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SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

NOV 22 2024

NO. _____
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

PETITION TO THE COURT

ON NOTICE TO: Service List, attached hereto as **Schedule "A"**

The address of the registry is:

The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

The petitioner estimates that the hearing of the petition will take 1 day.

- This matter is an application for judicial review.
- This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by

- The company named as petitioner in the style of proceeding above
- [Name] (the Petitioner)

If you intend to respond to this Petition, you or your lawyer must:

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for Response to Petition described below, and

- (b) serve on the Petitioner
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

TIME FOR RESPONSE TO PETITION

A Response to Petition must be filed and served on the Petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) **The ADDRESS FOR SERVICE of the Petitioner is:**

McCarthy Tétrault LLP
Barristers & Solicitors
Suite 2400, 745 Thurlow Street
Vancouver, BC V6E 0C5

**Attention: H. Lance Williams
Ashley Bowron**

Email address for service of the Petitioner: lwilliams@mccarthy.ca
abowron@mccarthy.ca
sdanielisz@mccarthy.ca

(2) **The name and office address of the Petitioner's lawyer:**

(same as above)

CLAIM OF THE PETITIONER

PART 1 ORDER SOUGHT

1. The Petitioner, Felix Payment Systems Ltd. ("**Felix**"), seeks an initial order under the *Companies Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended ("**CCAA**") substantially in the form attached as **Schedule "B"** (the "**Initial Order**") to this Petition, among other things:

- (a) abridging the time for service and filing of this Petition;
- (b) declaring Felix is a company to which the CCAA applies;
- (c) appointing Alvarez & Marsal Canada Inc. ("**A&M**") as an officer of this Court to monitor the assets, business, and financial affairs of Felix (in such capacity, the "**Monitor**");
- (d) approving Felix's ability to borrow up to a principal amount of \$400,000 under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Facility**"), to finance Felix's critically required operating expenses and other general corporate purposes, post-filing expenses, and costs over the next ten (10) days;
- (e) staying, for an initial period of not more than ten (10) days, all proceedings and remedies taken or that might be taken in respect of Felix, the Monitor, or the directors and offices of Felix, or affecting Felix's Business or the Property (as are defined in the Initial Order), except with the written consent of Felix and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");
- (f) granting the Administration Charge, the Directors' Charge, and the DIP Lenders' Charge (each as are defined in the Affidavit #1 of Andrew Cole, sworn November 21, 2024 (the "**First Cole Affidavit**")) in the following priorities:
 - (i) First – the Administration Charge in favour of the Monitor, counsel to the Monitor, and counsel to Felix up to a maximum amount of \$150,000;
 - (ii) Second – the DIP Lender's Charge in favour of the DIP Lender (as defined below) of \$400,000 to be increased to \$2.1 million, plus interest,

fees, and expenses at the Comeback Hearing (as defined in the First Cole Affidavit); and

(iii) Third – the Directors’ Charge in favour of the directors and officers of Felix up to a maximum of \$150,000.

(g) such further and other orders as this Court may deem just and convenient and as may be appropriate in the circumstances.

PART 2 FACTUAL BASIS

A. OVERVIEW

2. Felix is a privately-held financial technology company based in Vancouver, British Columbia specializing in cloud-based payment acceptance infrastructure and associated software systems. On October 15, 2024, (the “**NOI Filing Date**”), Felix filed a notice of intention to make a proposal (the “**NOI**”) under section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c. B-3 (the “**BIA**”), which commenced the NOI proceeding (the “**NOI Proceeding**”). A&M was appointed to act as the proposal trustee (in such capacity, the “**Proposal Trustee**”). On November 12, 2024, this Court (sitting in bankruptcy and insolvency) granted Felix an extension of time to file a proposal to December 30, 2024.

First Cole Affidavit at para 4

3. Felix remains insolvent as of the date of this Petition. Felix is in a liquidity crisis and, absent the approval of the additional financing proposed to be made available under the debtor-in-possession credit facility (the “**DIP Facility**”), Felix will not be able to meet its post-NOI Filing Date obligations as they become due. Further, the nature of the issues facing Felix (discussed below) require the greater flexibility afforded by CCAA proceedings.

First Cole Affidavit at para 5

4. This restructuring is required to address several issues facing Felix, and such a proceeding is in the best interests of all of Felix’s stakeholders because:

(a) there has been a breakdown in the relationship between the existing lenders/equity holders of Felix, and as such, no party is prepared to inject further financing under the current structure. In order to preserve the value of Felix’s

business, it is necessary to commence a sales and investment solicitation process (the “**SISP**”) to restructure the ownership and financing structure of Felix’s business; and

- (b) the nature of the debt, security, and status of enforcement against Felix’s assets is in dispute, and needs to be addressed and confirmed expeditiously in a court-supervised process.

First Cole Affidavit at para 6

5. Given the nature of Felix’s business as an early-stage technology company, there is likely little to no value for stakeholders in a liquidation. Further, without addressing these issues expeditiously, any residual value is likely further compromised. Consequently, Felix is requesting this Court continue the NOI Proceeding as a proceeding under the CCAA (the “**CCAA Proceeding**”) so that the adverse consequences associated with a bankruptcy can be avoided. The conversion to a CCAA Proceeding is intended to benefit all of Felix’s stakeholders, including the company’s many employees, customers, suppliers, creditors, and other contracting parties.

First Cole Affidavit at para 7

6. Mr. Jake Boxer, the CA Mordy Legacy Trust (the “**Mordy Trust**”), and PEL Chartered Professional Accountants Inc. have collectively agreed to provide additional financing to Felix to fund the restructuring process through the DIP Facility (in their capacity as lenders in this proceeding collectively, the “**DIP Lender**”) to, among other things, provide Felix with the immediate access to funding needed to continue to operate and preserve the value of its operations. As noted below, Felix does not produce sufficient revenues at this stage of its development to fund its operations, and as a technology-based business, its value is as a going-concern.

First Cole Affidavit at para 8

B. CORPORATE STRUCTURE AND MANAGEMENT

i. Felix’s Product

7. Felix has developed a novel cloud-based payment acceptance infrastructure and associated software system that transforms non-traditional hardware into a certified payment terminal. Felix’s payment acceptance technology enables contactless payments on near-field

communication-enabled devices without the need for additional hardware, making payment acceptance more accessible for all businesses. This technology allows payment terminals to be put on non-traditional hardware, such as cellphone or tablets, through a software application. Felix's value proposition is that it brings to market a method for offloading the 'payment engine' for processing electronic payments to a cloud environment and entirely off-device. This makes the payment acceptance method for business more flexible and easier to integrate with a variety of devices.

First Cole Affidavit at para 9

8. In particular, Felix allows its end users to access the software via its Android application or integration into another software product with its Software Development Kit (the "SDK"). The flexibility of Felix's SDK means it can be integrated into other software and is easier to work with than other systems. In addition to the initial deployment and integration of the software platform with customers, Felix is responsible for maintaining the cloud environment and all necessary certifications to operate a financial services technology. Because of the sensitive nature of the data being transmitted, certain certifications are required by payment processors and payment networks (e.g. VISA and MasterCard) to ensure sufficient security in the software. Felix has, or is in the process of completing, a number of these certifications, which are discussed below. Additionally, Felix provides support outlined in their applicable customer service level agreements.

First Cole Affidavit at para 10

9. Unlike its competition, Felix's payment platform caters to mid- and large-sized businesses because it can be adapted and deployed in more sophisticated software environments. The unique payment acceptance technology reduces certification overhead, device maintenance, and dependency on traditional terminal providers for businesses, and enables businesses of all sizes to accept payments everywhere. As Felix's platform is pre-certified for major payment processors and payment networks, it reduces certification delays and costs that businesses would otherwise incur.

First Cole Affidavit at para 11

10. To market its product, Felix contracts with channel partners, rather than a more traditional direct-to-end user strategy. Felix sells its services via four primary categories of channel partners (the "Channel Partners"): original equipment manufacturers, independent

software vendors, and financial institutions and their agents. Felix maintains contracts with its Channel Partners for referral business as well as contracts with the end-user businesses.

First Cole Affidavit at para 12

11. Felix's contracts with the Channel Partners typically generate revenue via a combination of two mechanisms: (i) a recurring SaaS License Fee charged monthly per device utilizing the Felix system, and (ii) a transaction fee charged per individual transaction. Additionally, Felix imposes one-time implementation and set-up fees for each deployment.

