

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N°: 500-11-057570-190

**SUPERIOR COURT**  
(Commercial Division)

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

**9348069 CANADA INC.**

-and-

**4295862 CANADA INC.**

-and-

**MOTOVAN CORPORATION**

(collectively hereafter referred to as “**MTV**”)

Petitioners

-and-

**MONCY HOLDING COMPANY INC.**

-and-

**MONCY FINANCIAL SERVICES COMPANY  
INC.**

-and-

**NICHOLS MOTORCYCLE SUPPLY INC.**

-and-

**MONCY LLC**

-and-

**MOTORCYCLE TIRES & ACCESSORIES LLC;**

Mises en cause

(Petitioners and the Mises en cause are collectively hereafter referred to as the « **CCAA Parties** »)

-and-

**BANK OF MONTREAL**

-and-

**INVESTISSEMENT QUÉBEC**

-and-

**EXPORT DEVELOPMENT CANADA**

-and-

**BDC CAPITAL INC.**

Secured Creditors

-and-

**KPMG INC.**

Monitor

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**PETITIONERS' MOTION FOR AN ORDER EXTENDING THE STAY PERIOD**

*(Section 11 and ff. of the Companies' Creditors Arrangement Act)*

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**TO THE HONOURABLE JUSTICE MARIE-ANNE PAQUETTE, J.S.C. SITTING IN COMMERCIAL DIVISION FOR THE DISTRICT OF MONTREAL, THE CCAA PARTIES RESPECTFULLY SUBMIT THE FOLLOWING:**

**I. INTRODUCTION**

1. On December 2, 2019, the Honourable Justice Marie-Anne Paquette, J.S.C., issued an initial order (the “**Initial Order**”<sup>1</sup>) commencing these proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in respect of the CCAA Parties, as appears from the Court record;
2. Pursuant to the Initial Order, the Court:
  - a) Declared that the CCAA Parties are debtor companies to whom the CCAA applies, or companies entitled to benefit from the protection arising from the Initial Order;
  - b) Ordered a stay of proceedings in favour of the CCAA Parties and their respective directors and officers and other general CCAA relief pursuant to, inter alia, sections 11, 11.02 and 11.03 thereof for an initial period of ten (10) days, i.e. until on or about **December 12, 2019** (hereinafter the “**Initial Period**”); and
  - c) Authorized the CCAA Parties to continue their operations in order to preserve their assets and make payments in the normal course of business;
  - d) Appointed KPMG Inc. (“**KPMG**”) (Dev A. Coossa, PAIR, SI) as Monitor pursuant to Section 11 of the CCAA;
  - e) Granted an Administration Charge to secure the Petitioners’ obligations towards its legal advisors (BCF LLP), the Monitor (KPMG) and the Monitor’s legal advisors (Norton Rose Fulbright Canada LLP);
  - f) Granted a D&O Charge to secure the Petitioners’ obligations towards its directors and officers in respect of potential liabilities that could arise after the Initial Order has been issued, but only to the extent that such potential liability is not covered by existing insurance policies;
  - g) Authorized Petitioners to file at a later date a plan of arrangement with their creditors pursuant to the CCAA (the “**Plan**”);

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<sup>1</sup> Except as otherwise provided for herein, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Initial Order.

- h) Authorized various measures required in order to facilitate the proposed restructuring; and
  - i) Declared that the Petitioners may at all times address this Court in order to seek any other measures necessary in order to carry out the restructuring process;
3. On December 12, 2019, the Honourable Marie-Anne Paquette, j.s.c. issued an Amended and Restated Initial Order pursuant to which the Court:
- a) Extended the Stay Period in respect of the CCAA Parties until January 31, 2020;
  - b) Amended the Initial Order to increase the amount of the Administration Charge from \$335,000.00 to \$500,000.00;
  - c) Approved the SISP proposed by the CCAA Parties;
4. On January 31, 2020, the Honourable Marie-Anne Paquette, j.s.c., issued an order pursuant to which the Court extended the Stay Period in respect of the CCAA Parties until May 15, 2020, in order notably to:
- a) Allow for the continuation of the liquidation process undertaken in the U.S. by Gordon Brothers;
  - b) Finalize the SISP process and the sale of MTV's assets in Canada;
5. On February 19, 2020, the Honourable Marie-Anne Paquette, j.s.c. issued an Approval and Vesting Order pursuant to which the Court notably approved the sale of Motovan Corporation's assets and of certain assets of Motorcycle Tires & Accessories LLC (Motovan Corporation and Motorcycle Tires & Accessories LLC being collectively referred to as the "**Vendor**") and ordered the remittance of the sale proceeds to the Monitor (the "**Vesting Order**");
6. On May 15, 2020, the Honourable Marie-Anne Paquette, j.s.c. issued (i) an Extension Order, (ii) a Re-Amended and Restated Initial Order, and (iii) a Distribution Order, by which the Court notably:
- a) Extended the Stay Period until November 16, 2020 in order to allow the CCAA Parties to maximize the collection proceeds in the U.S., to complete the liquidation process and to collect overpaid customs duties paid by MTV (the "**Duties**");

