Court File No. CL-26-00000256-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

OCTOBER'S VERY OWN ULC

Applicant

and

A.R.I. OVO GROWTH CAPITAL I, LLC

Respondent

APPLICATION UNDER Rule 14.05(3)(d) and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended

NOTICE OF MOTION

The respondent, A.R.I. OVO Growth Capital I, LLC ("**A.R.I.**"), will make a motion to a Judge on October 6, 2026 at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

[ ] In writing under subrule 37.12.1(1) because it is on consent;

[ ] In writing as an opposed motion under subrule 37.12.1(4);

[X] In person;

[ ] By telephone conference;

[ ] By video conference.

at the following location:

330 University Avenue, 9th Floor, Toronto, ON M5G 1R7

THE MOTION IS FOR

(a) a declaration that the following issues raised in the Notice of Application of the applicant, October's Very Own ULC ("**OVO**"), arise under the Convertible Note Purchase Agreement dated July 14, 2025 (as defined below) and the Convertible Promissory Notes issued thereunder, and are subject to the exclusive jurisdiction of the courts of British Columbia:

(i) whether Events of Default occurred under the Convertible Note Agreements (as defined below);

(ii) whether obligations under the Convertible Note Agreements were accelerated;

(iii) whether a Make Whole Fee (as defined below) is payable under the Convertible Note Agreements;

(iv) the enforceability and calculation of any Make Whole Fee under the Convertible Note Agreements; and

(v) the parties' continuing rights and obligations under the Convertible Note Agreements;

(b) a declaration that the relief sought by OVO in paragraphs 1(d) and 1(e) of its Notice of Application is subject to the exclusive jurisdiction of the courts of British Columbia;

(c) an order staying, or alternatively, dismissing, those portions of the application dealing with paragraphs 1(d) and 1(e) of OVO's Notice of Application and any related relief concerning issues arising under the Convertible Note Agreements;

(d) in the alternative, an order converting this application into an action pursuant to Rule 38.10 of the Rules of Civil Procedure, together with such directions respecting pleadings, discoveries, and the future conduct of the proceeding as this Honourable Court considers just;

(e) costs of this motion on a substantial indemnity basis, or such other scale as this Honourable Court considers just; and

(f) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE

The Contractual Framework

(a) On July 14, 2025, OVO and A.R.I. entered into a Convertible Note Purchase Agreement (the "**Purchase Agreement**") pursuant to which OVO issued a series of Convertible Promissory Notes to A.R.I. (the "**Notes**", and together with the Purchase Agreement, the "**Convertible Note Agreements**") in the aggregate principal amount of $5,234,121.93;

(b) The Notes were structured as five-year convertible securities that provide A.R.I. with contractual rights to become equity holders in OVO;

(c) Pursuant to the Convertible Note Agreements, OVO issued to A.R.I. five Notes as follows:

(i) Convertible Promissory Note No. 1 dated July 14, 2025 in the principal amount of $500,063.78;

(ii) Convertible Promissory Note No. 2 dated July 25, 2025 in the principal amount of $323,958.15;

(iii) Convertible Promissory Note No. 3 dated August 5, 2025 in the principal amount of $1,512,500;

(iv) Convertible Promissory Note No. 4 dated August 5, 2025 in the principal amount of $2,345,320; and

(v) Convertible Promissory Note No. 5 dated August 5, 2025 in the principal amount of $552,280;

(d) The Notes include a negotiated "Make Whole Fee", which is a contractual amount required to provide A.R.I. with the agreed minimum return if the Notes do not convert to equity, are repaid, become due, or are otherwise taken out before A.R.I. has received the benefit of the five-year investment period and the equity-linked rights attached to the Notes;

(e) The Convertible Note Agreements contain exclusive jurisdiction and governing law provisions. Specifically, sections 5(k) and 5(l) provide:

> (k) Consent to Jurisdiction. The parties (a) irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the Province of British Columbia for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement; (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the courts of the Province of British Columbia; and (c) waive, and agree not to assert, by way of

> motion, as a defence, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.
>
> (l) Governing Law. This Agreement, the Notes and the rights and obligations of the parties hereunder and thereunder shall be governed by the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia, without regard to principles of conflict of laws.

(f) OVO defaulted under the Convertible Note Agreements in that it failed, among other things, to make certain interest payments to A.R.I. when such payments became due;

(g) On February 27, 2026, A.R.I. delivered a Notice of Default identifying multiple Events of Default under the Convertible Note Agreements and expressly reserving all rights and remedies available thereunder;

(h) The Notice of Default further advised that A.R.I. was entitled to accelerate the indebtedness and demand immediate payment of all amounts owing under the Convertible Note Agreements;

(i) Following OVO's defaults under the Notes, the parties entered into a Forbearance Agreement on or about March 20, 2026 (the "**Forbearance Agreement**");

(j) Section 1.6 of the Forbearance Agreement provides that it shall "be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflicts of law or principles of comity";

(k) Further, s. 1.7 of the Forbearance Agreement provides that the parties "*irrevocably attorn to the exclusive jurisdiction of the Superior Court of Justice of the Province of Ontario sitting in the City of Toronto for all matters arising out of or in connection with this Agreement*";

(l) Prior to the expiry of the Forbearance Period, on May 25, 2026, A.R.I. provided OVO with a repayment statement setting out the amounts required to fully satisfy OVO's obligations, including the Make Whole Fee and professional fees;

(m) OVO was therefore aware that A.R.I. asserted that those amounts were due and payable before the expiry of the Forbearance Period (as defined in the Forbearance Agreement), yet disputed its obligation to pay them;

(n) The Forbearance Agreement did not replace, extinguish, novate or supersede the Convertible Note Agreements and expressly provided that, except as amended, the Convertible Note Agreements remained in full force and effect;

(o) In the Forbearance Agreement, OVO acknowledged, among other things, that Events of Default had occurred and were continuing, that amounts owing under the Convertible Note Agreements remained owing, and that A.R.I. had not waived its rights arising from those defaults;

(p) Any determination regarding whether a Make Whole Fee is payable, whether it became payable, whether it is enforceable, and how it is to be calculated requires interpretation and enforcement of the Convertible Note Agreements, and such interpretation is required to be made pursuant to the laws of the Province of British Columbia in the British Columbia courts;

(q) The Make Whole Fee forms part of the rights and obligations created by the Convertible Note Agreements and was negotiated as part of the overall economic bargain reflected in those agreements;

(r) OVO took the position that no Make Whole Fee is payable and that repayment of the principal satisfied OVO's obligations under the Convertible Note Agreements and the Forbearance Agreement;

The British Columbia Action

(s) On June 11, 2026, A.R.I. commenced an action in the Supreme Court of British Columbia, Court File No. 264397 (the "**British Columbia Action**") seeking, among other relief, payment of amounts owing under the Convertible Note Agreements, a declaration that the Make Whole Fee provisions are valid and enforceable, and determinations regarding the parties' rights and obligations under the Convertible Note Agreements;

