

**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 for Appointment of Representative Plaintiff Returnable December 4, 2023)**

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PART I – INTRODUCTION

A. Overview

1. On August 16, 2022, Endo International plc (“**Endo Parent**”) and certain of its affiliates (collectively, the “**Debtors**”), including Paladin Labs Inc. (“**Paladin**”), commenced voluntary cases under Chapter 11 of the United States Code (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). Paladin, in its capacity as foreign representative of the Chapter 11 Cases (the “**Foreign Representative**”), brought an application seeking recognition of the Chapter 11 Cases in proceedings under Part IV of the *Companies’ Creditors Arrangement Act* (the “**Canadian Recognition Proceedings**”). This Court recognized the Chapter 11 Cases as a “foreign main proceeding” pursuant to an Initial Recognition Order dated August 19, 2022.

2. As described below, the Debtors have made substantial progress in their restructuring efforts in the 15 months since commencing the Chapter 11 Cases. At this advanced stage of the restructuring, Jean-François Bourassa (the “**Quebec Plaintiff**”), the plaintiff in an uncertified class action before the Quebec Superior Court, has brought a motion for a CCAA Representation Order, among other things, seeking to appoint the Quebec Plaintiff to represent the interests of all Canadian Personal Injury Claimants (in such capacity, the “**Representative Plaintiff**”) in the Canadian Recognition Proceedings, and, as necessary, the Chapter 11 Cases. The Quebec Plaintiff asks this Court to order the Canadian Debtors to pay the reasonable fees and expenses of the Representative Plaintiff and the two law firms that it has retained (“**Plaintiff’s Counsel**”).

3. The Foreign Representative opposes the motion. The appointment of a Representative Plaintiff is unnecessary and unwarranted in the circumstances. On September 2, 2022, the U.S. Trustee appointed the Official Committee of Opioid Claimants (the “**OCC**”), a statutory committee, as fiduciary for all holders of current claims arising from alleged harm suffered due to the Debtors’ opioid products and practices, regardless of where they reside (the “**Opioid Claimants**”). The Canadian Personal Injury Claimants (to the extent they have current claims) form part of the constituency of the OCC. The OCC has vigorously represented the interests of all Opioid Claimants as a whole, including the Canadian Personal Injury Claimants, during the Chapter 11 Cases.

4. The Chapter 11 Cases are the foreign main proceeding and the primary forum for the restructuring of the Debtors, including the Canadian Debtors. If appointed as Representative Plaintiff,

the objective of the Quebec Plaintiff appears to be to circumvent a number of long-standing orders of the Bankruptcy Court – which contain important processes and deadlines that the Debtors and all of their stakeholders have observed in the course of advancing the Chapter 11 Cases and resolving legal and economic entitlements – and ultimately to force a standalone restructuring of the Canadian Debtors for the benefit of their unsecured creditors. Since the relief sought by the Quebec Plaintiff would impact many stakeholders and certain foundational matters in the Chapter 11 Cases, the Quebec Plaintiff’s motion should have been brought in the Chapter 11 Cases. Judge Garrity, who has overseen the Chapter 11 Cases from their outset, is uniquely situated to assess the appropriateness and potential implications for the Debtors’ overall restructuring process of appointing representative counsel for a subset of Opioid Claimants for whom the OCC already acts as a fiduciary. Accordingly, the Foreign Representative requests that this Court dismiss the Quebec Plaintiff’s motion.

B. Status of the Chapter 11 Cases

5. Commencing in April 2023, the Debtors conducted an extensive sale process (the “**Sale Process**”, and any sale identified therein, a “**Sale**”) pursuant to the Bidding Procedures Order,¹ underpinned by a stalking horse bid by the Ad Hoc First Lien Group (the “**Stalking Horse Bid**”) pursuant to which Tensor Limited (the “**Buyer**”), an entity formed by the Ad Hoc First Lien Group, would acquire substantially all of the Debtors’ assets in exchange for a credit bid of the Prepetition First Lien Indebtedness and certain additional cash and non-cash consideration. The Prepetition First Lien Indebtedness is guaranteed by, and secured against the assets of, the Canadian Debtors (as defined below). The Sale Process did not identify any bid(s) superior to the Stalking Horse Bid or capable of repaying in full the US\$5.9 billion principal amount of Prepetition First Lien Indebtedness. On June 20, 2023, in accordance with the Bidding Procedures Order, the Debtors filed with the Bankruptcy Court a notice of termination of the Sale Process, naming the Stalking Horse Bidder as the successful bidder and accelerating the hearing to approve the Sale (the “**Sale Hearing**”) from August 31, 2023 to July 28, 2023 (which was thereafter adjourned).

6. The Sale is supported by key unsecured stakeholder groups of the Debtors, including the OCC, the Official Committee of Unsecured Creditors (the “**UCC**”), the representative for future claimants appointed by the Bankruptcy Court (the “**FCR**”), and His Majesty the King in Right of the Province of British Columbia and each of the other Canadian provinces and territories (collectively, the

¹ The Bidding Procedures Order is the *Order (I) Establishing Bidding, Noticing, and Assumption and Assignment Procedures, (II) Approving Certain Transaction Steps, and (III) Granting Related Relief* dated April 2, 2023.

“**Canadian Governments**”)² – each of whose constituencies will be eligible to a recovery upon approval of the Sale by the Bankruptcy Court, despite the fact that the Debtors are unable to repay in full the Prepetition First Lien Indebtedness.

7. The Debtors have adjourned the Sale Hearing several times while they attempt to resolve a limited number of remaining objections, including objections by the United States Trustee (the “**U.S. Trustee**”) and the United States of America (the “**U.S. Government**”) on behalf of certain of its departments and agencies. Such negotiations are progressing in connection with the mediation process ordered by the Bankruptcy Court (the “**Mediation**”). The Mediation remains ongoing with respect to a limited number of objections. On November 20, 2023, the Ad Hoc First Lien Group filed a notice³ in the Chapter 11 Cases attaching a term sheet containing a summary of key terms under discussion in the Mediation in the interests of reaching a potential resolution of the U.S. Government’s objection and certain related claims and disputes (the “**USG Term Sheet**”). The notice indicated that the USG Term Sheet remains subject to, among other things, each party obtaining necessary approvals and agreement on definitive documentation implementing the USG Term Sheet, which may include a potential Chapter 11 plan of reorganization (a “**Chapter 11 Plan**”) that is being advanced and may be proposed prospectively by the Debtors.

8. The restructuring of the Debtors’ global business – whether implemented pursuant to the Sale or a Chapter 11 Plan – will include Paladin and Paladin Labs Canadian Holding Inc., the two Canadian entities in the Endo Group (collectively, the “**Canadian Debtors**”). The Canadian Debtors – along with substantially all other entities in the Endo Group – are guarantors of the Prepetition First Lien Indebtedness and the Prepetition Second Lien Notes Indebtedness, and have granted security interests in substantially all of their assets to secure same.

9. The OCC has served as a fiduciary for the interests of all Opioid Claimants, including the Canadian Personal Injury Claimants, throughout the Chapter 11 Cases. In January 2023, the OCC and the UCC (collectively, the “**Committees**”) jointly filed the Joint Standing Motion⁴ seeking standing

² The Province of British Columbia is the proposed representative plaintiff on behalf of all federal, provincial and territorial governments and agencies in an uncertified class action proceeding in British Columbia against a broad range of manufacturers, distributors and marketers of opioid products, including Paladin and certain other Debtors.

