

**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 PALADIN LABS CANADIAN HOLDING INC. AND  
PALADIN LABS INC.**

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

Applicant

**FACTUM OF THE FOREIGN REPRESENTATIVE  
(Motion Returnable January 24, 2024)**

**GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**Robert J. Chadwick** LSO# 35165K  
rchadwick@goodmans.ca

**Bradley Wiffen** LSO# 64279L  
bwiffen@goodmans.ca

**Andrew Harmes** LSO# 73221A  
aharmes@goodmans.ca

**Erik Axell** LSO# 85345O  
eaxell@goodmans.ca

Tel: 416.979.2211  
Fax: 416.979.1234

Lawyers for the Applicant

## TABLE OF CONTENTS

	<b>Page</b>
<b>PART I – OVERVIEW .....</b>	<b>1</b>
<b>PART II – THE FACTS .....</b>	<b>4</b>
A. Background .....	4
B. Outcome of the Sale Process .....	6
C. Stakeholder Resolutions .....	8
D. The Plan .....	10
E. Disclosure Statement Order .....	13
F. Key Dates and Deadlines .....	14
<b>PART III – THE ISSUE AND THE LAW .....</b>	<b>15</b>
A. This Court has Jurisdiction to Recognize the Disclosure Statement Order .....	16
B. Recognition of the Disclosure Statement Order is Consistent with the Principle of Comity.....	16
C. Recognition of the Disclosure Statement Order is Appropriate .....	19
<b>PART IV – RELIEF REQUESTED.....</b>	<b>22</b>

## PART I – OVERVIEW

1. Paladin Labs Inc. (“**Paladin**”) files this factum in its capacity as the foreign representative (the “**Foreign Representative**”) in respect of the proceedings commenced by Endo International plc (“**Endo Parent**”) and certain of its affiliates (collectively, the “**Debtors**”), including Paladin and Paladin Labs Canadian Holding Inc. (collectively, the “**Canadian Debtors**”), under chapter 11 of the United States Code (the “**Chapter 11 Cases**”), in support of its motion for an order (the “**Fifth Supplemental Order**”) recognizing and enforcing in Canada the Disclosure Statement Order.<sup>1</sup>

2. As described further below, since commencing the Chapter 11 Cases and these Canadian recognition proceedings in August 2022, Endo Parent and its affiliates (collectively, the “**Endo Group**”) have undertaken an extensive process to address their overleveraged capital structure and implementing a comprehensive restructuring of their global business.<sup>2</sup> This restructuring process has included, among other things, (a) conducting a marketing and sale process for the Debtors’ business and assets (the “**Sale Process**”) underpinned by a stalking horse credit bid (the “**Stalking Horse Bid**”) by an entity formed by an ad hoc group of holders of first lien indebtedness of the Debtors (the “**Ad Hoc First Lien Group**”), which Sale Process identified the Stalking Horse Bid as the highest offer for the Debtors’ assets, and (b) pursuing and achieving negotiated resolutions

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<sup>1</sup> The Disclosure Statement Order means the Order (I) Scheduling a Combined Hearing for Approval of the Disclosure Statement and Confirmation of the Plan; (II) Conditionally Approving the Adequacy of the Disclosure Statement; (III) Approving (A) Procedures for Solicitation, (B) Forms of Ballots and Notices, (C) Procedures for Tabulation of Votes, and (D) Procedures for Objections; and (IV) Granting Related Relief entered by the Bankruptcy Court on January 12, 2024.

<sup>2</sup> Capitalized terms not otherwise defined in this Factum have the meanings set out in the Affidavit of Daniel Vas sworn January 18, 2024 (the “**Fourth Vas Affidavit**”), including terms therein defined by way of cross-reference.

with a broad cross-section of the Debtors' secured and unsecured creditor groups through a mediation process ordered by the Bankruptcy Court (the "**Mediation**").

3. The resolutions reached in the Chapter 11 Cases have allowed the Debtors to pivot from seeking to restructure pursuant to a standalone sale transaction (in the form of the Stalking Horse Bid) to a chapter 11 plan of reorganization with the support of key stakeholders. On December 19, 2023, the Debtors filed the *Joint Chapter 11 Plan of Reorganization of Endo International plc and its Affiliated Debtors* (as amended from time to time, the "**Plan**") and the related disclosure statement (as amended from time to time, the "**Disclosure Statement**").<sup>3</sup>

4. The Plan and the related Plan Transaction will result in the acquisition of substantially all of the business and assets of the Endo Group by its first lien lenders and the continuation of business operations for the benefit of a broad range of stakeholders. Despite the fact that the Sale Process did not identify any transaction capable of repaying in full the US\$5.9 billion in principal amount of first lien secured indebtedness, the Plan will give effect to the resolutions reached in the Mediation and provide recoveries for various groups of unsecured creditors, including holders of deficiency claims in respect of the Debtors' second lien secured indebtedness and unsecured notes, other general unsecured claims, opioid-related claims, and claims asserted by governmental entities in the United States and Canada.

