

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11

SUPERIOR COURT
Commercial Division

**IN THE MATTER OF THE OF COMPANIES'
CREDITORS ARRANGEMENT ACT OF:**

HIGHCREST LENDING CORPORATION, a
corporation having a place of business at 208
S. Llano Street, Fredericksburg, Texas 78624

Applicant / Secured Creditor

- and -

13517985 CANADA INC., a corporation
incorporated under the Canada Business
Corporations Act, having its head office at
101-501 Boulevard Laurier, Sainte-Marie-
Madeleine, Province of Québec, J0H 1S0

Debtor

- and -

KPMG INC., a company incorporated under
the laws of Canada, having a place of
business at 600 De Maisonneuve Blvd. West,
in the city of Montreal, Province of Quebec,
H3A 0A3

Proposed Monitor

**APPLICATION FOR THE ISSUANCE OF
A FIRST DAY INITIAL ORDER AND
AN AMENDED AND RESTATED INITIAL ORDER**

(Sections 11 and ff., 23 and 36 of the *Companies' Creditors Arrangement Act*)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL,
THE APPLICANT, HIGHCREST LENDING CORPORATION, RESPECTFULLY
SUBMITS THE FOLLOWING:**

1. OVERVIEW AND ORDERS SOUGHT

1. The Applicant, Highcrest Lending Corporation (“**HLC**” or the “**Applicant**”), is the sole secured creditor of the debtor, 13517985 Canada Inc., doing business as Wholesale Express (“**WE**” or the “**Debtor**”), and is owed approximately \$12 million pursuant to, among other things, a Master Amended and Restated Loan and Security Agreement dated December 23, 2022 (the “**LSA**”), which the Debtor, and its parent company, Trade X Group of Companies Inc. (“**Trade X Group**”), have defaulted on.
2. The Debtor, whose business is focused on running an online daily auction site that sells pre-owned cars to registered dealers in Quebec, Ontario, Eastern Canada and the United States, is insolvent, being unable to pay the amounts owing to HLC, despite being due and payable since October 31, 2023.
3. Prolonged efforts have been undertaken by Trade X Group to sell WE in order to repay the amounts owing to HLC, but as will be explained in detail below, these efforts have stalled for a number of reasons, including because of disputes amongst Trade X Group’s creditors (both secured and unsecured) on how the proceeds of sale should be distributed, following repayment of WE’s sole secured creditor, HLC.
4. To make matters worse, it is important to highlight that HLC originally lent funds to Trade X Group, namely through a Loan and Security Agreement dated August 18, 2020 (as amended and restated, the “**Original Loan Agreement**”), however in 2022, it became apparent that all of the collateral securing this loan had been eroded or disappeared, with Trade X Group confirming the following to HLC:
 - a) During the period from October 2021 through May 2022, Trade X Group misreported cash amounts on deposit in the Operating Account (as defined in the Original Loan Agreement), including as a result of negligently misdirecting deposits and purchase payments made by buyers of vehicles owned by Trade X Group to accounts other than the Operating Account in contravention of the Original Loan Agreement. By way of example, vehicle proceeds, which should have been held in the Operating Account, for the benefit of the Applicant, have been confirmed to now be held in accounts of Tradexpress Auto Nigeria Ltd, an affiliate of Trade X Group, which accounts are not included as collateral under the Original Loan Agreement. In sum, proceeds that were clearly meant to be held in an account as collateral for the benefit of the Applicant, had been transferred, without authority, to a company in Nigeria;
 - b) Trade X Group had misreported collateral positions of the Debtor in the weekly collateral reports required under the Original Loan Agreement, including, just by way of example:
 - i. Reporting Vehicles valued at around \$3.5 million USD on May 25, 2021 and \$2.1 million USD on June 3, 2022, as well as misreporting the existence of \$26.8 million USD and \$28.3 million USD, on those respective dates, that was not in the Debtor’s bank account (i.e. the Canadian Operating Account);