³ *Notice of Filing of Term Sheet* dated November 20, 2023, a copy of which is attached as Exhibit “U” to the affidavit of Erik Axell sworn November 27, 2023 (the “**Axell Affidavit**”).

⁴ The Joint Standing Motion is the *Motion of the Official Committee of Unsecured Creditors and the Official Committee of Opioid Claimants for (I) Entry of an Order Granting Leave, Standing, and Authority to Commence and Prosecute Certain Claims on Behalf of the Debtors and (II) Settlement Authority in Respect of Such Claims* dated January 23, 2023.

to, among other things, commence and prosecute four complaints, certain of which related to the validity and extent of the liens securing the Prepetition First Lien Indebtedness. The Joint Standing Motion was the culmination of efforts by the Committees since their September 2022 appointment to investigate “the Debtors’ prepetition conduct, capital structure, secured debt obligations and asset base to determine whether certain of the Debtors’ assets are unencumbered and whether causes of action exist that may serve to return value to the Debtors’ estates and provide a recovery for unsecured creditors.”⁵

10. On January 27, 2023, the Bankruptcy Court entered the Mediation Order⁶ ordering the Debtors and certain of their key stakeholders to participate in the Mediation to attempt to resolve objections to the Debtors’ Sale Process and issues relating to the Joint Standing Motion. Following months of participating in the Mediation, the Committees reached a resolution with the Ad Hoc First Lien Group in March 2023 as reflected in the Resolution Stipulation.⁷

11. Pursuant to the Resolution Stipulation and the accompanying OCC Resolution Term Sheet, the Ad Hoc First Lien Group agreed to, *inter alia*, establish a trust for the benefit of present private opioid claimants (the “**PPOC Trust**”) on closing of the Sale and fund it with aggregate cash consideration of US\$119.2 million. In exchange, and subject to the termination rights contained in the Resolution Stipulation, the Committees agreed to hold in abeyance their prosecution of the Joint Standing Motion and to withdraw their objection to the proposed Sale.⁸

12. If implemented in connection with the Debtors’ restructuring (whether pursuant to a Sale or Chapter 11 Plan), the PPOC Trust and its various sub-trusts will deliver a significant recovery for Opioid Claimants who voluntarily elect to participate in the trusts in exchange for providing a consensual, contractual release of the Debtors, the Buyer and other released parties. The fact that individual Opioid Claimants will receive a recovery on their unsecured claims – despite the Sale Process not identifying any bids sufficient to pay in full the US\$5.9 billion in Prepetition First Lien Indebtedness – reflects the efforts of the OCC to advance the interests of all Opioid Claimants.

⁵ Joint Standing Motion at para. 24.

⁶ The Mediation Order is the *Stipulation and Order (A) Granting Mediation and (B) Referring Matters to Mediation* dated January 27, 2023.

⁷ The Resolution Stipulation is the *Stipulation Among the Debtors, Official Committee of Unsecured Creditors, Official Committee of Opioid Claimants, and Ad Hoc First Lien Group Regarding Resolution of Joint Standing Motion and Related Matters* dated March 24, 2023.

⁸ Affidavit of Daniel Vas sworn April 18, 2023 (the “**Third Vas Affidavit**”) at paras. 25 and 35.

13. Canadian Personal Injury Claimants that have timely filed a proof of claim are entitled to participate in the sub-trust of the PPOC Trust established for personal injury opioid claimants (the “**Personal Injury Sub-Trust**”), subject to its terms and approval by the Bankruptcy Court. The Canadian Personal Injury Claimants are expected to be treated exactly the same as similarly situated Opioid Claimants in the United States. The Canadian Personal Injury Claimants are expected to have the option to elect – or to not elect – to receive a recovery from the Personal Injury Sub-Trust, subject to meeting the requirements applicable to all personal injury opioid claimants and providing a consensual release. If the Debtors pursue a Chapter 11 Plan, Canadian Personal Injury Claimants would be expected to participate in the Chapter 11 Plan in the same manner as similarly situated Opioid Claimants in the United States.

C. Appointment of a Representative Plaintiff is Unwarranted in the Circumstances

14. In contrast to the significant efforts of the OCC to advance the interests of Opioid Claimants, the Quebec Plaintiff and its counsel have taken an entirely passive approach during the crucial stages of this restructuring. Plaintiff’s Counsel was advised of the commencement of the Chapter 11 Cases and the Canadian Recognition Proceedings on August 23, 2022.⁹ Until the filing of its motion for the appointment of the Representative Plaintiff, the Quebec Plaintiff has not raised any objections in the Chapter 11 Cases or the Canadian Recognition Proceedings. In particular:

- (a) the Quebec Plaintiff has not challenged or sought to modify the appointment of the OCC to represent the interests of all Opioid Claimants, including the interests of Canadian Personal Injury Claimants;
- (b) the Quebec Plaintiff has not brought a motion before the Bankruptcy Court for its appointment as a class representative, even though the Chapter 11 Cases are the appropriate venue for its motion at first instance;
- (c) the Quebec Plaintiff states that the purported absence of representation of Canadian Personal Injury Claimants “only started to become apparent after late July 2023” when the Joint Standing Motion was provided to Plaintiff’s Counsel by counsel to the OCC,¹⁰ even though the Joint Standing Motion¹⁰ was publicly filed in the Chapter 11

⁹ Axell Affidavit at Exhibit “N”.

¹⁰ Supplemental Siminovitch Affidavit at para. 8.

Cases on January 23, 2023 and described in an affidavit filed by the Foreign Representative in these proceedings in April 2023 and the Third Report of the Information Officer dated April 20, 2023;¹¹

- (d) the Quebec Plaintiff did not raise any objection to the Bar Date Order¹² entered by the Bankruptcy Court on April 3, 2023 (or to its recognition by this Court pursuant to the Fourth Supplemental Order dated April 25, 2023), even though the Quebec Plaintiff now complains that the Bar Date Order does not enable the Quebec Plaintiff to file a proof of claim on a class basis;
- (e) the Quebec Plaintiff did not seek to challenge the liens securing the Prepetition First Lien Indebtedness or the Prepetition Second Lien Notes Indebtedness prior to January 10, 2023 as required pursuant to the Cash Collateral Order;¹³
- (f) the Quebec Plaintiff did not request to participate in the Mediation, which commenced in January 2023 and resulted in the heavily-negotiated resolution of the Joint Standing Motion pursuant to, *inter alia*, the OCC Resolution Term Sheet; and
- (g) unlike other stakeholders (including Canadian stakeholders), the Quebec Plaintiff did not file any objection to the Sale in the Chapter 11 Cases by the July 14, 2023 deadline.

15. Moreover, it is misleading for the Quebec Plaintiff to argue, as it does, that “although requested by counsel for the Quebec Plaintiff, no information has been provided with regard to the validity and enforceability of the security given by the Canadian Debtors for the benefit of Endo Parent pursuant to Canadian law...”¹⁴ Goodmans LLP (“**Goodmans**”), counsel to the Canadian Debtors, provided Plaintiff’s Counsel with all applicable credit agreements, guarantees and security documents in respect of the Prepetition First Lien Indebtedness in July 2023.¹⁵ Plaintiff’s Counsel

¹¹ Third Vas Affidavit at para. 10.

