

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

**MOTION RECORD
(Returnable October 29, 2019)**

October 23, 2019

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TO: THE SERVICE LIST

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

**NOTICE OF MOTION
(Returnable October 29, 2019)**

Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (the "**Applicants**", and with Payless ShoeSource Canada LP, the "**Payless Canada Entities**") will make a Motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), on Tuesday, October 29, 2019 at 10:00 a.m., or as soon after that time as the motion can be heard, at the court house at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

(a) An order (the "**Sanction Order**") substantially in the form attached as Schedule "A" *inter alia*:

- i. if necessary, abridging the time for service of the Notice of Motion and the Motion Record herein and, if necessary, validating service thereof;
- ii. declaring that the Creditors' Meetings held on October 23, 2019 were duly convened and held, all in accordance with the Meetings Order;

- iii. sanctioning and approving the First Amended and Restated Plan of Compromise and Arrangement dated October 16, 2019 (as may be further amended and supplemented, the “**CCAA Plan**”) including the Plan Supplement dated October 16, 2019 (the “**Plan Supplement**”);
- iv. extending the Stay Period (as defined below) to and including February 28, 2020 (the “**Fourth Stay Extension**”);
- v. approving: (i) the supplement to the fifth report of FTI Consulting Canada Inc. (“**FTI**”) in its capacity as court-appointed monitor (the “**Monitor**”) dated September 17, 2019 (the “**Supplemental Report**”), and its activities as set out therein; (ii) the sixth report of the Monitor dated October 16, 2019 (the “**Sixth Report**”), and its activities as set out therein; and (iii) the seventh report of the Monitor to be filed (the “**Seventh Report**”), and its activities as set out therein.

(b) Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

(a) On February 18, 2019, Payless Holdings LLC, twenty-three (23) of its U.S. affiliated companies and the Payless Canada Entities commenced insolvency proceedings (the “**U.S. Proceedings**”) by filing voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code. In July 2018, two additional debtors referred to as the “July Debtors” filed for protection, collectively with the debtors that filed in February. The U.S. Proceedings are pending before the United States Bankruptcy Court for the Eastern District of Missouri (the “**U.S. Bankruptcy Court**”).

(b) Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. sought and obtained an Initial Order dated February 19, 2019 (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) (the “**CCAA Proceedings**”). The Initial Order’s protections were extended to Payless ShoeSource Canada LP as the operating entity of the Payless Canada Entities.

(c) The Initial Order granted an initial stay of proceedings (the “**Stay of Proceedings**”) in favour of the Payless Canada Entities up to and including March 21, 2019 (the “**Stay Period**”) and appointed FTI as Monitor in these CCAA Proceedings. The Stay of Proceedings has been extended a number of times and is currently set to expire on December 20, 2019.

The U.S. Plan and Disclosure Statement

(d) Following the completion of the Court-approved liquidation sales in the U.S. and Canada, Payless, with its advisors, has focused on the reorganization of the remaining business and emergence from these cross-border insolvency proceedings.

(e) On August 12, 2019, the U.S. Debtors (being all of the Payless entities with pending U.S. Proceedings other than the Payless Canada Entities) filed a joint plan of reorganization and corresponding disclosure statement, which has been amended from time to time in accordance with the practice in the U.S. Bankruptcy Court (the “**U.S. Plan**” and the “**Disclosure Statement**”). The Payless Canada Entities are not plan proponents under the U.S. Plan. On September 18, 2019, the U.S. Bankruptcy Court approved the Disclosure Statement and authorized the U.S. Debtors to solicit votes on the U.S. Plan.

(f) The U.S. Plan has been amended, most recently on October 23, 2019. On October 23, 2019, the U.S. Bankruptcy Court confirmed the U.S. Plan, as amended.

(g) The U.S. Plan contemplates, among other things, (i) the cancellation of certain intercompany notes, including an obligation of Payless Finance Inc. in favour of Payless ShoeSource Canada Inc. in the amount of approximately US\$114 million and (ii) the repayment by PSS Canada, Inc. (an entity incorporated in the United States and a U.S. Debtor) to Payless ShoeSource Canada LP of certain post-filing intercompany loans in the amount of approximately US\$15.6 million.

(h) In order to allow these steps to occur prior to the effectiveness of the CCAA Plan, the proposed Sanction Order seeks a limited lifting of the stay of proceedings in respect of the Payless Canada Entities for the purpose of dealing with intercompany claims as contemplated under the U.S. Plan.

(i) Concurrent with the confirmation hearing before the U.S. Bankruptcy Court, since the Payless Canada Entities are not plan proponents under the U.S. Plan, the Payless Canada Entities brought a motion to dismiss their U.S. Proceedings. The U.S. Bankruptcy Court granted the motion which will be effective upon implementation of the U.S. Plan.

The CCAA Plan and Plan Supplement

(j) On September 19, 2019, the Court granted a meetings order (the “**Meetings Order**”) which, among other things, accepted for filing the September 17, 2019 version of the CCAA Plan as may be amended in accordance with its terms. After the granting of the Meetings Order, the Payless Canada Entities, in consultation with the Monitor, determined that certain amendments to the CCAA Plan were desirable.

(k) On October 16, 2019, in accordance with the CCAA Plan provisions and the Meetings Order, the Payless Canada Entities served an amended version of the CCAA Plan.

(l) Also in accordance with the Meetings Order, the Payless Canada Entities served a Plan Supplement on October 16, 2019 that outlines (i) the technical transaction steps required to implement the CCAA Plan (including the treatment of certain intercompany obligations among the Payless group as they relate to the Payless Canada Entities), (ii) the Reserves to be established under the CCAA Plan; and (iii) the funds to be returned to the U.S. Debtors.

(m) Sanctioning of the CCAA Plan is a crucial and necessary step toward the resolution of these CCAA Proceedings.

Creditors' Meetings

(n) The Creditors' Meetings were held on October 23, 2019 at the offices of counsel to the Payless Canada Entities, Cassels Brock & Blackwell LLP.

(o) Eligible Voting Creditors (as defined in the Plan) that were present in person or by proxy and voting (or were deemed to vote) at the Creditors' Meetings, voted overwhelmingly in favour of the Plan Resolution (as defined in the Meetings Order) at each of the Creditors' Meetings.

(p) The results of the Creditors' Meetings will be set out in the Seventh Report.

Stay Extension

(q) The Payless Canada Entities are seeking the Fourth Stay Extension until and including February 28, 2020 to permit them to finalize and implement the CCAA Plan.

(r) The required reserves will be established, which include an Administrative Reserve, a Priority Claim Reserve, a Directors' Claim Reserve and a Post-Filing Claim Reserve.

(s) The Payless Canada Entities are forecast to have sufficient liquidity to fund their post-filing obligations during the Fourth Stay Extension, and the remaining costs of their CCAA Proceedings.

- (t) The Payless Canada Entities are not aware of any stakeholders that would suffer any material prejudice if the Stay Period is extended as requested.
- (u) The Monitor is supportive of the relief sought in this motion.
- (v) It is just and convenient and in the interests of the Payless Canada Entities and their stakeholders that the Sanction Order be granted.
- (w) There has been strict compliance with all statutory requirements.
- (x) Nothing has been done or purported to be done that is not authorized by the CCAA.
- (y) Those grounds as set out in the Affidavit of Stephen Marotta sworn October 23, 2019, and the exhibits thereto (the "**Marotta Affidavit**").
- (z) Those grounds set out in the Supplemental Report, the Sixth Report, the Seventh Report and the appendices thereto.
- (aa) The provisions of the CCAA and the inherent and equitable jurisdiction of this Court.
- (bb) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended; and
- (cc) Such further other grounds as counsel may advise and this Court may permit.

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

- (a) the Marotta Affidavit (and the exhibits thereto);
- (b) the Supplemental Report;
- (c) the Sixth Report;
- (d) the Seventh Report; and

(e) such other material as counsel may advise and this Court may permit.

October 23, 2019

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Canada LP*

TO: THE SERVICE LIST

TAB A

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR
JUSTICE McEWEN

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TUESDAY, THE 29TH
DAY OF OCTOBER, 2019

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

**ORDER
(Plan Sanction)**

THIS MOTION made by Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (the "**Applicants**", and with Payless ShoeSource Canada LP, the "**Payless Canada Entities**") for an Order (the "**Sanction Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") *inter alia* (a) approving and sanctioning the First Amended and Restated Plan of Compromise and Arrangement of the Payless Canada Entities dated October ●, 2019 (the "**Plan**"), a copy of which (including the Plan Supplement dated October ●, 2019) is attached hereto as **Schedule "A"**, and (b) approving the supplement to the Fifth Report of FTI Consulting Canada Inc. in its capacity as Monitor (the "**Monitor**") dated September 17, 2019 (the "**Supplemental Report**"), the Sixth Report of the Monitor, dated October ●, 2019 (the "**Sixth Report**") and the Seventh Report of the Monitor, dated October ●, 2019 (the "**Seventh Report**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Stephen Marotta sworn October [23], 2019 including the exhibits thereto, the Supplemental Report, the Sixth Report, the Seventh Report, the affidavit of Taschina Ashmeade sworn October ●, 2019, and upon hearing the submissions of counsel for the Payless Canada Entities, the Supporting Term Loan Lenders, and the Monitor, and no one else appearing although duly served as appears from the affidavit of service of Taschina Ashmeade sworn October ●, 2019;

DEFINED TERMS

1. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall be as defined in the Meetings Order granted in these proceedings (the “**CCAA Proceedings**”) by Justice McEwen on September 19, 2019 (the “**Meetings Order**”) or the Plan, as applicable.

SERVICE, NOTICE AND MEETINGS

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record, the Sixth Report and the Seventh Report be and is hereby validated such that this Motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient service, delivery and notice to all Affected Creditors of the Information Package, the Plan Supplement, the amendments to the Plan, the Sixth Report and the Seventh Report, and that the Creditors’ Meetings were duly, called, convened, held and conducted all in conformity with the CCAA, the Meetings Order and all other Orders of this Court in the CCAA Proceedings (collectively, the “**CCAA Orders**”).

SANCTION OF THE PLAN

4. **THIS COURT ORDERS AND DECLARES** that:

- (a) Pursuant to the Meetings Order, the relevant classes of creditors of the Payless Canada Entities for the purposes of voting to approve the Plan are the General Unsecured Creditors and the Landlords;

- (b) the Plan has been approved by Required Majorities, all in conformity with the CCAA and the terms of the CCAA Orders;
- (c) the Payless Canada Entities have acted, and are acting, in good faith and with due diligence, and have complied with the provisions of the CCAA and the CCAA Orders in all respects;
- (d) the Court is satisfied that the Payless Canada Entities have not done or purported to do anything that is not authorized by the CCAA; and
- (e) the Plan, all terms and conditions thereof, and the matters and the transactions contemplated thereby, are fair and reasonable.

5. **THIS COURT ORDERS** that the Plan and the Plan Supplement are hereby sanctioned and approved pursuant to section 6 of the CCAA.

PLAN IMPLEMENTATION

6. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions, arrangements, and releases effected thereby (including, without limitation, the events, transactions and steps set out in the Plan Supplement) are hereby approved, shall be deemed to be implemented and shall be binding and effective as of the Effective Time in accordance with the terms of the Plan and the Plan Supplement or at such other time, times or manner as may be set forth in the Plan or the Plan Supplement in the sequence provided therein, and shall enure to the benefit of and be binding and effective upon the Payless Canada Entities, the Monitor, the Directors, the Officers, all Affected Creditors, the Released Parties, and all other Persons and parties named or referred to in, affected by, or subject to the Plan as provided for in the Plan, the Plan Supplement or this Sanction Order.

7. **THIS COURT ORDERS** that each of the Payless Canada Entities, the Directors, the Officers, and the Monitor, as applicable, is authorized and directed to take all steps and actions and to do all things, necessary or appropriate, to implement the Plan (including the Plan Supplement) in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, disbursements, payments, deliveries,

allocations, instruments and agreements contemplated by, and subject to the terms and conditions of, the Plan and the Plan Supplement, and all such steps and actions are hereby authorized, ratified and approved. None of the Payless Canada Entities, the Directors, the Officers, nor the Monitor shall incur any liability as a result of acting in accordance with the terms of the Plan, the Plan Supplement, and this Sanction Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of such parties.

8. **THIS COURT ORDERS** that upon delivery of written notice from the Payless Canada Entities (or counsel on their behalf) to the Monitor, the Term Loan Agent and the Supporting Term Loan Lenders that the conditions to Plan implementation set out in the Plan have been satisfied or waived, the Monitor shall, as soon as possible following receipt of such written notice, deliver to the Payless Canada Entities, the Term Loan Agent and the Supporting Term Loan Lenders, and file with the Court, a certificate substantially in the form attached hereto as **Schedule "B"** (the **"Monitor's Certificate"**) which states that all conditions precedent to Plan implementation set out in the Plan have been satisfied or waived and that the Implementation Date and Effective Time (which both shall be set out on the certificate) have occurred and that the Plan, the Plan Supplement and the provisions of the Sanction Order which come into effect on the Implementation Date are effective in accordance with their respective terms. Following the delivery of the Monitor's Certificate to the Payless Canada Entities, the Monitor shall file the Monitor's Certificate with the Court, and shall post a copy of same, once filed, on the Monitor's Website and provide a copy to the Service List. Upon delivery of the Monitor's Certificate to the Payless Canada Entities, the Term Loan Agent and the Supporting Term Loan Lenders, all applicable parties shall take such steps as are required to implement the steps set out in the Plan Supplement.

COMPROMISE OF CLAIMS AND EFFECT OF PLAN

9. **THIS COURT ORDERS** that, pursuant to and in accordance with the terms of the Plan and the Plan Supplement, at the Effective Time, all existing Claims of Affected Creditors against the Payless Canada Entities shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred and all proceedings with respect to, in connection with or relating to such Claims shall permanently be stayed against the Released Parties, subject only to (i) the right of Affected Creditors to receive the distributions pursuant to the Plan and this

Sanction Order in respect of their Claims and (ii) the right of Affected Creditors who are or were employees of the Payless Canada Entities to make application for payment in respect of eligible wages (as defined in WEPPA) under WEPPA, each in the manner and to the extent provided for in the Plan.

10. **THIS COURT ORDERS** that the determination of Proven Claims in accordance with the Claims Procedure Order, the Meetings Order, and Plan shall be final and binding on the Payless Canada Entities and all Affected Creditors.

11. **THIS COURT ORDERS** that an Affected Creditor holding a Disputed Claim shall not be entitled to receive a distribution under the Plan in respect of any portion thereof unless and until such Disputed Claim becomes a Proven Claim in accordance with the Claims Procedure Order, the Meetings Order, and the Plan. The Monitor shall have no obligation to make distributions to Affected Creditors prior to the Affected Creditor Distribution Date.

12. **THIS COURT ORDERS** that nothing in the Plan extends to or shall be interpreted as extending or amending the Claims Bar Date or the Restructuring Period Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order. Any Affected Claim or Director/Officer Claim for which a Claim Statement or Amended Claim Statement, as applicable, was not sent and a Proof of Claim or Director/Officer Proof of Claim has not been filed in accordance with the Claims Procedure Order, whether or not the holder of such Affected Claim or Director/Officer Claim has received personal notification of the claims process established by the Claims Procedure Order, have been, shall be and are hereby forever barred, extinguished and released with prejudice.

13. **THIS COURT ORDERS** that, except to the extent expressly contemplated by the Plan, the Plan Supplement or this Sanction Order, all obligations or agreements to which the Payless Canada Entities are a party to immediately prior to the Effective Time, will be and shall remain in full force and effect as at the Implementation Date, unamended except as they may have been amended by agreement of the parties to such agreement, and no Person (excluding the Term Loan Agent and the Term Loan Lenders in respect of the Term Loan Claims, to whom the balance of paragraph 13 does not apply) who is a party to any such obligation or agreement shall, following

the Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of: (i) any defaults or events of default arising as a result of the insolvency of the Payless Canada Entities prior to the Implementation Date; (ii) any change of control of the Payless Canada Entities arising from the implementation of the Plan; (iii) the fact that the Payless Canada Entities have sought or obtained relief under the CCAA or that the Plan has been implemented by the Payless Canada Entities; (iv) the effect on the Payless Canada Entities of the completion of any of the transactions contemplated by the Plan or the Plan Supplement; (v) any compromises, arrangements, or reorganization effected pursuant to the Plan or the Plan Supplement; (vi) the making of the Receivership Order or the appointment of the Receiver, or (vii) any other event(s) which occurred on or prior to the Implementation Date which would have entitled any Person to enforce rights and remedies subject to any express provisions to the contrary in any agreements entered into with the Payless Canada Entities after the Filing Date.

14. **THIS COURT ORDERS** that from and after the Implementation Date, all Persons (excluding the Term Loan Agent and the Term Loan Lenders in respect of the Term Loan Claims, to whom the balance of paragraph 14 does not apply) shall be deemed to have waived any and all defaults of the Payless Canada Entities then existing or previously committed by the Payless Canada Entities, or caused by the Payless Canada Entities, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and any of the Payless Canada Entities arising directly or indirectly from the filing by the Payless Canada Entities under the CCAA and the implementation of the Plan or the Plan Supplement, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse the Payless Canada Entities from performing their obligations under the Plan and the Plan

Supplement or be a waiver of defaults by the Payless Canada Entities under the Plan and the Plan Supplement and the related documents.

15. **THIS COURT ORDERS** that on the Implementation Date, the Payless Canada Entities are authorized and directed to fund the Reserves and Affected Creditor Distribution Account in accordance with the Plan and the Plan Supplement. No amounts in the Reserves or the Affected Creditor Distribution Account shall be or be deemed to be held in trust for any Claimant.

16. **THIS COURT ORDERS** that sections 95 to 101 of the BIA and any other federal or provincial law relating to preferences, fraudulent conveyances, transfers at undervalue or oppression, shall not apply in any respect including, without limitation, to any dealings prior to the Filing Date, to the Plan, to the Plan Supplement, to any payments or distributions made in connection with the restructuring and recapitalization of the Payless Canada Entities, whether made before or after the Filing Date, or to any and all transactions contemplated by and to be implemented pursuant to the Plan and the Plan Supplement.

DISTRIBUTIONS

17. **THIS COURT ORDERS** that upon delivery of the funds constituting the Affected Creditor Distribution to the Affected Creditor Distribution Account by the Payless Canada Entities such funds shall be distributed to Affected Creditors under the Plan free and clear of all claims, rights, security interest or charges in favour of the Term Loan Lenders and the Term Loan Agent.

18. **THIS COURT ORDERS AND DECLARES** that all distributions or payments by the Monitor, on behalf of the Payless Canada Entities, to Affected Creditors with Proven Claims under the Plan are for the account of the Payless Canada Entities and the fulfillment of the Payless Canada Entities' obligations under the Plan.

19. **THIS COURT ORDERS** all distributions or other payments to be made under the Plan to General Unsecured Creditors, Landlords or the Receiver are conditional on the receipt of the Comfort Letter from the applicable Governmental Entity and in the event such Comfort Letter is not received by December 31, 2019, the Payless Canada Entities shall notify the Term Loan Agent and the Supporting Term Loan Lenders and, in consultation with the Monitor, may seek further directions of the Court on at least five (5) Business Days' notice to the Service List.

20. **THIS COURT ORDERS** that the Payless Canada Entities and the Monitor are authorized to take any and all such actions as may be necessary or appropriate to comply with applicable tax withholding and reporting requirements, if any, relating to the distributions contemplated in the Plan and Plan Supplement. All amounts withheld on account of Taxes, if any, relating to the distributions contemplated in the Plan and Plan Supplement, shall be approved by the Monitor in advance (having regard to, *inter alia*, the claims of the Term Loan Agent and the Term Loan Lenders, and the priority thereof) and treated for all purposes as having been paid to Affected Creditors in respect of which such withholding was made, provided such withheld amounts are remitted to the appropriate Taxing Authority in accordance with legal requirements.

21. **THIS COURT ORDERS AND DECLARES** that the Payless Canada Entities or the Monitor on behalf of the Payless Canada Entities, as the case may be, shall be authorized, in connection with the making of any payment or distribution, and in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan and the Plan Supplement, to apply to any Governmental Entity for any consent, authorization, certificate or approval in connection therewith.

22. **THIS COURT ORDERS AND DECLARES** that any distributions, disbursements or payments made under the Plan or this Sanction Order (including without limitation distributions made to or for the benefit of the Affected Creditors, Claims against the Reserves, the Term Loan Lenders or any other Person) shall not constitute a “distribution” by any person for the purposes of section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act, 2007* (Ontario), section 34 of the *Income Tax Act* (British Columbia), section 104 of the *Social Service Tax Act* (British Columbia), section 49 of the *Alberta Corporate Tax Act*, section 22 of the *Income Tax Act* (Manitoba), section 73 of *The Tax Administration and Miscellaneous Taxes Act* (Manitoba), section 14 of *An Act respecting the Ministère du Revenu* (Quebec), section 85 of *The Income Tax Act, 2000* (Saskatchewan), section 48 of *The Revenue and Financial Services Act* (Saskatchewan), section 56 of the *Income Tax Act* (Nova Scotia), section 48 of the *Income Tax Act* (Prince Edward Island), subsection 78(1) of the *New Brunswick Income Tax Act*, section 54 of the *Income Tax Act, 2000* (Newfoundland and Labrador), section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act*

(Canada), section 46 of the *Employment Insurance Act* (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), and the Monitor, in making any such distributions, disbursements or payments on behalf of the Payless Canada Entities, as applicable, is merely a disbursing agent under the Plan and is not exercising any discretion in making payments under the Plan and no person is “distributing” such funds for the purpose of the Tax Statutes, and the Payless Canada Entities, the Monitor and any other person shall not incur any liability under the Tax Statutes in respect of distributions, disbursements or payments made by it and the Payless Canada Entities, the Monitor and any other person is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of distributions, disbursements or payments made by it in accordance with the Plan and this Sanction Order and any claims of this nature are hereby forever barred.

CHARGES

23. **THIS COURT ORDERS** that the Administration Charge and the Directors’ Charge shall continue in full force and effect and shall, from and after the Effective Time, attach solely against the Administrative Reserve and the Directors’ Claim Reserve, respectively.

RELEASES

24. **THIS COURT ORDERS AND DECLARES** that the compromises, arrangements, releases, discharges and injunctions contemplated in section 4.7 and Article 8 of the Plan, including those granted by and for the benefit of the Released Parties are integral components thereof and that, effective on the Implementation Date, all such compromises, releases, discharges and injunctions contemplated in the Plan are effective, sanctioned, approved and given full force and effect.

25. **THIS COURT ORDERS** that nothing contained in this Order shall release or discharge:

- (a) the Payless Canada Entities and their respective assets, undertakings and properties from any Unaffected Claim that has not been paid in full under the Plan or the Plan Supplement to the extent of such non-payment;
- (b) a Released Party from its obligations under the Plan or the Plan Supplement;

- (c) subject to paragraph 26 below, a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed fraud or wilful misconduct in relation to a Released Claim for which it is responsible at law; or
- (d) subject to paragraph 26 below, the Directors from any Claims which have been preserved in accordance with the Claims Procedure Order that cannot be compromised due to the provisions of section 5.1(2) of the CCAA.

26. **THIS COURT ORDERS** that, to the extent not barred, released or otherwise affected by paragraph 12 above, and notwithstanding paragraph 25 above, any Person having, or claiming any entitlement or compensation relating to, a Director/Officer Claim (with the exception of any Director/Officer Claims judged by the express terms of a judgment rendered on a final determination on the merits to have resulted from criminal, fraudulent or other wilful misconduct on the part of the Director or Officer (an “**Excluded Director/Officer Claim**”)) will be irrevocably limited to recovery in respect of such Director/Officer Claim solely from the proceeds of the applicable insurance policies held by the Payless Canada Entities (the “**Insurance Policies**”), and Persons with any Director/Officer Claims will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from the Payless Canada Entities or any Released Party, other than enforcing such Person’s rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. Nothing in this Plan Sanction Order prejudices, compromises, releases or otherwise affects any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of a Director/Officer Claim. Notwithstanding anything to the contrary herein, from and after the Implementation Date, a Person may only commence or continue an action for an Excluded Director/Officer Claim against a Director or Officer if such Person has first obtained leave of the Court on notice to the applicable Directors and Officers, the Monitor and the Payless Canada Entities.

27. **THIS COURT ORDERS** that from and after the Implementation Date, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or

proceeded with against any Released Party in respect of all Claims and matters which are released pursuant to Article 8 of the Plan or discharged, compromised or terminated pursuant to the Plan, except as against the applicable insurer(s) to the extent that Persons with Director/Officer Claims seek to enforce rights to be paid from the proceeds of the Insurance Policies, and provided that any claimant in respect of a Director/Officer Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Director/Officer Claim against an insurer in respect of an Insurance Policy. Notwithstanding anything to the contrary contained herein, from and after the Implementation Date, a Person may only commence or continue an action against a Released Party in respect of a matter that is not released pursuant to Article 8.1(a)-(d) of the Plan if such Person has first obtained leave of the Court on notice to the applicable Released Party, the Payless Canada Entities, the Monitor and the insurer(s) under any applicable Insurance Policy.

28. **THIS COURT ORDERS** that, on the Implementation Date, each Affected Creditor, each holder of a Director/Officer Claim and any Person having a Released Claim shall be deemed to have consented and agreed to all of the provisions of the Plan and the Plan Supplement, in their entirety, and, in particular, each Affected Creditor, each holder of a Director/Officer Claim and any Person having a Released Claim shall be deemed:

- (a) to have executed and delivered to the Monitor, the Payless Canada Entities and the other Released Parties all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan and the Plan Supplement in their entirety; and
- (b) to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Affected Creditor, holder of a Director/Officer Claim, and the Payless Canada Entities as of the Implementation Date and the provisions of the Plan and the Plan Supplement, the provisions of the Plan and the Plan Supplement take precedence and priority, and the provisions of such agreement or other arrangements shall be deemed to be amended accordingly.

THE MONITOR

29. **THIS COURT ORDERS** that in addition to its prescribed rights and obligations under the CCAA and the CCAA Orders, the Monitor is granted the powers, duties and protections contemplated by and required under the Plan and Plan Supplement and that the Monitor be and is hereby authorized, entitled and empowered to perform its duties and fulfil its obligations under the Plan and the Plan Supplement to facilitate the implementation thereof and to apply to this Court for any orders necessary or advisable to carry out its powers and obligations under any other CCAA Order.

30. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order or the provisions of any other CCAA Order, including this Sanction Order, the Payless Canada Entities shall, subject to the terms of the Receivership Order, remain in possession and control of the Property (as defined in the Initial Order) and the Monitor shall not take possession or be deemed to be in possession and/or control of the Property.

31. **THIS COURT ORDERS** that, subject to further order of the Court, the Payless Canada Entities shall be and are hereby directed to maintain the books and records of the Payless Canada Entities for purposes of assisting the Monitor in the completion of the resolution of the General Unsecured Claims and Landlord Claims.

32. **THIS COURT ORDERS AND DECLARES** that in no circumstance will the Monitor have any liability for any of the Payless Canada Entities' tax liabilities regardless of how or when such liabilities may have arisen, nor will the Monitor or the Directors have any liability for any tax liabilities arising as a result of any distributions to be made by the Monitor or the Payless Canada Entities under the Plan or Plan Supplement.

33. **THIS COURT ORDERS** that, effective upon the delivery of the Monitor's Certificate to the Payless Canada Entities in accordance with paragraph 8 hereof, the Payless Canada Entities shall not be subject to the restrictions, obligations, requirements or provisions of paragraphs 12, 12A, and 12B of the Initial Order.

STAY OF PROCEEDINGS

34. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 18 of the Initial Order) be and is hereby extended until February 28, 2020.

35. **THIS COURT ORDERS** that to the extent necessary, the Stay of Proceedings is hereby lifted for the limited purpose of permitting the forgiveness or cancellation in whole or in part of the Intercompany Claims as set out in U.S. Plan.

APPROVAL OF MONITOR'S SUPPLEMENTAL REPORT, SIXTH REPORT AND SEVENTH REPORT

36. **THIS COURT ORDERS** that the Supplemental Report, the Sixth Report and the Seventh Report and the activities of the Monitor, as applicable, referred to therein, be and are hereby approved; *provided, however*, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

37. **THIS COURT ORDERS** that the Payless Canada Entities, the Monitor and any other interested parties are hereby granted leave to apply to this Court for such further advice, directions or assistance as may be necessary to give effect to the terms of the Plan and any other matters that pertain to the completion of the administration of the CCAA Proceedings.

38. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to recognize and give effect to the Plan and this Sanction Order, to confirm the Plan and this Sanction Order as binding and effective in any appropriate foreign jurisdiction, and to assist the Payless Canada Entities, the Monitor and their respective agents in carrying out the terms of the Plan and this Sanction Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Payless Canada Entities, and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Sanction Order, to grant representative status to the Payless Canada

Entities in any foreign proceeding, or to assist the Payless Canada Entities and the Monitor and their respective agents in carrying out the terms of this Sanction Order.

