

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

**Red Lobster Management LLC, Red Lobster Hospitality LLC,  
and Red Lobster Canada, Inc.**

**FIRST REPORT OF THE  
INFORMATION OFFICER**

**June 17, 2024**

**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**

**FIRST REPORT OF THE INFORMATION OFFICER**

**A. INTRODUCTION**

1. On May 19, 2024 (the “**Petition Date**”), Red Lobster Management LLC (“**RL Management**”) and certain of its affiliates (collectively, the “**Debtors**”), including Red Lobster Hospitality LLC (“**RL Hospitality**”) and Red Lobster Canada, Inc. (“**RL Canada**”, and together with RL Management and RL Hospitality, the “**Canadian Debtors**”) filed voluntary petitions for relief (collectively, the “**Petitions**” and each a “**Petition**”) in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division (the “**U.S. Bankruptcy Court**”) under chapter 11 of title 11 of the United States Code (the “**U.S. Bankruptcy Code**”). The proceedings before the U.S. Bankruptcy Court commenced by the Petitions are hereinafter referred to as the “**Chapter 11 Cases**”.
2. Several first day motions filed by the Debtors in the Chapter 11 Cases (collectively, the “**First Day Motions**”) for various orders (collectively, the “**First Day Orders**”) were heard before the U.S. Bankruptcy Court on May 21, 2024 (the “**First Day Hearing**”). Following the First Day Hearing, the U.S. Bankruptcy Court granted, among others, the following First Day Orders:

- (a) the Foreign Representative Order;
  - (b) the Wages and Benefits Order;
  - (c) the Insurance Order;
  - (d) the Customer Program Order;
  - (e) the Cash Management Order;
  - (f) the Tax Order;
  - (g) the Utilities Order;
  - (h) the OCB Payment Order; and
  - (i) the Interim DIP Order.
3. In its capacity as the then-proposed foreign representative of the Canadian Debtors in the Chapter 11 Cases (the “**Foreign Representative**”), RL Management sought and, on May 21, 2024, obtained an order (the “**Interim Stay Order**”) under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and section 106 of the *Courts of Justice Act* (Ontario) from the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”). Among other things, the Interim Stay Order granted an interim stay of proceedings in favour of the Canadian Debtors and their respective businesses, current and future assets, undertakings, and properties, and former, current, and future directors and officers.
4. On May 28, 2024, the Foreign Representative sought and obtained the following orders under Part IV of the CCAA from the Court:
- (a) an order (the “**Initial Recognition Order**”), among other things:
    - (i) recognizing the Chapter 11 Cases as a “foreign main proceeding” in respect of the Canadian Debtors and RL Management as the “foreign

representative” in respect of the Chapter 11 Cases, as such terms are defined in section 45 of the CCAA; and

- (ii) declaring that the Interim Stay Order shall be of no further force or effect upon the granting of the Initial Recognition Order; and
- (b) an order (the “**Supplemental Order**”), among other things:
- (i) recognizing certain of the First Day Orders;
  - (ii) granting a stay of proceedings in favour of the Canadian Debtors and their respective businesses, current and future assets, undertakings, and properties, and former, current, and future directors and officers;
  - (iii) appointing FTI Consulting Canada Inc. (“**FTI**”) as the Information Officer (in such capacity, the “**Information Officer**”) in these recognition proceedings (these “**Recognition Proceedings**”); and
  - (iv) granting the Administration Charge, the DIP Lender’s Charge, and the D&O Charge (each as defined in the Supplemental Order) on the Canadian Debtors’ property in Canada subject to the terms and conditions thereof.
5. Copies of the Initial Recognition Order, the Supplemental Order, and the accompanying endorsement of the Honourable Justice Penny, each dated May 28, 2024, are attached as **Appendices “A”, “B”, and “C”**, respectively.
6. On June 14, 2024, the U.S. Bankruptcy Court entered several orders following a hearing (the “**Second Day Hearing**”) of the second day motions filed by the Debtors in the Chapter 11 Cases (collectively, the “**Second Day Motions**”). The Foreign Representative intends to return to the Canadian Court on June 18, 2024 to seek recognition of certain of those orders, as discussed in more detail below.
7. This report (the “**First Report**”) has been filed by the Information Officer in these Recognition Proceedings for the purpose of providing the Canadian Court with the following:



- (a) an update on the Chapter 11 Cases since the granting of the Initial Recognition Order and the Supplemental Order;
- (b) the Information Officer's views regarding the Foreign Representative's motion for an order (the "**Second Supplemental Order**"), among other things, recognizing and enforcing certain orders of the U.S. Bankruptcy Court made at the Second Day Hearing (collectively, the "**Second Day Orders**"):
  - (i) *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**");
  - (ii) *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**");
  - (iii) *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**");
  - (iv) *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**", and together with the Final DIP Order, Final Wages and

Benefits Order, and Final Cash Management Order, the “**Final Orders**”);  
and

- (v) *Order (I) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (II) Authorizing the Debtors to Enter into 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, (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (VI) Granting Related Relief* (the “**Sale Procedures Order**”);  
and

- (c) a summary of the activities of the Information Officer since its appointment.

## **B. TERMS OF REFERENCE**

8. In preparing this First Report, the Information Officer has relied upon unaudited financial information prepared by the Debtors and their representatives, the Debtors’ books and records, and discussions with Canadian counsel to the Foreign Representative and the Canadian Debtors (collectively, the “**Information**”).
9. Except as described in this First Report:
  - (a) the Information Officer has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Canadian Auditing Standards pursuant to the *Chartered Professional Accountants of Canada Handbook* (the “**Handbook**”) and, accordingly, the Information Officer expresses no opinion or other form of assurance in respect of the Information; and
  - (b) the Information Officer has not examined or reviewed forecasts and projections referred to in this First Report in a manner that would comply with the procedures described in the Handbook.

10. Future oriented financial information reported in or relied on in preparing this First Report is based on the assumptions and estimates of the Debtors' management. Actual results may vary from such information and these variations may be material.
11. Capitalized terms used but not defined herein have the meanings given to them in the pre-filing report of FTI, in its then capacity as the proposed Information Officer, dated May 27, 2024 (the "**Pre-Filing Report**") and the Affidavit of Jonathan Tibus sworn June 11, 2024 (the "**Tibus Affidavit**"), as applicable. A copy of the Pre-Filing Report (without appendices) is attached as **Appendix "D"**.
12. All materials filed with the Canadian Court in these Recognition Proceedings are available on the Information Officer's website at: <http://cfcanada.fticonsulting.com/redlobster/> (the "**Case Website**"). All materials filed in the Chapter 11 Cases, are available on the case website maintained by Epiq Corporate Restructuring, LLC, in its capacity as the Debtors' notice, claims, and solicitation agent (the "**Claims Agent**"), at: <https://dm.epiq11.com/case/redlobster/info> (the "**Docket**").

### **C. BACKGROUND**

13. A detailed description of the Debtors, including the Canadian Debtors, their businesses, corporate structure, prepetition capital structure and indebtedness, and the events preceding the Chapter 11 Cases and these Recognition Proceedings (collectively, the "**Restructuring Proceedings**") is provided in the supplemental affidavit of Jonathan Tibus sworn May 24, 2024 (the "**First Tibus Affidavit**") and the first day declaration of Jonathan Tibus dated May 19, 2024 (the "**Tibus Declaration**") attached (without exhibits) as Exhibit "A" thereto. These matters were also addressed in the Pre-Filing Report attached as Appendix "D" hereto and are only briefly summarized herein.

### **The Debtors**

14. Red Lobster was founded in the U.S. in 1968 and expanded into Canada in 1983. As of the Petition Date, RL Group operated approximately 551 restaurant locations across 44 U.S.

states and 27 restaurant locations across four Canadian provinces. Of the Canadian restaurants, there are 20 in Ontario, 4 in Alberta, 2 in Saskatchewan, and 1 in Manitoba.

15. Also as of the Petition Date, the RL Group employed approximately 36,000 employees worldwide, approximately 2000 of which are in Canada. RL Canada employs all of the Canadian employees, most of whom serve in part-time roles. Of those employees, approximately 67% are in Ontario, 20% in Alberta, 7% in Saskatchewan, and 6% in Manitoba.
16. As set forth in the Tibus Affidavit, 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 Canadian landlords regarding go-forward rental arrangements.

### **The RSA and the Plan**

17. As described in the Tibus Affidavit, in March 2024, when it became clear that an out-of-court solution to recapitalize the Debtors was not feasible, the Debtors retained Hilco Corporate Finance, LLC (“**Hilco**”), an investment banker, to initiate a marketing and sale process for the Debtors’ assets. Hilco subsequently conducted an extensive marketing process and solicited indications of interest from strategic and financial buyers with the ability to complete a transaction with the Debtors.
18. In May 2024, the Pre-petition Term Loan Lenders provided the Debtors with a proposal, which was negotiated and memorialized in a restructuring support agreement dated as of May 9, 2024 (the “**RSA**”), which set out (a) the terms upon which the Pre-petition Term Loan Lenders would provide the necessary DIP financing to the Debtors, (b) the terms upon which the Pre-petition Term Loan Lenders would serve as a stalking horse bidder for the sale of substantially all of the Debtors’ assets, and (c) an agreed upon timeline for the commencement of the Chapter 11 Cases. The RSA also contemplated recognition of the Chapter 11 Cases under Part IV of the CCAA.

19. The Debtors subsequently commenced the Chapter 11 Cases with a view toward completing an operational restructuring and going-concern sale of the business as a whole, including the Canadian Business (defined below).

#### **Unsecured Creditors' Committee and Meeting of Creditors**

20. On May 31, 2024, the Office of the United States Trustee (the “**U.S. Trustee**”) appointed certain creditors of the Debtors to serve on the Unsecured Creditors' Committee (the “**UCC**”). The U.S. Trustee's notice of the appointment filed in the Chapter 11 Cases is attached as **Appendix “E”** and lists each member of the UCC. The UCC includes one Canadian member, Gordon Food Service Canada Ltd., a significant supplier of RL Canada.
21. Presently, in the Chapter 11 Cases, the meeting of creditors is scheduled to be held by telephone on June 28, 2024 at 1:00 p.m. (EDT), and the deadline for creditors to file proofs of claim is July 28, 2024.<sup>1</sup> The Notice of Chapter 11 Bankruptcy Case filed in the Chapter 11 Cases, attached as **Appendix “F”**, provides further details regarding the Chapter 11 Cases, including the meeting of creditors and claims process.

#### **D. ORDERS PROPOSED TO BE RECOGNIZED**

22. RL Management, in its capacity as the Foreign Representative, is seeking recognition of the Second Day Orders that were entered following the Second Day Hearing by the U.S. Bankruptcy Court in the Chapter 11 Cases. The Second Day Orders to be recognized pursuant to the proposed Second Supplemental Order are listed and described in the Tibus Affidavit. Copies of such Second Day Orders are appended to the proposed Second Supplemental Order as Schedules “A” to “E”.
23. With the assistance of its legal counsel, Fasken Martineau DuMoulin LLP (“**Fasken**”), the Information Officer has reviewed and considered the Second Day Orders and discussed them with counsel to the Foreign Representative, the Debtors, and certain creditors. A summary of each of the Second Day Orders proposed to be recognized is set out below.

---

<sup>1</sup> The proof of claim deadline for governmental units is 180 days from the date of filing.

## Final Orders

24. As noted above, the U.S. Bankruptcy Court has entered the Final Orders, which, in essence, are final forms of certain interim First Day Orders which the Canadian Court recognized on May 28, 2024 as part of the Supplemental Order. The Final Orders include the Final DIP Order, the Final Wages and Benefits Order, the Final Cash Management Order, and the Final Tax Order, each of which is discussed below:

- (a) *Final DIP Order* – The Final DIP Order, among other things, provides the Debtors with authorization to obtain senior secured post-petition financing on a super-priority basis pursuant to the terms of the DIP Credit Agreement. To date, the Debtors have drawn the maximum interim availability under the DIP Facility which totals USD \$40 million in New Money Advances *plus* USD \$70 million of Pre-petition Term Loan Obligations deemed to be funded (i.e., rolled up) at a ratio of USD \$1.75 for every USD \$1.00 of New Money Advances.<sup>2</sup> The Final DIP Order unlocks the remaining availability under the DIP Facility, which is an additional USD \$60 million of New Money Advances for a total of USD \$100 million. As the additional amount of New Money Advances now available under the DIP Credit Agreement are made, an additional USD \$105 million of Pre-petition Term Loan Obligations shall be deemed funded (i.e., rolled up at the same ratio) for a maximum total “roll-up” of USD \$175 million. The Final DIP Order does not vary the challenge period under the Interim DIP Order which expires on the earlier of (i) 60 calendar days after the Petition Date, and (ii) the date established by the U.S. Bankruptcy Court for submission of qualified bids to purchase the Debtors’ assets. The Final DIP Order also grants the DIP Lien in favour of the DIP Agent and the

---

<sup>2</sup> As described in the Pre-Filing Report, the DIP Credit Agreement, which was approved by the U.S. Bankruptcy Court on an interim basis in the Interim DIP Order, provided for an extension of credit not to exceed the principal amount of USD \$275 million which amount includes: (a) USD \$100 million of new money that the Debtors require for the continued operation of their business during the pendency of the Chapter 11 Cases (the “**New Money Advances**”), *plus* (b) a partial “roll-up” of USD \$175 million of the Pre-petition Term Loan Obligations (on the basis of USD \$1.75 of deemed funding for each USD \$1.00 of New Money Advances made).

DIP Lenders for the increased quantum of the DIP Obligations on substantially the same terms as the Interim DIP Order.

The UCC initially objected to the entry of the Final DIP Order. To resolve the UCC's objections, the Debtors, the UCC, the Pre-petition Secured Parties, and the DIP Secured Parties (as defined in the Final DIP Order) agreed to the resolution attached as Exhibit "C" to the Final DIP Order (the "**Resolution Term Sheet**"). As set out in the Resolution Term Sheet, the aforementioned parties will work cooperatively to draft a combined plan and disclosure statement which shall be funded in the amount of USD \$2.5 million by the Debtors and taken from the Excluded Cash (defined below), DIP Proceeds (as defined therein), or, in the event that the Successful Bidder is not the Stalking Horse Bidder, the cash proceeds from the Sale. Such funding shall be used by a plan trustee to be selected by the UCC, and 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, subject to the terms and conditions of the Resolution Term Sheet. Proceeds from the equityholder actions (if any) shall be shared by the DIP Lenders (60%) and GUC trust (40%). As part of the aforementioned resolution, the Final DIP Order provides, and the UCC agreed, that the UCC shall be forever barred from challenging the terms or entry of the Final DIP Order, and UCC expressly waived, to the fullest extent under applicable law, all rights to do so.

- (b) *Final Wages and Benefits Order* – The Final Wages and Benefits Order provides the Debtors with substantially the same relief as the interim Wages and Benefits Order but on a final basis. Among other things, the Final Wages and Benefits Order gives the Debtors authority, but not direction, to (i) 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, (ii) continue the compensation and benefits programs, (iii) modify, change, and discontinue any of their compensation and benefits programs and to implement new programs, policies, and benefits for non-insider employees in the ordinary course,

and (iv) to remit payroll taxes and deductions. The recognition of the Final Wages and Benefits Order will support RL Canada's continued authority to process compensation, deductions, and benefits for its approximately 2000 employees in Canada without interruption.

- (c) *Final Cash Management Order* – The Final Cash Management Order provides the Debtors with substantially the same relief as the interim Cash Management Order but on a final basis. The Final Cash Management Order, among other things, gives the Debtors the continued authority, but not direction, to (i) continue to maintain their existing Cash Management System, including the Canadian Accounts, subject to the requirements of the Final Cash Management Order, (ii) honor certain pre-petition and post-petition obligations related thereto, (iii) continue to perform intercompany transactions in the ordinary course.