First Cole Affidavit at para 13

ii. Ownership

12. According to Mr. Cole's review of the books and records of Felix, the company is privately owned by 23 shareholders. Its largest shareholder, Mr. Jake Boxer, holds approximately 18% of the outstanding shares. Mr. Boxer is an original seed investor in Felix with Mr. Doug Mordy, who together hold approximately 30% of the outstanding shares. Its only subsidiary is Felix Payment Systems US Ltd., which is incorporated in Delaware to serve US customers. Although Felix US remains a 100% owned subsidiary of Felix, it has not recognized any revenue or accumulated any assets to date.

First Cole Affidavit at paras 15-16 and Exhibit "B"

iii. Employees

13. Felix employs 32 people. Felix US has no employees. Felix has two directors, both of whom are based in Vancouver, British Columbia. Over 85% of the employees at Felix work on the technology team. The technology team is divided into four subgroups:

- (a) the Cloud Services team develops and maintains Felix's cloud back-end production environment and the core communication logic of Felix's overarching solution with other systems;
- (b) the Infrastructure team provides technical support for any of the business needs other than cloud services;
- (c) the Client Services team handles any client-facing operations; and

- (d) the Database & Portal team handles the database for Felix's product information storage and the device management and reporting tool Felix provides its customers.

First Cole Affidavit at para 19(a)-(d)

14. The largest group within the technology team is Cloud Services, with 12 employees. The aggregate payroll for Felix is approximately \$260,000 per month (excluding the cost of benefits).

First Cole Affidavit at para 20

15. All of Felix's employees are non-unionized and there are no pensions, retirement, or deferred compensation plans for their benefit. Through its benefits provider, Victor Insurance, Felix sponsors a group benefit plan offering extended health care, dental care, counselling services, and long-term disability benefits (among other things) to its employees.

First Cole Affidavit at para 21

iv. Real Property

16. Felix has one sublease agreement for its office space located at 1400-355 Burrard Street, with estimated annual payments of approximately \$326,730. In an effort to cut costs earlier this year, Felix relocated to this address because the sublease ends on August 31, 2025 and, therefore, reduces long-term fixed costs because the shorter lease provided Felix with a favourable lease rate.

First Cole Affidavit at para 23

v. Accounts and Credit Card

17. Felix maintains three bank accounts, one credit card, and one guaranteed investment certificate with the Royal Bank of Canada ("**RBC**"). Two of the accounts are with RBC Canada, one in Canadian dollars and one in American dollars. One of the accounts is with RBC US, in American dollars, and is maintained to facilitate the receipt of funds from partners in the United States. The guaranteed investment certificate is held with RBC for \$20,000 and secures Felix's credit card obligations with RBC.

First Cole Affidavit at para 24

18. Payroll payments are made using Payworks Inc., a workforce management application. Payroll amounts are transferred to Payworks, who then deposits them in the employees' accounts.

First Cole Affidavit at para 25

vi. Intellectual Property

19. As a financial technology company, Felix is in the process of protecting its intellectual property to ensure the value of its key asset: its intellectual property. To further that goal, on May 7, 2021, Felix submitted applications under the international Patent Cooperation Treaty and four national patent applications in Canada, United Kingdom, Australia, and the United States.

First Cole Affidavit at para 26

C. FINANCIAL POSITION OF FELIX

20. The following is a summary of Felix's financial position based on the available books and records. Felix has continued to review and refine the information available with respect to the nature and quantum of its obligations since the NOI Filing Date. Given the start-up nature of Felix's business, and the liquidity issues that Felix has faced, its books and records require updating. For example, many of the outstanding amounts in the books and records do not include accrued interest. Some of the litigation claims discussed in paragraph 62 below include disputes regarding documentation that was allegedly signed by Felix, and therefore, Felix requires additional time to review all of its documents before providing a more definitive summary of Felix's outstanding obligations. Given the disputed nature of the debts and security, it is anticipated that a limited claims process may be necessary as part of or in conjunction with the SISP to confirm the amount, validity, and priority of any outstanding obligations.

First Cole Affidavit at para 28 and Exhibit "C"

i. Assets and Liabilities

21. As at September 30, 2024, Felix had total unconsolidated assets with a book value of approximately \$653,291.05. As noted above, Felix is a start-up technology company so the net realizable value of the assets on liquidation may be less than book value. However, it is anticipated that the value of Felix's business, especially once certifications are complete, will greatly exceed book value.

First Cole Affidavit at paras 29-30 and Exhibit "C"

22. As at September 30, 2024, Felix had total unconsolidated liabilities with a book value owing of approximately \$19,005,102.01.

First Cole Affidavit at para 31 and Exhibit "C"

ii. Secured Obligations

23. Felix's primary secured creditors can be categorized in two groups: (i) the first lien lenders—Mr. Boxer and Mr. Mordy and their associated entities, which include Brookridge Chartered Professional Accounts Inc ("**Brookridge**"), the CA Mordy Legacy Trust ("**Mordy Trust**"), Candice Rose Mordy, Ralph McFee, Kapil Nanalal, and Section 3 Ventures (VCC) Inc. (collectively, the "**First Lien Lenders**"); and (ii) the second lien lenders—Mr. Steve Hall and his associated entities, which include SR Hall Management LLC ("**SR Hall**"), BBSG Hall Investments, LLC ("**BBSG**"), Ripcord Capital LLC ("**Ripcord**"), and DapIt NA, LLC ("**DapIt**", together with SR Hall, BBSG, and Ripcord, the "**Second Lien Lenders**").

First Cole Affidavit at para 32

24. The First Lien Lenders and the Second Lien Lenders have each registered a security interest in Felix's present and after-acquired personal property. According to the British Columbia Personal Property Registry Search (the "**PPR Search**"), the First Lien Lenders registered their security interest in January and February 2024 and the Second Lien Lenders registered their security interest in August 2024. As discussed in more detail below, the First Lien Lenders have security agreements securing their interest. Felix has no record of and has been unable to locate any similar agreement with the Second Lien Lenders that grants a security in all present and after acquired property, but expects to address those (and their scope) as part of the claims process.

First Cole Affidavit at para 33 and Exhibit "D"

First Lien Lenders

25. As of November 15, 2024, the books and records indicate that Mr. Boxer is owed approximately \$2.3 million, (this likely does not account for all interest and fees) pursuant to the following documents:

- (a) Demand Promissory Note dated June 25, 2021 for \$150,000;

- (b) Demand Promissory Note dated November 25, 2022 for \$500,000;
- (c) Demand Promissory Note dated December 29, 2022 for \$300,000;
- (d) Demand Promissory Note dated February 7, 2023 for \$250,000;
- (e) Secured Promissory Note dated February 10, 2024 for \$60,000;
- (f) Secured Promissory Note dated February 28, 2024 for \$66,000;
- (g) Secured Promissory Note dated March 14, 2024 for \$60,000; and
- (h) Amended and Restated Demand Loan Agreement between Mr. Boxer, as lender, and Felix, as borrower, dated March 27, 2024 (the "**Boxer Loan and Security Agreement**"), which indicated that, as of the date of the agreement, Mr. Boxer was owed \$1,386,000 in principal amounts and \$278,062.81 in interest pursuant to the series of promissory notes issued from time to time by Mr. Boxer to Felix. Pursuant to the Boxer Loan and Security Agreement, Mr. Boxer advanced a further \$30,000 and authorized Felix to request subsequent advances in accordance with the grid set out in Schedule A to the agreement.

First Cole Affidavit at para 34(a)-(h) and Exhibits "E"- "L"

26. Mr. Boxer's claims are secured by:

- (a) the Boxer Loan and Security Agreement, which secures all past and future indebtedness of Felix to Mr. Boxer; and
- (b) a General Security Agreement, between Mr. Boxer, as the secured party, and Felix, as grantor, dated February 10, 2024.