¹² The Bar Date Order is the *Order (I) Establishing Deadlines for Filing Proofs of Claim; (II) Approving Procedures for Filing of Proofs of Claim; (III) Approving the Proof of Claim Forms; (IV) Approving the Form and Manner of Notice Thereof; and (V) Approving the Confidentiality Protocol* dated April 3, 2023, as amended on June 23, 2023 and further amended on July 14, 2023.

¹³ The Cash Collateral Order is the *Amended Final Order (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; and (IV) Granting Related Relief* dated October 27, 2022.

¹⁴ Quebec Plaintiff’s Factum at para. 43(ii).

¹⁵ Axell Affidavit at Exhibit “O”.

has had four months to independently assess the validity and enforceability of the guarantees and security granted by the Canadian Debtors. However, the Quebec Plaintiff's motion does not articulate any specific deficiencies with the guarantees or liens granted by the Canadian Debtors.

16. Instead, the Quebec Plaintiff makes vague references to the "true nature" of the Debtors' prepetition financings and recycles generic allegations from the Joint Standing Motion, none of which have been proven and none of which relate specifically to the liens granted by the Canadian Debtors as long ago as 2017. The Quebec Plaintiff treats the allegations in the Joint Standing Motion as fact, as opposed to recognizing the Joint Standing Motion for what it was: a motion for *standing* to bring certain complaints – filed in a contentious period of the Chapter 11 Cases – which was never adjudicated by the Bankruptcy Court and which the Committees themselves agreed to hold in abeyance in connection with the consensual resolutions reached in the Resolution Stipulation.

17. The Quebec Plaintiff's motion suffers from a lack of timeliness. It has been more than 15 months since the start of these cases. The OCC has acted as a fiduciary for all Opioid Claimants, taken as a whole, throughout the proceedings. The OCC's professional advisors – two law firms, a financial advisor and an investment banker – have spent tens of thousands of hours and incurred significant fees representing the OCC in the Chapter 11 Cases. The OCC has thoroughly investigated the liens securing the Prepetition First Lien Indebtedness and engaged in the Mediation on behalf of its constituents – constituents that include the Canadian Personal Injury Claimants. The Mediation resulted in a resolution in March 2023 that will enable present private opioid claimants, including Canadian Personal Injury Claimants, who timely filed proofs of claim to obtain a recovery on their unsecured claims despite the significant deficiency on the Prepetition First Lien Indebtedness. The Quebec Plaintiff now takes issue with this outcome, despite having taken no initiative to participate in the process.

18. The Quebec Plaintiff is precluded by several orders entered by both the Bankruptcy Court and this Court from undertaking its stated objectives if it is appointed Representative Counsel – namely to investigate and invalidate the guarantees and liens granted by the Canadian Debtors (which it is precluded from doing under the Cash Collateral Order); to file a class-wide proof of claim (which is not permitted under the Bar Date Order); and to petition this Court to revoke recognition of the Chapter 11 Cases as the foreign main proceeding (which is a collateral attack on this Court's Initial Recognition Order). It would be unfair to the Debtors and their stakeholders, and contrary to the principles of comity, for the Quebec Plaintiff to ignore the binding processes and timelines in the

Chapter 11 Cases and then bring an untimely motion in these proceedings asking this Court to empower the Quebec Plaintiff in its attempt to overturn settled legal matters in the Chapter 11 Cases.

19. Fundamentally, the Quebec Plaintiff appears to take issue with the projected recovery for Canadian Personal Injury Claimants negotiated by the OCC. Canadian Personal Injury Claimants are expected to be treated in exactly the same manner as opioid personal injury claimants in the United States, but the Quebec Plaintiff thinks the Canadian Personal Injury Claimants should receive more – notwithstanding that there is insufficient value to repay in full the Prepetition First Lien Indebtedness, or any value to repay the Prepetition Second Lien Notes Indebtedness, both of which rank senior in priority to the unsecured claims of Opioid Claimants.

20. That is an issue of fairness that, in the context of a foreign main proceeding overseen by the Bankruptcy Court, should be adjudicated in the Chapter 11 Cases. The Quebec Plaintiff is free to seek relief from the Bankruptcy Court and/or to object to Bankruptcy Court approval of the Debtors' restructuring in the Chapter 11 Cases if it believes that the terms of the restructuring do not comply with the Bankruptcy Code or are unfair to the interests of the Quebec Plaintiff. The Quebec Plaintiff may also chose to oppose recognition of the Debtors' restructuring in these proceedings.

21. However, the Quebec Plaintiff does not need to be Representative Plaintiff on behalf of all Canadian Personal Injury Claimants in order to advance those arguments. The Quebec Plaintiff has shown, in this case and in the *Purdue Pharma* recognition proceedings, that it has the resources to participate and advance arguments on its own behalf. It is therefore not the case, as the Quebec Plaintiff argues, that the appointment of representative counsel is "essential" to its ability to raise issues before this Court. The Quebec Plaintiff can do so on its own behalf.

22. Accordingly, the Foreign Representative respectfully submits that the Quebec Plaintiff's motion should be dismissed.

PART II – SUMMARY OF THE FACTS

23. The facts with respect to this motion are set out in the previous affidavits filed by the Foreign Representative in connection with these Canadian Recognition Proceedings and the Axell Affidavit sworn in connection with this motion. Capitalized terms used and not defined herein have the meanings given to them in such affidavits.

A. Background to the Chapter 11 Cases

24. The Endo Group operates a global specialty pharmaceutical business that develops, manufactures, and sells life-enhancing 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.¹⁶

25. 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 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.¹⁷

26. As described more fully in the First Vas Affidavit, the Endo Group's capital structure consists of funded debt obligations in the aggregate principal amount of US\$8.15 billion, which obligations are guaranteed by the Canadian Debtors. The debt obligations include US\$5.9 billion in Prepetition First Lien Indebtedness and US\$941 million in Prepetition Second Lien Notes Indebtedness. The Prepetition First Lien Indebtedness and Prepetition Second Lien Notes Indebtedness is secured against substantially all of the Endo Group's assets, including the assets of the Canadian Debtors.¹⁸

27. On August 19, 2022, this Court granted (a) the Initial Recognition Order, among other things, recognizing Paladin as the Foreign Representative 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.

B. The Cash Collateral Order and the Prepetition First Liens

28. The Bankruptcy Court entered the Cash Collateral Order on October 27, 2022. This Court gave recognition to the Cash Collateral Order pursuant to the Third Supplemental Order dated November 29, 2022.

¹⁶ Affidavit of Daniel Vas sworn April August 17, 2022 (the "First Vas Affidavit") at paras. 3-5.

¹⁷ First Vas Affidavit at para. 8.

¹⁸ First Vas Affidavit at paras. 65 and 69-81.

29. The Quebec Plaintiff did not object to the Cash Collateral Order in the Chapter 11 Cases or to the recognition of the Cash Collateral Order in the Canadian Recognition Proceedings.