The U.S. Trustee objected to the Final Cash Management Order. In order to resolve that objection, the Debtors agreed, among other things, to revise the Final Cash Management Order such that if the balance of the Canada Master Concentration Account (as defined therein) exceeds CAD \$5 million for seven consecutive days, then the Debtors shall, on or prior to two business days following such occurrence, transfer all amounts in excess of CAD \$5 million to a Back Account (as defined therein) held at Wells Fargo Bank, N.A. (the “Cash Sweep”). The Information Officer understands that the U.S. Trustee wanted the Cash Sweep provision included in the Final Cash Management Order at least in part because Wells Fargo Bank, N.A. is insured by the U.S. Federal Deposit Insurance Corporation whereas the Canada Master Concentration Account at Royal Bank of Canada is not. The Information Officer also understands that, in the ordinary course, RL Group has historically maintained a float of approximately CAD \$3 million in the Canada Master Concentration Account and would periodically sweep any cash in excess of that amount into the U.S. cash management system. The Cash Sweep is therefore not inconsistent with RL Group's pre-petition cash management practices. From its discussions with counsel to the Debtors, the Information Officer understands that the



Canadian Business has remained cash flow positive since the commencement of these Recognition Proceedings.

- (d) *Final Tax Order* – The Final Tax Order provides the Debtors with the substantially the same relief as the interim Tax Order but on a final basis. The Final Tax Order, among other things, gives the Debtors the continued authority, but not direction, to pay, in the Debtors’ sole discretion and pursuant to the Approved DIP Budget (as defined therein), 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. RL Canada is liable for certain sales, property, income, and other taxes in Canada. Recognition of the Final Tax Order will enable RL Canada to continue collecting and remitting such taxes to the applicable taxing authorities in Canada.

### **Sale Procedures Order**

25. The Sale Procedures Order approves a marketing and sale process (the “**Sale Procedures**”) for the Debtors’ business and assets, including its business and assets in Canada (the “**Canadian Business**”). The Sale Procedures are supported by a stalking horse bid (the “**Stalking Horse Bid**”) from RL Purchaser LLC (the “**Stalking Horse Bidder**”), a newly formed entity created by the Pre-petition Term Loan Lenders for the purpose of acquiring the Debtors’ assets pursuant to a sale transaction.
26. The Tibus Affidavit provides a detailed summary of the Sale Procedures and Stalking Horse Bid. Certain of such information is summarized below.

### *Stalking Horse Bid*

27. Following the execution of the RSA, the Debtors entered into an asset purchase agreement dated as of May 19, 2024 with the Stalking Horse Bidder (the “**Stalking Horse APA**”). The Stalking Horse APA contemplates that the Stalking Horse Bidder, in addition to assuming certain liabilities and leaving certain cash with the Sellers (the “**Excluded Cash**”), will credit bid 100% of the DIP Obligations in order to satisfy the Purchase Price

(as such terms are defined in the Stalking Horse APA) for substantially all of the assets of the Debtors, including the Canadian Business. The Stalking Horse APA does not entitle the Stalking Horse Bidder to any break fee or termination fee in the event that the Stalking Horse Bid is unsuccessful.

28. The Stalking Horse APA contemplates that the Stalking Horse Bidder may elect to purchase the shares of any Debtor owned by RL Management, instead of its assets. If the Stalking Horse Bidder is selected as the Successful Bidder, the sale of the Canadian Business may therefore proceed as either a share sale or an asset sale, at the election of the Stalking Horse Bidder. The Information Officer understands that, if the Stalking Horse Bidder is the Successful Bidder and the acquisition of the Canadian Business proceeds as an asset sale, it is contemplated that the Stalking Horse APA will be amended, including to address certain tax considerations related to RL Canada's (a Delaware entity) disposition of those assets.
29. The Sale Procedures Order is procedural in nature and does *not* approve the transaction contemplated by the Stalking Horse Bid. Rather, the approval of any transaction with the Successful Bidder (whether or not such bidder is the Stalking Horse Bidder) will be the subject of a further approval hearing before the U.S. Bankruptcy Court which is anticipated to be heard on July 29, 2024. The Foreign Representative also intends to seek recognition from the Canadian Court of any order approving such transaction or transactions by the U.S. Bankruptcy Court.

#### *Sale Procedures*

30. The Sale Procedures Order sets forth the following key dates and deadlines for the Sale Procedure:

*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 the Debtors to (a) provide Adequate Assurance Information<sup>3</sup> with respect to Stalking Horse Bidder and (b) file and serve the Assumption and Assignment Notice
- July 12, 2024, at 5:00 p.m. (Eastern Time)* → Sale Objection Deadline
- July 18, 2024, at 5:00 p.m. (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
- July 22, 2024, at 5:00 p.m. (Eastern Time)* → Deadline for Debtors to Notify Bidders of Status as Qualified Bidders
- July 23, 2024, at 5:00 p.m. (Eastern Time)* → Auction (if any)
- The later of (a) July 24, 2024 at 12:00 p.m. (Eastern Time) and (b) twelve (12) hours after the conclusion of the Auction* → Deadline for Debtors to file Notice of Auction Results

---

<sup>3</sup> The Sale Procedures Order defines “Adequate Assurance Information” as, among other things, evidence of a bidder’s (or any other relevant assignee’s) ability to perform future obligations arising under any contracts included in its bid. This may include, without limitation, evidence regarding the bidder’s financial wherewithal and willingness to perform under any such contract.

- July 26, 2024, at 11:59 p.m. (Eastern Time)* → Post-Auction Objection Deadline
- July 29, 2024, at 1:30 p.m. (Eastern Time)* → Sale Hearing<sup>4</sup>
- July 30, 2024* → Deadline for Court to enter Sale Order
- August 3, 2024* → Deadline to consummate approved Sale Transactions<sup>5</sup>

31. The foregoing timeline is consistent with the milestone requirements of the DIP Credit Agreement and is necessary to maintain access to the DIP Facility. The Debtors believe that this timeline provides them with a reasonable opportunity to conduct a thorough marketing process for their assets and is in the best interests of the Debtors' estates.
32. The Sale Procedures are intended to solicit bids which are superior to the Stalking Horse Bid. Specifically, pursuant to the Sale Procedures Order, all overbids relating to the Stalking Horse Assets (as defined in the Sale Procedures Order) must:
- (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* all obligations outstanding under the DIP Documents which are not included in the purchase price set forth in the applicable Stalking Horse APA, *plus* an Initial Bid

---

<sup>4</sup> The RSA requires a Sale Hearing to be conducted by no later than *70 days* after the Petition Date. However, the Pre-petition 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.

<sup>5</sup> The Information Officer understands that the RSA provides that if the Sale Order is entered within *70 days* after the Petition Date, such deadline to consummate shall be extended to 90 days after the Petition Date solely for the purpose of obtaining regulatory approvals necessary to consummate the Sale. However, the Pre-petition 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.

Increment of USD \$2.5 million, and (iii) assume the Assumed Liabilities (as such terms are defined in the Sale Procedures Order); or

- (b) propose an alternative transaction that, in the Debtors' business judgment and in consultation with the Consultation Parties, provides higher value or better terms than the Stalking Horse Bid, including by exceeding the purchase price of such Stalking Horse Bid plus any applicable Initial Bid Increment, and after taking into account, among other things, in light of all the bids submitted, whether there is sufficient cash to pay (i) Wind-Down Expenses and (ii) the DIP Obligations; *provided however*, that any bid that does not include sufficient cash consideration to pay the DIP Obligations and fund the Excluded Cash in full shall not be a Qualified Bid (as such terms are defined in the Sale Procedure Order).
33. If the Debtors receive more than one Qualified Bid (including the Stalking Horse Bid) for an asset or combination of assets, the Debtors may conduct an auction in accordance with the Sale Procedures. 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 U.S. Bankruptcy Court, and serve on applicable notice parties and cause to be published on the Claims Agent's website, a notice 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 Sale Hearing (as defined in the Sale Procedures Order).
34. The Sale Procedures Order also provides a mechanism for the assumption and assignment of contracts and leases (the "**Assumption and Assignment Procedure**") in the event that a sale transaction is approved and consummated. Under the Assumption and Assignment Procedure, the Assumption and Assignment Notice (as defined in the Sale Procedures Order) shall be delivered to the contract counterparties and will (a) identify the relevant contracts that may be assumed and assigned or rejected pursuant to section 365 of the U.S. Bankruptcy Code, (b) provide an estimate of the Cure Amount(s) (as defined in the Sale Procedures Order) owing in respect of such contract(s), (c) include a statement that assumption and assignment of each such contract is not required nor guaranteed, and (d)

inform such counterparty of the requirement to file any Contract Objection(s) by the Contract Objection Deadline (as such terms are defined in the Sale Procedures Order). Contract Objections must be in writing, filed with the U.S. Court, and 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.

35. 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 U.S. Bankruptcy Court shall make all necessary determinations relating to the applicable objection;<sup>6</sup> *provided however*, that if the objection is resolved in a manner that is not in the best interests of the Debtors or their estates, the Debtors may determine that the contract subject to such objection will no longer be assumed or assigned within the applicable sale transaction.
36. If the Canadian Business is sold by way of an asset sale, the Assumption and Assignment Procedure will apply to contract counterparties who are involved with the Canadian Business. The Information Officer has reviewed the Assumption and Assignment Procedure with the assistance of Fasken, and is of the view that such procedures do not cause any unfairness to Canadian stakeholders.

### **Recognition of the Second Day Orders**

37. The Information Officer is supportive of the Foreign Representative's request for recognition of the Second Day Orders pursuant to the proposed Second Supplemental Order given, among other things, that:
  - (a) Canadian and U.S. stakeholders are treated in the same manner under each of the Second Day Orders for which recognition is sought, including with respect to the Assumption and Assignment Procedure in Sale Procedures Order;

---

<sup>6</sup> The hearing to determine unresolved Contract Objections is anticipated to be held on August 8, 2024 at 9:30 a.m. (Eastern Time). Such hearing may be adjourned in accordance with the terms of the Sale Procedures Order.

- (b) the granting of the Second Supplemental Order would be consistent with the principles of comity and facilitate the efficient coordination of the Chapter 11 Cases and these Recognition Proceedings;
- (c) the Second Day Orders for which recognition is sought are primarily procedural or administrative in nature, commonplace in the context of complex chapter 11 proceedings, and generally consistent with the forms of such orders frequently recognized by Canadian Courts in large cross-border insolvency proceedings;
- (d) the Second Day Orders are necessary to allow the Canadian Business to operate in the ordinary course while a going-concern sale is pursued in the Chapter 11 Cases which sale is anticipated to result in continued employment for the Debtors' Canadian employees;
- (e) the procedures and timelines set forth in the Second Day Orders are reasonable and appropriate in the circumstances;
- (f) RL Canada relies on certain other Debtors for business functions critical to its ongoing operation of the Canadian restaurants and the Debtors require the DIP Facility to continue to provide those business functions;
- (g) whereas a "roll-up" of pre-filing indebtedness would not be permitted in plenary proceedings under the CCAA, Canadian courts have recognized and given effect to "roll-ups" in ancillary proceedings under Part IV of the CCAA where approved by the supervising court in the foreign proceeding;
- (h) the Second Day Orders were supported by the Debtors' key stakeholders, including the DIP Agent and DIP Lenders;
- (i) the Second Day Orders were supported by the U.S. Trustee and the UCC, each of which had initially objected to the entry of certain Second Day Orders, including the Final DIP Order and Final Cash Management Order, but whose concerns were addressed in negotiated resolutions with the Debtors; and

- (j) the Information Officer is not aware of any objection having been filed in the Chapter 11 Cases by a Canadian stakeholder in respect of the Second Day Orders for which recognition is sought.

**E. ACTIVITIES OF THE INFORMATION OFFICER**

38. Since the date of the Pre-Filing Report, the activities of the Information Officer have included, among other things:

- (a) preparing for and attending the Foreign Representative's application for the Initial Recognition Order and the Supplemental Order;
- (b) attending the hearing of the Debtors' motions before the U.S. Bankruptcy Court seeking entry of the Second Day Orders via Zoom videoconference;
- (c) monitoring the Docket to remain apprised of materials filed in the Chapter 11 Cases;
- (d) establishing and updating the Case Website;
- (e) publishing notices substantially in the form attached as Schedule "A" to the Initial Recognition Order in *The Globe and Mail (National Edition)*;
- (f) notifying litigation claimants who have commenced proceedings against the Canadian Debtors and the relevant court offices of the stay of proceedings granted by the Canadian Court in these Recognition Proceedings;
- (g) engaging in discussions with the Debtors regarding their cash flows and the Information Officer's anticipated review of same;
- (h) responding to inquiries from stakeholders regarding the Restructuring Proceedings and related matters;
- (i) engaging in discussions with Canadian counsel for the Foreign Representative and the other Canadian Debtors;



- (j) engaging in discussions with Alvarez & Marsal North America, LLC, the financial and restructuring advisors of the Debtors;
- (k) corresponding with Fasken, the Information Officer's independent counsel;
- (l) reviewing each of the Second Day Orders, and the corresponding motions, in respect of which recognition is sought;
- (m) preparing this First Report; and
- (n) preparing for the hearing of the Foreign Representative's motion for recognition of the Second Day Orders.

**F. CONCLUSION**

39. For the reasons set out in this First Report, the Information Officer supports the relief sought by the Foreign Representative on the motion discussed herein and respectfully recommends that the Canadian Court grant the proposed Second Supplemental Order.

Dated this 17th day of June, 2024.

**FTI Consulting Canada Inc.,**  
*solely in its capacity as Information Officer*  
*in these Recognition Proceedings, and not*  
*in its personal or corporate capacity*

DocuSigned by:  
  
D55F23E8950345D...  
\_\_\_\_\_  
Jeffrey Rosenberg  
Senior Managing Director

# APPENDIX A



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

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

THE HONOURABLE

TUESDAY, THE 28TH

JUSTICE PENNY

DAY OF MAY, 2024

**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

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

**THIS APPLICATION**, made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") by Red Lobster Management LLC ("**RL Management**") in its capacity as the foreign representative (the "**Foreign Representative**"), in respect of proceedings commenced on May 19, 2024 in the United States Bankruptcy Court for the Middle District of Florida (the "**US Bankruptcy Court**") pursuant to Chapter 11 of Title 11 of the United State Bankruptcy Code (the "**Foreign Proceeding**") for an Order substantially in the form enclosed in the Supplementary Application Record, was heard this day by videoconference in Toronto, Ontario.

**ON READING** the Fresh As Amended Notice of Application, the affidavit of Jonathan Tibus sworn May 24, 2024, the affidavit of Nancy Thompson sworn May 26, 2024, the preliminary report of FTI Consulting Canada, Inc., (“**FTI**”) in its capacity as proposed information officer (the “**Information Officer**”) dated May 27, 2024, each filed and upon being provided with copies of the documents required by s.46 of the CCAA.

**AND UPON BEING ADVISED** by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) (the “**Supplemental Order**”) is being sought,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, counsel to Fortress Credit Corp. and counsel for such other parties as were present and wish to be heard, no one else appearing although duly served as appears from the Lawyer’s Certificates of Service of Caitlin McIntyre dated May 21 and 27, 2024, filed:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Fresh As Amended Notice of Application, the Supplementary Application Record and the Second Supplementary Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**FOREIGN REPRESENTATIVE**

2. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the "foreign representative" of RL Management, Red Lobster Hospitality LLC and Red Lobster Canada, Inc. (collectively, the “**Canadian Debtors**” and each a “**Canadian Debtor**”) as defined in section 45 of the CCAA in respect of the Foreign Proceeding.



3. **THIS COURT DECLARES** that the centre of main interests for each of the Canadian Debtors is the United States of America, and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 45 of the CCAA in respect of the Canadian Debtors.

#### **STAY OF PROCEEDINGS**

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against any Canadian Debtor under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 or the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11 are stayed;
- (b) further proceedings in any action, suit or proceeding against any Canadian Debtor are restrained; and
- (c) the commencement of any action, suit or proceeding against any Canadian Debtor is prohibited.

#### **NO SALE OF PROPERTY**

5. **THIS COURT ORDERS** that, except with leave of this Court, each of the Canadian Debtors are prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

6. **THIS COURT ORDERS** that within 5 business days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall cause to be published a notice substantially in the form attached to this Order as Schedule A, once a week for two consecutive weeks in *Globe and Mail*, National Edition.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America or any other foreign jurisdiction, to give effect to this Order and to assist the Canadian Debtors and the Foreign Representative, the Information Officer and their respective counsel and agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS AND DECLARES** that the Interim Stay Order (Foreign Proceeding made on May 21, 2024 (the “**Interim Stay Order**”) shall be of no further force and effect once this Order and the Supplemental Order become effective, and that this Order shall be effective as of 12:01 am on the date of this Order, provided that nothing herein shall invalidate any action taken in compliance with the Interim Stay Order prior to the effectiveness of this Order and the Supplemental Order.

9. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Canadian Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



---

**JUSTICE MICHAEL A. PENNY**

**SCHEDULE “A”**

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

**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

**NOTICE OF RECOGNITION ORDERS  
(FOREIGN MAIN PROCEEDING)**

**PLEASE BE ADVISED** that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) granted on May 28, 2024 (the “**Supplemental Recognition Order**”).

**TAKE NOTICE** that on May 19, 2024, **Red Lobster Management LLC, Red Lobster Hospitality LLC, and Red Lobster Canada, Inc.** (together, the “**Canadian Debtors**”) and certain of their affiliates filed voluntary petitions for relief (collectively, the “**Chapter 11 Cases**”) pursuant to chapter 11 of title 11 of the United States Code (the “**U.S. Bankruptcy Code**”) with the United States Bankruptcy Court for the Middle District of Florida, Orlando Division (the “**U.S. Bankruptcy Court**”). In connection with the Canadian Debtors’ Chapter 11 Cases, Red Lobster Management LLC was appointed to act as foreign representative of the Canadian Debtors and others (in such capacity, the “**Foreign Representative**”). The Foreign Representative’s address is 450 S Orange Ave, Orlando, FL 32801, USA.

**AND TAKE NOTICE** that the Supplemental Recognition Order and the initial recognition order granted by the Canadian Court on May 28, 2024 (the “**Initial Recognition Order**”, and together with the Supplemental Recognition Order, the “**Recognition Orders**”) have been issued by the Canadian Court under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA Recognition Proceedings**”) and, among other things: (i) recognized each of the Chapter 11 Cases of the Canadian Debtors as a foreign main proceeding; (ii) granted a stay of proceedings against the Canadian Debtors; (iii) recognized certain orders granted by the U.S. Bankruptcy Court in the Chapter 11 Cases; and (iv) appointed FTI Consulting Canada Inc.



as the Information Officer with respect to the CCAA Recognition Proceedings (in such capacity, the “**Information Officer**”).

**AND TAKE NOTICE** that motions, orders and notices filed with the U.S. Bankruptcy Court in the Chapter 11 Cases are available at <https://dm.epiq11.com/case/redlobster/info>, and that the Recognition Orders and any other orders that may be granted by the Canadian Court have (or will be, upon becoming available) posted at <http://cfcanada.fticonsulting.com/redlobster/>.

**AND TAKE NOTICE** that Canadian legal counsel for the Foreign Representative is:

Blake, Cassels & Graydon LLP  
Barristers and Solicitors  
199 Bay Street, Suite 4000  
Commerce Court West  
Toronto, Ontario M5L 1A9

Attention: Linc Rogers / Caitlin McIntyre  
Email: [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com) / [caitlin.mcintyre@blakes.com](mailto:caitlin.mcintyre@blakes.com)

**AND PLEASE FINALLY TAKE NOTICE** that if you wish to receive copies of the Recognition Orders or obtain further information in respect of the matters set forth in this Notice, you may contact the Information Officer at:

Address: FTI Consulting Canada Inc.  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, ON M5K 1G8

Tel: +1 416-649-8141  
Toll-free: +1 833-840-2742  
Email: [redlobster@fticonsulting.com](mailto:redlobster@fticonsulting.com)

DATED AT TORONTO, ONTARIO this [●] day of May, 2024.

**FTI Consulting Canada Inc.,**  
*solely in its capacity as Information  
Officer in these CCAA Recognition  
Proceedings, and not in its personal or  
corporate capacity*



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

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

**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](mailto:linc.rogers@blakes.com)

**Caitlin McIntyre**, LSO #72306R

Tel: 416-863-4174

Email: [caitlin.mcintyre@blakes.com](mailto:caitlin.mcintyre@blakes.com)

Lawyers for the Applicant

# **APPENDIX B**



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

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

THE HONOURABLE ) TUESDAY, THE 28TH  
 )  
JUSTICE PENNY ) DAY OF MAY, 2024  
 )

**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

**SUPPLEMENTAL ORDER**  
**(FOREIGN MAIN PROCEEDING)**

**THIS APPLICATION**, made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") by Red Lobster Management LLC ("**RL Management**") in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of proceedings commenced on May 19, 2024 (the "**Petition Date**") in the United States Bankruptcy Court for the Middle District of Florida (the "**US Bankruptcy Court**") pursuant to Chapter 11 of Title 11 of the United State Bankruptcy Code (the "**Foreign Proceeding**") for an Order substantially in the form enclosed in the Supplementary Application Record of RL Management, was heard this day by videoconference in Toronto, Ontario.

**ON READING** the Fresh As Amended Notice of Application, the affidavit of Jonathan Tibus sworn May 24, 2024 (the "**Tibus Affidavit**"), the affidavit of Nancy Thompson sworn May 26, 2024, the preliminary report of FTI Consulting Canada, Inc., in its capacity as Information Officer dated May 27, 2024, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Foreign Representative, counsel for the proposed Information Officer, counsel for Fortress Credit Corp. and counsel for such other parties as were present and wish to be heard, no one else appearing although duly served as appears from the Lawyer's Certificates of Service of Caitlin McIntyre dated May 21 and 27, 2024, filed, and on reading the consent of FTI Consulting Canada, Inc. to act as the Information Officer:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Fresh As Amended Notice of Application, the Supplementary Application Record and the Second Supplementary Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**INITIAL RECOGNITION ORDER**

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) of this Court dated May 28, 2024 (the "**Initial Recognition Order**").

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Initial Recognition Order, provided that in the event of a conflict between the provisions of this



Supplemental Order and the provisions of the Initial Recognition Order, the provisions of the Initial Recognition Order shall govern.

#### **RECOGNITION OF FOREIGN ORDERS**

4. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of the US Bankruptcy Court made in the Foreign Proceeding, copies of which are attached hereto as Schedules "A" to "I" are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) The Foreign Representative Order, being the Order Authorizing Red Lobster Management LLC to Act as Foreign Representative of the Debtors;
- (b) Interim Order (I) Approving Postpetition Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief ("**Interim DIP Order**");
- (c) Interim Order Authorizing Debtors to (I) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Employee Obligations, (II) Maintain Employee Benefit Programs and (III) For Related Relief;
- (d) Order Authorizing Debtors to (I) Continue to Administer Insurance Policies, Surety Bonds and Related Agreements, (II) Honor Certain Obligations in Respect Thereof; and (III) for Related Relief;
- (e) Order (I) Authorizing Debtors to (A) Maintain and Administer Prepetition Customer Programs, Promotions and Practices and (B) Honor Prepetition Obligations Related Thereto and (II) Granting Related Relief;

- 4 -

- (f) Interim Order (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;
- (g) Interim Order Authorizing Debtors to Pay Prepetition Sales, Use, Trust Fund, Property, Foreign and Other Taxes and Similar Obligations;
- (h) Order Pursuant to 11 U.S.C. §§ 105(a) and 366(b) and Local Rule 2081-1(g)(7): Prohibiting Utilities from Altering, Refusing or Discontinuing Services, (II) Deeming Utilities Adequately Assured of Future Performance, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (VI) Granting Related Relief; and
- (i) Order (I) Authorizing Debtors to Pay Certain Section 503(b)(9) Claims in the Ordinary Course of Business, and (II) Granting Related Relief.

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

#### **APPOINTMENT OF INFORMATION OFFICER**

5. **THIS COURT ORDERS** that FTI Consulting Canada, Inc. (the “**Information Officer**”) is hereby appointed as an officer of this Court, with the powers and duties set out herein and in any other Order made in these proceedings.

## **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

6. **THIS COURT ORDERS** that until such date as this Court may order (the "**Stay Period**") no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of RL Management, Red Lobster Hospitality LLC and Red Lobster Canada, Inc. ("**RL Canada**") (collectively, the "**Canadian Debtors**" and each a "**Canadian Debtor**") or affecting their business (the "**Business**") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Canadian Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

7. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Canadian Debtors, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Canadian Debtor and the Information Officer, or with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Canadian Debtors to carry on any business in Canada which that Canadian Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.



## **NO INTERFERENCE WITH RIGHTS**

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Canadian Debtors and affecting the Business or Property in Canada, except with the written consent of the applicable Canadian Debtor and the Information Officer, or with leave of this Court.

## **ADDITIONAL PROTECTIONS**

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Canadian Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Canadian Debtors, and that the Canadian Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

10. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Canadian Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Canadian Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.



11. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

**OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. **THIS COURT ORDERS** that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at such times and intervals that the Information Officer considers appropriate with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Canadian Debtors, to the extent that is necessary to perform its duties arising under this Order; and

(d) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. **THIS COURT ORDERS** that the Canadian Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Canadian Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. **THIS COURT ORDERS** that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Canadian Debtor with information provided by the Canadian Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Canadian Debtors is privileged or confidential, the

Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the applicable Canadian Debtors may agree.

17. **THIS COURT ORDERS** that Blake, Cassels & Graydon LLP, as counsel to the Canadian Debtors ("**Canadian Counsel**") the Information Officer and counsel to the Information Officer shall be paid by the Canadian Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Canadian Debtors are hereby authorized and directed to pay the accounts of Canadian Counsel, the Information Officer and counsel for the Information Officer on a bi-weekly basis on such terms as such parties may agree. The Foreign Representative shall pay to the Information Officer a retainer of USD \$50,000 on behalf of the Information Officer and its counsel.

18. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. **THIS COURT ORDERS** that Canadian Counsel, the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property in Canada, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their professional fees and disbursements



incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 24 and 26 hereof.

#### **DIP CHARGE**

20. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property in Canada, which DIP Lender's Charge shall be consistent with the liens and charges created by the Interim DIP Order provided however that the DIP Lender's Charge, (i) with respect to the Property in Canada, shall have the priority set out in paragraphs 24 and 26 hereof, (ii) solely with respect to the Unencumbered Property, shall only secure the New Money Advances (as such terms are defined in the Tibus Affidavit), and (iii) shall not be enforced except in accordance with the Interim DIP Order.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

21. **THIS COURT ORDERS** that RL Canada shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and officers RL Canada after the commencement of the within proceedings (including, for greater certainty, any obligations and liabilities for wages, vacation pay or termination or severance pay due to employees of RL Canada, whether or not any such employee was terminated prior to or after the commencement of these proceedings), except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of RL Canada shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$3,400,000, as security for the indemnity

provided in paragraph 21 of this Order. The D&O Charge shall have the priorities set out in paragraphs 24 to 26 hereof.

23. **THIS COURT ORDERS** that, the directors and officers of RL Canada shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

24. **THIS COURT ORDERS** that the D&O Charge shall be automatically released without the need for further Order of this Court in the event that there is a sale of the shares of RL Canada which has been (i) consented to in writing by the DIP Lender, (ii) approved by the US Bankruptcy Court, and (iii) recognized by this Court.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

25. **THIS COURT ORDERS** that the priorities of the Administration Charge, the D&O Charge and the DIP Lender's Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000); and

Second – DIP Lender's Charge.

Third – D&O Charge (to the maximum amount of \$3,400,000).

26. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

27. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

28. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Canadian Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Charges, unless the Canadian Debtors also obtain the prior written consent of the beneficiaries of the Charges and the Information Officer.

29. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), or any orders made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any Canadian Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Canadian Debtor of any Agreement to which it is a party;



- 13 -

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Canadian Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

30. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Canadian Debtor's interest in such real property leases.

#### **SERVICE AND NOTICE**

31. **THIS COURT ORDERS** that that the Guide Concerning Commercial List E-Service Protocol (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<http://cfcanada.fticonsulting.com/redlobster/>’.

32. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Canadian Debtors, the Foreign Representative and the

- 14 -

Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Canadian Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Canadian Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

33. **THIS COURT ORDERS** that the Canadian Debtors, the Information Officer, and their respective counsel are at liberty to serve or distribute this Order, the Initial Recognition Order, and any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Canadian Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

#### **GENERAL**

34. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

35. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Canadian Debtor, the Business or the Property.



36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America to give effect to this Order and to assist the Canadian Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Canadian Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Canadian Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

37. **THIS COURT ORDERS** that each of the Canadian Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

38. **THIS COURT ORDERS** that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Juridical Insolvency Network and attached as Schedule “J” hereto are adopted by this Court for the purposes of these recognition proceedings.

39. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Canadian Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

- 16 -

40. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 am on the date of this Order.

A handwritten signature in black ink, appearing to read "Penny J.", written over a horizontal line.

**JUSTICE MICHAEL A. PENNY**

Schedules to the Supplemental Order have been omitted and are available on the Information Officer's Case Website at: <http://cfcanada.fticonsulting.com/redlobster/>

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

---

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

**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](mailto:linc.rogers@blakes.com)

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

Lawyers for the Applicant

# APPENDIX C



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00720567-00CL

DATE: May 28, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: RED LOBSTER MANAGEMENT LLC et al.

BEFORE: JUSTICE PENNY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Linc Rogers	Blake Cassels & Graydon LLP, Counsel to the Applicant	linc.rogers@blakes.com
Caitlin McIntyre	Blake Cassels & Graydon LLP, Counsel to the Applicant	caitlin.mcintyre@blakes.com
Jake Harris	Blake Cassels & Graydon LLP, Counsel to the Applicant	jake.harris@blakes.com
Austin Jowers	King & Spalding LLC US Counsel to the Applicant	ajowers@kslaw.com

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Stuart Brotman	Fasken Martineau DuMoulin LLP Counsel to the Proposed Information Officer	sbrotman@fasken.com
Mitch Stephenson	Fasken Martineau DuMoulin LLP Counsel to the Proposed Information Officer	mstephenson@fasken.com
Jeffrey Rosenberg	Proposed Information Officer, FTI Consulting Canada Inc.	jeffrey.rosenberg@fticonsulting.com

Adsaran Vithiyananthan	Proposed Information Officer, FTI Consulting Canada Inc.	adsaran.vithiyananthan@fticonsulting.com
Hrvoje Muhek	Proposed Information Officer, FTI Consulting Canada Inc.	hrvoje.muhek@fticonsulting.com
Nicholas Haughey	Alvarez & Marsal North America, LLC	nhaughey@alvarezandmarsal.com
Scott Bomhof	Torys LLP Lawyers for Fortress Credit Corporation	sbomhof@torys.com
Jorge Gonzalez	Proskauer Rose LLP, Counsel for Fortress Credit Corporation	jgonzalez@proskauer.com
Benjamin Kranc <i>[Partial attendance / self-represented]</i>	On behalf of Leibco Realty Limited	benkranc@rogers.com
Mark Drake <i>[self-represented]</i>	714 Yonge Street Inc.	marksdrake@gmail.com
Ginny McMinn <i>[self-represented]</i>	Triovest Realty Advisors Inc.	gcmminn@triovest.com
Carrie Ashfield <i>[self-represented]</i>	Triovest Realty Advisors Inc.	cashfield@triovest.com
Naushin Virji <i>[self-represented]</i>	Trinity Property	N/A

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

**ENDORSEMENT OF JUSTICE PENNY:**

**Overview**

- [1] On May 19, 2024, the Debtors commenced Chapter 11 proceedings in the United States by filing voluntary petitions (the “Petitions”) for relief under the U.S. Bankruptcy Code. The Debtors sought to provide a protective platform for a comprehensive operational restructuring and value maximizing going-concern sale of the business as a whole, including what is referred to in the material as the Canadian Business of the Canadian Debtors.
- [2] 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 from this court in respect of the Canadian Debtors, as well as their respective directors and officers, in Canada.
- [3] Also on May 21, following a hearing before the United States Bankruptcy Court for the Middle District of Florida (Orlando Division), that Court entered several First Day Orders, including the Foreign Representative Order authorizing RL Management to act as Foreign Representative in respect of the Debtors and the Chapter 11 proceedings.

