



No. S-248103
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FELIX PAYMENT SYSTEMS LTD.

PETITIONER

NOTICE OF APPLICATION

Name of applicant: CA Mordy Legacy Trust (the "**Mordy Trust**"), Jake Boxer ("**Boxer**") and PEL Chartered Professional Accountants ("**PEL**" and together with the Mordy Trust and Boxer, the "**First Lien Lenders**")

To: THE SERVICE LIST, attached as **Schedule "A"**

TAKE NOTICE that an application will be made by the First Lien Lenders to the Honourable Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on January 31, 2025 at 10:00 a.m. for the order set out in Part 1 below.

The Receiver estimates that the application will take 60 minutes.

- ☐ This matter is within the jurisdiction of an associate judge.
- ☒ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. An Order substantially in the form attached at **Schedule "B"** granting, *inter alia*, the following relief:
 - (a) A declaration that the First Lien Lenders' security interest in the personal property of Felix Payment Systems Ltd. (the "**Debtor**") is:

- (i) valid, enforceable and ranks in priority to any other security interest registered under the *Personal Property Security Act*, RSBC 1996, c 359 (the “**PPSA**”) at the British Columbia Personal Property Registry (the “**PPR**”) other than the RBC Registration (as defined below);
 - (ii) secures repayment of the First Lien Loan Indebtedness (as defined below), inclusive of interest and costs;
 - (b) A declaration that the amount of money secured by the First Lien Charge (as defined below) is the sum of \$4,069,077.21 as of December 17, 2024, (plus interest and fees that continue to accrue) and is justly due and owing.
 - (c) Judgment against the Petitioner, in the amount of \$4,069,077.21 as of December 17, 2024, plus interest from and after December 17, 2024 at the interest rate specified in the Promissory Notes (as defined below), or in the alternative, pursuant to the *Court Order Interest Act*, RSBC 1996, c 79.
 - (d) Such further and other relief as counsel may request and this Honourable Court may deem just.
2. Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Affidavit #2 of Douglas Mordy, made January 28, 2025 (the “**Second Mordy Affidavit**”) and/or the Stalking Horse Bid (as defined below).

Part 2: FACTUAL BASIS

A. Background

1. The Debtor is a privately-held financial technology company based in Vancouver, British Columbia specializing in cloud-based payment acceptance infrastructure and associated software systems. The Debtor suffered a liquidity crisis and, on October 15, 2024, filed a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, RSC, 1985

- c B-3, as amended (the “**BIA**”) and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed to act as the proposal trustee (the “**NOI Proceedings**”).
2. On November 25, 2024 the NOI Proceedings were taken up and continued pursuant to s. 11.6(a) of the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”) pursuant to an initial order of the Honourable Justice Masuhara (as amended, the “**Initial Order**”). The Initial Order was subsequently amended and restated by order of Justice Masuhara on December 6, 2024.
 3. Pursuant to the Initial Order, *inter alia*:
 - (a) A&M was appointed as monitor of the Debtor (in such capacity, the “**Monitor**”);
 - (b) debtor-in-possession financing from the First Lien Lenders for up to the principal amount of \$2.35 million was approved (the “**DIP Facility**”); and
 - (c) a court-ordered priority charge in favour of the First Lien Lenders as security for the amounts advanced under the DIP Facility was approved (the “**DIP Lender’s Charge**”).
 4. On December 9, 2024 Justice Masuhara granted an Order which, *inter alia*:
 - (a) approved a sale and investment solicitation process to be implemented by the Monitor and its advisors (the “**Sale Process**”); and
 - (b) approved a stalking horse subscription agreement dated December 3, 2024 (the “**Stalking Horse Bid**”) between the Debtor, as vendor, and Douglas Mordy, Jake Boxer, the Mordy Trust and PEL, as stalking horse bidders (in such capacity, the “**Stalking Horse Bidders**”).
 5. The purchase price pursuant to the Stalking Horse Bid consists of:
 - (a) all amounts outstanding and obligations payable by the Debtor under or in connection with the DIP Facility and secured by the DIP Lender’s Charge; plus

