

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 KIDKRAFT, INC., SOLOWAVE
DESIGN HOLDINGS LIMITED, SOLOWAVE DESIGN INC.,
SOLOWAVE INTERNATIONAL INC. AND SOLOWAVE
DESIGN LP

APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF
THE *COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

APPLICANT

FACTUM OF THE APPLICANT
(Recognition Order (Plan Confirmation Order, etc.))
returnable June 28, 2024)

June 27, 2024

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PART I - NATURE OF THE MOTION

1. This factum is filed in support of an application by KidKraft, Inc. (“**KidKraft**,” and together with its debtor and non-debtor affiliates, the “**Company**”), in its capacity as the foreign representative (in such capacity, the “**Foreign Representative**”) of Solowave Design Holdings Limited, Solowave International Inc., Solowave Design Inc. and Solowave Design LP (together, the “**Canadian Debtors**”), and itself, for an order (the “**Third Recognition Order**”):¹

- (a) recognizing and enforcing the At-Issue Orders (defined below) entered by the U.S. Court (defined below), pursuant to section 49 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”);
- (b) amending the Supplemental Order to account for the Final DIP Order (each as defined below);
- (c) approving the sale of the Canadian Transferred Assets (as defined in the Purchase Agreement (defined below)) of KidKraft and the Chapter 11 Debtors (as defined below) over which the Court has jurisdiction to the Purchaser (as defined below), vesting the Canadian Transferred Assets in and to the Purchaser free and clear of all claims and encumbrances, and authorizing the Chapter 11 Debtors to take such steps and execute such additional documents as may be necessary or desirable for the completion of the sale of the Canadian Transferred Assets to the Purchaser;
- (d) providing a mechanism for the termination of these CCAA recognition proceedings, including the discharge of the Information Officer (as defined below);

¹ Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Fourth Affidavit of Geoffrey Walker sworn June 26, 2024 (the “**Fourth Affidavit**”). All dollar references herein are in U.S. dollars unless otherwise specified.

- (e) approving the pre-filing report of KSV Restructuring Inc., dated May 16, 2024, the first report of the Information Officer, dated June 18, 2024, the second report of the Information Officer, dated June 27, 2024, and the activities of the Information Officer described therein;
- (f) approving the fees and disbursements of the Information Officer and its legal counsel; and
- (g) granting such further and other relief as counsel may request and this Honourable Court may provide.

2. On May 10, 2024 (the “**Petition Date**”), KidKraft, the Canadian Debtors, and six other debtors and debtors in possession (collectively, the “**Chapter 11 Debtors**”) filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code and several first day motions and applications with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**U.S. Court**”), commencing the “**Chapter 11 Cases.**”²

3. On May 17, 2024, this Court recognized the Chapter 11 Cases as “foreign main proceedings” within the meaning of Part IV of the CCAA, recognized the appointment of the Foreign Representative, and granted related stays of proceedings (the “**Initial Recognition Order**”). This Court also recognized 11 First Day Orders (as defined below) entered by the U.S. Court (the “**Supplemental Order**”).³

² Fourth Affidavit at paras. 3, 7.

³ Fourth Affidavit at paras. 12, 14.

4. On June 19, 2024, this Court granted an order (the “**Second Recognition Order**”), among other things, recognizing the Second Interim DIP Order (as defined below) and amending paragraph 24 of the Supplemental Order to include references to the Second Interim DIP Order.⁴

5. The Chapter 11 Debtors have obtained the U.S. Court’s approval of their value-maximizing Sale Transaction to the Purchaser and the Plan (all as defined below), which provides for the end of the Chapter 11 Cases. The Foreign Representative now returns to this Court seeking relief that will implement the Plan and Sale Transaction, and ensure that these CCAA Part IV proceedings — having achieved their purpose once the Plan is effective — can be brought to an orderly close, providing certainty and finality for all parties.

PART II - THE FACTS

A. Update on Chapter 11 Cases

6. On May 13 and 14, 2024, the U.S. Court entered 11 interim and final orders in respect of motions filed on May 10 (the “**First Day Orders**”), including interim orders authorizing the Chapter 11 Debtors to:

- (a) pay critical vendors and certain others (the “**Interim Critical Vendors Order**”);
- (b) continue to operate their cash management system (the “**Interim Cash Management Order**”); and
- (c) obtain post-petition DIP loans (the “**First Interim DIP Order**”).

7. On May 17, 2024, this Court issued the Initial Recognition Order and Supplemental Order. Among other things, this Court recognized the First Day Orders, appointed KSV Restructuring Inc. as the information officer in these CCAA Part IV proceedings (in such capacity, the

⁴ Fourth Affidavit at para. 27.

“**Information Officer**”), and granted a DIP Charge (as defined in the Supplemental Order) for advances under the DIP Facility (defined below).⁵

8. On June 10 and 11, 2024, the U.S. Court entered orders in relation to DIP financing (the “**Second Interim DIP Order**”), customer programs, and bar dates.⁶ This Court subsequently recognized these orders by issuing the Second Recognition Order on June 19, 2024.⁷

9. On June 18, 2024, the U.S. Court entered the following order:

- (a) *Final Order (I) Authorizing the Debtors to Pay (A) Critical Vendors, (B) Lien Claimants, and (C) 503(B)(9) Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief (the “**Final Critical Vendors Order**”).*⁸

10. On June 24 and 25, 2024, the U.S. Court entered the following orders (together with the Final Critical Vendors Order, the “**At-Issue Orders**”):

- (a) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue Using Existing Checks and Business Forms, (C) Maintain Their Corporate Card Program, and (D) Continue Intercompany Transactions, and (II) Granting Related Relief (the “**Final Cash Management Order**”);*
- (b) *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “**Final DIP Order**”);*

⁵ Fourth Affidavit at para. 14.

