Ken Coleman
Jonathan Cho
ALLEN & OVERY LLP
1221 Avenue of the Americas
New York, NY 10020
Telephone: (212) 610-6300
Facsimile: (212) 610-6399

Counsel to Ernst & Young Inc., as the Monitor
and Foreign Representative of Peraso Technologies Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: PERASO TECHNOLOGIES INC.,[1] Debtor in a Foreign Proceeding.	Chapter 15 Case No. 20-_____ (___)

EMERGENCY MOTION FOR PROVISIONAL RELIEF

Ernst & Young Inc. is the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Peraso Technologies Inc. ("**Peraso**") in a proceeding (the "**Canadian Proceeding**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"), pending before the Ontario Superior Court of Justice, Commercial List (the "**Ontario Court**").

The Monitor has commenced this chapter 15 case ancillary to the Canadian Proceeding by filing an official form petition and *Verified Petition for Recognition of Foreign Proceeding and Related Relief* (collectively, the "**Chapter 15 Petition**"), with accompanying

---

[1] The last four digits of the United States Tax Identification Number, or similar foreign identification number, as applicable, for Peraso Technologies Inc. are 8747.

documentation, pursuant to sections 1504 and 1515 of title 11 of the United States Code (the "**Bankruptcy Code**") seeking the entry of an order: (i) recognizing the Canadian Proceeding as a "foreign main proceeding" under section 1517 of the Bankruptcy Code; and (ii) giving full force and effect in the United States to the Order of the Ontario Court dated June 3, 2020 (together with any extensions or amendments thereof authorized by the Ontario Court, the "**Initial Order**"). The Monitor has also filed a *Memorandum of Law in Support of Verified Petition for Recognition of Foreign Proceeding and Related Relief* setting forth the legal argument for the relief sought in the Chapter 15 Petition (the "**Memorandum of Law**").

By this *Emergency Motion for Provisional Relief* (this "**Motion**"), the Monitor seeks, pursuant to sections 1519 and 105(a) of the Bankruptcy Code, the entry of an order, substantially in the form attached hereto as <u>Exhibit A</u> (the "**Proposed Order**"), giving effect to the Initial Order in the United States on a provisional basis pending final disposition of the Chapter 15 Petition and granting such other and further relief as the Court finds appropriate under the circumstances.[2]

In support of this Motion, the Monitor respectfully states as follows:

<u>JURISDICTION AND VENUE</u>

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, section 1501 of the Bankruptcy Code, and the *Amended Standing Order of Reference of the United States District Court for the Southern District of New Yor*k, dated January 31, 2012, Reference M-431. *See In re Standing Order of Reference Re*: Title 11, 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in

[2] A copy of the Initial Order is attached as Exhibit 1 to the Proposed Order.

this District pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are sections 105(a), 1519, 1521, and 1522 of the Bankruptcy Code, and Rule 65 of the Federal Rules of Civil Procedure.

BACKGROUND

1. For a detailed description of Peraso's business, corporate organization, capital structure, and circumstances leading to the Canadian Proceeding, the Court is respectfully referred to: (i) the Chapter 15 Petition, the factual portions of which the Monitor incorporates by reference herein as if fully set forth in this Motion; (ii) the *Affidavit of Ronald Glibbery* in support of the commencement of the Canadian Proceeding sworn to June 2, 2020 (the "**Glibbery Affidavit**"); and (iii) the *Pre-Filing Report of the Proposed Monitor* dated June 2, 2020 (the "**Pre-Filing Report**"). The Glibbery Affidavit and the Pre-Filing Report were submitted to the Ontario Court at the commencement of the Canadian Proceeding and are annexed as Exhibits A and B, respectively, to the Declaration of Ken Coleman dated June 3, 2020 and filed contemporaneously herewith (the "**Coleman Declaration**").[3]

2. Peraso is a small, private Canadian fabless semiconductor company that specializes in the development of integrated circuits and chipsets for use in wireless technology that operates on the 60 GHz band.

3. Peraso's commencement of the Canadian Proceeding has been driven in large part by an ongoing dispute with Ubiquiti Inc. and certain of its affiliates (collectively, "**Ubiquiti**") arising out of a late 2018 transaction under which: (i) Peraso would develop certain chipsets as per Ubiquiti's specifications pursuant to a *License and Development Agreement* dated

[3] Copies of all unpublished orders referred to herein are attached for the Court's convenience to the Coleman Declaration.