[4] RL Management, in its capacity as duly appointed Foreign Representative, now seeks from this court the following relief:

(a) an order (the “Initial Recognition Order”):

(i) recognizing RL Management as the Foreign Representative in respect of the Canadian Debtors;

(ii) recognizing the US proceedings as a “foreign main proceeding” in respect of the Canadian Debtors; and

(iii) granting a stay of proceedings in respect of the Canadian Debtors in Canada; and

(b) an order (the “Supplemental Order”), among other things:

(i) recognizing certain of the interim and final orders issued by the US Court in the US proceedings, including, among others, an order approving a debtor-in-possession facility (the “DIP Facility”);

(ii) granting a further stay of proceedings in respect of the Canadian Debtors, and their respective directors and officers, in Canada prohibiting, among other things, the commencement or continuation of proceedings, exercise of rights and remedies, or interference with the rights of the Canadian Debtors;

(iii) appointing FTI Consulting Canada Inc. (“FTI”) as information officer in respect of these proceedings;

(iv) granting a Court-ordered charge over the assets and property of the Canadian Debtors to secure payment of the fees and disbursements of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer (the “Administration Charge”);

(v) granting a court-ordered charge over the assets and property of the Canadian Debtors to secure the DIP Facility (the “DIP Charge”); and

(vi) granting a Court-ordered charge over the assets and property of the Canadian Debtors to secure the indemnity obligations of the Canadian Debtors to their directors and officers in respect of the obligations and liabilities that such directors and officers may incur during these proceedings in their capacities as directors and officers (the “D&O Charge”).

[5] On May 28, 2024, I granted the orders sought with written reasons to follow. These are the reasons.

## **Background**

[6] In brief, Red Lobster is in the sea food restaurant business. It operates approximately 550 restaurants in locations across 44 states and 4 provinces in Canada; 27 of those restaurants are in Canada (20 in Ontario, 4 in Alberta, 2 in Saskatchewan and 1 in Manitoba).

[7] The Canadian restaurants are all operated through the Canadian Debtor, RL Canada. RL Canada is a Delaware corporation which, like the other Debtors, is a wholly owned subsidiary of RL Management. RL Hospitality is a limited liability company organized under the laws of Delaware. RL Hospitality is also a wholly owned subsidiary of RL Management. RL Hospitality is the registered owner of certain intellectual property in Canada.

[8] RL Canada has approximately 2,000 employees. Approximately 155 of these employees are unionized through collective bargaining units in place at two of RL Canada’s restaurants (one located in Ontario and one in Alberta). RL Management and RL Hospitality do not have any Canadian-based employees.



- [9] RL Canada owns two real property interests in Canada. The first is in Brantford, Ontario. The Brantford Property is used by RL Canada as the premises for a Red Lobster restaurant. RL Canada also owns a building improvement located on a property in Etobicoke, which RL Canada leases under a ground lease. The building on the Etobicoke Property is also used as a Red Lobster restaurant. The remaining Red Lobster restaurants in Canada also operate from leased premises. RL Canada is the lessee.
- [10] The evidence is that, as of the filing date, RL Canada is current in its employee compensation payments and in respect of all leasehold payments.
- [11] The Debtors' outstanding third-party funded debt obligations total approximately \$294 million. For today's purposes, the most relevant creditor is Fortress Credit Corp. which is owed about \$265 million. The outstanding obligations to Fortress are secured by a senior lien on substantially all of the Debtors' assets, including the assets of the Canadian Debtors.
- [12] Despite efforts to improve operations over the last twelve months, RL Group has continued to face significant liquidity and operational challenges. This has led to the closure of 93 restaurants in the United States prior to the Petition Date. As of the Petition Date, by book value, RL Canada had approximately USD \$62.5 million worth of assets, and total liabilities of approximately USD \$69.1 million, of which approximately USD \$8.2 million are current liabilities. The Debtors determined that a comprehensive operational restructuring and value maximizing sale inside of a Chapter 11 process would likely be the best possible alternative under the circumstances. Fortress has supported, and continues to support, this process.

### **Analysis**

- [13] The following issues need to be addressed:
- a. should the Chapter 11 Cases be recognized as "foreign main proceedings"?
  - b. should the Foreign Representative be granted the relief requested in the Orders, including:
    - i. granting the stay of proceedings in respect of the Canadian Debtors;
    - ii. recognition of certain First Day Orders, including the Interim DIP Order and related DIP Charge;
    - iii. appointment of FTI as Information Officer; and
    - iv. granting the Administration Charge and the D&O Charge.

### ***Foreign Main Proceeding***

- [14] Section 46(1) of the CCAA provides that a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which that person is a foreign representative. Section 46(2) of the CCAA provides that, where a foreign representative applies to the court for recognition of a foreign proceeding, such application must be accompanied by: (a) a certified copy of the instrument that commenced the foreign proceeding, (b) a certified copy of the instrument authorizing the foreign representative to act in that capacity, and (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.
- [15] Certified copies of the Foreign Representative Order and the Petitions filed by each of the Canadian Debtors have been filed in evidence. Further, the evidence also contains a statement identifying all foreign proceedings of the Debtors known to the Foreign Representative. Accordingly, all the technical requirements under s. 46(2) have been met.

- [16] Section 47 of the CCAA further provides that the Court shall make an order recognizing a foreign insolvency proceeding if the following two requirements are met:
- a. the application for recognition of a foreign proceeding relates to a “foreign proceeding” within the meaning of the CCAA; and
  - b. the applicant is a “foreign representative” within the meaning of the CCAA in respect of that foreign proceeding.
- [17] Both these requirements are also met.
- [18] Section 45(1) of the CCAA defines a “foreign proceeding” as any judicial proceeding in a jurisdiction outside of Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.
- [19] It is well accepted that proceedings under the Bankruptcy Code, under the supervision of a US bankruptcy court, satisfy the criteria of s. 45. Canadian courts have consistently recognized such proceedings to be “foreign proceedings” for the purposes of the CCAA. The Chapter 11 proceedings in this case are proceedings under the Bankruptcy Code, a law relating to bankruptcy or insolvency, and are subject to the supervision of the US Court, a US bankruptcy court, for the purposes of reorganization. The Chapter 11 proceedings are, therefore, “foreign proceedings” for the purposes of the CCAA.
- [20] The Canadian Debtors are also debtor companies within the meaning of the CCAA. The definition of “debtor company” in the CCAA includes any company “that is insolvent.” Under the CCAA, a company includes any company having assets or doing business in Canada. The Canadian Debtors have assets and/or conduct business in Canada. At the Petition Date, the Debtors were facing a looming liquidity crisis and/or had material amounts of indebtedness in arrears or had liabilities in excess of their assets and were thus insolvent for the purposes of the CCAA.
- [21] The second requirement is that RL Management be a “foreign representative”. The CCAA defines a “foreign representative” as:
- a person or body, including one appointed on an interim basis, who is authorized in a foreign proceeding in respect of a debtor company, to (a) monitor the debtor’s business and financial affairs for the purpose of a reorganization, or (b) act as a representative in respect of the foreign proceeding.
- [22] RL Management was appointed by the US Court to act as a representative of the Debtors in respect of the Chapter 11 proceedings and with respect to this recognition proceeding by way of the Foreign Representative Order. Therefore, RL Management meets the CCAA definition of a “foreign representative” in respect of the foreign proceeding.
- [23] If the Court grants an order under s. 47(1) of the CCAA, s. 47(2) requires that the Court specify whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.”
- [24] Section 45(1) of the CCAA provides that a “foreign main proceeding” is a foreign proceeding in a jurisdiction where the debtor company has the “centre of its main interests” (“COMI”). While the CCAA does not define what constitutes a debtor’s COMI, under s. 45(2) of the CCAA, in the absence of proof to the contrary, a debtor company’s COMI is presumed to be the location of its registered office. The registered offices of RL Management, RL Canada and RL Hospitality are all in Orlando, Florida. As a result, the Canadian Debtors’ presumed COMI is the US, and the Chapter 11 proceedings should be recognized as “foreign main proceedings”.

- [25] Further, it is clear that the operational realities of the Canadian Debtors are such that the COMI for each of them is, in fact, in the US:
- a. the Debtors are all Delaware incorporated companies or Delaware limited liability companies;
  - b. the RL Group's senior leadership, including the sole director, chief executive officer and chief restructuring officer are located in the US and such senior leadership exercises primary strategic management and control of the corporate group, including each of the Canadian Debtors;
  - c. all of the Debtors' outstanding secured indebtedness has been advanced by US-based lenders and the related loan documentation is governed by US law; and
  - d. Red Lobster's overall financial position is managed on a consolidated basis, principally from its US head office.

[26] In the US Foreign Representative Order, the US Court specifically requested the aid and assistance of the Canadian court to recognize the Chapter 11 proceedings as a "foreign main proceeding" and RL Management as a "foreign representative pursuant to the CCAA."

[27] The granting of these orders is supported by the proposed Information Officer.

[28] I find that the RL Group is a highly integrated corporate group managed out of the US. RL Canada and the other Canadian Debtors are incorporated and headquartered in the United States and rely on centralized management from RL Group's US offices. For these principal reasons, this court recognizes the Chapter 11 proceedings as "foreign main proceedings".

### ***The Stay of Proceedings***

[29] Section 48(1) of the CCAA requires the court to grant mandatory relief once a proceeding is found to be a foreign main proceeding, including:

- a. staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- b. restraining until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
- c. prohibiting, unless otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
- d. prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

[30] The Initial Recognition Order sought by the Foreign Representative is based on the court's Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all the relief required by s. 48 of the CCAA. Similarly, the proposed Supplemental Order is based on the court's Model CCAA Supplemental Order (Foreign Main Proceeding) and provides for a broad stay of proceedings, similar to that provided to CCAA debtors in plenary proceedings, in respect of the Canadian Debtors and their directors and officers in Canada.

[31] The request for the stay is supported by the proposed Information Officer.

[32] I find that the requested stay of proceedings is necessary and appropriate to give effect in Canada to the stay of proceedings granted by the US Court and to preserve and protect the value of the Canadian Business while the Debtors pursue a sale of the business as a going concern in the Chapter 11 proceedings.

### ***Recognition of the First Day Orders***

[33] Section 49 of the CCAA grants this court broad discretion to make any order necessary for the protection of the debtor company's property or the interests of a creditor or creditors. 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. 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. In this case, the Foreign Representative is seeking, within the Supplemental Order, recognition of First Day Orders which are administrative and procedural in nature, as well as the Interim DIP Order (which I will deal with separately below).

[34] In *Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238, Justice Hainey observed that the central principle governing Part IV of the CCAA is comity, which mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness. He went on to state that Canadian courts have emphasized the importance of comity and cooperation in cross-border insolvency proceedings to avoid multiple proceedings, inconsistent judgments and general uncertainty. "Coordination of international insolvency proceedings is particularly critical in ensuring the equal and fair treatment of creditors regardless of their location", at para. 42.

[35] The First Day Orders include: (i) the Foreign Representative Order, (ii) the Wages and Benefits Order, (iii) the Insurance Order, (iv) the Customer Program Order, (v) the Cash Management Order, (vi) the Tax Order, (vii) the Utilities Order, and (viii) the OCB Payment Order.

[36] These Administrative Orders are generally in line with the type of relief granted at the outset of Canadian CCAA proceedings. They are supported by the proposed Information Officer.

[37] I am satisfied that the First Day Orders should be recognized in these Canadian Part IV proceedings. I come to this conclusion for the following reasons:

a. the US Court has appropriately taken jurisdiction over the Chapter 11 proceedings. Comity will be furthered by this court's recognition of and support for the Chapter 11 proceedings already underway in the US;

b. coordination of proceedings in Canada and the US will ensure equal and fair treatment of all stakeholders, whether they are in the US or Canada;

c. given the close connection between the Canadian Business and the business of the RL Group in the US, it is "reasonable and "sensible" for the US Court to have principal control over the insolvency process. 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 (discussed below) for their restructuring. 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; and

e. the Canadian Business and US operations of Red Lobster are highly intertwined.

### *Interim DIP Financing*

- [38] The Debtors are facing a liquidity crisis and require DIP financing to fund their operations while pursuing a restructuring. Immediately prior to commencing the Chapter 11 proceedings, the Debtors (i) finalized a DIP financing facility (the “DIP Facility”) governed by a Secured Superpriority DIP Financing Agreement (the “DIP Credit Agreement”) by and among RL Management and each of its subsidiaries listed as a borrower or guarantor, including RL Canada and RL Hospitality, and the lenders (the “DIP Lenders”) as represented by Fortress.
- [39] The DIP Credit Agreement provides for an extension of credit not to exceed the principal amount of \$275,000,000, which is comprised of: (i) \$100,000,000 of new money that the Debtors require for the continued operation of their business during the Chapter 11 proceedings (the “New Money Advances”), plus (ii) a \$175,000,000 “roll-up” of Prepetition Term Loan Obligations.
- [40] The first \$40,000,000 of the new money being advanced to the Debtors under the DIP Credit Agreement was made available upon entry of the Interim DIP Order. The second \$60,000,000 of new money shall be made available upon entry of a final order providing the authorizations included in the Interim DIP Order on a final basis (the “Final DIP Order”). \$70,000,000 of Prepetition Term Loan Obligations (as defined in the Interim DIP Order) were deemed funded under the DIP Facility upon entry of the Interim DIP Order and upon each draw on the DIP Facility prior to entry of the Final DIP Order. A further \$105,000,000 of Prepetition Term Loan Obligations shall be deemed funded upon entry of the Final DIP Order and upon funding of the remaining amounts under the DIP Facility. Importantly, it is a requirement of the DIP Credit Agreement that the Interim DIP Order be recognized by the Court within seven business days of its granting.
- [41] Canadian courts have observed that in a plenary CCAA proceeding, a roll-up or partial rollup of the nature described above would not be permitted by operation of s. 11.2, which provides that a financing charge may not secure an obligation that exists before the order is made.
- [42] Canadian courts have, however, recognized orders approving DIP facilities by US courts in a foreign proceeding that include a roll-up provision. In doing so, our courts have emphasized the importance of comity in foreign recognition proceedings. In the leading case, *Hartford Computer Hardware Inc., Re*, Justice Morawetz (as he was then) observed:
- The Information Officer and Chapter 11 Debtors recognize that in CCAA proceedings, a partial “roll-up” provision would not be permissible as a result of section 11.2 of the CCAA, which expressly provides that a DIP charge may not secure an obligation that exists before the Initial Order is made. [...] A significant factor to take into account is that the DIP Facility was granted by the US Court. In these circumstances, I see no basis for this court to second guess the decision of the US Court.
- [43] This reasoning has been adopted, and similar orders made, in several subsequent cases, including, *Hollander, Xinergy Ltd.*, and *Instant Brands Acquisition Holdings Inc. et al.* As the cases make clear, the test for recognition of such DIP orders is not whether an identical order could be made in a plenary CCAA proceeding but, rather, would recognition of such an order be contrary to the public policy of Canada. Contrary to public policy, in this context, is to be construed narrowly, and requires more than the mere fact that such an order would be prohibited in a Canadian CCAA proceeding.
- [44] In *Re Payless Holdings LLC*, also a proceeding under Part IV of the CCAA, this Court declined to recognize a US order which approved a DIP facility containing roll-up features and declined to order a related DIP charge. Recognition of the US order had been opposed by Canadian landlords on the basis that they were uniquely prejudiced by its terms. The court agreed with the landlords and declined the order because:

(a) the Canadian debtor companies were not insolvent, were not borrowers or guarantors under the prepetition facility and had never previously granted security, and

(b) there was evidence of material prejudice to Canadian creditors. The landlords opposed the recognition of the DIP order because they were being uniquely disadvantaged.

