

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: CDS U.S. HOLDINGS, INC., <i>et al.</i> , ¹ Debtors.	)))))))	Chapter 15 Case No. 20-11719 (CSS) (Jointly Administered)
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**FOREIGN REPRESENTATIVE’S REPLY IN SUPPORT
OF THE VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN
MAIN PROCEEDINGS, (II) RECOGNITION OF FOREIGN REPRESENTATIVE,
AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

Cirque de Soleil Canada Inc., in its capacity as the authorized foreign representative (the “Foreign Representative”) of the above-captioned debtors (collectively, the “Debtors”), which are the subject of jointly-administered proceedings under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) in the Superior Court of Quebec, Commercial Division (the “Canadian Proceedings”) file this reply (this “Reply”) to the *Limited Objection and Reservation of Rights of the 2L Group to Debtors’ Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* [Docket No. 76] (the “Objection”) filed by the Ad Hoc Committee of Independent 2L Holders (the “Minority 2L Group”) objecting to the Foreign Representative’s *Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the*

¹ The last four digits of Debtor CDS U.S. Holdings, Inc.’s tax identification number are (0086). Due to the large number of debtor entities in these chapter 15 cases, which are jointly administered, a complete list of the debtor entities and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ noticing agent at www.omniagentsolutions.com/cirquedusoleil. The location of the Debtors’ service address for purposes of these chapter 15 cases is: 8400, 2e Avenue Montréal, Quebec H1Z 4M6 Canada.

Bankruptcy Code [Docket No. 2] (the “Verified Petition”).² In further support of the Verified Petition, the Foreign Representative respectfully states as follows:

REPLY

1. The Minority 2L Group does not object to the recognition of the Canadian Proceedings as foreign main proceedings of the Debtors. Instead, the Objection claims that the proposed recognition order attached to the Verified Petition (the “Order”) improperly recognizes the SISP Order and the *Order Appointing a Receiver* (the “Receivership Order”) of the Canadian Court in the United States.³ The Foreign Representative did not intend to seek recognition of such orders and has filed an amended version of the proposed Order (the “Amended Order”), contemporaneously herewith, which strikes the disputed language to resolve all doubts concerning the relief sought.⁴ As a result, the Minority 2L Group’s Objection should be overruled as moot.

2. More troubling, however, the Minority 2L Group’s Objection previews a forthcoming effort to circumvent the Canadian Court’s authority with a collateral attack of the Canadian Court’s SISP Order in the United States. The Minority 2L Group has previously tried, and failed, to challenge the SISP Order in the Canadian Proceedings. It should not be permitted to use this Court as a second bite at the apple or for an attempt at an end-run of the Canadian Court’s recognized authority. Accordingly, in addition to mooted the purported Objection, the

² Capitalized terms used but not defined herein have the meaning ascribed to them in the Verified Petition.

³ Specifically, the Order provides, in relevant part, that “[u]pon entry of this Order (this ‘Order’), the Canadian Proceedings *and all prior orders of the Canadian Court* shall be and hereby are granted comity and given full force and effect in the United States” Order ¶ 19 (emphasis added).

⁴ The Amended Order now provides, in relevant part, that “[u]pon entry of this Order (the “Order”), the Canadian Proceedings shall be and hereby are granted comity and given full force and effect in the United States” Revised Order ¶ 19. The Minority 2L Group does not object to the recognition of the First Day CCAA Order and Initial CCAA Order, which the Court previously recognized on an interim basis by orders dated July 2, 2020, and July 17, 2020, respectively [Docket Nos. 37, 53].

Foreign Representative files this Reply to briefly address the Minority 2L Group's improper effort to cast doubt on the fairness of the SISP and the validity of the Debtors' entry into the asset purchase agreement executed with Spectacle BidCo LP (the "Spectacle APA").

3. Contrary to the Minority 2L Group's baseless assertions, the appropriateness of the SISP and of the entry into the Spectacle APA were extensively scrutinized and, following notice and a hearing, properly approved by the Canadian Court. Not only did counsel to the Minority 2L Group receive adequate notice of the hearing on the SISP Order in the Canadian Proceedings (including by being served with the proposed SISP Order and the Spectacle APA), but counsel to the Minority 2L Group actually appeared before the Canadian Court and was given ample opportunity to challenge the Canadian Court's entry of the SISP Order.

4. In fact, during that hearing, counsel to the Minority 2L Group raised substantially the same arguments as the ones levied in the Objection. These objections and arguments were overruled by the Canadian Court on the merits. Importantly, the second lien credit agreement governing the 2L Minority Group's debt with the Debtors (the "2L Credit Agreement") grants the majority second lien holders the right to credit bid all loans outstanding under the 2L Credit Agreement, irrespective of a disagreement from the Minority 2L Group.⁵

5. Having tried and failed to challenge the SISP Order in the Canadian Proceedings—which it recognizes is the foreign main proceedings of the Debtors—the Minority 2L Group

⁵ The 2L Credit Agreement provides, in relevant part, that:

Notwithstanding the foregoing or anything in the Loan Documents to the contrary, *at the direction of the Required Lenders*, the Administrative Agent may, in exercising remedies, *take any and all necessary and appropriate action to effectuate a credit bid of all Loans* (or any lesser amount thereof) for the Borrowers' assets in a bankruptcy

2L Credit Agreement ¶ 10.24(d) (emphasis added). In turn, the 2L Credit Agreement defines "Required Lenders," in relevant part, as: "as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings and (b) aggregate unused Term Commitments" 2L Credit Agreement ¶ 1.01.

certainly should not be permitted to challenge the validity of the SISP Order in the United States merely because it disagrees with the reasoned determination of the Canadian Court. This Court should not be used as a forum for second-guessing.

6. The Foreign Representative will address any further misplaced challenges to the process implemented by the Canadian Court at the appropriate time.

CONCLUSION

7. For all of the foregoing reasons, the Court should grant the relief requested in the Verified Petition, enter the Amender Order, and overrule the Minority 2L Group's Objection.

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Dated: August 6, 2020
Wilmington, Delaware

/s/ Laura Davis Jones

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