(t) The parties' dispute is not limited to the calculation of the Make Whole Fee, but also includes whether any Make Whole Fee is payable at all and whether rights arising under the Convertible Note Agreements continue to exist;

(u) The parties' dispute concerning the Make Whole Fee and the remaining obligations owing under the Convertible Note Agreements forms part of the British Columbia Action;

(v) OVO's request for relief in paragraphs 1(d) and 1(e) of the Notice of Application herein seeks determinations that are already the subject of the relief sought in the British Columbia Action;

(w) The issues concerning the Make Whole Fee, Events of Default, acceleration, and the parties' continuing rights and obligations under the Convertible Note Agreements are already before the Supreme Court of British Columbia and are governed by British Columbia law;

(x) Both parties have retained British Columbia lawyers in connection with the British Columbia Action;

Bifurcation, if Necessary, is Appropriate

(y) The issues arising under the Forbearance Agreement can be determined independently of the issues arising under the Convertible Note Agreements;

(z) This Court may determine whether the "Indebtedness" contemplated by the Forbearance Agreement has been satisfied, and the amount of any Professional Expenses payable thereunder, without determining whether any Make Whole Fee is payable, enforceable, or owing under the Convertible Note Agreements;

(aa) The issues concerning the Make Whole Fee, Events of Default, acceleration, and the parties' continuing rights and obligations under the Convertible Note Agreements arise under agreements governed by British Columbia law and subject to the exclusive jurisdiction of the courts of British Columbia;

(bb) Bifurcation will avoid duplication of proceedings, promote judicial economy, respect the parties' contractual allocation of jurisdiction, and permit the issues concerning the Convertible Note Agreements to be determined by the court already seized of those issues;

(cc) Bifurcation will not result in prejudice to any party or give rise to any risk of inconsistent findings;

(dd) This Court maintains the inherent jurisdiction to control its own process and to order bifurcation where appropriate;

(ee) On July 13, 2026, Justice Myers issued an endorsement directing that the jurisdictional and merits issues be determined together at the hearing of the application and directing A.R.I. to deliver its motion record addressing those issues;

(ff) Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

(gg) Rules 1.04, 1.05, 2.01(2), 2.03, 3.02, 21.01(3)(a), 37, and 38.10 of the *Rules of Civil Procedure*; and

(hh) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

(a) The Affidavit of Zack Ellison, sworn August 10, 2026, together with the exhibits thereto;

(b) The Applicant's Notice of Application in this Court File No. CL-00000256-0000;

(c) The Notice of Civil Claim filed by A.R.I. in the Supreme Court of British Columbia on June 11, 2026;

(d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

TAB 2

Court File No. CL-26-00000256-0000

ONTARIO
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BETWEEN:

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Applicant

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A.R.I. OVO GROWTH CAPITAL I, LLC

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APPLICATION UNDER Rule 14.05(3)(d) and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended

AFFIDAVIT OF ZACK ELLISON

I, Dr. Zack Ellison, a resident of the State of Florida, United States of America, MAKE OATH AND SAY:

2. I am the Managing Member of A.R.I. OVO Growth Capital I, LLC ("**A.R.I.**"). I was A.R.I.'s primary point of contact in its relationship with the Applicant, October's Very Own ULC ("**OVO**") from the outset, including A.R.I.'s evaluation of the proposed investment, the approval of the financing, the negotiation and execution of the financing documents, and A.R.I.'s response to OVO's subsequent payment defaults and failure to repay its obligations, as described below.

3. The facts set out in this affidavit are within my personal knowledge or are based on my review of relevant records. Where I do not have personal knowledge, I have stated the source of my information and belief and in all such cases believe it to be true.

4. I make this affidavit in response to the application commenced by OVO in the Ontario Superior Court of Justice on June 2, 2026 and, in particular, in response to OVO's position that its payments to date satisfied its obligations under the Convertible Notes (as defined below) and the Forbearance Agreement (as defined below), and that no Make Whole Fee, as prescribed in the agreements, is payable.

5. I also make this affidavit in support of A.R.I.'s motion to stay or dismiss portions of OVO's Notice of Application on the basis that those portions of the application are not properly within the jurisdiction of Ontario courts.

Background and Experience

6. I am the Founder and Managing General Partner of Applied Real Intelligence, LLC, an institutional investment manager focused on senior secured growth credit and venture debt transactions. I am also Chief Investment Officer of the A.R.I. Senior Secured Growth Credit Fund, LP (the "**Fund**") and am responsible for originating, underwriting, structuring, negotiating, monitoring, and managing the Fund's investments.

7. My professional career spans over 20 years in institutional finance, investment management, and financial information services. During my career, I have worked for five publicly traded, highly regulated financial institutions and financial services companies, including Sun Life Financial, Scotiabank, The Thomson Corporation (now Thomson Reuters), and Deutsche Bank. Three of those organizations have assets totaling more than $1 trillion.

8. Before founding A.R.I. in 2019, I was a Vice President (equivalent to a Managing Director) in corporate bond trading, focused on the oil, gas, and utility sectors.

9. Prior to this role, while at Sun Life Financial, I served as Director of U.S. Public Fixed Income, where our team managed institutional fixed-income portfolios totaling more than USD $25 billion.

10. My experience at Sun Life followed my tenure at Deutsche Bank, the world's largest bank at the time, where I was a corporate bond and credit default swap trader in the globally recognized fixed income trading division.

11. During the Global Financial Crisis, I was an underwriter of corporate loans at Scotiabank, where I evaluated, structured, and monitored financing transactions for large corporate borrowers primarily in the media, sports, and telecommunications sectors.

12. Earlier in my career, beginning in 2005, I worked at The Thomson Corporation, which subsequently became Thomson Reuters, in the firm's Capital Markets Intelligence division.

13. I obtained the Chartered Financial Analyst ("CFA") designation in 2008 and the Chartered Alternative Investment Analyst ("CAIA") designation in 2016.

14. I hold a Bachelor of Arts in Economics from Swarthmore College, a Master of Business Administration, with concentrations in Analytic Finance and Economics, from the University of Chicago Booth School of Business, and a Master of Science in Risk Management from New York University Stern School of Business.

15. I also hold a Doctor of Business Administration from the University of Florida.

16. My doctoral research focused on venture debt, including the structure, pricing, risk, and return characteristics of loans to venture-backed companies. This research directly relates to A.R.I.'s investment activities and complemented my prior professional experience in corporate credit, underwriting, and institutional investment management.

17. I have also published extensively on venture debt and private credit. I authored the chapter on venture debt in the CFA Institute Research Foundation's book, *An Introduction to Alternative Credit*.

18. I was also a regular contributor to Venture Capital Journal, where I authored a monthly series of 25 articles focused specifically on venture debt over a period of more than two years.

