

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)	WEDNESDAY, THE
)	
JUSTICE McEWEN)	8th DAY OF JULY, 2020

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

- and -

**AND IN THE MATTER OF THE PROPOSAL OF FOODORA INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

O R D E R

THIS MOTION, made by Koskie Minsky LLP ("**KM**") was heard this day via video conference at, Toronto, Ontario.

ON READING the Affidavit of James Harnum, sworn July 7, 2020, and on hearing the submissions of KM, counsel to Foodora Inc., counsel to the Proposal Trustee of Foodora Inc. ("**Foodora**"), and the Proposed Representative Counsel to the CUPW Couriers of Foodora,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion record is hereby abridged and the Motion is properly returnable today.

2. **THIS COURT ORDERS** that KM is appointed as Representative Counsel pursuant to section 126(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") to all individuals who were contracted with Foodora to provide food courier services and who

were actively providing such services as of February 3, 2020, and who are not represented by the Canadian Union of Postal Workers (collectively the "**Non-CUPW Couriers**" or individually, "**Non-CUPW Courier**") in these proceedings or in any other insolvency proceeding which may be brought before this Honourable Court pertaining to Foodora (the "**Proceedings**"), including for the purpose of administering a settlement for the payment of claims of the Non-CUPW Couriers by Foodora and Delivery Hero SE (the "**Settlement**").

3. **THIS COURT ORDERS** that KM's mandate as Representative Counsel for the Non-CUPW Couriers in the Proceedings and for the Settlement shall include for the purpose of determining and/or settling any Claim (as defined below) in respect of a Non-CUPW Courier arising out of his or her contract with Foodora.
4. **THIS COURT ORDERS** that a Claim is defined as any amount owing which has now arisen or may arise under (a) law or equity and/or, or (b) federal or provincial legislation or regulations thereunder.
5. **THIS COURT ORDERS** that Representative Counsel shall have access to and be provided with copies of all relevant records and data with respect to the Non-CUPW Couriers kept by Foodora with respect to the Non-CUPW Couriers under applicable laws, whether on paper, electronic or any other form.
6. **THIS COURT ORDERS** that pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5, the Proposal Trustee and Foodora are authorized and permitted to disclose personal information of identifiable

individuals who are believed to be Non-CUPW Couriers to Representative Counsel, and Representative Counsel shall maintain and protect the privacy of such information and shall limit the use of such information to its role as Representative Counsel in the Proceedings.

7. **THIS COURT ORDERS** that any individual Non-CUPW Courier who does not wish to be represented by KM in the Proceedings shall, within 15 business days of the issuance of this Order, notify the Proposal Trustee and KM in writing that he or she is opting out of representation by KM and shall thereafter not be bound by the actions of KM and is free to represent himself or herself or be represented by any other counsel that he or she may retain at his or her own expense.
8. **THIS COURT ORDERS** that the KM shall forthwith from the date of issuance of this Order, send a notice ("**Notice**") substantially in the form attached hereto as **Schedule "A"** by email to all of the Non-CUPW Couriers for which contact information is available. The Notice shall also be posted on the Proposal Trustee's and KM's websites, respectively, in respect of the Proceedings.
9. **THIS COURT ORDERS** that Representative Counsel is authorized to take all steps and to do all necessary or desirable acts in carrying out the terms of this Order, including dealing with any regulatory body and any other government or ministry, department or agency, and to take all such steps as are necessary or incidental thereto.
10. **THIS COURT ORDERS** that the professional costs incurred by Representative Counsel on behalf of the Non-CUPW Couriers both before and after the date of this order shall be

paid from amounts payable by Foodora pursuant to the Settlement, and are subject to further order of the Court.

11. **THIS COURT ORDERS** that KM, KM's agents and the Proposal Trustee shall not have any liability as a result of Representative Counsel's appointment or the fulfilment of its duties in carrying out the provisions of this Order, except for claims based on gross negligence or wilful misconduct on their part.
12. **THIS COURT ORDERS** that Representative Counsel shall be at liberty to appoint, employ, or retain such professional or expert advisors from time to time as Representative Counsel may consider necessary or desirable to carry out the provisions of the Order.
13. **THIS COURT ORDERS** that KM shall be at liberty and is authorized at any time to apply to this Court for advice and directions in the discharge or variation of its powers and duties as Representative Counsel in the Proceedings.
14. **THIS COURT ORDERS** that the Proposal Trustee shall be at liberty and is authorized at any time to apply to this Court for advice and directions with respect to the discharge of its obligations under this Order.
15. **THIS COURT ORDERS** that this Order is subject to any further order of the Court in respect of these matters.



McEWEN, J.

SCHEDULE "A"

Court File No.: 31-2641224

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B E T W E E N :

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NOTICE TO NON-CUPW COURIERS

On April 27, 2020, Foodora filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. On that date, firm of Grant Thornton LLP ("**GT**") was appointed proposal trustee in the NOI proceedings.

TAKE NOTICE THAT, pursuant to Order of the Court dated July 8, 2020:

The law firm of Koskie Minsky LLP ("**KM**") was appointed as Representative Counsel of all individuals who were contracted by Foodora Inc. to provide courier services and who were actively providing services as of February 3, 2020, and who are not represented by the Canadian Union of Postal Workers. A copy of the Order is enclosed for your reference. Contact Information for Representative Counsel is below:

Website: kmlaw.ca/foodorarepcounsel

Email: foodorarepcounsel@kmlaw.ca

Toll-free Hotline: 1-844-819-8528

IF YOU DO NOT WISH TO BE REPRESENTED in the proceeding by KM as Representative Counsel and wish to represent yourself or be represented by another lawyer at your own cost, you must, before ●, 2020, provide notice in writing (by letter or email) to both KM and GT indicating that you wish to opt-out of such representation:

Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Attention: Foodora Inc.
Employee Representative Counsel

E-mail: foodorarepcounsel@kmlaw.ca

Grant Thornton LLP
200 King Street West, 11th Floor
Toronto, Ontario, M5H 3T4

Attention: Rob Stelzer
Trustee of Foodora Inc.

E-mail: rob.stelzer@ca.gt.com

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ORDER

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Proposed Representative Counsel to the
Non-CUPW Couriers of Foodora Inc.