- ii. Continuing to include the HST Tax Credit Value in the computation of the Borrowing Base during periods when the Canada Revenue Agency was not paying the HST Tax Credit to TX OPS CC or Davidson Motors Incorporated; and
 - iii. Continuing to include HST Tax Credit Value as Collateral during periods when it was simultaneously pledged to lenders under indebtedness of affiliates of the Debtor (or TSX OPS Funding I, LLC), the cumulative effect of which resulted in material Borrowing Base Deficiencies with respect to the weekly reporting periods from October 2021 through May 2022;
 - c) In September 2022, it was discovered that certain cars that were pledged under the Original Loan Agreement and were listed as being located in Ontario, had in fact been sold and were no longer in Canada. The funds from the sale of these cars were never applied against the amounts owing to the Applicant, despite the clear provisions of the Original Loan Agreement, nor was this sale properly reflected in the Borrowing Base.
5. As a result of this deceptive and questionable conduct, and in order to ensure that HLC be provided with the proper security following the above-described misappropriation of funds and collateral, the parties entered into the LSA, such that WE became the new borrower, and the Applicant was given first-ranking security on all of the shares of WE and its assets.
 6. Since then, and as will be explained in greater detail below, Trade X Group has continued to act in a manner that is detrimental to WE. Moreover, WE itself has failed to abide by certain basic obligations, including by neglecting to remit to tax authorities for the period ranging from June 2022 to December 2022, sales taxes amounting to approximately \$2.9 million. The amount owing has since been reduced to approximately \$2.3 million, with the Debtor having agreed to a monthly reimbursement plan.
 7. Finally, HLC has been just advised that a secured creditor of Trade X Group, the parent company of WE, is looking to possibly file a receivership application or a creditor-led CCAA application in Ontario against not only Trade X Group, but also WE, despite having absolutely no security in the assets of the Debtor, an entity with its registered office located in Quebec. If such an application is filed and granted, the Applicant has been informed that the transaction for the potential purchase of WE will be terminated, with the potential purchaser being unwilling to engage in such a global insolvency process.
 8. In these circumstances, the Applicant seeks from this Court, on an urgent basis, the issuance of the following orders pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"), in respect the Debtor:
 - a) a first day initial order (the "**First Day Order**"), a copy of which is communicated herewith as **Exhibit R-1**:

- i. appointing KPMG Inc. ("**KPMG**" or the "**Monitor**") as the monitor of the Debtor in these CCAA proceedings;
 - ii. staying all proceedings and remedies taken or that might be taken in respect of the Debtor or any of its property, save exception, for an initial period of ten (10) days in accordance with the CCAA (the "**Stay Period**");
 - iii. granting an Administration Charge and a Directors' Charge (as such terms are defined below); and
 - iv. ordering the sealing of any confidential exhibits which may be filed in support of this Application;
- b) an amended and restated initial order (the "**Initial Order**"), a copy of which is communicated herewith as **Exhibit R-2**:
- i. extending the Stay Period to February 10, 2024;
 - ii. confirming the appointment of KPMG as the Monitor of the Debtor in these proceedings;
 - iii. ordering that the Monitor, acting for and on behalf of the Debtor, be empowered to borrow by way of a revolving credit or otherwise from HLC, some monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2 million at any time and granting an Interim Lender's Charge (as defined below) to secure the amounts payable to HLC in accordance with the Initial Order;
 - iv. approving a Key Employee Retention Plan (the "**KERP**") as well as a KERP Charge (as defined below) securing the Debtor's obligations under the KERP;
 - v. confirming the approval of the Administration Charge and a Directors' Charge; and
 - vi. ordering the sealing of any confidential exhibits filed in support of this Application.

2. THE DEBTOR'S BUSINESS AND AFFAIRS

2.1. Overview of the Business of the Debtor (WE)

9. WE was founded in 2013 as a digital auction service, offering Canadian dealers in Ontario and Quebec an efficient solution to trading vehicles without local community limitations.
10. Since then, WE has developed into a business that sells used cars to registered dealers in Quebec, Ontario, Eastern Canada and the United States. Accessible via computer, tablet and smartphone, WE offers a solution to car dealers in order to

increase their sales conversion through, notably an industry leading vehicle photo capture process.

11. More specifically, dealers can access a daily auction platform which allows them to buy and sell wholesale vehicles with other dealers throughout North America. WE's digital auction platform offers users access to the following services:
 - a) **Auction:** Daily auctions offering a diverse line up of approximately 500 vehicles to a vast network of North American dealers;
 - b) **Appraisal:** A comprehensive appraisal of any vehicle is offered within a short time frame (i.e. 20 minutes), which appraisal is then accompanied by an assurance guarantee, which safeguards the validity of the appraisal for a user for a duration of 14 days; and
 - c) **Instant Buy Catalogue:** Users can bypass the digital auction platform and gain access to a comprehensive inventory of vehicles ready for direct purchase, which eliminates the need for engaging in what can be a competitive bidding process.
12. WE operates its business from a leased premises, located at 501 Laurier Boulevard, Suite 101, in Sainte-Marie-Madeline, Quebec.