19. Before I was introduced to OVO, I had written publicly about the importance of prepayment protections and make-whole provisions in venture debt transactions. In a Venture Capital Journal article entitled "Venture Debt: Key Lessons Learned," published on January 13, 2025, I wrote: "Put prepayment protections in place. Prepayment fees or make-whole provisions protect lenders from adverse selection when top-tier borrowers pay off loans early."

20. On April 1, 2025, shortly after my initial meeting with OVO's CEO, Derek "Drex" Jancar, I sent Mr. Jancar an email providing materials concerning my investment approach and experience. Among the materials I identified were my CFA Institute chapter on venture debt and a collection of 18 Venture Capital Journal articles I had written over the preceding 18 months concerning venture debt. In that email, I explained that I was providing those materials "to help provide more context on how I think about supporting innovative, high-growth companies." Attached as **Exhibit "A"** is a copy of the April 1, 2025 email correspondence.

21. As part of my Venture Capital Journal series, I subsequently authored a three-part series specifically concerning convertible notes, including their structure, conversion mechanics, valuation, downside protections, and potential investment outcomes. The series addressed many of the same types of economic provisions contained in the OVO Notes, including conversion discounts, valuation caps, Change of Control provisions, and make whole payments.

22. In the July 1, 2025 article in the Venture Capital Journal series, I addressed the circumstance in which a convertible note reaches maturity without converting into equity. Under the heading “Maturity Without Conversion,” I identified “backend interest or make-whole payments” as a protection that institutional investors could negotiate and wrote: “These provisions ensure a minimum annual return (for example, 10 percent) if the note never converts and reaches maturity. This helps investors avoid the ‘par repayment trap,’ where years of exposure result in little more than capital preservation.”

23. The same July 1, 2025 article included a table comparing features that make convertible notes more “equity-like” or “debt-like.” Under “Backend Payment,” I identified a “Make-whole cash payment to achieve a target IRR” as a feature that makes a convertible note more debt-like.

24. In the August 2025 article concluding that series, I addressed legal and structural considerations applicable to convertible notes and wrote under the heading “Legal and Regulatory Considerations”: “Legal enforceability: Ensure protective terms (for example, make-whole clauses, CoC triggers and redemption rights) are clearly drafted and enforceable.”

25. My work over the past two decades has consistently focused on credit analysis, financial modeling, valuation, risk management, portfolio management, and the structuring and negotiation of complex financing transactions.

26. Throughout my career, I have participated in debt and credit transactions with an aggregate value exceeding $10 billion, including corporate loans, bonds, and other credit instruments, and have evaluated numerous public and private companies across a range of industries and sizes.

27. Since founding A.R.I., I have been responsible for originating, evaluating, and negotiating private credit investments. My responsibilities, among others, include assessing borrowers'

creditworthiness, reviewing financial information and projections, evaluating collateral, negotiating loan terms, monitoring investments, and addressing borrower defaults.

28. The investment at issue in this proceeding was evaluated and approved by me in my capacity as A.R.I.'s Managing Member. In that role, I was responsible for assessing the risks and potential returns associated with the transaction, negotiating its economic terms, and determining whether the investment satisfied A.R.I.'s underwriting standards.

Parties

29. A.R.I. is a limited liability company incorporated under the laws of Delaware, United States.

30. OVO is an unlimited liability company incorporated under the laws of British Columbia, which carries on business in British Columbia and other provinces. OVO is the “Company” and “Borrower” under the Purchase Agreement and Forbearance Agreement, respectively. Attached as **Exhibit “B”** is a corporate profile of OVO.

Background to A.R.I.’s Investment

31. OVO was founded in 2008 and operates a lifestyle, apparel, music, and consumer products brand founded by Aubrey Drake Graham, professionally known as “Drake,” together with Oliver El-Khatib and Noah “40” Shebib. Drake is OVO’s majority owner, co-founder, and central cultural figure. OVO is an established consumer and lifestyle brand associated with apparel, retail, music, entertainment, and consumer products. It operates physical retail stores in Canada, the United States, and the United Kingdom, and serves customers internationally through its e-commerce platform.

32. In or around the first quarter of 2025, I was introduced to OVO’s CEO, Derek “Drex” Jancar, through a mutual business contact and learned from Mr. Jancar that OVO was seeking

external financing, including debt and equity capital, in connection with its business operations and growth initiatives.

33. I understood that this financing would represent OVO's first external equity financing. Until that time, OVO had been wholly owned by its three founders, Aubrey "Drake" Graham, Oliver El-Khatib, and Noah "40" Shebib, and had not previously raised capital from outside investors.

34. On or about April 4, 2025, OVO provided me with access to OVO's data room, which contained financial records of the company.

35. The financial records provided by OVO showed that OVO generated approximately $72 million in revenue in 2024 and nearly $400 million in cumulative revenue from 2019 through 2024.

36. The records also showed that OVO's revenue declined by more than $10 million in 2024 and that OVO had incurred losses in two of the preceding three years. Attached as **Exhibit "C"** is an April 9, 2025 email from Tasheel Jeerh to me enclosing OVO's draft 2024 financial statements. Attached as **Exhibit "D"** is the pitch deck provided by OVO to A.R.I. in or around April 2025. Based on OVO's financial records, OVO incurred losses of approximately $8 million in 2024 and more than $7 million in 2022. In total, OVO incurred aggregate losses of approximately $12 million between 2022 and 2024.

37. I also learned from the materials provided by OVO in its data room that October's Very Own Merchandising ("**OVO Merchandising**") was a borrower under an existing debt facility with Royal Bank of Canada ("**RBC**"). In connection with that RBC debt facility, OVO's three owners – Aubrey Drake Graham, Oliver El-Khatib, and Noah Shebib – had entered into a side letter, dated February 24, 2025 (the "**RBC Side Letter**"), pursuant to which they personally guaranteed a portion of OVO Merchandising's indebtedness to RBC.

38. Under the RBC Side Letter, the owners' guarantee obligations would be released upon, among other things, RBC receiving satisfactory evidence that OVO Merchandising had received an equity investment of at least $30 million, and certain RBC debt facilities, totaling approximately $10 million at the time, had been repaid in full. The RBC Side Letter further provided that OVO Merchandising could use proceeds from the $30 million equity injection to repay the RBC debt facilities.

39. Shortly after the Side Letter was executed, in or around March 2025, OVO began discussions with A.R.I. regarding two separate financings that OVO wished to undertake.

40. The first financing was a secured loan intended to provide OVO with near-term operating capital for its ongoing business operations.

41. The second financing was a contemplated $30 million to $50 million equity financing intended to provide OVO with longer-term growth capital while also satisfying the RBC requirements needed to remove the personal guarantees provided by OVO's three owners.

42. I reviewed OVO's investor materials, which stated, among other things, that $16.1 million of the minimum contemplated CDN $30 million financing would be used for paid media.

43. OVO's pitch deck also stated that $16.1 million of the contemplated $30 million equity raised would be dedicated to "paid media" with $3.2 million spent on "digital developments". Another $7.2 million was earmarked for opening six new stores in the U.S. and three new stores in Canada.[1]

[1] Exhibit "D" at p. 11.