First Cole Affidavit at para 35 and Exhibit "M"

27. As of November 15, 2024, the books and records indicate that Mr. Mordy and the Mordy Trust are collectively owed approximately \$639,000 (this likely does not account for all interest and fees) pursuant to the following documents:

- (a) Demand Promissory Note to Mordy Trust dated August 6, 2021 for \$200,000;

- (b) Demand Promissory Note to Mordy Trust dated January 10, 2023 for \$200,000;
- (c) Demand Promissory Note to Mordy Trust dated February 6, 2023 for \$100,000;
- (d) Demand Promissory Note to Mordy Trust dated February 9, 2023 for \$75,000;
- (e) Secured Promissory Note to Mordy Trust dated February 10, 2024 for \$30,000;
- (f) Secured Promissory Note to Mordy Trust dated February 28, 2024 for \$31,000;
- (g) Secured Demand Promissory Note to Mordy Trust dated March 14, 2024 for \$30,000; and
- (h) Amended and Restated Demand Loan Agreement between Mordy Trust, as lender, and Felix, as borrower, dated March 27, 2024 (the “**Mordy Loan and Security Agreement**”) which amends the Demand Loan Agreement between Doug Mordy, Candice Rose Mordy, Ralph Kurt McFee, Section 3 Ventures (VCC) Inc., and Kapil Nanalal, as lenders, and Felix as borrower, dated March 27, 2024. The Mordy Loan and Security Agreement indicated that, as of the date of the agreement, the Mordy Trust was owed \$666,000 in principal amounts and \$158,576.61 in interest pursuant to the series of promissory notes issued from time to time by Mr. Mordy to Felix. Pursuant to the Boxer Loan and Security Agreement, Mr. Boxer advanced a further \$15,000 and authorized Felix to request subsequent advances in accordance with the grid set out in Schedule A to the agreement.

First Cole Affidavit at para 36(a)-(h) and Exhibits “N”-“V”

28. Mr. Mordy and the Mordy Trust’s claims are secured by:
- (a) the Mordy Loan and Security Agreement, which secures all past and future indebtedness of Felix to the Mordy Trust;
 - (b) a General Security Agreement between Doug Mordy, Candice Rose Mordy, Ralph Kurt McFee, Section 3 Ventures (VCC) Inc., and Kapil Nanalal, as lenders, and Felix as borrower, dated March 27, 2024; and

- (c) a General Security Agreement between the Mordy Trust, as the secured party, and Felix, as grantor, dated February 10, 2024.

First Cole Affidavit at para 37 and Exhibits "W"- "X"

29. As of November 15, 2024, the books and records indicate that Brookridge is owed approximately \$314,000 (this likely does not account for all interest and fees) pursuant to the following documents:

- (a) Demand Promissory Note to Brookridge dated October 7, 2022 for \$200,000;
- (b) Secured Promissory Note to Brookridge dated February 10, 2024 for \$10,000;
- (c) Secured Promissory Note to Brookridge dated February 28, 2024 for \$13,000;
- (d) Secured Demand Promissory Note to Brookridge dated March 14, 2024 for \$10,000; and
- (e) Amended and Restated Demand Loan Agreement between Brookridge, as lender, and Felix, as borrower, dated March 27, 2024 (the "**Brookridge Loan and Security Agreement**"), which indicated that, as of March 27, 2024, Brookridge was owed \$233,000 in principal amounts and \$46,649.59 in interest. Pursuant to the Brookridge Loan and Security Agreement, Brookridge also advanced \$5,000 and authorized Felix to request subsequent advances in accordance with the grid set out in Schedule A to the agreement.

First Cole Affidavit at para 38 and Exhibits "Y"- "CC"

30. Brookridge's claims are secured by:

- (a) the Brookridge Loan and Security Agreement, which secures all past and future indebtedness of Felix to Brookridge; and
- (b) a General Security Agreement between Brookridge, as the secured party, and Felix, as grantor, dated February 10, 2024.

First Cole Affidavit at para 39 and Exhibit "DD"

31. Mr. Boxer, Brookridge, and the Mordy Trust negotiated a forbearance with Felix, which was confirmed in correspondence from those parties to Felix dated February 9, 2024.

First Cole Affidavit at para 40 and Exhibit "EE"

Second Lien Lenders

32. As of November 15, 2024, the books and records indicate that Mr. Steve Hall, SR Hall, and Daplt are collectively owed approximately US\$920,000 (CA\$1,253,346.41) (this likely does not account for all interest and fees) pursuant to the following documents:

- (a) Demand Loan Agreement and associated Secured Promissory Note dated February 14, 2024 for US\$140,000;
- (b) Demand Loan Agreement and associated Secured Promissory Note dated February 27, 2024 for US\$80,000;
- (c) Demand Loan Agreement and associated Secured Promissory Note dated March 13, 2024 for US\$70,000;
- (d) Demand Loan Agreement and associated Secured Promissory Note dated April 8, 2024 for US\$55,000;
- (e) Demand Loan Agreement and associated Secured Promissory Note dated April 10, 2024 for US\$135,000;
- (f) Demand Loan Agreement and associated Secured Promissory Note dated April 26, 2024 for US\$185,000;
- (g) Demand Loan Agreement and associated Secured Promissory Note dated May 13, 2024 for US\$145,000; and
- (h) Demand Loan Agreement and associated Secured Promissory Note dated August 14, 2024 for US\$110,000.

First Cole Affidavit at para 41(a)-(h) and Exhibits "FF"- "MM"

33. While the above documents indicate that they are secured by a security agreement, based on a review of the books and records of Felix, Mr. Cole has only been able to locate a

security agreement attached as Schedule A to each of the Demand Loan Agreements, listed in paragraph 32 above, which grants the applicable lender a security interest in the T661 Scientific Research and Experimental Development expenditures claims claimed by Felix from 2023 onward. Mr. Cole has not seen any further documentation evidencing a further security interest being granted to Mr. Hall, SR Hall and DapIt, notwithstanding the registration of a broader interest in August 2024 listed in the PPR Search.

First Cole Affidavit at para 42 and Exhibit "D"

34. Mr. Cole understands that the amount of the Second Lien Lender's claim (including other amounts that are claimed to be secured), and the extent and priority of such security is likely to be contested and will require a claims process to resolve.

First Cole Affidavit at para 43

RBC

35. Felix holds a guaranteed investment certificate ("**GIC**") for \$20,000 with RBC, which has been pledged to secure the obligations of Felix to RBC under its credit card. RBC has registered its interest in the GIC. Felix does not seek to prime the interest of RBC in the GIC, and otherwise seeks to have RBC unaffected in these proceedings. The RBC credit card is used by Felix to conduct its day-to-day business, and are necessary for ongoing operations.

First Cole Affidavit at para 44

iii. Unsecured Obligations

36. As of November 15, 2024, Felix has approximately 52 unsecured creditors, with claims totalling approximately \$17.1 million.

First Cole Affidavit at para 45

37. Felix's unsecured creditors can largely be summarized into three groups by jurisdiction:

- (a) Unsecured creditors based in Georgia consist of Mr. Steve Hall, BBSG, and Ripcord;
- (b) Unsecured creditors based in New York consist of DapIt and Maxifi (as defined below); and

- (c) Unsecured creditors based in Ohio consist of the Robert Alpert Group (as defined below).

First Cole Affidavit at para 46

38. Based on Mr. Cole's review of the books and records of Felix, as of November 15, 2024, Mr. Steve Hall is owed approximately \$3.5 million. Mr. Hall is an owner or investor in four other creditors of Felix: Maxifi Holdings LLC ("Maxifi"), BBSG, Ripcord, and Daplt (collectively, the "Steve Hall Group"). The relationship between Felix and Mr. Hall was exclusively handled by Mr. Newport, and there are several conflicting documents relating to the Steve Hall Group's investments. As of November 15, 2024, the underlying entities of the Steve Hall Group are owed the following amounts:

- (a) BBSG is owed approximately \$2.8 million, as evidenced by:
- (i) a Loan Agreement and Promissory Note dated October 7, 2021 owing to BBSG Hall Investments LLC in the principal amount of US\$2,000,000;
 - (ii) a Simple Agreement for Future Equity dated November 1, 2021 owing to BBSG Hall Investments LLC in the principal amount of US\$1,000,000; and
 - (iii) a Promissory Note dated May 13, 2022 owing to BBSG Hall Investments LLC in the principal amount of US\$1,220,000.
- (b) Ripcord is owed approximately \$254,000, as evidenced by:
- (i) a Simple Agreement for Future Equity dated November 1, 2021 owing to Ripcord Capital LLC in the principal amount of US\$1,000,000.
- (c) Maxifi is owed approximately \$310,000, as evidenced by:
- (i) a Convertible Promissory Note dated September 9, 2021 owing to Maxifi Holdings LLC in the principal amount of US\$180,000 due March 9, 2022.
- (d) Daplt is owed approximately \$2 million.