December 21, 2018 (the "**License Agreement**"); and (ii) upon Peraso's satisfaction of certain pre-agreed development milestones set forth in the License Agreement, Ubiquiti Networks Canada Inc. would provide Peraso with equity financing, totaling $15 million across three tranches, by purchasing additional Class C Convertible Preferred Shares of Peraso. At closing, Ubiquiti Networks Canada Inc. made the first of the three investments, became a minority shareholder of Peraso, and was granted certain limited observer rights on Peraso's board of directors (the "**Peraso Board**").

4. In 2019, Peraso did not receive $10 million of expected investment from Ubiquiti, giving rise to serious financial challenges and concerns about its solvency. Peraso has since engaged in efforts to obtain alternative financing, including additional investment or an acquisition. Further, in order to address immediate funding needs, Peraso issued approximately $1.75 million of secured notes in 2019, followed by another issuance of approximately $3.88 million in 2020. Ubiquiti was given the opportunity to participate in both issuances but declined to do so.

5. On January 16, 2020, Peraso sent notice to terminate the License Agreement (and therefore the exclusivity provision therein) on the basis that Ubiquiti failed to provide Peraso with notice of its acceptance or rejection of Peraso's satisfaction of two milestones, as was required under the License Agreement.

6. Shortly thereafter, Ubiquiti commenced multiple legal proceedings against Peraso and certain of its now-former and current directors in Canada and the United States challenging, among other things, the termination of the licensing and development arrangements and the propriety of certain steps taken by Peraso to secure additional financing in 2020.

7. Specifically, on February 14, 2020, Ubiquiti filed a complaint against Peraso in the United States District Court for the Southern District of New York. This litigation remains pending and is captioned *Ubiquiti Inc. v. Peraso Technologies Inc.*, Case No. 1:20-cv-01312-LTS-GWG (S.D.N.Y.) (the "**License Litigation**"). In the License Litigation, Ubiquiti alleges that Peraso's termination of the License Agreement was improper and seeks various forms of declaratory and monetary relief. On March 10, 2020, Ubiquiti filed an amended complaint that added William McLean, William James Whitaker, Shawn Abbott, David Adderley, Imed Zine and Riadh Zine, all of whom were members of the Peraso Board at the time of the termination, as personal defendants, all of whom were members of the Peraso Board at the time of the termination, as personal defendants (collectively, the "**Peraso Board Defendants**"). Peraso and the Peraso Board Defendants have denied Ubiquiti's allegations. Peraso has also filed counterclaims seeking various forms of declaratory and monetary relief. A number of deadlines in the License Litigation are expected to occur within the next few weeks in the absence of a stay. In accordance with a scheduling order entered in the License Litigation on May 21, 2020: (i) Peraso and the Peraso Board Defendants must respond to Ubiquiti's second amended complaint by June 12, 2020; (ii) initial document requests and initial interrogatories shall be served by June 24, 2020; and (iii) the deadline for joining parties or filing amended pleadings is June 30, 2020.

8. Peraso currently anticipates it will run out of cash by late June 2020. The License Litigation and the other Ubiquiti litigations commenced in Canada have made it difficult for Peraso to obtain additional funding or engage potential investors, and the ongoing efforts to respond to the litigations are a significant strain on Peraso's already-limited resources financial and management resources. Ronald Glibbery is tasked with restructuring Peraso's business and is the point person for Peraso on the Ubiquiti litigations.

9. Peraso therefore commenced the Canadian Proceeding on June 3, 2020, in order to create an environment in which it can stabilize its operations and resolve its dispute with Ubiquiti, thereby improving its prospects for additional financing or investment for the benefit of its stakeholders, including employees and shareholders.

10. On June 3, 2020, the Ontario Court entered the Initial Order, which, among other things, appointed the Monitor and authorized the Monitor to act as the foreign representative of the Canadian Proceeding for the purposes of seeking recognition of the Canadian Proceeding in the United States pursuant to chapter 15 of the Bankruptcy Code, and authorizes Peraso to continue in possession and control of its assets, to continue to carry on business in a manner consistent with the preservation of its business, and to continue the use of its existing cash management system.

