Court File Nos. 31-2436097, 312436108, 31-2436109

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

IN THE MATTER OF THE BANKRUPTCY PROCEEDINGS OF
FLUID BRANDS INC., 11041037 CANADA INC. and
11041045 CANADA INC.

RESPONDING MOTION RECORD

KESTENBERG SIEGAL LIPKUS LLP
Barristers and Solicitors
65 Granby Street
Toronto, Ontario
M5B 1H8

MICHAEL R. KESTENBERG
LSO #16005H
THOMAS M. SLAHTA
LSO @32464U

Tel: (416) 597-0000
Fax: (416) 597-6567
Email: mrk@ksllaw.com
Email: tslahta@ksllaw.com
Lawyers for Torkin Manes LLP

TO: **Osler, Hoskin & Harcourt LLP**
P.O. Box 50, 1 First Canadian Place
Toronto, Ontario M5X 1B8

Marc S. Wasserman (LSUC #44066M)
Email: mwasserman@osler.com
Tel: (416) 862-4908

Jeremy Dacks (LSO#41851R)
Email: JDacks@osler.com
Tel: (416) 862-4932
Fax: (416) 862-6666

Lawyers for Richter Advisory Group Inc. in its
capacity as Trustee of Fluid Brands Inc.
11041037 Canada Inc. and 11041045 Canada Inc.

Court File Nos. 31-2436097, 312436108, 31-2436109

ONTARIO

SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

IN THE MATTER OF THE BANKRUPTCY PROCEEDINGS OF
FLUID BRANDS INC., 11041037 CANADA INC. and
11041045 CANADA INC.

TABLE OF CONTENTS

TAB NO.	DOCUMENT	PAGE NO
1.	Affidavit of Jeffrey J. Simpson sworn February 28, 2018	1 - 25
EXHIBITS:		
"A"	Sulley email dated October 30, 2018	26 - 27
"B"	Simpson email dated October 31, 2018	28 - 30
"C"	Abitan email dated November 1, 2018	31 - 54
"D"	Nortman email dated November 1, 2018	55 - 57
"E"	Simpson email dated November 1, 2018	58 - 59
"F"	Notice of Motion and Liquidation Sales Order	60 - 98
"G"	Issued Order dated October 20, 2017	99 - 128
"H"	Gymbaree Order dated January 24, 2019	129 - 151
"I"	Sulley email dated November 29, 2018	152 - 153
"J"	Monitoring Report - November 10, 2018 - December 8, 2018	154 - 200
"K"	Sulley handwritten notes dated December 18, 2018	201 - 202
"L"	Direction re Loan dated December 19, 2018	203 - 205
"M"	Monitoring Report - December 22, 2018	206 - 213
"N"	Sulley handwritten note dated December 27, 2018	214 - 216
"O"	Direction re Loan dated December 27, 2018	217 - 219

"P" Monitoring Report - December 29, 2018 ---------- 220 - 227

"Q" Lau Email dated January 3, 2019---------- 228 - 232

Court File Nos. 31-2436097, 312436108, 31-2436109

ONTARIO

SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

IN THE MATTER OF THE BANKRUPTCY PROCEEDINGS OF
FLUID BRANDS INC., 11041037 CANADA INC. and
11041045 CANADA INC.

AFFIDAVIT OF JEFFREY J. SIMPSON

I, **JEFFREY J. SIMPSON**, of the City of Toronto, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am a partner with Torkin Manes LLP ("Torkin Manes") and have knowledge of the matters set out below based on my own personal knowledge and based upon my review of the relevant non-privileged documents contained in Torkin Manes' files. Where others have advised me, I believe the information that they provided to me is true.

2. I submit this Affidavit in response to the Bankruptcy Trustee's Motion seeking various relief against Torkin Manes and others as particularized in the Amended Notice of Motion dated February 15, 2019 and First Report to the Court dated February 15, 2019, in which the Bankruptcy Trustee:

   (a) asserts that during NOI Proceedings prior to the deemed assignments in bankruptcy, Torkin Manes:

      (i) received (and deposited to its trust account) monies from Fluid Brands Inc. ("Fluid"), 11041037 Canada Inc. (formerly known as Bombay & Co. Inc.) ("Bombay"), and 1041045 Canada Inc. (formerly known as Bowring & Co. Inc.) ("Bowring") (collectively the "Fluid Brand Debtors"),

      (ii) made payments to a third party from such funds pursuant to directions provided to Torkin Manes by its clients, and

      (iii) applied monies in trust on account of its outstanding accounts receivable for legal services provided to the Fluid Brand Debtors,

and that the payments and transfers made by Torkin Manes contravened the November 2, 2018 Liquidation Process Order (the "Liquidation Process Order"), and

(b) seeks an Order, pursuant to section 17(1) of the *Bankruptcy and Insolvency Act ("BIA")*, requiring Torkin Manes (along with others) to "*pay to the Trustee in Bankruptcy all monies received directly or indirectly from the [Fluid Brand Debtors]*," which I interpret as seeking an Order requiring Torkin Manes to remit any monies remaining in trust to the credit of the Fluid Brand Debtors (to which Torkin Manes does not object) and possibly requiring Torkin Manes to pay monies that were disbursed from Torkin Manes' trust account to the Bankruptcy Trustee (which Torkin Manes opposes).

3. As will be evident from a review of the contents of my Affidavit, my partner, S. Fay Sulley, was also actively involved in the Fluid Brands insolvency matter, and portions of my Affidavit contain information provided to me by Ms. Sulley.

4. I am providing evidence based on information from Ms. Sulley, because Ms. Sulley is unable to provide direct evidence (by way of Affidavit and cross-examination on that Affidavit) within the current time frames applicable to the Bankruptcy Trustee's Motion.

5. Ms. Sulley is unable (and therefore unavailable) to provide direct evidence in the required time-frame, because:

(a) on the evening of January 11, 2019, Ms. Sulley's husband died,

(b) his death was both unexpected and sudden,

(c) Ms. Sulley is understandably traumatized by her husband's sudden death and its surrounding circumstances, and she is under ongoing medical care,

(d) although Ms. Sulley attempted to return to work earlier this month and has attended at the office intermittently, she will be on medically recommended leave in March, including the week of March 4, 2019, which has been set aside for cross-examinations.

6. I am in possession of a letter from Ms. Sulley's doctor to this effect. I am not attaching the letter as an Exhibit to this affidavit so as not to make confidential medical information part of the public record. If necessary, and I am so directed by the Court, Ms. Sulley has authorized me to provide a copy of this letter to the Court and to counsel on a confidential basis.

Overview

7. I dispute the Bankruptcy Trustee's assertion that when Torkin Manes made payments to a third party (pursuant to written directions), without ensuring that the Liquidator's fees and expenses then owing had been paid or reserving enough monies (or ensuring that enough monies were reserved) to pay *"various costs properly incurred in connection with the NOI proceedings"*, including the anticipated Liquidator's fees and expenses, it contravened Court orders, particularly the Liquidation Process Order. The assertion that Torkin Manes made *"improper payments"* in contravention of the Liquidation Process Order is unsupported and unsupportable, because:

(a) the terms of the Liquidation Process Order do not:

(i) impose a trust on the proceeds of the liquidation sale for the Liquidator's benefit,

(ii) provide the Liquidator with a super-priority security interest, or any security interest, for fees and expenses that may be owing to the Liquidator,

(iii) direct that the Liquidator be paid prior to the Fluid Brand Debtors making payments to any other creditor,

(iv) direct the Fluid Brand Debtors, or any person with notice of the order, to reserve (or ensure that a reserve has been taken of) enough monies to pay anticipated fees and expenses, including the Liquidator's fees and expenses,

(b) rather, the Liquidation Process Order provides that the Liquidator is to be paid weekly (following a "*reconciliation*" of the prior week's sales) and authorizes the Liquidator to take enforcement steps to obtain weekly payments, notwithstanding the NOI stay of proceedings, and notwithstanding the rights of secured creditors, preferred creditors and the beneficiaries of charges created by the November 2, 2018 Administration Order,

(c) the circumstances surrounding the preparation of the form of Liquidation Process Order do not support a common intention to *"ring fence"* monies derived from the liquidation sale to protect the Liquidator's anticipated fees and expenses:

(i) the substantive terms of the Liquidation Process Order were prescribed by counsel to Richter Advisory Inc. ("Richter"), Sandra Abitan of Osler's Montreal office and

Adam Sherman of Richter, who told me to use the form of liquidation process order issued in insolvency proceedings involving Nine West,

(ii) Ms. Abitan, alone or in conjunction with a Richter's representative, dealt with a representative of the Liquidator (and/or its counsel) respecting, among other things, the terms of the Liquidation Process Order, including the protections to be afforded to the Liquidator in respect of its fees and expenses,

(iii) Torkin Manes had no contact with the Liquidator, and Ms. Abitan was Torkin Manes' sole contact respecting the Liquidator's requirements in respect of the terms to be included in the Liquidation Process Order, and

(iv) at no time was there any discussion (or even mention) to me or to Ms. Sulley that the proceeds of the liquidation sale were to be reserved, or set aside, or "*ring fenced*" to the extent of amounts owing to the Liquidator and/or that such a reservation was intended by the Liquidation Process Order as described in paragraph 37 of the Bankruptcy Trustee's First Report,

(d) similarly, the October 31, 2018 Liquidation Consulting Agreement, which

(i) was prepared by Ms. Abitan in consultation with a representative of the Liquidator and/or counsel for the Liquidator, and

(ii) was approved by a representative of the Liquidator after receipt and review of comments from interested parties, including counsel for CIBC

does not impose a trust on Liquidation Sales proceeds in favour of the Liquidator, or grant the Liquidator a super-priority security interest on the proceeds of the Liquidation Sale in favour of the Liquidator, or impose any requirements upon the Fluid Brand Debtors to segregate or *ring fence* amounts due and payable to the Liquidator during the NOI proceeding from the proceeds of the Liquidation Sale generally,

(e) after issuance of the Liquidation Process Order on November 2, 2018, Richter, in its capacity as Proposal Trustee, had knowledge of and was party to a practice and protocol among the Fluid Brand Debtors, CIBC and the Proposal Trustee by which all Liquidation Sales proceeds were deposited to an account maintained by the Fluid Brand Debtors (a

"lock box" account) with CIBC, from which CIBC applied Liquidation Sales proceeds to pay down the Fluid Brand Debtors' pre-filing and DIP financing obligations to CIBC:

(i) without regard to the pay down schedules reflected in cash flow projections prepared by the Fluid Brands Defendants with Richter's involvement and assistance (filed by Richter in its reports to the Court as Proposal Trustee), and

(ii) without ensuring that weekly payments had been made first to the Liquidator or, in the absence of weekly payments, reserving or setting aside or *ring-fencing* enough money to pay amounts owing to the Liquidator, before applying Liquidation Sales proceeds to pay down the Fluid Brand Debtors' pre-filing and DIP Financing indebtedness to CIBC.

Save and except for disbursements approved by the Proposal Trustee, CIBC applied Liquidation Sales proceeds to pay down the Fluid Brand Debtors' pre-filing and DIP Financing debt obligations to CIBC without regard to amounts that may have been owing and unpaid to the Liquidator,

(f) CIBC assigned its debt and security to 2668602 Ontario Inc. ("266") (as at December 11, 2018) and Notice of Assignment was provided to Richter on or about December 13, 2018. Following assignment, Richter, as Proposal Trustee:

(i) maintained its role in overseeing the Fluid Brand Debtors' cash flow, including review and approval of the Fluid Brand Debtors' proposed disbursements, and

(ii) reviewed and approved the Fluid Brand Debtors two (2) proposed disbursements to 266 (via Torkin Manes) of approximately $1.91 million on or about December 19 and $2.3 million on or about December 27 from liquidation sales proceeds, and

(iii) participated in the preparation of required weekly Monitoring Reports for the weeks ending December 22 and December 29 that expressly reflected that the Fluid Brand Debtors had made two (2) payments to 266 of $1.91 million and $2.3 million, respectively.

In reviewing, approving and reporting on these two (2) disbursements at the time, Richter did not assert (as it now does) that such payments were *Improper Payments* that contravened the Liquidation Process Order, and

(g) in any event, after the payments by the Fluid Brands Debtors to 266 (via Torkin Manes) in December 2018, the Fluid Brands Debtors had enough "*Book Cash*" (described in the Weekly Monitoring reports as Bank Cash, less outstanding cheques) to pay the Liquidator's fees and expenses.

8. I also dispute the Bankruptcy Trustee's assertion that Torkin Manes' transfers of monies from its trust account to satisfy outstanding accounts receivable for legal services rendered to the Fluid Brand Debtors in the NOI Proceeding contravened the Liquidation Process Order because:

(a) the Proposal Trustee's First Report to the Court and multiple cash flow statements filed by the Proposal Trustee with the Court indicated that there would be ongoing payments to the Proposal Trustee, the Proposal Trustee's counsel and to Torkin Manes (the "NOI Professionals") throughout the NOI Proceeding, and

(b) in addition to Torkin Manes, the Proposal Trustee and its counsel sought and received ongoing payments from the Fluid Brand Debtors throughout the NOI Proceeding, and requested payment to them of $250,000 from the Fluid Brand Debtors in January 2019, shortly before the Fluid Brands Debtors' deemed bankruptcies.

9. In short, the Proposal Trustee's and its counsel's conduct in respect of the payment of their ongoing professional fees by the Fluid Brand Debtors without first ensuring that the Liquidator had first been paid or without reserve or a *ring fence* to protect the Liquidator's accounts belies the Bankruptcy Trustee's assertion on this motion that Torkin Manes' application of monies to pay outstanding accounts receivable is contrary to the terms of the Liquidation Process Order.

Prelude to the 2018 NOI Proceeding

10. On October 19, 2018, Fred Benitah ("Benitah") contacted Ms. Sulley regarding a possible insolvency proceeding involving the Fluid Brand Debtors. Torkin Manes, particularly Ms. Sulley and I, had acted for predecessor companies of the Fluid Brand Debtors in respect of a 2014 restructuring.

11. Ms. Sulley was out of the country at the time, and the first substantive contact between Ms. Sulley and the Fluid Brand Debtors occurred on Sunday, October 21, 2018 following Ms. Sulley's return to Canada.

12. Prior to that first substantive contact with Ms. Sulley on October 21, 2018:

(a) the Fluid Brand Debtors retained Richter (Raymond Massi with Richter's Montreal office) to provide advice to deal with the Fluid Brand Debtors' existing financial difficulties, which culminated in Richter being retained to assist the Fluid Brand Debtors in preparation and filing of a Notice of Intention to Make a Proposal ("NOI") under the *Bankruptcy and Insolvency Act* ("BIA") in Quebec,

(b) Mr. Massi involved Ms. Abitan at Osler's Montreal office to assist with the Fluid Brand Debtors' restructuring and NOI,

(c) Ms. Abitan and/or Mr. Massi involved and consulted with a representative of Hilco (an experienced and sophisticated retail liquidator) respecting liquidation of certain of the Bombay and Bowring inventory as part of a corporate restructuring and downsizing in the context of a NOI and a Proposal under the BIA,

(d) Richter, in consultation with Fluid Brand Debtors and Hilco, began preparation of a cash flow analysis and liquidation projections in contemplation of a NOI filing,

(e) on or about October 16, 2018, Isaac Bennet Sales Agency ("IBSA"), through its Quebec counsel served Notices of Intention to Enforce Security ("NITES") on the Fluid Brands Debtors. IBSA's security was subordinate to security held by CIBC to secure repayment of the Fluid Brand Debtors' indebtedness to CIBC. In October 2018, the Fluid Brands Debtors owed CIBC approximately $23.0 million,

(f) on or about October 18, 2018, Benitah contacted CIBC to advise it of the Fluid Brand Debtors' intention to file a NOI,

(g) by October 19, 2018, a Director's resolution authorizing the filing of a NOI by the Fluid Brand Debtors had been passed, and

(h) motion materials were prepared by the Fluid Brand Debtors' Quebec counsel to seek an Order from a Quebec Court allowing Richter (which was the former auditor) to act as the Fluid Brand Debtors' Proposal Trustee.

13. Following Ms. Sulley's return to Canada, one of the first issues to be discussed and addressed was whether the Fluid Brand Debtors' NOI and court filings would be made in Montreal or whether they would be made in Toronto.

14. Following telephone calls and meetings involving Ms. Sulley, Benitah and others, a decision was made to transfer administration of the Fluid Brands Debtors' NOI to Richter's Toronto office and to retain Torkin Manes to act as counsel to the Fluid Brand Debtors in respect of the NOI proceeding.

15. Notwithstanding the transfer of the NOI proceedings to Richter's Toronto office and Torkin Manes' retainer, Ms. Abitan (by virtue of her earlier involvement in the matter) remained heavily involved in respect of the preparation of necessary documents, including the Liquidation Consulting Agreement and Court orders.

16. On October 22, 2018, CIBC issued demands and NITES against the Fluid Brand Debtors.

17. Following a meeting with CIBC and its counsel, David Cohen of Gowlings, Mr. Cohen's office circulated a proposed form of Forbearance Agreement to Ms. Sulley. In conjunction with the delivery of the draft Forbearance Agreement, Mr. Cohen advised that DIP Financing by CIBC had not yet been approved. Ultimately, CIBC agreed to provide post-filing financial support by way of roll up DIP Financing.

18. Because the ten (10) day notice period contained in IBSA's NITES expired on October 26, 2018, there was significant urgency in taking steps to initiate the filing of an NOI; however, a necessary first step in that process was obtaining a Court Order permitting Richter to act as the Fluid Brand Debtors' Proposal Trustee. Richter had provided accounting services to the Fluid Brand Debtors in the past; therefore leave of Court was required to permit Richter to act as the Proposal Trustee.

19. On October 23, 2018 Ms. Abitan forwarded to Ms. Sulley the Motion materials prepared by Quebec counsel seeking an Order permitting Richter to act as Proposal Trustee.

20. I received and revised the documentation from the anticipated Quebec Court motion provided by Ms. Abitan to conform to Ontario Court requirements, and I attended in Court on October 24, 2018. The Court granted the Order permitting Richter to act as Proposal Trustee.

21. Richter then prepared the necessary paperwork for the filing of a NOI on behalf of the three Fluid Brand Debtors, and on October 25, 2018 the Official Receiver accepted the filing of the NOI's on behalf of the three Fluid Brand Debtors. Richter was named as Proposal Trustee with respect to each.

22. We all recognized that we needed to be in Court as soon as possible, and the decision was made to bring a motion returnable on November 2, 2018. Because we were working toward a November 2, 2018 Court attendance, numerous documents needed to be prepared on an urgent basis. This documentation included:

(a) a Forbearance Agreement and DIP Financing Agreement with CIBC,

(b) the Proposal Trustee's Cash Flow Statements and First Report,

(c) a Liquidation Sales Agreement,

(d) Motion Materials, including a Benitah Affidavit, and

(e) the forms of a Liquidation Process Order and an Administration Order to approve, among other things, roll up DIP Financing and the Liquidation Process.

23. On October 30, 2018 Ms. Sulley wrote to Adam Sherman of Richter, Ms. Abitan and me. In her e-mail correspondence, Ms. Sulley explained that I would be responsible for preparing the Motion materials. Ms. Sulley specifically asked Ms. Abitan and Mr. Sherman if they had any particular provisions they would like to see in the Court Orders. Attached as Exhibit "A" is a copy of Ms. Sulley's October 30, 2018 email.

24. We scheduled a call for the morning of October 31, 2018 to discuss the proposed Orders and their terms.

25. I participated in a telephone conference call on the morning of October 31, 2018 with Ms. Sulley, Ms. Abitan and Mr. Sherman. During that call, Ms. Abitan told us to use the form of Liquidation Process Order that had been obtained in the Nine West Insolvency proceeding and to start with the form of Administration Order issued in Nine West as a basis for discussions with CIBC. Mr. Sherman advised that Richter was the Proposal Trustee in the Nine West matter and was familiar with the terms of those Orders.

26. We agreed that in the interest of time and to maximize the chance of Court approval of the materials submitted it made sense to use the forms of Order from the Nine West Proceeding, particularly the Liquidation Process Order.

27. We also agreed that it made sense to divide up the work.

28. Because of the NOI process that had been initiated by Richter in Montreal, the discussions with the Liquidator and the preparation of the Liquidation Consulting Agreement and sales process terms and the Liquidation Process Order was handled by Ms. Abitan and Richter. Neither Ms. Sulley nor I had any contact with or involvement in the discussions and negotiations with Hilco or the eventual Liquidator (a joint venture comprised of Merchant Retail Solutions, ULC an affiliate of Hilco Merchant Resources, LLC and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners LLC).

29. Ms. Sulley's time and attention (and to some extent my time) focused on dealing with CIBC in respect of the terms of a Forbearance Agreement and the terms of the roll up DIP financing.

30. My time and attention focused on the preparation of Motion materials for the anticipated November 2, 2018 Court attendance when we would seek procedural consolidation of the three Estates, an extension of time to file a Proposal, approval of DIP financing, approval of directors and administration charges and approval of a liquidation process.

31. I reviewed the Nine West Orders on Richter's website and later that night I sent an e-mail to counsel for CIBC, counsel for IBSA, Ms. Abitan, Mr. Sherman and Ms. Sulley to confirm that I was copying the Nine West Orders. I also confirmed that I was assuming that the Liquidator would want the same particulars and protections as were in the Nine West Order. Attached as Exhibit "B" is a copy of my October 31, 2018 email correspondence.

32. I received no advice to the contrary; therefore, I copied the substantive terms of the Nine West Orders as per the direction of Ms. Abitan and Mr. Sherman and circulated them for comment and approval.

33. Going forward, I spent significant time and attention on the form of Administration Order, including communication with CIBC's counsel. The focus of my efforts was to ensure that the terms of the Administration Order were consistent with the terms of the Forbearance Agreement being negotiated by Ms. Sulley and counsel for CIBC.

34. Neither I nor Ms. Sulley had any contact with the Liquidator respecting the terms of the Liquidation Process Order. At all times, any communications with the Liquidator respecting the form of the Liquidation Process Order involved Ms. Abitan and/or a representative of Richter.

35. As noted above, Ms. Abitan dealt with the Liquidator respecting the terms of the Liquidation Consulting Agreement. Neither Ms. Sulley nor I played any role in the negotiation of the terms or the wording of the Liquidation Consulting Agreement or the Liquidation Process Order.

36. On October 31, 2018, Ms. Abitan forwarded to Ms. Sulley and counsel for CIBC and IBSA, among others, a draft Liquidation Consulting Agreement, Sales Guidelines and Exhibits, which Ms. Abitan described as being identical to those used in the Nine West matter, save for party names and dates. Ms. Abitan also stated that the Exhibits attached to the draft agreements had been provided by Ben Nortman, a representative of Hilco.

37. Following receipt, counsel for CIBC and IBSA provided comments to Ms. Abitan and Benitah (who was in our offices on October 31, 2018) provided comments with respect to the mechanics of the liquidation sales process and personnel.

38. Neither Ms. Sulley nor I offered any substantive comments to the Liquidation Consulting Agreement, because we were advised that the form of the Liquidation Consulting Agreement circulated by Ms. Abitan was substantively identical to the form of agreement approved by the Court in the Nine West proceeding. To us, language from an agreement previously approved by the Court maximized the chances of Court approval in our matter.

39. Further to comments received, Ms. Abitan made changes, and on November 1, 2018 she circulated revised drafts incorporating acceptable comments to her original draft. She advised further that *"Hilco has signed off and provided its signature page."* Attached as Exhibit "C" is a copy of Ms. Abitan's November 1, 2018 e-mail and attachment.

40. Later in the day on November 1, 2018, Ben Nortman sent an email message advising that Hilco (one of the joint venture participants) had signed off on the revised Consulting Agreement as generated by Ms. Abitan. Attached as Exhibit "D" is a copy of Mr. Nortman's November 1, 2018 email. Benitah signed that document as well. A copy of the signed October 31, 2018 Liquidation Consulting Agreement is contained in the Bankruptcy Trustee's Motion material (Appendix 1).

41. I have reviewed the Liquidation Consulting Agreement dated October 31, 2018 (defined as the *Consulting Agreement* in the Bankruptcy Trustee's Reports and materials), and nowhere in the

Consulting Agreement is there language granting the Liquidator a trust interest or a security interest in the sales proceeds to protect its fees and expenses. Rather, the Consulting Agreement (at section E) provides that:

> *"all accounting amount matters (including, without limitation, all fees, expenses, or other amounts reimbursable or payable to Consultant shall be reconciled every Wednesday for the prior week and shall be paid within seven days after each such weekly reconciliation. The Parties shall complete final reconciliation and settlement of all amounts payable to Consultants contemplated by Consulting Agreement (including, without limitation, Expense Budget items and fees earned hereunder) no later than forty-five days following the Sale Termination Date for the last Store".*

42. On November 1, 2018, I circulated drafts of the Notice of Motion, the Benitah Affidavit, the Liquidation Process Order and Administration Order to counsel for CIBC and to Richter and to Ms. Abitan for their review and comment.

43. Consistent with the October 31, 2018 telephone conference with Ms. Abitan and Mr. Sherman (described above), the substance of the draft Liquidation Process Order that I circulated was copied from the Nine West Liquidation Process Order.

44. The draft Liquidation Process Order that I circulated did not provide the Liquidator a trust interest or a security interest to protect the Liquidator's fees.

45. Rather, and consistent with the Liquidation Consulting Agreement prepared by Ms. Abitan, the Liquidation Process Order contemplated a weekly reconciliation by the Liquidator and the Fluid Brand Debtors and payment by the Fluid Brand Debtors seven (7) days thereafter. The Liquidation Process Order also enabled the Liquidator to take enforcement steps in the event it was not paid and expressly exempted the Liquidator from the stay of proceedings following the NOI and the security interests and charges created by the accompanying Administration Order.

46. Following my request for review and comment, at no time did Ms. Abitan or a representative of Richter communicate that the purpose of the Liquidation Process Order was to segregate, or carve out, or reserve monies from the proceeds of the liquidation sale sufficient to protect the Liquidator's fee and expenses.

47. I disagree with the Bankruptcy Trustee's assertion (at paragraph 37 of the Bankruptcy Trustee's First Report) that making payments from liquidations sales proceeds while monies were owing to

the Liquidator was improper, because "*the Liquidation Process Order essentially ring-fenced the assets of the Fluid Brand Debtors that were subject to the liquidation sale, including any proceeds thereof, to immunize them from all Claims to the extent of amounts that were owing to the Consultant.*"

48. My reading and understanding of the Liquidation Process Order is that other than requiring the Fluid Brand Debtors to make payments after weekly reconciliations and authorizing enforcement steps by the Liquidator to obtain payments, the Liquidation Process Order does not provide any special status to the Liquidator's fees and expenses. Rather, paragraphs 5 and 7 of the Liquidation Process Order preclude any of the persons or entities encompassed within the definition of *Claims*, (namely secured creditors, preferred creditors, trust claimants, or the beneficiaries of the charges created by the Administration Order, including the DIP Financing Charge) from taking steps to reclaim the monies paid by the Fluid Brand Debtors to the Liquidator on account of fees and expenses.

49. Ms. Sulley had advised me that she shared my understanding of the Liquidation Process Order as outlined above.

50. Since all relevant parties were satisfied that the form of Liquidation Process Order, Liquidation Consulting Agreement and Sales Guidelines should track the approved order and agreement in the Nine West proceeding (and our preparation timeline was extremely short), I did not (prior to November 2, 2018) investigate alternative precedent liquidation process orders in proceedings in which the Liquidators Merchant Retail Solutions ULC ("Hilco") and Gordon Brothers Canada ULC ("Gordon Bros.") were involved.

51. After the Bankruptcy Trustee brought this Motion against Torkin Manes, I became aware that Osler and Hilco and Gordon Bros. have been involved in other retail liquidations in which the liquidation process order provided both trust language and a security interest in favour of the liquidator to protect its fees.

52. Specifically, in October 2017, Hilco and Gordon Bros, were part of a group conducting the liquidation of Sears Canada's retail stores. In the Sears liquidation, a form of liquidation sale order was sought and obtained that provided (at paragraphs 19 and 20):

(a) that proceeds of sale deposited to a designated deposit account were deemed to be held in trust for Sears Canada and the liquidators, and

(b) granted the liquidators a security interest that specified the priority ranking of that security interest *vis a vis* various Encumbrances.

Attached as Exhibit "F" is a copy of the October 20, 2017 Notice of Motion and form of liquidation sales approval order. Attached as Exhibit "G" is a copy of the issued Liquidation Sales Approval Order.

53. Similar trust and security interest protections were sought and obtained in 2019 in respect of the liquidation of Gymboree Canada, a liquidation in which Hilco and Gordon Bros. also participated.

54. In the Gymboree liquidation, a form of order was sought and obtained that provided (at paragraphs 23 - 24):

(a) that proceeds of sale deposited in the Designated Deposit Accounts were deemed to be held in trust for Gymboree Canada and the liquidators, and

(b) granted the liquidators a security interest in specified collateral, which security interest ranked in priority to all Encumbrances,

Attached as Exhibit "H" is a copy of the January 24, 2019 Order in the Gymboree matter.

55. In my view, the Bankruptcy Trustee's assertion that the Liquidators' fees and expenses have a protected status is more in line with a form of liquidation order (containing trust and security language) that is different from the form of Liquidation Process Order that was issued in this case.

56. Moreover, as will be described in more detail below, the conduct of CIBC and Richter (as the Proposal Trustee) following the issuance of the Liquidation Process Order on November 2, 2018 was inconsistent with the interpretation of the Liquidation Process Order now being advanced by Richter (as Bankruptcy Trustee).

57. Specifically, with the Proposal Trustee's knowledge and approval CIBC applied liquidation sales proceeds to pay down pre-filing secured debt and DIP Financing debt without reserve for unpaid fees and expenses owing to the Liquidator.

58. With respect to the payment of the fees of the professionals involved in the NOI Proceeding, namely the Proposal Trustee, Osler and Torkin Manes:

(a) paragraph 37 of the Proposal Trustee's First Report (Appendix 9 to the Bankruptcy Trustee's First Report) provides a cash flow forecast that shows payments being made for *Restructuring Professional Fees* totaling approximately $1.232 million, an amount far exceeding the $500,000 Administration Charge in favor of Richter, Osler and Torkin Manes described in the Proposal Trustee's First Report at paragraphs 61-62 and 76, and

(b) paragraph 17 of the Administration Order (Appendix 7 to the Bankruptcy Trustee's First Report) authorizes payments on a weekly basis for work performed in the BIA proceeding by the Proposal Trustee, its counsel and Torkin Manes.

November 2, 2018 to the Week Ending December 8, 2018

59. Following issuance of the November 2, 2018 Orders, the liquidation sale got underway. I am advised by Ms. Sulley that the following practice and procedure was implemented among the Proposal Trustee, CIBC and the Fluid Brand Debtors:

(a) consistent with the Forbearance Agreement, all proceeds from the liquidation sale were deposited to a blocked account maintained by the Fluid Brand Debtors with CIBC,

(b) CIBC was only prepared to permit disbursements approved by the Proposal Trustee to be paid from the liquidation sales proceeds deposited to the blocked account,

(c) pursuant to paragraph 30 of the Administration Order, which directed the Proposal Trustee to monitor the Fluid Brand Debtors' receipts and disbursements, a representative of the Proposal Trustee, Shane Connolly, attended daily at the Fluid Brand Debtors' head office located at Orfus Road in Toronto to monitor the Fluid Brand Debtors' operations,

(d) the Proposal Trustee monitored and oversaw cash flow, which involved a representative of the Fluid Brand Debtors (initially Margaret Morrison and later Rosa Doris) providing a daily listing of proposed disbursements to Richter for review and approval, including all proposed cheques and wire transfers to be debited against the Fluid Brand Debtors' bank accounts,

(e) the Proposal Trustee had electronic access to the Fluid Brand Debtors' online banking facilities, at all times,

(f) while CIBC was involved, the Proposal Trustee would review the proposed disbursements and approve payment, and CIBC would allow the payment to be made from the blocked account, and

(g) save and except for payment of approved disbursements, the liquidation sales proceeds were applied by CIBC to pay down amounts owing to CIBC on account of the Fluid Brand Debtors pre-filing debt and DIP Financing debt.

60. The Proposal Trustee's active role in reviewing proposed disbursements and approving or rejecting them is reflected in a November 29, 2018 e-mail from Ms. Sulley to Margaret Morrison in which Ms. Sulley advises Ms. Morrison that Adam Sherman of Richter had a "*meltdown*" when the cash flow funding request included a request for payment to FBI (a company controlled by Benitah) for the entire month of December. Attached as Exhibit "I" is a copy of Ms. Sulley's November 29, 2018 e-mail to Ms. Morrison.

61. With respect to payments to the Liquidator, under the terms of the Consulting Agreement, the Liquidator was entitled to be paid 1.5% of *Net Sales* (as that term was defined therein) as *Fees*. In addition, the Liquidator was entitled to payment of expenses incurred in accordance with the amounts contained in the approved budget attached to the Consulting Agreement.

62. Although entitled to payments on a weekly basis (one (1) week in arrears), the Liquidator did not initiate and maintain weekly reconciliations with the Fluid Brand Debtors, nor did it receive weekly payments, nor did it avail itself of any remedies to obtain weekly payments as expressly provided in the Liquidation Process Order.

63. The Proposal Trustee's awareness that weekly payments were not being made is reflected in the weekly Monitoring Report prepared by the Fluid Brand Debtors with the Proposal Trustee's assistance as required by paragraph 30 of the Administration Order. Attached as Exhibit "J" are copies of the weekly Monitoring Report for the periods week-ending November 10 through to week-ending December 8.

64. By way of example, the Weekly Monitoring Reports for the weeks ending November 17 and November 24 (at page 4) showed that **no** payments were made to the Liquidator for Fees (despite *Gross Receipts* exceeding $11.0 million) and only $9,000 was paid on account of budgeted expenses of nearly $200,000.

65. Although there were obviously monies owing to the Liquidator on account of Fees and expenses incurred, the monies then owing to the Liquidator on account of Fees and expenses were not segregated or "*ring fenced*" from being applied to reduce the Fluid Brand Debtors' debt obligation to CIBC.

66. Rather, with the Proposal Trustee's knowledge and consent (as shown on page 1 of the Weekly Monitoring Reports), CIBC applied all remaining liquidation sales proceeds ($2.071 million during the week-ending November 17 and $3.021 million during the week-ending November 24) to pay down the Fluid Brand Debtors' indebtedness to it.

67. Moreover (as also reflected at page 1 of the Monitoring Reports), in each of the weeks ending November 17 and November 24, after paydown of the CIBC indebtedness there was insufficient "*Booked Cash*" (described in the Weekly Monitoring Report as Bank Cash, less outstanding cheques) to cover the amounts evidently outstanding to the Liquidator.

68. Consequently, within two (2) weeks of the Liquidation Process Order being issued, Richter authorized and permitted payments by the Fluid Brand Debtors on account of its secured indebtedness to CIBC without regard to monies owing to the Liquidator.

69. Thus, it appears to me that Richter's conduct and practice respecting payments from the liquidation sales proceeds in November 2018 and following (as Proposal Trustee) stands in contrast to the interpretation of the Liquidation Process Order it now promotes (as Bankruptcy Trustee) as a basis for asserting *Improper Payments* by Torkin Manes.