The exact amount and nature of these claims may need to be addressed in a claims process.

First Cole Affidavit at para 47(a)-(d) and Exhibits "NN"- "RR"

39. Based on Mr. Cole's review of the books and records of Felix, as of November 15, 2024, Mr. Robert Alpert and his related entities (the "**Robert Alpert Group**") have contingent claims against Felix for approximately \$2.9 million and Mr. Alpert is owed approximately US\$1.2 million pursuant to the Convertible Note Purchase Agreement dated February 21, 2021, and as amended.

First Cole Affidavit at para 48 and Exhibit "SS"

40. The records indicate that the Robert Alpert Group provided Felix with capital predominantly between September 2020 and February 2021. This was originally recognized as revenue under a commercial agreement between Felix and Mr. Alpert's company, Onosys. On December 27, 2023, Mr. Cole was advised by Gregory Brown of Dentons LLP that the Robert Alpert Group filed a lawsuit against Felix for breaching his group's Convertible Promissory Notes. Pursuant to the claim, Mr. Cole learned the details of the alleged original agreement made between Mr. Newport and Mr. Alpert. The claims are set out in:

- (a) the Complaint for Breach of Contract dated November 27, 2023 filed with the Court of Common Pleas of Cuyahoga County, Ohio; and
- (b) the Notice of Civil Claim dated August 26, 2024 filed with the Supreme Court of British Columbia, Action No. S-245876.

First Cole Affidavit at paras 49(a)-(b) and Exhibits "TT"- "UU"

41. As of November 15, 2024, Mr. Owen Newport claims to be owed approximately \$1.6 million. Mr. Newport is ex-co-founder, co-CEO, and Director at Felix. Mr. Newport advanced funds to support working capital requirements. Felix and Mr. Newport did not formalize these advances with any documentation, and their nature (debt vs. equity) and any potential defences of Felix need to be addressed in a claims process, should they become relevant.

First Cole Affidavit at para 50

42. As of November 15, 2024, Mr. Kieran Moloney is owed approximately \$45,000. Mr. Moloney is a founder and Database & Portal Manager at Felix. Mr. Moloney advanced the funds to support working capital requirements in December 2023 and January 2024. Felix and Mr. Moloney did not formalize these advances with any documentation.

First Cole Affidavit at para 51

43. Based on Mr. Cole's review of the books and records of Felix, as of November 15, 2024, Mr. Don Paris, of Flat World Payment Foundry, is owed approximately \$386,000. Mr. Paris provided capital to Felix between September 2020 and June 2023. To the best of Mr. Cole's knowledge, Felix and Mr. Paris did not formalize these advances with any documentation, and their nature (debt vs. equity) and any potential defences of Felix need to be addressed, if relevant.

First Cole Affidavit at para 52

44. Based on Mr. Cole's review of the books and records of Felix, as of November 15, 2024, New Direction IRA Inc. is owed approximately \$70,000. New Direction IRA Inc. is a self-directed individual retirement account custodian. Felix does not know who authorized the transfer of funds and Mr. Cole has not been able to locate any documentation relating to the amount or lender, and their nature (debt vs. equity) and any potential defences of Felix need to be addressed, if relevant.

First Cole Affidavit at para 53

45. Based on Mr. Cole's review of the books and records of Felix, as of November 15, 2024, Mr. David Martin is owed approximately \$20,000. Mr. Martin is a Vancouver-based businessman introduced to the company around January 2023. Mr. Martin advanced funds to support working capital requirements. Mr. Cole was not able to locate any documents where Felix and Mr. Martin formalized these advances, and their nature (debt vs. equity) and any potential defences of Felix need to be addressed, if relevant.

First Cole Affidavit at para 54

46. It is Mr. Cole's understanding that Felix may have outstanding amounts owing to the Business Development Bank of Canada. On November 20, 2024, the Proposal Trustee provided Felix a copy of a demand letter it had received from the Business Development Bank of Canada claiming the amount of \$320,667.98. Mr. Cole is investigating the claim and will provide this Court more information at the Comeback Hearing.

First Cole Affidavit at para 55 and Exhibit "VV"

iv. Employee Liabilities

47. Felix is current with respect to the payment of payroll. However, the remittance of employee source deductions is behind in respect of three payrolls in the period of February 1 to

March 15, 2024 in the aggregate amount of approximately \$210,857.18, including fees and interest. The company also has recorded liabilities of \$1,111.09 (Work Safe BC) and \$42,000.00 (Ministry of Finance BC, Employer Health Tax).

First Cole Affidavit at para 56

48. Mr. Cole understands there may be additional claims related to employment and management matters by:

- (a) Warren Hogg for approximately \$18,750 stemming from the end of his employment and a complaint made to the British Columbia Employment Standards Branch;
- (b) Vincenzo DePalma for approximately \$540,000 and equity shares relating to an alleged management agreement; and
- (c) Gary Evans for approximately \$51,000 relating to an alleged wrongful termination.

Each of these claims is disputed.

First Cole Affidavit at para 57

v. Taxes

49. Felix has always been a pre-profit business and, therefore, has never been required to remit income taxes. As of November 15, 2024, the accounting net operating loss carry-forward of Felix is approximately \$18.7 million.

First Cole Affidavit at para 58

vi. Rent

50. Felix is up to date on all rent payments except some amounts outstanding dating back to February 2024 in the amount of \$59,655.48. This amount is owed to the landlord of Felix's previous head office at 1286 Homer St., Vancouver.

First Cole Affidavit at para 59

vii. Critical Suppliers

51. Given the nature of its business, Felix relies on a number of vendors and third-party service providers and, as such, is a party to a number of agreements for the provision of certain essential services including, among other things, software security, certification labs, third-party platforms, and other services provided in connection with operating a business in the technology industry. Felix has accrued a significant amount owing to third-party suppliers, totalling approximately \$1,195,049. Any interruption of service from these parties, either because they are unable to continue to provide their services to Felix or refuse to do so on account of unpaid pre-filing amounts owed to them by Felix, may prevent Felix from operating in the ordinary course and continuing to provide uninterrupted services to its customers.

First Cole Affidavit at para 60

52. Felix owes an aggregate of approximately \$571,628.50 to six critical suppliers (the **"Critical Suppliers"**):

- (a) RBC is owed approximately \$20,489.31;
- (b) FIME Inc. is owed approximately \$85,883.99;
- (c) Azure (Microsoft) is owed approximately \$11,225.71;
- (d) Riscure B.V. is owed approximately \$212,632.43;
- (e) QT Company is owed approximately \$9,977.89; and
- (f) Zimperium is owed approximately \$177,419.17.

First Cole Affidavit at para 61(a)-(f)

53. Without the continued provision of services by the Critical Suppliers, Felix's assets, businesses and value would be at material risk. It is necessary to ensure these parties continue to advance Felix's technology to ensure continued value.

First Cole Affidavit at para 62

D. LIQUIDITY ISSUES AND NEED FOR CREDITOR PROTECTION

54. Companies operating payment processing technology are highly regulated. Therefore, Felix requires a number of certifications to operate its product. Felix is in the start-up phase and is still in the process of achieving these certifications, as discussed above. Those certifications are time and resource intensive and have been the largest financial burden on Felix since its incorporation. Certifications require companies to, among other things:

- (a) contract with an accredited laboratory to test their product;
- (b) develop software that is compliant with the applicable standards, including strenuous security standards, that integrate payment software and protection components; and
- (c) submit the product to the laboratory for evaluation, which will evaluate the technology's policies and procedures, inspect the technology for compliance, and assess the product's security features.

First Cole Affidavit at para 63(a)-(c)

55. Certifications are particularly important to win large contracts with key customers, including financial institutions and sophisticated large-scale retailers. Therefore, Felix has invested significant capital in obtaining a number of these certifications. These certifications are key to the growth and commercialization of Felix's business.

First Cole Affidavit at para 64

56. Given the significant costs, but remaining obstacles to profitability, Felix is experiencing a liquidity crisis because funding has stopped except through DIP financing. The records of Felix are incomplete, and there is a dispute among the investors and Felix regarding the amount, nature, and security of those debts. The liquidity crisis has reached a critical juncture in the last fiscal year, despite a number of actions taken by management in an effort to reduce Felix's ongoing obligations and to obtain sufficient liquidity to support its short-term needs. Felix has incurred recurring losses and negative cash flows from operations. The liquidity crisis has been exacerbated by concerns around actions by certain of Felix's creditors and related parties (discussed below).