- (b) all amounts outstanding and obligations payable by the Debtor under or in connection with the First Lien Loan Documents (defined below) and secured by the First Lien Charge¹; plus
 - (c) the value of all other Assumed Liabilities, if any, to be satisfied by the Stalking Horse Bidder performing and/or discharging such Assumed Liabilities as and when they become due; plus
 - (d) the value of the Closing Payment to be paid by the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Bid.
6. Under the Sale Process the deadline for bids to be received is January 31, 2025. If the Monitor does not receive a 'Qualified Bid' superior to the Stalking Horse Bid during the Sale Process, the Stalking Horse Bid will be selected to be the 'Superior Bid'. To date, the Stalking Horse Bidders are unaware of any other potential bids received by the Monitor during the Sale Process and, if the *status quo* is maintained, the Monitor has scheduled an application before this Honourable Court on February 14, 2025 for court-approval of the Stalking Horse Bid.

Second Cole Affidavit, at para 17

B. First Lien Lenders' Loan and Security Agreements

7. In order to provide general working capital and general funding requirements to the Debtor, the First Lien Lenders each entered into loan agreements with the Debtor dated February 10, 2024 (together, the "**Loan Agreements**").
8. As security under the Loan Agreements, and for all present and future obligations owing by the Debtor to the First Lien Lenders, the Debtor granted to each of the First Lien Lenders a general security agreement dated February 10, 2024 (together, the "**GSAs**"). Pursuant to

Second Mordy Affidavit at para 12, Exhibit "A"

¹ The "First Lien Charge" is defined in the Stalking Horse Bid as, "the charge in favour of Jake Boxer, The CA Mordy Legacy Trust and Brookridge Chartered Professional Accountants Inc. (former name of PEL Chartered Professional Accountants Inc.) registered pursuant to the *Personal Property Security Act* (British Columbia) under base registration numbers 160139Q dated January 29, 2024 and 186604Q dated February 12, 2024".

the GSAs, the Debtor granted a security interest to each of the First Lien Lenders in (the “Collateral”):

- (a) all present and after-acquired property, assets and undertaking of the Grantor of every kind and nature whatsoever, including all Accounts, Goods (including Inventory, Equipment and motor vehicles, but excluding Consumer Goods), Intangibles, Chattel Paper, Documents of Title, Instruments, Securities and all other Investment Property, Money, and any other contract rights or rights to the payment of money;
- (b) all Proceeds and products of each of the foregoing, including all Proceeds of any insurance, indemnity, compensation for loss or damage, warranty or guarantee payable to the Grantor from time to time with respect to any of the foregoing;
- (c) all books and records relating to the foregoing, including in any form or medium;
- (d) all supporting obligations relating to the foregoing;
- (e) all additions, accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing;
- (f) all federal and provincial cash refund tax investment tax credits received by the Grantor arising as a result of the T661 Scientific and Experimental Development (SR&ED) expenditures (“SR&ED Credits”) claimed by the Grantor for the Grantor’s 2023 fiscal year and all subsequent years; and ...

[...] (Definition of SR&ED Credits added)

Second Mordy Affidavit at para 17, Exhibit “D”

9. The GSAs further provide that any present or future obligations owing by the Debtor to the First Lien Lenders are secured by the GSAs, as follows:

Section 3.01 Secured Obligations. **The Collateral secures the payment and performance of all present and future obligations of the Grantor to the Secured Party from time to time,** including without limitation, all present and future obligations of the Grantor, arising under the Loan Agreement, this Agreement and the other Loan Documents, whether primary, secondary, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, whether the indebtedness is reduced and thereafter increased or entirely extinguished and thereafter incurred again, whether incurred by the Grantor alone or with another or others and whether as a principal or surety, and, without limiting the foregoing, the payment and discharge of: (i) the principal of and premium, if any, and interest on the Loan Agreement, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise; and **(ii) all other present and future obligations and liabilities including fees, costs, legal fees and disbursements, reimbursement obligations, contract causes of action, expenses and indemnities** (all such obligations, covenants, duties, debts, liabilities, sums, fees and expenses being herein collectively called the "Secured Obligations"). (emphasis added)

Second Mordy Affidavit at para 18, Exhibit “D”

10. In addition to the foregoing, the First Lien Lenders were also granted promissory notes by the Debtor (the “**Promissory Notes**”), which Promissory Notes are secured by the GSAs, as follows:

- (a) with respect to Boxer – seven (7) promissory notes dated between June 25, 2021 and March 14, 2024;
- (b) with respect to the Mordy Trust – seven (7) promissory notes dated between August 6, 2021 and March 14, 2024; and
- (c) with respect to PEL – four (4) promissory notes dated between October 7, 2022 and March 14, 2024.

