ENDORSEMENT

COURT FILE NO.: CV-20-00642010-00CL **DATE:** October 14, 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.

A motion was brought by the Applicants and returnable before me by Zoom videoconference call due to COVID on October 14, 2020. Counsel in attendance as per the attached Counsel Slip.

1. The Applicant has brought a motion seeking approval of a settlement agreement between the Applicant and Ubiquiti Inc. dated as of October 9, 2020 (the "**Settlement Agreement**").

2. The Settlement Agreement, together with the agreements and documents which are schedules to it, resolves litigation between the Applicant and Ubiquiti that has been a central issue in these CCAA proceedings. It is the result of intense arms-length negotiations between the parties, with the assistance of the Monitor.

3. Pursuant to the Settlement Agreement and its Schedules, the Applicant will grant certain license and manufacturing rights to Ubiquiti and its affiliates in connection with certain intellectual property and will permit Ubiquiti to deal with specific Peraso suppliers to have certain Peraso components manufactured for Ubiquiti products. In exchange, Ubiquiti will make certain payments to the Applicant: (i) a one time payment of USD$5 million, which will be used in part to repay DIP financing previously provided to the Applicant by Ubiquiti in the amount of the CDN equivalent of USD$2.5 million; and (ii) ongoing future royalty payments in amounts as set out in the License and Manufacturing Agreement which is Schedule "A" to the Settlement Agreement.

4. The Schedules to the Settlement Agreement include a number of other agreements between the Applicant, Ubiquiti, and certain third parties, through which the terms of the Settlement Agreement will be effectuated (the "**Schedules**"). Specifically, there is a License and Manufacturing Agreement, under which Peraso grants to Ubiquiti a license and manufacturing rights in certain Peraso intellectual property, which is detailed in schedules to the License and Manufacturing Agreement. There is also an Escrow Agreement between Peraso, Ubiquiti, and Praxis Technology Escrow, under which Peraso will upload the subject intellectual property to the escrow agent's servers and Ubiquiti will have access to that intellectual property if Peraso is unable or unwilling to comply with the License and Manufacturing Agreement. There are also Step-in Rights Authorizations under which Peraso gives five (5) of its suppliers specific directions to allow Ubiquiti to order and have manufactured specific Peraso components, which authorizations identify the respective

Peraso intellectual property involved with that supplier. The Escrow Agreement and the Step-in Rights Authorizations are also schedules to the License and Manufacturing Agreement. The other operative Schedules to the Settlement Agreement are a Full and Final Mutual Release between the parties and a shareholders' consent which amends Peraso's 9th Amended and Restated Unanimous Shareholders' Agreement.

5. While the Settlement Agreement and the Escrow Agreement are signed and binding now, each of the License and Manufacturing Agreement, the Step-in Rights Authorizations (with the exception of one that remains a Condition Precedent as discussed below), the Full and Final Mutual Release and the Shareholders' Consent have been signed by the Applicant and Ubiquiti and delivered to the Monitor, who is holding those documents in escrow, to be released and become effective only once the conditions precedent in the Settlement Agreement have been satisfied.

6. The Applicant's Motion Record attaches a redacted version of the Settlement Agreement and does not include the Schedules. The Schedules were not included in the Applicant's Motion Record because they contain highly sensitive commercial information, including details of the Applicant's intellectual property, the names of the Applicant's third-party licensors and manufacturers, and applicable royalty rates. There is extreme sensitivity around that information, and a sealing order would not be sufficient to address the concerns of the parties. The Court had the opportunity at today's hearing to review the unredacted Settlement Agreement and its Schedules through screen sharing at the Zoom hearing.

7. The Applicant's request is unopposed and is supported by the Monitor and by Ubiquiti. When approving a settlement under the CCAA, the Court must be satisfied that: (i) the transaction is fair and reasonable; (ii) the transaction will be beneficial to the debtor and its stakeholders generally; and (iii) the settlement is consistent with the purpose and spirit of the CCAA. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, 2013 ONSC 1078 at para 49. I find that the Settlement Agreement, and the Schedules thereto, satisfies that test. The Settlement Agreement, and the Schedules thereto, is the product of a months-long process of intense negotiation between the parties, along with significant involvement by the Monitor and its counsel, and I find that it is fair and reasonable. It eliminates a significant obstacle to the Applicant's successful restructuring, allows the Applicant to pursue a restructured business relationship with Ubiquiti, and brings an end to the ongoing cash expenditure and uncertainty created by the litigation with Ubiquiti. Further, the Settlement Agreement, and the Schedules thereto, will provide the Applicant with additional liquidity to continue to maintain the company as a going-concern business, while preserving the company's workforce and maintaining relationships with customers and suppliers.

8. I am therefore satisfied that the Settlement Agreement is fair and reasonable, will be beneficial to the Applicant and its stakeholders, and is consistent with the purpose and spirit of the CCAA, and the Applicant's request for approval of the Settlement Agreement (which includes all of the Schedules thereto) is granted.

9. The Court is advised by counsel to Ubiquiti that in negotiating the Settlement Agreement and the Schedules thereto, Ubiquiti sought comfort to ensure that the intellectual property

rights which it was bargaining to acquire pursuant to the License and Manufacturing Agreement (and the schedules, exhibits, and appendices thereto), and was about to pay for, would be protected in any insolvency proceedings of Peraso. Therefore, the Settlement Agreement contains a condition that any order approving the settlement also provide that kind of comfort to Ubiquiti.

10. Accordingly, for the benefit of Ubiquiti, the Applicant further requests an order finding that, subject to the satisfaction of the outstanding Conditions Precedent in the Settlement Agreement, the License and Manufacturing Agreement, and each of the schedules, exhibits, and appendices thereto, and all contracts contemplated therein, are agreements granting rights to use intellectual property to which subsections 32(6) and 36(8) of the CCAA (and the similar provisions of the *Bankruptcy and Insolvency Act*) apply, notwithstanding any current or future insolvency proceedings involving the Applicant or any sale of the Applicant's business or intellectual property in accordance with those statutory provisions. Having listened to the submissions of counsel regarding these documents, and having had the opportunity to review them through the screen sharing noted above, I am satisfied that such an order is appropriate, and the Applicant's request is granted.

11. The Applicant notes that the effectiveness of the Settlement Agreement remains subject to the satisfaction of certain outstanding Conditions Precedent. Obtaining court approval of the Settlement Agreement on these terms is a Condition Precedent. There remain two (2) additional key Conditions Precedent to be satisfied which involves third parties (one a supplier and the other a report to be provided by the escrow agent under the Escrow Agreement), and the outside date for all such conditions to be satisfied is October 20, 2020 or such other date as the parties may agree to (the "**Outside Date**"). The Monitor advises that if the Conditions Precedent cannot be satisfied by the Outside Date, there may be insufficient liquidity available at that time for the Applicant to initiate a going concern sale process resulting in an expedited liquidation sale. The Court advises the parties to continue to use all efforts, with the assistance of the Monitor as necessary, to satisfy the Conditions Precedent in advance of the Outside Date.

12. The Applicant advised the Court that the Applicant's D&O insurer, Great American Insurance Company, has indicated that it intends to bring a motion to lift the stay of proceedings contained in the Initial Order. The Applicant indicated that the parties would return to Court on October 28, 2020 to address the scheduling of that motion, if necessary.

13. The Court remains available to address any issues that arise in accordance with the notice provisions of the Initial Order, as amended.

Hainey J

Hainey, J.

October 14, 2020