First Cole Affidavit at para 65

57. Felix's liquidity concerns crystallized on September 16, 2024, when Felix received a demand letter and accompanying notice of intention to enforce security pursuant to s. 244 of the BIA from the Second Lien Lenders. The letter demanded immediate repayment of the US\$11,619,903 (CA\$15,790,829) claimed to be owing as of August 31, 2024, pursuant to the Second Lien Lenders' secured loans. This demand initiated Felix's commencement of the NOI Proceeding. As noted, the amount of the debt and the security of the Second Lien Lenders is contested and will likely require a claims process to resolve.

First Cole Affidavit at para 66 and Exhibit "WW"

58. Felix filed the NOI to provide it with breathing room and expanded protections necessary to organize its financial affairs and develop a plan for the continuation of the business as a going concern. Since the NOI Filing Date, Felix has acted in good faith and made diligent efforts to improve its liquidity position, stabilize its operations, and pursue a going-concern solution for the company. These efforts have included, among others, the negotiation of additional financing, entering discussions with Critical Suppliers to avoid disruption to their services, and engaging with its key stakeholders.

First Cole Affidavit at para 67

59. In the lead up to the commencement of the CCAA Proceeding, Felix has engaged with a number of its key stakeholders, including the DIP Lender and some trade creditors, regarding Felix's proposed restructuring plan. The DIP Lender is supportive of Felix's restructuring plan. In the event that the Initial Order is granted, Felix intends to continue its engagement with stakeholders in advance of the hearing seeking an Amended and Restated Initial Order, with the goal of further refining its restructuring plan in a manner that addresses, to the extent possible in the circumstances, any concerns regarding the proposed path forward.

First Cole Affidavit at para 68

E. RESTRUCTURING PLAN WITHIN THE CCAA

60. Since commencing the NOI Proceeding, Felix has worked with the Proposal Trustee to develop a restructuring plan to address the company's liquidity concerns. Felix and the Proposal Trustee agree that the best path forward to effectuate the restructuring is to continue the NOI Proceeding as a proceeding under the CCAA.

First Cole Affidavit at para 69

61. The protections afforded under the CCAA would facilitate Felix's ability to conduct the SISP, and to commence a claims process in a bespoke manner to allow the valuation of claims as relevant. Given the various claims asserted by the creditors noted above, and the questions regarding the validity, priority, and nature of certain of those claims, a claims process will be required. However, not all creditors' interests need to be confirmed until the value of the business is known.

First Cole Affidavit at para 70

62. Felix is also investigating prospective claims against some of its creditors and other people associated with those creditors and intends to pursue those claims within the proposed CCAA Proceeding, where they can be litigated in an expeditious manner in order to maximize value and minimize the time involved.

First Cole Affidavit at para 71

63. The prospective claims being investigated are anticipated to be material to the value of the going concern value of Felix. Moreover, the prospective claims involve documentation allegedly signed on behalf of the company and, as a result, the company needs additional time to review all documents before returning to this Court with a more comprehensive review of Felix's prospective claims.

First Cole Affidavit at para 72

64. As noted, Felix's business value is as a going-concern. Its people are key to it retaining its value. Accordingly, Felix anticipates seeking approval of a key employee retention plan should CCAA protection be granted.

First Cole Affidavit at para 73

F. THE PROPOSED INTERIM FINANCING

65. On November 21, 2024, Felix entered into a binding commitment letter in respect of the DIP Facility (the "**DIP Agreement**") with Felix as borrower (in such capacity, the "**Borrower**") and the DIP Lender as lenders.

First Cole Affidavit at para 74 and Exhibit "XX"

66. The DIP Agreement provides for a super-priority, non-revolving credit facility of up to \$2.1 million.

First Cole Affidavit at para 75

67. The amounts drawn and outstanding under the DIP Facility will bear interest at 18%, with interest on the principal amount outstanding accruing on the first business day of each month.

First Cole Affidavit at para 76

68. The DIP Facility includes a commitment fee of \$30,000, which shall be earned and payable in two phases:

- (a) \$7,000 is earned upon the execution of the DIP Agreement; and
- (b) \$23,000 is earned upon the granting of the Amended and Restated Initial Order.

First Cole Affidavit at para 77

69. The DIP Facility is conditional, among other things, upon the granting of a priority charge over the property in favour of the DIP Lender to secure the amounts borrowed under the DIP Facility (the "**DIP Lender's Charge**").

First Cole Affidavit at para 78

70. In accordance with the DIP Agreement, the DIP Facility is to be used during the CCAA Proceeding to fund:

- (a) operating expenses in accordance with the Cash Flow Forecast (as defined below);
- (b) fees and expenses associated with the DIP Facility (including without limitation certain expenses, fees of the Monitor (as defined below), and legal fees of counsel to the DIP Lender, Felix and the Monitor); and
- (c) such other costs and expenses as agreed to by the DIP Lender, in writing.

First Cole Affidavit at para 79

71. The DIP Facility is subject to customary covenants, conditions precedent, and representations and warranties made by Felix to the DIP Lender. The DIP Facility must be repaid in full by the date that is the earlier of:

- (a) February 28, 2025, or such other date as may be agreed to by the DIP Lender and the Borrower;
- (b) the effective date of any Plan (as defined in the DIP Agreement);
- (c) the early termination of the DIP Facility in accordance with the terms of the DIP Agreement upon the occurrence and continuation of an Event of Default (as defined in the DIP Agreement);
- (d) the closing of the purchase and sale of all or substantially all of the assets or shares of the Borrower; and
- (e) the termination, expiration, or conversion of the CCAA Proceeding.

First Cole Affidavit at para 80(a)-(e)

72. The amount of the DIP Facility to be funded during the initial Stay of Proceedings (up to a principal amount of \$400,000) is only that portion that is necessary to ensure the continued operation of Felix's business in the ordinary course during the initial 10 days.

First Cole Affidavit at para 81

PART 3 LEGAL BASIS

A. FELIX SHOULD BE PERMITTED TO CONTINUE THE PROCEEDINGS UNDER THE CCAA

73. This Court has the jurisdiction to permit Felix to continue the NOI Proceeding under the CCAA pursuant to section 11.6(a) of the CCAA.

CCAA, s. 11.6(a)

74. Courts have held that a debtor company seeking to convert a proceeding from the BIA to the CCAA should demonstrate that:

- (a) it has not filed a proposal under the BIA;
- (b) the proposed continuation is consistent with the purposes of the CCAA; and

- (c) it has provided the Court with the information that would otherwise form part of an initial CCAA application under section 10(2) of the CCAA.

In the Matter of The Body Shop Canada Limited, 2024 ONSC 3882 [**The Body Shop Canada**] at para 10;
(Re) Clothing for Modern Times Ltd., 2011 ONSC 7522 [**Clothing**] at para 9; and
Soccer Express Trading Corp. (Re), 2020 BCSC 2109 at para 8

75. In addition, the debtor must be a company with liabilities that exceed \$5 million as required under the CCAA.

CCAA, s. 3(1)

76. These factors were adopted by Justice Osborne in *The Matter of the Body Shop Canada Limited*, Chief Justice Morawetz in *Comstock Canada Ltd. (Re)*, and Justice Newbould in *Urbancorp Toronto Management Inc. (Re)*. All of these factors are satisfied in this case.

The Body Shop Canada at para 10;
Comstock Canada Ltd. (Re), 2013 ONSC 4756, at paras 36-45; and
Urbancorp Toronto Management Inc. (Re), 2016 ONSC 3288 at paras 36-48

i. Felix Has Not Filed a Proposal under the BIA

77. Felix has not filed a proposal under the BIA in the NOI Proceeding.

ii. The Continuation is Consistent with the Purposes of the CCAA

78. The Supreme Court of Canada has identified the following purposes of the CCAA:

- (a) to permit a company to carry on business and, where possible, avoid the adverse effects of bankruptcy or liquidation while a court supervised attempt to reorganize the financial affairs of the debtor is made; and
- (b) to preserve the *status quo* while attempts are made to find a reorganization solution that is fair to all stakeholders.

The Body Shop Canada citing *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 [**Century Services**] at paras 15, 69-70 and 77

79. Moreover, courts have held that a sale of the debtor's business as a going-concern to new owners satisfies the purposes of the CCAA.