First Cole Affidavit at paras 34, 36 & 38, Exhibits “E” to “DD”

11. As certain of the Promissory Notes predate the Loan Agreements, pursuant to defaults of the Debtor to pay amounts owing under same upon demand on February 9, 2024, the Debtor and the First Lien Lenders entered into a forbearance agreement (the “**Forbearance Agreement**”). The Forbearance Agreement, among other things, confirmed the amounts owing to the First Lien Lenders under the Promissory Notes as at February 9, 2024 and confirmed that the GSAs (at that time, to be executed and registered) would secure all present and future obligations of the Debtor owing to the First Lien Lenders.

Second Mordy Affidavit at para 13, Exhibit “B”

12. On March 27, 2024 the Loan Agreements were each amended and restated pursuant to amended and restated demand loan agreements (the “**Amended Loan Agreements**”, and together with the Loan Agreements and the Promissory Notes, the “**First Lien Loan Documents**”). Pursuant to the Amended Loan Agreements, the Debtor, among other things, confirmed and acknowledged the amounts owing respectively to the First Lien Lenders under the Loan Agreements and the Promissory Notes and confirmed that the

GSAs continued to secure all present and future obligations of the Debtor owing to the First Lien Lenders.

Second Mordy Affidavit at para 11;

First Cole Affidavit at Exhibits “E”-“L”, “N”-“U” & “Y”-“CC”

13. As at December 17, 2024 the Debtor is indebted (the “**First Lien Loan Indebtedness**”) to the First Lien Lenders under the First Lien Loan Documents as follows:

First Lien Lender	Principal (\$)	Interest (\$)	Total (\$)
Mordy Trust	639,000.00	212,315.60	851,315.60
PEL	313,989.00	76,664.63	390,653.63
Boxer	2,337,000.00	490,107.98	2,827,107.98
TOTAL	3,289,989.00	779,088.21	4,069,077.21

First Mordy Affidavit at para 13

C. Second Lien Lenders Loan and Security Agreements

14. The Second Lien Lenders are comprised of, Steve Hall, SR Hall Management LLC, BBSG Hall Investments, LLC, Ripcord Capital LLC and Daplt NA, LLC (together, the “**Second Lien Lenders**”). Other than those documents appended to the First Cole Affidavit the First Lien Lenders have not reviewed any of the loan and security documents related to the Second Lien Lenders.

First Cole Affidavit at paras 41-42, Exhibits “FF” to “MM”

15. As set out in the First Cole Affidavit, the Debtor is indebted to the Second Lien Lenders in the amount of approximately US\$920,000 which amount was advanced pursuant to eight (8) demand loan agreements and associated promissory notes each dated February 14, 2024 (the “**Second Lien Lender Loan Documents**”). The security agreements attached as Schedule “A” to each of the Second Lien Lender Loan Documents (the “**Second Lien**”

GSAs”) are effectively identical and purport to grant a security interest in favour of the Second Lien Lenders, in collateral as follows:

“Felix Payment Systems Ltd. (the “Borrower”) mortgages and charges in favour of the lender (as defined in the Loan Agreement to which this Schedule A is attached), and grants to the Lender a security interest in all federal and provincial cash refund investment tax credits received by the Borrower arising as a result of the T661 Scientific Research and Experimental Development (SR&ED) expenditure claims claimed for the Borrower’s 2023 fiscal year and all subsequent years (collectively, the “Charged Property”) to secure payment and performance of all present debts, liabilities and other obligations of the Borrower to the Lender in respect of the indebtedness outstanding at any time under the Secured Promissory Note issued by the Borrower to the Lender on or about the date hereof (collectively, the “Secured Obligations”).” (emphasis added)

First Cole Affidavit at paras 41-42, Exhibits “FF” to “MM”

16. The Second Lien Lenders have not, to date, provided any security agreement which purports to secure any collateral other than the SR&ED Credits.
17. While the Second Lien Lenders eventually registered their security interest at the PPR, The Second Lien GSAs were registered in the PPR following the First Lien Lenders’ GSAs.