[45] This is not the case here. In my view, the recognition of the Interim DIP Order furthers the objectives of the CCAA, does not materially prejudice Canadian creditors and is not contrary to Canadian public policy. I come to these conclusions for the following reasons:

a. The Debtors require critical funding in order to avoid liquidation and pursue a going concern solution for their business, including the Canadian Business.

b. Although not a borrower under the DIP Facility, RL Canada is deeply integrated into the larger corporate group relying on back office and other forms of critical support from RL Management and other Debtors. Thus, the funding directly benefits RL Canada and its stakeholders in Canada including suppliers, customers, landlords, taxing authorities and the broader economic community.

c. The DIP Facility is the only basis upon which the Prepetition Term Loan Lenders were willing to make further loans to the Debtors and recognition of the Interim DIP Order by this Court is a requirement under the DIP Credit Agreement. Specific findings of the US Court support the necessity and good faith nature of this requirement in the circumstances.

d. The Interim DIP Order approves funding on an interim basis only, with restrictions on initial funding and amounts that are permitted to be rolled up.

e. The Interim DIP Order provides for a “challenge period” which expires on the earlier of (i) 60 calendar days after the Petition Date, and (ii) the date established by the US Court for submission of qualified bids to purchase the Debtors’ assets; thus there is an existing mechanism that allows parties in interest to raise concerns regarding the DIP Facility, including with respect to the roll-up provisions.

f. As confirmed by the opinion of independent counsel to the proposed Information Officer regarding the security registered pursuant to the Prepetition Term Loan Credit Agreement, the DIP Facility, to the extent that it constitutes a roll-up, is supported by the same asset base as was the Prepetition Term Loan Obligations and, accordingly, creditors of RL Canada are not materially prejudiced or put in a relatively worse off position than they already are by granting the roll up relief.

g. Importantly, the proposed Supplemental Order provides that, unlike the balance of the Canadian Debtors’ property in Canada already subject to the Fortress pre-petition security, what is defined as the “Unencumbered Property” (that is, the property interests owned by RL Canada in Brantford and Etobicoke, which was not subject to the pre-petition security) will not secure all obligations under the DIP Facility. Rather, the Unencumbered Property will only secure the New Money Advances under the DIP Facility. This is further support for the proposition that the collateral position of unsecured creditors remains unchanged with respect to the roll-up aspects of the DIP Facility in this case.

h. There is a significant new money component to the DIP Facility, in the amount of \$100,000,000. This component is not marginal or incremental. Rather, it is substantial and meaningful and is critical to facilitating a going concern solution for the Canadian Business.

[46] The granting of the Interim DIP Order is supported by the proposed Information Officer.

[47] The Interim DIP Order is granted.

### ***Administration Charge***

[48] The proposed Supplemental Order provides that Canadian counsel to the Canadian Debtors, the Information Officer, and counsel to the Information Officer will be granted a charge in the maximum amount of CDN \$1 million over the assets and property of the Canadian Debtors to secure the fees and disbursements of these professionals which are incurred in these recognition proceedings. The proposed Administration Charge does not extend to the assets or property of any of the Debtors that are not Canadian Debtors and covers only the Canadian Debtors' property in Canada. The Administration Charge is proposed to rank in priority to all other encumbrances in respect of the Canadian Debtors. The proposed Information Officer and Fortress support granting this charge.

[49] This Court commonly grants administration charges to secure obligations owing to the debtor's counsel and the information officer and its counsel in the context of Part IV proceedings. It is appropriate to do so here. The proposed Information Officer assisted in determining the quantum of the Administration Charge. The amount of the Administration Charge is reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of Canadian counsel to the Debtors and the Information Officer and its counsel.

### ***D&O Charge***

[50] The proposed Supplemental Order also provides for a charge on the Canadian Debtors' Collateral in favour of the Canadian Debtors' directors and officers in the maximum amount of CDN \$3.4 million. The D&O Charge would be subordinate to the proposed Administration Charge and DIP Charge but rank in priority to all other encumbrances.

[51] In light of the potential liabilities, the potential insufficiency of available insurance, and the need for the continued service of the director and officers of the Canadian Debtors in these proceedings, I find that the D&O Charge is reasonable and appropriate. The proposed Information Officer assisted in determining the quantum of the D&O Charge and it is supported by evidence of the likely nature and size of the potential liabilities.

[52] The D&O Charge is granted.

### ***The Information Officer***

[53] Last but by no means least, there is the question of the appointment of an information officer. Although the CCAA does not require that an information officer be appointed, a practice has developed whereby the court appoints an information officer (typically a financial advisory firm that is a licensed insolvency trustee) under its discretionary powers, to assist the court and keep the court apprised of the status of the foreign proceedings. FTI Consulting Canada Inc. has consented to act in this capacity and has the obvious capacity, skill and experience to do so. It has no conflicts that would interfere with this mandate.

[54] I accept that there is good reason to appoint FTI as the Information Officer in this case, to ensure that the court is kept apprised of the status of the Chapter 11 proceedings by an independent third-party licensed insolvency professional and to assist in providing information to and responding to inquiries from interested parties in Canada.

[55] The request to appoint FTI as Information Officer in these proceedings is granted.

[56] I will add that Mr. Kranc was asked to attend on behalf of a group of investors who lease property to Red Lobster in Peterborough, Ontario. He simply advised that this group had only been served on the weekend

and had not yet had the ability to seek advise from legal counsel. Mr. Kranc enquired about the possibility of an adjournment. Mr. Rogers was able to direct me to para. 39 of the Supplemental Order which provides that “any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Canadian Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.” On the strength of this provision, I ruled that the application would proceed and that the Peterborough landlord was, if so advised, at liberty to come back to court under the provisions of para. 39.

A handwritten signature in blue ink, appearing to read "Penny J.", with a stylized initial "P" and a trailing period.

Penny J.



# APPENDIX D

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

**Red Lobster Management LLC, Red Lobster Hospitality LLC,  
and Red Lobster Canada, Inc.**

**PRE-FILING REPORT OF FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS PROPOSED INFORMATION OFFICER**

**May 27, 2024**

**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**

**PRE-FILING REPORT OF FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS PROPOSED INFORMATION OFFICER**

**A. INTRODUCTION**

1. On May 19, 2024 (the “**Petition Date**”), Red Lobster Management LLC (“**RL Management**”) and certain of its affiliates (collectively, the “**Debtors**”), including Red Lobster Hospitality LLC (“**RL Hospitality**”) and Red Lobster Canada, Inc. (“**RL Canada**”, and together with RL Management and RL Hospitality, the “**Canadian Debtors**”) filed voluntary petitions for relief (collectively, the “**Petitions**” and each a “**Petition**”) in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division (the “**U.S. Bankruptcy Court**”) under chapter 11 of title 11 of the United States Code (the “**U.S. Bankruptcy Code**”). The proceedings before the U.S. Bankruptcy Court commenced by the Petitions are hereinafter referred to as the “**Chapter 11 Cases**”.
2. The purpose of the Chapter 11 Cases and the proposed Canadian recognition proceedings (the “**Recognition Proceedings**”) is to provide a stabilized environment for the Debtors to continue to operate in the normal course while they implement an orderly restructuring for the benefit of all parties in interest, which will include a sale of some, all, or substantially

all of certain aspects of the business and otherwise wind-down the remaining business as contemplated in the RSA (defined below).

3. In its capacity as the then-proposed foreign representative of the Debtors in the Chapter 11 Cases (the “**Foreign Representative**”), RL Management sought and, on May 21, 2024, obtained an order (the “**Interim Stay Order**”) under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and section 106 of the *Courts of Justice Act* (Ontario) from the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”). Among other things, the Interim Stay Order granted an interim stay of proceedings in favour of the Canadian Debtors and their respective businesses, current and future assets, undertakings, and properties, and former, current, and future directors and officers. A copy of the Interim Stay Order is attached as **Appendix “A”**.
4. Several first day motions filed by the Debtors in the Chapter 11 Cases (collectively, the “**First Day Motions**”) for various orders (collectively, the “**First Day Orders**”) were heard before the U.S. Bankruptcy Court on May 21, 2024 (the “**First Day Hearing**”). Following the First Day Hearing, the U.S. Bankruptcy Court granted a number of First Day Orders. Of those First Day Orders, the Foreign Representative will seek recognition of the following under Part IV of the CCAA:
  - (a) *Order Authorizing Red Lobster Management LLC to Act as Foreign Representative of the Debtors* (the “**Foreign Representative Order**”);
  - (b) *Interim Order 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 “**Wages and Benefits Order**”);
  - (c) *Order Authorizing Debtors to (I) Continue to Administer Insurance Policies, Surety Bonds and Related Agreements, (II) Honor Certain Obligations in Respect Thereof; and (III) For Related Relief* (“**Insurance Order**”);

- (d) *Order (I) Authorizing Debtors to (A) Maintain and Administer Prepetition Customer Programs, Promotions and Practices and (B) Honor Prepetition Obligations Related Thereto and (II) Granting Related Relief (“Customer Program Order”);*
  - (e) *Interim Order (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 “Cash Management Order”);*
  - (f) *Interim Order Authorizing Debtors to Pay Prepetition Sales, Use, Trust Fund, Property, Foreign and Other Taxes and Similar Obligations (the “Tax Order”);*
  - (g) *Order Pursuant to 11 U.S.C. §§ 105(a) and 366(b) and Local Rule 2081-1(g)(7): Prohibiting Utilities from Altering, Refusing or Discontinuing Services, (II) Deeming Utilities Adequately Assured of Future Performance, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (VI) Granting Related Relief (the “Utilities Order”);*
  - (h) *Order (I) Authorizing Debtors to Pay Certain Section 503(b)(9) Claims in the Ordinary Course of Business, and (II) Granting Related Relief (the “OCB Payment Order”); and*
  - (i) *Interim Order (I) Approving Postpetition Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “Interim DIP Order”).*
5. This report (the “**Pre-Filing Report**”) has been filed by FTI Canada Consulting Inc. (“**FTI**”), as the proposed information officer (in such capacity, the “**Proposed**

**Information Officer**”) in these Recognition Proceedings. The purpose of this Pre-Filing Report is to provide the Canadian Court with the following:

- (a) certain background information concerning the Debtors, including the Canadian Debtors, the Chapter 11 Cases, and these Recognition Proceedings;
- (b) the qualifications of FTI to act as the information officer in these Recognition Proceedings (if appointed in such capacity, the “**Information Officer**”);
- (c) the Proposed Information Officer’s views regarding the Foreign Representative’s application for an order (the “**Initial Recognition Order**”), among other things:
  - (i) recognizing the Chapter 11 Cases as a “foreign main proceeding” in respect of the Canadian Debtors and RL Management as the “foreign representative” in respect of the Chapter 11 Cases (if recognized in such capacity, the “**Foreign Representative**”), as such terms are defined in section 45 of the CCAA; and
  - (ii) declaring that the Interim Stay Order shall be of no further force or effect upon the granting of the Initial Recognition Order and the Supplemental Order (defined below); and
- (d) the Proposed Information Officer’s views regarding the Foreign Representative’s application for an order (the “**Supplemental Order**”), among other things:
  - (i) recognizing certain of the First Day Orders;
  - (ii) granting a stay of proceedings in favour of the Canadian Debtors and their respective businesses, current and future assets, undertakings, and properties, and former, current, and future directors and officers;
  - (iii) granting a charge (the “**Administration Charge**”) on the Canadian Debtors’ property in Canada in favour of Canadian counsel to the Foreign Representative and the Canadian Debtors, the Information Officer, and counsel to the Information Officer, up to a maximum amount of CAD \$1

million, as security for their respective professional fees and disbursements incurred in respect of these Recognition Proceedings both before and after the date of the proposed Supplemental Order;

- (iv) granting a charge (the “**DIP Charge**”) on the Canadian Debtors’ property in Canada in favour of the DIP Lenders (defined below) to secure the obligations outstanding from time to time under the DIP Credit Agreement (defined below);
- (v) granting a charge (the “**D&O Charge**”) on the Canadian Debtors’ property in Canada in favour of the directors and officers of RL Canada, up to a maximum aggregate amount of CAD \$3.4 million, as security for RL Canada’s indemnification obligations under the proposed Supplemental Order; and
- (vi) appointing FTI as the Information Officer.

## **B. TERMS OF REFERENCE**

6. In preparing this Pre-Filing Report, the Proposed Information Officer has relied upon unaudited financial information prepared by the Debtors and their representatives, the Debtors’ books and records, and discussions with Canadian counsel to the Foreign Representative and the Canadian Debtors (collectively, the “**Information**”).
7. Except as described in this Pre-Filing Report:
  - (a) the Proposed Information Officer has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Canadian Auditing Standards pursuant to the *Chartered Professional Accountants of Canada Handbook* (the “**Handbook**”) and, accordingly, the Proposed Information Officer expresses no opinion or other form of assurance in respect of the Information; and

- (b) the Proposed Information Officer has not examined or reviewed forecasts and projections referred to in this Pre-Filing Report in a manner that would comply with the procedures described in the Handbook.
8. Future oriented financial information reported in or relied on in preparing this Pre-Filing Report is based on the assumptions and estimates of the Debtors' management. Actual results may vary from such information and these variations may be material.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in United States ("U.S.") dollars. Capitalized terms used but not defined herein have the meanings given to them in the Supplemental Affidavit of Jonathan Tibus sworn May 24, 2024 (the "**Supplemental Tibus Affidavit**") or the Declaration of Jonathan Tibus in Support of the Debtors' Chapter 11 Petitions and First Day Relief dated May 19, 2024 attached (without exhibits) as Exhibit "A" thereto (the "**Tibus Declaration**"), as applicable.

**C. FTI'S QUALIFICATIONS TO ACT AS THE INFORMATION OFFICER**

10. FTI is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended. FTI has consented to act as the Information Officer if the Court grants the Initial Recognition Order and Supplemental Order sought by the Foreign Representative. A copy of FTI's consent to act is attached as **Appendix "B"**.
11. FTI personnel are familiar with the business and operations of the Debtors, including the Canadian Debtors, and the key issues and stakeholders in these Recognition Proceedings. Further, FTI has substantial experience in domestic and cross-border restructuring proceedings under the CCAA, including experience acting as the court-appointed information officer in other complex mandates.
12. FTI has searched its conflicts database in accordance with its usual practice and internal policies. FTI is not aware of any conflict of interest that would prevent it from acting as the Information Officer in these Recognition Proceedings.



## **D. BACKGROUND**

13. A detailed description of the Debtors, including the Canadian Debtors, their businesses, corporate structure, prepetition capital structure and indebtedness, and the events preceding the Chapter 11 Cases and these Recognition Proceedings is provided in the Supplemental Tibus Affidavit and Tibus Declaration. Certain of such information is summarized below.

### **Overview of the Debtors and Their Business**

14. Red Lobster was founded in the U.S. in 1968 and expanded into Canada in 1983. Today, Red Lobster is an iconic seafood restaurant chain with nearly 580 owned restaurants in the U.S. and Canada plus 27 franchised locations in other countries. As of 2020, RL Group's ultimate equity holders are Thai Union, former members of the Red Lobster management team, and certain investors operating under the name Seafood Alliance.
15. Red Lobster's organizational structure consists of more than 30 entities, of which 15 are the Debtors in the Chapter 11 Cases, including the three Canadian Debtors. The organizational chart for the RL Group, excerpted from the Tibus Declaration, is attached as **Appendix "C"** to this Pre-Filing Report.
16. As illustrated in Appendix "C", the Debtors consist of RL Management and its direct and indirect U.S. subsidiaries (excluding certain foreign entities), all of which are incorporated or established under the laws of the U.S. The Canadian Debtors, which are each limited liability companies or corporations formed in Delaware, consist of RL Management and two of its wholly-owned, direct subsidiaries, RL Hospitality and RL Canada. The Canadian operations of the RL Group are undertaken through RL Canada using certain trademarks owned by RL Hospitality and registered in Canada and other jurisdictions.
17. As of the Petition Date, RL Group operated approximately 551 restaurant locations across 44 U.S. states and 27 restaurant locations across four Canadian provinces. Of the Canadian restaurants, there are 20 in Ontario, four in Alberta, two in Saskatchewan, and one in Manitoba. With the exception of the Brantford Property (defined below) and Etobicoke

Building (defined below), RL Canada leases the premises for all of its restaurants. As of the Petition Date, RL Canada was current on all obligations to its lessors.

18. Also as of the Petition Date, the RL Group employed approximately 36,000 employees worldwide, approximately 2000 of which are in Canada. RL Canada employs all of the Canadian employees,<sup>1</sup> most of whom serve in part-time roles. Of those employees, approximately 67% are in Ontario, 20% in Alberta, 7% in Saskatchewan, and 6% in Manitoba (such Provinces being, collectively, the “**Relevant Provinces**”).
19. The majority of the Canadian employees are non-unionized, with the exception of the approximately 155 employees at the restaurants located in Burlington, Ontario and Edmonton, Alberta who are unionized pursuant to two separate collective bargaining agreements with RL Canada.
20. RL Canada does not sponsor or maintain a pension plan for any of its Canadian employees. RL Canada’s unionized and non-unionized employees are, however, entitled to certain other benefits, including, without limitation, medical, dental, life insurance, and short term disability. Certain employees are also eligible to participate in a company-sponsored registered retirement savings plan and an EBITDA-based bonus plan.
21. RL Canada employees are paid in arrears. As of the Petition Date, RL Canada was current on all Canadian payroll obligations and source deductions.
22. RL Canada does not have independent operational, financial, or marketing resources and relies on RL Management and other Debtors to fulfill these and other functions. RL Canada could not continue to operate its restaurants without these functions, and it would not be practical for RL Canada to develop such independent functions in the circumstances.