The Body Shop Canada at para 14; and
Clothing at para 12

80. Felix submits that the proposed continuation of the NOI Proceeding under the CCAA is consistent with the underlying purposes of the CCAA.

81. A going-concern solution is in the best interests of stakeholders. Because of the nature of its technology business, as well as the certifications that require extensive time and expense, a liquidation would eliminate the enterprise's value, and Felix requires time to develop, negotiate, finalize, and implement a going-concern solution, which is anticipated to include the SISP.

First Cole Affidavit at paras 6-7, 63 and 70

82. Felix intends to utilize the protection and the flexibility afforded by the CCAA in order to stabilize operations, continue the certification process, determine the amount and nature of the debts secured against its assets, review certain litigation claims, and commence the SISP and to facilitate a going concern solution. The CCAA will assist Felix to avoid a straight bankruptcy and liquidation that would see its going-concern value effectively eliminated, resulting in limited, if any, recovery by stakeholders.

First Cole Affidavit at para 5-7 and 70-73

83. The conversion of the NOI Proceeding to the CCAA Proceeding will also have the additional benefit of reducing the administrative and legal costs of this insolvency proceeding. Under the NOI Proceeding, the Proposal Trustee and Felix are required to report to this Court every 45 days to seek an extension of time to file a proposal. The costs associated with preparing for these attendances would be eliminated if the NOI Proceeding were to be converted to a CCAA Proceeding, in which the Monitor and Felix would only be required to report to this Court as prescribed under the CCAA or when Court involvement is required in the reorganization process.

84. Finally, the conversion to the CCAA Proceeding will preserve the *status quo* by allowing Felix to continue operations, maintain the employment of 32 individuals, and pay its obligations in the ordinary course while it pursues the SISP for the benefit of all of its stakeholders.

First Cole Affidavit at paras 19 and 70

iii. Felix Has Provided All of the Information That Would Otherwise Be Filed on a CCAA Initial Order Application

85. In support of this Petition, Felix and the Proposal Trustee have included the information required by section 10(2) of the CCAA, specifically:

- (a) a cash flow forecast for the period ending February 28, 2025; and
- (b) Felix's most recent financial information.

First Cole Affidavit at para 103 and Exhibits "C" and "ZZ"

First Report of the Proposal Trustee in the NOI Proceeding,
dated November 8, 2024 at para 8.3

86. Consequently, the test set out for the continuation of proceedings under the CCAA is met in this case.

iv. Felix is a "Debtor Company" Whose Liabilities Exceed \$5 Million

87. A "debtor company" is defined under section 2(1) of the CCAA as, *inter alia*, a "company" that is "insolvent" or that has committed an act of bankruptcy within the meaning of the BIA.

CCAA, s. 2(1), definition of "debtor company"

88. Felix qualifies for protection under the CCAA, which applies to a "debtor company" whose liabilities exceed \$5 million:

- (a) Felix is a company that is unable to meet its obligations as they generally become due; and
- (b) Felix's balance sheet as at September 30, 2024 discloses that Felix has liabilities of approximately \$19 million.

First Cole Affidavit at para 31 and Exhibit "C"

89. Whether a company is insolvent is evaluated by reference to the definition of "insolvent person" in the BIA, which provides that:

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

BIA, s. 2, definition of "insolvent person"

90. In the context of the CCAA, this test has been interpreted expansively. If a company is "reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring", it is considered insolvent.

Stelco Inc., Re, 2004 CanLII 24933 (ON SC) at paras 21-26

B. A&M SHOULD BE APPOINTED AS THE MONITOR

91. Section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs.

CCAA, s. 11.7

92. The Proposal Trustee has consented to act as the Monitor in the CCAA Proceeding and is a trustee within the meaning of section 2(1) of the BIA. The Proposal Trustee is also not affected by any of the restrictions on entities that may act as Monitor in section 11.7(2) of the CCAA. A&M has extensive experience acting as a Court-appointed monitor in CCAA proceedings. As such, the Proposal Trustee should be appointed as the Monitor in the CCAA Proceeding.

First Cole Affidavit at para 87 and Exhibit "YY"

C. THE PROPOSED STAY OF PROCEEDINGS SHOULD BE GRANTED

93. As part of the Initial Order sought on this Petition, Felix seeking to extend the existing stay of proceedings granted under the BIA through an analogous stay of proceedings under the CCAA.

94. This Court may grant a stay of proceedings of up to ten (10) days on an initial petition, provided it is satisfied that: (i) such a stay is appropriate; and (ii) Felix has acted in good faith and with due diligence.

CCAA, ss. 11.02(1) and (3)

95. The primary purpose of the CCAA stay is to maintain the *status quo* for a period while the debtor company consults with its stakeholders with a view to continuing its operations for the benefit of its creditors.

JTI-Macdonald Corp., Re, 2019 ONSC 1625 at para 12; and
Century Services Inc. v Canada (Attorney General), 2010 SCC 60
[**Century Services**] at para 60

96. The threshold for a stay is low and a debtor company only has to satisfy this Court that a stay of proceedings would “usefully further” its efforts to reorganize.

Century Services at para 70

97. With respect to the first prong of the test, the requested Stay of Proceedings is appropriate in the circumstances, including because:

- (a) the proposed stay will provide the stability and certainty required to enable Felix to implement a SISP (if approved) and implement a going concern transaction, which benefits all of its stakeholders;
- (b) Felix has prepared a 15-week Cash Flow Forecast that demonstrates Felix will have sufficient liquidity to meet its obligations during the requested stay; and
- (c) the extension of the stay period would preserve liquidity as it will eliminate the need for Felix and the Monitor to prepare for multiple court appearances.

First Cole Affidavit at para 102 and Exhibit “ZZ”

98. With respect to the second prong of the test, Felix has acted, and continues to act, in good faith and with due diligence.

First Cole Affidavit at para 104

99. Since the NOI Filing Date, Felix has taken numerous steps to develop and begin implementing its restructuring strategy.

First Cole Affidavit at para 69

D. OUTSTANDING PRE-FILING AMOUNTS OWING TO THE CRITICAL SUPPLIERS SHOULD BE PAID

100. Felix is seeking the payment of certain pre-filing amounts to the Critical Suppliers. This Court has the jurisdiction to permit the payment of these pre-filing amounts:

The next issue to consider is the applicants' request for authorization to pay pre-filing amounts owed to critical suppliers. In recognition that one of the purposes of the CCAA is to permit an insolvent corporation to remain in business, typically courts exercised their inherent jurisdiction to grant such authorization and a charge with respect to the provision of essential goods and services. In the recent amendments, Parliament codified the practice of permitting the payment of pre-filing amounts to critical suppliers and the provision of a charge.

...

In this case, no charge is requested and no additional notice is therefore required. Indeed, there is an issue as to whether in the absence of a request for a charge, section 11.4 is even applicable and the Court is left to rely on inherent jurisdiction. The section seems to be primarily directed to the conditions surrounding the granting of a charge to secure critical suppliers.

Canwest Global Communications Corp. (Re), [2009] OJ No 4286 (QL),
2009 CanLII 55114 (ON SC) at paras 41 and 43

101. The Critical Suppliers are essential to the continuation of Felix's business. Several of the Critical Suppliers have already stopped providing services to Felix, which are necessary for Felix's business to continue, until their pre-filing arrears are paid.

First Cole Affidavit at paras 60-62

102. Felix is not seeking a charge in favour of the Critical Suppliers, and no payment will be made without the consent of the Monitor.

E. THE PRIORITY CHARGES SHOULD BE GRANTED

103. Felix requests that this Court grant a super-priority Administration Charge, Directors' Charge, and the DIP Lenders' Charge (the "**Priority Charges**") in the CCAA Proceeding.

104. Each of the secured creditors who are likely to be affected by the proposed Priority Charges were given notice of this Petition.

i. The Administration Charge Should be Granted

105. Section 11.52 of the CCAA provides the Court with the authority to grant the Administration Charge. The beneficiaries of the Administration Charge will be the Monitor, counsel to the Monitor, and counsel to Felix.

CCAA, s. 11.52

106. This Court has adopted a list of non-exhaustive factors that may be analyzed in determining whether an administration charge should be granted:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 107 at para 42 citing *Canwest Publishing Inc. (Re)*, 2010 ONSC 222 [**Canwest Publishing**] at para 54

107. In this case, granting the Administration Charge is warranted, including because:

- (a) the CCAA Proceeding will require the extensive involvement of professional advisors subject to the Administration Charge;
- (b) there is no unwarranted duplication of roles of the professional advisors whose fees are secured by the Administration Charge; and

- (c) the proposed Administration Charge ranks in priority to the interests of the secured creditors, who have been given notice of this requested relief.

ii. The Directors' Charge Should be Granted

108. The continued assistance of Felix's directors and officers is still required to secure a successful going-concern solution in the CCAA Proceeding.