D. PPR Registrations

18. The First Lien Lenders registered and perfected their security interest pursuant to the GSAs in advance of the Second Lien Lenders. A PPR search for the Debtor dated January 9, 2025 revealed certain registrations, a summary of which is as follows:

Reg No.	Reg Date	Secured Creditor(s)	Collateral
355037N	November 8, 2021	Royal Bank of Canada	Deposit Accounts
160139Q	January 29, 2024	Boxer Capital Corporation	All of the Debtor’s present and after acquired personal property
186604Q	February 12, 2024	Jake Boxer, The CA Mordy Legacy Trust and Brookridge Chartered Professional Accountants Inc. (now PEL Chartered Professional Accountants Inc.)	All of the Debtor’s present and after acquired personal property

Reg No.	Reg Date	Secured Creditor(s)	Collateral
277672Q	March 27, 2024	Douglas Alan Mordy, Candice Rose Mordy, Ralph Kurt McFee, Section 3 Ventures (VCC) Inc. and Kapril Nanalal	All of the Debtor's present and after acquired personal property
559003Q	August 8, 2024	SR Hall Management LLC, BBSG Hall Investments, LLC, Ripcord Capital LLC, Dapit NA, LLC and Steve Hall	All of the Debtor's present and after acquired personal property

Second Mordy Affidavit at paras 19-20, Exhibit "E"

19. As set out above, the Royal Bank of Canada ("**RBC**") has a first-in-time registration (the "**RBC Registration**") which relates to a guaranteed investment certificate for \$20,000, whereby RBC has been pledged to secure the obligations of the Debtor to RBC under a credit card granted to the Debtor. The First Lien Lenders are not disputing the priority of the RBC Registration.

First Cole Affidavit at para 44

E. Security Opinion

20. The Monitor has not had occasion to complete a security opinion respecting the validity, enforceability and priority of the secured parties noted above. As a result, Osler, Hoskin & Harcourt LLP, counsel to the First Lien Lenders, has prepared a security opinion which, subject to the standard assumptions and qualifications therein opines that the security granted to the First Lien Lenders with respect to the First Lien Loan Documents is valid and enforceable.

Second Mordy Affidavit at para 22

F. Need for the Within Application

21. In *CCAA* proceedings, the usual method of determining the priority of claims is through a claims process approved by the Court following a sale closing; however, in light of the credit bid from the First Lien Lenders in the Stalking Horse Bid, this application is brought to provide clarity and finality to the priority of the respective secured parties. Moreover, it will allow the Monitor to properly quantify the value of the Stalking Horse Bid in the event

other Qualified Bids are received and to ensure a distribution, if available, can be made to the First Lien Lenders.

Part 3: LEGAL BASIS

A. The PPSA Governs

1. As noted above, in each of the First Lien Loan Documents, the lenders advanced funds to the Debtor.
2. Each of the GSAs creates a security interest; in the case of the First Lien Lenders, in all of the Debtor's present and after-acquired personal property.
3. The *PPSA* is broad in its scope and application, and applies to all arrangements that purport to secure the payment or performance of an obligation. The *PPSA* defines a "security interest" as follows:

"security interest" means

(a) an interest in goods, chattel paper, investment property, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods, and

(b) the interest of

(i) a transferee arising from the transfer of an account or a transfer of chattel paper,

(ii) a person who delivers goods to another person under a commercial consignment, and

(iii) a lessor under a lease for a term of more than one year,

whether or not the interest secures payment or performance of an obligation;

PPSA s.1(1) definition of "security interest"

4. The foundational premise of the *PPSA* is that it applies to all forms of security in personal property regardless of the manner or form in which the security is taken.

5. In particular, s.2 of the *PPSA* establishes that the *PPSA* applies to all transactions that create a security interest without regard to form or title.