SCHEDULE "A"
FIRST AMENDED AND RESTATED PLAN OF COMPROMISE AND ARRANGEMENT

SCHEDULE "B"
FORM OF MONITOR'S PLAN IMPLEMENTATION DATE CERTIFICATE

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

**MONITOR'S CERTIFICATE
(Plan Implementation)**

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Order of the Honourable Mr. Justice McEwen made in these proceedings on October [29], 2019 (the "**Sanction Order**").

Pursuant to paragraph 8 of the Sanction Order, FTI Consulting Canada Inc., solely in its capacity as Court-appointed monitor (the "**Monitor**") of the Applicants and Payless ShoeSource Canada LP (collectively, the "**Payless Canada Entities**"), delivers to the Payless Canada Entities, the Term Loan Agent and the Supporting Term Loan Lender this certificate and hereby certifies that it has been informed in writing by the Payless Canada Entities that all of the conditions precedent set out in the Plan have been satisfied or waived, and that the Effective Time of the Plan is _____ [a.m/p.m.] on _____, being the Implementation Date. The Implementation Date has occurred and the Plan, the Plan Supplement and the provisions of the Sanction Order which come into effect on the Implementation Date are effective in accordance with their respective terms. This Certificate will be filed with the Court and posted on the website maintained by the Monitor.

DATED at the City of Toronto, in the Province of Ontario, this ● day of ●, 2019 at [● a.m./p.m.]

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor of the Payless Canada Entities and not in its personal or corporate capacity

By: _____
Name:
Title:

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS
SHOESOURCE CANADA GP INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

PLAN SANCTION ORDER

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LP*

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS
SHOESOURCE CANADA GP INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

AFFIDAVIT OF STEPHEN MAROTTA

SWORN OCTOBER 23, 2019

I, Stephen Marotta, of Monmouth County, in the State of New Jersey, **MAKE OATH AND SAY:**

1. I am a Senior Managing Director at Ankura Consulting Group, LLC, the Chief Restructuring Organization of Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP (collectively, the "**Payless Canada Entities**"). I also serve as the Chief Restructuring Officer of Payless Holdings LLC (the ultimate parent company of the Payless Canada Entities), twenty-three (23) of its U.S. affiliated companies and two (2) other affiliated companies referred to as July Debtors (collectively, the "**U.S. Debtors**"). As such, I am familiar with the Payless Canada Entities' day-to-day operations, business, financial affairs, and books and records and I have personal knowledge of the Payless Canada Entities and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swear this affidavit in support of the Applicants' motion returnable October 29, 2019 (the "**Sanction Motion**") for an order pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), among other things:

- (a) declaring that the Creditors' Meetings held on October 23, 2019 were duly convened and held, all in accordance with the Meetings Order;
- (b) sanctioning and approving the First Amended and Restated Plan of Compromise and Arrangement dated October 16, 2019 (as may be further amended and supplemented, the "**CCAA Plan**") including the Plan Supplement dated October 16, 2019 (the "**Plan Supplement**");
- (c) extending the Stay Period (as defined below) to and including February 28, 2020; (the "**Fourth Stay Extension**"); and
- (d) approving: (i) the supplement to the fifth report of FTI Consulting Canada Inc. ("**FTI**") in its capacity as court-appointed monitor (the "**Monitor**") dated September 17, 2019 (the "**Supplemental Report**"), and its activities as set out therein; (ii) the sixth report of the Monitor dated October 16, 2019 (the "**Sixth Report**"), and its activities as set out therein; and (iii) the seventh report of the Monitor to be filed (the "**Seventh Report**").

3. Unless indicated otherwise, capitalized terms not defined in this affidavit have the meaning given to them in the CCAA Plan.

BACKGROUND

The Cross-Border Proceedings

4. Payless Holdings LLC, through its subsidiaries and related parties (collectively, "**Payless**"), was the largest specialty family footwear retailer in the Western Hemisphere, which

offered a wide range of shoes and accessory items at affordable prices. The Payless Canada Entities comprised the Canadian operating arm of the Payless global business and, as at February 19, 2019 (the “**Filing Date**”), sold Payless footwear and merchandise throughout Canada from over 240 retail stores across 10 provinces.

5. On February 18, 2019, the U.S. Debtors and the Payless Canada Entities commenced insolvency proceedings (the “**U.S. Proceedings**”) by filing voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code. The U.S. Proceedings are pending before the United States Bankruptcy Court for the Eastern District of Missouri (the “**U.S. Bankruptcy Court**”).

6. On the Filing Date, Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. sought and obtained the Initial Order under the CCAA. The Initial Order’s protections were extended to Payless ShoeSource Canada LP as the operating entity of the Payless Canada Entities. A copy of the Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) is attached hereto as **Exhibit “A”**.

7. Among other things, the Initial Order granted an initial stay of proceedings in favour of the Payless Canada Entities up to and including March 21, 2019 (the “**Stay Period**”) and appointed FTI as Monitor in these CCAA Proceedings. The Stay Period set out in the Initial Order has been extended several times, most recently to December 20, 2019.

The U.S. Plan and Disclosure Statement

8. Following the completion of the sales in the U.S. and Canada, Payless, with its advisors, has focused on the reorganization of the remaining business and emergence from these cross-border insolvency proceedings.

9. On August 12, 2019, the U.S. Debtors filed a joint plan of reorganization and corresponding disclosure statement, which has been amended from time to time in accordance with the practice in the U.S. Bankruptcy Court (the “**U.S. Plan**” and the “**Disclosure Statement**”). The Payless Canada Entities are not plan proponents under the U.S. Plan. On September 18, 2019, the U.S. Bankruptcy Court approved the Disclosure Statement and authorized the U.S. Debtors to solicit votes on the U.S. Plan.

10. The U.S. Debtors have further amended the U.S. Plan, most recently on October 23, 2019. On October 23, 2019, the U.S. Bankruptcy Court confirmed the U.S. Plan.

11. As it relates to the Payless Canada Entities, the U.S. Plan contemplates (i) the cancellation of certain intercompany notes, including an obligation of Payless Finance Inc. in favour of Payless ShoeSource Canada Inc. in the amount of approximately US\$114 million and (ii) the repayment by PSS Canada, Inc. (an entity incorporated in the United States and a U.S. Debtor) to Payless ShoeSource Canada LP of certain post-filing intercompany loans in the amount of approximately US\$15.6 million. The intercompany claims are part of global transactions among the Payless group and have implications for various U.S. Debtors and non-debtor entities. The U.S. Debtors, the Payless Canada Entities, and their advisors have carefully reviewed the proposed treatment of the various intercompany claims and determined the order in which the intercompany claims must be resolved under the U.S. Plan and the CCAA Plan. In order to allow these steps to occur prior to the effectiveness of the CCAA Plan, the proposed Sanction Order seeks a limited lifting of the stay of proceedings in respect of the Payless Canada Entities for the purpose of dealing with intercompany claims as contemplated under the U.S. Plan.

12. Concurrent with the confirmation hearing before the U.S. Bankruptcy Court, since the Payless Canada Entities are not plan proponents under the U.S. Plan, the Payless Canada Entities brought a motion to dismiss their U.S. Proceedings. The U.S. Bankruptcy Court granted

the motion, providing that the dismissal of the Payless Canada Entities' U.S. Proceedings will be effective upon implementation of the U.S. Plan.

THE CCAA PLAN

13. On September 19, 2019, the Court granted a meetings order (the "**Meetings Order**") which, among other things, accepted for filing the September 17, 2019 version of the CCAA Plan as may be amended in accordance with its terms. After the granting of the Meetings Order, the Payless Canada Entities, in consultation with the Monitor, determined that certain amendments to the CCAA Plan were desirable. On October 16, 2019, in accordance with the Meetings Order, the Payless Canada Entities served an amended version of the CCAA Plan. A copy of the CCAA Plan, which includes the Plan Supplement, is attached hereto as "**Exhibit "B"**". The material amendments are summarized in the Sixth Report.

14. If the CCAA Plan is sanctioned and the closing conditions are satisfied, the implementation of the CCAA Plan will provide for, among other things:

- (a) a structured and efficient method to make distributions to unsecured creditors, which distributions would not otherwise be available absent the CCAA Plan;
- (b) distribution by way of repayment of intercompany loans of the remaining funds after providing for the Reserves, to Payless ShoeSource Distribution, Inc. (a U.S. Debtor);
- (c) distribution of any funds remaining in the Reserves after satisfaction of the applicable claims to the Payless Canada Entities, which funds are anticipated to be returned to the U.S. Debtors;
- (d) if the Receivership Order is granted, appointment of FTI as receiver over the Employee Distributions and \$100 on the terms set out in the Receivership Order

which, among other things, will assist most former employees in accessing benefits under the *Wage Earner Protection Program Act* (“**WEPPA**”), as described in more detail in the Seventh Report; and

- (e) releases in favour of Payless Canada Entities, the Directors, the Officers, certain professional advisors to the Payless Canada Entities and the U.S. Debtors, the Chief Restructuring Organization, the Term Loan Agent, each of the Term Loan Lenders (including the Supporting Term Loan Lenders) and the Monitor, and their respective directors, officers, agents, professionals and certain other parties (as described in greater detail herein).

15. The CCAA Plan was put forward by the Payless Canada Entities in the expectation that all Persons with an economic interest in the Payless Canada Entities will derive a greater benefit from the implementation of the CCAA Plan than would result from a bankruptcy.

16. The mechanics and effect of the CCAA Plan are described in the affidavit of Adrian Frankum sworn September 10, 2019 (the “**Meetings Order Affidavit**”) and my supplemental affidavit sworn September 17, 2019 (“**Meetings Order Supplemental Affidavit**”). A copy of the Meetings Order Affidavit and the Meetings Order Supplemental Affidavit, each without exhibits, are attached hereto to as **Exhibit “C”** and **Exhibit “D”**, respectively.

17. In accordance with the CCAA Plan:

- (a) each General Unsecured Creditor with a Proven Claim will receive a distribution in an amount equal to its *pro rata* share of the General Unsecured Pool from the Affected Creditor Distribution Account, *provided, however*, that if the Receivership Order is granted, the Employee Distributions to WEPPA-eligible individuals will be paid to the Receiver to facilitate the receivership proceedings as described in the Seventh Report;

- (b) each Landlord will receive the lesser of, for each Lease: (i) \$3,840.00 or (ii) the amount asserted in the Landlord's Notice of Dispute of Claim Statement or Proof of Claim, or, if no Notice of Dispute of Claim Statement or Proof of Claim was filed, then the amount in the Landlord's Claim Statement. Only one distribution will be made in respect of each Lease regardless of whether one or more Person is identified as the Landlord under the Lease;
- (c) the Directors' Charge will be discharged against all property other than the Directors' Claim Reserve;
- (d) the Administration Charge will be discharged against all property other than the Administrative Reserve;
- (e) each Released Party (as defined below) will receive the benefit of broad releases as further described below.

18. The objection deadline established by the Meetings Order was October 18, 2019. No objections were received.

19. If this Court sanctions the CCAA Plan, it is anticipated that the Implementation Date will be as early as November 1, 2019. Timing of the Implementation Date is most dependent on the implementation of the U.S. Plan, which, as described below, is a condition precedent to the implementation of the CCAA Plan.

20. The remaining conditions precedent to the implementation of the CCAA Plan include:

- (a) the Sanction Order must be granted and the operation and effect of it must not be stayed, reversed or amended and in the event of an appeal or application for leave to appeal, final determination must be made by the appellate court;

- (b) the Reserves and the Affected Creditor Distribution Account must be funded by the Payless Canada Entities;
- (c) the U.S. Plan must be effective (at which time the Payless Canada Entities' U.S. Proceedings will be dismissed);
- (d) the Payless Canada Entities shall have received written confirmation from the Supporting Term Loan Lenders that the Supporting Term Loan Lenders are satisfied with (i) the treatment of the Post-Filing Intercompany Loans, (ii) the form and substance of the Plan Supplement, and (iii) all variations and modifications of, and amendments and supplements to the CCAA Plan and the Sanction Order, to and including the Implementation Date; and
- (e) the Implementation Date must occur no later than December 31, 2019, unless otherwise agreed to by the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders.

21. Before distributions can be made to Affected Creditors, the Payless Canada Entities and the Monitor will resolve all outstanding Disputed Claims and obtain a Comfort Letter from Canada Revenue Agency in connection with any distributions to Affected Creditors. In the event that the Comfort Letter is not received by December 31, 2019, the Payless Canada Entities may return to Court for further directions on the terms set out in the CCAA Plan.

PLAN SUPPLEMENT

22. The Payless Canada Entities served a Plan Supplement on October 16, 2019 that outlines (i) the technical transaction steps required to implement the CCAA Plan (including the intercompany transactions described above), (ii) the Reserves to be established under the CCAA Plan; and (iii) the funds to be returned to the U.S. Debtors. As required by the Meetings Order,

the Plan Supplement is in form and substance acceptable to the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders.

RELEASES

23. The Released Parties (as defined below) will receive the benefit of releases (the **"Releases"**) provided for under Article 8 of the CCAA Plan as summarized below. The Releases are required for plan implementation. They are an integral part of the CCAA Plan and are fair and equitable in the circumstances for the reasons set forth below.

24. The Released Parties include the Payless Canada Entities, the Directors, the Officers and any alleged fiduciary (whether acting as a director, officer, or other responsible party), Cassels, Akin, S&K, FTI, the Monitor, the Chief Restructuring Organization, the Term Loan Agent, and each of the Term Loan Lenders (including each of the Supporting Term Loan Lenders) together with each of their respective current and former legal counsel, financial advisors, representatives, directors, officers, predecessors, affiliates, member companies, related companies, partners, shareholders, administrators, executors, employees and professional advisors (collectively, the **"Released Parties"** and individually, a **"Released Party"**).

25. The Released Parties will be released and discharged from any and all claims and liabilities based in whole or in part on any act taking place on or prior to the Implementation Date, including, among other things, any and all Claims that may be made against the Released Parties where by law such Released Parties may be liable in their capacity as Directors or Officers of the Payless Canada Entities, based in whole or in part on any obligation or other occurrence existing or taking place on or prior to the Effective Time, or arising out of or in connection with the Affected Claims, the CCAA Plan, the CCAA Proceedings, or any Director/Officer Claim, any Claim that has been barred or extinguished by the Claims Procedure Order, and all such Claims will be forever

waived and released (other than the right to enforce the Payless Canada Entities' obligations under the CCAA Plan), all to the full extent permitted by Applicable Law.

26. Nothing in the CCAA Plan will release or discharge: (i) the Payless Canada Entities and their respective assets, undertaking and properties from any Unaffected Claim that has not been paid in full under the CCAA Plan to the extent of such non-payment; (ii) a Released Party from its obligations under the CCAA Plan; (iii) a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed fraud or wilful misconduct in relation to a Released Claim for which it is responsible at law; or (vi) the Directors/Officers from any Claims which have been preserved in accordance with the Claims Procedure Order that cannot be compromised due to the provisions of section 5.1(2) of the CCAA.

27. In accordance with the proposed Sanction Order any Director/Officer Claims which cannot be released (with the exception of Excluded Director/Officer Claims as defined in the Sanction Order) will be irrevocably limited to recovery from proceeds of the applicable Insurance Policies held by the Payless Canada Entities and Persons with any such claims will have no other right to, and shall not, directly or indirectly seek any recoveries from the Payless Canada Entities or any Released Party. It is noteworthy that no such Claims were filed pursuant to the Claims Procedure Order. Notwithstanding anything to the contrary contained in the proposed Sanction Order, the proposed Sanction Order provides that from and after the Implementation Date, a Person may only commence or continue an action against a Released Party in respect of a matter that is not released pursuant to Article 8(a)-(d) of the CCAA Plan if such Person has first obtained leave of the Court on notice to the applicable Released Party, the Payless Canada Entities, the Monitor and the insurer(s) under any applicable insurance policy.

28. The Released Parties have made significant contributions throughout the CCAA Proceedings to the development of the proposed plan of compromise and arrangement of the Payless Canada Entities.

29. The Released Parties were all critical to the development and negotiation of the CCAA Plan and have been integrally involved in the Payless Canada Entities' CCAA Proceedings. The Payless Canada Entities would not have brought forward the CCAA Plan and the Term Loan Lenders would not have supported CCAA Plan absent the inclusion of the Releases.

30. The backing of the Term Loan Lenders and specifically, (i) their agreement to make amounts available for distribution to unsecured creditors on an equitable basis with the unsecured creditors of the U.S. Debtors that would not otherwise be available and (ii) their consent to the transactions set out in the CCAA Plan and the Plan Supplement, is essential to the CCAA Plan's viability. Without such support, the CCAA Plan would not succeed.

31. The actions of the Released Parties were and are critical to the recoveries of all Affected Creditors and stakeholders largely, including the Payless Canada Entities' unsecured creditors by negotiating an amount for distribution to unsecured creditors of the Payless Canada Entities.

32. Following the commencement of the CCAA Proceedings, the Directors, Officers, Chief Restructuring Organization and their respective professional advisors have continued to invest significant time and effort into advancing and overseeing efforts to maximize value for the Payless Canada Entities, including in the negotiations to implement the CCAA Plan and to obtain a distribution for unsecured creditors in Canada.

33. The Payless Canada Entities believe that it is appropriate that the CCAA Plan include the Releases in favour of the Released Parties, since their contributions were and are critical for recoveries for Affected Creditors and all stakeholders. Without the support and contributions of the Released Parties, which would not have been provided without the expectation and condition of receiving the Releases, the Payless Canada Entities would have likely proceeded with a bankruptcy or other disposition that would not have provided a return to unsecured creditors.

34. The Payless Canada Entities believe that the release in favour of the Monitor under Article 8.1 of the CCAA Plan is necessary and appropriate in the circumstances. The Monitor is a court-appointed officer who (i) has carried out its mandate with respect to the Claims Process and these CCAA Proceedings; (ii) has been integrally involved in the development of the CCAA Plan; and (iii) will be administering the Affected Creditor distributions contemplated under the CCAA Plan on behalf of and for the benefit of the Payless Canada Entities.

CREDITORS' MEETINGS

35. In accordance with the Meetings Order, the original CCAA Plan was served upon the Service List on September 17, 2019 and the amended CCAA Plan was served upon the Service list on October 16, 2019 in these proceedings, each of which were subsequently filed with the Court and posted on the Monitor's Website.

36. The Creditors' Meetings were held on October 23, 2019 at the offices of counsel to the Payless Canada Entities, Cassels Brock & Blackwell LLP. Jim Robinson of the Monitor acted as the Chair of each of the Creditors' Meetings. Sean Zweig of Bennett Jones LLP, designated by the Monitor, acted as Secretary (as defined in the Meetings Order) at each of the Creditors' Meetings and Aiden Nelms of Bennett Jones LLP and Michael Basso of the Monitor were appointed as Scrutineers (as defined in the Meetings Order) for the supervision and tabulation of the attendance at, quorum at, and votes cast at each of the Creditors' Meetings.

37. I am advised by the Monitor that the quorum requirement established by the Meetings Order was satisfied for each of the Creditors' Meetings.¹

¹ The Meetings Order provided that quorum required at each of the Creditors' Meetings was one (1) Eligible Voting Creditor with a Voting Claim present at such meeting in person or by Proxy (as defined in the Meetings Order).

38. I am also advised that the Required Majorities voted overwhelmingly in favour of the Plan Resolution (as defined in the Meetings Order) at each of the Creditors' Meetings and therefore each class of Affected Creditors approved the CCAA Plan.

39. According to the Monitor's tabulation, the following votes were recorded in respect of the General Unsecured Creditor class:

NUMBER VOTING IN FAVOUR	DOLLAR AMOUNT VOTING IN FAVOUR	NUMBER VOTING AGAINST	DOLLAR AMOUNT VOTING AGAINST
44	\$498,372.90	1	\$38,323.00

40. According to the Monitor's tabulation, the following votes were recorded in respect of the Landlord class:

NUMBER VOTING IN FAVOUR	DOLLAR AMOUNT VOTING IN FAVOUR	NUMBER VOTING AGAINST	DOLLAR AMOUNT VOTING AGAINST
124	\$44,313,068.88	2	\$642,667.73

41. Cumulatively, the results illustrate that over 98% in number and 98.5% dollar value of the Eligible Voting Creditors in each of the General Unsecured Creditor class and the Landlord class voted in favour of the CCAA Plan.

PLAN SANCTION

42. The Payless Canada Entities believe that the sanction of the CCAA Plan is fair and reasonable in the circumstances for the following reasons:

- (a) Extensive Consultation: The CCAA Plan is the result of the Payless Canada Entities' extensive consultation with the Monitor and various stakeholders, most

notably the Supporting Term Loan Lenders, to determine the best available option for the Payless Canada Entities and their stakeholders. In finalizing the CCAA Plan, including developing the appropriate mechanics, the Monitor, the Supporting Term Loan Lenders and each of their counsel provided input and constructive feedback;

- (b) Greater Recovery than Bankruptcy: As illustrated in the Sixth Report, the CCAA Plan is the best available alternative for the Payless Canada Entities and their stakeholders. For unsecured creditors other than former employees eligible for WEPPA, recoveries under the CCAA Plan are significantly higher than under a bankruptcy scenario where unsecured creditors would receive no distribution. For WEPPA- eligible employees, the amendments to the CCAA Plan to facilitate the Receivership Order provide such employees with access to the benefits of WEPPA and recoveries potentially significantly in excess of those under the CCAA Plan alone. The Payless Canada Entities believe that all stakeholders will benefit more from the implementation of the CCAA Plan than from a bankruptcy. Further, in the event that the CCAA Plan is not implemented, it is unlikely that any party would fund the costs of a bankruptcy, meaning that former employees might not be able to access the benefits of WEPPA;
- (c) Approval by Creditors: The Payless Canada Entities have sought to achieve a fair and reasonable balance amongst their stakeholders under the CCAA Plan. An overwhelming majority of each class of Affected Creditors voted in favour of implementing the CCAA Plan. These results reinforce the Payless Canada Entities' belief that the CCAA Plan is the most reasonable and fair resolution in the circumstances; and

(d) Compliance with CCAA and Orders: Throughout the course of these CCAA Proceedings, the Payless Canada Entities have acted in good faith and with due diligence and in compliance with the CCAA and all Court orders made in these CCAA Proceedings. The CCAA Plan complies with the requirements of the CCAA, all orders made in these CCAA Proceedings and the CCAA Plan does not contravene any provisions of the CCAA.

43. In the circumstances, the CCAA Plan provides the best available outcome for creditors and stakeholders of the Payless Canada Entities.

STAY EXTENSION

44. On September 17, 2019 the Court granted an order extending the Stay Period up to and including December 20, 2019.

45. The Payless Canada Entities are seeking the Fourth Stay Extension until and including February 28, 2020 to permit them to finalize and implement a CCAA Plan. The Payless Canada Entities expect to work closely with their advisors and the Monitor to conclude these proceedings by that date.

46. As outlined in the CCAA Plan, the required reserves will be established, which include an Administrative Reserve, a Priority Claim Reserve, a Directors' Claim Reserve, and a Post-Filing Claim Reserve. The amount of the Reserves was established in accordance with the CCAA Plan based on an estimate for the remaining costs to be incurred to complete the CCAA Proceedings.

47. As a result, the Payless Canada Entities are forecasted to have sufficient liquidity to fund their post-filing obligations and the remaining costs of their CCAA Proceedings during the Fourth Stay Extension. The Monitor has conveyed that it will continue to report on the overall liquidity and the status of the Reserves of the Payless Canada Entities, including all miscellaneous

receipts received and disbursements made from the reserves. The Payless Canada Entities expect to return to Court in advance of the expiry of the Fourth Stay Extension to seek additional relief in connection with the resolution of these proceedings.

CONCLUSION

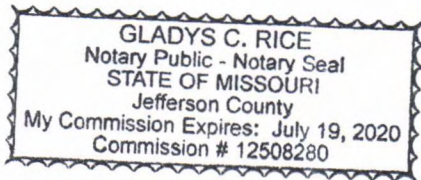
48. The Payless Canada Entities have complied with the CCAA and the orders of the Court made in the CCAA Proceedings. The CCAA Plan is overwhelmingly supported by the Affected Creditors and is fair and reasonable in the circumstances.

49. I swear this affidavit in support of the Payless Canada Entities' motion for the Sanction Order and for no other or improper purpose.

SWORN BEFORE ME at the)
St. Louis County in the state)
Missouri, this)
23rd day of October, 2019)
)

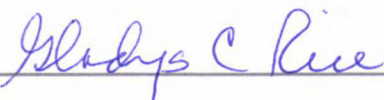
Stephen Marotta

Notary Public

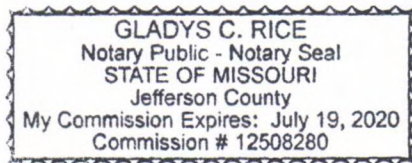


TAB A

This is **Exhibit "A"**
to the affidavit of **Stephen Marotta**
sworn and subscribed to before me
this **23rd day of October 2019**



(insert notary stamp)



Court File No.
CV-19-00614629-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL) TUESDAY, THE 19th
)
SENIOR JUSTICE MORAWETZ) DAY OF FEBRUARY, 2019



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

(the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Stephen Marotta sworn February 18, 2019 (the "**Marotta Affidavit**") and the Exhibits thereto, and the pre-filing report dated February 19, 2019 of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the proposed Monitor of the Payless Canada Entities (as defined below) (the "**Pre-Filing Report**") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and Payless ShoeSource Canada LP (each a "**Payless Canada Entity**" and collectively, the "**Payless Canada Entities**"), counsel to FTI, counsel to Wells Fargo Bank, National Association (the "**ABL Agent**"), counsel to the ad hoc group of lenders under the Term Loan Credit Facility (as defined in the Marotta Affidavit), counsel to Cortland Products Corp. (the "**Term Loan Agent**") and counsel to the Liquidation Consultant (as defined in the Marotta Affidavit), and no one appearing for any other party

although duly served as appears from the affidavit of service of Monique Sassi sworn February 19, 2019 and on reading the consent of FTI to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not an Applicant, Payless ShoeSource Canada LP shall be bound by this Order as though it were an Applicant, enjoy the benefits of the protections and authorizations provided by this Order and shall be subject to the restrictions contained herein.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Payless Canada Entities, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Payless Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, each of the Payless Canada Entities shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. Each of the Payless Canada Entities shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, advisors, experts, accountants, counsel and such other persons (collectively, the "**Assistants**") currently retained or employed by or with respect to it, with liberty to retain such further Assistants, including without limitation, a real estate advisor to assist in the monetization of the Payless Canada Entities' real property leases, as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Payless Canada Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Marotta Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by each of the Payless Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Payless Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that each of the Payless Canada Entities' existing depository and disbursement banks (collectively, the "**Banks**") is authorized to debit the applicable Payless Canada Entity's accounts in the ordinary course of business without the need for further order of this Court for: (i) all cheques drawn on the Payless Canada Entities' accounts which are cashed at such Bank's counters or exchanged for cashier's cheques by the payees thereof prior to the date of this Order; (ii) all cheques or other items deposited in one of Payless Canada Entities' accounts with such Bank prior to the date of this Order which have been dishonoured or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Payless Canada Entities were responsible for such items prior to the date of this Order; and (iii) all undisputed pre-filing amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

7. THIS COURT ORDERS that any of the Banks may rely on the representations of the applicable Payless Canada Entity with respect to whether any cheques or other payment order drawn or issued by the Payless Canada Entities prior to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the applicable Payless Canada Entities as provided for herein.

8. THIS COURT ORDERS that (i) those certain existing deposit agreements between the Banks shall continue to govern the post-filing cash management relationship between the Payless Canada Entities and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect, and (ii) either the Payless Canada Entities or the Banks may, without further Order of this Court, implement changes to the Cash Management Systems and procedures in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts.

9. THIS COURT ORDERS that each of the Payless Canada Entities shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to, on or after the date of this Order to the extent such expenses are incurred and payable by such Payless Canada Entity:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;
- (b) the fees and disbursements of any Assistants retained or employed by or with respect to any of the Payless Canada Entities in respect of these proceedings, in accordance with the terms of their respective engagements; and
- (c) with the consent of the Monitor, amounts owing for goods or services supplied to the Payless Canada Entities prior to the date of this Order by third party suppliers if, in the opinion of the Payless Canada Entities following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business.

10. THIS COURT ORDERS that, except as otherwise provided to the contrary herein each of the Payless Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by such Payless Canada Entity in carrying on the Business in the ordinary course on or

after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to such Payless Canada Entity following the date of this Order.

11. THIS COURT ORDERS that each of the Payless Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes, or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by such Payless Canada Entity in connection with the sale of goods and services by such Payless Canada Entity, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by any of the Payless Canada Entities.

12. THIS COURT ORDERS that, except (i) as specifically permitted herein; or (ii) for repayments of the obligations owing under the ABL Credit Facility (as defined in the Marotta Affidavit) in the amounts noted as Canadian Excess Proceeds in the Cash Flow Statement attached to the Pre-Filing Report, as such Cash Flow Statement may be amended from time to time pursuant to a further Order of this Court or an Order in the U.S. Proceedings, each of the Payless Canada Entities is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Payless Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

12A. THIS COURT ORDERS that the payments to be made by each of the Payless Canada Entities as authorized by this Order shall be materially consistent with the Cash Flow Statement, including without limitation the establishment and funding of the Reserve (as detailed in the Cash Flow Statement) in a separate Payless Canada Entity bank account (the "**Reserve Account**"). Payments shall only be made from the Reserve Account with the consent of the Monitor to satisfy those items for which the Reserve was established, or by further Order of the Court. For greater certainty, no Reserve amounts shall constitute Canadian Excess Proceeds or be otherwise used to repay the ABL Credit Facility without further Order of the Court, regardless of whether such amounts have been deposited into the Reserve Account.

