

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Court No: 500-11-057805-208,
500-11-057804-201
File No: 41-2607510,
41-2607508

SUPERIOR COURT
(Commercial Division)
Bankruptcy and Insolvency Act

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:

**FREEMARK APPAREL BRANDS RETAIL BE
INC.**

and

FREEMARK APPAREL BRANDS GROUP INC.
legal persons duly incorporated under the laws of
Canada, having their principal places of business at
5640 Pare Street, Mount Royal, Quebec, H3B 1M1

Petitioners / Debtors

-and-

RICHTER ADVISORY GROUP INC.

Proposal Trustee

**FIFTH REPORT OF THE PROPOSAL TRUSTEE
ON THE STATE OF PETITIONERS' BUSINESS AND FINANCIAL AFFAIRS
May 8, 2020**

INTRODUCTION

1. On January 21, 2020, each of Freemark Apparel Brands Retail BE Inc. ("**FAB Retail**") and Freemark Apparel Brands Group Inc. ("**FAB Wholesale**") (collectively with FAB Retail, the "**Debtors**") filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to the provisions of the Bankruptcy and Insolvency Act ("**BIA**"). Richter Advisory Group Inc. ("**Richter**") was named Trustee.
2. Prior to filing the NOI, this Court authorized Richter to act as trustee to the NOI. Such an authorization was required as an entity related to Richter acts as the auditor for the Debtors.

3. On or around January 27, 2020, the Debtors filed a Motion for the Issuance of an Order Authorizing a Liquidation Sale and Approving Ancillary Relief ("**Liquidation Motion**"). An order was rendered on January 31, 2020 approving the Liquidation Motion (the "**Liquidation Order**").
4. On January 27, 2020, the Proposal Trustee filed its First Report in support of the Liquidation Motion ("**First Report**").
5. On February 17, 2020, the Debtors filed the First Motion for the Extension of the Delay to File a Proposal (the "**First Extension Motion**"). On February 17, 2020, the Proposal Trustee filed its Second Report in support of the First Extension Motion ("**Second Report**"). The First Extension Motion was granted on February 20, 2020 providing an extension until April 3, 2020.
6. On March 23, 2020, the Debtors filed the Motion for the Issuance of an Order Approving a Transaction and Ordering the Assignment of Agreements (the "**Transaction Motion**"). On March 23, 2020, the Proposal Trustee filed its Third Report in support of the Transaction Motion ("**Third Report**"). The Transaction Motion was granted on March 27, 2020. The Transaction closed on March 30, 2020.
7. On March 30, 2020, the Debtors filed the Second Motion for the Extension of the Delay to File a Proposal (the "**Second Extension Motion**"). On March 30, 2020, the Proposal Trustee filed its Fourth Report in support of the Second Extension Motion ("**Fourth Report**"). The Second Extension Motion was granted on April 3, 2020.
8. On May 8, 2020, the Debtors filed the Third Motion for the Extension of the Delay to File a Proposal (the "**Third Extension Motion**").
9. In order to monitor the affairs and finances of the Debtors, the Proposal Trustee has been provided with access to the books, records and other important documents of the Debtors.

PURPOSE OF THIS REPORT

10. The purpose of this Fifth Report is to provide this Court with information pertaining to:
 - a) The background and operations of the Debtors;
 - b) The Debtors' creditors;
 - c) Post-filing operations;
 - d) The Transaction (as defined below);
 - e) The Debtors' statement of projected cash flow for the period from May 4, 2020 to July 5, 2020 and the reported results therein;

- f) The Debtors' request for a third extension of the statutory delay to file a proposal (the **"Proposal Period"**) to June 29, 2020; and
- g) The Trustee's recommendation that this Court render an order approving the Third Extension Motion.

TERMS OF REFERENCE

- 11. In preparing this Fifth Report, the Proposal Trustee has relied upon certain unaudited financial information prepared by the Debtors' representatives, the Debtors' books and records, and discussions with the Debtors' representatives and legal counsel (the **"Information"**).
- 12. Except as otherwise described in this Fifth Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (**"GAAS"**) pursuant to the Chartered Professional Accountant of Canada Handbook and, as such, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
- 13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND AND OPERATIONS OF THE DEBTORS

- 14. The information concerning the background and operations was set out in the First Report and certain information is being reproduced for ease of reference.
- 15. The FAB Group was a retailer of branded apparel. FAB Retail conducted its operations through a chain of 25 retail stores (throughout Canada) and through an e-commerce site. FAB Wholesale sold to a variety of customers including Costco, the Bay, Winners and other retailers. All stores were closed on March 19, 2020 as a result of the coronavirus.
- 16. The FAB Group's head office is located in Montreal as well as its warehouse and distribution center. All of the FAB Group's locations were leased from third parties.
- 17. Prior to the filing of the NOIs, the FAB Group employed approximately 338 people. As a result of the store closures on March 19, 2020, and the completion of the Transaction as described below, all store employees, all distribution center employees and the majority of the head office staff have also been terminated.