44. OVO’s financial projections estimated that the $30 million in equity capital that they sought would lead to $170 million in sales revenue and $32 million in earnings (approximately 19% earnings margin) by 2028.[2]

45. OVO's financial projections forecasted a significant improvement in the company's performance. Despite reporting losses of approximately $8 million in 2024 and approximately $12 million over the 2022-2024 period, OVO projected that revenue would increase by approximately 2.4 times between 2024 and 2028[3] and that earnings would reach approximately $32 million by 2028. That projected earnings figure was approximately 3.4 times greater than OVO's highest historical earnings of more than $9 million, achieved in 2019.[4]

46. In evaluating the proposed transaction, I understood that OVO's business was closely tied to the strength and commercial success of the OVO brand, in addition to the individual brand of its majority owner, Drake.

47. Around that time, Drake was involved in litigation in the U.S. District Court for the Southern District of New York against Universal Music Group (“UMG”) arising from UMG’s promotion and distribution of Kendrick Lamar’s song “Not Like Us.”

48. My understanding of the dispute is based on public media reports and discussions with OVO representatives, including OVO’s CEO, Derek “Drex” Jancar. Based on those sources, I understood that Drake alleged that UMG had promoted false and defamatory accusations concerning him and that the dispute could have implications for Drake’s reputation, brand, and commercial relationship with UMG.

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[2] Exhibit “D” at p. 23.
[3] Exhibit “D” at p. 23.
[4] Exhibit “D” at p. 23.

49. Given Drake's prominence, his ownership of OVO, and his close association with the OVO brand, A.R.I. considered the existence of the UMG litigation and its potential implications as part of its diligence and assessment of the proposed OVO transactions.

50. While I believed the business had meaningful growth potential, I also recognized that its performance could be affected by changes in consumer preferences, market conditions, findings emanating from Drake's lawsuit against UMG, and any resulting changes in brand perception for OVO. Those risks, among others, informed my assessment of the investment and the terms on which A.R.I. was prepared to provide financing.

51. Given the risks associated with the transaction, A.R.I. would only proceed if the investment provided both meaningful participation in OVO's potential future growth and robust contractual protections against the downside if that growth did not materialize.

52. In particular, A.R.I. was being asked to invest in a business that was operating at a significant loss and whose majority owner, Drake, was involved in active litigation. In my judgment, the potential return and contractual protections therefore needed to be commensurate with the risks A.R.I. was assuming.

53. In deciding whether to approve the investment, I considered OVO's need for capital, its intended uses of that capital, and whether the negotiated economic and contractual terms adequately compensated A.R.I. for the risks of the investment.

54. The resulting agreements therefore included provisions designed to protect A.R.I.'s expected economic return under different outcomes, including the Make Whole Fee, restrictions on prepayment, and Change of Control provisions.

55. From A.R.I.'s perspective, these provisions were material components of the negotiated economics of the investment and addressed, among other things, the possibility that the investment would be repaid earlier than anticipated, that OVO's growth would not materialize as forecast, or that a transaction involving OVO would occur during the investment period.

The Separate Senior Secured Loan Transaction

56. On or about May 16, 2025, a separate transaction was completed between an affiliate of A.R.I. and an affiliate of OVO.

57. Specifically, the Fund (being A.R.I. Senior Secured Growth Credit Fund, LP), an affiliate of A.R.I., provided a senior secured loan (the "**Secured Loan**") to October's Very Own IP Holdings ("**OVO Holdings**"), an affiliate of OVO.

58. The Secured Loan provided by the Fund was entered into approximately two months before the Convertible Notes financing, which is the subject of this proceeding.

59. The Secured Loan transaction helped establish the broader financing relationship between A.R.I. and OVO, and our respective affiliated entities.

60. The Secured Loan was a separate transaction from the Convertible Notes and involved different parties, financing documents, economic terms, collateral, and repayment obligations, which I describe in further detail below. Attached as **Exhibit "E"** is a copy of the Loan and Security Agreement for reference.

61. The Secured Loan was secured by OVO intellectual property collateral, including rights relating to the name "October's Very Own" and OVO's owl logo.

62. The Secured Loan transaction provided for a $10 million facility, of which an initial tranche of $2.5 million was advanced by the Fund to OVO Holdings on or about May 21, 2025.

63. Following the funding of the first tranche of the Secured Loan, OVO sought additional capital from A.R.I. and its affiliates through the Convertible Note financing as part of OVO's contemplated $30 million to $50 million equity raise.

64. Approximately nine months after A.R.I. funded the first tranche of the Secured Loan, OVO Holdings defaulted under that facility. On or about February 27, 2026, A.R.I., through its counsel, Aaron Bains, delivered a Notice of Default to OVO Holdings.

65. October's Very Own ULC also defaulted under the Convertible Note Agreements at or around the same time, as discussed in further detail below. Attached as **Exhibit "F"** is a copy of the February 27, 2026 Notice of Default.

66. On or about March 9, 2026, the Fund issued a Demand Letter together with a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act*, to OVO Holdings. Attached as **Exhibit "G"** is a copy of the aforementioned March 9, 2026 demand letter and notice.

67. On or about March 20, 2026, the Fund and three OVO-affiliated entities, namely October's Very Own IP Holdings, October's Very Own ULC, and October's Very Own Partner ULC, entered into a Forbearance Agreement concerning the Secured Loan.

68. In the Secured Loan Forbearance Agreement, OVO acknowledged the existing Events of Default and the enforceability of the agreements governing the Secured Loan, acknowledged that indebtedness in the amount of $2,540,416.67 was unconditionally owing, agreed that A.R.I. had not waived any of its contractual rights or remedies, and confirmed that, as of the date of the agreement, the Fund had acted in a commercially reasonable manner and in good faith.

69. On or about March 31, 2026, before the expiration of the Forbearance Period under the Secured Loan Forbearance Agreement, OVO Holdings repaid the principal amount outstanding under the defaulted Secured Loan. That repayment related solely to the Secured Loan and did

not satisfy or otherwise affect OVO's separate obligations under the Convertible Notes or any other agreements between A.R.I. and OVO or their respective affiliates.

The Convertible Note Financing

70. On July 14, 2025, A.R.I. and OVO entered into a Convertible Note Purchase Agreement (the "**Purchase Agreement**"). Pursuant to the Purchase Agreement, A.R.I. advanced an aggregate of $5,234,121.93 to OVO through five Convertible Promissory Notes (the "**Notes**") issued between July 14, 2025 and August 5, 2025. Attached as **Exhibit "H"** is a copy of the Purchase Agreement.