PPSA at s.2(1)(a)

6. The effect of s.2 of the *PPSA* is that the particular form of the transaction is irrelevant to the Court and, instead the Court is to consider all such interests as a “security interest”, and thereafter to determine priority of competing security interests according to the priority rules in the *PPSA* based on whether a security interest has “attached” and been “perfected”.

PPSA at ss. 2, 10, 12 & 35(1)

7. The *PPSA*’s key priority rule is that the first creditor to “perfect” their security by registering their security interest in the PPR obtains priority over other creditors who perfect their interest later in time or who have not perfected. This allows all interested parties to know at the outset how their security will rank as against the debtor’s collateral, and permits them to engage prior registered creditors to negotiate priorities. This system is based on the proposition that in order to have enforceable security as against the public, a creditor must have registered their security interest in the public registration system, which, in this case, is the PPR.

PPSA at s.35(1)

8. The *PPSA* provides that, if a creditor does not register their security interest in order to perfect their security interest in the PPR, it only has an unperfected security interest and cannot have priority over other secured creditors who perfect their security interest:

Perfection by registration

25 Subject to section 19, registration of a financing statement perfects a security interest in collateral

PPSA at s. 25

9. The approach of focusing on substance over form in assessing transactions serves a critical public policy purpose: it eliminates the ability of parties to circumvent the *PPSA* regime by crafting agreements that subvert the intent and purpose of the *PPSA*. In addition, it prevents situations where creditors are surprised by private, unregistered arrangements that purport to operate outside the statutory regime. Further, it creates certainty in commercial matters by avoiding inquiries into, and basing priorities on, what parties purportedly knew

or did not know about other creditors' arrangements. As a result, the *PPSA* creates predictability and certainty which are essential to the principles of commercial fairness.

Royal Bank v. Sparrow Electric Corp., 1997 CanLII 377 (SCC) at paras 21-22

B. The First Lien Lenders are Secured Creditors with Valid and Enforceable Security

10. The First Lien Lenders have registered, valid and enforceable first priority security (subject to the RBC Registration which is not contested) in all of the Debtor's present and after-acquired personal property.
11. For a lender to establish that they have a valid and enforceable security interest under the *PPSA* against third parties they must establish that: (a) the security "attaches" to the collateral; and (b) the attached security interest in the collateral must be perfected. Once the lender has an attached and perfected security interest, it can look to the *PPSA* to determine where its security interest ranks compared to other creditors of the borrower.

PPSA at ss.9, 10 & 12

PPSA Handbook at pgs. 102-103

12. For attachment to occur: (a) value must be given by the secured creditor to the debtor; (b) the debtor must have, or have the power to transfer, rights in the collateral; and, either (i) the debtor must sign a security agreement that contains a description of the collateral sufficient to enable it to be identified; or (ii) the secured party must have possession or control of the collateral; and (c) there must be no postponement of attachment.

PPSA at s.12

13. It is evident that value has been given by virtue of the advances made by the First Lien Lenders to the Debtor and that the collateral secured is limited to what the Debtor has rights in.
14. The GSAs are each a written agreement pursuant to the *PPSA* which provide a clear description of the Collateral, as set out above. Further, there are numerous valid and enforceable agreements between the Debtor and the First Lien Lenders which, not only establish the debts owing under the First Lien Loan Indebtedness, but also establish the present and future security entitlement of the First Lien Lenders. It is also evident that the

GSAs attach to the Collateral. As a result, the First Lien Lenders are secured creditors pursuant to the *PPSA* and the GSAs are valid and enforceable.

PPSA at s.10

PPSA Handbook at pgs. 101-102

C. The GSAs were Perfected in Priority to the Second Lien Lender Security

15. Pursuant to section 19 of the *PPSA* a, “security interest is perfected when: (a) it has attached; and (b) all steps required for perfection under this Act (the *PPSA*) have been completed, regardless of the order of occurrence”.

PPSA at s.19

16. Until perfected, a security interest in collateral is subordinate to the interest of, *inter alia*, a person with a perfected security interest in the same collateral or who has priority under any other Act.

