**TEMPLATE MAREVA INJUNCTION / ATTACHMENT ORDER**

The Template Order is intended to provide guidance to the Alberta bench and bar with respect to orders to freeze assets and prevent their dissipation pending the determination of the Action.

The objective of this Template Order is to identify and freeze assets of a defendant in appropriate circumstances. In general, 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. This Template Order does not alter the law with respect to Mareva Injunctions or Attachment Orders in the Province of Alberta and its terms may not be appropriate for all types of cases; likewise, further corollary relief may be appropriate and available beyond what is described in this Template Order. It is the responsibility of counsel seeking the Order 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.

The Template Order was prepared by the Template Mareva Injunction / Attachment Order Committee\*\* which consisted of:

Munaf Mohamed – Bennett Jones LLP

Michael Mysak – Bennett Jones LLP

David T. Madsen, Q.C. – Borden Ladner Gervais LLP

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\*\* This Template Order was reviewed and approved by the Alberta Template Orders Committee (Alberta Committee), the membership of which was:

 Darren Bieganek, Q.C., Jeremy Hockin, Q.C., David Mann, Rick Reeson, Q.C.,

 Randal van der Mosselaer, Adam Maerov, Carole Hunter and Chuck Russell, Q.C.,

 and Josef Kruger, Q.C. with input from Justice K.M. Horner, Justice K.M. Eidsvik,

 and Justice K.G. Neilsen.

The assistance of the Members of the Judiciary on the Alberta Committee does not mean that there is an "arrangement" with the Court that any type of Order will be granted. In each application the discretion of the presiding Justice will be completely unfettered.

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| COURT FILE NUMBER | Clerk's Stamp |
| COURT | COURT OF QUEEN'S BENCH OF ALBERTA |
| JUDICIAL CENTRE |   |
| PLAINTIFF(S) |  |
| DEFENDANT(S) |  |
| DOCUMENT  | **MAREVA INJUNCTION / ATTACHMENT ORDER[[1]](#endnote-1)**  |
| ADDRESS FOR SERVICE ANDCONTACT INFORMATION OFPARTY FILING THIS DOCUMENT |  |  |

**DATE ON WHICH ORDER WAS PRONOUNCED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

LOCATION WHERE ORDER WAS PRONOUNCED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NAME OF JUSTICE[[2]](#endnote-2) WHO MADE THIS ORDER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**UPON** the *ex parte* application of the Plaintiff(s);[[3]](#endnote-3) **AND UPON** reading the Statement of Claim;[[4]](#endnote-4) **AND UPON** readingthe Affidavit(s) of [     ]; **AND UPON** reading the brief filed in support of this Application;[[5]](#endnote-5) **AND UPON** hearing thesubmissions of counsel for the Plaintiff(s); **AND UPON** being satisfied that there is a reasonable likelihood that the Plaintiff's claim against the Defendant will be established;[[6]](#endnote-6) **AND UPON** being satisfied that the Plaintiff has a strong *prima facie* case against the Defendant;[[7]](#endnote-7) **AND UPON** being satisfied that there are reasonable grounds for believing that the Defendant has assets in Alberta;[[8]](#endnote-8) **AND UPON** being satisfied that there are reasonable grounds for believing that the Defendant is dealing, or is likely to deal with the defendant's exigible property otherwise than for the purposes of meeting his or her reasonable and ordinary business or living expenses and in a manner that would be likely to seriously hinder the Plaintiff in the enforcement of judgment against the Defendant;[[9]](#endnote-9) **AND UPON** being satisfied that there are reasonable grounds for believing that there is a risk that the Defendant's assets will be dissipated or removed before any judgment in this Action is awarded or satisfied;[[10]](#endnote-10) **AND UPON** noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the enforcement of this Order in the form attached as Schedule "A";[[11]](#endnote-11) **AND UPON** considering Part 3 of the *Civil Enforcement Act,* RSA 2000, c c-15, as amended; **AND UPON** being satisfied that the granting of this Order is warranted on an *ex parte* basis;

