consistent with the principles of order, predictability and fairness.³⁶

38. The stated purpose of Part IV of the CCAA is to promote cooperation between Canadian courts and other competent authorities in Canada with those of foreign jurisdictions in cross-border insolvencies.³⁷ 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.³⁸

39. A Canadian court will typically 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.³⁹ Canadian courts have consistently held that the public policy exception should be interpreted narrowly.⁴⁰

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

(ii) *The Confirmation Order Should be Recognized by this Court*⁴¹

41. The Foreign Representative seeks this Court's recognition and enforcement of the Confirmation Order. The Confirmation Order confirms the Plan, which is the outcome of extensive negotiation between the Debtors and their stakeholders and provides for a going-concern sale of the Debtors' business for the benefit of their stakeholders.

³⁶ *Hollander Sleep Products, LLC et al., Re*, [2019 ONSC 3238](#) at para 41.

³⁷ CCAA, section 44(a).

³⁸ CCAA, section 52(1).

³⁹ CCAA, section 61(2).

⁴⁰ *Hartford Computer Hardware Inc. (Re)*, [2012 ONSC 964](#) at para 17 [*Hartford Computer*].

⁴¹ Capitalized terms not otherwise defined under this heading have the meanings given to them in the Confirmation Order.

42. In cross-border restructuring proceedings, Canadian courts routinely exercise their discretion under sections 49 and 50 of the CCAA to recognize orders of the US court confirming plans of reorganization pursuant to the Bankruptcy Code.⁴²

43. In *Re Xerium Technologies Inc.*, this Court set out a non-exhaustive list of factors (the “**Xerium Factors**”) that weighed in favour of recognition of the US confirmation order in that case. Set out in the chart below are the Xerium Factors (on the left) and the relevant facts in the present case (on the right). The Foreign Representative submits that the same factors weigh in favour of recognition of the Confirmation Order in this case

Xerium Factors⁴³	Present Case
The plan was critical to the restructuring of the debtors as a global corporate unit.	The Plan is critical to the restructuring of the Debtors as a global corporate unit. In the Confirmation Order, the US Court made a finding of fact that the Plan was proposed in good faith and is designed to rehabilitate the Red Lobster restaurant chain, de-lever its balance sheet and optimize its financial performance going forward, thereby maximizing the going-concern value of the enterprise for the benefit of all stakeholders. ⁴⁴
The company was a highly integrated business and managed centrally from the United States	Red Lobster is a highly integrated business and is managed centrally from the US. Each of the Canadian Debtors is a US corporate entity. There are no Canadian corporate entities in the corporate group.

⁴² See, e.g., [Re GNC Holdings, Inc. et al., Recognition Order of Honourable Justice Conway dated October 16, 2020 \(Ont. Sup. Ct. J. \[Commercial List\]\), Court File No. CV-20-00642970-00CL \[GNC Holdings\]](#); [Re BBGI US, Inc. et al., Recognition Order of Honourable Justice Hainey dated March 26, 2021 \(Ont. Sup. Ct. J. \[Commercial List\]\), Court File No. CV-20-00647463-00CL](#); [Re Xerium Technologies Inc., 2010 ONSC 3974 \[Xerium\]](#); [Re Mallinckrodt Canada ULC et al., Recognition Order of Honourable Justice Dietrich dated April 22, 2022 \(Ont. Sup. Ct. J. \[Commercial List\]\), Court File No. CV-20-00649441- 00CL \[Mallinckrodt\]](#).

⁴³ *Xerium*, *supra* note 42 at para 27.

⁴⁴ Thompson Affidavit, Exhibit “A”, “Confirmation Order”.