11. Further, for the period until and including June 13, 2020, or such later date as the Ontario Court may subsequently order, the Initial Order, among other things: (i) prevents parties from terminating or altering their agreements with Peraso without the written consent of Peraso and the Monitor or the leave of the Ontario Court; (ii) stays the commencement or continuation of proceedings against Peraso and the Monitor without the written consent of Peraso and the Monitor or the leave of the Ontario Court; and (iii) stays the commencement or continuation of proceedings against former, current, or future directors and officers of Peraso.

12. The Chapter 15 Petition and this Motion are intended to aid the Canadian Proceeding by, among other things, giving effect to the terms of the Initial Order in the United States and giving Peraso breathing space as it seeks to reorganize.

REQUEST FOR RELIEF

By this Motion, the Monitor seeks the entry of an order giving effect to the Initial Order in the United States on a provisional basis pending final disposition of the Chapter 15 Petition and granting such other and further relief as the Court finds appropriate under the circumstances.

BASIS FOR RELIEF

A. Section 1519 of the Bankruptcy Code Authorizes the Requested Provisional Relief.

13. Section 1519 of the Bankruptcy Code broadly authorizes the Court to grant the Monitor certain "relief of a provisional nature" pending the Court's ruling on the Chapter 15 Petition where such relief is "urgently needed to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1519(a)(1). Section 1519(a)(3) specifically authorizes the Court to grant to the Monitor any relief referenced in section 1521(a)(7), which in turn allows the Court to grant "any additional relief that may be available to a trustee." 11 U.S.C. §§ 1519(a)(3), 1521(a)(7). Section 105(a) of the Bankruptcy Code further allows the Court to "issue any order . . . necessary or appropriate to carry out the provisions of [title 11]." 11 U.S.C. § 105(a).

14. The Initial Order, among other things, authorizes Peraso to continue in possession and control of its assets, to continue to carry on business in a manner consistent with the preservation of its business, and to continue the use of its existing cash management system. It also prevents parties from terminating or altering their agreements with Peraso and stays the commencement or continuation of proceedings against Peraso. Such relief is consistent with relief that would be available in plenary cases under the Bankruptcy Code for debtors-in-possession and, indeed, preventing the termination or modification of contracts and the imposition of a stay to

protect a debtor and its assets are core bankruptcy protections that would be automatic upon the filing of any plenary bankruptcy proceeding under sections 365 and 362 of the Bankruptcy Code. The extension of the stay to former, current, and future directors and officers, while not automatic under the Bankruptcy Code, is likewise relief that bankruptcy courts can, and do, order if the circumstances warrant. In the case of CCAA proceedings, such extension is a standard feature of the process. The enforcement of the Initial Order therefore constitutes "relief that may be available to a trustee" which this Court may grant, in its discretion, in order to preserve the estate pending final disposition of the Chapter 15 Petition.

15. Courts frequently grant provisional relief of this nature in chapter 15 cases. *See In re Arcadia Grp. (USA) Limited (in Administration)*, Case No. 19-11650 (JLG) (Bankr. S.D.N.Y. May 22, 2019) [Dkt. No. 16] (applying sections 362 and 365(e) of the Bankruptcy Code to the debtor and its property within the jurisdiction of the United States on a provisional basis); *In re Imperial Tobacco Canada Limited*, Case No. 19-10771(SCC) (Bankr. S.D.N.Y. Mar. 25, 2019) [Dkt. No. 22] (extending automatic stay pursuant to sections 1519(a)(3) and 105(a) of the Bankruptcy Code within the jurisdiction of the United States on a provisional basis). The enforcement of Initial Orders in the United States on both a provisional and final basis—including but not limited to standard provisions thereof staying actions against former, current, and future directors and officers—is, in particular, common in chapter 15 cases concerning foreign proceedings under the CCAA. *See, e.g.., In re The Aldo Grp. Inc.*, Case No. 20-11060 (KBO) (Bankr. D. Del. May 8, 2020) [Dkt. No. 29] (staying the commencement or continuation of any actions against the debtors and their directors and officers or their assets on a provisional basis); *In re Spectra Premium Industries Inc.*, Case No. 20-10611 (BLS) (Bankr. D. Del. Mar. 12, 2020)

[Dkt. No. 25] (giving full force and effect to a CCAA initial order which included a stay action against current and former directors and officers on a provisional basis).