70. This pattern of paying down the indebtedness to CIBC without reserving or segregating enough money to pay the Fees and expenses owing to the Liquidator continued into December 2018.

71. The Weekly Monitoring Report for the week-ending December 8 shows cumulative Gross Receipts of more than $24.0 million, which I calculate as entitling the Liquidator to be paid Fees in the hundreds of thousands of dollars; however, only $34,000 had been paid to the Liquidator on account of Fees.

72. Nevertheless, as reflected on page 1 of the Weekly Monitoring Report for the week-ending December 8, CIBC continued to apply unexpended Liquidation Sales Proceeds to pay down the Fluid Brand Debtors' pre-filing and DIP Financing indebtedness, without reserve or enough *Book Cash* (after paydown of the CIBC indebtedness) to pay monies owing to the Liquidator.

Week-Ending December 15, 2018 to Week-Ending December 29, 2018

73. Further to the Orders issued on November 2, 2018, the Fluid Brand Debtors were required to file a BIA Proposal by December 20, 2018; however, more time was required, and Torkin Manes received instructions to prepare materials to seek an extension of the time to file the BIA Proposal.

74. I was involved in the preparation of the motion materials seeking an extension of time, as well as to address issues raised by IBSA respecting sale of the Fluid Brand Debtors' FF&E and IBSA seeking to appoint a Receiver over the Fluid Brand Debtors' assets, none of which are relevant to the motion now before the Court.

75. The Motion Materials for an extension were prepared and filed on or about December 11, 2018 for a motion returnable December 18, 2018.

76. Prior to the December 18 return date, CIBC transferred the Fluid Brand Debtors' debt and security to 266 by Assignment Agreement effective December 11, 2018. Notice of Assignment was provided to the Proposal Trustee on December 13, 2018. A copy of the CIBC-266 Assignment Agreement is attached as Appendix 10 the Bankruptcy Trustee's First Report.

77. Torkin Manes (specifically Ms. Sulley) acted on behalf of 266 in respect of the negotiation of the assignment of the debt and security.

78. Without intending to waive privilege either expressly or impliedly, I confirm that as shown in Torkin Manes' trust records provided to the Bankruptcy Trustee (Appendix 17 to the Bankruptcy Trustee's First Report), a third-party advanced funds to Torkin Manes on behalf of 266, and Torkin Manes paid substantially all these monies to CIBC on behalf of 266.

79. Ms. Sulley advises that the monies were paid through Torkin Manes, because 266 did not have a bank account in December 2018.

80. 266's acquisition of CIBC's debt is reflected in the Weekly Monitoring Report for the week-ending December 15, 2018 although the amount recorded as being paid to CIBC exceeds the funds transferred to CIBC by Torkin Manes.

81. By virtue of 266's acquisition of the CIBC debt and security, the Proposal Trustee filed a Supplementary Second Report dated December 17, 2018 (Appendix 15 to the Bankruptcy Trustee's First Report).

82. At paragraph 49 of the Bankruptcy Trustee's First Report it refers to portions of the Supplementary Second Report (specifically paragraphs 24 and 25).

83. Neither Ms. Sulley nor I saw the revised cash flow found at paragraph 24 before hand-delivery of the Second Supplementary Report in the courtroom on December 18, 2018.

84. Further, neither Ms. Sulley nor I participated in (or had or have any knowledge of) the substance of the communications referenced in paragraph 25 of the Second Supplementary Report, other than what was contained in the Second Supplementary Report.

85. With respect to the statements referenced in paragraph 25 and the Revised Cash Flow (found at paragraph 24), Ms. Sulley advises, and I believe, that following the December assignment of CIBC's debt and security to 266:

(a) further to paragraph 30 of the Administration Order that directed the Proposal Trustee to monitor the Fluid Brand Debtors' receipts and disbursements, Mr. Connolly continued to attend the Fluid Brand Debtors' head office daily to monitor the Fluid Brand Debtors' operations,

(b) the Proposal Trustee continued to monitor and oversee cash flow, which involved Margaret Morrison and later Rosa Doris providing a daily listing of disbursements to Richter for review and approval,

(c) the Proposal Trustee continued to have online access to the Fluid Brand Debtors' banking facilities,

(d) the Proposal Trustee reviewed the proposed disbursements and would advise (usually within an hour) if it objected to any of the proposed disbursements. If the Proposal Trustee objected to a proposed disbursement, the payment would not be made; however, if the Proposal Trustee did not object to a proposed disbursement, the proposed disbursement was treated by the Fluid Brand Debtors and the Proposal Trustee as approved and the payment was made.

86. Ms. Sulley advises that on December 18, 2018 she spoke with Margaret Morrison and Benitah who advised that:

(a) sales had been great, that there was plenty of cash in the Bank, and the Fluid Brand Debtors intended to repay half of the loan that had been made to 266, and

(b) Fluid Brand would wire the funds to Torkin Manes to be wired on to 266's lender, after Margaret Morrison sent the list of the proposed wires to Duncan Lau of Richter to obtain Richter's consent for the payment.

Attached as Exhibit "K" is a copy of Ms. Sulley's contemporaneous notes of her December 18, 2018 telephone conversation with Benitah and Margaret Morrison.

87. Consistent with Ms. Morrison's advice that she would obtain Richter's approval for wiring funds to Torkin Manes to make a payment on behalf of 266, on December 19, 2018, Torkin Manes received a wire transfer of $1,910,817.63 from the Fluid Brand Debtors, along with instructions to pay the money (along with the unused balance of the original loan to 266 ($89,182.40)) on to 266's third party lender. Attached as Exhibit "L" is a copy of the December 19, 2018 Direction to Torkin Manes (the "December 19, 2018 Direction").

88. Torkin Manes followed the December 19, 2018 Direction and wired $2.0 million to a TD Waterhouse account on December 19, 2018, of which $1.911 million was in partial repayment of the third-party loan to 266.

89. The Proposal Trustee's knowledge of and consent to the $1.91 payment by the Fluid Brand Debtors to 266 is reflected in the Weekly Monitoring Report for the week-ending December 22, 2018 which records (on page 1) a payment of $1.911 million to 266 as an *"Assignment of CIBC Debt Repayment."* Attached as Exhibit "M" is the Weekly Monitoring Report for the week-ending December 22, 2018.

90. The Weekly Monitoring Report for the week-ending December 22, 2018 also indicates *Book Cash* of $4.396 million remaining after the December 19, 2018 payment by the Fluid Brand Debtors of a portion of funds loaned to 266 to enable it to acquire CIBC's debt and security.

91. Ms. Sulley also advises that on December 27, 2018 she spoke with Rosa Doris (Fluid Brand's CFO) and Benitah, and:

(a) Benitah advised that there were sufficient funds on hand to pay all creditors post-filing,

(b) Rosa advised that she would be preparing a wire transfer to be paid on to 266's third-party lender, after she had provided Richter with notice of the proposed disbursement, and

(c) Rosa confirmed Richter's practice of permitting disbursement requests absent notice of disapproval within approximately one (1) hour.

Attached as Exhibit "N" is a copy of Ms. Sulley's contemporaneous hand-written notes of her December 27, 2018 telephone conversation with Rosa Doris and Benitah.

92. Consistent with Ms. Doris' advice that she would provide notice to Richter respecting the wiring of further funds to Torkin Manes to make a payment on behalf of 266, on December 27, 2018, Torkin Manes received a wire transfer of $2,300,000 from the Fluid Brand Debtors, along with instructions to pay the money on to 266's third party lender. Attached as Exhibit "O" is a copy of the December 27, 2018 Direction to Torkin Manes (the "December 27, 2018 Direction").

93. Torkin Manes followed the December 27, 2018 Direction and wired $2.3 million to a TD Waterhouse account on December 27, 2018.

94. The Proposal Trustee's knowledge of and consent to this $2.3 million payment by the Fluid Brand Debtors to 266 is reflected in the Weekly Monitoring Report for the week-ending December 29, which records (on page 1) a payment of $2.3 million to 266 as an *"Assignment of CIBC Debt Repayment."* Attached as Exhibit "P" is the Weekly Monitoring Report for the week-ending December 29, 2018.

95. The Weekly Monitoring Report for the week-ending December 29, 2018 also indicates *Book Cash* on hand of $4.451 million after the December 27, 2018 payment by the Fluid Brand Debtors of a portion of funds loaned to 266 to enable it to acquire CIBC's debt and security.

96. The Proposal Trustee's awareness that the Fluid Brand Debtors' had made payments to 266 is also reflected in a January 3, 2019 e-mail from Duncan Lau to Ms. Sulley in which Mr. Lau advises that monies being returned by CIBC should be paid to the Fluid Brand Debtors *"given that the company paid off the full amount to 266."* Attached as Exhibit "Q" is a copy of Mr. Lau's January 3, 2019 e-mail to Ms. Sulley.

97. In addition to asserting that the payments made by the Fluid Brand Debtors (and the Firm) on December 19 and 27, 2018 were contrary to the terms of Liquidation Process Order, the Bankruptcy Trustee also asserts that the December 19 and December 27 payments were improper, because the payments left the Fluid Brand Debtors without sufficient funds to pay trade creditors (paragraph 7 of the Bankruptcy Trustee's First Report), the Proposal Trustee and its counsel (paragraphs 7 and 63 of the Bankruptcy Trustee's First Report) and former employees (paragraph 26(ii) of the Bankruptcy Trustee's First Report).

98. I disagree.

99. Although the Bankruptcy Trustee's First Report provides no details as to how the amounts have been determined, assuming the amounts claimed are properly owing in the NOI Proceeding the December 19 and December 27 payments did not leave the Fluid Brand Debtors without monies to pay these amounts.

100. Specifically, the Monitor's Weekly Report for the week-ending December 29, (Exhibit "P", *supra*), indicates that after making the payments on December 19 and December 27, more than $4.5 million remained in the possession of the Fluid Brand Debtors as at December 29, 2018. The money on hand (net of the two (2) challenged payments) was more than enough to satisfy the amounts identified in paragraphs 26(ii) and paragraph 63 of the Bankruptcy Trustee's First Report.

Payment of Torkin Manes' Fees and Disbursements

101. As year-end was approaching, on December 31, 2018 Torkin Manes applied the balance remaining in trust to satisfy two (2) outstanding accounts receivable of $159,969.79 and $40,000.12 respectively..

102. In the new year, Torkin Manes received $85,000 on account of fees. Torkin Manes paid $5,239.55 for agent's services on January 8, 2019 and applied $68,760.45 to satisfy an outstanding account receivable. Although instructions were provided respecting payment of the $68,760.45 account receivable on January 8, 2019, these instructions were not processed by Torkin Manes' accounting department until January 14, 2019.

103. These payments to Torkin Manes on account of legal fees and disbursements were authorized expressly by paragraph 17 of the Administration Order and were consistent with ongoing payments made by the Fluid Brand Debtors to the Proposal Trustee on account of its fees and Osler's fees. In fact, and inconsistent with the Bankruptcy Trustee's allegations of improper conduct by Torkin Manes in applying liquidation sales proceeds to accounts receivables for legal fees and disbursements while monies were owing to the Liquidator, Ms. Sulley advises that based on communications with Benitah in January 2019, she became aware that the Proposal Trustee sought $250,000 from the Fluid Brand Debtors to pay the fees of the Proposal Trustee and its counsel, Osler, in January, 2019.

104. Benitah's advice to Ms. Sulley in this respect is reflected in January 16, 2019 correspondence from Nadia Campion to the Bankruptcy Trustee's counsel, Marc Wasserman and the Liquidators counsel, Jane Dietrich (Appendix 25 to the Bankruptcy Trustee's Report).

Conclusion

105. $11,000 remains in Torkin Manes' Trust Account to the credit of the Fluid Brand Debtors. Torkin Manes has no objection to paying this sum to the Bankruptcy Trustee.

106. Torkin Manes acknowledges that (as reflected in Torkin Manes' trust records produced to the Bankruptcy Trustee and attached at Appendix 17 to the Bankruptcy Trustee's Report), it received $235,000 on January 4, 2019 from Bowring, which was referenced as *loan proceeds*.

107. These funds were received by wire from Bowring. Torkin Manes takes no position as to who as between the Bankruptcy Trustee and 266 is entitled to this $235,000. Torkin Manes will abide by whatever Order is issued in respect of payment of this $235,000.

108. For all of the reasons set out above, the Bankruptcy Trustee's claim for payment by Torkin Manes of monies received from the Fluid Brand Debtors and paid out by Torkin Manes is unsustainable. Save and except for $11,000 presently held in Torkin Manes' trust account to the credit of the Fluid Brand Debtors, which Torkin Manes does not object to paying to the Bankruptcy Trustee and possibly payment of $235,000 held in trust for 266 to the Bankruptcy Trustee, no further payment obligations should be imposed on Torkin Manes.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on February 28, 2019

A Commissioner for taking Affidavits
Thomas M. Slahta

JEFFREY J. SIMPSON

IN THE MATTER OF THE BANKRUPTCY PROCEEDINGS OF FLUID BRANDS INC., 11041037 CANADA INC. and 11041045 CANADA INC.

Court File Nos. 31-2436097, 31-2436108 and 31-2436109

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)
PROCEEDINGS COMMENCED IN TORONTO

AFFIDAVIT OF JEFFREY J. SIMPSON

KESTENBERG SIEGAL LIPKUS LLP
Barristers and Solicitors
65 Granby Street
Toronto, Ontario
M5B 1H8

MICHAEL R. KESTENBERG
LSO #16005h
THOMAS M. SLAHTA
LSO @32454U

Tel: (416) 597-0000
Fax: (416) 597-6567
Email: mrk@ksllaw.com
Email: tslahta@ksllaw.com
Lawyers for Torkin Manes LLP

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

27

Janice Chen

From: S. Fay Sulley <fsulley@torkinmanes.com>
Sent: Tuesday, October 30, 2018 8:14 PM
To: SAbitan@osler.com; Jeffrey Simpson; Adam Sherman
Subject: Bombay and Bowring

Sandra and Jeff,

I would like to introduce you to one another. Jeff, Sandra is counsel to Richter. Sandra, Jeff is going to be preparing the motion materials in respect of the motion we are hoping to have on Friday.

Sandra and Adam, if you have particular provisions that you would like to see in the Order, please let us know. At this time, we are going to to prepare for a motion to approve the DIP (roll up as set out in the forbearance agreement), the admin charge, D and O charge, DIP charge, Hilco agreement and anything else we can think of.

Beat regards,

Fay

Sent from my iPhone

S. Fay Sulley
Legal services provided through Sara F. Sulley Professional Corporation
Tel: 416-777-5419
Fax: 1-888-587-5769
mailto:fsulley@torkinmanes.com
http://www.torkinmanes.com/vcard.aspx?ID=s.-fay-sulley

Torkin Manes LLP
Barristers & Solicitors

151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

torkinmanes.com
An international member of Ally Law

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

29.

From: Jeffrey Simpson <jsimpson@torkinmanes.com>
Sent: Wednesday, October 31, 2018 8:56 PM
To: S. Fay Sulley; Sherman, Adam
Cc: SAbitan@osler.com
Subject: RE: Admin Charge

Hi all. I thought it would be helpful to report on my progress with respect to preparation of the court materials.

I have downloaded and read all of the Nine West orders and I now can see that this proceeding is, to certain degree roadmapped by those orders, and the Nine West proceeding generally (with some differences, obviously). I have prepared, and in the morning should be in a position to circulate, two draft orders, mirroring what was done in Nine West, one entitled "Administration Order" containing the bulk of the relief we requested, and the other "Liquidation Process Order" which, as the title indicates, deals with the sales process. I imagine there is no reason that Hilco and Gordon Bros would not want the same terms in this order as appeared in that order, which I raise only to highlight that the LP Order is lengthy and contains many clauses aimed at protecting the consultant. I'm assuming that will be the case in this Order as well.

I also will have the Notice of Motion reflecting all the relief we discussed ready for the morning, followed shortly thereafter by a draft of Fred's Affidavit. I hope to have drafts of all those documents to everyone for review sometime tomorrow morning.

The factums will be prepared tomorrow afternoon, and I am aiming to have final drafts of all the materials ready before the close of biz tomorrow. That may be aspirational, but using Nine West as a guide makes life easier. As long as plagiarism is not considered improper....

Jeffrey Simpson
Legal services provided through Jeffrey J. Simpson Professional Corporation
Tel: 416-777-5413
Fax: 1-888-587-9143

Torkin Manes LLP
Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

From: S. Fay Sulley
Sent: October-31-18 8:43 PM
To: Sherman, Adam
Cc: SAbitan@osler.com; Jeffrey Simpson
Subject: Re: Admin Charge

He will see it in the revised draft of the forbearance agreement, unless you think it would be prudent to discuss first (that would be one of you speaking to him, not me or Jeff). I did not copy him on my comments today.

S. Fay Sulley
Legal services provided through Sara F. Sulley Professional Corporation
Tel: 416-777-5419
Fax: 1-888-587-5769

Torkin Manes LLP
Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

On Oct 31, 2018, at 8:39 PM, Sherman, Adam <ASherman@Richter.ca> wrote:

> I have not spoken with Francois about the admin charge (or that it doesn't include BLGs fees - it also doesn't include FBIs fees).

—

ADAM
SHERMAN

—

ASherman@Richter.ca
T 416.488.2345 - 2318
D 416.642.4836
richter.ca/experts/adam-sherman/

—

Toronto, Montreal, Chicago RICHTER.CA

This email and any attachments are for the sole use of the intended recipients and may be private or confidential. Any distribution, printing or other by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

-----Original Message-----
From: S. Fay Sulley [mailto:fsulley@torkinmanes.com]
Sent: Wednesday, October 31, 2018 8:36 PM
To: Sherman, Adam; SAbitan@osler.com
Cc: Jeffrey Simpson
Subject: Admin Charge

Adam,

I know the professional fees are included in the cash flow. Has either of you spoken to François about the admin charge for these fees?

S. Fay Sulley
Legal services provided through Sara F. Sulley Professional Corporation
Tel: 416-777-5419
Fax: 1-888-587-5769
mailto:fsulley@torkinmanes.com
http://www.torkinmanes.com/vcard.aspx?ID=s.-fay-sulley

Torkin Manes LLP
Barristers & Solicitors

151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

torkinmanes.com
An international member of Ally Law

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

From: Abitan, Sandra <SAbitan@osler.com>
Sent: Thursday, November 01, 2018 12:18 PM
To: Cohen, David; Gertner, Thomas; harold.chataway@gowlingwlg.com; gkarpel@alvarezandmarsal.com; dmcintosh@alvarezandmarsal.com; Nortman, Ben; S. Fay Sulley; fbenitah@fluidbrands.ca; Gagnon, François D.; amacfarlane@blg.com; Jeffrey Simpson
Cc: Sherman, Adam; Levine, Warren; Morissette, Julien
Subject: Hilco Agreement - Final Version
Attachments: Consulting Agreement with Hilco and GB - 2018-11-01.DOCX; Compare - Consulting Agreement.pdf; Sale Guidelines - 2018-11-01.DOCX; Compare - Sale Guidelines.pdf; Exhibit B_Exp Budget 10-31-18 v2.pdf; Exhibit A_Store List 10-31-18.pdf

Hello,

Further to my last email, attached please find a revised draft of the agreement and guidelines (clean and blacklined to the version I circulated yesterday) for your final review.

Please note that Hilco has signed off and provided its signature page.

Fay – kindly provide your client's signature page at your earliest convenience.

Best.

Sandra

OSLER

Sandra Abitan
Managing Partner/Associée directrice, Montréal
514.904.5648 | SAbitan@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

****

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

****

MERCHANT RETAIL SOLUTIONS ULC
GORDON BROTHERS CANADA ULC

October 31, 2018

VIA EMAIL
Mr. Fred Benitah
Fluid Brands Inc.
11041037 Canada Inc.
11041045 Canada Inc.
98 Orfus Road
Toronto, Ontario
Canada M6A 1L9

Re: **Letter Agreement Governing Inventory Disposition**

Dear Fred:

This letter shall serve as an agreement ("Consulting Agreement") between a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners, LLC, on the one hand ("Consultant" or a "Party"), and Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc., on the other hand (collectively, "Merchant" or a "Party" and together with the Consultant, the "Parties"), under which Consultant shall act as exclusive consultant to Merchant for the purpose of advising with respect to a sale of certain Merchandise (as defined below) at the Merchant's stores set forth on Exhibit A (each a "Store" and collectively, the "Stores") through a "Store Closing", "Everything Must Go", "Everything on Sale" or similar themed sale as approved in writing by Merchant (the "Sale"). The Merchant may elect to increase or decrease the number of Stores included in the Sale and/or transfer Merchandise to/from the non-closing stores during the Sale, at its discretion. To the extent necessary, Merchant and Consultant will mutually agree on any modifications to the Expense Budget as a result of the increase or decrease in the number of Stores included in the Sale. Only Merchant-approved Sale terminology will be utilized at each Store.

On October 25 2018, each Merchant filed a Notice of Intention to Make a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. ("BIA") with Richter Advisory Group Inc. as proposal trustee (the "Trustee"). The Merchant intends to file an application with the Ontario Superior Court of Justice (Commercial List) (the "Court") seeking an order approving, among other things, this Consulting Agreement and the conduct of the Sale, in accordance with the terms hereof and the Sale Guidelines (the "Order").

The Consultant and the Merchant agree and acknowledge that the entering into of this Consulting Agreement by the Merchant is subject to the issuance of the Order approving, among other things, this Consulting Agreement and the conduct of the Sale and that should the Order not be obtained, this Consulting Agreement shall have no force or effect.

A. Merchandise

For purposes hereof, "Merchandise" shall mean all goods, saleable in the ordinary course, located in the Stores on the Sale Commencement Date, as well as certain inventory currently located or to be located in the Merchant's distribution center which Merchant requires to be sold through the Sale. "Merchandise" does not mean and shall not include: (1) goods that belong to sublessees, licensees or concessionaires of Merchant; (2) owned furnishings, trade fixtures, equipment and improvements to real property that are located in the Stores (collectively, "FF&E"); or (3) damaged or defective merchandise that cannot be sold.

B. Sale Term

For each Store, the Sale shall commence on the first calendar day after issuance of the Order (the "Sale Commencement Date") and conclude by no later than December 31, 2018 (the "Sale Termination Date"); provided, however, that the Parties, with the prior approval of the Trustee, may mutually agree in writing to extend, or Merchant, with the prior approval of the Trustee, may in writing elect to terminate the Sale at any Store prior to the Sale Termination Date. The Consultant acknowledges that, pursuant to Section 65.11 of the BIA, it is the intention of the Merchant to give thirty (30) days' notice of disclaimer of the lease agreement for each Store by no later than thirty (30) days prior to the Sale Termination Date, so that the effective date of the disclaimer of the lease coincides with the Sale Termination Date. If the Consultant recommends the termination of the Sale at any Store prior to the Sale Termination Date, the Consultant shall provide the Merchant with notice of that recommendation no less than thirty-five (35) days prior to the revised Sale Termination Date applicable to such Store in order to allow the Merchant to give notice of disclaimer of the lease thirty (30) days prior to the revised Sale Termination Date applicable to such Store. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the "Sale Term." At the conclusion of the Sale, Consultant shall arrange that the premises for each Store are in "broom swept" and clean condition; provided, however, Merchant shall bear all costs and expenses associated with surrendering the premises to the landlords according to the budget to be established by Merchant and Consultant. At the conclusion of the Sale at each Store, Consultant shall photographically document the condition of each such Store.

C. Project Management

(i) Consultant's Undertakings

During the Sale Term, Consultant shall (a) provide qualified supervisors (the "Supervisors") engaged by Consultant to oversee the management of the Stores, the aggregate number of Supervisors to be determined in consultation with the ~~Company~~ Merchant; (b) recommend appropriate point-of-sale and external advertising for the Stores, for approval in writing by Merchant; (c) recommend appropriate pricing and discounts of Merchandise and staffing levels for the Stores and appropriate bonus and incentive programs, if any, for the Stores' employees, for approval in writing by Merchant; (d) oversee display of Merchandise for the Stores; (e) to the extent that information is available, evaluate sales of Merchandise by category, provide sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties; (g) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; (h) advise on the appropriate Sale Termination Date of each Store and inventory consolidation matters; (i) advise and assist the Merchant in the development and

implementation of a program in connection with open customer orders and customer deposit and pre-payment matters; and (j) provide such other related services deemed necessary or appropriate by Merchant and Consultant.

The Parties expressly acknowledge and agree that Merchant shall have no liability to the Supervisors for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Consultant's hiring or engagement of the Supervisors, and the Supervisors shall not be considered or deemed to be employees or consultants of Merchant.

The ~~Consultant~~Supervisors shall ~~provide~~include one full time qualified lead supervisor and one full time ~~qualified administrative supervisor~~project controller for this engagement, the expense for which is included in the Budget. In consideration of Consultant's engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Expense, the Supervisor-related costs, expenses and deferred compensation, in accordance with and subject to the Budget (collectively, the "Supervisor Costs"). The Merchant shall reimburse the Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to the Merchant.

(ii) Merchant's Undertakings

All sales of Merchandise during the Sale Term shall be made by Merchant for its own account. Accordingly, during the Sale Term, Merchant shall (a) be the employer of the Stores' employees, other than the Supervisors; (b) pay all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of Merchant; (c) prepare and process all tax forms and other documentation; (d) collect all HST/GST and other applicable taxes assessed on the sale of the Merchandise and pay them to the appropriate taxing authorities for the Stores; (e) use reasonable efforts to cause Merchant's employees to cooperate with Consultant and the Supervisors; (f) execute all agreements determined by the Merchant to be necessary or desirable for the operation of the Stores during the Sale; (g) arrange for the ordinary maintenance of all point-of-sale equipment required for the Stores; and (h) provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary POS administration, sales audit, cash reconciliation, accounting, and payroll processing, all at Merchant's cost and expense.

The Parties expressly acknowledge and agree that Consultant shall have no liability to Merchant's employees for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring or retention of its employees, and such employees shall not be considered employees of Consultant.

D. The Sale

The Merchant and the Consultant agree that the procedure for conducting the Sale for each Store shall be in accordance with the sale guidelines set forth at Exhibit C (the "Sale Guidelines"). Consultant does not have, nor shall it have, any right, title or interest in the Merchandise. All sales of Merchandise shall be by cash, gift card, gift certificate, merchandise credit, or credit or debit card and, at Merchant's discretion, by check or otherwise in accordance with Merchant's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by Merchant. Except for lay-away sales prior to the Sale Commencement Date, no lay-away sales shall be permitted.

E. Consultant Fee and Expenses in Connection with the Sale

As used in this Consulting Agreement, the following terms shall have the following meanings:

(i) "Gross Proceeds" shall mean the sum of the gross proceeds of all sales of Merchandise made in the Stores during the Sale Term using the "gross rings" method, net of applicable HST/GST ~~and~~ and excluding lay-away sales prior to the Sale Commencement Date delivered on or after the Sale Commencement Date..

(ii) "Net Proceeds" shall mean aggregate Gross Proceeds, less Consultant's actual expenses incurred pursuant to the Expense Budget.

In consideration of its services hereunder, ~~Agent~~Consultant shall earn a fee equal to one and a half percent (1.5%) of the aggregate Net Proceeds.

Merchant shall be responsible for all expenses of the Sale, including (without limitation) all Store level operating expenses, all costs and expenses related to Merchant's other retail store operations, and Consultant's other reasonable, documented out of pocket expenses. To control expenses of the Sale, Merchant has established a budget (the "Expense Budget") for certain delineated expenses, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors' wages, fees, travel, and deferred compensation) and advertising costs. The Expense Budget for the Sale is attached hereto as Exhibit B. The Expense Budget may only be modified by mutual written agreement of Consultant and Merchant, with the consent of the Proposal Trustee, and Merchant may review, verify, and/or audit the expenses at any time. The Merchant and the Consultant shall meet weekly in order to review the proposed "spend" for the following week, which amount shall be subject to the approval of the Merchant. The costs of supervision set forth on Exhibit B include, among other things, industry standard deferred compensation. Notwithstanding anything herein to the contrary, unless otherwise agreed to by Merchant, Merchant shall not be obligated to pay costs of supervision and advertising costs that have not been included, or provided for, in the Expense Budget, as may be amended in accordance with this Consulting Agreement.

All accounting matters (including, without limitation, all fees, expenses, or other amounts reimbursable or payable to Consultant) shall be reconciled on every Wednesday for the prior week and shall be paid within seven (7) days after each such weekly reconciliation. The Parties shall complete a final reconciliation and settlement of all amounts payable to Consultant and contemplated by this Consulting Agreement (including, without limitation, Expense Budget items, and fees earned hereunder) no later than forty five (45) days following the Sale Termination Date for the last Store.

F. Indemnification

(i) Merchant's Indemnification

Merchant shall indemnify, defend, and hold Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, affiliates, and Supervisors (collectively, "Consultant Indemnified

Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or negligent acts or omissions of Merchant or the Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Consulting Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against Consultant or a Consultant Indemnified Party, except claims arising from Consultant's negligence, willful misconduct or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Consultant's Indemnified Parties or Merchant's customers by Merchant or Merchant's Indemnified Parties; and (e) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

(ii) Consultant's Indemnification

Consultant shall indemnify, defend and hold Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "Merchant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Consulting Agreement by Consultant; (c) any liability or other claims made by Consultant's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's services hereunder, except claims arising from Merchant's negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or Merchant's customers by Consultant or any of the Consultant Indemnified Parties and (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement.

G. Insurance

(i) Merchant's Insurance Obligations

Merchant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability (to the extent currently provided), comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall cause Consultant to be named an additional insured with respect to all such policies. At Consultant's request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

(ii) Consultant's Insurance Obligations

As an expense of the Sale, Consultant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least Two Million dollars ($2,000,000) and an aggregate basis of at least five million dollars ($5,000,000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores. Consultant shall name Merchant as an additional insured and loss payee under such policy, and upon execution of this Consulting Agreement provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term, workers compensation insurance compliance with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Consulting Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

H. Representations, Warranties, Covenants and Agreements

(i) Merchant warrants, represents, covenants and agrees that (a) Merchant is a company duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Consulting Agreement and to perform its obligations hereunder, and maintains its principal executive office at the address set forth herein, (b) subject to the issuance of the Order, the execution, delivery and performance of this Consulting Agreement has been duly authorized by all necessary actions of Merchant and this Consulting Agreement constitutes a valid and binding obligation of Merchant enforceable against Merchant in accordance with its terms and conditions, and the consent of no other entity or person is required for Merchant to fully perform all of its obligations herein, (c) all ticketing of Merchandise at the Stores has been and will be done in accordance with Merchant's customary ticketing practices; (d) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with customary Merchant's practices, and (e) the Stores will be operated in the ordinary course of business in all respects, except as determined by Merchant in writing.

(ii) Each party comprising the Consultant warrants, represents, covenants and agrees that (a) Consultant is a company duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Consulting Agreement and to perform the Consultant's obligations hereunder, and maintains its principal executive office at the addresses set forth herein, (b) the execution, delivery and performance of this Consulting Agreement has been duly authorized by all necessary actions of Consultant and this Consulting Agreement constitutes a valid and binding obligation of Consultant enforceable against Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for Consultant to fully perform all of its obligations herein, (c) Consultant shall comply with and act in accordance with any and all applicable federal, provincial and local laws, rules, and regulations, and other legal obligations of all governmental authorities, (d) Consultant will not take any disciplinary action against any employee of Merchant; and (e) Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* and shall provide the Merchant with its relevant sales tax numbers prior to the Sale.

I. Furniture, Fixtures and Equipment

Consultant shall advise in connection with the sale of the FF&E in the Stores from the Stores themselves. Merchant shall be responsible for all reasonable costs and expenses incurred by Consultant in connection with such advice, which costs and expenses shall be incurred pursuant to a budget or budgets to be established from time to time by mutual agreement of the Parties, with the consent of the Proposal Trustee. All sales of FF&E during the Sale Term shall be made by Merchant for its account, at prices, payable in cash, and upon such other terms determined by Merchant. Any unsold FF&E shall be disposed of as Merchant may, in its discretion, determine.

In consideration for providing the services set forth in this section I, Consultant shall be entitled to a fee equal to twenty percent (20%) of the Gross Proceeds of the sale of the FF&E.

During each weekly reconciliation described in section E above, Consultant's FF&E fee shall be calculated, and Consultant's calculated FF&E fee and all reasonable, documented out of pocket costs and expenses then incurred pursuant to this Section I shall be paid within seven (7) days after each such weekly reconciliation.

J. Termination

The following shall constitute "Termination Events" hereunder:

(a) Merchant's or Consultant's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party;

(b) any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or

(c) the Sale is terminated or materially interrupted or impaired for any reason other than an event of default by Consultant or Merchant.

If a Termination Event occurs, the non-defaulting Party (in the case of an event of default) or either Party (if the Sale is otherwise terminated or materially interrupted or impaired) may, in its discretion, elect to terminate the term of this Consulting Agreement by providing seven (7) business days' written notice thereof to the other Party and, in the case of an event of default, in addition to terminating the term of this Consulting Agreement, pursue any and all rights and remedies and damages resulting from such default. If the term of this Consulting Agreement is terminated, Merchant shall be obligated to pay Consultant all amounts due under this Consulting Agreement through and including the termination date.

K. Notices

All notices, certificates, approvals, and payments provided for herein shall be sent by fax or by recognized overnight delivery service as follows: (a) To Merchant: at the address listed above and by e-mail to Fred Benitah (fbenitah@fluidbrands.ca), with a copy to Torkin Manes LLP, 151 Yonge Street, Suite 1500, Toronto, Ontario, M5C 2W7, Attn: Fay Sulley and Jeffrey Simpson; (b) To the Trustee: Richter Advisory Group Inc., 181 Bay Street, Suite 3320, Toronto, Ontario, M5J 2T3, Attn: Adam Sherman with a copy to Osler, Hoskin and Harcourt LLP, 100 King Street West, Suite 6200, P.O. Box 50, Toronto, Ontario, M5X 1B8, Attn: Sandra Abitan; (c) As applicable, to: Canadian Imperial Bank of Commerce, care of David F.W. Cohen and Clifton P. Prophet, Gowling

WLG (Canada) LLP, 100 King Street West, Suite 1600, Toronto, Ontario, M5X 1G5; (d) As applicable, to Isaac Bennet Sales Agency Inc., care of François Gagnon and Alex MacFarlane, Borden Ladner Gervais LLP, 1000 De La Gauchetière Street West, Suite 900, Montréal, Québec, H3B 4W5 (e) To Consultant: Merchant Retail Solutions, ULC c/o Hilco Merchant Resources, LLC, One Northbrook Place, 5 Revere Drive, Suite 206, Northbrook, IL 60062, Fax: 847- 897-0859, Attn: Ian S. Fredericks and c/o Gordon Brothers Retail Partners, LLC, 800 Boylston Street, 27th Floor, Boston, MA 02199, fax: 617-531-7906, Attn: Mackenzie Shea; or (f) such other address as may be designated in writing by Merchant, Consultant or other applicable person.