30. The Cash Collateral Order contains certain “**Debtors’ Stipulations**” relating to the Prepetition First Liens – which are liens over the assets of the Debtors (including the Canadian Debtors) securing the Prepetition First Lien Indebtedness – including the following:¹⁹

- (a) “the Prepetition First Liens are valid, binding, properly perfected, enforceable, non-avoidable liens on and security interests in the Prepetition Collateral”;
- (b) “the Prepetition First Liens were granted...for fair consideration and reasonably equivalent value”; and
- (c) “no portion of the Prepetition First Liens or Prepetition First Lien Indebtedness is subject to any challenge, cause of action, or defence, including...recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, contest, defense, counterclaim...pursuant to the Bankruptcy Code or nonbankruptcy law.”

31. Section 19(a) of the Cash Collateral Order provides that the Debtors’ Stipulations are binding upon all parties in interest unless and to the extent that a party in interest has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules by the “**Challenge Period**”. For all parties in interest other than the Committees and the FCR, the Challenge Period was 75 calendar days after entry of the Cash Collateral Order (i.e. January 10, 2023) (or a total of 147 days from the commencement of the Chapter 11 Cases).²⁰

32. Section 19(b) of the Cash Collateral Order states that, upon the expiry of the Challenge Period without the filing of a Challenge (or if any such Challenge is filed and overruled), *inter alia*:²¹

- (a) “any and all such Challenges by any party...shall be deemed to be forever barred”;
- (b) “the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization...”; and
- (c) “all of the Debtors’ stipulations and admissions contained in this [Cash Collateral Order], including the Debtors’ Stipulations...and all other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties’ claims, liens, and interests contained in this [Cash Collateral Order] shall be in full force and effect and forever binding upon the Debtors, the Debtors’ estates, and all creditors, interest holders, and other parties in interest”.

¹⁹ Cash Collateral Order at section E(1)(d).

²⁰ Cash Collateral Order at section 19(b).

²¹ Cash Collateral Order at section 19(b)(i), (iii) and (iv).

33. The Quebec Plaintiff did not file any objection to the Debtors' Stipulations (including those relating to the Prepetition First Liens granted by the Canadian Debtors) before the Challenge Period. The Quebec Plaintiff has never challenged the Debtors' Stipulations in the Chapter 11 Cases.

34. On July 18, 2023, Plaintiff's Counsel requested from Goodmans copies of the credit agreements, guarantees and security documents executed by the Canadian Debtors. Goodmans provided Plaintiff's Counsel with the requested documents in relation to the Prepetition First Lien Indebtedness on July 20, 2023, and certain additional requested documents on July 24, 2023.

35. The motion filed by the Quebec Plaintiff does not articulate or particularize any specific issues with the Prepetition First Liens granted by the Canadian Debtors.

C. The Appointment and Activities of the OCC

36. The OCC was appointed by the U.S. Trustee on September 2, 2022 as a fiduciary for all holders of claims arising from alleged harm suffered due to the Debtors' opioid products and practices. The OCC is represented by Cooley LLP, as lead and general bankruptcy counsel, Akin Gump Strauss Hauer & Feld LLP, as special counsel, Province, LLC, as financial advisor, and Jefferies LLC, as investment banker.

37. In its reply dated July 26, 2023 filed in the Chapter 11 Cases in response to certain objections filed to the Sale (the "**OCC Reply**"), the OCC explains that it was appointed by the U.S. Trustee "in recognition of the outsized role that the Debtors' potential opioid liabilities played in the Debtors' determination to commence the Chapter 11 Cases, and the importance of providing Opioid Claimants with the ability to participate in the Chapter 11 Cases by and through an official committee."²² The OCC describes its role and objectives as follows:

The OCC is sensitive to and focused on the harm suffered by every Opioid Claimant – whether they be individuals or entities, public or private, living or dead. The OCC's sole mandate in the Chapter 11 Cases is to advocate for the interests of Opioid Claimants – *as a whole* – and to do whatever is possible to further the efforts of obtaining compensation for victims and abating the opioid crisis resulting from the harm that these particular Debtors have allegedly caused. The OCC has taken this role seriously, and believes it has accomplished much in its efforts to reach its goal – not only increasing the value offered to Opioid Claimants generally, but also focusing on a myriad of non-economic issues important to Opioid Claimants that have

²² *Reply of the Official Committee of Opioid Claimants in Support of Entry of the Revised Proposed Order (A) Approving the Purchase and Sale Agreement, (B) Authorizing the Sale of Assets, (C) Authorizing the Assumption and Assignment of Contracts and Leases, and (D) Granting Related Relief* (the "**OCC Reply**") at footnote 1.

arisen in these cases.²³ [emphasis in original]

...

The OCC takes extremely seriously its duties to Opioid Claimants. Throughout these Chapter 11 Cases, the OCC has worked at every turn to obtain the greatest possible value for Opioid Claimants and to make that value available to the greatest number of Opioid Claimants as soon as possible. The OCC has consistently sought to do whatever it can for all Opioid Claimants within the bounds of what is fair and reasonable, and consistent with previous opioid chapter 11 cases...²⁴

38. In January 2023, the Committees filed the Joint Standing Motion seeking standing to, among other things, commence and prosecute four complaints, certain of which related to the Prepetition First Liens (i.e. the debt to be credit bid under the Sale).

39. The Committees participated in the Mediation ordered by the Bankruptcy Court, which was conducted by the Honourable Shelley C. Chapman, a retired judge of the Bankruptcy Court. Following months of intensive negotiations in connection with the Mediation, the Ad Hoc First Lien Group reached resolutions with the Committees regarding the Joint Standing Motion and their objections relating to the Debtors' proposed Sale Process. On March 24, 2023, the Resolution Stipulation and an Amended and Restated Restructuring Support Agreement were filed in the Chapter 11 Cases. These materials were also attached as exhibits "B" and "C", respectively, to the Third Vas Affidavit sworn April 18, 2023 that the Foreign Representative filed in these proceedings.

D. The PPOC Trust

40. To achieve a consensual restructuring with the support of key stakeholders and to preserve relationships important to future business operations, the Buyer agreed to establish and fund certain voluntary trusts for the benefit of eligible junior secured and unsecured creditors (collectively, the "**Voluntary Trusts**"). The Voluntary Trusts were agreed as part of the Mediation in order to resolve objections to the Sale timely filed or raised in the Chapter 11 Cases.

41. The Voluntary Trusts were negotiated directly between the Buyer and representatives of the applicable beneficiary groups and are to be funded by the Buyer upon completion of the Sale. In the event that the Debtors restructure by way of a Chapter 11 Plan, it is expected that the material economic terms of the Voluntary Trusts will be incorporated into the Debtors' Chapter 11 Plan.

²³ OCC Reply at para. 1.