71. The Notes consisted of: (a) Convertible Promissory Note No. 1 dated July 14, 2025 in the principal amount of $500,063.78; (b) Convertible Promissory Note No. 2 dated July 25, 2025 in the principal amount of $323,958.15; (c) Convertible Promissory Note No. 3 dated August 5, 2025 in the principal amount of $1,512,500; (d) Convertible Promissory Note No. 4 dated August 5, 2025 in the principal amount of $2,345,320; and (e) Convertible Promissory Note No. 5 dated August 5, 2025 in the principal amount of $552,280. Attached as **Exhibit "I"** are copies of the Notes, respectively.

72. The Purchase Agreement and the Notes (collectively, the "**Convertible Note Agreements**") were a structured equity investment, not a conventional term loan.

73. The Notes were structured as long-term, equity-linked investments, with a maturity date of June 30, 2030 and contractual provisions providing for conversion into equity upon the occurrence of specified events before maturity.

74. In evaluating the proposed transaction, I understood and expected that A.R.I.'s investment would remain outstanding over this multi-year period and provide A.R.I. with the opportunity to participate in OVO's future growth through the conversion and other economic rights provided under the Convertible Note Agreements. The approximately five-year investment horizon was

therefore an integral component of A.R.I.'s investment thesis, expected return, and the negotiated economics of the transaction.

75. One of the features that distinguished the Notes from a conventional commercial loan was A.R.I.'s right, in specified circumstances, to convert amounts owing under the Notes into equity securities of OVO rather than receive repayment in cash (the "**Conversion Rights**"). Accordingly, A.R.I.'s anticipated return was not limited to simply the repayment of principal and interest.

76. Rather, my expectation was that the Conversion Rights would become relevant in connection with future financing transactions or change-of-control transactions involving OVO.

77. As part of the negotiations leading to the Convertible Note Agreements, the parties agreed that A.R.I.'s Conversion Rights would include a 20% conversion discount and a valuation cap of $200 million.

78. The 20% discount generally allowed the Notes to convert into equity at a price 20% below the price paid by new investors in a qualifying financing transaction. The $200 million valuation cap placed a ceiling on the valuation used to determine A.R.I.'s conversion price, such that if OVO were valued above $200 million in a qualifying transaction, A.R.I.'s conversion price would generally be calculated using the lower $200 million valuation rather than the higher transaction valuation.

79. These provisions gave A.R.I. the opportunity to acquire OVO equity at a lower price than future investors and thereby benefit significantly from any increase in OVO's value. This potential equity upside was an important part of the economics of A.R.I.'s investment.

80. In assessing and approving the investment, I did not view the Conversion Rights, the conversion discount, the valuation cap, the guaranteed Change of Control payments, the Make Whole Fee, the information rights, and the default protections, as separate or standalone

provisions. Rather, I understood them to be interconnected components of the overall economic arrangement negotiated between A.R.I. and OVO. Each formed part of the consideration that A.R.I. received in exchange for committing capital to OVO. Attached as **Exhibit "J"** is the email correspondence between Tasheel Jeerh at Mara Advisory, OVO's retained consultant, and Drex Jancar of OVO between April 24, 2025 and April 30, 2025, and attached as **Exhibit "K"** is the April 30, 2025 redline of the Convertible Note Term Sheet reflecting proposed revisions exchanged between A.R.I. and OVO.

81. A.R.I. and OVO had agreed to the following key terms as part of the negotiated Term Sheet that Raj Dhatt, OVO's General Counsel, had reviewed, commented on, and made edits to on April 30, 2025:

(a) "Conversion Price" means a per share price of Equity Securities that shall be (i) with respect to a Next Equity Financing, an amount determined by multiplying (x) the price per share paid by new money investors in the Next Equity Financing, by (y) eighty percent (80%);

(b) Valuation Cap: A Valuation Cap of CAD$200,000,000 at the Next Equity Financing only if the Company achieves a pre-money valuation of at least CAD$250,000,000 in such financing. If the pre-money valuation at the Next Equity Financing is less than CAD$250,000,000, no valuation cap shall apply.

(c) Change of Control Event. If the Company is acquired prior to the conversion or repayment of the Notes, at the option of the holder thereof, each Note shall either (i) convert into shares of the Company at a 20% discount, or (ii) receive a guaranteed cash payout based on the following stepped multiple of their original principal investment:

(i) Year 0-1: 1.20x

(ii) Year 1-2: 1.40x
(iii) Year 2-3: 1.60x
(iv) Year 3-4: 1.80x
(v) Year 4-5: 2.00x

The securities issued pursuant to the above conversion scenarios shall be referred to herein as “Equity Securities”.

(d) Success Fee / Make Whole: If the notes do not convert into equity prior to maturity, investors will receive a make-whole payment ensuring a minimum 15% internal rate of return (IRR) over the life of the investment.

82. A.R.I. would not have made the same investment on the terms of a traditional loan. The Conversion Rights, conversion discount, valuation cap, Change of Control payments, Make Whole Fee, information rights, and default protections were all material to A.R.I.’s decision to invest and formed part of the overall economic bargain negotiated between the parties.

83. These terms were particularly important because the Convertible Notes carried a lower interest rate and materially less downside protection than the Secured Loan A.R.I. had provided to OVO approximately two months earlier.

84. The Convertible Notes paid interest at 10% and were unsecured, whereas the Secured Loan paid interest at 12.5% and was secured by the valuable property of the company, including the name “October’s Very Own” and its owl logo.

85. A.R.I. accepted the lower interest rate and weaker downside protections only because of the additional economic rights and protections negotiated as part of the Convertible Note transaction, including the Make Whole Fee. Without those rights and protections, A.R.I. would not have provided the Convertible Note financing. Attached as **Exhibit “L”** is the executed Convertible Note Financing Term Sheet (the “**Term Sheet**”).

The Make Whole Fee

86. The Notes were structured as a long-term, equity-linked investment with a maturity date of June 30, 2030, providing for an investment life of approximately five years.

87. The Make Whole Fee was a material component of the economics of the Convertible Note transaction and contractually provided for a minimum 15% internal rate of return if the Notes did not convert into equity before maturity.

88. The Make Whole Fee was expressly negotiated before A.R.I. advanced any funds under the Notes. On April 24, 2025, A.R.I. circulated the first draft of the Convertible Note financing term sheet. That draft provided that prepayment would be permitted "*only with ARI's written consent*," but did not yet contain a Make Whole Fee provision. Attached as **Exhibit "M"** is a copy of my April 24, 2025 email, and attached as **Exhibit "N"** is the initial draft term sheet circulated with that email.