PPSA s.35(a)

17. Perfection can be obtained in three ways, by registration, by possession or by temporary possession. In the immediate case, the only issue is who registered their security interest first in time.

18. The *PPSA* system embodied in s.35(1) governs priorities and states that priority between conflicting security interests in the same collateral is resolved on the basis of a first in time rule. Here, the First Lien Lenders registered their financing statements on January 29, 2024 and February 12, 2024, ahead of the Second Lien Lenders.

PPSA at ss.24-25 & 35(a)

PPSA Handbook at pgs. 256-257

19. The Second Lien Lenders were, or should have been made aware of the First Lien Lenders’ PPR Registration prior to advancing any funds under the Second Lien Lender Loan Documents given that the First Lien Lenders’ PPR registration was filed before their loans were funded. In any event, the Second Lien Lenders failed to register their security interest for approximately 6 months, which registration would nevertheless rank subsequent to the registration made by the First Lien Lenders.

Second Mordy Affidavit at paras 19-20, Exhibit “E”

D. The GSAs Cover All of the First Lien Loan Indebtedness

20. The entirety of the First Lien Loan Indebtedness is secured by the GSAs.
21. The First Lien Lenders advanced the funds under the First Lien Loan Documents. Where amounts were advanced by third parties who are not parties to the GSAs, such advances were made according to written and documented directions to pay for and on behalf of the respective First Lien Lender.

Second Mordy Affidavit at paras 23-24, Exhibits "F"- "T"

22. With respect to the amounts advanced by third parties who are not parties to the GSAs, the *Skymark* decision is instructive. In this case, a secured creditor claimed that monies advanced under a promissory note by third party companies that he controlled should be covered under his security agreement. The Court found that due to the indirect nature of the claims there was no relationship between the third party companies and there was no documentation evidencing that the advances were made for and on behalf of the secured creditor. As a result, only the advances made directly by the secured creditor were entitled to be secured. *Skymark* is distinguishable in the immediate case as there is documentation evidencing the advances were made for and on behalf of the secured creditors.

Skymark Finance Corporation v. Mahal Venture Capital Inc. et al., 20023 ONSC 2354 at paras 58-61, 64 & 66

Second Mordy Affidavit at paras 23-24, Exhibits "F"- "T"

23. With respect to amounts advanced prior to the registration of the GSAs, pursuant to s.14(1) of the *PPSA* a security agreement may provide for future advances. That is the case here. The GSAs secure all present and future indebtedness owing by the Debtor to the First Lien Lenders.

PPSA at ss. 14(1), 14(2), 20(a)(i) & 20(a)(ii)

24. Section 14 of the *PPSA* recognizes the efficacy of clauses in security agreements that provide for future advances over the life of the agreements. The priority future advances enjoy is covered by s.35(5) of the *PPSA* which provides that a secured party can tack on future advances in priority to an intervening security interest so long as the first security interest is perfected.

PPSA Handbook at pg. 125

25. In the immediate case, certain of the advances under the Promissory Notes occurred after the Second Lien Lenders registered their security interest and after the First Lien Lenders registered their security interest. However, given the future advance clause set out above, all amounts owing under the First Lien Loan Documents remain secured and rank in priority to any other creditor registered at the PPR, other than the RBC Registration.

PPSA ss. 14(1) & 35(5)

PPSA Handbook at pgs. 124-128

E. Judgment against the Debtor

26. The First Lien Lenders plead and rely on the common law principle and applicable related statutes related to the laws of contract.
27. The Debtor is indebted to the First Lien Lenders in the amount of the First Lien Loan Indebtedness, with interest continuing to accrue with respect to the First Lien Loan Indebtedness.
28. The First Lien Loan Agreements and the GSAs each constitutes a binding contract.
29. Each of the GSAs have been properly registered with the PPR and provide security interests in the personal property of the Debtor in favour of the First Lien Lenders.
30. The Debtor is in breach of the First Lien Loan Documents and the First Lien Loan Indebtedness is due and owing to the First Lien Lenders.