5. The Canadian Debtors – which are the two Canadian entities in the Endo Group – are subject to the proposed Plan. Accordingly, if the Plan receives requisite stakeholder and court approvals and is implemented, substantially all of the business and assets of the Canadian Debtors

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<sup>3</sup> In this factum, references to the Plan mean the *Second Amended Joint Chapter 11 Plan of Reorganization* filed January 9, 2024 [Docket No. 3535], and references to the Disclosure Statement mean the *Disclosure Statement with Respect to the Second Amended Joint Chapter 11 Plan of Reorganization* filed January 16, 2024 [Docket No. 3554].

will be sold and transferred to a purchaser entity under the Plan Transaction and Canadian creditors with allowed claims against the Debtors will be entitled to receive recoveries on their unsecured claims pursuant to the Plan. The Plan will facilitate the continued operation of the Canadian Business as an integrated part of the Endo Group's restructured global business.

6. The Bankruptcy Court heard the Debtors' motion for approval of the Disclosure Statement Order on January 9, 2024. There was no opposition to the motion at the hearing, as the sole limited objection filed in respect of the motion was resolved in advance of the hearing.

7. On January 12, 2024, the Bankruptcy Court entered the Disclosure Statement Order, authorizing the Debtors to solicit votes on the Plan and conditionally approving the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code as providing holders of claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to accept or reject the Plan.

8. The Disclosure Statement Order establishes an extensive process to provide stakeholders with notice of and information related to the Plan (including the Disclosure Statement and other solicitation materials and documents), approves procedures for soliciting, receiving, and tabulating votes on the Plan, and establishes deadlines for filing objections to the Plan and the Disclosure Statement. The process set forth in the Disclosure Statement Order will enable parties in interest, including Canadian creditors and stakeholders, to receive notice of the Plan and, where applicable, cast their vote with respect to the acceptance or rejection of the Plan. The solicitation and voting process embodied in the Disclosure Statement Order is the next step in the process of the Debtors, including the Canadian Debtors, to achieve a successful emergence from the Chapter 11 Cases.

9. The Foreign Representative seeks recognition of the Disclosure Statement Order pursuant to the Court's jurisdiction under subsection 49(1) of the *Companies' Creditors Arrangement Act* (the "CCAA"). For the reasons discussed herein, the Foreign Representative submits that recognition of the Disclosure Statement Order is appropriate in the circumstances and in the best interests of the Canadian Debtors and their stakeholders. Accordingly, the Foreign Representative respectfully requests that this Court grant the Fifth Supplemental Order.

## **PART II– THE FACTS**

10. The facts with respect to this motion are more fully set out in the Fourth Vas Affidavit and the First Vas Affidavit.

### **A. Background**

11. The Endo Group operates a global specialty pharmaceutical group that develops, manufactures, and sells branded and generic products to customers in a wide range of medical fields. Endo Parent is an Irish publicly-traded company headquartered in Dublin, Ireland. The majority of the Endo Group's business is conducted in the United States. The Canadian Debtors are integrated members of the Endo Group. Paladin, the Canadian operating company, sells specialty pharmaceutical products that it owns, licences or distributes to a variety of customers, including wholesalers, hospitals, governmental entities and pharmacies.<sup>4</sup>

12. The Chapter 11 Cases were necessitated by a confluence of factors, including a highly leveraged capital structure that became unsustainable in light of the Endo Group's declining

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<sup>4</sup> First Vas Affidavit at paras. 5 and 7.

financial performance. The Chapter 11 Cases were also necessary to obtain a stay of the thousands of lawsuits relating to the Endo Group's marketing and sale of opioid products.<sup>5</sup>

13. The Endo Group's capital structure consists of funded debt obligations in the aggregate principal amount of US\$8.15 billion, which include US\$5.9 billion in Prepetition First Lien Indebtedness and US\$941 million in Prepetition Second Lien Indebtedness.<sup>6</sup>

14. The Canadian Debtors are guarantors of, and have granted security interests in their present and future property and assets to secure, the obligations under the Prepetition First Lien Indebtedness and the Prepetition Second Lien Indebtedness. The Canadian Debtors are also guarantors, on an unsecured basis, of the obligations under the Unsecured Notes.<sup>7</sup>

15. On August 16, 2022, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions in the Bankruptcy Court. On August 18, 2022, the Bankruptcy Court granted certain First Day Orders, including the Foreign Representative Order authorizing Paladin to act as the Foreign Representative for purposes of these Canadian recognition proceedings.<sup>8</sup>

16. On August 19, 2022, this Court granted (a) the Initial Recognition Order, among other things, recognizing Paladin as the "foreign representative" in respect of the Chapter 11 Cases and the Chapter 11 Cases as a "foreign main proceeding"; and (b) a Supplemental Order (Foreign Main Proceeding), among other things, appointing KSV Restructuring Inc. as the Information Officer and recognizing certain of the orders made by the Bankruptcy Court in the Chapter 11 Cases.<sup>9</sup>

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<sup>5</sup> First Vas Affidavit at para. 8.

<sup>6</sup> First Vas Affidavit at paras. 65 and 69-81.

<sup>7</sup> First Vas Affidavit at para. 69.

<sup>8</sup> Fourth Vas Affidavit at para. 5-6 [[A5941; A14](#)].

<sup>9</sup> Fourth Vas Affidavit at para. 7 [[A5941; A14](#)].