SECURED LENDERS

18. The information concerning the secured lenders and the unsecured creditors was set out in the First Report and Second Report but is being reproduced for ease of reference and to provide up to date information.
19. At the time of the filing of the NOIs, the Debtors' books and records reflected amounts owing to the following secured creditors:
 - a) Accord Financial Inc. ("**Accord**") – \$15.1 million in respect of the operating loan advances. As of May 4, 2020, the operating loan advances are approximately \$5.7 million;
 - b) Gordon Brothers Brands, LLC ("**GBB**") – \$5.9 million (~US\$4.5 million) in respect of the balance of sale owing on the purchase of the Bench intellectual property for the Americas, which amount has been fully repaid as part of the Transaction (as described below); and
 - c) Freemark Apparel Holdings Inc. ("**FAHI**") – \$14.7 million in respect of shareholders loans.
20. As noted in the Liquidation Motion, Accord and the Debtors entered into a forbearance agreement ("**Forbearance Agreement**") by which Accord will continue to provide financing during the NOI proceedings subject to the terms of the Forbearance Agreement.
21. The Proposal Trustee has engaged independent legal counsel to provide the Trustee with an opinion regarding the validity and enforceability of the security granted by the Debtors to the secured creditors.

UNSECURED CREDITORS

22. Based on the books and records of the Debtors, unsecured creditors consisting of landlords, trade suppliers, service providers and others are owed the following amounts:
 - a) FAB Wholesale - \$5.2 million;
 - b) FAB Retail - \$0.7 million.
23. It should be noted that many of the suppliers for FAB Retail actually invoice FAB Wholesale as they are supplying products to both companies, and as such, the debts of the two companies are to some extent co-mingled.
24. We further note that the actual amounts owing may vary once a claims process has been put in place, in particular as landlords will have claims in respect of damages relating to the disclaimer of the various leases.

POST-FILING OPERATIONS

25. Subsequent to the filing of the NOIs, FAB Retail commenced the liquidation of inventory in all of its retail locations. The initial plan was for FAB Retail to complete the closure of all retail locations by the end of April 2020. However, as a result of the impact of the coronavirus, and similar to many other retailers, FAB Retail closed all of its locations effective March 19, 2020.
26. On March 20, 2020, FAB Retail issued notices of disclaimer for all of its retail locations pursuant to subsection 65.2 of the BIA and vacated all of the store locations. None of the disclaimers were contested.
27. On March 23, 2020, FAB Wholesale issued a notice of disclaimer pursuant to subsection 65.2 of the BIA in respect of the Montreal warehouse. FAB Wholesale continued servicing its customers in the ordinary course of business up until April 26, 2020, including certain wholesale orders which were excluded from the Transaction. FAB Wholesale vacated the premise on April 23, 2020.
28. On March 30, 2020, a notice of disclaimer was issued for the head office location located in Montreal. The premises have not yet been vacated and the purchaser of the assets pursuant to the Transaction is occupying the head office premises on a temporary basis based upon an agreement with the landlord.
29. Following the issuance of the notices of disclaimer, all of the unsold retail inventory and unsold wholesale inventory (collectively the “**Remaining Inventory**”) were moved to a temporary warehouse in the greater Montreal area with the intention of liquidating the Remaining Inventory at a later date once the various coronavirus restrictions have been lifted.
30. The Debtors are current on their payroll although as a result of the current economic environment, their cash flow did not permit them to pay all of the retail store rent for the disclaimer period. Given the termination of operations, the various stakeholders including the landlords will not benefit from an immediate bankruptcy. To the contrary, a further extension will allow the Debtors the time to formulate a proposal which will include the liquidation of the Remaining Inventory.

SALE AND INVESTMENT SOLICITATION PROCESS

31. The information concerning the Sale and Investment Solicitation Process (the “**SISP**”) was set out in the Third Report and Fourth Report but is being reproduced for ease of reference and to provide up to date information.
32. As noted in the Third Report, the Debtors, with the assistance of the Proposal Trustee, launched a SISP on February 7, 2020 in respect of (i) certain intellectual property held by a wholly-owned subsidiary of FAB Wholesale (the “**Bench Americas IP**”); (ii) the current wholesale order book

owned by FAB Wholesale, and (iii) the rights held by FAB Wholesale to exercise an option to purchase certain intellectual property owned by an affiliate of GBB in respect of licenses relating to the Bench brand for those territories not included in the Bench Americas IP (the “**Bench ROW IP**”).