L. Independent Consultant

Consultant's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Consulting Agreement. Merchant shall have no control over the hours that Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Consultant is not authorized to enter into any contracts or agreements on behalf of Merchant or to otherwise create any obligations of Merchant to third parties, unless authorized in writing to do so by Merchant.

M. Non-Assignment

Neither this Consulting Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party. No modification, amendment or waiver of any of the provisions contained in this Consulting Agreement, or any future representation, promise or condition in connection with the subject matter of this Consulting Agreement, shall be binding upon any Party to this Consulting Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Consulting Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

N. Severability

If any term or provision of this Consulting Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Consulting Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Consulting Agreement fail to retain the essential understanding of the Parties, the Consulting Agreement may be terminated by mutual consent of the Parties.

O. Governing Law and Jury Waiver

This Consulting Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the internal laws of the Province of Ontario (without reference to the conflicts of laws provisions therein). Merchant and Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Consultant against Merchant or Merchant against Consultant on any matter whatsoever arising out of, or in any way connected with, this Consulting Agreement, the

relationship between Merchant and Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect.

P. Entire Agreement

This Consulting Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Consulting Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Consulting Agreement.

Q. Execution

This Consulting Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Consulting Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

R. Court Approval

The Merchant shall seek Court approval of this Consulting Agreement pursuant to the Order. The Parties expressly acknowledge and agree that the entering into of this Consulting Agreement by the Merchant is subject to the issuance of the Order approving, among other things, this Consulting Agreement and the conduct of the Sale and the Sale Guidelines and that should the Order or Court approval of this Consulting Agreement and the Sale Guidelines not be obtained, this Consulting Agreement shall have no force or effect.

[Signatures on next page.]

If this Consulting Agreement is acceptable to you, kindly execute a copy in the space provided, and return a countersigned version to the undersigned. Thank you again for this opportunity -- we look forward to working with you.

Very truly yours,

MERCHANT RETAIL SOLUTIONS, ULC, on its own behalf and on behalf of Gordon Brothers Canada ULC

_____

By:
Its:

AGREED AND ACCEPTED as of the 31st day of October, 2018:

FLUID BRANDS INC.

_____

By:
Its:

11041037 CANADA INC.

_____

By:
Its:

11041045 CANADA INC.

_____

By:
Its:

Exhibit A
Stores

Exhibit B
Expense Budget

Exhibit C
Sale Guidelines

EXHIBIT C

SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of 11041037 Canada Inc., and 11041045 Canada Inc. (collectively, the "Merchant"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners, LLC (the "Consultant") and the Merchant dated as of October 31, 2018 (the "Consulting Agreement").

1. Except as otherwise expressly set out herein, and subject to: (i) the Approval Order or any further Order of the Ontario Superior Court of Justice (Commercial List) (the "Court"); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by the Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.

2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Approval Order.

3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.

4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an "everything on sale", an "everything must go", a "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the ~~Monitor~~Proposed Trustee, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not permitted by the applicable Lease and the

Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the service list in the NOI proceedings (the "Service List"). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.

6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.

7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".

8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.

9. At the conclusion of the Sale in each Store, the ~~Merchant~~Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

10. Subject to the terms of paragraph 9 above, the Consultant may sell FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold

during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.

11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Stores. The Consultant will arrange with each Landlord represented by counsel on the Service List and with any other applicable Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, 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 the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 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 Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.

15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be ●Sarah Baker who may be reached by phone at ●847-504-2462 or email at ●sbaker@hilcoglobal.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties,

during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.

16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

Bombay
Exhibit A

Store List

Store #	Banner	Name	Address	City	State	Zip	Selling Sq. Ft.
170	Bombay	STAVANGER & TORBAY	56B ABERDEEN AVE. -	ST. JOHNS	NF	A1A 5N6	4,978
199	Bombay	BAYERS LAKE POWER CENTRE	212-C CHAIN LAKE DRIVE -	HALIFAX	NS	B3S 1C5	4,822
230	Bombay	ROSEMERE	401 LABELLE BOULEVARD -M-10	ROSEMERE	QC	J7A 3T2	6,185
231	Bombay	BROSSARD	8480 LEDUC BLVD, SUITE 70 -UNIT F12G1	BROSSARD	QC	J4Y 0K7	7,841
232	Bombay	FAUBOURG BOISBRIAND	3220 AVENUE DES GRANDES TOURELLES -	BOISBRIAND	QC	J7H 0A2	9,689
280	Bombay	DECARIE	7325 DECARIE -	MONTREAL	QC	H4P 2G8	10,613
281	Bombay	LA GAPPE	79 BOULEVARD DE LA GAPPE -C6	GATINEAU	QC	J8T 0B5	5,046
282	Bombay	SAINT-CONSTANT	520 - 100 VOIE DESSERTE 132 -L-004	SAINT-CONSTANT	QC	J5A 2E7	5,125
283	Bombay	HULL	75 BOULEVARD DU PLATEAU -G3	GATINEAU	QC	J9A 3G1	5,141
285	Bombay	MAIL CHAMPLAIN	2151 LAPINIERE BLVD. -H23	BROSSARD	QC	J4W 2T5	4,535
286	Bombay	CARREFOUR DU NORD	900 BOULEVARD GRIGNON -00060	SAINT-JEROME	QC	J7Y 3S7	9,659
297	Bombay	KIRKLAND CENTRE	3252 RUE JEAN YVES -	KIRKLAND	QC	H9J 2R6	6,102
298	Bombay	LES AVENUES VAUDREUIL	3202 - 3218 BOUL DE LA GARE -	VAUDREI-DORIAN	QC	J7V 8W5	3,520
311	Bombay	BAYSHORE SHOPPING CTR	100 BAYSHORE DRIVE -	OTTAWA	ON	K2B 8C1	5,003
317	Bombay	LONDON NORTH	1965 HYDE PARK ROAD -UNIT D12	LONDON	ON	N3E 1M3	5,041
320	Bombay	GREENLANE CENTER	18182 YONGE ST, YONGE & GREENLANE -	NEWMARKET	ON	A1A	4,219
323	Bombay	AURORA	43 FIRST COMMERCE DRIVE, UNIT#2 -J0002	AURORA	ON	L4G 0G2	4,831
325	Bombay	LIMERIDGE MALL	999 UPPER WENTWORTH STREET #243 -	HAMILTON	ON	L9A 4X5	5,199
332	Bombay	WHITE OAKS MALL	1105 WELLINGTON RD. -UNIT 481	LONDON	ON	N6E 1V4	3,592
361	Bombay	ORLEANS	2006 MER BLEUE ROAD -G0002	ORLEANS	ON	K4A 0G2	5,058
362	Bombay	OTTAWA TRAINYARDS	100 TRAINYARDS DRIVE -UNIT A32	OTTAWA	ON	K2E 7K3	5,203
372	Bombay	COOKSTOWN	3311 County Road 89 -	COOKSTOWN	ON	L0L 1L0	3,556
373	Bombay	WALKER SQUARE	4331 WALKER RD. -UNIT A.1	WINDSOR	ON	N8W 3T6	6,017
375	Bombay	PEN CENTRE	221 GLENDALE AVENUE, HWY406 -UNIT 1007B	ST. CATHARINES	ON	L2T 2K9	5,004
378	Bombay	CAMBRIDGE	30 PINEBUSH ROAD -UNIT 104	CAMBRIDGE	ON	N1R 8K5	6,849
385	Bombay	CANADA ONE OUTLETS	7500 LUNDY'S LANE -UNIT C11/C12/C13	NIAGARA FALLS	ON	L2H 1G8	6,947
398	Bombay	GARDINER'S ROAD	10-616 GARDINERS ROAD -UNIT 3A	KINGSTON	ON	K7M 3X9	4,881
551	Bombay	WEST EDMONTON MALL	2127-8882-170TH STREET -	EDMONTON	AB	T5T 4J2	5,465
561	Bombay	SIGNAL HILL	SIGNAL HILL -UNIT # 5979	CALGARY	AB	T3H 3P8	5,825
583	Bombay	SOUTH EDMONTON COMMONS	99TH STREET N.W. -UNIT 1914	EDMONTON	AB	T6N 1K9	5,010
595	Bombay	OUTLET COLLECTION WINNIPEG	555 STERLING LYON WAY -UNIT#369	WINNIPEG	MB	R3P 1E9	6,888
596	Bombay	KENASTON	1585 KENASTON BLVD. -	WINNIPEG	MB	R3P 2N3	4,928
652	Bombay	HILLSIDE CENTRE	78-1644 HILLSIDE AVENUE -UNIT# 78	VICTORIA	BC	V8T 2C5	5,318
660	Bombay	TSAWWASSEN MILLS	5000 CANOE PASS WAY -	TSAWWASSEN	BC	V4M 0B3	7,211

50

Bombay
Exhibit A

Store List

Store #	Banner	Name	Address	City	State	Zip	Selling Sq. Ft.
662	Bombay	RICHMOND CENTRE	6551-3 RD. -UNIT 1842	RICHMOND	BC	V6Y 2B6	3,615
679	Bombay	LOUGHEED SUPER CENTRE	101 SCHOOLHOUSE STREET -UNIT#220	COQUITLAM	BC	V3K 4X8	7,550
695	Bombay	LANGLEY POWER CENTRE	20070 LANGLEY BY-PASS -	LANGLEY	BC	V3A 9J7	4,967
913	Bombay	ORFUS	95 ORFUS -	TORONTO	ON	M6A 1M4	15,836
920	Bombay	AJAX	20 KINGSTON RD. WEST -	AJAX	ON	L1T 4K8	8,455
921	Bombay	MARKVILLE MALL	5000 HIGHWAY 7 -UNIT #57 A	MARKHAM	ON	L3R 4M9	5,606
922	Bombay	ERIN MILLS TOWN CENTRE	5100 ERIN MILLS PKWAY -UNIT R102A	MISSISSAUGA	ON	L5M 4Z5	2,846
928	Bombay	HYDE PARK	2501 HYDE PARK GATE BLVD. -UNIT #1G	OAKVILLE	ON	L6H 6G6	10,149
929	Bombay	BAYVIEW GLEN	295 HIGH TECH RD. -	RICHMOND HILL	ON	L4B 0A3	9,050
930	Bombay	OSHAWA MALL	419 KING STREET W -UNIT#2435	OSHAWA	ON	L1J 2K5	6,036
936	Bombay	ETOBICOKE	160 NORTH QUEEN STREET -UNIT # B0004	TORONTO	ON	M9C 1H4	6,088
956	Bombay	BURLOAK	3487 WYECROFT RD -UNIT G-003	OAKVILLE	ON	L6L 0B6	5,001
957	Bombay	VAUGHAN MILLS	1 BASS PRO MILLS DRIVE -UNIT #316	CONCORD	ON	L4K 5W4	3,611
959	Bombay	OSHAWA NORTH	1405 HARMONY ROAD -UNIT F0001	OSHAWA	ON	L1H 7K5	7,088
976	Bombay	SCARBOROUGH TOWN PAD	410 PROGRESS AVE. -UNIT D3	TORONTO	ON	M1P 5J1	5,040
990	Bombay	TRINITY COMMON	148 - 70 GREAT LAKES DRIVE -	BRAMPTON	ON	L6R 2K7	4,812
991	Bombay	RIOCAN COLOSSUS CENTRE	7575 WESTON ROAD -UNIT 114	WOODBRIDGE	ON	L4L 9M3	5,584
992	Bombay	HEARTLAND TOWN CENTRE	6075 MAVIS ROAD -UNIT #19	MISSISSAUGA	ON	L5R 4G6	5,348
305	Bowring	YORKDALE MALL	1 YORKDALE RD -CRU#6B	TORONTO	ON	M6A 3A1	2,563
308	Bowring	TD CENTRE	66 WELLINGTON ST WEST -0008C	TORONTO	ON	M5K 1A1	1,850
312	Bowring	PROMENADE MALL	1 PROMENADE CIRCLE -202B	THORNHILL	ON	L4J 4P8	4,690
322	Bowring	ERIN MILLS TOWN CENTRE	5100 ERIN MILLS PKY -B116A	MISSISSAUGA	ON	L5M 4Z5	3,777
325	Bowring	HOME & DESIGN CENTRE	2575 DUNDAS ST. W. -UNIT 26	MISSISSAUGA	ON	L5K 2M6	6,473
326	Bowring	HEARTLAND TOWN CENTRE	5980 MCLAUGHLIN RD -UNIT 4	MISSISSAUGA	ON	L5R 3X9	6,552
327	Bowring	TRINITY COMMON	30 GREAT LAKES DRIVE -110	BRAMPTON	ON	L6R 2K7	5,237
328	Bowring	RIO-CAN DURHAM CENTRE	140 KINGSTON RD E. -UNIT 2	AJAX	ON	L1Z 1G1	7,996
329	Bowring	COLOSSUS CENTRE	7575 WESTON RD -UNIT 117C BLOCK B	WOODBRIDGE	ON	L4L 1A6	4,731
330	Bowring	FIRST MARKHAM PLACE	3215 HWY 7 EAST -G3	MARKHAM	ON	L3R 3P3	5,984
335	Bowring	OSHAWA POWER CENTRE	1405 HARMONY RD NORTH -UNIT E-5	OSHAWA	ON	L1H 7K5	6,534
336	Bowring	GREEN LANE	18166 YONGE STREET, RR#1 -UNIT #A6	NEWMARKET	ON	L3Y 4V8	5,974
337	Bowring	QUEENSWAY TORONTO	171 NORTH QUEEN STREET -G1	ETOBICOKE	ON	M9C 1A7	5,033
338	Bowring	BOWRING OUTLET	98 ORFUS ROAD -	TORONTO	ON	M6A 1L9	20,000
351	Bowring	AURORA NORTH	15 FIRST COMMERCE DR. -1	AURORA	ON	L4G 0G2	5,102
366	Bowring	KENNEDY COMMONS	29 WILLIAM KITCHEN ROAD -UNIT J2B	TORONTO	ON	M1P 5B7	7,138

Bombay
Exhibit A

Store List

Store #	Banner	Name	Address	City	State	Zip	Selling Sq. Ft.
368	Bowring	FAIRVIEW MALL	1800 SHEPPARD AVENUE EAST -UNIT #1060	NORTH YORK	ON	M2J 5A7	2,229
369	Bowring	DUFFERIN MALL	900 DUFFERIN STREET -0155	TORONTO	ON	M6H 4A9	1,627
381	Bowring	TANGER COOKSTOWN	3311 SIMCOE 89 -D40	INNISFIL	ON	L0L 1L0	5,043
501	Bowring	MAIL CHAMPLAIN	2151 LAPINIERE BLVD. -H08C	BROSSARD	QC	J4W 2T5	4,131
502	Bowring	MEGA CENTRE NOTRE-DAME	BOUL NOTRE-DAME & HIGHWAY 13 -260G	LAVAL	QC	H7X 3V5	3,548
503	Bowring	PLACE LONGUEUIL	825 Saint-Laurent Street West -055	Longueuil	QC	J4K 2V1	2,363
602	Bowring	BURLINGTON MALL	777 GUELPH LINE -817	BURLINGTON	ON	L7R 3N2	2,441
605	Bowring	LIMERIDGE MALL	999 UPPER WENTWORTH ST. -104A	HAMILTON	ON	L9A 4X5	2,467
616	Bowring	BRAMALEA CITY CENTRE	25 PEEL CENTRE DRIVE -157C	BRAMPTON	ON	L6T 3R5	3,093
625	Bowring	WINDSOR CROSSING	1555 TALBOT ROAD -UNIT 5-760	LASALLE	ON	N9H 2N2	6,120
627	Bowring	PEN GLENDALE	221 GLENDALE AVE -UNIT OP6	ST CATHERINES	ON	L2T 2K9	6,583
628	Bowring	LONDON NORTH	1965 HYDE PARK ROAD -UNIT#104	LONDON	ON	N6H 0A3	4,537
630	Bowring	SUNRISE CENTRE	1400 OTTAWA STREET SOUTH -UNIT A-7	KITCHENER	ON	N2E 4E2	6,180
635	Bowring	CAMBRIDGE	34 PINEBUSH ROAD -Unit #3	CAMBRIDGE	ON	N1R 8K5	5,557
636	Bowring	BURLOAK	3487 WYECROFT ROAD -G7	OAKVILLE	ON	L6L 0B1	6,177
681	Bowring	ANCASTER POWER CENTRE	821 GOLF LINKS ROAD -UNIT # 452	ANCASTER	ON	L9K 1L5	5,516
703	Bowring	SIGNAL HILL CENTRE	5987 SIGNAL HILL CTR DR S.W -BLOCK H UNIT H1	CALGARY	AB	T3H 3P8	6,521
705	Bowring	SOUTH EDMONTON COMMON	2003 99TH STREET N W -	EDMONTON	AB	T6N 1M1	6,078
715	Bowring	SOUTHCENTRE MALL	100 ANDERSON RD SE -263	CALGARY	AB	T2J 3V1	4,744
719	Bowring	LINDENWOODS	1585 KENASTON BLVD -UNIT 6	WINNIPEG	MB	R3P 2N3	7,117
720	Bowring	OUTLET COLLECTION WINNIPEG	555 STERLING LYON WAY -389	WINNIPEG	MB	R3P 1E9	4,703
730	Bowring	REGINA EAST	2150 PRINCE OF WALES DR -	REGINA	SK	S4V 3A6	5,798
817	Bowring	LANGLEY POWER CENTRE	20150 LANGLEY BY PASS -#50	LANGLEY	BC	V3A 9J8	6,541
818	Bowring	LOUGHEED POWER CENTRE	101 SCHOOLHOUSE STREET -UNIT 230	COQUITLAM	BC	V3K 4X8	6,499
825	Bowring	TSAWWASSEN MILLS	5000 CANOE PASS WAY -329	TSAWWASSEN	BC	V4M 0B3	6,080
909	Bowring	GALERIES RIVE NORD	100 BRIEN BLVD. -38	REPENTIGNY	QC	J6A 5N4	1,887
917	Bowring	STAVENGER ST. JOHNS	56 ABERDEEN AVENUE -3	ST JOHN'S	NF	A1A 5T3	6,606
918	Bowring	CARREFOUR DU NORD	900 BOULEVARD GRIGNON -00020	SAINT JEROME	QC	J7Y 3S7	1,792
920	Bowring	RIOCAN CENTRE KIRKLAND	3252 RUE JEAN YVES -UNIT 6	KIRKLAND	QC	H9J 2R6	6,139
923	Bowring	SOUTH KEYS	1009C DAZE ROAD -C	OTTAWA	ON	K1V 2G3	6,471
926	Bowring	OTTAWA TRAINYARDS	100 TRAINYARDS DRIVE -C28	OTTAWA	ON	K1G 3S2	5,072
939	Bowring	PLACE ROSEMERE	401 LABELLE BOULEVARD -I-08	ROSEMERE	QC	J7A 3T2	3,627
953	Bowring	CARREFOUR RICHELIEU	600 PIERRE-CAISSE -00040	SAINT-JEAN-SUR-RICHELIE	QC	J3A 1M1	2,637
958	Bowring	HULL	75 BOULEVARD DU PLATEAU -G7	GATINEAU	QC	J9A 3G1	3,039

Bombay
Exhibit A

Store List

Store #	Banner	Name	Address	City	State	Zip	Selling Sq. Ft.
960	Bowring	BILLINGSBRIDGE	2269 RIVERSIDE DR -131	OTTAWA	ON	K2A 1H2	2,400
961	Bowring	ORLEANS	2006 MER BLEUE ROAD -3	ORLEANS	ON	K4A 0G2	5,056
962	Bowring	DECARIE	7335 DECARIE -	MONTREAL	QC	H4P 2G8	11,000
989	Bombay- Whse	Warehouse Sale	3389 Steeles Ave E	BRAMPTON	ON	L6T 5W4	20,000
912	Bombay- Ecom	0	0	0	0	00000	-
107							**5,746**

Bowring
Exhibit B

Expense Budget	
Advertising	
Media	127,997
Signs	351,506
Sign Walkers	459,091
Subtotal Advertising	938,594
Supervision	
Fees / Wages / Expenses (1)	986,043
Subtotal Supervision	986,043
Miscellaneous	50,000
Total Expenses	1,974,637

Note(s):

1. Includes Deferred Compensation and Insurance.

2. This Expense Budget contemplates a sale term of November, 2, 2018 through December 30, 2018. The Expense Budget remains subject to modification in the event that this term is extended, or as otherwise agreed to by the parties.

3. Miscellaneous costs and expense include agent's/consultant's attorneys fees associated with the bankruptcy case, including related to negotiating side letters with landlords.

THIS IS EXHIBIT "D" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

From: Nortman, Ben <bnortman@hilcoglobal.com>
Sent: Thursday, November 01, 2018 1:03 PM
To: Abitan, Sandra; Cohen, David; Gertner, Thomas; harold.chataway@gowlingwlg.com; gkarpel@alvarezandmarsal.com; dmcintosh@alvarezandmarsal.com; S. Fay Sulley; fbenitah@fluidbrands.ca; Gagnon, François D.; amacfarlane@blg.com; Jeffrey Simpson; Baker, Sarah; Fredericks, Ian
Cc: Sherman, Adam; Levine, Warren; Morissette, Julien
Subject: RE: Hilco Agreement - Final Version

This looks fine to us.

Benjamin Nortman
Chief Executive Officer, Hilco Merchant Resources, LLC
Executive Vice President, Hilco Global
5 Revere Drive, Suite 206
Northbrook, IL 60062
847-849-2950 (Office)
847-867-0951 (Mobile)

From: Abitan, Sandra <SAbitan@osler.com>
Sent: Thursday, November 1, 2018 11:18 AM
To: Cohen, David <David.Cohen@gowlingwlg.com>; Gertner, Thomas <Thomas.Gertner@gowlingwlg.com>; harold.chataway@gowlingwlg.com; gkarpel@alvarezandmarsal.com; dmcintosh@alvarezandmarsal.com; Nortman, Ben <bnortman@hilcoglobal.com>; S. Fay Sulley <fsulley@torkinmanes.com>; fbenitah@fluidbrands.ca; Gagnon, François D. <FGagnon@blg.com>; amacfarlane@blg.com; Jeffrey Simpson <jsimpson@torkinmanes.com>
Cc: Sherman, Adam <ASherman@Richter.ca>; Levine, Warren <wlevine@richterconsulting.com>; Morissette, Julien <JMorissette@osler.com>
Subject: Hilco Agreement - Final Version

Hello,

Further to my last email, attached please find a revised draft of the agreement and guidelines (clean and blacklined to the version I circulated yesterday) for your final review.

Please note that Hilco has signed off and provided its signature page.

Fay – kindly provide your client's signature page at your earliest convenience.

Best.

Sandra

OSLER

Sandra Abitan
Managing Partner/Associée directrice, Montréal
514.904.5648 | SAbitan@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

****

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

****

THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

59.

From: Jeffrey Simpson <jsimpson@torkinmanes.com>
Sent: Thursday, November 01, 2018 1:33 PM
To: Gertner, Thomas (Thomas.Gertner@gowlingwlg.com); David.Cohen@gowlingwlg.com; Harold.chataway@gowlingwlg.com
Cc: S. Fay Sulley
Subject: Fluid Brands et al
Attachments: Notice of Motion.DOCX; Benitah Affidavit.DOCX; Administration Order.DOCX; Liquidation Process Order.DOCX

All: As requested, attached are the draft materials for the motion returnable tomorrow. The materials at this point comprise a Notice of Motion, draft Affidavit, and two separate orders, which are we entitling Administration Order and Liquidation Process Order. A factum is being prepared.

Jeffrey Simpson
Legal services provided through Jeffrey J. Simpson Professional Corporation
Tel: 416-777-5413
Fax: 1-888-587-9143
jsimpson@torkinmanes.com
VCard

Torkin Manes LLP
Barristers & Solicitors

151 Yonge Street, Suite 1500
Toronto ON M5C 2W7
torkinmanes.com

An international member of Ally Law

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

THIS IS EXHIBIT "F" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

61.

Court File No. CV-17-11846-00CL

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 SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

NOTICE OF MOTION
(Motion for Approval of Phase II Liquidation)

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on October 13, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order substantially in the form of the draft Order attached to the Motion Record, *inter alia*:

(a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;

(b) approving the Amended and Restated Agency Agreement dated as of October 10, 2017 (the "**Amended and Restated Agency Agreement**") entered into between Sears Canada Inc. ("**Sears Canada**") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (together, the "**Syndicated Agent**") in the form attached at Tab 2B of the Motion Record, and the transactions contemplated thereunder;

(c) approving the updated sale guidelines (the "**Sale Guidelines**") in the form attached as Schedule "A" to the draft Order;

(d) authorizing the Syndicated Agent to conduct a liquidation sale in accordance with the draft Order, the Amended and Restated Agency Agreement and the Sale Guidelines;

(e) granting a Court-ordered charge in favour of the Syndicated Agent (the "**Second Agent's Charge**") on all of the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission) the Designated Sundry Goods and Consignment Goods Proceeds (to the extent of the Designated Sundry and Consignment Goods Commission) and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Amended and Restated Agency Agreement), provided that until payment in full to Sears Canada of all amounts owing to Sears Canada under the Amended and Restated Agency Agreement (including the Bid Protections), the Second Agent's Charge shall be junior and subordinate to all Encumbrances (each term as defined in the draft Order);

(f) authorizing and directing Sears Canada to take any and all actions as may be necessary or desirable to implement the Amended and Restated Agency Agreement and the transactions contemplated therein;

(g) authorizing the Applicants and the Hometown Dealers to conduct a liquidation sale of Merchandise and FF&E located at their respective Hometown Dealer stores in accordance with the draft Order and the Sale Guidelines;

(h) sealing from the public record certain commercially-sensitive information and documents (as described below); and

2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**") pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated;

2. FTI Consulting Canada Inc. was appointed to act as the Monitor (the "**Monitor**") in the CCAA proceeding;

3. Beginning on June 26, 2017, BMO Nesbitt Burns Inc. (the "**Sale Advisor**"), on behalf of the Applicants and with the assistance of the Monitor, conducted a process to solicit proposals from third party liquidators to assist the Applicants in the orderly liquidation of the inventory and furniture, fixtures and other store equipment ("**FF&E**") at 45 retail store locations which had been identified for closure at the outset of the CCAA proceedings (the "**Initial Closing Locations**") through the conduct of "liquidation" or similar themed sales;

4. On July 13, 2017, the Court approved a process (the "**SISP**") by which the Sale Advisor on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada and the Monitor sought bids and proposals for a broad range of transaction alternatives with respect to the business, assets and/or leases of the Applicants;

5. On July 18, 2017, the Court issued an Order (the "**July Liquidation Order**") which approved a process for the liquidation of inventory and FF&E at the Initial Closing Locations at that time;

6. In the course of implementing the SISP, the Sale Advisor and the Applicants initiated a process to solicit liquidation proposals for a potential second phase of the liquidation of the Inventory and FF&E located in Sears Canada's remaining store locations and Corbeil locations;

7. It was necessary to solicit bids for a phase II liquidation concurrently with the SISP in order to, among other things, comply with the Applicants' obligations under the DIP Credit Agreements (as amended from time to time), as well as to ensure that any liquidation sale could be conducted during the December holiday season in order to maximize recovery for all stakeholders;

8. On August 8, 2017, the Sale Advisor, on behalf of the Applicants and with the assistance of the Monitor, commenced a request for proposal process (the "**Second RFP Process**") to solicit proposals from third party liquidators to assist the Applicants in the orderly liquidation of inventory and associated assets, including certain FF&E, located at all leased and owned store and distribution centre locations that are not currently being liquidated, excluding dealer-managed and franchisee stores, (collectively, the "**Remaining Closing Locations**") through the conduct of "liquidation" or similar themed sales.

9. On August 31, 2017, three sets of proposals were received from potential liquidators, and all three proposals were subsequently updated as part of the negotiation process;

10. After considering all three of the proposals submitted, the Applicants selected Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (collectively, the "**Agent**") as the successful bidder;

11. The Applicants, the Sale Advisor and the Monitor are of the view that the Agent's proposal was the most favourable of those submitted;

12. The process of selecting the Syndicated Agent was fair and reasonable in the circumstances and was approved by the Monitor;

13. Following the RFP process, Sears Canada and the Agent negotiated and executed, subject to Court approval, an agency agreement dated as of October 7, 2017 (the "**Agency Agreement**"),

pursuant to which the Agent would serve as the Applicants' exclusive agent and mandatary for the purpose of disposing of the Merchandise and liquidating the FF&E located in the Remaining Closing Locations;

14. On October 10, 2017, the Agent provided Sears Canada with notice that the transactions contemplated by the Agency Agreement would be syndicated with Tiger Capital Group, LLC and GA Retail Canada ULC;

15. Sears Canada and the Syndicated Agent subsequently entered into the Amended and Restated Agency Agreement, subject to Court approval;

16. The Amended and Restated Agency Agreement contemplates the sale of the Merchandise and FF&E to commence on October 19, 2017 and to conclude no later than January 21, 2018, or such other dates agreed to by Sears Canada, the Syndicated Agent, the Monitor and the DIP Lenders;

17. The proposed liquidation sale under the Amended and Restated Agency Agreement will be conducted in accordance with the Sale Guidelines, which are substantially similar to the sale guidelines previously approved in these CCAA proceedings in the July Liquidation Order;

18. The Syndicated Agent has extensive experience conducting retail liquidations;

19. The terms of the Amended and Restated Agency Agreement and the process and transactions contemplated thereunder are fair and reasonable;

20. Similar to the first liquidation process that was approved by the July Liquidation Order, the remaining Hometown stores were not part of the Second RFP Process;

21. The Applicants, in consultation with the Sale Advisor, determined that it would not be appropriate to engage a third-party liquidator to liquidate the remaining 37 Hometown Dealer stores that were identified for closure given the particularities associated with their independent ownership and operation;

22. Accordingly, the Applicants propose that the Applicants and the remaining Hometown Dealers, as applicable, will run their own liquidation in accordance with the Sale Guidelines;

23. The process and transactions contemplated under the Amended and Restated Agency Agreement were designed by the Applicants and the Sale Advisor in consultation with the Monitor, and are expected to maximize the value of the Applicants' Inventory and FF&E in the closing stores for the benefit of the Applicants' stakeholders;

24. The Amended and Restated Agency Agreement is conditional on the Second Agent's Charge being approved by the Court;

25. The Amended and Restated Agency Agreement is in the best interests of the creditors and other stakeholders of the Applicants;

26. The relief sought on this motion is supported by the Monitor, the Sale Advisor and the DIP Lenders;

27. The Confidential Appendix to the Fourth Report of the Monitor, to be filed in respect of this motion, contains confidential and commercially sensitive information, including a summary of the three liquidation proposals received, which if made public would be materially prejudicial to Sears Canada and the bidders and detrimental if the proposed transaction is not completed;

28. There is no reasonable alternative measure to sealing this information from the public record;

29. The salutary effects of sealing this information outweigh the deleterious effects of doing so;

30. The provisions of the CCAA, in particular Section 11 thereof, and the inherent and equitable jurisdiction of this Honourable Court;

31. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

32. Such further and other grounds as counsel may advise and this Court may permit.

67

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

1. The Affidavit of Mark Caiger sworn September 28, 2017 and the exhibits attached thereto;

2. The Affidavit of Mark Caiger sworn October 10, 2017 and the exhibits attached thereto;

3. The Fourth Report of the Monitor (to be filed); and

4. Such further and other evidence as counsel may advise and this Court may permit.

October 10, 2017

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman (LSUC# 44066M)
Jeremy Dacks (LSUC# 41851R)
Tracy Sandler (LSUC# 32443N)
Karin Sachar (LSUC# 59944E)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for the Applicants

TO: SERVICE LIST

Court File No. CV-17-11846-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE **[MR./MADAM]**	)	●DAY, THE ●
	)	
JUSTICE ●	)	DAY OF OCTOBER, 2017

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 SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(each, an "**Applicant**", and collectively, the "**Applicants**")

LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, *inter alia*, approving: (i) the transactions contemplated under the Amended and Restated Agency Agreement entered into between Sears Canada Inc. ("**Sears Canada**") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the "**Agent**") dated as of October 10, 2017 (the "**Agency Agreement**") and certain related relief; and (ii) the Sale, the Hometown Dealer Sale, and the Sale Guidelines (each as defined below) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Mark Caiger sworn October 10, 2017 including the exhibits thereto, the Fourth Report of FTI Consulting

Canada Inc., in its capacity as Monitor (the "**Monitor**") filed October ●, 2017 and on hearing the submissions of respective counsel for the Applicants, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada, counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Sonja Pavic sworn October ●, 2017 filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein 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 Initial Order in these proceedings dated June 22, 2017 (as amended, the "**Initial Order**"), the Agency Agreement, or the Sale Guidelines, as applicable.

THE AGENCY AGREEMENT

3. THIS COURT ORDERS that the Agency Agreement, including the Sale Guidelines attached hereto as Schedule "A" (the "**Sale Guidelines**"), and the transactions contemplated thereunder, including the Bid Protections (which, for greater certainty, includes the Break-Up Fee) (each as such term is defined in the Agency Agreement), are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under the Agency Agreement or the Definitive Documents, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any

other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE SALE

4. THIS COURT ORDERS that, subject to receipt of the Initial Guaranty Payment by Sears Canada and delivery of the Agent L/C to Sears Canada, the Agent is authorized to conduct the Sale (as defined in the Agency Agreement), including the liquidation of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products (if so elected by Sears Canada pursuant to Section 4.5 of the Agency Agreement), and FF&E (including DC FF&E, if so included pursuant to Section 5.1(i) of the Agency Agreement) (each as defined in the Agency Agreement) (the "**Sale**") at the Applicants' retail stores as set out on Schedule "B" attached hereto (the "**Stores**") in accordance with this Order, the Agency Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Agency Agreement.

5. THIS COURT ORDERS that, subject to paragraph 12 of the Initial Order, the Agent, in its capacity as agent of Sears Canada is authorized to market and sell the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products, and FF&E (as such terms are defined in the Agency Agreement) on a "final sale" and "as is" basis and in accordance with the Sale Guidelines, and free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limitation the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge, the DIP ABL Lenders' Charge, the DIP Term Lenders' Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge (as such terms are defined in the Initial Order) and any other charges granted by this Court in these proceedings

(collectively, the "**CCAA Charges**"), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances, subject to this Order, will attach instead to the Guaranteed Amount and any other amounts received or to be received by Sears Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

6. THIS COURT ORDERS that subject to the terms of this Order, the Initial Order, the Agency Agreement and the Sale Guidelines, the Agent shall have the right to enter and use the Stores and Distribution Centers (as defined in the Agency Agreement) and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores and Distribution Centers, and other assets of Sears Canada as designated under the Agency Agreement, for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the Applicants' stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. THIS COURT ORDERS that until the Vacate Date (as defined in the Sale Guidelines) for each Store (which shall be on or before January 21, 2018 (the "**Sale Termination Date**")) the Agent shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Agent is an agent of Sears Canada and Sears Canada has granted the right of access to the Stores to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. THIS COURT ORDERS that except as provided for in this Order, any further order of the Court and the Sale Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases or operation agreements. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Leases, occupancy agreements, or operation agreements.

