

**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 CURO CANADA CORP. AND LENDDIRECT CORP.

APPLICATION OF CURO GROUP HOLDINGS CORP. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

FACTUM OF THE FOREIGN REPRESENTATIVE

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**FACTUM OF THE FOREIGN REPRESENTATIVE
(Recognition Order)**

PART I - INTRODUCTION

1. This factum is filed in support of a motion under section 49 the *Companies' Creditors Arrangement Act* (the "**CCAA**") by CURO Group Holdings Corp. ("**CURO Parent**") in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") of itself and the other Debtors¹ for an order recognizing and enforcing in Canada certain orders made by the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**") in connection with the Debtors' Chapter 11 Cases.

2. The Debtors are part of a group of companies (together with their non-Debtor affiliates, the "**Company**") that offer a broad range of direct-to-consumer finance products to customers in the U.S. and Canada.² In Canada, the consumer finance products are offered to Canadian customers by the Canadian Debtors under the "CashMoney" and "LendDirect" brands through a

¹ Terms not defined herein have the meanings given to them in the Affidavit of Douglas Clark sworn April 1, 2024 [*Second Clark Affidavit*].

² Second Clark Affidavit at para 13.

series of retail branches and online web platforms.³ The Canadian Debtors are CURO Canada Corp. and LendDirect Corp.⁴

3. The Foreign Representative seeks an order (the “**Recognition Order**”) recognizing certain orders of the U.S. Bankruptcy Court that fall into three categories: (i) an order regarding a Securitization Facility (as defined below), which was obtained from the U.S. Bankruptcy Court on an emergency basis and is necessary to meet the Company’s overall liquidity needs; (ii) four First Day Orders that were either not available when the Supplemental Order was made or have since been revised; and (iii) the Disclosure Statement Order, which establishes a timeline and certain milestones toward exiting the Restructuring Proceedings (collectively, the “**U.S. Orders**”).

4. Recognition of the U.S. Orders is necessary to the success of the Restructuring Proceedings and the Foreign Representative respectfully requests that this Court recognize and give full effect to such orders in Canada.

PART II - SUMMARY OF FACTS

A. The Chapter 11 Cases

5. On March 25, 2024 (the “**Petition Date**”), the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under the Bankruptcy Code in the U.S. Bankruptcy Court.⁵

6. On the same date, Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an interim stay of proceedings in respect of the Canadian Debtors, pending the hearing on the Foreign Representative’s application to, among other things, recognize the Canadian Debtors’ Chapter 11 Cases as a foreign main proceeding.⁶

³ Second Clark Affidavit at para 13.

⁴ Affidavit of Douglas D. Clark sworn March 25, 2024 at para 1 [*Initial Clark Affidavit*].

⁵ Second Clark Affidavit at para 8.

⁶ Second Clark Affidavit at para 9.

7. Following an initial hearing, the U.S. Bankruptcy Court entered various orders in the Chapter 11 Cases, including (a) an order authorizing CURO Parent to act as the Foreign Representative of itself and the other Debtors; (b) an order approving the Debtors' continued use of the Securitization Facilities and granting certain protections in favour of the lenders thereunder (the "**Interim Securitization Order**"); (c) an interim order authorizing the Debtors to pay certain taxes as they become due in the ordinary course (the "**Interim Taxes Order**"); (d) the Critical Vendor Order; (e) the Utilities Order; and (f) the Initial Customer Programs Order.⁷

8. On March 26, 2024, the Court entered an Initial Recognition Order, among other things, (a) recognizing CURO Parent as the Foreign Representative of itself and the other Debtors in respect of the Chapter 11 Cases; (b) recognizing the United States of America as the centre of main interest for the Canadian Debtors; and (c) recognizing the Canadian Debtors' Chapter 11 Cases as a "foreign main proceeding". The Court also granted a Supplemental Order (the "**Supplemental Order**"), among other things, (a) recognizing certain orders entered by the U.S. Bankruptcy Court in the Chapter 11 Cases; (b) granting the Administration Charge, the Securitization Charges and the D&O Charge; and (c) appointing FTI Consulting Canada Inc. as Information Officer in the Canadian Recognition Proceedings.⁸

B. The Company's Business

9. For approximately 25 years, the Company has provided customers in the U.S. and Canada with a broad range of direct-to-consumer finance products focusing on installment loans, revolving line-of-credit loans, single-pay loans and ancillary insurance products, and other

⁷ Second Clark Affidavit at para 10.