<p>Confirmation of the plan occurred in accordance with standard and well-established procedures and practices</p>	<p>Confirmation of the Plan in the US occurred in accordance with standard and well-established procedures and practices, including approval by the US Court of the Disclosure Statement and the process for solicitation and tabulation of votes on the Plan. In granting the Confirmation Order, the US Court made findings of fact that (i) votes to accept or reject the Plan were solicited and tabulated fairly, in good faith and in a manner consistent with the Solicitation Procedures Order and the Bankruptcy Code and (ii) the Plan properly classifies claims and equity interests.⁴⁵</p>
<p>The foreign proceeding was recognized as a foreign main proceeding and, accordingly, the Canadian court acknowledged Canada as an ancillary jurisdiction in the reorganization</p>	<p>The Initial Recognition Order recognized the Chapter 11 Cases as foreign main proceedings and, accordingly, this Court acknowledged Canada as an ancillary jurisdiction in the reorganization of the Debtors.</p>
<p>The Canadian business had the same access and participation in the foreign proceeding as the other US debtors</p>	<p>The Canadian Debtors, including the operating entity, RL Canada, are each US Debtors and had the same access and participation in the Chapter 11 Cases as the other Debtors. Canadian creditors of the Canadian Debtors are treated equitably and the same as their US counterparts under the Plan and Confirmation Order.⁴⁶</p>
<p>Recognition of the confirmation order was necessary for ensuring the fair and efficient administration of the cross-border insolvency proceeding, whereby all stakeholders who hold an interest in the debtors were treated equitably</p>	<p>Recognition of the Confirmation Order is a condition precedent to implementation of the Plan and is therefore necessary to the fair and efficient administration of the cross-border insolvency proceeding.⁴⁷</p>

⁴⁵ Thompson Affidavit, Exhibit “A”, “Confirmation Order”.

⁴⁶ Haughey Affidavit at para 41.

⁴⁷ Haughey Affidavit at para 63.

44. The Plan was accepted by the majority of creditors by number in both voting classes of creditors, including a majority of unsecured creditors voting in Class 4. The creditors voting in favour of the Plan in Class 4, however, did not represent at least two-thirds in value of voting claims.⁴⁸ Unlike the CCAA, a plan of reorganization may be confirmed under the Bankruptcy Code notwithstanding that every affected class did not vote to approve the plan with the requisite majorities, so long as the “cramdown” requirements of the Bankruptcy Code are met.

45. Pursuant to the cramdown provisions of the Bankruptcy Code, a US court may confirm a plan of reorganization notwithstanding a rejection by a dissenting class of claims or interests if the plan has been accepted by at least one impaired class of creditors and does not discriminate unfairly against and is fair and equitable with respect to each dissenting class of claims or interests.⁴⁹

46. In recognition proceedings it is not necessary that identical relief to that granted in the foreign proceeding be available in a Canadian plenary proceeding. The appropriate inquiry is whether recognition of the foreign order would be contrary to Canadian public policy.⁵⁰ As set out above, the public policy restriction should be interpreted narrowly. Canadian courts have previously recognized Confirmation Orders that invoke the cramdown provisions of the Bankruptcy Code and have not identified public policy concerns with respect to such recognition.⁵¹

47. When faced with similar facts in the cross-border recognition proceeding of *Mallinckrodt Canada ULC*, this Court, in recognizing the US order confirming the *Mallinckrodt* debtors’ plan, noted:

In seeking confirmation of the Confirmed Plan, the Debtors relied on the “cramdown” provisions of the Bankruptcy

⁴⁸ Thompson Affidavit, Exhibit “E”, “Voting Tabulation”; Haughey Affidavit at para 54.

⁴⁹ Bankruptcy Code, 11 USC, c. 11, § 1129(b).

⁵⁰ *Hartford Computer*, *supra* note 40 at paras 10 and 14.

⁵¹ See, e.g., *GNC Holdings*, *supra* note 42; *Mallinckrodt*, *supra* note 42.