2.2. Corporate Structure

13. WE is a private corporation that was incorporated pursuant to the *Canada Business Corporations Act* (the "**CBCA**"), as appears from a copy of the relevant extracts of the Quebec Registry of Enterprises for WE communicated herewith as **Exhibit R-3**.
14. In 2021, Trade X Group, a corporation with headquarters in Ontario, acquired the assets of Wholesale Express, and then transferred those assets into WE, as a new entity created for the sole purpose of the acquisition.
15. As a result, WE is the wholly-owned direct subsidiary of Trade X Group, a corporation with headquarters in Ontario, as appears from the following organizational chart:



16. WE operates as a standalone company and has a separate management team from Trade X Group.
17. From time to time, Trade X Group will acquire certain vehicles from WE at fair market value.

2.3. Employees

18. As of November 15, 2023, WE has approximately 55 employees of which 40 employees are located and employed in Quebec and 15 employees elsewhere in Canada.
19. The Debtor's gross payroll obligations, including commissions, for the fiscal year 2022 amounted to approximately \$7.56 million.

2.4. Assets

20. As at September 30, 2023, the Debtor's total current assets included the following:

Nature	Approximate Book Value
Bank	\$662,000
Receivables	\$6,924,000
Inventory	\$697,000
Advances	\$7,920,000
Prepaid Expenses	\$27,000
Other Current Assets	\$256,000
Total:	\$16,485,000

21. In addition to the foregoing, the Debtor has certain additional assets, which bring the total asset value as at September 30, 2023, to approximately \$49,806,000, broken down as follows:

Nature	Approximate Book Value
Capital Assets (Net)	\$135,000
Intangible Assets	\$11,494,000
Asset under construction (MVP Project)	\$1,657,000
Goodwill	\$20,035,000
Total:	\$33,321,000

22. In addition to the foregoing, the Debtor's books and records show an intercompany receivable owing from Trade X Group to WE in the amount of \$7,543,00. It is the

Applicant's understanding that this amount is owing for vehicles sold by WE to Trade X Group, which Trade X Group has, of this date, never repaid.

2.5. Indebtedness

23. As at September 30, 2023, the total indebtedness of the Debtor amounted to approximately \$65.5 million. Of that amount, approximately \$53.5 million was owed to unsecured creditors, whereas the indebtedness of the Debtor *vis-à-vis* its sole secured creditor, the Applicant, amounts to almost \$12 million, as appears from the below:

Secured and Unsecured Claims	Approximate Amount of Indebtedness
HLC Debt	\$12,000,000 (this amount appears on the books and records of Trade X Group, despite the Debtor being the borrower under the LSA)
Suppliers and Other Creditors	\$6,298,000
Sales Taxes	\$2,903,000
Intercompany Loan	\$43,809,000
Employees' Accrued Salaries and Vacations	\$520,000
Total:	\$65,531,000

3. THE APPLICANT'S INTEREST IN THE PROPOSED RESTRUCTURING

3.1. The Secured Indebtedness Owed to the Applicant

24. As mentioned above, on August 18, 2020, the Original Loan Agreement was entered into, pursuant to which funds were disbursed to Trade X Group by HLC. However, following a number of amendments, and the disclosure of information relating to the misappropriation of funds and collateral by Trade X Group, the parties entered into the LSA on December 23, 2022, notably in order to replace the Original Borrower (TX OPS Funding LLC) with WE. A copy of the Original Loan Agreement is attached hereto as **Exhibit R-4**.
25. As such, the Debtor is now indebted to the Applicant pursuant to the LSA, entered into by and among the Applicant, as lender, the Debtor, as borrower and Trade X Group, as pledgor. A copy of the LSA is communicated herewith as **Exhibit R-5**.
26. Pursuant to the terms of the LSA, the Debtor unconditionally promised to pay the Applicant the principal amount of the loan by June 23, 2023, which amounts were used by the Debtor to fund general corporate and working capital requirements.
27. By June 23, 2023, both the Debtor and Trade X Group were in default under the LSA and unable to repay the principal amounts owing thereunder. As such, the Applicant agreed to enter into a Forbearance Agreement with the Debtor and

Trade X Group, pursuant to which, the Applicant agreed to forbear from exercising any remedies arising from said defaults until the earliest of, among other events, (i) September 30, 2023, or (ii) a term sheet for the sale of the WE business was terminated (which term sheet was attached as Schedule A to the Forbearance Agreement) or WE was no longer able or willing to pursue any other proposed acquisition. As will be described in detail below, Trade X Group has been actively trying to sell the shares of WE since January 2023 to be able to repay the Applicant. A copy of the Forbearance Agreement dated June 23, 2023 is attached hereto, **under confidential seal**, as **Exhibit R-6**.