17. This Court has granted recognition to certain other orders granted by the Bankruptcy Court in the Chapter 11 Cases pursuant to a Second Supplemental Order dated October 13, 2022, a Third Supplemental Order dated November 29, 2022, and a Fourth Supplemental Order dated April 25, 2023.<sup>10</sup>

**B. Outcome of the Sale Process**

18. In early April 2023, the Bankruptcy Court granted (a) the Bidding Procedures Order, authorizing the Debtors to conduct the Sale Process; and (b) the Bar Date Order, establishing a process and procedures for the filing of claims against the Debtors and setting related deadlines. The Bidding Procedures Order and the Bar Date Order were recognized by this Court pursuant to the Fourth Supplemental Order on April 25, 2023.<sup>11</sup>

19. The Bidding Procedures Order and the Bar Date Order approved a plan for providing notice to known and unknown claimants and parties in interest of (a) the proposed sale of substantially all of the Debtors' assets and critical dates related thereto; and (b) deadlines for all entities and persons to file a proof of claim against any of the Debtors for prepetition claims (the "**Notice Plan**").<sup>12</sup>

20. The Debtors carried out the Notice Plan approved pursuant to the Bar Date Order, as described in the Second Finegan Declaration filed in the Chapter 11 Cases. As set out therein, the Notice Plan was extensive and ranks as one of the largest legal notice programs deployed in chapter 11 cases. In Canada, the Notice Plan included notices in English- and French-language

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<sup>10</sup> Fourth Vas Affidavit at para. 8 [[A5942; A15](#)].

<sup>11</sup> Fourth Vas Affidavit at paras. 9 and 10 [[A5942; A15](#) and [A5943; A16](#)].

<sup>12</sup> Fourth Vas Affidavit at para. 39 [[A5954; A27](#)].



magazines and newspapers, online display advertising, social media advertising, and press releases. The Media Notice Plan component of the Notice Plan ultimately reached an estimated 90% of Canadian adults 18 years of age and older with an estimated average frequency of over ten times, resulting in approximately 432 million total impressions in Canada across all media channels.<sup>13</sup>

21. The Debtors, with the assistance of their financial and legal advisors, conducted the Sale Process in accordance with the Bidding Procedures established by the Bidding Procedures Order. The Sale Process was structured as a two-stage process, followed by an auction if necessary, to determine the successful bid(s).<sup>14</sup>

22. The Debtors did not receive any indications of interest in the Sale Process prior to the applicable deadline on June 13, 2023 that, viewed individually or together, were superior to the Stalking Horse Bid or capable of repaying in full the Debtors' US\$5.9 billion in principal amount of Prepetition First Lien Indebtedness. Accordingly, in accordance with the Bidding Procedures, the Debtors elected to accelerate the Sale Process and scheduled the Sale Hearing to approve the sale and transfer of substantially all of the assets of the Debtors in the form of the Stalking Horse Bid (the "**Sale**").<sup>15</sup>

23. The Debtors adjourned the Sale Hearing several times while they engaged in negotiations to resolve objections to the Sale, including objections by His Majesty the King in Right of the Province of British Columbia and each of the other Canadian provinces and territories

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<sup>13</sup> Fourth Vas Affidavit at para. 41 [[A5955; A28](#)].

<sup>14</sup> Fourth Vas Affidavit at paras. 11 and 43 [[A5943; A16](#) and [A5956; A29](#)].

<sup>15</sup> Fourth Vas Affidavit at paras. 11 and 12 [[A5943; A16](#)].

(collectively, the “**Canadian Provinces**”), the U.S. Trustee, and the federal government of the United States of America (the “**U.S. Government**”) on behalf of certain of its departments and agencies.<sup>16</sup>

**C. Stakeholder Resolutions**

24. The Mediation process ordered by the Bankruptcy Court, which commenced in January 2023 in relation to objections to the Bidding Procedures Order, continued in relation to objections to the Sale.<sup>17</sup> The Mediation proved to succeed in enabling the Debtors to reach consensual resolutions with key stakeholders, including the Ad Hoc First Lien Group, the Ad Hoc Cross-Holder Group, the Non-RSA 1Ls, the Official Committee of Unsecured Creditors (the “**UCC**”), the Official Committee of Opioid Claimants (the “**OCC**”), the legal representative for future claimants appointed by the Bankruptcy Court, the Multi-State Endo Executive Committee, a group of distributors, manufacturers and pharmacies (the “**DMPs**”), the Canadian Provinces, and certain public school districts in the United States. An agreement has also been reached with the U.S. Government, including the Department of Justice, regarding the key economic terms of a potential resolution of all U.S. Government claims against the Debtors.<sup>18</sup>

25. The terms of the resolution with the Canadian Provinces is set forth in the Canadian Provinces Term Sheet filed with the Bankruptcy Court on September 29, 2023, which resolved the objection of the Canadian Provinces to the Sale.<sup>19</sup> The Plan incorporates the economic terms of the Canadian Provinces Term Sheet and provides that the Canadian Provinces are eligible to

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<sup>16</sup> Fourth Vas Affidavit at paras. 13 and 54 [[A5943; A16](#) and [A5960; A33](#)].

<sup>17</sup> Fourth Vas Affidavit at para. 14 [[A5943; A16](#)].