12B. THIS COURT ORDERS that the Payless Canada Entities, in consultation with the Monitor, shall provide periodic reporting to the ABL Agent and the Term Loan Agent on a weekly basis (unless otherwise agreed) until the ABL Credit Facility (in the case of reporting to the ABL Agent) and the Term Loan Credit Facility (in the case of reporting to the Term Loan Agent) is repaid in full, with respect to the actual and projected receipts and disbursements of the Payless Canada Entities in a form to be agreed upon between the Payless Canada Entities each of the ABL Agent and the Term Loan Agent, in consultation with the Monitor.

RESTRUCTURING

13. THIS COURT ORDERS that each of the Payless Canada Entities shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$500,000 in the aggregate; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit each of the Payless Canada Entities to proceed with an orderly restructuring of the Business.

REAL PROPERTY LEASES

14. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Payless Canada Entity which is responsible for such payment shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) but, ~~excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the Payless Canada Entities or any affiliate thereof, the making of this Order, or the commencement of any insolvency proceeding (including, without limitation, the U.S. Proceedings, as defined in the Cross-Border Protocol) in respect of any of the Payless Canada Entities or any affiliate thereof in the United States or any other foreign jurisdiction (a "Foreign Proceeding")~~ or as otherwise may be negotiated between the applicable Payless Canada Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. THIS COURT ORDERS that the relevant Payless Canada Entity shall provide each of the relevant landlords with notice of the relevant Payless Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased

premises to observe such removal and, if the landlord disputes the relevant Payless Canada Entity's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Payless Canada Entity, or by further Order of this Court upon application by the Payless Canada Entities on at least two (2) days notice to such landlord and any such secured creditors. If any of the Payless Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Payless Canada Entity's claim to the fixtures in dispute.

16. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Payless Canada Entities, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Payless Canada Entity and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Payless Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

8 ~~intentionally deleted~~
17. ~~THIS COURT ORDERS that, notwithstanding anything to the contrary in any real property lease or elsewhere, the Payless Canada Entities shall have no obligation to stock or restock and/or operate from any of its locations.~~ *9/13*

NO PROCEEDINGS AGAINST ANY OF THE PAYLESS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY

18. THIS COURT ORDERS that until and including March 21, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Payless Canada Entities or the Monitor, or affecting any of the Business or the Property,

except with the written consent of the applicable Payless Canada Entity(ies) and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Payless Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

19. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of any of the Payless Canada Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Payless Canada Entity(ies) and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower any of the Payless Canada Entities to carry on any business which such entity is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Payless Canada Entities, except with the written consent of the applicable Payless Canada Entity(ies) and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with any of the Payless Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, customs clearing, warehouse and logistics, insurance, transportation services, utility or other services to the Business or any of the Payless Canada Entities, are hereby restrained until

further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by any of the Payless Canada Entities, and that each of the Payless Canada Entities shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the appropriate Payless Canada Entity(ies) in accordance with normal payment practices of such Payless Canada Entity(ies) or such other practices as may be agreed upon by the supplier or service provider and each of the appropriate Payless Canada Entity(ies) and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Payless Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Payless Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Payless Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligation.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that each of the Payless Canada Entities shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of each of the Payless Canada Entities after the commencement of the within

proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of each of the Payless Canada Entities shall, as security for the indemnity provided in paragraph 24 of this Order, be entitled to the benefit of and are hereby granted (i) a charge on the funds in the Reserve Account in the amount of the funds held in the Reserve Account at any point in time (the "**Directors' Reserve Charge**") and (ii) a charge on the Property which charge shall not exceed a maximum amount of USD\$4 million until March 21, 2019 and thereafter shall automatically reduce without any further order of this Court, to the maximum amount of USD\$2 million (the "**Directors' General Charge**" and together with the Directors' Reserve Charge, the "**Directors' Charge**"). The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) each of the Payless Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPROVAL OF THE CRO ENGAGEMENT

27. THIS COURT ORDERS that the agreement dated as of January 24, 2019 pursuant to which the Payless Canada Entities have engaged Ankura Consulting Group, LLC ("**Ankura**") to act as Chief Restructuring Organization (the "**CRO**") through the services of Stephen Marotta, Adrian Frankum and other employees of Ankura, a copy of which is attached as Exhibit "**H**" to the Marotta Affidavit as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

28. THIS COURT ORDERS that, subject to the provisions of the CCAA, this Order and any subsequent Order of this Court, the CRO is authorized to exercise and perform the powers,

responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and approved by this Court (collectively, the “**CRO Powers**”), including, without limitation, the power to:

- (a) make decisions with respect to the day to day aspects of the management and operations of the Business, including, without limitation, organization, human resources, marketing, sales, operations, supply chain, finance and administration, in such manner and take such actions and steps, as the CRO deems reasonably necessary and appropriate, and execute such documents and writings as required to cause or permit each of the Payless Canada Entities to do all things authorized, directed and permitted pursuant to the CCAA, the terms of this Order, and any subsequent Orders of this Court, subject to the terms of those Orders;
- (b) subject to the terms of this Order, realize and dispose of the Property of each of the Payless Canada Entities on behalf of such Payless Canada Entity(ies), including, without limitation, to negotiate and enter into agreements on behalf of each of the Payless Canada Entities with respect to the sale or other disposition of all or any part of the Property;
- (c) represent each of the Payless Canada Entities in any negotiations with any other stakeholders and their professional constituencies, including vendors and suppliers;
- (d) assist the Payless Canada Entities with store closures and liquidations;
- (e) evaluate the short-term company-prepared cash flows and financing requirements of the Payless Canada Entities as they relate to these proceedings;
- (f) assist the Payless Canada Entities in the preparation and oversight of financial statements and schedules, monthly operating reports, and other information required in these proceedings, as applicable;
- (g) assist the Payless Canada Entities in obtaining court approval and administration of financing including developing forecasts and information, and any insolvency related claims management and reconciliation process;

- (h) work with the Payless Canada Entities, and their retained professionals, as appropriate, to assess any offer(s) made to one or more of the Payless Canada Entities;
- (i) communicate with and provide information to the Monitor, and its advisors, regarding the Business and affairs of each of the Payless Canada Entities;
- (j) assist the Monitor, as requested by the Monitor, in connection with the powers given to the Monitor; and
- (k) work with the Assistants and the Monitor in respect of all of the foregoing;

provided that, in each case such actions, agreements, expenses and obligations shall be construed to be those of the appropriate Payless Canada Entity and not of the CRO personally.

29. THIS COURT ORDERS that none of the CRO, Stephen Marotta, Adrian Frankum or such other employees of Ankura, shall be or be deemed to be a director, officer or employee of any of the Payless Canada Entities.

30. THIS COURT ORDERS that the CRO shall ~~not, as a result of the performance of its~~ ^{if deemed to be in possession or control} ~~obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be,~~ ^{shall} be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act of Canada* (the "BIA") and shall be entitled to the ~~benefits and protections in relation to the applicable Payless Canada Entity and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.~~

31. THIS COURT ORDERS that nothing in the CRO Engagement Letter or this Order shall be construed as resulting in the CRO being an employer, successor employer, responsible person or operator within the meaning of any statute, regulation or rule of law, or equity for any purpose whatsoever.

32. THIS COURT ORDERS that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

33. THIS COURT ORDERS that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Payless Canada Entities, the Monitor, and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Payless Canada Entities, the Monitor, and the CRO at least ten (10) days prior to the return date of any such motion for leave.

34. THIS COURT ORDERS that the obligations of each of the Payless Canada Entities to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of any of the Payless Canada Entities.

35. THIS COURT ORDERS that (i) any indemnification obligations of any of the Payless Canada Entities in favour of the CRO and (ii) payment obligations of any of the Payless Canada Entities to the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

APPOINTMENT OF MONITOR

36. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of each of the Payless Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that each of the Payless Canada Entities and its shareholders, officers, directors, and Assistants and the CRO shall advise the Monitor of all material steps taken by such Payless Canada Entity pursuant to this Order, and shall co-operate fully with the Monitor in the exercise

of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

37. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor each of the Payless Canada Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise each of the Payless Canada Entities in its development of the Plan and any amendments to the Plan;
- (d) assist each of the Payless Canada Entities, to the extent required by the Payless Canada Entity, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of each of the Payless Canada Entities, to the extent that is necessary to adequately assess the Payless Canada Entities' business and financial affairs or to perform its duties arising under this Order;
- (f) assist each of the Payless Canada Entities with respect to any Foreign Proceeding and monitor and report to this Court, as it deems appropriate, on the Foreign Proceeding;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

38. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

39. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and similar legislation in other provinces and territories and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

40. THIS COURT ORDERS that the Monitor shall provide any creditor of any of the Payless Canada Entities with information provided by such Payless Canada Entity in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by any of the Payless Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the applicable Payless Canada Entity(ies) may agree.

41. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save

and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Payless Canada Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Payless Canada Entities as part of the costs of these proceedings. The Payless Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Payless Canada Entities in accordance with the payment terms, including the use of retainers as previously paid, as agreed between or on behalf of the Payless Canada Entities and such parties.

43. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

44. THIS COURT ORDERS that the CRO, the Monitor, counsel to the Monitor, and counsel to the Payless Canada Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of USD\$2 million, as security for the professional fees and disbursements incurred by the CRO, the Monitor, counsel to the Monitor, and counsel for the Payless Canada Entities at each of their standard rates and charges and on the terms set forth in their respective engagement letters, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of USD\$2 million); and

Second – Directors' Charge (for the amounts set out in paragraph 25 hereof).

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "**Charges**") shall not be required, and that the

Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (each as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attachment, other than any validly perfected security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order. For the avoidance of doubt: (i) the Administration Charge and (ii) the Directors' Charge shall rank in priority to the security interest of the ABL Agent and the Term Loan Agent.

48. THIS COURT ORDERS that the Payless Canada Entities shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges have not obtained priority.

49. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, none of the Payless Canada Entities shall grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the applicable Payless Canada Entity(ies) also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and/or the Administration Charge, as applicable, or further Order of this Court.

50. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar

provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Payless Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by any of the Payless Canada Entities of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any obligation or Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by any of the Payless Canada Entities pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Payless Canada Entity(ies) interest in such real property leases.

CROSS-BORDER PROTOCOL

52. THIS COURT ORDERS that the cross-border protocol in the form attached as Schedule “A” hereto (the “**Cross-Border Protocol**”) is hereby approved and shall become effective upon its approval by the United States Bankruptcy Court for the Eastern District of Missouri, and the parties to these proceedings and any other Person shall be governed by and shall comply with the Cross-Border Protocol.

SERVICE AND NOTICE

53. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) and *Le Devoir* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Payless Canada Entities of more than

\$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

54. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://cfcanada.fticonsulting.com/paylesscanada/> (the "**Website**").

55. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Website, provided that the Monitor shall have no liability in respect of the accuracy of, or the timeliness of making any changes to, the Service List.

56. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Payless Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any of the Payless Canada Entities' creditors or other interested parties at their respective addresses as last shown on the records of any of the Payless Canada Entities and that any such service or distribution shall be deemed to be received (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

57. THIS COURT ORDERS that the Payless Canada Entities and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and

orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Payless Canada Entities' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

58. THIS COURT ORDERS that each of the Payless Canada Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions concerning the discharge of its powers and duties under this Order or in the interpretation or application of this Order.

59. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Payless Canada Entities, the Business or the Property.

60. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist each of the Payless Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to each of the Payless Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist each of the Payless Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

61. THIS COURT ORDERS that each of the Payless Canada Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Payless ShoeSource Canada Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

62. THIS COURT ORDERS that any interested party (including any of the Payless Canada Entities and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

63. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 19 2019

PER / PAR: RW

Schedule "A"

CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters (the "Guidelines"), annexed as "Schedule A" hereto, shall be incorporated by reference and form part of this Protocol. To the extent there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. On February 18, 2019 (the "Petition Date"), Payless Holdings LLC and certain of its subsidiaries and affiliates (collectively, the "Debtors")¹ commenced cases (collectively, the "U.S. Proceedings") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Missouri.

2. On February 19, 2019, certain of the Debtors, specifically Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc., (together with Payless ShoeSource Canada LP, the "Canadian Debtors"), also sought protection in Canada (the "Canadian Proceedings" and

¹ The Debtors (as defined herein) in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Payless Holdings LLC [5704]; Payless Intermediate Holdings LLC [5190]; WBG-PSS Holdings LLC [0673]; Payless Inc. [3160]; Payless Finance, Inc. [2101]; Collective Brands Services, Inc. [7266]; PSS Delaware Company 4, Inc. [1466]; Shoe Sourcing, Inc. [4075]; Payless ShoeSource, Inc. [4097]; Eastborough, Inc. [2803]; Payless Purchasing Services, Inc. [3043]; Payless ShoeSource Merchandising, Inc. [0946]; Payless Gold Value CO, Inc. [3581]; Payless ShoeSource Distribution, Inc. [0944]; Payless ShoeSource Worldwide, Inc. [6884]; Payless NYC, Inc. [4126]; Payless ShoeSource of Puerto Rico, Inc. [9017]; Payless Collective GP, LLC [2940]; Collective Licensing, LP [1256]; Collective Licensing International LLC [5451]; Clinch, LLC [9836]; Collective Brands Franchising Services, LLC [3636]; Payless International Franchising, LLC [6448]; PSS Canada, Inc. [4969]; Payless ShoeSource Canada Inc. [4180]; Payless ShoeSource Canada GP Inc. [4182]; and Payless ShoeSource Canada LP [4179]. With respect to certain taxing authorities, the Debtors' address is 2001 Bryan Street, Suite 800, Dallas, TX 75201. However, the location of Debtor Payless Holdings LLC's corporate headquarters and the Debtors' service address is: c/o Payless ShoeSource Inc., 3231 S.E. 6th Avenue, Topeka, Kansas 66607.

together with the U.S. Proceedings, the “Insolvency Proceedings”) by filing an application under *the Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) with the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court” and together with the U.S. Court, the “Courts” and each individually, a “Court”). The remaining Debtors in these chapter 11 cases are domiciled in the United States (the “U.S. Debtors”).

3. The Canadian Debtors sought an initial order from the Canadian Court (as may be amended from time to time, the “CCAA Order”), *inter alia*, (a) granting the Canadian Debtors relief under the CCAA; (b) appointing FTI Consulting Canada Inc. as monitor of the Canadian Debtors (the “Monitor”), with the rights, powers, duties and limitations upon liabilities set forth in the CCAA Order; and (c) granting a stay of proceedings in respect of the Canadian Debtors.

4. The Debtors continue to operate and maintain their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. The Office of the United States Trustee (the “U.S. Trustee”) may appoint an official committee of unsecured creditors (if appointed, the “U.S. Creditors’ Committee”) in the U.S. Proceedings.

B. Purpose and Goals

5. While the U.S. Proceedings and the Canadian Proceedings are full and separate proceedings pending in the United States of America (the “U.S.”) and Canada, the implementation of basic administrative procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto and ensure the maintenance of the Court’s independent jurisdiction and comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

- (a) harmonize and coordinate activities in the Insolvency Proceedings before the Courts;
- (b) promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;
- (c) honor the independence and integrity of the Courts and other courts and tribunals of the U.S. and Canada, respectively;
- (d) promote international cooperation and respect for comity among the Courts, the Debtors, the U.S. Creditors’ Committee, the U.S. Representatives (defined below), the Canadian Representatives (defined below and together with the U.S. Representatives, the “Estate Representatives”), the U.S. Trustee and other creditors and interested parties in the Insolvency Proceedings;
- (e) facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the creditors and interested parties of the Debtors, wherever located; and
- (f) implement a framework of general principles to address basic administrative issues arising out of the cross-border and international nature of the Insolvency Proceedings.

C. Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court’s and the Canadian Court’s independent jurisdiction over the subject matter of the

U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors, the Estate Representatives nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the U.S. or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

8. In accordance with the principles of comity and independence established in the preceding paragraphs, nothing contained herein shall be construed to:

- (a) increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the U.S. or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an ex parte or “limited notice” basis;
- (b) require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the U.S.;
- (c) require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;
- (d) require any of the Debtors, the Monitor, the U.S. Creditors’ Committee, the Estate Representatives or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;
- (e) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or
- (f) preclude any of the Debtors, the Monitor, the U.S. Creditors’ Committee, the Estate Representatives, the U.S. Trustee, or any creditor or other interested party

from asserting such party's substantive rights under the applicable laws of the U.S., Canada or any other relevant jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.

9. Subject to the terms hereof, the Debtors, the U.S. Creditors' Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws and orders of the Courts, as applicable.

D. Cooperation

10. To assist in the efficient administration of the Insolvency Proceedings and in recognizing that a Debtor may be a creditor of another Debtor's estate, the Debtors and the Estate Representatives shall where appropriate:

- (a) reasonably cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and
- (b) take any other reasonable steps to coordinate the administration of the U.S. Proceedings and the Canadian Proceedings for the benefit of the Debtors' respective estates and stakeholders, including, without limitation, developing in consultation with the U.S. Creditors' Committee and seeking approval of any cross-border claims protocol by the Canadian and U.S. Courts.

11. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities with and defer to the judgment of the other Court, where appropriate and feasible. In furtherance of the foregoing:

- (a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural or substantive matter relating to the Insolvency Proceedings;
- (b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a

motion or an application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined. Such process shall be subject to submissions by the Debtors, the Estate Representatives, the U.S. Creditors' Committee, the Monitor, the U.S. Trustee and any interested party before any determination on the issue of jurisdiction is made by either Court; and

- (c) The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

12. The U.S. Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Proceedings and the Canadian Proceedings, including the interpretation or implementation of this Protocol if both Courts consider such joint hearings to be necessary or advisable and, in particular, to facilitate or coordinate with the proper and efficient conduct of the U.S. Proceedings and the Canadian Proceedings. With respect to any such joint hearing, unless otherwise ordered, the following procedures will be followed:

- (a) a telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court;
- (b) notices, submissions, applications, or motions by any party that are or become the subject of a joint hearing of the Courts (collectively, "Pleadings") shall be made or filed initially only to the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any joint hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed with both Courts.
- (c) any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing shall file such materials, which shall be identical insofar as possible and shall be consistent with the procedure and evidentiary rules and requirements of each Court, in advance of the time of such hearing or the submissions of such application;

- (d) If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of either Court, it shall be entitled to file such materials without, by the act of filing, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from the Court to which it does not wish to attorn;
- (e) the Judge of the U.S. Court and the Justice of the Canadian Court who will hear any such application or motion shall be entitled to communicate with each other in advance of the hearing on the application or motion, with or without counsel being present, to establish guidelines for the orderly submission of pleadings, papers and other materials and the rendering of decisions by the U.S. Court and the Canadian Court, and to address any related procedural, administrative or preliminary matters; and
- (f) the Judge of the U.S. Court and the Justice of the Canadian Court, having heard any such application, shall be entitled to communicate with each other after the hearing on such application or motion, without counsel present, for the purpose of determining whether consistent rulings can be made by both Courts, and coordinating the terms upon which such rulings shall be made, as well as to address any other procedural or non-substantive matter relating to such applications or motions.

13. Notwithstanding the terms of the preceding paragraph, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to:

- (a) the conduct of the parties appearing in matters presented to such Court; and
- (b) matters presented to such Court, including without limitation, the right to determine if matters are properly before such Court.

14. In the interest of cooperation and coordination of these proceedings, each Court shall recognize and consider all privileges applicable to communications between counsel and parties, including those contemplated by the common interest doctrine or like privileges, which would be applicable in each respective Court. Such privileges in connection with

communications shall be applicable in both Courts with respect to all parties to these proceedings having any requisite common interest.

15. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 38 herein.

E. Retention and Compensation of Estate Representatives and Professionals

16. The Monitor, its officers, directors, employees, counsel, agents, and any other professionals related therefor, wherever located (collectively, the “Monitor Parties”) and any other estate representatives in the Canadian Proceedings and their counsel and other professionals (collectively with the Monitor Parties, the “Canadian Representatives”) shall all be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including:

- (a) the Canadian Representatives’ appointment and tenure in office;
- (b) the retention and compensation of the Canadian Representatives;
- (c) the Canadian Representatives’ liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Insolvency Proceedings; and
- (d) the hearing and determination of any matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law.

17. Additionally, the Canadian Representatives, and the Debtors’ Canadian counsel:

- (a) shall be compensated for their services solely in accordance with the CCAA and other applicable Canadian law or orders of the Canadian Court; and

(b) shall not be required to seek approval of their compensation in the U.S. Court.

18. The Monitor Parties shall be entitled to the protections of Bankruptcy Code section 306 and the same protections and immunities in the U.S. as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

19. Any estate representative appointed in the U.S. Proceedings, including without limitation, any restructuring officer appointed under Bankruptcy Code section 306, the U.S. Creditors' Committee and any examiner or trustee appointed pursuant to Bankruptcy Code section 1104, and their respective counsel and other professionals (collectively, the "U.S. Representatives"), shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including:

- (a) the U.S. Representatives' tenure in office;
- (b) the U.S. Representatives' retention and compensation;
- (c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Insolvency Proceedings; and
- (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the U.S.

20. Nothing in this Protocol creates any fiduciary duty, duty of care or other duty owed by the U.S. Representatives to the stakeholders in the Canadian Proceedings or by the

Canadian Representatives to the stakeholders in the U.S. Proceedings that they would not otherwise have in the absence of this Protocol.

21. The U.S. Representatives shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives:

- (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and
- (b) shall not be required to seek approval of their compensation in the Canadian Court.

22. Any professionals retained by or with the approval of the Debtors for Canadian related advice, activities performed in Canada or in connection with the Canadian Proceeding, including, in each case, counsel, financial advisors, accountants, consultants and experts (collectively, the “Canadian Professionals”) shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order any other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court. The Debtors will include the identity and the amount of payments with respect to the Canadian Professionals in the Debtors’ monthly operating reports.

23. Any professionals retained by or with approval of the Debtors for activities performed in the U.S. or in connection with the U.S. Proceedings, including, in each case, counsel, financial advisors, accountants, consultants and experts (collectively, the “U.S. Professionals”) shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals: (a) shall be subject to the procedures and standards for

retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the U.S. or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention of compensation in the Canadian Court.

24. Any professionals retained by the U.S. Creditors' Committee, including, in each case, counsel and financial advisors (collectively, the "Committee Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the Committee Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the U.S. or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention of compensation in the Canadian Court.

F. Rights to Appear and Be Heard

25. Each of the Debtors, their creditors and other interested parties in the Insolvency Proceedings, including the Canadian Representatives, and the U.S. Representatives shall have the right and standing to:

- (a) appear and be heard in either the U.S. Court or the Canadian Court in the Insolvency Proceedings to the same extent as a creditor and other interested party domiciled in the forum country, but solely to the extent such party is a creditor or other interested party in the subject forum, subject to any local rules or regulations generally applicable to all parties appearing in the forum; and
- (b) subject to 25(a) above, file notices of appearance or other papers with the Clerk of the U.S. Court or the Canadian Court in the Insolvency Proceedings; *provided, however*, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that appearance by the U.S. Creditors' Committee in the Canadian Proceedings shall not form a basis for personal jurisdiction in Canada over the members of the U.S. Committee. Notwithstanding the foregoing, and in accordance with the policies set forth above:
 - (i) the Canadian Court shall have jurisdiction over the U.S. Representatives and the U.S. Trustee solely with respect to the particular matters as to

which the U.S. Representatives or the U.S. Trustee appear before the Canadian Court; and

- (ii) the U.S. Court shall have jurisdiction over the Canadian Representatives solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

26. Solely with respect to consensual due diligence the U.S. Creditors' Committee will execute confidentiality agreements in the form to be agreed to by the Canadian Debtors and the U.S. Creditors' Committee.

G. Claims Protocol

27. It may be necessary to implement a specific claims protocol to address, among other things and without limitation, the timing, process, jurisdiction and applicable governing law to be applied to the resolution of claims filed by the Debtors' creditors (including intercompany claims) in the Canadian Proceedings and the U.S. Proceedings. In such event, and in recognition of the inherent complexities of the intercompany claims that may be asserted in the Insolvency Proceedings, the Debtors shall submit a specific claims protocol.

H. Notice

28. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier or electronic forms of communication) to the following:

- (a) all creditors and other interested parties in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur and order of the applicable court ; and
- (b) to the extent not otherwise entitled to receive notice under subpart (a) of this paragraph, to:

- (i) U.S. Counsel to the Debtors, Akin Gump Stauss Hauer & Feld LLP, Bank of America Tower, 1 Bryant Park, New York, NY 10036, USA (Attn: Meredith Lahaie and Kevin Zuzolo) and Armstrong Teasdale LLP, 7700 Forsyth Blvd., Suite 1800, St. Louis, MO 63105, USA (Attn: Erin Edelman and John Willard);
- (ii) Canadian Counsel to the Debtors, Cassels Brock & Blackwell LLP, 2100, 40 King Street West, Toronto, ON Canada, M5H 3C2 (Attn: Ryan Jacobs, Jane Dietrich, Natalie Levine);
- (iii) the Monitor, FTI Consulting Canada Inc., TD Waterhouse Tower, 79 Wellington Street West, Suite 2010, P.O. Box 104, Toronto, ON Canada, M5K 1G8 (Attn: Greg Watson, Paul Bishop), and its counsel, Bennett Jones LLP, 3400, One First Canadian Place, Toronto, ON Canada, M5X 1A4 (Attn: Sean Zweig, Kevin J. Zych);
- (iv) Counsel to the ABL Agent, Choate Hall & Stewart LLP, Two International Place, Boston, MA 02110 (Attn: Kevin Simard, Doug Gooding and Jonathan Marshall); Thompson Coburn LLP, One US Bank Plaza, St. Louis, MO 63101 (Attn: Mark Bossi); and Norton Rose Fulbright Canada LLP, Suite 3800, Royal Bank Plaza, South Tower, 200 Bay Street, P.O. Box 84, Toronto, ON Canada, M5J 2Z4 (Attn: Tony Reyes and David Amato);
- (v) Counsel to the Ad Hoc Term Lender Committee, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036, USA (Attn: Stephen D. Zide); Doster, Ullom & Boyle, LLC, 16090 Swingley Ridge Road, Suite 620, Chesterfield, Missouri 63017, USA (Attn: Gregory D. Willard); and Fasken Martineau DuMoulin LLP, Bay Adelaide Centre, 333 Bay Street, Suite 2400, P.O. Box 20, Toronto, ON Canada, M5H 2T6 (Attn: Stuart Brotman)
- (vi) Counsel to any statutory committee or any other official appointed in the U.S. Proceedings;
- (vii) the Office of the United States Trustee for Eastern District of Missouri;
- (viii) such other parties as may be designated by either Court from time to time.

29. Notice in accordance with this paragraph may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are

filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtors or the Canadian Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

30. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 28 above.

I. Recognition of Stays of Proceedings

31. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the U.S. Debtors and their property under Bankruptcy Code section 362 (the "U.S. Stay"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding the interpretation, extent, scope and applicability of the U.S. Stay, and any orders of this U.S. Court modifying or granting relief from the U.S. Stay.

32. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the Canadian Debtors, its property and the current and former directors and officers of the Canadian Debtors under the CCAA and the CCAA Order (the "Canadian Stay"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding the interpretation, extent, scope and applicability of the Canadian Stay, and any orders of the Canadian Court modifying or granting relief from the Canadian Stay.

33. Nothing contained herein shall affect or limit the Debtors or other parties' rights to assert the applicability or non-applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located. Subject to the terms hereof: (a) any motion with respect to the application of the stay of

proceedings issued by the Canadian Court in the CCAA Proceeding shall be heard and determined by the Canadian Court and (b) any motion with respect to the application of the stay under Bankruptcy Code section 362 shall be heard and determined by the U.S. Court.

J. Effectiveness; Modification

34. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

35. This Protocol may not be supplemented, modified, terminated or replaced in any manner except by the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with the notice provision contained in this Protocol.

K. Procedure for Resolving Disputes Under the Protocol

36. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice as set forth in paragraphs 28 and 29 above. In rendering a determination in any such dispute, the Court to which the issue is addressed:

- (a) shall consult with the other Court; and
- (b) may, in its sole discretion, either:
 - (i) render a binding decision after such consultation;
 - (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court; or
 - (iii) seek a joint hearing of both Courts.

37. Notwithstanding the foregoing, each Court in making a determination shall have regard to the independence, comity or inherent jurisdiction of the other Court established under existing law.

38. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

- (a) The U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;
- (b) The Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;
- (c) Copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 28 hereof; and
- (d) The Courts may jointly decide to invite the Debtors, the Estate Representatives, the U.S. Trustee, the Monitor and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

39. For clarity, the provisions of paragraph 38 shall not be construed to restrict the ability of the U.S. Court or the Canadian Court to confer, as provided above, whenever they deem it appropriate to do so.