**IT IS HEREBY ORDERED THAT:**

**Freezing Order[[12]](#endnote-12)**

# Other than as permitted by this Order, the Defendant [if the defendant is a corporation "and its directors, officers, servants, employees, agents, assigns and anyone else acting on their behalf or in conjunction with any of them"] is restrained from directly, or indirectly, by any means whatsoever, dealing with, transferring, mortgaging, charging, using, disposing of, creating an interest in or doing anything to[[13]](#endnote-13) any "exigible property" (as defined in the *Civil Enforcement Act* and associated regulations)[[14]](#endnote-14) including, without limitation, any things, rights or interests in things, anything regarded in law or equity as property or as an interest in property, any right or interest that can be transferred for value from one person to another, any right, including a contingent or future right, to be paid money or receive any other kind of property, and any cause of action in which the Defendant has any interest pending any further Order of this Court, whether located in Alberta or elsewhere.

# The prohibition set out in paragraph 1 applies to all of the Defendant's assets, whether in the Defendant's own name or not, and whether solely or jointly owned, including but not limited to:

## any bank, investment or other account at any bank, financial or other institution including without limitation those accounts outlined in the attached Schedule "B";

## any motor vehicle, trailer, or other vehicle registered to the Defendant including those vehicles outlined in the attached Schedule "B";

## any real property in which the Defendant has any interest including the real property outlined in the attached Schedule "B";

## any and all other personal property of any description whatsoever; and

## any and all share certificates, negotiable instruments and the like.

# Without limiting the scope of paragraph 1, the Defendant is further prohibited from dealing with or using in any manner any secured credit, including but not limited to any credit card, loan, or line of credit, for which payment is secured against any personal or real property in which the Defendant has any interest, pending further Order of this Court.

**Third Parties**

# Any person or entity with notice of this Order is prohibited from directly, or indirectly, by any means whatsoever, dealing with, transferring, mortgaging, charging, using, disposing of, creating an interest in or doing anything to any "exigible property" (as defined in the *Civil Enforcement Act* and associated regulations) in which the Defendant has any interest, whether such property is located in Alberta or elsewhere.[[15]](#endnote-15)

# Any branch(es) of the banks, financial institutions or other financial entities that is (are) served with a copy of this Order is (are) enjoined from disbursing or dealing with any funds or assets deposited in all accounts, including without limiting the generality of the foregoing, safety deposit box(es), investments, loans or other customer accounts held in the Defendant's name or such accounts in which the Defendant is authorized to conduct transactions.[[16]](#endnote-16)

# Any branch(es) of the banks, financial institutions or other financial entities that is (are) served with a copy of this Order that know(s) or become(s) aware of any safety deposit box(es) held by or on behalf of the Defendant is (are) directed to forthwith advise counsel for the Plaintiff of the location of such safety deposit box(es) and provide counsel for the Plaintiff, or such other person as authorized to act on behalf of the Plaintiff, with access to such safety deposit box(es), including without limitation, access to the contents of such safety deposit box(es).[[17]](#endnote-17)

**Disclosure of Assets**

# The Defendant[[18]](#endnote-18) shall forthwith, and in any event, within fifteen (15) days of service of this Order, deliver to counsel for the Plaintiff sworn evidence of the nature and location of all of its assets, wheresoever located, including assets held on their behalf or in trust for it, assets held jointly by it with some other party, assets in which it hold any interest and assets that it holds in trust for any other party. This evidence shall be presented using Form 13 or Form 14, as applicable, of Schedule 4 to the *Civil Enforcement Regulation*, AR 265/96.

**Exceptions to this Order**

[[19]](#endnote-19)

# Notwithstanding the provisions herein, counsel for the Plaintiff and the Defendant may, by written agreement signed by all parties, temporarily or permanently exclude specified "exigible property" from the effect of this Order.