<sup>18</sup> Fourth Vas Affidavit at para. 14 [[A5943; A16](#)].

<sup>19</sup> The Canadian Provinces Term Sheet is attached as Exhibit “E” to the Fourth Vas Affidavit [[A6850; A923](#)].

participate in the Canadian Provinces Trust and receive their proportionate share of the Canadian Provinces Consideration of up to US\$7.25 million in aggregate in full and final satisfaction and release of their claims. The Canadian Provinces had filed ten separate proofs of claim in the Chapter 11 Cases asserting claims against certain Debtors in the aggregate amount of US\$65.7 billion.<sup>20</sup>

26. The Debtors also reached a resolution with the DMPs, which are a group of wholesale distributors, manufacturers and retail pharmacies that are vital to the Debtors' business operations and are also co-defendants with the Debtors and other industry defendants in opioid-related litigation, including certain proposed class action proceedings in Canada.

27. The negotiated stipulation with the DMPs (the "**DMP Stipulation**") was approved by the Bankruptcy Court pursuant to the DMP Stipulation Order entered on August 3, 2023. The DMP Stipulation resolved the matters in dispute between the parties with respect to the Sale and includes an agreed approach with respect to the preservation and production of documents in connection with actions filed in Canada against any of the Debtors in respect of opioid claims. The Plan gives effect to the terms of the DMP Stipulation.<sup>21</sup>

28. The resolutions reached with key stakeholders have allowed the Debtors to pivot from pursuing the standalone Sale transaction to implementing these resolutions through the Plan. As a result, on December 19, 2023 the Debtors filed the Disclosure Statement Motion, the Plan and the Disclosure Statement with the Bankruptcy Court.

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<sup>20</sup> Fourth Vas Affidavit at para. 25(a) [[A5949](#); [A22](#)].

<sup>21</sup> Fourth Vas Affidavit at para. 26 [[A5950](#); [A23](#)].

**D. The Plan**

29. The Plan contemplates a comprehensive restructuring of the Debtors under which:

- (a) substantially all of the business and assets of the Endo Group will be transferred to purchaser entities formed by the Ad Hoc First Lien Group (as defined in the Plan, the “**Purchaser Entities**”) pursuant to the Plan Transaction, which shall be governed by the terms of a Purchase and Sale Agreement (the “**PSA**”). The PSA remains subject to negotiation between the Debtors and the Ad Hoc First Lien Group, however, it is expected that the PSA will be in generally the form of the Stalking Horse Bid, with necessary modifications having regard to subsequent developments in the Chapter 11 Cases and the implementation of the transaction in connection with the Plan;
- (b) holders of Allowed First Lien Claims (being claims on account of the Debtors’ Prepetition First Lien Indebtedness) will receive, among other consideration, 96.30% of the equity of the newly formed Purchaser Parent (subject to certain dilution referred to in the Fourth Vas Affidavit) that will directly or indirectly own the Purchaser Entities on implementation of the Plan;
- (c) unsecured creditors will receive the cash or other consideration as set forth in the Plan in full and final satisfaction of their claims; and
- (d) the Plan will implement certain releases and injunctions.<sup>22</sup>

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<sup>22</sup> Fourth Vas Affidavit at para. 68 [[A5966; A39](#)].

30. The key terms of the Plan are described in detail in the Disclosure Statement, which is attached as an exhibit to the Fourth Vas Affidavit.

31. The Plan classifies holders of claims and interests into 21 voting classes and six non-voting classes. The classes and their respective treatment and voting statuses are described in the Fourth Vas Affidavit.<sup>23</sup>

32. The Canadian Debtors are subject to the proposed Plan. If the Plan receives the requisite stakeholder votes in favour and is confirmed by the Bankruptcy Court and implemented, the Canadian Debtors will be restructured in accordance with the Plan and substantially all of the business and assets of the Canadian Debtors will be sold and transferred to a Purchaser Entity under the Plan Transaction.<sup>24</sup>

33. Despite the fact that the Sale Process did not identify any transaction capable of repaying in full the US\$5.9 billion in principal amount of Prepetition First Lien Indebtedness, the Plan will give effect to the resolutions reached in the Mediation and provide a recovery for various groups of unsecured creditors. This includes holders of deficiency claims in respect of the Debtors' Prepetition Second Lien Indebtedness and unsecured notes, other general unsecured claims, opioid-related claims, and claims asserted by governmental entities in the United States and Canada.<sup>25</sup>

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<sup>23</sup> Fourth Vas Affidavit at para. 71 [[A5968; A41](#)].

<sup>24</sup> Fourth Vas Affidavit at para. 18 [[A5946; A19](#)].

<sup>25</sup> Fourth Vas Affidavit at para. 24 [[A5948; A21](#)].