---

<sup>1</sup> For clarity, RL Management and RL Hospitality do not employ any of the Canadian workforce.

## Financial Overview

23. Standalone audited financial statements are not prepared on behalf of RL Canada in relation to RL Group’s business in Canada (the “**Canadian Business**”). Rather, financial statements for the RL Group are prepared on a consolidated basis.
24. As of the Petition Date, by book value, RL Canada had approximately USD \$62.5 million worth of assets, and total liabilities of approximately USD \$69.1 million, of which approximately USD \$8.2 million are current liabilities. These figures exclude RL Canada’s contingent obligations as a guarantor of the obligations under the Pre-petition ABL Facility and the Pre-petition Term Loan Facility.

## The Debtors’ Pre-Petition Funded Indebtedness

### *Secured Debt Obligations*

25. As of the Petition Date, the Debtors’ funded, secured indebtedness totaled approximately USD \$294 million in the aggregate. As set out in the Supplemental Tibus Affidavit and the Tibus Declaration, the Debtors’ pre-petition secured debt obligations consist of:

**Table 1**

Funded Secured Debt	Maturity	Approximate Balance
Pre-petition ABL Facility (Outstanding Letters of Credit)	January 2025	USD \$29,276,399
Pre-petition Term Facility	January 2026	USD \$264,720,000
	<b>Total</b>	<b>USD \$293,996,399</b>

26. As set forth in the Supplemental Tibus Affidavit, the Debtors’ secured debt facilities, listed above in **Table 1**, can be described as follows:

- (a) *Pre-petition ABL Facility (Outstanding Letters of Credit)* – The Debtors have an asset-based loan facility (the “**Pre-petition ABL Facility**”) in place with an aggregate commitment of USD \$100 million, including a USD \$40 million sublimit for letters of credit. The administrative agent under the ABL Facility is Wells Fargo Bank, National Association (“**Wells Fargo**”). As of the Petition Date, no loans are outstanding under the ABL Facility. However, Wells Fargo has issued letters of credit with an aggregate face amount of approximately USD \$29.3 million which remain outstanding.<sup>2</sup> The outstanding obligations under the Pre-petition ABL Facility are secured by a charge on substantially all of the Debtors’ assets, including certain cash collateral accounts held by Wells Fargo. Pursuant to an intercreditor agreement between Wells Fargo and the Pre-petition Term Loan Agent, Wells Fargo has a senior lien on certain assets (e.g. cash, cash accounts, inventory and credit card receivables) (the “**ABL Priority Collateral**”) and the Pre-petition Term Loan Agent (defined below) has a senior lien on all other assets of the Debtors; and
- (b) *Pre-petition Term Facility* – On January 22, 2021, RL Management as administrative borrower, RL Hospitality and RL Canada as guarantors,<sup>3</sup> Fortress Credit Corp. (“**Fortress**”) as administrative and collateral agent (in such capacities, “**Pre-petition Term Loan Agent**”), and Fortress as lender and certain other lenders (collectively, “**Pre-petition Term Loan Lenders**”) entered into a financing agreement (as amended, amended and restated, supplemented, or modified, the “**Pre-petition Term Loan Agreement**”). Pursuant to the Pre-petition Term Loan Agreement, Fortress and the other Pre-petition Term Loan Lenders severally agreed to extend credit to RL Management by way of a term loan with a maturity date of January 22, 2026 (the “**Pre-petition Term Loan Facility**”). Pursuant to Article XI of the Pre-petition Term Loan Agreement, the remaining Debtors (including RL

---

<sup>2</sup> As set forth in the Supplemental Tibus Affidavit, there are also approximately USD \$1.1 million of outstanding obligations in connection with a commercial card agreement (or “p-card” agreement) between Wells Fargo and the Debtors.

<sup>3</sup> As set forth in the Supplemental Tibus Declaration, the other parties to the Pre-petition Term Loan Agreement include each of the remaining Debtors as guarantors with the exception of Red Lobster International Holdings LLC (“**Holdings**”), the direct parent of RL Management, which does not own any assets other than the membership interests of RL Management.

Hospitality and RL Canada)<sup>4</sup> (the “**Pre-petition Term Loan Guarantors**”) jointly and severally guaranteed the payment when due of all present and future obligations of RL Management under the Pre-petition Term Loan Agreement.

- (c) As of the petition date, the aggregate principal amount outstanding under the Pre-petition Term Loan Agreement totaled approximately USD \$264.7 million. As security for the payment and performance of all their obligations under the Pre-petition Term Loan Agreement, RL Management and the Pre-petition Term Loan Guarantors (including RL Hospitality and RL Canada) granted to Fortress, as Pre-Petition Term Loan Agent, a security interest in all of their present and future personal property pursuant to a pledge and security agreement dated as of January 22, 2021 (the “**Pre-Petition Security Agreement**”). As set forth in the Supplemental Tibus Affidavit, said security interest constitutes a senior lien on substantially all of the Debtors’ assets, other than the ABL Priority Collateral, over which such obligations are secured by a secondary lien.

### *Payoff Letter*

27. As set out in the Supplemental Tibus Affidavit, Wells Fargo, the Pre-petition Term Loan Lenders, and the Debtor have entered into a payoff letter dated as of May 17, 2024 (the “**Payoff Letter**”) in connection with the proposed debtor-in-possession (“**DIP**”) facility discussed in the Supplemental Tibus Affidavit and below. The Payoff Letter provides that, in connection with the Debtors’ commencement of the Chapter 11 Cases and entry into the proposed DIP Facility (as defined below), the Debtors will make certain payments to Wells Fargo in exchange for the release of certain liens in favour of Wells Fargo other than with respect to the certain specified obligations set out in the Payoff Letter.

### *Liens Registered Against the Canadian Debtors*

28. In anticipation of these Recognition Proceedings, the Proposed Information Officer retained Fasken Martineau DuMoulin LLP (“**Fasken**”) to, among other things, review the

---

<sup>4</sup> But excluding Holdings.

Pre-petition Security Agreement and the personal property security registrations made in favour of Fortress (as Pre-petition Term Loan Agent) against the Canadian Debtors in the Relevant Provinces. For this purpose, Fasken has retained MLT Aikins LLP (“**MLTA**”) on behalf of the Proposed Information Officer to act as local counsel in Manitoba and Saskatchewan.

29. Searches of the personal property security registries in the Relevant Provinces conducted by Fasken and MLTA returned with currency dates of May 23 or 24, 2024 disclose the following:
  - (a) *RL Management* – there are no registrations against RL Management in any of the Relevant Provinces;
  - (b) *RL Hospitality* – there is one registration in Ontario against RL Hospitality in favour of Fortress as collateral agent in respect of collateral classifications “Accounts” and “Other”; there are no other registrations against RL Hospitality in any of the other Relevant Provinces; and
  - (c) *RL Canada* – there are registrations in all Relevant Provinces against RL Canada in favour of Fortress as collateral agent in respect all present and after-acquired personal property; there are also third-party registrations (the “**Third Party Registrations**”) against RL Canada in Alberta and Ontario in favour of Enterprise Fleet Management Canada, Inc., ITW Canada Inc., and Hobart Food Equipment Group Canada (collectively the “**Third-Party Registrants**”); there are no other registrations against RL Canada in the Relevant Provinces.
30. The Third Party Registrations all appear to be in regard to specific equipment. Each of the Third-Party Registrants has been served with the Canadian Debtors’ application for the Initial Recognition Order and the Supplemental Order.
31. While Wells Fargo appears to have had a financing statement registered in Ontario against RL Canada and RL Management in respect of all their present and after-acquired personal property, those registration were discharged as of May 24, 2024.

32. Fasken (in respect of personal property security interests governed by the laws of Alberta and Ontario) and MLTA (in respect of personal property security interests governed by the laws of Manitoba and Saskatchewan) each provided an opinion dated May 27, 2024 which, as applicable and subject to the standard assumptions and qualifications contained therein, concludes that (a) the Pre-petition Security Agreement granted by the Canadian Debtors in favour of Fortress, being the Pre-petition Term Loan Agent creates a valid security interest in the Canadian Debtors' assets situated in the Relevant Provinces; and (b) the security granted by RL Canada is registered in all public offices provided for under the laws of the Relevant Provinces and the federal laws of Canada applicable therein where such registration is necessary to preserve, protect, or perfect the security created by the Pre-petition Security Agreement in favour of Fortress in the assets of RL Canada described therein; and (c) the security granted by RL Hospitality is registered in all public offices provided for under the laws of the Province of Ontario and the federal laws of Canada applicable therein where such registration is necessary to preserve, protect, or perfect the security created by the Pre-petition Security Agreement in favour of Fortress in the assets of RL Hospitality described therein which are captured by the collateral classifications "Accounts" and "Other" under the *Personal Property Security Act* (Ontario) and the registry system maintained for the purposes thereof.

### ***Unsecured Debt Obligations***

33. The Canadian Debtors have no funded unsecured debt. In the ordinary course, RL Canada incurs trade debt with certain vendors and suppliers in connection with the operation of the Canadian Business. As of the Petition Date, RL Canada had approximately USD \$4.1 million of accounts payable owing of which USD \$2.3 million was then past due. RL Canada also incurs obligations in the ordinary course in relation to gift cards and customer programs.

### **The Debtors' Cash Management System and Ordinary Course Intercompany Transfers**

34. As described in the Tibus Supplemental Affidavit and the Tibus Declaration, the Debtors maintain a cash management system with three primary categories of bank account: (a) the Depository Accounts into which the cash proceeds from the Debtors' operations are



deposited; (b) the Operating Accounts where the deposits from the Depository Accounts are channeled, and (c) the Disbursement Accounts where funds from the Operating Accounts are transferred from time to time for the purpose of making disbursements (collectively, the “**Cash Management System**”). On average, approximately USD \$20 million in receipts and disbursements flows through the Cash Management System each banking day.

35. The 32 Canadian Accounts which comprise the Cash Management System in Canada are all in the name of RL Canada and held at Royal Bank of Canada. They include the Canada Master Concentration Account, 27 Restaurant Depository Accounts, a Credit Card Account, a Payroll Account, a Liquor Account, and an Investment Account. Particulars of the Canadian Accounts, including their respective balances as of the Petition Date, are provided in the Supplemental Tibus Affidavit.
36. Intercompany transactions occur frequently between the accounts held by Red Lobster Restaurants LLC, RL Management, and RL Canada, each to cover funding needs and operational expenditures as they come due in the ordinary course. Each intercompany transaction results in an accompanying bookkeeping entry reflecting a claim for the amounts owed to or by each Debtor.
37. As discussed below, the Foreign Representative is seeking recognition of the Cash Management Order to ensure that the Debtors, including the Canadian Debtors, are able to continue to utilize the Cash Management System and engage in intercompany transactions in the ordinary course. The Proposed Information Officer understands that RL Canada, which operates the Canadian business of the RL Group and holds substantially all of the property used in the Canadian operations, has historically been cash flow positive and balances in its accounts have been periodically swept into the Cash Management System. The Proposed Information Officer also understands that RL Canada is expected to remain cash flow positive during the Chapter 11 Cases. Whereas the Proposed Information Officer has been informed that there is no present intention to continue such cash sweeps during the Chapter 11 Cases, the Proposed Information Officer has been told that cash sweeps

from RL Canada may occur if performance during the Chapter 11 Cases differs from what is presently expected.

**E. THE CENTRE OF MAIN INTEREST**

38. As set out in the Supplemental Tibus Affidavit, the Canadian Debtors are Delaware limited liability companies or corporations, as applicable. The registered offices of each of the Canadian Debtors is in the U.S. The RL Group’s senior leadership, including the sole directors, chief executive officer, and chief restructuring officer, are located in the U.S. and such senior leadership exercises primary strategic management and control of the corporate group, including the Canadian Debtors. All of the Debtors’ outstanding secured indebtedness is advanced by U.S.-based lenders and the related loan documentation is governed by U.S. law. RL Group’s overall financial position is managed on a consolidated basis from its U.S. head office in Orlando, Florida.
39. Given that the Canadian Debtors’ registered offices are located in the U.S., and having regard to their reliance on the support, services, and leadership from the larger U.S. enterprise of the RL Group, the Foreign Representative asserts that the Canadian Debtors’ “centre of main interest” is in the U.S. and submits that the Chapter 11 Cases constitute a “foreign main proceeding” as defined in section 45 of the CCAA.
40. In light of the foregoing and based on the evidence set out in the Supplemental Tibus Affidavit, it appears to the Proposed Information Officer that the Canadian Debtors’ “centre of main interest” is in the United States, and that it is appropriate in the circumstances to recognize the Chapter 11 Cases as a “foreign main proceeding”.

**F. THE RSA AND THE PLAN**

41. Details of the events leading up to the commencement of the Chapter 11 Cases and these Recognition Proceedings—including RL Group’s operational challenges, pre-petition strategic plan beginning in February 2024, and subsequent out-of-court restructuring steps—are set forth in detail in the Supplemental Tibus Affidavit and the Tibus Declaration.

42. Following the aforementioned events, the RL Group negotiated with the Pre-petition Term Loan Lenders and their advisors on the terms and implementation of a strategic transaction. As a result of those negotiations, the Pre-petition Term Loan Lenders and the Debtors entered into a restructuring support agreement dated as of May 9, 2024 (the “**RSA**”).
43. The RSA sets forth (a) the terms upon which the Pre-petition Term Loan Lenders would provide the necessary DIP financing to the Debtors, (b) the terms upon which the Pre-petition Term Loan Lenders would serve as a stalking horse bidder for the sale of substantially all of the Debtors’ assets, and (c) an agreed upon timeline for the commencement of the Chapter 11 Cases. The RSA also contemplates recognition of the Chapter 11 Cases under Part IV of the CCAA.

#### **G. THE DIP FACILITY**

44. Immediately prior to commencing the Chapter 11 Cases, the Debtors (a) finalized a DIP financing facility (the “**DIP Facility**”) governed by a secured super-priority DIP financing agreement (the “**DIP Credit Agreement**”) by and among RL Management, as borrower, each affiliate of RL Management that is a guarantor thereunder, including RL Hospitality and RL Canada, Fortress as administrative agent and collateral agent (in such capacities, the “**DIP Agent**”), and the lenders party thereto from time to time (the “**DIP Lenders**”).
45. The DIP Credit Agreement, which was approved by the U.S. Bankruptcy Court on an interim basis in the Interim DIP Order provides for an extension of credit not to exceed the principal amount of USD \$275,000,000, which amount includes: (a) USD \$100,000,000 of new money that the Debtors require for the continued operation of their business during the pendency of the Chapter 11 Cases (the “**New Money Advances**”), plus (b) a partial “roll-up” of USD \$175,000,000 of the Pre-petition Term Loan Obligations (on the basis of \$1.75 of deemed funding for each \$1.00 of New Money Advances made).
46. Pursuant to the DIP Credit Agreement, the first USD \$40,000,000 of the New Money Advances to the Debtors under the DIP Credit Agreement was to be made available upon entry of the Interim DIP Order by the U.S. Bankruptcy Court. The second USD \$60,000,000 of New Money Advances is to be made available upon entry of a final order

providing the authorizations included in the Interim DIP Order on a final basis (the “**Final DIP Order**”).