9. THIS COURT ORDERS that, except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Stores, subject to and in accordance with this Order, the Agency Agreement and the Sale Guidelines, the Agent, as agent for Sears Canada, is authorized to advertise and promote the Sale, without further consent of any Person (as defined in the Initial Order) other than Sears Canada and the Monitor as provided under the Agency Agreement or a Landlord as expressly provided under the Sale Guidelines.

10. THIS COURT ORDERS that until the Vacate Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Sears Canada's intellectual property including without limitation trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as all licenses and rights granted to Sears Canada to use the trade names, trademarks and logos of third parties, solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Agency Agreement, the Sale Guidelines and this Order.

11. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "D" hereto, (the "**Monitor's Certificate**") and subject to payment in full by the Agent to Sears Canada of the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent under the Agency Agreement), and all other amounts due to Sears Canada under the Agency Agreement, all of Sears Canada's right, title and interest in and to any Remaining Merchandise and Remaining FF&E at the Stores and the Distribution Centers, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise or Remaining FF&E shall be expunged and discharged as against such Remaining Merchandise or Remaining FF&E upon the delivery of the Monitor's Certificate to the Agent; provided, however, that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise and Remaining FF&E (less the FF&E Commission) to the Designated Deposit Accounts, subject to the terms of the Agency Agreement. The Agent

shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

AGENT LIABILITY

13. THIS COURT ORDERS that the Agent shall act solely as an agent to Sears Canada and that it shall not be liable for any claims against Sears Canada other than as expressly provided in the Agency Agreement. More specifically:

(a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Sears Canada's employees (including the Retained Employees) located at the Stores or any other property of Sears Canada;

(b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

(c) Sears Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, or its employees, agents or independent contractors (other than Sears Canada's employees and the Retained Employees, agents or independent contractors) located at the Stores, or otherwise in accordance with the Agency Agreement.

14. THIS COURT ORDERS that to the extent any Landlord may have a claim against the Applicants arising solely out of the conduct of the Agent in conducting the Sale for which Sears Canada has claims against the Agent under the Agency Agreement, the Applicants shall be deemed to have assigned such claims free and clear to the applicable Landlord (the "**Assigned Landlord Rights**"); provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Sears Canada and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the FF&E Removal Deadline, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the FF&E Removal Deadline.

AGENT AN UNAFFECTED CREDITOR

15. THIS COURT ORDERS that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Sears Canada nor shall the claims of the Agent pursuant to the Agency Agreement and under the Second Agent's Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among the Applicants and their creditors (a "**Plan**") and, for greater certainty, the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

16. THIS COURT ORDERS that Sears Canada is hereby authorized and directed, in accordance with the Agency Agreement, to remit all amounts that become due to the Agent thereunder.

17. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement, including, without limitation, any amounts to be reimbursed by Sears Canada to the Agent pursuant to the Agency Agreement, and at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS

18. THIS COURT ORDERS that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts

pursuant to the Agency Agreement, including any collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

19. THIS COURT ORDERS that amounts deposited in the Designated Deposit Accounts by or on behalf of the Agent or Sears Canada pursuant to the Agency Agreement, including Proceeds and FF&E Proceeds, shall be and be deemed to be held in trust for Sears Canada and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Sears Canada or any third party.

AGENT'S CHARGE AND SECURITY INTEREST

20. THIS COURT ORDERS that subject to the receipt by Sears Canada of the Initial Guaranty Payment and the issue of the Agent L/C (except for the Bid Protections, in which case the charge shall be granted and be effective on the making of this Order without any further condition or formality), the Agent be and is hereby granted a charge (the "**Second Agent's Charge and Security Interest**") on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) (and, for greater certainty, the Second Agent's Charge and Security Interest shall not extend to other Property of the Applicants as defined in paragraph 4 of the Initial Order) as security for all of the obligations of Sears Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, including the Bid Protections, which charge shall rank in priority to all Encumbrances including without limitation all charges created under the Initial Order; provided, however, that the Second Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Company's Entitlement due to Sears Canada under the Agency Agreement (the "**Subordinated Amount**").

21. THIS COURT ORDERS that the filing, registration, recording or perfection of the Second Agent's Charge and Security Interest shall not be required; and the Second Agent's Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Second Agent's Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Second Agent's Charge and Security Interest. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Sears Canada shall not grant or permit to exist any Encumbrances over any Merchandise, Proceeds, FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), or proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) that rank in priority to, or *pari passu* with the Second Agent's Charge and Security Interest.

22. THIS COURT ORDERS that the Second Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) and other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.

23. THIS COURT ORDERS that notwithstanding:

(a) the pendency of these proceedings;

(b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") in respect of any of the Applicants, or any bankruptcy order made pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of any of the Applicants;

(d) the provisions of any federal or provincial statute; 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, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which an Applicant is a party;

(i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise and Remaining FF&E, (ii) the Assigned Landlord Rights, and (iii) the Second Agent's Charge and Security Interest, shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law. .

24. THIS COURT ORDERS that Sears Canada is authorized and permitted to transfer to the Agent personal information in Sears Canada's custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes and the Agent is hereby authorized to make use of such personal information as if it were Sears Canada, subject to and in accordance with the Agency Agreement.

DISTRIBUTION

25. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, immediately following receipt of the Initial Guaranty Payment, any other portion of the Guaranteed Amount, or the Company Sharing Recovering Amount, Sears Canada be and is hereby authorized and directed, without further Order of the Court, to distribute from such amounts to the DIP ABL Agent and/or the DIP Term Agent, **[in accordance with the terms of the Definitive Documents and the Intercreditor Agreement (as defined in the DIP ABL Credit Agreement)]**, which distribution(s) shall be free and clear of all Claims and Encumbrances and (i) in respect of the DIP ABL Credit Agreement, shall be made as a full and

final repayment of all amounts then owing by the Applicants (subject to all outstanding letters of credit being dealt with as provided below) and immediately upon the repayment in full of all amounts then owing by the Applicants (and the cash collateralizing of all outstanding letters of credit as provided below) under the DIP ABL Credit Agreement in accordance with its terms, all obligations of the parties thereto shall terminate (except for those obligations specifically intended to survive termination in accordance with the terms of the DIP ABL Credit Agreement), including terminating all unfunded commitments to make loans or otherwise extend credit to the Borrower under the DIP ABL Credit Agreement, provided that all undrawn letters of credit issued under the DIP ABL Credit Agreement or under any prior ABL credit agreement that remain outstanding at the date of such repayment shall remain in place until their expiry in accordance with their terms, and provided that the Applicants shall provide to the DIP ABL Agent cash collateral in an amount equal to 105% of the sum of all such letters of credit to be held by the DIP ABL Agent in the L/C Collateral Account as security for such letters of credit and any fees or expenses related thereto in accordance with the DIP ABL Credit Agreement and pursuant to amended paragraph 54 of the Initial Order, and (ii) in respect of the DIP Term Credit Agreement, shall be made as full or partial repayment of amounts then owing by the Applicants under the DIP Term Credit Agreement.

26. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or

(c) any assignment in bankruptcy made in respect of any of the Applicants;

the distribution(s) permitted by paragraph 25 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other

applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF THE HOMETOWN DEALER SALE

27. THIS COURT ORDERS that Sears Canada and the Hometown Dealers are authorized to conduct a liquidation sale (the "Hometown Dealer Sale") of Merchandise and FF&E (each as defined in the Sale Guidelines) located at their respective Hometown Dealer stores as set out on Schedule "C" attached hereto in accordance with this Order and the Sale Guidelines, as applicable. The rights and obligations of the landlords of such Hometown Dealers shall also be governed by this Order and the Sale Guidelines, as applicable.

SEALING

28. THIS COURT ORDERS that Confidential Appendix "●" to the Fourth Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL

29. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, 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 the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

SCHEDULE "A"
SALE GUIDELINES

(See attached)

SALE GUIDELINES – INVENTORY AND FF&E

The following procedures shall apply to any liquidation sales (the "**Sale**") of inventory and goods ("**Merchandise**") and FF&E (as defined below) to be held at Sears Canada's retail stores (listed on Schedules "●" and "●" to the Liquidation Sale Order (as defined below), the "**Stores**"). In addition, the following procedures, to the extent applicable, shall apply to the sale of Merchandise and FF&E located at Hometown Dealer stores as set out on Schedule "C" to the Liquidation Sale Order (the "**Hometown Dealer Sale**") and to any Landlords of such Hometown Dealer stores.

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them, as applicable, in the initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 22, 2017 (as amended and restated, the "**Initial Order**"), the Liquidation Sale Order, or the Agency Agreement (as defined below).

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the "**Liquidation Sale Order**") approving, *inter alia*, (a) the Amended and Restated Agency Agreement between Sears Canada Inc. ("**Sears Canada**") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the "**Agent**") dated as of October 10, 2017 (the "**Agency Agreement**"), and (b) these Sale Guidelines; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a "**Landlord**" and, collectively, the "**Landlords**"), the Sale shall be conducted in accordance with the terms of the applicable lease or other occupancy agreements for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.

2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Agency Agreement (the "**Vacate Date**"), and in all cases no later than January 21, 2018 (the "**Sale Termination Date**"). Rent payable under the respective Leases shall be paid as provided in the Initial Order.

3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.

4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "liquidation" or a "going out of business" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and

where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Agent shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, Sears Canada, the Agent and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.

6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to call the Agent's hotline number.

7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights, or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.

8. At the conclusion of the Sale in each Store, the Agent and Sears Canada shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Liquidation Sale Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Sears Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same

as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to Section 5.1(h) of the Agency Agreement, provided that the applicable Landlord has consented thereto or upon further Order of the Court.

9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment owned by Sears Canada ("**FF&E**") and located in the Stores during the Sale. For greater certainty, FF&E does not include (i) any portion of the Stores' HVAC system or sprinkler / fire suppression system and fire alarm system; and (ii) any furniture, fixtures and equipment owned by the Hometown Dealers. Sears Canada and the Agent may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Initial Order and the Liquidation Sale Order. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.

10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.

11. Sears Canada and the Agent hereby provide notice to the Landlords of Sears Canada's and the Agent's intention to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Agent to identify the FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Sears Canada, the Agent and such Landlord, or by further Order of the Court upon application by Sears Canada on at least two (2) days' notice to such Landlord and the Monitor. If Sears Canada has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, 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 the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to Sears Canada's or the Agent's claim to the FF&E in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, 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 Sears Canada, the Agent and the Monitor twenty-four (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 Store without waiver of or prejudice to any claims or rights such Landlord may have against Sears Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Sears Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. Sears Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.

15. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Ian Fredericks who may be reached by phone at 1-847-418-2075 or email at ifredericks@hilcoglobal.com. If a dispute should arise concerning the conduct of the Sale subject to a Hometown Dealer Sale, the respective Landlord should contact the relevant Hometown Dealer. If the parties are unable to resolve the dispute between themselves, the Landlord or Sears Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of any dispute.

16. Nothing herein or in the Agency Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease or related documents.

17. These Sale Guidelines may be amended by written agreement between Sears Canada, the Agent and the applicable Landlord.

SCHEDULE "B"
AGENT'S STORES

(See attached)

Channel	Store
Full-Line	001410-EDMONTON - KINGSWAY
Full-Line	001429-SOUTHGATE EDMONTON
Full-Line	001425-SOUTHCENTRE CALGARY
Full-Line	001422-LETHBRIDGE
Full-Line	001411-CALGARY - NORTH HILL
Full-Line	001416-EDMONTON - WEST EDMONTON
Full-Line	001819-VANCOUVER - BURNABY
Full-Line	001821-PRINCE GEORGE
Full-Line	001816-VANCOUVER - CAPILANO
Full-Line	001828-GUILDFORD
Full-Line	001836-BRENTWOOD MALL
Full-Line	001818-VICTORIA
Full-Line	001811-LANGLEY (BC)
Full-Line	001822-VANCOUVER - CHILLIWACK
Full-Line	001812-COQUITLAM (BC)
Full-Line	001827-KELOWNA
Full-Line	001823-NANAIMO
Full-Line	001112-POLO PARK
Full-Line	001432-WINNIPEG - KILDONAN
Full-Line	001436-ST. VITAL CENTRE
Full-Line	001623-MONCTON
Full-Line	001622-FREDERICTON
Full-Line	001639-ST. JOHN'S AVALON (NFLD)
Full-Line	001616-HALIFAX 2
Full-Line	001014-ST. CATHARINES
Full-Line	001020-PETERBOROUGH
Full-Line	001017-WINDSOR
Full-Line	001031-BARRIE
Full-Line	001088-TORONTO-NEWMARKET
Full-Line	001011-OTTAWA-CARLINGWOOD
Full-Line	001098-OWEN SOUND
Full-Line	001033-BRANTFORD
Full-Line	001330-WESTMOUNT
Full-Line	001045-NORTH BAY
Full-Line	001015-OTTAWA-ST. LAURENT
Full-Line	001027-BELLEVILLE
Full-Line	001244-SARNIA - RELOCATION
Full-Line	001102-HAMILTON RELOCATION
Full-Line	001093-HAMILTON-LIMERIDGE
Full-Line	001310-STRATFORD RETAIL STORE
Full-Line	001040-KINGSTON 2
Full-Line	001022-GUELPH
Full-Line	001418-THUNDER BAY
Full-Line	001083-SUDBURY

Full-Line	001049-BRAMALEA
Full-Line	001323-ERIN MILLS
Full-Line	001308-SCARBOROUGH 2
Full-Line	001321-OAKVILLE
Full-Line	001013-KITCHENER
Full-Line	001322-FAIRVIEW
Full-Line	001034-PICKERING
Full-Line	001016-OSHAWA
Full-Line	001097-TORONTO-PROMENADE
Full-Line	001328-BURLINGTON
Full-Line	001655-CHARLOTTETOWN (PEI)
Full-Line	001037-ST. JEAN
Full-Line	001086-BROSSARD
Full-Line	001057-JOLIETTE
Full-Line	001331-LA CAPITAL QUEBEC
Full-Line	001018-PLACE LAURIER
Full-Line	001305-POINTE CLAIRE RELOCATION
Full-Line	001085-LEVIS
Full-Line	001012-FLEUR DE LYS
Full-Line	001060-TROIS RIVIERES 2
Full-Line	001087-ANJOU
Full-Line	001035-ST JEROME
Full-Line	001094-LAVAL
Full-Line	001032-SHERBROOKE
Full-Line	001312-REPENTIGNY
Full-Line	001319-ST BRUNO
Full-Line	001096-LASALLE
Full-Line	001041-GRANBY
Full-Line	001241-ROSEMERE
Full-Line	001414-SASKATOON

Channel	Store
Home	001370-CALGARY NORTH HOME
Home	001376-KELOWNA HOME
Home	001338-BURLINGTON HOME
Home	001343-BARRIE HOME
Home	001361-OTTAWA-PINECREST HOME
Home	001393-WHITBY HOME
Home	001345-NEWMARKET HOME
Home	001385-REGINA HOME

SCHEDULE "C"
HOMETOWN DEALER STORES

(See attached)

Channel	Store
Dealer	7648-BROOKS (AB)
Dealer	7590-CARDSTON (AB)
Dealer	7699-EDSON (AB)
Dealer	7634-WETASKIWIN (AB)
Dealer	7586-DRAYTON VALLEY (AB)
Dealer	7633-AIRDRIE (AB)
Dealer	7583-GIBSONS (BC)
Dealer	7545-NELSON (BC)
Dealer	7564-TERRACE (BC)
Dealer	7959-PRINCETON (BC)
Dealer	7597-SMITHERS (BC)
Dealer	7596-PARKSVILLE (BC)
Dealer	7575-THOMPSON (MB)
Dealer	3906-BEAUSEJOUR (MB)
Dealer	7515-CAMPBELLTON (NB)
Dealer	7624-TRACADIE (NB)
Dealer	7860-SHIPPAGAN (NB)
Dealer	7054-CARAQUET (NB)
Dealer	3921-DEER LAKE (NL)
Dealer	7643-GRAND FALLS-WINDSOR (NL)
Dealer	7567-GANDER (NL)
Dealer	7184-CLARENVILLE (NL)
Dealer	7529-KINGSTON (NS)
Dealer	7549-PORT HAWKESBURY (NS)
Dealer	3802-PERTH (ON)
Dealer	7072-HALIBURTON (ON)
Dealer	7957-GANANOQUE (ON)
Dealer	7665-FORT ERIE (ON)
Dealer	7915-KIRKLAND LAKE (ON)
Dealer	7677-ELLIOT LAKE (ON)
Dealer	7582-KAPUSKASING (ON)
Dealer	7559-GASPE (QC)
Dealer	7539-ESTEVAN (SK)
Dealer	7516-MEADOW LAKE (SK)
Dealer	7790-MELVILLE (SK)
Dealer	7571-FORT ST JOHN (BC)
Dealer	7587-PRINCE RUPERT (BC)

SCHEDULE "D"

Court File No. CV-17-11846-00CL

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 SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(each, an "**Applicant**", and collectively, the "**Applicants**")

MONITOR'S CERTIFICATE

RECITALS

All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Amended and Restated Agency Agreement entered into between Sears Canada Inc. ("**Sears Canada**") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the "**Agent**") dated as of October 10, 2017, a copy of which is attached as Exhibit "●" to the Affidavit of Mark Caiger sworn October 10, 2017.

Pursuant to an Order of the Court dated October ●, 2017, the Court ordered that all of the Remaining Merchandise and the Remaining FF&E shall vest absolutely in the Agent, free and

clear of and from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent) and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada et al. certifies that it has been informed by the Agent and Sears Canada that:

The Sale has ended.

The Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent), and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

The Remaining Merchandise includes the Merchandise listed on Appendix "A" hereto.

The Remaining FF&E includes the FF&E listed on Appendix "B" hereto.

DATED as of this ● day of ●, 2017.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal capacity

APPENDIX "A"

LIST OF REMAINING MERCHANDISE

APPENDIX "B"

LIST OF REMAINING FF&E

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R
Tel: 416.862.4923

Michael De Lellis LSUC# 48038U
Tel: 416.862.5997

Lawyers for the Applicants

47

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

MOTION RECORD OF THE APPLICANTS
(Motion for Approval of Phase II Liquidation, returnable October 13, 2017)

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M
Tel: 416.862.4908
Email: mwasserman@osler.com

Jeremy Dacks LSUC# 41851R
Tel: 416.862.4923
Email: jdacks@osler.com

Tracy Sandler LSUC# 32443N
Tel: 416.862.5890
Email: tsandler@osler.com

Karin Sachar LSUC# 59944E
Tel: 416.862.5949
Email : ksachar@osler.com
Fax: 416.862.6666

Lawyers for the Applicants

THIS IS EXHIBIT "G" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

Court File No. CV-17-11846-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	FRIDAY, THE 13th
	)	
JUSTICE HAINEY	)	DAY OF OCTOBER, 2017

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 SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(each, an "**Applicant**", and collectively, the "**Applicants**")

LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, *inter alia*, approving: (i) the transactions contemplated under the Amended and Restated Agency Agreement entered into between Sears Canada Inc. ("**Sears Canada**") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the "**Agent**") dated as of October 10, 2017 (the "**Agency Agreement**") and certain related relief; and (ii) the Sale, the Hometown Dealer Sale, and the Sale Guidelines (each as defined below) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Mark Caiger sworn October 10, 2017 including the exhibits thereto, the Fourth Report of FTI Consulting

Canada Inc., in its capacity as Monitor (the "**Monitor**") filed October 11, 2017 and on hearing the submissions of respective counsel for the Applicants, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada, counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic and Sean Stidwill, each sworn October 10, 2017 filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein 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 Initial Order in these proceedings dated June 22, 2017 (as amended, the "**Initial Order**"), the Agency Agreement, or the Sale Guidelines, as applicable.

THE AGENCY AGREEMENT

3. THIS COURT ORDERS that the Agency Agreement, including the Sale Guidelines attached hereto as Schedule "A" (the "**Sale Guidelines**"), and the transactions contemplated thereunder, including the Bid Protections (which, for greater certainty, includes the Break-Up Fee) (each as such term is defined in the Agency Agreement), are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under the Agency Agreement or the Definitive Documents, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any

other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE SALE

4. THIS COURT ORDERS that, subject to receipt of the Initial Guaranty Payment by Sears Canada and delivery of the Agent L/C to Sears Canada, the Agent is authorized to conduct the Sale (as defined in the Agency Agreement), including the liquidation of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products (if so elected by Sears Canada pursuant to Section 4.5 of the Agency Agreement), and FF&E (including DC FF&E, if so included pursuant to Section 5.1(i) of the Agency Agreement) (each as defined in the Agency Agreement) (the "**Sale**") at the Applicants' retail stores as set out on Schedule "B" attached hereto (the "**Stores**") in accordance with this Order, the Agency Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Agency Agreement.

5. THIS COURT ORDERS that, subject to paragraph 12 of the Initial Order, the Agent, in its capacity as agent of Sears Canada is authorized to market and sell the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products, and FF&E (as such terms are defined in the Agency Agreement) on a "final sale" and "as is" basis and in accordance with the Sale Guidelines, and free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limitation the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge, the DIP ABL Lenders' Charge, the DIP Term Lenders' Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge (as such terms are defined in the Initial Order) and any other charges granted by this Court in these proceedings

(collectively, the "**CCAA Charges**"), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances, subject to this Order, will attach instead to the Guaranteed Amount and any other amounts received or to be received by Sears Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

6. THIS COURT ORDERS that subject to the terms of this Order, the Initial Order, the Agency Agreement and the Sale Guidelines, the Agent shall have the right to enter and use the Stores and Distribution Centers (as defined in the Agency Agreement) and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores and Distribution Centers, and other assets of Sears Canada as designated under the Agency Agreement, for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the Applicants' stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. THIS COURT ORDERS that until the FF&E Removal Deadline (as defined in the Agency Agreement) for each Store, the Agent shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Agent is an agent of Sears Canada and Sears Canada has granted the right of access to the Stores to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. THIS COURT ORDERS that except as provided for in this Order, any further order of the Court and the Sale Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases or operation agreements. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Leases, occupancy agreements, or operation agreements.

9. THIS COURT ORDERS that, except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Stores, subject to and in accordance with this Order, the Agency Agreement and the Sale Guidelines, the Agent, as agent for Sears Canada, is authorized to advertise and promote the Sale, without further consent of any Person (as defined in the Initial Order) other than Sears Canada and the Monitor as provided under the Agency Agreement or a Landlord as expressly provided under the Sale Guidelines.

10. THIS COURT ORDERS that until the Vacate Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Sears Canada's intellectual property including without limitation trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as all licenses and rights granted to Sears Canada to use the trade names, trademarks and logos of third parties, solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Agency Agreement, the Sale Guidelines and this Order.

11. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "D" hereto, (the "**Monitor's Certificate**") and subject to payment in full by the Agent to Sears Canada of the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent under the Agency Agreement), and all other amounts due to Sears Canada under the Agency Agreement, all of Sears Canada's right, title and interest in and to any Remaining Merchandise and Remaining FF&E at the Stores and the Distribution Centers, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise or Remaining FF&E shall be expunged and discharged as against such Remaining Merchandise or Remaining FF&E upon the delivery of the Monitor's Certificate to the Agent; provided, however, that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise and Remaining FF&E (less the FF&E Commission) to the Designated Deposit Accounts, subject to the terms of the Agency Agreement. The Agent

shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

AGENT LIABILITY

13. THIS COURT ORDERS that the Agent shall act solely as an agent to Sears Canada and that it shall not be liable for any claims against Sears Canada other than as expressly provided in the Agency Agreement. More specifically:

(a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Sears Canada's employees (including the Retained Employees) located at the Stores or any other property of Sears Canada;

(b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

(c) Sears Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, or its employees, agents or independent contractors (other than Sears Canada's employees and the Retained Employees, agents or independent contractors) located at the Stores, or otherwise in accordance with the Agency Agreement.

14. THIS COURT ORDERS that to the extent any Landlord may have a claim against the Applicants arising solely out of the conduct of the Agent in conducting the Sale for which Sears Canada has claims against the Agent under the Agency Agreement, the Applicants shall be deemed to have assigned such claims free and clear to the applicable Landlord (the "**Assigned Landlord Rights**"); provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Sears Canada and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the FF&E Removal Deadline, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the FF&E Removal Deadline.

AGENT AN UNAFFECTED CREDITOR

15. THIS COURT ORDERS that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Sears Canada nor shall the claims of the Agent pursuant to the Agency Agreement and under the Second Agent's Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among the Applicants and their creditors (a "**Plan**") and, for greater certainty, the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

16. THIS COURT ORDERS that Sears Canada is hereby authorized and directed, in accordance with the Agency Agreement, to remit all amounts that become due to the Agent thereunder.

17. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement, including, without limitation, any amounts to be reimbursed by Sears Canada to the Agent pursuant to the Agency Agreement, and at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS

18. THIS COURT ORDERS that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts

pursuant to the Agency Agreement, including any collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

19. THIS COURT ORDERS that amounts deposited in the Designated Deposit Accounts by or on behalf of the Agent or Sears Canada pursuant to the Agency Agreement, including Proceeds and FF&E Proceeds, shall be and be deemed to be held in trust for Sears Canada and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Sears Canada or any third party.

AGENT'S CHARGE AND SECURITY INTEREST

20. THIS COURT ORDERS that subject to the receipt by Sears Canada of the Initial Guaranty Payment and the issue of the Agent L/C (except for the Bid Protections, in which case the charge shall be granted and be effective on the making of this Order without any further condition or formality), the Agent be and is hereby granted a charge (the "**Second Agent's Charge and Security Interest**") on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) (and, for greater certainty, the Second Agent's Charge and Security Interest shall not extend to other Property of the Applicants as defined in paragraph 4 of the Initial Order) as security for all of the obligations of Sears Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, including the Bid Protections, which charge shall rank in priority to all Encumbrances including without limitation all charges created under the Initial Order; provided, however, that the Second Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Company's Entitlement due to Sears Canada under the Agency Agreement (the "**Subordinated Amount**").

21. THIS COURT ORDERS that the filing, registration, recording or perfection of the Second Agent's Charge and Security Interest shall not be required; and the Second Agent's Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Second Agent's Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Second Agent's Charge and Security Interest. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Sears Canada shall not grant or permit to exist any Encumbrances over any Merchandise, Proceeds, FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), or proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) that rank in priority to, or *pari passu* with the Second Agent's Charge and Security Interest.

22. THIS COURT ORDERS that the Second Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) and other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.

23. THIS COURT ORDERS that notwithstanding:

(a) the pendency of these proceedings;

(b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") in respect of any of the Applicants, or any bankruptcy order made pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of any of the Applicants;

(d) the provisions of any federal or provincial statute; 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, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which an Applicant is a party;

(i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise and Remaining FF&E, (ii) the Assigned Landlord Rights, and (iii) the Second Agent's Charge and Security Interest, shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

24. THIS COURT ORDERS that Sears Canada is authorized and permitted to transfer to the Agent personal information in Sears Canada's custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes and the Agent is hereby authorized to make use of such personal information as if it were Sears Canada, subject to and in accordance with the Agency Agreement.

DISTRIBUTION

25. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, immediately following receipt of the Initial Guaranty Payment, any other portion of the Guaranteed Amount, or the Company Sharing Recovering Amount, Sears Canada be and is hereby authorized and directed, without further Order of the Court, to distribute from such amounts to the DIP ABL Agent and/or the DIP Term Agent, in accordance with the terms of the Definitive Documents and the Intercreditor Agreement (as defined in the DIP ABL Credit Agreement), which distribution(s) shall be free and clear of all Claims and Encumbrances and (i) in respect of the DIP ABL Credit Agreement, shall be made as a full and final repayment of all

amounts then owing by the Applicants (subject to all outstanding letters of credit being dealt with as provided below) and immediately upon the repayment in full of all amounts then owing by the Applicants (and the cash collateralizing of all outstanding letters of credit as provided below) under the DIP ABL Credit Agreement in accordance with its terms, all obligations of the parties thereto shall terminate (except for those obligations specifically intended to survive termination in accordance with the terms of the DIP ABL Credit Agreement), including terminating all unfunded commitments to make loans or otherwise extend credit to the Borrower under the DIP ABL Credit Agreement, provided that all undrawn letters of credit issued under the DIP ABL Credit Agreement or under any prior ABL credit agreement that remain outstanding at the date of such repayment shall remain in place until their expiry in accordance with their terms, and provided that the Applicants shall provide to the DIP ABL Agent cash collateral in an amount equal to 105% of the sum of all such letters of credit to be held by the DIP ABL Agent in the L/C Collateral Account as security for such letters of credit and any fees or expenses related thereto in accordance with the DIP ABL Credit Agreement and pursuant to amended paragraph 54 of the Initial Order, and (ii) in respect of the DIP Term Credit Agreement, shall be made as full or partial repayment of amounts then owing by the Applicants under the DIP Term Credit Agreement.

26. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or

(c) any assignment in bankruptcy made in respect of any of the Applicants;

the distribution(s) permitted by paragraph 25 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other

applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF THE HOMETOWN DEALER SALE

27. THIS COURT ORDERS that Sears Canada and the Hometown Dealers are authorized to conduct a liquidation sale (the "**Hometown Dealer Sale**") of Merchandise and FF&E (each as defined in the Sale Guidelines) located at their respective Hometown Dealer stores as set out on Schedule "C" attached hereto in accordance with this Order and the Sale Guidelines, as applicable. The rights and obligations of the landlords of such Hometown Dealers shall also be governed by this Order and the Sale Guidelines, as applicable.

SEALING

28. THIS COURT ORDERS that Confidential Appendix "A" to the Fourth Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL

29. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, 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 the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants 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:

OCT 13 2017

PER / PAR:

SCHEDULE "A"
SALE GUIDELINES

(See attached)

SALE GUIDELINES – INVENTORY AND FF&E

The following procedures shall apply to any liquidation sales (the "**Sale**") of inventory and goods ("**Merchandise**") and FF&E (as defined below) to be held at Sears Canada's retail stores (listed on Schedule "B" to the Liquidation Sale Order (as defined below), the "**Stores**"). In addition, the following procedures, to the extent applicable, shall apply to the sale of Merchandise and FF&E located at Hometown Dealer stores as set out on Schedule "C" to the Liquidation Sale Order (the "**Hometown Dealer Sale**") and to any Landlords of such Hometown Dealer stores.

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them, as applicable, in the initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 22, 2017 (as amended and restated, the "**Initial Order**"), the Liquidation Sale Order, or the Agency Agreement (as defined below).

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the "**Liquidation Sale Order**") approving, *inter alia*, (a) the Amended and Restated Agency Agreement between Sears Canada Inc. ("**Sears Canada**") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the "**Agent**") dated as of October 10, 2017 (the "**Agency Agreement**"), and (b) these Sale Guidelines; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a "**Landlord**" and, collectively, the "**Landlords**"), the Sale shall be conducted in accordance with the terms of the applicable lease or other occupancy agreements for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.

2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Agency Agreement (the "**Vacate Date**"), and in all cases no later than January 21, 2018 (the "**Sale Termination Date**"). For clarity, the Agent shall be entitled to access the Stores for the sale/removal of the FF&E during the applicable FF&E Removal Period (as defined in the Agency Agreement), which will take place following the relevant Vacate Date for each Store, it being understood that in all circumstances, the relevant FF&E Removal Period shall expire by no later than 14 days following the Sale Termination Date. Rent payable under the respective Leases shall be paid as provided in the Initial Order.

3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.

4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "liquidation" or a "going out of business" sale, it being understood that

the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Agent shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, Sears Canada, the Agent and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.

6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to call the Agent's hotline number.

7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights, or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.

8. At the conclusion of the Sale in each Store, the Agent and Sears Canada shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E (as defined below) for clarity)

may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Liquidation Sale Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Sears Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to Section 5.1(h) of the Agency Agreement, provided that the applicable Landlord has consented thereto or upon further Order of the Court.

9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment owned by Sears Canada ("**FF&E**") and located in the Stores during the Sale. For greater certainty, FF&E does not include (i) any portion of the Stores' HVAC system or sprinkler / fire suppression system and fire alarm system; and (ii) any furniture, fixtures and equipment owned by the Hometown Dealers. Sears Canada and the Agent may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Initial Order and the Liquidation Sale Order. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.

10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.

11. Sears Canada and the Agent hereby provide notice to the Landlords of Sears Canada's and the Agent's intention to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Agent to identify the FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Sears Canada, the Agent and such Landlord, or by further Order of the Court upon application by Sears Canada on at least two (2) days' notice to such Landlord and the Monitor. If Sears Canada has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, 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 the CCAA and the Initial Order), and the disclaimer or resiliation of

the Lease shall be without prejudice to Sears Canada's or the Agent's claim to the FF&E in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, 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 Sears Canada, the Agent and the Monitor twenty-four (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 Store without waiver of or prejudice to any claims or rights such Landlord may have against Sears Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Sears Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. Sears Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.

15. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Ian Fredericks who may be reached by phone at 1-847-418-2075 or email at ifredericks@hilcoglobal.com. If a dispute should arise concerning the conduct of the Sale subject to a Hometown Dealer Sale, the respective Landlord should contact the relevant Hometown Dealer. If the parties are unable to resolve the dispute between themselves, the Landlord or Sears Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of any dispute.

16. Nothing herein or in the Agency Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease or related documents.

17. These Sale Guidelines may be amended by written agreement between Sears Canada, the Agent and the applicable Landlord.