Part 4: MATERIAL TO BE RELIED ON

1. The Affidavit #1 of Andrew Cole, made November 21, 2024;
2. The Affidavit #2 of Andrew Cole, made December 3, 2024;
3. The Affidavit #1 of Douglas Mordy, made December 19, 2024;
4. The Affidavit #2 of Douglas Mordy, made January 28, 2024;
5. The First Report of the Proposal Trustee (now Monitor), dated November 8, 2024;
6. The Pre-Filing Report of the Proposed Monitor, dated November 22, 2024;

7. The pleadings filed in this proceeding; and
8. Such further material as counsel may advise and this Honourable Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: January 28, 2025


Signature of lawyer for the First Lien Lenders
Emma Newbery

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

<p>.....</p> <p>.....</p> <p>.....</p>	
<p>Date:[dd/mmm/yyyy].....</p>	<p>.....</p> <p>Signature of [] Judge [] Master</p>

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

Schedule "A"

Service List

(See attached)

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,

R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c.57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FELIX PAYMENT SYSTEMS LTD.

PETITIONER

SERVICE LIST
As at January 7, 2025

Cassels Brock & Blackwell LLP Suite 2200, 885 West Georgia Street Vancouver, BC V6E 3E8 Attention: Vicki Tickle Mihai Tomos Hayley Roberts Email: vtickle@cassels.com mtomos@cassels.com hroberts@cassels.com <i>Counsel to the Court Appointed Monitor, Alvarez & Marsal Canada Inc.</i>	Alvarez & Marsal Canada Inc. 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3L2 Attention: Anthony Tillman Taylor Poirier Ryan Wu Email: atillman@alvarezandmarsal.com tpoirier@alvarezandmarsal.com ryan.wu@alvarezandmarsal.com <i>Court Appointed Monitor</i>
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<p>Osler, Hoskin & Harcourt LLP Bentall Four, 1055 Dunsmuir St Suite 3000, Vancouver, BC V7X 1K8</p> <p>Attention: Mary Buttery Emma Newbery Lucas Hodgson Sam Tse Emily Paplawski Stephen Kroeger</p> <p>Email: mbuttery@osler.com enewbery@osler.com lhodgson@osler.com stse@osler.com epaplawski@osler.com skroeger@osler.com</p> <p><i>Counsel to Proposed DIP Lender</i></p>	<p>McCarthy Tétrault LLP Suite 2400, 745 Thurlow Street Vancouver BC V6E 0C5</p> <p>Attention: Lance Williams Ashley Bowron Victoria Tortora Sue Danielisz</p> <p>Email: lwilliams@mccarthy.ca abowron@mccarthy.ca vtortora@mccarthy.ca sdanielisz@mccarthy.ca</p> <p><i>Counsel to the Petitioner, Felix Payment Systems Ltd.</i></p>
<p>Kornfeld LLP 1100 One Bentall Centre, 505 Burrard St, Box 11 Vancouver, BC, Canada V7X 1M5</p> <p>Attention: Douglas B. Hyndman</p> <p>Email: dhyndman@kornfeldllp.com</p> <p><i>Counsel to the Business Development Bank of Canada</i></p>	<p>Axiom B.I. MC Group of Companies 1680 – 200 Burrard Street Vancouver, BC V6C 3L6</p> <p>Attention: Vincenzo DePalma</p> <p>Email: vdepalma@axiomcapitalinc.com</p>

Department of Justice Canada B.C. Regional Office 900-840 Howe Street Vancouver, BC V6Z 2S9 Attention: Jessica Ko Miriam Assadi Email: Jessica.ko@justice.gc.ca Miriam.Assadi@justice.gc.ca	Bennett Jones LLP 2500 Park Place, 666 Burrard Street, Vancouver, B.C., V6C 2X8 Attention: David Gruber Email: GruberD@bennettjones.com <i>Counsel to the Respondent, Dapit NA, LLC</i>
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E-SERVICE LIST

As at January 7, 2025

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Schedule "B"

Draft Order

(See attached)

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FELIX PAYMENT SYSTEMS LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
JUSTICE MASUHARA) January 31, 2025
)