⁶ Fourth Affidavit at para. 20.

⁷ Fourth Affidavit at para. 27.

⁸ Fourth Affidavit at paras. 26.

- (c) *Order (I) Approving Certain Bidder Protections, (II) Approving Contract Assumption and Assignment Procedures, and (III) Granting Related Relief* (the “**Bidder Protections Order**”);
- (d) *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement; and (II) Confirming the Debtors’ Amended Joint Prepackaged Chapter 11 Plan* (the “**Plan Confirmation Order**”); and
- (e) *Amended Order (I) Authorizing the Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363, (II) Approving the Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the “**Sale Order**”).⁹

B. The Plan

(a) Development of the Plan

11. The Company has proactively worked to address its balance sheet and liquidity challenges, including by running multiple robust out-of-court sale processes prior to the Petition Date.¹⁰ It engaged advisors to explore strategic alternatives, including a potential sale of all or substantially all of the assets or equity of the Company. After a sale process in the fall of 2023 failed to result in a sale, an agreement was reached pursuant to which the Prepetition and DIP Lender (as defined below) purchased the existing debt under the Prepetition Credit Agreement (the “**Debt Sale**”) and agreed to provide additional financing while working with the Company to explore strategic alternatives.¹¹

12. Following a second sale process in the spring of 2024, Backyard Products, LLC (the “**Purchaser**”) emerged with a bid to purchase a substantial majority of the Company’s assets

⁹ Fourth Affidavit at para. 30-31.

¹⁰ Fourth Affidavit at para. 53.

¹¹ Fourth Affidavit at para. 54.

(including the Canadian Debtors' assets) in Chapter 11 (the "**Sale Transaction**"). The parties documented their commitment to the Sale Transaction in a restructuring support agreement (the "**RSA**") entered into by the Chapter 11 Debtors, 1903 Partners, LLC (the lender under the Prepetition Credit Agreement, the "**Prepetition and DIP Lender**"), GB Funding, LLC (the administrative agent under the Prepetition Credit Agreement, the "**Prepetition and DIP Agent**"), and together with the Prepetition and DIP Lender, "**Gordon Brothers**"), MidOcean, and the Purchaser.¹²

13. In connection with the RSA, certain of the Chapter 11 Debtors (including KidKraft, Solowave Design LP and Solowave Design Inc.) and the Purchaser entered into an asset purchase agreement (the "**Purchase Agreement**") to effectuate the Sale Transaction in conjunction with the Plan (as defined below).¹³ The Purchase Agreement provides for an estimated purchase price of at least \$39.0 million, and the Purchaser will also pay certain other additional amounts.¹⁴

14. The Company and its advisors began preparations to commence the Chapter 11 Cases following the signing of the RSA and Purchase Agreement.¹⁵ On the Petition Date, the Chapter 11 Debtors filed the *Debtors' Joint Prepacked Chapter 11 Plan* (as subsequently amended and supplemented, the "**Plan**").¹⁶

15. On June 17, 2024, the Chapter 11 Debtors, the Purchaser, MidOcean, and the official unsecured creditors' committee (the "**Committee**") reached a global settlement (the "**Global**

¹² Fourth Affidavit at paras. 41, 48, 55.

¹³ Fourth Affidavit at para. 49.

¹⁴ Fourth Affidavit at para. 56.

¹⁵ Fourth Affidavit at para. 57.

¹⁶ Fourth Affidavit at para. 10. Three plan supplements followed: Fourth Affidavit at paras. 21-22, 29.

Settlement”), notice of which was filed with the U.S. Court that day. The Plan was amended in accordance with the Global Settlement.¹⁷ In exchange for Committee’s support of the Plan and the proposed DIP financing, the Chapter 11 Debtors and their key stakeholders agreed to fund a general unsecured claims trust for the benefit of certain holders of general unsecured claims.¹⁸

16. Confirmation of the Plan was supported by all major stakeholders, including Gordon Brothers and the Committee. The U.S. Court confirmed the Plan and entered the Plan Confirmation Order on June 24, 2024.¹⁹

17. The Plan’s classification of claims and interests against each Chapter 11 Debtor ensured that similarly situated claims are treated the same or that there is a reasonable basis for any disparate treatment. Gordon Brothers, the sole holder of claims in the only class entitled to vote on the Plan, voted to accept the Plan.²⁰

(b) Summary of the Plan

18. The Plan effectuates the sale of substantially all of KidKraft’s inventory, intellectual property, and accounts receivable, among other things, to the Purchaser pursuant to the terms of the Purchase Agreement. The Purchaser has also agreed to assume certain of the Chapter 11 Debtors’ liabilities including any liabilities and identified cure costs (if any) arising under the assumption and assignment of any transferred contracts and certain transfer taxes and non-income taxes, subject to the terms and conditions of the Purchase Agreement. The Purchaser has also

¹⁷ Fourth Affidavit at paras. 24, 61.

¹⁸ Fourth Affidavit at para. 65.

¹⁹ Fourth Affidavit at para. 30.