⁸ Second Clark Affidavit at para 11.

financial products such as optional credit protection, cheque cashing, money transfer services, car club, and other related memberships.⁹

10. The Company's operations are funded by (i) corporate debt, secured on the assets of the Debtors (other than the Canadian Debtors) and (ii) five securitized credit facilities (the "**Securitization Facilities**"). The Securitization Facilities provide liquidity for the Company's operations by generating cash through the sale of loans receivables generated by the Debtors to variable interest entities to collateralize debt incurred under the Securitization Facilities. The borrower under each of the Securitization Facilities is a bankruptcy remote special purpose vehicle and, in each case, is a non-Debtor affiliate of the Debtors.¹⁰

11. Prior to the Petition Date, the Company negotiated a series of waivers and amendments to the Securitization Facilities, pursuant to which, among other things, (i) the lenders under each of the Securitization Facilities waived certain pre-petition defaults; and (ii) the lenders under four of the five Securitization Facilities agreed to modify terms of the Securitization Facilities (the "**Prepetition Amendments**"). As of the Petition Date, negotiations with respect to an amendment to the Canada SPV I Facility, being the only unamended Securitization Facility, were ongoing.¹¹

C. The U.S. Orders

(i) The Securitization Amendment Order

12. Following the Petition Date, the Debtors finalized the terms of an amendment to the Canada SPV I Facility (the "**Canada SPV I Amendment**" and the related documents, the "**Canada SPV I Amendment Documents**"). Certain of the Canada SPV I Amendment Documents

⁹ Initial Clark Affidavit at para 19.

¹⁰ Initial Clark Affidavit at paras 40-41.

¹¹ Second Clark Affidavit at para 16.

specifically require an order of this court recognizing the Securitization Amendment Order prior to becoming effective.¹²

13. As set out in the Securitization Amendment Motion attached to the Second Clark Affidavit, the Canada SPV I Amendment Documents and the previously approved amendments to the Canada SPV II Facility allow the Canadian Debtors to shift certain loans receivables with a value of approximately C\$164.3 million from non-Debtor CURO Canada Receivables Limited Partnership (“**Canada SPV I**”), being the borrower under the Canada SPV I Facility, to non-Debtor CURO Canada Receivables II Limited Partnership (“**Canada SPV II**”), being the borrower under the Canada SPV II Facility, in exchange for approximately C\$140 million cash and the modification of the borrowing capacities, among other terms, under the Canadian Securitization Facilities. To effect the reallocation, the Canadian Debtors will repurchase the receivables from Canada SPV I and resell them to Canada SPV II. The reallocation of receivables between the Canadian Securitization Facilities paves the way to extending the term of the Canada SPV I Facility until late 2026 and provides a path to a non-consenting lender to exit the structure.¹³

14. The Debtors require access to the funding provided by the Canada SPV I Facility and the DIP Facility, each of which require the Securitization Amendment Order to be entered by the U.S. Bankruptcy Court and recognized by this Court, by no later than April 5, 2024, in order to meet certain liquidity thresholds under the DIP Facility and the Securitization Facilities. Recognition of the Securitization Amendment Order is therefore necessary to permit the Debtors to continue the Restructuring Proceedings, access the DIP Facility, comply with the conditions precedent of the Plan and the DIP Facility, and preserve the value of the business.¹⁴

¹² Second Clark Affidavit at para 18.

¹³ Second Clark Affidavit at para 19.

¹⁴ Second Clark Affidavit at para 22.