28. On September 21, 2023, the Debtor and the Applicant executed the Amendment No. 1 to the Forbearance Agreement in order to, among other things, agree to extend the deadline to repay the loan to October 31, 2023. A copy of the Amendment No. to the Forbearance Agreement is attached hereto, **under confidential seal**, as **Exhibit R-7**.
29. The total amount outstanding under the LSA in principal and interest as of the date of this Application is \$12 million (excluding costs and subject to adjustment, the "**Secured Debt**").
30. As of the date of this Application, the Secured Debt is secured by, *inter alia*, the following:
 - a) A hypothec on the universality of moveable property of the Debtor as further described in the Deed of Hypothec dated as of December 22, 2022, granted in favour of HLC for an amount of \$17,250,000 with interest thereon at 25% per annum and registered at the Register of Personal and Movable Real Rights (RPMRR) on December 22, 2022, under number 22-1417720-0001 (the "**Movable Hypothec**");
 - b) A pledge of the securities dated as of December 23, 2022 in favour of HLC pursuant to which by Trade X Group granted a senior security interest in all of its present and future equity interest shares in the Debtor, which share certificates are currently held by the undersigned counsel on behalf of the Applicant (the "**Securities Pledge Agreement**"); and
 - c) A Guarantee dated as of December 23, 2022 granted by Trade X Group, in favour of HLC, guaranteeing the obligations of WE pursuant to the LSA (the "**Guarantee**").

A copy of the Movable Hypothec, the Securities Pledge Agreement and the Guarantee are respectively attached hereto as **Exhibit R-8, R-9 and R-10**.

31. The LSA is also subject to an Amended and Restated Intercreditor Agreement dated as of December 23, 2022, by and among, (i) as borrowers, the Debtor, TX OPS Funding II, LLC, TX OPS Global Funding I, LL (collectively referred therein, as the **Subsidiary Borrower**), and (ii) as lenders, TX OPS Indiana Limited, TX OPS Canada Corporation, Trade X Group, the Applicant (HLC), MBL Administrative Agent II LLC and Aimia Inc., which confirms, among things, that HLC is the only senior secured lender in regards to the assets of the Debtor and that nothing contained in the Intercreditor Agreement, will prevent HLC from

enforcing its remedies with respect to its Collateral (as such term is defined in the Intercreditor Agreement). A copy of the Intercreditor Agreement is attached hereto as **Exhibit R-11**.

32. The Debtor is thus indebted to the Applicant, however the Applicant, as the sole secured creditor of the Debtor, now finds itself in a situation where the repayment of the Secured Debt is a risk. Nonetheless, the Applicant is confident that the CCAA process will allow the parties, with the assistance of the proposed Monitor, to more efficiently negotiate and implement a transaction which will maximize value in order to repay the Secured Debt, as well as ensure that no further material breaches pursuant to the LSA are made.

3.2. The Breaches by Trade X Group and Impact on the Debtor

33. Over the course of more than a year, it has become clear to the Applicant, that Trade X Group and the Debtor have made a series of intentional and unintentional misrepresentations to the Applicant, notably to inflate their assets and misreport on liabilities, the whole in contravention of the LSA, as well as good borrowing practices.
34. In addition to the breaches by Trade X Group described above in the introduction to this Application, it has become increasingly clear that Trade X Group continues to inappropriately benefit from WE, by taking funds from it in order in order to support its own working capital needs, the whole in contravention of the LSA and to the detriment of the Applicant.
35. More specifically, in June 2023, Trade X Group transferred \$400,000 of funds from WE, in order to be able to satisfy Trade X Group's own payroll obligations. Moreover, up to \$1.6 million has been taken by Trade X Group from WE to fund other working capital needs and has yet to be reimbursed.
36. This inappropriate taking of funds is compounded with the fact that Trade X Group owes approximately \$7.5 million to WE for vehicles purchased from WE, but for which it has failed to repay.
37. Moreover, the Chief Executive Officer and Chief Financial Officer of Trade X Group recently mentioned to the Applicant, that they intend to use additional funds from WE in order to fund working capital needs of Trade X Group, despite this being contrary to the agreement amongst the parties, as well as detrimental to HLC's abilities to be repaid pursuant to the LSA.
38. Ultimately, it is essential that WE obtain protection from this Court in order to stop Trade X Group from continuing to pillage WE, to the detriment of all of the Debtor's stakeholders, including the Applicant.