34. If implemented, the Plan is expected to provide recoveries for Canadian creditors with opioid-related claims against the Debtors:

- (a) the Plan incorporates the terms of the Canadian Provinces Term Sheet agreed with the Canadian Provinces. Under the proposed Plan, the Canadian Provinces are eligible to participate in the Canadian Provinces Trust and receive their proportionate share of Canadian Provinces Consideration of up to US\$7.25 million in aggregate in full and final satisfaction and release of their claims;
- (b) Canadian Municipalities and Canadian First Nations with Allowed Other Opioid Claims will be eligible to participate pro rata in the Other Opioid Claims Trust, which will be funded with aggregate consideration of up to US\$200,000;
- (c) the Plan gives effect to the resolution reached with the OCC with respect to the claims of present private opioid claimants. Among other things, personal injury opioid claimants that satisfy the eligibility requirements under the Plan and applicable trust documents will be entitled to obtain a recovery from the PI Trust in respect of their PI Opioid Claims. The PI Trust will be funded with consideration of approximately US\$53 million (or approximately US\$39.7 million if all consideration is funded on the Effective Date of the Plan). All holders of Allowed PI Opioid Claims – whether resident in the United States, Canada or elsewhere – will receive the same treatment under the Plan; and
- (d) the Plan gives effect to the resolution reached with the UCC with respect to the claims of non-opioid unsecured creditors. Canadian creditors with Allowed Other

General Unsecured Claims will be eligible to participate pro rata in the GUC Trust to be established pursuant to the UCC Resolution Term Sheet.<sup>26</sup>

35. The Plan contains deeming provisions with respect to the granting of the third party releases depending on whether a particular creditor or interest holder votes for, against, or does not vote on the Plan. A creditor or interest holder can opt in or opt out, as applicable, to grant the third party releases in circumstances where the creditor votes against or does not vote on the Plan. The specific release deeming provisions and opt in and opt out requirements are described in the Plan and the Disclosure Statement and summarized in the Committee Letters of Support.<sup>27</sup>

**E. Disclosure Statement Order**

36. The Bankruptcy Court heard the Disclosure Statement Motion on January 9, 2024 and entered the Disclosure Statement Order on January 12, 2024. The Disclosure Statement Order was entered on an unopposed basis.<sup>28</sup>

37. The Disclosure Statement Order, among other things: (a) authorizes the Debtors to solicit votes on the Plan; (b) conditionally approves the Disclosure Statement as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approves the solicitation materials and documents to be included in the Solicitation Packages; (d) establishes March 19, 2024 as the date for the Combined Hearing (as described below); and (e) approves procedures for

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<sup>26</sup> Fourth Vas Affidavit at para. 25 [[A5948; A21](#)].

<sup>27</sup> Fourth Vas Affidavit at para. 74 [[A5983; A56](#)].

<sup>28</sup> Fourth Vas Affidavit at para. 19 [[A5946; A19](#)].

soliciting, receiving and tabulating votes on the Plan and for filing objections to the Plan and Disclosure Statement.<sup>29</sup>

38. The Disclosure Statement Order does not approve or confirm the Plan. If the Plan receives requisite creditor approvals, the Debtors intend to seek, at the Combined Hearing, an order of the Bankruptcy Court approving the Disclosure Statement on a final basis and confirming the Plan pursuant to section 1129 of the Bankruptcy Code (as defined in the Plan, the proposed “**Confirmation Order**”).<sup>30</sup>

39. Implementation of the Plan is conditioned on, among other things, the Bankruptcy Court having entered the Confirmation Order. In addition, the implementation of the Plan in respect of the Canadian Debtors is conditioned on this Court having granted an order recognizing and giving full force and effect in Canada to the Confirmation Order and the Plan.<sup>31</sup>

**F. Key Dates and Deadlines**

40. The Disclosure Statement Order establishes the following dates and deadlines with respect to the confirmation of the Plan and the final approval of the Disclosure Statement:<sup>32</sup>

<b>Event</b>	<b>Date</b>
Voting Record Date	January 2, 2024
Conditional Disclosure Statement Hearing	January 9, 2024 at 3:00 p.m. (prevailing Eastern Time)
Solicitation Directive Deadline	December 22, 2023 or January 3, 2024, as applicable

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<sup>29</sup> Fourth Vas Affidavit at para. 20 [[A5947; A20](#)].

<sup>30</sup> Fourth Vas Affidavit at para. 21 [[A5947; A20](#)].

<sup>31</sup> Fourth Vas Affidavit at para. 22 [[A5948; A21](#)].

<sup>32</sup> Fourth Vas Affidavit at para. 92 [[A5990; A63](#)].



<b>Event</b>	<b>Date</b>
Solicitation Deadline	January 25, 2024, or as soon as reasonably practicable thereafter
Publication Deadline	January 25, 2024
Adequate Assurance/Contract Rejection Objection Deadline	February 9, 2024 at 4:00 p.m. (prevailing Eastern Time)
Deadline to Object to Claims for Voting Purposes	February 14, 2024 at 4:00 p.m. (prevailing Eastern Time)
Plan Supplement Filing Deadline	February 15, 2024
Rule 3018(a) Motion Filing Deadline	February 22, 2024 at 4:00 p.m. (prevailing Eastern Time)
Voting Deadline	February 22, 2024 at 4:00 p.m. (prevailing Eastern Time)
Plan and Disclosure Statement Objection Deadline	February 22, 2024 at 4:00 p.m. (prevailing Eastern Time)
Deadline to Object to Rule 3018(a) Motion	March 7, 2024 at 4:00 p.m. (prevailing Eastern Time)
Deadline to File Voting Report	March 7, 2024 at 4:00 p.m. (prevailing Eastern Time)
Deadline to File the Confirmation Brief and Omnibus Reply to Plan and Disclosure Statement Objections	March 7, 2024 at 12:00 p.m. (prevailing Eastern Time)
Combined Hearing Date	March 19, 2024, at 10:00 a.m. (prevailing Eastern Time), subject to the Bankruptcy Court's availability

### **PART III– THE ISSUE AND THE LAW**

41. The issue to be considered on this motion is whether the Court should grant the Fifth Supplemental Order recognizing and giving effect in Canada to the Disclosure Statement Order under Part IV of the CCAA.