15. Following an emergency motion on April 1, 2024, the U.S. Bankruptcy Court entered the Securitization Amendment Order.¹⁵

(ii) Critical Vendor Order, Utilities Order, Final Taxes Order, Revised Customer Programs Order

16. The relief sought in the Critical Vendor Order, Utilities Order, Final Taxes Order and Revised Customer Programs Order was sought and, in each case, substantially granted at the First Day Hearing.¹⁶ The relief requested in each order is typical of relief sought at first day hearings in chapter 11 cases in order to allow the continued operation of the business uninterrupted. The factual support for each order is set out in the Initial Clark Affidavit.

17. The Critical Vendor Order and the Utilities Order were entered by the U.S. Bankruptcy Court on March 26, 2024 but were not yet entered at the time the Foreign Representative sought the Supplemental Order.¹⁷

18. An earlier version of each of the Final Taxes Order (in the form of an interim order) and the Revised Customer Programs Order, were already recognized by this Court pursuant to the Supplemental Order. On April 1, 2024, the U.S. Bankruptcy Court entered the Final Taxes Order to relieve the Debtors of the obligation to seek a further hearing on this routine relief and the Revised Customer Programs Order to document certain changes to the stay provisions that were discussed at the First Day Hearing but not captured in the form initially signed by the U.S. Bankruptcy Court.¹⁸

(iii) Disclosure Statement Order

19. Although the Disclosure Statement Order was scheduled to be heard at the First Day Hearing, the U.S. Bankruptcy Court adjourned the hearing to allow the court additional time to

¹⁵ Second Clark Affidavit at para 20.

¹⁶ Second Clark Affidavit at paras 24, 26-27 & 34-35.

¹⁷ Second Clark Affidavit at paras 24 & 26.

¹⁸ Second Clark Affidavit at paras 27 & 34-35.

review the material.¹⁹ At a hearing on March 27, 2024, the Bankruptcy Court directed the Debtors to make certain minor modifications to the Disclosure Statement and entered the Disclosure Statement Order on April 1, 2024.²⁰

20. The Disclosure Statement Order, among other things, (i) schedules a hearing for the approval of the Plan and the Disclosure Statement; (ii) conditionally approves the Disclosure Statement; and (iii) establishes certain deadlines in connection with confirmation of the Plan (the “**Confirmation Schedule**”).²¹ The Disclosure Statement Order and the Confirmation Schedule approved thereby provide a path for the Debtors to swiftly implement the Plan and emerge from the Chapter 11 Cases. As noted in the Initial Clark Affidavit, general unsecured creditors of the Debtors are unimpaired by the Plan and will not be solicited pursuant to the Disclosure Statement Order.²² The Disclosure Statement Order does not approve the Plan and any order in respect of the Plan will be subject to further review by the U.S. Bankruptcy Court and this Court.²³

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

21. The issue on this motion is whether the Court should grant the Recognition Order, recognizing the U.S. Orders in Canada pursuant to section 49 of the CCAA.

A. This Court Has Jurisdiction to Grant the Recognition Order

22. As this court has noted, “[t]he purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada.”²⁴ Part IV of the CCAA is intended, among other things, to promote (i) cooperation between Canadian courts and courts in foreign jurisdictions; (ii) fair and efficient administration of

¹⁹ Second Clark Affidavit at para 30.

²⁰ Second Clark Affidavit at para 30.

²¹ Second Clark Affidavit at para 32.

²² Initial Clark Affidavit at paras 66 & 75; Second Clark Affidavit at para 28.

²³ Second Clark Affidavit at paras 32 & 33.

²⁴ *Zochem Inc. (Re)*, [2016 ONSC 958](#) at para 15.

cross-border insolvencies, which protects the interests of debtors, creditors and other interested persons; and (iii) the protection and maximization of the value of a debtor's property.²⁵

23. Pursuant to the Initial Recognition Order, this Court recognized the Chapter 11 Cases of the Canadian Debtors as a "foreign main proceeding" under section 47 of the CCAA. When a foreign main proceeding has been recognized under Part IV of the CCAA, section 49(1) provides the Court with broad jurisdiction to grant "any order that it considers appropriate" with respect to such foreign proceedings if the Court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors.²⁶ If an order recognizing a foreign proceeding is made, the Court is required to cooperate, "to the maximum extent possible, with the foreign representative and the foreign court," so long as the requested relief is not inconsistent with the CCAA and does not raise concerns regarding public policy.²⁷

24. The Court has already recognized the Chapter 11 Cases of the Canadian Debtors as a foreign main proceeding and determined that in light of the requirements of subsection 52(1) and the circumstances facing the Canadian Debtors, granting the Supplemental Order, including recognition of certain prior first day orders, was appropriate.²⁸ As described below, the same considerations apply to the U.S. Orders now before the Court.

