

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 11TH DAY
)
JUSTICE BROWN) OF JULY, 2013

**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
EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**ORDER
(Re: Discharge)**

THIS MOTION, made by Extreme Fitness, Inc. (the "**Applicant**"), for an order, *inter alia*:

- (a) approving the Fourth Report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"), dated July 4, 2013 (the "**Fourth Report**"), and the actions of the Monitor described therein;
- (b) approving the fees and disbursements of the Monitor and its counsel, Goodmans LLP ("**Goodmans**");
- (c) approving the agreement (the "**Paymentech Agreement**") dated June 24, 2013 among the Applicant, Falconhead Capital, LLC ("**Falconhead**"), Chase Paymentech

Solutions (“**Paymentech**”) and National Bank of Canada (“**NBC**”), which governs the return of certain reserve funds that Paymentech was holding, and the transactions described therein;

(d) authorizing and directing the Applicant and any person in possession of any of the Applicant’s Property (as defined in Initial Order (the “**Initial Order**”) of the Honourable Mr. Justice Campbell granted on February 7, 2013 in these proceedings) to distribute, without further Order of this Court, any of the Property, including any funds comprising such Property, remaining in, or that come into, the Applicant’s or any other person’s possession to NBC, as agent, on behalf of the lenders under the credit agreement dated May 20, 2011 (the “**NBC Lenders**”) on account of the Applicant’s outstanding indebtedness for principal, interest and costs, up to the amount of the Applicant’s indebtedness to the NBC Lenders;

(e) upon the filing of the Monitor’s Discharge Certificate (as defined herein) with this Court, terminating: (i) the Administration Charge; (ii) the D&O Charge, with the exception that the D&O Charge shall continue solely as against the amount of \$40,197.00 to be held by Aird & Berlis LLP in trust pending the resolution, following the termination of these proceeds (the “**CCAA Proceedings**”), of the assessments issued by Canada Revenue Agency (“**CRA**”) in respect of the Applicant for unpaid source deductions under the *Income Tax Act* (Canada) (the “**ITA**”); and (iii) the DIP Charge, each as defined in, and established by, the Initial Order;

(f) discharging FTI as Monitor and releasing FTI from any and all liability that FTI has or may hereafter have by reason of, or in any way arising out of, the acts or omissions

of FTI while acting in its capacity as Monitor, upon the filing of the Monitor's Discharge Certificate with this Court; and

(g) terminating the CCAA Proceedings, upon the filing of the Monitor's Discharge Certificate with this Court,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Alan Hutchens sworn July 4, 2013 and the Fourth Report, the affidavit of Paul Bishop sworn July 4, 2013 (the "**Bishop Affidavit**") and the affidavit of Melaney J. Wagner sworn July 4, 2013 (the "**Wagner Affidavit**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and counsel for NBC, no one appearing for any other person on the service list, although duly served as appears from the affidavit of Sara Szulc sworn July 4, 2013, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record 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 the Fourth Report and the actions of the Monitor described therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period February 7, 2013 to June 30, 2013, inclusive, and the Monitor's fees and disbursements, as estimated, to complete its remaining duties and the administration of these CCAA Proceedings, all as set out in the Bishop Affidavit and the Fourth Report, are hereby approved.

4. **THIS COURT ORDER** that the fees and disbursements of the Monitor's counsel, Goodmans, for the period January 22, 2013 to July 2, 2013, inclusive, and Goodmans' fees and disbursements, as estimated, in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA Proceedings, all as set out in the Wagner Affidavit and the Fourth Report, are hereby approved.

5. **THIS COURT ORDERS** that the Paymentech Agreement and the transactions described therein be and are hereby approved and Paymentech is hereby authorized and directed to make each of the payments set out in the Paymentech Agreement to NBC, as agent, on behalf of the NBC Lenders, on account of the Applicant's outstanding indebtedness for principal, interest and costs up to the amount of the Applicant's indebtedness to the NBC Lenders.

6. **THIS COURT ORDERS** that the Applicant and any person in possession of the Applicant's Property are hereby authorized and directed to distribute, without further Order of this Court, any and all of the Applicant's Property, including any funds comprising such Property, remaining in, or that may come into, the Applicant's or any person's possession to NBC, as agent, on behalf of the NBC Lenders on account of the Applicant's outstanding indebtedness for principal, interest and costs, up to the amount of the Applicant's indebtedness to the NBC Lenders.