²⁰ Fourth Affidavit at paras. 69, 74. For an overview of the different classes under the Plan, see Fourth Affidavit at paras. 68-74.

committed, under the terms of the Purchase Agreement, to offer employment to nearly all of the domestic employees of the Chapter 11 Debtors that are party to the Purchase Agreement who are employed by the same at the closing of the Sale Transaction. The Chapter 11 Debtors will utilize the proceeds of the Sale Transaction to fund distributions to satisfy claims and wind down their operations in an orderly manner.²¹

19. The Plan includes certain settlements, releases, exculpations, and injunctions. The Chapter 11 Debtors do not, however, hold any colorable claims or causes of action worth pursuing against any released parties.²²

C. The Third Day Orders

(a) The Final Critical Vendors Order

20. The proposed Final Critical Vendors Order, among other things, authorizes the Chapter 11 Debtors to pay in the ordinary course of business, based on their sound business judgment, prepetition amounts owed to: (a) critical vendors; (b) lien claimants, and (c) vendors from whom the Chapter 11 Debtors received goods within 20 days before the Petition Date in the ordinary course of business (collectively, the “**Vendors**,” and the Vendors’ prepetition claims, collectively, the “**Vendor Claims**”). The Final Critical Vendors Order also confirms the administrative expense priority status and treatment of the Chapter 11 Debtors’ outstanding orders. The Final Critical Vendors Order includes substantially the same material terms as the Interim Critical Vendors Order recognized by this Court, except that the authorized limit for payment of Vendor Claims as

²¹ Fourth Affidavit at paras. 58-59.

²² Fourth Affidavit at para. 75.

they become due in the ordinary course of business is increased from \$525,000 on an interim basis to \$950,000 on a final basis.²³

(b) The Final Cash Management Order

21. The proposed Final Cash Management Order, among other things, authorizes the Chapter 11 Debtors to: (a) continue to operate their Cash Management System and maintain existing Bank Accounts (each as defined in the Final Cash Management Order); (b) continue using their existing business forms and cheques; (c) maintain their corporate card program; and (d) continue to engage in intercompany transactions.²⁴ The proposed Final Cash Management Order contains the same material terms as the Interim Cash Management Order, but adds certain provisions to further facilitate the ordinary course activities of the business.²⁵

(c) The Final DIP Order

22. The Chapter 11 Debtors' post-petition operations in the near-term will not generate sufficient cash to continue operations in the ordinary course while funding the expenses associated with the Chapter 11 Cases and these CCAA Part IV proceedings. Accordingly, pursuant to the RSA, Gordon Brothers agreed to provide a multi-draw debtor-in-possession term loan facility (the "**DIP Facility**") to meet the Chapter 11 Debtors' liquidity needs.²⁶

23. The First Interim DIP Order, the Second Interim DIP Order and the proposed Final DIP Order, among other things, authorize: (a) KidKraft as borrower to receive senior secured super-priority priming debtor-in-possession loans (each, a "**DIP Loan**" and in the aggregate, the "**DIP**

²³ Fourth Affidavit at paras. 34-35.

²⁴ Fourth Affidavit at para. 38.

²⁵ Fourth Affidavit at para. 40.

²⁶ Fourth Affidavit at para. 41.

Loans”) from the Prepetition and DIP Lender; and (b) the Chapter 11 Debtors to use the Cash Collateral of Gordon Brothers under the Prepetition Credit Agreement.²⁷

24. Following the entry of the Final DIP Order, the DIP Facility consists of an aggregate principal amount of:

- (a) \$10.5 million;
- (b) \$23.3 million of Prepetition Obligations (the “**Limited Roll-Up Amount**”), which will be deemed to have been advanced and shall convert into DIP Loans on a dollar-for-dollar cashless basis (the “**Limited Roll-Up**”); and
- (c) use of the Cash Collateral until the Carve-Out Termination Date (as defined in the Final DIP Order).²⁸

25. The proposed Limited Roll-Up Amount is limited to the new capital that the prepetition secured parties, Gordon Brothers, provided the Chapter 11 Debtors after the Debt Sale closed on January 31, 2024, following which the Canadian Debtors became guarantors of the Chapter 11 Debtors’ obligations to Gordon Brothers.²⁹

(d) The Bidder Protections Order

26. The Bidder Protections Order, among other things, approves certain bidder protections in favour of the Purchaser (the “**Bidder Protections**”), including:

- (a) a break-up fee of \$884,754.90, being 2.25% of the purchase price (the “**Break-Up Fee**”);

²⁷ Fourth Affidavit at para. 42.

²⁸ Fourth Affidavit at para. 43.

²⁹ Fourth Affidavit at para. 44.

- (b) expense reimbursement of up to \$1,000,000 (the “**Expense Reimbursement**”); and
- (c) requiring any alternative transaction to the Sale Transaction have an overbid of \$2,000,000.³⁰

27. The Bidder Protections Order also approves procedures (the “**Assumption and Assignment Procedures**”) for the assumption and assignment of certain executory contracts and the form of notice.³¹

28. The Bidder Protections’ original terms were included in the Purchase Agreement to address the Purchaser’s concerns that the Sale Transaction may not be consummated.³² While the Office of the United States Trustee for the Northern District of Texas initially filed an objection to the motion seeking the Bidder Protections Order in the U.S. Court, it withdrew its objections after the amounts were reduced from the original Break-Up Fee of \$1,179,673.20 and an overbid of \$4,000,000.³³

(e) The Plan Confirmation Order and Plan Confirmation Order

29. In entering the Plan Confirmation Order, the U.S. Court concluded that the Plan complied with applicable provisions of the U.S. Bankruptcy Code, was proposed in good faith, and was feasible. It also found that the releases, settlements, exculpations and injunctions in the Plan are appropriate.³⁴ The U.S. Court found in the Sale Order and the Plan Confirmation Order that the

³⁰ Fourth Affidavit at para. 46.

³¹ Fourth Affidavit at para. 47.

³² Fourth Affidavit at para. 50.