²⁴ OCC Reply at para. 6

42. One of the Voluntary Trusts is the PPOC Trust. Pursuant to the OCC Resolution Term Sheet, the Buyer agreed, on closing of the Sale, to establish the PPOC Trust and fund it with aggregate cash consideration of US\$119.2 million (the “**PPOC Trust Consideration**”).²⁵

43. The aggregate PPOC Trust Consideration is to be administered through five sub-trusts for specific categories of present private opioid claimants. On July 7, 2023, the Debtors filed the various agreements and distribution procedures relating to the PPOC Trust and its sub-trusts, which are exhibits to the proposed Sale Order. The filing included a notice of the OCC’s allocation of the PPOC Trust Consideration between the five-sub trusts. The Personal Injury Sub-Trust will receive approximately 45.3% of the PPOC Trust Consideration, which is the largest allocation to any of the sub-trusts.²⁶

44. The Canadian Personal Injury Claimants that the Quebec Plaintiff seeks to represent are entitled to participate in the PPOC Trust and the Personal Injury Sub-Trust, subject to their terms.²⁷ The Canadian Personal Injury Claimants are expected to be treated in the exact same manner as similarly-situated opioid claimants in the United States. The Canadian Personal Injury Claimants who timely filed proofs of claim are expected to have the option to elect to receive a recovery from the Personal Injury Sub-Trust, subject to meeting the requirements applicable to all personal injury opioid claimants and providing a consensual release.

45. The OCC stated the following in its Sale Reply:

The Sale, including the OCC Resolution, is manifestly in the best interests of Opioid Claimants taken as a whole and represents an outcome vastly superior to any other currently achievable alternative in these Chapter 11 Cases...The OCC’s obligation, as a fiduciary for Opioid Claimants was to maximize the value for Opioid Claimants *as a whole* and not for any particular Opioid Claimant(s), and then to ensure that any allocation of that value was fair and reasonable. The OCC has more than fulfilled this role, and views the Sale – and every aspect of the Sale Order – as in the best interests of all Opioid Claimants.²⁸ [emphasis in original]

E. The Bidding Procedures Order and the Bar Date Order

46. 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

²⁵ Third Vas Affidavit at para. 35.

²⁶ Axell Affidavit at Exhibit “M”.

²⁷ OCC Reply at para. 17.

²⁸ OCC Reply at para.

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.

47. The Quebec Plaintiff complains in its motion that the Bar Date Order does not permit the Quebec Plaintiff to file a proof of claim on a class basis. The Quebec Plaintiff did not object to, or seek a modification of, the Bar Date Order in the Chapter 11 Cases, nor did it raise any issues when the Bar Date Order was recognized by this Court.

48. The Bidding Procedures Order and the Bar Date Order approved a plan for providing notice to known and unknown claimants and parties in interest (the “**Notice Plan**”) 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.

49. The implementation of the Notice Plan is described in the Second Finegan Declaration filed in the Chapter 11 Cases.²⁹ As set out in the Second Finegan Declaration, 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 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.³⁰

F. Outcome of the Sale Process

50. The conduct and outcome of the Sale Process is described in the declaration of Tarek elAguizy of PJT Partners LP (the Debtors’ investment banker) filed in the Chapter 11 Cases.³¹ The Debtors received 19 indications of interest (“**IOIs**”) by the June 13, 2023 deadline, all of which were “Parts Bids” for various elements of the Debtors’ assets. The Debtors did not receive any “WholeCo Bids”

²⁹ The Second Finegan Declaration is the *Supplemental Declaration of Jeanne C. Finegan, APR in Connection with Sale Motion and Bar Date Motion* dated July 26, 2023. The Second Finegan Declaration is attached as Exhibit “Q” to the Axell Affidavit.

³⁰ Second Finegan Declaration at paras. 3-6 and 27-34.

³¹ *Declaration of Tarek elAguizy in Support of Entry of the Order (A) Approving the Purchase and Sale Agreement, (B) Authorizing the Sale of Assets, (C) Authorizing the Assumption and Assignment of Contracts and Leases, and (D) Granting Related Relief* (the “**elAguizy Declaration**”), a copy of which is attached as Exhibit “R” to the Axell Affidavit.

for all or substantially all of their assets. The value of the Stalking Horse Bid was more than US\$1 billion higher than the implied cumulative gross value of the aggregate Parts Bids.³²

51. After reviewing the IOIs, the Debtors, in consultation with the OCC and certain other stakeholders as required by the Bidding Procedures, determined that the IOIs received were not reasonably likely to result in the submission of a Qualified Bid that was superior to the Stalking Horse Bid or capable of repaying in full the Prepetition First Lien Indebtedness. Accordingly, on June 20, 2023 the Debtors elected to terminate the remainder of the Sale Process in accordance with the Bidding Procedures Order and proceed to seek Bankruptcy Court approval of the Sale.³³

G. Resolution of Objections

52. Pursuant to the Bidding Procedures Order, objections to the Sale were required to be filed by July 14, 2023. Certain stakeholders, including the Canadian Governments, timely filed objections to the Sale. Since that time, the Debtors and the Buyer have resolved the majority of the objections to the Sale. The Quebec Plaintiff did not file an objection to the Sale in the Chapter 11 Cases.

(i) Resolution with the Canadian Governments

53. The Canadian Governments timely filed ten separate proofs of claim in the Chapter 11 Cases asserting opioid-related claims in the aggregate amount of approximately US\$65.7 billion. The Canadian Governments objected to the Sale on the basis that they were not entitled to participate in the PPOC Trust (which is only for *private* opioid claimants) or the voluntary trust to be established by the Buyer for the benefit of states, territories and tribal groups in the United States.

54. The objection was referred to the Mediation and resolved on the terms set out in the Canadian Governments Term Sheet.³⁴ Pursuant to the Canadian Governments Term Sheet, which remains subject to Bankruptcy Court approval in connection with the Debtors' restructuring:

- (a) the Buyer agreed, on closing of the Sale, to establish a voluntary trust for the benefit of the Canadian Governments that elect to become beneficiaries thereof, and to fund it with an aggregate of US\$7,250,000 in 11 equal instalments over 10 years;

³² eAguizy Declaration at para. 17.

³³ eAguizy Declaration at para. 18.

³⁴ The Canadian Governments Term Sheet is the term sheet attached as Exhibit A to the *Notice of Filing of Voluntary Canadian Governments Resolution Term Sheet* dated September 29, 2023, a copy of which is attached as Exhibit "S" to the Axell Affidavit.

- (b) the Canadian Governments agreed to the entry of the proposed Sale Order and its recognition in the Canadian Recognition Proceedings; and
- (c) on closing of the Sale, the Canadian Governments agreed to release the Debtors, the Buyer, the Ad Hoc First Lien Group and the other Released Parties in respect of the Released Claims, as more fully set out in the Canadian Governments Term Sheet.

(ii) Resolution with the DMPs

55. The Debtors also achieved a resolution with a group of distributors, manufacturers and pharmacies (the “DMPs”). The DMPs represent a large portion of the Debtors’ direct customer base and are also co-defendants with the Debtors and other industry defendants in opioid-related litigation, including opioid class action lawsuits in Canada. The DMPs include a number of distributors, manufacturers and pharmacies with significant Canadian business operations.

56. On August 3, 2023, the Bankruptcy Court granted the DMP Stipulation Approval Order³⁵ approving the negotiated stipulation between the Debtors and the DMPs, with the support of the Buyer (the “DMP Stipulation”). The DMP Stipulation resolves the matters in dispute between the parties and includes an agreed approach with respect to preservation and production of documents in connection with actions filed in Canada against any of the Debtors in respect of opioid claims (as defined in the DMP Stipulation, the “Canadian Actions”).