109. This Court has the jurisdiction to grant the Directors' Charge under section 11.51 of the CCAA. In *Jaguar Mining Inc. (Re)*, Chief Justice Morawetz set out a list of factors to be considered in granting a Directors' Charge:

- (a) whether notice has been given to the secured creditors likely to be affected by the charge;
- (b) whether the amount is appropriate;
- (c) whether the applicant could not obtain adequate indemnification for the directors and officers at a reasonable cost; and
- (d) whether the charge purports to cover a director's or officer's gross negligence or wilful misconduct.

Jaguar Mining Inc. (Re), 2014 ONSC 494 at para 45;

Miniso International Hong Kong Limited v Migu Investments Inc.,
2019 BCSC 1234 at para 98; and *Canwest Publishing* at paras 56-57

110. Here, all of these factors are satisfied, including because:

- (a) the secured creditors have been notified of this Petition;
- (b) as Felix has developed a novel cloud-based payment acceptance infrastructure and associated software system, the current directors' and officers' knowledge of Felix's business is truly unique;
- (c) the present and former directors and officers of Felix are not currently insured under any liability insurance policies as all applicable policies expired in October 2024;

- (d) the director and officers of Felix are not prepared to remain in their positions absent the protection afforded to them under the Directors' Charge; and
- (e) the Directors' Charge will not apply in respect of any gross negligence or wilful misconduct.

First Cole Affidavit at paras 9 and 94-95

iii. The DIP Lender's Charge should be granted

111. Felix requires urgent interim financing during the initial stay period to cover operating expenses and professional costs during this period.

112. The DIP Lender has agreed to provide Felix with interim financing during the CCAA Proceeding pursuant to the terms of the DIP Agreement.

First Cole Affidavit at paras 74-75

113. The DIP Agreement provides for a DIP Facility in the maximum principal amount of \$2.1 million. During the initial stay period, availability under the DIP Facility will be limited to the principal amount of \$400,000.

First Cole Affidavit at paras 74-75, 81 and Exhibit "XX"

114. Section 11.2 of the CCAA gives the court the authority to grant the DIP Lender's Charge.

CCAA, s. 11.2

115. In turn, section 11.2(4) of the CCAA provides that, in determining whether to grant the DIP Lender's Charge, the Court should consider, among other things, the following factors:

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;

- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report, if any.

CCAA, s. 11.2(4)

116. In this case, Felix submits that the Court should approve the DIP Agreement (subject to limiting the initial borrowing to \$400,000) and grant the DIP Lender's Charge on the basis, among other things, that:

- (a) the Cash Flow Forecast demonstrates that an advance of \$400,000 during the initial ten (10) day stay period is reasonably necessary to continue operating in the ordinary course of business and to service associated professional fees during this period;
- (b) the ability to draw on the DIP Facility (both during the initial stay period, and after the Comeback Hearing, if approved) will allow Felix to fund its operations and focus on restructuring its business for the benefit of various stakeholders during the course of the CCAA Proceeding;
- (c) the DIP Lender's Charge will not secure any obligations that existed before the granting of the Initial Order; and
- (d) the DIP Facility will preserve the value of Felix and will enhance the probability of a successful restructuring of Felix.

117. Felix submits that the relief sought with respect to the DIP Facility and the DIP Lender's Charge are demonstrably necessary and appropriate in the circumstances.

PART 4 MATERIAL TO BE RELIED ON

1. Affidavit #1 of Andrew Cole, made November 21, 2024;

2. First Report of the Proposal Trustee in the NOI Proceeding, dated November 8, 2024;
and
3. Such further and other materials as counsel may advise and this Court may permit.

DATE: November 21, 2024



Counsel for the Applicant
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

To be completed by the court only:

Order Made

- in the terms requested in paragraphs _____ of Part 1 of this Petition
- with the following variations and additional terms:

DATE: _____

Signature of Judge
 Associate Judge

SCHEDULE "A"

NO. _____
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

SERVICE LIST

<p>McCarthy Tétrault LLP Suite 2400, 745 Thurlow Street Vancouver, BC V6E 0C5</p> <p>Attention: H. Lance Williams Ashley Bowron</p> <p>Email: lwilliams@mccarthy.ca abowron@mccarthy.ca sdanielisz@mccarthy.ca</p> <p><i>Counsel to Felix Payment Systems Ltd.</i></p>	<p>Osler, Hoskin & Harcourt LLP Suite 3000, Bentall Four 1055 Dunsmuir Street Vancouver, BC V7X 1K8</p> <p>Attention: Mary Buttery, K.C. Emma Newbery</p> <p>Email: mbuttery@osler.com enewbery@osler.com stse@osler.com</p> <p><i>Counsel to the First Lien Lenders</i></p>
<p>Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>Attention: Christopher Ramsay</p> <p>Email: cramsay@cwilson.com</p> <p><i>Counsel to the Second Lien Lenders</i></p>	<p>Alvarez & Marsal Canada Inc. 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3L2</p> <p>Attention: Anthony Tillman Taylor Poirier</p> <p>Email: atillman@alvarezandmarsal.com tpoirier@alvarezandmarsal.com</p> <p><i>Proposed Monitor</i></p>

<p>Cassels Brock & Blackwell LLP Suite 2200, 885 West Georgia Street Vancouver, BC V6C 3E8</p> <p>Attention: Vicki Tickle</p> <p>Email: vtickle@cassels.com</p> <p><i>Counsel for the Proposed Monitor</i></p>	<p>Kornfeld LLP 1100 One Bentall Centre 505 Burrard Street, Box 11 Vancouver, BC V7X 1M5</p> <p>Attention: Douglas B. Hyndman</p> <p>Email: dhyndman@kornfeldllp.com</p> <p><i>Counsel for Business Development Bank of Canada</i></p>
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<p align="center">PARTIES WITH REGISTERED SECURITY INTEREST</p>	
<p>Royal Bank of Canada 36 York Mills Road, 4th Floor Toronto, ON M2P 0A4</p>	<p>Boxer Capital Corporation 1188 West Georgia Street, Suite 650 Vancouver, BC V6E 4A2</p>
<p>Jake Boxer 1000 - 3707 West 7th Avenue Vancouver, BC V6R 1W7</p>	<p>The CA Mordy Legacy Trust 650 – 1188 West Georgia Street Vancouver, BC V6E 4A2</p>
<p>Brookridge Chartered Professional Accountants Inc. 650 - 1188 West Georgia Street Vancouver, BC V6E 4A2</p>	<p>Douglas Alan Mordy and Candice Rose Mordy 2901 Brookridge Drive North Vancouver, BC V7R 3A7</p>
<p>Section 3 Ventures (VCC) Inc. 650 – 1188 West Georgia Street Vancouver, BC V6E 4A2</p>	<p>Kapil Nanalal 7775 Kentwood Street Burnaby, BC V5A 2E6</p>
<p>Ralph Kurt McFee 5114 Ross Street Vancouver, BC V5W 3K7</p>	<p>SR Hall Management LLC 6605 Abercorn Street, Suite 204 Savannah, Georgia 31405-5819 U.S.A.</p>
<p>BBSG Hall Investments, LLC 6605 Abercorn Street, Suite 204 Savannah, Georgia 31405-5819 U.S.A.</p>	<p>Ripcord Capital LLC 6605 Abercorn Street, Suite 204 Savannah, Georgia 31405-5819 U.S.A.</p>
<p>DapIT NA, LLC 6605 Abercorn Street, Suite 204 Savannah, Georgia 31405-5819 U.S.A.</p>	<p>Steve Hall 6605 Abercorn Street, Suite 204 Savannah, Georgia 31405-5819 U.S.A.</p>

GOVERNMENT AGENCIES	
The Government of British Columbia Deputy Attorney General Ministry of Attorney General PO Box 9290 Stn Prov Govt Victoria, BC V8W 9J7	Department of Justice Canada British Columbia Regional Office 900 – 840 Howe Street Vancouver, BC V6Z 2S9
Pacific Insolvency Intake Centre Surrey National Verification and Collection Centre Canada Revenue Agency 9755 King George Boulevard Surrey, BC V3T 5E1	

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SCHEDULE "B"

NO. _____
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

**ORDER MADE AFTER APPLICATION
(INITIAL ORDER)**

BEFORE THE HONOURABLE)
JUSTICE MASUHARA) MONDAY, THE 25TH DAY
OF NOVEMBER, 2024

ON THE APPLICATION of the Petitioner, Felix Payment Systems Ltd., coming on for hearing at Vancouver, British Columbia on the 25th day of November, 2024; AND ON HEARING H. Lance Williams and Ashley Bowron, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #1 of Andrew Cole, sworn November 21, 2024, and the consent of Alvarez & Marsal Canada Inc. ("**A&M**") to act as the Monitor; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Court;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. The Petitioner is a company to which the CCAA applies.