SCHEDULE "B"
AGENT'S STORES

(See attached)

Channel	Store
Full-Line	001410-EDMONTON - KINGSWAY
Full-Line	001429-SOUTHGATE EDMONTON
Full-Line	001425-SOUTHCENTRE CALGARY
Full-Line	001422-LETHBRIDGE
Full-Line	001411-CALGARY - NORTH HILL
Full-Line	001416-EDMONTON - WEST EDMONTON
Full-Line	001819-VANCOUVER - BURNABY
Full-Line	001821-PRINCE GEORGE
Full-Line	001816-VANCOUVER - CAPILANO
Full-Line	001828-GUILDFORD
Full-Line	001836-BRENTWOOD MALL
Full-Line	001818-VICTORIA
Full-Line	001811-LANGLEY (BC)
Full-Line	001822-VANCOUVER - CHILLIWACK
Full-Line	001812-COQUITLAM (BC)
Full-Line	001827-KELOWNA
Full-Line	001823-NANAIMO
Full-Line	001112-POLO PARK
Full-Line	001432-WINNIPEG - KILDONAN
Full-Line	001436-ST. VITAL CENTRE
Full-Line	001623-MONCTON
Full-Line	001622-FREDERICTON
Full-Line	001639-ST. JOHN'S AVALON (NFLD)
Full-Line	001616-HALIFAX 2
Full-Line	001014-ST. CATHARINES
Full-Line	001020-PETERBOROUGH
Full-Line	001017-WINDSOR
Full-Line	001031-BARRIE
Full-Line	001088-TORONTO-NEWMARKET
Full-Line	001011-OTTAWA-CARLINGWOOD
Full-Line	001098-OWEN SOUND
Full-Line	001033-BRANTFORD
Full-Line	001330-WESTMOUNT
Full-Line	001045-NORTH BAY
Full-Line	001015-OTTAWA-ST. LAURENT
Full-Line	001027-BELLEVILLE
Full-Line	001244-SARNIA - RELOCATION
Full-Line	001102-HAMILTON RELOCATION
Full-Line	001093-HAMILTON-LIMERIDGE
Full-Line	001310-STRATFORD RETAIL STORE
Full-Line	001040-KINGSTON 2
Full-Line	001022-GUELPH
Full-Line	001418-THUNDER BAY
Full-Line	001083-SUDBURY

Full-Line	001049-BRAMALEA
Full-Line	001323-ERIN MILLS
Full-Line	001308-SCARBOROUGH 2
Full-Line	001321-OAKVILLE
Full-Line	001013-KITCHENER
Full-Line	001322-FAIRVIEW
Full-Line	001034-PICKERING
Full-Line	001016-OSHAWA
Full-Line	001097-TORONTO-PROMENADE
Full-Line	001328-BURLINGTON
Full-Line	001655-CHARLOTTETOWN (PEI)
Full-Line	001037-ST. JEAN
Full-Line	001086-BROSSARD
Full-Line	001057-JOLIETTE
Full-Line	001331-LA CAPITAL QUEBEC
Full-Line	001018-PLACE LAURIER
Full-Line	001305-POINTE CLAIRE RELOCATION
Full-Line	001085-LEVIS
Full-Line	001012-FLEUR DE LYS
Full-Line	001060-TROIS RIVIERES 2
Full-Line	001087-ANJOU
Full-Line	001035-ST JEROME
Full-Line	001094-LAVAL
Full-Line	001032-SHERBROOKE
Full-Line	001312-REPENTIGNY
Full-Line	001319-ST BRUNO
Full-Line	001096-LASALLE
Full-Line	001041-GRANBY
Full-Line	001241-ROSEMERE
Full-Line	001414-SASKATOON

Channel	Store
Home	001370-CALGARY NORTH HOME
Home	001376-KELOWNA HOME
Home	001338-BURLINGTON HOME
Home	001343-BARRIE HOME
Home	001361-OTTAWA-PINECREST HOME
Home	001393-WHITBY HOME
Home	001345-NEWMARKET HOME
Home	001385-REGINA HOME

SCHEDULE "C"
HOMETOWN DEALER STORES

(See attached)

Channel	Store
Dealer	7648-BROOKS (AB)
Dealer	7590-CARDSTON (AB)
Dealer	7699-EDSON (AB)
Dealer	7634-WETASKIWIN (AB)
Dealer	7586-DRAYTON VALLEY (AB)
Dealer	7633-AIRDRIE (AB)
Dealer	7583-GIBSONS (BC)
Dealer	7545-NELSON (BC)
Dealer	7564-TERRACE (BC)
Dealer	7959-PRINCETON (BC)
Dealer	7597-SMITHERS (BC)
Dealer	7596-PARKSVILLE (BC)
Dealer	7575-THOMPSON (MB)
Dealer	3906-BEAUSEJOUR (MB)
Dealer	7515-CAMPBELLTON (NB)
Dealer	7624-TRACADIE (NB)
Dealer	7860-SHIPPAGAN (NB)
Dealer	7054-CARAQUET (NB)
Dealer	3921-DEER LAKE (NL)
Dealer	7643-GRAND FALLS-WINDSOR (NL)
Dealer	7567-GANDER (NL)
Dealer	7184-CLARENVILLE (NL)
Dealer	7529-KINGSTON (NS)
Dealer	7549-PORT HAWKESBURY (NS)
Dealer	3802-PERTH (ON)
Dealer	7072-HALIBURTON (ON)
Dealer	7957-GANANOQUE (ON)
Dealer	7665-FORT ERIE (ON)
Dealer	7915-KIRKLAND LAKE (ON)
Dealer	7677-ELLIOT LAKE (ON)
Dealer	7582-KAPUSKASING (ON)
Dealer	7559-GASPE (QC)
Dealer	7539-ESTEVAN (SK)
Dealer	7516-MEADOW LAKE (SK)
Dealer	7790-MELVILLE (SK)
Dealer	7571-FORT ST JOHN (BC)
Dealer	7587-PRINCE RUPERT (BC)

SCHEDULE "D"

Court File No. CV-17-11846-00CL

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 SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(each, an "**Applicant**", and collectively, the "**Applicants**")

MONITOR'S CERTIFICATE

RECITALS

All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Amended and Restated Agency Agreement entered into between Sears Canada Inc. ("**Sears Canada**") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the "**Agent**") dated as of October 10, 2017, a copy of which is attached as Exhibit "B" to the Affidavit of Mark Caiger sworn October 10, 2017.

Pursuant to an Order of the Court dated October ●, 2017, the Court ordered that all of the Remaining Merchandise and the Remaining FF&E shall vest absolutely in the Agent, free and

clear of and from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent) and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada et al. certifies that it has been informed by the Agent and Sears Canada that:

The Sale has ended.

The Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent), and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

The Remaining Merchandise includes the Merchandise listed on Appendix "A" hereto.

The Remaining FF&E includes the FF&E listed on Appendix "B" hereto.

DATED as of this ● day of ●, 2017.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal capacity

---

APPENDIX "A"

LIST OF REMAINING MERCHANDISE

APPENDIX "B"

LIST OF REMAINING FF&E

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R
Tel: 416.862.4923

Michael De Lellis LSUC# 48038U
Tel: 416.862.5997

Lawyers for the Applicants

24

THIS IS EXHIBIT "H" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

Court File No.: 31-2464088
Estate File No.: 31-2464088

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

THE HONOURABLE MR. JUSTICE HAINEY	)	THURSDAY, THE 24th
	)	
	)	DAY OF JANUARY, 2019

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE, INC.

ORDER
(APPROVING AN INTERCOMPANY CHARGE, AN ADMINISTRATION CHARGE, A D&O CHARGE, AN AGENCY AGREEMENT AND SALES GUIDELINES, AND GRANTING ANCILLARY RELIEF)

THIS MOTION made by Gymboree, Inc. ("**Gymboree Canada**") pursuant to Sections 50.6, 64.1, 64.2 and 65.13 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of Gymboree Canada, the first report of KPMG Inc. in its capacity as proposal trustee (the "**Trustee**"), and the affidavit of service of Olga A. Lenova sworn January 22, 2019, filed, and on hearing submissions of counsel for Gymboree Canada, the Trustee, and counsel for other parties in attendance;

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service and filing of each of the notice of motion and motion record of Gymboree Canada 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 to such term in the Agency Agreement or the Sales Guidelines (each as defined below).

CASH MANAGEMENT SYSTEM AND INTERCOMPANY TRANSACTIONS

3. **THIS COURT ORDERS** that, subject to the Post-Filing Intercompany Arrangements and paragraphs 22 and 23 hereof, Gymboree Canada shall be entitled to continue to use the cash management system (the "**Cash Management System**") described in the affidavit of Jon W. Kimmins sworn January 21, 2019 (the "**Kimmins Affidavit**") or, with the consent of the Trustee, replace it in part or in whole with another substantially similar central cash management system, and that any present or future bank participating in 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 Gymboree Canada of funds transferred, paid, collected or otherwise dealt with in the Cash Management System.

4. **THIS COURT ORDERS** that the Post-Filing Intercompany Arrangements (as such term is defined and described in the Kimmins Affidavit) be and are hereby approved and that the obligations of Gymboree Canada to satisfy its share of the overhead costs and reimburse costs paid on its behalf on a post-filing basis in accordance with, and pursuant to, the Post-Filing Intercompany Arrangements, shall be secured by a charge and security (the "**Intercompany Charge**") in favour of the Gymboree Affiliates (as such term is defined in the Kimmins Affidavit), in all assets, rights, undertakings and properties of Gymboree Canada, of every nature and kind whatsoever, and wherever situated, regardless of whose possession it may be in and including all proceeds thereof (the "**Property**"), which charge shall have the priority set out in paragraphs 34 and following of this Order.

5. **THIS COURT ORDERS** that until a real property or immovable lease is disclaimed or resiliated in accordance with the BIA, Gymboree Canada shall pay all amounts constituting rent or payable as rent under its real property or immovable 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 for greater certainty, excluding accelerated rent or penalties, fees and other charges arising out of the insolvency of Gymboree Canada or the making of this Order) or as otherwise may be negotiated between Gymboree Canada and the particular landlord from time to time, for the period commencing from and including the date of this Order, monthly payments on the first day of each month, or the immediately following business day if that day is

not a business day, in advance (but not in arrears), up to and including the effective date of the disclaimer or resiliation.

AGENCY AGREEMENT AND SALE

6. **THIS COURT ORDERS** that (i) the agency agreement (the "**Agency Agreement**") entered into as of January 17, 2019 by and among Gymboree Group, Inc. ("**Gymboree US**") and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**") with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the "**Sale**"), (ii) the execution of the Agency Agreement by Gymboree Canada, (iii) the transactions contemplated thereunder, and (iv) the sales guidelines attached hereto as **Schedule "A"** (the "**Sales Guidelines**"), are hereby approved, authorized, and ratified with such minor amendments to the Agency Agreement as Gymboree US, Gymboree Canada and the Agent may agree to in writing.

7. **THIS COURT ORDERS** that, subject to the provisions of this Order and the Sales Guidelines, Gymboree Canada is hereby authorized to take any and all actions, including, without limitation, to execute and deliver such additional documents, as may be necessary or desirable to implement the Agency Agreement and the transactions contemplated thereunder.

8. **THIS COURT ORDERS** that, upon payment of the Initial Guaranty Payments and delivery of the Canadian Letter of Credit, the Agent is authorized to conduct the Sale at Gymboree Canada's retail stores (collectively, the "**Stores**") in accordance with this Order, the Agency Agreement and the Sales Guidelines, and to advertise and promote the Sale in accordance with the Sales Guidelines.

9. **THIS COURT ORDERS** that if there is a conflict between this Order, the Agency Agreement and the Sales Guidelines, the order of priority to resolve such conflict is as follows:

(a) first, this Order;

(b) second, the Sales Guidelines; and

(c) third, the Agency Agreement.

10. **THIS COURT ORDERS** that the Agent is hereby authorized to market and sell the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada on a "final sale" and "as is" basis and in accordance with the Sales Guidelines, free and clear of (i) all security, hypothecs, liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been registered, perfected or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively, "**Claims**"), including, without limitation, the Administration Charge (as defined below), the D&O Charge (as defined below), the Intercompany Charge, the Agent's Charge, and any other charges hereafter granted by the Court in these proceedings (collectively, the "**Court-Ordered Charges**"), and (ii) all Claims, charges, security interests or liens evidenced by registration pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all such Claims, charges (including the Court-Ordered Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances will attach instead to the Guaranteed Amount and any other amounts, in each case, received or to be received by, or on behalf of, Gymboree Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

11. **THIS COURT ORDERS** that subject to the terms of this Order, the Sales Guidelines and the Agency Agreement, the Agent shall have the right to enter and use the Stores and all related store services, facilities, furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of Gymboree Canada as designated under the Agency Agreement, for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the stay of proceedings in place in the present proceedings, as such stay of proceedings may be extended by further Order of the Court.

12. **THIS COURT ORDERS** that, until (i) the applicable premises vacate date for each Store (which shall not be later than April 30, 2019, the "**Applicable Sale Termination Date**"), notice of which shall be provided by Gymboree Canada to the applicable Landlord, or (ii) such earlier date as a lease is disclaimed in accordance with the BIA and such disclaimer becomes

effective, the Agent shall have access to the Stores in accordance with the applicable Leases and the Sales Guidelines on the basis that the Agent is an agent of Gymboree Canada and Gymboree Canada has granted the right of access to the applicable Store to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.

13. **THIS COURT ORDERS** that except as provided for in this Order, any further Order of the Court and the Sales Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease.

14. **THIS COURT ORDERS** that until the Sale Termination Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Gymboree Canada's trade names, trademarks and logos, as well as all licenses and rights granted to Gymboree Canada to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale of the Merchandise, Additional Agent Merchandise and Owned FF&E in accordance with the terms of the Agency Agreement, the Sales Guidelines and this Order.

15. **THIS COURT ORDERS** that upon delivery of a Trustee's certificate to the Agent, on or after the Sale Termination Date, substantially in the form attached as **Schedule "B"** hereto, (the "**Trustee's Certificate**"), all of Gymboree Canada's right, title and interest in and to any Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise shall be expunged and discharged as against such Remaining Merchandise upon the delivery of the Trustee's Certificate to the Agent, and attach instead to the Guaranteed Amount and any other amounts, in each case, received or to be received by or on behalf of Gymboree Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date; provided, however, that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Gymboree Canada in respect thereof, including without limitation, the

obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise, subject to the terms of the Agency Agreement.

16. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate forthwith after delivery thereof to the Agent.

AGENT LIABILITY

17. **THIS COURT ORDERS** that the Agent shall act solely as an agent to Gymboree Canada and that it shall not be liable for any claims against Gymboree Canada other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sales Guidelines and, for greater certainty:

(a) the Agent shall not be deemed to be an owner, or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Gymboree Canada's employees located at the Stores or any other property of Gymboree Canada;

(b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payer within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law for any purpose whatsoever, and shall not incur any successor liabilities whatsoever; and

(c) Gymboree Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events in connection with the Sale and occurring at the Stores during the Sale Term, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, its employees, agents or independent contractors (other than Gymboree Canada's employees, agents or independent contractors).

18. **THIS COURT ORDERS** that to the extent any Landlord may have a claim against Gymboree Canada arising solely out of the conduct of the Agent in conducting the Sale for

which Gymboree Canada has claims against the Agent under the Agency Agreement, Gymboree Canada shall be deemed to have assigned such claims free and clear of all Encumbrances to the applicable Landlord (the "**Assigned Landlord Rights**") provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Gymboree Canada and the Trustee during the period from the Sale Commencement Date to the date that is thirty (30) days following the Applicable Sale Termination Date, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Applicable Sale Termination Date.

AGENT AN UNAFFECTED CREDITOR

19. **THIS COURT ORDERS** that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Gymboree Canada, nor shall the claims of the Agent pursuant to the Agency Agreement and under the Agent's Charge (as defined below) be compromised or arranged pursuant to a Proposal, or a plan pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**"), and, for greater certainty, that the Agent shall be treated as an unaffected creditor in these proceedings and under any Proposal, or plan pursuant to the CCAA.

20. **THIS COURT ORDERS** that Gymboree Canada is authorized and directed to remit, in accordance with the Agency Agreement, all amounts that become due to the Agent thereunder.

21. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement and, at all times, the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS

22. **THIS COURT ORDERS** that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts pursuant to the Agency Agreement, including any collection or enforcement steps in relation to

any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

23. **THIS COURT ORDERS** that amounts deposited in the Designated Deposit Accounts by or on behalf of the Agent or Gymboree Canada pursuant to the Agency Agreement, including Proceeds and FF&E Proceeds, shall be and be deemed to be held in trust for Gymboree Canada and the Agent, as the case may be, and, for clarity, no person shall have any claim, ownership interest or other entitlement in or against those amounts held in trust for the Agent, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Gymboree Canada or any third party.

AGENT'S CHARGE

24. **THIS COURT ORDERS** that subject to the receipt of the Initial Guaranty Payments and delivery of the Canadian Letter of Credit, the Agent be and is hereby granted a charge (the "**Agent's Charge**") on the Agent Collateral (and, for greater certainty, the Agent's Charge shall not extend to other Property of Gymboree Canada) as security for all of the obligations of Gymboree Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances.

25. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the Agent's Charge shall not be required, and the Agent's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent's Charge coming into existence, notwithstanding any failure to file, register or perfect any such Agent's Charge. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Gymboree Canada shall not grant or permit to exist any Encumbrances over any Agent Collateral that rank in priority to, or *pari passu* with the Agent's Charge.

26. **THIS COURT ORDERS** that the Agent's Charge shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Agent Collateral, and shall rank in priority to all other Encumbrances of, or in favour of, any Person.

27. **THIS COURT ORDERS** that notwithstanding:

(a) the pendency of these proceedings, including any bankruptcy that may result from these proceedings or any proceedings that may be commenced under the CCAA;

(b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;

(c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statute; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which Gymboree Canada is a party;

(i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent, (ii) the Assigned Landlord Rights, (iii) the Agent's Charge, and (iv) any agreement that binds Gymboree Canada to clean up or repair any of the leased premises or any such obligation contained in this Order or the Sale Guidelines, shall be binding on Gymboree Canada and any trustee in bankruptcy that may be appointed in respect of Gymboree Canada (in the case of (iv) in such capacity and not in its personal capacity) and shall not be void or voidable by any person, including any creditor of Gymboree Canada, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

28. **THIS COURT ORDERS** that Gymboree Canada is authorized and permitted to transfer to the Agent personal information in Gymboree Canada's custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such

purposes and the Agent is hereby authorized to make use of such personal information, as if it were Gymboree Canada, subject to and in accordance with the Agency Agreement.

ADMINISTRATION CHARGE

29. **THIS COURT ORDERS** that the Trustee, Osler, Hoskin & Harcourt LLP as counsel to the Trustee, and Norton Rose Fulbright Canada LLP as counsel to Gymboree Canada, are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed the aggregate amount of $750,000 as security for their professional fees and disbursements, at the standard rates and charges, incurred both before and after the date of this Order. The Administration Charge shall have the priority set out in paragraphs 34 and following of this Order.

30. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee, and counsel to Gymboree Canada, shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by Gymboree Canada. Gymboree Canada is hereby authorized and directed to pay the accounts of the Trustee, counsel to the Trustee, and counsel to Gymboree Canada, on a weekly basis or on such other basis as such persons may agree.

DIRECTOR AND OFFICER INDEMNIFICATION AND CHARGE

31. **THIS COURT ORDERS** that Gymboree Canada shall indemnify all of its directors and officers in office as at the commencement of these proceedings or thereafter appointed (collectively, the "**Directors and Officers**") against obligations and liabilities that they may incur as directors or officers of Gymboree Canada after the commencement of these proceedings, except to the extent that the obligation or liability was incurred as a result of any such Director's or Officer's gross negligence or willful misconduct.

32. **THIS COURT ORDERS** that the Directors and Officers are hereby granted a charge (the "**D&O Charge**", and collectively with the Administration Charge and the Intercompany Charge, the "**NOI Charges**") on the Property, which charge shall not exceed the aggregate amount of $1,130,000, as security for the indemnity provided in paragraph 31 of this Order. The D&O Charge shall have the priority set out in paragraphs 34 and following of this Order.

33. **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 D&O Charge; and

(b) the Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 31 of this Order.

PRIORITY OF NOI CHARGES

34. **THIS COURT ORDERS** that each of the NOI Charges shall constitute a charge on the Property and that, subject to paragraph 24 with respect to the Agent's Charge on the Agent Collateral, such Charges shall rank in priority to all other Encumbrances in favour of any person.

35. **THIS COURT ORDERS** that the priorities of the NOI Charges, as among them, on Property that is not the Agent's Collateral shall be as follows:

(a) first, the Administration Charge;

(b) second, the D&O Charge; and

(c) third, the Intercompany Charge.

36. **THIS COURT ORDERS** that the priorities of the NOI Charges, and the Agent's Charge, on the Agent Collateral, as among them, shall be as follows:

(a) first, the Agent's Charge;

(b) second, the Administration Charge;

(c) third, the D&O Charge; and

(d) fourth, the Intercompany Charge.

37. **THIS COURT ORDERS** that the filing, registration or perfection of the NOI Charges shall not be required, and that the NOI 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 NOI Charges coming into existence.

38. **THIS COURT ORDERS** that, except for the Agent's Charge on the Agent Collateral, or as may be approved or ordered by this Court, Gymboree Canada shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the NOI Charges, unless Gymboree Canada also obtains the prior written consent of the Trustee and the beneficiaries of the NOI Charges.

39. **THIS COURT ORDERS** that notwithstanding:

(a) the pendency of these proceedings, including any bankruptcy that may result from these proceedings or any proceedings that may be commenced under the CCAA;

(b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;

(c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statute; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which Gymboree Canada is a party;

the NOI Charges shall be binding on Gymboree Canada and any trustee in bankruptcy that may be appointed in respect of Gymboree Canada, and shall not be void or voidable by any person, including any creditor of Gymboree Canada, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

40. **THIS COURT ORDERS** that any of the NOI Charges created by this Order over leases of real property in Canada shall only be a charge in Gymboree Canada's interest in such real property leases.

GENERAL

41. **THIS COURT ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Trustee or any of the Directors and Officers, employees, legal counsel or financial advisors of Gymboree Canada or of the Trustee in relation to the business of Gymboree Canada or the Property, without first obtaining leave of this Court, upon five (5) business days' written notice to Gymboree Canada's counsel, the Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.

42. **THIS COURT ORDERS** that this Order and its effects shall survive the filing by Gymboree Canada of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of Gymboree Canada pursuant to the terms of the CCAA or the bankruptcy of Gymboree Canada, unless this Court orders otherwise.

43. **THIS COURT ORDERS** that, except as otherwise specified herein or in the BIA, Gymboree Canada and the Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of Gymboree Canada and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

44. **THIS COURT ORDERS** that Gymboree Canada and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that Gymboree Canada shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

45. **THIS COURT ORDERS** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on Gymboree Canada's counsel and the Trustee and has filed such response with this Court, or appears on the service list prepared by Gymboree Canada, the Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.

46. **THIS COURT ORDERS** that Gymboree Canada or the Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.

47. **THIS COURT ORDERS** that Gymboree Canada and the Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.

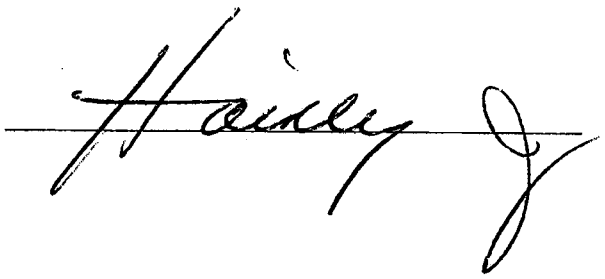
48. **THIS COURT ORDERS** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to Gymboree Canada, the Trustee, and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49. **THIS COURT ORDERS** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

50. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Eastern District of Virginia, to give effect to this Order and to assist Gymboree Canada, the Trustee 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 Gymboree Canada, and the Trustee as an officer of this Court, as may be necessary or desirable to give effect to the Order, or to assist Gymboree Canada, the Trustee and their respective agents in carrying out this Order.

51. **THIS COURT ORDERS** that each of Gymboree Canada and the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or

administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Trustee 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 of Canada.



SCHEDULE "A"
SALES GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of Gymboree, Inc. ("**Gymboree Canada**"). All terms not herein defined shall have the meaning set forth in the agency agreement (the "**Agency Agreement**") entered into as of January 17, 2019 by and among Gymboree Group, Inc. and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**") with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the "**Sale**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court made January 23, 2019 or any further Order of the Court; or (ii) any subsequent written agreement between Gymboree Canada and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by the Agent, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements to which the affected landlords are privy for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease.

2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the Applicable Sale Termination Date of each Store. The Sale at the Stores shall end by no later than April 30, 2019. Rent payable under the respective Leases shall be paid as provided in the Order.

3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.

4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar themed sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sales Guidelines. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Agent shall not use neon or day-glow signs or handwritten signage (save that handwritten

"you pay" or "topper" signs may be used). Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners or signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that (i) no signage in any other common areas of a mall shall be used, and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.

6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".

7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord.

8. At the conclusion of the Sale in each Store, Gymboree Canada and the Agent shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by Gymboree Canada) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Applicable Sale Termination Date in respect of which the applicable Lease has been disclaimed by Gymboree Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement.

9. Subject to the terms of paragraph 8 above and the Agency Agreement, the Agent may sell FF&E owned by Gymboree Canada which is located in the Stores during the Sale. For greater certainty, FF&E does not include any portion of the Stores' HVAC, sprinkler, fire suppression or fire alarm systems. Gymboree Canada and the Agent may advertise the sale of FF&E consistent with these Sales Guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.

10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.

11. Gymboree Canada and the Agent intend to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Gymboree Canada, the Agent and such Landlord, or by further Order of the Court upon application by Gymboree Canada on at least two (2) days' notice to such Landlord. If Gymboree Canada has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, 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 the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to Gymboree Canada's or the Agent's claim to the FF&E in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, 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 Gymboree Canada and the Agent 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 Store without waiver of or prejudice to any claims or rights such Landlord may have against Gymboree Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Gymboree Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. Gymboree Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.

15. The Agent shall be entitled, as agent for Gymboree Canada pursuant to and in accordance with the Agency Agreement to include in the Sale the Additional Agent Merchandise to the extent such is on-order goods from the Gymboree Group's existing vendors. The Agent, Gymboree Canada and counsel to the Landlords of record shall, as soon as practicable, discuss the intended overall aggregate amount and per store amount and to the extent any disagreement arises, such parties can return to Court for directions. The approval of the right of the Agent, as agent for Gymboree Canada pursuant to and in accordance with the Agency Agreement to include in the Sale the Additional Agent Merchandise to the extent such is not on-order goods is subject to further Court order and all parties reserve their rights in respect of such issue including without limitation any right of the Agent against Gymboree Canada.

16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Jane Dietrich at Cassels Brock & Blackwell LLP who may be reached by phone at 416-860-5223 or email at jdietrich@casselsbrock.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Gymboree Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sales Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.

17. Nothing herein or in the Agency Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

18. These Sales Guidelines may be amended by written agreement between Gymboree Canada, the Agent and any applicable Landlord (provided that such amended Sales Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines).

SCHEDULE "B"
Trustee's Certificate

Court File No.: 31-2464088
Estate File No.: 31-2464088

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE, INC.

TRUSTEE'S CERTIFICATE

RECITALS

All undefined terms in this Trustee's Certificate have the meanings ascribed to them in the Agency Agreement entered into as of January 17, 2019 by and among Gymboree Group, Inc. (the "**Merchant**") and Gymboree, Inc. ("**Gymboree Canada**"), each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**"), a copy of which is attached as **Exhibit "D"** to the Affidavit of Jon W. Kimmins sworn January 21, 2019.

Pursuant to an Order of the Court dated January 23, 2019, the Court ordered that all of Gymboree Canada's right, title and interest in and to any the Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all Encumbrances, upon the delivery by the Trustee to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Merchant Sharing Amount, the Additional Guaranteed Amount, and all other amounts due to the Merchant and Gymboree Canada under the Agency Agreement have been paid in full to the Merchant and Gymboree Canada.

KPMG INC., in its capacity as proposal trustee in the proposal proceedings of Gymboree Canada certifies that it has been informed by the Agent, the Merchant and Gymboree Canada that:

1. the Sale has ended;

2. the Guaranteed Amount, the Expenses, any Merchant Sharing Amount, the Additional Guaranteed Amount, and all other amounts due to the Merchant and Gymboree Canada under the Agency Agreement have been paid in full to the Merchant and Gymboree Canada.

DATED as of this _____ day of _____, 2019.

KPMG INC.,
in its capacity as proposal trustee of Gymboree, Inc., and not in its personal capacity

Per: _____

Name:

Title:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE, INC.

Court File No.: 31-2464088
Estate File No.: 31-2464088

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER
(APPROVING AN INTERCOMPANY CHARGE, AN ADMINISTRATION CHARGE, A D&O CHARGE, AN AGENCY AGREEMENT AND SALES GUIDELINES, AND GRANTING ANCILLARY RELIEF)

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Virginie Gauthier LSO#: 41097D
Tel: +1 416.216.4853
Evan Cobb LSO#: 55787N
Tel: +1 416.216.1929
Olga Lenova LSO#: 75574T
Tel: +1 416.216.3984
Fax: +1 416.216.3930

Virginie.Gauthier@nortonrosefulbright.com
Evan.Cobb@nortonrosefulbright.com
Olga.Lenova@nortonrosefulbright.com

Lawyers for Gymboree, Inc.

57

THIS IS EXHIBIT "I" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

From: S. Fay Sulley <fsulley@torkinmanes.com>
Sent: Thursday, November 29, 2018 8:46 AM
To: Margaret Morrison
Subject: Re: Lease disclaimers

Margaret,

Adam had a meltdown last night. The cash flow funding request showed that rent for the whole month of December was to be paid to FBI. It should have been pro rated because of the lease disclaimer he was supposed to have done.

I spoke to Fred about this last night and he assured me that he had signed it.

Can you let me know please?

Sent from my iPhone

S. Fay Sulley
Legal services provided through Sara F. Sulley Professional Corporation
Tel: 416-777-5419
Fax: 1-888-587-5769
mailto:fsulley@torkinmanes.com
http://www.torkinmanes.com/vcard.aspx?ID=s.-fay-sulley

Torkin Manes LLP
Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

> On Nov 29, 2018, at 6:54 AM, Margaret Morrison <mmorrison@fluidbrands.ca> wrote:
>
> Please confirm that required letters have been prepared for release.
> They will need to be sent courier today.
> Warehouse, head office should be Jan 15th.
> Leases being assumed by IBSA should have disclaimers prepared, Adam
> and Fay can confirm if these are to be released Thank you
>
> Sent from my iPhone
>

THIS IS EXHIBIT "J" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

Fluid Brands Inc.
Monitoring Report For the Week Ended November 10/18
Schedule 1 - Summary Schedule
Unaudited in $000's

	Week Ended November 10/18			Cumulative to November 10/18			
	Reported	Budget [1]	Variance	Reported	Budget [1]	Variance	Reference
Cash Receipts	$ 1,828	$ 3,358	$ (1,530)	$ 4,376	$ 6,086	$ (1,710)	Schedule 2
Cash Disbursements	(1,395)	(1,612)	216	(3,891)	(5,828)	1,938	Schedule 3
Net Cash Flow	**$ 433**	**$ 1,747**	**$ (1,314)**	**$ 485**	**$ 257**	**$ 228**	
Revolving Loan							
Opening	$ 24,692	$ 25,068	$ (376)	$ 23,473	$ 23,579	$ (106)	
Net Cash Flow	(433)	(1,747)	1,314	(485)	(257)	(228)	
Change in Bank Cash [2]	(980)	-	(980)	291	-	291	
Loan Balance	**$ 23,279**	**$ 23,322**	**$ (43)**	**$ 23,279**	**$ 23,322**	**$ (42)**	
Gross BBC Availability	**$ 1,627**	**$ 828**	**$ 800**	**$ 1,627**	**$ 828**	**$ 800**	Schedule 4
Net BBC Avail. ($5MM In-Transit Cap)	**$ (363)**	**$ (578)**	**$ 215**	**$ (363)**	**$ (578)**	**$ 215**	Schedule 4
BBC Availability (No In-Transit)	**$ (3,322)**	**$ (3,851)**	**$ 529**	**$ (3,322)**	**$ (3,851)**	**$ 529**	Schedule 4

Note 1: Based on cash flow budget circulated Oct 30, 2018

Note 2:

Bank Cash	$ 291	
O/S Cheques	(473)	Primarily rent
Book Cash	**$ (181)**	

Fluid Brands Inc.
Monitoring Report For the Week Ended November 10/18
Schedule 2 - Receipts
Unaudited in $000's

	Week Ended November 10/18			Cumulative to November 10/18			Comments
	Reported	Budget	Variance	Reported	Budget	Variance	
Net sales	$ 2,927	$ 4,620	$ (1,692)	$ 5,423	$ 7,812	$ (2,388)	Sales were < Budget due primarily to a delayed liquidation start (w/e Oct 27), and a lower prevailing discount (~20% vs ~40% Budgeted in w/e Nov 10). See next page for further details..
Retail sales tax	351	554	(203)	651	937	(287)	
Change in layway	(595)	(198)	(397)	(900)	(441)	(459)	
Change in giftcards	(46)	(44)	(2)	(2)	(88)	86	
Change in float	(809)	(1,574)	765	(796)	(2,135)	1,338	
Gross Receipts	**$ 1,828**	**$ 3,358**	**$ (1,530)**	**$ 4,376**	**$ 6,086**	**$ (1,710)**	

951

Fluid Brands Inc.
Monitoring Report For the Week Ended November 10/18
Schedule 2.1 - Sales & Margin
Unaudited in $000's

	Reported			Budget			Variance		
	Sales	COGS	GM%	Sales	COGS	GM%	Sales	COGS	GM%
Pre-Liquidation									
Oct 27	$ 1,164	$ 611	47.5%	$ 1,383	$ 732	47.1%	$ (219)	$ (121)	0.4%
Nov 03	1,332	633	52.5%	1,809	812	55.1%	(477)	(179)	-2.6%
	$ 2,496	**$ 1,244**	**50.2%**	**3,192**	**1,544**	**51.6%**	**$ (696)**	**$ (300)**	**-1.5%**
Liquidation									
Nov 10	2,927	1,209	58.7%	4,620	2,676	42.1%	(1,692)	(1,467)	16.6%
Nov 17				5,692	3,357	41.0%			
Nov 24				6,859	4,227	38.4%			
Dec 01				6,172	4,021	34.9%			
Dec 08				4,782	3,304	30.9%			
Dec 15				3,641	2,803	23.0%			
Dec 22				3,959	3,833	3.2%			
Dec 29				2,463	3,426	-39.1%			
Jan 05				191	346	-81.7%			
				38,380	**27,993**	**27.1%**			
				$ 41,572	**$ 29,537**	**29.0%**			
Oct 21 - Nov 10 [1]	**$ 5,423**	**$ 2,453**	**54.8%**	**$ 7,812**	**$ 4,220**	**46.0%**	**$ (2,388)**	**$ (1,767)**	**8.8%**

[1] Sales were lower than budget due primarily to:

- Delayed liquidation start (w/e Oct 27) as the signs were only in stores on Mon Oct 22 (vs. Sat Oct 20 per Budget);
- Lower prevailing discount in w/e Nov 10 (~20% vs. ~40% Budget) as Hilco is holding a lower discount until the new goods arrive in stores. They feel that this will have an overall positive impact on the liquidation.

Due to lower sales and higher margins vs. Budget for the three weeks ended Nov 10, the Company has ~$1.3MM more on hand inventory vs. Budget.