3.3. Uncompleted Sale Process

39. Since January 2023, WE's shareholder, Trade X Group, has been conducting, with the assistance of Canaccord Genuity Inc. ("**Canaccord**"), a solicitation process with a view to finding a purchaser for the shares of WE, in order to repay its

substantial indebtedness to the Applicant, with any balance to be used to pay the creditors of Trade X Group.

40. During the course of this sale process, which was launched in January 2023, Canaccord reached out to 40 interested parties, 13 of which manifested their interest and executed non-disclosure agreements. Since then, a number of these parties accessed the confidential data room, resulting in a handful of expressions of interest.
41. As of this date however, a single potential purchaser has made an offer, such that WE, Trade X Group and the potential purchaser (the "**Potential Purchaser**") have been negotiating a transaction for several months. The initial offer, from the Potential Purchaser, contemplated the participation of several insiders, and was ultimately rejected by Trade X Group's secured creditor.
42. A revised offer was then put forward, and the Applicant was initially informed by Trade X Group that the sale of WE to the Potential Purchaser, providing for the payment in full of the Secured Debt, was intended to be closed by June 2023.
43. The closing of the transaction has since been delayed on multiple occasions, and at this stage, it has become clear that there is no visibility or assurances as to *when* or even *if*, this potential transaction can be consummated.
44. Most recently, it has become clear that it is impossible to agree on transaction terms for the sale of WE, because the creditors in Trade X Group are in disagreement regarding how the balance of funds will be used following repayment to the Applicant. In addition, the parties continue to discuss and negotiate how and on what terms releases and guarantees can be implemented in order to ensure the Potential Purchaser obtains a clean asset.
45. Accordingly, while the Applicant remains willing to pursue discussions with the Potential Purchaser in order to explore transaction possibilities, including a going-concern transaction, HLC has lost all confidence in the ability of Trade X Group and WE to close any transaction that will result in the payment of its Secured Debt.
46. While a transaction certainly remains feasible, the Applicant respectfully submits that it is only possible in the context of CCAA proceedings and with the assistance and supervision of the Proposed Monitor, and not through global CCAA proceedings involving Trade X Group, which would result in the Potential Purchaser walking away from the transaction, due to the inherent complications that have arisen with Trade X Group and its group of creditors, none of whom have any interest in WE.
47. Moreover, for reasons set out above, HLC is concerned that if a transaction with the Potential Purchaser does not conclude, there will likely be a material erosion to the value of HLC's security, thereby potentially causing an irreparable prejudice to HLC.

4. THE APPLICANT'S PROPOSED RESTRUCTURING

48. In light of the foregoing, the Applicant believes that it has become necessary to seek relief and protection for the Debtor under the CCAA, in order to protect the Debtor's operations from Trade X Group's intervention in an efficient manner and continue with the efforts to proceed with a sale of all or part of the business of the Debtor as a going concern, possibly and if feasible, to the Potential Purchaser.

4.1. Creditor-Led CCAA Proceedings

49. Canadian courts have recognized that creditors have standing to commence proceedings in respect of a debtor company under the CCAA and have authorized the initiation of such proceedings on numerous occasions, including where there are concerns regarding the capabilities of the debtor company or its management to effectively implement a proposed restructuring, including the sale or all or substantially all of the assets of a debtor.
50. The commencement of CCAA proceedings has also been regarded as a proper exercise of creditors rights where, ideally, such proceedings will preserve the going-concern value of the insolvent business and allow it to continue for the benefit of the debtor company's stakeholders.
51. Because of the Debtor's financial situation, including its inability to repay the Secured Debt despite it being owing and payable, as well as the uncertainty resulting from the inability to close a transaction with the Potential Purchaser, the Applicant has significant concerns that some creditors may seek to take measures against Trade X Group or WE, all of which would be detrimental to the going concern value of WE.
52. Moreover, the integral role of the proposed Monitor as an officer of the Court, will contribute to the success of a proposed restructuring, and maximization of value for the Applicant and other creditors, while providing assurances regarding the representations made to the Applicant and others regarding the Debtor's financial situation, including the location and value of its assets.