# **Duration of this Order**

# **[Note: choose one or other of these paragraphs 9 as appropriate]**

# [*If the application is made ex parte and no circumstances exist* *which would make it inappropriate for the order granted to expire automatically after 21 days*] Unless this Order is varied or discharged by a further Order of this Court, this Order will remain in force up to and including [date 21 days from the date of the Order] unless the Order is extended on application on notice to the defendant.[[20]](#endnote-20)

# [*If the application is made ex parte and there are circumstances that exist which would make it inappropriate for the order granted to expire automatically after 21 days*] Unless this Order is varied or discharged by order of the Court, this Order shall remain in force until the earlier of:

## the dismissal or discontinuance of the Plaintiff's claim; or

## the expiry of 60 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.[[21]](#endnote-21)

# This Order will cease to have effect if the Defendant provides sufficient alternative security in a form and amount as determined by this Court or agreed to by the Plaintiff and the Defendant.[[22]](#endnote-22)

# **Enforcement of this Order**

# The Defendant, and any person who has possession or control of any exigible property in which the Defendant has any interest, shall, upon demand by Counsel for the Plaintiff, deliver that property up to any civil enforcement agent as retained by the Plaintiff for the purposes of enforcement of this Order.[[23]](#endnote-23)

# On request of Counsel for the Plaintiff, the Clerk of the Court is authorized and directed to issue garnishee summons as may be requested respecting any exigible property in which the Defendant has any interest.[[24]](#endnote-24)

# This Order may be registered with the Personal Property Registry.[[25]](#endnote-25)

# The Registrar for the South Alberta Land Registration District and the Registrar for the North Alberta Land Registration District shall cause a copy of this Order to be registered against title to lands owned in whole or in part, whether directly or indirectly, by the Defendant.[[26]](#endnote-26)

# **No Writ Proceedings**

# Pursuant to s. 24(2) of the *Civil Enforcement Act*, until such time as this Order terminates no writ proceedings against any property that is subject to this Order shall be commenced or continued without leave of the Court, which shall be obtained on notice to the Plaintiff pursuant to paragraph 16.

# **Variation or Discharge of this Order**

# Any interested person may apply to the Court at any time to vary or discharge this Order[[27]](#endnote-27) on giving no less than 24 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.

# 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 unless otherwise directed by the Judge.[[28]](#endnote-28)

# Costs of this application may be spoken to upon further application before this Court.

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| Justice of the Court of Queen's Bench of Alberta |  |

**Schedule "A"** – **Undertaking as to Damages**

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| COURT FILE NUMBER | Clerk's Stamp |
| COURT | COURT OF QUEEN'S BENCH OF ALBERTA |
| JUDICIAL CENTRE |  |
| PLAINTIFF(S) |  |
| DEFENDANT(S) |  |
| DOCUMENT  | **UNDERTAKING BY PLAINTIFF(S)** |
| ADDRESS FOR SERVICE ANDCONTACT INFORMATION OFPARTY FILING THIS DOCUMENT |  |  |

I, [name of person or of person authorized by corporate plaintiff to give undertaking], undertake [or I am authorized by the corporate plaintiff to give its undertaking and it does hereby undertake] to abide by any Order that this Court may make as to damages in the event that the Court is hereafter of the opinion that the defendant, or any other person served with this Order, has sustained damages by reason of this Order which the Plaintiff is liable to pay.

DATED at the \_\_\_\_\_\_\_\_\_of\_\_\_\_\_\_, in the Province of Alberta, this \_\_\_\_\_ day of [month], [year].

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|  |  | **●****Per:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **●** |

**SCHEDULE "B"**

**LIST OF ACCOUNTS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name(s)**  | **Bank** | **Account Number** | **Account Type** |
|  |  |  |  |
|  |  |  |  |

**LIST OF MOTOR VEHICLES**

|  |  |  |
| --- | --- | --- |
| **Vehicle** |  **VIN** | **Lease/Finance** |
|  |  |  |
|  |  |  |

**LIST OF REAL PROPERTY**

|  |  |  |
| --- | --- | --- |
| **Name(s) on Title** | **Title Number** | **Legal Description** |
|  |  |  |
|  |  |  |

**Commentary / Notes**

Note: The endnotes are not part of the Template Order and are provided solely as an interpretive guide to counsel. The inclusion of cases or other legal conclusions in the endnotes of this Template Order should not be taken as any endorsement of such comments by the Court.