157

Fluid Brands Inc.
Monitoring Report For the Week Ended November 10/18
Schedule 3 - Disbursements
Unaudited in $000's

	Week Ended November 10/18			Cumulative to November 10/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Operating							
Trade Payments (incl. broker)	$ 4	$ -	$ 4	$ 50	$ 46	$ 4	
Payroll	398	495	(97)	1,330	1,456	(125)	
Vacation Pay (terminated empl.)	-	-	-	-	-	-	
KEIP	-	-	-	-	-	-	
Rent	849	-	849	1,922	2,174	(252)	Lower than budgeted post-filing Oct rent.
Domestic Freight	1	31	(30)	11	73	(62)	
Utilities	1	28	(27)	6	74	(68)	
Sales Tax	-	121	(121)	100	253	(153)	Timing
Credit Card Fees	15	115	(100)	120	115	5	
Deposits	60	-	60	90	300	(210)	Timing
Other	67	137	(70)	148	324	(177)	
Liquidation	-		-			-	
Hilco Fee (1.5%)	-	-	-	-	-	-	
Supervision	-	128	(128)	-	128	(128)	Timing
Advertising	-	375	(375)	-	375	(375)	Timing
Non-Operating	-		-			-	
Interest	-	-	-	81	91	(10)	
Professional Fees	-	181	(181)	33	418	(385)	Timing
Total Disbursements	**$ 1,395**	**$ 1,612**	**$ (216)**	**$ 3,891**	**$ 5,828**	**$ (1,938)**	

Fluid Brands Inc.
Monitoring Report For the Week Ended November 10/18
Schedule 4 - BBC

Unaudited in $000's	Reported	Budget	Variance	Comments
Eligible A/R	$ 884	$ 2,328	$ (1,444)	
Eligible Inventory				
Bombay	17,189	15,889	1,301	Lower sales and $0.5MM of unbudgeted inventory receipts (w/e Oct 27th)
Bowring	12,190	11,654	536	
LC	95	94	1	
	29,474	27,636	1,838	
Gross Availability	**30,358**	**29,964**	**393**	
Reserves				
WEPPA	747	654	93	
Sales Tax	1,280	1,357	(77)	
DAS / Workers Comp.	197	265	(68)	
Layaway Deposits	908	1,385	(477)	Timing related.
Gift Cards	379	340	39	
Landed Cost Reserve	1,086	961	125	
LC Reserve	155	154	1	
Availability Block	700	700	-	
	5,452	5,815	(364)	
Net Availability	**24,906**	**24,149**	**757**	
Revolver	23,279	23,322	(43)	
Gross BBC Availability	**1,627**	**828**	**800**	
$5MM In-Transit Cap	(1,990)	(1,405)	(585)	
Net BBC Availability	**$ (363)**	**$ (578)**	**$ 215**	
BBC Avail. (No In-Transit)	**$ (3,322)**	**$ (3,851)**	**$ 529**	

Fluid Brands Inc.
Schedule 5

DIP Forbearance Cash Flow ($000's)	Oct 27 Forecast	Nov 03 Forecast	Nov 10 Forecast	Nov 17 Forecast	Nov 24 Forecast	Dec 01 Forecast	Dec 08 Forecast	Dec 15 Forecast	Dec 22 Forecast	Dec 29 Forecast	Jan 05 Forecast	Jan 12 Forecast	Jan 19 Forecast	Jan 26 Forecast	Wind Down	Total
Receipts																
Store Receipts (incl. taxes)	$1,356	$1,371	$3,358	$5,533	$6,787	$7,056	$5,893	$4,476	$4,015	$3,399	$1,486	$107	$0	$0	$0	$44,837
Fixture proceeds	-	-	-	-	-	150	-	150	-	-	-	-	-	-	-	300
	1,356	1,371	3,358	5,533	6,787	7,206	5,893	4,626	4,015	3,399	1,486	107	-	-	-	45,137
Disbursements																
Trade Payments (incl. broker)	46	–	–	–	–	–	–	–	–	–	–	–	–	–	–	46
Payroll	492	469	495	457	457	457	481	465	465	465	465	39	–	–	–	5,208
Vacation Pay (terminated empl.)	–	–	–	100	–	–	–	–	–	200	–	–	–	354	–	654
KEIP	–	–	–	–	–	100	–	–	–	200	–	–	–	200	–	500
Rent	92	2,082	–	–	–	–	1,687	–	–	–	52	–	–	–	–	3,912
Domestic Freight	10	31	31	31	57	57	57	57	51	51	51	51	4	–	–	539
Utilities	19	28	28	28	27	27	27	27	14	14	14	14	6	–	–	275
Sales Tax	55	78	121	466	602	727	661	504	367	400	227	9	(3)	(3)	(33)	4,176
Credit Card Fees	–	–	115	–	–	–	391	–	–	–	251	–	–	–	3	760
Deposits	–	300	–	–	–	–	–	–	–	–	–	–	–	–	–	300
Other	162	25	137	137	137	137	137	132	132	132	132	6	1	1	2	1,413
Liquidation																
Hilco Fee (1.75%)	–	–	–	81	100	150	108	114	64	69	43	3	–	–	–	732
Supervision	–	–	128	128	128	128	128	128	128	128	128	–	–	–	–	1,155
Advertising	–	–	375	120	70	70	70	70	70	70	70	–	–	–	–	989
Non-Operating																
Interest	–	91	–	–	–	–	65	–	–	–	13	–	–	–	1	169
Professional Fees	–	237	181	119	243	107	57	51	102	45	62	28	28	57	226	1,542
	876	3,341	1,612	1,668	1,822	1,963	3,870	1,549	1,394	1,775	1,508	151	35	608	199	22,371
Net Cash Flow	$480	($1,970)	$1,747	$3,865	$4,965	$5,243	$2,023	$3,077	$2,621	$1,624	($21)	($44)	($35)	($608)	($199)	22,767
Combined Facility																
Opening Bank Loan	23,579	23,099	25,068	23,322	19,456	14,491	9,248	7,226	4,149	1,528	–	–	–	5	613	23,579
Closing Bank Loan	$23,099	$25,068	$23,322	$19,456	$14,491	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812
Cash	$0	$0	$0	$0	$0	$0	$0	$0	$0	$96	$75	$30	$0	$0	$0	$0
BBC Availability	($612)	($1,709)	($972)	$702	$2,679	$4,370	$2,632	$3,150	$2,920	$1,410	($279)	($341)	($346)	($597)	N/A	N/A
BBC Availability (excl. In-Transit)	($5,100)	($6,388)	($5,651)	($3,977)	($2,000)	($308)	($1,818)	($1,300)	($1,530)	($3,041)	($3,948)	($4,010)	($4,015)	($4,266)	N/A	N/A
Overadvance (>$23.5MM)	$0	$1,568	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Fixed Pre-Petition Loans																
Opening Balance		$23,099	$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$23,099
Pay-down		(1,371)	(3,358)	(5,533)	(6,787)	(6,049)	–	–	–	–	–	–	–	–	–	(23,099)
Ending Balance		$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revolving Post-Petition Loans																
Opening Balance		$0	$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$0
Draw / (Pay-down)		3,341	1,612	1,668	1,822	806	(2,023)	(3,077)	(2,621)	(1,528)	–	–	5	608	199	812
Ending Balance		$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended November 17/18
Index of Schedules

		Page
Schedule 1	Summary Schedule	1
Schedule 2	Cash Receipts	2
Schedule 2.1	Liquidation Sales & Margin	3
Schedule 3	Cash Disbursements	4
Schedule 4	BBC	5
Schedule 5	DIP Budget	6

Signature: Margaret Mor
Margaret Morrison, CFO

Date: November 21, 2018

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended November 17/18
Schedule 1 - Summary Schedule
Unaudited in $000's

	Week Ended November 17/18			Cumulative to November 17/18			
	Reported	Budget [1]	Variance	Reported	Budget [1]	Variance	Reference
Cash Receipts	$ 3,097	$ 5,533	$ (2,436)	$ 7,473	$ 11,619	$ (4,146)	Schedule 2
Cash Disbursements	(1,026)	(1,668)	641	(4,917)	(7,496)	2,579	Schedule 3
Net Cash Flow	**$ 2,071**	**$ 3,865**	**$ (1,795)**	**$ 2,556**	**$ 4,122**	**$ (1,567)**	
Revolving Loan							
Opening	$ 23,279	$ 23,322	$ (43)	$ 23,473	$ 23,579	$ (106)	
Net Cash Flow	(2,071)	(3,865)	1,795	(2,556)	(4,122)	1,567	
Change in Bank Cash [2]	(36)	-	(36)	255	-	255	
Loan Balance	**$ 21,172**	**$ 19,456**	**$ 1,716**	**$ 21,172**	**$ 19,456**	**$ 1,716**	
Gross BBC Availability	**$ 2,703**	**$ 2,502**	**$ 201**	**$ 2,703**	**$ 2,502**	**$ 201**	Schedule 4
Net BBC Avail. ($5MM In-Transit Cap)	**$ 1,683**	**$ 1,097**	**$ 586**	**$ 1,683**	**$ 1,097**	**$ 586**	Schedule 4
BBC Availability (No In-Transit)	**$ (1,599)**	**$ (2,177)**	**$ 579**	**$ (1,599)**	**$ (2,177)**	**$ 579**	Schedule 4

Note 1: Based on cash flow budget circulated Oct 30, 2018

Note 2:

Bank Cash	$ 255	
O/S Cheques	(303)	Primarily rent
Book Cash	**$ (48)**	

Fluid Brands Inc.
Monitoring Report For the Week Ended November 17/18
Schedule 2 - Receipts
Unaudited in $000's

	Week Ended November 17/18			Cumulative to November 17/18			Comments
	Reported	Budget	Variance	Reported	Budget	Variance	
Net sales	$ 3,379	$ 5,692	$ (2,313)	$ 8,803	$ 13,504	$ (4,701)	Sales were < Budget due primarily to a delayed liquidation start (budgeted to start w/e Nov 3), and a lower prevailing discount (~20% vs ~40% Budgeted through Nov 17). See next page for further details.
Retail sales tax	406	683	(278)	1,056	1,620	(564)	
Change in layway	(177)	(198)	21	(1,077)	(639)	(438)	
Change in giftcards	(122)	(44)	(78)	(124)	(131)	7	
Change in float	(389)	(601)	212	(1,185)	(2,735)	1,550	Timing
Gross Receipts	**$ 3,097**	**$ 5,533**	**$ (2,436)**	**$ 7,473**	**$ 11,619**	**$ (4,146)**	

Fluid Brands Inc.
Monitoring Report For the Week Ended November 17/18
Schedule 2.1 - Sales & Margin
Unaudited in $000's

	Reported			Budget			Variance		
	Sales	COGS	GM%	Sales	COGS	GM%	Sales	COGS	GM%
Pre-Liquidation									
Oct 27	$ 1,164	$ 611	47.6%	$ 1,383	$ 732	47.1%	$ (219)	$ (121)	0.5%
Nov 03	1,332	795	40.3%	1,809	812	55.1%	(477)	(17)	-14.8%
	$ 2,496	**$ 1,406**	**43.7%**	**3,192**	**1,544**	**51.6%**	**$ (696)**	**$ (138)**	**-8.0%**
Liquidation									
Nov 10	2,927	1,409	51.9%	4,620	2,676	42.1%	(1,692)	(1,267)	9.8%
Nov 17	3,379	1,653	51.1%	5,692	3,357	41.0%	(2,313)	(1,704)	10.1%
Nov 24				6,859	4,227	38.4%			
Dec 01				6,172	4,021	34.9%			
Dec 08				4,782	3,304	30.9%			
Dec 15				3,641	2,803	23.0%			
Dec 22				3,959	3,833	3.2%			
Dec 29				2,463	3,426	-39.1%			
Jan 05				191	346	-81.7%			
				38,380	**27,993**	**27.1%**			
				$ 41,572	**$ 29,537**	**29.0%**			
Oct 21 - Nov 17 [1]	**$ 8,803**	**$ 4,468**	**49.2%**	**$ 13,504**	**$ 7,577**	**43.9%**	**$ (4,701)**	**$ (3,109)**	**5.4%**

[1] Sales were lower than budget due primarily to:

- Delayed liquidation start as the signs were only in stores on Mon Nov 5 (vs. Sat Nov 3 per Budget);
- Lower prevailing liquidation discount through Nov 17 (~20% vs. ~40% Budget).

Due to lower sales for the four weeks ended Nov 17 and $1.4MM of unbudgeted inventory purchases (w/e Nov 17 - Category 1 goods), the Company has $4.4MM more on hand inventory vs. Budget. (See Schedule 4)

Fluid Brands Inc.
Monitoring Report For the Week Ended November 17/18
Schedule 3 - Disbursements
Unaudited in $000's

	Week Ended November 17/18			Cumulative to November 17/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Operating							
Trade Payments (incl. broker)	$ 230	$ -	$ 230	$ 280	$ 46	$ 234	Related to Category 1 inventory (not budgeted).
Payroll	469	457	12	1,800	1,913	(113)	
Vacation Pay (terminated empl.)	10	100	(90)	10	100	(90)	Timing
KEIP	-	-	-	-	-	-	
Rent	131	-	131	2,053	2,174	(121)	Lower than budgeted post-filing Oct rent.
Domestic Freight	13	31	(18)	24	104	(80)	
Utilities	-	28	(28)	6	102	(96)	Timing
Sales Tax	-	466	(466)	100	719	(619)	Timing
Credit Card Fees	-	-	-	120	115	5	
Deposits	125	-	125	215	300	(85)	Timing
Other	48	137	(89)	196	462	(266)	Timing
Liquidation			-	-		-	
Hilco Fee (1.5%)	-	81	(81)	-	81	(81)	Timing
Supervision	-	128	(128)	-	257	(257)	Timing
Advertising	-	120	(120)	-	496	(496)	Timing
Non-Operating			-	-		-	
Interest	-	-	-	81	91	(10)	
Professional Fees	-	119	(119)	33	537	(504)	Timing
Total Disbursements	**$ 1,026**	**$ 1,668**	**$ (641)**	**$ 4,917**	**$ 7,496**	**$ (2,579)**	

Fluid Brands Inc.
Monitoring Report For the Week Ended November 17/18
Schedule 4 - BBC

Unaudited in $000's	Reported	Budget	Variance	Comments
Eligible A/R	$ 1,076	$ 2,869	$ (1,793)	
Eligible Inventory [1]				
Bombay	16,839	14,338	2,501	Lower sales and $0.5MM of unbudgeted inventory receipts (w/e Oct 27th)
Bowring	11,354	10,289	1,065	
LC	72	94	(22)	
	28,265	24,721	3,544	
Gross Availability	**29,340**	**27,590**	**1,751**	
Reserves				
WEPPA	747	554	193	
Sales Tax	1,692	1,493	199	
DAS / Workers Comp.	197	265	(68)	
Layaway Deposits	731	1,187	(456)	Timing related.
Gift Cards	318	319	(1)	
Landed Cost Reserve	925	961	(36)	
LC Reserve	155	154	2	
Availability Block	700	700	-	
	5,465	5,632	(166)	
Net Availability	**23,875**	**21,958**	**1,917**	
Revolver	21,172	19,456	1,715	
Gross BBC Availability	**2,703**	**2,502**	**201**	
$5MM In-Transit Cap	(1,021)	(1,405)	385	
Net BBC Availability	**$ 1,683**	**$ 1,097**	**$ 586**	
BBC Avail. (No In-Transit)	**$ (1,599)**	**$ (2,177)**	**$ 579**	

[1] Inventory			
Bombay - On-Hand	$ 16,307	$ 12,945	$ 3,362
Bowring - On-Hand	10,059	9,015	1,044
Total On-Hand	**26,366**	**21,960**	**4,406**
In-Transit	5,927	6,405	(478)
	$ 32,293	**$ 28,365**	**$ 3,928**
Eligible Inventory (BBC)	**$ 28,265**	**$ 24,721**	**$ 3,544**
	87.5%	*87.2%*	*0.3%*

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

167

Fluid Brands Inc.
Schedule 5

DIP Forbearance Cash Flow ($000's)	Oct 27 Forecast	Nov 03 Forecast	Nov 10 Forecast	Nov 17 Forecast	Nov 24 Forecast	Dec 01 Forecast	Dec 08 Forecast	Dec 15 Forecast	Dec 22 Forecast	Dec 29 Forecast	Jan 05 Forecast	Jan 12 Forecast	Jan 19 Forecast	Jan 26 Forecast	Wind Down	Total
Receipts																
Store Receipts (incl. taxes)	$1,356	$1,371	$3,358	$5,533	$6,787	$7,056	$5,893	$4,476	$4,015	$3,399	$1,486	$107	$0	$0	$0	$44,837
Fixture proceeds	-	-	-	-	-	150	-	150	-	-	-	-	-	-	-	300
	1,356	1,371	3,358	5,533	6,787	7,206	5,893	4,626	4,015	3,399	1,486	107	-	-	-	45,137
Disbursements																
Trade Payments (incl. broker)	46	—	—	—	—	—	—	—	—	—	—	—	—	—	—	46
Payroll	492	469	495	457	457	457	481	465	465	465	465	39	—	—	—	5,208
Vacation Pay (terminated empl.)	—	—	—	100	—	—	—	—	—	200	—	—	—	354	—	654
KEIP	—	—	—	—	—	100	—	—	—	200	—	—	—	200	—	500
Rent	92	2,082	—	—	—	—	1,687	—	—	—	52	—	—	—	—	3,912
Domestic Freight	10	31	31	31	57	57	57	57	51	51	51	51	4	—	—	539
Utilities	19	28	28	28	27	27	27	27	14	14	14	14	6	—	—	275
Sales Tax	55	78	121	466	602	727	661	504	367	400	227	9	(3)	(3)	(33)	4,176
Credit Card Fees	—	—	115	—	—	—	391	—	—	—	251	—	—	—	3	760
Deposits	—	300	—	—	—	—	—	—	—	—	—	—	—	—	—	300
Other	162	25	137	137	137	137	137	132	132	132	132	6	1	1	2	1,413
Liquidation																
Hilco Fee (1.75%)	—	—	—	81	100	150	108	114	64	69	43	3	—	—	—	732
Supervision	—	—	128	128	128	128	128	128	128	128	128	—	—	—	—	1,155
Advertising	—	—	375	120	70	70	70	70	70	70	70	—	—	—	—	989
Non-Operating																
Interest	—	91	—	—	—	—	65	—	—	—	13	—	—	—	1	169
Professional Fees	—	237	181	119	243	107	57	51	102	45	62	28	28	57	226	1,542
	876	3,341	1,612	1,668	1,822	1,963	3,870	1,549	1,394	1,775	1,508	151	35	608	199	22,371
Net Cash Flow	$480	($1,970)	$1,747	$3,865	$4,965	$5,243	$2,023	$3,077	$2,621	$1,624	($21)	($44)	($35)	($608)	($199)	22,767
Combined Facility																
Opening Bank Loan	23,579	23,099	25,068	23,322	19,456	14,491	9,248	7,226	4,149	1,528	—	—	—	5	613	23,579
Closing Bank Loan	$23,099	$25,068	$23,322	$19,456	$14,491	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812
Cash	$0	$0	$0	$0	$0	$0	$0	$0	$0	$96	$75	$30	$0	$0	$0	$0
BBC Availability	($612)	($1,709)	($972)	$702	$2,679	$4,370	$2,632	$3,150	$2,920	$1,410	($279)	($341)	($346)	($597)	N/A	N/A
BBC Availability (excl. In-Transit)	($5,100)	($6,388)	($5,651)	($3,977)	($2,000)	($308)	($1,818)	($1,300)	($1,530)	($3,041)	($3,948)	($4,010)	($4,015)	($4,266)	N/A	N/A
Overadvance (>$23.5MM)	$0	$1,568	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Fixed Pre-Petition Loans																
Opening Balance		$23,099	$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$23,099
Pay-down		(1,371)	(3,358)	(5,533)	(6,787)	(6,049)	—	—	—	—	—	—	—	—	—	(23,099)
Ending Balance		$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revolving Post-Petition Loans																
Opening Balance		$0	$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$0
Draw / (Pay-down)		3,341	1,612	1,668	1,822	806	(2,023)	(3,077)	(2,621)	(1,528)	—	—	5	608	199	812
Ending Balance		$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812

Fluid Brands Inc.
Monitoring Report For the Week Ended November 24/18
Index of Schedules

		Page
Schedule 1	Summary Schedule	1
Schedule 2	Cash Receipts	2
Schedule 2.1	Liquidation Sales & Margin	3
Schedule 3	Cash Disbursements	4
Schedule 4	BBC	5
Schedule 5	DIP Budget	6

Signature: _____
Margaret Morrison, CFO

Date: November 27, 2018

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended November 24/18
Schedule 1 - Summary Schedule
Unaudited in $000's

	Week Ended November 24/18			Cumulative to November 24/18			
	Reported	Budget [1]	Variance	Reported	Budget [1]	Variance	Reference
Cash Receipts	$ 4,163	$ 6,787	$ (2,624)	$ 11,636	$ 18,406	$ (6,770)	Schedule 2
Cash Disbursements	(1,142)	(1,822)	681	(6,059)	(9,318)	3,260	Schedule 3
Net Cash Flow	**$ 3,021**	**$ 4,965**	**$ (1,943)**	**$ 5,577**	**$ 9,087**	**$ (3,510)**	
Revolving Loan							
Opening	$ 21,172	$ 19,456	$ 1,715	$ 23,473	$ 23,579	$ (106)	
Net Cash Flow	(3,021)	(4,965)	1,944	(5,577)	(9,087)	3,510	
Change in Bank Cash [2]	(160)	-	(160)	95	-	95	
Loan Balance	**$ 17,991**	**$ 14,491**	**$ 3,500**	**$ 17,991**	**$ 14,491**	**$ 3,500**	
Gross BBC Availability	**$ 4,128**	**$ 4,479**	**$ (351)**	**$ 4,128**	**$ 4,479**	**$ (351)**	Schedule 4
Net BBC Avail. ($5MM In-Transit Cap)	**$ 3,180**	**$ 3,073**	**$ 107**	**$ 3,180**	**$ 3,073**	**$ 107**	Schedule 4
BBC Availability (No In-Transit)	**$ (302)**	**$ (200)**	**$ (102)**	**$ (302)**	**$ (200)**	**$ (102)**	Schedule 4

Note 1: Based on cash flow budget circulated Oct 30, 2018

Note 2:

Bank Cash	$ 95
O/S Cheques	(123)
Book Cash	**$ (28)**

17

Fluid Brands Inc.
Monitoring Report For the Week Ended November 24/18
Schedule 2 - Receipts
Unaudited in $000's

	Week Ended November 24/18			Cumulative to November 24/18			Comments
	Reported	Budget	Variance	Reported	Budget	Variance	
Net sales	$ 4,594	$ 6,859	$ (2,265)	$ 13,397	$ 20,363	$ (6,966)	Sales were less than Budget due primarily to a delayed liquidation start (budgeted to start w/e Nov 3), and a lower prevailing discount vs. Budget. See next page for further details.
Retail sales tax	551	823	(272)	1,608	2,444	(836)	
Change in layway	338	(198)	536	(739)	(837)	98	Layaway deposits increased in W/E Nov 24 due to larger furniture items sold at the stores via layaway deposit. These items will be shipped within a few days from the DC.
Change in giftcards	(91)	(44)	(47)	(215)	(175)	(40)	
Change in CC float	(1,230)	(654)	(576)	(2,415)	(3,389)	974	Timing
Gross Receipts	**$ 4,163**	**$ 6,787**	**$ (2,624)**	**$ 11,636**	**$ 18,406**	**$ (6,770)**	

Fluid Brands Inc.
Monitoring Report For the Week Ended November 24/18
Schedule 2.1 - Sales & Margin
Unaudited in $000's

	Reported			Budget			Variance		
	Sales	COGS	GM%	Sales	COGS	GM%	Sales	COGS	GM%
Pre-Liquidation									
Oct 27	$ 1,164	$ 611	47.6%	$ 1,383	$ 732	47.1%	$ (219)	$ (121)	0.5%
Nov 03	1,332	795	40.3%	1,809	812	55.1%	(477)	(17)	-14.8%
	$ 2,496	**$ 1,406**	**43.7%**	**3,192**	**1,544**	**51.6%**	**$ (696)**	**$ (138)**	**-8.0%**
Liquidation									
Nov 10	2,927	1,409	51.9%	4,620	2,676	42.1%	(1,692)	(1,267)	9.8%
Nov 17	3,379	1,653	51.1%	5,692	3,357	41.0%	(2,313)	(1,704)	10.1%
Nov 24	4,594	2,355	48.7%	6,859	4,227	38.4%	(2,265)	(1,872)	10.4%
Dec 01				6,172	4,021	34.9%			
Dec 08				4,782	3,304	30.9%			
Dec 15				3,641	2,803	23.0%			
Dec 22				3,959	3,833	3.2%			
Dec 29				2,463	3,426	-39.1%			
Jan 05				191	346	-81.7%			
				38,380	**27,993**	**27.1%**			
				$ 41,572	**$ 29,537**	**29.0%**			
Oct 21 - Nov 24 [1]	**$ 13,397**	**$ 6,823**	**49.1%**	**$ 20,363**	**$ 11,804**	**42.0%**	**$ (6,966)**	**$ (4,981)**	**7.0%**

[1] Sales were lower than budget due primarily to:

- Delayed liquidation start as the signs were only in stores on Mon Nov 5 (vs. Sat Nov 3 per Budget);
- Lower prevailing liquidation discount through Nov 24

Due to lower sales for the five weeks ended Nov 24 and $1.8MM of unbudgeted inventory purchases (w/e Nov 17, 24 - Category 1 goods), the Company has $6.6MM more on hand inventory vs. Budget. (See Schedule 4)

173

Fluid Brands Inc.
Monitoring Report For the Week Ended November 24/18
Schedule 3 - Disbursements
Unaudited in $000's

	Week Ended November 24/18			Cumulative to November 24/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Operating							
Trade Payments (incl. broker)	$ 126	$ -	$ 126	$ 406	$ 46	$ 360	Related to Category 1 inventory (not budgeted),
Payroll	454	457	(3)	2,254	2,370	(116)	
Vacation Pay (terminated empl.)	-	-	-	10	100	(90)	Timing
KEIP	-	-	-	-	-	-	
Rent	114	-	114	2,167	2,174	(7)	
Domestic Freight	22	57	(35)	46	162	(116)	
Utilities	5	27	(22)	11	129	(118)	Timing
Sales Tax	5	602	(597)	105	1,321	(1,216)	Timing
Credit Card Fees	-	-	-	120	115	5	
Deposits	34	-	34	249	300	(51)	Timing
Other	292	137	155	488	599	(111)	Timing
Liquidation			-			-	
Hilco Fee (1.5%)	-	100	(100)	-	180	(180)	Timing
Supervision	-	128	(128)	-	385	(385)	Timing
Advertising	9	70	(61)	9	566	(557)	Timing
Non-Operating			-			-	
Interest	-	-	-	81	91	(10)	
Professional Fees	81	243	(162)	114	780	(666)	Timing
Total Disbursements	**$ 1,142**	**$ 1,822**	**$ (681)**	**$ 6,059**	**$ 9,318**	**$ (3,260)**	

74

Fluid Brands Inc.
Monitoring Report For the Week Ended November 24/18
Schedule 4 - BBC

Unaudited in $000's	Reported	Budget	Variance	Comments
Eligible A/R	$ 1,890	$ 3,457	$ (1,567)	
Eligible Inventory [1]				
Bombay	16,011	12,299	3,712	Lower sales and $0.5MM of unbudgeted inventory receipts (w/e Oct 27th)
Bowring	10,380	8,658	1,722	
LC	72	94	(22)	
	26,463	21,051	5,412	
Gross Availability	**28,353**	**24,508**	**3,845**	
Reserves				
WEPPA	747	554	193	
Sales Tax	2,238	1,618	620	Includes pre-filing sales tax.
DAS / Workers Comp.	183	265	(82)	
Layaway Deposits	1,069	989	80	
Gift Cards	227	297	(69)	
Landed Cost Reserve	913	961	(48)	
LC Reserve	156	154	2	
Availability Block	700	700	-	
	6,234	5,538	697	
Net Availability	**22,119**	**18,970**	**3,149**	
Revolver	17,991	14,491	3,499	
Gross BBC Availability	**4,128**	**4,479**	**(351)**	
$5MM In-Transit Cap	(948)	(1,405)	458	
Net BBC Availability	**$ 3,180**	**$ 3,073**	**$ 107**	
BBC Avail. (No In-Transit)	**$ (302)**	**$ (200)**	**$ (102)**	
[1] **Inventory**				
Bombay - On-Hand	$ 15,403	$ 10,590	$ 4,813	
Bowring - On-Hand	8,979	7,143	1,836	
Total On-Hand	**24,382**	**17,733**	**6,649**	
In-Transit	5,947	6,405	(458)	
	$ 30,329	**$ 24,139**	**$ 6,191**	
Eligible Inventory (BBC)	**$ 26,463**	**$ 21,051**	**$ 5,412**	
	87.3%	*87.2%*	*0.1%*	

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

175

Fluid Brands Inc.
Schedule 5

DIP Forbearance Cash Flow ($000's)	Oct 27 Forecast	Nov 03 Forecast	Nov 10 Forecast	Nov 17 Forecast	Nov 24 Forecast	Dec 01 Forecast	Dec 08 Forecast	Dec 15 Forecast	Dec 22 Forecast	Dec 29 Forecast	Jan 05 Forecast	Jan 12 Forecast	Jan 19 Forecast	Jan 26 Forecast	Wind Down	Total
Receipts																
Store Receipts (incl. taxes)	$1,356	$1,371	$3,358	$5,533	$6,787	$7,056	$5,893	$4,476	$4,015	$3,399	$1,486	$107	$0	$0	$0	$44,837
Fixture proceeds	-	-	-	-	-	150	-	150	-	-	-	-	-	-	-	300
	1,356	1,371	3,358	5,533	6,787	7,206	5,893	4,626	4,015	3,399	1,486	107	-	-	-	45,137
Disbursements																
Trade Payments (incl. broker)	46	–	–	–	–	–	–	–	–	–	–	–	–	–	–	46
Payroll	492	469	495	457	457	457	481	465	465	465	465	39	–	–	–	5,208
Vacation Pay (terminated empl.)	–	–	–	100	–	–	–	–	–	200	–	–	–	354	–	654
KEIP	–	–	–	–	–	100	–	–	–	200	–	–	–	200	–	500
Rent	92	2,082	–	–	–	–	1,687	–	–	–	52	–	–	–	–	3,912
Domestic Freight	10	31	31	31	57	57	57	57	51	51	51	51	4	–	–	539
Utilities	19	28	28	28	27	27	27	27	14	14	14	14	6	–	–	275
Sales Tax	55	78	121	466	602	727	661	504	367	400	227	9	(3)	(3)	(33)	4,176
Credit Card Fees	–	–	115	–	–	–	391	–	–	–	251	–	–	–	3	760
Deposits	–	300	–	–	–	–	–	–	–	–	–	–	–	–	–	300
Other	162	25	137	137	137	137	137	132	132	132	132	6	1	1	2	1,413
Liquidation																
Hilco Fee (1.75%)	–	–	–	81	100	150	108	114	64	69	43	3	–	–	–	732
Supervision	–	–	128	128	128	128	128	128	128	128	128	–	–	–	–	1,155
Advertising	–	–	375	120	70	70	70	70	70	70	70	–	–	–	–	989
Non-Operating																
Interest	–	91	–	–	–	–	65	–	–	–	13	–	–	–	1	169
Professional Fees	–	237	181	119	243	107	57	51	102	45	62	28	28	57	226	1,542
	876	3,341	1,612	1,668	1,822	1,963	3,870	1,549	1,394	1,775	1,508	151	35	608	199	22,371
Net Cash Flow	$480	($1,970)	$1,747	$3,865	$4,965	$5,243	$2,023	$3,077	$2,621	$1,624	($21)	($44)	($35)	($608)	($199)	22,767
Combined Facility																
Opening Bank Loan	23,579	23,099	25,068	23,322	19,456	14,491	9,248	7,226	4,149	1,528	–	–	–	5	613	23,579
Closing Bank Loan	$23,099	$25,068	$23,322	$19,456	$14,491	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812
Cash	$0	$0	$0	$0	$0	$0	$0	$0	$0	$96	$75	$30	$0	$0	$0	$0
BBC Availability	($612)	($1,709)	($972)	$702	$2,679	$4,370	$2,632	$3,150	$2,920	$1,410	($279)	($341)	($346)	($597)	N/A	N/A
BBC Availability (excl. In-Transit)	($5,100)	($6,388)	($5,651)	($3,977)	($2,000)	($308)	($1,818)	($1,300)	($1,530)	($3,041)	($3,948)	($4,010)	($4,015)	($4,266)	N/A	N/A
Overadvance (>$23.5MM)	$0	$1,568	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Fixed Pre-Petition Loans																
Opening Balance		$23,099	$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$23,099
Pay-down		(1,371)	(3,358)	(5,533)	(6,787)	(6,049)	–	–	–	–	–	–	–	–	–	(23,099)
Ending Balance		$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revolving Post-Petition Loans																
Opening Balance		$0	$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$0
Draw / (Pay-down)		3,341	1,612	1,668	1,822	806	(2,023)	(3,077)	(2,621)	(1,528)	–	–	5	608	199	812
Ending Balance		$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

96

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Index of Schedules

		Page
Schedule 1	Summary Schedule	1
Schedule 2	Cash Receipts	2
Schedule 2.1	Liquidation Sales & Margin	3
Schedule 3	Cash Disbursements	4
Schedule 4	BBC	5
Schedule 5	DIP Budget	6

Signature: Margaret Morrison
Margaret Morrison, CFO

Date: December 5, 2018

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 1 - Summary Schedule
Unaudited in $000's

	Week Ended December 01/18			Cumulative to December 01/18			
	Reported	Budget [1]	Variance	Reported	Budget [1]	Variance	Reference
Cash Receipts	$ 5,538	$ 4,920	$ 618	$ 15,788	$ 15,170	$ 618	Schedule 2
Cash Disbursements	(1,475)	(2,961)	1,486	(6,721)	(8,207)	1,487	Schedule 3
Net Cash Flow	**$ 4,063**	**$ 1,959**	**$ 2,104**	**$ 9,067**	**$ 6,963**	**$ 2,104**	
Revolving Loan							
Opening	$ 17,991	$17,994	$ (4)	$22,899	$22,903	$ (4)	
Net Cash Flow	(4,063)	(1,959)	(2,104)	(9,067)	(6,963)	(2,104)	
Change in Bank Cash [2]	1,970	(95)	2,065	2,065	-	2,065	
Loan Balance	**$ 15,898**	**$ 15,940**	**$ (43)**	**$ 15,897**	**$ 15,940**	**$ (43)**	
Gross BBC Availability	**$ 2,250**	**$ 3,412**	**$ (1,162)**	**$ 2,250**	**$ 3,412**	**$ (1,162)**	Schedule 4
Net BBC Avail. ($5MM In-Transit Cap)	**$ 1,609**	**$ 3,389**	**$ (1,779)**	**$ 1,609**	**$ 3,389**	**$ (1,779)**	Schedule 4
BBC Availability (No In-Transit)	**$ (2,492)**	**$ (720)**	**$ (1,772)**	**$ (2,492)**	**$ (720)**	**$ (1,772)**	Schedule 4

Note 1: Based on the revised cash flow budget circulated Nov 29, 2018

Note 2:

Bank Cash	$ 2,065	
O/S Cheques	(2,066)	Primarily Dec rent
Book Cash	**$ (1)**	

179

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 2 - Receipts
Unaudited in $000's

	Week Ended December 01/18			Cumulative to December 01/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Net sales	$ 5,202	$ 5,612	$ (410)	$ 17,435	$ 17,845	$ (410)	Sales were < Budget due primarily to ~$0.4MM of layaway deposits rec'd in W/E Dec 01 for which the sale will be recorded in W/E Dec 08 when the merchandise is shipped to the customer.
Retail sales tax	624	673	(49)	2,092	2,141	(49)	
Change in layway	217	(267)	484	(576)	(1,060)	484	Layaway deposits increased in W/E Dec 01 due to larger furniture items sold at the stores via layaway deposit. These items will be shipped within a few days from the DC.
Change in giftcards	(160)	(55)	(105)	(504)	(399)	(105)	
Change in CC float	(346)	(1,043)	697	(2,660)	(3,357)	697	Timing.
Gross Receipts	**$ 5,538**	**$ 4,920**	**$ 618**	**$ 15,788**	**$ 15,170**	**$ 618**	