4.2. Proposed Restructuring

53. The Applicant's proposed restructuring process (the "**Restructuring Process**") contemplates the implementation of a transparent and court-supervised process aimed at stabilizing the Debtor's operations and identifying one or more transactions in respect of the business or property of the Debtor, possibly to the Potential Purchaser, which would permit the continuation of all or part of the business as a going concern.
54. The Applicant will provide significant support to the Restructuring Process, notably, by providing interim financing, if necessary, to ensure that liquidity needs are met throughout this process, thereby permitting the continuation of the Debtor's operations and guaranteeing that the going concern value is maintained, without further putting at risk its prospects of recovering the Secured Debt.

55. The Applicant believes it is imperative that any further efforts to sell the business and repay the Secured Debt be done through a court-supervised process, with the assistance of the proposed Monitor, and ultimately, approval of any transaction by the Court.
56. The Applicants respectfully submit that the above proposed Restructuring Process under the supervision of this court constitutes the best option for the realization of the Debtors' assets and the maximization of their value for the benefit of its stakeholders, which may include, if necessary, a re-canvassing of the market by proposed Monitor. In the event that no purchaser is identified, the Applicant will consider credit bidding in order to save the going concern value of the Debtor, although its main priority is to sell WE to a third-party purchaser.
57. Without the protection and supervision of this Court, it is anticipated that actions may be taken by the secured creditors of Trade X Group to sell WE's assets through a court-supervised process in Ontario, despite it being very clear that the only secured creditor with interests in WE's assets is the Applicant.

5. RELIEF SOUGHT UNDER THE PROPOSED ORDERS

5.1. Commencement of Creditor-Led CCAA Proceedings

58. It is respectfully submitted that the Debtor is a debtor company to which the CCAA applies and, as noted above, that the commencement of these creditor-led CCAA proceedings is appropriate in the circumstances.

5.2. Appointment and Powers of the Proposed Monitor

59. KPMG has been assisting the Applicant and the Debtor since the beginning of November 2023 in connection with a potential sale and the exploration of various restructuring alternatives.
60. The proposed Monitor is a licensed insolvency trustee, is qualified to act as monitor and has agreed to act in that capacity. Moreover, there is no restriction precluding the proposed Monitor from acting as Monitor in the present CCAA proceedings.
61. Given the circumstances outlined above, the draft First Day Order and the Initial Order seek the expansion of the proposed Monitor's powers in the context of these CCAA proceedings to implement the Restructuring Process for the benefit of the Debtors' stakeholders.
62. Considering its valuable insights into the Debtor's business and operations and its ability to perform the monitoring duties without further delay, the Application believes that it is in the best interests of all stakeholders that KPMG be appointed as monitor in the within proceedings.

5.3. Stay of Proceedings

63. The present proceedings have been filed by the Applicant because the Debtor currently find itself in dire financial circumstances, is insolvent, is not able to meet its obligations and requires, for the benefit of its stakeholders, a stay of

proceedings for an initial period of ten (10) days in order to preserve the status quo during the initial Stay Period.

64. At the Comeback Hearing, the Application will request a further extension of the Stay Period to February 10, 2024 to allow for the implementation of the Restructuring Process.

5.4. Interim Financing

65. Over the course of the past few days, the Applicant, together with the Debtor and the proposed Monitor, have had several discussions regarding the Debtor's financing needs to ensure the funding of the proposed Restructuring Process, and the payment of the Debtor's post-filing working capital requirements during the pendency of these proceedings.
66. On the basis of these discussions, HLC (in such capacity, the "**Interim Lender**") is prepared to provide interim financing to the Monitor, acting for and on behalf of the Debtor, in an amount not exceeding \$2 million to be guaranteed and secured by a super-priority charge (the "**Interim Lender's Charge**") on all present and after-acquired property of the Debtor.
67. The interim financing will be used, to the extent required, to implement the proposed Restructuring Process.
68. As things currently stand, the Debtor are currently expected to run out of cash by December 2023.
69. Accordingly, given the liquidity needs of the Debtor, the Interim Lender proposes that the Monitor be empowered to borrow by way of a revolving credit or otherwise from HLC, such monies from time to time the Monitor may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2 million, the whole in accordance with the Initial Order.
70. The Applicant understands that the proposed Monitor is supportive of the proposed interim financing and the Interim Lender's Charge, as well as the manner in which the advances thereunder should be made.

5.5. Administration Charge

71. The Applicant respectfully submits that a \$500,000 administration charge should be granted in accordance with the draft Initial Order (the "**Administration Charge**"). As appears from the Proposed First Day Order, the Applicant requests that such charge takes rank prior to any all other charges existing over the assets and undertakings of the Debtor.
72. During these proceedings, including the Restructuring Process, the Debtor will require the assistance of, *inter alios*, the following professionals:
- a) **The Applicant's legal counsel:** the Applicant's legal counsel has been retained to assist it in the conduct of these proceedings, including the Restructuring Process; and

- b) **KPMG and its legal counsel:** KPMG has agreed to act as monitor to the Debtor's restructuring proceedings and to assist the Debtor and the Applicant in the context of the Restructuring Process.