L. Preservation of Rights

40. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code, the CCAA and the Orders of the Courts or (b) preclude or prejudice the rights of any

person to assert or pursue such person's substantive rights against any other person under the applicable laws of the United States or Canada.

41. The question of the degree of standing of the U.S. Creditors' Committee in the Canadian Court remains an open issue. This Protocol is without prejudice to the question one way or the other.

Schedule A

GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS

INTRODUCTION

- A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction (“Parallel Proceedings”) by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.
- B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.
- C. In particular, these Guidelines aim to promote:
- (i) the efficient and timely coordination and administration of Parallel Proceedings;
 - (ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders’ interests are respected;
 - (iii) the identification, preservation, and maximisation of the value of the debtor’s assets, including the debtor’s business;
 - (iv) the management of the debtor’s estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;
 - (v) the sharing of information in order to reduce costs; and
 - (vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties² in Parallel Proceedings.
- D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit.³
- E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.
- F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

² The term “parties” when used in these Guidelines shall be interpreted broadly.

³ Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, “administrator” includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order,⁴ following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

- (i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;
- (ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;
- (iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or
- (iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

COMMUNICATION BETWEEN COURTS

⁴ In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

- (i) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings or other documents directly to the other court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.
- (ii) Directing counsel or other appropriate person to transmit or deliver copies of documents, pleadings, affidavits, briefs or other documents that are filed or to be filed with the court to the other court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.
- (iii) Participating in two-way communications with the other court, by telephone or video conference call or other electronic means, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, other than on administrative matters, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

- (i) In the normal case, parties may be present.
- (ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications.
- (iii) The communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.
- (iv) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.
- (v) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other parties by

making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court in accordance with the procedures applicable _in the court.

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol, order or directions made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

- (i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.
- (ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.
- (iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.
- (iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.
- (v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.
- (vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing.
- (vii) A court, subsequent to the joint hearing, should be entitled to communicate with the other court, with or without counsel present, for the purpose of determining outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.

CV-19-00614629-
00CL

Court File No.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

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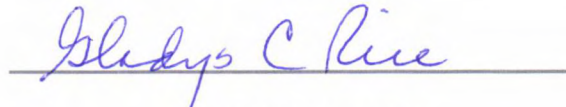
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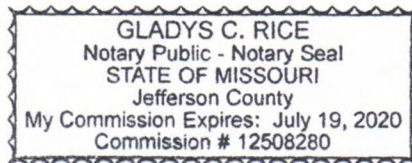
Lawyers for Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP

TAB B

This is **Exhibit "B"**
to the affidavit of **Stephen Marotta**
sworn and subscribed to before me
this **23rd day of October 2019**



(insert notary stamp)



**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "Applicants")

FIRST AMENDED AND RESTATED PLAN OF COMPROMISE AND ARRANGEMENT

PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

concerning, affecting and involving

**PAYLESS SHOESOURCE CANADA INC., PAYLESS SHOESOURCE CANADA GP INC., and
PAYLESS SHOESOURCE CANADA LP**

October 16, 2019

FIRST AMENDED AND RESTATED PLAN OF COMPROMISE AND ARRANGEMENT

A. Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc., collectively the “**Applicants**” are debtor companies (as such term is defined in the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”)).

B. On February 19, 2019, the Honourable Regional Senior Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Initial Order in respect of the Applicants (as such Order may be amended, restated or varied from time to time, the “**Initial Order**”) pursuant to the CCAA. The protections of the Initial Order extend to Payless ShoeSource Canada LP (together with the Applicants, the “**Payless Canada Entities**”).

C. On September 19, 2019, the Court granted a Meetings Order (as such Order may be amended, restated or varied from time to time, the “**Meetings Order**”) pursuant to which, among other things, the Payless Canada Entities were authorized to file this Plan and to convene meetings of Affected Creditors to consider and vote on this Plan.

D. The Payless Canada Entities have engaged in good faith discussions with the Monitor and the Supporting Term Loan Lenders and determined that certain matters in the Plan require amendment at this time.

NOW THEREFORE the Payless Canada Entities hereby propose and present this plan of compromise and arrangement under the CCAA.

ARTICLE 1 INTERPRETATION

1.1 Certain Rules of Interpretation

For the purposes of this Plan:

- (a) In this Plan and the Recitals, unless otherwise stated or the subject matter or context otherwise requires, all terms defined herein have their meanings ascribed thereto on Schedule “A”;
- (b) Any reference in this Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means such document shall be substantially in such form or substantially on such terms and conditions;
- (c) Unless otherwise expressly provided herein, any reference in this Plan to an instrument, agreement or an Order or an existing document or exhibit filed or to be filed means such instrument, agreement, Order, document or exhibit as it may have been or may be amended, modified, or supplemented in accordance with its terms;
- (d) The division of this Plan into articles and sections is for convenience of reference only and does not affect the construction or interpretation of this Plan, nor are the

descriptive headings of articles and sections intended as complete or accurate descriptions of the content thereof;

- (e) The use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of this Plan to such Person (or Persons) or circumstances as the context otherwise permits;
- (f) The words “includes” and “including” and similar terms of inclusion shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation, but rather shall mean “includes but is not limited to” and “including but not limited to”, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (g) Unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day;
- (h) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends;
- (i) Unless otherwise provided, any reference to a statute or other enactment of parliament, a legislature or other Governmental Entity includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;
- (j) References to a specific Recital, Article or Section shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specific Recital, Article or Section of this Plan, whereas the terms “this Plan”, “hereof”, “herein”, “hereto”, “hereunder” and similar expressions shall be deemed to refer generally to this Plan and not to any particular Recital, Article, Section or other portion of this Plan and include any documents supplemental hereto; and
- (k) The word “or” is not exclusive.

1.2 Governing Law

This Plan shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation or application of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the jurisdiction of the Court.

1.3 Currency

Unless otherwise stated, all references in this Plan to sums of money are expressed in, and all payments provided for herein shall be made in, Canadian dollars. In accordance

with paragraph 8 of the Claims Procedure Order, any Claim (other than Priority Claims) in a currency other than Canadian dollars must be converted to Canadian dollars, and any such amount shall be regarded as having been converted at the daily exchange rate quoted by the Bank of Canada for exchanging such currency to Canadian dollars as at the Filing Date, which rate for the conversion of United States currency is US\$1:CAD\$1.323 notwithstanding anything in the Claims Procedure Order.

1.4 Date for Any Action

If the date on which any action is required to be taken hereunder by a Person is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

1.5 Time

Time shall be of the essence in this Plan.

**ARTICLE 2
PURPOSE AND EFFECT OF THIS PLAN**

2.1 Purpose

The purpose of this Plan is to coordinate, on a cross-border basis with the U.S. Proceedings, a cost-effective means of making distributions to the Affected Creditors in the expectation that Persons who have an economic interest in any of the Payless Canada Entities, when considered as a whole, will derive a greater benefit from the implementation of this Plan than would result from a bankruptcy of the Payless Canada Entities.

The Term Loan Agent holds a valid and enforceable security interest in all of the assets, undertakings and properties of the Payless Canada Entities in respect of the Term Loan Claims. It is contemplated that certain amounts will be distributed from the Payless Canada Entities to, or for the ultimate benefit of, the Term Loan Lenders outside of this Plan.

2.2 Effectiveness

Subject to the satisfaction, completion or waiver (to the extent permitted pursuant to section 9.4) of the conditions precedent set out herein, this Plan will become effective in the sequence described in the Plan Supplement from and after the Effective Time and shall be binding on and enure to the benefit of the Payless Canada Entities, the Affected Creditors, the Released Parties, and all other Persons as provided for herein, or subject to, this Plan and their respective successors and assigns and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

2.3 Persons Not Affected

- (a) This Plan does not affect Unaffected Creditors to the extent of their Unaffected Claims. Nothing in this Plan shall affect the Payless Canada Entities' rights and defences, both legal and equitable, with respect to any Unaffected Claims, including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims, provided, however that the Payless Canada Entities hereby irrevocably (i) waive all such rights and defences with respect to the Term Loan Claims, and (ii) acknowledge that the security interests of the Term Loan Agent are valid and enforceable in accordance with their terms as against the Payless Canada Entities and their respective assets, undertakings and properties and stand as security for the Term Loan Claims. Except as otherwise provided for herein, nothing herein shall constitute a waiver of any rights of any Payless Canada Entity to dispute the quantum or validity of an Unaffected Claim. Other than with respect to Affected Claims and Released Claims this Plan does not affect or otherwise impair the Claims of any Person as against the Payless Canada Entities.

ARTICLE 3 CLASSIFICATION, VOTING CLAIMS AND RELATED MATTERS

3.1 Classes

For the purposes of considering, voting on, and receiving distributions under this Plan, the Affected Creditors shall constitute two classes: (i) the General Unsecured Creditor class; and (ii) the Landlord class.

3.2 Claims of Affected Creditors

- (a) Except as otherwise provided in the Meetings Order or this Plan, Affected Creditors shall be entitled to vote their Voting Claims or Disputed Voting Claims at the applicable Creditors' Meeting(s) in respect of this Plan and shall be entitled to receive distributions on account of their Proven Claims as provided under and pursuant to this Plan.
- (b) Holders of Intercompany Claims shall not be entitled to vote at the Creditors' Meetings

3.3 Unaffected Claims

Unaffected Claims shall not be compromised under this Plan. No Unaffected Creditor shall be:

- (a) entitled to vote or (except as otherwise expressly stated in the Meetings Order or this Plan) attend in respect of their Unaffected Claims at any Creditors' Meetings to consider and approve this Plan; or
- (b) entitled to receive any distribution or consideration under this Plan in respect of such Unaffected Claim;

provided, however, nothing in this Plan, other than provisions related to the Affected Creditor Distribution Account, shall prohibit or impair any distributions to the Term Loan Lenders or the Term Loan Agent in respect of the Term Loan Claims, whether in the CCAA Proceedings or the U.S. Proceedings or otherwise.

Notwithstanding the above, the Supporting Term Loan Lenders and the Term Loan Agent may attend at the Creditors' Meetings but shall not be entitled to vote at the Creditors' Meetings in respect of any portion of the Term Loan Claims.

3.4 Creditors' Meetings

- (a) The Creditors' Meetings shall be held in accordance with this Plan, the Meetings Order and any further Order in the CCAA Proceedings.
- (b) If this Plan is approved by the Required Majorities in each voting class, then this Plan shall be deemed to have been agreed to, accepted and approved by the Affected Creditors and shall be binding upon all Affected Creditors immediately upon the delivery of the Monitor's Certificate in accordance with section 9.6 hereof.

3.5 Procedure for Valuing Voting Claims

The procedure for valuing Voting Claims and resolving Disputed Voting Claims of Eligible Voting Creditors shall be as set forth in the Claims Procedure Order, the Meetings Order, this Plan and the CCAA. The Payless Canada Entities and the Monitor shall have the right to seek the assistance of the Court in valuing any Voting Claim in accordance with the Claims Procedure Order, the Meetings Order and this Plan, if required, and to ascertain the result of any vote on this Plan.

ARTICLE 4 TREATMENT OF CLAIMS

4.1 Treatment of General Unsecured Claims

- (a) On the Implementation Date and in accordance with this Plan, each Proven General Unsecured Claim shall be entitled to receive a distribution in an amount equal to its General Unsecured Pro Rata Share of the General Unsecured Pool from the Affected Creditor Distribution Account.
- (b) Consistent with section 6.2 of this Plan, if the Receivership Order is granted, all Employee Distributions that would otherwise be payable under this Plan will be paid to the Receiver to be dealt with in accordance with the Receivership Order.

4.2 Treatment of Landlord Claims

- (a) On the Implementation Date and in accordance with this Plan, each Proven Landlord Claim shall be entitled to receive a distribution in an amount equal to the lesser of \$3,840.00 and the amount asserted in such Landlord's Notice of

Dispute of Claim Statement or Proof of Claim, or if no Notice of Dispute of Claim Statement or Proof of Claim was filed, such Landlord's Claim Statement.

- (b) Only one distribution under section 4.2(a) hereof will be made in respect of each Lease regardless of whether one or more Person is identified as the Landlord under the Lease.

4.3 Treatment of Intercompany Claims

On the Implementation Date and in accordance with the steps and sequence as set forth in the Plan Supplement, all Intercompany Claims shall be preserved or extinguished at the election of the Payless Canada Entities, with the consent of the Supporting Term Loan Lenders.

4.4 Priority Claims

- (a) In accordance with the Sanction Order, the CCAA and with the steps and in the sequence set forth herein and the Plan Supplement, the Employee Priority Claims and the Crown Priority Claims, if any, shall be paid from the Priority Claim Reserve Account.
- (b) Subject to the Effective Time occurring: (i) all Crown Priority Claims that were outstanding as at the Filing Date shall be paid in full by the Monitor on behalf of the Payless Canada Entities, from the Priority Claim Reserve within six (6) months after the Sanction Order, as required by subsection 6(3) of the CCAA; and (ii) all Employee Priority Claims to the extent unpaid prior to the Implementation Date shall be paid by the Monitor, on behalf of the Payless Canada Entities, from the Priority Claim Reserve immediately after the Sanction Order as required by subsection 6(5) of the CCAA.

4.5 Disputed Claims

Any Affected Creditor with a Disputed Claim shall not be entitled to receive any distribution hereunder with respect to such Disputed Claim unless and until such Claim becomes a Proven Claim or a Proven Priority Claim in accordance with the Meetings Order. Distributions pursuant to and in accordance with this Plan shall be paid or distributed in respect of any Disputed Claim that is finally determined to be a Proven Claim in accordance with this Plan and the Meetings Order.

4.6 Director/Officer Claims

All Director/Officer Claims that are not (i) section 5.1(2) Director/Officer Claims, or (ii) judged by the express terms of a judgment rendered on a final determination on the merits to have resulted from criminal, fraudulent or other wilful misconduct on the part of the Director or Officer, shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration on the Implementation Date.

4.7 Extinguishment of Claims

On the Implementation Date, in accordance with its terms and in the sequence set forth in the Plan Supplement (as applicable) and in accordance with the provisions of the Sanction Order, the treatment of Affected Claims (including Proven Claims, Intercompany Claims, Disputed Claims) and all Released Claims, in each case as set forth herein, shall be final and binding on the Payless Canada Entities, all Affected Creditors (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns) and any Person holding a Released Claim. All Affected Claims and all Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred, and the Released Parties shall thereupon have no further obligation whatsoever in respect of the Affected Claims and the Released Claims, as applicable; provided that nothing herein releases any of the Payless Canada Entities or any other Person from their obligations to make distributions in the manner and to the extent provided for in this Plan and provided further that such discharge and release of the Payless Canada Entities shall be without prejudice to the right of an Affected Creditor in respect of a Disputed General Unsecured Claim or Disputed Landlord Claim to prove such Disputed General Unsecured Claim or Disputed Landlord Claim in accordance with the Claims Procedure Order or the Meetings Order so that such Disputed General Unsecured Claim or Disputed Landlord Claim may become a Proven Claim entitled to receive consideration under this Plan.

For certainty, all Affected Claims and Released Claims of Creditors who are or were employees of any of the Payless Canada Entities shall be fully, finally and irrevocably released, discharged, cancelled and barred pursuant to the terms hereof and the Sanction Order, except (notwithstanding anything contained in this section 4.7 or Article 8 hereof), if the Receivership Order has been granted, for the sole purpose of permitting, and only to the extent required to permit, individuals who are entitled to receive payment under WEPPA to make application for payment in respect of eligible wages (as defined in WEPPA) under and in accordance with WEPPA. No such individual or any person acting as assignee or subrogee (including the Crown) of or in respect of such claims shall have or be entitled to assert any claim against the Payless Canada Entities, their assets, directors or officers (other than as provided in Article 4 hereof and the Receivership Order) or against any other Released Party.

ARTICLE 5 CREATION OF POOL AND RESERVES

5.1 Creation of the General Unsecured Pool

- (a) On the Implementation Date, the Payless Canada Entities shall deliver to the Monitor by way of wire transfer (in accordance with the wire transfer instructions provided by the Monitor at least five (5) Business Days prior to the Implementation Date), Cash in the amount necessary to establish the General Unsecured Pool.

- (b) The Monitor shall hold the General Unsecured Pool in the Affected Creditor Distribution Account and shall distribute such Cash in the General Unsecured Pool to General Unsecured Creditors holding Proven General Unsecured Claims in accordance with Article 6 hereof.

5.2 Creation of the Landlord Pool

- (a) On the Implementation Date, the Payless Canada Entities shall deliver to the Monitor by way of wire transfer (in accordance with the wire transfer instructions provided by the Monitor at least five (5) Business Days prior to the Implementation Date), Cash in the amount necessary to establish the Landlord Pool.
- (b) The Monitor shall hold the Landlord Pool in the Affected Creditor Distribution Account and shall distribute such Cash in the Landlord Pool to Proven Landlord Creditors holding Proven Landlord Claims in accordance with Article 6 hereof.

5.3 Creation of the Administrative Reserve

- (a) On the Implementation Date, the Payless Canada Entities shall deliver to the Monitor by way of wire transfer (in accordance with the wire transfer instructions provided by the Monitor at least five (5) Business Days prior to the Implementation Date), Cash in the amount necessary to establish the Administrative Reserve.
- (b) In accordance with section 7.3 of this Plan, the Monitor shall hold the Administrative Reserve in the Administrative Reserve Account for the purpose of paying the Administrative Reserve Costs in accordance with this Plan and shall distribute any remaining balance in the Administrative Reserve Account to the Payless Canada Entities, which amounts will remain subject to the security interests of the Term Loan Agent.

5.4 Creation of the Priority Claim Reserve

- (a) On the Implementation Date, the Payless Canada Entities shall deliver to the Monitor by way of wire transfer (in accordance with the wire transfer instructions provided by the Monitor at least five (5) Business Days prior to the Implementation Date), Cash in the amount necessary to establish the Priority Claim Reserve.
- (b) In accordance with section 7.3 of this Plan, the Monitor shall hold the Priority Claim Reserve in the Priority Claim Reserve Account for the purpose of paying the Priority Claims in accordance with this Plan and shall distribute any remaining balance in the Priority Claim Reserve Account to the Payless Canada Entities, which amounts will remain subject to the security interests of the Term Loan Agent.

5.5 Creation of the Directors' Claim Reserve

- (a) On the Implementation Date, the Payless Canada Entities shall deliver to the Monitor by way of wire transfer (in accordance with the wire transfer instructions provided by the Monitor at least five (5) Business Days prior to the Implementation Date), Cash in the amount necessary to establish the Directors' Claim Reserve.
- (b) In accordance with section 7.3 of this Plan, the Monitor shall hold the Directors' Claim Reserve in the Directors' Claim Reserve Account for the purpose of paying the Director/Officer Claims in accordance with this Plan and shall distribute any remaining balance in the Directors' Claim Reserve Account to the Payless Canada Entities, which amounts will remain subject to the security interests of the Term Loan Agent.

5.6 Creation of the Post-Filing Claim Reserve

- (a) On the Implementation Date, the Payless Canada Entities shall deliver to the Monitor by way of wire transfer (in accordance with the wire transfer instructions provided by the Monitor at least five (5) Business Days prior to the Implementation Date), Cash in the amount necessary to establish the Post-Filing Claim Reserve.
- (b) In accordance with section 7.3 of this Plan, the Monitor shall hold the Post-Filing Claim Reserve in the Post-Filing Claim Reserve Account for the purpose of paying the Post-Filing Claims in accordance with this Plan and shall distribute any remaining balance in the Post-Filing Claim Reserve Account to the Payless Canada Entities, which amounts will remain subject to the security interests of the Term Loan Agent.

5.7 Excess Reserve Funds

- (a) To the extent that the Payless Canada Entities or the Monitor determine, with the consent of the other party, that there are funds in any Reserve sufficiently in excess of the amount required to fund payments that may be required to be made from such Reserve, the Payless Canada Entities with the consent of the Monitor and in consultation with the Supporting Term Loan Lenders, may transfer such excess funds to another Reserve. In the event of any dispute the parties may seek a further order of the Court.
- (b) To the extent that the Payless Canada Entities or the Monitor determine, with the consent of the other party, that there are insufficient funds in any Reserve to fund payments that may be required to be made from such Reserve, no excess amounts from any other Reserves will be distributed to the Payless Canada Entities without ensuring that sufficient funds are added to the applicable Reserve. In the event of any dispute the parties may seek a further order of the Court.

- (c) For the avoidance of doubt, no amounts held in any of the Reserves will be, or be deemed to be held in trust for any Claimant.

ARTICLE 6
PROVISIONS REGARDING DISTRIBUTIONS AND DISBURSEMENTS

6.1 Distributions and Disbursements Generally

- (a) All distributions and disbursements to be effected pursuant to this Plan shall be made pursuant to this Article 6 and shall occur in the manner set out below under the supervision of the Monitor.
- (b) Notwithstanding any other provisions of this Plan, no distributions or transfers of Cash shall be made by the Monitor with respect to all or any portion of a Disputed Claim unless and only to the extent that such Disputed Claim has become a Proven Claim or a Proven Priority Claim, as applicable.
- (c) Notwithstanding anything to the contrary herein, all distributions or other payments to be made pursuant to this Plan to General Unsecured Creditors or Landlords are conditional on the receipt of documentation in form and content satisfactory to the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders (the “**Comfort Letter**”) from the applicable Governmental Entity authorizing the Monitor to make the distributions, disbursements, or payments without any liability to any of the Payless Canada Entities, the Monitor, or each of their respective Directors, Officers, employees or agents in respect of the ITA, *Excise Tax Act*, and any other legislation pertaining to Taxes. In the event the Comfort Letter is not received by December 31, 2019, the Payless Canada Entities shall notify the Term Loan Agent and the Supporting Term Loan Lenders and may seek further directions from the Court on at least five (5) Business Days’ notice to the Service List.

6.2 Distributions of Cash After Disputed General Unsecured Claims and Disputed Landlord Claims are Resolved

- (a) From and after the date of the resolution of all Disputed General Unsecured Claims and all Disputed Landlord Claims in accordance with the Claims Procedure Order and the Meetings Order (the “**Affected Creditor Distribution Date**”), the Monitor shall, subject to section 6.1, distribute to such Affected Creditor, Cash in accordance with Article 4 herein, less any Withholding Obligations or statutory deductions required by Applicable Law. For the avoidance of doubt, the Monitor shall have no obligation to make distributions to Affected Creditors prior to the Affected Creditor Distribution Date.
- (b) If the Receivership Order has been granted, on the Affected Creditor Distribution Date, all Creditors who are or were employees of the Payless Canada Entities and, to the best of the Monitor’s knowledge, not ineligible under section 6 of WEPPA to receive a payment under WEPPA, shall be deemed to have directed that their Employee Distributions be made to the Receiver, and the Receiver

shall receive and deal with the Employee Distributions subject to and in accordance with the terms of the Receivership Order. For the avoidance of doubt, if the Receivership Order is granted no Employee Distributions shall be paid directly to employees by the Monitor or the Payless Canada Entities, however if the Receivership Order is not granted, such Employee Distributions will be made in the same manner as distributions to other General Unsecured Creditors.

6.3 Method of Payment

All distributions in Cash to Affected Creditors to be made by the Monitor under this Plan shall be made from the Affected Creditor Distribution Account by cheque sent by prepaid ordinary mail to the address for such Affected Creditor as recorded in the books and records of the Payless Canada Entities, as noted on the Notice of Dispute of Claim Statement or Proof of Claim filed by the Affected Creditors or as otherwise communicated to the Monitor not more than three (3) Business Days following the granting of the Sanction Order by such Affected Creditor, or an assignee in respect of such Affected Creditor's Proven Claim; provided if the Receivership Order is granted, the Employee Distributions shall be made by transfer from the Affected Creditor Distribution Account to an account established and designated by the Receiver.

6.4 Undeliverable Distributions

- (a) If any distribution is returned as undeliverable or is not cashed (in each case, an "**Undeliverable Distribution**"), no further distributions to such Affected Creditor shall be made unless and until the Monitor is notified by such Affected Creditor of its current address at which time all such distributions shall be made to such Affected Creditor without interest.
- (b) All claims for undeliverable or un-cashed distributions in respect of Proven Claims shall be made on or before the date that is six (6) months after the Affected Creditor Distribution Date, after which date the Proven Claims of such Affected Creditor or successor or assign of such Affected Creditor with respect to such unclaimed or un-cashed distributions shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any Applicable Law to the contrary, at which time any Cash held by the Monitor in relation to such undeliverable or unclaimed distribution shall be added to the Administrative Reserve. Nothing in this Plan or Sanction Order shall require the Monitor or the Payless Canada Entities to attempt to locate the holder of any Proven Claim or Unaffected Claim.

6.5 Tax Matters

- (a) Any terms and conditions of any Affected Claims which purport to deal with the order of or grant of priority of payment of principal, interest, penalties or other amounts shall be deemed to be void and ineffective. All distributions made

pursuant to this Plan shall be first in satisfaction of the portion of Affected Claims that are not subject to any Withholding Obligation.

- (b) Notwithstanding any provisions of this Plan, each Person that receives a distribution, disbursement or other payment pursuant to this Plan shall have sole and exclusive responsibility and liability for the satisfaction and payment of any Tax obligations imposed on such Person by any Taxing Authority on account of such distribution, disbursement or payment.
- (c) Any payor shall be entitled to deduct and withhold and remit from any distribution, payment or consideration otherwise payable to any Person pursuant to this Plan such amounts as are required, or are reasonably expected to be required, (a "**Withholding Obligation**") to be deducted and withheld with respect to such payment under the ITA, or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case, as amended or succeeded. For greater certainty, no distribution, payment or other consideration shall be made to or on behalf of a Person until such Person has delivered to the Payless Canada Entities and the Monitor such documentation prescribed by Applicable Law or otherwise reasonably required by the Monitor as will enable the Monitor to determine whether or not, and to what extent, such distribution, payment or consideration to such Person is subject to any Withholding Obligation imposed by any Taxing Authority.
- (d) All distributions made pursuant to this Plan shall be made as a payment of principal of the relevant Claim before any interest is paid on such Claim.
- (e) To the extent that amounts are withheld or deducted and paid over to the applicable Taxing Authority, such withheld or deducted amounts shall be treated for all purposes of this Plan as having been paid to such Person as the remainder of the payment in respect of which such withholding and deduction were made.

ARTICLE 7 IMPLEMENTATION

7.1 Authorizations

The adoption, execution, delivery, implementation and consummation of all matters contemplated under this Plan involving corporate or partnership action of the Payless Canada Entities will occur and be effective as of the Implementation Date, and will be authorized and approved under this Plan and by the Court, where appropriate, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, general partners, limited partners, directors or officers of any of the Payless Canada Entities. All necessary approvals to take actions shall be deemed to have been obtained from the Directors or the shareholders, general partners or limited partners of the Payless Canada Entities, as applicable, including the deemed passing by any class of shareholders, general partners or limited partners of any resolution or special resolution and no agreement between a shareholder, general partner or limited partner and another Person limiting in any way the right to vote shares or partnership interests held by such shareholder, general partner or limited partner with respect to any of the steps contemplated by this Plan shall be deemed to be effective and any such agreement shall have no force and effect.

7.2 Implementation Date Transactions

The Payless Canada Entities and the Monitor, as applicable, will take the steps set forth in the Plan Supplement (collectively, the “**Implementation Date Transactions**”), which shall be consummated and become effective in the order set out therein, and will take any additional actions as may be necessary to effect a restructuring of the Payless Canada Entities’ businesses or overall organizational structure to reflect and implement the provisions of this Plan in a tax efficient and orderly manner.

7.3 Post-Implementation Date Transactions

- (a) The Monitor, with the consent of the Payless Canada Entities and/or the Chief Restructuring Organization or upon further Court Order, on behalf of the Payless Canada Entities, shall pay (i) the Priority Claims pursuant to and in accordance with section 4.4 from the Priority Claim Reserve Account; (ii) any Administrative Reserve Costs from the Administrative Reserve Account; (iii) the Director/Officer Claims from the Directors’ Claim Reserve Account; (iv) any Post-Filing Claims from the Post-Filing Reserve Account; (v) distributions from the Landlord Pool in accordance with Article 6 hereof; and (vi) distributions from the General Unsecured Pool in accordance with Article 6 hereof, *provided, however*, that with respect to (iii) and (iv) above, such payments shall only be made after five (5) Business Days notice to the Term Loan Agent and the Supporting Term Loan Lenders and in the event of an objection in such period that cannot be resolved consensually, with an order of the Court.

- (b) The Monitor, with the consent of the Payless Canada Entities and/or the Chief Restructuring Organization and the Supporting Term Loan Lenders, or upon further Court Order on at least five (5) Business Days notice to the Service List, on behalf of the Payless Canada Entities, may transfer any unused portion of the Reserves to the Payless Canada Entities, which amounts will remain subject to the security interests of the Term Loan Agent.
- (c) Cassels shall continue to have primary carriage of, but shall work in consultation with the Monitor in respect of, the resolution of Claims including Claims to be paid from the Reserves and all negotiations with respect to the Comfort Letter after the Implementation Date.