³³ Fourth Affidavit at para. 51.

³⁴ Fourth Affidavit at para. 79.

Chapter 11 Debtors undertook robust and extensive efforts to secure the Sale Transaction.³⁵ It also concluded that the Purchase Agreement represents the highest and best offer for the Transferred Assets (as defined in the Purchase Agreement).³⁶

D. Termination of these Part IV CCAA proceedings

30. The Plan provides for the end of the Chapter 11 Cases. After the Plan Confirmation Order is recognized in Canada and the Plan is effective, these ancillary CCAA Part IV recognition proceedings will have achieved their purpose. To avoid the cost and time of returning to court to seek termination of these proceedings, the Third Recognition Order provides that:

- (a) upon the Plan becoming effective and any remaining matters to be attended to in these CCAA proceedings having been completed, the Information Officer will file a certificate (the “**Information Officer’s Termination Certificate**”) with the Court confirming same;
- (b) upon the filing of the Information Officer’s Termination Certificate:
 - (i) these CCAA proceedings shall be terminated;
 - (ii) the Administration Charge, the Directors’ Charge and the DIP Charge shall be terminated, released and discharged;
 - (iii) the Information Officer and its counsel, Gowling WLG (Canada) LLP, will be discharged and released.³⁷

³⁵ Fourth Affidavit at para. 85.

³⁶ Fourth Affidavit at para. 83.

³⁷ Fourth Affidavit at para. 90.

PART III - THE ISSUES

31. The issue to be determined on this motion is whether the Chapter 11 Debtors are entitled to the relief sought in the Third Recognition Order, including:

- (a) recognizing the At-Issue Orders; and
- (b) granting other ancillary relief in connection with the implementation of the Plan and termination of these Part IV proceedings.

PART IV - THE LAW

A. Recognition of the At-Issue Orders is appropriate

32. This Court has jurisdiction to recognize the At-Issue Orders, as it has recognized the Chapter 11 Cases as a “foreign main proceeding” pursuant to sections 47 and 48 of the CCAA.³⁸ Granting such an order empowers this Court to “make any order that it considers appropriate” pursuant to section 49, provided that it is “satisfied that it is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors.”³⁹ An order under Part IV “may be made on any terms and conditions that the Court considers appropriate in the circumstances.”⁴⁰ Further, section 61(1) permits the Court to apply any legal or equitable rules governing the recognition of foreign insolvency orders, provided that they are not inconsistent with the CCAA. The Court may, however, refuse to do something that would be contrary to public policy.⁴¹

³⁸ CCAA, ss. 47-48; Fourth Affidavit at para. 14.

³⁹ CCAA, s. 49(1).

⁴⁰ CCAA, s. 50.

⁴¹ CCAA, s. 61(2).

33. The principle of comity guides the Court’s exercise of its broad discretion under Part IV. It “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.” Canadian courts’ emphasis on comity and cooperation in cross-border insolvency proceedings avoids “multiple proceedings, inconsistent judgments and general uncertainty” while “ensuring the equal and fair treatment of creditors regardless of their location.”⁴² These principles are reflected in the Court’s statutory obligation to “cooperate, to the maximum extent possible, with the foreign representative and the foreign court” if an order recognizing a foreign proceeding is made.⁴³

34. Given the importance of comity, a Canadian court will typically only refuse to recognize another court’s order where it would be contrary to public policy under section 61(2) of the CCAA — an exception to recognition that “should be interpreted narrowly.”⁴⁴ Where there is a foreign main proceeding, this Court has recognized that it is “performing an ancillary role” and should therefore “not lightly undertake a second-guessing exercise in respect of decisions made by the US [c]ourt.”⁴⁵

35. Recognizing the At-Issue Orders is supported by statutory authority, considerations cited in the case law, and orders granted by this Court in other Part IV proceedings. Recognition would promote comity, protect the Chapter 11 Debtors’ property and stakeholder interests, and align with the objectives of the CCAA. There are no public policy issues that would engage s. 61(2) of the

⁴² *Hollander Sleep Products, LLC et al., Re*, [2019 ONSC 3238](#) [“*Hollander*”] at paras. 41-42.

⁴³ CCAA, s. 52(1).

⁴⁴ *YRC Freight Canada Company (Re)*, [2023 ONSC 5513](#) [“*YRC Freight*”] at para. 12.

⁴⁵ *Instant Brands Acquisition Holdings Inc. et al.*, [2023 ONSC 4252](#) [“*Instant Brands (Roll-Up)*”] at para. 15.

CCAA. Further, factors that Canadian courts consider in deciding when to recognize a foreign order weigh in favour of recognition, including: (a) promoting comity and cooperation between courts; (b) respecting foreign bankruptcy and insolvency legislation; (c) the equitable treatment of stakeholders regardless of the jurisdiction in which they reside; and (d) that the appropriate level of court involvement depends to a significant degree upon the court's nexus to the enterprise.⁴⁶

(a) This Court should recognize the Final Critical Vendors Order and the Final Cash Management Order

36. Both the Final Critical Vendors Order and the Final Cash Management Order are necessary for the protection of the Chapter 11 Debtors' property. The Final Critical Vendors Order authorizes the payment of prepetition amounts owed to Vendors, which is critical to the Chapter 11 Debtors' ability to continue operating and maintain the going concern value of their business as they work to effect a comprehensive Chapter 11 reorganization.⁴⁷ The Final Cash Management Order ensures the Canadian Debtors' continued access to the Cash Management System, which is crucial to collecting accounts receivable and meeting immediate-term obligations. Recognizing this order would ensure continuity of the Canadian Debtors' operations and ultimately preserve the value of the business in Canada.⁴⁸

37. With few exceptions, both the proposed Final Critical Vendors Order and Final Cash Management Order include the same material terms as the Interim Critical Vendors Order and the

⁴⁶ *Paladin Labs Canadian Holding Inc.*, [2024 ONSC 539](#) at para. 22, citing *Re Xerium Technologies Inc.*, [2010 ONSC 3974](#) ["*Xerium*"] at paras. 26-27.