47. Regarding the partial roll-up, effective upon the entry of the Interim DIP Order, up to USD \$70,000,000 of Prepetition Term Loan Obligations (as defined in the Interim DIP Order) were to be deemed funded on the date that the interim New Money Advances are funded by the DIP Lenders (e.g., if the entire USD \$40,000,000 is funded, USD \$70,000,000 of Prepetition Term Loan Obligations will be deemed funded). Similarly, effective upon the entry of the Final DIP Order, up to an additional USD \$105,000,000 of Prepetition Term Loan Obligations is to be deemed funded on the date that the final New Money Advances are funded by the DIP Lenders (e.g., if the entire USD \$60,000,000 is funded, an additional USD \$105,000,000 of Prepetition Term Loan Obligations will be deemed funded).
48. It is a requirement of the DIP Credit Agreement that the Interim DIP Order be recognized by the Canadian Court within seven business days of its granting. The Interim DIP Order to be recognized grants Fortress and the DIP Lenders super-priority administrative expense claim status in each of the Chapter 11 Cases and super-priority liens (the “**DIP Lien**”) on all collateral of the Debtors, subject to the Carve-Out (as defined therein) of, among other things, certain statutory and allowed professional fees and the Administration Charge (as defined below) against the Canadian Debtors’ Collateral (as defined below).
49. The collateral charged by DIP Lien will include the Canadian Debtors’ personal property which is already encumbered pursuant to the Pre-Petition Security Agreement. The DIP Lien will also charge two real property interests owned by RL Canada that, prior to the DIP Lien, had not been previously encumbered (collectively, the “**Unencumbered Property**”):
  - (a) a freehold interest in real property located in Brantford, Ontario and municipally known as 67 King George Road (the “**Brantford Property**”); and
  - (b) a building improvement located on real property located in Etobicoke, Ontario and municipally known as 1790 Queensway which is leased by RL Canada pursuant to a ground lease (the “**Etobicoke Building**”).

50. As provided in the DIP Credit Agreement and the Interim DIP Order, the DIP Lien on the Unencumbered Property will secure all DIP Obligations, including New Money Advances and the “roll-up” amounts. Following discussions between counsel for the Proposed Information Officer and Canadian counsel for Fortress, the DIP Agent agreed that the DIP Lender’s Charge upon Unencumbered Property provided for in proposed Supplemental Order will secure obligations in respect of New Money Advances only and not obligations in respect of any “roll-up” amounts.

#### **H. THE FIRST DAY ORDERS PROPOSED TO BE RECOGNIZED**

51. The First Day Motions and the First Day Orders are described in the Tibus Declaration and the Supplemental Tibus Affidavit, respectively. Copies of the First Day Motions and the First Day Orders, together with all other publicly filed information in the Chapter 11 Cases, are available on the case website maintained by Epiq Corporate Restructuring, LLC at the following address: <https://dm.epiq11.com/case/redlobster/info> (the “Docket”).
52. RL Management, in its capacity as the Foreign Representative, is seeking recognition of certain of the First Day Orders that have been entered by the U.S. Bankruptcy Court in the Chapter 11 Cases. The First Day Orders to be recognized pursuant to the proposed Supplemental Order are listed and described in the Supplemental Tibus Affidavit. Copies of such First Day Orders are appended to the proposed Supplemental Order as Schedules “A” to “I”.
53. With the assistance of Fasken, the Proposed Information Officer has reviewed and considered the First Day Orders and discussed them with counsel to the Foreign Representative and counsel to the DIP Agent. The Proposed Information Officer is of the view that much of the relief contained in the First Day Orders is common in chapter 11 cases and is frequently recognized by Canadian courts in cross-border insolvency proceedings. A summary of each of the First Day Orders proposed to be recognized is set out below:
- (a) *Foreign Representative Order*—The Foreign Representative Order provides, among other things, authorization for RL Management to act as the foreign representative

on behalf of the Debtors' estates in an ancillary proceeding under Part IV of the CCAA and to (i) seek recognition of the Debtors' Chapter 11 Cases in Canada, (ii) request that the Canadian Court lend assistance to the U.S. Bankruptcy Court in protecting the property of the Debtors' estates, (iii) seek any other appropriate relief from the Court, and (iv), consistent with any orders of the Canadian Court, pay the costs of the Court-appointed Information Officer and its counsel without further order of the U.S. Bankruptcy Court. The Foreign Representative Order also contains a request from U.S. Bankruptcy Court for the aid and assistance of the Canadian Court to recognize the Chapter 11 Cases as "foreign main proceeding" and RL Management as a "foreign representative" pursuant to the CCAA.

- (b) *Wages and Benefits Order* – The Wages and Benefits Order, among other things, gives the Debtors authority, but not direction, to (i) 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, (ii) continue the compensation and benefits programs, (iii) modify, change, and discontinue any of their compensation and benefits programs and to implement new programs, policies, and benefits for non-insider employees in the ordinary course, and (iv) to remit payroll taxes and deductions. The recognition of the Wages and Benefits Order will support RL Canada's authority to process compensation, deductions, and benefits for its approximately 2000 employees in Canada without interruption.
- (c) *Insurance Order* – The Insurance Order, among other things, (i) gives the Debtors authority, but not direction, to (X) maintain, renew, modify, supplement or purchase, in their sole discretion, their insurance policies and programs, their surety bond program (each as defined below) in the ordinary course of business, and current letters of credit and (Y) honor their insurance obligations, surety obligations, and current letters of credit (each as described in the motion for Insurance Order), including by paying any pre-petition insurance obligations and surety obligations in the ordinary course of business and issuing new letters of credit or posting additional cash collateral during the Chapter 11 Cases, and (ii)

modifies the automatic stay to the extent necessary to permit the Debtors' employees to proceed with any claims they may have under the workers' compensation programs. The insurance policies identified in the motion for the Insurance Order include Canadian insurance policies and programs, including Canada workers' compensation insurance. As of the Petition Date, the Debtors estimate that they owe USD \$47,000 on account of Canada workers' compensation premiums.

- (d) *Customer Program Order* – The Customer Program Order, among other things, gives the Debtors the authority, but not direction, to maintain and administer certain charitable programs and continue, renew, replace, implement, or terminate customer-related programs, promotions and practices. The customer programs include (i) coupons and sale promotions, (ii) a gift card program, (iii) a rewards/loyalty program, and (iv) the Debtors' ordinary course refund policy. The customer programs are a part of the Canadian Business and promote customer satisfaction, revenue growth opportunities, and the value of the brand.
- (e) *Cash Management Order* – The Cash Management Order, among other things, gives the Debtors the authority, but not direction, to (i) continue to maintain their existing Cash Management System, including the Canadian Accounts, (ii) honor certain pre-petition and post-petition obligations related thereto, (iii) continue to perform intercompany transactions in the ordinary course.
- (f) *Tax Order* – The Tax Order, among other things, gives the Debtors the authority, but not direction, 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. RL Canada is liable for certain sales, property, income, and other taxes in Canada. Recognition of the Tax Order will enable RL Canada to continue collecting and remitting such taxes to the applicable taxing authorities in Canada.

- (g) *Utilities Order* – The Utilities Order, among other things, prohibits the Debtors’ utility service providers from altering, refusing, or discontinuing service on account of pre-petition amounts outstanding or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance. The Utilities Order also approves the Debtors’ proposed adequate assurance and related procedures. The utilities service providers to which the Utilities Order applies include utilities service providers located in Canada. The Utilities Order ensures continuous service for the Debtors and provides utilities service providers with certainty regarding payment for post-filing services through the use of a segregated account containing an adequate assurance deposit for the benefit of the utilities companies during the pendency of the Chapter 11 Cases. The Utilities Order was granted on a conditional basis whereby interested parties have 30 days from the entry of the Order to file a written objection, failing which they will be deemed to have consented to the provisions of the Order.
- (h) *OCB Payment Order* – The OCB Payment Order, among other things, gives the Debtors authority, but not direction, to pay in the ordinary course of business pre-petition amounts owed to certain vendors solely for goods delivered to the Debtors within 20 days of the Petition Date, in an aggregate amount not to exceed USD \$49,838,000. The vendors that the Debtors propose to pay are all entitled to an administrative expense priority claim in the Chapter 11 Cases. Such vendors include Canadian vendors. Absent timely payment, there is a risk that vendors will suspend or terminate key supply arrangements, including supply arrangements in Canada.
- (i) *Interim DIP Order* – The Interim DIP Order, among other things, provides the Debtors with authorization, on an interim basis, to obtain senior secured post-petition financing on a super-priority basis pursuant to the terms of the DIP Credit Agreement. The Interim DIP Order provides for a challenge period which expires on the earlier of (i) 60 calendar days after the Petition Date, and (ii) the date established by the U.S. Bankruptcy Court for submission of qualified bids to purchase the Debtors’ assets. The Interim DIP Order also grants the DIP Lien in



favour of the DIP Agent and the DIP Lenders on all collateral of the Debtors as security for the obligations of the Debtors in respect of the DIP Obligations, including the Roll-up Amount, subject to the Carve-Out (as defined therein) of, among other things, certain statutory and allowed professional fees and the Administration Charge against the Canadian Debtors' collateral. Payments made pursuant to the Wages and Benefits Order, the Insurance Order, the Customer Program Order, the Cash Management Order, the Tax Order, the Utilities Order, and the OCB Payment Order must be in compliance with the Approved DIP Budget (as defined in the Interim DIP Order).

54. The Proposed Information Officer is supportive of the Foreign Representative's request for recognition of the above-noted First Day Orders pursuant to the proposed Supplemental Order given, among other things, that:
- (a) Canadian and U.S. stakeholders are treated in the same manner under each of the First Day Orders for which recognition is sought;
  - (b) the granting of the proposed Supplemental Order would be consistent with the principles of comity and facilitate the efficient coordination of the Chapter 11 Cases and these Recognition Proceedings;
  - (c) the First Day Orders for which recognition is sought are primarily procedural or administrative in nature, commonplace in the context of complex chapter 11 proceedings, and generally consistent with the forms of first day orders frequently recognized by Canadian Courts in large cross-border insolvency proceedings;
  - (d) RL Canada relies on certain other Debtors for business functions critical to its ongoing operation of the Canadian restaurants and the Debtors require the DIP Facility to continue to provide those business functions;
  - (e) whereas a "roll-up" of pre-filing indebtedness would not be permitted in plenary proceedings under the CCAA, Canadian courts have recognized and given effect to

“roll-ups” in ancillary proceedings under Part IV of the CCAA where approved by the supervising court in the foreign proceeding;

- (f) the First Day Orders were supported by the Debtors’ key stakeholders, including the DIP Agent and DIP Lenders; and
- (g) the Proposed Information Officer is not aware of any objection having been filed in the Chapter 11 Cases by a Canadian stakeholder in respect of the First Day Orders for which recognition is sought.

## **I. THE CHARGES PROPOSED UNDER THE SUPPLEMENTAL ORDER**

55. Pursuant to the proposed Supplemental Order, the Foreign Representative seeks the granting of the Administration Charge, the DIP Lender’s Charge, and the D&O Charge (together, the “**Charges**”) over the Canadian Debtors’ property. The priorities of the Charges are proposed to be as follows:
- (a) First – Administration Charge (to the maximum amount of CAD \$1 million);
  - (b) Second – DIP Charge; and
  - (c) Second – D&O Charge (to the maximum amount of CAD \$3.4 million).
56. Each of the Charges and the Proposed Information Officer’s views with respect thereto are discussed below.

### **The Administration Charge**

57. The proposed Supplemental Order provides for an Administration Charge up to the maximum amount of CAD \$1 million in favour of Canadian counsel to the Foreign Representative and the Canadian Debtors, the Information Officer, and counsel to the Information Officer. The Administration Charge is intended to provide security for the fees and disbursements of such professionals, each of which is expected to have a distinct role in these Recognition Proceedings and has and will continue to contribute to the Canadian Debtors’ restructuring efforts.

58. The quantum of the Administration Charge was determined with the assistance of the Proposed Information Officer. It is commensurate with the nature, scope and complexity of these Recognition Proceedings, the size of the retainers provided to the beneficiaries of the Administration Charge, and the professional costs expected to be incurred by such beneficiaries.
59. In the circumstances, the Proposed Information Officer is of the view that the proposed Administration Charge is both reasonable and appropriate. Moreover, the Proposed Information Officer is of the view that it will ensure that the Canadian Debtors have the benefit of the professional advice and expertise necessary for the success of these Recognition Proceedings. For these reasons, the Proposed Information Officer respectfully recommends that the proposed Administration Charge be granted under the Supplemental Order.

### **The DIP Charge**

60. As noted above, the DIP Credit Agreement contemplates super-priority liens and charges, in accordance with the terms therein and as provided for in the Interim DIP Order to secure the obligations outstanding from time to time under the DIP Facility, provided that the DIP Charge will rank below the Administration Charge in priority. Accordingly, RL Management, as the Foreign Representative, is seeking the granting of a charge on the Canadian Debtors' property in favour of the DIP Lenders pursuant to the Supplemental Order. The proposed Supplemental Order specifies that the DIP Charge shall only form a charge on the Unencumbered Property to secure the New Money Advances.
61. Given the reliance of RL Canada on other Debtors for critical business functions and the Debtors' need to access the DIP Facility to provide those functions, and having regard to scope of the liens granted under the Interim DIP Order and the exclusion from the DIP Charge upon Unencumbered Property in the proposed Supplemental Order of obligations in respect of "roll-up" amounts, among other factors, the Proposed Information Officer is of the view that the DIP Charge is reasonable in the circumstances.

## The D&O Charge

62. The proposed Supplemental Order requires that RL Canada indemnify its directors and officers against obligations and liabilities that they may incur in their capacity as directors and officers of RL Canada following the commencement of these Recognition Proceedings. Such indemnity explicitly excludes any obligation or liability arising from a director's or officer's gross negligence or wilful misconduct. As security for such indemnity, the proposed Supplemental Order grants a charge over the Canadian Debtors' property in the amount of CAD \$3.4 million in favour of RL Canada's directors and officers.
63. The Proposed Information Officer assisted RL Canada in determining the appropriate quantum of the D&O Charge, taking into consideration the amount of RL Canada's anticipated payroll, vacation pay, and federal and provincial sales tax liabilities during these Recognition Proceedings, as summarized in Table 2:

**Table 2**

		<b>Initial Filing</b>
Payroll	\$	1,461,510
Accrued Vacation and Sick Days	\$	109,652
Sales Tax	\$	1,827,401
Excise Tax	\$	-
Environmental Liabilities	\$	-
<b>Total</b>	<b>\$</b>	<b>3,398,563</b>
<b>Rounded</b>	<b>\$</b>	<b>3,400,000</b>

64. The Proposed Information Officer understands that RL Canada's directors and officers are potential beneficiaries of directors' and officers' insurance which provides coverage for certain director and officer obligations. However, the Proposed Information Officer also understands that such insurance contains certain exceptions, exclusions, and carve-outs, and as a result, may not provide adequate coverage to RL Canada's directors and officers during these Recognition Proceedings. RL Canada's directors and officers will only be entitled to the benefit of the D&O Charge to the extent they do not have coverage under

directors' and officers' insurance policies or to the extent such coverage is insufficient to pay an indemnified amount.

65. The Proposed Information Officer understands that the D&O Charge is necessary to ensure the continued service RL Canada's directors and officers through the Chapter 11 Cases and these Recognition Proceedings. In the circumstances, the Proposed Information Officer is of the view that the D&O Charge is necessary and reasonable in the circumstances.
66. Having regard to the foregoing, the Proposed Information Officer respectfully recommends that the proposed D&O Charge be granted pursuant to the Supplemental Order.

**J. ACTIVITIES OF THE PROPOSED INFORMATION OFFICER TO DATE**

67. To date, the activities of the Proposed Information Officer have included, among other things:
  - (a) attending the hearing of the Debtors' First Day Motions in the Chapter 11 Cases via Zoom videoconference;
  - (b) monitoring the Docket to remain apprised of materials filed in the Chapter 11 Cases;
  - (c) preparing for and attending the Foreign Representative's application for the Interim Stay Order in these Recognition Proceedings;
  - (d) reviewing each of the First Day Motions and the First Day Orders in respect of which recognition is sought;
  - (e) engaging in discussions with Canadian counsel for the Foreign Representative and the other Canadian Debtors and assisting in determining the appropriate quantum of both the Administration Charge and the D&O Charge;
  - (f) corresponding with Fasken, the Proposed Information Officer's independent counsel, regarding the Chapter 11 Cases, these Recognition Proceedings, and

matters concerning the Pre-Petition Term Loan Agreement and Pre-petition Security Agreement; and

(g) preparing this Pre-Filing Report.