- b) Amended the Initial Order in order to provide powers to the Monitor with respect to collecting the Duties and filing a motion for final decree in the Chapter 15 proceedings;
  - c) Allowed for the distribution of the sale proceeds held by the Monitor following the execution of the transaction pertaining to Vendor's assets;
7. On November 16, 2020, the Honourable Marie-Anne Paquette, j.s.c. issued (i) an Extension Order, (ii) a Re-Re-Amended and Restated Initial Order, and (iii) a Distribution Order, by which the Court notably:
- a) Extended the Stay Period until February 1<sup>st</sup>, 2021 in order to allow the CCAA Parties to finalize the collection of the Duties
  - b) Amended the Initial Order in order to provide powers to the Monitor with respect to collecting the Duties and filing a motion for final decree in the Chapter 15 proceedings;
  - c) Allowed for the distribution of the sale proceeds held by the Monitor following the execution of the transaction pertaining to Vendor's assets;

## **II. EXTENSION OF THE STAY PERIOD AND ORDER SOUGHT**

8. The CCAA Parties are hereby seeking an extension of the Stay Period until June 1<sup>st</sup>, 2021, as MTV requires additional time to collect the Duties, which it estimates could reasonably be collected during the extension period proposed herein, as more detailed below;
9. As a result of the support of their operational lender, BMO, the CCAA Parties have sufficient liquidity to continue their current operations on a going concern basis during the extended Stay Period;
10. BMO supports the extension of the Stay Period;

## **III. COLLECTION OF THE DUTIES**

11. At this time, MTV has not completed the process to claim the Duties which was initiated before the present proceedings;
12. The Monitor and the CCAA Parties submit that the process required to produce the claim before the relevant authorities has been completed, but that the reimbursement of the Duties has not yet been received in its entirety from the CBSA;

13. It is foreseeable that the extended Stay Period should be sufficient to receive the remainder of the Duties from the CBSA, which at this time is estimated at \$340,000, including:
  - a) \$290,000 for which the Monitor is awaiting payment, which according to the CBSA is taking longer than expected due to an important volume of claims received and cheques to be issued;
  - b) \$50,000 for which the Monitor is awaiting a decision from the CBSA.

As it notably appears from a copy of the Sixth Report of the Monitor, communicated herewith as **Exhibit R-2**;

14. While subtracting the potential fees to be owed to the customs broker upon the collection of the Duties and the professional fees, the amount to be collected justifies the order sought. In addition, BMO, which is the operating lender and which has a first rank security over the Duties, supports the cash flow presented under R-2 and the order sought;

#### **IV. CONCLUSION**

15. The CCAA Parties will continue their restructuring efforts with a view to preserve and maximize the value of their assets;
16. Since the issuance of the Initial Order, the CCAA Parties have acted, and continue to act, in good faith and with due diligence;
17. The Monitor and BMO support the present Motion;
18. The present Motion is well founded in fact and in law.

#### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present Motion;

**DECLARE** that sufficient prior notice of the presentation of the Motion has been given to interested parties;

**ISSUE** an order substantially in the form of the draft Order (**Exhibit R-1**) communicated in support hereof;

**THE WHOLE** without costs, save and except in case of contestation.

Montreal, January 26, 2021

BCF LLP

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**BCF LLP**

**Me Bertrand Giroux**

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**Me Marc-Étienne Boucher**

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Attorneys for the CCAA Parties

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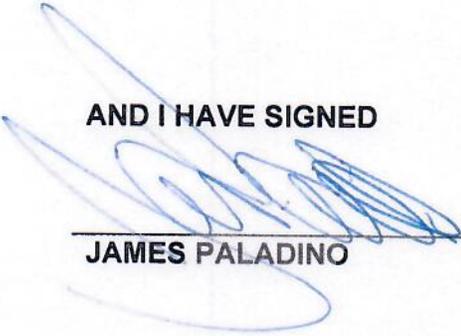
**SOLEMN DECLARATION**

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I, the undersigned, **JAMES PALADINO**, businessman, residing and domiciled at 690, Des Châtaigniers, in the City of Boucherville, District of Longueuil, Province of Quebec, J4B 8S2, solemnly affirm the following:

- 1- I am director of the Petitioners in the present case;
- 2- All of the facts contained in the *Petitioners' Motion for an Order extending the Stay Period* are true to my knowledge.