33. Only one offer was received by the March 13, 2020 deadline, being an offer from 11951432 Canada Inc. (the “**Purchaser**”), an entity related to the Debtors. Richter, in consultation with Accord, determined that the offer submitted by the Purchaser (the “**Transaction**”) was in the best interest of the Debtors’ stakeholders.
34. The Transaction was approved by the Court on March 27, 2020 and closed on March 30, 2020.
35. In addition to the assets acquired pursuant to the Transaction, the Purchaser is also acquiring certain inventory of the Debtors.

THE DEBTOR’S CASH FLOW FORECAST

36. The reported results versus the Debtors’ projections for the period January 13, 2020 to May 3, 2020, which are summarized in the table below, reflect a positive net cash flow variance of approximately \$714K mainly attributable to variances associated with timing variances in connection with the payment of sales taxes as well as gains resulting from the closing of foreign exchange contracts offset by higher operating expenses financial charges and professional fees:

Freemark Apparel Brands Inc. Reported vs Projected For the period Jan 13 to May 3, 2020 (\$000's)			
	<u>Reported</u>	<u>Projected</u>	<u>Variance</u>
Cash Receipts			
Retail	\$ 9,406	\$ 9,113	\$ 293
Wholesale	11,670	12,010	(339)
Other	50	95	(45)
	21,126	21,218	(92)
Disbursements			
Purchases	(6,549)	(6,393)	(156)
Payroll	(2,807)	(2,645)	(163)
Operational Expenses	(2,119)	(2,012)	(107)
Rent	(924)	(859)	(66)
Freight & Duty	(106)	(106)	-
Insurance	(93)	(73)	(20)
Sales Taxes	(173)	(838)	665
Financial Charges	(536)	(413)	(123)
Professional Fees	(1,192)	(1,027)	(164)
FX Gain (Loss)	621	(318)	939
	(13,879)	(14,685)	806
Net Cash Flow	\$ 7,247	\$ 6,533	\$ 714

37. In support of the extension sought, the Debtors have prepared a statement of projected cash flow (**Exhibit “A”**) covering the period May 4, 2020 to July 5, 2020 which we summarize as follows:

Freemark Apparel Brands Inc. Statement of Projected Cash Flow For the period May 4 to July 5, 2020 (\$000's)	
	Total <i>(62 days)</i>
Collections	
Wholesale	63
Other	36
	99
Disbursements	
Payroll	(9)
Operational Expenses	(65)
Insurance	3
Professional Fees	(123)
Total Disbursements	(194)
Net Cash Flow	\$ (95)
Opening Revolver (Net of Cash)	\$ (5,701)
Net Cash Flow	(95)
Ending Revolver (Net of Cash)	\$ (5,796)

38. The statement of projected cash flow was prepared on the basis of the following:
- Collections: Collection of existing accounts receivables and the sale of certain fixed assets, however, no collections are forecast for the sale of the remaining retail inventory as there is uncertainty as to when liquidation sales can commence due to the coronavirus; and
 - Disbursements: consists of:
 - Payroll for the remaining employees to assist during the extension period including the winding up of operations;
 - Operational expenses which include mainly transportation costs of the store inventory back to Montreal; and
 - Professional fees to administer a proposal to creditors or a bankruptcy.

REQUEST TO EXTEND THE PROPOSAL PERIOD TO JUNE 29, 2020

39. The Debtors are requesting the extension of the Proposal Period to June 29, 2020 (the “**Extension**”).
40. The Proposal Trustee supports the Debtors’ request for the extension for the following reasons:
- This will assist in the process for the disposition of the Remaining Inventory;

- b) This will enable the Debtors to assess whether or not they can formulate a viable proposal for the benefit of their creditors including discussions with the D&O insurer;
- c) The Debtors are acting in good faith and with due diligence in taking steps to maximize the value of their assets for the benefit of their creditors;
- d) It is the Proposal Trustee's view that the Extension will not materially prejudice or adversely affect any group of creditors; and
- e) Both Accord, and FAHI have been advised of the Third Extension Motion and have confirmed their support.

CONCLUSION

41. For the reasons outlined above, the Proposal Trustee supports the issuance of the conclusions sought in paragraph 10(g) of this report.

Respectfully submitted at Montreal, this 8^h day of May 2020.