B. The Requested Provisional Relief is Justified

16. Relief under section 1519 of the Bankruptcy Code is available where the foreign representative can satisfy the applicable standard for injunctive relief. 11 U.S.C. § 1519(e). The Second Circuit has established four factors to consider when determining whether to grant injunctive relief: (i) whether there is a likelihood of success on the merits; (ii) whether there is an imminent irreparable harm to the debtors' assets in the absence of an injunction; (iii) whether the balance of harms tips in favor of the moving party; and (iv) whether the public interest weighs in favor of an injunction. *See In re Lyondell Chem. Co.*, 402 B.R. 571, 588 (Bankr. S.D.N.Y. 2009) (applying the "traditional preliminary injunction standard as modified to fit the bankruptcy context") (internal citations and quotations omitted). The Monitor submits that this standard is satisfied in this case.

i. There Is a Substantial Likelihood of Recognition and of Enforcement of the Initial Order

17. As detailed more fully in the Chapter 15 Petition and the Memorandum of Law, there is a substantial likelihood that the relief sought in the Chapter 15 Petition will be granted because recognition of the Canadian Proceeding is warranted under section 1517 of the Bankruptcy Code. The Canadian Proceeding is a "foreign proceeding" and a "foreign main proceeding" and the Monitor is a "foreign representative" and a "person," as those terms are defined in the Bankruptcy Code. The Monitor duly and properly commenced this case by filing the Chapter 15 Petition accompanied by all fees, documents, and information required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. Further, the enforcement of the Initial Order in

the United States is warranted as discretionary relief under sections 1507 and 1521 of the Bankruptcy Code.

ii. The Relief Requested is Necessary to Prevent Irreparable Injury

18. This case has been commenced for the purpose of obtaining the assistance of this Court in the administration of the Canadian Proceeding. The Monitor believes that giving effect to the Initial Order in the United States pending final disposition of the Chapter 15 Petition is crucial to Peraso's efforts to achieve its goals in the Canadian Proceeding. The Initial Order, like sections 365 and 362 of the Bankruptcy Code, is designed to provide Peraso with a breathing spell to explore restructuring, financing, and other options by, among other things, preventing parties from terminating or altering their agreements with Peraso and staying proceedings against it and its current, former, and future directors and officers.

19. Without such relief, the License Litigation and other pending proceedings would continue to strain Peraso's already-limited resources. In particular, certain of Peraso's former and current directors and officers are defendants in the License Litigation, and the allegations raised against them arise from substantially the same factual nexus as the allegations raised against Peraso. *See In re Calpine Corp.*, Case No. 05-60200 (BRL), 2007 WL 1302604, at *3 (Bankr. S.D.N.Y. Apr. 30, 2007) (noting that courts enjoin litigation against non-debtors when an adverse judgment in the litigation will collaterally estop the debtor in subsequent litigation). Current directors and officers also have the benefit of a Directors' and Officers' Indemnification and Charge that is a standard feature of Initial Orders entered in proceedings under the CCAA. Initial Order ¶¶ 16-17. As such, any judgment against them would therefore be a *de facto* judgment against Peraso and its assets, to the detriment of creditors and the broader reorganization effort, and Peraso would have a strong interest in ensuring that litigation against them is stayed. *See In re*

FPSDA I, LLC, Case No. 10-75439, 2012 WL 6681794, at *11 (Bankr. E.D.N.Y. Dec. 21, 2012) (finding that "the purpose served by extending the stay to directors and officers indemnified by the debtor must be consistent with the purpose of the stay itself, [which is] to suspend actions that pose a serious threat to a corporate debtor's reorganization efforts") (quoting *In re Uni-Marts, LLC*, 399 B.R. 400 (Bankr. D. Del. 2009)). For these reasons, the Monitor believes it is paramount that the Court grant the relief requested to, among other things, stay the License Litigation and any and all other litigation against Peraso and former, current, and future directors and officers of Peraso.