89. On April 28, 2025, A.R.I. circulated a revised Convertible Note term sheet together with an explanatory email describing several proposed changes to the transaction structure, including the addition of the Make Whole provision. Attached as **Exhibit "O"** is a copy of my April 28, 2025 email setting out A.R.I.'s rationale for the Make Whole Fee. In that email, I explained the purpose of the proposed Make Whole provision as follows:

> *"15% IRR Minimum if Notes Are Not Converted: To further support investor confidence and participation, I believe it would be very attractive for investors if we were to add a provision guaranteeing a 15% internal rate of return (IRR) if the notes do not convert into equity after 5 years. This should not present any issues for OVO, as the intended outcome is to convert well before maturity through a successful equity financing. Importantly, a 15% IRR is quite reasonable compared to traditional private credit options, and this provision will materially improve optics for RIAs and institutional buyers."*

90. The final Term Sheet, executed by OVO's CEO, Derek "Drex" Jancar, incorporated the Make Whole and provided:

> *"Success Fee / Make Whole: If the notes do not convert into equity prior to maturity, investors will receive a make-whole payment ensuring a minimum 15% internal rate of return (IRR) over the life of the investment."*

91. The definitive Convertible Note Agreements subsequently preserved the Make Whole Fee and defined it as:

> *"Make Whole Fee" means such additional amount as is necessary to cause the internal rate of return to the Holder, with respect to the Note, as determined by Holder using the XIRR function of Microsoft Excel, on an aggregate basis, to be equal to at least fifteen percent (15%).*

92. The Make Whole Fee was reflected throughout the negotiation and documentation of the Convertible Note transaction. A.R.I.'s April 28, 2025 proposal expressly provided for a minimum 15% IRR if the Notes did not convert into equity; the executed Term Sheet subsequently provided for a minimum 15% IRR "*over the life of the investment*" if the Notes did not convert into equity before maturity; and the definitive Convertible Note Agreements defined the Make Whole Fee as the additional amount necessary to produce an aggregate IRR of at least 15%.

93. In calculating the Make Whole Fee, A.R.I. used the funding dates and principal amounts of each Note, all payments received under the Notes, and the contractual maturity date of June 30, 2030.

94. Consistent with the approximately five-year investment period contemplated when the transaction was negotiated, I calculated the additional amount required for A.R.I.'s aggregate annualized internal rate of return on the Notes over that period to equal 15%.

95. Using those contractual inputs and the XIRR methodology specified in the Convertible Note Agreements, I calculated the Make Whole Fee as follows:

(a) The aggregate principal amount invested under the Notes was $5,234,121.93.

(b) The additional amount required to produce an aggregate annualized internal rate of return of 15% over the contemplated investment period was $4,158,001.06.

(c) The resulting aggregate amount of principal and Make Whole Fee was $9,392,122.99.

96. Accordingly, I calculated the Make Whole Fee to be $4,158,001.06, resulting in an aggregate amount of principal and Make Whole Fee of $9,392,122.99.

97. The following table applies those contractual inputs to each of the five Convertible Notes using the XIRR function in Microsoft Excel, as specified.

Table 1[5]

Cash Flow	Principal Funding	Principal Funding	Principal Funding	Interest Payment	Interest Payment	Interest Payment	Principal + Make Whole	XIRR *(Microsoft Excel)*
Date	**7/14/2025**	**7/25/2025**	**8/5/2025**	**1/2/2026**	**2/28/2026**	**4/1/2026**	**6/30/2030**	
Note 1	($500,064)			$22,020	$14,982	$15,148	$904,650	15.00%
Note 2		($323,958)		$14,265	$9,706	$9,814	$583,338	15.00%
Note 3			($1,512,500)	$66,603	$45,314	$45,818	$2,710,824	15.00%
Note 4			($2,345,320)	$103,276	$70,265	$71,046	$4,203,471	15.00%
Note 5			($552,280)	$24,320	$16,546	$16,730	$989,841	15.00%
Total	**($500,064)**	**($323,958)**	**($4,410,100)**	**$230,484**	**$156,814**	**$158,556**	**$9,392,123**	**15.00%**

98. OVO's repayment, acceleration, or other early termination of the Notes before maturity would eliminate A.R.I.'s ability to benefit from the Conversion Rights and other equity-linked features of the transaction. In that circumstance, A.R.I. would lose the opportunity to participate in any future increase in OVO's value that might otherwise have been realized through those rights.

[5] Amounts shown in red represent the original principal funded by A.R.I. under each Convertible Note. Positive amounts (shown in black) represent interest payments actually received by A.R.I.

99. To protect against the early termination of the Notes and the destruction of value that such termination would cause to A.R.I., it was explicitly negotiated throughout the transaction, in both the Term Sheet and Notes, that OVO was not allowed to prepay the Notes without A.R.I.'s explicit consent. For example:

(a) In the first draft of the Term Sheet, A.R.I. wrote to OVO: *"Prepayment: Only with ARI 's written consent."*[6]

(b) OVO's counsel reviewed and redlined the proposed Term Sheet. In the version returned by OVO's counsel, the Term Sheet continued to provide*: "Prepayment. Principal and accrued interest may not be prepaid unless approved in writing by ARI."* A.R.I. subsequently made additional revisions to that redlined version. Attached as **Exhibit "P"** is a copy of the Term Sheet reflecting OVO counsel's redlines and A.R.I.'s further revisions as of April 28, 2025.

(c) In the executed final Term Sheet, the following was included: *"Prepayment. Principal and accrued interest may not be prepaid unless approved in writing by ARI."*[7]

(d) In the Notes, section 4 states: "*Prepayment of the Balance of the Note (in whole or in part) may only be made, without penalty, with the written approval of the Holder*."

100. The Make Whole Fee, prepayment restrictions, Conversion Rights, valuation cap, Change of Control payment provisions, and other economic terms of the Notes were negotiated as part of

[6] Exhibit "N".
[7] Exhibit "L".

the same Convertible Note transaction and incorporated into the executed Term Sheet and definitive Convertible Note Agreements.

101. A.R.I. advanced funds under the Convertible Notes only after those terms had been negotiated and incorporated into the parties' agreements.

OVO Defaults on its obligations under the Convertible Note Agreements

102. By late 2025, OVO had failed to make required interest payments under the Notes when due. Certain interest payments that had been due since July 2025 remained unpaid more than five months after their respective due dates and beyond the applicable grace periods under the Notes.

103. Interest for the first quarter of 2026, which was due under the Notes on January 2, 2026, remained unpaid as of February 17, 2026, more than six weeks after its due date.

104. On February 17, 2026, A.R.I. notified OVO, including its CEO, General Counsel, and head of finance, that Events of Default had occurred and were continuing under the Convertible Note Agreements. The identified defaults included OVO's failure to timely pay interest, failure to deliver required financial statements and compliance certificates, failure to finalize and deliver the Deposit Account Control Agreement required by the transaction documents, and other previously identified covenant and reporting breaches. Attached as **Exhibit "Q"** is a copy of the February 17, 2026 correspondence.

105. In that correspondence, A.R.I. advised OVO that its explanations for the delays did not cure the identified defaults and expressly reserved all rights and remedies available under the transaction documents and applicable law, including rights relating to default interest, acceleration of the obligations, remedies against collateral, and recovery of enforcement-related expenses. A.R.I. also advised OVO that further formal documentation and notices would follow.