Richter Advisory Group Inc.
Trustee



Andrew Adessky, CPA, CA, CIRP, LIT

Exhibit A

District of: Québec
Division No.: 01-Montréal
Court No.: 500-11-057805-208
Estate No.: 41-2607508, 41-2607510

FORM 29
Trustee's Report on Cash-Flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the Matter of the Notice of Intention to Make a Proposal of
Freemark Apparel Brands Group Inc. and Freemark Apparel Brands Retail BE Inc. "**Debtors**"
Of the City of Mont-Royal
In the Province of Québec

The attached statement of projected cash flow of the Debtors, as of the 7th day of May 2020, consisting of the period from May 4, 2020 to July 5, 2020, has been prepared by the management of the insolvent person for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

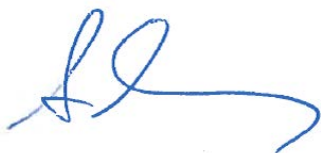
- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Montréal, in the Province of Quebec, this 7th day May 2020.

Richter Advisory Group Inc.
Licensed Insolvency Trustee
Per:



Andrew Adessky, MBA, CPA, CA, CIRP, LIT
1981 McGill College, 11th Floor
Montréal QC H3A 0G6
Phone: (514) 934-3400 Fax: (514) 934-8603

District of: Québec
Division No.: 01-Montréal
Court No.: 500-11-057805-208
Estate No.: 41-2607508, 41-2607510

FORM 29 – ATTACHMENT
Trustee's Report on Cash-Flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the Matter of the Notice of Intention to Make a Proposal of
Freemark Apparel Brands Group Inc. and Freemark Apparel Brands Retail BE Inc. "**Debtors**"
Of the City of Mont-Royal
In the Province of Québec

Purpose:

The Debtors filed a Notice of Intention to Make a Proposal on January 21, 2020. The purpose of this Statement of Projected Cash Flow is to present the estimated cash receipts and disbursements of the Debtors (the "Company"), for the period May 4, 2020 to July 5, 2020, relating to the filing of relating to the filing of a Motion to extend the delay to make a proposal.

This Statement of Projected Cash Flow has been prepared by management on May 7, 2020, based on available financial information at that date in accordance with Section 50.4(2) of the Bankruptcy and Insolvency Act and should be read in conjunction with the Trustee's Report on the Cash Flow Statement. Readers are cautioned that this information may not be appropriate for other purposes.

Projection Notes:

The Statement of Projected Cash Flow has been prepared using probable assumptions supported and consistent with the plans of the Company for the period May 4, 2020 to July 5, 2020, considering the economic conditions that are considered the most probable by management.

As the cash flow is based upon various assumptions regarding future events and circumstances, variances will exist and said variances may be material. Accordingly, we express no assurance as to whether the projections will be achieved.

Assumptions:

(a) Projected Cash Receipts

The projected cash receipts are estimated by management, based on the remaining accounts receivable collections.

(b) Projected Cash Disbursements

The projected cash disbursements are best estimates by the Company and management' of the remaining operational expenses to be incurred;

Professional fees are based on management's estimate and relate to the filing of the Notice of Intention to Make a Proposal and restructuring;

The cash disbursements do not provide for the payment of arrears to unsecured creditors.

Dated at the City of Montréal in the Province of Quebec, this 7th day May 2020.

Richter Advisory Group Inc.

Licensed Insolvency Trustee

Per:



Andrew Adessky, MBA, CPA, CA, CIRP, LIT
1981 McGill College, 11th Floor
Montréal QC H3A 0G6
Phone: (514) 934-3400 Fax: (514) 934-8603

District of: Québec
Division No.: 01-Montréal
Court No.: 500-11-057805-208
Estate No.: 41-2607508, 41-2607510

- FORM 30 -

Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2) (c) of the Act)

In the Matter of the Notice of Intention to Make a Proposal of
Freemark Apparel Brands Group Inc. and Freemark Apparel Brands Retail BE Inc. **"Debtors"**
Of the City of Mont-Royal
In the Province of Québec

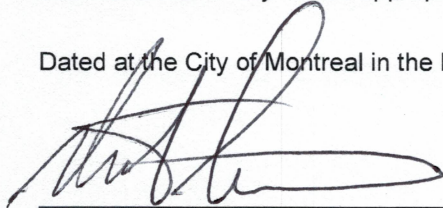
The management of the Debtors has developed the assumptions and prepared the attached statement of projected cash flow of the insolvent person, as of the 7th day of May 2020, consisting of the period from May 4, 2020 to July 5, 2020.

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the insolvent person and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Montreal in the Province of Quebec, this 7th day of May 2020.