20. Finally, it has been consistently held that "the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury." See *In re Lines*, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988). It has also been held that harm to an estate exists where the orderly determination of claims and the fair distribution of assets are disrupted. *See Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 714 (2d Cir. 1987); *In re Banco Nacional de Obras y Servicios Publicos, S.N.C.*, 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988). In this case, allowing litigation to continue against Peraso and current and former directors would have a detrimental impact on Peraso's ability to continue conducting its business and reorganizing, to the detriment of stakeholders and contrary to the stay provisions of the Initial Order.

iii. Granting the Provisional Relief Will Not Result in Even Greater Harm to Creditors

21. The entry of the requested relief is justified under the balance of hardships test. Peraso's creditors will not be harmed by the requested provisional relief as it will merely preserve the status quo and enable Peraso to continue its operations, free from disruption, for the short time necessary for the Court to rule on the Chapter 15 Petition. The Monitor submits that there will be no harm to creditors if the Monitor's request for provisional relief is granted. Any

creditor or potential creditor that objects to the relief requested will have an opportunity to be heard, and may apply to this Court for relief if it believes that it is harmed by the terms of the requested relief. By contrast, Peraso and its stakeholders will suffer significant injury from the commencement or continuation of proceedings against it if the Court does not grant the relief sought by this Motion. For the same reason, the interests of creditors and other interested entities, including Peraso, would be protected by the requested relief as required under section 1522(a) of the Bankruptcy Code.

iv. The Public Interest Favors Granting the Provisional Relief

22. The requested provisional relief is consistent with the policy underlying bankruptcy law and is in the public interest because it will facilitate the efforts to complete a court-supervised reorganization of Peraso's business for the ultimate benefit of Peraso's stakeholders. *See, e.g., Rehabworks, Inc. v. Lee (In re Integrated Health Servs, Inc.),* 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests.").

23. In addition, granting the provisional relief is in the public interest because it promotes cooperation between jurisdictions in cross-border insolvencies, which is an express purpose of chapter 15 of the Bankruptcy Code. Specifically, section 1501(a) of the Bankruptcy Code provides:

> (a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of
>
> . . .
>
> (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtors' assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

11 U.S.C. §1501(a).

24. In the Initial Order, the Ontario Court has granted the Monitor "full and complete authority to act as the representative of the Applicant in a foreign proceeding" Initial Order ¶ 20(f). It has also directed the Monitor to seek such relief in this Court as necessary to give effect to the Initial Order in the United States and specifically requested this Court's assistance through the following provision of the Initial Order:

> **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

Initial Order ¶ 40. Under section 1525(a), "consistent with section 1501, this court shall cooperate to the maximum extent possible with a foreign court or a foreign representative." 11 U.S.C. §§ 1525(a) and 1501. The Monitor believes that granting the requested relief is necessary to give effect to the Initial Order of the Ontario Court. Thus, in addition to the reasons set forth above, this Court should grant the requested relief in accordance with well-established principles of international comity, as embodied in sections 1501 and 1525 of the Bankruptcy Code.

NOTICE

25. The Monitor has provided notice of this Motion by e-mail, where practicable, and where e-mail service is impracticable, by United States mail, first-class postage prepaid or by overnight courier, to: (a) the Office of the United States Trustee for the Southern District of New York; (b) Peraso; (c) Ubiquiti; (d) all other parties to litigation currently pending in the United States in which Peraso is a party; and (e) all known U.S. creditors and contract counterparties of Peraso. In light of the nature of the relief requested herein, the Monitor submits that no further notice of this Motion is necessary.

NO PRIOR REQUEST

26. No previous request for the relief requested herein has been made to this or any other court.

WAIVER OF FEDERAL RULE OF CIVIL PROCEDURE 65(C)

27. Bankruptcy Rule 7065 provides that "a temporary restraining order or preliminary injunction may be issued on the application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c)." To the extent Rule 65 of the Federal Rules of Civil Procedure applies, the Monitor believes that the security requirements imposed by Rule 65(c) are unwarranted under the circumstances and, accordingly, respectfully requests a waiver of such requirements pursuant to Bankruptcy Rule 7065.

[Remainder of Page Intentionally Left Blank]

CONCLUSION

WHEREFORE, the Monitor respectfully requests that the Court enter an order, substantially in the form of the Proposed Order, giving effect to the Initial Order in the United States on a provisional basis pending final disposition of the Chapter 15 Petition and granting such other and further relief as the Court finds appropriate under the circumstances.

Dated: New York, New York
June 3, 2020

ALLEN & OVERY LLP

By: /s/ *Ken Coleman*_______
Ken Coleman
Jonathan Cho
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 610-6300
Facsimile: (212) 610-6399
ken.coleman@allenovery.com
jonathan.cho@allenovery.com

Counsel to Ernst & Young Inc., as the Monitor and Foreign Representative of Peraso Technologies Inc.