Code, which allow a U.S. court to confirm a plan or reorganization over the objections of a dissenting class under certain circumstances. Sections 49 and 50 of the CCAA permit Canadian courts to recognize foreign orders confirming plans that comply with the laws of the foreign jurisdiction even if those laws differ from local law.⁵²

48. As is clearly evidenced by cases such as *Mallinckrodt*, the Canadian court plays an ancillary role in recognition proceedings under Part IV of the CCAA. Accordingly, “it is not the role of this Court to second guess or to conduct an initial assessment of the merits. Rather, the appropriate inquiry is to consider whether the orders made in the Chapter 11 Cases should be recognized.”⁵³ The US Court has properly elected to invoke the cramdown provisions of the Bankruptcy Code and enter the Confirmation Order notwithstanding the fact that a majority in value of voting claims of the unsecured creditors in Class 4 did not vote to accept the Plan. In doing so, the US Court found that the Plan is fair and equitable with respect to rejecting classes and that the requirements of the cramdown provision in the Bankruptcy Code were met.⁵⁴

49. For these reasons, the Foreign Representative submits that this Court should recognize the Confirmation Order. The Foreign Representative further submits that such recognition supports the overarching goal of Part IV proceedings to promote comity, cooperation and the fair and efficient administration of cross-border insolvencies.

(iii) *The provisions of the Confirmation Order relating to Liquor Licenses are appropriate*

50. The Confirmation Order contains provisions that authorize the Reorganized Debtors, including RL Canada, to continue to use any liquor licenses or permits necessary for the sale of

⁵² [Re Mallinckrodt Canada ULC et al., Recognition Order Endorsement of Honourable Justice Dietrich dated April 22, 2022 \(Ont. Sup. Ct. J. \[Commercial List\]\), Court File No. CV-20-00649441-00CL.](#)

⁵³ *Paladin Labs Canadian Holding Inc.*, [2024 ONSC 219](#) at para 49.

⁵⁴ Thompson Affidavit, Exhibit “A”, “Confirmation Order”, para RR.

alcohol at Retained Locations (as defined therein) until such time as said liquor licenses and permits are transferred to the Reorganized Debtors or the Purchaser as applicable, or the Reorganized Debtors or the Purchaser as applicable obtain replacement licenses and permits, subject to reasonable, timely and good faith efforts to obtain such transfer or new liquor licenses.⁵⁵

51. In granting the Confirmation Order, the US Court found that the purchase and sale of alcohol is an important component of the operation of the Retained Locations and that, accordingly, it is in the best interests of the Debtors' estates and all other parties in interest for alcohol purchases and sales to continue uninterrupted during the transition of operation of Retained Locations pursuant to the Plan (except to the extent that governmental and regulatory agencies exercise their police powers under applicable law).⁵⁶

52. The Confirmation Order is consistent with Canadian law and practice in plenary CCAA cases where maintaining regulatory licenses is critical to preserving the going-concern value of an enterprise. For example, in *Re BZAM Ltd. et al.*, this Court held in staying the termination of cannabis licenses:

46. CCAA courts have granted regulatory stays over licences where, absent such a stay, the applicable regulators were likely to suspend or cancel licences due to the commencement of the CCAA proceeding. Other courts have observed that permitting the immediate termination of the licenses of a debtor company would not avoid social and economic losses but rather would amplify them.

[...]

49. The cannabis licences of the Applicants are among their most valuable assets. Just as importantly, they are required to permit the Applicants to continue operating their underlying business. The expiry or cancellation of licences will suspend or terminate completely the operation and delivery of products by the Applicants with the result that the ability of the Applicants to restructure or

⁵⁵ Haughey Affidavit at para 57.