73. In this context, the Applicant respectfully submits that the Administration Charge sought is necessary and appropriate, as well as reasonable, under the circumstances and that, accordingly, it should be granted in accordance with the draft Initial Order.

5.6. Director's Charge

74. In order to carry on business during these proceedings and in order to complete the Restructuring Process, the Applicant requires the active and committed involvement and continued participation of the Debtors' remaining director and officer (the "**Remaining Director**").

75. Although the Applicant understands that the proposed Monitor will ensure that the Debtor complies with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax, it is expected that the Remaining Director will nevertheless be concerned about the possibility for its personal liability in the context of the present proceedings given the Restructuring Process.

76. Considering the risk to which the Remaining Director may be exposed to in assisting the Applicant during the Restructuring Process, the Remaining Director requires the Debtor to indemnify it of all liabilities which they may incur in the context of its employment after the filing of these proceedings.

77. The Applicant therefore requests a Court-ordered charge in the amount of \$850,000 (the "**Directors' Charge**") over the Debtor's assets, property and undertaking, to indemnify the Remaining Director in respect of any liability which they may incur in connection with these proceedings. As appears from the draft First Day Order and Initial Order, the Applicant request that such charge takes rank immediately after the Administration Charge and the Interim Lending Charge (in the case of the Initial Order).

78. The Applicant submits that the requested Director's Charge is reasonable and adequate given, notably, the potential exposure of the Remaining Director to personal liability, especially under a scenario where the Debtor would not be able to secure satisfactory offers in respect of their business and assets.

79. In addition, the Applicants further submit that the Directors' Charge will provide some assurances to the Debtors' employees with regards to the payment of their salaries.

80. Indeed, while the insolvency of the Debtor and its non-payment of various employee obligations may trigger the personal liability of the Remaining Director, any recourse initiated by the Debtor's employees does not guarantee them any recovery. Therefore, the creation of a security in favour of the Remaining Director for sums for which they may be held liable to employees (but for which the Debtor

is ultimately liable) enhances such employees' chances of recovery by, in effect, creating a security for their claims.

81. Finally, KPMG has advised that it is supportive of the Directors' Charge, including the amount thereof.

5.7. KERP and KERP Charge

82. The Applicant, in consultation with the Monitor and the Debtor, will be developing the KERP in order to ensure that key members of management and other employees are retained throughout the CCAA process, and in particular, until implementation of a transaction for the sale of all or part of the Debtor's business.

83. The terms of the KERP will be presented at the Comeback Hearing as well as a request for a priority KERP Charge over the Debtor's assets in order to secure the amounts payable pursuant to the KERP.

5.8. Payment of Certain Essential Creditors to the Value of the Business

84. As appears from the draft First Day Order and the Initial Order, the Applicant asks that the Debtor be authorized, but not obligated, to pay certain creditors, notably car dealers, failing which the viability of the Debtor's business will be significantly threatened.

85. The Applicant is requesting that the Debtor be permitted to pay, in consultation with KPMG and the Application, the following:

- a) Any pre-filing accrued salaries, vacation or other benefits owing to the employees of the Debtor; and
- b) Any amounts owing to certain car dealers that have transacted through the Debtor, and who are owed sums for vehicles purchased and sold.

86. Failure by the Debtor to pay the above amounts could have detrimental results, and essentially result in an important devaluation of the business, should employees leave, or alternatively, if dealers are no longer willing or able to conduct business with the Debtor.

87. KPMG has advised the Applicant that it is supportive of this request.

88. Given the nature of the Applicant's operations, and the importance of maintaining value for the benefit of all stakeholders, the Applicant submits that the ability to make these payments should be authorized.

6. CONCLUSIONS

89. For the reasons set forth above, the Applicant believes it is both appropriate and necessary that the relief being sought be granted, and that this requested relief is consistent with the remedial objectives of the CCAA.

90. The Applicant seeks to implement the Restructuring Process in good faith, with regard to the stakeholders of the Debtor, namely through the negotiation and implementation of a transaction, which is already underway.
91. All parties who may be affected by the present motion will be served with the present Application.
92. Considering the urgency of the situation, the Applicant respectfully submits that the notices given for the presentation of this Application are proper and sufficient.
93. The Applicant respectfully submits that this Application should be granted in accordance with its conclusions.