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: PERASO TECHNOLOGIES INC.,[1] Debtor in a Foreign Proceeding.	Chapter 15 Case No. 20-_____ (___)

ORDER GRANTING PROVISIONAL RELIEF

This matter was brought by Ernst & Young Inc., as the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Peraso Technologies Inc. ("**Peraso**") in a proceeding (the "**Canadian Proceeding**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, (as amended, the "**CCAA**"), pending before the Ontario Superior Court of Justice, Commercial List (the "**Ontario Court**") with the filing of an *Emergency Motion for Provisional Relief* (the "**Motion**") seeking the entry of an order giving effect in the United States to the Order of the Ontario Court dated June 3, 2020, attached hereto as Exhibit 1 (together with any extensions or amendments thereof authorized by the Ontario Court, the "**Initial Order**") and granting such other and further relief as the Court finds appropriate under the circumstances (together, the "**Provisional Relief**").[2]

The Court has considered and reviewed the Motion and the other pleadings and documents submitted by the Monitor in support thereof, including the *Verified Petition for Recognition of Foreign Proceeding and Related Relief* (the "**Chapter 15 Petition**"), the *Memorandum of Law in Support of Verified Petition for Recognition of the Foreign Proceeding*

---

[1] The last four digits of the United States Tax Identification Number, or similar foreign identification number, as applicable, for Peraso Technologies Inc. are 8747.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and Related Relief, and the *Declaration of Ken Coleman*, dated June 3, 2020, each filed contemporaneously with the Motion.

After due deliberation and sufficient cause appearing therefore, the Court finds and concludes as follows:

(A) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 1501;

(B) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P);

(C) venue is proper in this District pursuant to 28 U.S.C. § 1410;

(D) the Monitor has given appropriate, sufficient and timely notice of the Motion;

(E) the Court has the authority to grant the Provisional Relief under 11 U.S.C. §§ 105(a), 1519, 1521, and 1522;

(F) the Provisional Relief is needed to protect the interests of Peraso and its creditors, employees, and other parties in interest, as permitted by 11 U.S.C. § 1519(a);

(G) the interests of Peraso's creditors and other parties in interest, including Peraso, are sufficiently protected by the Court's grant of the Provisional Relief, as required by 11 U.S.C. § 1522(a);

(H) the Monitor has demonstrated a substantial likelihood of success that (i) the Canadian Proceeding is entitled to recognition as a "foreign main proceeding" as that term is defined in 11 U.S.C. § 1502(4), (ii) the Monitor is a "foreign representative" and a "person" as those terms are defined in 11 U.S.C. §§ 101(24) and (41), (iii) all the requirements for recognition of the Canadian Proceeding are satisfied in accordance with 11 U.S.C. § 1517, and (iv) upon recognition, the Initial Order will be given full force and effect in the United States on a final basis under 11 U.S.C. §§ 1507 and 1521;

(I) immediate irreparable harm will result to Peraso and its creditors, employees, and other parties in interest if the Provisional Relief is not granted on an expedited basis pending final disposition of the Chapter 15 Petition, and no injury will result to any party that is greater than the harm to Peraso in the absence of the Provisional Relief;

(J) the interests of the public will be served by the Court's granting the Provisional Relief; and

(K) due to the nature of the Provisional Relief, the Court finds that no security is required under Rule 65(c) of the Federal Rules of Civil Procedure.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is **GRANTED**.

2. The Initial Order is hereby given full force and effect in the United States, effective immediately on an interim basis and until such time as the Court conducts a final hearing on, and enters a final order with respect to, the relief sought by the Monitor in the Chapter 15 Petition.

3. Nothing in this Order shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent set forth in sections 362(b) and 1521(d) of the Bankruptcy Code.

4. Pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, the security provision of Rule 65(c) of the Federal Rules of Civil Procedure is waived.

5. Within forty-eight (48) hours of the entry of this Order, the Monitor shall serve a true and correct copy of this Order by e-mail, where practicable, and where e-mail service is impracticable, by United States mail, first-class postage prepaid or by overnight courier, to: (a) the Office of the United States Trustee for the Southern District of New York; (b) Peraso; (c) Ubiquiti, (d) all other parties to litigation currently pending in the United States in which Peraso is a party; and (e) all known U.S. creditors and contract counterparties of Peraso. Such service shall constitute due, adequate and sufficient service and notice, and no other or further service or notice shall be required.