⁴⁷ Fourth Affidavit at paras. 34-35.

⁴⁸ Fourth Affidavit at paras. 38-39.

Interim Cash Management Order, respectively, which this Court has recognized earlier in these proceedings.⁴⁹

38. This Court has previously recognized similar orders to the Final Cash Management Order and Final Critical Vendors Order in other Part IV proceedings.⁵⁰ Recognizing these orders is appropriate and necessary in these circumstances.

(b) This Court should recognize the Final DIP Order

39. Recognizing the Final DIP Order would conclude the implementation of the DIP Facility, which is necessary to ensure that the Chapter 11 Debtors meet their liquidity needs.⁵¹ Together, the First Interim DIP Order, the Second Interim DIP Order, and the proposed Final DIP Order authorize KidKraft's receipt of the DIP Loans and the Chapter 11 Debtors' use of the Cash Collateral of Gordon Brothers under the Prepetition Credit Agreement.⁵² The Final DIP Order would authorize access to the final DIP commitment of \$5 million and "roll up" \$23.3 million of the Prepetition Obligations (to be converted into DIP Loans).⁵³

40. This Court should recognize the Final DIP Order to ensure the viability of the Company as a going concern, to facilitate the consummation of the Sale Transaction to the Purchaser, and to preserve the value of the Chapter 11 Debtors' estates. The DIP Facility is the product of arm's-

⁴⁹ Fourth Affidavit at paras. 12, 14, 36, 40. The Final Critical Vendors Order includes an increase in the authorized limit for payment of Vendor Claims. The Final Cash Management Order adds certain provisions to facilitate the business' ordinary course activities.

⁵⁰ [YRC Freight](#) at paras. 5, 14-18, endorsing *YRC Freight Canada Company (Re)* (29 September 2023), Toronto CV-23-00704038-00CL (ONSC) ([Second Supplemental Order](#)) at paras. 3(c), (e) and Schedules "C," "E"; *Jack Cooper Ventures, Inc. (Re)* (9 September 2019), Toronto CV-19-625200-00CL (ONSC) ([Recognition and Intercompany Charge Order](#)) at paras. 2(a), (f).

⁵¹ Fourth Affidavit at para. 41.

⁵² Fourth Affidavit at para. 42.

⁵³ Information Officer's Second Report dated June 27, 2024 ("IOR") at para. 5.3(4)

length negotiations, represents the best available option for the Chapter 11 Debtors, and will benefit all parties in interest. Further, the DIP Facility does not increase the existing liability of the Canadian Debtors pursuant to the Prepetition Credit Facility or grant security over assets in Canada in favour of the Prepetition and DIP Lender that were previously unencumbered.⁵⁴ Instead, funds available under the DIP Facility will indirectly flow to the Canadian Debtors to enable their continued operation during these Part IV proceedings.⁵⁵

41. This Court has previously granted the First Interim DIP Order and the Second Interim DIP Order, which authorized the Chapter 11 Debtors' access to the interim DIP commitment under the DIP Facility. The reasoning that applied to the approval of the guarantee contemplated by the First Interim DIP Order applies here in favour of recognizing the Final DIP Order.⁵⁶

42. The partial roll-up represented by the Limited Roll-Up is no obstacle to this Court's recognition of the Final DIP Order. While an interim financing charge may not secure an obligation that existed prior to the granting of an initial order in plenary CCAA proceedings, rolling up "prepetition debt into post-petition super priority financing can, and in appropriate circumstances should, be approved in the context of foreign recognition proceedings" under Part IV.⁵⁷ This Court has recognized U.S. court orders regarding DIP financing that included partial and full roll-up

⁵⁴ Fourth Affidavit at para. 45.

⁵⁵ Fourth Affidavit at para. 41.

⁵⁶ These factors are set out in the Factum of the Applicant (Initial Recognition Order and Supplemental Order, returnable May 17, 2024) at paras. 52-54. This Court accepted these submissions: *KidKraft, Inc. (Re)* (17 May 2024), Toronto CV-24-00720035-00CL (ONSC) ([Endorsement](#)) at para. 9.

⁵⁷ CCAA, s. 11.2(1); [Instant Brands \(Roll Up\)](#) at paras. 20-21.

provisions on a number of occasions.⁵⁸ In so doing, this Court has emphasized the importance of comity, finding no basis to “second guess the decision of the U.S. Court.”⁵⁹

43. CCAA Courts will recognize a foreign roll-up DIP facility when there is no material prejudice to Canadian creditors.⁶⁰ The Canadian creditors will not be prejudiced by the DIP Charge or guarantee because the Canadian Debtors’ assets were already encumbered as security for their guarantees for the Prepetition Credit Agreement, a factor that has been considered in other Part IV cases when recognizing a foreign DIP facility with a roll-up component.⁶¹ Coface in particular will not be materially prejudiced as there is no dispute as to the priority of its liens on its separate collateral, as such receivables are the property of Coface and not the Chapter 11 Debtors.⁶²

44. The Limited Roll-Up is a material component of the structure of the DIP Facility and was required by the Prepetition and DIP Lender as a condition to its commitment to provide postpetition financing and its consent to the Chapter 11 Debtors’ use of Cash Collateral. It is reasonable in light of the ratio of new money provided by the Prepetition and DIP Lender to the Limited Roll-Up Amount.⁶³ In exchange for the Limited Roll-Up, which is limited in size, the Chapter 11 Debtors will receive the substantial benefit of liquidity.⁶⁴

⁵⁸ See, for example, *Hartford Computer Hardware Inc. (Re)*, [2012 ONSC 964](#) at paras. 6, 15 [“*Hartford*”] (a partial roll-up); *Xinergy Ltd., Re*, [2015 ONSC 2692](#) [“*Xinergy*”] at paras. 18-23 (a full roll-up); *Hollander* at paras. 45-48 (a creeping roll-up); *Instant Brands (Roll Up)* at paras. 19-22 (a full roll-up).