B. The U.S. Orders Should be Recognized and Enforced in Canada

25. When deciding whether to recognize a foreign order, Canadian courts have considered, among other factors: (i) the promotion of comity and cooperation between the courts; (ii) respect of the "overall thrust of foreign bankruptcy and insolvency legislation in any analysis," unless it

²⁵ CCAA, s. [44](#).

²⁶ CCAA, s. [49](#).

²⁷ CCAA, s. [50](#), [52\(1\)](#) & [61\(2\)](#).

²⁸ [Endorsement of Osborne J dated March 26, 2024](#), *CURO Canada Corp. and LendDirect Corp.*, Court File No. CV-24-00717178-00CL at paras 33 and 38.

diverges radically from the process in Canada; (iii) the equitable and, to the extent reasonably possible, equal treatment of common or like stakeholders regardless of their location; (iv) permitting the enterprise to reorganize as a global entity, including allowing for one jurisdiction to take charge of the principal administration of the enterprise's reorganization; and (v) the notice given to creditors.²⁹ As set out below, considering these factors and the principals of Part IV outlined above, the Recognition Order should be granted.

(i) Securitization Amendment Order

26. The U.S. Bankruptcy Court has already confirmed that the relief granted pursuant to the Securitization Amendment Order is necessary to the Debtors' restructuring. Recognition of the Securitization Amendment Order is required for the Debtors to continue to operate in the ordinary course and to successfully emerge from these Restructuring Proceedings, as recognition will allow the Debtors to (i) access the funding under the DIP Facility and the Securitization Facilities; and (ii) comply with the conditions precedent under the Plan and the DIP Facility.³⁰ Consistent with the Initial Recognition Order, the Canadian Debtors are seeking an order of this Court to effect the sale of Property in Canada (being the receivables to be repurchased and resold) outside the ordinary course of business.

27. The objective of these Restructuring Proceedings and comity would be furthered by the recognition of the Securitization Amendment Order given that the U.S. Bankruptcy Court has already determined that these matters are necessary to the Company's restructuring.³¹ Further, recognition of the Securitization Amendment Order is consistent with the relief previously

²⁹ *Babcock & Wilcox Canada Ltd., Re*, [2000 CanLII 22482 \(ONSC\)](#) at para [21](#). See also *Xerium Technologies Inc., Re*, [2010 ONSC 3974](#) at paras [26](#) & [27](#); *Paladin Labs Canadian Holding Inc.*, [2024 ONSC 539](#) at para 22.

³⁰ Second Clark Affidavit at paras 21-22.

³¹ Second Clark Affidavit at para 20.

recognized by this Court in the Interim Securitization Order and the approval of the Prepetition Amendments recognized thereby and is supported by the lenders to the Securitization Facilities.³²

(i) Critical Vendor Order, Utilities Order, Final Taxes Order, Revised Customer Programs Order

28. The U.S. Bankruptcy Court granted the Critical Vendor Order, Utilities Order, Final Taxes Order and Revised Customer Programs Order, in each case, on the basis that, among other things, they are necessary for the Debtors to continue to operate in the ordinary course during the Chapter 11 Cases and preserve the value of the Debtors business.³³

29. Recognition of these orders is consistent with prior orders of this Court and ought to be recognized on the same basis and in the furtherance of comity.³⁴ Recognition of the Critical Vendor Order and Utilities Order is necessary to permit the Canadian Debtors to make certain payments and provide assurances necessary to enable the continued provision of services from the counterparties and ensure the Canadian Debtors are able to continue operating in the ordinary course.³⁵ Recognition of the Final Taxes Order and Revised Customer Programs Order is consistent with the relief previously granted in these Canadian Recognition Proceedings and is not expected to impair any general unsecured creditor of the Canadian Debtors.³⁶ Recognition of these orders is consistent with prior decisions of this Court and ought to be granted.³⁷

³² Second Clark Affidavit at paras 16-17 & 19.