ARTICLE 8 RELEASES

8.1 Plan Releases

At the Effective Time, for good and valuable consideration, including the distributions to be made pursuant to this Plan, and, if the Receivership Order is granted, the transfer to the Receiver of the Employee Distributions to be dealt with in accordance with the Receivership Order, every Creditor, Affected Creditor or other Person, on the Creditor's, Affected Creditor's or other Person's own behalf and on behalf of the Creditor's, Affected Creditor's or other Person's respective affiliates, present and former officers, directors, employees, associated individuals, auditors, beneficiaries, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitors, agents, dependents, heirs, executors, administrators, representatives, successors and assigns, as applicable, hereby is deemed to and does fully, finally, irrevocably and unconditionally release and forever discharge each of the Payless Canada Entities, the Directors, the Officers and any alleged fiduciary (whether acting as a director, officer, or other responsible party), Cassels, Akin, S&K, FTI, the Monitor, the Chief Restructuring Organization, the Term Loan Agent, and each of the Term Loan Lenders (including each of the Supporting Term Loan Lenders) together with each of their respective current and former legal counsel, financial advisors, representatives, directors, officers, predecessors, affiliates, member companies, related companies, partners, shareholders, administrators, executors, employees, professional advisors (collectively, the "**Released Parties**" and individually, a "**Released Party**"), of and from any and all Claims, and, without limitation, any and all past, present and future claims, causes of action, debts, rights, interests, actions, rights of indemnity, liabilities, demands, duties, injuries, accounts, covenants, damages, expenses, fees (including solicitors' fees or liens), costs, compensation, or causes of action of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, matured or unmatured, direct, indirect or derivative, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, any act, inaction or omission, transaction, distribution, payment, dealing or other occurrence relating to or otherwise in connection with (a) the business and operations of the Payless Canada Entities existing or taking place on or prior to the Effective Time, (b) the property and assets of the

Payless Canada Entities existing or taking place on or prior to the Effective Time, (c) the Affected Claims, this Plan, the U.S. Proceedings or the CCAA Proceedings; (d) any contract that has been restructured, terminated, repudiated, disclaimed or resiliated in accordance with the CCAA, (e) the Implementation Date Transactions in respect of which the Released Parties had any role, whether in their capacity as Officers, Directors or in any other capacity, (f) liabilities of the Directors and Officers and any alleged fiduciary or other duty, including any and all Claims that may be made against the Directors or Officers where by law such Directors or Officers may be liable in their capacity as Directors or Officers, or (g) any Claim that has been barred or extinguished by the Claims Procedure Order (all collectively, the "**Released Claims**"); and at the Effective Time the Payless Canada Entities are deemed to and do fully, finally, irrevocably and unconditionally release and forever discharge every other Released Party of and from any and all Released Claims.

Notwithstanding the foregoing, nothing in this section 8.1 shall release or discharge:

- (a) the Payless Canada Entities and their respective assets, undertakings and properties from any Unaffected Claim that has not been paid in full under this Plan or the Plan Supplement to the extent of such non-payment;
- (b) a Released Party from its obligations under this Plan or the Plan Supplement;
- (c) a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed fraud or wilful misconduct in relation to a Released Claim for which it is responsible at law; or
- (d) the Directors from any Claims which have been preserved in accordance with the Claims Procedure Order that cannot be compromised due to the provisions of section 5.1(2) of the CCAA.

8.2 Injunction

Subject to the exceptions stated in sub-paragraphs (a) through (d) of section 8.1 of this Plan, all Persons, along with their respective affiliates, present and former officers, directors, employees, associated individuals, auditors, beneficiaries, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitors, agents, dependents, heirs, executors, administrators, representatives, successors and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to the Affected Claims and the Released Claims, from:

- (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suit, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any of the Released Parties or their property;

- (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property;
- (c) commencing, conducting or continuing in any manner, directly or indirectly, any action, suit or demand (including by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation) or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim in any manner or forum, against one or more of the Released Parties;
- (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; or
- (e) taking any action to interfere with the implementation or consummation of this Plan (including the Implementation Date Transactions);

and any such proceedings will be deemed to have no further effect against the Payless Canada Entities or any of their assets and will be released, discharged or vacated without cost to the Payless Canada Entities. All Persons shall cooperate with the Payless Canada Entities and the Monitor in lifting any lien or discontinuing any proceeding filed or commenced prior to the Effective Time, as the Payless Canada Entities or the Monitor may reasonably request. The Payless Canada Entities may apply to the Court to obtain a discharge or dismissal of any such proceedings if necessary without notice to any Person.

8.3 Timing of Releases and Injunctions

All releases and injunctions set forth in this Article 8 shall become effective on the Implementation Date.

8.4 Knowledge of Claims

Each Person to which section 8.1 hereof applies shall be deemed to have granted the releases set forth in section 8.1 notwithstanding that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such party expressly waives any and all rights that it may have under any Applicable Law which would limit the effect of such releases to those Claims or causes of action known or suspected to exist at the time of the granting of the release.

ARTICLE 9
COURT SANCTION, CONDITIONS PRECEDENT AND IMPLEMENTATION

9.1 Application for Sanction Order

If this Plan is approved by the Required Majorities, the Payless Canada Entities shall apply for the Sanction Order on the date set out in the Meetings Order or such later date as the Court may set and, shall provide the Supporting Term Loan Lenders with drafts of the court materials at least three (3) Business Days prior to the date the Payless Canada Entities serve the materials upon the service list (or as soon as possible where it is not reasonably practicable to provide drafts three (3) Business Days in advance). At such hearing, the Monitor will also request the Court grant the Receivership Order.

9.2 Sanction Order

The Sanction Order shall be substantially in the form attached (without this Plan included as a schedule) as Schedule "B" hereto, with such amendments as the Payless Canada Entities, the Supporting Term Loan Lenders, and the Monitor may agree.

9.3 Conditions to the Implementation Date

The implementation of this Plan shall be conditional upon the fulfillment, satisfaction or waiver (to the extent permitted by section 9.4 hereof) of the following conditions:

- (a) this Plan shall have been approved by the Required Majorities;
- (b) the Court shall have granted the Sanction Order the operation and effect of which shall not have been stayed, reversed or amended and in the event of an appeal or application for leave to appeal, final determination shall have been made by the appellate court;
- (c) the Payless Canada Entities shall have funded:
 - (i) the Administrative Reserve;
 - (ii) the Priority Claim Reserve;
 - (iii) the Directors' Claim Reserve;
 - (iv) the Post-Filing Claim Reserve;
 - (v) the General Unsecured Pool, to be held in the Affected Creditor Distribution Account; and
 - (vi) the Landlord Pool, to be held in the Affected Creditor Distribution Account;
- (d) the U.S. Proceedings with respect to the Payless Canada Entities shall have been dismissed;
- (e) the U.S. Plan shall have become effective;

- (f) the Monitor shall have received written confirmation from Supporting Term Loan Lenders that the Supporting Term Loan Lenders are satisfied with (i) the treatment of the Post-Filing Intercompany Loans, (ii) the form and substance of the Plan Supplement, and (iii) all variations and modifications of, and amendments and supplements to the Plan, the Plan Supplement and the Sanction Order, to and including the Implementation Date;
- (g) the Implementation Date shall have occurred no later than the Outside Date.

9.4 Waiver of Conditions

The Payless Canada Entities, with the consent of the Monitor and in consultation with the Supporting Term Loan Lenders, may at any time and from time to time waive the fulfillment or satisfaction, in whole or in part, of the conditions set out herein, to the extent and on such terms as such parties may agree. Notwithstanding anything to the contrary in this Plan or in any order of the Court, the Payless Canada Entities may not waive satisfaction of the conditions set out in subsection 9.3(f) hereof, which condition is for the exclusive benefit of, and may only be waived by, the Supporting Term Loan Lenders. Notwithstanding anything to the contrary in this Plan or in any order of the Court, the Payless Canada Entities may not waive satisfaction of the conditions set out in subsection 9.3(e) without the consent of the Supporting Term Loan Lenders.

9.5 Implementation Provisions

If the conditions contained in section 9.3 are not satisfied or waived (to the extent permitted under section 9.4) by the Outside Date, unless the Payless Canada Entities, in consultation with the Monitor and in consultation with the Supporting Term Loan Lenders, agree in writing to extend such period, this Plan and the Sanction Order shall cease to have any further force or effect and will not be binding on any Person.

9.6 Monitor's Certificate of Plan Implementation

Upon written notice from the Payless Canada Entities (or counsel on their behalf) to the Monitor, the Term Loan Agent and the Supporting Term Loan Lenders that the conditions to Plan implementation set out in section 9.3, have been satisfied or waived, the Monitor shall, as soon as possible following receipt of such written notice, deliver to the Payless Canada Entities, the Term Loan Agent and the Supporting Term Loan Lenders, and file with the Court, a certificate (the "**Monitor's Certificate**") which states that all conditions precedent set out in section 9.3 have been satisfied or waived and that the Implementation Date (which shall be set out on the certificate) has occurred.

ARTICLE 10 GENERAL

10.1 Deeming Provisions

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

10.2 Preferential Transactions

Sections 95 to 101 of the BIA and any applicable law relating to preferences, settlements, fraudulent conveyances or transfers at undervalue shall not apply in any respect, including, without limitation, to any dealings prior to the Filing Date, to this Plan, to any payments or distributions made in connection with the restructuring and recapitalization of the Payless Canada Entities, whether made before or after the Filing Date, or to any and all transactions contemplated by and to be implemented pursuant to this Plan.

10.3 Claims Bar Date

Nothing in this Plan extends or shall be interpreted as extending or amending the Claims Bar Date, or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order.

10.4 Non-Consummation

If the Implementation Date does not occur on or before the Outside Date (as the same may be extended in accordance with the terms hereof), or if this Plan is otherwise withdrawn in accordance with its terms: (a) this Plan shall be null and void in all respects, and (b) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Payless Canada Entities, their respective successors or any other Person; (ii) prejudice in any manner the rights of the Payless Canada Entities, their respective successors or any other Person in any further proceedings involving the Payless Canada Entities or their respective successors; or (iii) constitute an admission of any sort by the Payless Canada Entities, their respective successors or any other Person.

10.5 Modification of Plan

- (a) The Payless Canada Entities may propose a variation or modification of, or amendment or supplement to this Plan at or prior to the Creditors' Meetings, in consultation with the Monitor, provided that notice of such variation, modification, amendment or supplement is given to all Creditors entitled to vote and present in person at the applicable Creditors' Meetings prior to the vote being taken. Any variation, amendment, modification or supplement at a Creditors' Meetings shall be posted promptly on the Monitor's Website, served by email to the Service List and filed with the Court as soon as practicable following the applicable Creditors' Meetings and in any event prior to the Court hearing the Sanction Motion.
- (b) After the Creditors' Meetings (and both prior to and subsequent to the obtaining of any Sanction Order), the Payless Canada Entities may at any time and from time to time, amend, restate, vary, modify or supplement this Plan: (a) pursuant to an Order of the Court, or (b) without further Court Order, where such amendment to this Plan concerns a matter which, in the opinion of the Payless Canada Entities and the Monitor, is of an administrative nature required to better give effect to the implementation of this Plan or the Sanction Order or to cure any

errors, omissions or ambiguities, and in either circumstance is not materially adverse to the financial or economic interests of the Affected Creditors. The Monitor shall forthwith post on the Monitor's Website any such amendment to this Plan, with notice of such posting forthwith provided to the Service List.

10.6 Severability of Plan Provisions

If, prior to the Effective Time, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, at the request of the Payless Canada Entities with the consent of the Supporting Term Loan Lenders, the Court shall have the power to either (a) sever such term or provision from the balance of this Plan and provide the Payless Canada Entities with the option to proceed with the implementation of the balance of this Plan as of and with effect from the Effective Time, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that this Plan is implemented, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

10.7 Preservation of Rights of Action

Except as otherwise provided in this Plan or in the Sanction Order, or in any contract, instrument, release, indenture or other agreement entered into in connection with this Plan, following the Implementation Date, the Payless Canada Entities will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Payless Canada Entities may hold against any Person or entity without further approval of the Court.

10.8 Responsibilities of Monitor

The Monitor is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceedings with respect to the Payless Canada Entities and not in its personal or corporate capacity, and shall have no liability in connection with the implementation of this Plan, including without limitation with respect to making distributions pursuant to and in accordance with this Plan, the establishment and administration of the General Unsecured Pool, the Landlord Pool, the Affected Creditor Distribution Account, the Administrative Reserve, the Priority Claim Reserve, the Directors' Claim Reserve and the Post-Filing Claim Reserve, (and in each case, any adjustments with respect to same) or the timing or sequence of this Plan's transaction steps, in each case save and except for gross negligence and wilful misconduct. FTI will incur no personal liability whatsoever whether on its own part or in respect of any failure on the part of the Payless Canada Entities to observe, perform or comply with any of its obligations under this Plan. The Monitor shall not be responsible or liable whatsoever for any obligations of the Payless Canada Entities. The Monitor shall at all times have the

powers and protections granted to it by this Plan, the CCAA, the Initial Order, the Meetings Order, and any other Order made in the CCAA Proceedings.

10.9 Different Capacities

Persons who are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by a Person in writing or unless its Claims overlap or are otherwise duplicative.

10.10 Notices

Any notice or other communication to be delivered hereunder must be in writing and refer to this Plan and may, as hereinafter provided, be made or given by personal delivery, ordinary mail, email or by facsimile addressed to each of the respective parties as follows:

- (a) The Payless Canada Entities:

c/o Ankura Consulting Group, LLC
485 Lexington Avenue, 10th Floor
New York, NY United States 10017

Attention: Adrian Frankum
Email: adrian.frankum@ankura.com

with a required copy (which shall not be deemed notice) to:

Cassels Brock & Blackwell LLP
40 King Street West
2100 Scotia Plaza
Toronto, Ontario M5H 3C2

Attention: Ryan Jacobs and Jane O. Dietrich
Email: rjacobs@casselsbrock.com
jdietrich@casselsbrock.com

- (b) The Monitor:

FTI Consulting Canada Inc.
79 Wellington Street West
Toronto Dominion Centre, Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Greg Watson, Paul Bishop and Jim Robinson
Email: paylesscanada@fticonsulting.com

And to:

Bennett Jones LLP
100 King Street West, Suite 3400
Toronto, ON M5X 1A4

Attention: Sean Zweig and Michael S. Shakra
Email: zweigs@bennettjones.com
shakram@bennettjones.com

(c) The Supporting Term Loan Lenders:

c/o Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
P.O. Box 20
Toronto, Ontario M5H 2T6
Attention: Stuart Brotman and Dylan Chochla
Email: sbrotman@fasken.com
dchochla@fasken.com

(d) The Term Loan Agent

c/o McCarthy Tetrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto, Ontario M5K 1E6
Attention: Trevor Courtis
Emails: tcourtis@mccarthy.ca

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. (Toronto time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

10.11 Reliance on Consent

For the purposes of this Plan, where a matter (i) shall have been agreed, waived, consented to or approved by the Supporting Term Loan Lenders, (ii) requires consultation with or notice to the Supporting Term Loan Lenders, or (iii) must be satisfactory or acceptable to the Supporting Term Loan Lenders, any Person shall be

entitled to rely on written confirmation from Fasken, as counsel to the Supporting Term Loan Lenders, that the Supporting Term Loan Lenders have agreed, waived, consented to or approved a particular matter or, as applicable, may consult with or provide notice to Fasken to satisfy such requirement.

10.12 Paramountcy

- (a) From and after the Effective Time, any conflict between (i) this Plan and (ii) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and the Payless Canada Entities as at the Implementation Date, will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.
- (b) From and after the granting of the Sanction Order, any conflict between (i) this Plan and (ii) the Sanction Order, will be deemed to be governed by the terms, conditions and provisions of the Sanction Order, which shall take precedence and priority.

10.13 Further Assurances

Notwithstanding that the transactions and events set out herein will occur and be deemed to occur in the order set out in this Plan without any further act or formality, each of the Persons named or referred to in, or subject to, this Plan will make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them to carry out the full intent and meaning of this Plan and to give effect to the transactions contemplated herein.

Dated this 16th day of October, 2019.

SCHEDULE "A"

Definitions

"Administration Charge" has the meaning given to that term in the Initial Order;

"Administrative Reserve" means a Cash reserve in the amount set forth in the Plan Supplement, to be deposited by the Payless Canada Entities into the Administrative Reserve Account for the purpose of paying the Administrative Reserve Costs, which amounts will be subject to the Administration Charge, from and after the Implementation Date;

"Administrative Reserve Account" means a segregated interest-bearing trust account established by the Monitor to hold the Administrative Reserve;

"Administrative Reserve Costs" means costs incurred and payments to be made on or after the Implementation Date (including costs incurred prior to the Implementation Date which remain outstanding as of the Implementation Date) in respect of: (a) the Payless Canada Entities' legal fees and disbursements; (b) the Monitor's fees and disbursements (including of its legal counsel and other consultants and advisors) (in the case of (a) and (b), subject to the provisions of the Initial Order); and (c) with the consent of the Monitor and in consultation with the Supporting Term Loan Lenders, any other amounts the Payless Canada Entities may determine in respect of any other determinable contingency in connection with the Payless Canada Entities, the CCAA Proceedings or this Plan;

"Affected Claims" means all Claims against any of the Payless Canada Entities that are not Unaffected Claims;

"Affected Creditor" means the holder of an Affected Claim in respect of and to the extent of such Affected Claim;

"Affected Creditor Distribution" means Cash in the amount of \$1,183,500;

"Affected Creditor Distribution Account" means a segregated interest-bearing trust account established by the Monitor to be funded by the Payless Canada Entities in the amount of the Affected Creditor Distribution for the purpose of funding the Affected Creditor Distribution;

"Affected Creditor Distribution Date" has the meaning given to that term in section 6.2 hereof;

"Akin" means Akin Gump Strauss Hauer & Feld LLP, counsel to the U.S. Debtors and the Payless Canada Entities in the U.S. Proceedings;

"Applicable Law" means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter, including, where appropriate, any interpretation of the Law (or any part thereof) by any Person, court or tribunal having jurisdiction over it, or charged with its administration or interpretation;

"Applicants" has the meaning ascribed to that term in the Recitals;

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3;

“**Business Day**” means any day, other than a Saturday, or a Sunday or a statutory or civic holiday, on which banks are generally open for business in Toronto, Ontario;

“**Cash**” means cash, certificates of deposit, bank deposits, and other cash equivalents;

“**Cassels**” means Cassels Brock & Blackwell LLP, counsel to the Payless Canada Entities and the Chief Restructuring Organization;

“**CCAA**” has the meaning ascribed to that term in the Recitals;

“**CCAA Proceedings**” means the proceedings commenced by the Applicants under the CCAA as contemplated by the Initial Order;

“**Charges**” has the meaning ascribed to that term in the Initial Order;

“**Chief Restructuring Organization**” means Ankura Consulting Group, LLC in its capacity as Chief Restructuring Organization of the Payless Canada Entities;

“**Claim**” has the meaning ascribed to that term in the Claims Procedure Order;

“**Claim Statement**” has the meaning ascribed to that term in the Claims Procedure Order, and includes any amended Claim Statement;

“**Claimant**” has the meaning ascribed to that term in the Claims Procedure Order;

“**Claims Bar Date**” has the meaning ascribed to that term in the Claims Procedure Order;

“**Claims Procedure Order**” means the Order made in these proceedings on April 24, 2019 entitled “Claims Procedure Order”;

“**Comfort Letter**” has the meaning ascribed thereto in Article 6 hereof;

“**Court**” has the meaning ascribed to that term in the Recitals;

“**Creditor**” means any Person having a Claim and includes without limitation the transferee or assignee of a Claim transferred and recognized as a Creditor in accordance with the Claims Procedure Order or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

“**Creditors’ Meetings**” means the meetings of the General Unsecured Creditors and of the Landlords called for the purpose of considering and voting in respect of this Plan as described in the Meetings Order;

“**Crown**” means Her Majesty in right of Canada or a province of Canada;

“**Crown Priority Claim**” means any Claim of the Crown, for all amounts that were outstanding at the Filing Date and are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the ITA;

- (b) any provision of the Canada Pension Plan or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of the *Employment Insurance Act* and of any related interest, penalties or other amounts;
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or
 - (ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;

"Director" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or de facto director of any of the Payless Canada Entities;

"Directors' Charge" has the meaning ascribed to it in the Initial Order;

"Directors' Claim Reserve" means a Cash reserve, equal to the amount of the Directors' Charge or such lesser amount as may be agreed to by the Payless Canada Entities, the beneficiaries of the Directors' Charge, the Monitor and the Supporting Term Loan Lenders, to be deposited by the Payless Canada Entities into the Directors' Claim Reserve Account for the purposes of paying any finally determined valid claims secured by the Directors' Charge;

"Directors' Claim Reserve Account" means a segregated interest-bearing trust account established by the Monitor to hold the Directors' Claim Reserve;

"Disputed Claim" any Claim that has not been finally determined in accordance with the Claims Procedure Order, the Meetings Order, this Plan or the CCAA;

"Disputed General Unsecured Claim" means a General Unsecured Claim which has not been allowed, in whole or in part, as a Proven General Unsecured Claim, which is validly disputed for distribution purposes in accordance with the Claims Procedure Order or the Meetings Order and which remains subject to adjudication for distribution purposes in accordance with the Claims Procedure Order, the Meetings Order or this Plan;

"Disputed Landlord Claim" means a Landlord claim which has not been allowed, in whole or in part, as a Proven Landlord Claim, which is validly disputed for distribution purposes in

accordance with the Claims Procedure Order and which remains subject to adjudication for distribution purposes in accordance with the Claims Procedure Order, the Meetings Order or this Plan;

“Disputed Voting Claim” means a disputed Landlord Claim or a Disputed General Unsecured Claim;

“Effective Time” means the time set out on Monitor’s certificate confirming the occurrence of the Implementation Date (as further described in the Sanction Order);

“Eligible Voting Creditors” means General Unsecured Creditors and Landlords, holding Voting Claims or Disputed Voting Claims;

“Employee Distribution” means any distribution under this Plan to an employee or former employee of any of the Payless Canada Entities who is, to the best of the Monitor’s knowledge, not ineligible under section 6 of WEPPA to receive a payment under WEPPA, in his or her capacity as an employee or former employee, on account of such employee or former employee’s General Unsecured Claim;

“Employee Priority Claims” means, with respect to Creditors who are or were employees of any of the Payless Canada Entities, the following claims:

- (a) Claims of the Payless Canada Entities’ employees and former employees equal to the amounts that such employees and former employees would have been qualified to receive under paragraph 136(l)(d) of the *Bankruptcy and Insolvency Act* (Canada) if the Payless Canada Entities had become bankrupt on the Filing Date; and
- (b) Claims of the Payless Canada Entities’ employees and former employees for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the date of the Sanction Order, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Payless Canada Entities’ business during the same period.

“Equity Claim” has the meaning set forth in section 2(1) of the CCAA;

“Excise Tax Act” means the *Excise Tax Act*, R.S.C. 1985, c.E-15, as amended and any regulations thereunder;

“Fasken” Fasken Martineau DuMoulin LLP, counsel to the Supporting Term Loan Lenders;

“Filing Date” means February 19, 2019;

“FTI” means FTI Consulting Canada Inc. and its affiliates;

“General Unsecured Claim” means any Affected Claim other than a Landlord Claim or an Intercompany Claim;

“General Unsecured Creditor” means the holder of a General Unsecured Claim in respect of and to the extent of such General Unsecured Claim;

“General Unsecured Pool” means Cash in the amount of the Affected Creditor Distribution minus the amount required to fund the Landlord Pool;

“General Unsecured Pro Rata Share” means the proportionate share of a Proven General Unsecured Claim to the total of all Proven General Unsecured Claims after final determination of all Disputed General Unsecured Claims in accordance with the Claims Procedure Order, the Meetings Order and this Plan;

“General Unsecured Required Majority” means a majority in number of General Unsecured Creditors representing at least two thirds in value of the Voting Claims of General Unsecured Creditors who actually vote (in person or by proxy) at the Creditors’ Meeting;

“Governmental Entity” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

“Implementation Date” means the Business Day on which this Plan becomes effective, which shall be the day indicated on the certificate which the Monitor has filed with the Court contemplated in section 9.6 hereof;

“Implementation Date Transactions” has the meaning ascribed to that term in section 7.2;

“Initial Order” has the meaning ascribed to that term in the Recitals;

“Intercompany Claim” means any Claim held by a Payless Canada Entity against another Payless Canada Entity or an affiliate of a Payless Canada Entity (including, for the avoidance of doubt, a U.S. Debtor) or any Claim held by an affiliate of a Payless Canada Entity (including, for the avoidance of doubt, a U.S. Debtor) against a Payless Canada Entity, provided however, that the Post-Filing Intercompany Loans shall not be an Intercompany Claim;

“ITA” means the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), as amended and any regulations thereunder;

“Landlord” means any Person(s) in its/their capacity as lessor was a party under a Lease;

“Landlord Claim” means a Claim of a Landlord;

“Landlord Claim Statement” has the meaning ascribed to that term in the Claims Procedure Order;

“Landlord Pool” means Cash in the amount required to pay the distributions provided for in section 4.2, provided, however, that for the purposes of funding the Landlord Pool, if the Payless

Canada Entities have disputed any Landlord Claim, \$3,840.00 shall be reserved for such claim, and for greater clarity, if any portion of the Landlord Pool is not required to pay Proven Landlord Claims, such amounts shall be included in the General Unsecured Pool;

“Landlord Required Majority” means a majority in number of Landlord representing at least two thirds in value of the Voting Claims of Landlords who actually vote (in person or by proxy) at the Creditors’ Meeting;

“Law” means any law, statute, order, decree, consent decree, judgment, rule regulation, ordinance or other pronouncement having the effect of law whether in Canada or any other country, or any domestic or foreign state, county, province, city or other political subdivision or of any Governmental Entity;

“Lease” a real property lease under which any one of the Payless Canada Entities was a lessee;

“Meetings Order” means the Order of the Court dated September 17, 2019 in connection with the CCAA Proceedings, which Meetings Order shall be acceptable to the Supporting Term Loan Lenders;

“Monitor” means FTI, in its capacity as court-appointed Monitor of the Payless Canada Entities;

“Monitor’s Certificate” has the meaning ascribed to that term in section 9.6 hereof;

“Monitor’s Website” means <http://cfcanada.fticonsulting.com/paylesscanada/>;

“Notice of Dispute of Claim Statement” has the meaning ascribed to that term in the Claims Procedure Order;

“Officer” means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Payless Canada Entities;

“Order” means any order of the Court in the CCAA Proceedings;

“Outside Date” means December 31, 2019 (or such other date as the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders may agree);

“Payless Canada Entities” has the meaning ascribed to that term in the Recitals;

“Person” is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Governmental Entity or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status;

“Plan” means this First Amended and Restated Plan of Compromise and Arrangement, including the Plan Supplement and any amendments, restatements, modifications or supplements hereto made from time to time in accordance with the terms hereof or made at the direction of the Court in the Sanction Order or otherwise;

“Plan Supplement” means the Plan Supplement to be filed with the Court, as defined and described in the Meetings Order, and for which greater certainty shall include, among other things, the quantum and mechanics for distributions in respect of the Term Loan Claims outside of the Plan;

“Post-Filing Claim” means any claims against any of the Payless Canada Entities that arose from the provision of authorized goods and services provided or otherwise incurred on or after the Filing Date, but shall not include a Restructuring Period Claim;

“Post-Filing Claim Reserve” means a Cash reserve, in the amount of set forth in the Plan Supplement, to be deposited by the Payless Canada Entities into the Post-Filing Claim Reserve Account for the purpose of paying the Post-Filing Claims;

“Post-Filing Claim Reserve Account” means a segregated interest-bearing trust account established by the Monitor to hold the Post-Filing Claim Reserve;

“Post-Filing Intercompany Loans” means the post-petition loans from Payless ShoeSource Canada LP to Payless Finance, Inc., which loans are reflected on the books and records of the U.S. Debtors and the Payless Canada Entities and bear interest at a rate of 6%;

“Priority Claim” means a Crown Priority Claim or an Employee Priority Claim;

“Priority Claim Reserve” means a Cash reserve, equal to the amount of the Priority Claims, to be deposited by the Payless Canada Entities into the Priority Claim Reserve Account for the purpose of paying the Priority Claims, which Priority Claim Reserve shall not exceed the amount set forth in the Plan Supplement;

“Priority Claim Reserve Account” means a segregated interest-bearing trust account established by the Monitor to hold the Priority Claim Reserve;

“Proof of Claim” has the meaning ascribed to that term in the Claims Procedure Order;

“Proven Claim” means a Proven General Unsecured Claim or a Proven Landlord Claim, as applicable;

“Proven General Unsecured Claim” means the amount of the General Unsecured Claim of a General Unsecured Creditor as finally accepted and determined for distribution purposes in accordance with the Claims Procedure Order, the Meetings Order, this Plan and the CCAA;

“Proven Landlord Claim” means the amount of the Landlord Claim in respect of Lease as finally accepted and determined for distribution purposes in accordance with the Claims Procedure Order, the Meetings Order, this Plan and the CCAA;