57. The Quebec Plaintiff spends considerable time summarizing the U.S. Government Objection on the basis that it is “particularly relevant” to the issues raised in the Quebec Plaintiff’s motion.³⁶ That is entirely misguided. First, the Quebec Plaintiff cites the complaint of the U.S. Government that the Sale has been structured “so that certain preferred classes of junior creditors will receive substantial payments on account of their prepetition claims, while the [U.S.] Government’s priority tax claims and other general unsecured creditors will be left completely unsatisfied.”³⁷ Of course, one of those “preferred classes of junior creditors” is Opioid Claimants. Second, the priority tax claim asserted by the U.S. Government is not driving the quantum of the recovery for Canadian Personal Injury Claimants, and the Debtors are not suggesting this to be the case. The recoveries for unsecured

³⁵ The DMP Stipulation Approval Order is the *Order Granting the Debtors’ Motion for an Order Approving the Amended Stipulation Among the Debtors and the DMPs Resolving the DMPs’ Objection to the Bidding Procedures and Sale Motion* dated August 2, 2023, a copy of which is attached as Exhibit “T” to the Axell Affidavit.

³⁶ Supplemental Siminovitch Affidavit at paras. 15 and 22-25.

³⁷ Supplemental Siminovitch Affidavit at para. 23(iii).

creditors, including Opioid Claimants, were negotiated in the context of a restructuring in which the Debtors are unable to repay in full the Prepetition First Lien Indebtedness, or repay any amount of the Prepetition Second Lien Notes Indebtedness, both of which rank in priority to unsecured claims.

PART III – ISSUES AND THE LAW

58. The issue to be considered on this motion is whether the Court should grant the CCAA Representation Order sought by the Quebec Plaintiff.

A. Comity Supports the Dismissal of the Motion

59. The Quebec Plaintiff cites section 11 of the CCAA as the primary jurisdictional basis on which this Court should grant the CCAA Representation Order. Section 11 of the CCAA is not applicable in the context of a Part IV recognition proceeding. However, the Foreign Representative acknowledges that this Court has broad authority under Part IV of the CCAA to grant any order that it considers appropriate, and accordingly has jurisdiction to grant the CCAA Representation Order.

60. However, comity is the central principle animating the exercise of the Court’s discretion under Part IV of the CCAA. Comity 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.³⁸

61. Comity is embodied in sections 44 and 52(1) of the CCAA. In particular, once an order recognizing a foreign proceeding is made, subsection 52(1) of the CCAA requires the Court to “cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”³⁹

62. In *Xerium*, this Court held that it had the “authority and indeed obligation” to recognize the U.S. bankruptcy court’s plan confirmation order”.⁴⁰ 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.”⁴¹

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

³⁹ CCAA, s. 52(1).

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

⁴¹ *Xerium* at para 29.

63. The Foreign Representative submits that the principles of comity and cooperation with the Bankruptcy Court justify the dismissal of the Quebec Plaintiff's motion.

64. In granting the Initial Recognition Order, this Court determined that (a) the "centre of main interests" of the Canadian Debtors is in the United States; and (b) the Chapter 11 Cases are a "foreign main proceeding" in respect of the Canadian Debtors pursuant to subsection 47(2) of the CCAA.⁴²

65. The Chapter 11 Cases are the central forum for the restructuring of the Endo Group; they are the forum in which stakeholder objections have been vigorously pursued and, in most cases, resolved. The Debtors initially encountered significant opposition to their proposed restructuring, including from the OCC. In response, the Bankruptcy Court ordered the Mediation in January 2023. Many objections were resolved through the Mediation in March 2023, which enabled the Debtors to move forward with the Sale Process and the Stalking Horse Bid with the support of key stakeholders. The Mediation has also been successful in resolving the substantial majority of remaining objections to the Sale that were timely filed in the Chapter 11 Cases.

66. Other Canadian stakeholders have participated in the Chapter 11 Cases and resolved their objections. The DMPs – which include businesses with a significant Canadian presence – filed an objection in the Chapter 11 Cases on January 6, 2023 and after extensive negotiations resolved their issues with the Bidding Procedures Order and the Sale, including issues relating to the preservation and production of documents in the Canadian Actions. The Canadian Governments filed an objection to the Sale and were able to reach a resolution with the Buyer through the Mediation process.

67. Conversely, the Quebec Plaintiff has not taken any steps to participate in the Chapter 11 Cases, other than submitting a class proof of claim that does not meet the requirements of the Bar Date Order.

68. Notably, the Quebec Plaintiff has chosen to bring its motion for representative status in these Canadian Recognition Proceedings, rather than the Chapter 11 Cases. The Order sought by the Quebec Plaintiff even states that the Quebec Plaintiff is appointed to represent the interests of Canadian Personal Injury Claimants *in the Chapter 11 Cases*. The Foreign Representative submits that the Bankruptcy Court is the proper venue for the Quebec Plaintiff's motion at first instance.

⁴² [*Re Paladin Labs Inc. et al.*, 2022 ONSC 4931 at para. 24.](#)

69. That was the holding of this Court in *Voyager Digital* on very similar facts.⁴³ *Voyager Digital* involved a chapter 11 case before the Bankruptcy Court, recognized by this Court as a foreign main proceeding. A proposed class action plaintiff brought a motion in the Canadian recognition proceedings seeking appointment of representative counsel on behalf of all shareholders of the debtor. Cavanagh J. dismissed the motion. He distinguished *Grace Canada* – which is cited by the Quebec Plaintiff in its factum⁴⁴ – on the basis that the representative counsel appointment motion in that case was brought by the debtor and that the Canadian recognition proceedings were not subject to Part IV of the CCAA (as those amendments were not yet in force). Cavanagh J. went on to conclude:

The U.S. Proceeding has been recognized as the foreign main proceeding and it is the plenary proceeding. The U.S. Bankruptcy Court is the forum in which the restructuring of VDL and the other debtors will take place. The requested order, even if it were granted, would still require a motion to the U.S. Bankruptcy Court for the appointment of representative counsel to represent the interests of the VDL shareholders in relation to the U.S. Proceeding, including any restructuring plan, so any efficiencies in having this motion heard in this Court are limited.

In my view, given that the U.S. Bankruptcy Court is presiding over the plenary proceeding, and this Court has recognized the U.S. Proceeding as the foreign main proceeding under Part IV of the CCAA, the requested order to appoint representative counsel should be sought from the U.S. Bankruptcy Court and not from this Court. This is consistent with the scheme of Part IV of the CCAA. It is open to the U.S. Bankruptcy Court to seek the assistance and cooperation of this Court in respect of any such request, including recognition of any Order made in the U.S. Proceeding and a request for consideration of any ancillary Order in the Canadian proceeding that may be needed to give effect in Canada to such an Order.

70. The same principles apply in this case. Judge Garrity, who has closely overseen the Chapter 11 Cases from their outset, is uniquely situated to assess the appropriateness and potential implications of appointing representative counsel for a small subset of Opioid Claimants having regard to all of the circumstances. The Quebec Plaintiff is asking this Court to do what it is not prepared to ask the Bankruptcy Court to do.