106. Certain payments made by OVO were remitted to an account held by the Fund, a legal entity separate from A.R.I. Although A.R.I. credited those payments, it did not modify OVO's payment obligations under the Notes or constitute a waiver of A.R.I.'s rights under the Convertible Note Agreements.

107. On February 27, 2026, with the identified Events of Default continuing, A.R.I., through counsel, delivered a formal Notice of Default under the Convertible Note Agreements (the "**Default Notice**"). Attached as **Exhibit "R"** is a copy of the February 27, 2026 Default Notice.

108. The Default Notice identified the continuing payment defaults and other Events of Default under the Convertible Note Agreements and declared the outstanding principal, accrued and unpaid interest, default interest, and all other amounts then due and owing under the Notes to be immediately due and payable.

A.R.I. Agrees to Forbear on Certain Conditions

109. Following delivery of the Default Notice, OVO requested that A.R.I. forbear from exercising its rights and remedies under the Convertible Note Agreements.

110. On March 20, 2026, A.R.I. and OVO entered into a forbearance agreement (the "**Forbearance Agreement**"), pursuant to which A.R.I. agreed to temporarily forbear from exercising certain rights and remedies, subject to the terms and conditions set out in that agreement. Attached as **Exhibit "S"** is a copy of the executed Forbearance Agreement.

111. In the Forbearance Agreement, OVO acknowledged the existing Events of Default and its indebtedness owing under the Convertible Note Agreements. Specifically, OVO acknowledged that, as of March 3, 2026, it owed A.R.I. CDN$5,234,121.93 in principal and interest, plus accruing interest and costs, including A.R.I.'s legal and other professional fees (collectively, the "**Indebtedness**").

112. Importantly, the repayment obligation under the Forbearance Agreement was not limited to the CDN$5,234,121.93 identified as owing as of March 3, 2026.

113. Section 4.1 required "*full and indefeasible repayment of all Indebtedness outstanding by the Borrower to the Holder*" and expressly provided that the amounts to be repaid included "*any and all Professional Expenses*" and "*any and all other fees and expenses contemplated by this Agreement and any of the Financing Agreements.*"

114. Section 4.1 required OVO to make that full and indefeasible repayment by no later than 5:00 p.m. on May 1, 2026. The Forbearance Agreement provided for a conditional extension of that deadline to July 1, 2026 if specified requirements were satisfied. Those requirements were not satisfied, and the May 1, 2026 repayment deadline was therefore not extended.

115. The Forbearance Agreement separately required OVO to reimburse A.R.I. for all reasonable legal and other professional expenses incurred in connection with its dealings with OVO and the protection, preservation, and enforcement of the Purchase Agreement and the Notes. The agreement expressly provided that nothing in the Forbearance Agreement constituted a cap on OVO's obligation to pay those Professional Expenses.

116. The Forbearance Agreement also expressly addressed how A.R.I. could apply any funds received from or on account of OVO. It provided that all payments, proceeds, recoveries, collections, realizations, or distributions received by A.R.I., whether voluntarily, through enforcement, insolvency proceedings, set-off, or otherwise, would be applied in A.R.I.'s "*sole and absolute discretion*" in the following order of priority:

1. First, to all amounts owing to A.R.I., including, without limitation, all time and expenses, internal costs, advisory fees, monitoring fees, enforcement costs, indemnities, and any other amounts payable to A.R.I.
2. Second, to all unpaid Professional Expenses, including legal fees, disbursements and other professional costs.

3. Third, to accrued and unpaid interest, including interest at the Default Rate.
4. Fourth, to principal and all other obligations of OVO to A.R.I.
5. Fifth, to such other amounts as A.R.I. may determine in its sole discretion.

117. The Forbearance Agreement further provided that this application of funds would apply "*irrespective of any instructions from the Company*" and irrespective of whether the Forbearance Period had expired or been terminated. OVO expressly acknowledged that A.R.I.'s priority in the application of funds constituted "*a material inducement to the Holder's agreement to forbear*."

118. The Forbearance Agreement also expressly preserved A.R.I.'s existing rights and remedies under the Financing Agreements and applicable law. It provided that A.R.I. "*has not waived any such rights or remedies*" and that neither the Forbearance Agreement nor any delay by A.R.I. in exercising those rights or remedies would be construed as a waiver.

OVO Fails to Repay the Convertible Note Obligations in Full

119. On May 25, 2026, A.R.I. delivered a repayment statement to OVO setting out its calculation of the amounts owing under the Convertible Note Agreements and the Forbearance Agreement as of May 31, 2026. The repayment statement included amounts for principal, the Make Whole Fee, Professional Expenses, and other contractual amounts. Attached as **Exhibit "T"** is a copy of A.R.I.'s May 25, 2026 repayment statement, including its calculation of the repayment amount as of May 31, 2026.

120. On May 28, 2026, counsel for OVO responded to A.R.I.'s repayment statement and enclosed confirmation of a wire transfer in the amount of USD$3,824,768.54, equivalent to CAD$5,234,121.93. Attached as **Exhibit "U"** is a copy of OVO counsel's May 28, 2026 correspondence and the enclosed wire transfer confirmation.

121. In its May 28, 2026 correspondence, OVO disputed its obligation to pay certain amounts included in A.R.I.'s repayment statement, including the Make Whole Fee. OVO took the position

that the CAD$5,234,121.93 payment satisfied the outstanding principal under the Notes and that, upon payment of certain professional fees, no further amounts would be owing under the Forbearance Agreement.

122. OVO did not pay the Make Whole Fee or the other disputed amounts included in A.R.I.'s repayment statement. OVO also has not paid the legal and other Professional Expenses claimed by A.R.I. under the Forbearance Agreement.

123. OVO further took the position that A.R.I.'s rights under the Convertible Note Agreements would terminate, including A.R.I.'s continuing rights to convert the Notes into equity of OVO.

124. The Notes separately contain an entire section—Section 4, entitled "PREPAYMENT"—governing prepayment of the Notes. Section 4 provides that principal and accrued interest under the Notes may not be prepaid without A.R.I.'s prior written approval.

125. OVO did not obtain A.R.I.'s written approval before making the May 27, 2026 payment. The payment was therefore made without the written approval required by the prepayment provisions of Section 4 of the Notes.

126. On May 29, 2026, A.R.I., through counsel, responded to OVO's May 28, 2026 correspondence. A.R.I. advised OVO that the USD $3,824,768.54 payment would be converted to Canadian dollars and applied in accordance with section 4.7 of the Forbearance Agreement.

127. A.R.I. further advised OVO that payment of principal alone did not satisfy the amounts claimed by A.R.I. under the Convertible Note Agreements and the Forbearance Agreement and that A.R.I. regarded the payment as a partial payment only. A.R.I. reserved all rights and remedies and enclosed invoices supporting its claim for Professional Expenses. Attached as **Exhibit "V"** is a copy of the May 29, 2026 correspondence and enclosed invoices.