1. A Mareva Injunction provides similar relief to an attachment order under the *Civil Enforcement Act*, RSA 2000, c C-15 (the "*CEA*"), but is granted pursuant to the court's equitable jurisdiction to grant injunctive relief: *Judicature Act*, RSA 2000, c J-2, s 13(2). To the extent remedies are sought within Alberta that are comparable to those available under the *CEA*, similar protections for the interests of the defendants to those contemplated in the legislation should be considered by the court, absent exceptional circumstances. In granting a Mareva injunction or a preservation order a court should be guided by the principles in the *CEA*: *Secure 2013 Group Inc v Tiger Calcium Services Inc*, 2017 ABCA 316 ("*Secure 2013*") at para 66. [↑](#endnote-ref-1)
2. If the claimant is only seeking an attachment order under the *CEA*, the application can be made before a Master – see *Proprietary Industries Inc. v Workum*, 2006 ABCA 225. However, if a Mareva Injunction is also sought, the application must be brought before a Justice. [↑](#endnote-ref-2)
3. An application for an attachment order may be made *ex parte*: Section 18, *CEA*. However, unless the Court is satisfied that it would be inappropriate for an attachment order granted on an *ex parte* application to expire automatically after 21 days, an attachment order granted on an *ex parte* application must specify a date, not more than 21 days from the day that the order is granted, on which the order will expire: Section 18(2) and (3), *CEA*. However, the Plaintiff may subsequently apply, on notice to the defendant, for an Order extending the *ex parte* attachment order until the Plaintiff's claim is dismissed or discontinued, 60 days from the date of judgment in favor of the defendant, or as directed by the Court: Section 18(4) and 19, *CEA.* An applicant proceeding without notice to the opposing party is required to act with the utmost good faith and make full, fair and candid disclosure of the facts and this disclosure must include facts which would militate against the application: *Secure 2013* at para 44. [↑](#endnote-ref-3)
4. A claimant may apply to the Court for an attachment order where the claimant has commenced, or is about to commence, proceedings in Alberta to establish the claimant's claim: Section 17(1)(a). Accordingly, it is not necessary that the Statement of Claim be filed at the time the application is made. [↑](#endnote-ref-4)
5. Filing a brief is not mandatory, but is a recommended best practice to be followed. [↑](#endnote-ref-5)
6. Section 17(2)(a), *CEA*. The threshold a plaintiff must meet for an attachment order under the *CEA* is lower than a strong *prima facie* case but higher than a genuine issue to be tried: *Simonelli v Ayron Developments Inc*., 2010 ABQB 565 ("*Simonelli*") at para 150. However, in order to obtain a Mareva Injunction, the Plaintiff must show a strong prima facie case, see endnote 7 *infra*. [↑](#endnote-ref-6)
7. In order to obtain a Mareva Injunction, the Plaintiff must show a strong prima facie case: *Secure 2013* at para 67. [↑](#endnote-ref-7)
8. In order to obtain a Mareva Injunction, the Plaintiff must establish that the Defendant has assets in Alberta: *Eli Lilly Canada Inc v Novapharm Ltd.,* 2010 FC 241("*Eli Lilly*") at para 19; *Cho v Twin Cities Power-Canada*, 2011 ABQB 707 ("*Cho*") at para 13. [↑](#endnote-ref-8)
9. Section 17(2)(b), *CEA*. There is a chance in any suit that a Plaintiff will not be able to collect on its judgment. Accordingly, the test is not simply the probability of non-recovery, but issues must be considered in respect of the defendant's solvency and the manner in which the defendants have dealt with assets. Importantly, an attachment order will not be imposed where the Defendant has substantial remaining assets: *Simonelli* at paras 150 and 156. [↑](#endnote-ref-9)
10. In order to obtain a Mareva Injunction, the Plaintiff must show that there is a real risk that the Defendant will remove assets from the jurisdiction, or dissipate them, in order to avoid execution under a judgment: *Secure 2013* at para 67; *Eli Lilly* at para 19; *Cho* at para 13. [↑](#endnote-ref-10)
11. See attached Schedule "A"; see also Section 17(4), *CEA*. [↑](#endnote-ref-11)
12. When an attachment order is granted, it should be granted in such a manner that it causes as little inconvenience to the defendant as is consistent with achieving the purposes for which the order is granted: Section 17(5), *CEA*. [↑](#endnote-ref-12)
13. In granting an attachment order, the Court may prohibit the defendant from "dealing" with "exigible property" of the defendant. The definition of "dealing" in Section 16(c) of the *CEA* in reference to property includes "transferring,