CONTINUANCE UNDER THE CCAA

2. The proposal proceedings commenced by the Petitioner under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”) by filing a notice of intention to make a proposal (the “**NOI Proceeding**”) on October 15, 2024 (the “**NOI Filing Date**”) under Estate No. 11-3140093 and Court File No. VLC-S-B-240514 are hereby taken up and continued under the CCAA. The NOI Proceeding shall have no further force or effect, and is hereby terminated save that any and all acts, steps, agreements, and procedures validly taken, done, or entered into by the Petitioner during the NOI Proceeding shall remain valid, binding, and actionable within this proceeding (the “**CCAA Proceeding**”). For certainty, the approval of the Monitor’s and its counsel’s fees and disbursements, and approval of the Monitor’s activities in the CCAA Proceeding shall be deemed approval of the fees, disbursements and activities of A&M in its capacity as the trustee of the proposal of the Petition (in such capacity, the “**Proposal Trustee**”) and the fees and disbursements of the Proposal Trustee’s counsel in the NOI Proceeding. The Petitioner is hereby authorized and directed to file a copy of this Order in the NOI Proceeding.

SUBSEQUENT HEARING DATE

3. The hearing of the Petitioner’s application for an extension of the Stay Period (as defined in paragraph 11 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at _____ a.m./p.m. on _____, the _____ day of _____, 2024 or such other date as this Court may order.

PLAN OF ARRANGEMENT

4. The Petitioner shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. Subject to this Order and any further Order of this Court, the Petitioner shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), and continue to carry on its business (the “**Business**”) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioner shall

be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

6. The Petitioner shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the NOI Filing Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the NOI Filing Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**");
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioner which are related to the Petitioner's restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner, whenever and wherever incurred, in respect of:
 - (i) the NOI Proceeding;
 - (ii) the CCAA Proceeding or any other similar proceedings in other jurisdictions in which the Petitioner or any subsidiaries or affiliated companies of the Petitioner are domiciled;
 - (iii) any litigation in which the Petitioner is named as a party or is otherwise involved, whether commenced before or after the NOI Filing Date;
 - (iv) any related corporate matters; and
- (c) such suppliers of good and services as are deemed critical for the preservation of the Property and/or Business with the consent of the Monitor.

7. Except as otherwise provided herein, the Petitioner shall be entitled to pay all expenses reasonably incurred by the Petitioner in carrying on the Business in the ordinary course following the NOI Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$50,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioner after the NOI Filing Date, including without limitation, with respect to goods and services actually supplied to the Petitioner following the NOI Filing Date (including those under purchase orders outstanding at the NOI Filing Date but excluding any interest on the Petitioner's obligations incurred prior to the NOI Filing Date); and
- (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the NOI Filing Date.

8. The Petitioner is authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or are collected after the NOI Filing Date, or where such Sales Taxes accrued or were collected prior to the NOI Filing Date but not required to be remitted until on or after the NOI Filing Date; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Except as specifically permitted herein, the Petitioner is hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioner to any of its creditors as of the NOI Filing Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioner to such customers as of the NOI Filing Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

10. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioner shall have the right to terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate to permit the Petitioner to proceed with an orderly restructuring of the Business (the "**Restructuring**").

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

11. Until and including December 5, 2024, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioner and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

12. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court.

13. Nothing in this Order, including paragraphs 11 and 12, shall: (i) empower the Petitioner to carry on any business which the Petitioner is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

14. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

15. During the Stay Period, all Persons having oral or written agreements with the Petitioner or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the NOI Filing Date are paid by the Petitioner in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

16. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the NOI Filing Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioner on or after the NOI Filing Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

17. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioner that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall

be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

18. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings , except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19. The directors and officers of the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for the indemnity provided in paragraph 18 of this Order. The Directors' Charge shall have the priority set out in paragraphs 35 and 37 herein.

20. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

APPOINTMENT OF MONITOR

21. Alvarez & Marsal Canada Inc. ("**A&M**") is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioner with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioner and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioner's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Petitioner, to the extent required by the Petitioner, in its dissemination, to the DIP Lender (as hereinafter defined) and its counsel on a bi-weekly basis of financial and other information as agreed to between the Petitioner and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Petitioner in its preparation of the Petitioner's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Petitioner in its development of the Plan and any amendments to the Plan;
- (f) assist the Petitioner, to the extent required by the Petitioner, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioner, to the extent that is necessary to adequately assess the Petitioner's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

23. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

24. The Monitor shall provide any creditor of the Petitioner and the DIP Lender with information provided by the Petitioner in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioner is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioner may agree.

25. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, its appointment as the Proposal Trustee, or the carrying out of its role as the Proposal Trustee, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor or the Proposal Trustee by the CCAA, the BIA, or any applicable legislation.

ADMINISTRATION CHARGE

26. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioner on a periodic basis. The prior payment by the Petitioner of retainers to the Monitor and counsel to the Petitioner in the amounts of \$75,000 and \$75,000, respectively are hereby authorized and the Petitioner is hereby authorized to pay to counsel to the Monitor a retainer in the amount of \$50,000, such retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

27. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

28. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioner's restructuring. The Administration Charge shall have the priority set out in paragraphs 35 and 37 hereof.

INTERIM FINANCING

29. The Petitioner is hereby authorized and empowered to obtain and borrow under a credit facility from Mr. Jake Boxer, the CA Mordy Legacy Trust, and PEL Chartered Professional Accountants Inc. (collectively, the "**DIP Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed \$400,000 unless permitted by further Order of this Court.

30. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioner and the DIP Lender dated as of November 21, 2024 (the "**Commitment Letter**"), filed.

31. The Petitioner is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

32. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the **"DIP Lender's Charge"**) on the Property. The DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 35 and 37 hereof.

33. Notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) business days notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioner or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Petitioner and set off and/or consolidate any amounts owing by the DIP Lender to the Petitioner against the obligations of the Petitioner to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

34. The DIP Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the BIA, with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

35. The priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the **"Charges"**), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$150,000);

Second – DIP Lender's Charge;

Third - Directors' Charge (to the maximum amount of \$150,000).

36. Any security documentation evidencing, or the filing, registration or perfection of, the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

37. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, but excluding the security interest of Royal Bank of Canada in relation certain amounts held on deposit with them and registered in the Personal Property Registry of British Columbia as Base Registration No. 355037N (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

38. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge and the Director's Charge.

39. The Administration Charge, the Director's Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents,

lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioner entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioner pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

40. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioner’s interest in such real property leases.

SERVICE AND NOTICE

41. The Monitor shall (i) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioner of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

42. The Petitioner and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioner’s creditors or other interested parties at their respective addresses as last shown on

the records of the Petitioner and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

43. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.alvarezandmarsal.com/felixpayment.

44. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.alvarezandmarsal.com/felixpayment.

45. Notwithstanding paragraphs 42 and 44 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the Crown Proceeding Act, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

46. The Petitioner or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

47. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

48. Each of the Petitioner and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioner to apply to the United

States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

49. The Petitioner may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioner determines that such a filing is appropriate.

50. The Petitioner is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

51. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

52. Any interested party (including the Petitioner and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

54. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

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 Lawyer for the Petitioner
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

BY THE COURT

REGISTRAR

NO.
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

**ORDER MADE AFTER APPLICATION
(INITIAL ORDER)**

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Fax: (604) 643-7900

Attention: H. Lance Williams and Ashley Bowron
Email: lwilliams@mccarthy.ca / abowron@mccarthy.ca

****FILING AGENT: HL LITIGATION****