

**Draft Model Order for Preservation of Assets  
“Mareva Injunction Order”<sup>1</sup>**

[Style of Proceedings]

**ORDER**

BEFORE THE HONOURABLE ) \_\_\_\_\_ day the \_\_\_\_\_ day of  
MR./MADAM JUSTICE ) \_\_\_\_\_, 20\_\_\_\_  
[Name of Judge] )

ON THE APPLICATION of the plaintiff made without notice, coming before me at [*place of hearing*] on this day, and on hearing [*name*], counsel for the plaintiff, no other party having been served, and on reading:

1. [*list affidavits and any other material read at hearing*]
2. [*etc.*]

AND ON the plaintiff having undertaken to comply with the terms of the undertaking set out in Schedule “A” to this Order, which among other things requires service of the notice set out in Schedule “B” to this Order;

THIS COURT ORDERS [AND DIRECTS] THAT:

Freezing Order

1. Except as permitted by this Order, the defendant must not:
  - (i) remove from British Columbia or in any way dispose of or deal with or diminish the value of any of [his/her/its] assets that are in British Columbia whether in [his/her/its] own name or not and whether solely or jointly owned [unless assets having a fair market value of at least \$\_\_\_\_ net of all secured interests remain in British Columbia and are not dealt with, disposed of, or diminished in value];

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<sup>1</sup> An early draft of this Order was prepared by Gray J and Groberman J (as he then was). It has been revised to reflect comments of a Working Group consisting of Madam Justice Victoria Gray; Michael D Lucas, Manager, Policy and Legal Services, Law Society of British Columbia; Robert Dawkins, Border Ladner Gervais LLP; and Michael Stephens, Hunter Litigation Chambers. This model Order does not alter the law with respect to Mareva Injunction Orders in the Province of British Columbia and its terms may not be appropriate for all types of cases. Additional, alternative or related relief may be sought and obtained from the Court. It is the responsibility of counsel to ensure that the proposed Order meets the requirements of their case and to provide evidentiary support and judicial authority for the relief sought, whether contained in this model Order or otherwise.

[if injunction is worldwide:

- (ii) in any way dispose of or deal with or diminish the value of any of [his/her/its] assets whether they are in or outside British Columbia whether in [his/her/its] own name or not and whether solely or jointly owned [unless assets having a fair market value of at least \$\_\_\_ net of all secured interests in Canadian funds remain in all jurisdictions combined and are not dealt with, disposed of, or diminished in value].

This prohibition applies to all of the defendant's assets, and includes the following assets in particular:

- (a) real property described as [*description of property*] or the net proceeds from the sale of the property if it has already been sold;
- (b) the property and assets of the defendant's business [known as (*name of business*) or carried on at (*address of business*)] or the net proceeds from the sale of the asset or assets if any of them have been sold; and
- (c) any money in the accounts numbered [*set out account numbers and bank branches*].

2. If the total value of the defendant's assets in British Columbia, net of all secured interests, exceeds \$[ ], the defendant may remove any of those assets from British Columbia or may dispose of or deal with them so long as the total net value of [his/her/its] assets still in British Columbia remains above \$[ ].

[if the injunction is worldwide: If the total net value of the defendant's assets in British Columbia does not exceed \$[ ], the defendant must not remove any of those assets from British Columbia and must not dispose of or deal with any of them, but if [he/she/it] has other assets outside British Columbia the defendant may dispose of or deal with those assets so long as the total net value of all [his/her/its] assets whether in or outside British Columbia remains above \$[ ].]

#### Exceptions to this Order

3. This Order does not prohibit the defendant from spending up to \$[ ] a month [*or* reasonable amounts] on ordinary living expenses [and \$[ ] a month [*or* reasonable amounts] on ordinary and proper business expenses] and a total of \$[ ]<sup>2</sup> [*or* reasonable amounts] on legal advice and representation. Before spending any money on living, business or legal expenses, the defendant must advise the plaintiff's solicitors in writing of the intended source of the funds to be expended.

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<sup>2</sup> This Order is not intended to limit a defendant in obtaining legal advice. Whether an amount is fixed or reasonable, and the ultimate amount if it is fixed, should depend on the entire context of the case and the evidence: e.g., a more complex case may require higher legal fees.

[4. This Order does not prohibit the defendant from dealing with or disposing of any of his/her/its assets in the ordinary and proper course of business.]<sup>3</sup>

5. The defendant may agree with the plaintiff that the above spending limits should be increased or that this Order should be relaxed in any other respect but any such agreement will be effective only if confirmed in writing and signed by all parties.

#### Duration of this Order

6. [If a return date is set] This Order will remain in force up to and including [ ] (the "Return Date") unless before then it is varied or discharged by a further Order of this Court. The application in which this Order is made shall come back to the Court for further hearing on the Return Date.