⁵⁶ Thompson Affidavit, Exhibit "A", "Confirmation Order", para RR, paras 52-57.

continue as a going concern business will in all probability be eliminated.⁵⁷

53. Notably: (i) the Confirmation Order does not purport to restrict the exercise of “police powers” (i.e. enforcement and compliance powers), consistent with the restrictions under the CCAA on a Court’s jurisdiction to stay enforcement actions of regulatory bodies⁵⁸; (ii) although there is a change at the shareholder level, the same legal entity, RL Canada remains in possession of the liquor license; (iii) the same RL Canada personnel remains in care and control of the liquor and its sale; (iv) the stay provided for in the Confirmation Order is conditional upon good faith attempts by RL Canada to obtain any required new license; (v) the licensing authorities have been given notice of this motion and have not objected; and (vi) there is no attempt to compel the liquor license authorities to issue a new liquor license or otherwise fetter their discretion in considering any application for a new license.⁵⁹

54. Instead, the relief requested is confirmatory in nature and intended to provide stability and certainty during the period of transition following implementation of the Plan.

(iv) *The Releases contained in the Plan are appropriate*

55. The Plan includes certain release, injunctive and exculpatory provisions. The definition of “Releasing Party” under the Plan includes, without limitation, holders of Prepetition Term Loan Claims and General Unsecured Claims that vote to accept the Plan. Upon the Plan Effective Date, except as otherwise provided in the Plan, the Debtors (excluding the Wind-Down Debtors) shall be discharged to the fullest extent permitted by the Bankruptcy Code from all Claims, provided

⁵⁷ [Re BZAM Ltd. et al., Endorsement of Honourable Justice Osborne \(Initial Order\) dated February 28, 2024, Court File No. CV-24-00715773-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#) at para 46; *Re Just Energy Corp.*, [2021 ONSC 1793](#) at para 87.

⁵⁸ CCAA, section 11.1(2).

⁵⁹ *Alexis Paragon Limited Partnership (Re)*, [2014 ABQB 65](#) at para 31.

however, that such discharge shall exclude Assumed Liabilities.⁶⁰ The Plan also includes certain releases in favour of “Released Parties”, which include the DIP Lenders and the DIP Agent, the Prepetition Term Loan Parties and the Committee.⁶¹

56. In the Confirmation Order, the US Court specifically found that the release and exculpation provisions in the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code. Likewise, the US Court found that the Released Parties (as defined in the Plan) made significant concessions and contributions to the Chapter 11 Cases and that justify the releases in the Plan. The US Court found that such third-party releases are, among other things (i) consensual, (ii) in exchange for good and valuable consideration, (iii) a good faith settlement and compromise of claims, (iv) mutually beneficial to and in the best interests of the Debtors, their estates and their stakeholders and important to the overall objectives of the Plan, (v) fair, equitable and reasonable, and (vi) consistent with the Bankruptcy Code.⁶²

57. The third-party releases contained in the Plan are consistent with the approach to granting third-party releases in the context of a plenary CCAA plan, as set out by the Court of Appeal of Ontario in *Metcalf & Mansfield Alternative Investments II Corp., (Re)*, being (a) the parties to be released are necessary and essential to the restructuring of the debtor, (b) the claims to be released are rationally related to the purpose of the Plan and necessary for it, (c) the Plan cannot succeed without the releases, (d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan, (e) the Plan will benefit not only the debtor companies but creditors generally, (f) the voting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases, and (g) the releases are fair and reasonable and not overly

⁶⁰ Haughey Affidavit at para 48.

⁶¹ Thompson Affidavit, Exhibit “C”, “Second Amended Plan”.

⁶² Thompson Affidavit, Exhibit “A”, “Confirmation Order”.

broad or offensive to public policy.⁶³ Accordingly, recognition and enforcement of the third-party releases contained in the Plan is not contrary to Canadian public policy.

58. The Foreign Representative submits that it is appropriate for this Court to give full force and effect to the releases, injunctions and exculpatory provisions contained in the Plan and Confirmation Order in Canada. This will ensure that such releases, injunctions and exculpatory provisions are effective and enforceable in a key jurisdiction where RL Canada conducts business and will promote comity, cooperation and the fair and efficient administration of Red Lobster's cross-border insolvency proceeding.