⁵⁹ *Hartford* at para. 14.

⁶⁰ *Hollander* at para. 53; *Hartford* at para. 13; *Xinergy* at para. 22.

⁶¹ Affidavit of Geoffrey Walker sworn May 10, 2024 at para. 37. See *Revlon, Inc. (Re)* (20 June 2022), Toronto CV-22-00682880-00CL (ONSC) ([Endorsement](#)); *David’s Bridal, LLC (Re)* (18 April 2023), Toronto CV-23-00698107-00CL (ONSC) ([Endorsement](#)) at para. 19; *Instant Brands (Roll Up)* at paras. 17, 24-28.

⁶² Fourth Affidavit at para. 44.

⁶³ Fourth Affidavit at para. 44.

⁶⁴ Fourth Affidavit at para. 45.

(c) This Court should recognize the Bidder Protections Order

45. The Bidder Protections, including the Break-Up Fee and Expense Reimbursement, were a material component of the Purchase Agreement that was key to the success of the sale process. To address its concerns that the Sale Transaction may not be consummated, the Purchaser required the Bidder Protections as a condition for entering into the Purchase Agreement. These terms balance the Purchaser's desire for certainty with the Chapter 11 Debtors' ability to maximize the value of their estates. Further, payment of the Bidder Protections is only required under the narrow circumstances prescribed by the Purchase Agreement.⁶⁵

46. This Court has recognized bidding procedures orders that provide for break fees and expense reimbursements in other Part IV proceedings.⁶⁶ The Break-Up Fee of 2.25% of the cash portion of the purchase price is also consistent with this Court's practice in plenary CCAA proceedings, as it is well within the reasonable range for break fees awarded to stalking horse bidders in Canadian CCAA sale proceedings.⁶⁷ The Information Officer's analysis has established that the Break-Up Fee and the combined Bidder Protections are within the range of break fees approved by Canadian courts in recent CCAA proceedings, and that the Expense Reimbursement of up to \$1 million appears commercially reasonable.⁶⁸ The Information Officer believes the Bidder Protections to be fair, reasonable, appropriate, and unlikely to adversely affect others.⁶⁹

⁶⁵ Fourth Affidavit at para. 50.

⁶⁶ See, e.g., *Instant Brands Acquisition Holdings Inc. et al.*, [2023 ONSC 4264](#) at paras. 20-21, approving a Bid Procedure Order that contemplated a break fee of up to 3% of the cash portion of the purchase price in the stalking horse bid.

⁶⁷ See, for instance, *BZAM Ltd. Plan of Arrangement*, [2024 ONSC 1685](#) at para. 20, citing *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#) at paras. 12-14.

⁶⁸ IOR at para. 5.2(3)(e).

⁶⁹ IOR at para. 5.2(3)(f)

47. The Assumption and Assignment Procedures are also appropriate. The Information Officer considers the Assumption and Assignment Procedures to be reasonable and necessary to adequately notify parties of potential assumptions or assignments, providing counterparties with a sufficient opportunity to verify the proposed cure amounts and object to the assumption or assignment.⁷⁰ This Court has approved orders assuming and assigning contracts in relation to sale transactions in other Part IV proceedings.⁷¹

(d) This Court should recognize the Plan Confirmation Order

48. This Court has regularly exercised its jurisdiction under sections 49 and 50 of the CCAA to recognize orders confirming plans of reorganization granted in Chapter 11 proceedings.⁷² The Plan Confirmation Order satisfies factors that courts have considered in recognizing similar orders from U.S. courts in a Part IV proceeding, including the following:⁷³

(a) The Plan Confirmation Order was confirmed in accordance with well-established procedures and practices under the U.S. Bankruptcy Code. The U.S. Court concluded that the Plan was proposed in good faith, complied with applicable law, maximized value for all stakeholders, and will not likely be followed by liquidation or further financial reorganization (other than as contemplated in the Plan).⁷⁴ This

⁷⁰ IOR at para. 5.2(3)(g).

⁷¹ See, for instance, *Hollander Sleep Products LLC et al. (Re)*, (September 11, 2019), Toronto CV-19-620484-00CL (ONSC) ([Recognition, Approval and Vesting Order](#)) at para 3(b) and Schedule “B”; *Curo Canada Corp. and LendDirect Corp. (Re)* (May 17, 2024), Toronto, CV-24-00717178-00CL (ONSC) ([Recognition Order](#)) at para 3(a) and Schedule “A”.

⁷² *Instant Brands Acquisition Holdings Inc., et al.*, [2024 ONSC 1204](#) [*“Instant Brands (Plan)”*] at para. 17.

⁷³ See [Xerium](#) at para. 27; [Instant Brands \(Plan\)](#) at para. 18.

⁷⁴ Fourth Affidavit at para. 79.