[7. [If no return date is set] Unless this Order is varied or discharged or extended by order of the Court, this Order shall remain in force until the expiry of 30 days following the pronouncement of final judgment in this matter by this Court, including any necessary assessment of damages but not the assessment of costs or completion of all execution proceedings.]

8. This Order will cease to have effect if the defendant provides security by paying the sum of \$[ ] into Court or makes provision for security in that sum by some other method agreed in writing with the plaintiff.

9. [This Order will also cease to have effect on *[date]* unless:

- (a) the plaintiff has, on or before that date, provided the Court an irrevocable letter of credit in a form approved by the Court in the sum of \$[ ] to secure [his/her/[its] undertaking set out in Schedule A.; or
- (b) on application by the parties, this Court orders this Order ceases to have effect]

#### Variation or Discharge of this Order

10. Anyone affected by this Order may apply to the Court at any time to vary or discharge it, or to request that the plaintiff be required to post security for the undertaking [or vary the amount of security], on giving no less than two hours' notice to the plaintiff's solicitor of his or her intention to do so, but this Order will remain in force until further Order even if such an application is pending.

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<sup>3</sup> This Order is designed for an individual defendant. If the defendant is a company which conducts a business consideration and allowance should be made for the distribution of assets as an integral part of that business.

11. All applications to vary or discharge this Order, or arising out of the issuance or enforcement of this Order, shall be heard by the Judge who issued this Order with the exception of:

- (a) urgent matters for which the Judge is not available; or
- (b) as otherwise directed by the Judge.

### Third Parties

12. Except as permitted by this Order, no person or other legal entity with notice of this Order may deal with any bank or other accounts of the defendant (including money market, retirement savings plan accounts, investment certificates, treasury bills, and deposits) or with other assets of the defendant in his/her/its possession or control without further order of this Court.

13. No person or other legal entity with notice of this Order shall breach or permit a breach of this Order.

14. To the extent that any person or other legal entity holds assets of the defendant in excess of \$[ ], that person or other legal entity is not restrained from dealing with that part of the assets held by that person or other legal entity which is in excess of \$[ ].

15. The terms of this Order do not affect any person or legal entity outside the jurisdiction of this Court until it is declared enforceable or is enforced by a Court in the relevant jurisdiction, unless such person or other legal entity is:

- (a) the defendant or an officer or an agent of the defendant; or
- (b) a person or other legal entity who or which is subject to the jurisdiction of this Court; and
  - (i) has been given written notice of this Order, and
  - (ii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order.

16. This Order does not prevent any bank, financial institution or secured party from exercising any rights to claim interest, to levy service charges, to claim set off, to enforce security, or to enforce any other contractual right, arising from contracts made before being notified of this Order.

17. No bank or financial institution needs to enquire as to the application or proposed application of any money withdrawn by the defendant if the withdrawal appears to be permitted by this Order.

18. This Order binds every defendant and every other person who is subject to this Order and obtains notice of the Order, as of the time such defendant or person first receives notice<sup>4</sup> of the Order, and whether or not such defendant or person has been served with a copy of the Order.

BY THE COURT

[DISTRICT] REGISTRAR

POSSIBLE ADDITIONAL TERMS OF ORDER:

Disclosure Order

[In most cases, this should not be granted on the *ex parte* application, but should be considered when this application is heard on notice to the defendant, usually on the Return Date].

19. The defendant must, within [seven] days of service of this Order, provide the plaintiff's solicitor with a list (the "Defendant's Asset List"), verified by [his/her/its] affidavit setting out all of the defendant's assets as of the date of this Order whether in or outside British Columbia and whether in [his/her/its] own name or not and whether solely or jointly owned, and details of all such assets, including the nature of each asset, all identifying numbers and other identifying information, its exact location as of the date of this Order, and whether the asset is held in the defendant's name or jointly held with another person, or by another on his/her/its behalf.<sup>5</sup>

20. If the defendant holds any assets over which [he/she/it] has no beneficial interest, that asset shall be included in the list, along with an indication that the asset is held in trust for others.

21. The plaintiff's solicitor shall not disclose the Defendant's Asset List or the information contained in it to any person (including the plaintiff) except for the purpose of this proceeding. Before making such disclosure, counsel shall obtain a written undertaking from the person to whom disclosure is to be made in the form attached to this Order as Schedule "C".

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<sup>4</sup> Counsel should be aware of special provisions which may concern proper service of a Mareva injunction on a bank. Section 462(1) of the *Bank Act*, S.C. 1991, c.46 (in effect at the time of drafting this model Mareva Injunction Order) requires service of an injunction on the branch of the bank which has possession of property belonging to a person or is the branch of account in respect of a person's deposit account. This provision may require service of a Mareva injunction on the branch of account, or the branch holding the applicable property, in order for the Order to bind property held by a bank.