THE APPLICATION of CA Mordy Legacy Trust, Jake Boxer and PEL Chartered Professional Accountants Inc. (together, the “**First Lien Lenders**”) coming on for hearing at Vancouver, British Columbia, on the 31st day of January, 2025; AND ON HEARING from Emma Newbery, counsel for the First Lien Lenders and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed, including Affidavit #1 of Andrew Cole made November 21, 2024, Affidavit #2 of Andrew Cole made December 3, 2024, Affidavit #1 of Douglas Mordy made December 19, 2024, the Affidavit #2 of Douglas Mordy Made January 28, 2025 (the “**Second Mordy Affidavit**”), the First Report of the Monitor, Alvarez & Marsal Canada Inc., (in its capacity as court-appointed monitor of Felix Payment Systems Ltd., the “**Monitor**”) dated December 5, 2024 and the Second Report of the Monitor dated January 9, 2025; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c.0-36 as amended, the British Columbia Supreme Court Civil Rules, BC Reg 168/2009, the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS, DECLARES, AND DIRECTS THAT:

PRIORITY

1. The general security agreement dated as of February 10, 2024 executed by the Felix Payment Systems Ltd. (the “**Debtor**”) in favour of Jake Boxer (“**Boxer**”) in respect of which a financing statement was filed in the British Columbia Personal Property Registry (the “**PPR**”) against the Debtor under base registration number 186604Q on February 12, 2024, constitutes a valid charge in favour of Boxer on present and acquired personal property and proceeds thereof (the “**Personal Property**”) of the Debtor in priority to the interest therein or claims thereto of all respondents and all persons claiming by, through, or under them, subject only to the charges against the property of the Debtor ordered by this Court (the “**Court Ordered Charges**”), and the security interest in favour of Royal Bank of Canada with respect to certain deposit accounts perfected by a security registration in the PPR against the Debtor under base registration 355037N, on November 8, 2021 (the “**RBC Interest**”).
2. The general security agreement dated as of February 10, 2024 executed by the Debtor in favour of in favour of Brookridge Chartered Professional Accounts Inc. (now PEL Chartered Professional Accountants Inc.) (“**PEL**”) in respect of which a financing statement was filed in the PPR against the Debtor under base registration number 186604Q on February 12, 2024, constitutes a valid charge in favour PEL on the Personal Property the Debtor in priority to the interest therein or claims thereto of all respondents and all persons claiming by, through, or under them, subject only to the charges against Court Ordered Charges and the RBC Interest.
3. The general security agreement dated as of February 10, 2024 executed by the Debtor in favour of in favour of CA Mordy Legacy Trust (“**Mordy Trust**”) in respect of which a financing statement was filed in the PPR against the Debtor under base registration number 186604Q on February 12, 2024, constitutes a valid charge in favour Mordy Trust on the Personal Property of the Debtor in priority to the interest therein or claims thereto of all respondents and all persons claiming by, through, or under them, subject only to the charges against Court Ordered Charges and the RBC Interest.

4. The charges confirmed in paragraphs 1-4 of this Order (the “**First Lien Security Interests**”) secure the repayment of the following indebtedness as at December 17, 2024, for which interest and costs continue to accrue (the “**First Lien Loan Indebtedness**”):

First Lien Lender	Principal (\$)	Interest (\$)	Total (\$)
Mordy Trust	639,000.00	212,315.60	851,315.60
PEL	313,989.00	76,664.63	390,653.63
Boxer	2,337,000.00	490,107.98	2,827,107.98
TOTAL	3,289,989.00	779,088.21	4,069,077.21

5. The Debtor is indebted to the First Lien Lenders in the amount of \$4,069,077.21 as of December 17, 2024 (plus interest and fees that continues to accrue), and this amount is justly due and owing.
6. The First Lien Lenders are hereby granted judgment against the Debtor in the amount of \$4,069,077.21 as of December 17, 2024 plus interest from and after the date of this Order at the as set out in applicable promissory notes made between the First Lien Lenders and the Debtor, or in the alternative, pursuant to the *Court Order Interest Act*, RSBC 1996, c 79.

7. Endorsement of this Order by counsel appearing on this application other than counsel for the First Lien Lenders is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyers for the First Lien Lenders
Emma Newberry

BY THE COURT

REGISTRAR

Schedule A

[illegible]