**A. This Court has Jurisdiction to Recognize the Disclosure Statement Order**

42. This Court recognized the Chapter 11 Cases as a “foreign main proceeding” under section 47 of the CCAA pursuant to the Initial Recognition Order.<sup>33</sup> When a foreign proceeding has been recognized under Part IV of the CCAA, subsection 49(1) provides the Court with broad jurisdiction to grant any order that it considers appropriate if the court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of creditors.<sup>34</sup> An order under Part IV of the CCAA “may be made on any terms and conditions that the court considers appropriate in the circumstances.”<sup>35</sup> Accordingly, this Court has the jurisdiction to grant recognition of the Disclosure Statement Order.

**B. Recognition of the Disclosure Statement Order is Consistent with the Principle of Comity**

43. This Court has noted that “[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.”<sup>36</sup> This statement corresponds with the stated purposes of Part IV of the CCAA set out at section 44 of the CCAA, which include the promotion of: (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in the cases of cross-border insolvencies; (b) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies; and (c) the protection and maximization of the value of the debtor company’s property.<sup>37</sup>

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<sup>33</sup> [Re Paladin Labs Inc. et al., Initial Recognition Order \(Foreign Main Proceeding\) granted August 19, 2022, Court File No. CV-22-00685631-00CL.](#)

<sup>34</sup> [CCAA, s. 49\(1\).](#)

<sup>35</sup> [CCAA, s. 50.](#)

<sup>36</sup> [Zochem Inc. \(Re\), 2016 ONSC 958](#) at para 15.

<sup>37</sup> [CCAA, s. 44.](#)

44. Comity is the foundational principle underlying these objectives. Comity mandates that Canadian courts 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.<sup>38</sup> Subsection 52(1) of the CCAA provides that if a proceeding is recognized by a Canadian court as a foreign proceeding, the court shall “cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”<sup>39</sup>

45. In *Xerium*, this Court held that it had the “authority and indeed obligation” to recognize the U.S. bankruptcy court’s plan confirmation order and that such recognition is “precisely the kind of comity in international insolvency contemplated by Part IV of the CCAA.”<sup>40</sup> The Court noted that in recognizing the order, it “not only helps to ensure the orderly completion to the Chapter 11 Debtors’ restructuring process, but avoids what otherwise might have been a time consuming and costly process were the Canadian part of the Applicant itself to make a separate restructuring application under the CCAA in Canada.”<sup>41</sup>

46. Canadian courts have consistently emphasized comity and cooperation between courts across jurisdictions to facilitate successful cross-border restructurings.<sup>42</sup> Canadian courts have on many occasions recognized disclosure statement orders granted by U.S. courts in Chapter 11 cases that are foreign main proceedings.<sup>43</sup> This Court held in *Purdue Pharma* and *Mallinckrodt* that

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<sup>38</sup> [Hollander Sleep Products, LLC \(Re\)](#), 2019 ONSC 3238, at para. 41; [Re Babcock & Wilcox Canada Ltd.](#), 2000 CanLII 22482 (ONSC) at para. 21.

<sup>39</sup> [CCAA, s. 52\(1\)](#).

<sup>40</sup> [Xerium Technologies Inc., Re](#), 2010 ONSC 3974 at para. 23 [*Xerium*].

<sup>41</sup> *Xerium* at para 29.

<sup>42</sup> [Caesars Entertainment Operating Company, Inc. \(Re\)](#), 2015 ONSC 712 at para. 38.

<sup>43</sup> [Re Mallinckrodt Canada ULC et al. \(Recognition of Disclosure Statement Order\)](#) granted July 9, 2021, Court File No. CV-20-00649441-00CL; [Re Purdue Pharma L.P. et al. \(Re: Disclosure Statement Order\)](#) granted July 5, 2021, Court File No. CV-19-627656-00CL; [Re BBGI US, Inc. et al. \(Disclosure Statement Order\)](#) granted February 16,

recognition of disclosure statement orders helps coordinate the restructuring proceedings in both the U.S. and Canada and is consistent with the principles of comity and cross-border cooperation.<sup>44</sup>

47. Typically, a Canadian court will only refuse to recognize an order of another court in situations where subsection 61(2) of the CCAA is engaged. Subsection 61(2) of the CCAA provides that “Nothing in this Part [IV] prevents the court from refusing to do something that would be contrary to public policy.”<sup>45</sup> Canadian courts have held that this exception to recognition should be interpreted narrowly.<sup>46</sup>

48. In considering whether to recognize a foreign order, including an order made in a Chapter 11 proceeding, a Canadian court should consider, among things: (a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions; (b) the need to respect foreign bankruptcy and insolvency legislation; (c) the equitable treatment of stakeholders, and, to the extent reasonably possible, the equal 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.<sup>47</sup> A consideration of these factors supports this Court’s recognition of the Disclosure Statement Order pursuant to the Fifth Supplemental Order.