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 2.1 - Sales & Margin
Unaudited in $000's

	Reported			Nov 29 Cash Flow			Variance		
	Sales	COGS	GM%	Sales	COGS	GM%	Sales	COGS	GM%
Pre-Liquidation									
Oct 27	$ 1,164	$ 611	47.6%	$ 1,164	$ 611	47.6%	$ -	$ -	0.5%
Nov 03	1,332	795	40.3%	1,332	795	40.3%	-	-	-14.8%
	$ 2,496	**$ 1,406**	**43.7%**	**$ 2,496**	**$ 1,406**	**43.7%**	**$ -**	**$ -**	**-8.0%**
Liquidation									
Nov 10	2,927	1,409	51.9%	2,927	1,409	51.9%	-	-	9.8%
Nov 17	3,379	1,653	51.1%	3,379	1,653	51.1%	-	-	10.1%
Nov 24	4,594	2,422	47.3%	4,594	2,422	47.3%	-	-	8.9%
Dec 01	5,202	2,834	45.5%	5,612	3,207	42.9%	(410)	(373)	8.0%
Dec 08				6,226	3,851	38.2%			
Dec 15				6,163	4,283	30.5%			
Dec 22				6,067	5,145	15.2%			
Dec 29				5,400	7,273	-34.7%			
Jan 05				-	-				
	16,103	**8,318**	**48.3%**	**40,369**	**29,243**	**27.6%**	**(410)**	**(373)**	**0.5%**
	$ 18,599	**$ 9,724**	**47.7%**	**$ 42,866**	**$ 30,649**	**28.5%**	**$ (410)**	**$ (373)**	**-0.5%**
Oct 21 - Dec 01 [1]	**$ 18,599**	**$ 9,724**	**47.7%**	**$ 19,009**	**$ 10,097**	**46.9%**	**$ (410)**	**$ (373)**	**0.8%**

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 3 - Disbursements
Unaudited in $000's

	Week Ended December 01/18			Cumulative to December 01/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Operating							
Trade Payments (incl. broker)	$ -	$ -	$ -	$ 360	$ 360	$ -	
Payroll	505	525	(20)	2,277	2,297	(20)	
Vacation Pay (terminated empl.)	3	100	(97)	3	100	(97)	Timing
KEIP	-	-	-	-	-	-	
Rent	2	-	2	2,077	2,075	2	
Domestic Freight	161	157	4	198	194	4	
Utilities	1	77	(76)	11	87	(76)	Timing
Sales Tax	152	152	-	157	157	-	
Credit Card Fees	261	-	261	357	96	261	Timing. To be charged next week.
Deposits	50	51	(1)	299	300	(1)	
Other	99	137	(38)	537	575	(38)	
Liquidation							
Hilco Fee (1.5%)	34	168	(134)	34	168	(134)	Timing
Supervision	91	247	(155)	91	247	(155)	Timing
Advertising	105	274	(169)	114	283	(169)	Timing
Sales Tax	11	33	(22)	11	33	(22)	Timing
Non-Operating							
Interest	-	-	-	81	81	-	
Professional Fees	-	1,040	(1,040)	115	1,155	(1,040)	Timing
Total Disbursements	**$ 1,475**	**$ 2,961**	**$ (1,486)**	**$ 6,721**	**$ 8,207**	**$ (1,486)**	

152

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 4 - BBC

Unaudited in $000's	Reported	Budget	Variance	Comments
Eligible A/R	$ 2,050	$ 2,829	$ (778)	Timing
Eligible Inventory [1]				
Bombay	14,008	14,053	(45)	
Bowring	8,771	8,574	197	
LC	96	94	2	
	22,875	22,721	154	
Gross Availability	**24,925**	**25,549**	**(625)**	
Reserves				
WEPPA	747	647	100	
Sales Tax	2,644	2,539	105	
DAS / Workers Comp.	197	264	(67)	
Layaway Deposits	1,286	802	484	Layaway deposits increased in week (Schedule 2)
Gift Cards	147	200	(52)	
Landed Cost Reserve	899	892	7	
LC Reserve	157	154	3	
Availability Block	700	700	-	
	6,777	6,197	580	
Net Availability	**18,148**	**19,352**	**(1,205)**	
Revolver	15,898	15,940	(42)	
Gross BBC Availability	**2,250**	**3,412**	**(1,162)**	
$5MM In-Transit Cap	(641)	(23)	(617)	
Net BBC Availability	**$ 1,609**	**$ 3,389**	**$ (1,779)**	
BBC Avail. (No In-Transit)	**$ (2,492)**	**$ (720)**	**$ (1,772)**	

[1] **Inventory**				
Bombay - On-Hand	$ 13,938	$ 13,749	$ 190	Additional inventory on-hand due to lower sales, higher margins
Bowring - On-Hand	7,692	7,426	266	
Total On-Hand	**21,630**	**21,175**	**455**	
In-Transit	5,916	5,872	44	
	$ 27,546	**$ 27,047**	**$ 499**	
Eligible Inventory (BBC)	**$ 22,875**	**$ 22,721**	**$ 154**	
	83.0%	*84.0%*	*-1.0%*	

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands - DIP Cash Flow ($000's)	Nov 03 Reported	Nov 10 Reported	Nov 17 Reported	Nov 24 Reported	Dec 01 Forecast	Dec 08 Forecast	Dec 15 Forecast	Dec 22 Forecast	Dec 29 Forecast	Jan 05 Forecast	Jan 12 Forecast	Jan 19 Forecast	Jan 26 Forecast	Wind Down	Total
Receipts															
Store Receipts (incl. taxes)	$1,162	$1,828	$3,097	$4,163	$4,920	$6,307	$6,615	$6,526	$6,422	$3,024	$0	$0	$0	$0	$44,065
Fixture proceeds	–	–	–	–	–	–	150	200	150	–	–	–	–	–	500
	1,162	1,828	3,097	4,163	4,920	6,307	6,765	6,726	6,572	3,024	-	–	–	–	44,565
Disbursements															
Trade Payments (incl. broker)	–	4	230	126	–	–	–	–	–	–	–	–	–	–	360
Payroll	440	398	479	454	525	525	525	463	463	463	49	10	10	10	4,816
Vacation Pay (terminated empl.)	–	–	–	–	100	–	–	–	200	–	–	–	454	–	754
KEIP	–	–	–	–	–	–	–	–	350	–	–	–	150	–	500
Rent	981	849	131	114	–	1,800	–	–	–	145	–	–	–	–	4,020
Domestic Freight	–	1	13	22	157	92	57	11	11	11	11	1	–	–	389
Utilities	3	1	–	5	77	27	27	14	14	14	14	6	–	–	204
Sales Tax	–	–	–	5	152	–	–	–	1,563	–	–	–	2,472	–	4,193
Credit Card Fees	81	15	–	–	–	296	–	–	–	420	–	–	–	–	812
Deposits [1]	30	60	125	34	51	–	–	–	–	–	–	–	–	–	300
Other	30	67	48	292	137	137	127	127	177	127	6	1	51	2	1,330
Liquidation															
Hilco Fee (1.5%)	–	–	–	–	168	84	123	132	121	81	–	–	–	–	710
Supervision	–	–	–	–	247	123	123	123	123	123	123	–	–	–	986
Advertising	–	–	–	9	274	141	141	141	141	141	–	–	–	–	989
Sales Tax - Hilco	–	–	–	–	33	11	16	17	16	11	–	–	–	–	103
Non-Operating															
Interest	81	–	–	–	–	76	–	–	–	21	–	–	–	–	179
Professional Fees	34	–	–	81	1,040	141	85	136	129	40	34	95	28	226	2,068
	1,680	1,395	1,027	1,144	2,961	3,455	1,225	1,165	3,308	1,598	238	113	3,166	238	22,713
Net Cash Flow	($518)	$433	$2,070	$3,019	$1,959	$2,852	$5,540	$5,561	$3,263	$1,426	($238)	($113)	($3,166)	($238)	21,851
Combined Facility															
Opening Bank Loan	22,903	23,421	22,988	20,918	17,899	15,940	13,088	7,548	1,987	–	–	–	–	813	22,903
Closing Bank Loan	$24,692	$22,988	$20,918	$17,899	$15,940	$13,088	$7,548	$1,987	$0	$0	$0	$0	$813	$1,052	$1,052
Cash	$1,271	$291	$0	$95	$0	$0	$0	$0	$1,276	$2,703	$2,465	$2,352	$0	$0	$0
BBC Availability	$573	$1,729	$3,487	$4,154	$3,412	$3,015	$4,600	$5,484	$2,375	N/A	N/A	N/A	N/A	N/A	N/A
BBC Availability (excl. In-Transit)	($4,106)	($3,221)	($927)	($143)	($720)	($1,116)	$469	$1,353	($1,756)	N/A	N/A	N/A	N/A	N/A	N/A
Overadvance (>$23.5MM)	$1,192	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Fixed Pre-Petition Loans															
Opening Balance	$22,903	$21,741	$19,913	$16,816	$12,653	$7,733	$1,426	$0	$0	$0	$0	$0	$0	$0	$22,903
Pay-down	(1,162)	(1,828)	(3,097)	(4,163)	(4,920)	(6,307)	(1,426)	–	–	–	–	–	–	–	(22,903)
Ending Balance	$21,741	$19,913	$16,816	$12,653	$7,733	$1,426	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revolving Post-Petition Loans															
Opening Balance	$0	$1,680	$3,075	$4,102	$5,246	$8,207	$11,662	$7,548	$1,987	$0	$0	$0	$0	$813	$0
Draw / (Pay-down)	1,680	1,395	1,027	1,144	2,961	3,455	(4,114)	(5,561)	(1,987)	–	–	–	813	238	1,052
Ending Balance	$1,680	$3,075	$4,102	$5,246	$8,207	$11,662	$7,548	$1,987	$0	$0	$0	$0	$813	$1,052	$1,052

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

154

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Index of Schedules

		Page
Schedule 1	Summary Schedule	1
Schedule 2	Cash Receipts	2
Schedule 2.1	Liquidation Sales & Margin	3
Schedule 3	Cash Disbursements	4
Schedule 4	BBC	5
Schedule 5	DIP Budget	6

Signature: Margaret Morrison
Margaret Morrison, CFO

Date: December 6, 2018

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 1 - Summary Schedule
Unaudited in $000's

	Week Ended December 01/18			Cumulative to December 01/18			
	Reported	Budget [1]	Variance	Reported	Budget [1]	Variance	Reference
Cash Receipts	$ 5,538	$ 7,206	$ (1,668)	$ 17,174	$ 25,612	$ (8,438)	Schedule 2
Cash Disbursements	(1,475)	(1,963)	488	(7,534)	(11,281)	3,748	Schedule 3
Net Cash Flow	**$ 4,063**	**$ 5,243**	**$ (1,180)**	**$ 9,640**	**$ 14,331**	**$ (4,690)**	
Revolving Loan							
Opening	$ 17,991	$ 14,491	$ 3,499	$ 23,473	$ 23,579	$ (106)	
Net Cash Flow	(4,063)	(5,243)	1,180	(9,640)	(14,331)	4,690	
Change in Bank Cash [2]	1,970	-	1,970	2,065	-	2,065	
Loan Balance	**$ 15,898**	**$ 9,248**	**$ 6,650**	**$ 15,898**	**$ 9,248**	**$ 6,650**	
Gross BBC Availability	**$ 2,250**	**$ 6,017**	**$ (3,767)**	**$ 2,250**	**$ 6,017**	**$ (3,767)**	Schedule 4
Net BBC Avail. ($5MM In-Transit Cap)	**$ 1,609**	**$ 4,611**	**$ (3,002)**	**$ 1,609**	**$ 4,611**	**$ (3,002)**	Schedule 4
BBC Availability (No In-Transit)	**$ (2,492)**	**$ 1,492**	**$ (3,984)**	**$ (2,492)**	**$ 1,492**	**$ (3,984)**	Schedule 4

Note 1: Based on cash flow budget circulated Oct 30, 2018

Note 2:

Bank Cash	$ 2,065	
O/S Cheques	(2,066)	Primarily Dec rent (funded in advance).
Book Cash	**$ (1)**	

L81

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 2 - Receipts
Unaudited in $000's

	Week Ended December 01/18			Cumulative to December 01/18			Comments
	Reported	Budget	Variance	Reported	Budget	Variance	
Retail							
Net sales	$ 5,202	$ 6,172	$ (970)	$ 18,599	$ 26,535	$ (7,936)	Sales were less than Budget due primarily to lower prevailing discounts vs. Budget. See next page for further details.
Retail sales tax	624	741	(116)	2,232	3,184	(952)	
Change in layway	217	(198)	415	(522)	(1,035)	513	Layaway deposits increased in W/E Dec 01 due to larger furniture items sold at the stores via layaway deposit. These items will be shipped within a few days from the DC.
Change in giftcards	(160)	(44)	(116)	(375)	(219)	(156)	Timing
Change in CC float	(346)	385	(730)	(2,760)	(3,004)	244	Timing
	5,538	**7,056**	**(1,518)**	**17,174**	**25,462**	**(8,288)**	
FF&E	-	150	(150)	-	150	(150)	Timing
Gross Receipts	**$ 5,538**	**$ 7,206**	**$ (1,668)**	**$ 17,174**	**$ 25,612**	**$ (8,438)**	

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 2.1 - Sales & Margin
Unaudited in $000's

	Reported			Budget			Variance		
	Sales	COGS	GM%	Sales	COGS	GM%	Sales	COGS	GM%
Pre-Liquidation									
Oct 27	$ 1,164	$ 611	47.6%	$ 1,383	$ 732	47.1%	$ (219)	$ (121)	0.5%
Nov 03	1,332	795	40.3%	1,809	812	55.1%	(477)	(17)	-14.8%
	$ 2,496	**$ 1,406**	**43.7%**	**3,192**	**1,544**	**51.6%**	**$ (696)**	**$ (138)**	**-8.0%**
Liquidation									
Nov 10	2,927	1,409	51.9%	4,620	2,676	42.1%	(1,692)	(1,267)	9.8%
Nov 17	3,379	1,653	51.1%	5,692	3,357	41.0%	(2,313)	(1,704)	10.1%
Nov 24	4,594	2,422	47.3%	6,859	4,227	38.4%	(2,265)	(1,805)	8.9%
Dec 01	5,202	2,834	45.5%	6,172	4,021	34.9%	(970)	(1,187)	10.7%
Dec 08				4,782	3,304	30.9%			
Dec 15				3,641	2,803	23.0%			
Dec 22				3,959	3,833	3.2%			
Dec 29				2,463	3,426	-39.1%			
Jan 05				191	346	-81.7%			
				38,380	**27,993**	**27.1%**			
				$ 41,572	**$ 29,537**	**29.0%**			
Oct 21 - Dec 01 [1]	**$ 18,599**	**$ 9,724**	**47.7%**	**$ 26,535**	**$ 15,825**	**40.4%**	**$ (7,936)**	**$ (6,101)**	**7.4%**

[1] Sales were lower than budget due primarily to:

- Delayed liquidation start as the signs were only in stores on Mon Nov 5 (vs. Sat Nov 3 per Budget);
- Lower prevailing liquidation discount through Dec 01

Due to lower sales for the six weeks ended Dec 01 and $1.9MM of unbudgeted inventory purchases (w/e Nov 17, 24, Dec 01 - Category 1 goods), the Company has $7.9MM more on hand inventory vs. Budget. (See Schedule 4)

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 3 - Disbursements
Unaudited in $000's

	Week Ended December 01/18			Cumulative to December 01/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Operating							
Trade Payments (incl. broker)	$ -	$ -	$ -	$ 406	$ 46	$ 360	Related to Category 1 inventory (not budgeted),
Payroll	505	457	48	2,759	2,827	(68)	
Vacation Pay (terminated empl.)	3	-	3	13	100	(87)	Timing
KEIP	-	100	(100)	-	100	(100)	
Rent	2	-	2	2,169	2,174	(5)	
Domestic Freight	161	57	104	207	219	(12)	
Utilities	1	27	(26)	12	157	(145)	Timing
Sales Tax	163	727	(565)	268	2,048	(1,781)	Timing
Credit Card Fees	261	-	261	381	115	266	
Deposits	50	-	50	299	300	(1)	
Other	99	137	(38)	587	736	(150)	Timing
Liquidation			-	-		-	
Hilco Fee (1.5%)	34	150	(116)	34	330	(296)	Timing
Supervision	91	128	(37)	91	513	(422)	Timing
Advertising	105	70	34	114	637	(523)	Timing
Non-Operating							
Interest	-	-	-	81	91	(10)	
Professional Fees	-	107	(107)	114	887	(773)	Timing
Total Disbursements	**$ 1,475**	**$ 1,963**	**$ (488)**	**$ 7,534**	**$ 11,281**	**$ (3,748)**	

Fluid Brands Inc.
Monitoring Report For the Week Ended December 01/18
Schedule 4 - BBC

Unaudited in $000's	Reported	Budget	Variance	Comments
Eligible A/R	$ 2,050	$ 3,111	$ (1,060)	
Eligible Inventory [1]				
Bombay	14,008	10,364	3,643	
Bowring	8,771	7,101	1,671	
LC	96	94	2	
	22,875	17,559	5,316	
Gross Availability	**24,925**	**20,670**	**4,255**	
Reserves				
WEPPA	747	554	193	
Sales Tax	2,644	1,552	1,093	Includes pre-filing sales tax.
DAS / Workers Comp.	197	265	(68)	
Layaway Deposits	1,286	791	494	
Gift Cards	147	275	(127)	
Landed Cost Reserve	899	961	(62)	
LC Reserve	157	308	(151)	
Availability Block	700	700	-	
	6,777	5,405	1,372	
Net Availability	**18,148**	**15,265**	**2,883**	
Revolver	15,898	9,248	6,650	
Gross BBC Availability	**2,250**	**6,017**	**(3,767)**	
$5MM In-Transit Cap	(641)	(1,405)	765	
Net BBC Availability	**$ 1,609**	**$ 4,611**	**$ (3,002)**	
BBC Avail. (No In-Transit)	**$ (2,492)**	**$ 1,492**	**$ (3,984)**	

[1] Inventory				
Bombay - On-Hand	$ 13,938	$ 8,356	$ 5,582	
Bowring - On-Hand	7,692	5,357	2,336	
Total On-Hand	**21,630**	**13,712**	**7,918**	
In-Transit	5,916	6,405	(490)	
	$ 27,546	**$ 20,117**	**$ 7,429**	
Eligible Inventory (BBC)	**$ 22,875**	**$ 17,559**	**$ 5,316**	
	83.0%	*87.3%*	*-4.3%*	Nov NOLV used in Budget vs Dec NOLV in reported

Fluid Brands Inc.
Schedule 5

DIP Forbearance Cash Flow ($000's)	Oct 27 Forecast	Nov 03 Forecast	Nov 10 Forecast	Nov 17 Forecast	Nov 24 Forecast	Dec 01 Forecast	Dec 08 Forecast	Dec 15 Forecast	Dec 22 Forecast	Dec 29 Forecast	Jan 05 Forecast	Jan 12 Forecast	Jan 19 Forecast	Jan 26 Forecast	Wind Down	Total
Receipts																
Store Receipts (incl. taxes)	$1,356	$1,371	$3,358	$5,533	$6,787	$7,056	$5,893	$4,476	$4,015	$3,399	$1,486	$107	$0	$0	$0	$44,837
Fixture proceeds	-	-	-	-	-	150	-	150	-	-	-	-	-	-	-	300
	1,356	1,371	3,358	5,533	6,787	7,206	5,893	4,626	4,015	3,399	1,486	107	-	-	-	45,137
Disbursements																
Trade Payments (incl. broker)	46	–	–	–	–	–	–	–	–	–	–	–	–	–	–	46
Payroll	492	469	495	457	457	457	481	465	465	465	465	39	–	–	–	5,208
Vacation Pay (terminated empl.)	–	–	–	100	–	–	–	–	–	200	–	–	–	354	–	654
KEIP	–	–	–	–	–	100	–	–	–	200	–	–	–	200	–	500
Rent	92	2,082	–	–	–	–	1,687	–	–	–	52	–	–	–	–	3,912
Domestic Freight	10	31	31	31	57	57	57	57	51	51	51	51	4	–	–	539
Utilities	19	28	28	28	27	27	27	27	14	14	14	14	6	–	–	275
Sales Tax	55	78	121	466	602	727	661	504	367	400	227	9	(3)	(3)	(33)	4,176
Credit Card Fees	–	–	115	–	–	–	391	–	–	–	251	–	–	–	3	760
Deposits	–	300	–	–	–	–	–	–	–	–	–	–	–	–	–	300
Other	162	25	137	137	137	137	137	132	132	132	132	6	1	1	2	1,413
Liquidation																
Hilco Fee (1.75%)	–	–	–	81	100	150	108	114	64	69	43	3	–	–	–	732
Supervision	–	–	128	128	128	128	128	128	128	128	128	–	–	–	–	1,155
Advertising	–	–	375	120	70	70	70	70	70	70	70	–	–	–	–	989
Non-Operating																
Interest	–	91	–	–	–	–	65	–	–	–	13	–	–	–	1	169
Professional Fees	–	237	181	119	243	107	57	51	102	45	62	28	28	57	226	1,542
	876	3,341	1,612	1,668	1,822	1,963	3,870	1,549	1,394	1,775	1,508	151	35	608	199	22,371
Net Cash Flow	$480	($1,970)	$1,747	$3,865	$4,965	$5,243	$2,023	$3,077	$2,621	$1,624	($21)	($44)	($35)	($608)	($199)	22,767
Combined Facility																
Opening Bank Loan	23,579	23,099	25,068	23,322	19,456	14,491	9,248	7,226	4,149	1,528	–	–	–	5	613	23,579
Closing Bank Loan	$23,099	$25,068	$23,322	$19,456	$14,491	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812
Cash	$0	$0	$0	$0	$0	$0	$0	$0	$0	$96	$75	$30	$0	$0	$0	$0
BBC Availability	($612)	($1,709)	($972)	$702	$2,679	$4,370	$2,632	$3,150	$2,920	$1,410	($279)	($341)	($346)	($597)	N/A	N/A
BBC Availability (excl. In-Transit)	($5,100)	($6,388)	($5,651)	($3,977)	($2,000)	($308)	($1,818)	($1,300)	($1,530)	($3,041)	($3,948)	($4,010)	($4,015)	($4,266)	N/A	N/A
Overadvance (>$23.5MM)	$0	$1,568	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Fixed Pre-Petition Loans																
Opening Balance		$23,099	$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$23,099
Pay-down		(1,371)	(3,358)	(5,533)	(6,787)	(6,049)	–	–	–	–	–	–	–	–	–	(23,099)
Ending Balance		$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revolving Post-Petition Loans																
Opening Balance		$0	$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$0
Draw / (Pay-down)		3,341	1,612	1,668	1,822	806	(2,023)	(3,077)	(2,621)	(1,528)	–	–	5	608	199	812
Ending Balance		$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended December 08/18
Index of Schedules

		Page
Schedule 1	Summary Schedule	1
Schedule 2	Cash Receipts	2
Schedule 2.1	Liquidation Sales & Margin	3
Schedule 3	Cash Disbursements	4
Schedule 4	BBC	5
Schedule 5	DIP Budget	6

Signature: Margaret Morrison

Margaret Morrison, CFO

Date: December 11, 2018

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended December 08/18
Schedule 1 - Summary Schedule
Unaudited in $000's

	Week Ended December 08/18			Cumulative to December 08/18			
	Reported	Budget [1]	Variance	Reported	Budget [1]	Variance	Reference
Cash Receipts	$ 7,076	$ 5,893	$ 1,183	$ 24,250	$ 31,505	$ (7,255)	Schedule 2
Cash Disbursements	(3,475)	(3,870)	395	(11,009)	(15,152)	4,143	Schedule 3
Net Cash Flow	**$ 3,601**	**$ 2,023**	**$ 1,578**	**$ 13,241**	**$ 16,353**	**$ (3,112)**	
Revolving Loan							
Opening	$ 15,898	$ 9,248	$ 6,650	$ 23,473	$ 23,579	$ (106)	
Net Cash Flow	(3,601)	(2,023)	(1,578)	(13,241)	(16,353)	3,112	
Change in Bank Cash [2]	(1,941)	-	(1,941)	124	-	124	
Loan Balance	**$ 10,356**	**$ 7,226**	**$ 3,131**	**$ 10,356**	**$ 7,226**	**$ 3,131**	
Gross BBC Availability	**$ 3,833**	**$ 4,125**	**$ (292)**	**$ 3,833**	**$ 4,125**	**$ (292)**	Schedule 4
Net BBC Avail. ($5MM In-Transit Cap)	**$ 3,118**	**$ 2,719**	**$ 398**	**$ 3,118**	**$ 2,719**	**$ 398**	Schedule 4
BBC Availability (No In-Transit)	**$ (970)**	**$ (1,320)**	**$ 349**	**$ (970)**	**$ (1,320)**	**$ 349**	Schedule 4

Note 1: Based on cash flow budget circulated Oct 30, 2018

Note 2:

Bank Cash	$ 124	
O/S Cheques	(139)	Rent, utilities and other
Book Cash	**$ (15)**	

195

Fluid Brands Inc.
Monitoring Report For the Week Ended December 08/18
Schedule 2 - Receipts
Unaudited in $000's

	Week Ended December 08/18			Cumulative to December 08/18			Comments
	Reported	Budget	Variance	Reported	Budget	Variance	
Retail							
Net sales	$ 7,056	$ 4,782	$ 2,274	$ 25,656	$ 31,318	$ (5,662)	Cumulative sales were < Budget due primarily to lower prevailing discounts vs. Budget. See next page for further details.
Retail sales tax	847	574	273	3,079	3,758	(679)	
Change in layway	489	(198)	687	(33)	(1,233)	1,200	Layaway deposits increased in past few weeks due to larger furniture items sold at the stores via layaway deposit. These items will be shipped within a few days from the DC.
Change in giftcards	(351)	(44)	(307)	(726)	(263)	(463)	Gift card redemptions exceeded the Budget
AMEX holdback	(700)	-	(700)	(700)	-	(700)	
Change in CC float	(510)	778	(1,288)	(3,270)	(2,226)	(1,045)	Timing
	6,831	**5,893**	**938**	**24,005**	**31,355**	**(7,350)**	
FF&E	245	-	245	245	150	95	Timing
Gross Receipts	**$ 7,076**	**$ 5,893**	**$ 1,183**	**$ 24,250**	**$ 31,505**	**$ (7,255)**	

196

Fluid Brands Inc.
Monitoring Report For the Week Ended December 08/18
Schedule 2.1 - Sales & Margin
Unaudited in $000's

	Reported			Budget			Variance		
	Sales	COGS	GM%	Sales	COGS	GM%	Sales	COGS	GM%
Pre-Liquidation									
Oct 27	$ 1,164	$ 611	47.6%	$ 1,383	$ 732	47.1%	$ (219)	$ (121)	0.5%
Nov 03	1,332	795	40.3%	1,809	812	55.1%	(477)	(17)	-14.8%
	$ 2,496	**$ 1,406**	**43.7%**	**3,192**	**1,544**	**51.6%**	**$ (696)**	**$ (138)**	**-8.0%**
Liquidation									
Nov 10	2,927	1,409	51.9%	4,620	2,676	42.1%	(1,692)	(1,267)	9.8%
Nov 17	3,379	1,653	51.1%	5,692	3,357	41.0%	(2,313)	(1,704)	10.1%
Nov 24	4,594	2,422	47.3%	6,859	4,227	38.4%	(2,265)	(1,805)	8.9%
Dec 01	5,202	2,834	45.5%	6,172	4,021	34.9%	(970)	(1,187)	10.7%
Dec 08	7,056	4,637	34.3%	4,782	3,304	30.9%	2,274	1,333	3.4%
Dec 15				3,641	2,803	23.0%			
Dec 22				3,959	3,833	3.2%			
Dec 29				2,463	3,426	-39.1%			
Jan 05				191	346	-81.7%			
				38,380	**27,993**	**27.1%**			
				$ 41,572	**$ 29,537**	**29.0%**			
Oct 21 - Dec 08 [1]	**$ 25,656**	**$ 14,361**	**44.0%**	**$ 31,318**	**$ 19,129**	**38.9%**	**$ (5,662)**	**$ (4,768)**	**5.1%**

[1] Sales were lower than budget due primarily to lower prevailing liquidation discounts through Dec 08.
Due to lower sales for the seven weeks ended Dec 08 and $1.9MM of unbudgeted inventory purchases (w/e Nov 17, 24, Dec 01 - Category 1 goods), the Company has $6.6MM more on hand inventory (prior to shrink) vs. Budget. (See Schedule 4)

Fluid Brands Inc.
Monitoring Report For the Week Ended December 08/18
Schedule 3 - Disbursements
Unaudited in $000's

	Week Ended December 08/18			Cumulative to December 08/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Operating							
Trade Payments (incl. broker)	$ -	$ -	$ -	$ 406	$ 46	$ 360	Related to Category 1 inventory (not budgeted).
Payroll	509	481	28	3,268	3,308	(41)	
Vacation Pay (terminated empl.)	3	-	3	16	100	(84)	Timing
KEIP	-	-	-	-	100	(100)	
Rent	1,940	1,687	253	4,109	3,861	248	
Domestic Freight	108	57	51	315	276	39	
Utilities	10	27	(17)	22	184	(162)	Timing
Sales Tax	65	661	(596)	333	2,709	(2,376)	Timing. Sales tax was funded to an escrow account in the Budget.
Credit Card Fees	311	391	(80)	692	506	186	Higher than budgeted fees.
Deposits	20	-	20	319	300	19	
Other	90	137	(47)	677	874	(197)	Timing
Liquidation							
Hilco Fee (1.5%)	-	108	(108)	34	439	(404)	Timing
Supervision	-	128	(128)	91	642	(550)	Timing
Advertising	17	70	(53)	131	707	(576)	Timing
Non-Operating	-						
Interest	193	65	128	274	156	118	Higher interest due to Revolver balance > budget.
Professional Fees	209	57	153	323	944	(621)	Timing
Total Disbursements	**$ 3,475**	**$ 3,870**	**$ (395)**	**$ 11,009**	**$ 15,152**	**$ (4,143)**	

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended December 08/18
Schedule 4 - BBC

Unaudited in $000's	Reported	Budget	Variance	Comments
Eligible A/R	$ 2,832	$ 2,410	$ 422	
Eligible Inventory [1]				
Bombay	11,925	8,393	3,533	
Bowring	7,118	5,626	1,492	
LC	96	94	2	
	19,140	14,113	5,026	
Gross Availability	**21,972**	**16,523**	**5,448**	
Reserves				
WEPPA	747	554	193	
Sales Tax	3,286	1,395	1,891	Includes pre-filing sales tax.
DAS / Workers Comp.	197	256	(59)	
Layaway Deposits	1,775	594	1,181	
Gift Cards	9	253	(244)	
Landed Cost Reserve	912	961	(49)	
LC Reserve	157	461	(304)	
Availability Block	700	700	-	
	7,783	5,173	2,610	
Net Availability	**14,189**	**11,350**	**2,838**	
Revolver	10,356	7,226	3,130	
Gross BBC Availability	**3,833**	**4,125**	**(292)**	
$5MM In-Transit Cap	(715)	(1,405)	690	
Net BBC Availability	**$ 3,118**	**$ 2,719**	**$ 398**	
BBC Avail. (No In-Transit)	**$ (970)**	**$ (1,320)**	**$ 349**	
[1] **Inventory**				
Bombay - On-Hand	$ 11,309	$ 6,357	$ 4,952	
Bowring - On-Hand	5,685	4,051	1,635	
Total On-Hand	**16,994**	**10,408**	**6,586**	
In-Transit	5,990	6,405	(415)	
	$ 22,985	**$ 16,813**	**$ 6,171**	
Eligible Inventory (BBC)	**$ 19,140**	**$ 14,113**	**$ 5,026**	
	83.3%	*83.9%*	*-0.6%*	

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

1919

Fluid Brands Inc.
Schedule 5

DIP Forbearance Cash Flow ($000's)	Oct 27 Forecast	Nov 03 Forecast	Nov 10 Forecast	Nov 17 Forecast	Nov 24 Forecast	Dec 01 Forecast	Dec 08 Forecast	Dec 15 Forecast	Dec 22 Forecast	Dec 29 Forecast	Jan 05 Forecast	Jan 12 Forecast	Jan 19 Forecast	Jan 26 Forecast	Wind Down	Total
Receipts																
Store Receipts (incl. taxes)	$1,356	$1,371	$3,358	$5,533	$6,787	$7,056	$5,893	$4,476	$4,015	$3,399	$1,486	$107	$0	$0	$0	$44,837
Fixture proceeds	-	-	-	-	-	150	-	150	-	-	-	-	-	-	-	300
	1,356	1,371	3,358	5,533	6,787	7,206	5,893	4,626	4,015	3,399	1,486	107	-	-	-	45,137
Disbursements																
Trade Payments (incl. broker)	46	–	–	–	–	–	–	–	–	–	–	–	–	–	–	46
Payroll	492	469	495	457	457	457	481	465	465	465	465	39	–	–	–	5,208
Vacation Pay (terminated empl.)	–	–	–	100	–	–	–	–	–	200	–	–	–	354	–	654
KEIP	–	–	–	–	–	100	–	–	–	200	–	–	–	200	–	500
Rent	92	2,082	–	–	–	–	1,687	–	–	–	52	–	–	–	–	3,912
Domestic Freight	10	31	31	31	57	57	57	57	51	51	51	51	4	–	–	539
Utilities	19	28	28	28	27	27	27	27	14	14	14	14	6	–	–	275
Sales Tax	55	78	121	466	602	727	661	504	367	400	227	9	(3)	(3)	(33)	4,176
Credit Card Fees	–	–	115	–	–	–	391	–	–	–	251	–	–	–	3	760
Deposits	–	300	–	–	–	–	–	–	–	–	–	–	–	–	–	300
Other	162	25	137	137	137	137	137	132	132	132	132	6	1	1	2	1,413
Liquidation																
Hilco Fee (1.75%)	–	–	–	81	100	150	108	114	64	69	43	3	–	–	–	732
Supervision	–	–	128	128	128	128	128	128	128	128	128	–	–	–	–	1,155
Advertising	–	–	375	120	70	70	70	70	70	70	70	–	–	–	–	989
Non-Operating																
Interest	–	91	–	–	–	–	65	–	–	–	13	–	–	–	1	169
Professional Fees	–	237	181	119	243	107	57	51	102	45	62	28	28	57	226	1,542
	876	3,341	1,612	1,668	1,822	1,963	3,870	1,549	1,394	1,775	1,508	151	35	608	199	22,371
Net Cash Flow	$480	($1,970)	$1,747	$3,865	$4,965	$5,243	$2,023	$3,077	$2,621	$1,624	($21)	($44)	($35)	($608)	($199)	22,767
Combined Facility																
Opening Bank Loan	23,579	23,099	25,068	23,322	19,456	14,491	9,248	7,226	4,149	1,528	–	–	–	5	613	23,579
Closing Bank Loan	$23,099	$25,068	$23,322	$19,456	$14,491	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812
Cash	$0	$0	$0	$0	$0	$0	$0	$0	$0	$96	$75	$30	$0	$0	$0	$0
BBC Availability	($612)	($1,709)	($972)	$702	$2,679	$4,370	$2,632	$3,150	$2,920	$1,410	($279)	($341)	($346)	($597)	N/A	N/A
BBC Availability (excl. In-Transit)	($5,100)	($6,388)	($5,651)	($3,977)	($2,000)	($308)	($1,818)	($1,300)	($1,530)	($3,041)	($3,948)	($4,010)	($4,015)	($4,266)	N/A	N/A
Overadvance (>$23.5MM)	$0	$1,568	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Fixed Pre-Petition Loans																
Opening Balance		$23,099	$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$23,099
Pay-down		(1,371)	(3,358)	(5,533)	(6,787)	(6,049)	–	–	–	–	–	–	–	–	–	(23,099)
Ending Balance		$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revolving Post-Petition Loans																
Opening Balance		$0	$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$0
Draw / (Pay-down)		3,341	1,612	1,668	1,822	806	(2,023)	(3,077)	(2,621)	(1,528)	–	–	5	608	199	812
Ending Balance		$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

THIS IS EXHIBIT "K" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN ~~BEFORE ME,~~
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

Client	Lawyer	File No.	Date	Diary Date
W Fluid		How Received: Telephone☐ Interview☐ Meeting☐	Dec 18/18	Start Time / Finish Time

INFORMATION SHEET

Discussion / Conference with: Fred + Margaret - DIP Loan

- 1/2 of loan to 266 to be repaid
- pales have been good + there is plenty of cash in bank acct
- Fluid will wire funds to us + we wire directly to Suriya
- can't be any hold ups
- MM - will send list of ~~p~~ proposed wires to Duncan before sending wire to DM
- let them know when we received funds.
- further discussion with Margaret - funds won't be wired until morning

THIS IS EXHIBIT "L" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

DIRECTION RE LOAN

TO: Torkin Manes LLP ("**Torkin Manes**")

FROM: Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc. (the "**Borrowers**")

RE: Loan by Canadian Imperial Bank of Commerce, assigned to 2668602 Ontario Inc. (the "**Lender**"), for the benefit of Simon Serruya

---

The undersigned hereby irrevocably authorizes and directs Torkin Manes to pay out of funds being held in Torkin Manes' trust account (file #35162.0001) on account of the undersigned, to TD Waterhouse (for the account of Simon Serruya) the sum of $2,000,000, to repay on account of the loan to the Borrowers and this shall be your good and sufficient irrevocable authority to do so.