6. Notwithstanding any applicable Bankruptcy Rule, the terms and condition of this Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, New York
June __, 2020

____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Initial Order

Court File No. ____________________

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 3rd
	)	
JUSTICE HAINEY	)	DAY OF JUNE, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERASO TECHNOLOGIES INC. (the "**Applicant**")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") proceeded on this day by way of video-conference due to the COVID-19 crisis.

ON READING the affidavit of Ronald Glibbery sworn June 2, 2020 (the "**Glibbery Affidavit**") and the Exhibits thereto, the pre-filing report of Ernst & Young Inc., in its capacity as proposed monitor (the "**Monitor**") to the Applicant, dated June 2, 2020, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant and counsel for the Monitor and those other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service of Nicholas Avis sworn June 2, 2020 and on reading the consent of Ernst & Young Inc. to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, contractors, 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 the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the central cash management system currently in place as described in the Glibbery Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management

System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably 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; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. **THIS COURT ORDERS** that the Applicant shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant 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 Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

9. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicant including without limitation all avenues of refinancing of their Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

10. **THIS COURT ORDERS** that until and including June 13, 2020, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with

the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that 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 Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant 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 security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

12. **THIS COURT ORDERS** that during the Stay Period, except with the written consent of the Applicant and the Monitor, or leave of this Court, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates 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 Applicant, 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 Applicant, and that the Applicant 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 date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

14. **THIS COURT ORDERS** that, notwithstanding anything else 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 date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

15. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

17. **THIS COURT ORDERS** that the directors and officers of the Applicant 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 $650,000 as security for the indemnity provided in paragraph 16 of this Order. The Directors' Charge shall have the priority set out in paragraphs 27 and 29 herein.

18. **THIS COURT ORDERS** that, 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 Applicant'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 16 of this Order.

APPOINTMENT OF MONITOR

19. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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.

20. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant'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) advise the Applicant in its preparation of the Applicant's cash flow statements;

(d) 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

Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(e) 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;

(f) have full and complete authority to act as the representative of the Applicant in a foreign proceeding; and

(g) perform such other duties as are required by this Order or by this Court from time to time.

21. **THIS COURT ORDERS** that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

22. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant 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 Applicant 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 Applicant may agree.

23. **THIS COURT ORDERS** that, 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, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

24. **THIS COURT ORDERS** that the Monitor, Canadian and U.S. counsel to the Monitor (Thornton Grout Finnigan LLP and Allen & Overy LLP) and Canadian and U.S. counsel to the Applicant (Stikeman Elliott LLP and Hodgson Russ LLP) shall be paid their reasonable fees and

disbursements, and applicable taxes, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, Canadian and U.S. counsel to the Monitor and Canadian and U.S. counsel to the Applicant.

25. **THIS COURT ORDERS** that 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 Commercial List of the Ontario Superior Court of Justice.

26. **THIS COURT ORDERS** that the Monitor, Canadian and U.S. counsel to the Monitor and Canadian and U.S. counsel to the Applicant 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 $200,000, as security for their professional fees and disbursements, plus applicable taxes, incurred at their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 27 and 29 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

27. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $200,000); and

Second – Directors' Charge (to the maximum amount of $650,000).

28. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

29. **THIS COURT ORDERS** that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and

encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

30. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge unless the Applicant also obtains the prior written consent of the Monitor, and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

31. **THIS COURT ORDERS** that the Directors' Charge and the Administration 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**") thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant 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 creation of the Charges; and

(c) the payments made by the Applicant pursuant to this Order 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.

32. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

33. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail (national edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, or as soon as reasonably practicable thereafter (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner (including by email), a notice to every known creditor who has a claim against the Applicant of more than $1,000 (excluding contractors, individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), 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.

34. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/peraso.

35. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile 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.

36. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

CHAPTER 15 PROCEEDINGS

37. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered, but not required, to act as the foreign representative (the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada, including, if deemed advisable by the Monitor, to apply for recognition of these proceedings in the United States pursuant to chapter 15 of title 11 of the *United States Code*, 11 U.S.C. §§ 101-1532.

GENERAL

38. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder.

39. **THIS COURT ORDERS** that 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 Applicant, the Business or the Property.

40. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

41. **THIS COURT ORDERS** that each of the Applicant 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 that 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.

42. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice 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.

43. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and filing.

Hainey J