WHEREFORE, MAY THIS COURT:

GRANT this *Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* (the "**Application**").

ISSUE orders substantially in the form of:

- a) the draft First Day Order communicated as Exhibit R-1 at the first day hearing; and
- b) the draft Initial Order communicated as Exhibit R-2 at the comeback hearing.

WITHOUT COSTS, save and except in case of contestation.

MONTREAL, November 20, 2023



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**Secured Creditor HIGHCREST LENDING
CORPORATION**

SWORN STATEMENT

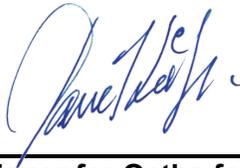
I, the undersigned, Robert Weening, having my principal place of business at 208 South Llano, Fredericksburg, Texas, 78624, solemnly declare the following:

1. I am the Managing Director of Operations of Highcrest Lending Corporation; and
2. All the facts alleged in the *Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* are, to the best of my knowledge, true.

AND I HAVE SIGNED


Robert Weening

**Solemnly declared before me, by technological means,
at Montreal, on the 20th day of November 2023**





Commissioner for Oaths for the Province of Québec

NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the *Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* will be presented for adjudication the Honourable Louis J. Gouin, J.C.S., of the Superior Court of Quebec, Commercial Division, at the Montréal Courthouse located at 1 Notre-Dame Street East, on **November 22, 2023, at 9:30 AM, in room 15.11.**

The link to connect to the virtual courtroom can be found below.

DO GOVERN YOURSELVES ACCORDINGLY.

15.11	<p>Rejoindre la réunion Microsoft Teams +1 581-319-2194 Canada, Québec (Numéro payant) (833) 450-1741 Canada (Numéro gratuit) ID de conférence : 508 117 984#</p> <p>Numéros locaux Réinitialiser le code confidentiel En savoir plus sur Teams Options de réunion</p> <p>Rejoindre à l'aide d'un dispositif de vidéoconférence teams@teams.justice.gouv.qc.ca ID de la conférence VTC : 1115629941 Autres instructions relatives à la numérotation VTC</p>
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MONTREAL, November 20, 2023



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Secured Creditor

HIGHCREST LENDING CORP.

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

No.: 500-11-

IN THE MATTER OF THE OF COMPANIES'
CREDITORS ARRANGEMENT ACT OF:

HIGHCREST LENDING CORPORATION

Applicant / Secured Creditor

- and -

13517985 CANADA INC.

Debtor

- and -

KPMG INC.

Proposed Monitor

**LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF
A FIRST DAY INITIAL ORDER AND
AN AMENDED AND RESTATED INITIAL ORDER**

(Sections 11 and ff., 23 and 36 of the *Companies' Creditors Arrangement Act*)

Exhibit R-1:	Draft First day Initial Order
Exhibit R-2:	Draft Amended and Restated Initial Order
Exhibit R-3:	Extracts of the Quebec Registry of Enterprises for Wholesale Express (13517985 CANADA INC.)
Exhibit R-4:	Original Loan Agreement dated August 18, 2020
Exhibit R-5:	Master Amended and Restated Loan and Security Agreement dated December 23, 2022
Exhibit R-6: (under seal)	Forbearance Agreement dated June 23, 2023

Exhibit R-7: <i>(under seal)</i>	Amendment No.1 to the Forbearance Agreement dated September 21, 2023
Exhibit R-8:	Movable Hypothec dated as of December 22, 2022
Exhibit R-9:	Securities Pledge Agreement dated as of December 23, 2022
Exhibit R-10:	Guarantee dated as of December 23, 2022
Exhibit R-11:	Amended and Restated Intercreditor Agreement dated as of December 23, 2022

MONTRÉAL, November 20, 2023



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Secured Creditor

HIGHCREST LENDING CORP.

**SUPERIOR COURT
(Commercial Division)**

N° :

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**IN THE MATTER OF THE PLAN OF ARRANGEMENT AND
COMPROMISE OF:**

HIGHCREST LENDING CORPORATION

Applicant / Secured Creditor

-and-

13517985 CANADA INC.

Debtor

-and-

KPMG INC.

Proposed Monitor

BS0350

File: 152593-1001

**APPLICATION FOR THE ISSUANCE OF
A FIRST DAY INITIAL ORDER AND
AN AMENDED AND RESTATED INITIAL ORDER
(Sections 11 and ff., 23 and 36 of the *Companies' Creditors
Arrangement Act*)**

ORIGINAL

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