[*The next page is the signature page*]

DATED the 19th day of December, 2018.

FLUID BRANDS INC.

By: _____
Fred Benitah
Title: C.E.O.
I have the authority to bind the corporation

11041037 CANADA INC.

By: _____
Fred Benitah
Title: C.E.O.
I have the authority to bind the corporation

11041045 CANADA INC.

By: _____
Name: Fred Benitah
Title: C.E.O.
I have the authority to bind the corporation

2668602 ONTARIO INC.

By: _____
Name: Fred Benitah
Title: C.E.O.
I have the authority to bind the corporation

THIS IS EXHIBIT "M" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

Fluid Brands Inc.
Monitoring Report For the Week Ended December 22/18
Index of Schedules

		Page
Schedule 1	Summary Schedule	1
Schedule 2	Cash Receipts	2
Schedule 2.1	Liquidation Sales & Margin	3
Schedule 3	Cash Disbursements	4
Schedule 4	Inventory	5
Schedule 5	DIP Budget	6

Signature: _____

Date: December 28, 2018

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended December 22/18
Schedule 1 - Summary Schedule
Unaudited in $000's

	Week Ended December 22/18			Cumulative to December 22/18			
	Reported	Budget [1]	Variance	Reported	Budget [1]	Variance	Reference
Cash Receipts	$ 6,953	$ 4,015	$ 2,938	$ 40,092	$ 40,145	$ (53)	Schedule 2
Cash Disbursements	(1,264)	(1,394)	130	(14,204)	(18,094)	3,891	Schedule 3
Net Cash Flow	**$ 5,689**	**$ 2,621**	**$ 3,068**	**$ 25,888**	**$ 22,051**	**$ 3,837**	
CIBC Revolving Loan							
Opening	$ -	$ -	$ -	$ 23,473	$ 23,579	$ (106)	
Net Cash Flow (up to Dec 13)	-	-	-	(19,265)	(22,051)	2,786	
Payment from 2668602 Ontario Inc.	-	-	-	(4,508)	-	(4,508)	
Loan Balance	**$ -**	**$ -**	**$ -**	**$ (300)**	**$ 1,528**	**$ (1,828)**	
2668602 Ontario Inc.							
Opening [2]	$ 4,508	$ -	$ 4,508	$ -	$ -	$ -	
Assignment of CIBC Debt	-	-	-	4,508	-	4,508	
Repayment	(1,911)	-	(1,911)	(1,911)	-	(1,911)	
December 28, 2018	**$ 2,597**	**$ -**	**$ 2,598**	**$ 2,597**	**$ -**	**$ 2,597**	
Cash							
Opening Balance	$ 935	$ -	$ 935	$ -	$ -	$ -	
Net Cash Flow	5,689			$ 25,888		25,888	
Repayment	(1,911)	-	(1,911)	(21,175)	-	(21,175)	
Cash Balance	**$ 4,713**	**$ -**	**$ (977)**	**$ 4,713**	**$ -**	**$ 4,713**	
Net Loan Balance	**$ (2,116)**	**$ -**	**$ (2,116)**	**$ (2,416)**	**$ 1,528**	**$ (3,943)**	

Note 1: Based on cash flow budget circulated Oct 30, 2018.
Note 2: Estimated debt amount including interest, fees and other costs.
Note 3:

Bank Cash	$ 4,713	
O/S Cheques	(317)	Utilities, taxes and other
Book Cash	**$ 4,396**	

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

208

Fluid Brands Inc.
Monitoring Report For the Week Ended December 22/18
Schedule 2 - Receipts
Unaudited in $000's

	Week Ended December 22/18			Cumulative to December 22/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Retail							
Net sales	$ 6,901	$ 3,959	$ 2,942	$ 39,481	$ 38,918	$ 563	Cumulative sales were < Budget due primarily to lower prevailing discounts vs. Budget. See next page for further details.
Retail sales tax	828	475	353	4,738	4,670	68	
Change in layway	(931)	(198)	(733)	(1,411)	(1,628)	218	
Change in giftcards	-	(44)	44	(726)	(350)	(376)	Gift card redemptions exceeded the Budget
AMEX holdback	-	-	-	(718)	-	(718)	
Change in CC float	155	(178)	333	(1,564)	($1,765)	201	Timing
	6,953	**4,015**	**2,938**	**39,800**	**39,845**	**(45)**	
FF&E	-	-	-	292	300	(8)	Timing
Gross Receipts	**$ 6,953**	**$ 4,015**	**$ 2,938**	**$ 40,092**	**$ 40,145**	**$ (53)**	

Fluid Brands Inc.
Monitoring Report For the Week Ended December 22/18
Schedule 2.1 - Sales & Margin
Unaudited in $000's

	Reported			Budget			Variance		
	Sales	COGS	GM%	Sales	COGS	GM%	Sales	COGS	GM%
Pre-Liquidation									
Oct 27	$ 1,164	$ 611	47.6%	$ 1,383	$ 732	47.1%	$ (219)	$ (121)	0.5%
Nov 03	1,332	795	40.3%	1,809	812	55.1%	(477)	(17)	-14.8%
	$ 2,496	**$ 1,406**	**43.7%**	**3,192**	**1,544**	**51.6%**	**$ (696)**	**$ (138)**	**-8.0%**
Liquidation									
Nov 10	2,927	1,409	51.9%	4,620	2,676	42.1%	(1,692)	(1,267)	9.8%
Nov 17	3,379	1,653	51.1%	5,692	3,357	41.0%	(2,313)	(1,704)	10.1%
Nov 24	4,594	2,422	47.3%	6,859	4,227	38.4%	(2,265)	(1,805)	8.9%
Dec 01	5,202	2,834	45.5%	6,172	4,021	34.9%	(970)	(1,187)	10.7%
Dec 08	7,056	4,637	34.3%	4,782	3,304	30.9%	2,274	1,333	3.4%
Dec 15	6,924	4,869	29.7%	3,641	2,803	23.0%	3,283	2,067	6.6%
Dec 22	6,901	5,589	19.0%	3,959	3,833	3.2%	2,942	1,756	15.8%
Dec 29				2,463	3,426	-39.1%			
Jan 05				191	346	-81.7%			
				38,380	**27,993**	**27.1%**			
				$ 41,572	**$ 29,537**	**29.0%**			
Oct 21 - Dec 22	**$ 39,481**	**$ 24,819**	**37.1%**	**$ 38,918**	**$ 25,765**	**33.8%**	**$ 563**	**$ (946)**	**3.3%**

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended December 22/18
Schedule 3 - Disbursements
Unaudited in $000's

	Week Ended December 22/18			Cumulative to December 22/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Operating							
Trade Payments (incl. broker)	$ 141	$ -	$ 141	$ 707	$ 46	$ 661	Category 1 inventory and some augment goods
Payroll	524	465	59	4,369	4,239	130	
Vacation Pay (terminated empl.)	4	-	4	24	100	(76)	Timing
KEIP	-	-	-	-	100	(100)	Timing
Rent	-	-	-	4,144	3,861	283	
Domestic Freight	83	51	33	449	384	65	
Utilities	40	14	26	62	226	(164)	Timing
Sales Tax	46	367	(322)	378	3,580	(3,202)	$1.6MM of Nov sales tax to be paid w/e Dec 29
Credit Card Fees	179	-	179	871	506	365	Higher than budgeted fees
Deposits	-	-	-	319	300	19	
CIBC Holdback deposits	-	-	-	340	-	340	Cash collateral provided to CIBC for various bank accounts and LCs
Other	-	132	(132)	683	1,138	(455)	Timing
Liquidation				-			
Hilco Fee (1.5%)	-	64	(64)	75	616	(541)	Timing
Supervision	-	128	(128)	171	899	(728)	Timing
Advertising	-	70	(70)	234	848	(614)	Timing
Non-Operating	-						
Interest	-	-	-	274	156	118	Higher interest due to Revolver balance > budget
Professional Fees	247	102	146	1,105	1,096	9	
Total Disbursements	**$ 1,264**	**$ 1,394**	**$ (130)**	**$ 14,204**	**$ 18,094**	**$ (3,891)**	

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

1/12

Fluid Brands Inc.
Monitoring Report For the Week Ended December 22/18
Schedule 4 - Inventory

Unaudited in $000's	Reported	Budget	Variance	Comments
Inventory On-Hand				
Bombay	$ 4,182	$ 2,118	$ 2,063	
Bowring	2,354	1,654	700	
	$ 6,536	**$ 3,772**	**$ 2,764**	

Fluid Brands Inc.
Schedule 5

DIP Forbearance Cash Flow ($000's)	Oct 27 Forecast	Nov 03 Forecast	Nov 10 Forecast	Nov 17 Forecast	Nov 24 Forecast	Dec 01 Forecast	Dec 08 Forecast	Dec 15 Forecast	Dec 22 Forecast	Dec 29 Forecast	Jan 05 Forecast	Jan 12 Forecast	Jan 19 Forecast	Jan 26 Forecast	Wind Down	Total
Receipts																
Store Receipts (incl. taxes)	$1,356	$1,371	$3,358	$5,533	$6,787	$7,056	$5,893	$4,476	$4,015	$3,399	$1,486	$107	$0	$0	$0	$44,837
Fixture proceeds	-	-	-	-	-	150	-	150	-	-	-	-	-	-	-	300
	1,356	1,371	3,358	5,533	6,787	7,206	5,893	4,626	4,015	3,399	1,486	107	-	-	-	45,137
Disbursements																
Trade Payments (incl. broker)	46	—	—	—	—	—	—	—	—	—	—	—	—	—	—	46
Payroll	492	469	495	457	457	457	481	465	465	465	465	39	—	—	—	5,208
Vacation Pay (terminated empl.)	—	—	—	100	—	—	—	—	—	200	—	—	—	354	—	654
KEIP	—	—	—	—	—	100	—	—	—	200	—	—	—	200	—	500
Rent	92	2,082	—	—	—	—	1,687	—	—	—	52	—	—	—	—	3,912
Domestic Freight	10	31	31	31	57	57	57	57	51	51	51	51	4	—	—	539
Utilities	19	28	28	28	27	27	27	27	14	14	14	14	6	—	—	275
Sales Tax	55	78	121	466	602	727	661	504	367	400	227	9	(3)	(3)	(33)	4,176
Credit Card Fees	—	—	115	—	—	—	391	—	—	—	251	—	—	—	3	760
Deposits	—	300	—	—	—	—	—	—	—	—	—	—	—	—	—	300
Other	162	25	137	137	137	137	137	132	132	132	132	6	1	1	2	1,413
Liquidation																
Hilco Fee (1.75%)	—	—	—	81	100	150	108	114	64	69	43	3	—	—	—	732
Supervision	—	—	128	128	128	128	128	128	128	128	128	—	—	—	—	1,155
Advertising	—	—	375	120	70	70	70	70	70	70	70	—	—	—	—	989
Non-Operating																
Interest	—	91	—	—	—	—	65	—	—	—	13	—	—	—	1	169
Professional Fees	—	237	181	119	243	107	57	51	102	45	62	28	28	57	226	1,542
	876	3,341	1,612	1,668	1,822	1,963	3,870	1,549	1,394	1,775	1,508	151	35	608	199	22,371
Net Cash Flow	$480	($1,970)	$1,747	$3,865	$4,965	$5,243	$2,023	$3,077	$2,621	$1,624	($21)	($44)	($35)	($608)	($199)	22,767
Combined Facility																
Opening Bank Loan	23,579	23,099	25,068	23,322	19,456	14,491	9,248	7,226	4,149	1,528	—	—	—	5	613	23,579
Closing Bank Loan	$23,099	$25,068	$23,322	$19,456	$14,491	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812
Cash	$0	$0	$0	$0	$0	$0	$0	$0	$0	$96	$75	$30	$0	$0	$0	$0
BBC Availability	($612)	($1,709)	($972)	$702	$2,679	$4,370	$2,632	$3,150	$2,920	$1,410	($279)	($341)	($346)	($597)	N/A	N/A
BBC Availability (excl. In-Transit)	($5,100)	($6,388)	($5,651)	($3,977)	($2,000)	($308)	($1,818)	($1,300)	($1,530)	($3,041)	($3,948)	($4,010)	($4,015)	($4,266)	N/A	N/A
Overadvance (>$23.5MM)	$0	$1,668	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Fixed Pre-Petition Loans																
Opening Balance		$23,099	$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$23,099
Pay-down		(1,371)	(3,358)	(5,533)	(6,787)	(6,049)	—	—	—	—	—	—	—	—	—	(23,099)
Ending Balance		$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revolving Post-Petition Loans																
Opening Balance		$0	$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$0
Draw / (Pay-down)		3,341	1,612	1,668	1,822	806	(2,023)	(3,077)	(2,621)	(1,528)	—	—	5	608	199	812
Ending Balance		$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

THIS IS EXHIBIT "N" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

Client	Lawyer	File No.	Date	Diary Date
Flurd			Dec. 27/18	
		How Received: Telephone☑ Interview☐ Meeting☐	Start Time	Finish Time

INFORMATION SHEET

Discussion / Conference with: Fred & Rosa Duris

- Rosa is preparing wire transfers
- has to send a list to Richter one hour before releasing wires
- ⇒ Richters will get back to Rosa w/i hour if they object to any payments
- so far, they have only objected to payments of some of Fred's personal expenses
- there will be sufficient funds on hand to pay all creditors post-filing - Fred's not worried - but does want to talk to Richter, Osler, David Cohen & Hilco about their fees - everyone is overcharging
- Richters wants inventory all sold by end of Dec. Fred disagrees

Client	Lawyer	File No.	Date	Diary Date
		How Received: Telephone☐ Interview☐ Meeting☐		Start Time Finish Time

INFORMATION SHEET

Discussion / Conference with:

Fred - inventory should be packed up & shipped to location that remain open

- Rosa → she'll call when wire transfer had been issued - will be about 1-2 hours

THIS IS EXHIBIT "O" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019

A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

DIRECTION RE LOAN

TO: Torkin Manes LLP ("**Torkin Manes**")

FROM: Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc. (the "**Borrowers**")

RE: Loan by Canadian Imperial Bank of Commerce, assigned to 2668602 Ontario Inc. (the "**Lender**"), for the benefit of Simon Serruya

---

The undersigned hereby irrevocably authorizes and directs Torkin Manes to pay out of funds being held in Torkin Manes' trust account (file #35162.0001) on account of the undersigned, to TD Waterhouse (for the account of Simon Serruya) the sum of $2,300,000, to repay on account of the loan to the Borrowers and this shall be your good and sufficient irrevocable authority to do so.

[*The next page is the signature page*]

DATED the 27th day of December, 2018.

FLUID BRANDS INC.

By: _____
Fred Benitah
Title: C.E.O.
I have the authority to bind the corporation

11041037 CANADA INC.

By: _____
Fred Benitah
Title: C.E.O.
I have the authority to bind the corporation

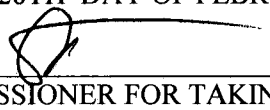
11041045 CANADA INC.

By: _____
Name: Fred Benitah
Title: C.E.O.
I have the authority to bind the corporation

2668602 ONTARIO INC.

By: _____
Name: Fred Benitah
Title: C.E.O.
I have the authority to bind the corporation

THIS IS EXHIBIT "P" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019



A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

Fluid Brands Inc.
Monitoring Report For the Week Ended December 29/18
Index of Schedules

		Page
Schedule 1	Summary Schedule	1
Schedule 2	Cash Receipts	2
Schedule 2.1	Liquidation Sales & Margin	3
Schedule 3	Cash Disbursements	4
Schedule 4	Inventory	5
Schedule 5	DIP Budget	6

Signature: _____

Date: January 2, 2019

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended December 29/18
Schedule 1 - Summary Schedule
Unaudited in $000's

	Week Ended December 29/18			Cumulative to December 29/18			
	Reported	Budget [1]	Variance	Reported	Budget [1]	Variance	Reference
Cash Receipts	$ 4,666	$ 3,399	$ 1,267	$ 44,758	$ 43,544	$ 1,214	Schedule 2
Cash Disbursements	(2,338)	(1,775)	(563)	(16,542)	(19,869)	3,327	Schedule 3
Net Cash Flow	**$ 2,328**	**$ 1,624**	**$ 704**	**$ 28,216**	**$ 23,675**	**$ 4,541**	
CIBC Revolving Loan							
Opening	$ -	$ -	$ -	$ 23,473	$ 23,579	$ (106)	
Net Cash Flow (up to Dec 13)	-	-	-	(19,265)	(23,675)	4,410	
Payment from 2668602 Ontario Inc.	-	-	-	(4,508)	-	(4,508)	
Loan Balance	**$ -**	**$ -**	**$ -**	**$ (300)**	**$ (96)**	**$ (204)**	
2668602 Ontario Inc.							
Opening [2]	$ 2,597	$ -	$ 2,597	$ -	$ -	$ -	
Assignment of CIBC Debt	-	-	-	4,508	-	4,508	
Repayment	(2,300)	-	(2,300)	(4,211)	-	(4,211)	
December 28, 2018	**$ 297**	**$ -**	**$ 298**	**$ 297**	**$ -**	**$ 297**	
Cash							
Opening Balance	$ 4,713	$ -	$ 4,713	$ -	$ -	$ -	
Net Cash Flow	2,328			$ 28,216		28,216	
Repayment	(2,300)	-	(2,300)	(23,475)	-	(23,475)	
Cash Balance	**$ 4,741**	**$ -**	**$ 2,413**	**$ 4,741**	**$ -**	**$ 4,741**	

Note 1: Based on cash flow budget circulated Oct 30, 2018.
Note 2: Estimated debt amount including interest, fees and other costs.
Note 3:

Bank Cash	$ 4,741	
O/S Cheques	(289)	Utilities, freight and other
Book Cash	**$ 4,451**	

Fluid Brands Inc.
Monitoring Report For the Week Ended December 29/18
Schedule 2 - Receipts
Unaudited in $000's

	Week Ended December 29/18			Cumulative to December 29/18			Comments
	Reported	Budget	Variance	Reported	Budget	Variance	
Retail							
Net sales	$ 2,888	$ 2,463	$ 425	$ 42,370	$ 41,382	$ 988	
Retail sales tax	347	296	51	5,084	4,966	119	
Change in layway	(414)	(198)	(216)	(1,824)	(1,826)	2	
Change in giftcards	-	-	-	(726)	(350)	(376)	Gift card redemptions exceeded the Budget
AMEX holdback	180	-	180	(538)	-	(538)	
Change in CC float	1,665	$838	827	101	($927)	1,028	
	4,666	**3,399**	**1,267**	**44,466**	**43,244**	**1,222**	
FF&E	-	-	-	292	300	(8)	
Gross Receipts	**$ 4,666**	**$ 3,399**	**$ 1,267**	**$ 44,758**	**$ 43,544**	**$ 1,214**	

Fluid Brands Inc.
Monitoring Report For the Week Ended December 29/18
Schedule 2.1 - Sales & Margin
Unaudited in $000's

	Reported			Budget			Variance		
	Sales	COGS	GM%	Sales	COGS	GM%	Sales	COGS	GM%
Pre-Liquidation									
Oct 27	$ 1,164	$ 611	47.6%	$ 1,383	$ 732	47.1%	$ (219)	$ (121)	0.5%
Nov 03	1,332	795	40.3%	1,809	812	55.1%	(477)	(17)	-14.8%
	$ 2,496	**$ 1,406**	**43.7%**	**3,192**	**1,544**	**51.6%**	**$ (696)**	**$ (138)**	**-8.0%**
Liquidation									
Nov 10	2,927	1,409	51.9%	4,620	2,676	42.1%	(1,692)	(1,267)	9.8%
Nov 17	3,379	1,653	51.1%	5,692	3,357	41.0%	(2,313)	(1,704)	10.1%
Nov 24	4,594	2,422	47.3%	6,859	4,227	38.4%	(2,265)	(1,805)	8.9%
Dec 01	5,202	2,834	45.5%	6,172	4,021	34.9%	(970)	(1,187)	10.7%
Dec 08	7,056	4,637	34.3%	4,782	3,304	30.9%	2,274	1,333	3.4%
Dec 15	6,924	4,869	29.7%	3,641	2,803	23.0%	3,283	2,067	6.6%
Dec 22	6,901	5,589	19.0%	3,959	3,833	3.2%	2,942	1,756	15.8%
Dec 29	2,888	3,774	-30.7%	2,463	3,426	-39.1%	425	348	8.4%
Jan 05				191	346	-81.7%			
				38,380	**27,993**	**27.1%**			
				$ 41,572	**$ 29,537**	**29.0%**			
Oct 21 - Dec 29	**$ 42,370**	**$ 28,593**	**32.5%**	**$ 41,382**	**$ 29,191**	**29.5%**	**$ 988**	**$ (597)**	**3.1%**

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

224

Fluid Brands Inc.
Monitoring Report For the Week Ended December 29/18
Schedule 3 - Disbursements
Unaudited in $000's

	Week Ended December 29/18			Cumulative to December 29/18			
	Reported	Budget	Variance	Reported	Budget	Variance	Comments
Operating							
Trade Payments (incl. broker)	$ 3	$ -	$ 3	$ 710	$ 46	$ 664	Category 1 inventory and some augment goods
Payroll	671	465	205	5,040	4,704	335	There were 30,000 additional hours in the prior week payroll run as the result of increased sales leading into the holidays.
Vacation Pay (terminated empl.)	3	200	(197)	26	300	(274)	Timing
KEIP	-	200	(200)	-	300	(300)	Timing
Rent	26	-	26	4,170	3,861	309	
Domestic Freight	34	51	(17)	483	435	49	
Utilities	0	14	(14)	62	240	(178)	
Sales Tax	1,602	400	1,202	1,980	3,980	(2,000)	December's taxes are outstanding
Credit Card Fees	-	-	-	871	506	365	Higher than budgeted fees
Deposits	-	-	-	319	300	19	
CIBC Holdback deposits	-	-	-	340	-	340	Cash collateral provided to CIBC for various bank accounts and LCs
Other	-	132	(132)	683	1,270	(587)	
Liquidation							
Hilco Fee (1.5%)	-	69	(69)	75	685	(610)	Timing
Supervision	-	128	(128)	171	1,027	(856)	Timing
Advertising	-	70	(70)	234	918	(684)	Timing
Non-Operating	-						
Interest	-	-	-	274	156	118	Higher interest due to Revolver balance > budget
Professional Fees	-	45	(45)	1,105	1,141	(37)	
Total Disbursements	**$ 2,338**	**$ 1,775**	**$ 563**	**$ 16,542**	**$ 19,869**	**$ (3,327)**	

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

Fluid Brands Inc.
Monitoring Report For the Week Ended December 29/18
Schedule 4 - Inventory

Unaudited in $000's	Reported	Budget	Variance	Comments
Inventory On-Hand				
Bombay	$ 1,632	$ 193	$ 1,438	
Bowring	1,130	153	977	
	$ 2,762	**$ 346**	**$ 2,416**	

226

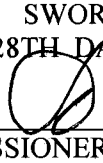
Fluid Brands Inc.
Schedule 5

DIP Forbearance Cash Flow ($000's)	Oct 27 Forecast	Nov 03 Forecast	Nov 10 Forecast	Nov 17 Forecast	Nov 24 Forecast	Dec 01 Forecast	Dec 08 Forecast	Dec 15 Forecast	Dec 22 Forecast	Dec 29 Forecast	Jan 05 Forecast	Jan 12 Forecast	Jan 19 Forecast	Jan 26 Forecast	Wind Down	Total
Receipts																
Store Receipts (incl. taxes)	$1,356	$1,371	$3,358	$5,533	$6,787	$7,056	$5,893	$4,476	$4,015	$3,399	$1,486	$107	$0	$0	$0	$44,837
Fixture proceeds	-	-	-	-	-	150	-	150	-	-	-	-	-	-	-	300
	1,356	1,371	3,358	5,533	6,787	7,206	5,893	4,626	4,015	3,399	1,486	107	-	-	-	45,137
Disbursements																
Trade Payments (incl. broker)	46	–	–	–	–	–	–	–	–	–	–	–	–	–	–	46
Payroll	492	469	495	457	457	457	481	465	465	465	465	39	–	–	–	5,208
Vacation Pay (terminated empl.)	–	–	–	100	–	–	–	–	–	200	–	–	–	354	–	654
KEIP	–	–	–	–	–	100	–	–	–	200	–	–	–	200	–	500
Rent	92	2,082	–	–	–	–	1,687	–	–	–	52	–	–	–	–	3,912
Domestic Freight	10	31	31	31	57	57	57	57	51	51	51	51	4	–	–	539
Utilities	19	28	28	28	27	27	27	27	14	14	14	14	6	–	–	275
Sales Tax	55	78	121	466	602	727	661	504	367	400	227	9	(3)	(3)	(33)	4,176
Credit Card Fees	–	–	115	–	–	–	391	–	–	–	251	–	–	–	3	760
Deposits	–	300	–	–	–	–	–	–	–	–	–	–	–	–	–	300
Other	162	25	137	137	137	137	137	132	132	132	132	6	1	1	2	1,413
Liquidation																
Hilco Fee (1.75%)	–	–	–	81	100	150	108	114	64	69	43	3	–	–	–	732
Supervision	–	–	128	128	128	128	128	128	128	128	128	–	–	–	–	1,155
Advertising	–	–	375	120	70	70	70	70	70	70	70	–	–	–	–	989
Non-Operating																
Interest	–	91	–	–	–	–	65	–	–	–	13	–	–	–	1	169
Professional Fees	–	237	181	119	243	107	57	51	102	45	62	28	28	57	226	1,542
	876	3,341	1,612	1,668	1,822	1,963	3,870	1,549	1,394	1,775	1,508	151	35	608	199	22,371
Net Cash Flow	$480	($1,970)	$1,747	$3,865	$4,965	$5,243	$2,023	$3,077	$2,621	$1,624	($21)	($44)	($35)	($608)	($199)	22,767
Combined Facility																
Opening Bank Loan	23,579	23,099	25,068	23,322	19,456	14,491	9,248	7,226	4,149	1,528	–	–	–	5	613	23,579
Closing Bank Loan	$23,099	$25,068	$23,322	$19,456	$14,491	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812
Cash	$0	$0	$0	$0	$0	$0	$0	$0	$0	$96	$75	$30	$0	$0	$0	$0
BBC Availability	($612)	($1,709)	($972)	$702	$2,679	$4,370	$2,632	$3,150	$2,920	$1,410	($279)	($341)	($346)	($597)	N/A	N/A
BBC Availability (excl. In-Transit)	($5,100)	($6,388)	($5,651)	($3,977)	($2,000)	($308)	($1,818)	($1,300)	($1,530)	($3,041)	($3,948)	($4,010)	($4,015)	($4,266)	N/A	N/A
Overadvance (>$23.5MM)	$0	$1,568	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Fixed Pre-Petition Loans																
Opening Balance		$23,099	$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$23,099
Pay-down		(1,371)	(3,358)	(5,533)	(6,787)	(6,049)	–	–	–	–	–	–	–	–	–	(23,099)
Ending Balance		$21,727	$18,369	$12,836	$6,049	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revolving Post-Petition Loans																
Opening Balance		$0	$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$0
Draw / (Pay-down)		3,341	1,612	1,668	1,822	806	(2,023)	(3,077)	(2,621)	(1,528)	–	–	5	608	199	812
Ending Balance		$3,341	$4,952	$6,620	$8,442	$9,248	$7,226	$4,149	$1,528	$0	$0	$0	$5	$613	$812	$812

Based upon unaudited information provided by management. No opinion is expressed regarding the accuracy or completeness of the information.

27

THIS IS EXHIBIT "Q" REFERRED TO IN THE
AFFIDAVIT OF JEFFREY J. SIMPSON
SWORN BEFORE ME,
THIS 28TH DAY OF FEBRUARY, 2019



A COMMISSIONER FOR TAKING AFFIDAVITS
THOMAS M. SLAHTA

229

Janice Chen

From: Lau, Duncan <DLau@Richter.ca>
Sent: Thursday, January 03, 2019 11:16 AM
To: S. Fay Sulley
Cc: Sherman, Adam
Subject: FW: CIBC
Attachments: NOTSET[Untitled]NOTSET.PDF

Fay,

Attached is the payout letter related to CIBC's debt. As you will see, the payout amount includes about $340k related to cash collateral. Will CIBC be paying this amount back to the Company or 266? This amount should come to the Company given that the company paid off the full amount to 266.

Duncan

RICHTER

DUNCAN
LAU
CIRP, CMA
VICE-PRESIDENT

DLau@Richter.ca
D 416.488.4027

Toronto, Montréal, Chicago RICHTER.CA

This email and any attachments are for the sole use of the intended recipients and may be private or confidential. Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact the sender immediately, and permanently delete this email and attachments.

From: Levine, Warren
Sent: Friday, December 14, 2018 2:13 PM
To: Lau, Duncan; Connolly, Shane
Subject: FW: CIBC

RICHTER

WARREN
LEVINE

wlevine@richterconsulting.com
C 312.859.4329 T 312.828.0800
My Profile

From: S. Fay Sulley <fsulley@torkinmanes.com>
Sent: Friday, December 14, 2018 2:09 PM
To: Sherman, Adam <ASherman@Richter.ca>; Levine, Warren <wlevine@richterconsulting.com>
Cc: SAbitan@osler.com; Jeffrey Simpson <jsimpson@torkinmanes.com>
Subject: FW: CIBC

Warren,

Attached is the Payout Letter we received from the bank yesterday morning.

Thanks

S. Fay Sulley
Legal services provided through Sara F. Sulley Professional Corporation
Tel: 416-777-5419
Fax: 1-888-587-5769

Torkin Manes LLP
Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

From: Gertner, Thomas [mailto:Thomas.Gertner@gowlingwlg.com]
Sent: Thursday, December 13, 2018 9:58 AM
To: S. Fay Sulley
Cc: Cohen, David
Subject: RE: CIBC

Fay;

Please find the enclosed payout letter.

The total due (including all cash collateral / legal and advisory fees) is as follows:

Cad$ 3,995,324.50

US$ 159,861.37

Please confirm once you are in receipts and one you have in turn initialized the wire.

Regards;

Thomas Gertner
Associate
T +1 416 369 4618
thomas.gertner@gowlingwlg.com

GOWLING WLG

wa

Fluid Brands Inc
Payout statement to CIBC Asset Based Lending

Facility Total Revolver Commitment is $23,500,000
Payout date is December 13, 2018

		CAD$	US$	
1	Principal Loan Balance , December 13, 2018	3,659,335.87	51,408.39	
2	Interest and fees outstanding			
	Interest charged on Prime Loan	Prime + 1.50%	US Base + 1.50%	
	Current Prime Rate	3.95%	5.75%	
	Interest and fees paid to:	30-Nov	30-Nov	
	Days to Calculate Interest	13	13	
	Interest - Prime/Base Loans	19,532.78	134.55	
	Letter of Credit Fees @1.50% and 1.00%	10.53	37.18	
	Wire Fee	16.00	-	
	Unused Line fee,	1,764.50	-	
	Monthly Collateral Management fee	1,500.00	-	
	Legal fees - Gowling's	102,427.62	-	
	Financial Advisor Fees	15,000.00		
	Total Interest and Fees	140,251.43	171.73	
	Total Principal, Interest and Fees	3,799,587.00	51,580.12	
	Cash Collateral other for Accounts at CIBC	175,000.00	-	
	Letter of Credits - Cash Collataralized at 105%	20,737.50	108,281.25	
	Total Cash Collateral	195,737.50	108,281.25	
	Total amounts owing to CIBC	3,995,324.50	159,861.37	

Calculation of Unused Line Fee

Credit Limit	23,500,000.00		
UL Rate	0.375%		
Days	13		
Days Basis	365		
Average Monthly Loan Balance	10,288,885.35	10,288,885.35	FX 1.3356
Unused line	13,211,114.65		
ULF	1,764.50		

	Cad$ Amounts	USD$ Amounts
Letter of Credits	19,750.00	103,125.00
	19,750.00	103,125.00
105%	20,737.50	108,281.25

IN THE MATTER OF THE BANKRUPTCY PROCEEDINGS OF FLUID BRANDS INC., 11041037 CANADA INC. and 11041045 CANADA INC.

Court File Nos. 31-2436097, 31-2436108 and 31-2436109

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)
PROCEEDINGS COMMENCED IN TORONTO

RESPONDING MOTION RECORD

KESTENBERG SIEGAL LIPKUS LLP
Barristers and Solicitors
65 Granby Street
Toronto, Ontario
M5B 1H8

MICHAEL R. KESTENBERG
LSO #16005H
THOMAS M. SLAHTA
LSO @32454U

Tel: (416) 597-0000
Fax: (416) 597-6567
Email: mrk@ksllaw.com
Email: tslahta@ksllaw.com
Lawyers for Torkin Manes LLP