(v) *The Bar Date Order and Claim Objection Order Should be Recognized by this Court*

59. As set out above, the Bar Date Order approved the Bar Date Notice which established the General Bar Date of July 28, 2024 by which non-governmental creditors were required to file proofs of claim. The Claims Objection Order established a comprehensive process for resolving disputes in relation to proofs of claim that were filed in the Chapter 11 Cases.⁶⁴

60. All creditors identified in the books and records of the Debtors, including creditors of RL Canada, were sent the Bar Date Notice and provided with information regarding the process for filing proofs of claim. Additionally, the Information Officer included a copy of the Bar Date Notice in its First Report dated June 17, 2024 and provided Canadian creditors with information regarding the General Bar Date.⁶⁵ Accordingly Canadian creditors were given the opportunity to participate

⁶³ *Metcalf & Mansfield Alternative Investments II Corp., (Re)*, [2008 ONCA 587](#), leave to appeal refused, [2008 CanLII 46997 \(SCC\)](#), at para 113.

⁶⁴ Haughey Affidavit at paras 15 and 18.

⁶⁵ Haughey Affidavit at para 16.

in the claims process in the Chapter 11 Cases, and did participate in such process by asserting total claims of \$45,297,156.32 against RL Canada.⁶⁶

61. The Foreign Representative submits that recognition of the Bar Date Order is appropriate to confirm and further evidence the binding nature of the Bar Date Order and the general Bar Date in Canada, which has now passed. Recognition of the Claim Objection Order is necessary to give effect in Canada to the claims dispute resolution process being carried out in the Chapter 11 Cases. Canadian creditors are actively engaged in that process.

B. THE ANCILLARY RELIEF SHOULD BE GRANTED

(i) The Canadian Actions Should be Dismissed

62. The Plan, by releasing and discharging Claims and Causes of Action against the Debtors, has the practical effect of permanently staying and dismissing pending litigation actions against the Canadian Debtors in Canada (the “**Canadian Actions**”).

63. The proposed Third Supplemental Order includes provisions designed to reduce any ambiguity regarding the effect of the Plan on Canadian litigation actions by explicitly directing the registrars of relevant courts to dismiss the Canadian Actions and authorizing the Foreign Representative to take any steps necessary and appropriate to obtain the dismissal of the Canadian Actions. The proposed Third Supplemental Order does not create any new releases or discharges that are not already contained in the Plan; rather, this section is designed to ensure that the Plan is fully understood by Canadian creditors and properly implemented in Canada. This Court granted substantially similar relief in similar circumstances in *Re Instant Brands Acquisition Holdings Inc. et al.*⁶⁷

⁶⁶ Haughey Affidavit at para 17.

⁶⁷ [Re Instant Brands Acquisition Holdings Inc. et al., Recognition Order of Honourable Justice Osborne dated February 26, 2024 \(Ont. Sup. Ct. J. \[Commercial List\]\), Court File No. CV-23-00701159-00CL.](#)

64. All known counterparties to litigation against the Canadian Debtors in Canada were provided with notice of this motion. No objections from those parties have been received to date.

(ii) *Plan Effective Date and Termination of Relief in CCAA Proceedings*

65. After occurrence of the Plan Effective Date, it is intended that the stay of proceeding and any restrictions on doing business in the Chapter 11 Cases will be lifted as against the Reorganized Debtors. The Reorganized Debtors will, however, continue to participate in the Chapter 11 Cases until such Chapter 11 Cases have been fully administered and the Reorganized Debtors have satisfied all other administrative obligations.⁶⁸

66. Consistent with the status of the Reorganized Debtors following the Plan Effective Date in the Chapter 11 Cases, the proposed Third Supplemental Order provides that on the Plan Effective Date:

- (a) all stays in effect pursuant to the Initial Recognition Order⁶⁹ and Supplemental Order shall terminate⁷⁰, other than the stay in respect of the Information Officer;
- (b) the D&O Charge and DIP Charge shall terminate; and
- (c) the restriction on the Canadian Debtors contained in paragraph 5 of the Initial Recognition Order relating to the sale of assets and indemnification obligations contained in paragraph 21 of the Supplemental Order relating to directors and officers shall terminate.