The Debtors


Name and title of signing officer

District of: Québec
Division No.: 01-Montréal
Court No.: 500-11-057805-208
Estate No.: 41-2607508, 41-2607510

- FORM 30 - Attachment
Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2) (c) of the Act)

In the Matter of the Notice of Intention to Make a Proposal of
Freemark Apparel Brands Group Inc. and Freemark Apparel Brands Retail BE Inc. "**Debtors**"
Of the City of Mont-Royal
In the Province of Québec

Purpose:

The Debtors filed a Notice of Intention to Make a Proposal on January 21, 2020. The purpose of this Statement of Projected Cash Flow is to present the estimated cash receipts and disbursements of the Debtors (the "Company"), for the period May 4, 2020 to July 5, 2020, relating to the filing of relating to the filing of a Motion to extend the delay to make a proposal.

This Statement of Projected Cash Flow has been prepared by management on May 7, 2020 based on available financial information at that date in accordance with Section 50.4(2) of the Bankruptcy and Insolvency Act and should be read in conjunction with the Trustee's Report on the Cash Flow Statement. Readers are cautioned that this information may not be appropriate for other purposes.

Projection Notes:

The Statement of Projected Cash Flow has been prepared using probable assumptions supported and consistent with the plans of the Company for the period May 4, 2020 to July 5, 2020, considering the economic conditions that are considered the most probable by management.

As the cash flow is based upon various assumptions regarding future events and circumstances, variances will exist and said variances may be material. Accordingly, we express no assurance as to whether the projections will be achieved.

Assumptions:

(a) Projected Cash Receipts

The projected cash receipts are estimated by management, based on the remaining accounts receivable collections.

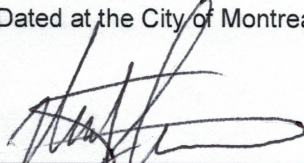
(b) Projected Cash Disbursements

The projected cash disbursements are best estimates by the Company and management' of the remaining operational expenses to be incurred;

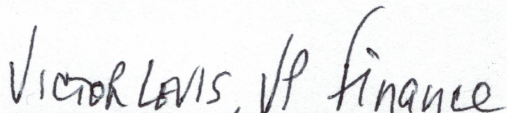
Professional fees are based on management's estimate and relate to the filing of the Notice of Intention to Make a Proposal and restructuring;

The cash disbursements do not provide for the payment of arrears to unsecured creditors.

Dated at the City of Montreal, in the Province of Quebec, this 7th day of May 2020.



The Debtors

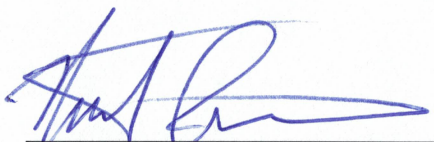


Name and title of signing officer

District of: Québec
Division No.: 01-Montréal
Court No.: 500-11-057805-208
Estate No.: 41-2607508, 41-2607510

Statement of Combined Projected Cash Flows for:
Freemark Apparel Brands Group Inc.
Freemark Apparel Brands Retail BE Inc.

Projected Weekly Cash Flow	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Total
Week ending	10-May-20	17-May-20	24-May-20	31-May-20	7-Jun-20	14-Jun-20	21-Jun-20	28-Jun-20	5-Jul-20	9-Week
\$'000	(Projected)	(Projected)	(Projected)	(Projected)	(Projected)	(Projected)	(Projected)	(Projected)	(Projected)	(Projected)
Collections										
Wholesale	-	16	16	16	16	-	-	-	-	63
Other	-	36	-	-	-	-	-	-	-	36
	-	52	16	16	16	-	-	-	-	99
Disbursements										
Payroll	-	(6)	-	(3)	-	-	-	-	-	(9)
Operational Expenses	(15)	-	-	-	(50)	-	-	-	-	(65)
Insurance	-	3	-	-	-	-	-	-	-	3
Professional Fees	(25)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(123)
	(40)	(16)	(12)	(15)	(62)	(12)	(12)	(12)	(12)	(194)
Net Cash Flow	(40)	36	4	1	(46)	(12)	(12)	(12)	(12)	(95)
Opening Revolver (net of cash)	(5,701)	(5,741)	(5,705)	(5,702)	(5,701)	(5,747)	(5,760)	(5,772)	(5,784)	(5,701)
Closing Revolver (net of cash)	\$ (5,741)	\$ (5,705)	\$ (5,702)	\$ (5,701)	\$ (5,747)	\$ (5,760)	\$ (5,772)	\$ (5,784)	\$ (5,796)	\$ (5,796)


Victor Levis, CPA



Andrew Adessky, MBA, CPA, CA, CIRP, LIT

May 7, 2020
Date

May 8, 2020

Date