Court has recognized that these principles “also underlie the CCAA, and thus dictate in favour of the Plan’s recognition and implementation in Canada.”⁷⁵

- (b) The Plan is critical to the restructuring of the Chapter 11 Debtors as a global corporate unit.⁷⁶
- (c) The Canadian Debtors are fully integrated with and dependant on the Chapter 11 Debtors’ U.S. operations.⁷⁷
- (d) By recognizing the Chapter 11 Cases as the foreign main proceedings,⁷⁸ this Court acknowledged Canada as an ancillary jurisdiction in the reorganization of the Chapter 11 Debtor.
- (e) KidKraft and the Canadian Debtors are also party to the Chapter 11 Cases,⁷⁹ to which they had the same access as the other Chapter 11 Debtors.
- (f) The Plan represents the best opportunity to maximize the Chapter 11 Debtors’ value for all stakeholders.⁸⁰ Recognizing the Plan Confirmation Order would ensure a coordinated cross-border approach to implementing the Sale Transaction, promoting fairness and efficiency while protecting the interests of the Chapter 11 Debtors and their creditors.⁸¹

⁷⁵ [Xerium](#) at para. 28.

⁷⁶ Fourth Affidavit at paras. 67, 79, 81.

⁷⁷ Second Affidavit of Geoffrey Walker sworn May 15, 2024 at paras. 26, 36.

⁷⁸ Fourth Affidavit at para. 14.

⁷⁹ Fourth Affidavit at para 3.

⁸⁰ Fourth Affidavit at para. 79.

⁸¹ Fourth Affidavit at para 80.

- (g) The sole creditor class entitled to vote on the Plan, Gordon Brothers (the Chapter 11 Debtors' primary secured creditor and lender under the DIP Facility), voted 100% in dollar amount and 100% in number to accept the Plan.⁸² The Committee also agreed to support the Plan in exchange for the Chapter 11 Debtors and key stakeholders agreeing to fund a general unsecured claims trust for the benefit of certain holders of general unsecured claims.⁸³
- (h) The Plan and Global Settlement are the best compromise available considering the realities of the Chapter 11 Debtors' capital structure and lack of any superior actionable bids resulting from the two sale processes or during these Chapter 11 Cases.⁸⁴ Without the proposed Sale Transaction effected through the Plan, the only alternative path for the Chapter 11 Debtors is likely a value-destructive liquidation.⁸⁵
- (i) Canadian stakeholders are treated no differently than U.S. stakeholders under the Plan.⁸⁶
- (j) The Information Officer considers the Plan to be fair and reasonable in the circumstances and believes that this Court should recognize the Plan Confirmation Order.⁸⁷

⁸² Fourth Affidavit at para. 74; IOR at 4.3(1)(b).

⁸³ Fourth Affidavit at para. 65.

⁸⁴ Fourth Affidavit at para. 61.

⁸⁵ Fourth Affidavit at para. 67.

⁸⁶ IOR at para. 5.4(1)(a) (discussing the orders generally).

⁸⁷ IOR at para. 4.3(1).

(e) The Sale Order

49. In recognizing sale approval orders granted within Chapter 11 proceedings, Canadian courts have considered the principles that apply in approving a sale in a plenary CCAA proceeding. These sale approval factors weigh in favour of recognizing the Sale Order:⁸⁸

- (a) The two sale processes leading to the transaction were conducted on a commercially reasonable basis with the assistance of advisors.⁸⁹
- (b) The Sale Transaction was the result of extensive good-faith, arms-length negotiations.⁹⁰
- (c) The Sale Transaction represents the best opportunity to maximize the Chapter 11 Debtors' value for all stakeholders.⁹¹ Without the Sale Transaction, the only alternative path for the Chapter 11 Debtors is likely a value-destructive liquidation.⁹² The Sale Transaction is the only transaction available to preserve the Company's business and operations on a going concern basis.⁹³
- (d) The interests of all parties were considered. The parties to the Global Settlement also settled a variety of issues under the Global Settlement, enhancing the Chapter 11 Debtors' ability to achieve the Sale Transaction.⁹⁴

⁸⁸ See *Instant Brands Acquisition Holdings Inc. et al.*, [2023 ONSC 5810](#) at paras. 18-19, citing the sale approval factors set out in CCAA, s. 36(3) and *Royal Bank of Canada v. Soundair Corp.* (1991), [4 O.R. \(3d\) 1](#) (C.A.). See also *Digital Domain Media Group, Inc. (Re)*, [2012 BCSC 1567](#) at para. 15.

⁸⁹ IOR at para. 5.1(8)(a).

⁹⁰ Fourth Affidavit at para. 79.

⁹¹ Fourth Affidavit at para. 79.

⁹² Fourth Affidavit at para. 67.

⁹³ IOR at para. 5.1(8)(b).

⁹⁴ Fourth Affidavit at paras. 63, 65.

- (e) The Information Officer supports the recognition of the Sale Order and approval of the Sale Transaction.⁹⁵

B. This Court should grant the ancillary relief in the Third Recognition Order

50. In addition to the recognition of the At-Issue Orders, the Third Recognition Order provides for other ancillary relief in connection with the implementation of this Plan and the termination of these proceedings. Among other things, the Third Recognition Order (i) gives the releases in the Plan full force and effect; (ii) provides a mechanism for the termination of the CCAA proceedings and the discharge and release of the Information Officer and its counsel; (iii) approves the activities of the Information Officer; and (iv) approves the fees and disbursements of the Information Officer and its legal counsel.