71. Comity entails deference to the restructuring process, timelines and building blocks established by the Bankruptcy Court in the Chapter 11 Cases. The Quebec Plaintiff cannot ignore the process requirements in the Chapter 11 Cases and then ask this Court to re-open settled legal issues. The Quebec Plaintiff did not object to the Cash Collateral Order, the Bidding Procedures Order or the Bar Date Order in the Chapter 11 Cases, nor did it object to recognition of those orders in these

⁴³ [Re Voyager Digital Ltd., CV-22-00683820-00CL, Endorsement of Cavanagh J. dated August 11, 2022.](#)

⁴⁴ Quebec Plaintiff's Factum at para. 53.

Canadian Recognition Proceedings. However, the objective of the Quebec Plaintiff is to effectively circumvent orders of the Bankruptcy Court and this Court and re-open settled issues:

- (a) the Quebec Plaintiff wants to “ascertain the true nature of debt restructuring transactions related to Paladin” and obtain a finding that “Paladin is not responsible for the debts of the Endo Parent and its affiliates”⁴⁵, even though the Cash Collateral Order required any party seeking to do that to file an objection by January 10, 2023 or be forever barred from doing so;
- (b) the Quebec Plaintiff seeks admittance of the class proof of claim that it filed in the Chapter 11 Cases,⁴⁶ even though the Bar Date Order does not permit the Quebec Plaintiff to file a class proof of claim; and
- (c) the Quebec Plaintiff wants to petition this Court to “revoke the recognition of the Chapter 11 Proceedings as the foreign main proceedings and to place Paladin under CCAA protection in Canada”⁴⁷, effectively setting aside the Initial Recognition Order granted more than 15 months ago based on a legal argument (the validity of the liens and guarantees of the Canadian Debtors) that could have been advanced at the outset.

72. In *Target Canada*, this Court noted the “building block” nature of restructuring proceedings and the importance of respecting binding orders that stakeholders have relied on.⁴⁸ That reasoning, although expressed in a plenary CCAA proceeding, applies equally in the context of recognition proceedings where the building blocks are the orders granted in the foreign main proceeding.

73. The Debtors, the Ad Hoc First Lien Group and all other stakeholders of the Debtors have been advancing the Chapter 11 Cases on the basis that the Canadian Debtors are subject to the global restructuring of the Endo Group being negotiated in the Chapter 11 Cases and that the Prepetition First Liens are valid and enforceable against the Canadian Debtors. It would be fundamentally unfair and prejudicial – and contrary to the building block nature of restructuring cases – to permit the Quebec Plaintiff to upend those foundational matters at this late stage in the restructuring process,

⁴⁵ Siminovitch Affidavit at para. 54.

⁴⁶ Siminovitch Affidavit at para. 26.

⁴⁷ Siminovitch Affidavit at para. 54.

⁴⁸ [Re Target Canada Co., 2016 ONSC 316](#) at para. 81.

without any meaningful evidentiary basis for its assertions, after it has ignored the binding process and timelines in the Chapter 11 Cases.

74. Accordingly, the Foreign Representative submits that principles of comity and judicial recognition of the process and timelines established in the Chapter 11 Cases justify the dismissal of the Quebec Plaintiff's motion.

B. The OCC Already Acts as a Fiduciary for All Opioid Claimants, Taken as a Whole

75. The Quebec Plaintiff's assertion that the Canadian Personal Injury Claimants have not had effective representation during the Chapter 11 Cases is legally and factually wrong. The Quebec Plaintiff cherry picks what it calls "American-centric" wording in a short pleading filed by the OCC in September 2022 in response to the Debtors' motion for the appointment of the FCR to argue that the OCC does not represent the interests of Canadian Personal Injury Claimants. That pleading contains a footnote listing "at least" 11 separate sub-groups of Opioid Claimants that the OCC represents, including "personal injury victims". The Quebec Plaintiff baldly asserts that Canadian Personal Injury Claimants are not represented within the group of "personal injury victims".⁴⁹

76. The reality is that the OCC is the fiduciary for a broad constituency – all Opioid Claimants, taken as a whole – which includes Canadian Personal Injury Claimants. The appointment of the OCC to represent the interests of all Opioid Claimants (including all personal injury claimants wherever they are located) strikes a balance between, on the one hand, ensuring that Opioid Claimants, as a vulnerable group, have estate-funded legal and financial representation to advance their interests in the Chapter 11 Cases; and, on the other hand, preventing a fragmentation of Opioid Claimants into an unworkable number of sub-groups based on injury type, geographic location and other factors.

77. It is incontrovertible that the Canadian Personal Injury Claimants constitute "Opioid Claimants" and are therefore constituents whose interests are represented by the OCC. More importantly, a broader view of the Chapter 11 Cases demonstrates that the interests of Canadian Personal Injury Claimants have been well-represented as part of the OCC's mandate to represent the interests of all Opioid Claimants.

78. The Quebec Plaintiff's motion is centered on an assertion that issues raised by the OCC in the Joint Standing Motion require further investigation. That merely reinforces that the OCC thoroughly

⁴⁹ Supplemental Siminovitch Affidavit at para. 28.

investigated the conduct of the Debtors, including the Canadian Debtors, to identify potential sources of value for Opioid Claimants. But the Quebec Plaintiff characterizes the OCC's decision to resolve the Joint Standing Motion as an abandonment of the interests of Canadian Personal Injury Claimants, as opposed to what it truly is – a negotiated, global resolution of claims achieved through an extensive Mediation process that will result in Opioid Claimants receiving meaningful value in a case in which the Debtors cannot repay in full their first lien secured indebtedness.

79. The Quebec Plaintiff ignores the tens of thousands of hours spent by OCC professionals and the result achieved by the OCC on behalf of all present private opioid claimants, including the Canadian Personal Injury Claimants:

- (a) despite the fact that the Debtors cannot repay the Prepetition First Lien Indebtedness, the Buyer has agreed to fund the PPOC Trust with aggregate cash consideration of US\$119.2 million;
- (b) the Personal Injury Sub-Trust will receive approximately 45.3% of the PPOC Trust Consideration, which was established as part of the Mediation and is by far the largest allocation to any of the sub-trusts;
- (c) Canadian Personal Injury Claimants who timely filed proofs of claim are entitled to make a claim against, and recover from, the Personal Injury Sub-Trust in accordance with its terms, which the Quebec Plaintiff itself acknowledges; and
- (d) Canadian Personal Injury Claimants are treated in the exact same manner as similarly-situated personal injury opioid claimants in the United States for purposes of obtaining recoveries from the Personal Injury Sub-Trust.

80. Accordingly, the Foreign Representative submits that the interests of Canadian Personal Injury Claimants have been effectively represented by the OCC in the Chapter 11 Cases.

C. It is not Appropriate to Appoint Another Representative Counsel

81. In addition to the principle of comity (which the Foreign Representative submits is dispositive of the Quebec Plaintiff's motion), the Foreign Representative also submits that the Quebec Plaintiff's motion should be dismissed because it has failed to satisfy the test for the appointment of representative counsel developed in the context of a plenary CCAA proceeding.

82. In determining whether to appoint representative counsel in a main CCAA proceeding, this Court considers the non-exhaustive list of factors set out in *Canwest Publishing*: (a) the vulnerability and resources of the group sought to be represented; (b) any benefit to the companies under CCAA protection; (c) any social benefit to be derived from the representation of the group; (d) the facilitation of the administration of the proceedings and efficiency; (e) the avoidance of a multiplicity of legal retainers; (f) the balance of convenience and whether it is fair and just including to the creditors of the estate of the Debtor; (g) whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and (e) the position of other stakeholders and the Monitor.⁵⁰

83. As reasons for appointing employee representative counsel in *Canwest Publishing*, Pepall J. (as she then was) noted, among other things, that (a) “the evidence is also to the effect that members of the group have little means to pursue representation”; (b) no committee of unsecured creditors had been appointed to address the needs of unsecured creditors; and (c) “there is no other counsel available to represent their interests”.⁵¹ The facts in the current case are the polar opposite.