“Proven Landlord Creditor” means a holder of a Proven Landlord Claim;

“Proven Priority Claim” means a Priority Claim as finally accepted and determined for distribution purposes in accordance with the Claims Procedure Order, the Meetings Order, this Plan and the CCAA

“Receiver” means FTI in its capacity as receiver, appointed pursuant to the terms of the Receivership Order;

“Receivership Order” means an order acceptable in form and substance to the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders, and which shall be substantially in the form attached as Schedule “C” hereto;

“Released Claims” means the matters that are subject to release and discharge pursuant to section 8.1 hereof;

“Released Parties” has the meaning ascribed to that term in section 8.1 hereof;

“Released Party” means each of the Released Parties;

“Required Majorities” means the Landlord Required Majority and the General Unsecured Required Majority;

“Reserves” means the Administrative Reserve, the Directors’ Claim Reserve, the Priority Claim Reserve and the Post-Filing Claim Reserve;

“Restructuring Period Claim” shall have the meaning set forth in the Claims Procedure Order;

“S&K” means Seward & Kissell LLP, counsel to the U.S. Debtors, acting at the direction of the special committee, in the U.S. Proceedings;

“Sanction Motion” means the Payless Canada Entities’ motion for an order sanctioning this Plan;

“Sanction Order” means an order acceptable in form and substance to the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders, and which shall be substantially in the form attached as Schedule “B” hereto;

“Section 5.1(2) Director/Officer Claims” means any Director/Officer Claims that may not be compromised pursuant to section 5.1(2) of the CCAA;

“Service List” means the service list maintained by the Monitor in respect of these CCAA Proceedings;

“Supporting Term Loan Lenders” means a majority of the Term Loan Lenders represented by Fasken;

“Tax” or **“Taxes”** means any and all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever, including all interest, penalties, fines, additions to tax or other additional amounts in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all

employment insurance, health insurance and Canada, Quebec and other government pension plan premiums or contributions;

“Taxing Authority” means any of Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, any municipality of Canada, the Canada Revenue Agency, the Canada Border Services Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof and any Canadian or foreign government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power;

“Term Loan Agent” means Cortland Products Corp.;

“Term Loan Claims” means all Claims of the Term Loan Lenders under or in respect of the Term Loan Credit Facility against the Payless Canada Entities in an aggregate amount of USD\$277.2 million as of the Filing Date, or any of them, or in respect of which the Term Loan Agent holds a security interest in any assets, undertakings or properties of any Payless Canada Entity;

“Term Loan Credit Facility” means that certain Term Loan and Guarantee Agreement, dated as of August 10, 2017, by and among WBG – PSS Holdings LLC, Payless Inc., Payless Finance, Inc., Payless ShoeSource, Inc. and Payless ShoeSource Distribution, Inc., collectively, as borrowers, the guarantors party thereto, the Term Loan Lenders, and the Term Loan Agent, as administrative agent and collateral agent, as amended by amendment no. 1 dated October 26, 2017, as further amended by amendment no. 2 dated December 29, 2017 and amendment no. 3 dated June 19, 2018, and as the same may be amended from time to time;

“Term Loan Lenders” means the lenders from time to time party to the Term Loan Credit Facility;

“U.S. Debtors” means Payless Holdings LLC and its affiliated debtors and debtors in possession who have proposed the U.S. Plan in the U.S. Proceedings;

“U.S. Plan” means the joint plan of reorganization proposed by the U.S. Debtors;

“U.S. Proceedings” means the proceedings under chapter 11 of the United States Bankruptcy Code that are jointly administered under case no. 19-40883 in the United States Bankruptcy Court for the Eastern District of Missouri;

“Unaffected Claim” means

- (a) any Claims secured by any of the Charges;
- (b) any Claims that cannot be compromised pursuant to subsection 19(2) of the CCAA;
- (c) any Term Loan Claims;
- (d) any Priority Claims;

- (e) any Post-Filing Claims;
- (f) any Equity Claims, except to the extent set out in the Plan Supplement; and
- (g) any Claim entitled to the benefit of any applicable insurance policy, excluding any such Claim or portion thereof that is directly recoverable as against any of the Payless Canada Entities;

“Unaffected Creditor” means a Person who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim;

“Undeliverable Distribution” has the meaning given to that term in section 6.4;

“Voting Claim” means the amount of the General Unsecured Claim of a General Unsecured Creditors or the amount of a Landlord Claim of a Landlord against the Payless Canada Entities as finally accepted and determined for the purposes of voting at the Creditors’ Meeting, in accordance with the provisions of the Meetings Order and the CCAA;

“WEPPA” means the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, as amended; and

“Withholding Obligation” has the meaning set forth in section 6.5.

SCHEDULE "B"
FORM OF SANCTION ORDER

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR
JUSTICE McEWEN

)
)
)

TUESDAY, THE 29TH
DAY OF OCTOBER, 2019

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "Applicants")

**ORDER
(Plan Sanction)**

THIS MOTION made by Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (the "**Applicants**", and with Payless ShoeSource Canada LP, the "**Payless Canada Entities**") for an Order (the "**Sanction Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") *inter alia* (a) approving and sanctioning the First Amended and Restated Plan of Compromise and Arrangement of the Payless Canada Entities dated October ●, 2019 (the "**Plan**"), a copy of which (including the Plan Supplement dated October ●, 2019) is attached hereto as **Schedule "A"**, and (b) approving the supplement to the Fifth Report of FTI Consulting Canada Inc. in its capacity as Monitor (the "**Monitor**") dated September 17, 2019 (the "**Supplemental Report**"), the Sixth Report of the Monitor, dated October ●, 2019 (the "**Sixth Report**") and the Seventh Report of the Monitor,

dated October ●, 2019 (the “**Seventh Report**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Stephen Marotta sworn October [23], 2019 including the exhibits thereto, the Supplemental Report, the Sixth Report, the Seventh Report, the affidavit of Taschina Ashmeade sworn October ●, 2019, and upon hearing the submissions of counsel for the Payless Canada Entities, the Supporting Term Loan Lenders, and the Monitor, and no one else appearing although duly served as appears from the affidavit of service of Taschina Ashmeade sworn October ●, 2019;

DEFINED TERMS

1. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall be as defined in the Meetings Order granted in these proceedings (the “**CCAA Proceedings**”) by Justice McEwen on September 19, 2019 (the “**Meetings Order**”) or the Plan, as applicable.

SERVICE, NOTICE AND MEETINGS

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record, the Sixth Report and the Seventh Report be and is hereby validated such that this Motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient service, delivery and notice to all Affected Creditors of the Information Package, the Plan Supplement, the amendments to the Plan, the Sixth Report and the Seventh Report, and that the Creditors’ Meetings were duly, called, convened, held and conducted all in conformity with the CCAA, the Meetings Order and all other Orders of this Court in the CCAA Proceedings (collectively, the “**CCAA Orders**”).

SANCTION OF THE PLAN

4. **THIS COURT ORDERS AND DECLARES** that:

- (a) Pursuant to the Meetings Order, the relevant classes of creditors of the Payless Canada Entities for the purposes of voting to approve the Plan are the General Unsecured Creditors and the Landlords;
- (b) the Plan has been approved by Required Majorities, all in conformity with the CCAA and the terms of the CCAA Orders;
- (c) the Payless Canada Entities have acted, and are acting, in good faith and with due diligence, and have complied with the provisions of the CCAA and the CCAA Orders in all respects;
- (d) the Court is satisfied that the Payless Canada Entities have not done or purported to do anything that is not authorized by the CCAA; and
- (e) the Plan, all terms and conditions thereof, and the matters and the transactions contemplated thereby, are fair and reasonable.

5. **THIS COURT ORDERS** that the Plan and the Plan Supplement are hereby sanctioned and approved pursuant to section 6 of the CCAA.

PLAN IMPLEMENTATION

6. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions, arrangements, and releases effected thereby (including, without limitation, the events, transactions and steps set out in the Plan Supplement) are hereby approved, shall be deemed to be implemented and shall be binding and effective as of the Effective Time in accordance with the terms of the Plan and the Plan Supplement or at such other time, times or manner as may be set forth in the Plan or the Plan Supplement in the sequence provided therein, and shall enure to the benefit of and be binding and effective upon the Payless Canada Entities, the Monitor, the Directors, the Officers, all Affected Creditors, the Released Parties, and all other Persons and parties named or referred to in, affected by, or subject to the Plan as provided for in the Plan, the Plan Supplement or this Sanction Order.

7. **THIS COURT ORDERS** that each of the Payless Canada Entities, the Directors, the Officers, and the Monitor, as applicable, is authorized and directed to take all steps and actions

and to do all things, necessary or appropriate, to implement the Plan (including the Plan Supplement) in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, disbursements, payments, deliveries, allocations, instruments and agreements contemplated by, and subject to the terms and conditions of, the Plan and the Plan Supplement, and all such steps and actions are hereby authorized, ratified and approved. None of the Payless Canada Entities, the Directors, the Officers, nor the Monitor shall incur any liability as a result of acting in accordance with the terms of the Plan, the Plan Supplement, and this Sanction Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of such parties.

8. **THIS COURT ORDERS** that upon delivery of written notice from the Payless Canada Entities (or counsel on their behalf) to the Monitor, the Term Loan Agent and the Supporting Term Loan Lenders that the conditions to Plan implementation set out in the Plan have been satisfied or waived, the Monitor shall, as soon as possible following receipt of such written notice, deliver to the Payless Canada Entities, the Term Loan Agent and the Supporting Term Loan Lenders, and file with the Court, a certificate substantially in the form attached hereto as **Schedule “B”** (the **“Monitor’s Certificate”**) which states that all conditions precedent to Plan implementation set out in the Plan have been satisfied or waived and that the Implementation Date and Effective Time (which both shall be set out on the certificate) have occurred and that the Plan, the Plan Supplement and the provisions of the Sanction Order which come into effect on the Implementation Date are effective in accordance with their respective terms. Following the delivery of the Monitor’s Certificate to the Payless Canada Entities, the Monitor shall file the Monitor’s Certificate with the Court, and shall post a copy of same, once filed, on the Monitor’s Website and provide a copy to the Service List. Upon delivery of the Monitor’s Certificate to the Payless Canada Entities, the Term Loan Agent and the Supporting Term Loan Lenders, all applicable parties shall take such steps as are required to implement the steps set out in the Plan Supplement.

COMPROMISE OF CLAIMS AND EFFECT OF PLAN

9. **THIS COURT ORDERS** that, pursuant to and in accordance with the terms of the Plan and the Plan Supplement, at the Effective Time, all existing Claims of Affected Creditors against the Payless Canada Entities shall be fully, finally, irrevocably and forever compromised,

released, discharged, cancelled, extinguished and barred and all proceedings with respect to, in connection with or relating to such Claims shall permanently be stayed against the Released Parties, subject only to (i) the right of Affected Creditors to receive the distributions pursuant to the Plan and this Sanction Order in respect of their Claims and (ii) the right of Affected Creditors who are or were employees of the Payless Canada Entities to make application for payment in respect of eligible wages (as defined in WEPPA) under WEPPA, each in the manner and to the extent provided for in the Plan.

10. **THIS COURT ORDERS** that the determination of Proven Claims in accordance with the Claims Procedure Order, the Meetings Order, and Plan shall be final and binding on the Payless Canada Entities and all Affected Creditors.

11. **THIS COURT ORDERS** that an Affected Creditor holding a Disputed Claim shall not be entitled to receive a distribution under the Plan in respect of any portion thereof unless and until such Disputed Claim becomes a Proven Claim in accordance with the Claims Procedure Order, the Meetings Order, and the Plan. The Monitor shall have no obligation to make distributions to Affected Creditors prior to the Affected Creditor Distribution Date.

12. **THIS COURT ORDERS** that nothing in the Plan extends to or shall be interpreted as extending or amending the Claims Bar Date or the Restructuring Period Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order. Any Affected Claim or Director/Officer Claim for which a Claim Statement or Amended Claim Statement, as applicable, was not sent and a Proof of Claim or Director/Officer Proof of Claim has not been filed in accordance with the Claims Procedure Order, whether or not the holder of such Affected Claim or Director/Officer Claim has received personal notification of the claims process established by the Claims Procedure Order, have been, shall be and are hereby forever barred, extinguished and released with prejudice.

13. **THIS COURT ORDERS** that, except to the extent expressly contemplated by the Plan, the Plan Supplement or this Sanction Order, all obligations or agreements to which the Payless Canada Entities are a party to immediately prior to the Effective Time, will be and shall remain in full force and effect as at the Implementation Date, unamended except as they may have been

amended by agreement of the parties to such agreement, and no Person (excluding the Term Loan Agent and the Term Loan Lenders in respect of the Term Loan Claims, to whom the balance of paragraph 13 does not apply) who is a party to any such obligation or agreement shall, following the Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of: (i) any defaults or events of default arising as a result of the insolvency of the Payless Canada Entities prior to the Implementation Date; (ii) any change of control of the Payless Canada Entities arising from the implementation of the Plan; (iii) the fact that the Payless Canada Entities have sought or obtained relief under the CCAA or that the Plan has been implemented by the Payless Canada Entities; (iv) the effect on the Payless Canada Entities of the completion of any of the transactions contemplated by the Plan or the Plan Supplement; (v) any compromises, arrangements, or reorganization effected pursuant to the Plan or the Plan Supplement; (vi) the making of the Receivership Order or the appointment of the Receiver, or (vii) any other event(s) which occurred on or prior to the Implementation Date which would have entitled any Person to enforce rights and remedies subject to any express provisions to the contrary in any agreements entered into with the Payless Canada Entities after the Filing Date.

14. **THIS COURT ORDERS** that from and after the Implementation Date, all Persons (excluding the Term Loan Agent and the Term Loan Lenders in respect of the Term Loan Claims, to whom the balance of paragraph 14 does not apply) shall be deemed to have waived any and all defaults of the Payless Canada Entities then existing or previously committed by the Payless Canada Entities, or caused by the Payless Canada Entities, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and any of the Payless Canada Entities arising directly or indirectly from the filing by the Payless Canada Entities under the CCAA and the implementation of the Plan or the Plan Supplement, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be

deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse the Payless Canada Entities from performing their obligations under the Plan and the Plan Supplement or be a waiver of defaults by the Payless Canada Entities under the Plan and the Plan Supplement and the related documents.

15. **THIS COURT ORDERS** that on the Implementation Date, the Payless Canada Entities are authorized and directed to fund the Reserves and Affected Creditor Distribution Account in accordance with the Plan and the Plan Supplement. No amounts in the Reserves or the Affected Creditor Distribution Account shall be or be deemed to be held in trust for any Claimant.

16. **THIS COURT ORDERS** that sections 95 to 101 of the BIA and any other federal or provincial law relating to preferences, fraudulent conveyances, transfers at undervalue or oppression, shall not apply in any respect including, without limitation, to any dealings prior to the Filing Date, to the Plan, to the Plan Supplement, to any payments or distributions made in connection with the restructuring and recapitalization of the Payless Canada Entities, whether made before or after the Filing Date, or to any and all transactions contemplated by and to be implemented pursuant to the Plan and the Plan Supplement.

DISTRIBUTIONS

17. **THIS COURT ORDERS** that upon delivery of the funds constituting the Affected Creditor Distribution to the Affected Creditor Distribution Account by the Payless Canada Entities such funds shall be distributed to Affected Creditors under the Plan free and clear of all claims, rights, security interest or charges in favour of the Term Loan Lenders and the Term Loan Agent.

18. **THIS COURT ORDERS AND DECLARES** that all distributions or payments by the Monitor, on behalf of the Payless Canada Entities, to Affected Creditors with Proven Claims under the Plan are for the account of the Payless Canada Entities and the fulfillment of the Payless Canada Entities' obligations under the Plan.

19. **THIS COURT ORDERS** all distributions or other payments to be made under the Plan to General Unsecured Creditors, Landlords or the Receiver are conditional on the receipt of the Comfort Letter from the applicable Governmental Entity and in the event such Comfort Letter is not received by December 31, 2019, the Payless Canada Entities shall notify the Term Loan

Agent and the Supporting Term Loan Lenders and, in consultation with the Monitor, may seek further directions of the Court on at least five (5) Business Days' notice to the Service List.

20. **THIS COURT ORDERS** that the Payless Canada Entities and the Monitor are authorized to take any and all such actions as may be necessary or appropriate to comply with applicable tax withholding and reporting requirements, if any, relating to the distributions contemplated in the Plan and Plan Supplement. All amounts withheld on account of Taxes, if any, relating to the distributions contemplated in the Plan and Plan Supplement, shall be approved by the Monitor in advance (having regard to, *inter alia*, the claims of the Term Loan Agent and the Term Loan Lenders, and the priority thereof) and treated for all purposes as having been paid to Affected Creditors in respect of which such withholding was made, provided such withheld amounts are remitted to the appropriate Taxing Authority in accordance with legal requirements.

21. **THIS COURT ORDERS AND DECLARES** that the Payless Canada Entities or the Monitor on behalf of the Payless Canada Entities, as the case may be, shall be authorized, in connection with the making of any payment or distribution, and in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan and the Plan Supplement, to apply to any Governmental Entity for any consent, authorization, certificate or approval in connection therewith.

22. **THIS COURT ORDERS AND DECLARES** that any distributions, disbursements or payments made under the Plan or this Sanction Order (including without limitation distributions made to or for the benefit of the Affected Creditors, Claims against the Reserves, the Term Loan Lenders or any other Person) shall not constitute a "distribution" by any person for the purposes of section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act, 2007* (Ontario), section 34 of the *Income Tax Act* (British Columbia), section 104 of the *Social Service Tax Act* (British Columbia), section 49 of the *Alberta Corporate Tax Act*, section 22 of the *Income Tax Act* (Manitoba), section 73 of *The Tax Administration and Miscellaneous Taxes Act* (Manitoba), section 14 of *An Act respecting the Ministère du Revenu* (Quebec), section 85 of *The Income Tax Act, 2000* (Saskatchewan), section 48 of *The Revenue and Financial Services Act* (Saskatchewan), section 56 of the *Income Tax Act* (Nova Scotia), section 48 of the *Income Tax Act* (Prince Edward Island), subsection 78(1) of the *New Brunswick Income Tax Act*, section 54 of the *Income Tax Act, 2000*

(Newfoundland and Labrador), section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), and the Monitor, in making any such distributions, disbursements or payments on behalf of the Payless Canada Entities, as applicable, is merely a disbursing agent under the Plan and is not exercising any discretion in making payments under the Plan and no person is “distributing” such funds for the purpose of the Tax Statutes, and the Payless Canada Entities, the Monitor and any other person shall not incur any liability under the Tax Statutes in respect of distributions, disbursements or payments made by it and the Payless Canada Entities, the Monitor and any other person is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of distributions, disbursements or payments made by it in accordance with the Plan and this Sanction Order and any claims of this nature are hereby forever barred.

CHARGES

23. **THIS COURT ORDERS** that the Administration Charge and the Directors’ Charge shall continue in full force and effect and shall, from and after the Effective Time, attach solely against the Administrative Reserve and the Directors’ Claim Reserve, respectively.

RELEASES

24. **THIS COURT ORDERS AND DECLARES** that the compromises, arrangements, releases, discharges and injunctions contemplated in section 4.7 and Article 8 of the Plan, including those granted by and for the benefit of the Released Parties are integral components thereof and that, effective on the Implementation Date, all such compromises, releases, discharges and injunctions contemplated in the Plan are effective, sanctioned, approved and given full force and effect.

25. **THIS COURT ORDERS** that nothing contained in this Order shall release or discharge:

- (c) the Payless Canada Entities and their respective assets, undertakings and properties from any Unaffected Claim that has not been paid in full under the Plan or the Plan Supplement to the extent of such non-payment;

- (d) a Released Party from its obligations under the Plan or the Plan Supplement;
- (e) subject to paragraph 26 below, a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed fraud or wilful misconduct in relation to a Released Claim for which it is responsible at law; or
- (f) subject to paragraph 26 below, the Directors from any Claims which have been preserved in accordance with the Claims Procedure Order that cannot be compromised due to the provisions of section 5.1(2) of the CCAA.

26. **THIS COURT ORDERS** that, to the extent not barred, released or otherwise affected by paragraph 12 above, and notwithstanding paragraph 25 above, any Person having, or claiming any entitlement or compensation relating to, a Director/Officer Claim (with the exception of any Director/Officer Claims judged by the express terms of a judgment rendered on a final determination on the merits to have resulted from criminal, fraudulent or other wilful misconduct on the part of the Director or Officer (an “**Excluded Director/Officer Claim**”)) will be irrevocably limited to recovery in respect of such Director/Officer Claim solely from the proceeds of the applicable insurance policies held by the Payless Canada Entities (the “**Insurance Policies**”), and Persons with any Director/Officer Claims will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from the Payless Canada Entities or any Released Party, other than enforcing such Person’s rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. Nothing in this Plan Sanction Order prejudices, compromises, releases or otherwise affects any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of a Director/Officer Claim. Notwithstanding anything to the contrary herein, from and after the Implementation Date, a Person may only commence or continue an action for an Excluded Director/Officer Claim against a Director or Officer if such Person has first obtained leave of the Court on notice to the applicable Directors and Officers, the Monitor and the Payless Canada Entities.

27. **THIS COURT ORDERS** that from and after the Implementation Date, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative

hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of all Claims and matters which are released pursuant to Article 8 of the Plan or discharged, compromised or terminated pursuant to the Plan, except as against the applicable insurer(s) to the extent that Persons with Director/Officer Claims seek to enforce rights to be paid from the proceeds of the Insurance Policies, and provided that any claimant in respect of a Director/Officer Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Director/Officer Claim against an insurer in respect of an Insurance Policy. Notwithstanding anything to the contrary contained herein, from and after the Implementation Date, a Person may only commence or continue an action against a Released Party in respect of a matter that is not released pursuant to Article 8.1(a)-(d) of the Plan if such Person has first obtained leave of the Court on notice to the applicable Released Party, the Payless Canada Entities, the Monitor and the insurer(s) under any applicable Insurance Policy.

28. **THIS COURT ORDERS** that, on the Implementation Date, each Affected Creditor, each holder of a Director/Officer Claim and any Person having a Released Claim shall be deemed to have consented and agreed to all of the provisions of the Plan and the Plan Supplement, in their entirety, and, in particular, each Affected Creditor, each holder of a Director/Officer Claim and any Person having a Released Claim shall be deemed:

- (a) to have executed and delivered to the Monitor, the Payless Canada Entities and the other Released Parties all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan and the Plan Supplement in their entirety; and
- (b) to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Affected Creditor, holder of a Director/Officer Claim, and the Payless Canada Entities as of the Implementation Date and the provisions of the Plan and the Plan Supplement, the provisions of the Plan and the Plan Supplement take precedence

and priority, and the provisions of such agreement or other arrangements shall be deemed to be amended accordingly.

THE MONITOR

29. **THIS COURT ORDERS** that in addition to its prescribed rights and obligations under the CCAA and the CCAA Orders, the Monitor is granted the powers, duties and protections contemplated by and required under the Plan and Plan Supplement and that the Monitor be and is hereby authorized, entitled and empowered to perform its duties and fulfil its obligations under the Plan and the Plan Supplement to facilitate the implementation thereof and to apply to this Court for any orders necessary or advisable to carry out its powers and obligations under any other CCAA Order.

30. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order or the provisions of any other CCAA Order, including this Sanction Order, the Payless Canada Entities shall, subject to the terms of the Receivership Order, remain in possession and control of the Property (as defined in the Initial Order) and the Monitor shall not take possession or be deemed to be in possession and/or control of the Property.

31. **THIS COURT ORDERS** that, subject to further order of the Court, the Payless Canada Entities shall be and are hereby directed to maintain the books and records of the Payless Canada Entities for purposes of assisting the Monitor in the completion of the resolution of the General Unsecured Claims and Landlord Claims.

32. **THIS COURT ORDERS AND DECLARES** that in no circumstance will the Monitor have any liability for any of the Payless Canada Entities' tax liabilities regardless of how or when such liabilities may have arisen, nor will the Monitor or the Directors have any liability for any tax liabilities arising as a result of any distributions to be made by the Monitor or the Payless Canada Entities under the Plan or Plan Supplement.

33. **THIS COURT ORDERS** that, effective upon the delivery of the Monitor's Certificate to the Payless Canada Entities in accordance with paragraph 8 hereof, the Payless Canada Entities shall not be subject to the restrictions, obligations, requirements or provisions of paragraphs 12, 12A, and 12B of the Initial Order.

STAY OF PROCEEDINGS

34. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 18 of the Initial Order) be and is hereby extended until February 28, 2020.

35. **THIS COURT ORDERS** that to the extent necessary, the Stay of Proceedings is hereby lifted for the limited purpose of permitting the forgiveness or cancellation in whole or in part of the Intercompany Claims as set out in U.S. Plan.

APPROVAL OF MONITOR'S SUPPLEMENTAL REPORT, SIXTH REPORT AND SEVENTH REPORT

36. **THIS COURT ORDERS** that the Supplemental Report, the Sixth Report and the Seventh Report and the activities of the Monitor, as applicable, referred to therein, be and are hereby approved; *provided, however*, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

37. **THIS COURT ORDERS** that the Payless Canada Entities, the Monitor and any other interested parties are hereby granted leave to apply to this Court for such further advice, directions or assistance as may be necessary to give effect to the terms of the Plan and any other matters that pertain to the completion of the administration of the CCAA Proceedings.

38. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to recognize and give effect to the Plan and this Sanction Order, to confirm the Plan and this Sanction Order as binding and effective in any appropriate foreign jurisdiction, and to assist the Payless Canada Entities, the Monitor and their respective agents in carrying out the terms of the Plan and this Sanction Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Payless Canada Entities, and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Sanction Order, to grant representative status to the Payless

Canada Entities in any foreign proceeding, or to assist the Payless Canada Entities and the Monitor and their respective agents in carrying out the terms of this Sanction Order.

SCHEDULE "A"
FIRST AMENDED AND RESTATED PLAN OF COMPROMISE AND ARRANGEMENT

SCHEDULE "B"
FORM OF MONITOR'S PLAN IMPLEMENTATION DATE CERTIFICATE

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

**MONITOR'S CERTIFICATE
(Plan Implementation)**

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Order of the Honourable Mr. Justice McEwen made in these proceedings on October [29], 2019 (the "**Sanction Order**").

Pursuant to paragraph 8 of the Sanction Order, FTI Consulting Canada Inc., solely in its capacity as Court-appointed monitor (the "**Monitor**") of the Applicants and Payless ShoeSource Canada LP (collectively, the "**Payless Canada Entities**"), delivers to the Payless Canada Entities, the Term Loan Agent and the Supporting Term Loan Lender this certificate and hereby certifies that it has been informed in writing by the Payless Canada Entities that all of the conditions precedent set out in the Plan have been satisfied or waived, and that the Effective Time of the Plan is _____ [a.m/p.m.] on _____, being the Implementation Date. The Implementation Date has occurred and the Plan, the Plan Supplement and the provisions of the Sanction Order which come into effect on the Implementation Date are effective in accordance with their respective terms. This Certificate will be filed with the Court and posted on the website maintained by the Monitor.

DATED at the City of Toronto, in the Province of Ontario, this ● day of ●, 2019 at [● a.m./p.m.]

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor of the Payless Canada Entities and not in its personal or corporate capacity

By: _____
Name:
Title:

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS
SHOESOURCE CANADA GP INC.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

PLAN SANCTION ORDER

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*Lawyers for Payless ShoeSource Canada Inc., Payless
ShoeSource Canada GP Inc. and Payless ShoeSource Canada
LP*

SCHEDULE "C"
FORM OF RECEIVERSHIP ORDER

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR
JUSTICE McEWEN

)
)
)

TUESDAY, THE 29TH
DAY OF OCTOBER, 2019

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

RECEIVERSHIP ORDER

THIS MOTION made by FTI Consulting Canada Inc. ("**FTI**"), in its capacity as court-appointed monitor (the "**Monitor**") of the Applicants and Payless ShoeSource Canada LP (the "**Payless Canada Entities**") for an Order (the "**Receivership Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing FTI as receiver (in such capacity, the "**Receiver**") without security, of all Employee Distributions (as defined in the First Amended and Restated Plan of Compromise and Arrangement of the Payless Canada Entities dated October ●, 2019, as may be further amended from time to time (the "**CCAA Plan**")), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor, the Affidavit of Stephen Marotta sworn October [23], 2019 including the exhibits thereto, the [seventh] report of the Monitor dated October ●, 2019, and on hearing the submissions of counsel for the Payless Canada Entities, the Monitor, FTI (as the proposed Receiver), the Term Loan Agent and the Supporting Term

Loan Lenders, and no one else appearing although duly served as appears from the affidavit of service of Taschina Ashmeade sworn October ●, 2019, and on reading the consent of FTI to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the CCAA Plan.

LIFTING OF THE STAY

3. **THIS COURT ORDERS** that the stay of proceedings granted by this Court under the Initial Order dated February 19, 2019, (the "**Initial Order**") is hereby lifted with respect to the Payless Canada Entities and the Receivership Property (as defined below) solely to allow: (i) the appointment of the Receiver over the Receivership Property on the Receivership Effective Date (as defined below); and (ii) the Receiver to act in respect of the Receivership Property, each in accordance with the provisions of this Receivership Order.