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[2021, Court File No. CV-20-00647463-00CL; \*Re GNC Holdings Inc. et al. \(Recognition of Certain U.S. Orders in Foreign Main Proceeding\)\* granted August 25, 2020, Court File No. CV-20-00642970-00CL.](#)

<sup>44</sup>[Re \*Purdue Pharma L.P. et al.\* CV-19-627656-00CL, Endorsement of Conway J. dated July 5, 2021, at para. 3; \*Re Mallinckrodt Canada ULC et al.\*, CV-20-00649441-00CL, Endorsement of Patillo J. dated July 9, 2021.](#)

<sup>45</sup> [CCAA, s. 61\(2\).](#)

<sup>46</sup> [Hartford Computer Hardware, Inc. Re, 2012 ONSC 964](#) at paras. 17-18.

<sup>47</sup> [Xerium](#), at paras. 26-27.

**C. Recognition of the Disclosure Statement Order is Appropriate**

49. Recognition of the Disclosure Statement Order by this Court is consistent with Part IV of the CCAA, the principles of comity, and the approval of similar orders commonly granted in Canadian restructuring proceedings.

50. The Disclosure Statement Order does not approve or confirm the Plan. As stated above, if the Plan receives requisite creditor approvals, the Debtors intend to seek the Confirmation Order, which is a condition precedent to implementation of the Plan. Further, the implementation of the Plan in respect of the Canadian Debtors is conditioned on this Court having granted an order recognizing and giving full force and effect in Canada to the Confirmation Order and the Plan.<sup>48</sup>

51. The Disclosure Statement Order results from significant efforts and success by the Debtors in achieving resolutions with their stakeholders in the Chapter 11 Cases. The Debtors' motion for the Disclosure Statement Order proceeded on an unopposed basis, as the sole objection filed in response to the Debtors' motion was consensually resolved in advance of the hearing.

52. The Disclosure Statement Order, among other things: (a) approves procedures for (i) soliciting, receiving and tabulating votes to accept or reject the Plan, (ii) voting to accept or reject the Plan, and (iii) filing objections to the Plan; (b) approves the forms of ballots and procedures for the distribution thereof; (c) approves the form and methods of distribution of solicitation packages; (d) approves the form of cover letter from the Debtors describing the contents of the Solicitation Package, urging claimants with voting claims to vote to accept the Plan, and providing notice of the Combined Hearing; (e) approves the manner and form of notice of the Combined Hearing for confirmation of the Plan, and final approval of the Disclosure

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<sup>48</sup> Fourth Vas Affidavit at para. 22 [[A5948](#); [A21](#)].

Statement; and (f) approves the form of Publication Notice and directs that the Publication Notice be submitted for publication by the Debtors in a number of U.S. and international publications, including the *Globe and Mail* (National Canadian Edition).<sup>49</sup>

53. In granting the Disclosure Statement Order, the Bankruptcy Court determined on a conditional basis, among other things, that: (a) the Disclosure Statement provides holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan; and (b) the Disclosure Statement and its exhibits provide holders of Claims or Interests with sufficient notice of the injunction, exculpation, and release provisions contained in the Plan.<sup>50</sup> The specific release deeming provisions and opt in and opt out requirements are also summarized in the UCC Letter and the OCC Letter to be included in the Solicitation Packages sent to holders of claims in Voting Classes.<sup>51</sup>

54. The Disclosure Statement Order granted by the Bankruptcy Court is similar in nature to meeting orders granted in the context of plenary CCAA proceedings. The standard for issuing a meeting order under the CCAA and permitting a plan to proceed to a vote of creditors is low.<sup>52</sup> The feasibility of a plan is a relevant factor to be considered, but the Court does not impose a heavy burden to establish the likelihood of ultimate success at the outset.<sup>53</sup> Rather, a meeting order is a procedural step in the CCAA process and the Court is not required to address the “fairness and

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<sup>49</sup> Fourth Vas Affidavit at para. 91 [[A5989; A62](#)].

<sup>50</sup> Disclosure Statement Order at paras. 2 and 3 [[A5998; A71](#)].

<sup>51</sup> Fourth Vas Affidavit at para. 74 [[A5983; A56](#)].

<sup>52</sup> *Quest University Canada (Re)*, 2020 BCSC 1845 at para. 46.

<sup>53</sup> *Laurentian University of Sudbury*, 2022 ONSC 4433 at para. 23.

reasonableness” of the plan when determining whether to grant a meeting order.<sup>54</sup> Fairness and reasonableness is considered at a plan sanction hearing.<sup>55</sup>

55. The Disclosure Statement Order establishes an extensive process to provide stakeholders with notice of and information related to the Plan. The Disclosure Statement Order also establishes procedures for soliciting, receiving, and tabulating votes on the Plan, as well as deadlines for filing objections to the Plan and the Disclosure Statement. The process set forth in the Disclosure Statement Order will enable parties in interest, including Canadian creditors and stakeholders, to receive notice of the Plan and, where applicable, cast their vote with respect to the acceptance or rejection of the Plan. It will also allow them to assert their rights as creditors of the Debtors by voting on the Plan and, if desired, to participate in the confirmation process before the Bankruptcy Court.<sup>56</sup>

56. The Disclosure Statement Order and the voting and solicitation procedures it establishes are essential to ensure the efficient and orderly administration of the Debtors’ restructuring process. The process embodied in the Disclosure Statement Order, including creditor voting on the Plan and the scheduling of the Combined Hearing for confirmation of the Plan if it is approved by creditors, is a necessary and appropriate next step in the Debtors’ efforts to complete a comprehensive global restructuring in the Chapter 11 Cases.