mortgaging, charging, using, disposing of, creating an interest in or doing anything to the property." [↑](#endnote-ref-13)
14. Section 1(u) defines exigilbe as "not exempt from writ proceedings or distress proceedings"; s. 1(ll) defines "property" as *including* "(i)  things, as well as rights or interests in things, (ii) anything regarded in law or equity as property or as an interest in property, (iii) any right or interest that can be transferred for value from one person to another, (iv)  any right, including a contingent or future right, to be paid money or receive any other kind of property, and (v) any cause of action" [↑](#endnote-ref-14)
15. Section 17(3)(b), (c) and (g), *CEA*. [↑](#endnote-ref-15)
16. Section 17(3)(b), (c) and (g), *CEA*. [↑](#endnote-ref-16)
17. Section 17(3)(b), (c) and (g), *CEA*. [↑](#endnote-ref-17)
18. The Court has the general power to do this under its *Mareva* Injunction powers. Further, to give effect to s. 17(6) of the CEA, the Court can direct this provision pursuant to s. 17(3)(g) [↑](#endnote-ref-18)
19. s. 17(6) of the CEA provides an attachment order should only freeze so much of the Defendants' assets as may be necessary to give effect to the order. However, absent disclosure of assets (as set out above) it is typically difficult or impossible to know if this is occurring.

If the Plaintiff can establish *prima facie* proprietary interest in the assets, they will (or should) not be released, even if needed for ordinary living expenses or legal fees. That initial onus to establish a proprietary claim is on the Plaintiff (See *Metalworks Canada Ltd v Warrack*, 2014 ABCA 389) whereas the onus to establish there are no further assets is on the Defendant. In general, assets that arise from the alleged wrongdoing should not be released to defend the claim. See *Canadian Imperial Bank of Commerce v Credit Valley Institute of Business and Technology* (2003), 119 AWCS (3d) 826 at para 26 and *Toronto Dominion Bank v Jaikaran*, 2004 ABQB 297 [↑](#endnote-ref-19)
20. Section 18(2), *CEA*. Absent exceptional circumstances, the 21-day limit in the *CEA* for a without notice application is also an appropriate temporal guideline for without notice Mareva injunctions: *Secure 2013* at para 168. [↑](#endnote-ref-20)
21. Section 18(3) and 19, *CEA*. [↑](#endnote-ref-21)
22. Section 20, *CEA*. [↑](#endnote-ref-22)
23. Section 17(3)d), *CEA*. [↑](#endnote-ref-23)
24. Section 17(3)(e), *CEA*. [↑](#endnote-ref-24)
25. Section 22(a), *CEA*. [↑](#endnote-ref-25)
26. Section 22(b), *CEA*. [↑](#endnote-ref-26)
27. Section 17(8), *CEA*. [↑](#endnote-ref-27)
28. Rule 9.15(1)(a) of the Alberta *Rules of Court* provides that the Court of Queen's Bench "may set aside, vary or discharge a judgment or an order, whether final or interlocutory, that was made (a) without notice to one or more affected persons". Rule 9.16 states that such an application "must be decided by the judge or master who granted the original judgment or order unless the Court otherwise orders". [↑](#endnote-ref-28)