84. The Court in *Canwest Publishing* also noted the importance of appointing representative counsel in the early stages of the restructuring proceedings. The Court stated that “it is a false economy to watch and wait” and that a delay in appointing representative counsel would be unhelpful to the needs of the represented parties and the interests of the debtors.⁵²

85. In *Mountain Equipment Co-operative*, Fitzpatrick J. noted the importance of timeliness when she rejected a motion to appoint representative counsel for former employees. Fitzpatrick J. distinguished many of the cases that the Quebec Plaintiff cites – including *Nortel*, *Target Canada*, and *Fraser Papers* – on the basis that affected groups in those cases “sought representation in the early days of those complex CCAA proceedings.”⁵³

86. In *TBS Acquireco*, Brown J. (as he then was) also cited a lack of timeliness when he refused a request to appoint an individual to represent all employee claimants. The Court noted that – in contrast to *Nortel* and *Canwest Publishing*, where representative plaintiffs were appointed in the

⁵⁰ [Canwest Publishing Inc., 2010 ONSC 1328](#) [*Canwest Publishing*] at para 21; [Re Urbancorp Inc., 2016 ONSC 5426](#) [*Urbancorp*] at para. 11; [Re Mountain Equipment Co-Operative, 2020 BCSC 2037](#) [*MEC*] at para 23.

⁵¹ *Canwest Publishing* at para. 24.

⁵² *Canwest Publishing* at para. 24.

⁵³ *MEC* at para. 28.

initial months of the CCAA proceedings – the motion for representative status was brought after the debtors had conducted a court-approved sale process that resulted in only one going-concern offer, which provided no proceeds for unsecured creditors.⁵⁴ In addition to concerns about forcing the purchaser to underwrite the legal fees of one class of unsecured creditors, the Court also stated that it had difficulty understanding what significant extra “value add” representative counsel would bring at the very late stage of the proceedings.⁵⁵

87. The Foreign Representative submits that the Quebec Plaintiff has on balance failed to satisfy the factors established in *Canwest Publishing*. In particular:

- (a) the social and efficiency benefits of obtaining representation for a vulnerable group of claimants have already been achieved through the appointment of the OCC. The OCC and its legal and financial advisors have been serving as fiduciary for all Opioid Claimants, including the Canadian Personal Injury Claimants, since September 2022;
- (b) the granting of the motion would result in the “multiplicity of legal retainers” that the Court cautioned against in *Canwest Publishing*, particularly since the Quebec Plaintiff is itself represented by two law firms;
- (c) if appointed, the Quebec Plaintiff is effectively seeking to abrogate binding, long-standing orders issued in the Chapter 11 Cases (and recognized in these Canadian Recognition Proceedings) and reverse the substantial restructuring progress that the Debtors have made to date with the support of key stakeholders, including the OCC. Granting the motion is therefore not in the best interests of the Canadian Debtors and would undermine the efficiency and administration of the restructuring proceedings;
- (d) even if the Quebec Plaintiff’s motion had merit, which is denied, it has been brought far too late in these proceedings. The Quebec Plaintiff has not been diligent in asserting its own perceived interests in the Chapter 11 Cases, let alone the interests of the Canadian Personal Injury Claimants that it now wants to represent; and

⁵⁴ *Re TBS Acquireco Inc.*, 2013 ONSC 4663 [TBS Acquireco] at paras. 33, 35 and 36.

⁵⁵ *TBS Acquireco* at para. 37.

- (e) having regard to all of the circumstances set forth above and the importance of showing comity to the Bankruptcy Court overseeing the foreign main proceeding, the balance of convenience favours the dismissal of the motion.

88. The Quebec Plaintiff requests that the Canadian Debtors be required to pay the reasonable fees and disbursements of the Quebec Plaintiff and Plaintiff's Counsel. As this Court stated in *Urbancorp* in rejecting a request by representative counsel to be paid by the debtor's estate, "estate funds should be spent for the benefit of the estate as a whole". It is not an issue of whether the requested funding is minimal – "the issue is whether in principle it should be ordered."⁵⁶ It is not appropriate, in all of the circumstances of this case, to require the Canadian Debtors to fund the costs of a particular creditor group that already has effective representation.

89. The Endo Group is not the first pharmaceutical company to file for Chapter 11 protection while facing exposure to substantial opioid class action litigation. Purdue Pharma (in 2019) and Mallinckrodt plc (in 2020) commenced Chapter 11 cases that were recognized in Canada. In neither case was a representative plaintiff appointed on behalf of Canadian personal injury claimants. Notably, that did not prevent the Quebec Plaintiff from participating in Purdue's Canadian recognition proceedings, including by filing opposing materials on at least three occasions.⁵⁷ The absence of a representation order in the Purdue Canadian recognition proceedings clearly did not prevent the Quebec Plaintiff from participating in that case. This case is no different. The Quebec Plaintiff is free to advance its own interests in the Chapter 11 Cases, within the confines of the existing Bankruptcy Court orders; it does not need this Court to grant it representative status in order to do so.

PART IV – RELIEF REQUESTED

90. For all of the reasons sets forth above, the Foreign Representative requests that the Court dismiss the motion of the Quebec Plaintiff.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of November, 2023.

Goodmans LLP

Goodmans LLP

⁵⁶ *Urbancorp* at para. 24 and 26.

⁵⁷ [Responding Motion Record of the Quebec Opioid Class Action Plaintiff](#) returnable November 28, 2019; [Notice of Objection by the Quebec Class Action Plaintiff](#) returnable July 5, 2021; and [Motion Record of the Quebec Class Action Plaintiff](#) returnable November 9, 2021.

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<i>Re Hollander Sleep Products, LLC</i>, 2019 ONSC 3238
2.	<i>Re Babcock & Wilcox Canada Ltd</i>, [2000] OJ NO 786 (Ont Sup Ct J (Commercial Division))
3.	<i>Xerium Technologies Inc., Re</i>, 2010 ONSC 3974
4.	<i>Re Paladin Labs Inc. et al</i>, 2022 ONSC 4931
5.	<i>Re Voyager Digital Ltd.</i>, CV-22-00683820-00CL, Endorsement of Cavanagh J. dated August 11, 2022.
6.	<i>Re Target Canada Co.</i>, 2016 ONSC 316
7.	<i>Canwest Publishing Inc.</i>, 2010 ONSC 1328
8.	<i>Re Urbancorp Inc.</i>, 2016 ONSC 5426
9.	<i>Re Mountain Equipment Co-Operative</i>, 2020 BCSC 2037
10.	<i>Re TBS Acquireco Inc.</i>, 2013 ONSC 4663

SCHEDULE B
STATUTORY REFERENCES

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

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.

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 FOREIGN REPRESENTATIVE
Motion for Appointment of Representative Plaintiff
Returnable December 4, 2023**

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