**AND I HAVE SIGNED**



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**JAMES PALADINO**

**SOLEMNLY DECLARED** before me  
By technological means,  
in Marieville, Province of Québec,  
this 26<sup>th</sup> day of January, 2021.



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**Commissioner of Oaths for Québec**



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## NOTICE OF PRESENTATION

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TO: THE ATTACHED SERVICE LIST

**TAKE NOTICE** that the present *Petitioners' Motion for an Order extending the Stay Period* will be presented, by videoconference, before one of the honourable judges of the Superior Court sitting in commercial division and for the district of Montreal, on **January 29, 2021, at 11h00 a.m. (Montreal time)**.

**DO GOVERN YOURSELF ACCORDINGLY.**

Montreal, January 26, 2021



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**BCF LLP**

**Me Bertrand Giroux**

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**Me Marc-Étienne Boucher**

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Attorneys for the CCAA Parties

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF **MONTREAL**

N°: 500-11-057570-190

**SUPERIOR COURT**  
(Commercial Division)

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-and-

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(collectively hereafter referred to as “**MTV**”)

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**INVESTISSEMENT QUÉBEC**

-and-

**EXPORT DEVELOPMENT CANADA**

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**BDC CAPITAL INC.**

Secured Creditors

-and-

**KPMG INC.**

Monitor

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## **LIST OF EXHIBITS**

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**EXHIBIT R-1:** Draft Order;

**EXHIBIT R-2:** Sixth Report of the Monitor.

Montreal, January 26, 2021.

BCF LLP

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**BCF LLP**

**Me Bertrand Giroux**

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**Me Marc-Étienne Boucher**

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C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF **MONTREAL**

File: No: 500-11-057570-190

**SUPERIOR COURT**  
(Commercial Division)

**Montreal, January 29, 2021**

**PRESIDING: THE HON. MARIE-ANNE  
PAQUETTE, J.S.C.**

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

**9348069 CANADA INC.**

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Mises en cause

(Petitioners and the Mises en cause are collectively hereafter referred to as the « **CCAA Parties** »)

-and-

**BANK OF MONTREAL;**

-and-

**INVESTISSEMENT QUÉBEC;**

-and-

**EXPORT DEVELOPMENT CANADA;**

-and-

**BDC CAPITAL INC.**

Secured Creditors

-and-

**KPMG INC.**

Monitor

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## **ORDER**

**UPON READING** the *Petitioners' Motion for an Order Extending the Stay Period* pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**"), dated January 26, 2021, and having examined the exhibits and the affidavit of James Paladino filed in support thereof (the "**Motion**");

**GIVEN** the absence of contestation and the consent of the Monitor;

**FOR THESE REASONS, THE COURT HEREBY:**

**GRANTS** the Motion;

**DECLARES** that sufficient prior notice of the presentation of the Motion has been given to interested parties;

**EXTENDS** the Stay Period, as defined under Section 8 of the Amended Initial Order, until and including June 1<sup>st</sup>, 2021 at 5 p.m. (Montreal time);

**ORDERS** the provisional execution of the present Order notwithstanding any appeal;

**THE WHOLE** without costs.

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**HON. MARIE-ANNE PAQUETTE, J.S.C.**

No.: 500-11-057570-190

**SUPERIOR COURT  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, R.S.C.,  
1985, C. C-36, AS AMENDED:  
9348069 CANADA INC. et al.**

Petitioners

and

**MONCY HOLDING COMPANY INC. et al.**

Mises en cause

and

**MICROSOFT CANADA**

Mise en cause

and

**BANK OF MONTREAL et al.**

Secured Creditors

and

**KPMG INC.**

Monitor

**PETITIONERS' MOTION FOR AN ORDER  
EXTENDING THE STAY PERIOD, SOLEMN  
DECLARATION OF JAMES PALADINO, NOTICE  
OF PRESENTATION, LIST OF EXHIBITS AND  
EXHIBITS R-1**

*(Section 36 of the Companies' Creditors  
Arrangement Act)*

ORIGINAL

Me Bertrand Giroux

Our file: 8350-318



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