APPOINTMENT

4. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and effective upon service on the Service List of the certificate attached as **Schedule "A"** hereto (the "**Receivership Effective Date**") confirming that the Affected Creditor Distribution Date has occurred, FTI will hereby be appointed Receiver, without security, of all Employee Distributions and Cash in the amount of \$100.00 to be transferred by Payless ShoeSource Canada LP to the Receiver (the "**Receivership Property**"), and no other property of the Payless Canada Entities.

5. **THIS COURT DECLARES** that the Receiver is a receiver within the meaning of section 243(1) of the BIA.

RECEIVER'S POWERS

6. **THIS COURT ORDERS** that, from and after the Receivership Effective Date, the Receiver will be empowered and authorized, but not obligated, to act at once in respect of the

Receivership Property and the Receiver will be expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) subject to paragraphs 11, 13 and 14 of this Receivership Order, to exercise control over the Receivership Property;
- (b) to perform its statutory obligations under the *Wage Earner Protection Program Act* (Canada) (the “**WEPPA**”);
- (c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (d) to engage counsel to assist with the exercise of the Receiver’s powers conferred by this Receivership Order,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusions of all other Persons (as defined below), including the Payless Canada Entities and without interference from any other Person.

7. **THIS COURT ORDERS** that the Receiver be and is hereby relieved from compliance with the provision of sections 245(1), 245(2) and 246 of the BIA, provided that the Receiver shall provide notice of its appointment in the prescribed form and manner to the Superintendent of Bankruptcy, accompanied by the prescribed fee.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

8. **THIS COURT ORDERS** that (i) the Payless Canada Entities, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and members, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Receivership Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith grant access to the Receivership Property to the Receiver upon the Receivership Effective Date.

9. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Receivership

Property and the current (if any) and former employees of the Payless Canada Entities for the purposes of complying with the Receiver's statutory obligations under the WEPPA, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 9 or in paragraph 10 of this Receivership Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to applicable laws prohibiting such disclosure.

10. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER OR THE RECEIVERSHIP PROPERTY

11. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or the Receivership Property except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Receiver or the Receivership Property are hereby stayed and suspended pending further Order of this Court.

EMPLOYEES

12. **THIS COURT ORDERS** that employees of the Payless Canada Entities, if any, shall remain the employees of the Payless Canada Entities until such time as the Payless Canada Entities may terminate the employment of such employees and the Receiver shall not be liable

for any employee-related liabilities or obligations, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Receivership Property or any of the Payless Canada Entities' other assets, property or undertaking, including (without limitation) property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial, or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**").

POSSESSION OF RECEIVERSHIP PROPERTY

14. **THIS COURT ORDERS** that the Receiver shall take no part whatsoever in the management or supervision of the management of the Business (as defined in the Initial Order) and the Receiver shall not, as a result of this Receivership Order or anything done in pursuance of the Receiver's duties and powers under this Receivership Order, be deemed to be in possession of or be deemed to have taken any steps to dispose of any of the Receivership Property, or of any other assets, property or undertaking of the Payless Canada Entities, including (without limitation) within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

15. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its delivery of the Receivership Certificate, its appointment or the carrying out the provisions of this Receivership Order, including any liability or obligation in respect of taxes, withholdings, interest, penalties, or other like claims, save and except for any gross negligence or wilful misconduct on its part, and it shall have no obligations under sections 81.4(5) or 81.6(3) of the

BIA. Nothing in this Receivership Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

COSTS OF ADMINISTRATION

16. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, in an amount up to but not exceeding the amount of the Receivership Property, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Receivership Property, as security for such fees and disbursements, both before and after the making of this Receivership Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Receivership Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

17. **THIS COURT ORDERS** that, if requested by the Court or any interested person, the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the Receivership Property, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

TERMINATION OF THE RECEIVERSHIP

19. **THIS COURT ORDERS** that unless otherwise ordered by the Court following the completion of the Receivers' duties under this Receivership Order, any Receivership Property remaining after payment of all fees and expenses of the Receiver and its counsel shall be remitted to Service Canada as subrogee of Claims paid in respect of eligible wages (as defined in WEPPA), as contemplated by WEPPA.

SERVICE AND NOTICE

20. **THIS COURT ORDERS** that, subject to further Order of the Court, service and notice with respect to this Receivership Order and the appointment of the Receiver shall be in accordance with paragraphs 54, 55, 56, and 57 of the Initial Order.

INITIAL ORDER, CCAA PLAN AND SANCTION ORDER

21. **THIS COURT ORDERS** that, except as expressly stated herein with respect to the Receivership Property, nothing herein amends the terms of the Initial Order, including the powers, authorizations, obligations and protections for the Monitor, the Payless Canada Entities and the Payless Canada Entities' directors and officers contained in the Initial Order.

22. **THIS COURT ORDERS** that, nothing herein amends the terms of the CCAA Plan or the Sanction Order, including the compromises, discharges, releases and injunctions provided for therein.

WEPPA

23. **THIS COURT ORDERS** that (i) notwithstanding subsection 21(1)(d) of WEPPA and subsection 16(1)(b) of the WEPPA Regulations, each individual (as such term is used in WEPPA) will not be required to, and shall not, deliver a proof of claim for wages owing, and the Receiver will instead accept the individual's CCAA claim for purposes of administration of WEPPA in this proceeding, and (ii) notwithstanding subsection 15(1)(d) of the WEPPA Regulations, the Receiver shall advise the Minister (as defined in WEPPA), and the Minister shall accept, that the requirement of an individual to deliver a proof of claim for wages owing was met given the acceptance of claims referred to immediately above.

24. **THIS COURT ORDERS** that, for the purposes of WEPPA and these receivership proceedings, (i) Payless ShoeSource Canada LP is subject to the CCAA Proceedings, (ii) the wage eligibility period for the purpose of establishing eligible wages under WEPPA in accordance with subsection 2(1)(a)(ii) of WEPPA has occurred, and (iii) the wage eligibility period began six months prior to the date of commencement of the CCAA Proceedings.

GENERAL

25. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. **THIS COURT ORDERS** that nothing in this Receivership Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Payless Canada Entities (or any of them).

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Receivership Order and to assist the Receiver and its agents in carrying out the terms of this Receivership Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Receivership Order or to assist the Receiver and its agents in carrying out the terms of this Receivership Order.

28. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Receivership Order and for assistance in carrying out the terms of this Receivership Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

29. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Receivership Order on not less than seven (7) days' notice to the Receiver and the Payless Canada Entities and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

RECEIVER CERTIFICATE

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

RECEIVERSHIP CERTIFICATE

The undersigned confirm that this is the "Receivership Certificate" referred to in the Receivership Order of the Ontario Superior Court of Justice (Commercial List) made on October 29, 2019, and that in accordance with paragraph 4 of the Receivership Order, the Affected Creditor Distribution Date as defined in the First Amended and Restated Plan of Compromise and Arrangement of the Payless Canada Entities dated October ●, 2019, as may be further amended from time to time, has occurred and that the Receivership Effective Date shall be effective upon service of this certificate on the Service List.

PAYLESS SHOESOURCE CANADA
INC., PAYLESS SHOESOURCE
CANADA GP INC. AND PAYLESS
SHOESOURCE CANADA LP

FTI CONSULTING CANADA INC., SOLELY IN
ITS CAPACITY AS PROPOSED RECEIVER,
AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY

Per: _____
Name:
Title

Per: _____
Name:
Title:

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A
PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

RECEIVERSHIP ORDER

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*Lawyers for Payless ShoeSource Canada Inc., Payless
ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP*

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**FIRST AMENDED AND RESTATED PLAN OF COMPROMISE
AND ARRANGEMENT**

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*Lawyers for Payless ShoeSource Canada Inc., Payless
ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP*

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

PLAN SUPPLEMENT

October 16, 2019

Plan Supplement

A. Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc., (collectively the “**Applicants**”) are debtor companies (as such term is defined in the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”)).

B. On February 19, 2019, the Honourable Regional Senior Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Initial Order in respect of the Applicants (as such Order may be amended, restated or varied from time to time, the “**Initial Order**”) pursuant to the CCAA. The protections of the Initial Order extend to Payless ShoeSource Canada LP (together with the Applicants, the “**Payless Canada Entities**”).

C. On September 19, 2019, the Court granted a Meetings Order (as such Order may be amended, restated or varied from time to time, the “**Meetings Order**”) pursuant to which, among other things, the Payless Canada Entities were authorized to file a Plan¹ and to convene meetings of Affected Creditors to consider and vote on the Plan.

D. The Meetings Order requires the Payless Canada Entities to serve a Plan Supplement, in form and substance acceptable to the Payless Canada Entities, the Monitor, and the Supporting Term Loan Lenders no later than five Business Days before the Creditors’ Meetings or such shorter period as may be agreed by the Monitor and the Supporting Term Loan Lenders.

NOW THEREFORE consistent with the Meetings Order and the Plan, this Plan Supplement includes the following schedules:

Schedule A	Transaction Steps (including treatment of Intercompany Claims)
Schedule B	Reserves

¹ Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Plan.

SCHEDULE "A"

TRANSACTION STEPS

Section 7.2 of the Plan provides that the Implementation Date Transactions will be set out in the Plan Supplement.

Section 4.3 of the Plan provides that on the Implementation Date, and in accordance with the steps and sequence as set forth in the Plan Supplement, all Intercompany Claims shall be preserved or extinguished at the election of the Payless Canada Entities, with the consent of the Supporting Term Loan Lenders.

It is a condition to implementation of the Plan that the U.S. Plan will have become effective. Pursuant to the U.S. Plan, (i) for no consideration, Payless Finance Inc. ("**Finance**") will cancel the intercompany note in the amount of approximately US\$114 million (including principal and interest) owed by Finance to Payless ShoeSource Canada Inc. ("**PSSC**") and (ii) PSS Canada, Inc. ("**PCI**") will repay Payless ShoeSource Canada LP ("**PSCLP**") the Post-Filing Intercompany Loans (including accumulated interest thereon) in full in the amount of approximately US\$15.6 million.

Following the effective date of the U.S. Plan, certain holders of the Tranche A-2 Term Loan Secured Claims (as defined in the U.S. Plan) will own 100% of the equity in reorganized Payless Holdings LLC.

Commencing at the Effective Time, the following events or transactions will occur, or be deemed to have occurred and be taken and effected in five minute increments (unless otherwise indicated) and in the order set out below (or in such other manner or order or at such other time or times as the Payless Canada Entities may determine in consultation with the Monitor), without any further act or formality required on the part of any Person, except as may be expressly provided herein:

- (a) Payments by the Payless Canada Entities: The Payless Canada Entities shall fund the Reserves and the Affected Creditor Distribution Account in accordance with the Plan.
- (b) Priority Payments by the Payless Canada Entities: The Monitor, on behalf of the Payless Canada Entities shall pay any Priority Claims from the Priority Claim Reserve Account as required by the CCAA and in accordance with the Plan.
- (c) Continuation of Administration Charge and Director's Charge: The Administration Charge and the Directors' Charge shall continue and shall attach solely against the Administrative Reserve and the Directors' Claim Reserve, respectively, from and after the Implementation Date pursuant to and in accordance with the Sanction Order.
- (d) Landlord Claims: Landlords shall be entitled to the treatment set out in section 4.2 of the Plan.
- (e) General Unsecured Claims: General Unsecured Creditors shall be entitled to the treatment set out in sections 4.1, 4.7 and 6.2(b) of the Plan.

- (f) Compromise, Satisfaction and Release: The compromises with the General Unsecured Creditors and Landlords and the release of the Released Parties referred to in the Plan shall become effective in accordance with section 4.7 and Article 8 of the Plan and as otherwise set forth in the Sanction Order.
- (g) Intercompany Claims:
 - (i) PSCLP will pay the amount received from PCI as repayment of the Post-Filing Intercompany Loans (including accumulated interest thereon) to Payless ShoeSource Distribution, Inc. ("**PSSD**") in partial satisfaction of the principal amounts owing from PSCLP to PSSD.
 - (ii) PSCLP will repay to PSSD in partial satisfaction of the principal amounts owing from PSCLP to PSSD, the available cash remaining after provision for the Reserves (which remaining cash is estimated to be approximately \$2.1 million).
 - (iii) PSSC will cancel the existing note (including accumulated interest thereon) payable to Collective Brands II Cooperatief UA.

SCHEDULE "B"
RESERVES

The Reserves provided for in the Plan shall be in the amounts set forth below:

Administrative Reserve	\$1,065,150 (less amounts paid for October 2019)
Directors' Claim Reserve	\$2,000,000
Post-Filing Claim Reserve	\$908,402
Priority Claim Reserve	\$0

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

PLAN SUPPLEMENT

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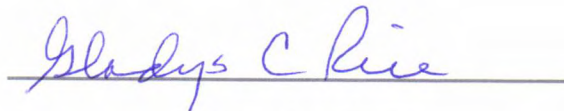
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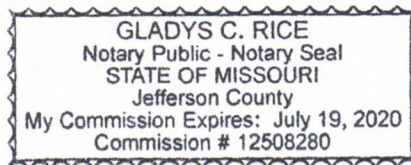
*Lawyers for Payless ShoeSource Canada Inc., Payless
ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP*

TAB C

This is **Exhibit "C"**
to the affidavit of **Stephen Marotta**
sworn and subscribed to before me
this **23rd day of October 2019**



(insert notary stamp)



**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

AFFIDAVIT OF ADRIAN FRANKUM

SWORN SEPTEMBER 10, 2019

I, Adrian Frankum, of the city of New York, in the State of New York, **MAKE OATH AND SAY:**

1. I am a Senior Managing Director at Ankura Consulting Group, LLC, the Chief Restructuring Organization ("**CRO**") of Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP (collectively, the "**Payless Canada Entities**"). I also serve as the Restructuring Officer of Payless Holdings LLC (the ultimate parent company of the Payless Canada Entities) and twenty-five (25) of its affiliated companies (the "**U.S. Debtors**"). As such, I am familiar with the Payless Canada Entities' day-to-day operations, business, financial affairs, and books and records and I have personal knowledge of the Payless Canada Entities and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swear this affidavit in support of a motion by the Applicants for:

- (a) an order (the “**Meetings Order**”) substantially in the form attached hereto as Schedule “A”, *inter alia*:
- (i) accepting the filing of the Payless Canada Entities’ Plan of Compromise and Arrangement (the “**CCAA Plan**”);
 - (ii) authorizing the Payless Canada Entities to establish two (2) classes of affected creditors for the purpose of considering and voting on the CCAA Plan: (i) a general unsecured creditor class (“**General Unsecured Creditors**”); and (ii) a landlord class (the “**Landlords**”);
 - (iii) authorizing the Payless Canada Entities to call, hold and conduct (i) a meeting of the General Unsecured Creditors and (ii) a meeting of the Landlords (together, the “**Creditors’ Meetings**”) to consider and vote on a resolution (the “**Plan Resolution**”) to approve the CCAA Plan, and approving the procedures to be followed with respect to the Creditors’ Meetings;
 - (iv) setting the date for the hearing of the Payless Canada Entities’ motion for an order to sanction the CCAA Plan (the “**Sanction Order**”) should the CCAA Plan be approved for filing and approved by the required majorities of affected creditors at the Creditors’ Meetings; and
 - (v) approving procedures for the reconciliation of certain claims.
- (b) an order, substantially in the form attached hereto as Schedule “B” (the “**Stay Extension Order**”), *inter alia*:

- (i) lifting the stay of proceedings (the “**Stay of Proceedings**”) granted in the Initial Order of the Honourable Regional Senior Justice Morawetz dated February 19, 2019 (the “**Initial Order**”) for a limited purpose;
- (ii) extending the Stay Period (as defined in the Initial Order) to and including December 20, 2019; (the “**Third Stay Extension**”);
- (iii) approving the fifth report of the Monitor (as defined below) to be filed (the “**Fifth Report**”), and the activities of the Monitor as described therein; and
- (iv) approving the fees and disbursements of the Monitor and its counsel as set out and described in the Fifth Report.

3. Unless indicated otherwise, capitalized terms not defined in this affidavit have the meaning given to them in the Initial Order or the proposed Meetings Order.

4. As described in detail below, the U.S. Debtors have filed a plan in the U.S. Proceedings (as defined below). In light of the expected timing of the U.S. confirmation hearing (currently scheduled for the end of October) and the need for the Payless Canada Entities to proceed on a similar timeline, the Payless Canada Entities intend to seek approval of the Meetings Order on September 17, 2019.

5. The terms and structure of the CCAA Plan are not yet final and the subject of ongoing negotiations among the U.S. Debtors and Payless Canada Entities and their stakeholders (including the Term Loan Lenders). The CCAA Plan has therefore not been included with these motion materials. The Payless Canada Entities expect to file a supplemental affidavit attaching the proposed CCAA Plan and providing additional information (the “**Supplemental Affidavit**”) in advance of the hearing on this Motion.

BACKGROUND

6. Payless Holdings LLC, through its subsidiaries and related parties (collectively, “**Payless**”), was the largest specialty family footwear retailer in the Western Hemisphere, which offered a wide range of shoes and accessory items at affordable prices. The Payless Canada Entities comprised the Canadian operating arm of the Payless global business and, as at February 19, 2019 (the “**Filing Date**”), sold Payless footwear and merchandise throughout Canada from over 240 retail stores across 10 provinces.

7. On February 18, 2019, the U.S. Debtors (including the Payless Canada Entities) commenced insolvency proceedings (the “**U.S. Proceedings**”) by filing voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code. The U.S. Proceedings are pending before the United States Bankruptcy Court for the Eastern District of Missouri (the “**U.S. Bankruptcy Court**”).

8. On the Filing Date, Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. sought and obtained the Initial Order under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Initial Order’s protections extend to Payless ShoeSource Canada LP as the operating entity of the Payless Canada Entities. A copy of the Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) is attached hereto as **Exhibit “A”**.

9. Among other things, the Initial Order granted an initial stay of proceedings in favour of the Payless Canada Entities up to and including March 21, 2019 (the “**Stay Period**”) and appointed FTI Consulting Canada Inc. as monitor in these CCAA proceedings (in such capacity, the “**Monitor**”). As described in detail below, on March 20, 2019, the Court granted an order extending the Stay Period up to and including June 7, 2019, and on June 4, 2019, the Court granted a further extension of the Stay Period which is currently set to expire on September 20, 2019.

Liquidation Sales

10. On February 21, 2019, the Court granted an order approving a liquidation consulting agreement with a contractual joint venture comprised of Great American Group, LLC and Tiger Capital Group, LLC (together, the “**Consultant**”) dated February 12, 2019 pursuant to which the U.S. Debtors and the Payless Canada Entities engaged the Consultant to advise them, in both the U.S. Proceedings and the CCAA Proceedings, with respect to the liquidation of inventory and certain fixtures.

11. The liquidation sales in the U.S. and Canada have concluded and the Payless Canada Entities have vacated all of their Canadian stores and the Canadian corporate head office. The global Payless corporate office in Topeka, Kansas remains open and provides corporate services required by the Payless Canada Entities.

The U.S. and Canadian Claims Procedures

12. On April 23, 2019, the U.S. Bankruptcy Court granted an order approving a claims process in the U.S. Proceedings (the “**Chapter 11 Claims Process**”). The Chapter 11 Claims Process contained notification procedures for the Chapter 11 Claims Process, procedures for filing proofs of claim, and bar dates by which claims in respect of the U.S. Debtors must be filed. The bar date in respect of general, prepetition claims was June 7, 2019. The Payless Canada Entities were specifically carved out of the Chapter 11 Claims Process.

13. On April 24, 2019, the Court granted an order in the CCAA Proceedings (the “**Claims Procedure Order**”) authorizing the Payless Canada Entities to undertake a parallel claims procedure to solicit and identify claims against the Payless Canada Entities and their present and former Directors and Officers. Subject to certain exceptions, the deadline to file a Proof of Claim (as defined in the Claims Procedure Order) or Notice of Dispute of Claim Statement (as

defined below) was June 7, 2019. Attached hereto as **Exhibit “B”** is a copy of the Claims Procedure Order, without schedules.

14. The Claims Procedure Order provided for a “negative claims process” in which the Payless Canada Entities, with the assistance of the Monitor, provided claim statements (each a “**Claim Statement**”) to certain of their known creditors showing the amount owing according to the applicable Payless Canada Entity’s books and records. To the extent that a party having or asserting a claim failed to file a notice of dispute with respect to the Claim Statement (a “**Notice of Dispute of Claim Statement**”), the claim was deemed to be the amount set forth in the Claim Statement. Any claimant that did not receive a Claim Statement from the Monitor, was permitted to assert a Claim against the Payless Canada Entities or the Directors or Officers by filing a Proof of Claim.

15. The Claims Procedure Order provided that any additional reconciliation procedures would be subject to further order of the Court.

16. The Notices of Dispute of Claim Statement and Proofs of Claim are detailed in the Fifth Report and can be summarized as follows:

- (a) 2184 Claim Statements (including amended Claim Statements) sent by the Monitor;
- (b) 288 Notices of Dispute of Claim Statement received by the Monitor; and
- (c) 130 Proofs of Claim received by the Monitor.

The U.S. Plan

17. Following completion of the liquidation sales in the U.S. and Canada, Payless, with its advisors, has focused on the reorganization of the remaining business and emergence from these cross-border insolvency proceedings.

18. On August 12, 2019, the U.S. Debtors filed a joint plan of reorganization and corresponding disclosure statement, which were each amended on August 28, 2019 (the “**U.S. Plan**” and the “**U.S. Disclosure Statement**”). Attached hereto are copies of the U.S. Disclosure Statement and U.S. Plan as **Exhibit “C”** and **Exhibit “D”** respectively. Since that date, the U.S. Debtors have engaged in good faith negotiations with their stakeholders and remain optimistic that a resolution of certain contested issues may be reached. The U.S. Disclosure Statement hearing originally scheduled for September 11, 2019 has been adjourned and continued to September 18, 2019 to provide additional time for such negotiations.

19. The Payless Canada Entities are not plan proponents under the U.S. Plan and therefore the provisions of the U.S. Plan do not pertain to the Payless Canada Entities. The Payless Canada Entities intend to file a motion for dismissal of the Payless Canada Entities’ U.S. Proceedings effective upon implementation of the U.S. Plan and intend to address the resolution of claims and any distribution to Canadian creditors through a CCAA Plan.

20. The current U.S. Plan can be summarized as follows:¹

(a) Purpose: The U.S. Plan seeks to (i) de-lever the U.S. Debtors’ capital structure and preserve the U.S. Debtors’ profitable business segments, (ii) implement a global settlement of any and all claims, including causes of action related to the U.S. Debtors’ business; and (iii) provide a distribution to general unsecured creditors of the U.S. Debtors.

(b) Distributions: The U.S. Plan contemplates distributions to the creditors of the U.S. Debtors including but not limited to the following:

¹ Terms in this section not otherwise defined herein have the meanings ascribed to such terms in the U.S. Plan.

- (i) Administrative Claims (post-filing claims entitled to priority under U.S. law), Other Priority Claims (claims entitled to priority) and Other Secured Claims, will be paid in full in cash;
- (ii) Term Loan Lenders (defined below) holding tranche A-1 secured claims in the amount of their *pro rata* share of [USD\$67,000,000] in cash;²
- (iii) Term Loan Lenders holding tranche A-2 secured claims can elect to receive their *pro rata* share of common ownership units in the reorganized Payless Holdings LLC, or cash in the amount of 10% of their allowed tranche A-2 claims;
- (iv) If general unsecured creditors vote to accept the U.S. Plan, the general unsecured creditors will receive their *pro rata* share of USD\$4,000,000 cash less certain expenses and their *pro rata* share of a USD\$5,000,000 note (the “**Liquidation Trust Note**”) and the Term Loan Lenders will waive any rights to receive distributions in respect of their deficiency claims;
- (v) If the general unsecured creditors vote to reject the U.S. Plan, the general unsecured creditors will only receive their *pro rata* share of the Liquidation Trust Note less certain expenses, and the Term Loan Lenders with deficiency claims will share in this distribution;
- (vi) Intercompany claims will be reinstated or cancelled as determined by the U.S. Debtors and the Requisite Plan Support Parties, and with respect to the Payless Canada Entities, with the consent of the Payless Canada Entities;

² Such amount remains subject to finalization in the U.S. Plan.

- (vii) Intercompany equity interests will be reinstated or cancelled as determined by the U.S. Debtors and the Requisite Plan Support Parties; and
- (viii) Equity interests in Payless Holdings LLC will be cancelled for no consideration.

21. The U.S. Plan also describes the intention of the U.S. Debtors that unsecured creditors of the Payless Canada Entities will receive a proportionate recovery similar to the recovery received by the general unsecured creditors of the U.S. Debtors (the “**Canadian GUC Amount**”), which amount will be distributed to unsecured creditors of the Payless Canada Entities pursuant to the CCAA Plan. Any such distribution requires the agreement of the Term Loan Lenders to make a portion of its collateral in Canada available for distribution to unsecured creditors. The Payless Canada Entities expect to provide the Court with additional information regarding the U.S. Plan as it becomes available.

THE CCAA PLAN

22. The Payless Canada Entities continue to work with the Term Loan Lenders, the Monitor and other stakeholders in developing a CCAA Plan which will coordinate, on a cross-border basis, with the U.S. Proceedings, a cost-effective means of making certain distributions to creditors of the Payless Canada Entities. The terms and structure of the CCAA Plan are not yet final and are the subject of ongoing negotiations among the U.S. Debtors, the Payless Canada Entities and certain of their stakeholders (including the Term Loan Lenders).

23. As described above, the U.S. Debtors have filed the U.S. Plan and have scheduled the U.S. confirmation hearing for the end of October. In order to keep pace with the timing in the U.S., the Payless Canada Entities have brought this motion seeking, among other relief, approval of the Meetings Order prior to having finalized the CCAA Plan. The Payless Canada

Entities expect to provide further details of the CCAA Plan as soon as it is available and will provide this Court with a copy thereof in the Supplemental Affidavit. Below is a high-level summary of the matters expected to be dealt with in the CCAA Plan.

Cooperation with the Term Loan Agent and Term Loan Lenders

24. The Payless Canada Entities, as guarantors, are indebted to the lenders under the Term Loan Credit Facility (the “**Term Loan Lenders**”) in the aggregate amount of USD\$277.2 million as of the Filing Date under and in respect of the Term Loan Credit Facility. The Payless Canada Entities understand that the Monitor has received an opinion from its independent counsel that, subject to the typical assumptions and qualifications, the security in respect of the Term Loan Credit Facility is valid and enforceable. At this time, the Payless Canada Entities anticipate that the Term Loan Lenders will be unaffected creditors under the CCAA and that distributions to the Term Loan Lenders will be made outside of the CCAA Plan.

25. The primary purpose of the CCAA Plan is to provide a mechanism to make a distribution to unsecured creditors of the Payless Canada Entities of an amount which the Term Loan Lenders may agree to make available for distribution to them.

Calculation of the Distribution to Unsecured Creditors

26. It is anticipated by the Payless Canada Entities that the CCAA Plan will distribute the Canadian GUC Amount to unsecured creditors of the Payless Canada Entities. While not a perfect calculus, the Canadian GUC Amount is expected to represent a good faith effort by the Payless Canada Entities, the CRO and the Monitor to provide Canadian unsecured creditors with a recovery similar to that available to U.S. unsecured creditors.

27. In light of the different procedures and valuation methods that apply to claims on either side of the border, the U.S. Debtors and the Payless Canada Entities, with the assistance of the

Monitor, are working to compare the total amount of claims asserted in the Chapter 11 Claims Process and pursuant to the Claims Procedure Order. Although a formal claims reconciliation process has not yet been undertaken, the preliminary methodology is as follows:

- (a) all suspected duplicate claims were eliminated;
- (b) all unliquidated claims were estimated at zero;
- (c) all intercompany claims were disregarded;
- (d) the restructuring period claim in respect of each Canadian lease was calculated under the landlord formula provided in the United States Bankruptcy Code which limits landlord claims to the greater of one lease year or 15 percent, not to exceed three years, of the remaining lease term plus any pre-filing amounts owed; and
- (e) all other claims were assumed allowed in full in the amounts set out in the U.S. schedules, the U.S. proofs of claim, the Claim Statements or the Proofs of Claim.

Based on the calculations above, and subject to reaching an agreement with the Term Loan Lenders, the Payless Canada Entities and the Monitor expect to finalize calculations for the Canadian GUC Amount in connection with the CCAA Plan.

Treatment of Affected Creditors

28. As set out in the draft Meetings Order, it is contemplated that the CCAA Plan will provide for two voting classes: (i) the General Unsecured Creditor class and (ii) the Landlord class.

29. Each General Unsecured Creditor with a proven claim will receive a *pro rata* share of the funds made available for distribution to General Unsecured Creditors of the Payless Canada Entities.