7. **THIS COURT ORDERS AND DECLARES** that, notwithstanding:

(a) the pendency of the CCAA Proceedings or the termination of the CCAA Proceedings;

- (b) any application for a bankruptcy order or bankruptcy Order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the “BIA”) in respect of the Applicant; or
- (c) any assignment in bankruptcy made in respect of the Applicant,

the distributions and payments made or to be made to NBC, as agent, on behalf of the NBC Lenders pursuant to the terms of this Order are final and irreversible and shall be binding upon any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall any such payments or distributions constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, or other reviewable transactions under the BIA or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Applicant regarding the satisfaction of all of the Applicant’s duties and obligations pursuant to the CCAA and orders of the Court in respect of these CCAA Proceedings.

9. **THIS COURT ORDERS** that, upon the filing by the Monitor of a certificate with this Court substantially in the form attached as **Schedule “A”** hereto (the “**Monitor’s Discharge Certificate**”) certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor:

- (a) FTI be and is hereby discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the Initial Order, any

other Order of this Court in the CCAA Proceedings, the *Companies' Creditors Arrangement Act* (the "CCAA") or otherwise;

- (b) the Administration Charge, the D&O Charge and the DIP Charge (each as defined in, and established by, the Initial Order) be and are hereby terminated, released and discharged, with the exception that the D&O Charge shall continue solely as against the amount of \$40,197.00 held by Aird & Berlis LLP in trust pending the resolution, following termination of the CCAA Proceedings, of the assessments issued by CRA in respect of the Applicant for unpaid source deductions under the ITA; and
- (c) the CCAA Proceedings be and are hereby terminated.

10. **THIS COURT ORDERS** that, in addition to the protections in favour of the Monitor as set out in the Initial Order, any other Order of this Court or reasons provided by this Court in the CCAA Proceedings or the CCAA, the Monitor shall not be liable for any act or omission on the part of the Monitor, including with respect to any reliance thereof, including, without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of the Monitor's duties in the CCAA Proceedings or with respect to any other duties or obligations of the Monitor under the CCAA or otherwise, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Subject to the foregoing and in addition to the protections of the Monitor as set out in the Orders of this Court or any reasons provided by this Court in the CCAA Proceedings, any claims against the Monitor in connection with the performance of its duties as Monitor are hereby released, stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof.

11. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on seven (7) days prior written notice to the Monitor and such further order securing, as security for costs, the full indemnity costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

12. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the rights, approvals and protections in favour of the Monitor pursuant to the Initial Order, any other Order of this Court or reasons provided by this Court in the CCAA Proceedings, the CCAA or otherwise, all of which are expressly continued and confirmed.

13. **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 Order and to assist the Applicant and its 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 the Applicant 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 the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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



JUL 11 2013



Schedule "A"
Form of Monitor's Discharge Certificate

Court File No. CV-13-10000-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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MONITOR'S DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 7, 2013, Extreme Fitness, Inc. (the "**Applicant**") was declared a company to which the *Companies' Creditors Arrangement Act* (the "**CCAA**") applied and FTI Consulting Canada Inc. ("**FTI**") was appointed as the Court-appointed Monitor of the Applicant (in such capacity, the "**Monitor**").

B. Pursuant to an Order of this Court dated July 11, 2013 (the "**Discharge Order**"), FTI was discharged as Monitor of the Applicant to be effective upon the filing by the Monitor of this certificate with this Court certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE MONITOR CERTIFIES that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor.

DATED at Toronto, Ontario, this ____ day of _____, 2013.

FTI CONSULTING CANADA INC.,
in its capacity as the Court-appointed Monitor
of Extreme Fitness, Inc., and not in its personal
or corporate capacity

Per:

Name: Steven Bissell
Title: Managing Director

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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OF EXTREME FITNESS, INC.**

Court File No. CV-13-10000-00CL

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Proceeding commenced at Toronto

**ORDER
(Re: Discharge)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: 416.865.7726

Fax: 416.863.1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: 416.865.3082

Fax: 416.863.1515

Email: iaversa@airdberlis.com

James A. Desjardins (LSUC # 62493E)

Tel: 416.865.4641

Fax: 416.863.1515

Email: jdesjardins@airdberlis.com

Lawyers for Extreme Fitness, Inc.