51. This ancillary relief is necessary to implement the Plan to the benefit of all stakeholders and to avoid the cost and time of returning before this Court to seek termination.⁹⁶ This Court has granted similar relief in other Part IV proceedings.⁹⁷

PART V - RELIEF REQUESTED

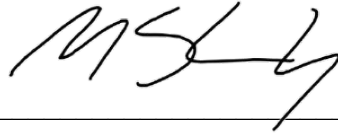
52. For the foregoing reasons, the Foreign Representative requests that this Honourable Court grant the relief sought in the form of the proposed Third Recognition Order.

⁹⁵ IOR at para. 5.1(8).

⁹⁶ Fourth Affidavit at para. 91.

⁹⁷ See, e.g., *Pier 1 Imports, Inc. et al. (Re)* (13 October 2020), Toronto CV-20-000636511-00CL (ONSC) ([Recognition Order \(Recognition of Confirmation Order\)](#)) at paras. 6, 8-15; *Revlon, Inc. (Re)* (21 April 2023), Toronto CV-22-00682880-00CL (ONSC) ([Recognition Order \(Plan Confirmation Order and Termination of CCAA Proceedings\)](#)) at paras. 7-15.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of June, 2024.

A handwritten signature in black ink, appearing to read 'MSL', is written above a horizontal line.

OSLER, HOSKIN & HARCOURT, LLP
per Mark Sheeley

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Applicant

SCHEDULE “A”

LIST OF AUTHORITIES

1. *BZAM Ltd. Plan of Arrangement*, [2024 ONSC 1685](#)
2. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#)
3. *Curo Canada Corp. and LendDirect Corp. (Re)* (May 17, 2024), Toronto, CV-24-00717178-00CL (ONSC) ([Recognition Order](#))
4. *David’s Bridal, LLC (Re)* (18 April 2023), Toronto CV-23-00698107-00CL (ONSC) ([Endorsement](#))
5. *Digital Domain Media Group, Inc. (Re)*, [2012 BCSC 1567](#)
6. *Hartford Computer Hardware Inc, (Re)*, [2012 ONSC 964](#)
7. *Hollander Sleep Products, LLC et al., Re*, [2019 ONSC 3238](#)
8. *Hollander Sleep Products LLC et al. (Re)*, (September 11, 2019), Toronto CV-19-620484-00CL (ONSC) ([Recognition, Approval and Vesting Order](#))
9. *Instant Brands Acquisition Holdings Inc. et al.*, [2023 ONSC 4252](#)
10. *Instant Brands Acquisition Holdings Inc. et al.*, [2023 ONSC 4264](#)
11. *Instant Brands Acquisition Holdings Inc. et al.*, [2023 ONSC 5810](#)
12. *Instant Brands Acquisition Holdings Inc., et al.*, [2024 ONSC 1204](#)
13. *Jack Cooper Ventures, Inc. (Re)* (9 September 2019), Toronto CV-19-625200-00CL (ONSC) ([Recognition and Intercompany Charge Order](#))
14. *KidKraft, Inc. (Re)* (17 May 2024), Toronto CV-24-00720035-00CL (ONSC) ([Endorsement](#))
15. *Paladin Labs Canadian Holding Inc.*, [2024 ONSC 539](#)
16. *Pier 1 Imports, Inc. et al. (Re)* (13 October 2020), Toronto CV-20-000636511-00CL (ONSC) ([Recognition Order \(Recognition of Confirmation Order\)](#))
17. *Re Xerium Technologies Inc.*, [2010 ONSC 3974](#)
18. *Revlon, Inc. (Re)* (20 June 2022), Toronto CV-22-00682880-00CL (ONSC) ([Endorsement](#))
19. *Revlon, Inc. (Re)* (21 April 2023), Toronto CV-22-00682880-00CL (ONSC) ([Recognition Order \(Plan Confirmation Order and Termination of CCAA Proceedings\)](#))
20. *Royal Bank of Canada v. Soundair Corp.* (1991), [4 O.R. \(3d\) 1](#) (C.A.).

LIST OF AUTHORITIES

21. *Xinergy Ltd., Re*, [2015 ONSC 2692](#)
22. *YRC Freight Canada Company (Re)*, [2023 ONSC 5513](#)
23. *YRC Freight Canada Company (Re)* (29 September 2023), Toronto CV-23-00704038-00CL (ONSC) ([Second Supplemental Order](#))

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

- (4)** In deciding whether to make an order, the court is to consider, among other things,
- (a)** the period during which the company is expected to be subject to proceedings under this Act;
 - (b)** how the company’s business and financial affairs are to be managed during the proceedings;
 - (c)** whether the company’s management has the confidence of its major creditors;
 - (d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e)** the nature and value of the company’s property;
 - (f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g)** the monitor’s report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the

terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b)** whether the monitor approved the process leading to the proposed sale or disposition;
- (c)** whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d)** the extent to which the creditors were consulted;
- (e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Application for recognition of a foreign proceeding

46 (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority 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.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

Translation

(5) The court may require a translation of any document accompanying the application.

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.

Order relating to recognition of a foreign main proceeding

48. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(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, until 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.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

When subsection (1) does not apply

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

Application of this and other Acts

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

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.

[...]

Cooperation — court

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

[...]

Court not prevented from applying certain rules

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

Public policy exception

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED Court File No: CV-24-00720035-00CL
AND IN THE MATTER OF KIDKRAFT, INC., SOLOWAVE DESIGN HOLDINGS LIMITED., SOLOWAVE DESIGN INC., SOLOWAVE INTERNATIONAL INC. AND
SOLOWAVE DESIGN LP
APPLICATION OF KIDKRAFT, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT

**(Recognition Order (Plan Confirmation Order, Sale Order and
Termination of CCAA Proceedings, and Related Relief))**

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