<sup>5</sup> The central purpose a Mareva Injunction Order is not to obtain discovery. However, certain terms permitting some form of disclosure may be appropriate in the circumstances of a particular case. See *Sekisui House Kabushiki Kaisha v. Nagashima* (1982), 42 BCLR 1 (C.A.).

22. On or before [date], or such later date as provided in a further order, the plaintiff's solicitor shall destroy all copies of the Defendant's Asset List received from the defendant and take reasonable steps to ensure that any copies released to anyone else are destroyed, except that the plaintiff is at liberty to file with the Court a sealed copy of the Defendant's Asset List, to be retained in the Court file so that it will be available on further court order.

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**SCHEDULE "A"**

I, *[name of [person] plaintiff or of person authorized by corporate plaintiff to give undertaking]*, declare as follows:

1. I have read the attached draft Order (the "Order").
2. I undertake [or I am authorized by the corporate plaintiff to give its undertaking and it does hereby undertake] to do the following:
  - (a) To take reasonable steps to ensure service on the defendant[s] a copy of the Notice of Civil Claim, the Order and every affidavit referred to in the Order, and a separate copy of the Notice to Defendant which is Schedule "B" to the Order;
  - (b) to serve a copy of the Order upon any person who the plaintiff intends to be bound to honour the terms of the Order;
  - (c) to abide by any Order the British Columbia Supreme Court may make as to damages in the event that this Court is of the opinion that the defendant[s], or any of them, or any other person served with this Order has sustained damages by reason of this Order which the plaintiff ought to pay;
  - (d) to pay the reasonable costs of complying with the Order which anyone served with a copy of the Order by the plaintiff, other than the defendant[s], incurs, including the reasonable costs of ascertaining whether that person or entity holds any of the defendant's assets; and
  - (e) to take all reasonable steps to notify, in writing, any person or entity which the plaintiff serves with a copy of the Order of any changes to the Order that might affect that person, including any occurrence which results in the Order ceasing to have effect.
3. I understand that if I breach this undertaking or the Order, I may be imprisoned or fined.

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Dated *[month/day/year]*

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Signed *[name of person giving undertaking]*

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Witness *[Name of Witness]*

**SCHEDULE "B"**

**IMPORTANT**

**NOTICE TO THE DEFENDANT**

1. The Order of Mr./Madam Justice [ Name ] dated [ date ] ("Order") prohibits you from dealing with your assets [up to the amount stated]. The Order is subject to the exceptions stated in the Order. You should read it all carefully.
2. You are entitled to seek legal advice from your own lawyer regarding this Order and the rights you may have. You are advised to consult a lawyer as soon as possible. You have a right to ask the Court to vary or discharge this Order.
3. If you disobey this Order you may be found guilty of contempt of court and you [any of your directors] may be sent to prison or fined [and you may be fined] or your assets may be seized. [Furthermore, if you fail to cooperate as required by the Order, the Court may draw negative inferences from that failure that could prejudice the defendant(s) in the Court proceedings.]
4. *If a return date has been set:* This Order will be brought back before the Court on [date and time]. You will, at that time, have the opportunity to make submissions as to whether this Order should cease, be continued, or be modified. [If a disclosure order is being sought on the return date: At that time, as well, the plaintiff(s) will be asking the Court to make an order requiring you to disclose the assets that you hold as at the date that this Order was made]. If you wish to submit evidence for that hearing, you must follow the Rules of Court in doing so. If you wish to be heard at that hearing, you must attend in Court at that time.

Dated:           Month/Day/Year

I acknowledge receipt of a copy of this notice.



**Acknowledged and delivered in the presence of:**

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\_\_\_\_\_  
**Witness Signature**

**Name:**

**Address:**

\_\_\_\_\_  
**Recipient**

**Name:**

**Address:**

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ADDITIONAL UNDERTAKING IF ASSET LISTING ORDERED:

**SCHEDULE "C"**

1. I understand, agree and undertake to the Court that I will not disclose the Defendant's Asset List, or any information contained in that list, to anyone other than counsel for the plaintiff in this action, or a person who is designated in writing by counsel and who signs a separate form of this undertaking and provides me with a signed and witnessed copy.
2. I agree and undertake to the Court that I will only use the Defendant's Asset List or the information contained in the Defendant's Asset List for the purpose of this litigation and proceedings to execute on any order made in this litigation and for any purpose that is expressly permitted by a court order.
3. I understand, agree and undertake to the Court that I will destroy or return to the plaintiff's counsel my copy of the Defendant's Asset List, and any other document that contains information derived from the Defendant's Asset List, by [date], or such later date expressly permitted by court order.

\_\_\_\_\_  
Dated [month/day/year]

\_\_\_\_\_  
Signed [name of person giving undertaking]

\_\_\_\_\_  
Witness [Name of Witness]