30. The Landlords in respect of the Payless Canada Entities are cumulatively the largest unsecured creditor group of the Payless Canada Entities. The Monitor received 254 Notices of Dispute of Claim Statement from the Landlords, the review and valuation of which would likely consume much if not all, of any amount that may be made available for distribution to unsecured creditors. Given the complexity in reviewing and determining such claims, it is anticipated that the CCAA Plan will classify Landlords in a separate class for voting purposes and provide that each Landlord will receive from an amount to be made available for distribution to unsecured creditors the lesser of:

- (a) a fixed amount to be set forth in the CCAA Plan; or
- (b) the amount asserted in the Landlord's Notice of Dispute of Claim Statement, or, if no Notice of Dispute of Claim Statement was filed, then the amount in the Landlord's Claim Statement (as such terms are defined in the Claims Procedure Order).

Additional Provisions

31. It is also anticipated that the CCAA Plan will require the creation of certain reserves. The nature and amount of these reserves is still under negotiation.

32. As is customary for proceedings of this size and nature, it is anticipated that the CCAA Plan will contain broad releases in favour of the Payless Canada Entities, the Term Loan Agent, the Term Loan Lenders and the Monitor and their respective directors, officers, agents, professionals and certain other parties.

33. Among other things, it anticipated that the CCAA Plan would be conditional upon the U.S. Plan becoming effective.

THE PROPOSED MEETINGS ORDER

34. The Meetings Order has been crafted in anticipation of a timely agreement on the terms of the CCAA Plan and authorizes the Payless Canada Entities to convene the meetings of the two (2) classes of creditors comprised of the (i) General Unsecured Creditor class and (ii) the Landlord class to consider and vote on the CCAA Plan. This timeline allows the Payless Canada Entities to proceed to sanction shortly after the U.S. confirmation (currently scheduled for October 21 and 22, 2019)

35. The Payless Canada Entities propose that the Creditors' Meetings will be held at the offices of Cassels Brock & Blackwell LLP, counsel to the Payless Canada Entities, on October 23, 2019. The meeting of the General Unsecured Creditors will take place on that date at 10:00 am (Toronto time) and the meeting of the Landlords will take place thereafter at 10:15 am (Toronto time).

Notification

36. The Meetings Order provides for extensive notification of the Creditors' Meetings to Affected Creditors. It is proposed that the Monitor will:

- (a) as soon as practicable after the granting of the Meetings Order and by no later than September 24, 2019, send the Notice of Creditors' Meetings and Sanction Motion, the proxy, the Fifth Report, the issued Meetings Order, the CCAA Plan, an information memorandum (the "**Canadian Memorandum**") and the U.S. Disclosure Statement (the "**Information Package**") to each affected creditor at the address for such affected creditor pursuant to the books and records of the Payless Canada Entities, as noted in a Notice of Dispute of Claim Statement or Proof of Claim or such address as subsequently provided to the Monitor by an affected creditor. fanti

- (b) forthwith post an electronic copy of the Information Package to the Monitor's Website;
- (c) send the Information Package to the Service List;
- (d) provide a written copy of the Information Package to any affected creditor upon request by such affected creditor; and
- (e) cause the Notice of Creditors' Meetings to be published for a period of two (2) Business Days in *The Globe and Mail (National Edition)* and *La Presse* on or before October 1, 2019.

37. No later than three (3) Business Days before the Creditors' Meetings, the Monitor shall also serve a report regarding the CCAA Plan on the Service List and cause such report to be posted on the Monitor's Website.

Conduct of the Creditors' Meetings

38. The proposed Meetings Order provides that, after consultation with the Payless Canada Entities, a designated representative of the Monitor will preside as the Chair of the Creditors' Meetings and, subject to any further Order of this Court, will decide all matters relating to the conduct of the Creditors' Meetings. The Monitor may appoint Scrutineers for the supervision and tabulation of the attendance at, quorum at and votes cast at the Creditors' Meetings. A party designated by the Monitor will act as Secretary at the Creditors' Meetings.

39. The only parties entitled to attend and speak at the Creditors' Meetings are Eligible Voting Creditors (or their duly appointed proxyholders), representatives of the Monitor, the Payless Canada Entities, the Supporting Term Loan Lenders, the Term Loan Agent, the Chair, Secretary, Scrutineers and all such parties respective legal counsel and advisors. Any other Person may be admitted to the Creditors' Meetings on invitation of the Chair.

Voting for Affected Creditors

40. The voting procedures were designed to provide a fair and equitable opportunity for Eligible Voting Creditors to register their votes for or against the CCAA Plan. The Meetings Order provides, *inter alia*:

- (a) after consultation with the Payless Canada Entities, the Chair and the Monitor will direct a vote on the Plan Resolution to approve the CCAA Plan and any amendments or variations thereto made in accordance with the Meetings Order and the CCAA Plan;
- (b) the quorum required at the Creditors' Meetings will be one (1) Eligible Voting Creditor with a Voting Claim present at such meeting in person or by proxy;
- (c) Eligible Voting Creditors will be permitted to attend the Creditors' Meeting in person or may appoint another person to attend the applicable Creditors' Meeting as its proxyholder in accordance with the process provided in the Meetings Order. The Meetings Order contains provisions outlining the requirements for Eligible Voting Creditors to vote by proxy, and sets out the procedure and deadlines for submitting a proxy; and
- (d) an Eligible Voting Creditor can transfer or assign the whole of its claim prior to the applicable Creditors' Meeting for voting purposes, provided that none of the Payless Canada Entities nor the Monitor will be obligated to give notice to or otherwise deal with the transferee or assignee of such claim unless the transferee or assignee has complied with the procedures in the CCAA Plan and Meetings Order.

41. Any proxy for a General Unsecured Creditor or Landlord must be (a) received by the Monitor by 10:00 am (Toronto time) on October 21, 2019, or 48 hours (excluding Saturdays, Sundays and statutory holidays) prior to any adjourned, postponed or rescheduled Creditors' Meeting.

Approval and Court Sanction of the CCAA Plan

42. The Monitor will provide a report to the Court as soon as practicable after the Creditors' Meetings with respect to: (i) the results of voting at each of the Creditors' Meetings on the Plan Resolution; (ii) whether each of the Required Majorities has approved the CCAA Plan; (iii) the separate tabulation of votes cast by Eligible Voting Creditors holding Disputed Voting Claims; and (iv) in its discretion, any other matter relating to the Payless Canada Entities' motion seeking sanction of the CCAA Plan ("**Sanction Motion**").

43. The Payless Canada Entities propose that, in the event that the CCAA Plan is approved by the Required Majorities, the Payless Canada Entities will bring a motion on October 29, 2019 to seek the Sanction Order.

44. The proposed Meetings Order provides that any Person intending to oppose the Sanction Motion must: (i) file or have filed with the Court a Notice of Appearance and serve such Notice of Appearance on the Service List at least seven (7) Business Days before the date set for the Sanction Motion; and (ii) serve on the Service List a notice setting out the basis for such opposition and a copy of the materials to be used to oppose the Sanction Motion that are available at least seven (7) Business Days before the date set the Sanction Motion, or such shorter time as the Court, by Order, may allow.

Claims Resolution Procedures

45. The Claims Procedure Order provides that any Claimant who failed to file a Notice of Dispute of Claim Statement by the applicable bar date would have their Claim determined in the amount set out in the Claim Statement. The Claims Procedure Order further provides that any further claims determination procedures will be subject to an Order of this Court.

46. The Meetings Order contains additional procedures for the reconciliation of Claims to allow the Payless Canada Entities to make distributions to creditors. The procedures are intended to be streamlined and efficient in order to minimize the professional costs of the claims review.

47. The claim adjudication process is solely for the purposes of voting and/or receiving a distribution under the CCAA Plan. It does not apply to unaffected claims. Further, the Meetings Order provides that the Payless Canada Entities and the Monitor shall not accept, reject, revise and settle any claim ranking or purporting to rank *pari passu* with, or in priority to, the Term Loan Claims (other than the Term Loan Lenders Subordinated Claim) without the consent of the Supporting Term Loan Lenders.

48. With respect to affected claims, the Payless Canada Entities, in consultation with the Monitor, may deem a claim accepted for distribution purposes. This procedure will be particularly relevant to Landlords who are expected to receive a fixed distribution per lease under the CCAA Plan.

49. With respect to the Notices of Dispute of Claim Statement filed by parties other than the Landlords, the Payless Canada Entities, in consultation with the Monitor, will work to consensually resolve such Claims.

50. With respect to the Proofs of Claim that were received, the Payless Canada Entities may determine to revise or reject a Proof of Claim by sending a Notice of Revision or Disallowance (as defined in the Meetings Order) to the Claimant. If the Claimant wishes to challenge the

Notice of Revision or Disallowance, the Claimant must file a Notice of Dispute with the Monitor by no later than 15 days after the delivery of the Notice of Revision of Disallowance.

51. In the event that the parties cannot reach a resolution with respect to a Notice of Dispute of Claim Statement or a Notice of Dispute, the Payless Canada Entities may refer such dispute to the Court or to a claims officer, subject to further order of the Court.

STAY EXTENSION AND LIFTING OF STAY OF PROCEEDINGS

52. On March 20, 2019, the Court granted an order extending the Stay Period up to and including June 7, 2019. On June 4, 2019 the Court granted a further extension to the Stay Period up to and including September 20, 2019.

53. The Payless Canada Entities are seeking to lift the Stay of Proceedings, to the extent necessary, to allow the Payless Canada Entities to apply to the U.S. Court to dismiss the Payless Canada Entities' U.S. Proceedings in order to implement the U.S. Plan.

54. For all other purposes, the Payless Canada Entities are seeking the Third Stay Extension until and including December 20, 2019 to permit them to finalize and implement a CCAA Plan. The Payless Canada Entities expect to work closely with their advisors and the Monitor to meet the conditions to implementation by that date.

55. The Payless Canada Entities, with the assistance of the Monitor, are preparing a revised cash flow statement for the period until December 20, 2019 (the "**Cash Flow Statement**"). The Cash Flow Statement will be appended to the Fifth Report.

56. As will be reflected in the Cash Flow Statement, the Payless Canada Entities are forecast to have sufficient liquidity to fund their post-filing obligations and the costs of their CCAA Proceedings during the Third Stay Extension. The Payless Canada Entities expect to

return to Court in advance of the expiry of the Third Stay Extension to seek additional relief in connection with the resolution of these proceedings.

CONCLUSION

57. It is my belief that each of the Payless Canada Entities has acted, and continues to act, in good faith and with due diligence. The Payless Canada Entities continue to carry on their business in compliance with the CCAA and the orders of the Court made in the CCAA Proceedings.

58. I do not believe that any of the Payless Canada Entities' stakeholders will suffer material prejudice if the Third Stay Extension or the Meetings Order is granted as requested.

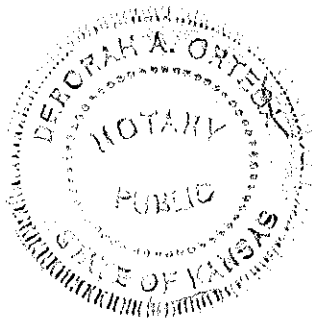
59. I swear this affidavit in support of the Payless Canada Entities' motion for the Meetings Order and the Stay Extension Order and for no other or improper purpose.

SWORN BEFORE ME at the)
City of Wichita, in the)
State of Kansas, this)
10th day of September, 2019)
)



Adrian Frankum


Notary Public
My Commission Expires 12-2-20



**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE
CANADA GP INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

Affidavit of Adrian Frankum
Sworn September 10, 2019

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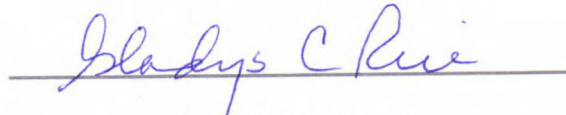
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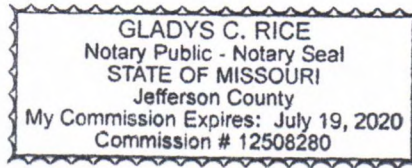
Lawyers for Payless ShoeSource Canada Inc., Payless ShoeSource
Canada GP Inc. and Payless ShoeSource Canada LP

TAB D

This is **Exhibit "D"**
to the affidavit of **Stephen Marotta**
sworn and subscribed to before me
this **23rd day of October 2019**



(insert notary stamp)



**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

AFFIDAVIT OF STEPHEN MAROTTA

SWORN SEPTEMBER 17, 2019

I, Stephen Marotta, of Morris County, in the State of New Jersey, **MAKE OATH AND SAY:**

1. I am a Senior Managing Director at Ankura Consulting Group, LLC, the Chief Restructuring Organization of Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP (collectively, the "**Payless Canada Entities**"). I also serve as the Chief Restructuring Officer of Payless Holdings LLC (the ultimate parent company of the Payless Canada Entities) and twenty-five (25) of its affiliated companies (the "**U.S. Debtors**"). As such, I am familiar with the Payless Canada Entities' day-to-day operations, business, financial affairs, and books and records and I have personal knowledge of the Payless Canada Entities and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swear this supplemental affidavit (the "**Supplemental Affidavit**") in support of a motion by the Applicants for:

- (a) an order (the “**Meetings Order**”):
- (i) accepting the filing of the Payless Canada Entities’ Plan of Compromise and Arrangement dated September 17, 2019 (the “**CCAA Plan**”);
 - (ii) authorizing the Payless Canada Entities to establish two (2) classes of affected creditors for the purpose of considering and voting on the CCAA Plan: (i) a general unsecured creditor class (“**General Unsecured Creditors**”); and (ii) a landlord class (the “**Landlords**”);
 - (iii) authorizing the Payless Canada Entities to call, hold and conduct (i) a meeting of the General Unsecured Creditors and (ii) a meeting of the Landlords (together, the “**Creditors’ Meetings**”) to consider and vote on a resolution to approve the CCAA Plan, and approving the procedures to be followed with respect to the Creditors’ Meetings;
 - (iv) setting the date for the hearing of the Payless Canada Entities’ motion for an order to sanction the CCAA Plan (the “**Sanction Order**”) should the CCAA Plan be approved for filing and approved by the required majorities of affected creditors at the Creditors’ Meetings; and
 - (v) approving procedures for the reconciliation of certain claims.

3. Unless indicated otherwise, capitalized terms not defined in this affidavit have the meaning given to them in the Affidavit of Adrian Frankum in support of this motion sworn September 10, 2019 (the “**Frankum Affidavit**”).

4. At the time of swearing the Frankum Affidavit, as described therein, the U.S. Debtors had filed a plan in the U.S. Proceedings, which remained subject to further negotiations. Similarly, the terms and structure of the CCAA Plan were not yet final and were the subject of

ongoing negotiations among the U.S. Debtors and the Payless Canada Entities and their stakeholders.

5. This Supplemental Affidavit provides additional information on the plan processes in the U.S. Proceedings and these CCAA Proceedings. I understand that a supplement to the Fifth Report will be filed by the Monitor in order to provide additional information regarding the CCAA Plan (the “**Supplemental Report**”).

6. A copy of the CCAA Plan is attached hereto as **Exhibit “A”**. The CCAA Plan provides for a recovery to General Unsecured Creditors of approximately 3.2% of their Proven Claims and a distribution in an amount to a maximum of \$3,840 for each Proven Landlord Claim in excess of that amount. Although the CCAA Plan is substantially final, certain additional information will be provided to Affected Creditors in advance of the Creditors’ Meeting through a supplement (the “**Plan Supplement**”).

SECOND AMENDED U.S. PLAN

7. Since the Frankum Affidavit, the U.S. Debtors have further amended the U.S. Plan and the U.S. Disclosure Statement (the “**Second Amended U.S. Plan**” and the “**Second Amended Disclosure Statement**”, respectively). Copies of the Second Amended U.S. Plan and Second Amended U.S. Disclosure Statement are attached hereto as **Exhibit “B”** and **Exhibit “C”**, respectively.

8. The Second Amended U.S. Plan provides for expected distributions to stakeholders as follows¹:

¹ Terms in this section not otherwise defined herein have the meanings ascribed to such terms in the Second Amended U.S. Plan.

- (a) Administrative Claims (post-filing claims entitled to priority under U.S. law), Other Priority Claims (claims entitled to priority) and Other Secured Claims (mostly, claims secured by cash deposits or letters of credit), will be paid in full in cash.
- (b) Term Loan Lenders holding Tranche A-1 Term Loan Secured Claims will receive their *pro rata* share of US\$68,800,000 in cash (an increase of approximately US\$1.8 million) and shall waive any distributions in respect of related deficiency claims.
- (c) Term Loan Lenders holding Tranche A-2 Term Loan Secured Claims can elect to receive their *pro rata* share of common ownership units in the reorganized Payless Holdings LLC, or cash in the amount of 10% of their allowed tranche A-2 claims, and in either case, shall waive any distributions in respect of related deficiency claims.
- (d) General Unsecured Creditor recovery has been revised to reflect the global settlement with the Official Committee of Unsecured Creditors (the “UCC”) including:
 - (i) General Unsecured Creditors of Payless ShoeSource Worldwide, Inc. and Collective Brands Logistics Limited (Class 5A) (“**Class 5A General Unsecured Creditors**”) will receive their *pro rata* share of US\$8.4 million, plus certain unused amounts currently designated for professional fees; and
 - (ii) General Unsecured Creditors of all other U.S. Debtors (Class 5B) (“**Class 5B General Unsecured Creditors**”) will receive their *pro rata* share of US\$5.1 million plus certain unused amounts currently designated for

professional fees (less the Canadian GUC Amount of US\$900,000, as defined and described in detail below).

- (e) Intercompany claims will be reinstated or cancelled as determined by the U.S. Debtors and the Requisite Plan Support Parties, and with respect to the Payless Canada Entities, with the consent of the Payless Canada Entities;
- (f) Intercompany equity interests will be reinstated or cancelled as determined by the U.S. Debtors and the Requisite Plan Support Parties; and
- (g) Equity interests in Payless Holdings LLC will be cancelled for no consideration.

9. The Second Amended U.S. Plan describes the intent to seek dismissal of the Payless Canada Entities' U.S. Proceedings and facilitate a distribution to the unsecured creditors of the Payless Canada Entities through the CCAA Plan. After significant negotiation among the U.S. Debtors, the Payless Canada Entities, and their stakeholders (including the Monitor, the Term Loan Lenders and the UCC), the parties have fixed the amount for distribution to the general unsecured creditors of the Payless Canada Entities at US\$900,000 (being referred to as the "**Canadian GUC Amount**") which will be converted to Canadian dollars in the amount of \$1,183,500 (using the exchange rate of 1.315).

10. The Canadian GUC Amount is intended to provide a recovery to Canadian unsecured creditors that is commensurate with the expected recovery for the Class 5B General Unsecured Creditors.

11. The Payless Canada Entities, as guarantors, are indebted to the Term Loan Lenders in the aggregate amount of US\$277.2 million as of the Filing Date under and in respect of the Term Loan Credit Facility. The Payless Canada Entities understand that the Monitor has received an opinion from its independent counsel that, subject to the typical assumptions and

qualifications, the security in respect of the Term Loan Credit Facility is valid and enforceable. The Class 5A General Unsecured Creditors will receive a distribution larger than the Class 5B General Unsecured Creditors because Payless ShoeSource Worldwide, Inc. and Collective Brands Logistics Limited have certain additional unencumbered assets to support a higher distribution to unsecured creditors of those entities.

12. As such, unsecured creditors of the Payless Canada Entities are similarly situated to the Class 5B General Unsecured Creditors.

13. As described in the Frankum Affidavit, in light of the different procedures and valuation methods that apply to claims on either side of the border, the U.S. Debtors and the Payless Canada Entities, with the assistance of the Monitor, compared the total amount of claims asserted in the Chapter 11 Claims Process and pursuant to the Claims Procedure Order. Although a formal claims reconciliation process has not yet been undertaken in either jurisdiction, for purposes of this analysis only:

- (a) all suspected duplicate claims, including claims filed against the Canadian Debtors which were properly considered to be filed against the U.S. Debtors, were eliminated;
- (b) all unliquidated claims were estimated at zero;
- (c) all intercompany claims were disregarded;
- (d) the restructuring period claim in respect of each Canadian Lease was calculated under the landlord formula provided in the United States Bankruptcy Code which limits landlord claims to the greater of one lease year or 15 percent, not to exceed three years, of the remaining lease term plus any pre-filing amounts owed; and

(e) all other claims were assumed allowed in full in the amounts set out in the U.S. schedules, the U.S. proofs of claim, the Claim Statements, the Amended Claim Statements, or the Proofs of Claim.

14. Based on this analysis, the U.S. Debtors and the Payless Canada Entities, with the assistance of the Monitor, estimated that the recovery to unsecured creditors of the applicable U.S. Debtors and the recovery (on a *pro rata* basis) to unsecured creditors of the Payless Canada Entities would be approximately 3.2%, subject to further reconciliation of claims.

15. Importantly, the fixed Canadian GUC Amount means that the Payless Canada Entities are not at risk for a readjustment of the distributions to Canadian creditors in the event that the U.S. claims pool increases in the future. Instead, the Payless Canada Entities will make distributions to Canadian creditors based solely on the Canadian claims as reconciled pursuant to the orders of this Court.

16. Attached hereto as **Exhibit “D”** is a draft memorandum (without exhibits) (the “**Information Memorandum**”) intended to be provided to creditors of the Payless Canada Entities to explain these cross-border proceedings and the impact of the U.S. Plan on the CCAA Plan and creditors of the Payless Canada Entities.

THE CCAA PLAN

17. The CCAA Plan is being put forward by the Payless Canada Entities in the expectation that all Persons with an economic interest in the Payless Canada Entities will derive a greater benefit from the implementation of the CCAA Plan than would result from a bankruptcy. Since all or substantially all of the Payless Canada Entities' assets are subject to liens of the Term Loan Lenders (who will not be paid in full), the Canadian GUC Amount is a "gift", which the Term Loan Lenders advise would not be available in a bankruptcy.

Treatment of Affected Creditors under the CCAA Plan

18. As described in the Frankum Affidavit, the CCAA Plan provides for two classes for voting under the CCAA Plan: (i) the General Unsecured Creditor class and (ii) the Landlord class.

19. Each General Unsecured Creditor with a Proven Claim will receive a distribution in an amount equal to its *pro rata* share of the General Unsecured Pool.

20. The CCAA Plan classifies Landlords in a separate class for voting purposes and provides that each Landlord will receive the lesser of:

- (a) \$3,840.00 per Lease (provided that if there are multiple Landlords per Lease, only one payment of \$3,840.00 shall be made); or
- (b) the amount asserted in the Landlord's Notice of Dispute of Claim Statement or Proof of Claim, or, if no Notice of Dispute of Claim Statement or Proof of Claim was filed, then the amount in the Landlord's Claim Statement.

21. As described in the Frankum Affidavit, because of the difficulty in reconciling Landlord Claims, the CCAA Plan proposes a fixed recovery per Landlord Claim. If the Payless Canada Entities were required to reconcile each Landlord claim, including undertaking an analysis of the Lease provisions and the Landlord's efforts to mitigate damages, much (or all) of the recovery

that would otherwise be available for distribution would be redirected to professional fees. The fixed recovery per Landlord Claim means the Payless Canada Entities will be able to undertake a much more limited review of such Claims and return more value to unsecured creditors.

22. The Payless Canada Entities and the Monitor arrived at the maximum distribution of \$3,840.00 per Lease by examining the estimated percentage recovery to General Unsecured Creditors and Landlords under various scenarios. I understand that the Supplemental Report will provide further details on the process to derive this figure.

23. Pursuant to the CCAA Plan, no distributions will be made to Landlords or General Unsecured Creditors until documentation in form and content satisfactory to the Payless Canada Entities, the Supporting Term Loan Lenders and the Monitor (the “**Comfort Letter**”) is received from the applicable Governmental Entity authorizing the Monitor to make the distributions, disbursements, or payments without any liability to any of the Payless Canada Entities, the Monitor, or each of their respective Directors, Officers, employees or agents in respect of the ITA, *Excise Tax Act*, and any other legislation pertaining to Taxes is received. The CCAA Plan provides that in the event the Comfort Letter is not received by December 31, 2019, the Payless Canada Entities may seek further directions from the Court.

24. With respect to Intercompany Claims, the CCAA Plan provides that further information regarding the treatment of Intercompany Claims will be included in the Plan Supplement.

Reserves

25. The CCAA Plan also contemplates the creation of certain reserve accounts, which remain subject to the security interests of the Term Loan Agent, to pay priority claims and claims that are required to be paid by Court-order. Specifically, the CCAA Plan provides for:

- (a) an Administrative Reserve, which will hold the estimated costs of administering the CCAA Plan;
- (b) a Directors' Claim Reserve, which will hold the amounts secured by the Directors' Charge until applicable claims have been resolved or paid;
- (c) a Priority Claim Reserve, which will hold amounts necessary to pay any Crown Priority Claims or Employee Priority Claims that remain unpaid; and
- (d) a Post-Filing Claim Reserve, which will include an amount to pay for any unpaid Post-Filing Claims as estimated by the Monitor prior to implementation.

26. To the extent that a Claim may be payable from more than one Reserve, the Payless Canada Entities will only reserve for such Claim once. To the extent that the Payless Canada Entities or the Monitor determine, with the consent of the other party, that there are funds in any Reserve sufficiently in excess of the amount required to fund payments that may be required to be made from such Reserve, the Payless Canada Entities with the consent of the Monitor, and in consultation with the Term Loan Lenders, may transfer such excess funds to another Reserve. To the extent that the Payless Canada Entities or the Monitor determine, with the consent of the other party, that there are insufficient funds in any Reserve to fund payments that may be required to be made from such Reserve, no excess amounts from any other Reserves will be distributed to the Payless Canada Entities without ensuring that sufficient funds are added to the applicable Reserve. In the event of any dispute, the parties may seek a further order of the Court. The amount of the Reserves will be set out in the Plan Supplement.

Releases

27. As is customary for proceedings of this size and nature, the CCAA Plan contains broad releases of the Payless Canada Entities, the Term Loan Agent, the Term Loan Lenders and the

Monitor and their respective directors, officers, agents, professionals and certain other parties.

The releases specifically do not release:

- (a) the Payless Canada Entities and their respective assets, undertaking and properties from any Unaffected Claim that has not been paid in full under the CCAA Plan to the extent of such non-payment;
- (b) a Released Party from its obligations under the CCAA Plan;
- (c) subject to provisions in the CCAA plan pertaining to insurance, a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed fraud or wilful misconduct in relation to a Released Claim for which it is responsible at law; or
- (d) subject to provisions in the CCAA Plan pertaining to insurance, the Directors from any Claims which have been preserved in accordance with the Claims Procedure Order that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA. To the extent not released, the proposed Sanction Order will limit recovery for such claims against the Directors to available insurance.

Plan Supplement

28. The Payless Canada Entities and certain of their stakeholders, including the Monitor and the Supporting Term Loan Lenders, are continuing to consider the technical transaction steps required to implement the CCAA Plan and the most efficient way to distribute funds in respect of the Term Loan Claims outside of the CCAA Plan. These steps are not expected to impact recoveries to Affected Creditors, but will be necessary to quantify the Reserves and quantify and determine the mechanics in respect of the distributions to the Term Loan Claims outside of the CCAA Plan (as the Term Loan Claims are unaffected claims under the CCAA Plan).

29. The Payless Canada Entities intend to file a Plan Supplement no later than five (5) Business Days prior to the Creditors' Meetings (or such other date as may be agreed to by the Monitor) providing this additional information. The Payless Canada Entities have agreed that the Plan Supplement will be in form and substance acceptable to the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders.

Conditions to Implementation of CCAA Plan

30. There are a number of conditions to the implementation of the CCAA Plan including:
- (a) the CCAA Plan must be approved by the Required Majorities;
 - (b) the Court must grant the Sanction Order, the operation and effect of which must not be stayed, reversed or amended, and in the event of an appeal or application for leave to appeal, final determination must be made by the appellate court;
 - (c) the Reserves and the Affected Creditor Distribution Account must be funded by the Payless Canada Entities;
 - (d) the U.S. Plan must be effective;
 - (e) the U.S. Proceedings with respect to the Payless Canada Entities must be dismissed;
 - (f) the Monitor shall have received written confirmation from the Supporting Term Loan Lenders that the Supporting Term Loan Lenders are satisfied with (i) the treatment of the Post-Filing Intercompany Loans, (ii) the form and substance of the Plan Supplement, and (iii) all variations and modifications of, and amendments and supplements to the Plan, the Plan Supplement and the Sanction Order, to and including the Implementation Date; and

(g) the Implementation Date must occur no later than the Outside Date.

CONCLUSION

31. It is my belief that each of the Payless Canada Entities has acted, and continues to act, in good faith and with due diligence. The Payless Canada Entities continue to carry on their business in compliance with the CCAA and the orders of the Court made in the CCAA Proceedings.

32. I swear this Supplemental Affidavit in support of the Payless Canada Entities' motion for the Meetings Order and for no other or improper purpose.

SWORN BEFORE ME at the)
City of Topeka, in the)
State of Kansas, this)
17th day of September, 2019)



Stephen Marotta



Notary Public

My Commission Expires 12-2-20



**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE
CANADA GP INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**Supplemental Affidavit of Stephen Marotta
Sworn September 17, 2019**

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Affidavit of Stephen Marotta
Sworn October 23, 2019

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MOTION RECORD

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