

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE) THURSDAY, THE 15TH
)
JUSTICE STEELE) DAY OF FEBRUARY, 2024

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
RLOGISTICS LIMITED PARTNERSHIP,
IN THE CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by RLogistics Limited Partnership dba Factorydirect.ca (“**Factory Direct**”), for an order, *inter alia*:

- a) approving the Consulting Agreement dated February 13, 2024 (the “**Consulting Agreement**”) between Factory Direct and Danbury Global Limited and AD Hennick & Associates Inc. (the “**Consultants**”) pursuant to which the Consultants will assist Factory Direct in carrying out a liquidation sale (the “**Sale**”) of Factory Direct’s inventory, merchandise, and furniture, fixtures and equipment;
- b) granting a charge over Factory Direct’s property to secure the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel and Factory Direct’s counsel;
- c) granting a charge over Factory Direct’s property in favour of its directors and officers to secure obligations that they may incur in those capacities during these proceedings;
- d) approving the KERP and granting the KERP Charge (as those terms are defined below);

- e) approving relief in connection with the *Wage Earner Protection Program Act* (“**WEPPA**”) for employees whose employment with Factory Direct is terminated as part of these proceedings;
- f) granting Factory Direct’s request for an extension of the time required to file its proposal, from March 8, 2024, the date the current stay expires, to April 22, 2024;
- g) administratively consolidating this proceeding with the proceedings commenced by RLogistics Inc. and 1696308 Ontario Inc.; and
- h) sealing the confidential appendices to the First Report of RSM Canada Limited dated February 13, 2024 in its capacity as proposal trustee (in such capacity, the “**Proposal Trustee**”) of Factory Direct (the “**First Report**”),

was heard this day at 330 University Avenue, Toronto, Ontario via videoconference.

ON READING the Notice of Motion, the Affidavit of Rod Hunter sworn on February 14, 2024 and the exhibits thereto (the “**Hunter Affidavit**”) and the First Report, and on hearing the submissions of counsel for Factory Direct and other such parties in attendance, as shown on the Participant Information Form, filed.

ADMINISTRATIVE CONSOLIDATION

1. **THIS COURT ORDERS** that this proceeding and the proposal proceedings of RLogistics Inc. and 1696308 Ontario Inc. (collectively, the “**Debtors**”), bearing estate numbers 31-3040679, 31-3042209 and 31-3042213 respectively (the “**Proposal Proceedings**”), are hereby

administratively consolidated and are hereby authorized and directed to continue under the following joint title of proceedings:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
RLOGISTICS LIMITED PARTNERSHIP**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
RLOGISTICS INC.**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
1696308 ONTARIO INC.**

2. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed with the Court only in the Factory Direct estate and court file, bearing Estate No./Court File No. 31-3040679.

EXTENSION OF TIME TO FILE A PROPOSAL

3. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the Debtors to file a proposal is hereby extended to April 22, 2024 (as that date may be extended by further order of the Court, the “**Proposal Extension Date**”).

THE CONSULTING AGREEMENT

4. **THIS COURT ORDERS** that the Consulting Agreement dated February 13, 2024 (the “**Consulting Agreement**”), is hereby authorized and approved, with such minor amendments to the Consulting Agreement as Factory Direct (with the consent of the Proposal Trustee) and the Consultants may agree to in writing. Subject to the provisions of this Order, Factory Direct is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement.

WAGE EARNER PROTECTION PROGRAM ACT

5. **THIS COURT ORDERS** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1 (“**WEPPA**”), Factory Direct and its employees, upon termination, meet the criteria prescribed by Section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and each of Factory Direct’s employees are eligible, or will be eligible upon termination, to receive payments under and in accordance with WEPPA following the termination of their employment.

ADMINISTRATION CHARGE

6. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Debtors (collectively, the “**Administrative Professionals**”) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtors as part of the costs of the Proposal Proceedings.

7. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

8. **THIS COURT ORDERS** that the Administrative Professionals shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on all of the Debtors’ present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the “**Property**”), which charge shall not exceed an aggregate amount of \$300,000 (before HST), as security for payment of their respective professional fees and disbursements incurred at their standard hourly rates, both before

and after the making of this Order, in respect of this proceeding. The Administration Charge shall have the priority set out in paragraphs 14 and 16 hereof.

D&O CHARGE

9. **THIS COURT ORDERS** that the Debtors shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtors after the commencement of the Proposal 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.

10. **THIS COURT ORDERS** that the directors and officers of the Debtors shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$600,000, as security for the indemnity provided in paragraph 9 of this Order. The D&O charge shall have the priority set out in paragraph 14 and 16 herein.

11. **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 that benefit of the D&O Charge, and (b) the Debtors' directors and officers shall only be entitled to the benefit of the D&O 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 9 of this Order.

KERP

12. **THIS COURT ORDERS** that Factory Direct's key employee retention plan (the "KERP") described in the First Report be and is hereby approved and Factory Direct is authorized and directed to make the payments contemplated thereunder should the employees become entitled thereto in accordance with the terms and conditions of the KERP.

13. **THIS COURT ORDERS** that the beneficiaries of the KERP shall be entitled to the benefit of and are hereby granted a charge (the "KERP Charge") on the Property in the amount of \$81,000. The KERP Charge shall have the priority set out in paragraphs 14 and 16 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. **THIS COURT ORDERS** that the priorities of the Administration Charge, D&O Charge and the KERP Charge (collectively, the "Charges"), as among them, shall be as follows with respect to the Property described below:

First – Administration Charge

Second – D&O Charge

Third – KERP Charge

15. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

16. **THIS COURT ORDERS** that each of the Charges 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 save and except for validly perfected security interests in favour of each of (i) Hewlett-Packard Financial Services Canada Company, (ii) Ryder Truck Rental Canada Ltd., and (iii) Dell Financial Services Canada Limited, granted in connection with certain equipment financing arrangements as at February 7, 2024.

17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Debtors also obtain the prior written consent of the Proposal Trustee, and the beneficiaries of the KERP Charge, the Administration Charge and the D&O Charge, or further Order of this Court.

18. **THIS COURT ORDERS** that the Charges 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**”) 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) the bankruptcy of the Debtors; (c) the provisions of any federal or provincial statutes; or (d) 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 any of the Debtors, 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 Debtors 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 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.

SEALING ORDER

19. **THIS COURT ORDERS** that, subject to further order of this Court, Confidential Appendix “1” to the First Report shall be sealed and kept confidential.

SERVICE AND NOTICE

20. **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/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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: <https://tdbadvisory.ca/insolvency-case/rlogistics-limited-partnership-dba-factorydirect-ca/>.

21. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors and the Proposal Trustee 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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

22. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Debtors, the Proposal Trustee 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 Debtors and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtors and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

24. **THIS COURT ORDERS** that each of the Debtors or the Proposal Trustee shall be at liberty and are 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.

25. **THIS COURT ORDERS** that any interested party (including the Debtors and the Proposal Trustee) 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.

26. **THIS COURT ORDERS** that this Order is effective from today's date and it is made and enforceable without any need for entry or filing.

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Estate/Court File No.: 31-3040679

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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