68. If appointed in these Recognition Proceedings, the proposed Supplemental Order contemplates that FTI, in its capacity as the Information Officer, will:

(a) assist the Foreign Representative in the performance of its duties in such capacity as the Foreign Representative may request;

(b) report to the Court with respect to the status of these Recognition Proceedings and the Chapter 11 Cases;

(c) provide creditors of the Canadian Debtors with non-confidential information provided by the Foreign Representative or the other Canadian Debtors in response to reasonable requests for such information;

(d) publish a notice substantially in the form attached as Schedule "A" to the Initial Recognition Order, once a week for two consecutive weeks, in *The Globe and Mail (National Edition)*; and

(e) establish a case website on which, among other things, materials filed in these Recognition Proceedings will be posted, including any orders granted by the Court and the Information Officer's reports to the Court.

**K. CONCLUSION**

69. For the reasons set out in this Pre-Filing Report, the Proposed Information Officer supports the relief sought by the Foreign Representative on the within application and respectfully recommends that the Court grant the proposed Initial Recognition Order and Supplemental Order.

Dated this 27th day of May, 2024.

**FTI Consulting Canada Inc.,**  
*solely in its capacity as Information Officer*  
*in these CCAA Recognition Proceedings,*  
*and not in its personal or corporate*  
*capacity*

DocuSigned by:  
  
D55F23E6950345D...

---

Jeffrey Rosenberg  
Senior Managing Director

# APPENDIX E



UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

IN RE

RED LOBSTER MANAGEMENT LLC

Case No. 6:24-bk-02486-GER  
Lead Case

RED LOBSTER RESTAURANTS LLC  
RLSV, INC.

Jointly Administered with  
Case No. 6:24-bk-02487-GER

RED LOBSTER CANADA, INC.

Case No. 6:24-bk-02488-GER

RED LOBSTER HOSPITALITY LLC

Case No. 6:24-bk-02489-GER

RL KANSAS LLC

Case No. 6:24-bk-02490-GER

RED LOBSTER SOURCING LLC

Case No. 6:24-bk-02491-GER

RED LOBSTER SUPPLY LLC

Case No. 6:24-bk-02492-GER

RL COLUMBIA LLC

Case No. 6:24-bk-02493-GER

RL OF FREDERICK, INC.

Case No. 6:24-bk-02494-GER

RED LOBSTER OF TEXAS, INC.

Case No. 6:24-bk-02495-GER

RL MARYLAND, INC.

Case No. 6:24-bk-02496-GER

RED LOBSTER OF BEL AIR, INC.

Case No. 6:24-bk-02497-GER

RL SALISBURY, LLC

Case No. 6:24-bk-02498-GER

RED LOBSTER INTERNATIONAL HOLDINGS LLC, Case No. 6:24-bk-02499-GER

Debtors.

/

**UNITED STATES TRUSTEE'S APPOINTMENT AND  
NOTICE OF APPOINTMENT OF OFFICIAL COMMITTEE  
OF CREDITORS HOLDING UNSECURED CLAIMS**

Pursuant to 11 U.S.C. § 1102(a), Mary Ida Townson, United States Trustee for Region 21, by undersigned counsel, appoints the following creditors to serve on the Official Committee of Creditors Holding Unsecured Claims:

Warner Bros. Discovery, Inc.  
on Behalf of Itself and its Subsidiaries  
c/o Ashleigh Landis, VP Legal,  
Litigation  
4000 Warner Blvd.  
Burbank, CA 91505  
Phone: 818-331-1709  
[ashleigh.landis@wbd.com](mailto:ashleigh.landis@wbd.com)

Kenneth O. Lester Company, Inc.  
d/b/a Performance Food Group  
Attn: David Easton, Credit Manager  
12500 West Creek Parkway  
Richmond, VA 23238  
Phone: 804-380-4005  
[deaston@pfgc.com](mailto:deaston@pfgc.com)

Gordon Food Service Canada Ltd.  
Attn: Jennifer Heeringa,  
North America Director of Credit  
2999 James Snow Parkway North  
Milton, ON L9T 5G4  
Canada  
Phone: 905-864-3746  
[jennifer.heeringa@gfs.com](mailto:jennifer.heeringa@gfs.com)

PepsiCo Sales, Inc.  
Attn: W. Conrad Ragan, Finance  
Director  
1100 Reynolds Blvd.  
Winston-Salem, NC 27105  
Phone: 336-972-8910  
[conrad.ragan@pepsico.com](mailto:conrad.ragan@pepsico.com)

George Parker  
c/o Pack Law  
51 NE 24<sup>th</sup> Street, Suite 108  
Miami, Florida 33137  
Phone: 305-916-4500  
[joe@packlaw.com](mailto:joe@packlaw.com)  
[jessey@packlaw.com](mailto:jessey@packlaw.com)

Realty Income Corporation  
Attn: Demetri Lahanas, AVP, Senior  
Legal Counsel  
11995 El Camino Real  
San Diego, CA 92130  
Phone: 858-284-5327  
[dlahanas@realtyincome.com](mailto:dlahanas@realtyincome.com)

Credera Enterprises Company, LLC  
Attn: Adam Kagan, General Counsel  
15303 Dallas Parkway  
Addison, TX 75001  
Phone: 917-861-3505  
[adam.kagan@omcpmg.com](mailto:adam.kagan@omcpmg.com)

Rubin Postaer and Associates  
Attn: Juan Ojeda, VP of Finance  
Vince Mancuso, CFO and Co-Chair  
Brett Bender, COO  
2525 Colorado Avenue  
Santa Monica, CA 90404  
Phone: 310-633-6007  
[jojeda@rpa.com](mailto:jojeda@rpa.com)

Provender Hall I, LLC  
Provender Hall IV, LLC  
c/o Meera Fox, J.D.,  
Member and Designated  
Representative  
2625 Alcatraz Avenue #607  
Berkley, CA 94705  
Phone: 510-521-0438  
[meerafox@aol.com](mailto:meerafox@aol.com)

Additional members may be added to the committee in the near future.

DATED: May 31, 2024

Respectfully submitted,

Mary Ida Townson  
United States Trustee, Region 21

*/s/ Jill E. Kelso*

---

Jill E. Kelso, Trial Attorney  
Florida Bar No.: 0578541  
United States Department of Justice  
Office of the United States Trustee  
George C. Young Federal Building  
400 W. Washington Street, Suite 1100  
Orlando, FL 32801  
Telephone No.: (407) 648-6286  
Facsimile No.: (407) 648-6323  
Email: [Jill.Kelso@usdoj.gov](mailto:Jill.Kelso@usdoj.gov)

# **APPENDIX F**

**INFORMATION to identify the case:**

United States Bankruptcy Court, Middle District of Florida

Date cases filed for chapter 11: **05/19/24****Official Form 309F1 (For Corporations or Partnerships)****Notice of Chapter 11 Bankruptcy Case**

Name of Debtor	Other Names Used by the Debtors (if any)	EIN	Case No.
Red Lobster Management LLC	Red Lobster	46-5136889	Case No. 6:24-bk-02486-GER
Red Lobster Restaurants LLC	Red Lobster	46-5134308	Case No. 6:24-bk-02487-GER
RLSV, Inc.	Red Lobster	46-5146180	Case No. 6:24-bk-02488-GER
Red Lobster Canada, Inc.	Red Lobster	46-5304569	Case No. 6:24-bk-02489-GER
Red Lobster Hospitality LLC	Red Lobster	46-5125297	Case No. 6:24-bk-02490-GER
RL Kansas LLC	Red Lobster	46-5132396	Case No. 6:24-bk-02491-GER
Red Lobster Sourcing LLC	Red Lobster	46-5503075	Case No. 6:24-bk-02492-GER
Red Lobster Supply LLC	Red Lobster	46-5459187	Case No. 6:24-bk-02493-GER
RL Columbia LLC	Red Lobster	46-5377825	Case No. 6:24-bk-02494-GER
RL of Frederick, Inc.	Red Lobster	52-1989184	Case No. 6:24-bk-02495-GER
Red Lobster of Texas, Inc.	Red Lobster	75-1421424	Case No. 6:24-bk-02496-GER
RL Maryland, Inc.	Red Lobster	52-1757185	Case No. 6:24-bk-02497-GER
Red Lobster of Bel Air, Inc.	Red Lobster	52-1832240	Case No. 6:24-bk-02498-GER
RL Salisbury, LLC	Red Lobster	47-1407836	Case No. 6:24-bk-02499-GER
Red Lobster International Holdings LLC	Red Lobster	47-1204661	Case No. 6:24-bk-02500-GER

For the debtors listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See box 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at <https://pacer.uscourts.gov>).

The staff of the bankruptcy clerk's office staff cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtors' Full Names:	Red Lobster Management LLC ** ** (See above for full names of all Debtors)	
2. All Other Names Used in the Last 8 Years:	See above list.	
3. Address	450 S. Orange Avenue Suite 800 Orlando, FL 32801	
4. Debtors' attorney Name and address	Paul Steven Singerman, Esq. Berger Singerman LLP 1450 Brickell Ave., Suite 1900 Miami, FL 33131	Contact phone: (305) 755-9500  Email: singerman@bergersingerman.com
5. Bankruptcy Clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at <a href="https://pacer.uscourts.gov">https://pacer.uscourts.gov</a>	George C. Young Federal Courthouse 400 West Washington Street Suite 5100 Orlando, FL 32801	Hours open 8:30 a.m. – 4:00 p.m.  Contact Phone: (407) 237-8000  Dated: 05/23/2024
6. MEETING OF CREDITORS The debtor's representative must attend the meeting to be questioned under oath.  Creditors may attend, but are not required to do so.	<u>June 28, 2024 at 1:00 p.m. (EDT)</u>  The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	<b>Meeting to be held telephonically by the U.S. Trustee's Office (For Orlando Cases), Call in Number:</b>  <b>1-888-972-7807; Passcode: 7751406</b>  <b>Parties wishing to reserve time for questioning should email the United States Trustee at:</b>  <a href="mailto:USTPRL341Questions@usdoj.gov">USTPRL341Questions@usdoj.gov</a>
7. Proof of Claim Deadline  <u>When Filing Proofs of Claim:</u> Claims may be delivered or mailed to:  <b>First-Class Mail:</b> Red Lobster Management LLC, et al. Claims Processing Center c/o Epiq Corporate Restructuring, LLC P.O. Box 4421 Beaverton, OR 97076-4421  <b>Hand Delivery or Overnight Mail:</b> Red Lobster Management LLC, et al. Claims Processing Center c/o Epiq Corporate Restructuring, LLC 10300 SW Allen Blvd. Beaverton, OR 97005  <b>Proofs of Claim may also be filed electronically via the case website:</b>  <a href="https://dm.epiq11.com/RedLobster">https://dm.epiq11.com/RedLobster</a>	<b>Deadline for all creditors to file a proof of claim: <u>July 28, 2024</u></b>  <b>For a governmental unit: 180 days from the date of filing</b>  A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at <a href="http://www.fimb.uscourts.gov">www.fimb.uscourts.gov</a> , any bankruptcy clerk's office, on the case website at <a href="https://dm.epiq11.com/RedLobster">https://dm.epiq11.com/RedLobster</a> , or by calling the toll-free information line at 888-754-0507 or 971-257-5614 (International).  Your claim will be allowed in the amount scheduled unless: <ul style="list-style-type: none"><li>• your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>;</li><li>• you file a proof of claim in a different amount; or</li><li>• you receive another notice.</li></ul> If your claim is not scheduled or if your claim is designated as <i>disputed</i> , <i>contingent</i> , or <i>unliquidated</i> , you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.  You may review the schedules at the bankruptcy clerk's office or online at <a href="https://pacer.uscourts.gov">https://pacer.uscourts.gov</a> or at the case website of <a href="https://dm.epiq11.com/RedLobster">https://dm.epiq11.com/RedLobster</a> .  Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.	

<p><b>8. Exception to Discharge Deadline</b> The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.</p>	<p>If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below.</p> <p><b>Deadline for Filing the Complaint: No later than the first date set for hearing on confirmation.</b></p>
<p><b>9. Creditors with a Foreign Address</b></p>	<p>If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.</p>
<p><b>10. Filing a Chapter 11 bankruptcy case</b></p>	<p>Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate its business.</p>
<p><b>11. Discharge of Debts</b></p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.</p>



**PROOF OF CLAIM**  
 UNITED STATES BANKRUPTCY COURT  
 MIDDLE DISTRICT OF FLORIDA  
 ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

Name of Debtors

**RED LOBSTER MANAGEMENT LLC, et al.**

Case Numbers:

**6:24-bk-02486-GER**

(Jointly Administered)

Indicate Debtor against which you assert a claim by checking the appropriate box below.

**(Check only one Debtor per claim form)**

Name of Debtor	Case Number
<input type="checkbox"/> Red Lobster Management LLC	Case No. 6:24-bk-02486-GER
<input type="checkbox"/> Red Lobster Restaurants LLC	Case No. 6:24-bk-02487-GER
<input type="checkbox"/> RLSV, Inc.	Case No. 6:24-bk-02488-GER
<input type="checkbox"/> Red Lobster Canada, Inc.	Case No. 6:24-bk-02489-GER
<input type="checkbox"/> Red Lobster Hospitality LLC	Case No. 6:24-bk-02490-GER
<input type="checkbox"/> RL Kansas LLC	Case No. 6:24-bk-02491-GER
<input type="checkbox"/> Red Lobster Sourcing LLC	Case No. 6:24-bk-02492-GER
<input type="checkbox"/> Red Lobster Supply LLC	Case No. 6:24-bk-02493-GER
<input type="checkbox"/> RL Columbia LLC	Case No. 6:24-bk-02494-GER
<input type="checkbox"/> RL of Frederick, Inc.	Case No. 6:24-bk-02495-GER
<input type="checkbox"/> Red Lobster of Texas, Inc.	Case No. 6:24-bk-02496-GER
<input type="checkbox"/> RL Maryland, Inc.	Case No. 6:24-bk-02497-GER
<input type="checkbox"/> Red Lobster of Bel Air, Inc	Case No. 6:24-bk-02498-GER
<input type="checkbox"/> RL Salisbury, LLC	Case No. 6:24-bk-02499-GER
<input type="checkbox"/> Red Lobster International Holdings LLC	Case No. 6:24-bk-02500-GER

Official Form 410

**Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor?

Name of the current creditor (the person or entity to be paid for this claim) \_\_\_\_\_  
 Other names the creditor used with the debtor \_\_\_\_\_

2. Has this claim been acquired from someone else?

No  
 Yes. From whom? \_\_\_\_\_

3. Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent?

Where should payments to the creditor be sent? (if different)

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Name \_\_\_\_\_  
 Number Street \_\_\_\_\_  
 City State Zip Code \_\_\_\_\_  
 Contact phone \_\_\_\_\_  
 Contact email \_\_\_\_\_

Name \_\_\_\_\_  
 Number Street \_\_\_\_\_  
 City State Zip Code \_\_\_\_\_  
 Contact phone \_\_\_\_\_  
 Contact email \_\_\_\_\_

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. Does this claim amend one already filed?

No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_

Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ \_\_\_\_\_ Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
 \_\_\_\_\_

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

No

Yes. *Check one:*

**Amount entitled to priority**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\_\_\_\_\_

Up to \$3,350\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

Wages, salaries, or commissions (up to \$15,150\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

Other. Specify subsection of 11 U.S.C. § 507(a)(\_\_\_\_) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

**Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

*Check the appropriate box:*

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date \_\_\_\_\_  
MM / DD / YYYY

\_\_\_\_\_  
Signature

**Print the name of the person who is completing and signing this claim:**

Name \_\_\_\_\_  
First name Middle name Last name

Title \_\_\_\_\_

Company \_\_\_\_\_  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_

**Mail Claim Form to:**

**If by First Class Mail:** Red Lobster Management LLC, *et al.* Claims Processing Center, c/o Epiq Corporate Restructuring, LLC, P.O. Box 4421, Beaverton, OR 97076-4421; **If by Hand Delivery or Overnight Mail:** Red Lobster Management LLC, *et al.* Claims Processing Center, c/o Epiq Corporate Restructuring, LLC, 10300 SW Allen Blvd., Beaverton, OR 97005; **or file your claim electronically via the following case website:** <https://dm.epiq11.com/RedLobster>.