128. The Forbearance Period expired on June 1, 2026. By that date, OVO had not paid the Make Whole Fee or the Professional Expenses claimed by A.R.I. and continued to dispute its obligation to pay the Make Whole Fee.

129. On June 3, 2026, A.R.I., through counsel, delivered a Notice of Default under the Forbearance Agreement. In that notice, A.R.I. advised that:

(a) OVO had failed to repay all amounts owing before the expiration of the Forbearance Period on June 1, 2026,

(b) the outstanding obligations had accelerated and became immediately due and payable,

(c) A.R.I. did not accept OVO’s position regarding the Make Whole Fee or its assertion that the indebtedness had been satisfied,

(d) OVO’s May 27, 2026 payment constituted only a partial payment of the amounts owing,

(e) A.R.I. had not waived the existing defaults, and

(f) A.R.I. reserved all of its rights and remedies.

Attached as **Exhibit “W”** is a true copy of the June 3, 2026 Notice of Default.

OVO’s Ontario Application and A.R.I.’s British Columbia Action

130. On June 2, 2026, OVO commenced the within application in the Ontario Superior Court of Justice (Commercial List) against A.R.I. Attached as **Exhibit “X”** is the Notice of Application.

131. In its Ontario application, OVO seeks, among other things, declarations that its May 27, 2026 payment constituted full and timely payment of all amounts owing under the Forbearance Agreement, that no Make Whole Fee is payable under the Notes, and that A.R.I. is

not entitled to claim further amounts beyond certain professional fees that remained to be determined (and which OVO has not yet paid). OVO also seeks an assessment of the professional fees claimed by A.R.I. under the Forbearance Agreement.

132. On June 11, 2026, A.R.I. commenced an action in the Supreme Court of British Columbia, Vancouver Registry, Court File No. 264397 (the "BC Action"). Attached as **Exhibit "Y"** is a copy of the Notice of Civil Claim.

133. As described above, the Make Whole Fee was first proposed and negotiated as a term of the Convertible Note financing, was included in the executed Term Sheet pertaining to the Notes, and was subsequently incorporated into the definitive Convertible Note Agreements. The Notes expressly define the "Make Whole Fee" and specify the methodology for its calculation.

134. The Purchase Agreement and Notes contain British Columbia governing law and exclusive jurisdiction provisions. Specifically, those agreements provide that the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of British Columbia for proceedings arising out of or based upon the Convertible Note Agreements.

135. The Forbearance Agreement was entered into only after OVO had defaulted under the Convertible Note Agreements and requested that A.R.I. temporarily forbear from exercising certain rights and remedies thereunder.

136. The Forbearance Agreement expressly refers to the underlying Financing Agreements and the amounts owing under them. Section 4.1 required *"full and indefeasible repayment of all Indebtedness outstanding by the Borrower to the Holder*" and expressly included "*any and all other fees and expenses contemplated by this Agreement and any of the Financing Agreements*."

137. The Forbearance Agreement also expressly preserved A.R.I.'s rights and remedies under the Financing Agreements. It provided that A.R.I. "*has not waived any such rights or remedies*" and that neither the Forbearance Agreement nor any delay by A.R.I. in exercising those rights or remedies would be construed as a waiver.

138. The Forbearance Agreement contains Ontario governing law and jurisdiction provisions applicable to that agreement.

139. OVO's Ontario application asks the Court to determine both whether OVO satisfied its repayment obligations under the Forbearance Agreement and whether the Make Whole Fee is payable under the Notes.

140. The Make Whole Fee referenced in OVO's requested declaration is the Make Whole Fee defined in the Convertible Note Agreements. The Forbearance Agreement does not separately define a Make Whole Fee. Rather, as set out above, it expressly requires repayment of amounts including *"any and all other fees and expenses contemplated by this Agreement and any of the Financing Agreements*," while preserving A.R.I.'s rights and remedies under those Financing Agreements.

141. The Convertible Note Agreements in which the Make Whole Fee is defined are the same agreements that contain the British Columbia governing law and exclusive jurisdiction provisions described above.

142. Accordingly, A.R.I. commenced the BC Action seeking, among other things, recovery of the Make Whole Fee and other amounts A.R.I. claims are owing under the Convertible Note Agreements.

Amounts Remaining Owing to A.R.I.

143. As of June 11, 2026, prior to the commencement of the BC Action and after accounting for payments received, A.R.I. calculated that $4,609,455.72 remained due and owing under the financing arrangements, including amounts claimed in respect of the Make Whole Fee, default interest, legal fees, professional fees, enforcement costs, lender expenses, and other contractual amounts. Certain components of those amounts, including professional expenses claimed pursuant to the Forbearance Agreement, have been disputed by OVO.

144. Should this Court determine the merits of the parties' dispute concerning the amounts claimed by A.R.I., including the Make Whole Fee, A.R.I. maintains that additional amounts remain owing under the Notes, the Purchase Agreement, and the Forbearance Agreement, including amounts claimed in respect of the Make Whole Fee, default interest, legal fees and expenses, professional fees, enforcement costs, lender expenses, contractual fees and charges, pre-judgment interest, post-judgment interest, and the costs of this proceeding. A summary of the amounts claimed as of July 31, 2026 is set out below:

Table 2

Description	Amount (CDN)
Principal, Make Whole Fee and Legal Fees through May 31, 2026	
Aggregate Principal and Make Whole Fee Under the Convertible Notes	$9,392,123
Legal Fees through May 31, 2026	$275,000
Less: Credit for OVO Partial Payment on May 27, 2026	($5,280,093)
Subtotal	**$4,387,030**
Additional Obligations and Accruals through July 31, 2026	
Accrued Regular and Default Interest through May 31, 2026	$90,952
A.R.I. Lender Expenses in June–July 2026	$211,114
Legal Fees in June–July 2026	$248,483
Accrued Regular and Default Interest in June–July 2026	$100,397
Total Obligations as of July 31, 2026*	**$5,037,977**

145. On August 10, 2026, A.R.I. delivered an updated repayment statement to OVO setting out the amounts that A.R.I. calculated remained owing under the financing documents as of July 31, 2026. Attached as **Exhibit "Z"** is a copy of the August 10, 2026 repayment statement.

146. In that repayment statement, A.R.I. maintained that OVO's prior payment was required to be applied in accordance with the payment allocation provisions contained in section 4.7 of the Forbearance Agreement and, after applying that methodology, A.R.I. calculated that amounts remained owing under the financing documents, including amounts claimed in respect of principal, the Make Whole Fee, default interest, professional fees, legal fees and expenses, lender expenses, and other contractual obligations.

SWORN by Zack Ellison of the State of Florida, in the United States of America, before me at the City of Toronto, in the Province of Ontario, on August 10, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits **SARA ROMEIH LSO No. 80740I**	**ZACK ELLISON**

OCTOBER'S VERY OWN ULC -and- **A.R.I. OVO GROWTH CAPITAL I, LLC**
Applicant Respondent

Court File No. CL-26-00000256-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

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