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<sup>54</sup> [Jaguar Mining Inc. \(Re\)](#), 2014 ONSC 494 at para. 48.

<sup>55</sup> [Stelco Inc., Re. \[2005\] O.J. No. 4814 \(Ont. S.C.J. \(Commercial List\)\)](#) at para. 15.

<sup>56</sup> Fourth Vas Affidavit at para. 28 [[A5951](#); [A24](#)].

57. The Foreign Representative submits that recognition of the Disclosure Statement Order by this Court is consistent with Part IV of the CCAA, the principles of comity, and the type of relief commonly granted in Canadian insolvency proceedings.

**PART IV– RELIEF REQUESTED**

58. For the foregoing reasons, the Foreign Representative respectfully requests that the Court grant the Fifth Supplemental Order recognizing and giving full force and effect in Canada to the Disclosure Statement Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19<sup>th</sup> day of January, 2024.

*Goodmans LLP*  
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Goodmans LLP



**SCHEDULE A**  
**LIST OF AUTHORITIES**

<b>Tab</b>	<b>Description</b>
1.	<a href="#"><u>Re Paladin Labs Inc. et al., Initial Recognition Order (Foreign Main Proceeding) granted August 19, 2022, Court File No. CV-22-00685631-00CL.</u></a>
2.	<a href="#"><u>Zochem Inc. (Re), 2016 ONSC 958.</u></a>
3.	<a href="#"><u>Re Hollander Sleep Products, LLC, 2019 ONSC 3238.</u></a>
4.	<a href="#"><u>Re Babcock &amp; Wilcox Canada Ltd, [2000] OJ NO 786 (Ont Sup Ct J (Commercial Division)).</u></a>
5.	<a href="#"><u>Xerium Technologies Inc., Re, 2010 ONSC 3974.</u></a>
6.	<a href="#"><u>Caesars Entertainment Operating Company, Inc. (Re), 2015 ONSC 712.</u></a>
7.	<a href="#"><u>Re Mallinckrodt Canada ULC et al. (Recognition of Disclosure Statement Order) granted July 9, 2021, Court File No. CV-20-00649441-00CL.</u></a>
8.	<a href="#"><u>Re Purdue Pharma L.P. et al. (Re: Disclosure Statement Order) granted July 5, 2021, Court File No. CV-19-627656-00CL.</u></a>
9.	<a href="#"><u>Re BBGI US, Inc. et al. (Disclosure Statement Order) granted February 16, 2021, Court File No. CV-20-00647463-00CL.</u></a>
10.	<a href="#"><u>Re GNC Holdings Inc. et al. (Recognition of Certain U.S. Orders in Foreign Main Proceeding) granted August 25, 2020, Court File No. CV-20-00642970-00CL.</u></a>
11.	<a href="#"><u>Re Purdue Pharma L.P. et al. CV-19-627656-00CL, Endorsement of Conway J. dated July 5, 2021.</u></a>
12.	<a href="#"><u>Re Mallinckrodt Canada ULC et al., CV-20-00649441-00CL, Endorsement of Patillo J. dated July 9, 2021.</u></a>
13.	<a href="#"><u>Hartford Computer Hardware, Inc, Re, 2012 ONSC 964.</u></a>
14.	<a href="#"><u>Quest University Canada (Re), 2020 BCSC 1845.</u></a>
15.	<a href="#"><u>Laurentian University of Sudbury, 2022 ONSC 4433.</u></a>
16.	<a href="#"><u>Jaguar Mining Inc. (Re), 2014 ONSC 494.</u></a>
17.	<a href="#"><u>Stelco Inc., Re, [2005] O.J. No. 4814 (Ont. S.C.J. (Commercial List)).</u></a>

**SCHEDULE B**  
**STATUTORY REFERENCES**

***COMPANIES' CREDITORS ARRANGEMENT ACT***  
**R.S.C. 1985, c. C-36, as amended**

s. 4

Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

s. 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.

s. 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.

s. 50

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

s. 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.

s. 61(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

AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

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

Applicant

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

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT  
(Motion for Recognition of Disclosure Statement Order  
Returnable January 24, 2024)**

**GOODMANS LLP**

Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**Robert J. Chadwick LSO#: 35165K**  
rchadwick@goodmans.ca

**Bradley Wiffen LSO#: 64279L**  
bwiffen@goodmans.ca

**Andrew Harmes LSO#: 73221A**  
aharmes@goodmans.ca

**Erik Axell LSO#: 85345O**  
eaxell@goodmans.ca

Tel: 416.979.2211  
Fax: 416.979.1234

Lawyers for the Applicant