⁶⁸ Haughey Affidavit at para 58.

⁶⁹ [Re Red Lobster Management LLC et al., Initial Recognition Order \(Foreign Main Proceeding\) of Honourable Justice Penny dated May 28, 2024 at para 4.](#)

⁷⁰ [Re Red Lobster Management LLC et al., Supplemental Recognition Order \(Foreign Main Proceeding\) of Honourable Justice Penny dated May 28, 2024 at paras 6-10.](#)

PART V – RELIEF REQUESTED

67. The Foreign Representative requests that the Court grant the Third Supplemental Order in the form included at Tab 3 of the Third Supplementary Motion Record. The Information Officer supports the requested relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of September, 2024.



Blake, Cassels & Graydon LLP
Lawyers for the Foreign Representative

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 et al., Re</i> , 2019 ONSC 3238
4.	<i>Hartford Computer Hardware Inc. (Re)</i> , 2012 ONSC 964
5.	Re GNC Holdings, Inc. et al., Recognition Order of Honourable Justice Conway dated October 16, 2020 (Ont. Sup. Ct. J. [Commercial List]), Court File No. CV-20-00642970-00CL
6.	Re BBGI US, Inc. et al., Recognition Order of Honourable Justice Hainey dated March 26, 2021 (Ont. Sup. Ct. J. [Commercial List]), Court File No. CV-20-00647463-00CL
7.	<i>Re Xerium Technologies Inc.</i> , 2010 ONSC 3974
8.	Re Mallinckrodt Canada ULC et al., Recognition Order of Honourable Justice Dietrich dated April 22, 2022 (Ont. Sup. Ct. J. [Commercial List]), Court File No. CV-20-00649441- 00CL
9.	Re Mallinckrodt Canada ULC et al., Recognition Order Endorsement of Honourable Justice Dietrich dated April 22, 2022 (Ont. Sup. Ct. J. [Commercial List]), Court File No. CV-20-00649441-00CL
10.	<i>Paladin Labs Canadian Holding Inc.</i> , 2024 ONSC 219
11.	Re BZAM Ltd. et al., Endorsement of Honourable Justice Osborne (Initial Order) dated February 28, 2024 (Ont. Sup. Ct. J. [Commercial List]), Court File No. CV-24-00715773-00CL
12.	<i>Re Just Energy Corp.</i> , 2021 ONSC 1793
13.	<i>Alexis Paragon Limited Partnership (Re)</i> , 2014 ABQB 65
14.	<i>Metcalf & Mansfield Alternative Investments II Corp., (Re)</i> , 2008 ONCA 587 , leave to appeal refused, 2008 CanLII 46997 (SCC)
15.	Instant Brands Acquisition Holdings Inc. et al., Recognition Order of Honourable Justice Osborne dated February 26, 2024 (Ont. Sup. Ct. J. [Commercial List]), Court File No. CV-23-00701159-00CL

SCHEDULE “B”

RELEVANT STATUTES AND RULES

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

Meaning of *regulatory body*

11.1 (1) In this section, *regulatory body* means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body’s investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court’s opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

PART IV

Cross-border Insolvencies

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.

Terms and conditions of orders

50 An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

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.

Public policy exception

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

BANKRUPTCY, 11 U.S. Code §§ 101-1532 (2015)

§1129. Confirmation of plan

(b)(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

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

FACTUM OF THE FOREIGN REPRESENTATIVE

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Linc Rogers, LSO#: 43562N

Tel: (416) 863-4168

Email: linc.rogers@blakes.com

Caitlin McIntyre, LSO#: 72306R

Tel: (416) 863-4174

Email: caitlin.mcintyre@blakes.com

Jake Harris, LSO#: 85481T

Tel: (416) 863-2523

Email: jake.harris@blakes.com

Lawyers for the Foreign Representative