³³ Second Clark Affidavit at paras 24, 26-27 & 34-35.

³⁴ *YRC Freight Canada Company, (Re)*, [2023 ONSC 5513](#) at paras [5](#) & [17](#) [*YRC Recognition Endorsement*]; [Second Supplemental Order dated September 29, 2023](#), *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL at para 3 [*YRC Recognition Order*].

³⁵ Initial Clark Affidavit at paras 89(f) & 89(g).

³⁶ Second Clark Affidavit at paras 27 & 35.

³⁷ *YRC Recognition Endorsement* at paras [5](#) & [17](#); [YRC Recognition Order](#) at para 3.

(i) Disclosure Statement Order

30. Recognition of the Disclosure Statement Order will facilitate the Debtors' emergence from the Restructuring Proceedings as previewed at the prior appearances before this Court.

31. This Court has previously recognized orders entered in cases commenced under chapter 11 of title 11 of the Bankruptcy Code establishing a schedule for the approval of a chapter 11 plan of arrangement.³⁸ Considering the factors set out above, the Disclosure Statement Order should be recognized. The Plan has substantial support among the Debtors' lenders, as evidenced by the Restructuring Support Agreement, and does not propose to impair general unsecured creditors in Canada.³⁹ Recognition of the Disclosure Statement Order is consistent with the overall objective of the Restructuring Proceedings. While the Plan itself remains subject to further approval by the U.S. Bankruptcy Court and this Court, solicitation of votes on the Plan is an important step forward in the global, coordinated restructuring of the business.

³⁸ *Instant Brands Acquisition Holdings Inc., et al.*, [2024 ONSC 1204](#) at paras [10](#) & [23](#); [Order \(Confirmation Order Recognition and Ancillary Relief\) dated February 26, 2024, Instant Brands Acquisition Holdings Inc. et al.](#), Court File No. CV-23-00701159-00CL at para 3.

³⁹ Initial Clark Affidavit at paras 65-66 & 75.

PART IV - ORDER REQUESTED

32. The Foreign Representative respectfully requests that the Court grant the Recognition Order in the form requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of April, 2024.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Babcock & Wilcox Canada Ltd., Re*, [2000 CanLII 22482 \(ONSC\)](#)
2. [Endorsement of Osborne J dated March 26, 2024](#), *CURO Canada Corp. and LendDirect Corp.*, Court File No. CV-24-00717178-00CL
3. *Instant Brands Acquisition Holdings Inc., et al.*, [2024 ONSC 1204](#)
4. [Order \(Confirmation Order Recognition and Ancillary Relief\) dated February 26, 2024](#), *Instant Brands Acquisition Holdings Inc. et al.*, Court File No. CV-23-00701159-00CL
5. *Paladin Labs Canadian Holding Inc.*, [2024 ONSC 539](#)
6. [Second Supplemental Order dated September 29, 2023](#), *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL
7. *YRC Freight Canada Company, (Re)*, [2023 ONSC 5513](#)
8. *Xerium Technologies Inc., Re*, [2010 ONSC 3974](#)
9. *Zochem Inc. (Re)*, [2016 ONSC 958](#)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

[Companies' Creditors Arrangement Act, RSC 1985, c. C-36, as amended](#)

PART IV – CROSS-BORDER INSOLVENCIES

PURPOSE

Purpose

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

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

RECOGNITION OF FOREIGN PROCEEDING

Order Recognizing Foreign Proceeding

47 (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of Foreign Proceeding to Be Specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Other Orders

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

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

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

Restriction

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

Application of this and Other Acts

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

Terms and Conditions of Orders

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

[...]

OBLIGATIONS

Cooperation — Court

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

[...]

MISCELLANEOUS PROVISIONS

Court not prevented from applying certain rules

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

Public policy exception

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

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PROCEEDING COMMENCED AT TORONTO

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